

AN ORDINANCE 2017-11-30-0915

**AUTHORIZING EXECUTION OF A LEASE AGREEMENT FOR LAND FROM I.H. 37 LAND, LTD. FOR A TERM OF 20 YEARS FOR THE DEVELOPMENT OF THE SALADO CREEK GREENWAY TRAIL (SOUTHSIDE LIONS PARK TO SOUTHEAST MILITARY DRIVE) PROJECT, INCLUDED IN THE FY 2018-2023 CAPITAL IMPROVEMENT PROGRAM BUDGET, LOCATED IN COUNCIL DISTRICT 3.**

\* \* \* \* \*

**WHEREAS**, the proposed Lease Agreement will allow for the expansion of the Salado Creek Greenway Trail from Southside Lions Park to Southeast Military Drive, enhancing bike and pedestrian connectivity and park access for adjacent residents; and

**WHEREAS**, the property is located within the 100-year floodplain, adjacent to the Salado Creek Greenway Trail in Council District 3; and

**WHEREAS**, this action is consistent with the City's objectives to acquire and preserve open space along San Antonio waterways and to develop multi-use hike and bike trails, trailheads, signage and associated amenities for use by San Antonio residents and visitors; and

**WHEREAS**, the Salado Creek Greenway is part of the Howard W. Peak Greenway Trails system, which is funded through sales tax initiatives approved by voters in 2000, 2005, 2010, and 2015; and

**WHEREAS**, the objectives of the Program are to acquire and preserve open space along San Antonio waterways and to develop multi-use hike and bike trails, trailheads, signage and associated amenities for use by San Antonio residents and visitors; and

**WHEREAS**, the segment of the Salado Creek Greenway from Southside Lions Park to Southeast Military Drive is currently in design; and

**WHEREAS**, this segment will be just over three miles long, making a total of 11 miles of connected trail from Ft. Sam Houston to Southeast Military Drive, where a new trailhead parking area will be built; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager or her designee, or the Director of the San Antonio Parks and Recreation Department or her designee, is authorized to execute the lease agreement for land from I.H. 37 Land, Ltd. for a term of 20 years for the development of the Salado Creek

Greenway Trail (Southside Lions Park to Southeast Military Drive) project. A copy of the lease agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.


**SECTION 2.** If approved funding for this ordinance in the amount of \$6,400.00 is available in Fund 11001000, Cost Center 2601010001 and General Ledger 5202025 as part of the Fiscal Year 2018 Budget.

**SECTION 3.** Payment not to exceed the budgeted amount is authorized to I.H. 37 Land, Ltd. and should be encumbered with a purchase order.

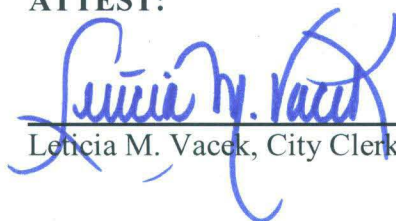
**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 5.** This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

**PASSED AND APPROVED this 30<sup>th</sup> day of November, 2017.**

  
**M A Y O R**  
Ron Nirenberg

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Andrew Segovia, City Attorney

<b>Agenda Item:</b>	16 ( in consent vote: 4, 5, 6, 7, 8, 9A, 9B, 10, 11, 12, 13, 16, 18, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32 )						
<b>Date:</b>	11/30/2017						
<b>Time:</b>	09:43:16 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing execution of a Lease Agreement for land from I.H. 37 Land, Ltd. for a term of 20 years for the development of the Salado Creek Greenway Trail (Southside Lions Park to Southeast Military Drive) project, included in the FY 2018-2023 Capital Improvement Program budget, located in Council District 3. [María Villagómez, Assistant City Manager; Xavier D. Urrutia, Director, Parks and Recreation]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		x				x
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

SW  
11/30/17  
Item No. 16

# ATTACHMENT I



## **LAND LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Lease Agreement") is made and entered into on the latest date established by the signatories at the end of the body of this Lease at San Antonio, Bexar County, Texas, by and between I. H. 37 Land, Ltd., ("Landlord") and City of San Antonio, a Texas Municipal Corporation ("Tenant").

**Background:** Landlord in entering into this lease agreement as a charitable goal of supporting the City of San Antonio's Linear Creekways Park development and operations program. This lease will allow the construction and operation of linear park improvements.

### **1. DEMISE AND DESCRIPTION OF PROPERTY**

1.1 **Demise:** In consideration of the agreements, terms, provisions and covenants of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, on the terms and conditions hereinafter set forth, the Premises during the Term.

