MEMORANDUM OF UNDERSTANDING
BETWEEN
AUSTIN PARKS AND RECREATION DEPARTMENT
AND
AUSTIN ENERGY
FOR THE HOLLY STREET POWER PLANT DECOMMISSIONING
AND DEMOLITION PROJECT

THIS INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING ("MOU") is between the Electric Utility Department of the City of Austin, d/b/a Austin Energy ("**AE**" or "**Austin Energy**") and the Austin Parks and Recreation Department ("**Parks Department" or "Parks")** regarding the Holly Street Power Plant Decommissioning Project ("**Holly**") located at 2401 Holly Street, Austin, Texas.

RECITALS

WHEREAS, On May 2, 1985, the City Council of the City of Austin approved Ordinance No. 850502-U dedicating "certain city owned land along or near Town Lake as Parkland." Included in the Ordinance was the "Holly Street Power Plant and adjacent land used in connection therewith." Part 3 of the Ordinance states "tracts of land shall immediately become parkland upon the termination or cessation of their existing use";

WHEREAS, Austin Energy is in the final stages of completing the Holly Street Power Plant Decommissioning and Demolition Project ("**Project"),** and AE and Parks have reached agreement regarding the terms and conditions necessary to facilitate the conveyance of the Holly Street Power Plant property and associated adjacent property as defined in this MOU **("Conveyed Property")** from AE to Parks upon the completion of the Project;

WHEREAS, Austin Energy maintains and controls certain property adjacent to the Conveyed Property for the operation of the Pedernales Substation, and, following the completion of the Project and the transfer of control and maintenance of the Conveyed Property to Parks, Austin Energy will continue to maintain, control and operate the Pedernales Substation and associated property ("**AE Retained Property**") as set forth in this MOU;

WHEREAS, Austin Energy will maintain easement rights ("**AE Easement Rights**") across certain portions of the Conveyed Property ("**Burdened Conveyed Property**") as necessary to maintain and operate the Pedernales Substation and to continue to operate its electric transmission and distribution facilities on the Burdened Conveyed Property;

WHEREAS, Parks and Austin Energy have agreed that Parks will, on or before the completion of the Project, receive certain easements rights ("**Parks Easement Rights**") across certain portions of the Retained Property **("Burdened Retained Property**");

WHEREAS, Parks maintains and controls certain Parks property adjacent to the Holly Street Power Plant property ("**Existing Parkland**") and Parks and Austin Energy have agreed that Austin Energy will, on or before the completion of the Project, receive certain easements rights ("**AE Easement Rights**") from Parks across certain portions of the Existing Parkland **("Burdened Existing Parkland**") to ensure that AE has continued access to and from the: Burdened Conveyed Property; the Pedernales Substation; and to its electric transmission and distribution facilities.

WHEREAS, Austin Energy and Parks intend this MOU to set forth the terms and conditions to accomplish the following purposes:

1. Identify the location of the property line that will separate the Conveyed Property and the AE Retained Property;

2. Identify the location of AE's electric utility and access declarations on the Burdened Conveyed Property;

3. Identify the location of Parks Easement Rights on the AE Retained Property;

4. Identify the location of AE Easement Rights on the Burdened Existing Parkland; and

5. Define and detail the respective tasks and obligations of AE and Parks necessary to accomplish the purposes set forth above.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, AE and Parks agree that, on or before the completion of the Project, AE and Parks will execute all agreements appropriate or necessary and take all actions necessary to convey the property rights and accomplish the purposes set forth in this MOU and as described below and as further described and identified on **Exhibit A, Exhibit B, Exhibit C and Exhibit D** attached hereto and made a part hereof:

SECTION A. PROPERTY CONVEYANCE AND EASEMENT OBLIGATIONS

1. The AE Retained Property is identified as "Tract 1", and is labeled as the "Austin Energy Pedernales Substation" on Page 1 of Exhibit A; the Conveyed Property is identified as "Tract 2 on Page 1 of Exhibit A; and the dividing line between Tract 1 and Tract 2 is shown on Page 1 of Exhibit A and this dividing line will be the property line defining the respective properties of AE and Parks upon the execution of a Declaration of Departmental Transfer ("**Transfer Document**") which shall, in one or more documents, exchange and convey operation and maintenance responsibilities between the departments over the properties described in this MOU;

2. AE and Parks will execute declarations that will declare AE's Easement Rights and that will indicate the location of AE's electric facilities across the Conveyed Property which are located within the shaded portions of Tract 2 - labeled as "**AE Electric Declaration**" in page 1 of Exhibit A; and a portion of Tract 7 (known as 2220 Riverview Street); and the form of the declarations will be in substantially the same form as the declaration attached at Exhibit C;

3. AE and Parks agree that they will cooperate in the filing and processing through to completion of the City administrative processes for the vacation of a City street ("**Street Vacation Process**") for a portion of Riverview Street labeled as Tract 3 in Exhibit A. Parks further agrees that it will: a) prepare and file all required Street Vacation Process applications; b) that Park's personnel will participate in and take the lead role in all required public meetings and hearings; and c) prepare and submit all required supporting documentation to conduct the Street Vacation Process. AE further agrees that it will reimburse or pay all of Parks' expenses to participate in the Street Vacation Process (including the cost of the appraisal and payment to the appropriate City department of the fair market value associated with the vacated portion of the street). AE and Parks further agree that AE will have exclusive access to and management and control over Tract 3 upon the completion of the Street Vacation Process;

4. On or before the completion of the Project, AE and Parks agree to execute a declaration granting AE sole access to and control over that portion of Existing Parkland comprising approximately 2,049 square feet and identified as Tract 4 in Exhibit A as required for AE's operation and control of the Pedernales Substation. Parks and AE agree that the terms of this MOU contain the full consideration for the property and easement rights, and that there will be no additional consideration; fees or mitigation required of AE for the use of Tract 4;

5. AE and Parks agree to execute a declaration that will grant AE non-exclusive ingress and egress access rights across that portion of Parkland in the approximate size of 5,842 square feet and identified as Tract 5 in Exhibit A. Parks and AE agree that the terms of this MOU contain the full consideration for the property and easement rights conveyed, and that, unless expressly set forth in this MOU, AE will not be charged any additional consideration, including fees or mitigation, for the non-exclusive use of the 5,842 square feet of Parkland;

6. AE agrees to execute a Declaration of Trail Location granting Parks the right to maintain and operate a hike and bike trail in the existing trail location identified as Tract 6 on Exhibit A, and Parks agrees that such declaration shall be subject to existing utility easement rights on Tract 6. Parks and AE agree that the terms of this MOU contain the full consideration for the property and easement rights conveyed, and that Parks will not be charged

any additional consideration for the dedication to Parks of the Declaration of Trail Location by AE.

