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SAN ANTONIO PARKS FOUNDATION, and
THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER THIRTY-ONE,
CITY OF SAN ANTONIO, TEXAS

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**DEVELOPMENT AGREEMENT WITH THE CITY OF SAN ANTONIO, TEXAS
SAN ANTONIO PARKS FOUNDATION, and
THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER THIRTY-ONE,
CITY OF SAN ANTONIO, TEXAS**

This Development Agreement (“Agreement”), pursuant to Ordinance No. 2015-____-_____, passed and approved on the ____ day of _____, 2015, is entered into by and between the City of San Antonio, a Texas municipal corporation in Bexar County, Texas (“the City”); San Antonio Parks Foundation, a 501(c)(3) nonprofit organization, (“SAPF”), and the Board of Directors for Reinvestment Zone Number Thirty-One, City of San Antonio, Texas, a tax increment reinvestment zone (the “Board”) and whom together may be referred to as the “Parties.”

BACKGROUND:

WHEREAS, the City recognizes the importance of its continued role in economic development, community development, planning and urban design; and

WHEREAS, a tax increment reinvestment zone created pursuant to the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code (as amended, hereinafter called the “Act”) may only be designated by the City within the city limits; and

WHEREAS, by Ordinance Number 2008-12-11-1134, dated December 12, 2008, the City created Reinvestment Zone Number Thirty-One in accordance with the Act, to promote development and redevelopment of the Zone Property, the Midtown City area, through the use of tax increment financing, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future, and established a Board of Directors for the Zone, and authorized the Board to exercise all the rights, powers, and duties as provided to such boards under the Act; and

WHEREAS, in accordance with the Act, the City created the Board and authorized the Board to exercise all the rights, powers, and duties as provided to such Boards under the Act or by action of the City Council; and

WHEREAS, on the 23rd day of January, 2015 the Board approved funding for this project; and

WHEREAS, on the Board will adopt and approve an amended Project Plan and an amended Finance Plan defined hereunder and referred to as “Project Plan” and “Finance Plan” which will include this project for development of the Zone Property; and

WHEREAS, pursuant to the Act and City of San Antonio Ordinance Number 20__-__-_____, dated _____, 2015, the Board has authority to enter into agreements that the Board considers necessary or convenient to implement the Project Plan and Finance Plan and to achieve the purposes of developing the Zone Property within the scope of those plans; and

WHEREAS, pursuant to said authority above, the Board, the City, and the SAPF each hereby enters into a binding agreement with the others to develop and/or redevelop the Zone Property as may be specified in any future amended Project Plan, and Finance Plans and this Agreement; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, the City, the Board, and the SAPF agree as follows:

ARTICLE I. DEFINITIONS

- 1.1 The “City,” the “Board” and the “SAPF” shall have the meanings specified above.
- 1.2 “Act” means the Tax Increment Financing Act, Texas Tax Code Chapter 311, as amended from time to time.
- 1.3 “Administrative Costs” means reasonable costs directly incurred by any Participating Taxing Entity related to its agreement to participate in the funding of the Zone, as described in this Agreement. These costs include, but are not limited to, reasonable costs and expenses for legal review and financial analysis related to the Zone incurred prior to entering into and during this Agreement, as well as any such costs and expenses incurred after this Agreement becomes effective.
- 1.4 “Agreement” means this document by and among the City, the Board and the SAPF, which may be amended from time to time.
- 1.5 “Available Tax Increment Funds” for each Participating Taxing Entity means the “Tax Increment” contributed by each Participating Taxing Entity to the TIF Fund, as paid out in accordance with the priority of payment listed in Section 7.6 below.
- 1.6 “Captured appraised value of real property taxable by a taxing unit for a year” has the meaning provided by §311.012(b) of the Act.
- 1.7 “City Manager” means the City Manager of the City or her designee.
- 1.8 “City Code” means the City Code of the City of San Antonio, as amended.
- 1.9 “Completion” means final approval of the construction of a Public Improvement in the Zone in accordance with the SAPF’s engineer’s design, Project Plan, Finance Plan and this Agreement. In order for a Public Improvement to have achieved a state of “Completion” for the purpose of reimbursement under Article VII of this Agreement, the improvement must:
 - (1) be approved and accepted by the City or appropriate entity as evidenced by a letter of acceptance issued by an authorized official of the City or appropriate entity.
- 1.10 “Construction Schedule” means the timetable for constructing the Public Improvements specified in this Agreement, which timetable is more particularly set forth in **Exhibit A**,

Construction Schedule, attached and incorporated in this Agreement for all purposes and which timetable may be amended by the Parties from time to time pursuant to Section 22.2.

1.11 “Contract Progress Payment Request” (“CPPR”) means a request, prepared in accordance with the requirements of **Exhibit D**, Contract Progress Payment Request Form, attached and incorporated herein, for reimbursement to the SAPF for work completed in accordance with the definition of “Completion” on specific improvement in the Zone in accordance with the Public Improvements in the Project Plan and the timeline detailed in **Exhibit A**.

1.12 “CPPR Approval” means a written acknowledgement from the City to the SAPF that the CPPR was completed and submitted correctly, and that the CPPR is ready for presentation to the Board for approval and consideration of reimbursement to the SAPF.

1.13 “SAPF” means San Antonio Parks Foundation, a 501(c)(3) nonprofit organization.

1.14 “Effective Date” means the last date that a Party signs this Agreement.

1.15 “Finance Plan” means the amended Reinvestment Zone Financing Plan as defined in the Act, as approved and as may be amended from time to time by the Board and the City, which Plan is hereby incorporated into this Agreement by reference for all purposes, as if set out in its entirety.

1.16 “Guidelines” means the current Tax Increment Financing (TIF) and Reinvestment Zone policy as passed and approved by the City Council of the City of San Antonio and amended from time to time.

1.17 “Participating Taxing Entity” means any governmental entity recognized as such by Texas law, which is participating in this Project by contributing a percentage of its tax increment.

1.18 “Phase” means a portion of the Project that is being constructed by the SAPF during a specific timeline.

1.19 “Project” has the meaning specified in Section 3.1 of this Agreement.

1.20 “Project Costs” has the meaning provided by Section 311.002(1) of the Act.

1.21 “Project Plan” means the amended Project Plan as defined in the Act, as approved and as may be amended from time to time by the Board and the City, which is incorporated by reference into this document as if set out in its entirety, for all purposes.

1.22 “Project Status Report” means a report, prepared and submitted by the SAPF in accordance with the requirements of this Agreement, and **Exhibit B** attached and incorporated herein for all purposes, which report provides quarterly updates of Project construction and compliance with laws, ordinances, and contractual requirements.

1.23 “Public Improvements” include those improvements that provide a public benefit and that are listed in this Agreement in Section 3.1. 1.24 “Tax Increment” has the meaning assigned

by Section 311.012 of the Texas Tax Code, and applies only to taxable real property within the Zone.

1.25 “TIF” means Tax Increment Financing.

1.26 “TIF Fund” means the tax increment fund created by the City for the deposit of Tax Increments for the Zone, entitled “Reinvestment Zone Number Thirty-One, City of San Antonio, Texas Tax Increment Fund.”

1.27 “TIF Unit” means the City department responsible for the management of the City’s Tax Increment Financing Program.

1.28 “TIRZ” means Tax Increment Reinvestment Zone.

1.29 “Zone” means Tax Increment Reinvestment Zone Number Thirty-One, City of San Antonio, Texas.

1.30 “Zone Property” means the contiguous geographic area of the City that is included in the boundaries of the Zone, which are more particularly described in the Project and Finance Plans incorporated herein.

Singular and Plural: Words used in the singular, where the context so permits, also include the plural and vice versa, unless otherwise specified.

ARTICLE II. REPRESENTATIONS

2.1 **No Tax Increment Bonds or Notes:** The City, the Board and the SAPF represent that they understand and agree that neither the City nor the Board shall issue any bonds or notes to cover any costs directly or indirectly related to the SAPF’s improvement of the Zone under this Agreement.

2.2 **City Authority.** The City represents to the SAPF that as of the date of the execution of this Agreement, the City is a home rule municipality located in Bexar County, Texas, and has authority to carry out the obligations contemplated by this Agreement.

2.3 **Board’s Authority.** Board represents to the SAPF that as of the date of the Board’s signature to this Agreement the Zone is a Tax Increment Reinvestment Zone established by the City pursuant to Ordinance Number 2008-12-11-1134, passed and approved on December 11, 2008, and that the City and the Board have authority to carry on the functions and operations contemplated by this Agreement.

2.4 **SAPF’s Authority and Ability to Perform.** The SAPF represents to the City and to the Board that the SAPF is a 501(c)(3) nonprofit organization; that the SAPF has the authority to enter into this Agreement and to perform the requirements of this Agreement; that the SAPF’s performance under this Agreement shall not violate any applicable judgment, order, law or regulation nor result in the creation of any claim against the City for money or performance, any lien, charge, encumbrance or security interest upon any asset of the City or the Board, except that

this Agreement shall constitute a claim against the TIF Fund only from Available Tax Increment Funds to the extent provided herein; and that the SAPF shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital.

2.5 **Reasonable Efforts of All Parties.** The City, the Board and the SAPF represent each to the others that they shall each make reasonable efforts to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

2.6 **All Consents and Approvals Obtained.** The City, the Board and the SAPF represent each to the others that the execution, delivery, and performance of this Agreement on its part does not require consent or approval of any person that has not been obtained.

2.7 **Right to Assign Payment.** The City and the SAPF may rely upon the payments to be made to them out of the TIF Fund as specified in this Agreement and the SAPF may assign its rights to such payments, either in full or in trust, for the purposes of financing its obligations related to this Agreement, but the SAPF's right to such payments is subject to the other limitations of this Agreement. Notwithstanding the forgoing, the City shall issue a check or other form of payment made payable only to the SAPF.

2.8 **SAPF's Continuing Duty to Complete Improvements.** The City, the Board and the SAPF represent each to the others that they understand and agree that even after the Zone terminates, the SAPF shall diligently work to successfully complete any and all required improvements that are not completed before the Zone terminates. Such completion shall be at no additional cost to the City and/or the Board.

2.9 **No Interlocal Agreements.** The City, the Board and the SAPF represent each to the others that they understand and agree that the City is the only taxing entity contributing a percentage of its tax increment to the TIF Fund, and therefore, no other agreements are necessary with any other public entity to make this Agreement effective.

2.10 **SAPF Bears Risk of Reimbursement.** The SAPF understands and agrees that any expenditure made by the SAPF in anticipation of reimbursement from Tax Increments shall not be, nor shall be construed to be, financial obligations of the City, Board. The SAPF shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of Tax Increment, changes in tax rates or tax collections, changes in law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, unanticipated effects covered under legal doctrine of force majeure.

2.11 **Not an Obligation of the General Fund.** Any contributions made by the SAPF in anticipation of reimbursement from tax increments shall never be an obligation of the City's general fund, but are only obligations of the TIF Fund, and are subject to limitations herein.

ARTICLE III. THE PROJECT

3.1 **The Project.** The Project is to include the following Public Improvements to be constructed by the SAPF at Maverick Park located at 1000 Broadway, San Antonio Texas 78215:

1). A dog agility area; 2). a dog recreation creek; 3). a dog wash facility; 4). a terrain play area; 5). fencing in and around the park; 6). sidewalks in and around the park; 7). Bio swale water filtration system; 8). outdoor adult fitness areas and children's playground; 9) public art; 10) landscaping in and around the park; 11). lighting; and other improvements as more thoroughly set forth in the Exhibit F attached and incorporated herein for all purposes.

3.2 **Private Financing.** The cost of the Public Improvements and all other improvement expenses associated with the Project shall be funded by the SAPF's own capital or through commercial or private construction loans/lines of credit or donations secured solely by the SAPF. SAPF shall secure all private sources of funds necessary to complete the Project of approximately two hundred and eighty-one thousand four hundred and ninety one dollars (\$281,491.00) ("Budgeted Funds") of which a maximum of Fifty Thousand Dollars (\$50,000.00) is to be eligible for Project Costs reimbursement. The City and the Board pledge to use Available Tax Increment Funds, up to the maximum amount provided herein, to reimburse the SAPF for eligible Project Costs it has expended. These Available Tax Increment Fund reimbursements made to the SAPF are not intended to reimburse the SAPF for all of its costs incurred in connection with performing its obligations under this Agreement.

3.3 **Reimbursement.** Neither the City nor the Board can guarantee that Available Tax Increment Funds shall completely reimburse the SAPF, but those Available Tax Increment Funds shall constitute the only source of reimbursement to the SAPF for the construction of the Public Improvements within the Project. Reimbursement is contingent on SAPF securing financing for the remaining costs of the Project as outlined in this Agreement and **Exhibit G**.

ARTICLE IV. TERM

4.1 The term of this Agreement shall commence on the Effective Date and end on whichever of the following dates should occur the earliest: (i) the date the SAPF receives the final reimbursement for completing the Project; (ii) the date this Agreement is terminated as provided in Article X; or (iii) termination of the Midtown TIRZ, provided that all existing warranties and warranty bonds on the Project shall survive termination of this Agreement.

