

THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED ORDINANCE OR RESOLUTION ADOPTED BY THE CITY COUNCIL.

AN ORDINANCE

AUTHORIZING THE CLOSURE, VACATION, AND ABANDONMENT OF A 0.236 ACRE IMPROVED PORTION OF AVENUE A IN COUNCIL DISTRICT 1 AS REQUESTED BY BROADWAY SA INVESTORS GP LLC FOR A FEE OF \$116,172.00.

* * * * *

WHEREAS, Broadway SA Investors GP LLC (“Petitioner”) owns or has agreement from the owners abutting the property surrounding the proposed closures; and

WHEREAS, this portion of street is surplus to City of San Antonio needs and such closure will alleviate the City of San Antonio from maintenance and other costs; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. As an exercise of its discretion, the City Council authorizes the closure, vacation, and abandonment of the right of way segment (“Right of Way Segment”) identified in Section 2 of this Ordinance. The City Manager or her designee, severally, are authorized and directed to execute and deliver all necessary documents and to do all other things conducive to effectuate this closure, abandonment, and vacation.

SECTION 2. Maps and pictures of the Right of Way Segment are set forth on **Attachment I**. The detailed description of the Right of Way Segment is set forth on **Attachment II**. Both Attachments I and II are incorporated into this ordinance for all purposes as if they were fully set forth. Attachment II controls over any discrepancy between it and Attachment I.

SECTION 3. The properties abutting the Right-of-Way Segment are:

Address:	Description:	Owner Listed by Bexar Appraisal District :
226 Newell Avenue, San Antonio, Texas 78215	NCB 6326 BLK D LOT 1 THRU 4, 7 THRU 12 & NW IRR 42.32 FT OF 5	Broadway SA Investors GP, LLC
302 Newell Avenue, San Antonio, Texas 78215	NCB 6325 BLK C LOT NW TRI 5 OF 6 W IRR 40 OF 7 E IRR 43 OF W IRR 73 OF 8&9, W 30 FT OF 8&9	Broadway SA Investors GP, LLC
333 Avenue A, San Antonio, Texas 78215	NCB A-8 BLK LOT N PT OF A2 & NCB 6326 BLK D LOT SE IRR 22.34 FT OF 5	Broadway SA Investors GP, LLC
N/A	IH 35 & small parcels (see survey)	TxDOT

The listing above is made solely to facilitate indexing of this Ordinance in the real property records. If the listing is inaccurate or not comprehensive, it does not affect the validity of the closure.

SECTION 4. Reservation of Utility Rights. All presently existing drainage, water, recycled water and wastewater lines and facilities, electric transmission and distribution poles, lines and facilities, gas lines and facilities, communication lines and facilities, or any other public utility lines and facilities, if any, may remain in place despite this Ordinance and may continue to be accessed, used, repaired, enlarged, upgraded, replaced (and realigned within the Right-of-Way segment) and maintained in the ordinary course of business. Any person wanting removal or relocation of an existing utility pole, line or facility must negotiate separately with the pertinent utility. Any person building on the Right-of-Way Segment without first reaching an agreement with a utility having poles, lines or facilities in the segment does so at his own risk. After the date of this Ordinance, other than replacement of an existing pole, line or facility, no utility may add additional utility poles, lines or facilities in the Right-of-Way Segment based on a claim that the Right-of-Way Segment is public right of way. All drainage rights in the Right-of-Way Segment are retained by the City. This closure does not give up any right arising other than from the plat or other instrument creating the public street or alley right of way. Neither does this Ordinance create new easement rights.

SECTION 5. The closure shall not be authorized until the following conditions have been met:

1. Owners of abutting property to the Right of Way Segment must provide an ingress and egress access easement to maintain compliance with Chapter 35 of the City Code, the Unified Development Code, in substantially the same form as shown in **Attachment III**.

If the City Manager finds that each of the conditions listed in this Ordinance have been satisfied, the City Manager or her designee is authorized and directed to execute and deliver a recordable certificate of closure reflecting this ordinance and closing, vacating and abandoning the Right of Way Segment. The City Manager or her designee, severally, are further authorized and directed to execute and deliver all necessary documents, including quit claim deeds approved by the City Attorney's Office, and to do all other things conducive to effect this closure, abandonment, and vacation

SECTION 6. The Right-of-Way Segment exists by easement. The underlying fee ownership of the Right-of-Way Segment by the adjacent lot owners is now unburdened by the rights closed, vacated, and abandoned. For purposes of future conveyance and to better reflect their ownership generally, owners of the adjacent property should replat. No such replat impairs the rights retained by City above, unless in the course of replatting, the owner, at its own expense, otherwise provides for those rights according to platting rules of general applicability.

SECTION 8. Petitioner shall pay \$116,172.00 to the City of San Antonio. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 223000000253 and General Ledger 4903101.

SECTION 9. The disposition of surplus property must be coordinated through the city's Finance Department to assure the removal of these assets into the City's financial records and to record the proper accounting transactions.

