

PARKLAND IMPROVEMENT DONATION AGREEMENT
(Lamar Beach Park)

Nikelle Meade Clean Version 11/5/19

**PARKLAND IMPROVEMENT DONATION AGREEMENT
(Lamar Beach Park)**

This Parkland Improvement Donation Agreement (Lamar Beach Park) (the "**Agreement**") is entered into by and between the **CITY OF AUSTIN, TEXAS**, a Texas home-rule municipal corporation (the "**City**") and **PRESSLER RRI, L.P.**, a Texas limited partnership ("**Partner**").

RECITALS

Partner is the owner of the real property described in **Exhibit A** and located in the City of Austin (the "**Property**").

The City is the owner of certain parkland property, identified as Lamar Beach Park (the "**Park**"), that is adjacent to the Property; and

Partner intends to develop commercial and/or residential uses on the Property (the "**Project**").

The City has determined that the public benefits of the Park will be substantially enhanced through the construction of certain Park improvements, including the installation of a retaining wall, the excavation of a bluff, the burying of overhead utilities, the addition of water and electric lines, the construction of a park entrance and plaza at the southern terminus of Pressler Street, and the installation of a pedestrian walkway from Pressler Street into the Park, all as described in **Exhibit B** (the "**Park Improvements**").

City and Partner desire to cooperate in the development and construction of the Park Improvements.

Partner wishes to facilitate the Park Improvements by donating to the City the design and project management, and a portion of the construction of the Park Improvements (which design, project management, and portion of construction costs shall be referred to herein as the "**Donated Improvements**"), and Partner has determined that these donations will benefit the Project by improving the nearby amenities and enhancing the environment in which the Project is to be located.

City wishes to pay for the portion of the cost of construction of the Park Improvements not donated by Partner (which portion shall be referred to herein as the "**City-Funded Improvements**") via a monetary reimbursement to Partner of the cost of construction of the City-Funded Improvements (the "**Reimbursement**").

City and Partner anticipate entering into a Community Facilities and Reimbursement Agreement (the "**CFRA**") to provide for the expedited development and construction of the Park Improvements and for the Reimbursement, and this Agreement is subject to the approval of said CFRA by the City Council and execution thereof by the

City Manager or his designee within one hundred twenty (120) days after the Effective Date.

Following the completion of the Park Improvements, City will own and maintain the Park Improvements.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants expressed herein, the Parties agree as follows:

I. DEFINITIONS

As used in this Agreement and in any exhibit incorporated in it, the following terms have the meanings assigned to each:

Contractors mean Partner's and/or Partner's successors and assigns, contractor(s) or subcontractor(s), their employees, agents, materialmen, suppliers, and assigns employed to construct and/or maintain the Park Improvements and/or Park.

Director means the Director of the Parks and Recreation Department of the City of Austin.

Effective Date means the last date of execution of this Agreement by the Parties, provided both Parties must execute this document in order for it to be effective.

Insurance Requirements means the insurance coverages required to be maintained by Partner as described in **Exhibit C**, which is incorporated into and made a part of this Agreement for all purposes.

PARD means the City of Austin Parks and Recreation Department.

Park Rules means the applicable requirements and conditions of Chapter 8-1 of the Austin City Code, as it may be amended from time to time, relating to the administration of public parks, and the guidelines and rules established by PARD for the use and enjoyment of public parks, as they may be amended from time to time, and any successor to such Code, guidelines or rules.

Park Specs means the City's Construction in Parks Specifications set forth in **Exhibit D**, as they may be amended or waived in writing by PARD from time to time, that Partner must adhere to in constructing the Park Improvements.

Party means either the City or Partner and its successors and assigns; collectively, the City and Partner are the "**Parties**."

Partner means Pressler RRI, L.P. and its successors and assigns.

II. TERM

The term of the Agreement (“**Term**”) begins on the Effective Date and terminates upon City acceptance of the Park Improvements, which, unless otherwise agreed to in writing by the Parties, shall be completed within thirty-six (36) months after the date construction of the Park Improvements commences.

III. DESIGNATION OF PARTY REPRESENTATIVES

The City designates the Director as its authorized representative to act on the City’s behalf with respect to this Agreement. Partner designates Barrett Lepore to act on its behalf with respect to this Agreement.

If Partner replaces its authorized representative, Partner shall promptly send written notice of the change to the City’s authorized representative. The notice shall identify a qualified and competent replacement and provide contact information.

IV. RESPONSIBILITIES OF PARTNER

A. Partner will submit a conceptual description of the Park Improvements (the “**Conceptual Plans**”) to PARD for approval. PARD will respond to the Conceptual Plans by approving, conditionally approving subject to additional requirements, or rejecting them within thirty (30) days from the City’s receipt thereof.

B. Following PARD’s final approval of the Conceptual Plans and at least thirty (30) days prior to Partner’s submittal thereof to the City’s Development Services Department as a part of Partner’s application for site development permit approval, Partner will submit construction plans, a construction schedule, and an estimate of construction costs, as referenced in subsection E below, for the Park Improvements (the “**Park Construction Plans**”) to PARD. Within thirty (30) days of the PARD’s receipt thereof (the “**Park Construction Plan Review Period**”), PARD will approve, conditionally approve subject to additional requirements, or reject the Park Construction Plans. Failure to approve, conditionally approve, or reject the Park Construction Plans within the Park Construction Plan Review Period shall be deemed an approval thereof by PARD. As such, upon the expiration of the Park Construction Plan Review Period, Partner may proceed with submittal of the Park Construction Plans to the City’s Development Services Department for approval of the site development and building permits needed for the Project.

C. Upon final approval of the Park Construction Plans by the City’s Development Services Department, PARD will issue a notice to Partner that Partner may proceed with the Project. Partner will not undertake any work on the Park Improvements until it receives such notice.

D. Upon completion of the Park Improvements, Partner will notify PARD by e-mail that they have been completed (the “**Completion Notice**”). Within fourteen (14) business days of receipt of the Completion Notice, PARD will either provide a list of

items still requiring completion or accept the Park Improvements and pay Partner the Reimbursement set forth in the CFRA. Upon final acceptance of the Park Improvements, PARD will issue an “**Acceptance Letter.**” Failure to respond to a Completion Notice within thirty (30) days will be deemed acceptance by the City.

E. The minimum cost of construction for the Park Improvements will be Five Hundred Eighty-One Thousand Three Dollars and NO/100 (\$581,803.00). An engineer's estimates of construction costs for Park Improvements shall be provided to the City for approval as part of the Park Construction Plans.

F. Partner will comply with all applicable City ordinances, rules and regulations, including the Park Rules and the Park Specs, in connection with permits and approvals for construction of the Park Improvements and in connection with the actual construction of the Park Improvements, as well as those of any other governmental entity having jurisdiction. Partner will also comply with all applicable competitive bidding requirements and the minority-owned and female-owned business enterprise procurement program requirements of City Code Chapters 2-9A, 2-9B, 2-9C, and 2-9D for the City-Funded Improvements, in the same manner that the City would be required to comply if the City was carrying out the construction of the City-Funded Improvements.