ARTICLE V. DUTIES AND OBLIGATIONS OF SAPF

5.1 **Compliance with Laws and Ordinances.** Notwithstanding any other provision of this Agreement, the SAPF agrees to retain and exercise supervision over the construction of the Public Improvements of the Project, shall comply and require its contractors and subcontractors to comply with all applicable provisions of the Act, the TIF Guidelines, the City Charter, the City Code (including the Unified Development Code such as Universal Design and Construction requirements), all City ordinances, state, federal and local law, as amended.

5.2 **Duty to Complete.** Subject to Article VII, “Compensation to SAPF,” the SAPF agrees to complete, or cause to be completed, the Public Improvements described in Section 3.1 and Exhibit F of this Agreement. The SAPF agrees to provide, or cause to be provided, all materials, labor, and services for completing the Project. The SAPF also agrees to obtain or cause to be obtained, all necessary permits and approvals from the City and/or all other governmental agencies having jurisdiction over the construction of Public Improvements.

5.3 **Commencement of Construction.** From the Effective Date of this Agreement forward, the SAPF shall not commence any construction on any Phase of the Project until the plans and specifications for a Phase have been approved in writing by the appropriate City department and the requirements of all federal, state and local laws have been met. For purposes of this Section, letters of certification or acceptance issued by the City shall constitute written approval of the City.

5.4 **Payment and Performance Bonds.** If applicable, for all Phases, in accordance with Chapter 2253 of the Texas Government Code, the SAPF shall cause its general contractor or general contractors to obtain payment and performance bonds naming the City as a beneficiary or obligee of the bonds. The SAPF and its contractors must wait for approval of the bonds by the City’s Risk Management Department prior to construction, in order for the Public Improvements to be eligible for reimbursement. Failure to meet the City’s minimum standards for these bonds prior to the commencement of construction for each Phase will be considered a breach of this Agreement. The payment and performance bonds for each Phase shall be in an amount sufficient to cover the entire contract cost of the Public Improvements for that Phase.

The City’s Risk Management Department shall determine whether the bonds meet the minimum standard. Failure of the SAPF to comply with this Section or Chapter 2253 of the Texas Government Code is a breach of this Agreement, and the City may exercise the full range of legal remedies available, including but not limited to: terminating this Agreement, exercising its rights under Article X, and/or removing the value of Phases and lots which are ineligible for reimbursement.

5.5 **Supervision of Construction.** Notwithstanding any other provision of this Agreement, the SAPF agrees to retain and exercise supervision over the construction of all public and private improvements of the Project, and cause the construction of all Public Improvements to be performed, at a minimum, in accordance with federal, state and local laws and ordinances, including, but not limited to the current TIF Guidelines, the Project Plan, the Financing Plan, the Unified Development Code, Universal Design, Prevailing Wage, Chapter 2258 of the Texas Government Code, the City Code, and the plans and specifications approved by the appropriate department of the City and the Board. The SAPF also agrees to provide reports to the Board quarterly, or more often if requested by the City or the Board, using the form attached as **Exhibit B**, as it may be amended. SAPF’s failure to comply with this Section is a breach of this Agreement, and the City may terminate this Agreement and exercise the full range of legal remedies available to the City, including Article X.

5.6 **Discretionary Program.** The SAPF agrees that the TIF program is a discretionary funding program and that the City has no obligation to extend TIF to the SAPF. In exchange for receiving TIF, the SAPF agrees that it has no vested rights under any regulations, ordinances or

laws, and waives any claim to be exempt from applicable provisions of the current and future City charter, City Code, City ordinances, and City Unified Development Code, state or federal laws and regulations.

5.7 Payment of Applicable Fees. The SAPF shall be responsible for paying, or causing to be paid, to the City and all other governmental agencies the cost of all applicable permit fees and licenses, which have not been waived and are required for construction of the Project.

5.8 Delays. The SAPF agrees to commence and complete the Project in accordance with the Construction Schedule. If Project completion is delayed due to war, civil commotion, acts of God, inclement weather, governmental restrictions, fire or other casualty, court injunction, necessary condemnation proceedings, interference by third parties, or any circumstances reasonably beyond the SAPF's control, then at the City's reasonable discretion, the timeline set forth in the Construction Schedule may be extended by the period of each such delay. In the event that the SAPF does not complete the Project substantially in accordance with the Construction Schedule, then the Parties, in compliance with Section 22.2 of this Agreement, may extend the timelines set forth in the Construction Schedule, but not past the expiration of the Zone. If the Parties cannot reach an agreement on the extension of the Construction Schedule, or if the SAPF continues to fail to complete the Project in accordance with the revised Construction Schedule, then the City may exercise its remedies including but not limited to termination of the Agreement.

5.9 Litigation Against the City. The City's policy on litigation is that, except to the extent prohibited by law, persons who are engaged in litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ against the City are ineligible to obtain or continue the use of TIF as principals or participants for the duration of the litigation. A principal or participant includes the TIF applicants and the TIF applicant's SAPFs, partners, affiliates, sponsors, payroll employees, or relatives of the first degree of consanguinity. Accordingly, the City shall not consider a project proposing the use of TIF, designate a TIRZ, enter into any TIF agreements with, or authorize or make any TIF payments to persons engaged in litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ with the City. Ineligible persons shall be excluded from participating as either participants or principals in all TIF projects during the term of their litigation. "Person" includes an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

5.10 Utility payments. The SAPF shall pay, or cause to be paid, monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by the SAPF in regard to the development of the Zone Property for all areas owned by the SAPF during construction of the Project, and for so long as the SAPF owns those areas. The Project shall be subject to Section 35.501 et seq. of the San Antonio City Code (impact fees) and the SAPF shall not be prohibited from applying for the benefits of any impact fee credits allowed by that Section.

5.11 Tree Ordinance. In accordance with Sections, 5.1 and 5.5 above, the SAPF shall comply and shall cause its contractors and subcontractors to comply with the City Code provisions for tree preservation, located in Chapter 35, Article IV of the City's Unified Development Code.

5.12 Infrastructure Maintenance.

- a. The SAPF shall, at its own cost and expense, maintain or cause to be maintained all Public Improvements not dedicated to the City upon completion. For all Public Improvements dedicated to the City upon completion, the SAPF shall, at its own cost and expense, maintain or cause to be maintained all Public Improvements until acceptance by the City as evidenced by written acceptance required by Sections 1.9 (1) and for one year after Completion.
- b. If applicable and upon acceptance of a street or drainage improvement for maintenance by the City, SAPF shall deliver to the City a one-year extended warranty bond, naming the City as the obligee, in conformity with Chapter 35 of the City's Unified Development Code. The cost of repair, replacement, reconstruction and maintenance for defects discovered during the first year after Completion shall be paid by the SAPF or the bond company and shall not be paid out of the TIF Fund.
- c. After the expiration of the one year extended warranty bond, the cost of the repair, replacement, reconstruction and maintenance of the Public Improvements dedicated to the City shall be the City's responsibility. The City shall be reimbursed from the TIF Fund for those costs incurred, including, but not limited to: demolition, rebuilding, engineering, design, reconstruction or any other cost necessitated by the failure without regard to fault or degree ("failure") of Public Improvements, which is discovered within years two through ten after Completion of said Public Improvements.
- d. Payment of the City under this Section shall take priority over reimbursement of the SAPF.
- e. The City's reimbursement from the TIF Fund shall not be considered an amendment of the Finance Plan and requires no action by the Board or the City Council to be effective.
- f. The TIF Unit shall report any City reimbursement for the reconstruction or repair of any Public Improvements to the Board in a timely manner.
- g. It shall be no defense to the City's reimbursement of itself out of the TIF Fund that the City or its agents have inspected, accepted or approved the Public Improvement. Approval or acceptance of a Public Improvement is not a waiver of claims. The City may attempt multiple repairs on the same infrastructure and reimburse itself for each attempt.
- h. The SAPF, its agents, employees, and contractors will not interfere with reasonable use of all the Public Improvements by the general public, except for drainage retention improvements. In accordance with the Construction Schedule, the SAPF shall use its best efforts to dedicate (or grant a public easement to) the Public Improvements where applicable to the appropriate taxing entity (as determined by the City), at no additional cost or expense to the City or any other Participating Taxing Entity within sixty (60) days after completion and acceptance of the improvements.

- i. Reimbursement of the SAPF shall not be unreasonably denied provided the Public Improvement has reached Completion, and provided the City has no active claim for reimbursement.
- j. The requirements of this Agreement cannot be waived or modified in any way by an engineer, employee or other official of the City or its subordinate agency with responsibility for inspecting or certifying public infrastructure. The actions of a City employee or agent do not work as an estoppel against the City under this Agreement or the Unified Development Code.

5.13 **Duty to Cooperate.** The SAPF shall cooperate with the City and the Board in providing all necessary information to the City and the Board in order to assist the City and the Board in determining SAPF's compliance with this Agreement.

5.14 **Quarterly Status and Compliance Reports.** The SAPF shall submit to the City and the Board written and signed Project Status Report (see Sections 1.22 and 5.5 above) containing all required information, starting no later than 30 days following the beginning of construction of the Project, and on the 15th days of January, April, July and October thereafter throughout the duration of the Project, or more often if requested by the City, County or Board, on its construction progress and construction expenses, proof of insurance and its compliance with laws, ordinances, and contractual requirements. If Project Status Reports are not submitted on the assigned dates as above, the SAPF understands that no Available Tax Increment Funds will be paid to the SAPF and the City may exercise its rights in accordance with Article X.

ARTICLE VI. DUTIES AND OBLIGATIONS OF CITY AND BOARD

6.1 **No TIF Bonds.** Neither the City nor the Board shall sell or issue any bonds to pay or reimburse the SAPF or any third party for any improvements to the Zone Property performed under the Project Plan, Finance Plan or this Agreement.

6.2 **Pledge of Funds.** Subject to the terms and conditions of this Agreement, termination of the Zone, and any reimbursement to the City under Section 5.13, the City and the Board hereby pledge all Available Tax Increment Funds as reimbursement to the SAPF for approved Project costs, up to the maximum total amount specified in Section 7.3 in this Agreement, excluding those taxes collected after September 30, 2031.

6.3 **Form of Reimbursement Requests.** The City and the Board agree that all reimbursement requests from the SAPF shall be initiated by the submission of a CPPR form, attached as **Exhibit D**.

ARTICLE VII. COMPENSATION TO SAPF

7.1 **CPPR Approval.** Upon completion of the Public Improvements in each Phase of the Project, the SAPF shall submit to the Board within ninety (90) days a completed Contract Progress Payment Request (hereinafter "CPPR"), as detailed in **Exhibit D** hereof. The CPPR shall be presented to the Board for review and possible reimbursement authorization after the

City review and approval, as evidenced by a written CPPR Approval issued by the City. Failure to timely submit CPPR's in accordance with this Section 7 shall result in disallowance of any such SAPF requests for reimbursement of expenses.

7.2 Corrections to CPPR. Should there be discrepancies in the CPPR or if more information is required, SAPF will have thirty (30) days upon notice by City to correct any discrepancies or submit additional information requested by City. Failure to timely submit the additional information requested by the City shall result in disallowance of the SAPF's requested expense reimbursement.

7.3 Maximum Reimbursement to SAPF. Following the Board's authorizations, the SAPF shall receive, in accordance with this Agreement, total reimbursements for Public Improvements from the City of a maximum of Fifty Thousand Dollars (**\$50,000.00**) for public improvements on eligible project costs, as full reimbursement for designing and constructing the Public Improvements required under this Agreement. The Board shall not authorize reimbursement under this Agreement until the Budgeted Funds necessary to complete the Project have been raised by the SAPF in accordance with this Agreement.

7.4 Processing of Payment Requests. Board-authorized reimbursements of Available Tax Increment Funds shall be made to the SAPF by the City within thirty (30) days after the deposit of the City's Tax Increment Payment to the TIF Fund, if the SAPF is in compliance with laws, statutes, ordinances and the requirements of this Agreement and subject to available funds and the priority of payment in accordance with this Agreement and Exhibit G.

7.5 Available Tax Increment Funds. The sole source of the funds to reimburse the SAPF for Project Costs shall be the Available Tax Increment Funds levied and collected on the Zone Property and contributed by the Participating Taxing Entities participating in the Zone to the fund created and maintained by the City for the purpose of implementing the Public Improvements of the Project.

