



*poll: Bd members
for their opinion;
then approve*

MEMORANDUM

TO: Parks and Recreation Board Members

FROM: Manuel A. Mollinedo, Director
Parks and Recreation Department

DATE: December 10, 1990

SUBJECT: Lantana Park Development

In 1986, the Lantana subdivision, in the Oak Hill area, was required by the Parkland Dedication Ordinance to donate parkland to the City. The Ordinance ensures new developments provide parkland for new Austin residents but, the City has not approved CIP bonds to develop the new park. To resolve the dilemma, the Parks and Recreation Department (PARD) and the owner, Ben Franklin Savings, explored an alternate form of compliance with the Ordinance. Instead of dedicating 46 acres of undeveloped parkland, Ben Franklin Savings agreed to give 22 acres, plus park improvements equal to the value of the remaining acreage (\$750,000). The Parkland Dedication Ordinance allows compliance by a combination of land and improvements. The contribution of improvements as well as land results in a usable park far in advance of the expected CIP funding cycle, and at no construction cost to the City.

On July 13, 1989 the City Council approved negotiation of a Community Facilities Agreement for the construction and dedication of land and park improvements in the Lantana subdivision. PARD and Ben Franklin Savings have negotiated a contract requiring Ben Franklin Savings to construct park improvements to City specifications, worth \$750,000 in Lantana Park. Ben Franklin Savings agreed to deposit \$750,000 with the City and draw upon the fund as the improvements are completed. The land and facilities will be dedicated to the City upon acceptance. The project includes a junior Olympic size swimming pool, bathhouse, two tennis courts, a basketball court, and associated landscaping and parking facilities. The draft Community Facilities Agreement is attached for your review.

PARD is supportive of the project because it will fill a need for recreational facilities in the park deficient Oak Hill area. The closest pool is 6 1/2 miles away at Dittmar Park, or at Garrison Park, 5 1/2 miles away. In addition, PARD would like to encourage developers to build park facilities to serve growing areas. Ben Franklin Savings' architects, working closely with PARD, have produced construction documents that are sensitive to the maintenance obligations to be assumed by PARD.

At this time, the construction documents have been reviewed and approved by PARD, the \$750,000 is ready for deposit with the City, and a contractor has been hired by the developer to begin construction. After approval of the contract, construction is scheduled to begin immediately; the facilities will be opened to the public by the swimming season of 1991.

Ben Franklin Savings is controlled by the Resolution Trust Corporation (RTC), which remains supportive of this project and is ready to provide the \$750,000 funding. However, should RTC suddenly decide otherwise, funding for the construction of Lantana Park could be withdrawn. Additionally, the construction bids are effective until January 1, after which the project must be rebid.

During preparation of the FY 1990-91 Operating Budget, it appeared the RTC would not approve funding for the park this year. In October, development funding was released to Ben Franklin Savings, but maintenance funding for the park was not included in the PARD Operating Budget, approved in September. Responding to the lack of PARD funds, Ben Franklin Savings has agreed to pay for park grounds maintenance from the time the pool is opened in June until October 1991, giving PARD time to secure additional budgetary funding in FY 1991-92. Aquatic operational and utility costs between June and October 1991 are not covered by Ben Franklin Savings. PARD will need \$26,537 in additional operating funds to open the swimming pool this summer. I will request supplemental funding to cover this cost.

Beginning in FY 1991-92, the full-year cost of Lantana Park will be \$44,037, including the \$26,537 pool cost plus an additional \$17,500 for the 12-months grounds maintenance cost (mowing, litter pickup, horticulture, restroom cleanup, etc.). I will request a \$44,037 program change for the FY 1991-92 PARD operating budget to cover the addition of Lantana Park.

Recommendation

I am very supportive of this much-needed project, and I recommend your approval of the Community Facilities Agreement, with the understanding that I will request \$26,537 in supplemental funding from the City's ending balance or other sources to maintain the pool during the remainder of FY 1990-91. If no additional funding is made available, there would be an impact on the PARD operating budget. Postponing construction of the park is not an advisable option since the RTC funding could be withdrawn, the parkland dedication could be jeopardized, and the Oak Hill community will not be sympathetic if the City delays a developer-donated pool.

Carolyn Nelson

for

Manuel A. Mollinedo, Director
Parks and Recreation Department

MAM:CF:SS

COMMUNITY PARK FACILITIES AGREEMENT

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TRAVIS §

THIS COMMUNITY PARK FACILITIES AGREEMENT ("Agreement") is made by and between the CITY OF AUSTIN, a municipality in the State of Texas ("City"), and REALTEX FUNDING CORP., a Texas corporation ("Developer").