SECTION 10. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 11. This Ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this _____ day of _____, 2017.

M A Y O R
Ivy R. Taylor

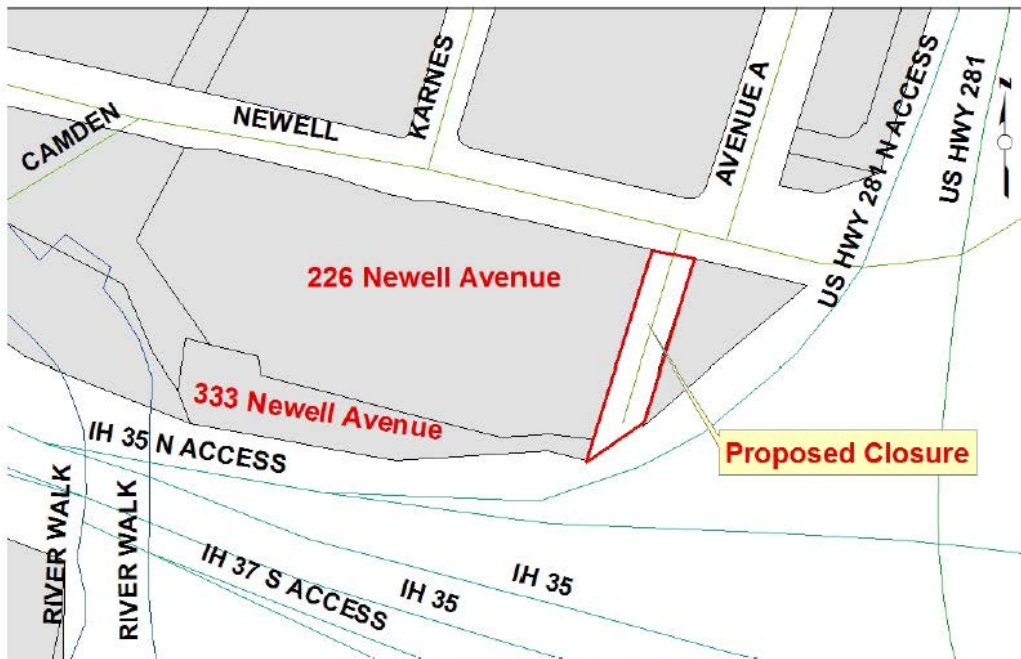
ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek, City Clerk

Andrew Segovia, City Attorney

Attachment I



Map of Proposed Closure



Aerial Map of Proposed Closure

Exhibit "A"

Attachment II



FIELD NOTES
FOR
0.236 OF AN ACRE TRACT

A 0.236 of an acre, or 10,300 square feet more or less, tract of land being comprised of a portion of Avenue "A", a called 55.6' right-of-way found as variable, in the City of San Antonio, Bexar County, Texas. Said 0.236 of an acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983, NAD 83 (NA2011) epoch 2010.00:

BEGINNING: At the northwest corner of the herein described tract, a found $\frac{1}{4}$ " iron rod with yellow cap marked "Pape-Dawson" on the south right-of-way line of Newell Avenue, a variable width right-of-way, and on the west right-of-way line of said Avenue "A", at the northeast corner Lot 1 of O.R. Mitchell Subdivision recorded in Volume 5870, Page 241 of the Deed and Plat Records of Bexar County, Texas, the northeast corner of a 2.122 acre tract of New City Block 6326 conveyed in deed to Broadway SA Investors GP, LLC, recorded in Volume 14203, Pages 1918-1924 of the Official Public Records of Real Property of Bexar County, Texas, and at North 13,708,007.36, East 2,133,985.22 of said coordinate system;

THENCE: S 77°30'37" E, along and with the south right-of-way of said Newell Avenue, a distance of 54.33 feet to a found mag nail with washer marked "Pape-Dawson" on the east right-of-way line of said Avenue "A" at the northwest corner of Lot 9 of New City Block 6325 in the City of San Antonio, Bexar County, Texas, the northwest corner of a 0.182 of an acre tract of land conveyed in deed to Broadway SA Investors GP, LLC, recorded in Volume 17661, Pages 765-769 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: S 17°03'27" W, departing the south right-of-way line of said Newell Avenue, along and with the east right-of-way line of said Avenue "A", the west line of said 0.182 acre tract and the west line of Lots 6, 7, 8 and 9 of said New City Block 6325, a distance of 154.21 feet to a found $\frac{1}{4}$ " iron rod with yellow cap marked "Pape-Dawson" on the northwest right-of-way line of L.H. 37, a variable width right-of-way, at the south corner of said 0.182 acre tract, the southeast corner of the herein described tract;

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0.236 of an acre
Job No. 9366-15-900

