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**WALLER CREEK DISTRICT**

**JOINT DESIGN, DEVELOPMENT, MANAGEMENT AND  
OPERATION AGREEMENT**

**BY AND AMONG**

**CITY OF AUSTIN, TEXAS**

**WALLER CREEK LOCAL GOVERNMENT CORPORATION**

**AND**

**WALLER CREEK CONSERVANCY**

*April 16*, 2014

**EXECUTIVE SUMMARY OF**  
**JOINT DEVELOPMENT AGREEMENT**  
**BETWEEN THE WALLER CREEK CONSERVANCY (“Conservancy”), CITY OF**  
**AUSTIN (“City”), AND WALLER CREEK LOCAL GOVERNMENT CORPORATION**  
**(“LGC”)**

**Purpose of Agreement:**

- The Agreement documents a long-term relationship between the Parties to promote and expand the public use of the Waller Creek District (“District”) and to develop the District consistent with the design plan to be approved by the City (“Design Plan”).
- The Parties will design, build, operate, and maintain a series of five park projects and related infrastructure and trails.
- The City will maintain its ownership of the City-owned land and improvements within the District.
- The Agreement describes the process by which each project will be designed, funded, and constructed. It also contains related agreements, including the operating agreement, council-approved Design Standards, and council approved Design Guidelines.

**Role of Each Party:**

**Conservancy**

- The Conservancy operates as conservancies do in Houston and other cities throughout America, and it will act as the steward for the District park land, public space venues, and trails.
- The Conservancy will provide funding for certain Projects and lead the design and construction of some improvements.
- Ultimately, the Conservancy will operate and maintain the parks, public spaces, and venues at a high level that taxpayer funding alone cannot achieve.

**City**

- The City’s role will be to (i) provide design and construction funding for Projects consistent with the Agreement and the Design Plan, as approved by City Council, and (ii) fund a portion of the operation of Projects subject to approval as part of the annual budget process.
- The City will be responsible for (i) improvements within the right-of-way, (ii) drainage projects such as the Waller Creek Tunnel, and (iii) customary police, fire, and emergency services within the District.

**LGC**

- The LGC, created in April 2011, provides a formal mechanism for ongoing communication and cooperation under this long-term relationship among the Parties.
- The LGC will conduct open meetings.
- The LGC will review the work within the District that is done by the City and the Conservancy.

- To the extent that City or LGC funds are used, the LGC will approve each Project and the operations budget of the Conservancy.
- The LGC will operate with a budget approved by City Council and will provide periodic updates on the status of the Projects to Council.
- The LGC may issue debt to assist with funding of Projects.

**Funding:**

City

- The City has expended funds for (i) the Design Competition, (ii) one-time costs for certain staff and consultants for the Conservancy, (iii) shared costs for a business process consultant, (iv) the Waller Creek Tunnel project, and (v) legal fees to draft the Agreement.
- The City has committed funds to be spent, such as voter approved general obligation bond funds for stream bank and trail improvement and for Waterloo Park and Palm Park.
  - The Agreement will have a schedule of City funds that have been identified as a potential sources for funding Projects. Those funds not already appropriated for use in the District must be reviewed and approved by City Council as part of the annual budget process.
- To the extent operating funds are needed from the City in future years, those requests will be considered by City Council as part of the annual budget process.

Conservancy

- The Conservancy has expended funds for (i) the Design Competition, (ii) staff costs for the Conservancy, and (iii) special events to begin the fund-raising process and to encourage community interest in the District.
- The Conservancy will be responsible for the costs of maintaining and operating the improvements after they are completed in excess of any contribution the City may make from annually appropriations that would have funded PARD's maintenance of park land in the District.

**Term of the Agreement:**

The Agreement will be for 20 years with options for multiple 10 year renewals.

**Steps for Approval of Projects:**

- The Agreement has a process to approve a proposed project, and the plan for each project is called a "Phase Plan". After approval of a Phase Plan, work on a Project can commence. There may be some Projects that have more than one Phase Plan (e.g., for design, as well as construction or multiple phases of construction).
- The Conservancy and the City each have the ability to propose projects that fit within the Design Plan.
- Each Phase Plan will include the budget, process for design, procurement, and implementation of a proposed Project.
- A Phase Plan will not be approved unless it identifies the sources of funding to complete the phase of a proposed Project.

- Before each Project moves from design to construction, the Phase Plan will contain a maintenance and operations plan where sources of funding are identified.
- Any substantial changes to the Agreement or the Design Plan will come back to City Council for approval.

**Procurement Requirements:**

- Procurement will be done as required by State law, applicable City Code provisions, and applicable City resolutions.

**Construction Standards:**

- Any construction performed by contractors under the Conservancy will meet or exceed the City's construction requirements for improvements.
- There are Design Guidelines for the District in the Agreement that are similar to other guidelines adopted by the City; these guidelines are not zoning. They provide guidance for compatible design and construction in areas adjacent to the District. They are similar to the Downtown Design Guidelines.

**Operation Considerations:**

- The Conservancy, in consultation with the City and the LGC, will be responsible for approving, accepting, displaying, and maintaining any public art within the District. The City will waive the requirements of the City Code related to public art.
- The Conservancy will be responsible for branding and advertising the District within guidelines in the Agreement.
- The Conservancy will be responsible for (i) obtaining donations and other funding for design and construction to the extent the costs exceed the funds available from the City, and (ii) operations and maintenance costs in excess of the contribution from the City. Fundraising will be conducted so that it does not jeopardize any tax-exempt funding used for any Projects.
- The City will waive the naming requirements of the City Code, excluding names of existing parks and facilities that are already named, and naming will comply with requirements similar to those in other public-private partnership agreements.
- The Conservancy will take over operations and maintenance of the improvements as each Project is completed and they will meet or exceed the City's standards. Any City contribution for maintenance will be made at that time.
- The Conservancy will coordinate special events within the District with the City.

**Fees and Charges:**

- The Conservancy will be responsible for setting fees for concessions and rentals of space within the District.
- The Conservancy will develop a proposed fee schedule, and it is contemplated PARD or a City designee will review these fees on behalf of the City and approve the schedule unless PARD determines the fees are unreasonable.
- The City will have the right to review the books and records of the Conservancy. The Conservancy will have its own annual audit.

- The Conservancy and the City will set aside a certain number of days for the free use of the District by the City for public functions and City sponsored events.
- The Conservancy and the City will develop a plan for activities and use of the District by community groups, such as non-profits, children, and the elderly that includes free or reduced rates.
- All fees received by the Conservancy for use of the facilities will be used to support the operations and maintenance of improvements in the District.

**Reporting Requirements:**

- The LGC will provide written progress reports on a regular basis to Council to describe the status of all ongoing Projects.

**Dispute Resolution and Termination:**

- There will be a process for settling disagreements between the Parties that includes mediation.
- There is a mechanism for terminating the Agreement.

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Schedule 3.01C	Description of City Sources of Funds
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## JOINT DESIGN, DEVELOPMENT, MANAGEMENT AND OPERATION AGREEMENT

This JOINT DESIGN, DEVELOPMENT, MANAGEMENT AND OPERATION AGREEMENT (this “**Agreement**”) is made and entered into as of the Effective Date (as defined below) by and among the following parties: (i) **CITY OF AUSTIN, TEXAS**, a Texas home rule city and municipal corporation (the “**City**”); (ii) **WALLER CREEK LOCAL GOVERNMENT CORPORATION**, a local government corporation created pursuant to Chapter 431 of the Texas Transportation Code (the “**LGC**”); and (iii) **WALLER CREEK CONSERVANCY**, a Texas non-profit corporation (the “**Conservancy**”).

### DEFINITIONS AND INTERPRETATIONS

Each term or phrase used in this Agreement in which the first letter of each word is capitalized has the following meanings, unless the text says otherwise.

“**Affiliate**” means a Person that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person, or is a son, daughter, spouse, parent, sibling or in-law of the specified Person. In determining affiliation, the City shall consider all appropriate factors, including common ownership, common management, and contractual relationships. With respect to the City or the Conservancy, the LGC is expressly deemed not to be an Affiliate.

“**Agreement**” means this Joint Design, Development, Management and Operation Agreement, as it is amended, modified or supplemented from time to time after this date by a written document signed by the City, the LGC and the Conservancy, including amendments by Phase Plans.

“**Applicable Law**” means any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, including, without limitation, all applicable zoning ordinances and building codes, flood disaster laws, health laws and environmental laws and regulations.

“**Approval**” when this Agreement states that an action or document is subject to a Party’s approval, that approval will not be unreasonably withheld unless it is stated expressly to the contrary.

“**Austin Values**” means those values reflected in Imagine Austin.

“**Automatic Termination Event**” means each event described in Section 15.01.

“**Bonds**” means the term described in Section 11.06.

“**Business Day**” means any day other than a Saturday, a Sunday or a public or bank holiday or the equivalent for banks generally under the laws of the State of Texas. Use of the word “**day**,” as opposed to Business Day, means calendar day.

“**Capital Repair Funds**” means the funds described in Section 11.02.

“**City**” means the term described in the introductory paragraph of this Agreement.

“**City Charter Limit**” means the expenditure limit set forth in Article VII, Section 15 of the City Charter, as amended or replaced from time to time, and as adjusted pursuant to the terms of Article VII, Section 15, under which the city manager shall have the authority to contract for expenditures without further approval of the City Council.

“**City Code**” means the ordinances of the City of Austin, Texas, as codified in the City Code.

“**City Contribution**” means the payments required to be made by the City to the Project Disbursement Fund Account pursuant to Section 3.01C of this Agreement and any Phase Plans executed and delivered by the Parties after the Effective Date.

“**City Council**” means the City Council of the City of Austin, Texas.

“**City Improvements**” means the improvements and facilities in the District, other than public utilities, that the City would undertake in the normal course to provide and which will not be less than what is essential to ensure such function.

“**City Ordinance**” means Ordinance No. 20130620-021 authorizing this Agreement, adopted June 20, 2013.

“**City Representative**” means the term described in Section 19.03.

“**Code**” means the Internal Revenue Code of 1986, 26 U.S.C.S §101, et seq., as amended.

“**Common Goals**” means the term described in Section 2.01A.

“**Conceptual Design Documents**” means drawings based on the Design Plan that establish the conceptual design of a Public Improvement Project illustrating the scale and relationship of the components of the Public Improvement Project. The Conceptual Design Documents shall include a conceptual site plan, conceptual floor plans and roof plan, conceptual (color) building elevations and relevant building sections showing above ground improvements, conceptual landscape, and conceptual grading and drainage plan. At the Parties’ option, the Conceptual Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction material shall be noted on the drawings or described in writing.

“**Conservancy**” means the term described in the introductory paragraph of this Agreement.

“**Conservancy Contribution**” means the payments required to be made by the Conservancy to the Project Disbursement Fund Account pursuant to Section 3.01B of this Agreement and any Phase Plans executed and delivered by the Parties.

“**Conservancy Representative**” means the term described in Section 19.01.

**“Construction Contract”** means each contract for construction of a Public Improvement Project that is in accordance with the Contract Documents for that Public Improvement Project and that has a total contract price with appropriate contingency reserves permitted by the approved Project Budget.

**“Construction Manager at Risk”** means the construction manager with whom the City, the LGC, or the Conservancy executes a contract for construction of each Public Improvement Project and any replacement of such construction manager.

**“Contract Documents”** means the architectural, engineering and other drawings, project manual, addenda, change orders, and other documents for the design and construction of a Public Improvement Project.

**“Contracts”** means all contracts entered into by the City, the LGC, or the Conservancy relating to the Projects, including all Construction Contracts.

**“Contractors”** means the contractors, design and engineering professionals, and vendors selected and engaged by the City, the LGC, or the Conservancy, whichever is the Managing Party, relating to a Project.

**“Contributions”** means the City Contributions and the Conservancy Contributions.

**“Core Project”** means the term described in Section 3.04D.

**“Cost Overruns”** means the amount of additional funds required to complete a Project that exceed the approved Project Budget for that Project.

**“Current M/WBE Program Ordinance”** means the applicable standards and principles of Chapters 2-9A through 2-9D of the City’s ordinance for M/WBEs in effect as of the Effective Date.

**“Design Plan”** means the concept design plan for the Public Improvement Projects prepared by the Project Landscape Architect dated September 12, 2012, as amended and modified June 20, 2013 and which has been approved by the Council, the City, the LGC, and the Conservancy pursuant to Resolution 20121018-068 and shown on **Exhibit “E”** attached to this Agreement.

**“District”** means the area of the City referred to as the Waller Creek District, which is shown on **Exhibit “A”** attached to this Agreement.

**“District ROWs”** means the total surface area, and the area above and below the surface, between property lines that is dedicated, deeded, reserved by plat or otherwise owned or controlled by the City, for use by the public for right of way for pedestrian, rail, or vehicular travel (including bicycle travel) within the District, but shall not include trails and sidewalks that are not a part of a transportation system and trails and sidewalks whose purpose is for recreation or to tie together Projects only.

**“Effective Date”** means the date on which this Agreement has been duly executed by the

last Party to sign this Agreement as evidenced by the date below the signature of the last Party to sign.

**“Environmental Condition”** means any Environmental Event that occurs after the Effective Date.

**“Environmental Event”** means (i) the spill, discharge, leakage, pumpage, drainage, pourage, interment, emission, emptying, injecting, escaping, dumping, disposing, migration or other release of any kind of Hazardous Materials which may cause a threat or actual injury to human health, the environment, plant or animal life, (ii) the occurrence of any Environmental Proceedings pursuant to any Environmental Laws arising out of any of the foregoing, and (iii) any claims, demands, actions, causes of actions, remedial and/or abatement response, remedial investigations, feasibility studies, environmental studies, damages, judgments or settlements arising out of an Environmental Proceeding.

**“Environmental Laws”** means any and all federal, state and local statutes, laws (including common law tort law, common law nuisance law and common law in general), regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment, or to handling, storage, emissions, discharges, releases or threatened emissions, discharges or releases of Hazardous Materials into the environment, including ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment or disposal of any Hazardous Materials, including, but not limited to, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Federal Solid Waste Disposal Act (including, but not limited to, the Resource Conservation and Recovery Act of 1976), CERCLA, the Toxic Substances Control Act, the Hazardous Materials Transportation Act, the Federal Insecticide, Fungicide and Rodenticide Act and the Emergency Planning and Community Right-to-Know Act, and any other federal, state or local laws, ordinances, rules, regulations and publications and similar restrictions now or hereafter existing relating to any of the foregoing.

**“Environmental Proceeding”** means (i) any notice of any investigation, response action, spill, proceeding, whether executive, administrative or judicial, or litigation or litigation threatened in writing relating to Environmental Laws or other environmental matters concerning property insofar as such investigation, response action, spill, litigation, litigation threatened in writing or proceeding relates to such property; or (ii) receipt of any notice from any Person of: (a) any violation or alleged violation of any Environmental Law relating to any portion of any property in the District or any activity at the time conducted on any such property, or (b) the commencement of any clean-up, abatement or control pursuant to or in accordance with any Environmental Law of any Hazardous Materials on or about any such property or (c) any violation of any Applicable Laws or any harm to a Person or property in each case with respect to worker safety at or in connection with such property.

**“Event of Default”** means those events described in Section 15.02.

**“Final Completion”** means the date on which the Managing Party determines that all Work has been completed and final payment to Contractor will be made in accordance with the Contract Documents.

**“Fiscal Year”** means the City fiscal year – October 1<sup>st</sup> to September 30<sup>th</sup>.

**“Force Majeure Event”** means the occurrence and continuance of any of the following: labor disputes; casualties; acts of God, including all days of rainy weather in excess of the normal number of days of rainy weather for Austin, Texas, as reflected in the most recent publication of “Local Climatological Data” by the National Climatic Data Center; unusual delays in transportation or shipping; acts of war or terrorism; act of military authority; sabotage; or shortages of fuel, labor or building materials which could not reasonably have been avoided by anticipatory action by the affected party or its respective subcontractors, agents, or employees; or other delays due to causes beyond its or their control.

**“Foundational Articles”** means the term described in Section 3.03B.

**“Governmental Authority”** means the City and any federal, state and/or local agency, department, commission, board, bureau, administrative or regulatory body or other instrumentality having jurisdiction over the Projects or on which such an instrumentality relies for standards.

**“Governmental Function”** means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which a Governmental Authority is authorized or required to perform.

**“Hazardous Materials”** means (i) any substance, emission or material, defined, listed or specified in an Applicable Law as a “regulated substance,” “hazardous substance,” “toxic substance,” “pesticide,” “hazardous waste,” “hazardous material”, asbestos, or any similar or like classification or categorization under any Environmental Law, including for the following reasons: ignitability, corrosivity, reactivity, carcinogenicity or reproductive or other toxicity of any kind, or (ii) any products or substances containing petroleum, asbestos, or polychlorinated biphenyls.

**“Impasse”** means any disagreement between the City and the Conservancy under this Agreement as to any matter requiring their approval or agreement under this Agreement. However, an Impasse expressly shall not include any disagreement by the City and the Conservancy to enter into any Phase Plans.

**“Indemnitee”** means the term described in Section 14.02A.

**“Indemnitor”** means the term described in Section 14.02A.

**“LGC”** means the term described in the introductory paragraph of this Agreement.

**“LGC Representative”** means the term described in Section 19.02.

**“Limitations”** means the term described in Section 8.01.

**“Managers”** means any Persons retained by the Conservancy with respect to any O&M Projects.

“**Managing Party**” means the Party or Parties in the Phase Plan that is designated to be responsible for managing all or a portion of the work described in the Phase Plan.

“**Managing Party Indemnitees**” means the term described in Section 3.06O.

“**MBE**” has the meaning set forth in City Code Section 2-9A-4(31), as such meaning is amended, modified or replaced.

“**MOU**” means the term described in Recital G.

“**MVVA**” means the term described in Section 3.01A.

“**MVVA Contract**” means the term described in Section 3.01A

“**M/WBE**” means MBE and WBE business enterprises.

“**M/WBE Program Ordinance**” means the Current M/WBE Program Ordinance, as it may be amended or modified or replaced and which is in effect at the time of a Phase Plan and work on a Project commences.

“**Naming Parameters**” means the guidelines for naming rights for Public District Sites described in Section 12.03.

“**O&M Projects**” means, collectively, the operation and management of the Public District Sites.

“**Operating Expenses**” means the expenses and costs from the operation of the District, including, without limitation, expenses and costs paid to Managers; provided, however, that Operating Expenses shall not include the expenses and costs incurred by the Conservancy in connection with the development and construction of Public Improvement Projects or in connection with Private District Projects.

“**Operating Revenues**” means the revenues and income from the use or operation of the District, including, but not limited to, rents, ticket sales, nonrefundable deposits, and concessions. Operating Revenues do not include the revenues and income received in connection with the development and construction of Public Improvement Projects or in connection with Private District Projects, including, without limitation, any Contributions received by the City or the Conservancy with respect to either type of Project.

“**PARD**” means the Parks and Recreation Department of the City or such other department nominated by the City.

“**Parties**” means, collectively, the City, the LGC and the Conservancy and their respective successors and permitted assigns and in the singular, any one of them, but not third parties.

“**Party Proposing Project**” means the term described in Section 3.04A.

**“Payment/Reimbursement Request”** means the term described in Section 10.04A of this Agreement.

**“Payment Bond”** means a bond of a corporate surety licensed in the State of Texas, issued solely for the protection and use of those payment beneficiaries who have a direct contractual relationship with the LGC or the Conservancy or the City, the contractor, a subcontractor or a material supplier engaged in the construction of a Public Improvements Project, or their contractual assignees, in a penal sum equal to the penal sum of the related Performance Bond. A Payment Bond shall authorize payment for (A) labor used to carry out the work under the Construction Contract(s), (B) materials used or ordered, delivered for use, directly to carry out such work, (C) specially fabricated material, (D) rental and running repair costs for construction equipment used or required and delivered for use, directly to carry out the work at the worksite, and (E) power, water, fuel and lubricants used, or ordered and delivered for use, directly to carry out the work if such payments are authorized under the Construction Contracts. The form of the Payment Bond shall be in the form set forth in the City of Austin Public Works standard bid documents or such other form approved by the City.

**“Performance Bond”** means a bond of a corporate surety licensed in the State of Texas, issued for the benefit of the LGC, the City and the Conservancy in form acceptable to the Conservancy and the City, in an amount equal to the amount of the Construction Contract and being sufficient to fund the costs of substantial completion of the work described in such Construction Contract. The form of the Performance Bond shall be in the form set forth in the City of Austin Public Works standard bid documents or such other form approved by the City.

**“Permits”** means all permits, consents, approvals, authorizations, variances, waivers, certificates and approvals from all Governmental Authorities, quasi-Governmental Authorities, utility companies and insurance rating agencies.

**“Person”** means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity .

**“Phase Plan”** means the term described in Section 3.03A.

**“Phifer”** means the term described in Section 3.01A.

**“Phifer Contract”** means the term described in Section 3.01A.

**“Pledge”** means the written agreement of a private-sector donation by a Person to be paid to the Conservancy, at a later date, or in installments, permitted by this Agreement and described in the written agreement with the Person making the pledge.

**“Private District Projects”** means, collectively, (i) the development of land use rules, regulations and ordinances that govern the development, construction, zoning and use of the Private District Sites as described in Article 6, but which expressly excludes Public District Sites and District ROWs, and (ii) the work for such Private Districts.

**“Private District Sites”** means those portions of the District that are not Public District

Sites or District ROWs.

“**Project**” means collectively, Public Improvement Projects, Private District Projects and O&M Projects or any work performed under this Agreement or a Phase Plan that are consistent with the Design Plan.

“**Project Agreement Period**” means the term described in Section 3.04C.

“**Project Architect**” means the architectural firm selected by the Parties as the primary architect for the Public Improvement Projects, it being understood that with approval by the City other firms may be selected for the design and site planning of the Public Improvement Projects, including any local design firms retained by the primary architect or the Managing Party on an as-needed basis.

“**Project Budget**” means a budget of all Project Costs for a Project.

“**Project Costs**” means all costs and expenses incurred, or to be incurred, for a Project, including, expenses for architects, engineers, legal, accounting, financial and other third party consultants, land acquisition, preconstruction, permitting, construction, inspection and acceptance of work, furniture, fixtures and equipment, site development, onsite infrastructure and drainage, environmental remediation, utility relocation, construction oversight and management, pre-opening expenses, interest, Project contingencies for design, permitting, land acquisition and other components of the Project and capitalized costs such as procurement and debt cost of issuance. The Project Budget attached to the Phase Plan for the Project shall include an estimate of all Project Costs, and actual Project Costs may not exceed the Project Budget without the written consent of the City and the Conservancy.

“**Project Director**” means the term described in Section 2.01C.

“**Project Disbursement Fund Account**” means the account established pursuant to Section 10.01.

“**Project Engineer**” means an engineer that is required by Applicable Law to perform engineering work or to supervise civil improvements or public works projects that affect the public health or safety.

“**Project Landscape Architect**” means the landscape architectural firm selected by the Parties as the primary landscape architect for the Public Improvement Projects, it being understood that with approval by the City other firms may be selected.

“**Project Proposal**” means the term described in Section 3.04A.

“**Projects**” means one or more Project.

“**Public District Sites**” means those portions of the District that are either (i) owned by the City, including park lands, (ii) leased by the City as the tenant on a long-term ground lease basis, (iii) park land or conservation easements granted to the City, or (iv) designated by the Parties as Public District Sites pursuant to Phase Plans; provided, however, that the Public

District Sites do not include the District ROWs.

**“Public Improvement Projects”** means the entire design, planning, development and construction of improvements on Public District Sites.

**“Public Purpose”** means as defined by Applicable Laws.

**“Quality Standard”** means a standard mutually acceptable to the Parties and generally of similar standard of quality used in the design, construction and capabilities of a premier public amenity with a high level of design excellence consistent with the following premier public amenities (and any additions or replacements designated by the City): Atlanta’s Piedmont Park; Brooklyn’s Prospect Park; Chicago’s Millennium Park; Detroit’s Campus Martius Park; Houston’s Discovery Green Park; New York’s Central Park; Pittsburgh’s Forest Park; Portland’s Courthouse Square; and St. Louis’s Forest Park; provided, however, that in no event shall the Quality Standard be less than the standard adopted by the City.

**“Reserve Funds”** means an endowment fund maintained by the Conservancy to address potential funding deficits incurred in the operation and maintenance of the Public District Sites pursuant to this Agreement and which amounts shall be for the anticipated cost for a 24 month period for the applicable Project.

**“Responding Parties”** means the term described in Section 3.04A.

**“Response Notice”** means the term described in Section 3.04C.

**“Review and Approval or Consent Rights”** means the term described in Section 3.02A.

**“Reviewing Party”** means the term described in Section 3.02A.

**“ROWs”** see District ROWs.

**“Schedule”** means the written schedule that is a part of the Design Plan reflecting the agreed milestone dates for the completion of phases of the Design Plan and the schedule that is adopted as a part of a Phase Plan for deliverables from the Managing Party at critical times during design and construction phases of a Project, the funding, commencement and completion of Projects then subject to the terms of this Agreement (as supplemented by Phase Plans), as such schedule may be updated from time to time by the City and the Conservancy.

**“Significant Event Report”** means the term described in Section 20.04.

**“SMBR”** means the City’s Small and Minority Business Resources Department.

**“SMBR Compliance Period”** means the term described in Exhibit “G”.

**“Submitting Party”** means the term described in Section 3.02A.

**“Substantial Completion”** means the date on which (i) the Project Landscape Architect or Project Architect has certified as evidenced by a certificate of substantial completion, and the

Conservancy and the City have reasonably and in good faith agreed with the Project Landscape Architect's or Project Architect's certification, that all work in a particular Phase Plan is sufficiently complete in accordance with the Contract Documents so that the improvements may be used for the purposes for which they were intended; and (ii) all final Permits with respect to the construction of the work and use of the improvements have been issued. To the extent that a Public Improvement Project is a public works project, the work shall be directly supervised by a Project Engineer and the certifications required shall be signed by the Project Engineer.

“**TAG**” meant the Technical Advisory Group established from time to time by the City.

“**Term**” means the term described in Section 2.02.

“**Tunnel**” means the flood control tunnel along Waller Creek being constructed by the City as of the commencement of the Term.

“**Waller Creek**” means that creek partially located in the District commonly referred to as Waller Creek.

“**Waller District Design Guidelines**” means the standards described in Section 6.02.

“**WBE**” has the meaning set forth in City Code Section 2-9A(47) ), as such meaning is amended, modified or replaced.

“**Work**” means the physical construction work to be performed to complete the Public Improvement Projects.

## **ARTICLE 1 RECITALS**

A. The District is located in the City and is a prominent geographic feature that has helped to shape the historical evolution of the City.

B. The City is currently constructing the Tunnel within the District along Waller Creek, which when completed is expected to remove approximately 28 acres of property from the 100 year floodplain and facilitate the enhancement and revitalization of the District and the surrounding area to allow the reclaimed area to be developed.

C. Certain portions of the District have been blighted through years of being in the 100 year floodplain and not having sustained use or development.

D. The City is interested in seeking support to assist the City with the necessary work to design, develop, construct, operate and maintain the Public Improvement Sites in the District as a premier public amenity with a high level of design excellence and in the future to adopt land use regulations with respect to the Private District Sites consistent with the anticipated uses of the Public District Sites.

E. The Conservancy was formed on July 30, 2010 and raised a significant portion of the necessary funds to develop a comprehensive design of the District which has resulted in the

approved Design Plan for the District. The Conservancy has volunteered to support the City's efforts and is using the time and talent of its board to increase the community's awareness and backing for this vital amenity for the City. Specifically among other things, the Conservancy will endeavor to (i) facilitate and aid the City with respect to its enhancement and development of the District, (ii) raise funds from the community to help implement the Design Plan, (iii) defray costs of the landscaping and other amenities within the District, (iv) assist the City with developing proposed zoning and land use rules to be adopted to ensure the achievement and maintenance of the Quality Standards of the District, and (v) facilitate and aid the City with respect to the operation and maintenance of the District.

F. City Council approved and adopted Resolution No. 2010923-090 on September 23, 2010, directing the City Manager to explore a public-private partnership with the Conservancy for the financing, design, development, construction, management and operation of the District, including Waterloo Park and Palm Park located within the District, and recommend to City Council a structure of the potential roles and responsibilities of the City and the Conservancy, including an implementation schedule.

G. The City and the Conservancy entered into a Memorandum of Understanding dated April 28, 2011 ("**Original MOU**"), as amended May 26, 2011 ("**MOU Amendment**") and as amended effective March 21, 2013 by City Council approval on December 6, 2012 and February 14, 2013 ("**Amendment No. 1 and 2**") (collectively, the "**MOU**"), which governs the Parties' relationship to the day immediately preceding the Effective Date. The City provided a significant portion of the necessary funds to develop a comprehensive design of the District which has resulted in the approved Design Plan for the District.

H. City Council approved and adopted Resolution No. 20110428-014 on April 28, 2011, pursuant to which the City authorized the creation of the LGC in accordance with Chapter 431 of the Texas Transportation Code. The LGC was created to oversee the improvement of the District.

I. Pursuant to the MOU, the Parties are entering into this Agreement to memorialize the roles and responsibilities of the City and the Conservancy, including an implementation schedule of improvements for the District and to describe their respective rights and responsibilities with respect to the financing, design, development, construction, management and operation of the District. In addition this Agreement will memorialize the termination of the MOU and MOU Amendment as being superseded by this Agreement (but not Amendment No. 1 and 2 as contemplated by Section 2.03 and Section 3.01C).

J. The health, safety and general welfare of the people of the City are directly dependent upon the continual encouragement, development, growth and expansion of business, commerce, and tourism in the City. Attraction of business, commerce and tourism to the City as a result of the development of the District and its ancillary uses will be an important factor in the continued encouragement, promotion, attraction, stimulation, development, growth and expansion of business, commerce and tourism within the City. The development and promotion of the District will provide significant benefits to the general public.

K. In view of the foregoing, the City has determined that entering into this

Agreement is in the best interests of the City and the welfare of its residents, and in accord with valid public purposes, and the Conservancy has determined that entering into this Agreement furthers its pursuit of its charitable purposes.

L. Due to the efforts of the Conservancy significant benefits to the general public will be realized from the development and operation of the District under the Design Plan. The ongoing cooperation of the City and the Conservancy under this Agreement will promote the health, safety and general welfare of the people of the City from the development and promotion of the District.

**NOW, THEREFORE**, for and in consideration of the mutual obligations of the Parties described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

**ARTICLE 2  
PURPOSE; TERM; MOU**

**Section 2.01 Purpose; Roles of Parties.**

A. Purpose. The purpose of this Agreement is to continue the beneficial and cooperative working relationship between the Parties with respect to the District and the Projects, to establish the role of each Party in that relationship, to further the Parties' common goal of preserving, restoring designing, developing, enhancing, rehabilitating, repairing, improving, managing, operating and maintaining the District, promoting and expanding the use of the District by the public, and to govern the implementation of the Projects to achieve these results (collectively, the "**Common Goals**"). To that end, the City will work with the Conservancy when it negotiates existing agreements for use within the District to ensure consistency of operations and the Common Goals. The City will designate the primary department responsible for this review along with the members of the TAG.

B. The City's Role. The City's role in the Projects is generally that of (i) being the owner of most of the Public District Sites, which ownership shall be retained unless changed in accordance with Applicable Law, (ii) being the active Governmental Authority involved in the Projects, (iii) being a sponsor of the Common Goals to foster the Public Purpose, (iv) improving the District ROWs, (v) ensuring public funds spent for a public purpose, (vi) providing public money for the design and construction of City Improvements from the City Contribution, (vii) approving any budget for the LGC, and (viii) providing customary police, fire and emergency services within the District. Ownership of improvements made in the Public District Sites, unless otherwise agreed to by the Parties, will vest in the City. As set forth in the Operating Agreement, the City will continue its maintenance and operations of the park areas within the District and will transition that maintenance and operations to the Conservancy as Phase Plans are completed. Some Phase Plans may require ongoing maintenance from the City (e.g., improvements to the District ROWs). These responsibilities will be established in each Phase Plan.

C. The Conservancy's Role. The Conservancy's role in the Projects, unless delegated to the City or to the LGC in a Phase Plan, (i) is the management of certain design,

construction, operation, maintenance, community and public relations activities approved in a Phase Plan, and as set forth in the Operating and Management Agreement, (ii) to fundraise from the community and other available sources to support the Common Goals and to achieve the Public Purpose and (iii) to provide insight and information to the City and the LGC from the community and experts. The Conservancy shall employ a project director (the “**Project Director**”) to manage the design, planning and implementation of improvements in the District and to provide reports to the City on its efforts. Reports regarding Phase Plans shall be made in accordance with each approved Phase Plan on a schedule agreed to by the Parties. Reports regarding matters such as funding and operations shall be on a schedule mutually agreed to by the Parties, but not less than annually. These funding and operating reports shall be provided to the LGC and to PARD. The Conservancy will manage day to day operations as and when set forth in the Operating Agreement.

D. The LGC’s Role. The LGC’s role in the Projects is to: (i) oversee the improvement of the District, the Work under Phase Plans, the use of City or LGC funds for Projects, the use of City funds in the operations budget for the Conservancy, and the day to day operations of the District, (ii) carry out the decisions made by the City and the Conservancy generally with respect to the Common Goals and Public Purpose, (iii) be a Managing Party when designated in a Phase Plan, (iv) issue, from time to time, debt to assist with funding of Projects, (v) provide City Council with periodic updates on the status of Projects, and (vi) have open meetings as required by Applicable Law.

E. Good Faith. The City, the LGC and the Conservancy agree to work together in good faith and in a commercially reasonable manner. The Parties agree to not unreasonably withhold, condition or delay giving any approval or consent under this Agreement. The Parties agree to attempt to resolve expeditiously any disputes under this Agreement. Any decision reached under this Agreement and any Phase Plan shall be presumed to have been made in good faith and in a commercially reasonable manner.

**Section 2.02 Term.** The “**Term**” of this Agreement starts on the Effective Date and terminates on January 31, 2033, unless this Agreement is terminated sooner as permitted in this Agreement. However, the Term will automatically renew for eight consecutive terms of 10 years each, unless the City or the Conservancy give 180 days prior written notice to the other party of its election for the Term not to renew and for the Term to expire on the expiration of the term then in effect. The Conservancy shall give the City prior written notice 60 days before any date that the City or the Conservancy has the right to elect any such termination. If this Agreement is terminated by mutual agreement of the Parties, or other event, the Parties upon request shall promptly execute a document confirming the termination of this Agreement and such other documents as may be reasonable under the circumstances.