1.2 The premises ("Leasehold") leased in this Agreement is described in Exhibit A attached and made a part of this Lease in New City Block 10848 along the banks of the Salado Creek in the City of San Antonio, Bexar County, Texas.

1.3 The Reduced Leasehold is discussed below in Section Four of this Lease. The Reduced Leasehold is hereby defined as an ninety foot width of vacant property extending from the centerline of Salado Creek to either extreme end of the Original Leasehold and and completely contained within the Original Leasehold as further depicted on Exhibit B.

### **2. TERM OF LEASE**

This Lease Agreement is for a term of twenty (20) years, beginning January 1, 2018 and ending December 31, 2037, referred to in this Lease Agreement as the "Lease Term", or until such time as both parties mutually agree to terminate the Lease Agreement.

### **3. REIMBURSEMENTS**

3.1 During the Lease Term, Tenant covenants and agrees to pay to Landlord reimbursements of liability insurance and the city-portion of ad-valorem taxes assessed for the Leasehold, for the use and occupancy of the Leasehold on an annual basis.

3.1a Tax Reimbursement - Landlord shall be responsible for payment of the City of San Antonio portion of the ad-valorem property tax assessments and governmental charges applicable to the tract in which the Leasehold is a whole or part as further discussed in this Paragraph. Landlord shall notify Tenant in writing of the tax assessment and payment thereof (an official email notice shall qualify as "in writing" for this purpose). After such notification, which shall reference this Paragraph, but before December 31<sup>st</sup> of that respective year (or 45 days' after Landlord has provided written notice, whichever is the later date) Tenant shall reimburse Landlord for the actual real property taxes and assessments applicable by the City of San Antonio Portion, prorated for the number of days that the Leasehold was subject to this Lease and continuing

regularly thereafter no later than the same day of each succeeding year until the Lease Agreement expires or is otherwise earlier terminated. Upon expiration or termination of this Lease, the prorated number of days from the first day of that year until expiration shall be payable by Tenant upon expiration or termination.

3.1b Liability Insurance reimbursement - Tenant shall reimburse Landlord for the cost of any liability insurance deemed necessary by Landlord purchased to protect Landlord, Landlord's representatives, successors, and assigns from liabilities occurring on the Premises. Such liability insurance coverage shall not exceed the amount of five million dollars (\$5,000,000.00). Upon Landlord notifying Tenant in writing of the liability insurance invoice and payment thereof (an official email notice shall qualify as "in writing" for this purpose), Tenant shall reimburse Landlord for the cost of said liability insurance within 45 days' of Landlord providing notice.

**3.2 The above stated reimbursements are due and payable without demand at 3500 Goliad Road, No. 1, San Antonio, Bexar County, Texas, 78223.**

#### **4. LANDLORD'S RIGHT TO REDUCE LAND AREA**

.1 **General Conditions.** Landlord under this Lease shall have the option to reduce the premises from that area shown in Exhibit A (the "Original Leasehold") to that area shown in Exhibit B (the "Reduced Leasehold"), upon all terms and conditions set forth in this Lease for the Original Leasehold, except as otherwise set forth herein. The reduced leasehold may be modified by mutual agreement to include additional areas to accommodate storm water events, breaks in topography, and wheelchair accessibility.

4.2 **Written Notice.** To exercise the Contraction Option, Landlord must deliver written notice to Tenant.

4.3 **Terms of Landlord's Contraction.** Landlord shall have the right to reduce the Leasehold at any time after this Lease has commenced with ninety (90) days' notice to Tenant (the "Contraction Option"). If Landlord exercises the Contraction Option, the Tenant's liability for Rent shall be decreased proportionately to the approximate square footage of the Original Leasehold as compared to the approximate square footage of the Reduced Leasehold, and the Reduced Leasehold shall commence on the date ninety (90) days after the applicable Reduced Leasehold Date and shall be coterminous with the Term for the Leasehold originally demised by this Lease. In the event that Landlord and Tenant cannot agree on the amount of the reduced rent, Landlord and Tenant hereby agree that the Independent Internal City Auditor for the City of San Antonio, in good faith and without prejudice, will calculate the rental rate based on the proportionality described above in this Section.

#### **5. SECURITY DEPOSIT**

5.1 No Security Deposit shall be deposited with Landlord.



## **6. USE**

6.1 Tenant shall continuously use the Leasehold only for the sole purpose of making available to the public a linear park and hike and bike trail. Other than for the purpose of constructing improvements allowed hereunder, Tenant agrees that it shall only grant permission to third parties to enter onto the Leasehold for the purpose of "Recreation", as defined in TEX. CIV. PRAC. & REM. CODE § 75.001(3), as the same may be amended from time to time ("Recreational Activities"). Tenant shall not commit or suffer to be committed any waste of the premises or permit the maintenance or commission of any nuisance on the premises or the use the premises for any private, for profit purpose.