G. Except as otherwise provided in the approved Park Construction Plans or as otherwise set forth in this Agreement, Partner will comply with the applicable Park Rules for all removal, cutting, and/or pruning of trees in the Park.

H. Partner will obtain from each of its Contractors a written warranty or bond acceptable to the City and warranting that any work performed or materials supplied with respect to the Park Improvements will be free of defects for at least one year from the date of the Acceptance Letter. Each warranty or bond will be assigned to the City, without further recourse against Partner, except that Partner will maintain the right to enforce such warranties during the Term.

I. Partner has no right, authority, or power to bind the City for labor, materials, or any other charge or expense incurred in the construction of any improvements or other work done in the Park; provided, however, that a mortgage lien on the Property does not violate this paragraph. If a lien or claim for labor or materials supplied, or claimed to have been supplied, to the Park Improvements or the Park is filed, Partner will promptly pay or bond such lien or claim to the City's reasonable satisfaction or otherwise obtain the release or discharge of the lien or claim.

J. Partner and its Contractors will perform the obligations set forth in this Agreement as independent contractors.

K. Partner will not discriminate against any Contractors or applicants for employment because of race, creed, color, national origin, sex, age, religion, veteran status or sexual orientation. Partner will take affirmative action to ensure that Contractors are treated during the construction of the Park Improvements or maintenance of the Park without regard to race, creed, color, national origin, sex, age, religion, veteran status or

sexual orientation. Partner will, in all solicitations or advertisements for employment placed on or behalf of Partner, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, religion, veteran status, or sexual orientation.

V. RESPONSIBILITIES OF THE CITY

A. The City grants Partner and its Contractors the right to enter the Park (the “**Temporary Right of Entry**”) and a temporary license for access over, under, across, and upon the portion of the Park shown as Construction Zone in **Exhibit B** for the purpose of constructing and maintaining the Park Improvements (the “**Temporary Access License**”). The Temporary Right of Entry and Temporary Access License, unless extended in writing by Director, shall expire automatically at midnight on the date this Agreement is terminated. This right of entry relates solely to Partner’s rights related to the design and construction of the Park Improvements and the Project. The parties agree that in addition to the access and rights set forth in this Agreement, Partner and Partner’s licensees, guests, and invitees, shall have the same access and rights to use the Park as public parkland as the public, and shall have access to the Park from 5 AM until 10 PM, seven (7) days a week.

B. PARD staff will assist in securing all permits and approvals necessary to construct the Park Improvements. Partner and its Contractors will coordinate with PARD staff to provide information that is necessary or that will facilitate applications for permits and approvals.

C. The City retains the right to inspect construction of the Park Improvements and to exercise its rights and duties to ensure compliance with applicable laws in the Park.

VI. PROJECT COSTS AND RESPONSIBILITIES

A. Unless otherwise agreed to in the CFRA or elsewhere in writing by the City, and except for the Reimbursement, Partner will be responsible for all costs associated with the Park Improvements. Any increases in the actual costs of the Park Improvements, including cost increases, change orders and overruns, will be borne by Partner, unless otherwise agreed to in writing by the City. “**Costs**” include, but are not limited to, consultant fees, design costs, landscaping costs, labor costs, site restoration and re-vegetation costs, materials costs, engineering costs, legal fees, utility connection fees, permits, inspection fees, insurance costs and any other costs incurred in the design and construction of the Park Improvements.

B. At the City’s written request and prior to beginning construction of the Park Improvements, Partner will provide proof that it has the ability to pay for all costs to be incurred by Partner under this Agreement. Such proof may include an independently certified financial statement or a construction budget approved by the construction lender funding the costs of construction of the Park Improvements.

VII. OWNERSHIP AND MAINTENANCE OF PARK IMPROVEMENTS

Upon the City's issuance of the Acceptance Letter, the City shall have complete title to and full rights of ownership of the Park Improvements, save and except the Retaining Wall (defined in **Exhibit B**), and shall assume full responsibility for their maintenance. Partner shall have complete title to and full rights of ownership of the Retaining Wall.

VIII. LIABILITY AND INDEMNIFICATION

A. PARTNER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (THE "INDEMNIFIED PARTIES") AGAINST ALL COSTS, LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS (THE "CLAIMS"), ARISING, DIRECTLY OR INDIRECTLY, OUT OF (A) A BREACH OF THIS AGREEMENT OR VIOLATION OF LAW BY PARTNER, ITS OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS, (THE "PARTNER PARTIES"); (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE PARTNER PARTIES IN THIS AGREEMENT; OR (C) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE PARTNER PARTIES IN CONNECTION WITH THIS AGREEMENT. CLAIMS TO BE INDEMNIFIED UNDER THIS ARTICLE INCLUDE, BUT ARE NOT LIMITED TO, CLAIMS FOR BODILY INJURY OR DEATH, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES, WAGES OR INCOME, DAMAGE, DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKERS' COMPENSATION CLAIMS. PARTNER'S OBLIGATIONS UNDER THIS ARTICLE ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES.

B. The City shall give Partner written notice of a Claim asserted against an Indemnified Party. Partner shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against the Indemnified Parties. The Indemnified Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving Partner of any obligations in this agreement. In no event may Partner admit liability on the part of an Indemnified Party without the written consent of City Attorney.

C. Maintenance of the insurance required under this Agreement will not limit Partner's obligations under this Article. Partner will require all successors and assigns to indemnify the City as provided in this Article.

IX. INSURANCE

During the Term, Partner will require its Contractors to procure and maintain in full force and effect insurance coverages in accordance with the requirements set forth in **Exhibit C**.

X. SUSPENSION; TERMINATION; DEFAULT; REMEDIES

A. At any time during construction of the Park Improvements and for good cause, as determined in the City's sole discretion, the City may suspend the work (or any portion of it) for not more than ninety (90) calendar days by providing at least fifteen (15) calendar days' written notice to Partner provided, however, the City may not suspend the work if Partner determines, in Partner's reasonable discretion, that the suspension would have a material, adverse impact on the cost or construction schedule of the Project. The notice will provide the date on which Partner will resume the work, and Partner will resume on that date.

B. If either party breaches its obligations under this Agreement, the other party shall notify the breaching party in writing of the specific breach(es). The breaching party shall have thirty (30) calendar days from receipt of the notice in which to cure the breach(es). If the breach cannot be reasonably cured within the thirty (30) calendar days and the breaching party has diligently pursued such remedy as is reasonably necessary to cure the breach, then the parties may agree in writing to an extension of the period during which the breach must be cured.

C. If the breach is a material breach of the Agreement, and if the breaching party has not cured it within the required time, then the non-breaching party, at its sole option, has the right to terminate the Agreement. This termination shall be made by sending written notice (the "**Notice of Termination**") to the breaching party and shall be effective for all purposes when deposited in the U.S. Mail, postage prepaid and mailed Certified Mail, Return Receipt Requested.

D. A material breach of this Agreement shall constitute an event of default.

E. If Partner defaults under the Agreement and the default is not cured within the cure period, or if the Agreement otherwise terminates in accordance with its terms, upon depositing the Notice of Termination in the U.S. Mail as specified above, the City may, but is not obligated to, assume possession and control of the Park Improvements, save and except the Retaining Wall, and/or any electronic plans or specifications for the design of the Park Improvements to the extent the plans and specifications for the Park Improvements can be delineated separately from the Project. In such event, Partner will be relieved of liability for any claims, injuries or losses resulting from negligent acts or omissions of the City, its employees or agents.