7. AE and Parks will execute a declaration document transferring management and control over the following described properties from AE to Parks for the use of Parks' (Tract 7):

   (a.) Lot 27, Blk A, OLT 62, Div O, Driving Park Addn No. 2 known as 2220 Haskell Street;
   (b.) Lot 6 Blk B, OLT 62, Div O, Driving Park Addn No. 2 known as 2221 Haskell Street; and
   (c.) Lot 27, Blk B, OLT 62, Div O, Driving Park Addn No. 2 - known as 2220 Riverview Street (the conveyance of 2220 Riverview Street is for Parks use, subject to the condition that no above ground structures or changes in grade, except as agreed to in writing by AE and subject to the terms of Section B.9 under this MOU are to be constructed on this lot, and AE is to have continued right to access this lot for parking and staging during the performance of Pedernales Substation maintenance)

8. AE and Parks intend that all declarations conveying management and control of property between departments will also convey management and control over any existing structures and fixtures on the subject property, other than public utility facilities, and AE and Parks intend that all properties are conveyed "as-is" except as specifically set forth in this MOU, and that neither department will owe the other department for any further fees, mitigation or charges other than as expressly set forth in this MOU.

SECTION B. ADDITIONAL TERMS AND CONDITIONS:

1. On or before the completion of the Project, AE will, at its expense, install a chain link security fence and gates along the outside boundary of the Retained Property;

2. On or before the completion of the Project, AE and Parks will execute a Substation Enclosure Construction Interdepartmental Agreement ("**Enclosure Agreement**") in substantially the same form as the draft Enclosure Agreement attached as Exhibit "D". AE agrees that the Enclosure Agreement will provide for the payment by AE of $407,480.00 to Parks within 45 days of the execution of the Enclosure Agreement, for the purpose of defraying Parks' costs to: a) design and construct an enclosure to replace the chain link security fence and gates (as described in the immediately preceding paragraph) that will enclose the footprint of the Pedernales Substation ("**Enclosure**"); and b) incorporate Art in Public Places features in the Enclosure in accordance with the terms of the Enclosure Agreement. At such time as Parks redevelops the Conveyed Property pursuant

to the Holly Master Plan, Parks will, pursuant to the terms and conditions of the Enclosure Agreement, replace the AE's chain link security fence with an Enclosure constructed in accordance with the terms of the Enclosure Agreement;

3. Austin Energy agrees to provide, at its expense, the metes and bounds descriptions necessary to prepare and finalize the documents referenced in this MOU;

4. Parks agrees to take the lead in fulfilling all administrative and regulatory requirements, including the filing, supporting and processing of requests for regulatory approval, required under the terms of this MOU, and including the completion of all requirements necessary to vacate the portion of Riverview Street that is identified as Tract 3 in Exhibit A;

5. Parks agrees that it will process and take the lead in filing, supporting and processing all change in use requirements (to include conducting a Chapter 26 hearing(s) under Chapter 26 of the Texas Parks and Wildlife Code, if appropriate) that are necessary to effectuate the terms of this MOU. AE is responsible for all administrative, advertising and permit fees associated with the process;

6. Parks agrees that it will process and take the lead in making all other regulatory applications, and in filing, supporting and processing all presentations to the Austin City Council and all City commissions, boards and neighborhood groups as reasonable required effectuating the terms of this MOU. AE is responsible for all administrative, advertising and permit fees associated with the process;

7. AE agrees to provide technical support and justification for the request for regulatory approval to be filed by Parks as described in paragraphs 4, 5 and 6 immediately above.

8. The property, property rights and terms and obligations contained in this MOU constitute the full consideration that will be exchanged between AE and Parks to effectuate the purposes of this MOU. Other than as expressly provided for in this MOU, no additional interdepartmental transfers of funds, compensation, fees, mitigation or other consideration, will be required of either department;

9. Parks agrees that plans and drawings for all Holly Master Plan Construction Projects ("**Holly Projects**") or plans for the development of 2220 Riverview Street that are to be constructed using the City of Austin's General Permit process shall be submitted to AE for review and approval in advance of Parks submitting such plans or drawings to the Planning and Development Review Department of the City, so that AE and Parks can jointly agree and take such steps as are necessary to address any potential conflicts between Holly Projects

and the locations of AE's electric facilities, Monitoring Wells and access routes to electric facilities; and

10. AE and Parks agree to exercise best efforts to complete all task required to effectuate the terms of this MOU on or before March 31, 2015.

SECTION C. ENVIRONMENTAL PROJECT TERMS AND CONDITIONS:

1. AE shall, at its sole cost and expense, diligently perform any and all response actions required by the Texas Commission on Environmental Quality ("**TCEQ**") under the pending action on the Conveyed Property ("**Environmental Project**") and will obtain a Voluntary Cleanup Program ("**VCP**") - "Final Certificate of Completion" ("**Certificate**") from the TCEQ for the Conveyed Property. Previously, AE received TCEQ VCP approval indicating that all sampling and cleanup (remedial work) for the Conveyed Property is complete and in compliance with residential standards. Currently, AE is working to complete all TCEQ required groundwater monitoring as necessary to obtain a Certificate for the Conveyed Property ("**Certificate**"). Accordingly, there are existing groundwater monitoring wells (**"Monitoring Wells**") located on the Conveyed Property. Quarterly testing is done by AE and submitted to TCEQ, and AE will continue to perform such testing in accordance with the requirements of the TCEQ until TCEQ indicates that no further action is required (including any post-closure required testing). Upon filing of the Certificate and the Affidavit, AE's responsibility, environmental and otherwise, for the Conveyed Property, shall cease and Parks shall have all responsibility thereafter for the Conveyed Property as shown on Exhibit B. AE's responsibility for the Environmental Project shall include:

    a) Maintain and test Monitoring Wells on the Conveyed Property;
    b) Work with TCEQ to reduce the number of Monitoring Wells on the Conveyed Property;
    c) Work with Parks to determine an alternative Monitoring Well location (meeting TCEQ approval) and relocate a Monitoring Well if its location conflicts with the development of the Holly Master Plan;
    d) Work with Parks to identify the locations of and install additional Monitoring Wells if required by TCEQ to complete the Environmental Project; and
    e) Upon completion, execute the "Affidavit of Completion of Response Action", and record the Affidavit and the Certificate in the Official Public Records of the Travis County Clerk's Office.