**Section 2.03 Memorandum of Understanding.** As of the Effective Date, the MOU, as amended (excluding Amendment No. 1 and 2) is superseded and replaced by this Agreement.

**ARTICLE 3**  
**DESIGN PLAN; APPROVALS; PHASES**

**Section 3.01 Project Landscape Architect, Project Architect; Initial Contributions; Design Plan.**

A. Project Architect. Pursuant to the MOU and a public process, the Parties have selected Michael Van Valkenburgh Associates, Inc. (“MVVA”) as the Project Landscape Architect to produce the Design Plan, and Thomas Phifer & Partners (“Phifer”) as the Project Architect. The Conservancy has negotiated and executed a contract between the Conservancy and MVVA (the “MVVA Contract”) and MVVA and Phifer have executed a subcontract (the “Phifer Contract”). Any replacement of the Project Landscape Architect or the Project Architect shall be selected by the Conservancy, subject to the prior written approval of the City, and shall be an architect and landscape architect who is qualified and experienced in the design of facilities that are similar in nature and size as the Public Improvement Project. The Conservancy shall provide a copy of the MVVA Contract and the Phifer Contract and all amendments to the City and the LGC. The MVVA Contract and the Phifer Contract shall be assignable in whole or in part automatically to the LGC and the City upon the request of the LGC or the City, and both the LGC and the City shall have the right to approve any amendments to the MVVA Contract and the Phifer Contract.

B. Conservancy Contributions. The Conservancy is committed to having the financial strength to help support the District and has retained a development team to aid the Conservancy in raising funds from the community. The Conservancy will use its good faith efforts to raise sufficient funds as needed for its portion of the various phases of development of Projects approved by a Phase Plan. Any funds received by the Conservancy for work under a Phase Plan shall be placed into the Conservancy Account until such time as funds from the Conservancy Account are allocated to pay for work under a Phase Plan and are due to be deposited into the Project Disbursement Fund Account at the various phases of development under the Phase Plan.

Any payments from the Conservancy Account of the Conservancy to the Project Disbursement Fund Account shall be made payable to the Project Disbursement Fund Account, and shall bear the notation “Waller Creek District Project Disbursement Fund Account”.

C. City Contributions. The City will make payments as contemplated by and subject to, the Amendment No. 1 and 2 to the MOU, to the extent such payments have not been fully paid as of the Effective Date. The City will endeavor to provide funding sources to complete the City Improvements in the Design Plan from lawfully available and otherwise unencumbered funds and these sources may include funds from bond proceeds and other sources of funds. As of the Effective Date, the City has identified sources of funds it contemplates can be used for City Improvements in the District which are described on Schedule 3.01C attached to this Agreement. On Schedule 3.01C, the City has identified as one possible source of such funding the bonds authorized in Proposition 14 of the November 6, 2012 bond election which principally allows for the planning, designing, engineering, acquiring, constructing, renovating, improving and equipping public parks and recreation centers and other park buildings, natural area and other related facilities, but does not include costs for operating and maintaining these

improvements. The City may elect to issue bonds authorized by Proposition 14 and use the proceeds of those bonds to fund all or a portion of the costs of the City Improvements for which the bonds may lawfully be spent. As a part of the City's annual budget process, the City contemplates that it will identify other sums of money that may be used for the District, including, but not limited to, money that may be allocated on a pro rata or other basis to the District from the budget of the City, which amounts will be subject to annual appropriation and approval pursuant to Applicable Law. In addition, Operating Revenue from the District and park dedication fees may be available for use in the District. Once the City has approved funding for a Project under an approved Phase Plan, without further approval of the City Council, the City's contribution to that Project will be limited solely to the approved amount and amounts within the City Charter Limit.

D. Design Plan. The Design Plan for the Public Improvement Projects for the District has been developed and approved by the City and the Conservancy. It is contemplated that revisions to the Design Plan must be approved by City Council and the Conservancy, provided, that minor adjustments to the Design Plan may be made from time to time which singularly and in the aggregate do not cause the Design Plan to vary from the inherent scope, nature, capacities and capabilities of the then approved Design Plan, and if requested by the Conservancy, the City will deliver to the Conservancy a letter on which the Conservancy may rely that any such adjustments are minor. This letter will be provided by person designated by the City to be the project manager assisting with implementation of the project for which the letter is sought.

### **Section 3.02            Review, Approvals and Objections.**

A. Review, Approvals or Consent Rights. The provisions of this Section 3.02 shall apply to all instances under this Agreement where the City, the LGC or the Conservancy has Review and Approval or Consent Rights (defined below); provided, however, that if the provisions of this Section 3.02 specify time periods for exercise of Review and Approval or Consent Rights that conflict with other express time periods in this Agreement for Review and Approval or Consent Rights, then the other express time periods shall control. As used in this Agreement, the term "**Review and Approval or Consent Rights**" shall include all instances in which one Party (the "**Submitting Party**") submits to another Party any document, notice or determination of the Submitting Party to which the other Party (the "**Reviewing Party**") has a right or duty under this Agreement to review, comment, consent, approve, disapprove, object, dispute or challenge; provided, however, permitting by the City and approval of any Phase Plans pursuant to Section 3.04 below expressly is not governed by this Section 3.02.

B. Standard for Review. The Submitting Party shall use reasonable efforts to submit to the Reviewing Party with a cover letter that states (i) in all capital letters that are in bold face type of at least 12 point in size on the top of the first page of the notice "**TIME SENSITIVE REQUEST FOR REVIEW/APPROVAL OR CONSENT**", (ii) the date of submission, (iii) the date by which a response is required under the terms of this Agreement or is requested by the Submitting Party if this Agreement does not specify a required response date, and such date shall not be unreasonable, (iv) the provision of this Agreement pursuant to which such review and approval or consent is sought (by document or drawing title, identifying number and revision date, or other clear description), which must include all documents and materials

relevant to the request. The Reviewing Party shall review the request and shall timely give the Submitting Party notice of the Reviewing Party's comments and describe in detail the Reviewing Party's reasons for any disapproval. The Reviewing Party shall have the right to extend the time period for its response as reasonably needed, unless this Agreement or a relevant Phase Plan mandates a hard deadline for the response and there is no Force Majeure Event. All submissions to the City, the Conservancy and/or the LGC shall be delivered to the City Representative, the Conservancy Representative and the LGC Representative. These representatives may change from time to time, but will be identified in each Phase Plan.

C. Deemed Approval or Consent. If no response from the Reviewing Party is delivered to the Submitting Party within 15 Business Days after the complete submission of a particular matter (or the extended date reasonably requested) and if the City is the Reviewing Party, so long as the project manager for the City has received such submission, such matters shall be deemed approved or consented to by the Reviewing Party; provided, that no deemed approval or consent under this Section 3.02C is applicable to the submission of a Phase Plan or an amendment to a Phase Plan. There shall not be any implied or imputed approval or consent, except as expressly described in this Section 3.02C.

D. Duties, Obligations and Responsibilities Not Affected. An approval or consent by the Reviewing Party shall not, (i) relieve the Submitting Party of its obligations under this Agreement with respect to the matter so submitted, unless specifically so stated so in the submission and the submission is approved (or deemed approved), and (ii) shift the obligations of the Submitting Party with respect to the submitted matter to the Reviewing Party.

E. Prior Submissions. The Parties acknowledge that the communications or submissions by and among the Parties before the Effective Date shall not constitute a submission nor constitute approval by any Party of any matter requiring approval pursuant to this Agreement.

F. Exclusion of Phase Plans. In no event will a Party's agreement to a Phase Plan or an amendment to a Phase Plan be deemed approved.

### **Section 3.03            Phases, Phase Plans and Foundational Articles.**

A. Phases and Phase Plans. The implementation of the Projects shall occur in phases based on written agreements reached by the Parties subsequent to this Agreement. The agreements reached by the Parties with respect to each phase of a Project shall be in the form of a written agreement that supplements this Agreement (each, a "**Phase Plan**").

B. Foundational Articles. The Parties agree that it is their intent to establish in this Agreement the process and basic agreement for the Phase Plans so that each Phase Plan may be approved, executed and delivered expeditiously once the Parties have agreed on the subject matter of a Phase Plan. Accordingly, the Parties have established the following foundational articles (collectively these Articles are referred to as the "**Foundational Articles**"): (i) Articles 4 and 5 which describe the process and agreements with respect to Public Improvement Projects; (ii) Article 6 which describes the process and agreements with respect to Private District Projects; (iii) Article 7 which describes the agreements with respect to O&M Projects; (iv)

Article 8 which describes the Limitations on LGC Decisions of the LGC; (v) Article 9 which describes insurance requirements; (vi) Articles 10 and 11 which describe general guidelines for financing and disbursement of funds; (vii) Article 12 which describes naming rights; (viii) Article 13 which describes the agreements with respect to representations, warranties and covenants of the Parties; and (ix) Article 14 which describes the agreements with respect to the indemnification obligations by the Conservancy. The Parties are not obligated to pursue any phase of any Projects or spend any funds on any Projects until a Phase Plan for a Project has been approved, executed and delivered by all the Parties. The Foundational Articles have been negotiated by the Parties in anticipation of phased implementation of Projects under the Design Plan that will be agreed upon and implemented over a number of years. As such, some of the Foundational Articles may not apply or adequately address the scope of all phases of the Projects. It is contemplated that the Foundational Articles may be modified with respect to any phase of any Project by the applicable Phase Plan.

### **Section 3.04 Phase Plan Process.**

A. Project Proposal. If a Party (such Party, a “**Party Proposing Project**”) wishes to have a Phase Plan executed by the Parties to implement a Project, it will first notify the other Parties (such Parties, the “**Responding Parties**”) of the proposed Project in writing (a “**Project Proposal**”) and the Project Proposal will describe the Project and contain the following information as applicable to the phase of the Project being proposed:

(1) The general parameters of the proposed Project, including a general outline of the Project, a proposed schedule of commencement, milestones for commencement and completion of the Project and a narrative of how the Project will be implemented;

(2) If the Project is a Public Improvement Project, then (i) the identity of the landscape architect or architect, and any Contractors (including, any Construction Manager at Risk) desired to be used for the Public Improvement Project and proposal to satisfy terms of any oversight required by Applicable Law, (ii) a description of the proposed construction delivery method for the Public Improvement Project (e.g., construction manager at risk, project manager, design-build, cost plus, stipulated sum, guaranteed maximum, etc.), (iii) designate whether the Project Director or the Managing Party will review and accept the construction schedule and (iv) copies of any preliminary architectural and engineering drawings and other design materials prepared for the Public Improvement Project;

(3) The portion of the District to be covered by the proposed Project and a map showing the limits of construction for the proposed Project;

(4) A Project Budget showing the planned expenditures for the Project from the commencement of the Project to the completion of the Project, cost overrun contingencies, and the capital repair and operating, management and maintenance expenses reasonably anticipated to be incurred during the first 24 months after the Project is completed. It is the intention of the Parties that each phase of a Project be fully funded and monies be deposited in the Project Disbursement Fund Account (or applicable subaccount) on or before the commencement of each phase of a Project. Each Phase Plan should clearly state the sources of funding, where the funds will be held, and any constraints on the use of any particular funding

source;

(5) The proposal for how the Project and any cost overruns will be funded, including any Contributions of the City and the Conservancy and other sources of funding;

(6) Any proposed modifications to the Foundational Articles for the Project;

(7) Any third-party consents or agreements that will be required to be obtained in connection with the Project;

(8) The proposed process for procurements to comply with City Code and other Applicable Law, including the requirements of Sections 252 and 271 Local Government Code and Chapter 431 of the Texas Transportation Code;

(9) The proposed plan for the participation by M/WBEs, including, the awarding of contracts, subcontracts and other opportunities in connection with the proposed Project shall meet the requirements set forth in Exhibit "G";

(10) If the Project is a Public Improvement Project, the division of responsibility for coordinating and obtaining approvals and permits from Governmental Authorities for design and construction;

(11) The proposed plan for obtaining and paying for any approvals or permits necessary to operate and maintain the proposed Project and the cost of operation and maintenance of the proposed Project, including using any Operating Revenue derived from operation of the proposed Project;

(12) Identification and mapped location of easements and other real property interests in connection with the Project;

(13) Any requirements that may apply due to the use of tax-exempt obligations or grants or other funds from governmental sources to fund the Project;

(14) Provision of insurance and bonding as required by Article 9;

(15) Identification of terms for exclusive free use of the Project by the City for public functions and City sponsored events;

(16) Identification of terms for a plan for activities and use of the District by community groups, such as non-profits, children and the elderly that includes free or reduced rates;

(17) Identification of maintenance of District ROWs to the extent not to be performed by the City and the applicable standards for such maintenance;

(18) Identification of how utilities will be provided, the cost of these services and any allocation or metering or sub metering (utilities including, water, electricity, sewer, solid waste, drainage, trash and other similar services);

(19) Identification of the operations and maintenance standards to be used by the Conservancy with respect to any Project;

(20) Identification of the revenue and fees that the Conservancy or the City will receive from the Project and identification of any proposed licensing and a pro forma of how fees will cover estimated Operating Expenses ;

(21) Identification of whether commercial design standards may be waived for a Project;

(22) Identification of any applicable license requirements for a Project or Project facilities;

(23) Identification of license agreements for the naming rights for any portion or component parts of the Project;

(24) Identification of any proposed change in ownership of a Public District Site;

(25) Identification of capital needs timing for Projects to facilitate planning by the City;

(26) Identification of how payment for costs for operations by PARD, or other City departments will be made;

(27) Identification for each Project of the public accessibility needs and provision for these needs;

(28) Identification of the timing of transfer for any transfers of improvements and land to the City (in fee simple or conservation easement or otherwise) and provision to meet the requirements and procedures of the City for these transfers as may be in effect from time to time, including any necessary land surveys, environmental assessments, title review and insurance, deeds, conservation easements, easements and other conveyancing documents, evidence of authorization, representations and notices and payment of all rents, water, wastewater and utility charges, ad valorem taxes and other items of income or operational expenses owed in connection with such land, and other due diligence items and coordination of these issues with and approval by appropriate City departments, including risk management and real estate. The time for transfer of any improvements on land owned or leased by the City or granted an easement to the City shall be at the time of completion of the improvements.

(29) Identification of ways that Projects can be designed to maintain natural space and to provide open green space;

(30) Identification of how flexibility with respect to City owned land, including the police station in the District is being maintained;

(31) Identification of any desired exemption of City Code or park rules that relate to alcohol in City parks and facilities, and

(32) Any other relevant information that the Proposing Party wishes to include.

B. Party Proposing Project. After delivery of a Project Proposal, the Party Proposing Project will take all reasonable steps necessary to cooperate with the Responding Parties with respect to questions, requests for additional information and other matters related to the Project Proposal that the Responding Parties reasonably decide is necessary for their review of the Project Proposal. The Party Proposing Project will endeavor to schedule a meeting with the Responding Parties to make a presentation of the Project Proposal. The Party Proposing Project will also make access available to the Responding Parties all consultants, architects and other third parties engaged by the Party Proposing Project to respond to questions and requests that the Responding Parties may have.

C. Response. Within a reasonable time after receipt of a Project Proposal, not to exceed 30 days, the Responding Parties will respond in writing to the Party Proposing Project (a “**Response Notice**”) indicating whether the Responding Parties are interested in pursuing the Project described in the Project Proposal, and giving any comments the Responding Parties may have to the Project Proposal. Failure of a Responding Party to send a Response Notice with such 30 day period shall be deemed to be the Party’s delivery of a Response Notice indicating that the Party is not interested in pursuing the proposed Project described in the Project Proposal. If all Parties are interested in pursuing the proposed Project, then they shall work together to agree to a Phase Plan with respect to such proposed Project within 30 days after delivery of the Response Notice of the Responding Parties (such period, the “**Project Agreement Period**”). If all of the Parties are not (or are deemed not to be) interested in pursuing the proposed Project or the Parties are not able to agree on a Phase Plan for the proposed Project within the Project Agreement Period, then there shall be no further obligation to continue to meet and confer and to seek to reach agreement on a Phase Plan for the proposed Project, but the Proposing Party may revise its Project Proposal and re-submit the same to begin the process described in this Section 3.04 again. Once the Parties agree on any phase of a proposed Project if there are necessary additional approvals, including a vote of City Council, such approvals shall be obtained before a Phase Plan is executed, delivered or effective. Each party will designate the point of contact for Phase Plan review.

D. Core Projects and Termination. If a Proposing Party has sent a Project Proposal for a proposed Project and the time period stated in Section 3.04C above has expired for the Parties to be obligated to work on a Phase Plan for the proposed Project, then the Proposing Party may resubmit a Project Proposal for the same proposed Project for one additional time and send it with a separate written notice to the Responding Parties that contains the following language, in all capital letters that are in bold face type of at least 12 point in size on the top of the first page of the notice: “**WARNING: THIS PROJECT PROPOSAL IS FOR A PROPOSED PROJECT THAT IS CONSIDERED A CORE PROJECT AND, THEREFORE, IF A PHASE PLAN IS NOT AGREED UPON BY THE PARTIES, THE PROPOSING PARTY MAY TERMINATE THE JOINT DESIGN, DEVELOPMENT, MANAGEMENT AND OPERATION AGREEMENT WITH RESPECT TO ALL FUTURE PROJECTS.**” (any Project for which such notice is sent constitutes a “**Core Project**”). It is intended that a Core Project be a Project the Proposing Party in good faith believes is material and integral to achieving the Common Goals without which the Proposing Party is unwilling to continue working under this Agreement for future development of Projects.

If after receiving a notice under this Section 3.04D designating a Core Project and completing the process described in Section 3.04C, the Parties are unable to agree on a Phase Plan for the Core Project, then the Proposing Party, as its sole recourse for the determination by one or more of the Responding Parties to reject all proposals by the Submitting Party to develop the Core Project, may elect to terminate this Agreement by giving written notice to the other Parties within 60 days after the Parties are no longer obligated to pursue such Phase Plan pursuant to Section 3.04C. This Agreement shall terminate as of the date of the termination notice and neither Party shall have any further rights, duties or obligations under this Agreement as to (and only as to) the future development of Projects, including such Core Project, and any amounts in a Project Disbursement Fund Account shall be disbursed to the City, and any assets in the District that are owned by the Conservancy shall be transferred without cost to the City. In case of termination, this Agreement shall remain in full force and effect for all Projects for which a Phase Plan has been executed and delivered by the Parties.

**Section 3.05 Implementation by Managing Party.**

It is contemplated that a Phase Plan will specify which Parties are the Managing Party for all or portion of the work specified in the Phase Plan. In some instances the City and the Conservancy shall specify that the LGC is the Managing Party with respect to all or a portion of the work in a Phase Plan. It is the intent of the Parties that the LGC will not have any paid staff, unless the City and the Conservancy agree otherwise as a decision under Article 8, and the work of the LGC will be performed on behalf of the LGC by the Conservancy and the City. A Managing Party will have the following duties (subject to the terms of this Agreement, including the approval of Phase Plans with respect to Projects, the funding of Contributions in accordance with Phase Plans, and the fact that one or more Party may be tasked each with one or more of the obligations listed below pursuant to Phase Plans, and in the event that more than one Party is the Managing Party for work under the Phase Plan, the following duties may be divided among the Managing Parties as set forth in the Phase Plan):

A. The Managing Party (i) shall undertake and assume responsibility to implement those Projects as to which all the Representatives of the other Parties agree in the relevant Phase Plan are to be the responsibility of the Managing Party; (ii) shall pay from the Project Disbursement Fund Account all costs in connection with the implementations of the Projects; and (iii) confirm in writing to the Representatives of the other Parties that funds deposited in the Project Disbursement Fund Account will only be disbursed by the Managing Party for the purposes described in this Agreement (as supplemented by the applicable Phase Plan); and

B. The Managing Party shall coordinate the work of all Persons involved in Projects for which it is responsible. The Managing Party shall meet with the Project Landscape Architect or Project Architect, Contractors, and other Persons providing services on a regular basis as is necessary in the Managing Party's sole judgment to assure the implementation of the Projects in accordance with the terms of this Agreement. To the extent the Managing Party has rights under any Contract pertaining to the Projects, the Managing Party will exercise such rights in accordance with this Agreement.

**Section 3.06 Services to be Performed by the Managing Party.** Subject in all instances to funding of the Contributions as provided in this Agreement and the Phase Plans, the

Managing Party shall cause the Projects to be implemented in an orderly, expeditious and efficient manner in accordance with the Applicable Laws and this Agreement. Subject to the provisions of a Phase Plan, the Managing Party:

A. Shall provide the Schedule and reports required by Article 20 within the time periods prescribed.

B. May utilize the services of consultants (including City employees) and coordinate the design of the Public Improvement Projects as more specifically described in Article 4.

C. Shall direct, coordinate, and supervise the preparation of all submissions necessary under Applicable Law to obtain the Permits required in connection with the Public Improvement Projects, and negotiate with and act as liaison to the Governmental Authorities in connection with obtaining such Permits.

D. Shall use good faith, commercially reasonable efforts to obtain the best price and quality of goods and services in connection with all Projects and comply with applicable procurement requirements.

E. May negotiate agreements from time to time to retain the services of a Contractor (to the extent they are not directly retained by the LGC, the City or the Conservancy), who shall, among other things, execute the construction of the Public Improvement Projects, or, in the case of a construction manager, manage, supervise and direct construction activities related to the Public Improvement Projects.

F. Shall investigate, hire, contract with, train, pay, supervise and, when necessary, discharge the personnel reasonably required to be employed or engaged by the Managing Party in order to properly complete the Projects. Except as described in any Phase Plans addressing the same, such personnel shall in every instance be deemed independent contractors, agents or employees, as the case may be, of the LGC or the Conservancy and not of the City, unless the City is the Managing Party and has agreed in writing that such Persons are employees of the City for such work, and all matters pertaining to the employment, engagement, supervision, compensation, promotion and discharge of such independent contractors, agents or employees shall be the sole responsibility of the Managing Party. These expenses that are Project Costs will be allowed as set forth in the Phase Plan. All salaries, wages, commissions and other compensation or expense of personnel employed by the Managing Party, including so-called fringe benefits, medical and health insurance, pension plans, social security, taxes, workers' compensation insurance and all other expenses of the Managing Party are and shall be the responsibility of and paid by the Managing Party. The Managing Party shall use reasonable efforts to cause all personnel used by the Managing Party, the Project Landscape Architect, the Project Architect, and any Contractor in the performance of their responsibilities to implement the Projects to be qualified by training and experience to perform their assigned tasks.

G. Provided that (i) the City and/or the Conservancy is obligated to make payments for such Project Costs, and has funded fully its share of such Project Costs as set forth in the Phase Plan and has authorized disbursements for amounts due and payable as costs and expenses of a Project from the Project Disbursement Fund Account, (ii) disbursements are made in such

proportions and (iii) the disbursement procedures for that Project have been approved by the City and the Conservancy and are being followed, shall cause such disbursements to be made regularly and punctually to the Persons entitled to such disbursements pursuant to the requisition procedure established in this Agreement (as supplemented by the applicable Phase Plan).

H. Shall maintain separate, true and complete books, records, accounts, journals and files regarding the Projects, which shall contain Contracts, agreements, all design documents (including, without limitation, Contract Documents), shop drawings, change orders, applications for payment, Permits, rental agreements and records, insurance policies, non-proprietary correspondence directly related to the Projects, receipts, bills, vouchers and any audits obtained by the Managing Party. At the request of the LGC, the City or the Conservancy, provide the LGC, the City or the Conservancy with access to and one copy of this information, and if needed, the Parties may charge for these copies.

I. Shall promptly furnish to the Parties copies of all legal notices received by the Managing Party affecting the District, including, without limitation, notices from Governmental Authorities and all notices from any Party claiming any default in any financing or payment obligation, and any other notice not of a routine nature.

J. Shall promptly notify the Parties of any suit, proceeding or action that is initiated or threatened in connection with the District or against the Managing Party in connection with the Projects.

K. Shall provide the City, as soon as reasonably practicable, but in no event later than 60 days after the completion date of the applicable Public Improvement Project as set forth in the Phase Plan, with an original and three sepia prints of as-built drawings substantially reflecting and depicting the applicable Public Improvement Project as constructed and indicating the changes in and deviations from the Contract Documents and an electronic version as such version exists following the completion date. The as-built drawings will be an assembled set prepared by the various Contractors, suitable for use by the City.

L. Shall cooperate with the City in pursuing specified goals for M/WBE participation in performing work for all Public Improvement Projects and implementation of the O&M Projects.

M. Shall keep the Representatives of the other Parties that are not the Managing Party apprised of the progress of the implementation of all Projects and permit such Representative the right to attend, for informational purposes, the regularly scheduled Project status meetings with the Managing Party, Project Landscape Architect or Project Architect and Contractor(s).

N. Shall advise the Representatives of the other Parties that are not the Managing Party with respect to Environmental Conditions known by the Managing Party to exist in the District and all requirements imposed by, and the Managing Party's negotiations with, any Governmental Authority concerning any such Environmental Condition.

O. Shall, if the Managing Party is the Conservancy, indemnify and hold harmless the directors of the other Parties that are not the Managing Party and their respective elected officials, agents, employees, officers, directors and representatives, individually and collectively

(all such parties being the, “**Managing Party Indemnitees**”) from any liability that may be imposed on them due to the activities of the Managing Party. If the Conservancy is the Managing Party, it expressly agrees that the Managing Party Indemnitees shall have no liability whatsoever on behalf of the Conservancy as the Managing Party.

If the Managing Party is not the City, the Managing Party shall obtain the consent of the City before commencing, defending or settling legal actions and proceedings concerning the design and construction of the Public Improvement Project and retaining counsel in connection with such legal action or proceeding. In lieu of the Managing Party performing the services described in this Section 3.06, the Managing Party may use commercially reasonable efforts to cause one or more services to be performed by another Person; provided, however, in no event shall the Managing Party be relieved of such services or create any obligation of the other Parties to pay for such services where such other Parties are not the Managing Party.

**Section 3.07 Services to be Performed by the Conservancy.** In addition to the services the Conservancy may perform as the Managing Party and under Article 7 and the Operating and Management Agreement, the Conservancy shall do the following:

A. Notify the City if the Conservancy elects to retain a design assurance manager to advise the City, the LGC and the Conservancy as the Design Plan is implemented.

B. Coordinate with the City in discussions with the State of Texas, the University of Texas System, Travis County, and other governmental entities, private landowners, the University of Texas at Austin, Seton Hospital, and other stakeholders with respect to easements, acquisition of property, development issues, and other matters related to the District.

C. Collaborate with the City on the development and implementation of a reasonable ongoing public outreach program with respect to the District with regular meetings and updates provided to the City and the LGC.

D. Promote, preserve and encourage the public use of the District.

E. Assure that no public funds contributed will be spent on improvements to private land and that no funds received by the Conservancy will be spent for any purposes outside of the design, development, operation and management of the District in accordance with this Agreement.

F. Assist with the development of the Project Budgets for anticipated Projects.

G. Assist with periodic updates to City Council regarding the condition of the District and the status of each Project to which the City and the Conservancy have agreed and any proposed Projects.

H. Use its reasonable efforts to maximize Pledges of funds for the design, development, management and operation of the District. All Pledges shall be in a written form.

I. Create operational, management and maintenance guidelines and procedures for the overall management of the District.

J. Perform such obligations and duties under an approved Phase Plan where the Conservancy is a Managing Party.

**Section 3.08 Services to be Performed by the City.** In addition to the services the City may perform as the Managing Party, the City shall do the following:

A. Designate one or more project managers to represent the City's interest in the District to the extent the City desires to do so.

B. Use its reasonable efforts to continue the public-private partnership between the City, the LGC and the Conservancy to accomplish the Common Goals.

C. Assist with the development of the Project Budgets for anticipated Projects.

D. Coordinate with the Conservancy in discussions with the State of Texas, the University of Texas System, Travis County, and other governmental entities, private landowners, the University of Texas at Austin, Seton Hospital, and other stakeholders with respect to easements, acquisition of property, development issues, and other matters related to the District.

E. Assure that no public funds contributed will be spent on improvements to private land and that no funds contributed will be spent for any purposes outside of the design, development, operation and management of the District in accordance with this Agreement.

F. Review the Project to make sure that the construction meets or exceeds City's construction requirements as reflected in the construction contracts and standards maintained by the City's Public Works Department.

G. Perform its obligations and duties under an approved Phase Plan where the City is a Managing Party.

**Section 3.09 Services to be Performed by the LGC.** In addition to the services the LGC may perform as the Managing Party, the LGC shall do the following:

A. Use its reasonable efforts to continue the public-private partnership between the City, the LGC and the Conservancy to accomplish the Common Goals.

B. Oversee the improvement of the District and the day to day operations of the District.

C. Carry out the decisions made by the City and the Conservancy generally with respect to the Common Goals and Public Purpose.

D. Assist with the development of the Project Budgets for anticipated Projects.

E. Assure that no public funds contributed will be spent on improvements to private land and that no funds contributed will be spent for any purposes outside of the design, development, operation and management of the District in accordance with this Agreement.

F. Aid in financing Projects for the District.

G. Perform its obligations and duties under an approved Phase Plan where the LGC is a Managing Party.

**Section 3.10 Impasse.** In settling any Impasse, each of the Parties, subject to Article 18, shall act in accordance with the following procedures:

A. In the event of an Impasse, either Party may make a written request for a meeting between representatives of each Party within 14 days after receipt of the request or such later period as agreed by the Parties. Each Party shall include, at a minimum, one senior level individual. The purpose of this and any subsequent meeting is to attempt in a good faith, commercially reasonable manner to negotiate a resolution of the Impasse. If, within 30 calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the Impasse, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by all Parties, in which event the Parties may proceed directly to mediation as described below.

B. If the efforts to resolve the Impasse through negotiation fail, or the Parties waive the negotiation process, the Parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the Impasse. Should they choose this option, the Parties agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the Impasse or a contract interpretation expert. If the Parties fail to agree on a mediator within 30 calendar days after initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The mediation shall be terminated by on the earlier of: (i) the execution of a settlement agreement or similar statement by the parties; (ii) a declaration of the mediator that mediation is terminated; (iii) a written declaration by any of the Parties to the effect that the mediation process is terminated at the conclusion of five Business Days; or (iv) 30 calendar days after the date of the first mediation session. The City and the Conservancy shall share the costs of mediation equally.

C. In the event that the mediation is terminated without settlement of the Impasse, then any Party may terminate this Agreement on no less than 90 days notice, such termination to be effective on the date described in such notice which shall not be less than 90 days after the date of such notice as to (and only as to) the future development of Projects; provided, however, that this Agreement shall not terminate if the Impasse is resolved before the early termination date. In the event this Agreement is terminated pursuant to the immediately preceding sentence as to future Projects, this Agreement shall remain in full force and effect for all Projects for which a Phase Plan has been executed and delivered by the Parties.

**Section 3.11 Conflicts of Interest Policy.** The LGC and Conservancy shall adopt and maintain, during the Term of this Agreement, a policy concerning conflicts of interest that is approved by the City and complies with policies or practices adopted by the City from time to time applicable to public-private partnerships to which the City is a party.

**ARTICLE 4**  
**DESIGN OF INDIVIDUAL PUBLIC IMPROVEMENT PROJECTS**

**Section 4.01            Development.**

A.     Once the Parties have executed and delivered a Phase Plan with respect to a Public Improvement Project, the Managing Party shall (to the extent not already included and approved in the Phase Plan) cause the Project Landscape Architect or Project Architect to have a sufficient number of informal reviews of drawings as mutually agreed upon. Following the completion of these reviews, the Managing Party shall prepare and deliver to the Representatives of the other Parties, for their respective review and approval, a copy of the Contract Documents for that Public Improvement Project.

B.     Any objections to the Contract Documents shall be delivered to the Managing Party within 15 Business Days after receipt of complete and correct copies of such documents. The response shall contain, in reasonable detail, the reasons for objections. The Managing Party may resubmit any proposed Contract Document that was disapproved or objected to by the Representatives of the other Parties. The resubmission shall be approved or disapproved within 10 Business Days after receipt of a complete resubmission which response shall contain, in reasonable detail, the reasons for objections. Further, in the event that the City Representative disapproves, objects or comments, as applicable, on a submission or resubmission because of a failure to meet the Quality Standard, it shall meet on an expeditious basis with the Managing Party to resolve any items of Impasse to the reasonable satisfaction of the City and Managing Party. To the extent that a portion of the Contract Documents have been deemed approved, such approval may not be withdrawn, and the Managing Party shall not be required to obtain re-approval of such portion deemed approved except to the extent that there is a subsequent change to such portion. The Contract Documents approved pursuant to this Section 4.01 may not be changed or altered without prior notice to the Representatives of the other Parties and approval as described in this Section 4.01B.

C.     During the design phases, the LGC shall establish, and update as necessary, the milestone dates in the Schedule for delivery of the various design documents and other necessary components of the development process.

D.     The LGC shall retain control of the design process and all aspects of the design and specifications of the Public Improvement Project (other than District ROWs) provided, however, the City Representative shall have the right to review and approve the Contract Documents for applicable permits to be obtained.

**Section 4.02            Design Standards.** The Contract Documents for any Public Improvement Project shall comply with all Applicable Laws, the Quality Standard, and the requirements of the Design Plan.

**Section 4.03            District ROWs.** The City retains approval and control over all District ROWs, and no Project shall include the District ROWs unless the City consents to such inclusion in a Phase Plan, which consent the City may withhold in its sole and absolute discretion.

**Section 4.04 Use of Drawings and Contract Documents.** Without the prior written consent of the City, neither the LGC nor the Conservancy shall use the Contract Documents, drawings, models, samples and the like produced or developed in connection with the design and construction of any Public Improvement Projects for any purpose other than as contemplated by this Agreement. All Contract Documents shall be certified to, and jointly owned by, the LGC and the City, and the Contract Documents shall be expressly assignable to the City upon request of the City.

**ARTICLE 5  
CONSTRUCTION OF PUBLIC IMPROVEMENT PROJECTS**

**Section 5.01 Construction Delivery Methods and Construction Manager at Risk.**

A. A Public Improvement Project may be delivered by various construction methods, such as Construction Manager at Risk, Design Build, Job Ordering Contracting, Competitive Sealed Proposals and other methods as determined by the Managing Party, provided that the method selected is consistent with Applicable Law. The remainder of this Article 5 is written based on the Construction Manager at Risk delivery method.