## **7. CONSTRUCTION**

7.1 Tenant has the explicit right to build a hike and bike trail in such a manner as the City of San Antonio has built elsewhere in its Howard W. Peak Greenway Trail System. Tenant may construct such trail at any time during the term of this Lease.

## **8. END OF AGREEMENT PERIOD**

8.1 Upon the expiration or earlier termination of this Lease Agreement, Tenant agrees to surrender and vacate the Leasehold leaving it in a good and clean condition, reasonable wear and tear expected. Provided Tenant is not otherwise in default of this Lease Agreement, Tenant shall have the right to remove any fixtures and signage, if such fixtures and signage were installed by Tenant, provided that any damage incurred by such removal shall be repaired and cleaned up at Tenant's expense.

8.2 All Tenant's fixtures not removed from the Leasehold within thirty (30) days after the Lease Agreement expires or is earlier terminated as herein provided shall be deemed to be abandoned by Tenant and Landlord may retain or remove, destroy and dispose of same without liability to Landlord.

## **9. MAINTENANCE AND CODE COMPLIANCE**

9.1 Tenant shall be responsible for maintaining the Premises during the term of the lease to a standard consistent with its other park properties of a similar design. Violations to and punishment for (including fines, levies, and liens) the City Code Compliance ordinances, or similar laws or regulations, within the Leasehold shall be remedied at the expense and effort of Tenant in a timely fashion, including mowing of the natural and additional vegetation and trash and refuse pick up within the Leasehold.

**9.2 It is understood that Landlord is not responsible for the maintenance, repair, or replacement of any improvements made by Tenant.**

#### **10. WAIVER OF IMPLIED WARRANTY OF SUITABILITY**

10.1 Tenant acknowledges that he has been afforded the opportunity to adequately inspect the Leasehold or to cause same to be inspected by experts of its choice to determine its suitability for Tenant's intended purpose. Tenant accepts the property in its present condition.

**10.2 LANDLORD EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF SUITABILITY THAT MAY OTHERWISE HAVE ARISEN BY OPERATION OF LAW. LANDLORD DOES NOT REPRESENT OR WARRANT THAT THERE ARE NO LATENT DEFECTS IN THE FACILITIES THAT ARE VITAL TO THE TENANT'S USE OF THE LEASEHOLD FOR ITS INTENDED PURPOSES AND THAT THESE ESSENTIAL FACILITIES WILL REMAIN IN A SUITABLE CONDITION. TENANT EXPRESSLY AGREES TO LEASE THE LEASEHOLD "AS-IS" AND EXPRESSLY WAIVES THE IMPLIED WARRANTY OF SUITABILITY.**

#### **11. UTILITIES**

11.1 Tenant agrees to pay for all water, sewer, garbage/trash removal, gas, telephone service, and electricity used or consumed in or about the Leasehold as a result of Tenant's improvements. Tenant shall pay all such utility and service charges directly to the company or the municipality furnishing such services before payment shall become delinquent or, at Landlord's option, Tenant shall promptly reimburse and pay Landlord on demand for such utility services.

11.2 It is the intent of the parties that Tenant shall pay all costs and expenses relating to the use, operation, maintenance and repair of the Leasehold and the operations of Tenant carried on thereon.

#### **12. ASSIGNMENT AND SUBLEASE**

12.1 The Tenant shall not assign, sublet, encumber or otherwise transfer this Agreement or any right or interest in this Agreement, or in the Leasehold. If Tenant sublets, assigns, encumbers or otherwise transfers its rights or interest in this Agreement or in the Leasehold, Landlord may, at its option, declare the Agreement terminated.

#### **13. DEFAULT**

13.1 The following events shall be deemed to be events of default by Tenant under this Agreement:

- a. Tenant shall fail to pay in full any installment of rent when due, and shall not cure such default within thirty (30) days after written notice thereof to Tenant.
- b. Tenant shall fail to comply with any term, provision, covenant, or condition (other than the covenant to pay rent covered above) and shall not cure such default within thirty (30) days after written notice thereof to Tenant.
- c. Tenant shall assign this Lease Agreement or sublet the Leasehold, or any part thereof, or suffer any lien or encumbrance to attach to the Leasehold.



d. Tenant attempts to operate the Leasehold as anything other than a public linear park for a continuous period of one hundred eighty (180) calendar days or more, and shall not cure such default within thirty (30) days after written notice thereof to Tenant.

e. Tenant affirmatively allows third parties to enter onto the Leasehold for purposes other than Recreational Activities.