2. Parks agrees to the following with respect to the Environmental Project:

    a) Use due care and precaution when performing any grading or construction work near any Monitoring Well on the Conveyed Property;

b) Provide AE unimpeded access to the locations of Monitoring Wells as required for the Environmental Project;
c) Work with AE to identify appropriate locations for the installation of additional Monitoring Wells or relocated Monitoring Wells ("New Wells"), as required by TCEQ to complete the Environmental Project or as required by Parks to accommodate a Parks' activity on the Conveyed Property;
d) Conduct the Chapter 26 process broadly such that any New Wells are anticipated and covered by the initial Chapter 26 process;
e) Provide AE with 45 days advance written notice if the location of a Monitoring Well conflicts with a Park activity. AE agrees to the expenses of all necessary well relocations. Notices shall be submitted to the AE Environmental Project Manager, Eric Stager, at the following address:

Eric Stager, Project Manager
Austin Energy
721 Barton Springs Road
Austin, Texas 78704

Phone: 512-322-6226
Eric.stager@austinenergy.com

SECTION D. COOPERATION

The Parks Department and AE agree to cooperate in the negotiation of revisions to this Memorandum in the event such revisions are necessary. Subject to the terms and conditions of this MOU, the parties agree to take all steps reasonably required to coordinate their respective duties hereunder.

(SIGNATURE PAGE TO FOLLOW)

This MOU may be terminated or modified only upon the written consent of both Directors, and it shall have an effective date of JULY 15, 2014

AGREED AND ACCEPTED:

AUSTIN PARKS AND RECREATION DEPARTMENT

By: _____
Sara Hensley, Director
Austin Parks and Recreation Department

Date: 7-9-14

AUSTIN ENERGY

By: _____
Larry Weis, General Manager
Austin Energy

Date: 7/15/14

APPROVED AS TO CONTENT:

AUSTIN ENERGY

By: _____
Todd Henson, Acting Director
Engineering & Technical Services

Date: 7/10/14

AUSTIN ENERGY

By: _____
Sonny Poole
Public Involvement and Property Acquisition Manager

Date: 7/10/2014

APPROVED AS TO FORM:

LEGAL DEPARTMENT

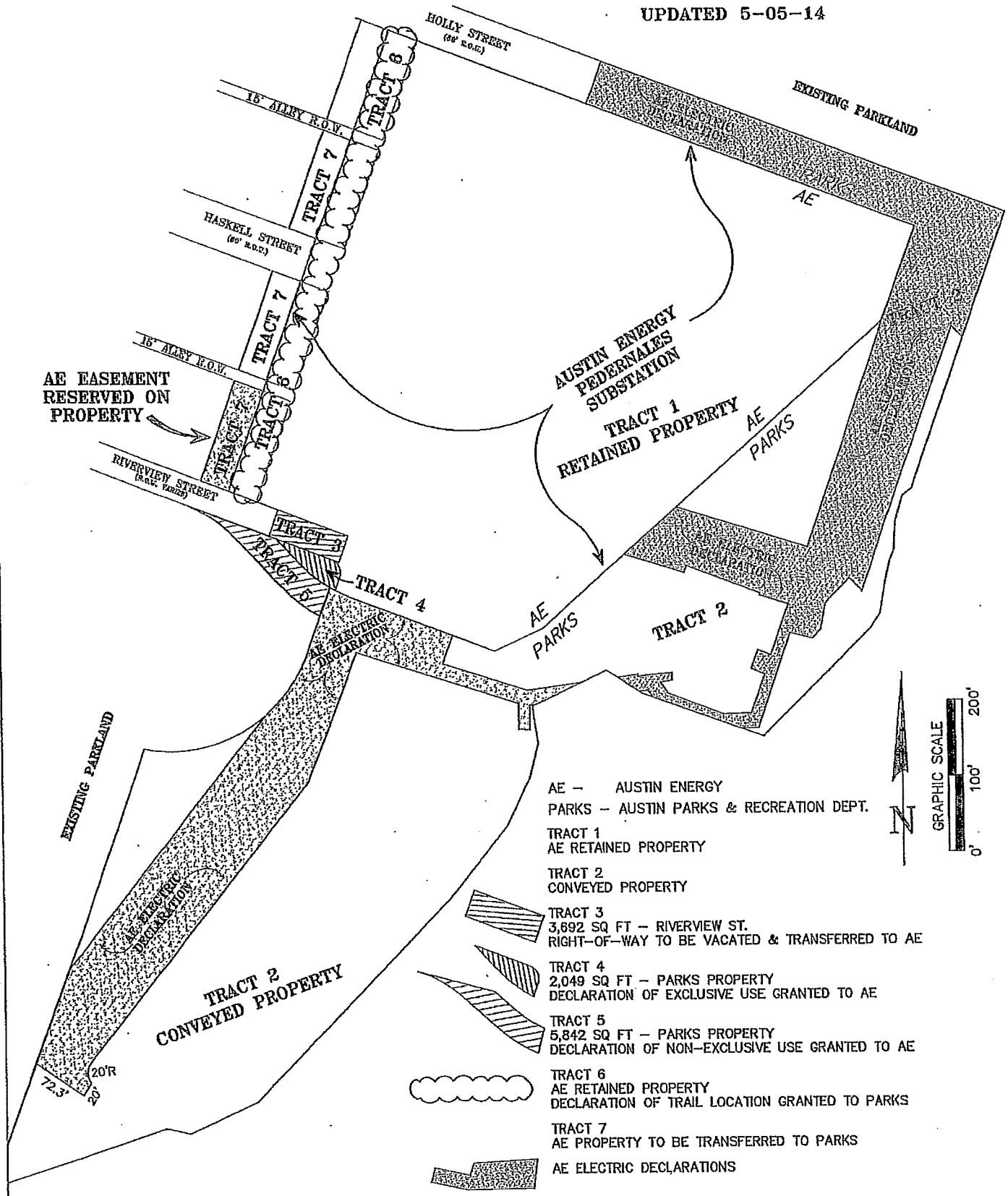
By: _____
Name: Susan Grove
Title: Assistant City Attorney

EXHIBIT A
PROPERTY AND EASEMENT SKETCHES
EXHIBIT B
GROUNDWATER MONITORING WELL LOCATIONS
EXHIBIT C
DECLARATION OF ELECTRIC UTILITY LOCATION
EXHIBIT D
ENCLOSURE AGREEMENT

EXHIBIT A
PROPERTY AND EASEMENT SKETCHES

EXHIBIT "A" Pg. 1 of 3 EASEMENTS

UPDATED 5-05-14



AE – AUSTIN ENERGY

PARKS – AUSTIN PARKS & RECREATION DEPT.