B. The Managing Party shall conduct a comprehensive selection process to select a Construction Manager at Risk from at least three qualified and experienced firms.

C. The Managing Party shall use commercially reasonable efforts to cause the Construction Manager at Risk to diligently pursue and prosecute to final completion the construction of the applicable Public Improvement Project in accordance with the Project Budget, the Schedule and the Contract Documents for that Public Improvement Project.

D. The Managing Party shall negotiate and execute the Construction Contract between the Managing Party and the Construction Manager at Risk and other Contractors for the applicable Public Improvement Project, which form of contract shall be determined by the Managing Party and approved as a part of the applicable Phase Plan or otherwise approved by the Representatives of the other Parties before execution. Except as otherwise provided, amounts owing under Contracts and other such agreements, including costs, fees and expenses of Contractors, entered into by the Managing Party in connection with the construction of the applicable Public Improvement Project, shall be funded as described in the applicable Phase Plan through the Project Disbursement Fund Account. The Managing Party shall require the Construction Manager at Risk and others performing the Work on a Public Improvement Project to obtain and maintain and provide copies of all Permits and any bonds and insurance required by this Agreement (as supplemented by the applicable Phase Plans).

**Section 5.02 Supervision of Construction.** The Managing Party shall cause the construction of each Public Improvement Project in accordance with the Phase Plan for the Public Improvement Project. The Managing Party shall cause the Construction Manager at Risk to supervise and coordinate the construction of the Public Improvement Project so that the Public Improvement Project is constructed, equipped, furnished and completed with materials in a good and workmanlike manner and in accordance with the terms of this Agreement. To the

extent that the Project is a public works project, the Managing Party shall cause such work to be directly supervised by a Project Engineer. The Managing Party shall use commercially reasonable efforts to enforce substantial compliance with the terms of the Contract Documents and to require that work be continuously and diligently performed to achieve Substantial Completion on or before the completion date described in the Schedule, subject to Force Majeure Events. Without limiting the foregoing, the Managing Party shall use commercially reasonable efforts to cause the Construction Manager at Risk to do the following:

A. Coordinate the Work for the Public Improvement Project as it progresses, cooperate with regulatory agencies' and consultants' inspections, review inspection reports, schedule and conduct preconstruction and construction meetings, implement courses of action when requirements of Contracts are not being fulfilled, and review and revise estimates of construction costs.

B. Negotiate or prepare bid packages for any portion of the Work for the Public Improvement Project necessary for the award of sub contracts as required under their agreement, coordinate selections and procedures, maintain harmonious labor relations, and encourage participation by M/WBE as required by Exhibit "G".

C. Prepare all applications for payment with supporting documentation and evidence of all payments as required by law and specified within each Construction Contract for each Public Improvement Project. Prepare all requests for change orders with supporting documentation for consideration by the Managing Party.

D. Subject to the consent of the Managing Party negotiate final payments and/or final settlements with all parties involved in the construction of the Public Improvement Project

E. Cause any known defects in the construction of the Public Improvement Project or in the installation or operation of any equipment or fixtures to be corrected during construction and applicable warranty periods.

F. Hold regular job meetings with all job-site personnel, including contractors and subcontractors and the Project Landscape Architect and/or Project Architect, as appropriate and necessary, during the construction of the Public Improvement Project to review the progress and the completion of the Work.

G. Prepare a comprehensive, detailed construction schedule for the review and acceptance of the Project Director or the Managing Party, as indicated in the Phase Plan. Provide an update to this schedule on a regular basis as described in the Construction Contract. Advise the Managing Party of any necessary changes (described in Section 5.04) or any delays or anticipated delays in meeting the Schedule for the Public Improvement Project and of the actual dates on which the various stages of construction indicated on the Schedule for the Public Improvement Project are started and completed.

H. Supervise and coordinate the completion of "punch list" items and warranty work following Substantial Completion and Final Completion of the Public Improvement Project.

If construction of the Public Improvement Project does not progress in accordance with

the milestone dates required by the Schedule, as it may be adjusted pursuant to the terms of this Agreement, or if it is unlikely that such dates will be met based on the progress of the Work, the Managing Party shall give the Representatives of the other Parties timely notice of such fact and may, but is not required to, cause an acceleration of such Work by all available means including utilization of overtime, additional work crews and alternate material suppliers so long as the cost of the Project Budget is not exceeded.

**Section 5.03 Correction of Work.** If during construction, the Managing Party becomes aware that construction is not in accordance with the Contract Documents, the Managing Party shall cause any such nonconforming work to be corrected by the responsible party, at no expense to the other Party, and without adjustment to the Project Budget or Schedule. If, however, the Managing Party determines it to be inexpedient to require the correction of such Work, then so long as the Quality Standard is maintained, the Managing Party may require an equitable deduction under the applicable Contract or other remedy acceptable to the Managing Party. To the extent the Project Landscape Architect or Project Architect determines the same to be reasonably necessary consistent with sound construction practices, the Managing Party will engage the services of independent testing agencies to verify construction compliance with the contract specifications and drawings and to monitor the Construction Manager at Risk's quality control program.

**Section 5.04 Changes to Contract Documents.** The Managing Party shall have the right to make changes to the Contract Documents for a Public Improvement Project, provided that any such changes conform to the Quality Standard and the Managing Party receives the prior written approval of the other Parties. The costs of any such changes shall not result in any increase to the Project Budget for the Public Improvement Project, without the written approval from the Representatives of the other Parties and an agreement on the proposed source of funding. If the costs are less than the Project Budget, then the Managing Party shall make recommendations as to the use of any excess funds and an amendment to the Phase Plan shall be agreed upon with respect to any use of such excess funds.

**Section 5.05 Sales Tax.** As permitted by Applicable Law, the Parties will structure the purchase of materials for the construction of a Public Improvement Project to be exempt from all state and local sales and use taxes. The LGC, the City and the Conservancy shall cooperate as may be reasonably necessary to accomplish this result.

**Section 5.06 Bonding, Liens and Claims.** Each Construction Contract for any Public Improvement Project shall require the Construction Manager at Risk to provide a Payment Bond and a Performance Bond in favor of the City and the Managing Party, as co-obligees, which satisfies the requirements of Chapter 2253 of the Texas Government Code, as amended, and if applicable, those laws relating to the construction of public works. If any claim is made against the Payment Bond, with respect to public land, by reason of any Work supplied or claimed to have been supplied under a Construction Contract for construction of public works on public land, the Managing Party shall take such actions as are necessary to defend against the claim made and protect the Parties, subject to any reimbursement by the Conservancy and/or City in accordance with the Phase Plan, including causing the same to be satisfied or effectively preventing the enforcement of this claim against anything other than the Payment Bond, by injunction, payment, deposit, bond, court order or otherwise. If any claim is

made with respect a portion of the District which is not public land, by reason of any Work supplied or claimed to have been supplied under a Construction Contract, the Managing Party shall take such actions as are necessary to defend against the claim made and protect the other Parties and the portion of the District which is not public land, subject to any reimbursement by the Conservancy and/or City in accordance with the Phase Plan, including causing the same to be satisfied or effectively preventing the enforcement of this claim against the other Parties and the portion of the District which is not public land by injunction, payment, deposit, bond, court order or otherwise.

**Section 5.07 Development Fees.** Unless expressly described otherwise in the applicable Phase Plan, all development, review, and inspection fees for a Public Improvement Project required by the land development portions of the City Code or under other agreements related to the Public Improvement Project shall be included as part of the Project Budget and paid out of the Project Disbursement Fund Account.

**Section 5.08 Permits.** Unless expressly described otherwise in the applicable Phase Plan, the City shall cooperate, in its usual and customary manner, with the Managing Party and its Contractors in connection with any required platting or replatting of the Public District Sites in connection with a Public Improvement Project, street closures, applications for the issuance of all building permits, plans of development, easements, requests for certificates of occupancy, and such other documents as may be reasonably required by the Managing Party to obtain building permits, licenses, approvals, certificates and other permits and authorization as may be necessary for the development, construction and operation of a Public Improvement Project.

## ARTICLE 6 ENTITLEMENTS

**Section 6.01 Commissions.** The City and the LGC will be responsible for approving, accepting, displaying and determining the maintenance of any public art for the District to ensure consistency with the Design Plan. The City waives the requirements of the City Code related to public art, including the requirements of City Code Chapter 7-2 for a separate approval of public art by the Arts Commission, however, plans for public art will be presented to the Arts Commission.

**Section 6.02 Rules.** All applicable City Code and zoning, land use rules, and regulations shall govern the development and construction of the Private District Sites. In addition the “Waller District Design Guidelines” attached to this Agreement as **Exhibit “F”** (“**Waller District Design Guidelines**”) shall guide development and construction of the Private District Sites, and the LGC shall have the right to amend the Waller District Design Guidelines from time to time so long as such amendments are consistent with the Design Plan. After approval of the Design Plan, the City will assess the need to amend Ordinance 20100624-151 to reflect any changes required by the Design Plan. The Parties are authorized to establish a Waller District Design Guideline Review Team (“**Guidelines Team**”). The Guidelines Team will be authorized by the LGC to take such actions as may be appropriate to encourage development within the District to be done in a manner that is consistent with the Waller District Design Guidelines. Toward this goal, the Guidelines Team will have the ability to

review drawings for proposed development within the District and make recommendations consistent with the Waller District Design Guidelines. The Guidelines Team will be comprised of three staff people from the City and two people chosen by the Conservancy. The Guidelines Team may establish a process for submittal of development drawings to the Guidelines Team. The Guidelines Team membership will be approved by the LGC. The process for submittal and review of development drawings also will be approved by the LGC.

**Section 6.03 Project Landscape Architect and Project Architect.** If the Conservancy funds the necessary Conservancy Contributions, the LGC shall retain the Project Landscape Architect and/or the Project Architect to work with the City and the Conservancy in the Phase Plans.

**Section 6.04 Review.** A Phase Plan may describe the review process for such Project as to facilitate the anticipated completion schedule consistent with the review for other City projects.

**Section 6.05 District ROWs.** The City retains ownership, approval and control over all District ROWs, and no Project shall include the District ROWs unless the City's Public Works Director consents to such inclusion in a Phase Plan, which consent the City Public Works Director may withhold in his or her sole and absolute discretion.

**Section 6.06 Effect of the City Approvals.** The City's approval of the Design Plan or other approvals under the terms of this Agreement does not reflect any approval, representation or warranty with respect to the sufficiency, accuracy, completeness or integrity of the Design Plan or the matters so approved by the City, all of which are expressly disclaimed by City. Each approval required of City under the terms of this Agreement is in addition to the usual and customary approvals required for construction or development under the City Code, unless provided otherwise in a Phase Plan.

**Section 6.07 City Development Fees and Inspection Costs.** The Managing Party shall pay to the City from the applicable Project Disbursement Fund Account all applicable fees associated with the implementation of the Projects, including, but not limited to, application, review, filing, issuance, oversight, inspection, street closure, and other fees applicable to each Project at the times and in the amounts described in the City Code, unless provided otherwise in a Phase Plan.

## ARTICLE 7 OPERATION AND MANAGEMENT

**Section 7.01 Operation and Management of the District.** It is contemplated that the Conservancy will commence operation and management of the District (but excluding the District ROWs) on the terms set forth in the Operating and Management Agreement attached to this Agreement as Exhibit "D" (the "Operating and Management Agreement").

**Section 7.02 Marketing Plan.** The Parties shall work together to develop, implement and monitor signage, marketing, advertising and promotions for the Public District

Sites. The Conservancy shall have the primary responsibility for marketing, advertising and promoting the Public District Sites in accordance with the Quality Standard or shall cause such responsibilities to be undertaken by Managers of a O&M Project. Nevertheless, the City shall have the right to approve all signage, marketing, advertising and promotional material related to the Public District Sites.

**Section 7.03 Catering.** The Conservancy may, in its discretion but subject to approval by the LGC, develop a catering policy for the Public District Sites that will allow for the utilization of caterers who meet certain quality and service standards and who also otherwise comply with the catering policy (including insurance requirements, deposit requirements and other applicable fees and charges) approved by the Parties. The City will comply with City requirements regarding provision of catering at City events. The City may, but is not required to, comply with the Conservancy’s catering policy.

**Section 7.04 Rates.** The Conservancy may establish from time to time minimum rental rates for use or admission to any Public District Site, subject to the review and approval by the City or a department of the City, which approval shall not be withheld so long as such rates are reasonable.

## ARTICLE 8 LIMITATIONS ON LGC DECISIONS

**Section 8.01 Limitations on LGC Decisions.** The governing documents for the LGC shall describe the actions that may not be made by the LGC without the consent of the City or both the City and the Conservancy, these actions being set forth on **Exhibit “B”** which is attached to this Agreement and incorporated by this reference (such actions individually and collectively referred to as a “**Limitations**”). In no event shall the LGC take any action which modifies or deletes these Limitations provisions of the governing documents of the LGC unless otherwise provided in a Phase Plan which specifically references that it is intended to make such modification or deletion. There will not be waivers to major City policies without the approval of City Council, including M/WBE policies.

## ARTICLE 9 INSURANCE

**Section 9.01 Insurance.** The Managing Party and the Conservancy shall provide, or shall cause Contractors or licensees of the resources or facilities within the District to provide, evidence of insurance with responsible companies as is recommended by the City’s Office of Risk Management. This shall be done for each Project and each part of the operations and licensed use of the resources and facilities within the District. They shall maintain this coverage throughout their Work, operations or licensed use. This evidence of coverage shall be submitted to the City before commencement of any Work or such operations and licensed use. The Managing Party shall require that any professionals or other persons under the Contract Documents or other contracts maintain bonds required by the City.

**Section 9.02 Waiver of Subrogation.** All insurance policies required to be obtained and maintained by the Managing Party and the Conservancy pursuant to the terms of

this Agreement shall provide that neither Conservancy, the City nor the LGC shall be liable to the other Parties or to any insurance company (by way of subrogation or otherwise) insuring any other Party for any loss or damage to property or injury to persons, or any resulting loss of income, or losses under workers' compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence (whether ordinary or gross) of such Party, its agents or employees, to the extent any such loss or damage is actually covered by insurance benefitting the Party suffering such loss or damage. The provisions of this Section 9.02 are not intended to limit the claims of any Party to the face amount or coverage of insurance policies provided for or to evidence a waiver by a Party of any claim for damages in excess of the face amount or coverage of any such insurance policies. Neither the issuance of any insurance policy required under this Agreement, nor the minimum limits specified in this Agreement with respect to a Party's insurance coverage, shall be deemed to limit or restrict in any way a Party's liability arising under or out of this Agreement. The failure of a Party to maintain any required insurance shall be a defense for the other Parties to any claim asserted by the Party against either of the other Parties by reason of any loss sustained by the Party that would have been covered by the required insurance. The City expressly shall have no liability for the activities of the LGC or the Conservancy.

**Section 9.03 Notice of Claims.** The Conservancy or the Managing Party (as applicable) shall use its reasonable efforts to investigate and make a full timely written report to the insurance carriers as to any accident at the Public District Sites, claim for damages relating to the design and/or construction of the Public Improvement Projects, and material damage to or destruction of the Public District Sites or any improvements located on the Public District Sites (and the estimated cost of repair), and prepare and file any and all reports required by any insurance carriers and provide copies to the City and the Conservancy.

**Section 9.04 Additional Insurance.** The Parties may agree on additional insurance requirements for each Project pursuant to the applicable Phase Plan.

**ARTICLE 10**  
**PROJECT DISBURSEMENT FUND ACCOUNT; PROJECT BUDGETS;**  
**PAYMENT/REIMBURSEMENT REQUESTS**

**Section 10.01 Project Disbursement Fund Account.** The Conservancy shall establish a Project Disbursement Fund Account as an account separate and apart from any other accounts of the City, the LGC, and the Conservancy and dedicated solely for the District. Subaccounts shall be established as directed by the City reserved for revenue collection, construction, operation, capital repair reserves, and other subaccounts. Unless expressly provided otherwise in this Agreement, the City Contribution and the Conservancy Contribution shall be deposited into the Project Disbursement Fund Account, from time to time, and in the amounts necessary to pay timely their respective portion of the costs of the Projects and in accordance with this Agreement (as supplemented by Phase Plans). The City will fund its portion based upon completed Work and its review of invoices submitted to the City to support its payment. It is understood that the cost of administration, meetings and document preparation will be borne individually by the City and the Conservancy as individual separate costs that will not be reimbursed from the Project Disbursement Fund Account unless specified in writing in a Phase Plan or otherwise.

**Section 10.02 Disbursements from the Project Disbursement Fund Account.**

The money in the Project Disbursement Fund Account shall be deposited into and disbursed to the Managing Party (or on its behalf) only to pay the costs of the Projects upon receipt of a properly completed Payment/Reimbursement Request submitted by the Managing Party, all pursuant to the procedures outlined in this Agreement (as supplemented by the applicable Phase Plans). Reimbursements or payments for the Project Costs shall be made no sooner than as provided in the applicable Phase Plan, and only if the conditions described in this Agreement and the applicable Phase Plan have been satisfied, and shall be disbursed only for the Project Costs reflected in the Project Budget for the Project or otherwise permitted under this Agreement or the applicable Phase Plan.

**Section 10.03 Project Budget.** The Managing Party will submit a Project Budget at the time the Phase Plan is proposed for a Project. The City and the Conservancy will review and approve the proposed Project Budget, which approval may not be unreasonably withheld, conditioned or delayed. The approved Project Budget will be attached to the Phase Plan. The Managing Party shall have the right, from time to time, subject to the review and approval of the Representatives of the other Parties, to reallocate budgeted amounts from one category to any other category of a Project Budget, subject to any restrictions on funding sources.

**Section 10.04 Payment/Reimbursement Request.**

A. For each Project that is the subject of a Phase Plan, the Managing Party will submit a Project Costs payment request (“**Payment/Reimbursement Request**”) in the sample form of **Exhibit “C”** attached, as this form may be revised from time to time, to the Representatives of the other Parties. Any such submission may contain reference to information available for inspection by the City or the Conservancy. The Representatives of the other Parties will promptly review the Payment/Reimbursement Request, and if all or part of the Payment/Reimbursement Request is approved, the Representatives of the other Parties shall forward the Payment/Reimbursement Request to all Parties, indicating its approval or the approval of a portion. If there is a rejection of all or part of the Payment/Reimbursement Request by any of the Representatives of the other Parties, the accepted portion of the Payment/Reimbursement Request shall be processed only if permitted in writing by all the Representatives of the other Parties as provided in this Agreement, and the rejected portion will be returned to all Parties within 10 Business Days after the date of submission to all the Representatives of the other Parties with a reasonable and detailed explanation of the rejection.

B. Upon approval of the Payment/Reimbursement Request or any approved portion, the Managing Party shall pay, from the Project Disbursement Fund Account, to the Contractors or, at the election of the Managing Party, jointly to both the Contractor(s) and the Managing Party, the amounts approved in the Payment/Reimbursement Request, with such payments being made proportionally based on the proportion paid by the City and the Conservancy.

C. Payment/Reimbursement Requests submitted for payment or reimbursement of Project Costs paid for or incurred for any Public Improvement Projects shall include (i) an unconditional waiver or partial waiver, as the case may be, of liens for the Contractors and a conditional waiver of liens, with the only condition being payment of the amount requisitioned, for each subcontractor, or other appropriate evidence of full payment indicating that the party has

fully paid for all items invoiced for which reimbursement is requested, and (ii) an invoice for services rendered for all items invoiced for which payment is requested. Accompanying each new requisition for any Public Improvement Project shall be unconditional waivers of lien or partial waivers, as the case may be, of all subcontractors paid from the prior requisition. No waiver of lien shall be required from parties who do not have the ability to place a lien on any portion of the District or the funds of the LGC, the Conservancy or the City.

## **ARTICLE 11 FINANCING OF THE PROJECTS**

**Section 11.01 Determination of the City Contribution and the Conservancy Contribution.** Funding for each Project shall be provided by the LGC, the Conservancy, and the City in accordance with the terms of the Phase Plan for the Project.

**Section 11.02 Capital Repair Funds.** Upon substantial completion of each Public Improvement Project, or at such earlier date as may be described in the applicable Phase Plan, the Conservancy shall establish a Capital Repair Fund with respect to each Public Improvement Project and the Conservancy shall deposit into a Capital Repair Fund (i) the initial amount, if any, to establish the Capital Repair Fund as indicated in the applicable approved Phase Plan, plus (ii) all Operating Revenues derived from the Public Improvement Project remaining after payment of all Operating Expenses for the Public Improvement Project until the Capital Repair Fund for the Public Improvement Project equals the required amount to be described in the applicable Phase Plan. The Capital Repair Fund will be a funding source for the maintenance, repair, refurbishment and replacement of the Public Improvement Project and the associated Public District Site and the amount shall be reasonably approved by the City and the LGC. The definition of “associated Public Site” will be stated or depicted in the Phase Plan for the Public Improvement Project. It is permitted to have a master Capital Repair Fund for some or all Projects so long as each Public Improvement Project has been separately allocated funds from the master Capital Repair Fund and allocated funds are not counted more than once. The Conservancy shall maintain books and records reflecting the sources and uses of all Capital Repair Funds, including (but not limited to) the manner in which it has allocated any portion of a master Capital Repair Fund to individual Public Improvement Projects.

### **Section 11.03 Reserve Funds.**

A. Reserve Fund Deposit. The Conservancy shall create Reserve Funds. The Phase Plan shall identify sources of funding and deposit requirements for Reserve Funds. Unless otherwise stated in a Phase Plan, the Managing Party shall make quarterly deposits into the Reserve Funds equal to the positive difference, if any, of (i) all Operating Revenues, minus (ii) the sum of (1) all Operating Expenses, plus (2) deposits into the Capital Repair Funds made by the Managing Party pursuant to Section 11.02 above.

B. Use of the Reserve Funds. The Reserve Funds may be utilized solely for:

(1) Expense shortfalls due to Cost Overruns, provided that expenditures for Cost Overruns shall not cause the balance of the Reserve Funds to be less than the dollar amount designated in the Phase Plans;

(2) Funding for the Operating Expenses, to the extent that Operating Revenues and any Contributions required by the Parties pursuant to Phase Plans are insufficient for such purpose; and

(3) Funding for repair and restoration of the Public District Sites and improvements located on the Public District Sites, to the extent that Operating Revenues (after paying Operating Expenses), the Capital Repair Fund and any Contributions required by the City or the Conservancy pursuant to a Phase Plan.

**Section 11.04 Audit of the Conservancy.** The Conservancy shall maintain complete books and records and shall perform an annual audit. The City, the LGC, and their authorized representative(s) may examine, and audit such records as necessary to determine the Conservancy's compliance with the terms of this Agreement. Such examinations, inspections and audits shall be made during normal business hours at the offices of the Conservancy, upon not less than three Business Days' prior notice to all Parties. Any Party may copy all or part of such books and records and may retain such copies. The cost and expense of such examinations and audits will be the sole responsibility of the Party conducting the same; provided, however, if an audit reflects that the Conservancy has expended either more than \$1,000.00 or more than 10 percent of any reserved fund or a Pledge in a manner not authorized by this Agreement, the reasonable cost and expense of the audit by the LGC or the City will be borne by the Conservancy. Such audits and records will be made available to the public, subject to requests for confidentiality by specific donors and with respect to legal, employment, strategic planning for donor outreach and development and other similar matters.

**Section 11.05 Financing Limitations.** Notwithstanding anything to the contrary that may be described in this Agreement, any third party financing obtained by the Conservancy or the LGC to secure funding for Cost Overruns, if any, shall not be secured by any part of the District, the City Contributions, the Conservancy Contributions or any guarantee, obligation or agreement of the City or the Conservancy. The LGC and the Conservancy covenant and agree not to permit the encumbrance, whether voluntary or involuntary, on any part of the District, the City Contributions or the Conservancy Contributions, for any purpose whatsoever. The Parties agree that, as a condition to making a loan to the LGC or the Conservancy, as permitted in this Agreement, any third-party lender may require reasonable assurances from the City and the Conservancy with respect to their satisfaction of their respective funding obligations under this Agreement, and the City and the Conservancy agree to provide, to the extent permitted under Applicable Law, such reasonable assurances as may be so requested, provided that the same does not increase their respective obligations or liabilities under this Agreement.

**Section 11.06 City Contribution Limitations.** The City may obtain and secure a portion of the City Contributions from a combination of net proceeds of tax-exempt obligations and taxable obligations (collectively, the "**Bonds**"), plus any earnings on or from any other legally available funds of the City which the City decides to use. Any Bonds issued by the City will be issued on such terms and conditions as the City determines, in its sole discretion. The City Contributions for a Project will be dependent upon (i) if Bonds are used, no material adverse change in the City's bonding capacity, (ii) if Bonds are used, the City's ability to sell the anticipated amount of Bonds described in the applicable Phase Plan upon terms acceptable

to the City, and (iii) the Conservancy having received Pledges sufficient to fund the Conservancy Contribution for the Project. Any Project funded in part or in whole by City Contributions shall be subject to the terms and conditions of the sources of such City Contributions and shall not adversely affect the tax-exempt status of any Bonds. The sources of such City Contributions will be described in the Phase Plan for the Project. Notwithstanding anything in this Agreement to the contrary, any and all amounts payable by the City under this Agreement (as supplemented by Phase Plans) are payable solely from funds appropriated by City Council for such purpose, if any, and no claim for payment of any amount of the City Contribution shall be made, claimed or permitted against any other funds, properties, assets or the general credit of the City.

## ARTICLE 12 NAMING RIGHTS

**Section 12.01 Naming Authority.** Subject to obtaining the prior consent of the City, the Conservancy will have the sole and exclusive right to grant license agreements for the naming rights to the Public District Sites and each of their component parts. There is no right for the Conservancy to name parks and facilities that are already named as of the Effective Date.

**Section 12.02 Exception to Approval Requirement.** The Conservancy will not be required to obtain the City's approval of any name to be used or the terms of a naming rights license agreement if:

A. the naming right is on a list of permitted naming right items previously approved in writing by the City or other governmental entity;

B. there are no tax-exempt bond funds used in connection the portion of the Project that is subject to the license agreement (and such fact has been confirmed in writing by the City prior to execution of the license agreement);

C. the license agreement provides that, if such amount is not fully funded, the license agreement will terminate;

D. the license agreement and the permitted names comply with the Naming Parameters in Section 12.03 below;

E. the license agreement provides that if there is ever a violation of the Naming Parameters as determined by the City, in the City's sole discretion, then after notice and 30 days for cure, the Conservancy shall terminate the license agreement and remove all names associated with the license agreement with no obligation to refund any amounts funded under the license agreement if the violation is not cured in the 30 days;

F. the license agreement evidences a legally binding and enforceable obligation of the licensee;

G. the design of the naming rights licensed are consistent with the Design Plan and any other design requirements for signage approved for the District;

- H. the name is consistent with Austin Values; and
- I. the name is not for parks and facilities that are already named as of the Effective Date.

**Section 12.03 Naming Parameters.** The Conservancy shall prepare and adopt pursuant to its bylaws naming parameters for the Public District Sites and each of their component parts, but excluding existing parks and facilities that are named as of the Effective Date (the “**Naming Parameters**”), which may (but not necessarily will) contain the following restrictions, limitations and conditions:

- A. The licensed name shall:
  - (1) Include the name of a facilitator or benefactor of the District;
  - (2) Honor a person, place, institution, group, entity or event, whether now existing or that existed in the past;
  - (3) Recognize events or affairs of historic or civic significance; or
  - (4) Embrace civic ideals or goals.
- B. The licensed name shall not include a name or reference that:
  - (1) Is defamatory, libelous, obscene, vulgar or offensive to the general public;
  - (2) May violate the rights of any person, institution, group or entity;
  - (3) Identifies or is identified with distilled liquor or spirits, habit-forming drugs, tobacco products, illegal drugs, adult-only entertainment, sexually-oriented businesses or publications, pornography, massage parlors, erectile dysfunction, birth control or sexually transmitted diseases, firearms or firearm ammunition, tattoo parlors, pawn shops, check-cashing establishments, or any product or service which is prohibited by Applicable Law or any entities that produce or sell such items;
  - (4) Advocates or opposes any political or social issue, cause, movement or belief, including, without limitation, a political party, public official, candidate, religion or religious establishment or movement;
  - (5) Advocates criminal activity, violence, unethical conduct or immorality;
  - (6) Refers to any proper geographic name unless such reference is to Austin or the City of Austin or is a part of the proper name of a person or entity otherwise permitted under this Article 12; or
  - (7) The City believes is inappropriate because it identifies or is identified with a person or organization that has been convicted of a criminal offense, fined by a recognized

global regulatory body or subpoenaed by a Governmental Authority in connection with criminal activity, violence, unethical conduct, or immorality.

### **ARTICLE 13 REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 13.01 By the Conservancy.** The Conservancy makes the following representations, warranties and covenants to the City and the LGC as of the Effective Date:

A. Existence. The Conservancy is a non-profit corporation duly incorporated and legally existing under the laws of the State of Texas, and is exempt from taxation under Section 501(c)(3) of the Code, as amended.

B. Authorization. The Conservancy is duly and legally authorized to enter into this Agreement and has complied with all laws, rules, regulations, charter provisions and bylaws relating to its corporate existence and authority to act, and the undersigned representative is authorized to act on behalf of and bind the Conservancy to the terms of this Agreement. The Conservancy has provided to the City and the LGC, on or before the Effective Date, a certified copy of a resolution of its Board of Directors authorizing the Conservancy's execution of this Agreement through the undersigned representative, together with documents evidencing the Conservancy's good standing and authority to transact business in the State of Texas. The Conservancy has all requisite power to perform all of its obligations under this Agreement. The execution of this Agreement by the Conservancy does not require any consent or approval which has not been obtained, including, without limitation, the consent or approval of any Governmental Authority.

C. Enforceable Obligations. Assuming due authorization, execution and delivery by the other Parties with respect to this Agreement, this Agreement, all documents executed by the Conservancy pursuant to this Agreement and all obligations of the Conservancy under this Agreement are enforceable against the Conservancy in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditor's rights generally and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).

D. No Legal Bar. The execution and delivery of this Agreement and the performance of its obligations under this Agreement by the Conservancy will not conflict with any provision of any Applicable Laws to which the Conservancy is subject or conflict with, or result in a breach of, or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which the Conservancy is a party or by which it is bound or any order or decree applicable to the Conservancy.

E. Litigation. There are no legal actions or proceedings pending or, to the knowledge of the Conservancy, threatened against the Conservancy which, if adversely determined, would materially and adversely affect the financial condition, charitable capacity or prospects of the Conservancy or its ability to fulfill its obligations under this Agreement.

F. Knowledge. The Conservancy has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by the Conservancy or any other Party under this Agreement are in any way inaccurate, incomplete or misleading.

G. Documents. All documents made available by the Conservancy to the City and/or the City's agents or representatives and/or to the LGC and/or the LGC's agents or representatives before the Effective Date, including, without limitation, all financial documents relating to the Conservancy, are true, correct and complete copies of the instruments which they purport to be and accurately depict the subject matter addressed.

**Section 13.02 By the LGC.** The LGC represents, warrants and covenants to the City and the Conservancy as of the Effective Date that the LGC has been duly created under the laws of the State of Texas.

**Section 13.03 By the City.** The City represents, warrants and covenants to the LGC and the Conservancy as of the Effective Date that the City is a municipal corporation and home rule city of the State of Texas principally situated in Travis County.

**Section 13.04 Disclaimer by the City.** THE CONSERVANCY AND THE LGC ACKNOWLEDGE THAT, EXCEPT FOR THE REPRESENTATIONS CONTAINED WITHIN THIS AGREEMENT, NEITHER THE CITY NOR ANY OF ITS EMPLOYEES, OFFICERS, REPRESENTATIVES OR ELECTED OFFICIALS HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED) REGARDING THE DISTRICT, THE PROJECTS, THE SUBJECT MATTER OF THIS AGREEMENT, PHASE PLANS OR ANY EXHIBIT, OTHER THAN THE EXPRESSED OBLIGATIONS CONTAINED IN THIS AGREEMENT. THE CONSERVANCY AND THE LGC AGREE THAT NEITHER THE CITY NOR ANY OF ITS EMPLOYEES, OFFICERS, REPRESENTATIVES OR ELECTED OFFICIALS WILL HAVE ANY RESPONSIBILITY FOR (AND HAVE MADE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO) ANY OF THE FOLLOWING:

A. THE ACCURACY OR COMPLETENESS OF ANY INFORMATION SUPPLIED BY ANY PERSON OTHER THAN THE CITY REPRESENTATIVE PURSUANT TO THIS AGREEMENT.

B. THE COMPLIANCE OF THE PROJECTS, PHASE PLANS, THE DESIGN PLAN OR ANY FEATURE AND ANY PROPOSED IMPROVEMENT WITH ANY APPLICABLE LAWS.

C. THE ACCURACY OR COMPLETENESS OF ANY FINANCIAL PROJECTIONS, COST ESTIMATES, SCHEDULES OR OTHER MATTERS RELATING TO THE DISTRICT, THE PROJECTS, PHASE PLANS OR ANY IMPROVEMENTS REQUIRED TO BE CONSTRUCTED OR FUNDED UNDER THE TERMS OF THIS AGREEMENT (AS SUPPLEMENTED BY PHASE PLANS).

IT IS UNDERSTOOD AND AGREED BY THE CONSERVANCY AND THE LGC (FOR THEMSELVES AND FOR ANY PERSON CLAIMING BY, THROUGH OR UNDER

THE CONSERVANCY OR THE LGC, AS THE CASE MAY) THAT EACH OF THEM HAS BEEN AND WILL CONTINUE TO BE SOLELY RESPONSIBLE FOR MAKING THEIR OWN INDEPENDENT APPRAISAL OF AND INVESTIGATION INTO ALL SUCH MATTERS.

**Section 13.05**      **Reliance.** Each Party agrees and acknowledges that, in entering into this Agreement,

A. Each Party is expressly and primarily relying on the truth and accuracy of the foregoing representations, warranties and covenants of each other Party, without any obligation to investigate the accuracy or completeness;

B. Notwithstanding any investigation by any Party, each Party may continue to rely on the foregoing representations, warranties and covenants of each other Party until this Agreement is terminated according to its terms;

C. Such representations, warranties and covenants are a material inducement to each Party in making this Agreement and agreeing to undertake and accept its terms; and

D. Each Party would not be willing to do so in the absence of any of such representations, warranties and covenants.

**Section 13.06**      **Additional Covenants of the Conservancy.** The Conservancy further covenants and agrees with the City and the LGC:

A. Capital Repair Funds and Reserve Funds. The Conservancy shall use good faith, commercially reasonable efforts to preserve and protect the Capital Repair Funds and Reserve Funds and expend the Capital Repair Funds and the Reserve Funds solely for the purposes described in this Agreement. The Conservancy shall adopt from time to time investment guidelines for all reserve accounts that are approved in writing by the City.