7.6 Order or Priority of Payment. . The Parties agree that the City and the Board may use funds in the Tax Increment Fund to pay eligible expenditures in the following order or priority of payment: (i) to fully reimburse eligible startup Administrative Costs incurred by each Participating taxing Entity the, Administrative Costs of each Participating Taxing Entity shall be reimbursed on a pro rata basis based on each taxing entity's level of participation in the Zone ; (ii) to pay all other ongoing Administrative Costs to the City for administering the Tax Increment Fund and/or the Zone, except that if there are insufficient funds for the full reimbursement of ongoing Administrative Costs to the City, then the ongoing Administrative Costs of the City shall be reimbursed on a pro rata basis based on each taxing entity's level of participation in the Zone; (iii) to reimburse the City for costs of the repair, replacement, and maintenance of public infrastructure and associated costs as described in any Development Agreements (if any); (iv) to reimburse the City under any reclaim of funds pursuant to Article X of this Agreement or any other applicable agreement associated with the Zone and; (v) to reimburse the SAPF or any other Developer for Midtown project costs including cost of Public Improvements under this Agreement, financing costs, as provided in the in this Agreement or any other applicable agreement associated with the Zone and to the extent

that funds in the TIF Fund are available for this purpose. The foregoing notwithstanding, no funds will be paid from the TIF Fund to a Participating Taxing Entity or the SAPF for its financial or legal services in any dispute arising under this Agreement or a related interlocal agreement between the SAPF and a Participating Taxing Entity or between Participating Taxing Entities.

7.7 Partial Payments. If Available Tax Increment Funds do not exist in an amount sufficient to make payments in full when the payments are due under this Agreement, partial payment shall be made in the order of priority above, and the remainder shall be paid as Available Tax Increment Funds become available. No fees, costs, expenses or penalties shall be paid to any Party on any late payment.

7.8 Repayment of Invalid Payments. If any payment to the SAPF is held invalid, ineligible, illegal or unenforceable under federal, state or local laws, including but not limited to the charter, codes, or ordinances of the City, then and in that event it is the intention of the Parties that such invalid, ineligible, illegal or unenforceable payment shall be repaid in full by the SAPF to the City for deposit into the TIF Fund, and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable payment was never contained in this Agreement.

ARTICLE VIII. INSURANCE

8.1 Applicability. The SAPF will require that the insurance requirements contained in this Article be included in all its contracts or agreements for the construction of Public Improvements where SAPF is seeking payment under this Agreement, unless specifically exempted in writing by the City.

8.2 Proof of Insurance. Prior to the commencement of any work under this Agreement, SAPF shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's TIF Unit, which shall be clearly labeled "**Midtown TIRZ, San Antonio Parks Foundation Development**" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City shall not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City at the same addresses listed in Section 8.5 of this Article. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's TIF Unit. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement for the City.

8.3 Right to Review. The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverage's and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances

surrounding this Agreement. In no instance will the City allow modification whereupon the City may incur increased risk.

8.4 Required Types and Amounts. The SAPF's financial integrity is of interest to the City, therefore, subject to the SAPF's right to maintain reasonable deductibles in such amounts as are approved by the City, the SAPF or the SAPF's subcontractors or contractors, shall obtain and maintain in full force and effect during the construction of all Public Improvements required by the Project Plan and Finance Plan, and any extension hereof, at the SAPF's or the SAPF's subcontractors' contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the Best Company and/or otherwise acceptable to the City, in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented to you.	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

8.5 Requests for Changes. The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and the City may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any such policies). SAPF and/or SAPF's subcontractor or contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the addresses provided below within ten days of the requested change. SAPF and/or SAPF's

subcontractor or contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following addresses:

City Clerk
City of San Antonio
Attn: Risk Management Department
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
Planning and Community Development
Department
TIF Unit
1400 S. Flores
San Antonio, Texas 78204

8.6 Required Provisions and Endorsements. SAPF agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- a. Name the City and its respective officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured subject to this Agreement, with the exception of the workers' compensation and professional liability policies;
- b. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio if City is an additional insured shown on the policy;
- c. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
- d. Provide thirty (30) calendar days advance written notice directly to City at the same addresses listed in Section 8.5 of this Article of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

8.7 Cancellation, Suspension, and Non-Renewal. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, SAPF and/or SAPF's subcontractor or contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City at the same addresses listed in Section 8.5 of this Article. City shall have the option to suspend SAPF's and/or SAPF's subcontractor's or contractor's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a breach of this Agreement and the City may exercise its remedies under Article X of this Agreement.

8.8 City's Remedies. In addition to any other remedies the City may have upon SAPF and/or SAPF's subcontractor's or contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, the City shall have the right to order SAPF to stop work, and/or withhold any payment(s), which become due to the SAPF until SAPF and/or SAPF's subcontractor or contractor demonstrates compliance with the requirements.

8.9 **Responsibility for Damages.** Nothing herein contained shall be construed as limiting in any way the extent to which SAPF and/or SAPF's subcontractor or contractor may be held responsible for payments of damages to persons or property resulting from SAPF's or its subcontractors' performance of the work covered under this Agreement.

8.10 **Primary Insurance.** It is agreed that SAPF's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City for liability arising out of operations under this Agreement.

8.11 **Obligation of SAPF.** SAPF agrees to obtain all insurance coverage's with minimum limits of not less than those limits delineated in Section 8.4 from each contractor or subcontractor to SAPF and provide a Certificate of Insurance and Endorsement that names the SAPF and the City as an additional insured. It is understood and agreed that the insurance required is in addition to and separate from any other obligation in this Agreement. SAPF and any subcontractors are responsible for all damages to their own equipment and/or property. SAPF must provide City current proof of insurance for all projects and applicable contracts and agreements executed pursuant to this Agreement in Quarterly Status and Compliance Reports.

8.12 **"All Risk".** Prior to the commencement of any construction and at all times during the performance of such construction SAPF and/or SAPF's subcontractors or contractors shall obtain and keep in full force and effect builder's "all risk" insurance policies affording coverage of such construction. The Builder's Risk Policies shall be written on an occurrence basis and on a "replacement cost" basis, insuring 100% of the insurable value of construction improvements.

ARTICLE IX. WORKERS COMPENSATION INSURANCE COVERAGE

9.1 **Applicability.** This Article is applicable only to construction of Public Improvements, the costs for which the SAPF is seeking reimbursement from the City and the Board, and is not intended to apply to the private improvements made by the SAPF.

9.2. Definitions:

- a. Certificate of Coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a Phase of the Project for the duration of the project.
- b. Duration of the project - includes the time from the beginning of the work on the Phase of the Project until the SAPF's/person's work on the project has been completed and accepted by the City.
- c. Persons providing services on the Project ("subcontractor" in §406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services the SAPF has undertaken to perform on the Project, regardless of whether that person contracted directly with the SAPF and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors,

leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity, which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

9.3 The SAPF shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the SAPF providing services on the Project, for the duration of the Project.

9.4 The SAPF must provide a certificate of coverage to the City prior to proceeding under this Agreement.

9.5 If the coverage period shown on the SAPF's current certificate of coverage ends during the duration of the Phase of the Project, the SAPF must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.

9.6 The SAPF shall obtain from each person providing services on a project, and shall provide to the City:

- a. a certificate of coverage, prior to that person beginning work on the Phase of the Project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- b. no later than seven days after receipt by the SAPF, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Phase of the Project.

9.7 The SAPF shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

9.8 The SAPF shall notify the City in writing by certified mail or personal delivery, within 10 days after the SAPF knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

9.9 The SAPF shall post on the Zone Property a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

9.10 The SAPF shall contractually require each person with whom it contracts to provide services on the Project, to:

- a. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements

of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the applicable Phase of the Project;

- b. provide to the SAPF, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the applicable Phase of the Project;
- c. provide the SAPF, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;
- d. obtain from each other person with whom it contracts, and provide to the SAPF:
 - (1) a certificate of coverage, prior to the other person beginning work on the Project; and
 - (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;
- e. retain all required certificates of coverage on file for the duration of the applicable Phase of the Project and for one year thereafter;
- f. notify the City in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- g. perform as required by sub Sections a-g with the certificates of coverage to be provided to the person for whom they are providing services.

9.11 By signing this Agreement or providing or causing to be provided a certificate of coverage, the SAPF is representing to the City that all employees of the SAPF who will provide services on the Project will be covered by workers' compensation coverage for the duration of the applicable Phase of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the SAPF to administrative penalties, criminal penalties, civil penalties, or other civil actions.

9.12 The SAPF's failure to comply with any of these provisions is a breach of this Agreement by the SAPF, which entitles the City to declare the Agreement void and exercise all legal remedies including to terminate if the SAPF does not remedy the breach within ten (10) days after receipt of notice of breach from the City without necessity of the ninety (90) day cure period set forth in Article X.

ARTICLE X. DEFAULT AND TERMINATION

10.1 In the event that the SAPF or SAPF's contractors fail to commence construction of the Project, fail to complete construction of the Project, or fail to perform any other obligation pursuant to any term of this Agreement, the City and/or the Board may declare a material breach and notify the SAPF by certified mail. The City or Board may terminate this Agreement if the SAPF does not take adequate steps to cure its failure within ninety (90) calendar days after receiving written notice from the City and/or the Board requesting the failure be cured. In the event of such default, and as one of the remedies of the City and/or the Board, the SAPF shall return any payments under this Agreement for the construction of Public Improvements for any Phase within ninety (90) calendar days after receiving written notice from the City and/or the Board that the SAPF has defaulted on this Agreement; EXCEPT that no refund is due if SAPF, with the City's and the Board's written consent, assigns its remaining obligations under this Agreement to a qualified party who timely completes the SAPF's obligations under this Agreement, pursuant to Article XVI (Assignment) herein.

10.2 After sending notice of failure under Section 10.1 above, the City and Board shall not distribute TIF funds to the SAPF until the SAPF's default is cured. If the default is not cured, the City and Board may retain all undistributed TIF funds, terminate this agreement, and unencumber the unpaid balance under the terms of this agreement without further Board or Council action.

10.3 Notwithstanding Section 10.1 above, in the event the Board and/or the SAPF fails to furnish any documentation required in Article XIV (Examination of Records) herein within thirty (30) days following the written request for same, then the Board and/or the SAPF shall be in default of this Agreement.

10.4 The CITY shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and repayment of funds, if SAPF defaults under the material terms of this Agreement and fails to cure such default within the cure period set forth above.

ARTICLE XI. INDEMNIFICATION

11.1 The SAPF covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY (and the elected officials, employees, officers, directors, and representatives of the CITY), the BOARD (and the officials, employees, officers, directors, and representatives of the BOARD), and any PARTICIPATING TAXING ENTITY (and the elected officials, employees, officers, directors, and representatives of any such entity), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the CITY, BOARD, and/or upon any PARTICIPATING TAXING ENTITY directly or indirectly arising out of, resulting from or related to the SAPF'S activities under this AGREEMENT, including any acts or omissions of the SAPF, any agent, officer, contractor, subcontractor, director,

representative, employee, consultant or sub-consultants of the SAPF, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the CITY, the BOARD, or any PARTICIPATING TAXING ENTITY under Texas Law and without waiving any defenses of the Parties under Texas, Federal, or International Law.

IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY,, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY AND OR THE NEGLIGENCE OF THE BOARD, UNDER THIS CONTRACT. SAPF SHALL ALSO INDEMNIFY, DEFEND AND HOLD THE CITY, THE BOARD, AND ANY PARTICIPATING TAXING ENTITIES HARMLESS FROM ANY CLAIMS, DAMAGES AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, ATTORNEY'S FEES, AND PENALTIES ARISING FROM POLLUTION OF THE PROPERTY BY DEVELOPER OR DEVELOPER'S PREDECESSORS IN TITLE, OR THE FAILURE OF DEVELOPER OR DEVELOPER'S PREDECESSORS IN TITLE, TO COMPLY WITH LOCAL, STATE OR FEDERAL ENVIRONMENTAL LAWS OR REGULATIONS.

It is the EXPRESS INTENT of the parties to this AGREEMENT that the INDEMNITY provided for in this section, is an INDEMNITY extended by SAPF to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. SAPF further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

It is the EXPRESS INTENT of the parties to this AGREEMENT that the INDEMNITY provided for in this section, is an INDEMNITY extended by SAPF to INDEMNIFY, PROTECT and HOLD HARMLESS, the BOARD from the consequences of the BOARD'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the Board is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the Board is the sole cause of the resultant injury, death, or damage. SAPF further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE BOARD AND IN THE NAME OF THE BOARD, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

The SAPF shall advise the CITY, the BOARD, and any PARTICIPATING TAXING ENTITY in writing within twenty-four (24) hours of any claim or demand against the CITY, the BOARD, or any PARTICIPATING TAXING ENTITY related to or arising out of the SAPF'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at the SAPF's cost to the extent required under the INDEMNITY in this Section.

THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

The CITY, the BOARD, and/or any PARTICIPATING TAXING ENTITY shall have the right, at their option and at their own expense, to participate in such defense without relieving the SAPF of any of its obligations.