TRACT 1
AE RETAINED PROPERTY

TRACT 2
CONVEYED PROPERTY

TRACT 3
3,692 SQ FT – RIVERVIEW ST.
RIGHT-OF-WAY TO BE VACATED & TRANSFERRED TO AE

TRACT 4
2,049 SQ FT – PARKS PROPERTY
DECLARATION OF EXCLUSIVE USE GRANTED TO AE

TRACT 5
5,842 SQ FT – PARKS PROPERTY
DECLARATION OF NON-EXCLUSIVE USE GRANTED TO AE

TRACT 6
AE RETAINED PROPERTY
DECLARATION OF TRAIL LOCATION GRANTED TO PARKS

TRACT 7
AE PROPERTY TO BE TRANSFERRED TO PARKS

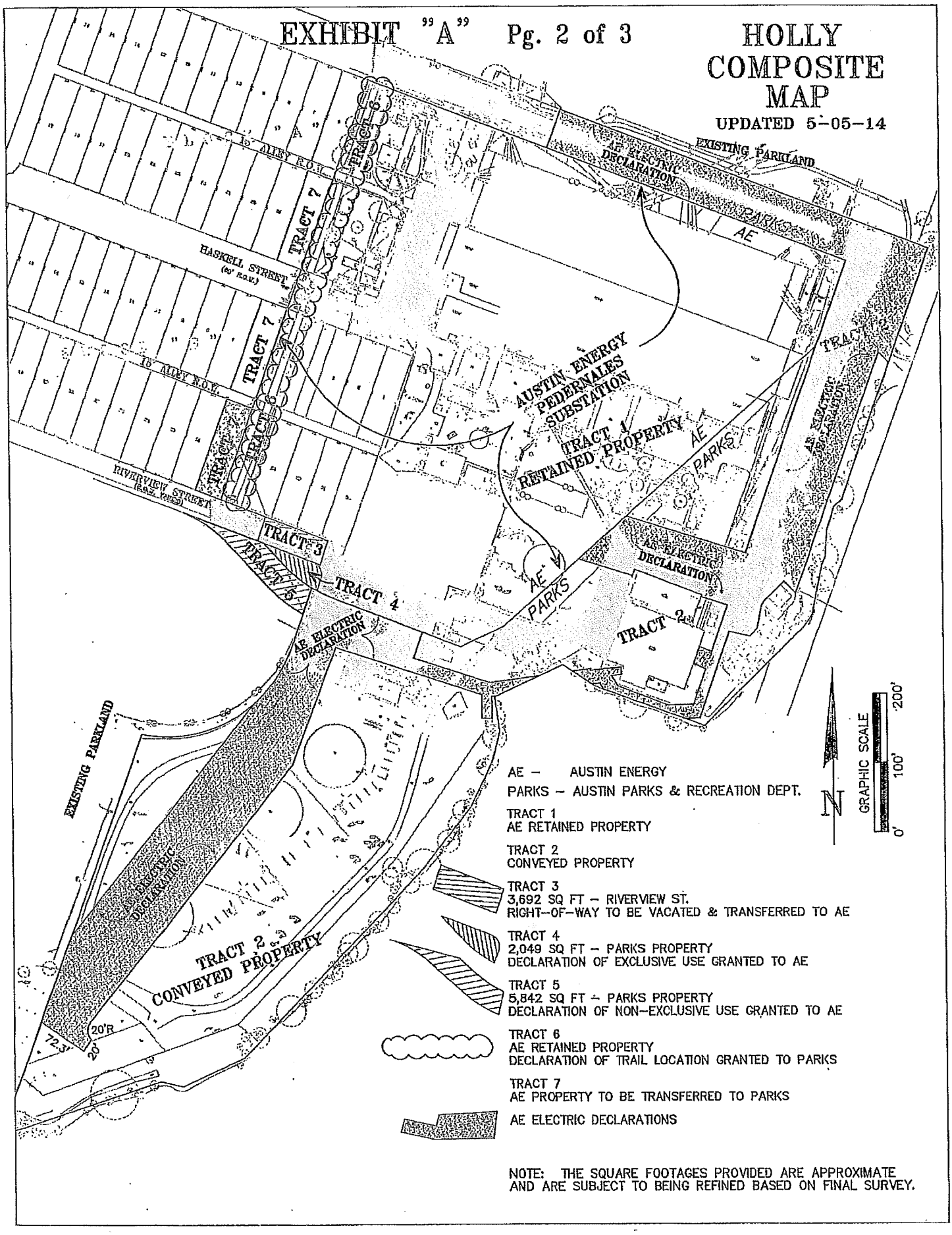
AE ELECTRIC DECLARATIONS

NOTE: THE SQUARE FOOTAGES PROVIDED ARE APPROXIMATE AND ARE SUBJECT TO BEING REFINED BASED ON FINAL SURVEY.