B. Expenditures. The Conservancy shall expend funds advanced to it by the City or the LGC solely in accordance with this Agreement, as described in the then applicable Project Budget and Phase Plans.

C. Enforcement. The Conservancy shall use commercially reasonable efforts to diligently enforce its rights, and seek remedies available to it (i) upon any default under the terms of any Contracts, and (ii) as necessary to preserve and protect its right, title and interests in and to any portion of the District.

D. Notices. The Conservancy shall promptly furnish to the LGC and the City, upon receipt by the Conservancy, copies of all legal notices received by the Conservancy affecting the Projects, including, without limitation, notices from Governmental Authorities, notices from any party claiming any default in any financing or payment obligation, and any other notice not of a routine nature.

E. Proceedings. The Conservancy shall promptly notify the LGC and the City of any suit, proceeding or action that is initiated or threatened in connection with the Projects or against

the LGC, the City or the Conservancy in connection with the Projects.

F. Cooperation. The Conservancy shall cooperate with the LGC and the City in all aspects of the Projects, and, except as expressly authorized by this Agreement, not unreasonably hinder, delay or interfere with the Projects.

## **ARTICLE 14 INDEMNITY; LIMITATION OF LIABILITY**

### **Section 14.01 Indemnifications.**

THE CONSERVANCY COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, THE LGC AND THEIR RESPECTIVE ELECTED OFFICIALS, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING, BUT NOT LIMITED TO, INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT OR COPYRIGHT THAT ARISE OUT OF ANY OF THE WORK PERFORMED BY, OR ON BEHALF OF, THE CONSERVANCY, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO THE CONSERVANCY'S BREACH OF THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF THE CONSERVANCY, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE OR PERSONNEL, CONSULTANT, CONTRACTOR OR SUBCONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, PERSONNEL, DIRECTORS AND REPRESENTATIVES IN BREACH OF THE PERFORMANCE OF DUTIES OF THE CONSERVANCY UNDER THIS AGREEMENT. THE CONSERVANCY SHALL PROMPTLY ADVISE EACH OTHER PARTY IN WRITING OF ANY CLAIM OR DEMAND AGAINST SUCH PARTY KNOWN TO THE CONSERVANCY RELATED TO OR ARISING OUT OF THE CONSERVANCY'S ACTIVITIES RELATED TO THIS AGREEMENT AND SHALL INVESTIGATE AND DEFEND SUCH CLAIM OR DEMAND AT THE CONSERVANCY'S EXPENSE TO THE EXTENT THE SAME IS COVERED BY THE CONSERVANCY'S INDEMNITY UNDER THIS SECTION. EACH PARTY WILL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE CONSERVANCY OF ANY OF ITS OBLIGATIONS UNDER THIS SECTION.

### **Section 14.02 Indemnification Procedures.**

A. If any Person indemnified pursuant to Section 14.01 (an "**Indemnitee**") shall discover or have actual notice of facts giving rise or which may give rise to a claim for indemnification under this Article 14, or shall receive notice of any claim or demand, with respect to any matter for which indemnification may be claimed, the Indemnitee shall, within 20 days following service of process (or within such shorter time as may be necessary to give the Person obligated to indemnify the Indemnitee (the "**Indemnitor**") a reasonable opportunity to

respond to such service of process) or within 20 days after any other such notice, notify the Indemnitor in writing together with a statement of the information as the Indemnatee has; it being understood and agreed that any failure or delay of the Indemnatee to notify the Indemnitor shall not relieve the Indemnitor from liability except and solely to the extent that the failure or delay shall have adversely affected the Indemnitor's ability to defend against, settle, or satisfy any such claim or demand. Following notice, the Indemnitor shall have the right, at its sole cost and expense, to contest or defend such claim or demand through attorneys, accountants, and others of its own choosing (the choice of such attorneys, accountants, and others being subject to the approval of the Indemnatee) and in the event it elects to do so, it shall promptly notify the Indemnatee of its intent to contest or defend such claim or demand. If within 20 days following the notice from the Indemnatee (or within such shorter time as may be necessary to give the Indemnitor a reasonable opportunity to respond to service of process or other judicial or administrative action), the Indemnatee has not received notice from the Indemnitor that the claim or demand will be contested or defended by the Indemnitor, the Indemnatee shall have the right to (i) authorize attorneys satisfactory to it to represent it, or (ii) subject to the approval of the Indemnitor, at any time settle, compromise, or pay such claim or demand, in either of which events the Indemnatee shall be entitled to indemnification subject to this Section 14.02.

B. In the event and so long as the Indemnitor is actively contesting or defending against a claim or demand as provided above, the Indemnatee shall cooperate with the Indemnitor and its counsel in such contest or defense, shall join in making any appropriate counterclaim or cross-claim in connection with the claim or demand, and shall provide such access to the books and records of the Indemnatee as shall be necessary in connection with such defense or contest, all at the sole cost and expense of the Indemnitor. Notwithstanding that the Indemnitor is actively conducting such defense or contest, any claim or demand may be settled, compromised or paid by the Indemnatee without the consent of the Indemnitor. Any such claim or demand may be settled, compromised, or paid by the Indemnitor without the Indemnatee's consent, so long as such settlement or compromise does not cause the Indemnatee to incur any present or future material cost, expense, obligation or liability of any kind or nature, or require any admission or action or forbearance from action by Indemnatee.

C. If a conflict of interest exists between the Indemnatee and the Indemnitor with respect to any claim or demand, the Indemnatee shall have the right to participate in the defense of such claim or demand with separate counsel chosen by the Indemnatee, subject to the approval of the Indemnitor, and paid by the Indemnitor.

**Section 14.03 No Affiliate Liability.** The obligations and liabilities of any Party to this Agreement are solely the obligations and liabilities of the Party and shall not be the obligations or liabilities of any of the officers, elected officials, directors, trustees, employees, volunteers, or donors of and to the Party. No Party may seek any remedy under or related to this Agreement against any of the officers, elected officials, directors, trustees, employees, volunteers, or donors of and to another Party, none of whom shall have any personal liability.

**Section 14.04 Survival.** The obligations contained in this Article 14 will survive the expiration or earlier termination of this Agreement, but only insofar as such indemnities relate to (i) any liabilities, damages, suits, claims or judgments that accrue or arise before the

expiration or earlier termination of this Agreement, or (ii) any acts or omissions that occur before the expiration or earlier termination of this Agreement.

**Section 14.05 City Limitations.**

A. The LGC and the Conservancy may not seek any remedy for non-payment by the City if such non-payment is due to: (i) Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and (ii) §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

B. The funding of this Agreement by the City is dependent upon the availability of appropriations. The City's payment obligations are payable only and solely from funds appropriated and available for this Agreement. The absence of appropriated or other lawfully available funds shall render this Agreement null and void to the extent funds are not appropriated or available. The City shall provide the Conservancy written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under this Agreement, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under this Agreement. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

**Section 14.06 No Consequential Damages.** In no event shall any Party to this Agreement ever have any liability to any other Party for incidental, consequential, exemplary or punitive damages. Additionally, recourse upon the Conservancy for any breach of this Agreement is in all things limited to the Project Disbursement Fund Account. In no event shall the City or the LGC ever have recourse under this Agreement or otherwise upon any funds or other assets of the Conservancy, or its members, directors, officers, employees, representatives, affiliates, successors, and assigns, apart from the Project Disbursement Fund Account.

**ARTICLE 15  
TERMINATION EVENTS, EVENTS OF DEFAULT, AND REMEDIES**

**Section 15.01 Automatic Termination Events.** The Parties acknowledge that certain obligations and requirements of this Agreement are of fundamental importance to the Parties, such that the breach of the obligations and requirements justifies the automatic termination of this Agreement and that no alternate remedy would appropriately protect the respective interests of the Parties. Each of the following is an Automatic Termination Event that, without notice or opportunity to cure by any Party when it occurs, will result in the automatic termination of this Agreement, other than with respect to those matters which survive termination as expressly stated in this Agreement:

- A. The Public District Sites are not used for Public Purposes.
- B. The entry of a non-appealable ruling by a court of competent jurisdiction that the LGC did not have power or authority to enter into this Agreement.

C. The entry of a non-appealable ruling by a court of competent jurisdiction that the Conservancy did not have power or authority to enter into this Agreement.

D. The entry of a non-appealable ruling by a court of competent jurisdiction that the City did not have authority to enter into this Agreement.

E. The entry of a non-appealable ruling by a court of competent jurisdiction that this Agreement is not valid or enforceable.

F. If fraudulent statements are made to induce the City or the LGC to give any approvals under this Agreement.

**Section 15.02 Events of Default.** Each of the following will be an Event of Default:

A. A Party fails to perform or observe any of the obligations, covenants or agreements to be performed or observed by such Party under this Agreement, which failure continues for more than 30 days following written notice of such failure to such Party, or such longer period of time as may be reasonable under the circumstances, if such failure cannot be cured within 30 days because of the nature of the default and during such 30 day period curative action has commenced and is thereafter pursued diligently by such Party.

B. Any material representation or warranty of a Party is untrue when made or becomes untrue thereafter and remains untrue after 30 days following written notice to such Party that the material representation or warranty is untrue.

C. A Party submits a report, application, certificate or other information required under the terms of this Agreement which intentionally or knowingly contains any false or misleading statements of material facts.

D. The LGC or the Conservancy transfers or encumbers any portion of the Public District Sites in violation of this Agreement.

E. The Managing Party fails to maintain the Project Disbursement Fund Account (or any subaccount), Capital Repair Funds or the Reserve Funds in accordance with this Agreement.

F. A Party makes a general assignment for the benefit of creditors.

G. A petition under any section or chapter of federal bankruptcy laws or under any similar law or statute of the United States or any state is filed by or against a Party and is not dismissed, withdrawn or otherwise concluded without adjudication within 75 days after being filed.

H. A Party admits in writing its inability to pay its debts when due.

I. A bill in equity or other proceeding for the appointment of a receiver of a Party or other custodian for a Party's business or assets is filed and consented to by that Party.

J. A receiver or other custodian (permanent or temporary) of substantially all of the Party's assets or property, or any part, is appointed by any court of competent jurisdiction.

K. Proceedings for a composition with creditors under any state or federal law have been instituted by or against a Party.

L. A final judgment representing a claim or charge against the assets of a Party in an amount in excess of \$1.0 million remains unsatisfied or of record for 180 days or longer (unless a supersedeas or other appeal bond is filed); provided, however, that this provision shall not apply to the City.

M. A Party is dissolved.

N. Execution is levied against a Party's business or substantially all of its property.

O. The Managing Party fails for a period of more than 30 days, after funding by any of the other Parties of a Payment/Reimbursement Request to pay or cause payment to the Project Architect, Project Landscape Architect, Contractors or others engaged by the Managing Party in the implementation of any Project amounts due and owing to be paid out of such funding and not disputed by the Managing Party in connection therewith.

P. Failure by the Conservancy or the City to fund all or part of its Contributions in accordance with the terms of this Agreement and any applicable Phase Plans, and the failure to thereafter fund such amounts within 30 days following notice from another Party of such failure.

**Section 15.03 Remedies for Uncured Event of Default under Section 15.02.**

Subject to Section 3.10, after delivery of any required notice, any non-defaulting Party may pursue, at its option and without prejudice to any other rights and remedies provided for pursuant to this Agreement or by law, any right or remedy conferred upon or reserved to it under this Agreement or at law or in equity, including, without limitation, the right to pursue specific performance and termination of this Agreement. The rights and remedies provided in this Agreement shall be in addition to and cumulative of all other rights and remedies available to a Party, and the pursuit of one remedy will not be an election of a sole remedy and will not preclude the right to pursue any or all other available remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus. Any failure of a Party to exercise any right or remedy as provided in this Agreement shall not be deemed a waiver by such Party of any claim for actual damages it may have by reason of the other Party's default and specific performance.

**ARTICLE 16  
ASSIGNMENT**

The Parties shall not assign (partially or in the entirety) any rights or duties under this Agreement without prior written consent of each other Party, and this consent may be withheld in the respective Party's sole and absolute discretion. If an assignment of this Agreement is approved by the Parties, the transfer of this Agreement or any of the documents referenced in this Agreement shall confer all rights and duties with respect to the Projects.

**ARTICLE 17  
FORCE MAJEURE EVENTS**

**Section 17.01 Mitigation.** Each Party shall use commercially reasonable efforts to mitigate any delay in performance by such Party under this Agreement caused by a Force Majeure Event.

**Section 17.02 Notice.** Each Party whose performance under this Agreement is prevented by a Force Majeure Event shall provide notice to the other Parties within three Business Days after the Party becomes aware of the occurrence of the Force Majeure Event. The notice shall describe the facts and circumstances of the Force Majeure Event and the anticipated effect on the performance of such Party's obligations, duties, covenants and agreements under this Agreement, which notice shall be supplemented from time to time upon request. Such Party shall also give notice to the other Parties of its ability to resume performance under this Agreement within a reasonable time following termination of the Force Majeure Event.

**Section 17.03 Effect of Force Majeure Event.** The Parties agree they shall grant the other Parties a reasonable extension of time as appropriate if a Force Majeure Event renders timely performance of the Parties' obligations impossible or unexpectedly burdensome. Consent to an extension of time for performance under such circumstances will not be unreasonably withheld, conditioned or delayed. Failure to fulfill obligations due to conditions beyond a Party's control shall not be considered a breach of this Agreement; provided, however, that the obligations shall be suspended only for the reasonable duration of such conditions. Suspension of one Party's obligations pursuant to this Section 17.03 shall likewise suspend performance of the other Party's obligations for the duration of the suspension.

**ARTICLE 18  
CITY COUNCIL APPROVAL; CAPACITY OF THE CITY; GOVERNMENTAL  
FUNCTIONS**

**Section 18.01 City Council Approval.** The LGC and the Conservancy recognize and agree that any contracts or agreements contemplated to be entered into by the City under the terms of this Agreement, which are not attached as exhibits to this Agreement, may be subject to the prior approval of City Council, if the approval of City Council is required under the terms of the City's charter or other Applicable Law, such determination to be made by the City in its sole and absolute discretion. Further, any approvals required of the City for any assignment of this Agreement will be subject to the prior approval of City Council.

**Section 18.02 Capacity of the City.** Without in any way limiting or extending the obligations, duties, covenants and agreements of the City as a Party to this Agreement, the Parties agree that any action, omission or circumstance arising out of the exercise or performance of the City's required Governmental Functions shall not cause or constitute a default by the City under this Agreement or any other document delivered in connection with this Agreement or give rise to any rights or claims for damages or injury against the City in its capacity as a Party to this Agreement. The Conservancy's and the LGC's remedies for any injury, damage or claim resulting from any other action, omission or circumstance shall be

governed by the laws and regulations concerning claims against the City as a home rule charter city. These provisions shall survive any termination of this Agreement.

**Section 18.03 Capacity of Parties Acting on Behalf of the City.** All references in this Agreement to employees, agents, representatives, contractors and the like of the City shall refer only to persons or entities acting on behalf of the City in its capacity as a Party to this Agreement, and all such references specifically exclude any employees, agents, representatives, contractors, elected officials and the like acting in connection with the performance of the City's required Governmental Functions.

**Section 18.04 No Limitation on the City's Governmental Functions.** The Parties acknowledge that no representation, warranty, consent, approval or agreement in this Agreement by the City (as a Party to this Agreement) shall be binding upon, constitute a waiver by or estop the City from exercising any of its rights, powers or duties in its required Governmental Functions. For example, approval by the City of this Agreement shall not constitute satisfaction of any requirements of, or the need to obtain any approval by, the City in the exercise of its Governmental Functions or as may be required under any Applicable Laws.

## ARTICLE 19 PARTY REPRESENTATIVES

**Section 19.01 The Conservancy Representative.** Upon execution of this Agreement, the Conservancy shall designate in writing to the City and the LGC the name of the individual (the "**Conservancy Representative**") who will have full authority to execute any and all instruments requiring the Conservancy's signature and to act on behalf of the Conservancy with respect to all matters arising out of this Agreement. The Conservancy shall have the right, from time to time, to change the Person who is the Conservancy Representative by giving the City and the LGC prior written notice. The Conservancy Representative shall represent the interests of the Conservancy, be responsible for overseeing all aspects of the Projects on behalf of the Conservancy, and work closely with the City Representative and the LGC Representative, on behalf of the Conservancy. Actions by the Conservancy Representative on behalf of the Conservancy shall be done in his or her reasonable judgment unless express standards or parameters therefor are included in this Agreement, in which case, actions taken by the Conservancy Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination by the Conservancy Representative shall be binding on the Conservancy; provided, however, that the Conservancy Representative shall not have any right to modify, amend, unless authorized in a Phase Plan, or terminate this Agreement or agree to, execute and deliver Phase Plans unless authorized by official action of the governing authority of the Conservancy.

**Section 19.02 The LGC Representative.** Upon execution of this Agreement, the LGC shall designate in writing to the City and the Conservancy the name of the individual (the "**LGC Representative**") who will have full authority to execute any and all instruments requiring the LGC's signature and to act on behalf of the LGC with respect to all matters arising out of this Agreement. The LGC shall have the right, from time to time, to change the Person who is the LGC Representative by giving the City and the Conservancy prior written notice. The LGC Representative shall represent the interests of the LGC, be responsible for overseeing

all aspects of the Projects on behalf of the LGC, and work closely with the City Representative and the Conservancy Representative, on behalf of the LGC. Actions by the LGC Representative on behalf of the LGC shall be done in his or her reasonable judgment unless express standards or parameters are included in this Agreement, in which case, actions taken by the LGC Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the LGC Representative shall be binding on the LGC; provided, however, that the LGC Representative shall not have any right to modify or amend this Agreement, unless authorized in a Phase Plan, or terminate this Agreement or agree to execute and deliver Phase Plans, unless authorized by official action of the governing authority of the LGC.

**Section 19.03 The City Representative.** Upon execution of this Agreement, the City shall designate an individual or a committee of up to five individuals to be the City Representative (the “**City Representative**”) and provide the Conservancy and the LGC with prior written notice of the identity of the individuals so designated. The City shall have the right, from time to time, to change any or all of the Persons who are the City Representatives of the other Parties by giving the Conservancy and the LGC written notice. With respect to any action which is to be made by the City under this Agreement, subject to Article 18, the City Representative may make such action as set out in this Agreement, in the Phase Plan or as otherwise permitted or shall notify the Conservancy and the LGC in writing of the Person(s) responsible for such action and shall forward any communications to such Person(s) for action. Actions by any City Representative on behalf of the City shall be done in his or her reasonable judgment unless express standards or parameters therefor are included in this Agreement, in which case, actions taken by the City Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the City Representative shall be binding on the City; provided, however, that the City Representative shall not have any right to modify or amend this Agreement, unless authorized in a Phase Plan or as may be otherwise permitted, or terminate this Agreement or to agree to, execute and deliver Phase Plans, unless authorized by the City.

## ARTICLE 20 BUDGETING, SCHEDULE AND REPORTS

**Section 20.01 Annual Project Funding and Planning Process for Phase Improvements.**

A. Annual Project Plans. Not later than 120 days before the beginning of each Fiscal Year, the LGC shall submit an annual plan of projects that are anticipated to be submitted as Phase Plans to be funded for such Fiscal Year.

B. Approval. The Parties shall have the right to review and approve (which approval shall not be unreasonably withheld) the Annual Project Plans for each Fiscal Year.

**Section 20.02 Schedule.** The City, the LGC, and the Conservancy shall work together to develop a long range schedule to identify, plan and implement to completion the Projects contemplated by the Design Plan, and they shall develop a priority list of Projects. Such priority list shall not dictate the order of work or prevent the LGC, the City and the

Conservancy from approving a Phase Plan for other Projects before completing the Projects on the priority list. The LGC shall provide to the Representatives of the other Parties as and when available, for their information, the current Schedule for all Projects. The Schedule shall include time for adverse weather conditions to the extent normally encountered in the Austin, Texas area establish milestone dates for completion for the applicable Project, delineate all phases of the Project and described a projected date for completion of each phase in sufficient detail to allow the City and the Conservancy to monitor progress of the Project and to determine if milestone dates are being met. The Schedule shall indicate the projected milestone dates for the starting and completion of the various stages of the Project and shall be revised as required by the conditions of the Project. The phases of any Public Improvement Project to be addressed in a Schedule shall include, without limitation, (a) the design phases, (b) submission for and issuance of Permits, and (c) all construction phases.

**Section 20.03 Progress Reports.** The LGC shall provide to the Representatives of the other Parties and City Council written progress reports on a regular basis, but no less often than quarterly, unless otherwise agreed by the Parties. Such reports shall describe the status of all ongoing Projects and include, but not be limited to, actual versus estimated completion dates for each component of the Projects, any change in costs incurred in connection with the completion of the Projects, performance against schedule, any change in the critical path and revisions to the Schedule as of the end of each reporting period.

**Section 20.04 Significant Event Reports.** Should any Force Majeure Event or other situation, occurrence or event having a material impact on a Project occur, the Managing Party within a reasonable time following the Managing Party's acquiring actual knowledge of such occurrence prepare a written "**Significant Event Report**" detailing all available information and the steps being taken to correct the problem and forward the same to the Representatives.

**Section 20.05 Inspection Reports.** The LGC shall cause its designee to implement and require all reasonably necessary inspections, testing, and safety programs for the Projects or otherwise mandated by Applicable Law or specified in the applicable Contracts, and shall prepare and submit its inspection reports, procedures, schedules and requirements with respect to such programs in writing to the City Representative as prepared.

**Section 20.06 Final Report.** Within 90 days after final completion of a Project, the Managing Party shall deliver or cause to be delivered to the City Representative a final project report, which report shall describe the total Project Costs incurred in connection with the completion of the Project through final completion of the Project.

**Section 20.07 Returns Required by Law.** The LGC shall execute and file punctually when due all forms, reports and returns relating to a Project required by Applicable Law, including, without limitation, reports relating to the employment of personnel.

**Section 20.08 Inspection Rights of the City.** The LGC and the Conservancy agree that the City Representative shall have the right at all times during normal business hours of the LGC or the Conservancy, or the Contractors to inspect the progress of any Project so long as such inspections do not unreasonably interfere with ongoing work. The City Representative

shall, at the option of the LGC or the Conservancy, be accompanied by the LGC or the Conservancy or their respective representative during such inspection. In addition, the Conservancy shall keep the books and records to be maintained by the Conservancy pursuant to this Agreement at its regular business office. The City Representative may examine and audit such books and records (at its respective expense) during the normal business hours of the Conservancy, upon not less than three Business Days' notice to the Conservancy. The Conservancy further agrees to ensure that the contract with all Contractors or other Persons retained by or on behalf of the Conservancy will permit such inspections, examinations and audits. The provisions of this Section 20.08 shall in no way limit or otherwise relieve the Conservancy from the Conservancy's obligation to implement the Projects in conformance with this Agreement. The City, through appropriate designees, which may change from time to time, further reserves the right to enter the District during regular business hours to conduct fire, safety and health inspections or any other inspections by Governmental Authorities or to exercise the City's normal police powers, provided that in exercising such powers (a) the City shall use its reasonable efforts not to unreasonably interfere with the operations of the Conservancy and (b) the City's inspection rights shall not be deemed to limit in any way the Conservancy's rights to contest the City's findings with respect to such inspections or the exercise of such police powers.

**ARTICLE 21  
MISCELLANEOUS PROVISIONS**

**Section 21.01 Notices.** The Parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications required or permitted to be given by one Party to another by this Agreement shall be given in writing addressed to the Party to be notified at the address described below for such Party, (a) by delivering the same in person, (b) by depositing the same in the United States mail, certified, return receipt requested, postage prepaid, addressed to the Party to be notified, or (c) by depositing the same with a nationally recognized courier service guaranteeing "next day delivery," addressed to the Party to be notified. A notice delivered in accordance with the immediately preceding sentence will be deemed to have been given upon the date of delivery (or refusal to accept delivery) as indicated on the return receipt; provided, however, if such notice is not delivered or refused on a Business Day, then notice shall be deemed to have been given on the first Business Day following the actual date of delivery or refusal. For the purposes of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

**City:**

Marc A. Ott  
City Manager  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-1088  
512-974-2200

Karen Kennard  
City Attorney  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-1088  
512-974-2268

Elaine Hart  
Chief Financial Officer  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-1088  
512-974-2283

**With copies to:** Sue Edwards  
Assistant City Manager  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-1088  
512-974-2200

**Conservancy:** Melba Whatley  
President  
Waller Creek Conservancy  
2909 West 35th Street  
Austin, Texas 78703  
512-478-4675

**With copies to:** Tom Meredith  
Chairman  
Waller Creek Conservancy  
MFI  
P. O. Box 2146  
Austin, Texas 78768  
512-732-2001

Melanie Barnes  
Secretary/Treasurer  
Waller Creek Conservancy  
111 Congress Avenue, Suite 400  
Austin, Texas 78703  
512-422-1023

Gretchen Flatau  
Interim Executive Director  
Waller Creek Conservancy  
P.O. Box 12363  
Austin, Texas 78711  
512-541-3520

David Armbrust  
Armbrust & Brown PLLC  
100 Congress, Suite 1300  
Austin, Texas 78701-2744  
512-435-2301

Kimberly S. Beckham  
Armbrust & Brown PLLC  
100 Congress, Suite 1300  
Austin, Texas 78701-2744  
512-435-2382

**LGC:**

Elaine Hart  
Chief Financial Officer  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-1088  
512 974-2283

**With a copy to:**

Jacqueline Cullom  
Assistant City Attorney  
City of Austin  
Law Department  
P. O. Box 1088  
Austin, Texas 78767-1088  
512-974-2918

The Parties may, from time to time, change their respective addresses, and each has the right to specify as its address any other address within the United States of America by giving at least five days written notice to the other Parties.

To further communication between the Parties under this Agreement and outside of the formal written notice process, the Parties will designate within 10 days after the Effective Date those people who will represent each Party in informal communications concerning this Agreement and Phase Plans. The Parties may, from time to time, designate replacement and additional representatives for informal communication.

**Section 21.02 Business Days.** If any date or any period provided in this Agreement ends on a day that is not a Business Day, the applicable period shall be extended to the first Business Day following such non-Business Day.

**Section 21.03 Time.** Time is of the essence in performing under this Agreement.

**Section 21.04 Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws such that the legitimate expectations of any Party hereunder is incapable of being realized and cannot be reformed to validly and legally meet such thwarted expectations, then, and only in that event, it is the intention of the Parties that this Agreement shall terminate in all respects. In any other event, it is the intention of the Parties that the remainder of this Agreement will not be affected.

**Section 21.05 Waiver.** Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver, and such Party will have the right at any time to insist upon strict performance of any and all of the provisions of this Agreement.

**Section 21.06 Reservation of Rights.** To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under Applicable Laws. The rights and remedies of the parties under this Agreement shall not be mutually exclusive. The exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions of this Agreement.

**Section 21.07 Further Documents.** The Parties agree that at any time after execution of this Agreement, they will, upon request of another Party, execute and deliver such further documents and do such further acts and things as any other Party may reasonably request in order to effectuate the terms of this Agreement.

**Section 21.08 Incorporation of Exhibits, Schedules, Phase Plans and Other Documents by Reference.** All Exhibits, Schedules, Phase Plans and other documents attached to or referred to in this Agreement are incorporated into this Agreement by reference for the purposes described in this Agreement.

**Section 21.09 Governing Law; Venue.** This agreement, and the actions of the Parties hereunder shall in all respects be governed by and construed in accordance with the laws of the State of Texas (excluding principles of conflicts of law). Venue shall be in Travis County, Texas.

**Section 21.10 Waiver of Attorneys' Fees.** In consideration of this Agreement and the mutual waiver of this right, the Parties, knowingly and intentionally waive their rights to attorneys' fees and costs of court in any administrative proceeding, alternative dispute resolution proceeding, or other litigation arising out of or connected to this Agreement, including, without limitation, any rights under Section 271.153 of the Texas Local Government Code or otherwise.

**Section 21.11 No Party Deemed Drafter.** Each Party has thoroughly reviewed and revised this Agreement (including each exhibit attached to this Agreement) and has had the

advice of counsel before execution of this Agreement, and the Parties agree that none of them shall be deemed to be the sole drafter.

**Section 21.12 Use of Defined Terms.** Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of members of the relevant class. Any reference to this Agreement shall include this Agreement, the Phase Plans, exhibits and other instruments, documents and agreements as originally executed and as the same may from time to time be supplemented, modified or amended to conform with the requirements of Section 21.14.

**Section 21.13 Multiple Counterparts.** This Agreement may be executed in multiple counterparts, including by electronic means, each of which shall be deemed to be an original, but taken together shall constitute only one document. The Parties agree to circulate for execution all executed counterparts in order that each Party may obtain one counterpart executed by all Parties.

**Section 21.14 Entire Agreement, Amendment and Waiver, Survival.** This Agreement, together with the attached exhibits and the documents referenced in this Agreement, constitute the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior written and oral agreements and understandings with respect to such subject matter, including, without limitation, the MOU. Neither this Agreement nor any of the terms of this Agreement may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought, and in the case of the City, approved by action of City Council. No failure or delay of any Party in exercising any power or right under this Agreement will operate as a waiver of such power or right, nor will any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right of power, preclude any other or future exercise or the exercise of any other right or power. All of the representations and warranties of each Party contained in this Agreement shall survive the execution, delivery and acceptance of this Agreement and any termination of this Agreement. Unless otherwise described in this Agreement, all agreements of the Parties contained in this Agreement which must survive to afford each respective Party the anticipated benefits of such agreements shall likewise survive, whether or not identified in this Agreement to so survive.

**Section 21.15 Table of Contents; Headings.** The table of contents and headings of the various articles, sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Agreement.

**Section 21.16 Parties in Interest.** The terms of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their successors and permitted assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person (other than the Parties and their successors and permitted assigns and as expressly provided in this Agreement) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained in this Agreement or any standing or authority to enforce the terms and provisions of this Agreement.

**Section 21.17 Notices of Changes in Fact.** Promptly after either Party becomes aware of same, such Party will notify the other Party of:

A. Any change in any material fact or circumstance represented or warranted by such Party in this Agreement; and

B. Any default, event or condition which, with notice or lapse of time or both, could become a breach by such Party under this Agreement, specifying in each case, the nature of the condition and what action the Party has taken and proposes to take with respect to that condition.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the City, the LGC and the Conservancy have executed this Agreement as of dates below, to be effective as of the Effective Date.

**CONSERVANCY:**

**WALLER CREEK CONSERVANCY**

By: Melba Whitley

Name: Melba Whitley

Title: President, Waller Creek Conservancy

Date: April 7, 2014

LGC:

**WALLER CREEK LOCAL GOVERNMENT  
CORPORATION**

By Sue Edwards

Name: SUE Edwards

Title: President, LGC

Date: 4.16.14

CITY:



CITY OF AUSTIN, TEXAS

By *M. Ott*

Name: *M. Ott*

Title: *City Mgr*

Date: *4.3.14*

ATTEST:

*James S. Guice*  
City Clerk

**EXHIBIT "A"**  
**DEPICTION OF DISTRICT**  
**[SEE ATTACHED]**

# Waller District Emerging Projects

**Brick Oven site** 01

Developer: unknown  
 Project Type: mixed use  
 Gross Square Footage: unknown Project Site Size: unknown

**The Millennium Rainey** 09

Developer: Dinerstein Companies  
 Project Type: Residential (250 units +/-)  
 Gross Square Footage: unknown Project Site Area: unknown

**Hotel Indigo/Holiday Inn** 02

Developer: Journeymen  
 Project Type: Boutique Hotel/Hotel (300 rooms), 10 stories  
 Gross Square Footage: unknown Project Site Size: unknown



North Elevation

**Hotel VanZandt** 10

Developer: JMR-Austin Hotel LP  
 Project Type: Hotel (328 rooms)  
 Gross Square Footage: unknown Project Site Area: unknown



Rendering from Austin Business Journal

**Stubb's** 03

Developer: Stubb's  
 Project Type: Interior remodel  
 Gross Square Footage: unknown Project Site Size: unknown

**Homewood Suites** 11

Developer: AOS Rainey R, LLC  
 Project Type: Hotel (150 rooms), 14 stories  
 Gross Square Footage: 118,855 SF Project Site Area: 0.83 AC

**Episcopal Church National Archive** 04

Developer: Episcopal Church  
 Project Type: Office, 5 stories  
 Gross Square Footage: unknown Project Site Size: unknown

**70 Rainey Street** 12

Developer: 70 Rainey Street, LP  
 Project Type: Restaurant, Residential (197 units), 89 stories  
 Gross Square Footage: 208,780 SF Project Site Area: 0.87 AC



South Elevation West Elevation

**4th/RR** 05

Developer: Perry Lorenz  
 Project Type: Mixed Use  
 Gross Square Footage: unknown Project Site Size: unknown

**Fairmont Hotel** 06

Developer: White Lodging  
 Project Type: Hotel (1031 rooms), 80 stories  
 Gross Square Footage: 7.5F Project Site Size: 9 AC



North Elevation West Elevation

**Kimber Modern Rainey** 13

Developer: Kimber Cavendish and Vicki Faust  
 Project Type: Hotel (30 rooms +/-)  
 Gross Square Footage: unknown Project Site Area: unknown



Rendering from downtownbuilding.org

**Trinity Place (99 Trinity)** 07

Developer: World Class Capital  
 Project Type: Restaurant/Residential (350 units), 38 stories  
 Gross Square Footage: 478,485 SF Project Site Area: 9 AC



North Elevation East Elevation

**Austin Skyhouse** 14

Developer: Novare Group  
 Project Type: Residential (350 units), 83 stories  
 Gross Square Footage: unknown Project Site Area: unknown



Rendering from Austin Business Journal

**Waller Park Place / Waller Center** 08

Developer: Sutton Company  
 Project Type: 34 story mixed-use tower, 48 story residential, 21 story office/retail  
 Gross Square Footage: unknown Project Site Area: unknown



West Elevation North Elevation

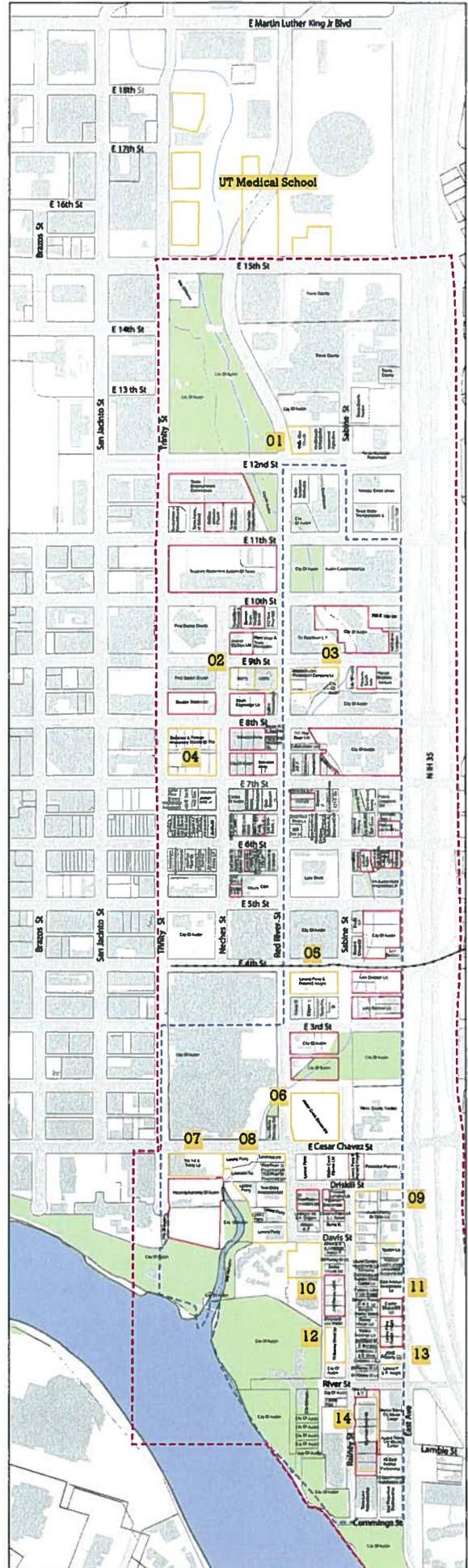
**North Shore Lofts** 15

Developer: Town Lake 28 LLC  
 Project Type: Residential, 18 stories  
 Gross Square Footage: 128,384 SF Project Site Area: unknown



Photograph - Looking from Lady Bird Lake

**Inset Map - Southern portion of Waller District**

## LEGEND

- Waller District
- TIF District
- Current Projects within District
- City of Austin Parks
- Parcels according to TCAD
- Multiple Parcels held by the Same Owner

Map was prepared by PORD and EDD, information was compiled from multiple sources and is current as of the date of this map. Map is to be used for reference purposes only.