F. A termination of the Agreement pursuant to this Article does not relieve Partner of its obligation to pay any sum or sums due and payable to the City under the Agreement at the time of termination, or any claim for damages then or previously

accruing against Partner under the Agreement. Any such termination will not prevent the City from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from Partner for any default under the Agreement. All of the City's rights, options, and remedies under this Agreement are cumulative, and none of them is exclusive of any other.

XI. CONDITION OF PREMISES; DISCLAIMER OF WARRANTIES

Except as otherwise provided in this Agreement, Partner agrees to accept the Park in "as is" condition and agrees that the City has no obligation to alter it in any way. Except as otherwise expressly provided in this Agreement, neither the City nor any agent, employee, or representative of the City makes or has made any warranties or representations, express or implied, with respect to the physical condition of the Park or its fitness or suitability for any particular use.

XII. NO WAIVER

If at any time the City fails to enforce this Agreement, whether or not any violations of it are known, such failure will not constitute a continuing waiver or estoppel of the right to enforce the Agreement.

XIII. NO RECOURSE

No recourse will be had against any elected official, director, officer, attorney, agent, or employee of either the City or of Partner, whether in office on the Effective Date of this Agreement or after such date, for any claim based upon this Agreement.

XIV. ASSIGNMENT

A Party to this Agreement may not assign or transfer its interests under this Agreement unless agreed to in writing by the other Party, which shall not be unreasonably conditioned, withheld, or delayed.

XV. DISPUTE RESOLUTION

A. In the event of a dispute, the Parties agree to attempt in good faith to informally negotiate a resolution. Either Party may make a written request for a meeting between representatives of each Party, and the meeting will occur within fourteen (14) calendar days after receipt of the request, or at such time as agreed by the Parties. The parties may agree in writing to additional meetings, and each Party will send at least one representative with decision-making authority to each meeting. If the Parties have not succeeded in negotiating a resolution of the dispute within thirty (30) days of the last meeting, they shall proceed directly to mediation as described below. Informal negotiation may be waived by a written agreement signed by both Parties, in which event the Parties shall proceed directly to mediation as described below.

B. The Parties will act in good faith to select a mediator within thirty (30) calendar days of the date of the written agreement waiving informal negotiations or within sixty (60) calendar days of the last informal negotiation meeting. If the time period for selecting a mediator has expired with no agreement, the mediator shall be selected by the Travis County Dispute Resolution Center. Mediation will take place in Austin, Texas and the Parties will share the costs of mediation equally. The Parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. Neither Party may file suit until at least forty-five (45) calendar days after the date of the first mediation session.

XVI. MISCELLANEOUS PROVISIONS

A. This Agreement constitutes the entire agreement between the parties. Any previous agreement, assertion, statement, understanding, or other commitment before the date of this contract, whether written or oral, will have no force or effect.

B. Each Party warrants and represents that the person signing this Agreement on its behalf is authorized to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of the Party, except as may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditor's rights, or, with respect to the City, governmental immunity under the Constitution and laws of the State of Texas.

C. The Parties bind themselves and their successors in interest, assigns and legal representatives to this Agreement.

D. Regardless of the actual drafter of this Agreement, this Agreement will, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

E. The Agreement may be executed in multiple counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. Facsimile signatures appearing on the Agreement shall be as valid and binding as original signatures.

F. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts will remain in full force and effect.

G. This Agreement is made, and will be construed and interpreted under, the laws of the State of Texas. Mandatory venue for any lawsuit arising out of this Agreement shall be in a court located in the City of Austin, Travis County, Texas.

H. This Agreement may be amended only by a writing properly executed by each of the Parties. Provided the amendment does not increase the sum to be paid by the City to an amount in excess of the then-current administrative authority of the City Manager, and the form of amendment is approved by the City Law Department, the City

Manager or the City Manager's designee is authorized to execute any amendment to the Agreement on behalf of the City without further authorization by the City Council.

I. All official communications and notices required to be made under this Agreement will be deemed made if sent, postage prepaid, to the parties at the addresses listed below:

If to the City:

Director
Parks and Recreation Department
City of Austin
P. O. Box 1088
Austin, Texas 78767

If to Partner:

Pressler RRI, L.P.
Attn. Barrett Lepore
100 Congress Avenue
STE 1450
Austin, Texas 78701

With a copy to:

Husch Blackwell LLP
Attn. Nikelle Meade
111 Congress Avenue
STE 1400
Austin, Texas 78701

[Signature page follows]

PRESSLER RRI, L.P., a Texas limited partnership

By: Pressler RRI, GP, LP, a Texas limited partnership, its general partner

By: Pressler RRI Master GP, LLC, a Texas limited liability company, its general partner

By: _____

Printed Name: _____

Its: _____

Date: _____

CITY OF AUSTIN, TEXAS

By: _____
Spencer Cronk, City Manager

Date: _____

APPROVED AS TO CONTENT:

PARKS AND RECREATION DEPARTMENT

By: _____
Kimberly McNeeley, Director

Date: _____

APPROVED AS TO FORM:

CITY LAW DEPARTMENT

By: _____
Mary Searcy Marrero
Assistant City Attorney

Date: _____

Attachments:

- Exhibit A – Legal description of Property
- Exhibit B – Park Improvements

- Exhibit C – Insurance Requirements
- Exhibit D – Park Specs

Exhibit A
Legal Description of Property



Professional Land Surveying, Inc.
Surveying and Mapping

Office: 512-443-1724
Fax: 512-389-0943

3500 McCall Lane
Austin, Texas 78744

1.072 ACRES
TRAVIS COUNTY, TEXAS

A DESCRIPTION OF 1.072 ACRES (APPROXIMATELY 46,712 SQUARE FEET) IN OUTLOT 1, DIVISION "Z" OF ORIGINAL CITY OF AUSTIN, TEXAS, IN TRAVIS COUNTY, TEXAS, BEING ALL OF A 1.072 ACRE TRACT CONVEYED TO PRESSLER RRI, LP, IN A SPECIAL WARRANTY DEED EXECUTED APRIL 19, 2017 AND RECORDED IN DOCUMENT NO. 2017068325 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 1.072 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" rebar found at the intersection of the southwest right-of-way line of the International and Great Northern Railroad (aka Missouri Pacific Railroad) (right-of-way width varies) and the southeast right-of-way line of Pressler Street (right-of-way width varies), being the northernmost corner of the said 1.072 acre tract, from which a 1/2" rebar with "Terra Firma" cap found at the intersection of the southwest right-of-way line of the International and Great Northern Railroad (aka Missouri Pacific Railroad) and the northwest right-of-way line of Pressler Street, being the easternmost corner of a 1.170 acre tract described in Document No. 2017068325 of the Official Public Records of Travis County, Texas, bears North 66°06'29" West, a distance of 51.04 feet;

THENCE with the southwest right-of-way line of the International and Great Northern Railroad (aka Missouri Pacific Railroad) and the northeast line of the said 1.072 acre tract, the following two (2) courses and distances:

1. South 66°18'22" East, a distance of 142.74 feet to a 1/2" rebar found;
2. With a curve to the right, having a radius of 2839.93 feet, a delta angle of 04°05'43", an arc length of 202.99 feet, and a chord which bears South 64°32'54" East, a distance of 202.95 feet to a 1/2" rebar found for the easternmost corner of the said 1.072 acre tract;

THENCE with the southeast line of the said 1.072 acre tract, the following four (4) courses and distances:

1. South 08°38'18" West, a distance of 46.34 feet to an inundated point;
2. South 35°18'14" West, a distance of 40.33 feet to a 1/2" rebar found
3. South 22°24'58" West, a distance of 45.30 feet to a 1" iron pipe found

4. South 48°33'45" West, a distance of 0.42 feet to a 1/2" rebar with "Chaparral" cap set for the southernmost corner of the said 1.072 acre tract, being on the northeast line of a 77 acre tract called the "Reserve" Tract in Division Z of The City Of Austin (aka Sand Beach Reserve) and conveyed to the City Of Austin in Volume 769, Page 57 of the Deed Records of Travis County, Texas, from which a cotton spindle found in the base of a chinaberry tree for an angle point in the northeast line of the Sand Beach Reserve, bears South 65°35'15" East, a distance of 617.46 feet;

THENCE North 65°35'15" West with the southwest line of the said 1.072 acre tract, and the northeast line of the Sand Beach Reserve, a distance of 350.80 feet to a 1/2" rebar with "Chaparral" cap set in the southeast right-of-way line of Pressler Street, being the westernmost corner of the said 1.072 acre tract, from which a 1/2" rebar with "MWM" aluminum cap found for the northernmost corner of the Sand Beach Reserve, bears North 65°35'15" West, a distance of 906.78 feet and 1/2" rebar found, bears South 23°52'56" West, a distance of 2.93 feet;

THENCE North 23°52'56" East with the southeast right-of-way line of Pressler Street and the northwest line of the said 1.072 acre tract, a distance of 131.75 feet to the **POINT OF BEGINNING**, containing 1.072 acres of land, more or less.

Surveyed on the ground on February 8, 2017.

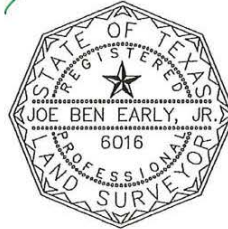
Bearing Basis: The Texas Coordinate System of 1983 (NAD83), Central Zone, based on GPS solutions from The National Geodetic Survey (NGS) on-line positioning user service (OPUS).

Attachments: Survey Drawing No. 747-002-PRESSLER TRACTS


Joe Ben Early, Jr.
Registered Professional Land Surveyor
State of Texas No. 6016
T.B.P.L.S. Firm No. 10124500

10/5/17

Date





**Professional Land Surveying, Inc.
Surveying and Mapping**

Office: 512-443-1724
Fax: 512-389-0943

3500 McCall Lane
Austin, Texas 78744

**1.170 ACRES
TRAVIS COUNTY, TEXAS**

A DESCRIPTION OF 1.170 ACRES (APPROXIMATELY 50,963 SQUARE FEET) IN OUTLOT 1, DIVISION "Z" OF ORIGINAL CITY OF AUSTIN, TEXAS, IN TRAVIS COUNTY, TEXAS, BEING ALL OF A 1.170 ACRE TRACT CONVEYED TO PRESSLER RRI, LP, IN A SPECIAL WARRANTY DEED EXECUTED APRIL 19, 2017 AND RECORDED IN DOCUMENT NO. 2017068325 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 1.170 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" rebar with "Terra Firma" cap found at the intersection of the southwest right-of-way line of the International and Great Northern Railroad (aka Missouri Pacific Railroad) (right-of-way width varies) and the northwest right-of-way line of Pressler Street (right-of-way width varies), being the easternmost corner of the said 1.170 acre tract, from which a 1/2" rebar found at the intersection of the southwest right-of-way line of the International and Great Northern Railroad (aka Missouri Pacific Railroad) and the southeast right-of-way line of Pressler Street, being the northernmost corner of a 1.072 acre tract described in Document No. 2017068325 of the Official Public Records of Travis County, Texas, bears South 66°06'29" East, a distance of 51.04 feet;

THENCE South 24°18'01" West with the northwest right-of-way line of Pressler Street and the southeast line of the said 1.170 acre tract, a distance of 131.28 feet to a 1/2" rebar with "Chaparral" cap set for the southernmost corner of the said 1.170 acre tract, being on the northeast line of a 77 acre tract called the "Reserve" Tract in Division Z of The City Of Austin (aka Sand Beach Reserve) and conveyed to the City Of Austin in Volume 769, Page 57 of the Deed Records of Travis County, Texas, from which a cotton spindle found in the base of a chinaberry tree for an angle point in the northeast line of the Sand Beach Reserve, bears South 65°35'15" East, a distance of 1020.26 feet and a 1/2" rebar with "Terra Firma" cap found, bears South 24°18'01" West, a distance of 3.35 feet;

THENCE North 65°35'15" West with the southwest line of the said 1.170 acre tract and the northeast line of the Sand Beach Reserve, a distance of 394.93 feet to a 1/2" rebar with "Chaparral" cap set for the westernmost corner of the said 1.170 acre tract, from which a 1/2" rebar with "MWM" aluminum cap found for the northernmost corner of the Sand Beach Reserve, bears North 65°35'15" West, a distance of 459.85 feet;

THENCE with the northwest line of the said 1.170 acre tract and the southeast line of a tract of land (no acreage given) described in Volume 10870, Page 35 of the Real

Property Records of Travis County, Texas, the following two (2) courses and distances:

1. North 22°13'51" East, a distance of 2.11 feet to a 1/2" rebar found
2. North 22°13'51" East, a distance of 110.45 feet to a 1/2" rebar found in the southwest right-of-way line of the International and Great Northern Railroad (aka Missouri Pacific Railroad), being a northern corner of the said 1.170 acre tract, being also the easternmost corner of the tract of land (no acreage given) described in Volume 10870, Page 35 of the Real Property Records of Travis County, Texas, from which a an old 6" diameter cedar fence post found in the southwest right-of-way line of the International and Great Northern Railroad (aka Missouri Pacific Railroad), being the northernmost corner of the tract of land (no acreage given) described in Volume 10870, Page 35 of the Real Property Records of Travis County, Texas, bears North 66°12'47" West, a distance of 50.00 feet;

THENCE with the southwest right-of-way line of the International and Great Northern Railroad (aka Missouri Pacific Railroad) and the northeast line of the said 1.170 acre tract, the following four (4) courses and distances:

1. South 65°41'13" East, a distance of 49.91 feet to a 1/2" rebar found
2. North 24°17'27" East, a distance of 17.29 feet to a cotton spindle found
3. South 65°49'07" East, a distance of 248.89 feet to a 5/8" rebar found
4. South 65°50'01" East, a distance of 100.20 feet to the **POINT OF BEGINNING**, containing 1.170 acres of land, more or less.

Surveyed on the ground on February 8, 2017.