WHEREAS, the Developer is the owner of 888 acres of land, more or less, situated in Travis County, Texas, previously locally known as Patton Ranch and currently being developed under the name of Lantana ("Lantana"); and

WHEREAS, the Developer had previously designated two (2) certain tracts out of Lantana, both of which are more particularly described by metes and bounds on Exhibit "A." attached to and incorporated into this Agreement by reference for all purposes, to be zoned, dedicated, and used as park land ("Former Park Tracts"); and

WHEREAS, the City of Austin Parks and Recreation Department ("Parks Department") has requested that, in lieu of receiving the Former Park Tracts by dedication, a different tract ("New Park Tract") be designated, appropriately zoned, and dedicated by Developer as park land, which New Park Tract is more particularly described by metes and bounds on Exhibit "B." attached to and incorporated into this Agreement by reference for all purposes; and

WHEREAS, in addition to designating and acquiring zoning for the New Park Tract, the Parks Department has requested, pursuant to Section 13-2-450 et seq. of the Austin City Code of 1981, which ~~provides for the development of "facilities in partial fulfillment~~ of required park land dedication," that the Developer construct certain park facilities and improvements on the New Park Tract in lieu of dedicating the Former Park Tracts and in complete satisfaction of all of the Developer's obligations under Section 13-2-450 et seq. of the Austin City Code and any other City ordinance, regulation, or policy requiring dedication of park land for all of Lantana; and

WHEREAS, in order to provide park land and recreational facilities for the Lantana community and to accommodate the Parks Department's requests, the Developer has agreed to designate and zone the New Park Tract for park and recreational use and to construct the improvements requested, and, in exchange, the Former Park Tracts will be promptly rezoned for appropriate uses; and

WHEREAS, the City and the Developer have reached an agreement regarding the dedication and improvement of the New Park Tract and the rezoning of the Former Park Tracts, and desire to set forth their agreement in writing.

NOW, THEREFORE, for and in consideration of these premises, TEN AND NO/100 DOLLARS (\$10.00) paid to the Developer by the City, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Developer and the City covenant and agree as follows:

1. New Park Tract Compliance. The Developer represents to the City that the New Park Tract and the Improvements (defined in Section 4 below) to be constructed thereon will comply with all applicable city, county, state, and federal laws and regulations, including, but not limited to, Chapter 13-2 of the Austin City Code of 1981, and all other applicable site development and environmental ordinances, rules, and technical manuals of the City.

2. Escrow of Deed and Dedication of Park Land. Upon execution of this Agreement, Developer shall execute and deliver a special warranty deed (the "Deed"), in form acceptable to the City, to the City of Austin Legal Department. The Deed will convey all of Developer's right, title, and interest in the New Park Tract and the Improvements to the City for use as park land. The Deed will be held in trust by the City of Austin Legal Department. The Deed will convey all of Developer's right, title, and interest in the New Park Tract and the Improvements to the City for use as park land. The Deed will be held in trust by the City of Austin Legal Department and not recorded until the first to occur of the following: (i) Developer's completion of the Improvements and the City's approval of construction of the Improvements, as set out in

Section 9(ii), which shall in no event be later than final subdivision plat approval; or (ii) the City takes action to terminate this Agreement pursuant to Section 5 of this Agreement.

3. Rezoning of Former Park Tracts. Parks Department shall not oppose any rezoning of the Former Park Tracts from "P," its current zoning designation, to an appropriate use, as that use is determined by the City's Planning Commission and City Council and is thereafter approved in the usual zoning process.

4. Public Improvements. The Developer agrees to improve the New Park Tract by constructing certain park facilities and amenities, including a swimming pool, bath house, one basketball court, two tennis courts, sidewalks, landscaping, and parking spaces, as those facilities and amenities are depicted on Exhibit "C," attached to and incorporated into this Agreement by reference for all purposes ("Improvements"). The Developer will construct the Improvements in accordance with the Approved Construction Plans, defined in Section 5 below. It is understood and agreed by both parties that the Developer will not be required to incur Improvement Costs, defined in Section 6 below, in excess of Seven Hundred Fifty Thousand and No/100 (\$750,000.00) and in no event will the City make any Written Objection, defined in Section 5 below, or take any other action, which would be based upon or require the Developer to incur Improvement Costs in excess of \$750,000.00. The Developer shall retain a competent architect and/or engineer ("Architect"), of its choosing, to prepare the appropriate plans, specifications, and other instructions required to construct the Improvements. The Developer agrees to engage adequate independent third party field inspection personnel to assure an acceptable level of quality control. As a condition to the City's approval of construction of the Improvements, the Developer will be required to have an independent third party inspector certify that the construction work meets the City's standards. As a condition to the City's approval of construction of the Improvements, the Developer will be required to certify that the construction work meets the City's standards, as those

standards are set forth in City ordinances, rules, and technical manuals. Within ninety (90) days after the completion of the Improvements, the Developer shall supply the City with a complete set of "as built" plans.