March 13, 2014



0 100 200 300 400 500 Feet

## EXHIBIT "B"

### LIMITATIONS ON LGC DECISIONS

1. Approval of annual budget of the LGC, payment systems and controls to assure that all funds are properly administered, or any expenditure in excess of the amount described for such item in the most recent annual operating plans and operating budgets for the LGC that has been approved for the period in question by the City and the Conservancy;
2. M/WBE requirements for any work or contract unless set forth in a Phase Plan, in the sole discretion of the City and there will not be waivers to major City M/WBE policies without the approval of City Council;
3. Any work impacting right of way for the Urban Rail Project, in the sole discretion of the City Manager and being consistent with the Design Plan;
4. Create any subsidiary corporation;
5. Acquire any interest in real or personal property or shares of capital stock or other equity interest;
6. Borrow money, issue debt or modify any financing, pledge the credit of the LGC, execute any promissory note or other obligation or execute any mortgage, deed of trust, security deed, security agreement or other encumbrance;
7. Sell, convey, exchange, mortgage, subdivide or otherwise transfer or encumber or grant any easement or license of any assets of the LGC other than (i) non material transfers of personal, tangible or intangible property in the ordinary course of the operation of the LGC for its purposes or (ii) as contemplated by, as applicable, an approved Phase Plan;
8. Take any action that would violate an affirmative or negative covenant or other provision of any financing document or other agreement binding on the LGC;
9. Voluntarily agree on any restrictions on any properties owned by the LGC or the City and with respect to land owned by the City, only minor and limited restrictions are permitted and City Council must approve all other restrictions;
10. Enter into, modify or terminate any Phase Plan or any license or use and occupancy agreement relating to the District if not in conformance with the Design Plan;
11. Enter into, modify or terminate any contract for operation or maintenance other than any contract which (i) is terminable by the LGC without penalty on less 30 days' prior written notice, (ii) is entered into in the ordinary course of the LGC's pursuit of its purposes, and (iii) is for work or services contemplated in a Phase Plan or in the Operating and Management Agreement;
12. Enter into or amend, modify or terminate any contract for any design, construction, development, improvement or rehabilitation unless (i) with respect to any new contract

with an aggregate liability of less than \$25,000 and the identity of the service provider as well as the work under the contract has been approved by the Board; (ii) with respect to any change orders or contract amendment does not result in a price adjustment in excess of \$25,000 in any one instance or, taken all together with all other change orders that do not require Approval, result in a price adjustments of \$100,000 in the aggregate or reduce in any material respect the quality of the work to be provided, or (iii) contemplated by a Phase Plan and contained in the Project Budget or the operating budget for the Project or (iv) otherwise approved by City Council;

13. Commission or approve any plans for the construction of any improvements having a cost in excess of \$25,000 unless approved by the Phase Plan and contained in the Project Budget or the operating budget for the Project or otherwise approved by City Council;
14. Approve any material deviation in construction not consistent with the Design Plan;
15. Enter into, modify or terminate any property management, asset management, brokerage, concession, license, or other similar agreement which is not in the ordinary course of pursuing the purposes of the LGC, except as contemplated by a Phase Plan and contained in the Project Budget or the operating budget for the Project or otherwise approved by City Council;
16. Expend, or incur obligations unless unrestricted cash funds are held by the LGC;
17. Retain attorneys or institute or defend any legal action or settle any claim;
18. Guarantee the payment of any money, or debt of another person;
19. Grant any general power of attorney on behalf of the LGC;
20. Select accounting principles, practices or policies with respect to the maintenance of the LGC's books and records and agree to any material change to these accounting principles, practices or policies;
21. File any bankruptcy;
22. Take any action relating to environmental matters other than obtaining environmental approval under a Phase Plan;
23. Make any decision regarding (i) the building or restoration of the Property arising out of a casualty or condemnation, except for emergency expenditures or unless approved by the Phase Plan and contained in the Project Budget or the operating budget for the Project or otherwise approved by City Council; or (ii) the disposition of any casualty proceeds (or condemnation proceeds if applicable) which must always be spent in the District unless otherwise approved by City Council;
24. Adopt Naming Parameters pursuant to Article 12 of this Agreement and additional restrictions contained in a Phase Plan, and

25. Employ any personnel or discharge any key personnel, and adopt any personnel policies.

**EXHIBIT "C"**

**SAMPLE FORM OF PROJECT COST PAYMENT/REIMBURSEMENT REQUEST**

Requisition No. \_\_\_\_\_

**REQUISITION FOR DISBURSEMENT OF PROJECT COSTS**

1. All terms capitalized in this Requisition shall have the same meaning as in that certain Joint Design, Development, Management and Operation Agreement (the "**Agreement**") dated as of \_\_\_\_\_, 201\_\_, between the City of Austin, Texas (the "**City**"), Waller Creek Local Government Corporation (the "**LGC**") and Waller Creek Conservancy (the "**Conservancy**"). The sums requisitioned are for the payment of Project Costs of the Project described in that certain Phase Plan No. \_\_\_\_\_ dated as of \_\_\_\_\_, 20\_\_.

2. The Managing Party submits the following information to support the sums requisitioned for payment:

<u>Item No.</u>	<u>Budgetary Category</u>	<u>Contract Amount</u>	<u>Payee's Invoice No.</u>	<u>Name, Address of Payee</u>	<u>Purpose</u>	<u>Invoice Total</u>	<u>% Completion</u>

[ADD ADDITIONAL SHEETS AS NEEDED]

3. This Requisition is for Project Costs which have not been the basis of a prior or contemporaneous Requisition, or if previously requested, were not paid by the City or the Conservancy.

4. The services, work, material, and equipment or other property covered by this Requisition have been performed or delivered.

5. Attached are copies of all invoices for which reimbursement or payment is sought together with proof of payment therefore, if applicable.

6. The Managing Party certifies that, with respect to all items covered by this Requisition, it has complied with the provisions of this Agreement. Submitted herewith are certificates or documents, if any, required to be submitted pursuant to this Agreement.

7. The schedules and attachments to this Requisition are true and correct to the best of the Managing Party's knowledge.

**MANAGING PARTY**

-----  
**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**[AS APPLICABLE] APPROVED:**

CITY OF AUSTIN, TEXAS

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**[AS APPLICABLE] APPROVED:**

WALLER CREEK CONSERVANCY

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**[AS APPLICABLE] APPROVED:**

WALLER CREEK LOCAL GOVERNMENT  
CORPORATION

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**EXHIBIT “D”**

**OPERATING AND MANAGEMENT AGREEMENT**

**[SEE ATTACHED]**

**OPERATING AND MANAGEMENT AGREEMENT**  
**BY AND AMONG**  
**CITY OF AUSTIN, TEXAS**  
**WALLER CREEK LOCAL GOVERNMENT CORPORATION**  
**AND**  
**WALLER CREEK CONSERVANCY**

\_\_\_\_\_, 2014

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## OPERATING AND MANAGEMENT AGREEMENT

This OPERATING AND MANAGEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of the Effective Date (as defined below) by and among the following parties: (i) **CITY OF AUSTIN, TEXAS**, a Texas home rule city and municipal corporation (the “**City**”); (ii) **WALLER CREEK LOCAL GOVERNMENT CORPORATION**, a local government corporation created pursuant to Chapter 431 of the Texas Transportation Code (the “**LGC**”); and (iii) **WALLER CREEK CONSERVANCY**, a Texas non-profit corporation (the “**Conservancy**”), collectively, the “**Parties**.”

### RECITALS:

WHEREAS, on the Effective Date, the Parties entered into the Waller Creek District Joint Design, Development, Management and Operation Agreement (“**JDA**”) in which the Parties agreed to their respective roles and responsibilities: (i) for the implementation of a schedule of improvements for the area of the City referred to as the Waller Creek District, which is shown on **Exhibit “A”** attached to this Agreement (the “**District**”); and (ii) with respect to the financing, design, development, construction, and management of the District; and

WHEREAS, the Parties recognize that due to the proximity of the Public District Sites to the Neal W. Kocurek Convention Center and nearby hotels, the Public District Sites will be highly visible to and frequently visited by tourists, convention and business visitors and their families, as well as residents of Austin, Texas and therefore the Parties desire for the Public District Sites to be operated and maintained at high standards in order to reflect positively on the City as a whole; and

WHEREAS, the Parties propose to combine private and public funds and resources to pay the costs of operation and maintenance of the Public District Sites; and

WHEREAS, the Parties acknowledge the importance of the respective funds and contributions of services and property by each of the Parties as being essential to accomplishing the maintenance of the Public District Sites as contemplated, and acknowledge that without such contributions by the public sector and the private sector acting jointly, neither sector acting alone could successfully maintain the Public District Sites and the Parties agree to work together to source funds to maintain the Public District Sites; and

WHEREAS, the Parties desire to enter into this Agreement in order to set forth the Parties' respective rights, obligations and undertakings with regard to the operation of the Public District Sites;

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to the Parties, it is agreed as follows:

AGREEMENT

**ARTICLE I  
DEFINITIONS**

Section 1.1 Definitions. The following terms have the meanings set forth below:

“**ACE**” means the Austin Center for Events of the City or such other department designated by the City.

“**Affiliate**” means a Person that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person, or is a son, daughter, spouse, parent, sibling or in-law of the specified Person. In determining affiliation, the City shall consider all appropriate factors, including common ownership, common management, and contractual relationships. With respect to the City or the Conservancy, the LGC is expressly deemed not to be an Affiliate.

“**Annual Management Fee**” means the annual management fee from time to time that may be paid by the City to be considered by City Council as a part of its annual budget process following the date of Substantial Completion (as defined below) of the first Completed Phase Plan Area (defined below), and thereafter during the Term of this Agreement. It is contemplated that the first annual management fee may be based on a prorated amount of the then current budget for park maintenance for the park areas within the Completed Phase Plan Area; or, alternatively, the management fee may be such other appropriation made by the City.

“**Annual Operating Plan and Budget**” means the operating plan and budget described in Section 2.3(1) that is approved from time to time by the Parties.

“**Applicable Law**” means any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, including, without limitation, all applicable zoning ordinances and building codes, flood disaster laws, health laws and environmental laws and regulations.

“**Approval**” when this Agreement states that an action or document is subject to a Party’s approval, that approval will not be unreasonably withheld unless it is stated expressly to the contrary.

“**ATD**” means the Austin Transportation Department of the City or such other department designated by the City.

“**Baseline Operating Expenses**” are defined in Exhibit “B”.

“**Business Day**” means any day other than a Saturday, a Sunday or a public or bank holiday or the equivalent for banks generally under the laws of the State of Texas. Use of the word “**day**,” as opposed to Business Day, means calendar day.

“**Capital Repair Fund(s)**” means the funds described in Section 2.1(b).

**“City Charter Limit”** means the expenditure limit set forth in Article VII, Section 15 of the City Charter, as amended or replaced from time to time, and as adjusted pursuant to the terms of Article VII, Section 15, under which the city manager shall have the authority to contract for expenditures without further approval of the City Council.

**“City Council”** means the City Council of the City of Austin, Texas.

**“City Charter”** means the charter of the City of Austin, Texas.

**“City Representative”** means the representatives of the City appointed under the JDA.

**“Claims”** means claims, liabilities, costs, expenses (including, without limitation, reasonable attorneys' fees and defense costs), demands, fines, suits and causes of action of every kind and character.

**“Completed Phase Plan Area”** is defined in Section 2.1(a) below.

**“Contract Documents”** means the architectural, engineering and other drawings, project manual, addenda, change orders, and other documents for the design and construction of a Public Improvement Project.

**“Contractor”** means the contractors, design and engineering professionals, and vendors selected and engaged by Conservancy relating to an Operating Project.

**“Current M/WBE Program Ordinance”** means the applicable standards and principles of Chapters 2-9A through 2-9D of the City’s ordinance for M/WBEs in effect as of the Effective Date.

**“Design Plan”** means the Design Plan for the Public Improvement Projects prepared by the Project Landscape Architect dated September 12, 2012 and which has been approved by the Council, the City, the LGC, and the Conservancy pursuant to Resolution 20121018-068 and attached to the JDA as Exhibit E.

**“District ROWs”** means the total surface area, and the area above and below the surface, between property lines that is dedicated, deeded, reserved by plat or otherwise owned or controlled by the City, for use by the public for right of way for pedestrian, rail, or vehicular travel (including bicycle travel) within the District, but shall not include trails and sidewalks that are not a part of a transportation system and trails and sidewalks whose purpose is for recreation or to tie together Completed Phase Plan Areas only.

**“Effective Date”** means the date on which this Agreement has been duly executed by the last Party to sign this Agreement as evidenced by the date below the signature of the last Party to sign.

**“Funds”** means Operating Revenues, the Capital Repair Funds, Operating and Maintenance Funds and the Reserve Funds.

**“Governmental Authority”** means the City and any federal, state or local agency, department, commission, board, bureau, administrative or regulatory body or other instrumentality having jurisdiction over the District or on which such an instrumentality relies for standards.

**“Governmental Function”** means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which a Governmental Authority is authorized or required to perform.

**“Impasse”** means any disagreement between the City and the Conservancy under this Agreement as to any matter requiring their approval or agreement under this Agreement.

**“Managers”** mean any Persons retained by the Conservancy with respect to any Operating Project.

**“Managing Party”** means for this Agreement, the Conservancy in connection with an Operating Project.

**“MBE”** has the meaning set forth in City Code Section 2-9A-4(31), as such meaning is amended, modified or replaced.

**“M/WBE”** means MBE and WBE business enterprises.

**“M/WBE Program Ordinance”** means the Current M/WBE Program Ordinance, as it may be amended or modified or replaced and which is in effect at the time of a Phase Plan and work on a Project commences.

**“Operating Expenses”** means the expenses and costs from the operation, management and maintenance of each Completed Phase Plan Area including, without limitation, expenses and costs paid to Managers; provided, however, that Operating Expenses shall not include the expenses and costs incurred by the Conservancy in connection with the development and construction of Public Improvement Projects or in connection with Private District Projects.

**“Operating and Maintenance Fund(s)”** means the funds described in Section 2.1(d).

**“Operating Project”** means any work performed under this Agreement for a Completed Phase Plan Area.

**“Operating Project Costs”** means all Operating Expenses for an Operating Project and capital costs that are a part of the approved Annual Operating Plan and Budget.

**“Operating Revenues”** means the revenues and income derived from rents, ticket sales, nonrefundable deposits, and concessions and such other revenues and income expressly set forth in the Phase Plan for a Completed Phase Plan Area or in the Annual Operating Plan and Budget approved by the LGC, but excluding Reserved Fees/Revenue.

**“PARD”** means the Parks and Recreation Department of the City or such other department designated by the City.

**"Permits"** means all permits, consents, approvals, authorizations, variances, waivers, certificates and approvals from all Governmental Authorities, quasi-Governmental Authorities, utility companies and insurance rating agencies.

**"Person"** means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

**"Phase Plan"** means the agreements reached by the Parties with respect to: (i) each phase of development of a Public Improvement Project and a Private District Project in accordance with the JDA; and (ii) an Operating Project, including the operation and maintenance standard for such Completed Phase Plan Area, which standard shall be at the same or greater level as if the City were to retain maintenance responsibility of the Operating Project in a manner consistent with other City maintained publicly accessible open space.

**"Private District Projects"** means, collectively, (i) the development of land use rules, regulations and ordinances that govern the development, construction, zoning and use of the Private District Sites as described and defined in the JDA, but which expressly excludes Public District Sites and District ROWs, and (ii) the work for such Private Districts.

**"Private District Sites"** means those portions of the District that are not Public District Sites or District ROWs.

**"Project Architect"** means the architectural firm selected by the Parties as the primary architect for the Public Improvement Projects, it being understood that with approval by the City other firms may be selected for the design and site planning of the Public Improvement Projects, including any local design firms retained on an as-needed basis.

**"Project Engineer"** means an engineer that is required by Applicable Law to perform engineering work or to supervise civil improvements or public works projects that affect the public health or safety.

**"Project Landscape Architect"** means the landscape architectural firm selected by the Parties as the primary landscape architect for the Public Improvement Projects, it being understood that with approval by the City other firms may be selected.

**"Project Rules"** is defined in Section 2.3(d) below.

**"Public District Sites"** means those portions of the District that are either (i) owned by the City, including park lands, (ii) leased by the City as the tenant on a long-term ground lease basis, (iii) park land or conservation easements granted to the City, or (iv) designated by the Parties as Public District Sites pursuant to Phase Plans; provided, however, that the Public District Sites do not include the District ROWs.

**"Public Improvement Projects"** means the entire design, planning, development and construction of improvements on Public District Sites.

**“Reserve Fund(s)”** means an endowment fund maintained by the Conservancy to address potential funding deficits incurred in the operation and maintenance of all Completed Phase Plan Areas pursuant to this Agreement and which amounts will be for the anticipated cost for a 24 month period for the applicable Completed Phase Plan Area.

**“Reserved Fees/Revenue”** means fees charged by ATD for ROW management, fees charged by ACE for special events, and revenue received from parking charges.

**“Responsible Contractor”** means a contractor who: (1) has the appropriate experience, reputation, employee relations, responsiveness, fees, and dependability to perform the required work; (2) provides workers a fair compensation and fair benefits, as evidenced by payroll and employee records, for the required work, based on market conditions, (3) has no adjudicated record of substantial or repeated willful noncompliance with any relevant federal or state regulatory statute including statutes concerning labor relations, occupational safety and health, nondiscrimination and affirmative action, environmental protection and conflicts of interest, (4) has no conviction under state or federal statutes relating to embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, (5) has no conviction under state or federal antitrust statutes arising out of the submission of bids or proposals, or a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, and (6) without the prior written consent of the City, is not an Affiliate of the Conservancy.

**“Substantial Completion”** means the date on which (i) the Project Landscape Architect or Project Architect has certified as evidenced by a certificate of substantial completion, and the Conservancy and the City have reasonably and in good faith agreed with the Project Landscape Architect's or Project Architect's certification, that all work in a particular Phase Plan is sufficiently complete in accordance with the Contract Documents so that the improvements or a designated portion, may be used for the purposes for which they were intended; and (ii) all final Permits with respect to the construction of the work and use of the improvements have been issued. To the extent that a Public Improvement Project is a public works project, the work shall be directly supervised by a Project Engineer and the certifications required shall be signed by the Project Engineer.

**“TAG”** meant the Technical Advisory Group established from time to time by the City.

**“Term”** is defined in Section 2.3(a) below.

**“User Fees”** is defined in Section 2.3(e) below.

**“WBE”** has the meaning set forth in City Code Section 2-9A(47) ), as such meaning is amended, modified or replaced.

## **ARTICLE II OPERATION OF THE DISTRICT**

Section 2.1 Annual Management Fee; Capital Repair Fund; Reserve Funds.

(a) The Conservancy covenants to the City that from and after the date of Substantial Completion of a Public Improvement Project improved pursuant to a Phase Plan (such area being defined as a “**Completed Phase Plan Area**”), it will at all times operate and maintain the Completed Phase Plan Area, or cause the Completed Phase Plan Area to be operated and maintained in accordance with the Phase Plan and this Agreement. In addition, the Conservancy will operate and maintain other areas in the District (including District ROWs) but only if the Parties agree in writing, and if agreed, this Agreement will be modified. Further, if a Phase Plan contemplates that the City or another entity that is not the Conservancy or an entity that is operating by, through or under the Conservancy, will operate and maintain a Completed Phase Plan Area, then such operation and maintenance will not be governed by this Agreement during the period of time that the City or other entity is operating and maintaining the Completed Phase Plan Area. The proposed plan for the participation by M/WBEs, including, the awarding of contracts, subcontracts and other opportunities in connection with an Operating Project shall meet the requirements set forth in Exhibit “G” of the JDA (and attached to this Agreement as **Schedule 1** for informational purposes). For purposes of the requirements under Schedule 1, the Conservancy shall be considered the Managing Party.

(b) On the date the Conservancy assumes responsibility for the operation and maintenance of a Completed Phase Plan Area in accordance with paragraph (a) above, or at such earlier date as may be described in the applicable Phase Plan, the Conservancy will establish a Capital Repair Fund with respect to each Completed Phase Plan Area and the Conservancy will deposit into the Capital Repair Fund (i) the initial amount, if any, to establish the Capital Repair Fund as indicated in the applicable Phase Plan, plus (ii) all Operating Revenues derived from the Completed Phase Plan Area remaining after payment of all Operating Expenses for the Completed Phase Plan Area until the Capital Repair Fund for the Completed Phase Plan Area equals the required amount to be described in the applicable Phase Plan. The Capital Repair Fund will be a funding source for the maintenance, repair, refurbishment and replacement of the improvements in the Completed Phase Plan Area. It is permitted to have a master Capital Repair Fund for some or all of the Completed Phase Plan Areas so long as each Completed Phase Plan Area has been separately allocated funds from the master Capital Repair Fund and allocated funds are not counted more than once. The Conservancy shall maintain books and records reflecting the sources and uses of all Capital Repair Funds, including (but not limited to) the manner in which it has allocated any portion of a master Capital Repair Fund to individual Completed Phase Plan Area.

(c) If required based upon the calculation set forth in this paragraph, the Conservancy shall create Reserve Funds. The Conservancy shall make quarterly deposits into the Reserve Funds equal to the positive difference of (i) all Operating Revenues, minus (ii) the sum of (1) all Operating Expenses, plus (2) deposits into the Capital Repair Funds made pursuant to Section 2.1(b) above. The Reserve Funds may be utilized by the Conservancy solely to provide funding for the Operating Expenses and restoration of the Completed Phase Plan Areas to the extent that Operating Revenues and any Capital Repair Funds are insufficient for such purposes.

(d) In consideration of the foregoing, and for so long as the Conservancy complies with this Agreement, the City agrees to pay to the Conservancy the applicable Annual Management Fee, as a baseline of public financial support that the Parties

contemplate will be leveraged with private sector revenues and donations. The Parties intend that the City pays to the Conservancy, the amount of money that PARD would have spent on the Completed Phase Plan Area that is then being operated by the Conservancy under this Agreement. The Conservancy shall submit to the City invoices on a monthly basis unless a quarterly schedule is approved by the City Manager or the City Manager's designee. Upon receipt by the City of monthly invoices, the Annual Management Fee shall be payable in equal monthly installments on the last Business Day of each month or partial month, and for quarterly invoices, the Annual Management Fee shall be payable in quarterly installments on the last Business Day of such quarter. The Annual Management Fee shall be deposited in an Operating and Maintenance Fund and shall be spent only on Baseline Operating Expenses. The Annual Management Fee (without regard to how the first year's or prior Annual Management Fee may have been prorated or calculated) shall be recalculated and adjusted annually as of the first day of each fiscal year of the City following the first fiscal year of the City in which the Annual Management Fee for such year has been spent in its entirety. If the entire Annual Management Fee payable in any fiscal year exceeds the Baseline Operating Expenses for such year, the excess amount of the Annual Management Fee shall be paid into the Capital Repair Fund unless otherwise stated in the Annual Operating Plan and Budget approved by the LGC. The Annual Management Fee is subject to approval by City Council and the City limitations set forth in Section 5.19- Section 5.23.

(e) The City agrees to furnish customary City services such as police, fire, and emergency medical service for the District.

(f) The City and the Conservancy agree that each Phase Plan will designate which of them will be responsible for payment of drainage, solid waste, water, waste water, and other city utility charges that may be assessed for the Phase Plan improvements. To the extent feasible, the Conservancy will assume these charges for each area that it operates and maintains. The rates and charges for these utilities will be as set forth in the City's approved rates for these utilities.

(g) The City acknowledges that the Conservancy may elect to provide supplemental security from time to time as an Operating Project Cost. The Conservancy acknowledges that supplemental security expenses will not be paid out of the Annual Management Fee funds or by any other City funds.

(h) During the Term of this Agreement, at the Conservancy's written request, the City shall pay such monthly installments of the Annual Management Fee directly to the subcontractor designated by the Conservancy to manage an Operating Project, provided that a designated subcontractor qualifies as a Responsible Contractor and has been otherwise approved by the LGC and City.

(i) The Conservancy shall maintain complete books and records and shall perform an annual audit. The City, the LGC, and their authorized representative(s), including any auditor on behalf of the City, may examine, and audit such records, including Baseline Operating Expenses, as necessary to determine the Conservancy's compliance with the terms of this Agreement and the proper uses of public funds and compliance with tax exempt bond requirements. Such examinations, inspections and audits shall be made during normal

business hours at the offices of the Conservancy, upon not less than three Business Days' prior notice to all Parties. Any Party may copy all or part of such books and records and may retain such copies. The cost and expense of such examinations and audits will be the sole responsibility of the Party conducting the same; provided, however, if an audit reflects that the Conservancy has expended either more than \$1,000.00 or more than ten percent of any Fund in a manner not authorized by this Agreement, the reasonable cost and expense of the audit by the LGC or the City will be borne by the Conservancy. Such audits and records will be made available to the public, subject to requests for confidentiality by specific donors and with respect to legal, employment, strategic planning for donor outreach and development and other similar matters. The Conservancy further agrees to ensure that the contract with all Contractors or other Persons retained by or on behalf of the Conservancy will permit such inspections, examinations and audits.

## Section 2.2 Operating and Maintenance Standards.

(a) The Conservancy covenants to operate, manage, maintain and preserve the Completed Phase Plan Areas in compliance with all Applicable Laws and this Agreement.

(b) The District will be highly visible to, and frequently visited by, tourists, business visitors and their families, and residents of the greater Austin, Texas metropolitan area who do not live or work in the Central Business District of the City, as well as to existing and future residents, of and workers in, the Central Business District of the City. Accordingly, each Completed Phase Plan Area will at all times be maintained at high standards of cleanliness, safety, and natural beauty. The City and the Conservancy each stipulate, acknowledge and agree that maintaining each Completed Phase Plan Area in such manner provides a benefit to the City. Maintenance may include replacement of an improvement.

(c) The LGC and the Conservancy agree that the City Representative shall have the right at all times to inspect Completed Phase Plan Areas so long as such inspections do not unreasonably interfere with ongoing work. The City Representative may be accompanied by the LGC, or the Conservancy, or their respective representatives during such inspection. The provisions of this Section 2.2(c) shall in no way limit or otherwise relieve the Conservancy from the Conservancy's obligation to operate and maintain the Completed Phase Plan Areas in conformance with this Agreement. The City, through appropriate designees, which may change from time to time, further reserves the right to enter the District to conduct fire, safety, and health inspections, or any other inspections by Governmental Authorities or to exercise the City's normal police powers, provided that in exercising such powers (a) the City shall use its reasonable efforts not to unreasonably interfere with the operations of the Conservancy and (b) the City's inspection rights shall not be deemed to limit in any way the Conservancy's rights to contest the City's findings with respect to such inspections or the exercise of such police powers. The City Representative may change from time to time as designated by the City.

Section 2.3 Operating Terms. The Conservancy shall have the exclusive right to operate and manage the Completed Phase Plan Area in the nature of a public park, open space and related facilities and amenities, subject to limitations of Applicable Law. The Conservancy

acknowledges that this Agreement expressly does not permit the Conservancy to lease or otherwise alienate Public District Sites, and specifically this Agreement is subject to the limits of Article II, Section 7 of the City Charter, as it may be amended or replaced from time to time; provided, however, the terms of the JDA regarding licenses and concessions are operative with respect to licenses and concessions.

(a) The initial term of the Conservancy's operation and management will commence upon Substantial Completion of the first Completed Phase Plan Area and terminate on January 31, 2033 ("**Term**"), unless this Agreement is terminated sooner as permitted in this Agreement. However, the Term will automatically renew for eight consecutive terms of 10 years each, unless the City or the Conservancy give 180 days' prior written notice to the other party of its election for the Term not to renew and for the Term to expire on the expiration of the term then in effect. The Conservancy shall give the City notice 60 days before any date that the City or the Conservancy has the right to elect any such termination. If this Agreement is terminated by mutual agreement of the Parties, or other event, the Parties upon request shall promptly execute a document confirming the termination of this Agreement and such other documents as may be reasonable under the circumstances.

(b) Prior to the Effective Date, at the City's request, the Conservancy became responsible for managing the resources and facilities in Palm Park. As a part of such agreement, the Conservancy has received, and pursuant to the terms of this Agreement, will continue to receive all net revenues generated from licensing use of the resources and facilities of such park; provided, however, the City has maintained and will continue to maintain Palm Park until the Conservancy takes over operation and maintenance of such parks in accordance with Section 2.1 above.

(c) The Conservancy shall pay all Baseline Operating Expenses in excess of the Annual Management Fee. Unless the Phase Plan contains different terms, the Conservancy shall be entitled to receive all Operating Revenues generated from the Completed Phase Plan Areas for the operation and maintenance of the Completed Phase Plan Areas, and such amounts shall be deposited into the Operating and Maintenance Fund to be spent in accordance with the Annual Operating Plan and Budget, and any excess at the end of a fiscal year shall be deposited into the Capital Repair Fund.

(d) Subject to the terms and conditions set forth in this paragraph, the Conservancy shall have the exclusive right to establish such reasonable rules and regulations as it may deem necessary or desirable for the Completed Phase Plan Areas from time to time, including, but not limited to, rules and regulations relating to the use of, and the types and sizes of activities and events in, the Completed Phase Plan Areas (collectively, the "**Project Rules**"). The Project Rules shall comply with all Applicable Laws, including, the Noise and Sound Level standards set forth in the City's Code of Ordinances and rules and policies established by PARD (as the same may be amended from time to time), shall be non-discriminatory to the full extent required by Applicable Laws. The initial draft Project Rules will be provided to the City and the LGC no later than 30 days prior to a Completed Phase Plan Area being maintained by the Conservancy and will be deemed approved if no written objection is made within 30 days of delivery of such draft Project Rules. The Project Rules will be effective as of the Effective Date and any subsequent modifications, deletions or additions to the Project Rules shall be subject to

the City's Approval. The Conservancy shall provide copies of all Project Rules and any modifications, deletions, or additions to the City in accordance with the notice provisions of Section 4.1 below.

(e) Subject to the terms and conditions set forth in this paragraph, the Conservancy shall have the exclusive right to establish non-discriminatory fee structures and rate schedules from time to time, and to charge such fees and rates according to such structures and schedules ("**User Fees**"), for uses of and activities and events in the Completed Phase Plan Areas occurring after the Effective Date, including use of the Completed Phase Plan Areas for public or private events, subject to the Reserved Fees/Revenue. After developing a proposed fee structure and rate schedule, or proposed changes to any existing fee structure and rate schedule, the Conservancy will provide the schedule to PARD, or the entity that the City designates for review in accordance with the notice provisions of Section 4.1 not later than 30 days before the fees are to be set, or raised. The City representative shall review and provide a response to the Conservancy not less than 7 days before the effective date of the proposed fee change. If the fees are to be raised beyond the charges identified in the pro forma for the Phase Plan, the Conservancy shall provide an explanation of the reason for the proposed increase. If PARD or the other City designee upon review of the proposed fee structure and rate schedule determines that fees and rates are unreasonable it will give written notice to the Conservancy, and PARD or the other City designee and the Conservancy will work in good faith to agree upon a revised fee and rate schedule. In no event shall the Conservancy impose any general admission fee or other charge for entry into the District as a whole. Subject to the terms and limitations set forth in this paragraph, the Conservancy shall have the exclusive right to establish fees, rental rates, and any other charges of any kind for the use of space consistent with the purposes of this Agreement. Any concession shall comply with Applicable Law, including, §§8-1-71 -8-1-74 of the City Code. This Agreement does not authorize the Conservancy to set or collect parking fees, fines, fees for use of the City Right of Way, impact fees, or other charges relating to the provision of city utilities, taxes, or regulatory fees within the District, provided, however, the Conservancy may be reimbursed for any such fees that the Conservancy pays by users of space within the District. The City may provide parkland dedication fees to the Conservancy for use for operations and maintenance of the parkland in the District if such use is allowed by Applicable Law and is approved by action of City Council.