Bearing Basis: The Texas Coordinate System of 1983 (NAD83), Central Zone, based on GPS solutions from The National Geodetic Survey (NGS) on-line positioning user service (OPUS).

Attachments: Survey Drawing No. 747-002-PRESSLER TRACTS


Joe Ben Early, Jr.
Registered Professional Land Surveyor
State of Texas No. 6016
T.B.P.L.S. Firm No. 10124500

10/5/17

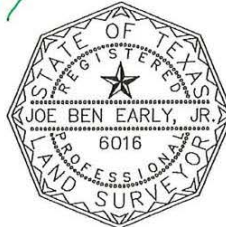


Exhibit B
Park Improvements

See attached.

List of Park Improvements (Exhibit B, Page 1 of 2)

1. Partner will construct a retaining wall with enhanced skin along the common boundary in accordance with the Agreement;
2. Partner will construct a walkway through the Park to connect to the Pressler Street right-of-way;
3. Partner will remove certain trees from the Park in accordance with the Agreement;
4. Partner will excavate the bluff/side slope adjacent to the southern boundary of the Property in accordance with the Agreement;
5. On behalf of Austin Energy, Partner will bury certain overhead electric and telecom utilities in the location shown in this **Exhibit B** attached hereto;
6. Partner will remove dead vegetation and do selective pruning of the trees within the Park;
7. Partner will hydromulch disturbed areas within the Construction Zone with buffalo grass, blue gramma grass, and City specification 609s;
8. Partner will install tree protection for all trees within the boundaries of or within close proximity to the Construction Zone;
9. Partner will construct a park entrance and plaza at the southern terminus of Pressler Street; and
10. Partner will install a new 12” underground waterline and an underground electric service loop feeder within easements dedicated to Austin Water and Austin Energy.

List of Park Improvements (Exhibit B, Page 2 of 2)

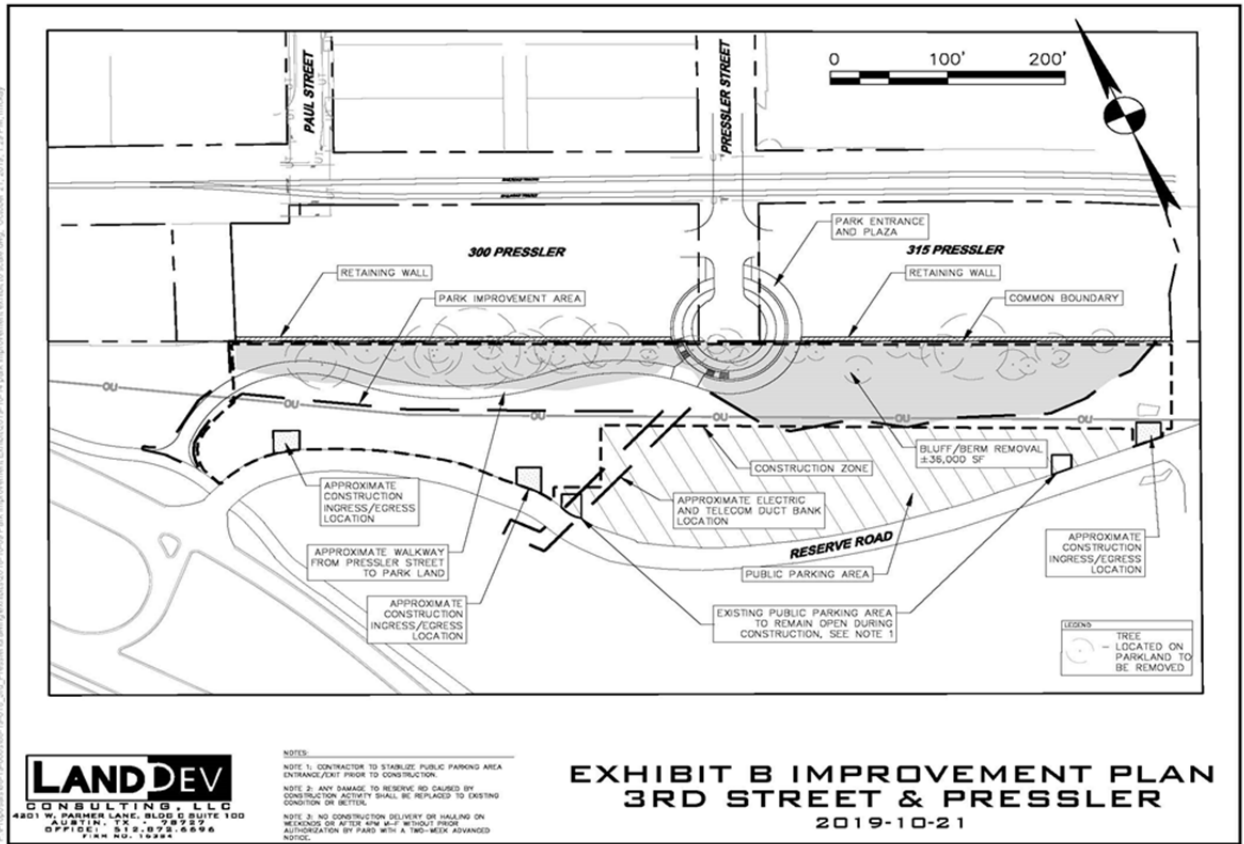


EXHIBIT C
Insurance Requirements

Partner and its Contractors are required to carry workers' compensation insurance, and general liability insurance with combined single coverage limits in an amount of not less than \$1,000,000.00 per occurrence. Within thirty (30) days of executing this Agreement, and prior to any maintenance activities in the Easement Area, Partner shall furnish to the City the following current certificates of insurance:

A. Commercial General Liability insurance with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B. The policy shall contain the following provisions:

1. Blanket contractual liability coverage for liability assumed under this contract and all contracts relative to this Agreement.
2. Completed Operations/Products Liability for the duration of the warranty period.
3. Explosion, Collapse, and Underground (X, C, & U) coverage.
4. Independent contractors' coverage.
5. City of Austin listed as an additional insured, endorsement CG 2010.
6. 30-day Notice of Cancellation in favor of the City of Austin, endorsement CG 0205.
7. Waiver of Transfer Right of Recovery Against Others in favor of the City of Austin, endorsement CG 2404.

B. Business Automobile Liability insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of the City of Austin:

1. Waiver of Subrogation, endorsement TE 2046A.
2. 30-day Notice of Cancellation, endorsement TE 0202A.
3. Additional Insured endorsement TE 9901B.

C. All Contractors and subcontractors providing services in the Easement Area shall carry insurance in the types and amounts indicated below for the duration of their contracts.