EXHIBIT "A" Pg. 2 of 3

HOLLY COMPOSITE MAP

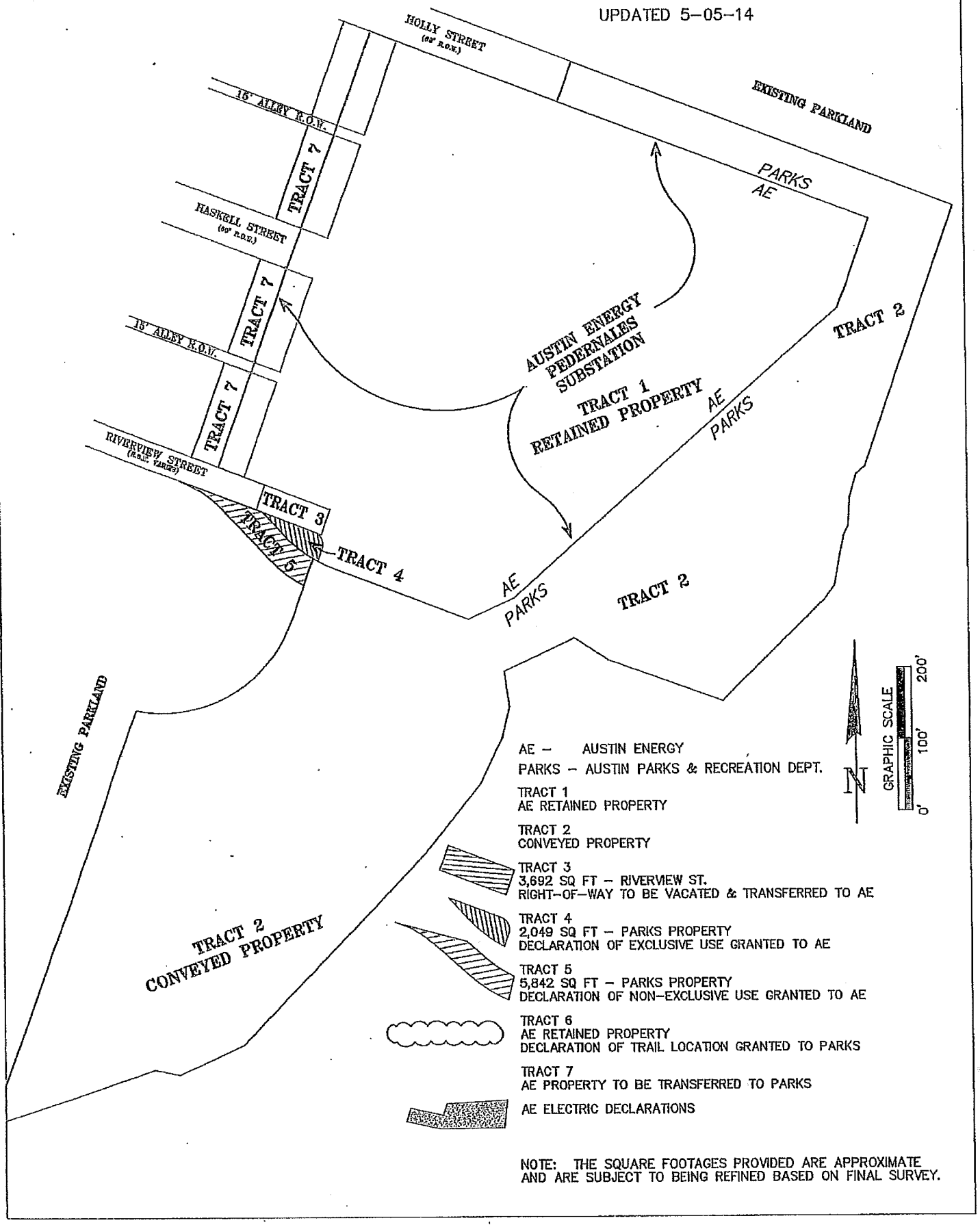
UPDATED 5-05-14



NOTE: THE SQUARE FOOTAGES PROVIDED ARE APPROXIMATE AND ARE SUBJECT TO BEING REFINED BASED ON FINAL SURVEY.

EXHIBIT "A" Pg. 3 of 3 PROPERTY BOUNDARIES

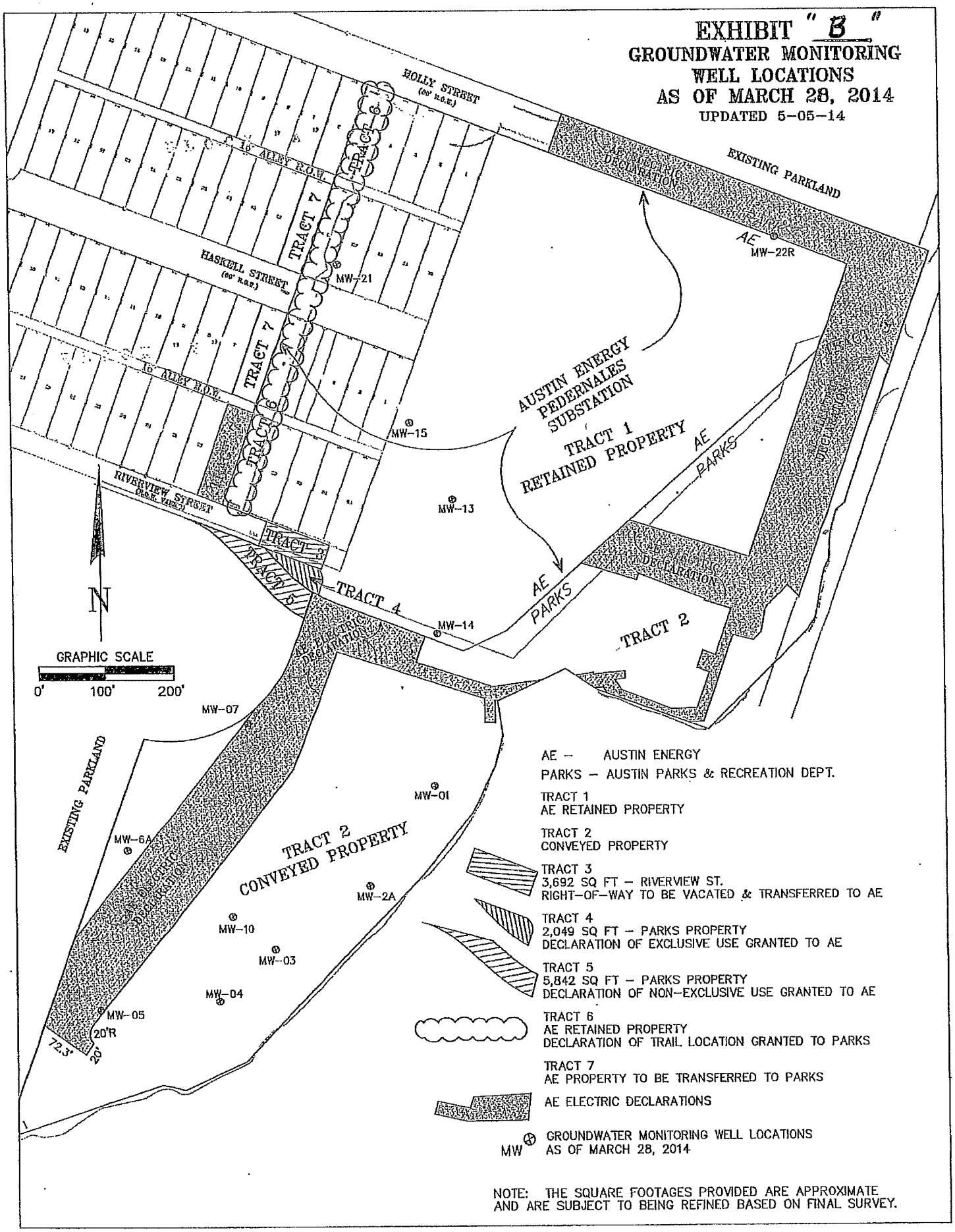
UPDATED 5-05-14



NOTE: THE SQUARE FOOTAGES PROVIDED ARE APPROXIMATE AND ARE SUBJECT TO BEING REFINED BASED ON FINAL SURVEY.