5. Approved Construction Plans. Within sixty (60) days of the execution of this Agreement, the Developer will submit preliminary plans, specifications, and other instructions required to construct the Improvements (collectively, "Plans") to the City. The City will have a period of thirty (30) days from its receipt of the Plans ("Review Period") during which it shall have the right to examine the Plans. At any time during the Review Period, the City may, but need not, deliver to the Developer written notice of any objection to the Plans ("Written Objection"). If the City does not deliver a Written Objection during the Review Period to the Developer, any defect or objection to the Plans shall be deemed accepted by the City, and the Plans, in their entirety, shall be deemed approved ("Approved Construction Plans"). If, during the Review Period, the City delivers to the Developer a Written Objection, the Developer may either (i) change the Plans so as to cure the Written Objection within thirty (30) days; or (ii) not cure the Written Objection. Developer must, within ten (10) working days of receipt of the Written Objection, send the City written notice of its election to either cure or not cure the Written Objection ("Developer's Response"). If Developer elects to cure the Written Objection, Developer shall submit amended Plans to the City for review and approval. The City shall send written notice of its approval or disapproval of such amended Plans within twenty (20) working days of its receipt thereof. If the City fails to send such notice within the twenty (20) day period, the amended Plans shall be deemed approved. If Developer elects not to cure the Written Objection, the City is entitled to: (i) retain the cash deposit for construction of the Improvements by giving written notice to the Developer within ten (10) working days after its receipt of the Developer's Response; and (ii) record the Deed, as permitted under Section 2 above, thereby conveying the New Park

Tract to the City. The date on which the Plans are approved, as provided in this Section 5, shall be defined as the "Approved Construction Plan Date."

6. Responsibility for Costs. The Developer agrees to pay all Improvement Costs (defined below) incurred in constructing the Improvements, but in no event to exceed Seven Hundred Fifty Thousand And No/100 Dollars (\$750,000.00). Improvement Costs shall be defined as the sum of all labor costs, material costs, design costs, engineering costs, legal fees, inspection fees, insurance costs, permit fees, capital recovery fees and any other costs incurred in connection with constructing the Improvements. It is understood and agreed, however, that Improvement Costs shall not include any internal overhead or management fees or expenses incurred by the Developer which fees and expenses will be paid by the Developer.

7. Fiscal Security: Cash Deposit. The Developer shall be required to deliver to the City, within ten (10) business days of the date of commencement of this Agreement, Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) in cash, to be deposited with the City of Austin in accordance with this Agreement. The \$750,000.00 amount represents one hundred percent (100%) of the estimated cost of the Improvements. For purposes of reducing the Fiscal Security only, the Improvements have been divided into the phases ("Phases"), as set out in Exhibit "D." attached to and incorporated into this Agreement by reference. Procedures for reducing the amount of the Cash Deposit as phases of the Improvements are completed are set out in Subparts (ii) of this Section 7. The Cash Deposit shall be delivered to the City to be ~~deposited by the City in one or more interest-bearing accounts~~ commonly used for such purposes. All interest accruing on the Cash Deposit shall be the property of the Developer. Draws on the Cash Deposit and distributions out of the Cash Deposit shall be made in accordance with this Agreement.

(i) Conditions of Draw on Cash Deposit. The City may draw on the Cash Deposit in the event the Developer

fails to construct the Improvements in accordance with Section 4 of this Agreement. The City shall provide written notice of default to the Developer, which notice shall include a specific description of the default in addition to a statement that the City intends to perform some or all of the Developer's obligations under Section 4 for specified Improvements if the default is not cured. Notice shall be given no less than twenty (20) days prior to the City drawing on the Cash Deposit, unless, in the reasonable opinion of the City, the default creates an immediate and substantial harm to the public health or safety, in which case the notice shall state why the default creates an immediate and substantial to the public health or safety, and shall be given no less than five (5) days prior to the time the City draws on the Cash Deposit. The City shall be entitled to draw on the Cash Deposit in an amount it considers necessary to perform Developer's obligations under Section 4 for any Improvement it states its intent to construct or complete in accordance with the standards and specifications for such Improvement. The Developer hereby grants to the City, its successors, assigns, agents, contractors, and employees, a non-exclusive right and easement to enter the Property for the purposes of constructing, maintaining, and repairing such Improvements.