D. Specific Requirements for Partner Contractors and Subcontractors:

1. Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with the statutory benefits outlined in the Texas Workers' Compensation Act (Section 401) and minimum policy limits for employer's liability of \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit, and \$100,000 bodily injury by disease each employee. The Contractor's policy shall apply to the State of Texas and include the following endorsements in favor of the City of Austin:

- a. Waiver of Subrogation, form WC 420304.
- b. 30-day Notice of Cancellation, form WC 420601.
2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B. The policy shall contain the following coverages:
 - a. Blanket contractual liability coverage for liability assumed under this contract and all contracts relative to this project.
 - b. Completed Operations/Products Liability for the duration of the Warranty period.
 - c. Explosion, Collapse, and Underground (X, C, & U) coverage.
 - d. Independent Contractors' coverage.
 - e. City of Austin listed as an additional insured, endorsement CG 2010.
 - f. 30-day Notice of Cancellation in favor of the City of Austin, endorsement CG 0205.
 - g. Waiver of Transfer Right of Recovery Against Others in favor of the City of Austin, endorsement CG 2404.

EXHIBIT D
Park Specs

See attached.

SECTION 5 - CONSTRUCTION IN PARKS

5.1.0 - GENERAL

The information in this section is intended to define the technical design criteria needed for construction on parkland owned by the City of Austin.

Although parkland construction is generally achieved through contractual agreement, this section provides guidelines that coordinate the special requirements for park construction with the general development requirements of the Land Development Code and the Technical Manual Series.

Appeals concerning the enforcement of these rules shall be brought to the Director of the Parks and Recreation Department.

Construction activities that disrupt the environment are an inevitable part of the growth and maintenance of a city and as a city develops, the open areas of parks, creeks and greenbelts become more attractive as routes for underground utilities. This is the case in Austin where the many creeks and greenbelts, under the control of the Parks and Recreation Department, have and will continue to provide a convenient route. In many cases, such installation of underground utility lines, causes only temporary disruption and the environment eventually returns by natural means to its original state. The length of time required for recovery of the original vegetation may be great, however, depending on the proximity of seed sources and the suitability of soil conditions for plant establishment and growth. The purpose of these guidelines is to reduce and control the construction impact upon the City's park areas and to speed the recovery of natural vegetation. This can be done by minimizing the initial environmental impact of construction, restoring suitable soil conditions and introducing appropriate plant species.

Construction impact can be minimized by selecting the least destructive route that is feasible within the constraints of the budget. It also involves the avoidance of unnecessary impacts during the course of construction, such as the excessive destruction of vegetation and the loss of soil through uncontrolled erosion.

Restoration of soils involves restoring the original contours of the land and ensuring that soil physical conditions are suitable for plant growth. Soils of construction sites have generally been compacted by heavy machinery and topsoil has been lost or at least diluted by subsoils. These and other conditions must usually be improved before vegetation can be established.

5.2.0 - ADVANTAGES OF RESTORATION AND REVEGETATION

Restoring natural vegetation in disturbed areas has practical advantages as well as ecological and aesthetic ones. On the practical side, natural vegetation provides low maintenance landscaping while also helping to minimize precipitation runoff and the consequent problems of soil erosion,

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siltation and flooding. Ecological and aesthetic advantages stem from the fact that natural vegetation is diverse in terms of species composition and growth forms. This diversity results not only in a more interesting landscape, but also one that provides suitable living space for native wildlife in an increasingly urbanized area.

A particular advantage of restoring natural vegetation in Austin is that of helping to conserve the city's unique flora. These guidelines should be used in conjunction with the Revegetation Criteria found in Section 1.4.0 of this manual.

The objective of the revegetation criteria is to provide information on the processes involved in planning the restoration of natural vegetation in disturbed areas.

The procedures for route selection, reconnaissance survey and preconstruction inventory should be followed. The information compiled should be presented as an environmental report and used in conjunction with the Parks and Recreation Department in selecting a route and for restoration and revegetation.

The initial environmental impact of construction can be minimized by proper planning. Effective and efficient restoration of the site upon completion of construction also calls for planning.

Ecologically or aesthetically valuable areas can often be avoided with little or no increase in construction costs. The resulting environmental savings is doubled by the fact that restoration of topography and vegetation is consequently less complex and less expensive. Once a final project alignment is selected, further savings are possible by planning resource salvaging efforts, erosion control and restoration of topography and vegetation.

5.3.0 - ROUTE SELECTION

A reconnaissance survey is necessary in order to select the least expensive alignment of the construction right-of-way corridor. Included in the expense estimate is the cost of restoring the pre-existing vegetation following construction, as well as the cost of the construction itself. In most cases, the cost of restoration will be insignificant compared to the expense of moving the alignment to avoid vegetation, but not always. If planning is done well in advance, it is probable that an alignment can be achieved which will not be significantly more expensive, but will be considerably less destructive than some other alignment that is made without reference to the vegetation.

Using information obtained during the reconnaissance surveys, select the least destructive route through the area. In comparing the costs of various alternatives, the costs of restoration should be considered. For example, it may be less expensive to realign a potential construction corridor to avoid important vegetational or topographic features than to restore the features later. Rare plant populations must be avoided at all costs. Transplanting the rare species elsewhere is no solution, since habitats suitable for rare species are frequently protected.

After the final alignment is selected, an inventory of the resources in and near the construction easement should be conducted. This is necessary in order to plan restoration efforts and to minimize the immediate environmental impact of the project.

The simplest, most effective model for restoring vegetation is the original vegetation. If this is described prior to construction there will be fewer decisions to make concerning what species and densities to restore. If the original vegetation is weedy, however, it would be advisable to restore a more desirable community.

5.3.1 - Tree Survey

When suitable alignment has been decided, a detailed tree survey of the construction and access easements is required. The survey is to include those trees adjacent to the easement whose driplines come within the easement.

The survey is to show all Class 2 or Class 3 trees whose diameter is larger than four (4) inches and all Class 1 trees, regardless of size. Particular attention should be paid to identifying Class 1 trees with a view to transplanting. (See Appendix F)

The survey is to show:

- The location of the tree.
- The diameter of the trunk at 4½ feet above natural grade.
- The approximate crown size of the large trees.
- The species and/or common name of the tree.

Trees to be removed should be indicated and the locations approved by the Parks and Recreation Department. All trees that are to be retained are to be protected with tree protection fences (see Appendix K). These tree protection fences are to be shown on the construction drawings.

5.3.2 - Tree Evaluation

A tree evaluation is required to establish a relative value of the trees that will be removed or impacted by the construction works (see [Section 3.5.1](#)).

These evaluations will provide the basis for replacement of those trees removed or to assign a monetary value to them.

The tree evaluation system is shown in detail in [Section 3](#). Trees to be removed will be carried out in accordance with the methods shown in [Section 5.4.6](#), Site Clearing.

5.3.3 - Disturbed Natural Areas

Natural areas within the Parks and Recreation Department's jurisdiction are greenbelts, wilderness parks and nature preserves.

Any areas that are disturbed within these natural parkland areas will require restoration as detailed in Appendix L, to ensure that their character as natural areas are maintained.

5.4.0 - CONSTRUCTION

5.4.1 - General

The Texas Parks and Wildlife Code, Chapter 26, prohibits any construction activity on public land designated for park and recreation use unless an easement has first been granted by the City Council. This easement process is described below in [Section 5.4.4](#).

All construction activity on lands under the jurisdiction of the Parks and Recreation Department shall conform to the requirements of these guidelines.

If not covered by these guidelines all construction activity shall, with the approval of the Parks and Recreation Department, be in accordance with the City of Austin Standard Specifications.