EXHIBIT B
GROUNDWATER MONITORING WELL LOCATIONS

EXHIBIT "B"
GROUNDWATER MONITORING WELL LOCATIONS AS OF MARCH 28, 2014
UPDATED 5-05-14



AE – AUSTIN ENERGY

PARKS – AUSTIN PARKS & RECREATION DEPT.

TRACT 1
AE RETAINED PROPERTY

TRACT 2
CONVEYED PROPERTY

TRACT 3
3,692 SQ FT – RIVERVIEW ST.
RIGHT-OF-WAY TO BE VACATED & TRANSFERRED TO AE

TRACT 4
2,049 SQ FT – PARKS PROPERTY
DECLARATION OF EXCLUSIVE USE GRANTED TO AE

TRACT 5
5,842 SQ FT – PARKS PROPERTY
DECLARATION OF NON-EXCLUSIVE USE GRANTED TO AE

TRACT 6
AE RETAINED PROPERTY
DECLARATION OF TRAIL LOCATION GRANTED TO PARKS

TRACT 7
AE PROPERTY TO BE TRANSFERRED TO PARKS

AE ELECTRIC DECLARATIONS

MW GROUNDWATER MONITORING WELL LOCATIONS AS OF MARCH 28, 2014

NOTE: THE SQUARE FOOTAGES PROVIDED ARE APPROXIMATE AND ARE SUBJECT TO BEING REFINED BASED ON FINAL SURVEY.

EXHIBIT C
DECLARATION OF ELECTRIC UTILITY LOCATION

Easement No.
File No.
Address: 2401 Holly Street
Initials: KMS

DECLARATION OF ELECTRIC UTILITY LOCATION

STATE OF TEXAS §
COUNTY OF TRAVIS §

The City of Austin hereby declares and acknowledges by this Declaration: 1) a right of way over and across, and 2) the dedication and location of electric utility facilities, in, over and across a portion of that certain Electric Utility Department d/b/a Austin Energy property conveyed to the City of Austin, being (insert legal description) as described and shown in Exhibit A attached hereto (the "Property). The exact location of the permanent electric utility facilities is shown on EXHIBIT "B" ("Declaration Area"), attached hereto and made a part hereof.

The City of Austin dedicates and reserves the right to cross the Property to reach its Facilities and it dedicates and reserves the Declaration Area for use by the Austin electric utility as an exclusive easement for the purpose of accessing, placing, constructing, reconstructing, installing, operating, repairing, maintaining, inspecting, replacing, upgrading or removing (in whole or in part) electric lines and telecommunications lines and systems and all necessary or desirable appurtenances and structures, and to permit telephone and cable television lines and systems to be placed, constructed, reconstructed, installed, operated, repaired, maintained, inspected, replaced, upgraded or removed including the right to cut and trim trees and shrubbery and to remove obstructions as necessary to keep them clear of said electric lines and facilities in, across, under and through the Declaration Area. Austin Energy shall have unimpeded access to the Declaration Area at all times.

This Declaration runs with the land for the benefit of the Austin electric utility and is a restrictive covenant binding all present and future owners of the fee interest in and to the Property.

No permanent or temporary structures of any kind may be placed, erected or maintained in such proximity to the Facilities as would constitute a violation of the National Electric Safety Code in effect at the time the structure is erected, nor, without the Austin electric utility's prior written consent, any structure, including, but not limited to drainage, filtration or detention ponds, and no changes in grade, in elevation or contour of the land may be made which would materially impair the electric utility's access to its Facilities. Ball fields are prohibited with the Declaration Area.

The Director of the Parks and Recreation Department, the Officer of the Office of Real Estate Services and the General Manager of the Electric Department, or their duly authorized designees have approved this Declaration.

Upon completion of initial construction or any subsequent work in the Easement, the electric utility shall repair any material damage to the Property so as to restore same to substantially the same condition it was in prior to commencement of the work, but the electric utility shall not be required to replace any trees, shrubbery or obstructions which the electric utility removed due to interference with its use of the Easement.

This Declaration runs with the land for the benefit of the Austin Electric Utility and is a restrictive covenant binding all present and future owners of the fee interest in and to the land.

EXECUTED on this day _____ of _____, 20__.

THE CITY OF AUSTIN,
a municipal corporation

By: _____
Name: SONNY POOLE
Title: Public Involvement and Property Acquisition Manager
Public Involvement/Real Estate Services
Austin Energy, City of Austin

APPROVED AS TO FORM:

_____
Susan Groce
Assistant City Attorney
Date: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ___ day of _____, 20__ by Sonny Poole, Public Involvement and Property Acquisition Manager of Public Involvement/Real Estate Services of Austin Energy, the electric utility department of the City of Austin, a municipal corporation, on behalf of said municipal corporation.

_____
Notary Public, State of Texas

_____
Notary's Printed or Typed Name

_____
Notary's Commission Expires

AFTER RECORDING RETURN TO:
City of Austin – Austin Energy
721 Barton Springs Road
Austin, Texas 78704
Attn: Melody Giambruno
DECLARATION OF EASEMENT LOCATION
Legal Review 05/01/13

EXHIBIT D
ENCLOSURE AGREEMENT

INTERDEPARTMENTAL ENCLOSURE AGREEMENT
BETWEEN
AUSTIN PARKS AND RECREATION DEPARTMENT
AND
AUSTIN ENERGY
FOR CONSTRUCTION OF THE PEDERNALES SUBSTATION ENCLOSURE AT THE HOLLY STREET POWER PLANT

THIS INTERDEPARTMENTAL ENCLOSURE AGREEMENT ("Enclosure Agreement") is between the Electric Utility Department of the City of Austin, d/b/a Austin Energy ("**AE**" or "**Austin Energy**") and the Austin Parks and Recreation Department ("**Parks Department" or "Parks")** regarding the construction of an enclosure along the boundary of Tracts 1 and 2 identified on Exhibit A attached hereto upon the completion of the decommissioning of the Holly Street Power Plant ("**Plant Decommissioning**").