11.2 SAPF shall, and does hereby agree to DEFEND, INDEMNIFY and HOLD HARMLESS the CITY, and the BOARD and their respective agents and employees from and against all encumbrances, claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, controversies, agreements, demands, damages, losses, liens, causes of action, suits, judgments, and attorney fees of any kind or nature whatsoever which are asserted by any person or entity for penalties or sums due any worker or agency for services, labor or materials furnished for the PROJECT. SAPF'S INDEMNITY obligations to the CITY under this INDEMNIFICATION shall be limited to all encumbrances, claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, controversies, agreements, demands, damages, losses, liens, causes of action, suits, judgments, and attorney fees of any kind or nature whatsoever by any person or entity for violations of Chapter 2258 of the Texas Government Code or for any sums or penalties due any worker or agency for labor furnished for the PROJECT. To the extent that this INDEMNIFICATION conflicts with the INDEMNIFICATION provisions in Section 11.1 above, the provisions in Section 11.1 control over those set forth in this Section. Prior to expending any money that SAPF would be obligated to INDEMNIFY, the CITY or the BOARD shall send written notice to SAPF describing in reasonable detail the claim and allowing SAPF to cure such claim within fifteen (15) calendar days of receiving the notice.

ARTICLE XII. SITE INSPECTION AND RIGHT OF ENTRY

12.1 The City shall allow the SAPF access to the Project property owned or controlled by the City to perform the duties and obligations described in this Agreement. Such access to the Project property shall be controlled by this Agreement and the Right of Entry Agreement attached and incorporated for all purposes as **Exhibit H**.

12.2 The SAPF shall allow the City and the Board access to the Project property for inspections during and upon completion of construction of the Project, and to documents and records considered necessary by the City and the Board to assess the SAPF's compliance with

this Agreement. In each contract with a builder , the SAPF shall retain a right of entry into the properties and structures in favor of the City for the purpose of allowing the City, its staff and agents to conduct random non-destructive walk-through inspections and monitoring of the properties and structures.

ARTICLE XIII. RESPONSIBILITIES OF THE PARTIES

13.1 **SAPF.** As between the City, the SAPF, and the Board, the SAPF shall be solely responsible for compensation payable to any employee, contractor, or subcontractor of the SAPF, and none of the SAPF's employees, contractors, or subcontractors will be deemed to be employees, contractors, or subcontractors of the City, the Board, or any Participating Taxing Entity as a result of the Agreement.

13.2 **City and Board.** To the extent permitted by Texas law, no director, officer, employee or agent of the City, the Board, or any other Participating Taxing Entity shall be personally responsible for any liability arising under or growing out of this Agreement.

ARTICLE XIV. EXAMINATION OF RECORDS

14.1 **Right to Review.** Following notice to the Board and the SAPF, the City reserves the right to conduct, at its own expense, examinations, during regular business hours and of the books and records related to this Agreement (including contracts, paper, correspondence, copies, books, accounts, billings and other information related to the performance of the Board and/or the SAPF's services hereunder) no matter where the books and records are located. The City also reserves the right to perform any and all additional audits relating to the Board's and/or the SAPF's services, provided that such audits are related to those services performed by the Board and/or the SAPF for the City under this Agreement. These examinations shall be conducted at the offices maintained by the Board and/or the SAPF.

14.2 **Preservation of Records.** All applicable records and accounts of the Board and/or the SAPF relating to this Agreement, together with all supporting documentation, shall be preserved and made available in Bexar County, Texas by the Board and/or the SAPF throughout the term of this Agreement and for twelve (12) months after the termination of this Agreement, and then transferred, upon City request, at no cost to the City, to the City for retention. During this time, the City, at its own expense, may require that any or all of such records and accounts be submitted for audit to the City or to a Certified Public Accountant selected by the City within ten (10) business days following written request.

14.3 **Discrepancies.** Should the City discover errors in internal controls or in record keeping associated with the Project, the Board and/or the SAPF shall correct such discrepancies either upon discovery or within a reasonable period of time, not to exceed sixty (60) days after discovery and notification by the City or the County to the Board and/or the SAPF of such discrepancies. The Board and/or the SAPF shall inform the City in writing of the action taken to correct such discrepancies.

14.4 **Overcharges.** If it is determined that the Board and/or the SAPF has overcharged for the cost of the Public Improvements, then such overcharges shall be immediately returned to the TIF Fund and become due and payable with interest at the maximum legal rate under applicable law from the date the City paid such overcharges. In addition, if the audit determined that there were overcharges of more than two percent (2%) of the greater of the budget or payments to the SAPF for the year in which the discrepancy occurred, and the TIF Fund is entitled to a refund due to these overcharges, then the SAPF shall pay the cost of the audit.

ARTICLE XV. NON-WAIVER

15.1 **Actions or Inactions.** No course of dealing on the part of the City, the Board, or the SAPF nor any failure or delay by the City, the Board, or the SAPF in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

15.2 **Receipt of Services.** The receipt by the City of services from an assignee of the SAPF shall not be deemed a waiver of the covenant in this Agreement against assignment or an acceptance of the assignee or a release of the SAPF from further observance or performance by the SAPF of the covenants contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such a waiver is in writing, and approved by the City Council of the City in the form of a duly passed ordinance.

ARTICLE XVI. ASSIGNMENT

16.1 **Assignment by City.** The City and/or the Board may assign their rights and obligations under this Agreement to any governmental entity the City creates without prior consent of the SAPF. If the City and/or the Board assign their rights and obligations under this Agreement then the City and/or the Board shall send the SAPF written notice of such assignment within fifteen (15) days of such assignment.

16.2 **Assignment by SAPF.** The SAPF may sell or transfer its rights and obligations under this Agreement only with the approval of the Board and the written consent of the City as evidenced by an ordinance passed and approved by the City Council, when a qualified purchaser or assignee specifically agrees to assume all of the obligations of the SAPF under this Agreement. This restriction on the SAPF's rights to sell or transfer is subject to the right to assign as provided in Section 16.5 below.

16.3 **Work or Services Subject to this Agreement.** Any work or services contracted herein shall be contracted only by written contract or agreement and, unless the City grants specific waiver in writing, shall be subject by its terms, insofar as any obligation of the City is concerned, to each and every provision of this Agreement. Compliance by the SAPF's contractors and/or subcontractors with this Agreement shall be the responsibility of the SAPF. Copies of those written contracts must be submitted with the CPPR in order to be considered for eligible Project Cost reimbursement.

16.4 **No Third Party Obligation.** The City shall in no event be obligated to any third party, including any contractor, subcontractor or consultant of the SAPF, for performance of work or services under this Agreement except as set forth in section 16.5 of this Agreement.

16.5 **Written Instrument.** Each transfer or assignment to which there has been consent, pursuant to Section 16.2 above, shall be by instrument in writing, in form reasonably satisfactory to the City, and shall be executed by the transferee or assignee who shall agree in writing for the benefit of the City and the Board to be bound by and to perform the terms, covenants and conditions of this Agreement. Four executed copies of such written instrument shall be delivered to the City. Failure to obtain, the City's consent in writing, or failure to comply with the provisions herein first shall prevent any such transfer or assignment from becoming effective. In the event the City approves the assignment or transfer of this Agreement, the SAPF shall be released from such duties and obligations.

16.6 **No Waiver.** Except as set forth in Section 16.3, the receipt by the City of services from an assignee of the SAPF shall not be deemed a waiver of the covenant in this Agreement against assignment or an acceptance of the assignee or a release of the SAPF from further observance or performance by the SAPF of the covenants contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such waiver is in writing, and approved by the City Council of the City in the form of a duly passed ordinance.

ARTICLE XVII. NOTICE

17.1 **Addresses.** Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving Party at the following addresses:

CITY

Department of Planning and Community
Development
Attn: TIF Unit
1400 S. Flores
San Antonio, TX 78204

BOARD

Board of Directors, Midtown Tax Increment
Reinvestment Zone Number Thirty-One
City of San Antonio, Texas
C/O Planning and Community Development
ATTN: John Dugan, Director
1400 S. Flores
San Antonio, TX 78204

SAPF

San Antonio Parks Foundation
400 N. Saint Mary's, Ste 101
San Antonio, TX 78205

17.2 **Change of Address.** Each Party may change its address by written notice in accordance with this Article. Any communication delivered by facsimile shall be deemed delivered when

receipt of such is during normal business hours or the next business day if receipt is after normal business hours. Any communication delivered in person shall be deemed received when actually received by an officer of the Party to whom the communication is properly addressed. All notices, requests or consents under this Agreement shall be: (i) in writing, (ii) delivered to a principal officer or managing entity of the recipient in person, by courier, mail, facsimile, or similar transmission, and (iii) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the notice shall be considered received on the next business day after such delivery. Whenever any notice is required by applicable law or this Agreement, a written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Each Party shall have the right to change its address by giving at least fifteen (15) days written notice to the other Parties.

ARTICLE XVIII. CONFLICT OF INTEREST

18.1 Charter and Ethics Code Prohibitions. The Board and the SAPF each acknowledges that it is informed that the Charter of the City and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

18.2 Warrant and Certification. In accordance with Section 311.0091(h)(1) of the Act, and pursuant to Section 18.1 above, the Board and the SAPF each warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. The Board and the SAPF each further warrants and certifies that each member of the Board and that the SAPF has tendered to the City a **Discretionary Contracts Disclosure Statement** in compliance with the City's Ethics Code using the form provided in **Exhibit E**.

ARTICLE XIX. INDEPENDENT CONTRACTORS

19.1 No Agency. All Parties expressly agree that in performing their services under this Agreement, the Board and the SAPF at no time shall be acting as agents of the City and that all consultants or contractors engaged by the Board and/or the SAPF respectively shall be independent contractors of the Board and/or the SAPF. The City shall not be liable for any claims that may be asserted by any third party occurring in connection with services performed by the Board and/or the SAPF respectively, under this Agreement unless any such claims are due to the fault of the City.

19.2 **No Authority.** The Parties further understand and agree that no Party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

ARTICLE XX.

[INTENTIONALLY DELETED]

ARTICLE XXI. PREVAILING WAGES

21.1 The TIF program is a discretionary program, and it is the policy of the City that the requirements of Chapter 2258 of the Texas Government Code, entitled “Prevailing Wage Rates,” shall apply to TIF Development Agreements. The Board and the SAPF each individually agree that the SAPF will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

21.2 In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this Agreement is included as **Exhibit C**, and made a part of this Agreement. The SAPF is required, and shall require its subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the SAPF calls for bids for construction of a given phase.

21.3 The SAPF is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the SAPF’s general contractor and all subcontractors for construction of each Phase. The SAPF shall forfeit as a penalty to the City \$60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the SAPF or any subcontractor under the SAPF. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the SAPF from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

ARTICLE XXII. CHANGES AND AMENDMENTS

22.1 **Ordinance and Order Required.** Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing executed by the City, the Board and the SAPF and evidenced by passage of a subsequent City ordinance.

22.2 **Construction Schedule.** Notwithstanding the above, the Construction Schedule as detailed in **Exhibit A** may be amended by approval of the Board and the City, as evidenced by an agreement in writing between the Board and the Director of the City Department responsible

for overseeing the TIF Unit, (the “TIF Director”) as long as the overall Amended Project Plan and Amended Finance Plans are not materially changed by such amendment. In the event an amendment to the Construction Schedule will result in a Material Change to the overall Final Project Plan or Final Financing Plan, then such amendment shall comply with the requirements of Section 22.1 above. No change under this Section may result in an increase in the maximum contribution of the City or any other Participating Taxing Entity. The SAPF shall rely on the determination of the TIF Director whether a change in the Construction Schedule would result in a Material Change to the overall Project requirements.

22.3 Automatic Incorporation of Laws. Changes in local, state and federal rules, regulations or laws applicable to the Board’s and the SAPF’s services under this Agreement may occur during the term of this Agreement and any such changes shall be automatically incorporated into this Agreement without written amendment to this Agreement, and shall become a part of this Agreement as of the effective date of the rule, regulation or law.

ARTICLE XXIII. SEVERABILITY

23.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under federal, state or local laws, then said clause or provision shall not affect any other clause or provision and the remainder of this Agreement shall be construed as if such clause or provision was never contained herein. It is also the intent of the Parties that in lieu of each invalid, illegal, or unenforceable clause or provision, there be added to this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

ARTICLE XXIV. LITIGATION EXPENSES

24.1 Under no circumstances will the available Tax Increment Funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against the City or any other public entity.

24.2 During the term of this Agreement, if the Board and/or the SAPF files and/or pursues an adversarial proceeding against the City regarding this Agreement without first engaging in good faith mediation of the dispute, then, at the City’s option, all access to the funding provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest bearing account.

24.3 The Board and/or the SAPF, at the City’s option, could be ineligible for consideration to receive any future funding while any adversarial proceedings regarding this Agreement against the City remains unresolved if it was initiated without first engaging in good faith mediation of the dispute.

24.4 For purposes of this Article, “adversarial proceedings” include any cause of action regarding this Agreement filed by the Board and/or the SAPF against the City in any state or federal court, as well as any state or federal administrative hearing, but does not include

Alternate Dispute Resolution proceedings, including arbitration. Nothing contained in this Article shall effect or otherwise affect the indemnity provisions contained in Article XI above.