(ii) Reduction in the Cash Deposit. After the approval of any Phase, the amount which the City is entitled to draw on the Cash Deposit shall be reduced by an amount equal to ninety percent (90%) of the estimated cost of the approved Phase, as shown on Exhibit "D." For purposes of this Section, inspection and approval of construction of a Phase will be done in accordance with Section 10(i), below. Upon completion of a Phase, at the written request of Developer, and provided the Developer is not then in default under this Agreement, the City

shall deliver to the Developer: (i) a reduction letter verifying the approval of construction of the Phase and documenting that the Cash Deposit has been reduced by stating the balance of the Cash Deposit remaining after the reduction required by the first sentence of this Paragraph; and (ii) a check for the amount of the reduction to the Cash Deposit.

8. Completion of Work. The Developer shall complete all work required by Section 4 of this Agreement in accordance with the Approved Construction Plans, which plans and specifications are incorporated into this Agreement for all purposes, on or before the first anniversary ("Completion Date") of the effective date of this Agreement ("Commencement Date"). An extension of time to complete all work required by this Agreement may be granted by the City for good cause shown. All work shall be subject to the approval of the City and, when and if necessary, any other governmental agency having jurisdiction.

9. City Approval of Construction of Improvements. During and after construction of the Improvements, the City of Austin will be entitled to inspect construction to ensure that it is in compliance with the Approved Construction Plans and to confirm completion and approval of construction of Phases.

(i) Interim Inspection and Approval of Construction of Phases. The City agrees to inspect the Improvements during construction. When inspection indicates that a Phase has been completed in accordance with City standards and specifications and the Approved Construction Plans, the City agrees to issue the required certification to permit a reduction in the Fiscal Security in accordance with Section 7, above.

(ii) Substantial Completion and Final Acceptance. Upon substantial completion of the Improvements, the Developer will deliver to the City written notice that the Improvements have been substantially completed ("Substantial Completion Notice"). Within ten (10) days of Substantial Completion

Date, the City may, but need not, deliver a written "punch list" of items it believes necessary to complete the Improvements in accordance with the Approved Construction Plans. Upon completion of the Improvements, the Developer will deliver to the City written notice ("Final Completion Notice") that the Improvements have been completed in accordance with the Approved Construction Plans. Within ten (10) days of receipt of the Final Completion Notice, the City shall give the Developer written notice of any items on such "punch list" not adequately completed or be deemed to have approved completion of the items listed thereon. After completion of all items in compliance with the Approved Construction Plans, the City will then approve construction of the Improvements within ten (10) days, as evidenced by its issuance of a Letter of Acceptance and issuance of a Certificate of Occupancy. The City agrees to maintain the Improvements beginning on the date it accepts dedication of the New Park Tract, as set out in Section 2, above. Upon issuance of the Letter of Acceptance, the City shall promptly release and deliver to Developer the remaining balance of the Cash Deposit plus accrued interest, as applicable. The Developer shall execute all necessary documents as required by the City to evidence dedication of the New Park Tract and Improvements thereon to the City. Upon acceptance of the dedication of the New Park Tract, as set out in Section 2, above, the Improvements shall become public property without further notice or action.

~~10. Inspection. The Developer hereby grants the City, its agents, employees, officers, and contractors a right of entry and license to enter the New Park Tract to perform such inspections it deems appropriate during the development of the New Park Tract.~~

11. Warranty. The Developer warrants all work required to be performed by it against poor material and faulty workmanship for a period of one (1) year after its completion and acceptance

by the City and agrees to assign all warranties it receives from contractors to the City to effectuate same.

12. Environmental Control. The Developer shall comply with all applicable erosion control methods addressed in the City's Erosion Control Manual, as well as such other applicable regulations of the City, e.g. site restoration, for the prevention of damage to adjacent property and the control of surface water run-off.

13. City's Remedies. If the Developer does not satisfactorily complete the Improvements as required by this Agreement, the City may (i) draw on the Cash Deposit as provided in Section 7, (ii) record the Deed as provided in Section 2, and (iii) at its option, complete the work itself or contract for the completion of the work. The Developer's financial obligation for construction of the Improvements and any costs incurred by the Developer in connection with construction of the Improvements, shall not exceed Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00).