RECITALS

WHEREAS, On May 2, 1985, the City Council approved Ordinance No. 850502-U dedicating "certain city owned land along or near Town Lake as Parkland. " Included in the Ordinance was the "Holly Street Power Plant and adjacent land used in connection therewith." Part 3 of the Ordinance states "tracts of land shall immediately become parkland upon the termination or cessation of their existing use."

WHEREAS, Parks and AE have agreed, in the Memorandum of Understanding dated _____, ("**MOU**") to the terms and conditions, upon the completion of AE's Holly Street Decommissioning Project ("**Holly Decommissioning Project**"), for the transfer of property associated with the Holly Street Power Plant to Parks and for the retention of certain property, associated with the Pedernales Substation, by Austin Energy. Parks and AE have agreed that Tract 1, as

identified in the attached Exhibit A, will be retained by AE for the operation of the Pedernales Substation ("**AE Retained Property**") and Tract 2 ("**Burdened Conveyed Property**") will be transferred to Parks for parkland. The transfer of Tract 2 will occur on or before December 31, 2015.

WHEREAS, AE encloses its substations with fences or walls constructed to optimize the safe and secure operation of its substations. Under the terms of the MOU, AE is responsible for the cost and installation of a chain link fence along the shared boundary of Tracts 1 and 2 as shown in Exhibit "A" attached hereto. The parties intend that the chain link fence will be installed on or before December 31, 2015.

WHEREAS, AE and Parks agree that the chain link fence built pursuant to the MOU will be replaced, under the terms of this Enclosure Agreement, with an enclosure (the "**Enclosure**") that the City has determined is essential to the viability and civic attractiveness of the Holly Shores / Edward Rendon Sr. at Festival Beach Master Plan Project (**"Festival Beach Project**"). At this time, the Enclosure has not been designed nor are there any renderings or proposed drawings.

WHEREAS, the design, construction and management of the Enclosure must be coordinated between AE and Parks for budgetary, construction and operational purposes.

TERMS OF AGREEMENT

The Parties, in consideration of the mutual covenants and agreements to be performed, set forth in this Agreement, agree as follows:

1. On or before the completion of the decommissioning of Holly, AE will erect and maintain a temporary chain link fence at its expense. Once the temporary chain link fence is erected and Parks is ready to commence

construction of the Enclosure, Parks is responsible for the removal of the existing chain link fence at its expense.

2. In conjunction with the Festival Beach Project, Parks intends to commence formulating on plans for the construct of the Enclosure;
3. AE shall provide Parks with copies of its standard construction specifications and safety and security requirements to be included as mandatory elements of design as part of Parks preparation of a request for qualifications ("**Enclosure RFQ**") to be issued for the design and construction of the Enclosure. AE will be provided an opportunity to review and comment on the content of the RFQ before it is finalized.
4. Parks shall be responsible for issuance of the RFQ and for the review of the responses to the RFQ ("**Design Proposals**"). Once the Design Proposals are reviewed, Parks will submit all responsive and complete Enclosure Proposals ("**Responsive Proposals**") to AE for AE's review and approval.
5. AE shall review the Responsive Proposals provided by Parks for compliance with AE's standard construction requirements and safety and security specifications, and AE will provide Parks with a list of the Responsive Proposals meeting AE's requirements ("**Compliant Enclosure Proposals**").
6. Parks, in conjunction with the Art in Public Places Department, shall review the Compliant Enclosure Proposals and Parks, in conjunction with Art in Public Places, shall make the final determination as to which Compliant Enclosure Proposal best meets the City's requirements for design and artistic merit.
7. Following the award of the Enclosure bid, Parks will work with the successful bidder to perform the necessary preliminary design evaluation and design development and Parks, in conjunction with the successful bidder, will be responsible for the actual construction of the Enclosure, conditioned upon receipt of AE's approval of each step in the design development process as set forth in this MOU.

8. When the design development process is at the 30%, 60%, 90% and 100% stages, Parks shall require the successful bidder to submit Enclosure design plans to AE for review and approval. AE agrees to respond with acceptance or comments to each such submittal within 10 business days of receipt. Notwithstanding the foregoing, in no event shall design and construction plans be considered accepted until authorized agents of both Parks and AE have signed off and indicated approval in writing of the final design and construction plans on behalf of each department.
9. Under the requirements of Section 7.2 of the City of Austin Art in Public Places Code, AE shall contribute four hundred seven thousand four hundred and eighty dollars ($407,480.00) to be used for the design and construction of the Enclosure ("**AE Enclosure Contribution**"). This amount represents AE's full contribution to the cost of the Enclosure. Parks agrees that it will work cooperatively with the Art in Public Places Department in the expenditure of these funds and that the AE Enclosure Contribution will constitute AE full and final contribution to the cost of the Enclosure. AE will transfer the AE Enclosure Contribution as directed by Parks within 45 days of the full execution of this Interdepartmental Enclosure Agreement.
10. Parks and its contractors, in conjunction with Art in Public Places, shall be responsible for obtaining all necessary permits and approvals for the construction of the Enclosure.
11. For safety and operational reasons, Parks and its contractors shall coordinate the construction of the Enclosure in compliance with National Electric Safety Code and Austin Energy requirements and all other applicable federal, state, and City requirements for construction in proximity to electric distribution, transmission and substation facilities.
12. During construction, AE shall retain the right to immediately stop work on the Enclosure construction in the event that it determines, in its sole discretion, that the construction work is not in compliance with AE's safety

or security requirements or that the construction does not meet AE's design or construction specifications.

13. At all times during construction and following completion of construction, AE shall retain ownership of the Enclosure.