ARTICLE XXV. LEGAL AUTHORITY

25.1 **All Consents and Approvals Obtained.** Each person executing this Agreement on behalf of each Party, represents, warrants, assures and guarantees that he or she has have full legal authority to (i) execute this Agreement on behalf of the City, the Board and/or the SAPF, respectively and (ii) to bind the City, the Board and/or the SAPF to all of the terms, conditions, provisions and obligations of this Agreement.

ARTICLE XXVI. VENUE AND GOVERNING LAW

26.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Bexar, County Texas.

ARTICLE XXVII. PARTIES' REPRESENTATIONS

27.1 This Agreement has been jointly negotiated by the City, the Board and the SAPF and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

ARTICLE XXVIII. CAPTIONS

28.1 All captions used in this Agreement are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the Parties to this Agreement.

ARTICLE XIX LICENSES/CERTIFICATIONS

29.1 SAPF warrants and certifies that SAPF and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

ARTICLE XXX. NONDISCRIMINATION AND SECTARIAN ACTIVITY

30.1 SAPF SHALL ENSURE THAT NO PERSON SHALL, ON THE GROUND OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, AGE OR HANDICAP, BE EXCLUDED FROM PARTICIPATION IN, BE DENIED THE BENEFITS OF, BE SUBJECTED TO DISCRIMINATION UNDER, OR BE DENIED ACCESS TO ANY PROGRAM, PUBLIC PLACE, OR ACTIVITY FUNDED IN WHOLE OR IN PART WITH PUBLIC FUNDS. FURTHER NO PORTION OF THE FUNDS RECEIVED SHALL BE USED IN SUPPORT OF, ANY SECTARIAN OR RELIGIOUS ACTIVITY.

ARTICLE XXXI. ENTIRE AGREEMENT

31.1 **No Contradictions.** This written Agreement embodies the final and entire agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties.

31.2 **Incorporation of Exhibits.** The **Exhibits A through H** attached to this Agreement are incorporated herein and shall be considered a part of this Agreement, except that if there is a conflict between an **Exhibit** and a provision of this Agreement, the provision of this Agreement shall prevail over the **Exhibit**.

IN WITNESS THEREOF, the Parties have caused this instrument to be signed on the date of the each signature below. This Agreement will become effective on the date of the last signature below:

CITY OF SAN ANTONIO

San Antonio Parks Foundation

Sheryl Sculley
City Manager or designee
Date: _____

Name:
By:
Date: _____

**BOARD OF DIRECTORS
MIDTOWN TIRZ**

ATTEST/SEAL(If necessary):

Name: _____
Chairman, Board of Directors
Date: _____

Name: _____
Secretary, Board of Directors
Date: _____

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney
Date: _____

EXHIBIT A

Construction Schedule

SAPF DEVELOPMENT

Maverick Dog Park Site Development Schedule

Prepared by Bender Wells Clark Design

Week of Project

Major Activities	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Start-up Meeting	█													
Set-Up & Layout, Temporary Fencing	█													
Demolition of Existing Concrete Walks, Clear & Grub Surface, Spoils Haul-off	█	█												
Import Fill		█	█											
Re-set Irrigation, Salvage Existing Irrig.		█												
Grading and excavation		█	█	█	█									
Set Boulders & Grade 'Creek Bed'				█										
Trenching for Lighting				█	█	█								
Trenching for Water Fountains / Dog Shower and Quick Couplers				█	█	█								
Lighting & Electrical						█	█	█						
Plumbing						█	█	█						
Small tree transplants		█						█	█					
Form Concrete walks, Set re-bar									█	█				
Pour Concrete walks											█	█		
Lawn Prep & Finish Grading								█	█	█		█		
Plant Mix / Bed Prep for Shrub Areas								█	█	█				
LID / Biofilter- Gravels and Sub grade														
Fencing & Gates				█	█	█								
Planting										█	█	█		
Mulch												█	█	
Install Mutt Mitts, Signage													█	
Fencing & Gates								█	█	█	█	█		
Topsoil & Seed Turf Areas												█	█	
City Staff Training & Review: Maintenance, Irrigation Controls, etc.													█	
Punch List & Substantial Completion Inspection													█	
Project Close Out														█

Project scheduled to begin in January of 2016

EXHIBIT B

Project Status Report

Status Report TIRZ Funded Project

Project Name:	Maverick Dog Park	TIRZ Name & #:	Midtown #31	Report Date:	
Progress Report #:		Scheduled Start Date:		Actual Start Date:	
Reporting Period:		Scheduled Completion Date:		Actual Completion Date:	

Task Name	Task Detail	Estimated Completion Date	Actual Completion Date	% Completed this Reporting Period	% Completed to Date	Description of Work Completed This Reporting Period
Demolition						
Grading and Excavation						
Electrical & Lighting						
Plumbing						
LID/Biofilter						
Landscaping						
Fencing						
Installation of Special Features and Signage						

Comments: (Please describe any project milestones, accomplishments or setbacks that have occurred during this reporting period)

Certification:

I certify that to the best of my knowledge and belief, the data above is correct and accurately reflects the status of the project to date.

Signature of Certifying Individual: _____ Date: _____

Type or printed Name and Title: _____ Telephone #: _____

EXHIBIT C

Prevailing Wage Rates

POWER EQUIPMENT OPERATOR:

Agricultural Tractor.....	\$ 12.69
Asphalt Distributor.....	\$ 15.55
Asphalt Paving Machine.....	\$ 14.36
Boom Truck.....	\$ 18.36
Broom or Sweeper.....	\$ 11.04
Concrete Pavement	
Finishing Machine.....	\$ 15.48
Crane, Hydraulic 80 tons	
or less.....	\$ 18.36
Crane, Lattice Boom 80	
tons or less.....	\$ 15.87
Crane, Lattice Boom over	
80 tons.....	\$ 19.38
Crawler Tractor.....	\$ 15.67
Directional Drilling	
Locator.....	\$ 11.67
Directional Drilling	
Operator.....	\$ 17.24
Excavator 50,000 lbs or	
Less.....	\$ 12.88
Excavator over 50,000 lbs...	\$ 17.71
Foundation Drill, Truck	
Mounted.....	\$ 16.93
Front End Loader, 3 CY or	
Less.....	\$ 13.04
Front End Loader, Over 3 CY.	\$ 13.21
Loader/Backhoe.....	\$ 14.12
Mechanic.....	\$ 17.10
Milling Machine.....	\$ 14.18
Motor Grader, Fine Grade....	\$ 18.51
Motor Grader, Rough.....	\$ 14.63
Pavement Marking Machine....	\$ 19.17
Reclaimer/Pulverizer.....	\$ 12.88
Roller, Asphalt.....	\$ 12.78
Roller, Other.....	\$ 10.50
Scraper.....	\$ 12.27
Spreader Box.....	\$ 14.04
Trenching Machine, Heavy....	\$ 18.48

Servicer.....\$ 14.51

Steel Worker

Reinforcing.....	\$ 14.00
Structural.....	\$ 19.29

TRAFFIC SIGNAL INSTALLER

Traffic Signal/Light Pole	
Worker.....	\$ 16.00

TRUCK DRIVER

Lowboy-Float.....	\$ 15.66
Off Road Hauler.....	\$ 11.88
Single Axle.....	\$ 11.79
Single or Tandem Axle Dump	
Truck.....	\$ 11.68
Tandem Axle Tractor w/Semi	
Trailer.....	\$ 12.81

WELDER.....\$ 15.97

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor

200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION



EXHIBIT D

Contract Progress Payment Request Form & Requirements



CITY OF SAN ANTONIO Contract Progress Payment Request (CPPR) Form and Requirements

Prior to submitting an invoice to request reimbursement, the developer must submit to the TIF Unit:

- **All approved Master Development Plans (MDPs), recorded plats, City approved construction plans and Inspections**
- **Copies of the payment and performance bond in accordance with executed Development Agreement**
- **Proof of compliance of the Bidding Policies must accompany the invoices submitted to include, but is not limited to: Publication of request for proposals, list of bidders, rating of bidders, and reason for choosing bidder (*Please refer to City's policy on Bidding Requirements.*)**
- **Letters of acceptance from City departments or other agencies certifying the public infrastructure was constructed and accepted in accordance with all applicable rules, regulations and codes.**

When submitting an invoice for reimbursement, a summary page (refer to Sample Packet, page 2) must accompany all invoices to include related project name, invoice number, period covered by invoices and phase covered by invoices. Invoices must be submitted in the categories listed in the approved Final Finance Plan Sources and Uses page. The Sources and Uses page is broken down into phases and categories on a forecasted maximum allowable cost.

Each category should have their own separate summary page (refer to Sample Packet, page 2) itemizing invoices submitted in each appropriate category. The summary page will need to include maximum allowable cost, actual invoice amount, Plat or MDP number (if applicable) and method of payment. This maximum allowable cost is the forecasted amount that was projected for each category in the phase.

A receipt and/or a cancelled check must accompany each invoice to qualify for reimbursement. The invoice must refer to the related project. The dates and amount on invoices must coincide with receipt or cancelled checks. The invoice total must calculate correctly and tie to the summary page.

Each column is defined below: (refer to Sample Packet, page 2)

- **Column A** is the category from the Sources and Uses page for projected expenses
- **Column B** is the forecasted maximum allowable cost per the Final Finance Plan
- **Column C** is the actual developer's expense
- **Column D** is the amount of prior requests
- **Column E** is the balance column. The balance is the difference between the projected expenses and the actual developer's expenses. (The balance column will be used for internal tracking purposes only.)

*** All invoice Payments must be accompanied by:**

- **Receipt or Cancelled Check**
- **Must Reference the Project**

*** Only those categories outlined in the approved Final Finance Plan are eligible expenses for reimbursement.**

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: NAD Residential TIRZ		Period covered by this invoice: 12/02---8/03			
Invoice#: One (1)		Phase(s) covered by this invoice: Phases 1, 2, & 3			
Section	A Activity	B Maximum Allowable from Final Finance Plan	C Invoices Amount	D Prior Requests	E **Balance
1	Construction Management	44,200	40,624	0	3,576
2	Contingency	192,500	199,215	0	-6,715
3	Driveway Approach	20,000	22,972	0	-2,972
4	Engineering Survey	50,050	50,000	0	50
5	Formation Fees	150,150	200,000	0	-49,850
6	Gas	144,375	100,000	0	44,375
7	Green Belt/Green Space	26,950	21,000	0	5,950
8	Infrastructure Cost	61,600	60,000	0	1,600
9	Legal Fees	10,000	11,500	0	-1,500
10	Organizational Cost	20,800	35,000	0	-14,200
11	Official Traffic Control Device	15,000	10,000	0	5,000
12	Parking Facilities	30,000	28,250	0	1,750
13	Project Cost	86,163	86,100	0	63
14	Public Schools	10,000	11,000	0	-1,000
15	Recreational Park Area	105,942	105,940	0	2
16	Regional Storm Water Improvements	73,344	73,444	0	-100
17	Relocation Cost	40,747	55,474	0	-14,727
18	Sanitary Sewer	35,000	65,000	0	-30,000
19	Sidewalks	47,500	67,587	0	-20,087
20	Streetscape Planting	20,000	20,000	0	0
21	Street Lights	25,000	25,105	0	-105
22	Water	19,500	19,500	0	0
TOTAL		1,286,321	1,365,211	0	-78,890

Financing Cost does not accrue interest

**The Balance Column is used for Tracking purposes only

All Invoice Payments must be accompanied by:

- Receipt or Cancelled Check
- Must Reference the Project

The City of San Antonio recommends having a CPA and the Project Engineer certify invoices submitted by developers.

CERTIFICATION: I certify that to the best of my knowledge and belief the data above and supporting documentation attached are correct and that all outlays were made in accordance with the terms of the Development Agreement, plats, & construction plans; and that payment is due and has not been previously reimbursed.	Signature of Certifying Financial Official _____ Typed or printed Name and Title John Doe, CPA DATE: _____	Signature of Certifying Engineer _____ Typed or printed Name & Title John Smith, Engineer DATE: _____
--	--	---

Reimbursement for TIRZ Expenses

Project Name:		Period covered by this invoice:			
Invoice#:		Phase(s) covered by this invoice:			
Section	A Activity	B Maximum Allowable from Final Finance Plan	C Invoices Amount	D Prior Requests	E **Balance
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
TOTAL					

Financing Cost does not accrue interest

**The Balance Column is used for Tracking purposes only

All Invoice Payments must be accompanied by:

Receipt or Cancelled Check

Must Reference the Project

The City of San Antonio recommends having a CPA and the Project Engineer certify invoices submitted by developers.