(f) The Conservancy and the City will work together to plan and coordinate any opening ceremonies for Completed Phase Plan Areas. The Conservancy shall establish a reservation process for advance scheduling of activities and events and for advance bookings of the right to use or occupy particular improvements or areas within a Completed Phase Plan Area, including use of any Completed Phase Plan Area for public or private events, and to charge User Fees and rental rates for the foregoing. The process will at all times and in all respects be consistent with the standards for development, maintenance and use of a Completed Phase Plan Area for similar City facilities or areas and open for public access the hours that similar City facilities or areas are available, unless otherwise agreed by the Parties, and as an urban public space amenity with high standards of cleanliness, safety and natural beauty and with all Project Rules. This process will be in compliance with Applicable Law and will be consistent with the process established by PARD for similar reservations, and the Conservancy will provide a copy of its process to PARD. The Conservancy shall have the right to schedule, organize, promote and conduct activities and uses in each Completed Phase Plan Area on its own

initiative in accordance with its Annual Operating Plans and Budgets. Reservation and scheduling through the Conservancy shall be coordinated with ACE and shall be consistent with the City's special events requirements, unless otherwise agreed to by Council. No event shall take place without the appropriate permits being obtained by the entity holding the event. The Conservancy shall coordinate all special events with the City. The City will cooperate with the Conservancy to expedite permitting, however, permits issued by ATD or ACE will follow the process established by ATD and ACE.

(g) The Conservancy will set aside a certain number of days for the free use by the City of the District and its facilities for public functions and City sponsored events. The Conservancy will also develop a plan for the District that includes free or reduced rates for activities and use of the District facilities by community groups, such as non-profits, children and the elderly. The City and Conservancy agree that, except during the time facilities within the District are reserved for special events consistent with paragraph (f) above, the District will be continuously available to the public for public use, and at all times portions of the park land shall be open and available to the public the hours that similar City facilities or areas are available unless otherwise agreed by the Parties. Further the connectivity of the transportation system shall not be interrupted, and street closures and detours must be approved in advance by ATD and requests for closures and detours will be granted only on an as needed and occasional basis with notice to and approval by the City, ATD, and the LGC.

(h) The Conservancy shall have the exclusive right and duty to collect all revenues generated from User Fees and rental rates charged for any of the foregoing except for Reserved Fees/Revenue; provided, however, that all such revenues shall be deposited into the Operating and Maintenance Fund to be spent in accordance with the Annual Operating Plan and Budget, and any excess at the end of a fiscal year shall be deposited into the Capital Repair Fund.

(i) The Conservancy shall have the right and duty to market and promote the District and the events and activities organized or sponsored by the Conservancy. Use of the City seal shall be consistent with City policy. The Conservancy shall have the exclusive right to establish a program to raise private donations and obtain grants for the portion of the Operating Expenses not covered by either the Annual Management Fee or income generated by User Fees and rentals.

(j) The Conservancy shall have the signage and naming rights more particularly described in Article 12 of the JDA, and be subject to the limitations of Article 12.

(k) The Conservancy shall have the exclusive right to design, construct and install replacement improvements in a manner consistent with the Design Plan, provided, however, any such work that costs more than the City Charter Limit shall require the approval of the City Representative and shall be governed by the Phase Plan process in the JDA;

(l) It is acknowledged that as of the date of this Agreement the Conservancy operates on a fiscal year that is based on a calendar year (January to December) and the City has a fiscal year that begins in October and ends the following September. The Conservancy shall deliver to the LGC a copy of Conservancy's annual operating plan and budget ("**Annual Operating Plan and Budget**") not later than 120 days before the beginning of each

fiscal year for the City (in June) which shall contain a forecast for the current calendar year and through the City's next fiscal year (through September of the following year) and shall provide updates to the Annual Operating Plan and Budget midyear and at such other times as requested by the LGC. The Conservancy and LGC shall have the right to review and approve the Annual Operating Plan and Budget for each fiscal year and any amendment to the budget, which approvals shall not be unreasonably withheld. The LGC shall deliver a copy of the approved Annual Operating Plan and Budget to the Chief Financial Officer for the City.

(m) The Conservancy shall have the right to subcontract and/or delegate all or any part of its rights and obligations the Conservancy deems necessary or desirable for the efficient and cost-effective performance of such rights and obligations; provided, however, that the Conservancy shall contractually require all of such consultants, Contractors and subcontractors to indemnify, defend and hold harmless the Conservancy, City and the LGC against all Claims for bodily injury or death of any person or damage to any property arising, directly or indirectly, out of the entry on any Public District Site or the performance of any work relating to a Completed Phase Plan and each subcontractor and delegate shall qualify as a Responsible Contractor.

(n) The Conservancy shall carry insurance as established by the City's Office of Risk Management.

(o) Upon the effective date of any termination of this Agreement, the Conservancy shall (i) surrender control of the Completed Phase Plan Area and deliver to the City all Funds, including any Operating Revenues from the District received by the Conservancy after the expiration or termination, (ii) deliver to the City all books, records, notices, correspondence, related to this Agreement and the Completed Phase Plan Area and (iii) assign or confirm the assignment to the City of all contracts, licenses, permits, warranties, and other rights the Conservancy may have in connection with the Operating Project and the Completed Phase Plan Area that the City wishes to assume and terminate any contracts not assumed. By this Agreement the Conservancy grants a power of attorney (coupled with an interest) to the City to endorse any checks received in connection with the Completed Phase Plan Area and to effect such assignments. The City shall not be liable for any obligations of the Conservancy occurring prior to the date of assignment of contracts or for any termination fees in connection with contracts that are terminated. In addition, the Conservancy shall, to the extent reasonably requested by the City or LGC and at the Conservancy's sole cost and expense, within 30 days after expiration or termination, deliver to the City a final report itemizing all receipts and remittances for the calendar year in which the expiration or termination occurs up to the date of expiration or termination. Without limiting the Conservancy's other specific obligations in this paragraph (o), the Conservancy further agrees to do all other things which are reasonably necessary for an orderly transition of the management of the Property without detriment to the rights of the City or to the continued management of the Completed Phase Plan Area. The terms and provisions of this paragraph (o) shall survive the expiration or earlier termination of this Agreement, as the case may be.

(p) The contracts the Conservancy enters into shall contain industry standard warranties and guaranties and an indemnity by the Contractor of the City and LGC, and other terms that the City from time to time shall reasonably request. The Conservancy shall use

commercially reasonable efforts to enforce the Project Rules and all contracts, special events and user fee agreements. The Conservancy will maintain written records of all complaints and notify the City and LGC of any material complaint. The Conservancy will make regular inspections of the Completed Phase Plan Area and notify the City and LGC of any materially defective condition in a Completed Phase Plan Area of which the Conservancy is aware.

(q) The Conservancy shall not make any expenditure that is not in accordance with the approved Annual Operating Plan and Budget. The Conservancy shall not obligate the City or the LGC for the payment of any expense, pledge the credit of the City or the LGC, or borrow money in the name of the City or the LGC or on behalf of the City or the LGC, or transfer any property or other asset of the City or the LGC.

(r) The Conservancy shall not discriminate against any employee or applicant for employment in connection with the operation, maintenance and management of any Completed Phase Plan Area and an Operating Project because of disability, race, creed, color, age, sex, sexual orientation, marital status or national origin. The Conservancy will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their disability, race, creed, color, age, sex, sexual orientation, marital status or national origin.

(s) THE CONSERVANCY COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, THE LGC AND THEIR RESPECTIVE ELECTED OFFICIALS, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING, BUT NOT LIMITED TO, INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT OR COPYRIGHT THAT ARISE OUT OF ANY OF THE WORK PERFORMED BY, OR ON BEHALF OF, THE CONSERVANCY, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO THE CONSERVANCY'S BREACH OF THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF THE CONSERVANCY, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE OR PERSONNEL, CONSULTANT, CONTRACTOR OR SUBCONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, PERSONNEL, DIRECTORS AND REPRESENTATIVES IN BREACH OF THE PERFORMANCE OF DUTIES OF THE CONSERVANCY UNDER THIS AGREEMENT. THE CONSERVANCY SHALL PROMPTLY ADVISE EACH OTHER PARTY IN WRITING OF ANY CLAIM OR DEMAND AGAINST SUCH PARTY KNOWN TO THE CONSERVANCY RELATED TO OR ARISING OUT OF THE CONSERVANCY'S ACTIVITIES RELATED TO THIS AGREEMENT AND SHALL INVESTIGATE AND DEFEND SUCH CLAIM OR DEMAND AT THE CONSERVANCY'S EXPENSE TO THE EXTENT THE SAME IS COVERED BY THE CONSERVANCY'S INDEMNITY UNDER THIS SECTION. EACH PARTY WILL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE CONSERVANCY OF ANY OF ITS

OBLIGATIONS UNDER THIS SECTION. THESE PROVISIONS SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

(t) The Conservancy may, in its discretion but subject to approval by the LGC, develop a catering policy for the Public District Sites that will allow for the utilization of caterers who meet certain quality and service standards and who also otherwise comply with the catering policy (including insurance requirements, deposit requirements and other applicable fees and charges) approved by the Parties. The City will comply with City requirements regarding provision of catering at City events. The City may, but is not required to, comply with the Conservancy's catering policy.

### **ARTICLE III DEFAULTS AND REMEDIES**

Section 3.1 Impasse. In settling any Impasse, each of the Parties, subject to Sections 5.20-5.23, shall act in accordance with the following procedures:

A. In the event of an Impasse, either Party may make a written request for a meeting between representatives of each Party within 14 days after receipt of the request or such later period as agreed by the Parties. Each Party shall include, at a minimum, one senior level individual. The purpose of this and any subsequent meeting is to attempt in a good faith, commercially reasonable manner to negotiate a resolution of the Impasse. If, within 30 calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the Impasse, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by all Parties, in which event the Parties may proceed directly to mediation as described below.

B. If the efforts to resolve the Impasse through negotiation fail, or the Parties waive the negotiation process, the Parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the Impasse. Should they choose this option, the Parties agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the Impasse or a contract interpretation expert. If the Parties fail to agree on a mediator within 30 calendar days after initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The mediation shall be terminated by on the earlier of: (i) the execution of a settlement agreement or similar statement by the parties; (ii) a declaration of the mediator that mediation is terminated; (iii) a written declaration by any of the Parties to the effect that the mediation process is terminated at the conclusion of five Business Days; or (iv) 30 calendar days after the date of the first mediation session. The City and the Conservancy shall share the costs of mediation equally.

C. In the event that the mediation is terminated without settlement of the Impasse, then any Party may terminate this Agreement on no less than 90 days' notice, such termination to be effective on the date described in such notice which shall not be less than 90 days after the

date of such notice as to (and only as to) the future development of Projects; provided, however, that this Agreement shall not terminate if the Impasse is resolved before the early termination date. In the event this Agreement is terminated pursuant to the immediately preceding sentence as to future Projects, this Agreement shall remain in full force and effect for all Projects for which a Phase Plan has been executed and delivered by the Parties.

Section 3.2 Events of Default. Each of the following will be an Event of Default:

A. A Party fails to perform or observe any of the obligations, covenants or agreements to be performed or observed by such Party under this Agreement, which failure continues for more than 30 days following written notice of such failure to such Party, or such longer period of time as may be reasonable under the circumstances, if such failure cannot be cured within 30 days because of the nature of the default and during such 30 day period curative action has commenced and is thereafter pursued diligently by such Party.

B. Any material representation or warranty of a Party is untrue when made or becomes untrue thereafter and remains untrue after 30 days following written notice to such Party that the material representation or warranty is untrue.

C. A Party submits a report, application, certificate or other information required under the terms of this Agreement which intentionally or knowingly contains any false or misleading statements of material facts.

D. The LGC or the Conservancy transfers or encumbers any portion of the Public District Sites in violation of this Agreement or the JDA.

E. The Conservancy fails to maintain the Operating and Maintenance Fund Account (or any subaccount), Capital Repair Fund or the Reserve Fund in accordance with this Agreement.

F. A Party makes a general assignment for the benefit of creditors.

G. A petition under any section or chapter of federal bankruptcy laws or under any similar law or statute of the United States or any state is filed by or against a Party and is not dismissed, withdrawn or otherwise concluded without adjudication within 75 days after being filed.

H. A Party admits in writing its inability to pay its debts when due.

I. A bill in equity or other proceeding for the appointment of a receiver of a Party or other custodian for a Party's business or assets is filed and consented to by that Party.

J. A receiver or other custodian (permanent or temporary) of substantially all of the Party's assets or property, or any part, is appointed by any court of competent jurisdiction.

K. Proceedings for a composition with creditors under any state or federal law have been instituted by or against a Party.

L. A final judgment representing a claim or charge against the assets of a Party in an amount in excess of \$1.0 million remains unsatisfied or of record for 180 days or longer (unless a supersedeas or other appeal bond is filed); provided, however, that this provision shall not apply to the City.

M. A Party is dissolved.

N. Execution is levied against a Party's business or substantially all of its property.

O. The Conservancy fails for a period of more than 30 days, after funding by any of the other Parties of a Payment/Reimbursement Request to pay or cause payment to Contractors or others engaged by the Conservancy in the implementation of any Operating Project for amounts due and owing to be paid out of such funding and not disputed by the Conservancy in connection with such payment.

P. Failure by the Conservancy or the City to fund all or part of its obligations in accordance with the terms of this Agreement, and the failure to thereafter fund such amounts within 30 days following notice from another Party of such failure.

Section 3.3 Remedies for Uncured Event of Default under Section 3.2. Subject to Section 3.1, after delivery of any required notice, any non-defaulting Party may pursue, at its option and without prejudice to any other rights and remedies provided for pursuant to this Agreement or by law, any right or remedy conferred upon or reserved to it under this Agreement or at law or in equity, including, without limitation, the right to pursue specific performance and termination of this Agreement. The rights and remedies provided in this Agreement shall be in addition to and cumulative of all other rights and remedies available to a Party, and the pursuit of one remedy will not be an election of a sole remedy and will not preclude the right to pursue any or all other available remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus. Any failure of a Party to exercise any right or remedy as provided in this Agreement shall not be deemed a waiver by such Party of any claim for actual damages it may have by reason of the other Party's default and specific performance.

#### **ARTICLE IV NOTICES**

Section 4.1 Delivery of Notice. The Parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications required or permitted to be given by one Party to another by this Agreement shall be given in writing addressed to the Party to be notified at the address described below for the Party, (a) by delivering the same in person, (b) by depositing the same in the United States mail, certified, return receipt requested, postage prepaid, addressed to the Party to be notified, or (c) by depositing the same with a nationally recognized courier service guaranteeing "next day delivery," addressed to the Party to be notified,. A notice delivered in accordance with the immediately preceding sentence will be deemed to have been given upon the date of delivery (or refusal to accept delivery) as indicated on the return receipt; provided, however, if such notice is not delivered or refused on a Business Day, then notice shall

be deemed to have been given on the first Business Day following the actual date of delivery or refusal. For the purposes of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

**City:**

Marc A. Ott  
City Manager  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-1088  
512-974-2200

Karen Kennard  
City Attorney  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-1088  
512-974-2268

Elaine Hart  
Chief Financial Officer  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-1088  
512-974-2283

**With copies to:**

Sue Edwards  
Assistant City Manager  
City of Austin  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-1088  
512-974-2200

**Conservancy:**

Melba Whatley  
President  
Waller Creek Conservancy  
2909 West 35th Street  
Austin, Texas 78703

512-478-4675

**With copies to:**

Tom Meredith  
Chairman  
Waller Creek Conservancy  
MFI  
P. O. Box 2146  
Austin, Texas 78768  
512-732-2001

Melanie Barnes  
Secretary/Treasurer  
Waller Creek Conservancy  
111 Congress Avenue, Suite 400  
Austin, Texas 78703  
512-422-1023

Gretchen Flatau  
Interim Executive  
Waller Creek Conservancy  
P.O. Box 12363  
Austin, Texas 78711  
512-541-3520

David Armbrust  
Armbrust & Brown PLLC  
100 Congress, Suite 1300  
Austin, Texas 78701-2744  
512-435-2301

Kimberly S. Beckham  
Armbrust & Brown PLLC  
100 Congress, Suite 1300  
Austin, Texas 78701-2744  
512-435-2382

**LGC:**

Elaine Hart  
Chief Financial Officer  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-1088  
512 974-2283

**With a copy to:**

Jacqueline Cullom  
Assistant City Attorney  
City of Austin Law Department  
P. O. Box 1088

Austin, Texas 78767-1088  
512-974-2918

The Parties may, from time to time, change their respective addresses, and each has the right to specify as its address any other address within the United States of America by giving at least five days written notice to the other Parties.

To further communication between the Parties under this Agreement and outside of the formal written notice process, the Parties will designate within 10 days after the Effective Date those people who will represent each Party in informal communications concerning this Agreement and Phase Plans. The Parties may, from time to time, designate replacement and additional representatives for informal communication.

## **ARTICLE V GENERAL PROVISIONS**

Section 5.1 Independent Contractor and Fiduciary. It is understood and agreed that the relationships among the City and the Conservancy will be that of an independent contractor. Nothing contained in this Agreement will be deemed or construed to (i) make the City the agent, servant or employee of the Conservancy, (ii) make the Conservancy the agent, servant or employee of the City, (iii) create any partnership, joint venture, or other association between the City and the Conservancy. The Conservancy acknowledges a fiduciary relationship of trust and confidence between it and the City. The Conservancy agrees to perform its duties under this Agreement with the same degree of care, skill, knowledge, judgment and diligence as it would if the Conservancy was the owner of the District and in no event shall the Conservancy perform its duties under this Agreement with a care, skill, knowledge, judgment or diligence less than the customary and usual degree of care, skill, knowledge, judgment or diligence exercised by conservancies of public properties similar to the District.

Section 5.2 Business Days. If any date or any period provided in this Agreement ends on a day that is not a Business Day, the applicable period shall be extended to the first Business Day following such non-Business Day.

Section 5.3 Time. Time is of the essence in performing under this Agreement.

Section 5.4 Severability. If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws such that the legitimate expectations of any Party hereunder is incapable of being realized and cannot be reformed to validly and legally meet such thwarted expectations, then, and only in that event, it is the intention of the Parties that this Agreement shall terminate in all respects. In any other event, it is the intention of the Parties that the remainder of this Agreement will not be affected.

Section 5.5 Waiver. Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver, and such

Party will have the right at any time to insist upon strict performance of any and all of the provisions of this Agreement.

Section 5.6 Reservation of Rights. To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under Applicable Laws. The rights and remedies of the parties under this Agreement shall not be mutually exclusive. The exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions of this Agreement.

Section 5.7 Further Documents. The Parties agree that at any time after execution of this Agreement, they will, upon request of another Party, execute and deliver such further documents and do such further acts and things as any other Party may reasonably request in order to effectuate the terms of this Agreement.

Section 5.8 Incorporation of Exhibits, Schedules, Phase Plans and Other Documents by Reference. All Exhibits, Schedules, Phase Plans and other documents attached to or referred to in this Agreement are incorporated into this Agreement by reference for the purposes described in this Agreement.

Section 5.9 Governing Law; Venue. This Agreement, and the actions of the Parties hereunder shall in all respects be governed by and construed in accordance with the laws of the State of Texas (excluding principles of conflicts of law). Venue shall be in Travis County, Texas.

Section 5.10 Waiver of Attorneys' Fees. In consideration of this Agreement and the mutual waiver of this right, the Parties, knowingly and intentionally waive their rights to attorneys' fees and costs of court in any administrative proceeding, alternative dispute resolution proceeding, or other litigation arising out of or connected to this Agreement, including, without limitation, any rights under Section 271.153 of the Texas Local Government Code or otherwise.

Section 5.11 No Party Deemed Drafter. Each Party has thoroughly reviewed and revised this Agreement (including each exhibit attached to this Agreement) and has had the advice of counsel before execution of this Agreement, and the Parties agree that none of them shall be deemed to be the sole drafter.

Section 5.12 Use of Defined Terms. Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of members of the relevant class. Any reference to this Agreement shall include this Agreement, the Phase Plans, exhibits and other instruments, documents and agreements as originally executed and as the same may from time to time be supplemented, modified or amended to conform with the requirements of Section 5.18.

Section 5.13 Multiple Counterparts. This Agreement may be executed in multiple counterparts, including by electronic means, each of which shall be deemed to be an original, but taken together shall constitute only one document. The Parties agree to circulate for execution all executed counterparts in order that each Party may obtain one counterpart executed by all Parties.

Section 5.14 Table of Contents; Headings. The table of contents and headings of the various articles, sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Agreement.

Section 5.15 Parties in Interest. The terms of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their successors and permitted assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person (other than the Parties and their successors and permitted assigns and as expressly provided in this Agreement) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained in this Agreement or any standing or authority to enforce the terms and provisions of this Agreement.

Section 5.16 Notices of Changes in Fact. Promptly after either Party becomes aware of same, such Party will notify the other Party of:

A. Any change in any material fact or circumstance represented or warranted by such Party in this Agreement; and

B. Any default, event or condition which, with notice or lapse of time or both, could become a breach by such Party under this Agreement, specifying in each case, the nature of the condition and what action the Party has taken and proposes to take with respect to that condition.

Section 5.17 Assignments. The Parties shall not assign (partially or in the entirety) any rights or duties under this Agreement without prior written consent of each other Party, and this consent may be withheld in the respective Party's sole and absolute discretion. If an assignment of this Agreement is approved by the Parties, the transfer of this Agreement or any of the documents referenced in this Agreement shall confer all rights and duties with respect to the Completed Phase Project Area.

Section 5.18 Entire Agreement, Amendment and Waiver, Survival. This Agreement, together with the attached exhibits and the documents referenced in this Agreement, constitute the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior written and oral agreements and understandings with respect to such subject matter, provided that portions of a Phase Plan that address operations and maintenance shall be incorporated herein by reference, and these terms may be attached to this Agreement without further consent or acknowledgement. The Parties may supplement this Agreement in a Phase Plan to address specific operations and maintenance of each Completed Phase Plan Area. In the event of a conflict between this Agreement and the JDA, the JDA shall control or between this Agreement and a Phase Plan for a Completed Phase Plan Area, the Phase Plan shall control. Neither this Agreement nor any of the terms of this Agreement may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought, and in the case of the City, approved by action of City Council. No failure or delay of any Party in exercising any power or right under this Agreement will operate as a waiver of such power or right, nor will any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right of power, preclude

any other or future exercise or the exercise of any other right or power. All of the representations and warranties of each Party contained in this Agreement shall survive the execution, delivery and acceptance of this Agreement and any termination of this Agreement. Unless otherwise described in this Agreement, all agreements of the Parties contained in this Agreement which must survive to afford each respective Party the anticipated benefits of such agreements shall likewise survive, whether or not identified in this Agreement to so survive.

Section 5.19 City Limitations.

(a) The LGC, the City and the Conservancy may not seek any remedy for non-payment by the City if such non-payment is due to: (i) Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and (ii) §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

(b) The funding of this Agreement by the City is dependent upon the availability of appropriations. The City's payment obligations are payable only and solely from funds appropriated and available for this Agreement. The absence of appropriated or other lawfully available funds shall render this Agreement null and void to the extent funds are not appropriated or available. The City shall provide the Conservancy written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under this Agreement, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under this Agreement. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

(c) Once the City has approved the Annual Management Fee, the City's contribution to Operating Expenses, without further approval of the City Council, will be limited solely to the approved Annual Management Fee and amounts within the City Charter Limit.

Section 5.20 City Council Approval. The LGC, the City, and the Conservancy recognize and agree that any contracts or agreements contemplated to be entered into by the City under the terms of this Agreement, which are not attached as exhibits to this Agreement, may be subject to the prior approval of City Council, if the approval of City Council is required under the terms of the City's charter or other Applicable Law, such determination to be made by the City in its sole and absolute discretion. Further, any approvals required of the City for any assignment of this Agreement will be subject to the prior approval of City Council.

Section 5.21 Capacity of the City. Without in any way limiting or extending the obligations, duties, covenants and agreements of the City as a Party to this Agreement, the Parties agree that any action, omission or circumstance arising out of the exercise or performance of the City's required Governmental Functions shall not cause or constitute a default by the City under this Agreement or any other document delivered in connection with this Agreement or give rise to any rights or claims for damages or injury against the City in its capacity as a Party to this Agreement. The Conservancy's and the LGC's remedies for any injury, damage or claim resulting from any other action, omission or circumstance shall be governed by the laws and

regulations concerning claims against the City as a home rule charter city. These provisions shall survive any termination of this Agreement.

Section 5.22 Capacity of Parties Acting on Behalf of the City. All references in this Agreement to employees, agents, representatives, contractors and the like of the City shall refer only to persons or entities acting on behalf of the City in its capacity as a Party to this Agreement, and all such references specifically exclude any employees, agents, representatives, contractors, elected officials and the like acting in connection with the performance of the City's required Governmental Functions.

Section 5.23 No Limitation on the City's Governmental Functions. The Parties acknowledge that no representation, warranty, consent, approval or agreement in this Agreement by the City (as a Party to this Agreement) shall be binding upon, constitute a waiver by or estop the City from exercising any of its rights, powers or duties in its required Governmental Functions. For example, approval by the City of this Agreement shall not constitute satisfaction of any requirements of, or the need to obtain any approval by, the City in the exercise of its Governmental Functions or as may be required under any Applicable Laws.

Section 5.24 Existing Agreements. The City will work with the Conservancy when it negotiates existing agreements for use within the District to ensure consistency of operations and the common goal of preserving, restoring designing, developing, enhancing, rehabilitating, repairing, improving, managing, operating and maintaining the District, promoting and expanding the use of the District by the public, and governing the implementation of the Completed Phase Plan Areas to achieve these results.

Section 5.25 Rules Regarding Alcoholic Beverages Within the District. The Parties agree that the Conservancy will follow Texas Alcoholic Beverage Commission ("**TABC**") rules and regulations concerning the provision of alcoholic beverages within the District. The Conservancy will abide by City Code or park rules that relate to alcohol in City parks and facilities unless exempted by the City.

Section 5.26 Annual Review of Agreement. Due to the long term nature of this Agreement, the Parties recognize the need to review this Agreement annually to determine if provisions are adequate for the circumstances existing at such time. The Parties agree that such review may indicate the need to amend this Agreement, and they agree to work in good faith to agree upon amendments and modifications to the Agreement in light of the results of this review.

*[Remainder of this page intentionally left blank; signature pages follow.]*

**IN WITNESS WHEREOF**, the City, the LGC and the Conservancy have executed this Agreement as of dates below, to be effective as of the Effective Date.

**CONSERVANCY:**

**WALLER CREEK CONSERVANCY**

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**LGC:**

**WALLER CREEK LOCAL GOVERNMENT  
CORPORATION**

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**CITY:**

**CITY OF AUSTIN, TEXAS**

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**ATTEST:**

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

**EXHIBIT "A"**  
**DEPICTION OF DISTRICT**  
**[ATTACHED]**

# Waller District Emerging Projects

**Brick Oven site** 01

Developer: unknown  
 Project Type: mixed use  
 Gross Square Footage: unknown Project Site Area: unknown

**Hotel Indigo/Holiday Inn** 02

Developer: Intermar  
 Project Type: Boutique Hotel/Hotel (300 rooms), 10 stories  
 Gross Square Footage: unknown Project Site Area: unknown



North Elevation

**Stubb's** 03

Developer: Stubb's  
 Project Type: Interior remodel  
 Gross Square Footage: unknown Project Site Area: unknown

**Episcopal Church National Archive** 04

Developer: Episcopal Church  
 Project Type: Office, 8 stories  
 Gross Square Footage: unknown Project Site Area: unknown

**4th/RR** 05

Developer: Perry Lorenz  
 Project Type: Mixed Use  
 Gross Square Footage: unknown Project Site Area: unknown

**Fairmont Hotel** 06

Developer: White Lodging  
 Project Type: Hotel (1031 rooms), 60 stories  
 Gross Square Footage: \* SF Project Site Area: \* AC



North Elevation

**Trinity Place (95 Trinity)** 07

Developer: World Class Capital  
 Project Type: Restaurant/Residential (350 units), 38 stories  
 Gross Square Footage: 472,428 SF Project Site Area: unknown



North Elevation

**Waller Park Place / Waller Center** 08

Developer: Sutton Company  
 Project Type: 38 story mixed-use tower, 46 story residential, 21 story office/retail  
 Gross Square Footage: unknown Project Site Area: unknown



West Elevation

**The Millennium Rainey** 09

Developer: Oberstein Companies  
 Project Type: Residential (200 units +/-)  
 Gross Square Footage: unknown Project Site Area: unknown

**Hotel VanZandt** 10

Developer: J&S-Houston Hotel LP  
 Project Type: Hotel (200 rooms)  
 Gross Square Footage: unknown Project Site Area: unknown



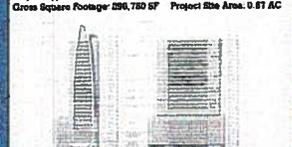
Rendering from Austin Business Journal

**Homewood Suites** 11

Developer: AHS Rainey II, LLC  
 Project Type: Hotel (120 rooms), 14 stories  
 Gross Square Footage: 112,006 SF Project Site Area: 0.62 AC

**70 Rainey Street** 12

Developer: 70 Rainey Street, LP  
 Project Type: Restaurant, Residential (107 units), 29 stories  
 Gross Square Footage: 259,750 SF Project Site Area: 0.67 AC



South Elevation

**Kimber Modern Rainey** 13

Developer: Kimber Commodities and Vicks Post  
 Project Type: Hotel (200 rooms +/-)  
 Gross Square Footage: unknown Project Site Area: unknown



Rendering from Austin Business Journal

**Austin Skyhouse** 14

Developer: Moore Group  
 Project Type: Residential (300 units), 23 stories  
 Gross Square Footage: unknown Project Site Area: unknown



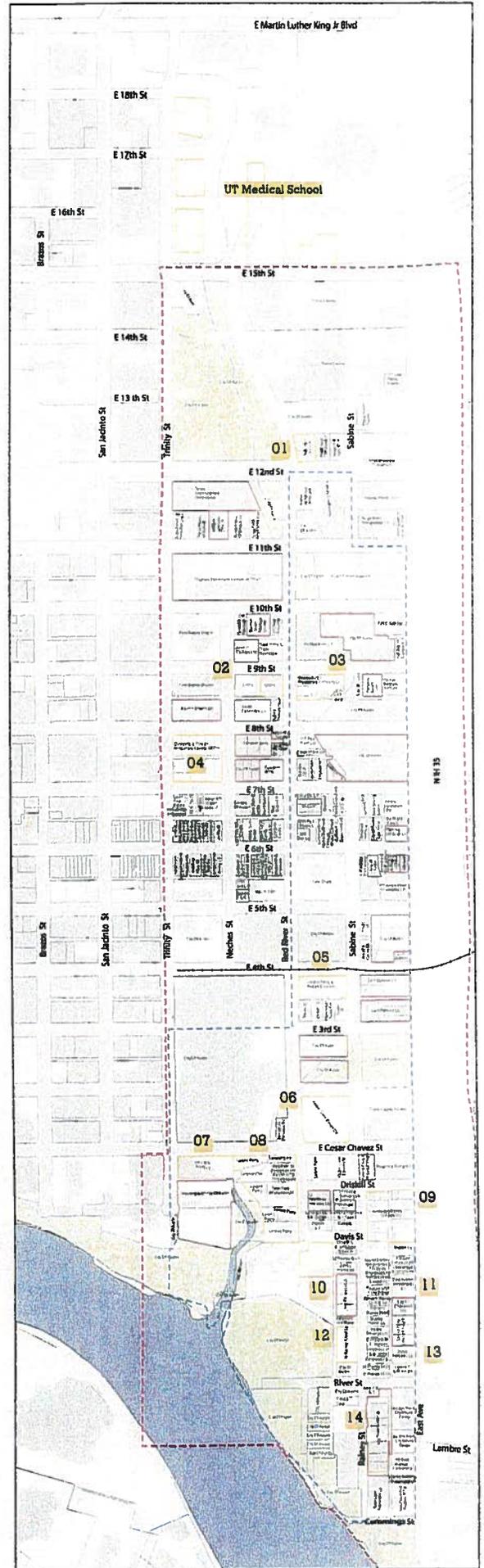
Rendering from Austin Business Journal

**North Shore Lofts** 18

Developer: Thom Lahn 28 LLC  
 Project Type: Residential, 16 stories  
 Gross Square Footage: 122,364 SF Project Site Area: unknown



Rendering - Looking from Lake Travis



## LEGEND

-  Waller District
-  TIF District
-  Current Projects within District
-  City of Austin Parks
-  Parcels according to TCAD
-  Multiple Parcels held by the Same Owner

Map was prepared by PORD and EDO, information was compiled from multiple sources and is current as of the date of this map.  
 Map is to be used for reference purposes only.