13.2 Upon the occurrence of any of such events of default described above, Landlord shall have the option to pursue any one or more of the following remedies without notice or demand whatsoever:

Terminate this Agreement, in which event Tenant shall immediately surrender the Leasehold to Landlord, and if Tenant fails to do so, Landlord, without prejudice to any other remedy which it may have for possession or arrearages in rent, may re-enter and take possession of the Leasehold and remove all persons occupying the premises and all personal property located in, on or about the premises without being deemed guilty of any manner of trespass or being liable for prosecution of any claim of damages therefore;. No waiver by Landlord of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default.

13.3 Landlord's or Tenant's pursuing any remedy provided in this Lease Agreement will not preclude pursuing any other remedy provided in this Lease. Either party's pursuing any remedy provided in this Lease Agreement will not be deemed a forfeiture or waiver of any damages accruing to either by reason of violating any term or covenant of this Lease Agreement, nor will Landlord's pursuing any remedies provided in this Lease Agreement constitute a waiver of forfeiture of any rent due hereunder.

13.4 If Landlord defaults in the performance of any term, covenant, or condition required to be performed by this Lease Agreement, Tenant, after not less than fifteen (15) days' written notice to Landlord of such default, may terminate this Lease Agreement (unless Landlord is grossly negligent) on the date designated in Tenant's notice unless Landlord has cured the default prior to the expiration of the fifteen (15) day period.

13.5 So long as Tenant is not in default of this Lease Agreement, Landlord agrees not to interfere with Tenant's possession of the Leasehold.

13.6 All rights and remedies of Landlord and Tenant under this Lease Agreement shall be cumulative, and none, unless expressly provided, shall exclude any other right or remedy provided by law, or by any other provision of this Lease Agreement. All rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their

exercise may arise. A waiver of a breach by either Landlord or Tenant of this Lease Agreement does not constitute a continuing waiver or a waiver of any subsequent breach of the Lease Agreement.

#### **14. INSPECTION BY LANDLORD**

14.1 Tenant shall permit Landlord and Landlord's agents, representatives and employees to enter into the Leasehold at all reasonable times for the purpose of inspecting, maintaining, making repairs or alterations to the Leasehold or for any other purpose necessary to protect Landlord's interest in the Leasehold or to perform Landlord's duties under the Agreement.

#### **15. SUBORDINATION**

15.1 Landlord shall have the right to place any mortgages or encumbrances on the Leasehold and this Agreement and the estate granted hereby shall be subject and subordinate to the any lien or encumbrance thereby created or given and to any modifications or extensions thereof.

#### **16. REALTOR'S COMMISSION**

16.1 Landlord and Tenant represent and agree that no Realtor, agent, or other person is due a commission or fee on account of this transaction.

#### **17. MISCELLANEOUS**

17.1 All notices required or permitted under this Lease Agreement must be in writing and are effective when deposited with the USPS, Certified Mail, Return Receipt Requested, addressed to the proper party, at the respective address:

Landlord:

E. J. Burke III  
3500 Goliad Road, No. 1  
San Antonio, Texas 78223

Tenant:

City of San Antonio, a Texas Municipal  
Corporation  
c/o Parks and Recreation Department  
P.O. Box 839966, San Antonio, TX 78283-3966

Either party may change the address to which notices are to be sent by giving the other party notice of the new address in the manner provided by this section.

17.2 This Lease Agreement shall be binding upon and inure to the benefit of the parties, and theirs respective heirs, administrators, executors, legal representatives, successors and assigns when permitted by this Lease Agreement.

17.3 This Lease Agreement shall be construed in accordance with the laws of the State of Texas, and all obligations of this Agreement are performable in Bexar County, Texas.

17.4 In the event one or more of the provisions of this Lease agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this agreement.



17.5 This Lease Agreement constitutes the sole and only agreement of the parties with respect to the subject matter contained; it supersedes any prior understandings or written or oral agreements between the parties relating to the subject matter contained.

17.6 No amendment, modification, or alteration of the terms of this Lease Agreement shall be binding unless it is in writing, dated, and duly executed by the parties hereto.

17.7 If, as a result of a breach of this Lease Agreement by either party, the other party employs an attorney or attorneys to enforce its rights under this agreement, then the breaching party agrees to pay the other party the reasonable attorneys' fees and costs incurred to enforce the Lease Agreement.