THENCE: S 57°06'18" W, departing the east right-of-way line of said Avenue "A", with the northwest right-of-way line of said Interstate Highway, a distance of 88.81 feet to a found mag nail on the north right-of-way line of I.H. 35, a variable width right-of-way, on the west right-of-way line of said Avenue "A", at the southeast corner of a 0.423 acre tract of land conveyed in deed to Broadway SA Investors GP, LLC, recorded in Volume 14305, Pages 32-44 of the Official Public Records of Bexar County, Texas;

THENCE: N 17°50'31" E, departing the north right-of-way line of said I.H. 35, with the west right-of-way line of said Avenue "A", the east line of said 0.423 acre tract, continuing with the east line of the aforementioned 2.122 acre tract, and the east line of said O.R. Mitchell Subdivision, a distance of 217.89 feet to the POINT OF BEGINNING, and containing 0.236 of an acre in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey description and map prepared under job number 9366-15-900 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: March 18, 2016
JOB NO. 9366-15-900
DOC. ID. N:\Survey\15\15-9300\9366-15\Word\9633-15-900 FN 0.236 AC.docx



Attachment III

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.

PUBLIC ACCESS EASEMENT

Effective Date: Effective date of Ordinance No. _____

Grantor:

Grantor's Mailing Address:

Grantee: CITY OF SAN ANTONIO

Grantee's Mailing Address: CITY OF SAN ANTONIO,
Attn: TCI Real Estate Division
PO Box 839966,
San Antonio, Texas 78283

Easement Property: See Attached **Exhibit A.**

Easement Purpose: For providing free and uninterrupted pedestrian and vehicular ingress and egress along that portion of the Easement Property and all other associated rights as if such portion were a platted public alley in conformance with Chapter 35 of the City Code, San Antonio (Unified Development Code).

Consideration: The sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor.

Ordinance:

Reservations from Conveyance: None.

Exceptions to Warranty: None.

Grant of Easement: Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee and Grantee's heirs, successors and assigns an easement over, on, and across the Easement Property for the Easement Purpose and for the benefit of the general public, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors and assigns. Grantor binds Grantor and Grantor's heirs, successors and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's heirs, successors and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part thereof, except as to the Reservations from Conveyance and Exceptions to Warranty, to the extent such claim arises by, through, or under Grantor but not otherwise.

Terms and Conditions: The following terms and conditions shall apply to the Easement granted by this agreement:

1. *Character of Easements.* The Easement is exclusive and irrevocable subject to the duration in subsection 2, and for the benefit and use of the general public for ingress and egress along the Easement Property.

2. *Duration of Easement.* The duration of the Easement shall be the period commencing on the Effective Date and automatically expiring upon the recordation of an approved subdivision plat (or replat) covering the Easement Property and providing access in compliance with Chapter 35 of the City Code (Unified Development Code).

3. *Reservation of Rights.* Grantor reserves for Grantor and Grantor's heirs successors and assigns the right to continue to use and enjoy the surface of the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the Easement by Grantee for the Easement Purposes. Grantor shall not grant any additional easements, licenses, permits, or other interest that may affect the rights of Grantee unless agreed to in writing by Grantee.

4. *Improvement and Maintenance of Easement Property.* Maintenance of the Easement Property shall be the sole expense of Grantor. Grantee has the right to eliminate any encroachments into the Easement Property. Grantor must maintain the Easement Property in a neat and clean condition. Grantee has the right to remove or relocate any fences within the Easement Property or along or near its boundary lines if reasonably necessary to continue the purposes of this easement.

5. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. *Binding Effect.* This Agreement binds and inures to the benefit of the parties and their respective heirs, successors and permitted assigns.

7. *Choice of Law.* This Agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the County or Counties in which the easement property is located.

8. *Counterparts.* This Agreement may be executed in any number of counterparts with the same effect as if signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

9. *Waiver of Default.* It is not a waiver or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

10. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions and conditions of this agreement and all transactions contemplated by this agreement.

11. *Entire Agreement.* This agreement and any exhibits are the entire agreement of the parties concerning the Easement Property and the grant of the Easement by Grantor to Grantee. Grantor represents that (i) it owns the property over which this easement is granted and (ii) it is a Texas corporation, duly organized, validly existing, and in good standing under the laws of the State of Texas with authority to grant this easement to Grantee. There are no representations, agreements, warranties, or promises other than those in this agreement and neither party is relying on any statements or representations of any agent of the other party, that are not in this agreement and any exhibits.

12. *Legal Construction.* If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of this agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

13. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

14. *Time.* Time is of the essence. Unless otherwise specified, all references to “days” mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holidays, the date for performance will be the next following regular business day.

GRANTOR:

By: _____

Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this the ____ day of _____, 2017, by _____, as the _____, a _____, on behalf of said _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____

Exhibit A



FIELD NOTES
FOR
0.236 OF AN ACRE TRACT

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PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: March 18, 2016
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DOC. ID. N:\Survey\15\15-9300\9366-15\Word\9633-15-900 FN 0.236 AC.docx