March 12, 2014



0 100 200 300 400 500 Feet

## EXHIBIT B

### BASELINE OPERATING EXPENSES

(a) "Baseline Operating Expenses" means, subject to the exclusions set forth below and to limits imposed in an approved Annual Operating Plan and Budget, all Operating Project Costs, computed on an accrual basis and determined in accordance with generally accepted accounting principles consistently applied, including but not limited to the following:

- (1) wages and salaries of all employees of the Conservancy, if any, directly engaged in the maintenance and operation of a Completed Phase Plan Area up to the level of senior property manager, including taxes and insurance; provided that for employees who are engaged in direct services to Completed Phase Plan Areas but who also provide other services for other activities of the Conservancy, the employment costs of such personnel shall be allocated to Completed Phase Plan Areas based upon the percentage of their time spent providing such services to the Completed Phase Plan Areas and such allocated portion shall be included in Baseline Operating Expenses;
- (2) the cost of all supplies, tools, equipment, and materials used in the operation and maintenance of Completed Phase Plan Areas;
- (3) except as otherwise set forth in the Phase Plan, the cost of all utilities for Completed Phase Plan Areas, including the cost of water, sewer, trash, drainage, gas, solid waste, transportation user fees, electricity, telephone, internet and other telecommunication and/or technological service and other utilities for Completed Phase Plan Areas, but excluding those costs billed to specific events or users of the Completed Phase Plan Areas;
- (4) the cost of all maintenance and service agreements for work solely in the Completed Phase Plan Areas and related fixtures, systems and equipment therein, including sanitation, litter collection, janitorial service, trash removal, but excluding those costs billed to specific events or users of the Completed Phase Plan Areas;
- (5) the cost of repairs and general, routine or periodic maintenance of the improvements in the Completed Phase Plan Areas;
- (6) the cost of all maintenance and care of improvements and landscaping within a Completed Phase Plan Area, excluding (a) repairs and general maintenance paid by proceeds of insurance or by third parties, and (b) alterations attributable solely to accommodate specific events or users of a Completed Phase Plan Area;
- (7) the cost of all insurance obtained by the Conservancy, the City or the LGC relating to the Completed Phase Plan Areas, including the cost of property

and liability insurance applicable to Completed Phase Plan Areas and the sculpture, friezes, paintings or other works of art that the Conservancy may own and is used in the District, so long as contemplated in the Phase Plan or unless otherwise agreed by the Parties, and the cost of deductibles paid on allowed claims;

- (8) any payments made by the Conservancy for any equipment used in the operation or maintenance of Completed Phase Plan Areas, excluding, however, any part of such payments that constitutes capital expenditures under generally accepted accounting principles or those costs billed to events or users of the Completed Phase Plan Areas;
  - (9) costs or expenses for maintaining sculpture, friezes, paintings or other works of art; and
  - (10) costs of repairs, replacements or other work occasioned by fire, windstorm or other casualty, or the exercise by governmental authorities of the right of eminent domain, provided however to the extent any such costs are reimbursed by insurance or condemnation proceeds, then the amount of reimbursement shall be paid the City to the extents such costs were funded by the Maintenance Fee and any excess reimbursement shall be deposited into the Capital Repair Fund;
- (b) Baseline Operating Expenses shall exclude the following:
- (1) depreciation and other "non-cash" expense items or amortization;
  - (2) costs of correcting or repairing defects in the Completed Phase Plan Area, and/or equipment or the replacement of defective equipment, to the extent such costs are covered by warranties of manufacturers, suppliers or Contractors, or are otherwise borne by parties other than the Conservancy;
  - (3) costs of conducting any capital campaigns, development programs, membership or subscriber programs or any other aspect of raising or soliciting donations, grants or other funds from public or private sources or costs of marketing;
  - (4) penalties or interest charged for (i) failure to pay equipment payments, ad valorem taxes and/or other special assessments before they became delinquent or (ii) failure to promptly comply with laws related to the Completed Phase Plan Area, but, in either case, only if said penalties or interest were not caused by the Conservancy;
  - (5) costs directly resulting from the negligence or willful misconduct of the Conservancy, its employees, agents and/or Contractors; or
  - (6) costs associated with the operation of the entity which constitutes the Conservancy, as distinguished from the Conservancy's operation of the

Completed Phase Plan Areas, such as general overhead and general administrative expenses (individual, partnership or corporate, as the case may be), which costs would not be chargeable to operating expenses of the Completed Phase Plan Areas in accordance with generally accepted accounting principles, consistently applied.

- (7) costs of a capital nature, including, but not limited to, capital additions, capital improvements, capital alterations, capital replacements, capital equipment and capital tools, and/or capital redesign, all in accordance with generally accepted accounting principles, consistently applied;
- (8) payments of principal, finance charges or interest on debt or amortization on any bonds, mortgage, deed of trust or other debt;
- (9) purchase, ownership, leasing, showing and promotion of sculpture, friezes, paintings or other works of art;
- (10) consulting costs and costs for professional services incurred by the Conservancy relating to the operation and maintenance of the Completed Phase Plan Area;
- (11) compensation in the form of wages, salaries and such other compensation and benefits, as well as any adjustments, for all executive employees and personnel of the Conservancy above the level of the on-premises manager for a Completed Phase Plan Area;
- (12) Security services; and
- (13) the cost of all restoration and replacement of improvements and landscaping within a Completed Phase Plan Area, repairs and general maintenance paid by proceeds of insurance or by third parties, alterations attributable solely to accommodate specific events or users of a Completed Phase Plan Area.

## SCHEDULE 1

### EXHIBIT "G" TO JDA

#### M/WBE REQUIREMENTS

- (a) The Managing Party shall comply with the applicable standards and principles of the **M/WBE Program Ordinance** in the design and construction of Projects, provided, however, Contractors and their subcontractors under contracts executed and delivered by the Conservancy as of the date of this Agreement for the scope of work contemplated in the Design Plan approved by City Council shall not be required to comply with this Exhibit G. A change in the scope of work or Contractors or subcontractors, including adding Contractors or subcontractors shall require compliance with this Exhibit G. Prior to any changes or additions the Managing Party shall consult with and provide SMBR information regarding the proposed change in scope or change or deletions of Contractors or subcontractors to determine the necessary steps to achieve compliance with the M/WBE Program.

With respect to any design or construction projects for a Project, the Contractors shall meet the gender and ethnic-specific participation goals or subgoals for each year in which design or construction occurs as determined by the Director of SMBR in accordance with the M/WBE Program Ordinance and rules. Before advertising a bid for any portion of the design or construction work, the Managing Party shall submit to SMBR a copy of a proposed solicitation in order for the City to determine the gender and ethnic-specific participation goals or subgoals for the project. The determination by the Director shall be based on the proposed size, type and scope of work to be undertaken by the Managing Party and described in the bid documents, and the availability of each group of M/WBEs to perform elements of the work. The City may utilize either the cumulative M/WBE goal or the subgoals for each group of minority persons in the proposed solicitation, or set M/WBE participation goals for each Project as provided in City Code Section 2-9A-19 (*Establishment of MBE/WBE Participation Levels for Individual Contracts in Construction*), or as may subsequently be modified, amended or replaced. The Director shall have ten business days from receipt of a bid package from the Managing Party in order to evaluate and determine the required level for utilization of M/WBE project or phase-specific goals or subgoals, and shall notify the Managing Party in writing of the Director's determination.

In an effort to meet the gender and ethnic-specific M/WBE utilization goals, the Managing Party shall implement an outreach program designed to solicit participation of M/WBEs. These outreach efforts should also target small businesses generally. The Managing Party may seek the assistance of SMBR in these outreach efforts as described in paragraph (b) below.

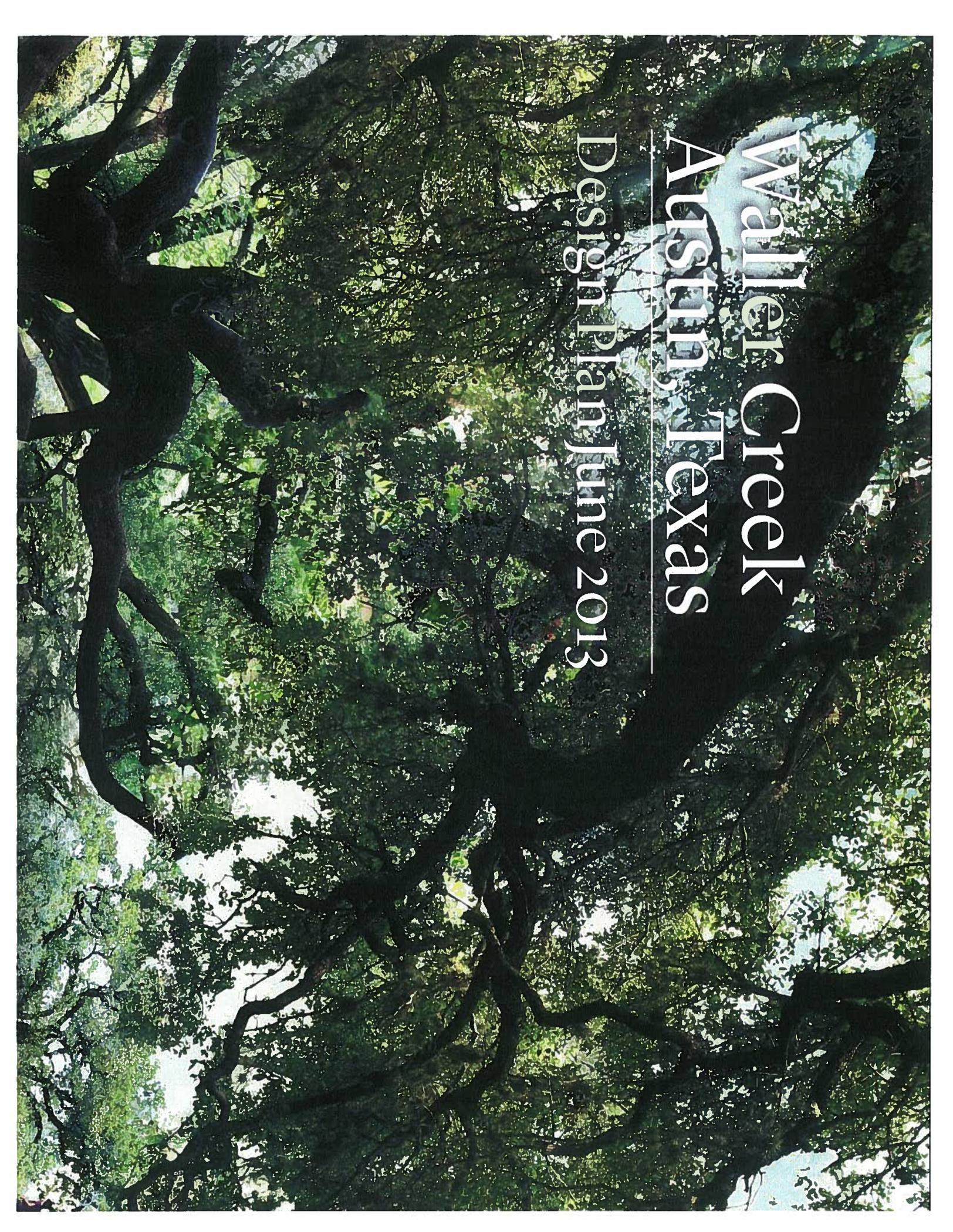
For any year in which the Managing Party, the Contractors fail to meet each of the goals or subgoals established by the Director, the Managing Party, the Contractors must demonstrate good faith efforts to meet the goals as described in the M/WBE Program Ordinance. The Managing Party shall submit documentation demonstrating its own and the Contractors' good faith efforts to meet the goals as is required under the following paragraph (d). If the Managing Party provides documentation to SMBR evidencing its own and its Contractors' good faith efforts, the Managing Party shall be deemed in compliance with this paragraph (a). Failure to perform this obligation shall be considered a material breach of this Agreement. The City acknowledges that this obligation does not require the Managing Party to modify, nullify or abrogate any contracts that the Managing Party has entered into before the Effective Date of this Agreement.

- (b) The Managing Party shall apprise SMBR when the Managing Party desires assistance from SMBR in its efforts to meet the gender and ethnic specific M/WBE utilization goals. This assistance may include providing a list of certified M/WBE firms from which the Managing Party may solicit or cause the Contractors to solicit participation in the design and construction of any improvements, identifying potential scopes of work, establishing the bid packages, scheduling and hosting outreach meetings, and assisting the Managing Party, its Contractors in soliciting M/WBE firms to provide bids. The Managing Party is not required to solicit participation during a period in which the Managing Party is not engaged in designing and/or constructing a Project, but rather, the Managing Party is required to incorporate the standards and principles of the M/WBE Program Ordinance including the foregoing M/WBE utilization goals into its development process as and when such process exists in connection with a Project.
- (c) The Managing Party shall provide monthly reports to SMBR no later than the 10<sup>th</sup> day of each month to track (i) the utilization on a percentage basis of M/WBE firms in the design and construction of the Projects; and (ii) a summary of the Managing Party's efforts to implement the standards and principles of the M/WBE Program Ordinance. SMBR shall provide the forms to be used by the Managing Party in submitting such reports.
- (d) Within thirty (30) days of receipt of the Managing Party's final monthly report (as is required under paragraph (e) above for the preceding year, January 1<sup>st</sup> through December 31<sup>st</sup> (the "**SMBR Compliance Period**"), SMBR shall determine whether the Managing Party is in compliance with the requirements of this **Exhibit "G"**.

**EXHIBIT “E”**

**DESIGN PLAN**

**[SEE ATTACHED]**

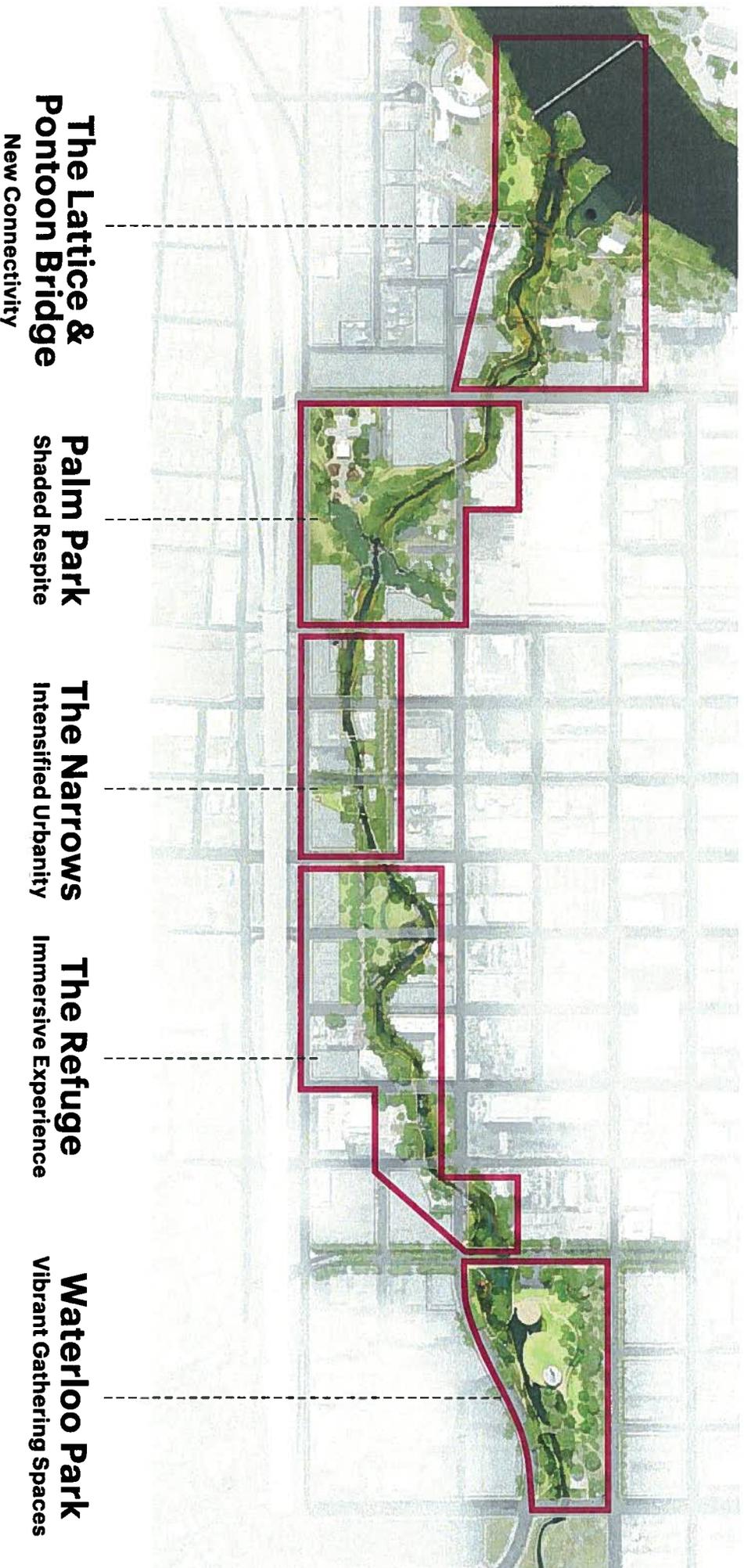


Waller Creek  
Austin, Texas

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Design Plan June 2013

# Waller Creek and a Chain of Parks



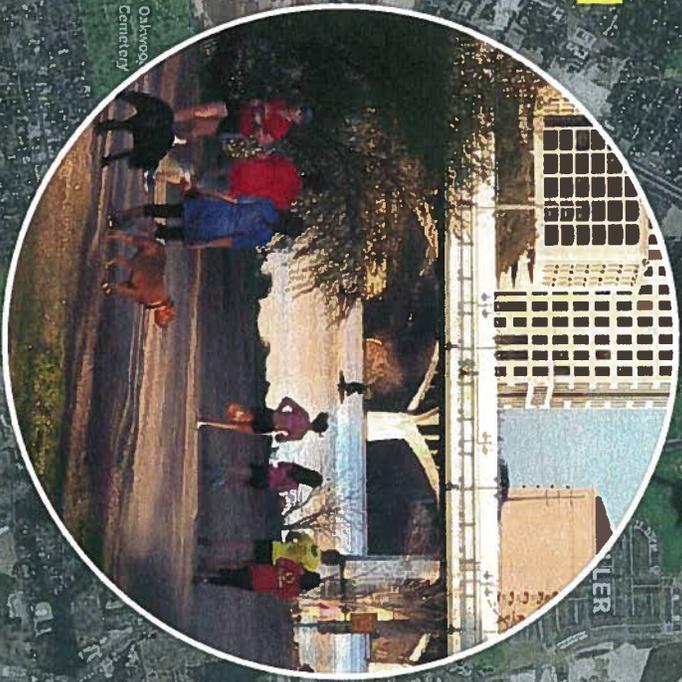
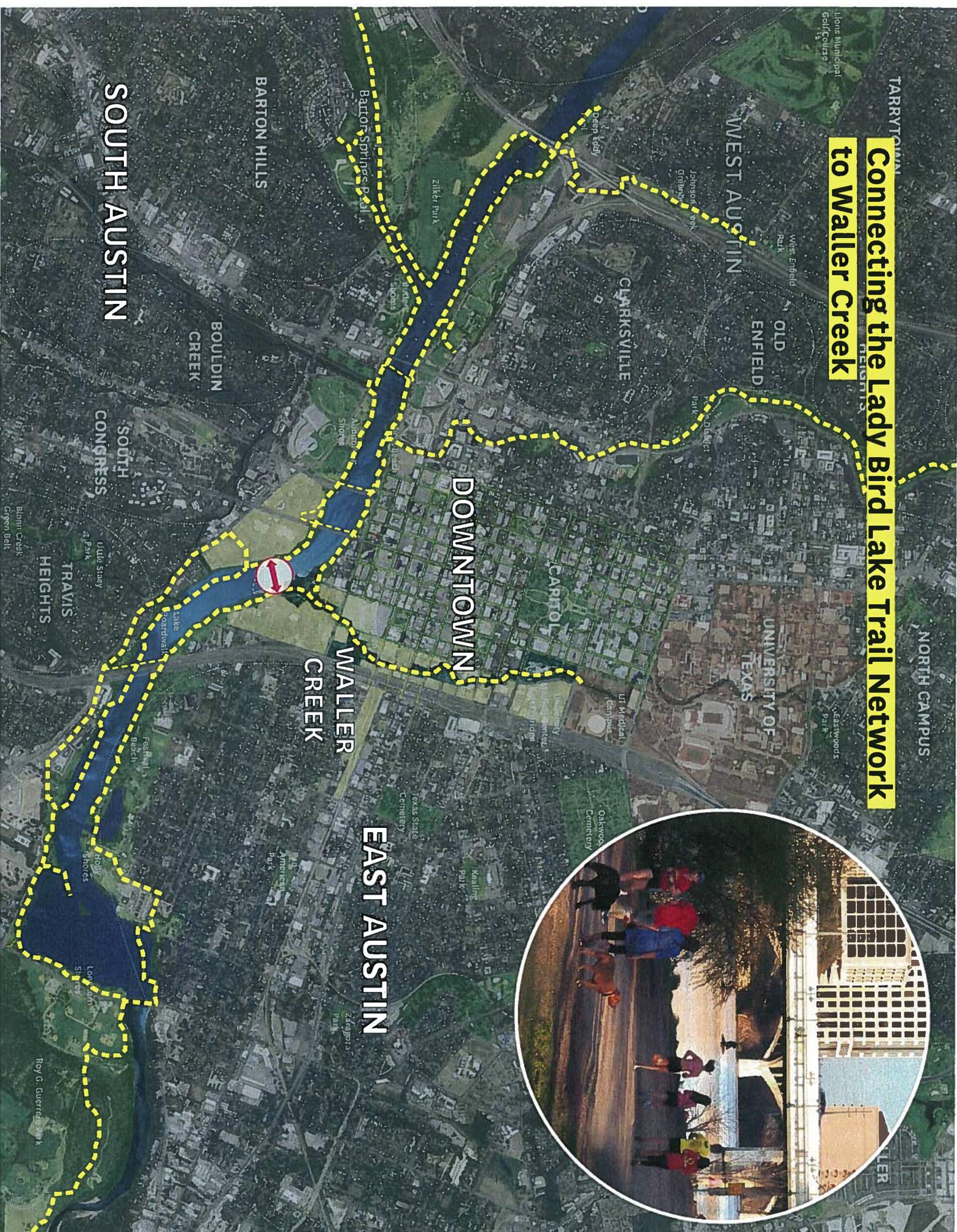
# THE LATTICE & PONTOON BRIDGE: New Connectivity



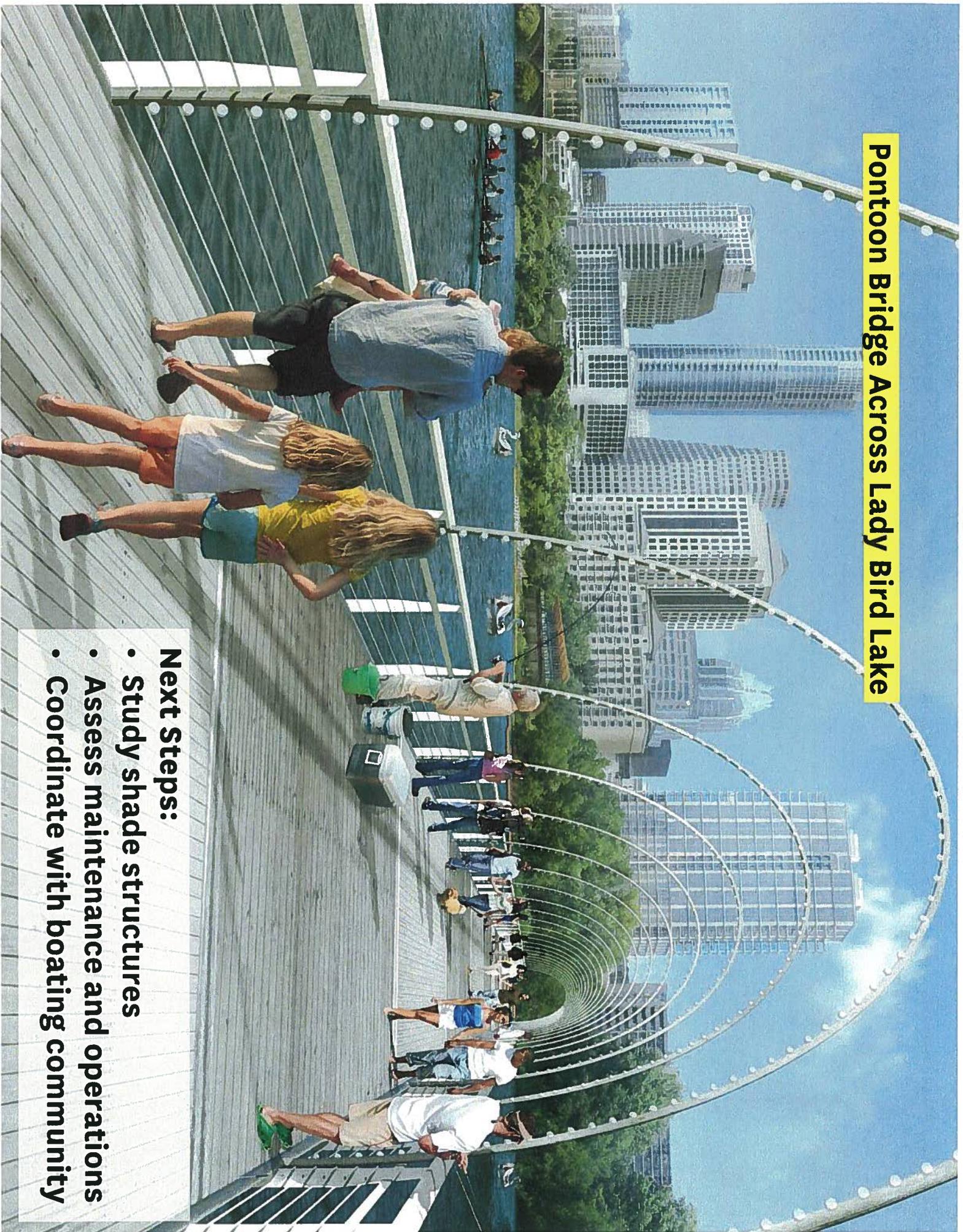
Cesar  
Chavez

I-35

# Connecting the Lady Bird Lake Trail Network to Waller Creek



## Pontoon Bridge Across Lady Bird Lake



### **Next Steps:**

- **Study shade structures**
- **Assess maintenance and operations**
- **Coordinate with boating community**

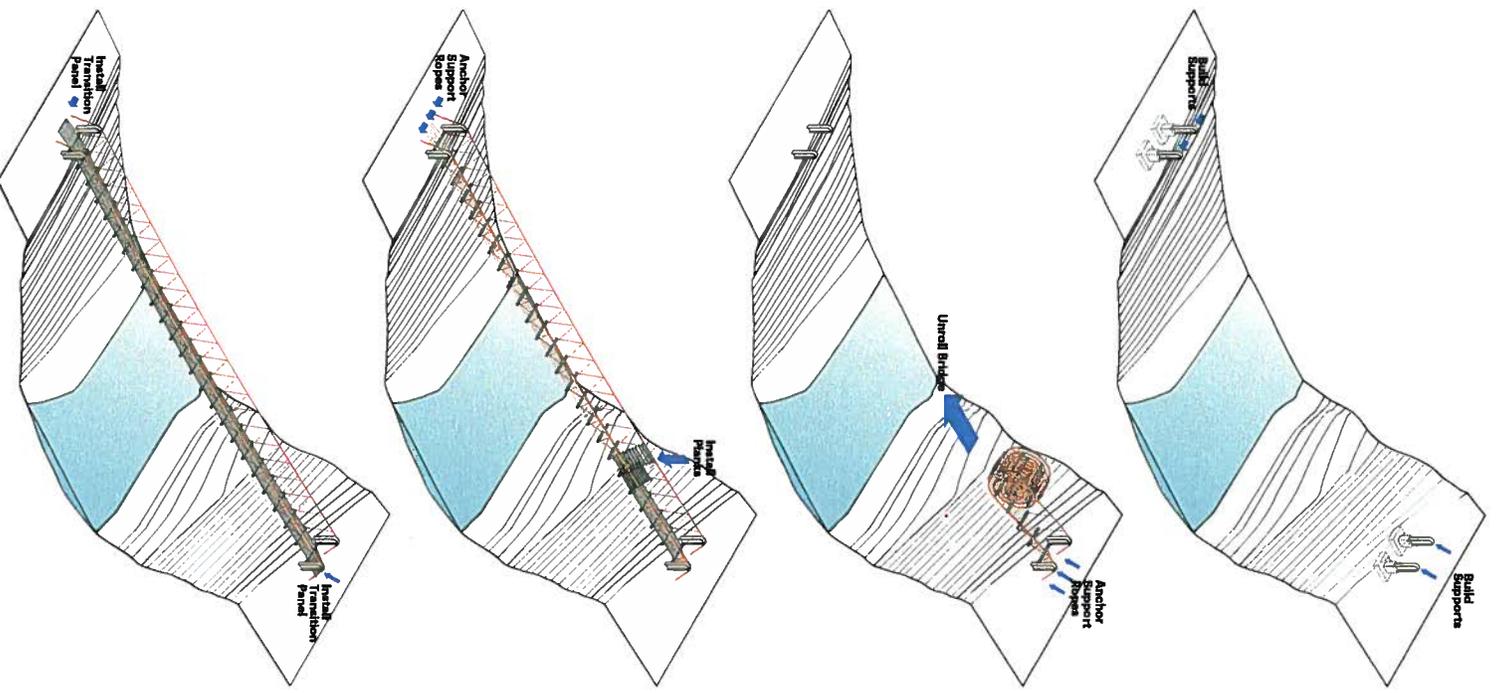
**Pontoon Bridge: North-South Connections Across the Lake**



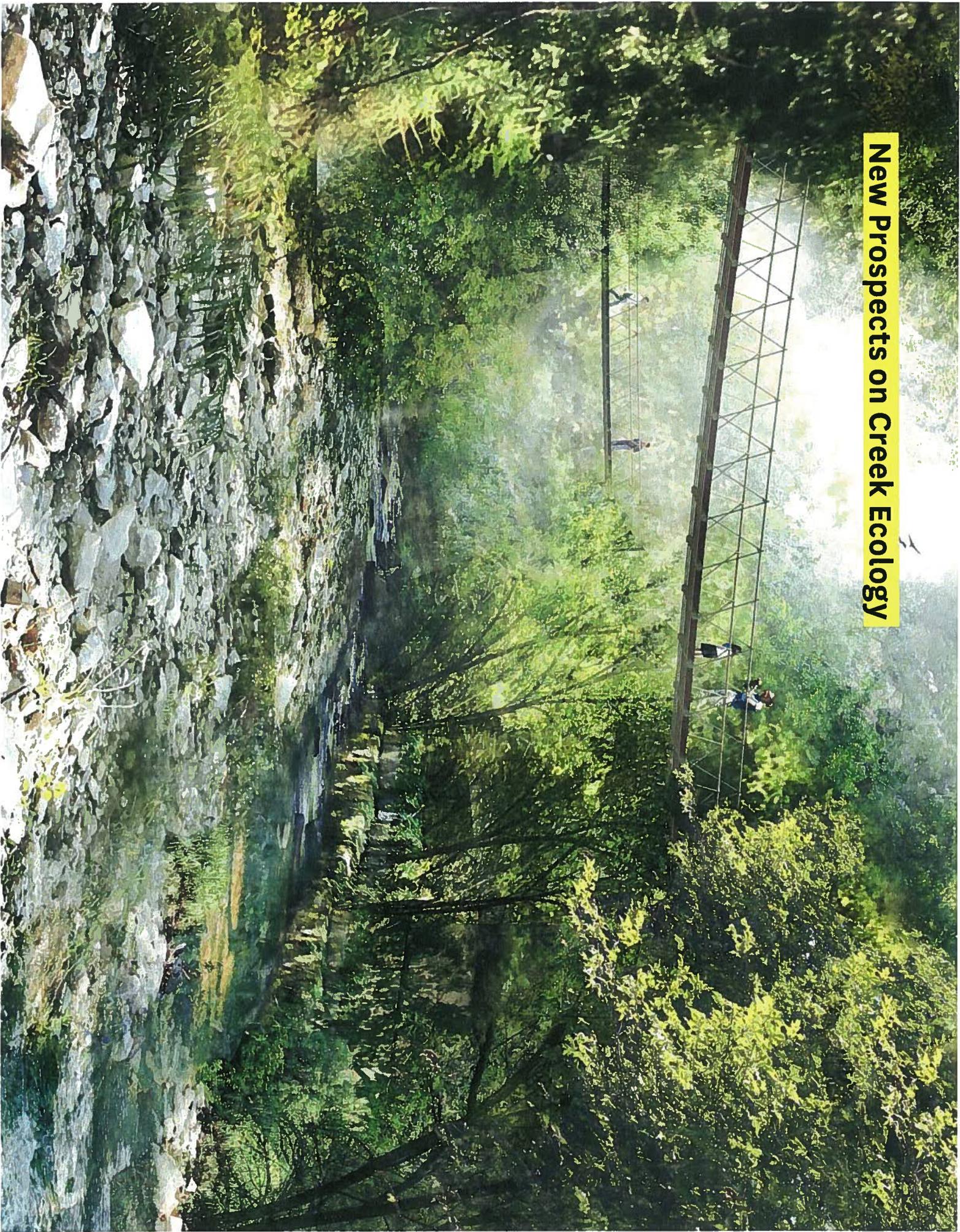
**The Lattice: East-West Connections Across the Creek**