17.8 Time is of the essence in all matters pertaining to this Agreement.

THE UNDERSIGNED Landlord and Tenant execute this Lease Agreement in duplicate originals on the date first set out above at San Antonio, Bexar County, Texas.

Landlord:

Tenant:

IH 37 LAND, LTD.

CITY OF SAN ANTONIO

By its Managing Partner  
IH 37 Management, L.L.C.

  
E. J. Burke, Managing Partner

\_\_\_\_\_  
Xavier D. Urrutia  
Director of Parks and Recreation

Date: 11/15/2017

Date: \_\_\_\_\_

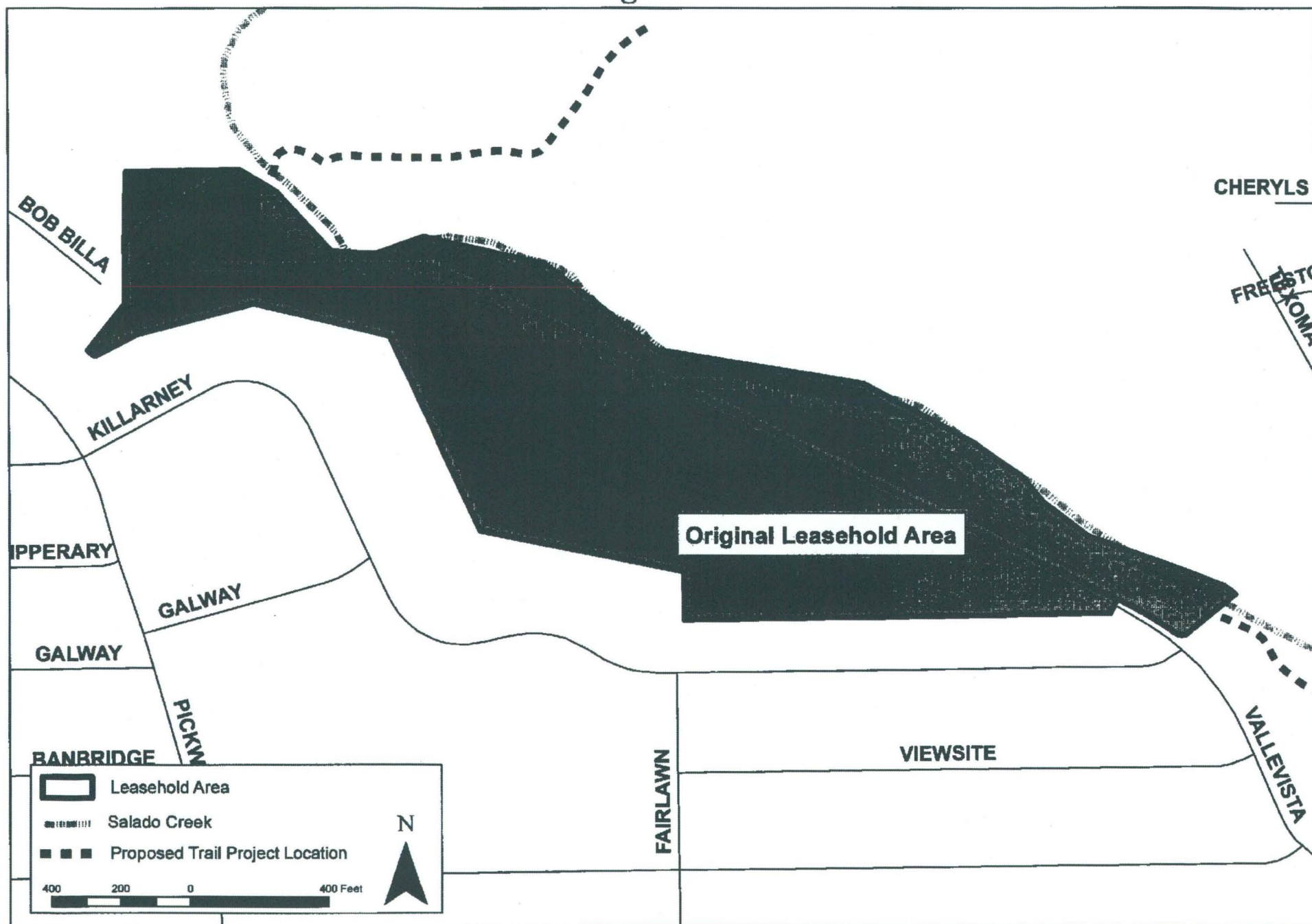
ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## Exhibit A: Original Leasehold Area





## Exhibit B: Reduced Leasehold Area