14. Lantana Park. Upon execution of this Agreement, the City agrees to name the New Park Tract and the Improvements "Lantana Park".

15. Miscellaneous.

(A) This Agreement shall be binding upon the parties, their heirs, successors and assigns. Developer shall not assign or transfer any interest in this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld.

(B) The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing and signed by the parties. The City's failure to promptly take legal action to enforce this Agreement shall not act as a waiver or release.

(C) This Agreement shall run with the land and may be recorded in the deed records of Travis County, Texas.

(D) This Agreement shall be governed by the laws of the State of Texas.

Venue for any lawsuit concerning this Agreement shall be in the City of Austin, Travis County, Texas.

16. Severability. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid by a court of competent jurisdiction, such decision shall not effect the validity of the remaining portion of the Agreement.

17. Release. Upon approval of construction of the Improvements, the City agrees to issue a letter releasing the Developer, its successors and assigns, and both the New Park Tract and the Former Park Tracts, from all the provisions of this Agreement, except any of the Developer's obligations under the warranty provision set forth in Section II of this Agreement.

18. Designation of City Representative. The City hereby designates the Director of the Parks and Recreation Department ("Director") as its representative authorized to act on the City's behalf with respect to this Agreement.

19. Contract as Entire Agreement. This Agreement constitutes the entire agreement between the parties. Any previous agreement, assertion, statement, understanding, or other commitment before the date of this Agreement, whether written or oral, shall have no force or effect. No modification of this Agreement shall have any legal force or effect unless properly executed in writing by the parties and approved by the City Council.

20. Notices. All official communications and notices required to be made under this Agreement shall be deemed made if sent postage prepaid to the parties at the addresses set forth below, unless otherwise specified elsewhere in this Agreement.

To the City:

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

To the Developer:

Realtex Funding Corp.
901 South Mopac, Suite 1-410
Austin, Texas 78746

IN WITNESS WHEREOF, this Agreement is executed this ____ day
of _____, 1990.

DEVELOPER:

REALTEX FUNDING CORP., a Texas
corporation

By: Gary L. Wolf
Gary L. Wolf, President

CITY:

CITY OF AUSTIN, a municipality in
the State of Texas

By: Camille Cates Barnett, Ph.D
City Manager

APPROVED AS TO FORM:

Raul Calabrese
Asst. City Attorney

Exhibit C LANTANA CITY PARK

Lichter/Jamson & Associates, Inc.
QUALITY PERSONNEL **PROVEN** **RESULTS**
 200 EAST 10TH ST., SUITE 400, ANAHEIM, CA 92805-1000, TEL: 714-939-0000



MEMORANDUM

TO: Parks and Recreation Board Members

FROM: Manuel A. Mollinedo, Director
Parks and Recreation Department

DATE: December 10, 1990

SUBJECT: Caprock PUD Land Swap

At their November 29, 1990 meeting, the City Council approved on first reading Planned Unit Development (PUD) zoning for the Caprock development next to Spicewood Springs Park, on the condition that the developer will exchange part of his land for the park. The land swap must be approved by the voters and is scheduled for the May ballot. The specific boundaries of the land to be traded must be approved by the Council at the required second and third readings of the zoning request.

Parks and Recreation Department staff has been instructed to develop a land swap proposal, in discussions with the developer. In their discussion, the Council mentioned the value of the realigned park site as a buffer between the neighborhood and the Caprock development.

At your December 10 meeting, I will present a site plan explaining the tentative land swap proposal for your review and concurrence.

Carolyn Nelson

for

Manuel A. Mollinedo, Director
Parks and Recreation Department

MAM:SS



MEMORANDUM

TO: Parks and Recreation Board Members

FROM: Manuel A. Mollinedo, Director
Parks and Recreation Department

DATE: December 4, 1990

SUBJECT: Twin Rocks Development

At their December 6 meeting, the City Council is scheduled to consider rezoning an undeveloped property on Loop 360 at Bull Creek. The multi-family (MF-2) use is requested with the offer to donate the 100-year floodplain to the City as a greenbelt. Currently, the Bull Creek Greenbelt adjoins the tract and extends approximately one mile to the north. The greenbelt is undeveloped, pending approval of funding for trails. Bull Creek District Park is located on the creek approximately one-quarter mile south of the Twin Rocks tract.

Dedication of the Twin Rocks floodplain will establish a continuous two-mile greenbelt corridor from Lakewood Drive to Spicewood Springs Road.

Carolyn Nelson

for

Manuel A. Mollinedo, Director
Parks and Recreation Department

MAM:SS