<p>CERTIFICATION:</p> <p>I certify, that to the best of my knowledge and belief, the data above and supporting documentation attached are correct and that all outlays were made in accordance with the terms of the Development Agreement, plats, & construction plans; and that payment is due and has not been previously reimbursed.</p>	<p style="text-align: center;">Signature of Certifying Financial Official</p> <p>_____</p> <p>Typed or printed Name and Title:</p> <p>_____</p> <p>Signature: _____</p> <p>DATE: _____</p>	<p style="text-align: center;">Signature of Certifying Engineer</p> <p>_____</p> <p>Typed or printed Name & Title:</p> <p>_____</p> <p>Signature: _____</p> <p>DATE: _____</p>
---	--	--

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: NAD Residential TIRZ	Period covered by this invoice: 12/02---8/03
Invoice #: One (1)	Phase covered by this invoice: Phases 1,2, & 3

Section 1 Site Work	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Dirt Movers Inc.	00451364		1520	10,000		Ck# 2140
Dirt Movers Inc.	145246		1555	22,000		Ck# 2141
Dirt Movers Inc.	783581		1600	2,500		Ck# 2142
Dirt Movers Inc.	891771		1680	1,124		Ck# 2142
Dirt Movers Inc.	157863146		1685	5,000		Ck# 2144
Total		44,200		40,624	3,576	

Reimbursement for TIRZ Expenses

Project Name:	Period covered by this invoice:
Invoice #:	Phase covered by this invoice:

Section 1 Site Work	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Total						

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: NAD Residential TIRZ	Period covered by this invoice: 12/02---8/03
Invoice #: One (1)	Phase covered by this invoice: Phases 1,2, & 3

Section 2 Streets & Approaches	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
NAD Contractors	00451364		2020	\$165,000		Ck# 2523
Total		\$192,500		\$165,000	\$27,500	

Reimbursement for TIRZ Expenses

Project Name:	Period covered by this invoice:
Invoice #:	Phase covered by this invoice:

Section 2 Streets & Approaches	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Total						

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: NAD Residential TIRZ	Period covered by this invoice: 12/02---8/03
Invoice #: One (1)	Phase covered by this invoice: Phases 1,2, & 3

Section 3 Parkway	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Fast City Contractors	3574216		123	\$10,000		Ck# 8989
			456	\$4,500		Ck# 8989
			789	\$5,500		Ck# 8989
Total		\$20,000		\$20,000	\$0.00	

Reimbursement for TIRZ Expenses

Project Name: NAD Residential TIRZ	Period covered by this invoice: 12/02---8/03
Invoice #: One (1)	Phase covered by this invoice: Phases 1,2, & 3

Section 3 Parkway	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Total						

EXHIBIT E

City of San Antonio's Discretionary Contracts Disclosure Form

City of San Antonio Discretionary Contracts Disclosure

For use of this form, see [Section 2-59 through 2-61 of the City Code \(Ethics Code\)](#)
Attach additional sheets if space provided is not sufficient.

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

--

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

--

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

No subcontractor(s); or

List subcontractors:

--

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

--

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate _____, (“conflicts of interest”) by participating in official action relating to the discretionary contract.

Party not aware of facts which would raise a “conflicts-of-interest” issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature:	Title: Company or D/B/A:	Date:
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² For purposes of this rule, facts are “reasonably understood” to “raise a question” about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

EXHIBIT F

Project Scope

Maverick Dog Park SCOPE OF WORK

The Maverick Dog Park, a state of the art world class dog-park, is to be developed at the underutilized city owned Maverick Park located at Broadway and East Jones Ave. Phase I of the project will be focused on the dog park, leaving human elements to the later phases of the project. Phase I features will include a dog agility area, a creek for water recreation, a dog wash facility, separate areas for large and small dogs, and a terrain play area. Low Impact Development (LID) and sustainability will be hallmarks of this project. The project will include a bio swale water filtration system to prevent waste from entering the San Antonio river and energy saving elements that will enable the park to be a net-zero impact site, meaning the total amount of energy used by the site on an annual basis is roughly equal to the amount of renewable energy created on the site. Plans for a future phase include elements for two legged patrons including an outdoor adult fitness area as well as a children's playground and public art.

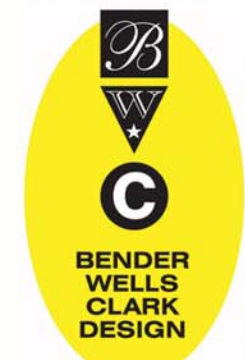
The project is being designed by a local landscape architect with a preliminary budget of \$280,000. This amount will cover site work, fencing, creek and terrain areas, concrete sidewalks and landscaping.

Specifically, the improvements to the Maverick Dog Park will include the following: 1) a dog agility area; 2) a dog recreation creek; 3) a dog wash facility; 4) a terrain play area; 5) fencing in and around the park; 6) sidewalks in and around the park; 7) a bio swale water filtration system; 8) an outdoor adult fitness area and children's playground; 9) public art; 10) landscaping in and around the park; and 11) lighting.

The park is in desperate need of transformation. It is an amazing, indispensable location and is currently under-utilized and in poor condition. Nearby residents are unable to enjoy Maverick Park because of safety issues and the poor condition of facilities. Currently there is not a safe, public location in the area for residents to take their dogs. Activating this space will remedy that issue and open it for use to the general population. Not only will it create a sense of security by activating the park, it will also serve as a 'go-to' for social events, especially those with a pet friendly focus. It is envisioned that animal service and awareness groups will be able to use the park for events. At least 47% of American households have at least one dog and the density of apartment dwellers in downtown San Antonio does not appear to dilute this statistic. The urban demographic also tends to adopt rather than buy. This is a huge plus for area awareness and pet adoption agencies that may use the park to raise awareness and hold events.

MAVERICK PARK IMPROVEMENTS

LANDSCAPE ARCHITECT / PRIME CONSULTANT



Landscape Architecture
Urban Design
Planning
830 N. ALAMO ST.
SAN ANTONIO, TEXAS 78215

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Date: DECEMBER 11, 2014

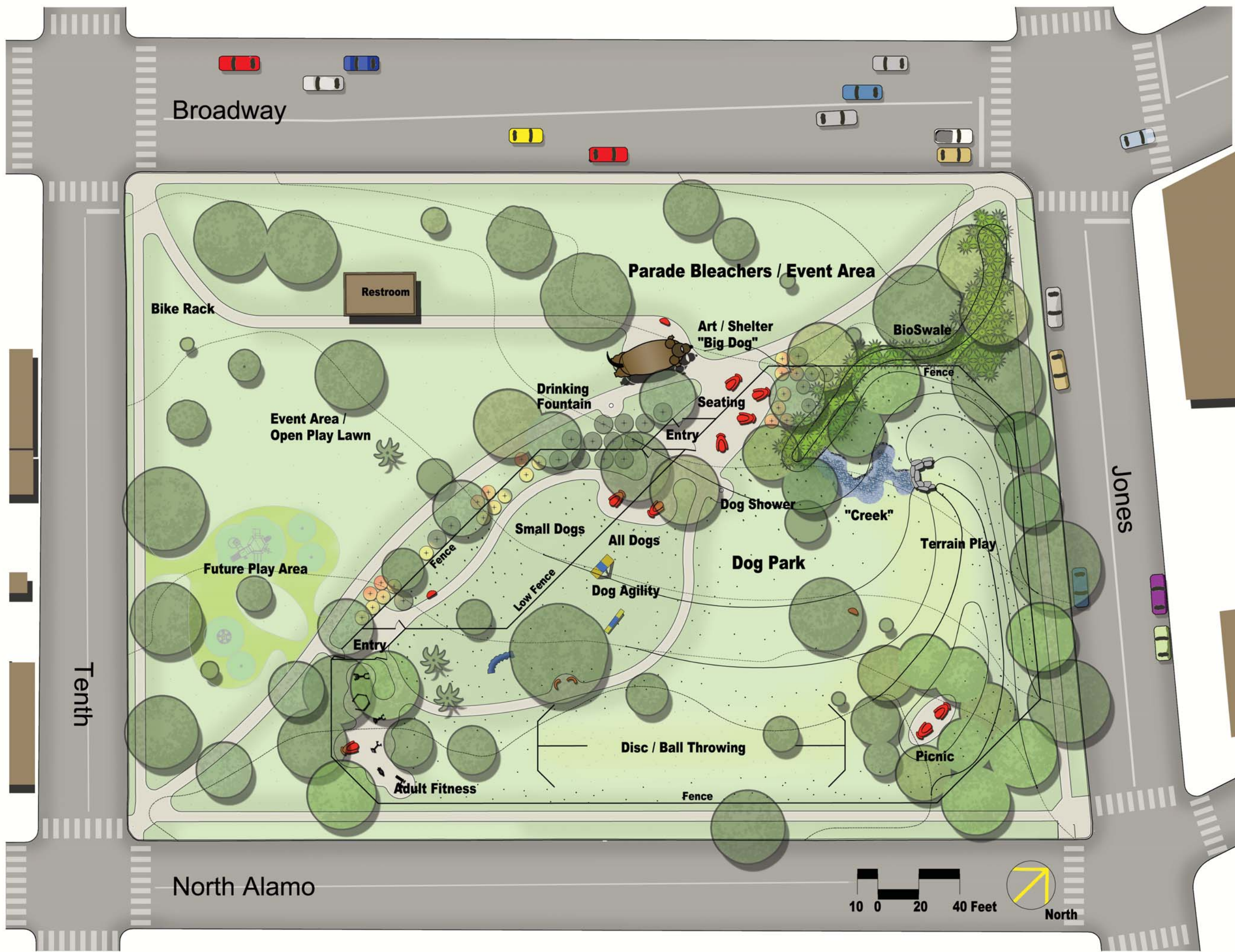
THESE DOCUMENTS ARE INCOMPLETE AND ARE RELEASED FOR INTERIM REVIEW ONLY, AND NOT INTENDED FOR REGULATORY APPROVAL, BIDDING, PERMIT, OR CONSTRUCTION PURPOSES.
LAWRENCE C. CLARK
LANDSCAPE ARCHITECT
1211
TX REGISTRATION NO.
10772014
DATE

Sheet Name:

SITE DEVELOPMENT PLAN

CONCEPT ONLY

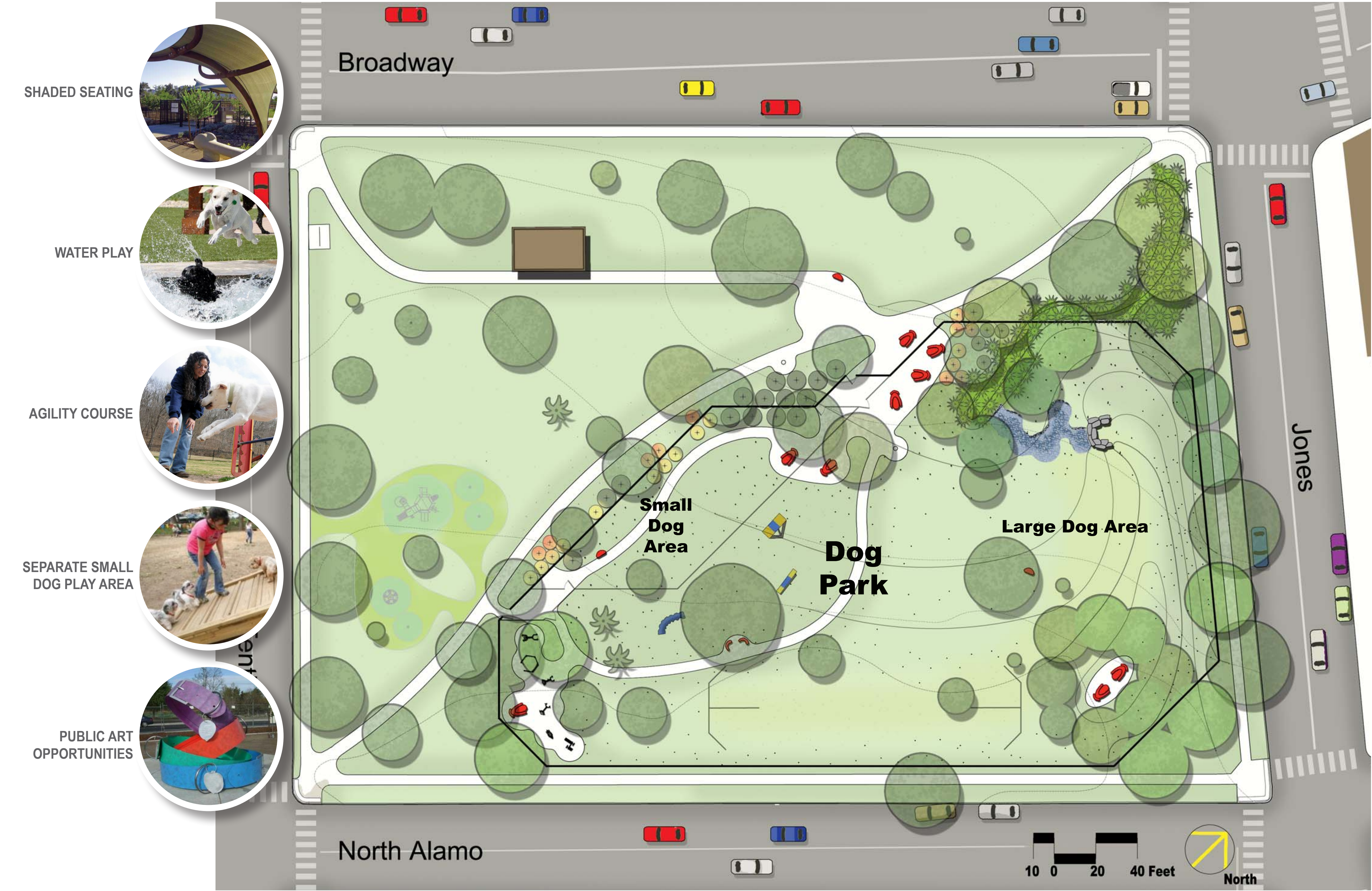
Project Number:
Drawn By:
Checked By:



MAVERICK PARK DOG PARK

PLAN ELEMENTS

Conceptualization



INTRODUCING PARK IMPROVEMENTS

Improvements to Maverick Park will expand access to serve many users. The Dog Park will be a primary feature, and the park can continue to be improved going forward:

- Dog park with areas for
 - Fenced Dog Park Area with Vestibule Entries
 - Separate Areas for Large and Small Dogs
 - Dog Shower and Water Bowls
 - Ball / Disc Throwing Area
 - Terrain Play for Dogs
 - Agility Equipment Area
 - Bioswale and Infiltration Area for Runoff
- Accessible Pathways
- Improved Lighting
- Bike Racks
- Drinking Fountains
- Benches and Seating
- Picnic Tables
- Public Art Opportunities
- Event Areas
- Parade Viewing Area
- Native Plantings
- Rain Garden and Butterfly Garden
- Donor Recognition Elements
- Interpretive Displays
- Future Improvements to Restrooms
- Future Play Area
- Future Adult Fitness Area





3 ACRES OF GREEN SPACE & SAN ANTONIO HISTORY

URBAN DESIGN SIGNIFICANCE

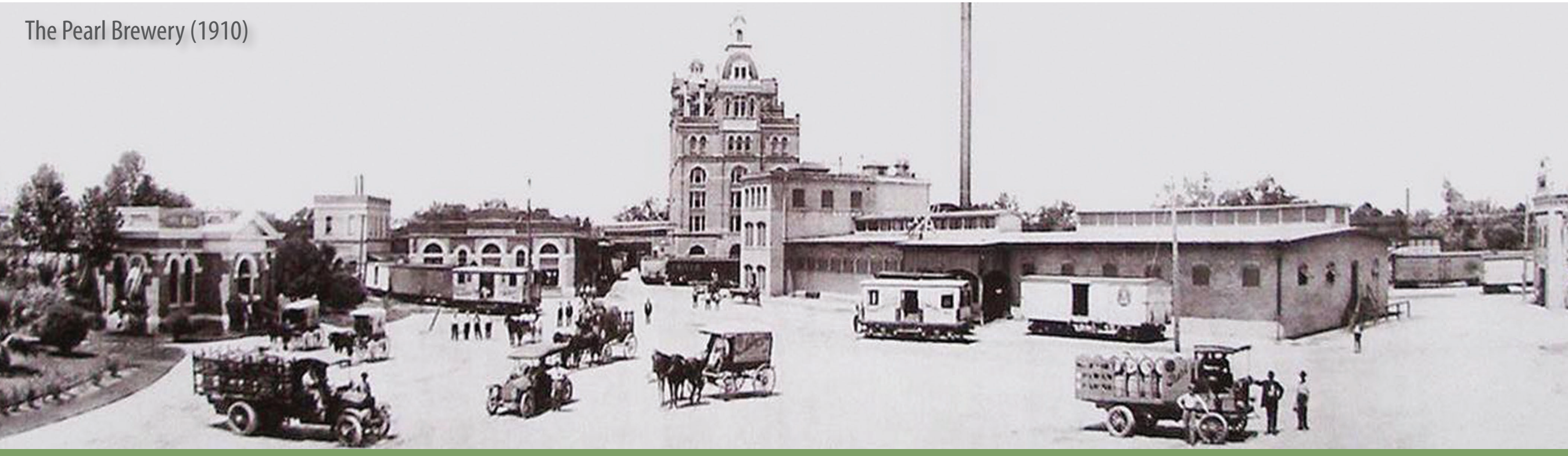
- Located at the corner of Jones Avenue and Broadway, Maverick Park is a 3-acre green space surrounded by a surge of recent and planned multi-family housing projects that are adding hundreds of new residents into the River North area. The San Antonio Museum of Art is just east of the park. Many new commercial projects have been added to the district, along with significant improvements to the Riverwalk. All of these elements are creating a greater demand for park space in the area closely tied to the neighborhoods they serve.
- Parks strengthen communities by providing a place for people to get together and participate in important spontaneous social interaction. Small urban parks are some of the best spaces for this.
- Maverick Park will provide places to sit, public spaces that feel safe and are connected to their surroundings, comfortable outdoor areas under large shade trees, and places for special activities and events. A sustainable dog park will draw more human activity. This park must serve the neighborhood, but also visitors to the near-downtown.
- The ecological function of the park is also important, presenting an opportunity for increasing the amount of permeable surfaces in the city and functioning as a respite for birds, beneficial pollinators, and other insects.

HISTORICAL SIGNIFICANCE

- The Alamo Acequia ran just to the east of the park delivering water from the river (near the Witte Museum today) to the mission and beyond from the 1720s until the late 19th Century.
- The city's first railway station was just 3 blocks away in 1881 when Sam Maverick donated the land for the park.
- Jones Avenue was called Grand Avenue and the Grand Hotel served travelers at the top of the street. Restaurants, grocers, barbers, bars, pharmacies, hotels, and laundries can all be seen on the 1885 Sanborn Insurance map. The tracks of the street cars are still present along Jones Street.
- Avenue "C" and River Street are now called Broadway and has become a major thoroughfare linking downtown to northern neighborhoods. Parades have passed by the park each Fiesta attracting crowds of over 350,000 people.
- In 1957, "Old 794" – one of the last steam locomotives- was put on display in the park and remained there for 42 years. The historic locomotive is now on display at the Sunset Station.



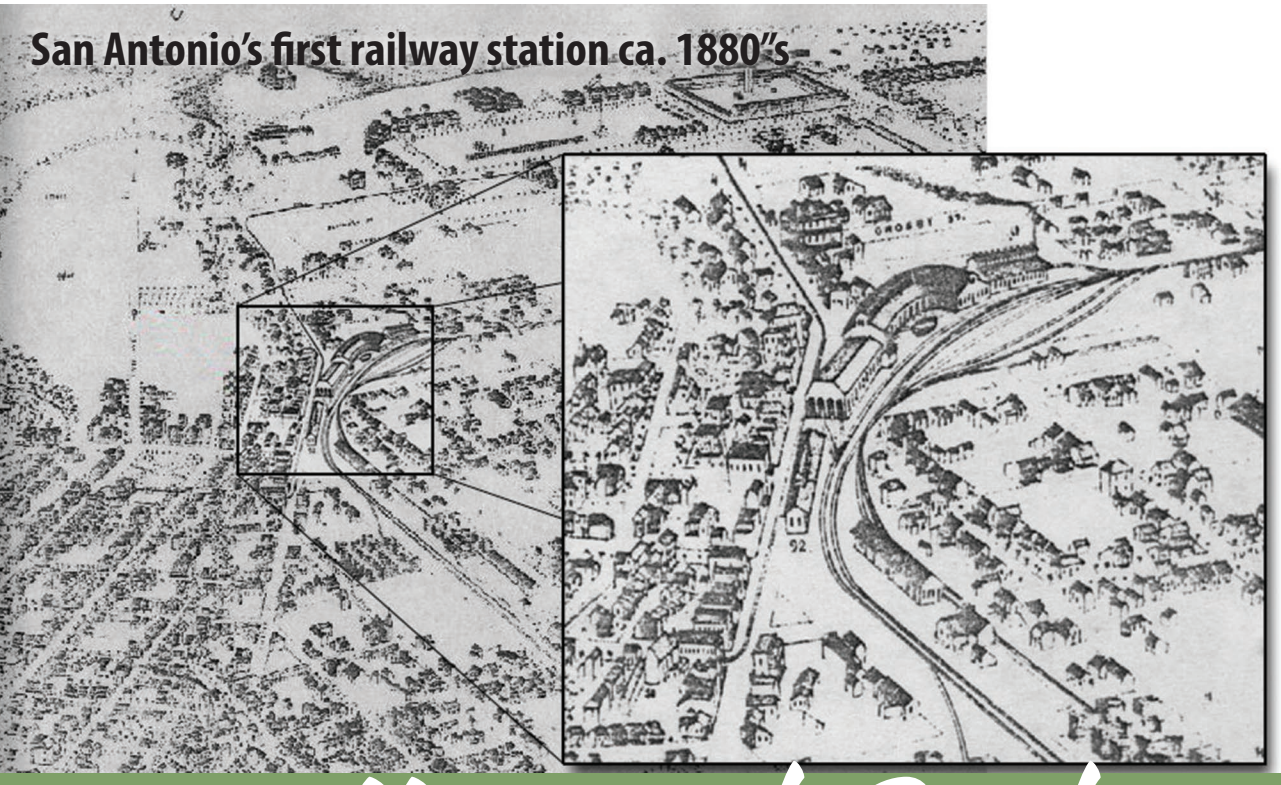
Looking north on Broadway (ca 1930)



The Pearl Brewery (1910)



Fiesta Parade (1977)



San Antonio's first railway station ca. 1880's

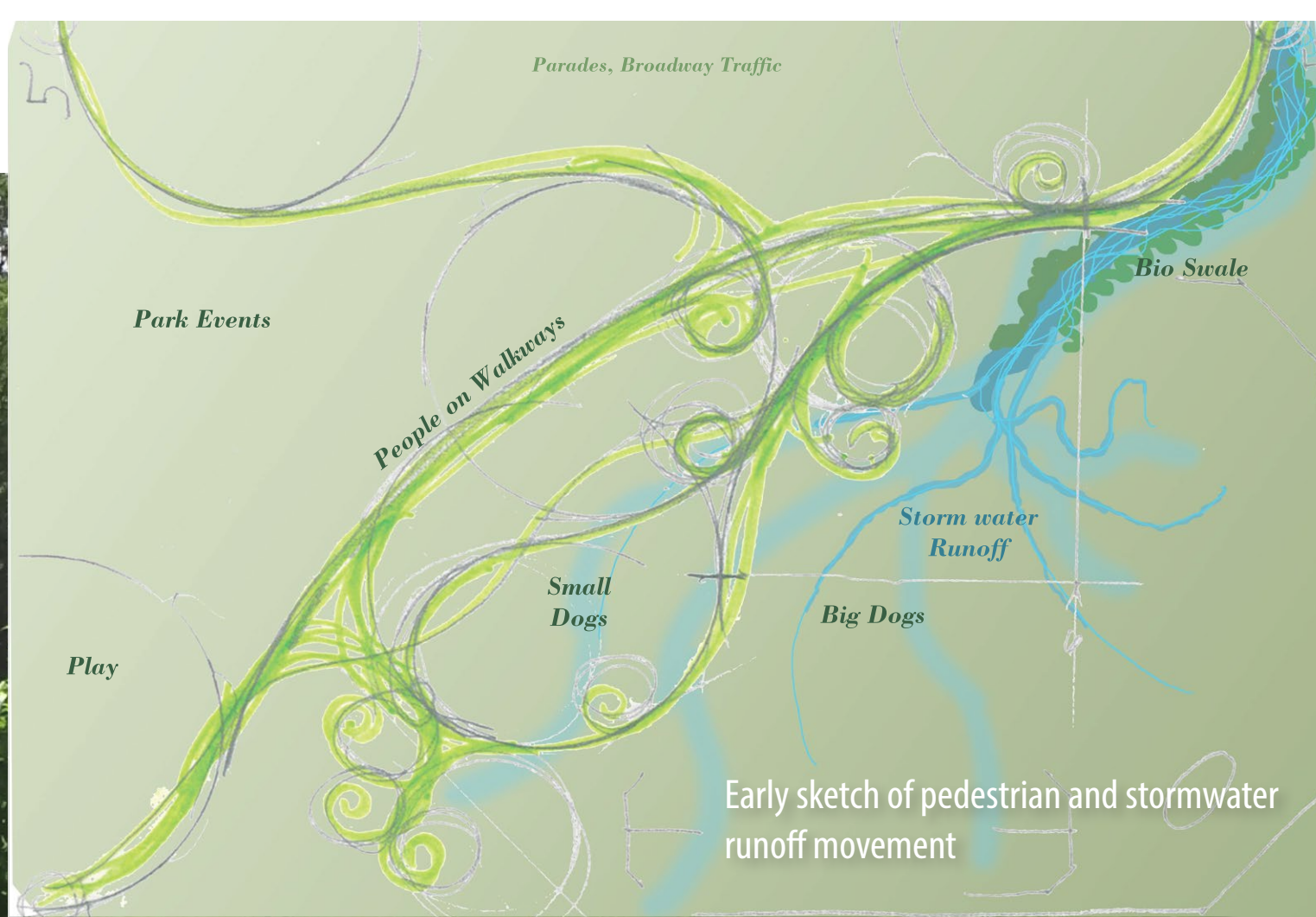


"Old 794"





Bioretention/Bioswale in San Antonio Park



SUSTAINABILITY AT THE DOG PARK

Environmental planning can be a real challenge in existing urban settings. The rapid urbanization of the human population raises concerns about the sustainability of cities. Ensuring ecosystem integrity within this urban context, highly disturbed by human activity over hundreds of years, means developing a greater degree of naturalness within this 3-acre patch.