Particular attention is drawn to the following paragraphs of the "General Conditions of Agreement - Bidding and Contract Requirements," in Section 00140 of City of Austin Standard Specifications particularly 3.14 "Laws and Ordinances", and 10.10 "Safety of Persons and Property".

5.4.2 - Laws and Ordinances

The contractor shall at all times observe and comply with all federal, state and local laws, ordinances, codes and regulations which in any manner affect the contract or the work and shall indemnify and save harmless the owner and engineer/architect against any claim arising from the violation of any such laws, ordinances and regulations whether by the contractor or his employees. If the contractor observes that the project is at variance therewith, he shall promptly notify the engineer/architect in writing, and any necessary changes shall be prepared as provided in writing, and any necessary changes shall be prepared as provided in the contract for changes in the work. If the contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the engineer/architect, he shall bear all costs arising therefrom. The ordinances and regulations of the City shall be controlling and shall be considered as part of this contract to the same effect as though embodied herein.

Maintaining clean water, air and earth or improving thereon shall be regarded as of prime importance. The contractor shall plan and execute his operations in compliance with applicable federal, state and local laws and regulations concerning the control and abatement of water pollution and the prevention and control of air pollution.

Care shall be exercised to preserve the natural landscape within the project site and shall conduct his construction operations so as to prevent any unnecessary destruction, scarring or defacing of the natural surroundings in the vicinity of the work. Except where clearing is required for permanent construction, trees and vegetation shall be preserved and protected from damage which may be caused by equipment and construction operations. Where unnecessary destruction or damage occurs as a result of the contractor's operations to trees, replacement or correction shall be made at the contractor's expense as directed by the engineer/architect. Prevention of noise pollution shall be a responsibility of the contractor. Garbage, trash and material debris shall be picked up daily and deposited in a suitable receptacle provided and maintained by the contractor. Measures shall also be implemented to prevent the escape of mud and excess concrete.

5.4.3 - Safety of Persons and Property

All reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to:

1. All employees on the work and all other persons who may be affected thereby;
2. All the work and all materials and equipment to be incorporated therein, whether in storage or off the site, under the care, custody or control of the contractor or any of his subcontractors or sub-subcontractors; and
3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, fences, roadways, structures and utilities not designed for removal, relocation or replacement in the course of construction.

The contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the work, the contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

All blasting, including methods of storing and handling explosives and highly flammable materials, shall conform to federal, state and local laws and Ordinances.

5.4.4 - Easements

For information and procedures for obtaining easements through City of Austin Parkland see the Administrative Criteria Manual.

5.4.5 - Access and Security

All permanent easements, temporary construction easements, access roads, work areas and materials storage sites should be shown on the construction drawings in locations agreed and approved by the Parks and Recreation Department. All construction shall be confined to the marked easements. No material, equipment, plant, vehicle parking or storage shall occur outside this easement or within the dripline of trees retained in or adjacent to the easement. The contractor will be responsible for all damages to work areas, storage sites and access roads which are a result of his use or negligence in protection and for all damage that is caused by the contractor working outside of these areas. Spillage or discharge of oil or other toxic fluids shall be contained and removed from the site.

Prior to bringing major construction equipment into unpaved areas, the contractor shall outline the limits of the construction and access easements which will be disturbed, with a barrier in accordance with City standards.

If the construction works are carried out in a park location where the public has access, an eight (8) foot high chain link security fence is to be provided around the immediate area of construction operations, all work areas and storage sites. This fence is to be secured to prevent unauthorized entry at all times when contractors personnel are not at the site.

The contractor shall exercise utmost care in preventing damage to trees and other items in the Parks and Recreation Department area. Any damaged item shall be repaired or replaced, at no expense to the City, to a condition equal to or better than their condition before construction.

All workers should be informed of the special efforts to salvage and restore the vegetation and they should be encouraged to prevent unnecessary damage.

5.4.6 - Site Clearing/Erosion Control

To prevent erosion, clearing of easements and access routes will only be carried out for a distance of 1,000 feet in advance of construction or seven (7) days prior to construction being at that location.

Trees that are to be removed shall be taken down in a manner which will not impact any of the adjacent trees to be retained.

All trees will have crown and limbs removed before being felled and depending upon the density of vegetation the trunk shall be felled before the stump is removed.

The City may require that limbs and underbrush be chipped/shredded and retained on site to be spread as a mulch after construction has finished.

The boundary of the access route and working easement clearing shall be marked with a barrier described above. The boundary shall be reviewed with the Parks and Recreation Department prior to marking. No clearing operations will be allowed in an unmarked area.

Salvaging and placing existing topsoil shall be in accordance with City of Austin Standard Specifications, Item No. 601.

Spoil shall not be placed within the drip line of trees. In locations where the line runs along the creek bank, care is taken to prevent excavated material from spilling into or blocking the creek. At the end of the work day, all spoil shall be cleaned up, ditches backfilled and excess spoil removed from the job site.

5.4.7 - Temporary Erosion Control

Temporary erosion controls during the construction period shall be carried out in accordance with the measures contained in Section 1.4.0 of this manual.

5.4.8 - Construction in Creeks

Every effort shall be made to keep the zone of immediate construction free of surface water. For construction in the creek channel, a pipe of adequate size to divert normal stream flow shall be provided around the construction area. Diversion may be by pumping or gravity flow using temporary dams.

A. Discharge of Pumped Water.

Where water must be pumped from the construction zone, discharges shall be in a manner that will not cause scouring or erosion. All discharges shall be on the upstream or upslope side of emplaced erosion control structures. If discharges are necessary in easily erodible areas, a stabilized, energy-dissipating discharge apron shall be constructed of riprap with minimum stone diameter of six (6) inches and minimum depth of 12 inches. Size of the apron in linear dimensions shall be approximately ten (10) times the diameter of the discharge pipe. Discharges into creeks or major drainages should be as identified by the site development permit.

B. In-Channel Erosion and Siltation Controls.

The contractor will be responsible for controlling erosion and sedimentation in the construction zone. When leaving the job site for more than 12 hours, the contractor shall remove loose excavated materials from the creek channel, except all excavated trench sections shall be backfilled when the contractor leaves for the weekend.

C. Creek Banks.

Creek banks shall be restored wherever they have been disturbed during the construction process. The contractor shall be responsible for the costs of repair and restoration for all damage to the creek banks, whether caused by personnel or equipment. Stone riprap or gabions shall be used to stabilize cut banks where line enters and exits channel or as otherwise approved by Parks and Recreation Department.

D. Excavation in Creek Channel.

Material excavated from the trench in the creek channel shall not be deposited on the channel banks. Excavation shall be hauled out of the channel or used in backfill of open trench. No loose excavated material shall be left in the channel at the end of a work day.

E. Trench Cap in Creek Channel.

The contractor shall cap the trench in the creek channel with two (2) square feet or larger job excavated rock material or similar. This cap shall extend a minimum of 30 inches from the top of the trench.

5.4.9 - Site Cleanup

Upon completion of the work and before restoration and revegetation, the contractor shall clean and remove from the site of the work, all surplus and discarded materials, temporary structures and debris of every kind. He shall leave the site of the work in a neat and orderly condition at least equal to that which originally existed. Surplus and waste materials removed from the site of the work shall be disposed of in a permitted disposal area.