14. Parks and its contractors shall develop a maintenance plan for the Enclosure which shall establish standards and procedures for the maintenance, cleaning and superficial, non-structural repair (e.g., graffiti and debris removal) of the Enclosure (**"Maintenance Plan"**). The final Maintenance Plan must be approved in writing by AE. The parties shall cooperate in good faith to promptly reach agreement on the selection of the appropriate department to implement the Maintenance Plan based upon budgetary, operational and staffing considerations. In the event that Parks does not obtain funds for the implementation of the Maintenance Plan, AE shall implement the Maintenance Plan. Such Maintenance Plan shall be immediately implemented following completion of construction.

15. AE shall be responsible for any necessary structural repairs to the Enclosure or Enclosure repairs which are necessary to ensure the continued security of the Pedernales Substation.

16. The Parties agree to communicate all information reasonably necessary to the accomplishment of this Interdepartmental Enclosure Agreement and to coordinate their respective activities at all times to provide for the efficient design and construction of the Enclosure. Before and after completion of the Enclosure, Parks and its contractors shall observe AE's normal policies and practices for third party ingress and egress within the Pedernales Substation, and Parks and its contractors shall take no action that is inconsistent with AE's primary use of the property.

17. Since both Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction and studies and for other utility-related purposes, the Parties will cooperate in good faith at all times to assure compliance with any applicable governmental requirements where noncompliance or non-

cooperation may subject a party to penalties, loss of grants or other funds, or other adverse regulatory action.

18. Parks acknowledges that time will be of the essence once construction of the Enclosure commences, and that, once construction commences, Parks agrees to use its best efforts to minimize the disruption to Austin Energy normal operations, and to continuously conduct the construction activities until completion of the Enclosure. The parties agree to take all steps reasonably required to coordinate their respective duties hereunder.

(SIGNATURE PAGE TO FOLLOW)

DRAFT

The Parties agree that this MOU will be effective from and after the date of full execution by the Parties. This MOU may be terminated or modified only upon the written consent of both directors.

AGREED AND ACCEPTED:

AUSTIN ENERGY:

By: _____ **Date:** _____, **2014**
Larry Weis, General Manager

PARKS:

By:_____ **Date:** _____, **2014**
Sara Hensley, Director

APPROVED AS TO CONTENT:

AUSTIN ENERGY

By: _____
Todd Henson, Acting Director
of Substation and Transmission
Engineering and Construction
Date: _____

ART IN PUBLIC PLACES

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

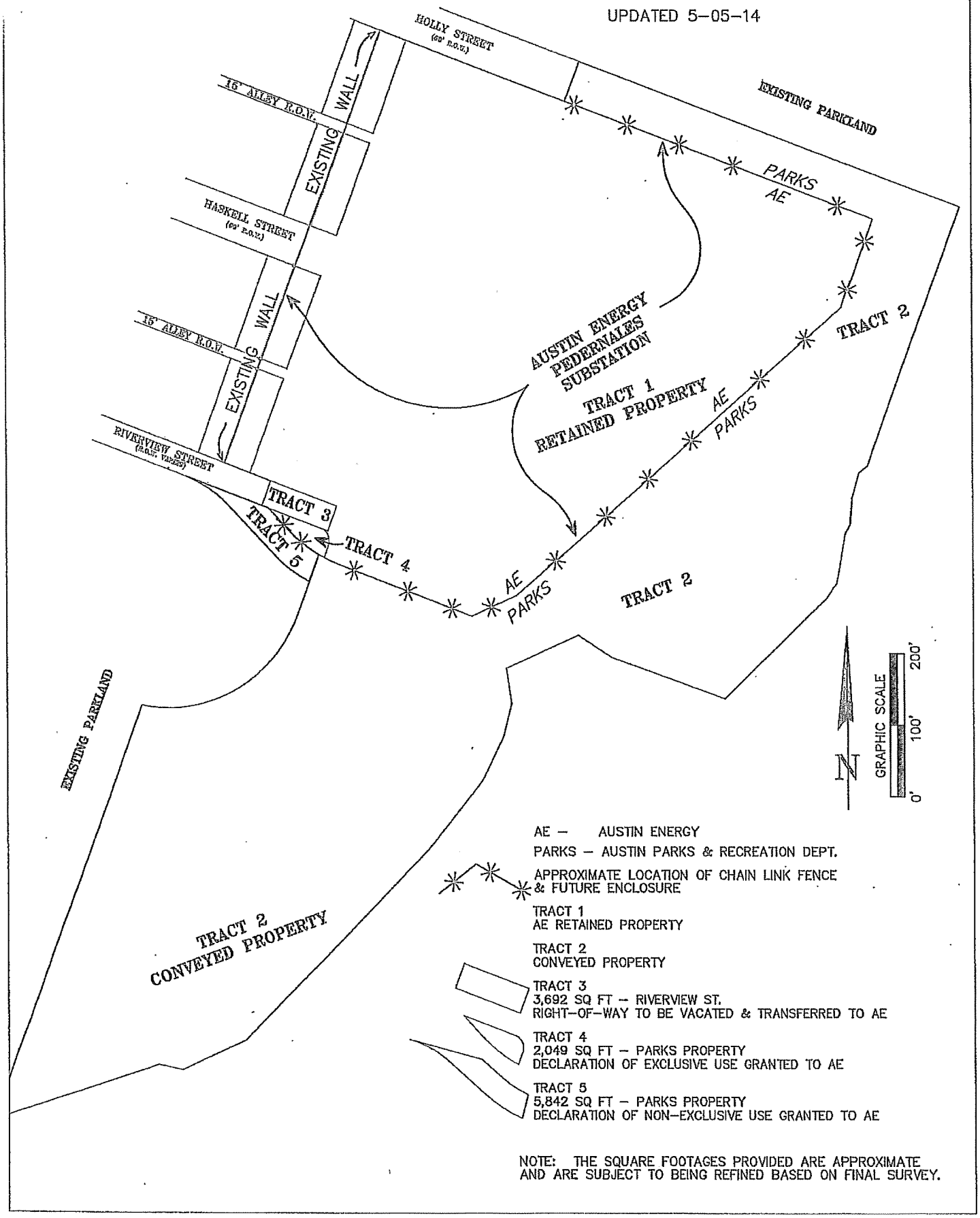
LAW DEPARTMENT

By: _____
Name: _____
Title: Assistant City Attorney
Date: _____

EXHIBIT "A"

ENCLOSURE AGREEMENT

UPDATED 5-05-14



NOTE: THE SQUARE FOOTAGES PROVIDED ARE APPROXIMATE AND ARE SUBJECT TO BEING REFINED BASED ON FINAL SURVEY.