The park is a relatively isolated patch of open space in an area with increasingly dense land uses. Preservation of the park as an open space with as many natural characteristics as possible will reduce the impact on the ecological integrity significantly.

Native plants, butterfly and bird-attracting plants, and a more diverse tree canopy will help to regenerate a natural condition that allows for:

- Better water quality protection for the river and downstream
- Habitat to sustain populations of beneficial insects and pollinators
- A micro-habitat and a “stepping stone” for birds
- Improved soil formations to allow infiltration and reduced runoff

HYDROLOGY AND STORMWATER RUNOFF

The city's impervious surfaces such as roads, parking lots and sidewalks, along with rooftops, carry polluted stormwater to drains and into the river. Instead of allowing water to percolate through the soil, rain water is discharged and contributes to flooding. Effective control of urban runoff is increasingly important as the city grows.

At Maverick Park, the intent is to approach this new development as a way to work with nature to manage stormwater as close to the source as possible. By creating functional and appealing site drainage, recreating natural landscape features, and treating water as a resource rather than a waste product, we can reduce the impact of this area on the watershed. The principles and practices employed include:

- Reducing impervious cover
- Improving soil porosity
- Promoting the natural movement of water into the ecosystem of the park
- Restoring the area's pre-development condition as much as possible from a stormwater perspective
- Creating bio-filtration, bio-retention, and rain garden areas
- Incorporating Green Infrastructure into the design wherever possible using natural systems to provide environmental services

PET WASTE

Pet waste is always a concern at dog parks. When improperly disposed of, it can be picked up by stormwater runoff and washed into the river. Proper disposal is a public awareness issue, and signs and “Mutt-Mitt” dispensers will help raise park user's consciousness. Studies show enormous potential for pet waste programs to play a significant role in reducing the cost of local urban stormwater strategies. Pet waste stations with bags and trash cans will be installed.

The introduction of a bioswale at the park will improve the quality of runoff. Bioswales can help remove nutrients from runoff and may reduce pathogens as well. Common stormwater contaminants include motor oil and grease from cars, pesticides from gardens, pet waste, and household chemicals.

According to the Center for Watershed Protection, “A Cambridge, MA dog park has taken pet waste disposal one step further and is actually using the poop to power a light in the park. The “Park Spark” is located at the Pacific Street Park and is actually a methane digester connected to a nearby street lantern. People “feed” the digester with their dog's poop and then turn a wheel to stir its insides, which produces methane, which is used to power the lamp. A nearby sign says “this lamp is powered by your dog.”

We agree and will continue to look for innovative and sustainable solutions to this problem.

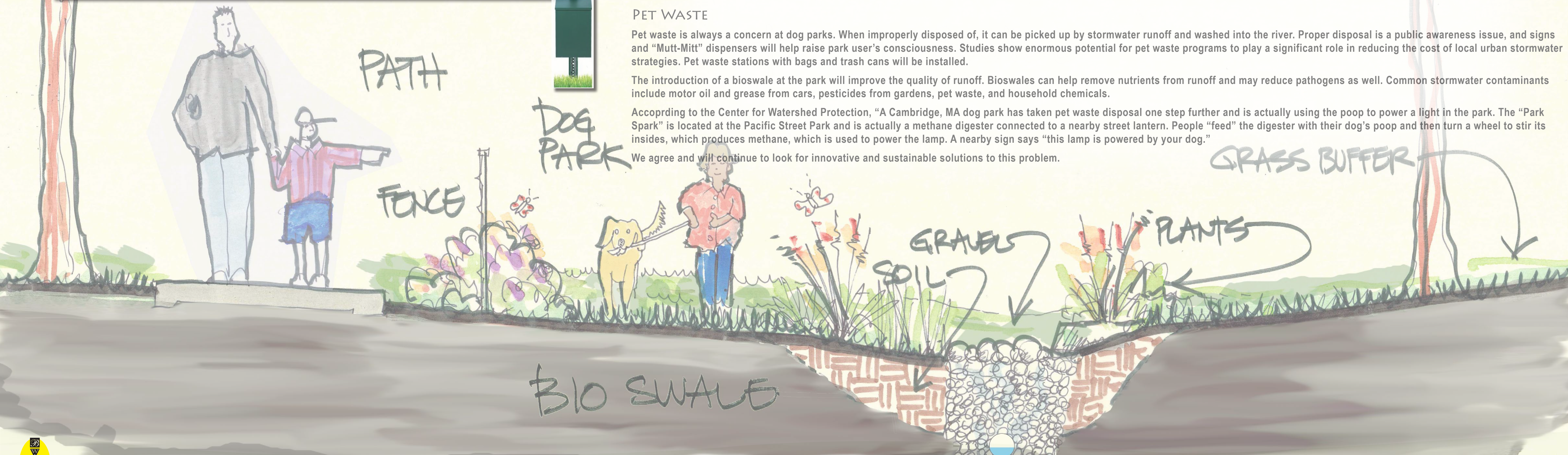


EXHIBIT G

Maverick Park Dog Park

FIRM COMMITMENTS

	<i>Units</i>	<i>Committed</i>
Mosaic	120	\$ 3,600
Rivera	290	\$10,000
815 Ave B	300	\$ 9,000
River House	261	\$ 7,830
<u>1221 Broadway</u>	<u>309</u>	<u>\$ 9,270</u>
<i>Subtotal - Private</i>		\$39,700
TBD - Private Funds		\$30,000
Midtown TIRZ		\$50,000
80/20 Foundation		\$15,000
<u>Total Firm</u>		<u>\$134,700</u>

SOFT COMMITMENTS

Crowdfunding Goal	\$10,000
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PROJECT BUDGET

Landscape Installation	\$113,691
Redesign Existing Irrigation	10,500
Site Work	29,000
Concrete Sidewalks	65,000
Fencing and Erosion Control	63,300
<u>Total with Alternate</u>	<u>\$281,491</u>

EXHIBIT H
Right of Entry Agreement

Right of Entry Agreement

Authorizing Ordinance: City Code of San Antonio, Texas §§ 37-15, 37-2(e) and City Ordinance 2015-__-____-_____

Owner: City of San Antonio, a Texas municipal corporation

Owner's Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Requester: San Antonio Parks Foundation

Request's Address: **San Antonio Parks Foundation**
400 N. Saint Mary's, Ste. 101
San Antonio, Texas 78205

Purpose of Access: To perform all duties and obligations as authorized under the Development Agreement approved by City Council Ordinance 2015-__-____-_____.

Subject Property: **Maverick Park located at 1000 Broadway San Antonio Texas 78215 and more specifically described in Exhibit A attached to this Agreement for all purpose herein.**

Beginning Date: The "Effect Date" of this Agreement as defined herein.

Ending Date: The date which is the earliest to occur of the following:
1) the date in which completion of all work related to the Purpose of Access is completed; or 2) the date of termination of the Development Agreement approved by City Council Ordinance 2015-__-____-_____.

1. Performance of Work.

From the Beginning Date through the Ending Date, Requester and its authorized agents and representatives may enter the Subject Property to perform work consistent with the Purpose of Access. In so doing, Requester may employ such equipment and independent contractors as it deems necessary or convenient to accomplish the Purpose of Access.

2. Noninterference, Restoration.

Requester must minimize interference with Owner's activities on the Subject Property. At the completion of work, Requester must, at its expense, restore the Subject Property to substantially the same or better physical condition as it was in at the Beginning Date.

3. Expense, Compliance.

Requester will perform all work at its own expense and will comply with all applicable federal, state, and local laws, rules, and regulations in the course of performing the work.

4. Indemnity.

4.1 The REQUESTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the OWNER (and the elected officials, employees, officers, directors, and representatives of the OWNER), the Inner City TIRZ BOARD (“BOARD”) (and the officials, employees, officers, directors, and representatives of the BOARD), and any PARTICIPATING TAXING ENTITY (and the elected officials, employees, officers, directors, and representatives of any such entity), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the OWNER, BOARD, and/or upon any PARTICIPATING TAXING ENTITY directly or indirectly arising out of, resulting from or related to the REQUESTOR’S activities under this AGREEMENT, including any acts or omissions of the REQUESTOR, any agent, officer, contractor, subcontractor, director, representative, employee, consultant or sub-consultants of the REQUESTOR, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the OWNER, the BOARD, or any PARTICIPATING TAXING ENTITY under Texas Law and without waiving any defenses of the Parties under Texas, Federal, or International Law.

IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF OWNER, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, THE REPRESENTATIVES OF OWNER, OR THE BOARD UNDER THIS CONTRACT. THE REQUESTOR SHALL ALSO INDEMNIFY, DEFEND AND HOLD THE CITY AND THE BOARD HARMLESS FROM ANY CLAIMS, DAMAGES AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, ATTORNEY’S FEES, AND PENALTIES ARISING FROM POLLUTION OF THE PROPERTY BY REQUESTOR OR REQUESTOR’S PREDECESSORS IN TITLE, OR THE FAILURE OF REQUESTOR OR REQUESTOR’S PREDECESSORS IN TITLE, TO COMPLY WITH LOCAL, STATE OR FEDERAL ENVIRONMENTAL LAWS OR REGULATIONS.

It is the EXPRESS INTENT of the parties to this AGREEMENT that the INDEMNITY provided for in this section, is an INDEMNITY extended by REQUESTOR to INDEMNIFY, PROTECT and HOLD HARMLESS, the OWNER from the consequences of the OWNER'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the Owner is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the Owner is the sole cause of the resultant injury, death, or damage. REQUESTOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE OWNER AND IN THE NAME OF THE OWNER, any claim or litigation brought against the OWNER and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

It is the EXPRESS INTENT of the parties to this AGREEMENT that the INDEMNITY provided for in this section, is an INDEMNITY extended by REQUESTOR to INDEMNIFY, PROTECT and HOLD HARMLESS, the BOARD from the consequences of the BOARD'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the Board is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the Board is the sole cause of the resultant injury, death, or damage. REQUESTOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE BOARD AND IN THE NAME OF THE Board, any claim or litigation brought against the OWNER and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

The REQUESTOR shall advise the OWNER, the BOARD, and any PARTICIPATING TAXING ENTITY in writing within 24 hours of any claim or demand against the OWNER, the BOARD, or any PARTICIPATING TAXING ENTITY related to or arising out of the REQUESTOR'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at the REQUESTOR's cost to the extent required under the INDEMNITY in this Section

THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE OWNER, REQUESTOR, AND THE BOARD AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

The OWNER, the BOARD, and/or any PARTICIPATING TAXING ENTITY shall have the right, at their option and at their own expense, to participate in such defense without relieving the REQUESTOR of any of its obligations.

5. Release of Liability.

Requestor releases Owner from any liability for injury arising from the condition of the Subject Property.

6. Public Information.

Requestor acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

7. Insurance.

A) Prior to the commencement of any work under this Agreement, Requester shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's _____ Department, which shall be clearly labeled "*insert name of project/contract*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's _____ Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

C) A Requester's financial integrity is of interest to the City; therefore, subject to Requester's right to maintain reasonable deductibles in such amounts as are approved by the City, Requester shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Requester's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>

1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury *d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *e. Explosion, Collapse, Underground	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. *Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
*if applicable	

D) Requester agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Requester herein, and provide a certificate of insurance and endorsement that names the Requester and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Requester. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subsubcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Requester shall be required to comply with any such

requests and shall submit requested documents to City at the address provided below within 10 days. Requester shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: _____ Department
P.O. Box 839966
San Antonio, Texas 78283-3966

F) Requester agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Requester shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Requester's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H) In addition to any other remedies the City may have upon Requester's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Requester to stop work hereunder, and/or withhold any payment(s) which become due to Requester hereunder until Requester demonstrates compliance with the requirements hereof.

I) Nothing herein contained shall be construed as limiting in any way the extent to which Requester may be held responsible for payments of damages to persons or property resulting from Requester's or its subcontractors' performance of the work covered under this Agreement.

J) It is agreed that Requester's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

L) Requester and any Subcontractors are responsible for all damage to their own equipment and/or property.

8. Counterparts.

This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, the counterparts constitute only one agreement. In making proof of the agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be signed on the date of the each signature below. This Agreement will become effective on the date of the last signature below ("Effective Date"):

City of San Antonio,
a Texas municipal corporation

San Antonio Parks Foundation, a
501(c)(3) Non-profit Organization

By:_____

By:_____

Printed
Name:_____

Printed
Name:_____

Title:_____

Title:_____

Date:_____

Date:_____

ATTEST/SEAL:

Leticia M. Vacek, City Clerk
Date: _____