In the event the contractor fails or refuses to clean up and remove surplus materials and debris as above provided, the City may do so or cause same to be done, at the contractor's expense and the reasonable cost thereof shall be deducted from the final payment.

5.4.10 - Restoration/Revegetation

The Parks and Recreation Department will provide detailed planting requirements for revegetation of all disturbed areas. These requirements will consider and be based upon the submitted Environmental Report, the Tree Evaluation Survey and Restoration of Disturbed Natural Areas, Appendix L. The revegetation shall be carried out in accordance with the City of Austin Standard Specifications.

5.5.0 - PARK RULES**5.5.1 - Smoking Policy**

Per Austin City Code, Chapter 10-6, smoking is prohibited in all City parks and any other city-owned land used for a park or recreational purpose that is under the administrative control of the Parks and Recreation Department. However, an exemption can be made for temporary designated smoking areas in a park for special events.

1. In order to have temporary designated smoking areas, an application must be submitted through the Parks and Recreation Department's Office of Special Events. The department director will then make a recommendation to City Council as to whether the exemption should be granted, and City Council will have the final approval of granting an exemption for temporary designated smoking areas.
2. The application for temporary designated smoking areas must be submitted to the Office of Special Events at the close out of the current calendar year for the upcoming year's events, or at the time the Applicant submit their application for the special event (whichever timeline is greater), but in no event no later than 8 weeks prior to the event. If the deadline is missed, an appeal may be made to the Director. On appeal, the director may waive the deadline provided that the applicant shows good cause that the waiver should be granted. In order to show good cause, the applicant must show at a minimum that failure to comply with the deadline was unintentional, that granting the waiver will not unduly prejudice the City in any way, and that the applicant can still comply with all other laws and legal requirements regulating the special event. The Director may consider any other factor that the Director deems relevant to determining the existence of good cause.
3. Temporary designated smoking areas are permitted only during special events. Special events are those events which are having or anticipating 1,000 or more persons and must occur in approved special event venues. Special event sites include Auditorium Shores, Brush Square Park, Fiesta Gardens West End, Republic Square Park, Walter E. Long Park, Waterloo Park, Woolridge Square and other specially approved sites.
4. The minimum physical requirements for a temporary designated smoking area include:
 - a. The area must be at least 15-feet away from any heavily trafficked areas and areas where people can congregate. Heavily trafficked areas include those areas where pedestrian traffic is constantly flowing within the special event venue. Areas where people can congregate include those areas where patrons (more than 3 people) gather within a special event venue, such as food courts, audience-viewing stage area, vendor booths, portable toilets' queue space, water stations, and other areas which attract gatherers.
 - b. The area must be surrounded by a chain-link type fencing of preformed 6-foot-high freestanding panels;
 - c. The area must have at a minimum two entries/exits, and at least one uniformed security officer shall be positioned at each entry/exit to check an age-bearing photo

- identification of patrons entering the temporary designated smoking area;
- d. Fireproof receptacles for cigarette/cigar litter must be placed throughout the area; throughout the duration of the event there should be no cigarette/cigar litter on the park grounds, and the applicant is responsible for this ongoing cleanup;
 - e. There should be no structures such as roofs or walls that would diminish the dispersion and dilution of smoke; and
 - f. Signs that read "DESIGNATED SMOKING AREA" must be placed in prominent locations throughout the area. These signs must be at a minimum 10" Wide × 15" High in size.
5. The temporary designated smoking areas shall be used by patrons for smoking purposes only.
 6. Applicant's event staff should be aware of any temporary designated smoking areas and how to direct smokers to them.
 7. At the conclusion of the special event, the temporary designated smoking areas will be thoroughly cleaned and returned to its original state by the applicant.
 8. During periods when a Burn Ban is in effect exemptions for temporary designated smoking areas are not granted. Refer to Austin City Code Chapter 8, Article 7, Restrictions on Outdoor Burning. However, during a Burn Ban an Applicant may submit an application for a temporary designated smoking area in the event that the Burn Ban ends prior to the date of the event in which case a temporary designated smoking area would be considered.
 9. The Applicant must fill out the Temporary Designated Smoking Area Application.

5.5.2 - Smoking Application

TEMPORARY DESIGNATED SMOKING AREA APPLICATION

This form constitutes a request that an exemption be granted to allow smoking in Parks during a special event. The Parks and Recreation Department Director makes a recommendation as to whether the exemption should be granted. Final approvals of temporary designated smoking areas are granted by City Council. Please refer to the Temporary Designated Smoking Area Policies for additional information.

Along with this application please include a site plan (drawn to scale) for the event which shows the location of the proposed temporary designated smoking areas.

APPLICANT AND COMPANY INFORMATION

Event Name:			
Applicant Name & Company Name:			
Billing Address:	State:	Zip:	
Mobile #:	Emergency #:		
Email address:			

DETAILS (please type detailed information in the boxes below or attached additional pages as necessary)

Event Description:	
Event Location Requested:	
Type of Event:	
Total Estimated Attendance:	
Number and Size of Designated Smoking Areas Requested:	
Name of Security Contractor:	
Number of dedicated event staff to clean up the proposed temporary designated smoking areas:	
Describe the clean up process for the proposed temporary designated smoking areas	

after the event:	
How many cigarette disposal receptacles will be provided in the proposed temporary designated smoking areas?	
Will cigarette disposal receptacles be provided at entrances/exits to the Special Event? If yes, how many will be provided at each entrance/exit?	
What is the distance (in feet) of the proposed temporary designated smoking areas to the nearest residential property?	
What is the distance (in feet) of the proposed temporary designated smoking areas to the nearest private commercial property?	
Is it anticipated that patrons attending the special event will park their vehicles in adjacent neighborhoods and walk to the event?	
What is the distance (in feet) from heavily trafficked areas and the proposed temporary designated smoking areas? Heavily trafficked areas include those areas where pedestrian traffic is constantly flowing within the special event venue.	
What is the distance (in feet) from areas where people can congregate and the proposed temporary designated smoking areas? Areas where people can congregate include those areas where patrons (more than 3 people) gather within a	

special event venue, such as food courts, audience-viewing stage area, vendor booths, portable toilets' queue space, water stations, and other areas which attract gatherers for a period of three minutes or longer.	
Are there going to be youth (under the age of 18) attending this event? If so, what are the approximate ages of these youth?	
Can special event patrons leave the event and re-enter as they wish?	
Is there any more additional information regarding the proposed temporary designated smoking areas that the Department should be aware of?	

SIGNATURE AND AGREEMENT

I certify that the information contained in the foregoing request is true and correct to the best of my knowledge. If the request is approved by City Council, Applicant agrees to comply with all Federal, State and City regulations including Austin City Code, Chapter 8 Parks and Recreation and Chapter 10-6 Smoking in Public Places, and to abide by and uphold City of Austin Park Rules.

Applicant Signature

Date

By **BOTH** checking this box and typing my name in the above "applicant signature" line, I attest that this constitutes and represents my signature "electronically".

FOR OFFICE USE ONLY

Office of the Director

Recommended

Not Recommended

Signature: _____

Date: _____