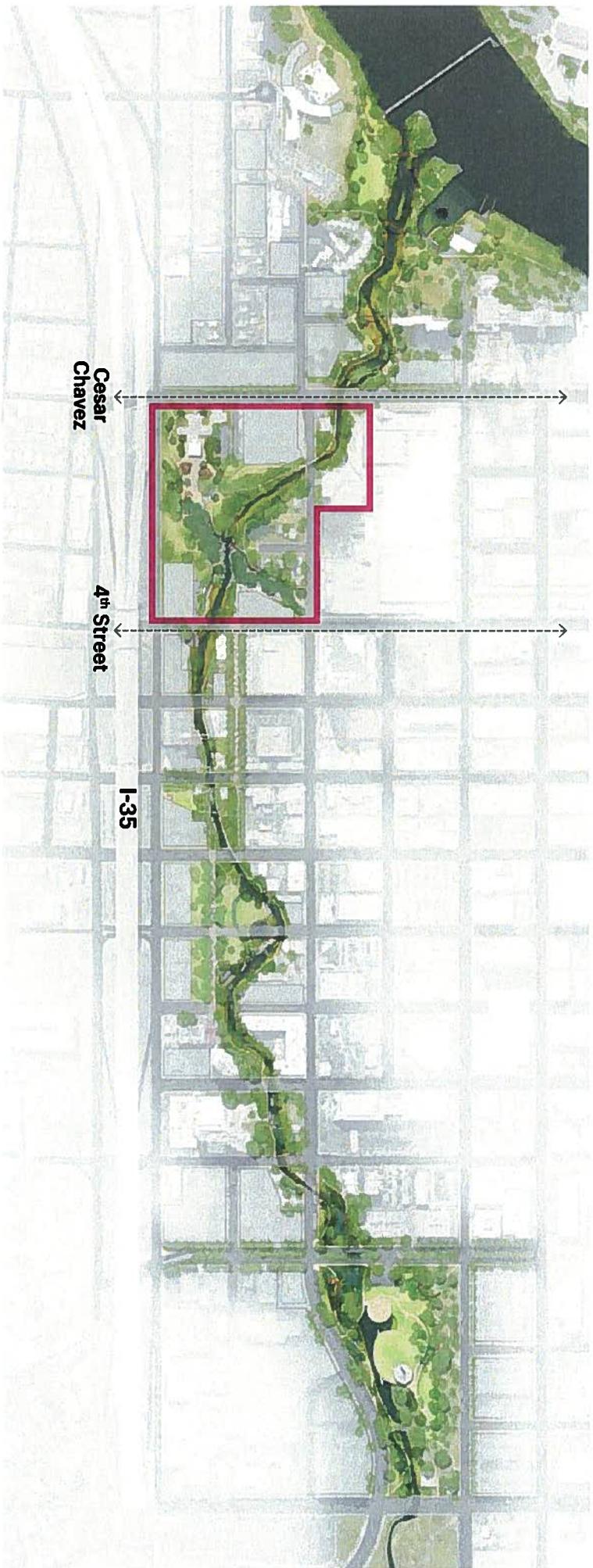
# A Lattice of Lightweight Bridges



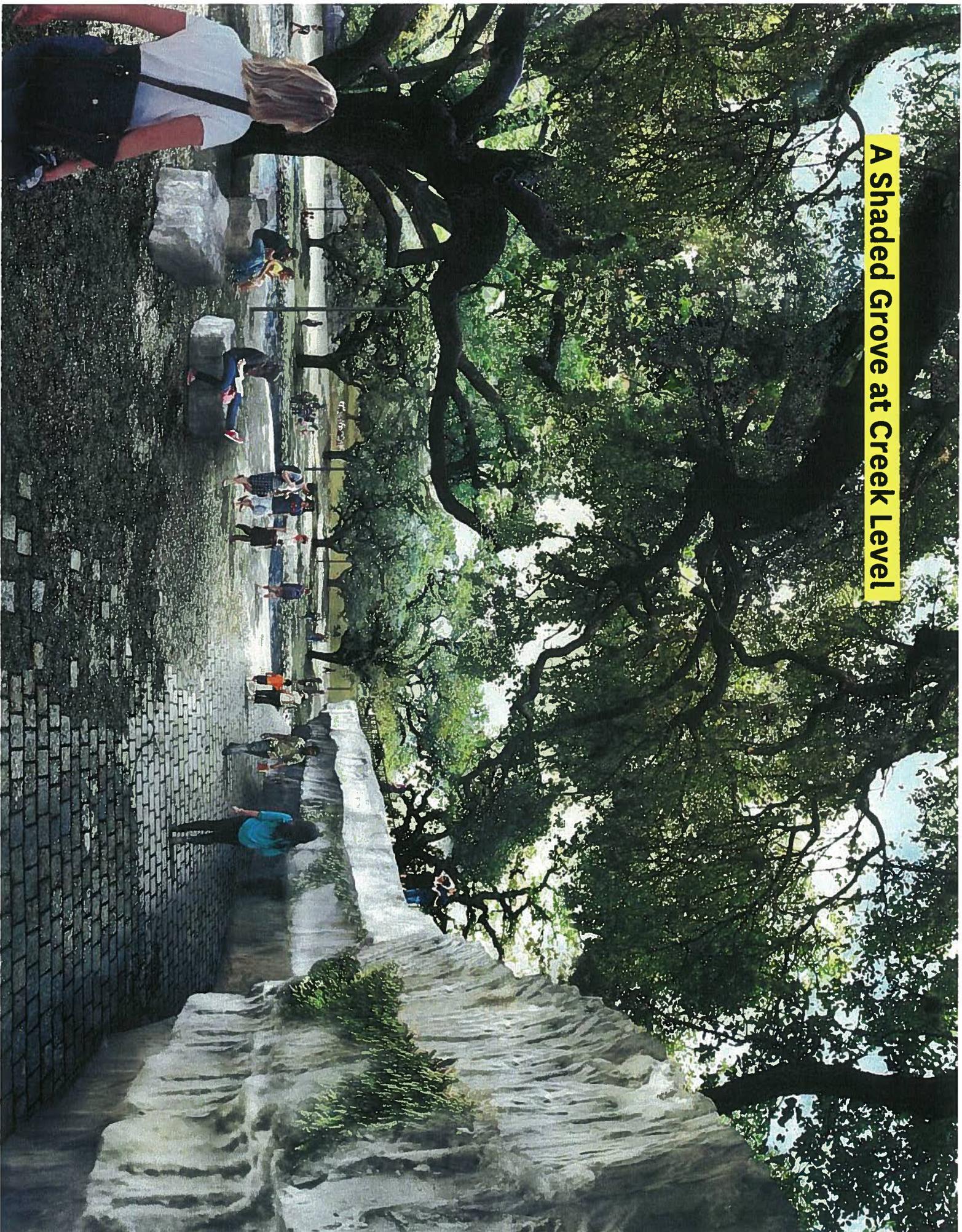
**New Prospects on Creek Ecology**



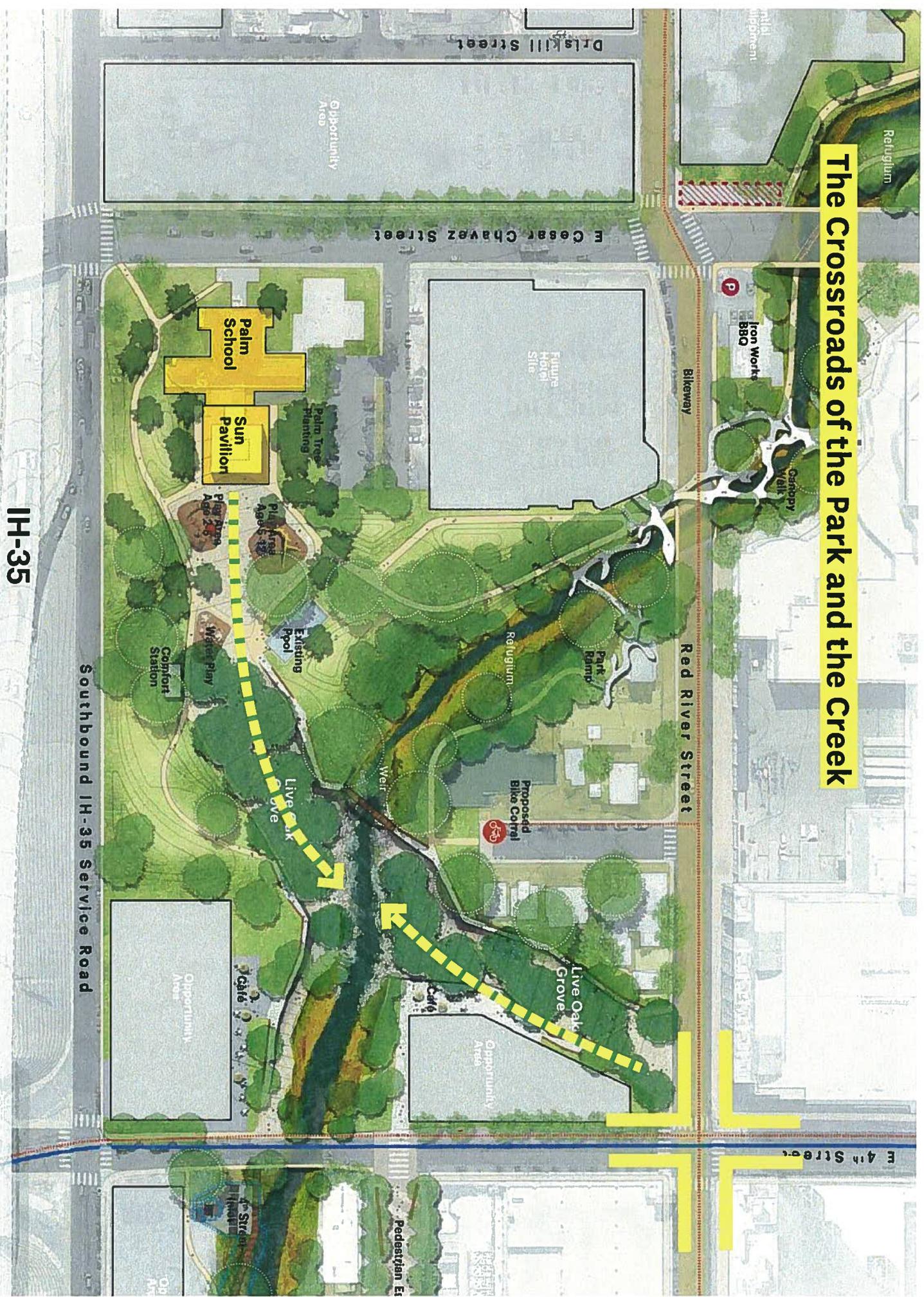
# PALM PARK: Shaded Respite



**A Shaded Grove at Creek Level**



# The Crossroads of the Park and the Creek



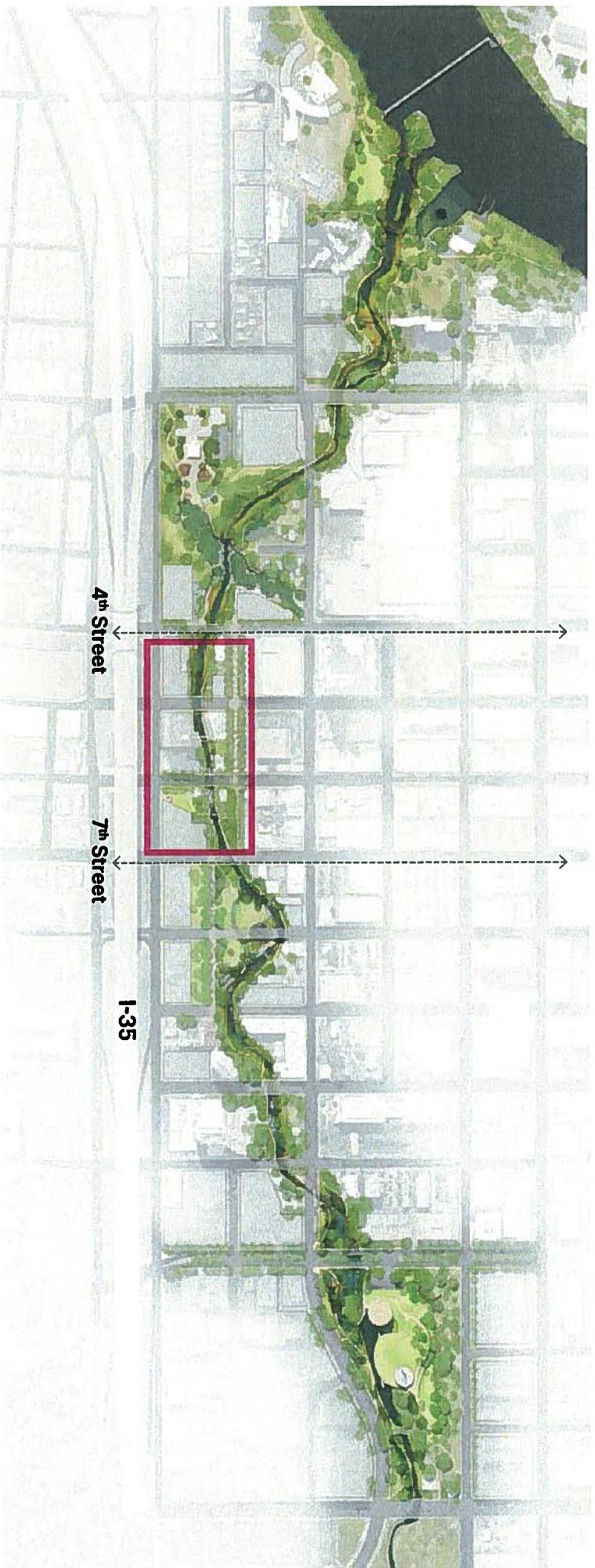
IH-35

Southbound IH-35 Service Road

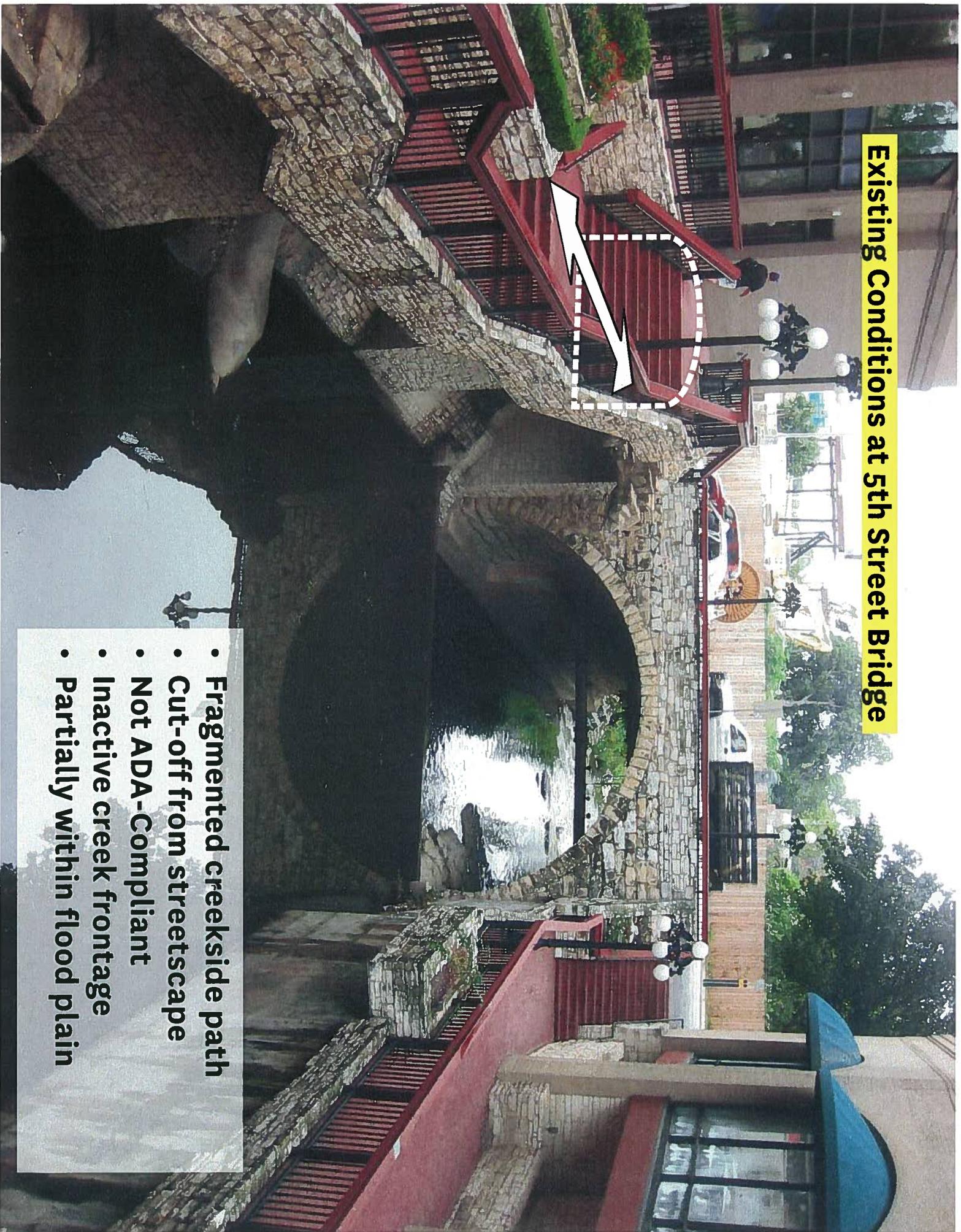
# Programming in Palm Park



# THE NARROWS: Intensified Urbanity

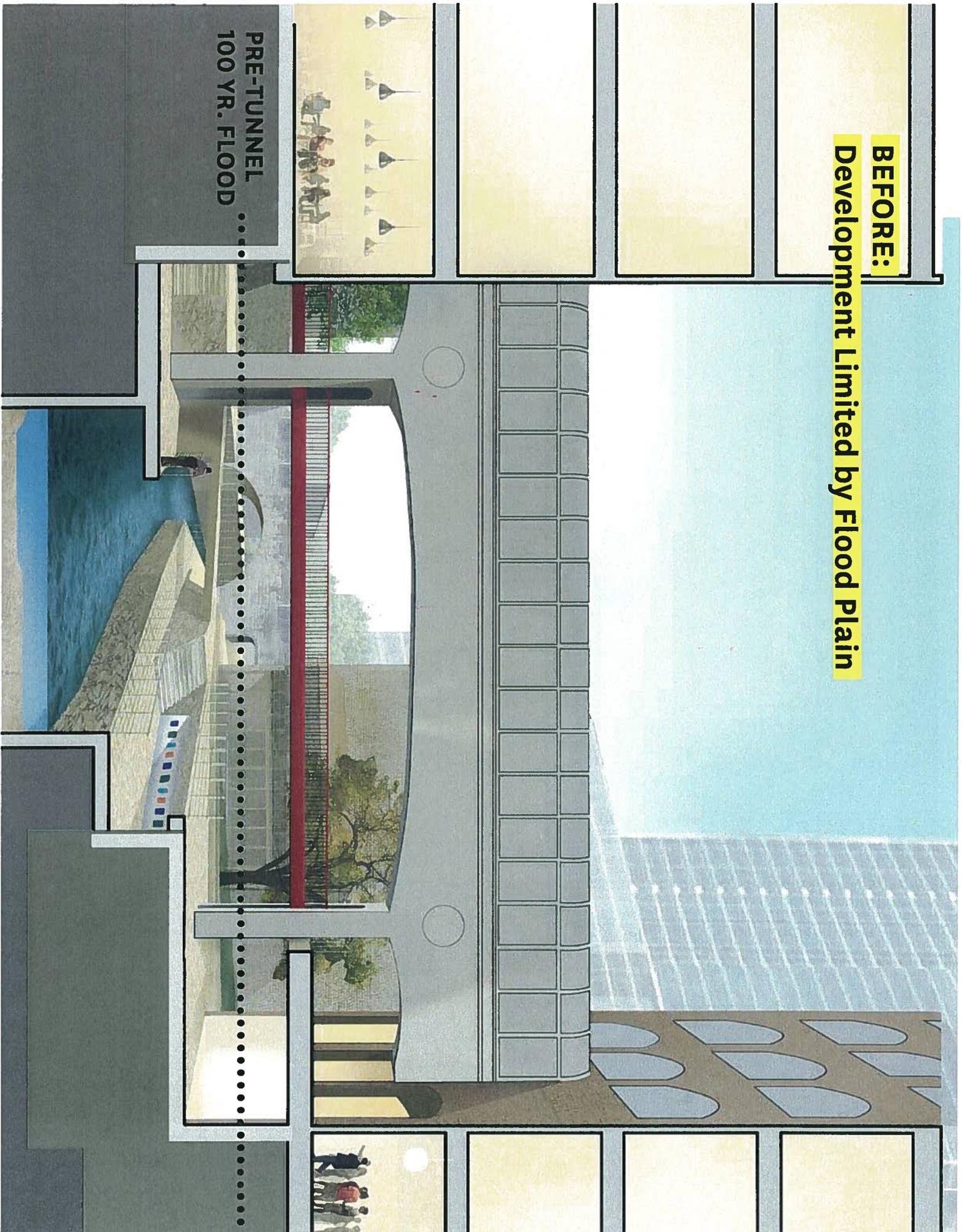


## Existing Conditions at 5th Street Bridge



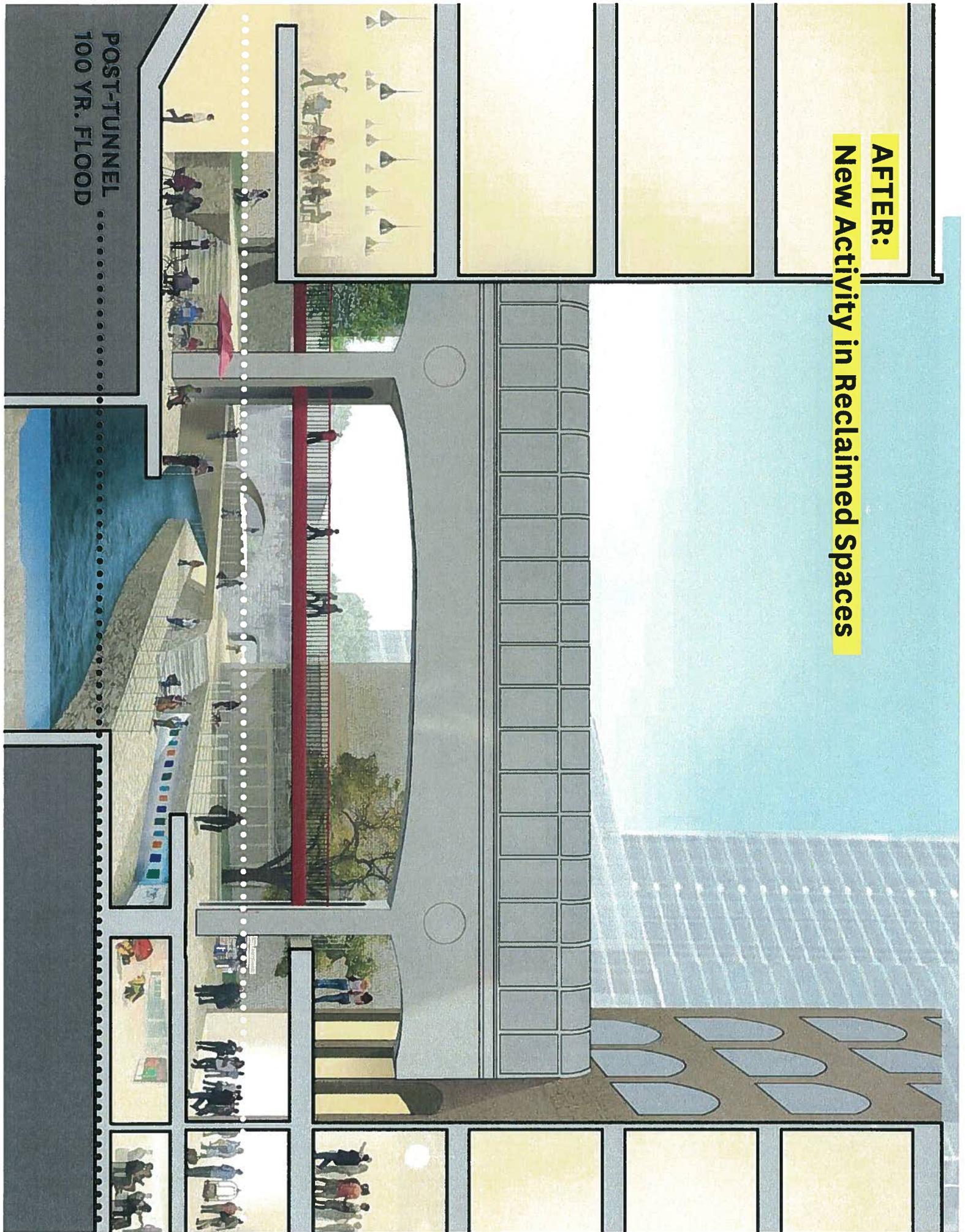
- Fragmented creekside path
- Cut-off from streetscape
- Not ADA-Compliant
- Inactive creek frontage
- Partially within flood plain

**BEFORE:**  
Development Limited by Flood Plain

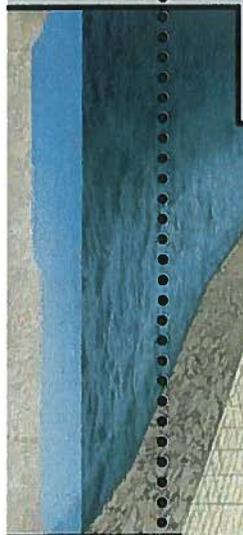


PRE-TUNNEL  
100 YR. FLOOD

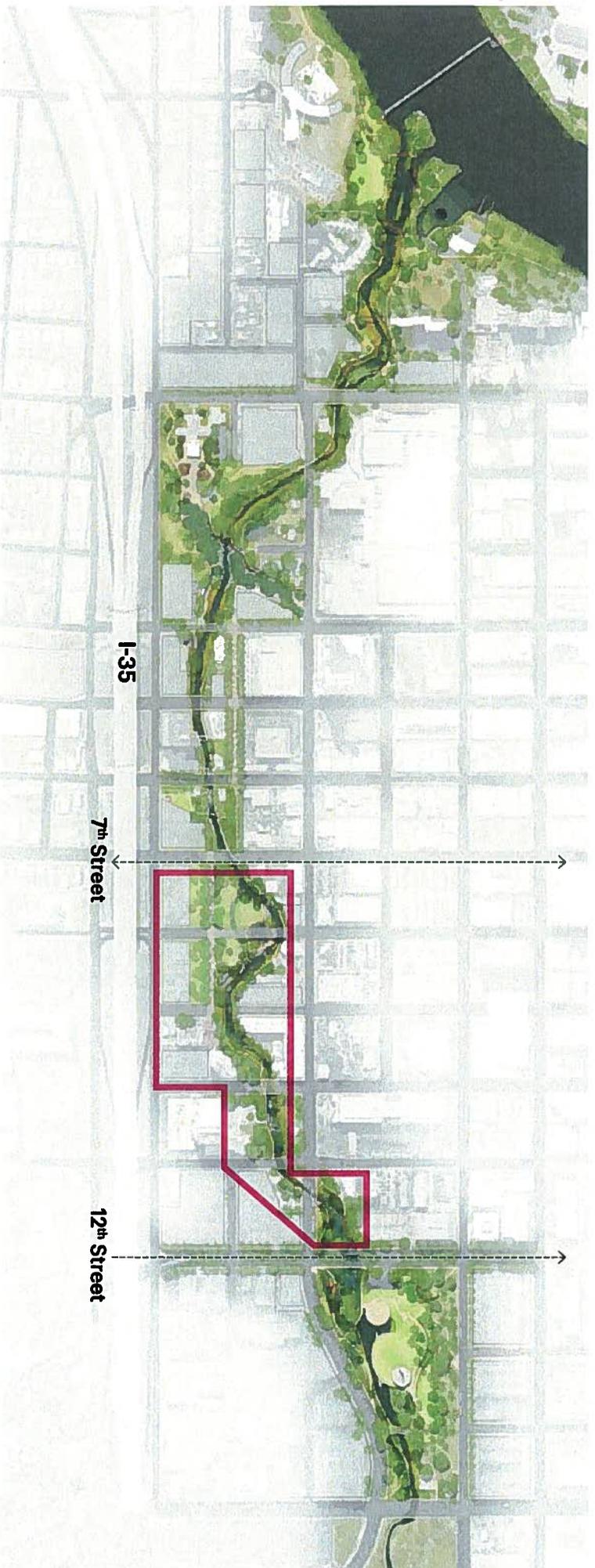
**AFTER:**  
New Activity in Reclaimed Spaces



POST-TUNNEL  
100 YR. FLOOD



# THE REFUGE: Immersive Experience



**Existing Conditions**

Red River Street

7th Street

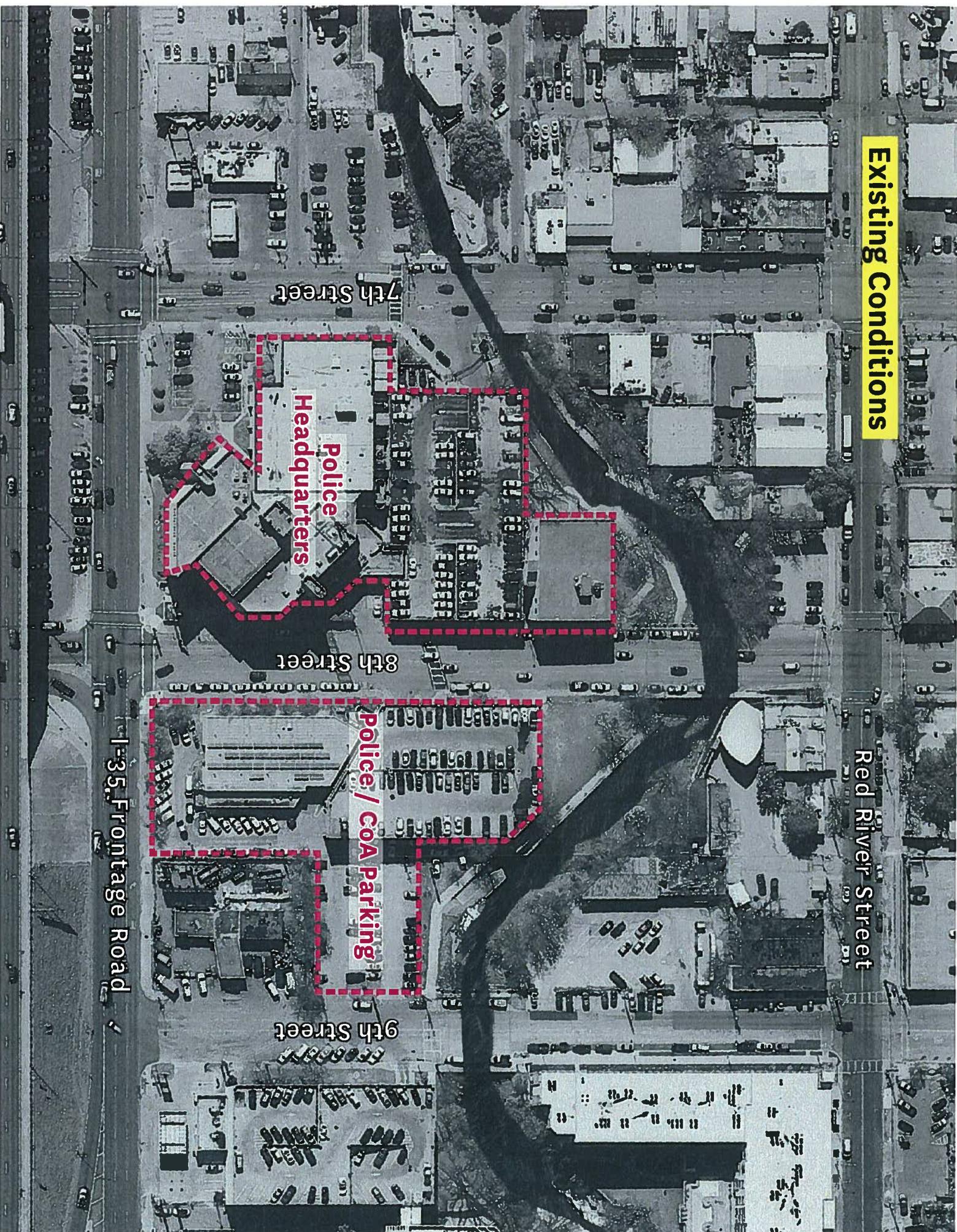
Police  
Headquarters

8th Street

Police / CoA Parking

9th Street

I-35 Frontage Road



# A New Park at Creek Level

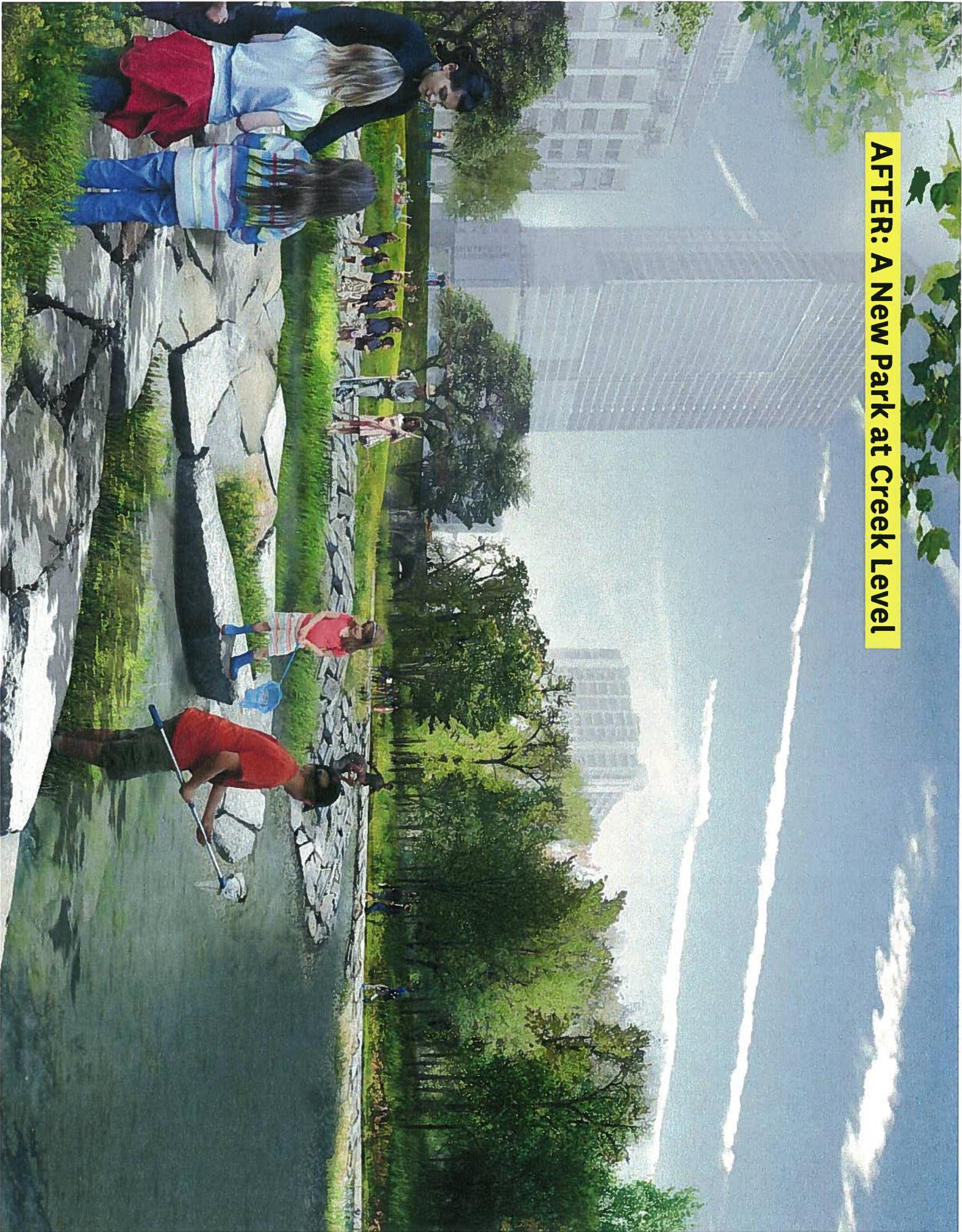
 Existing  
Bike Corral

 Existing  
Bike Corral

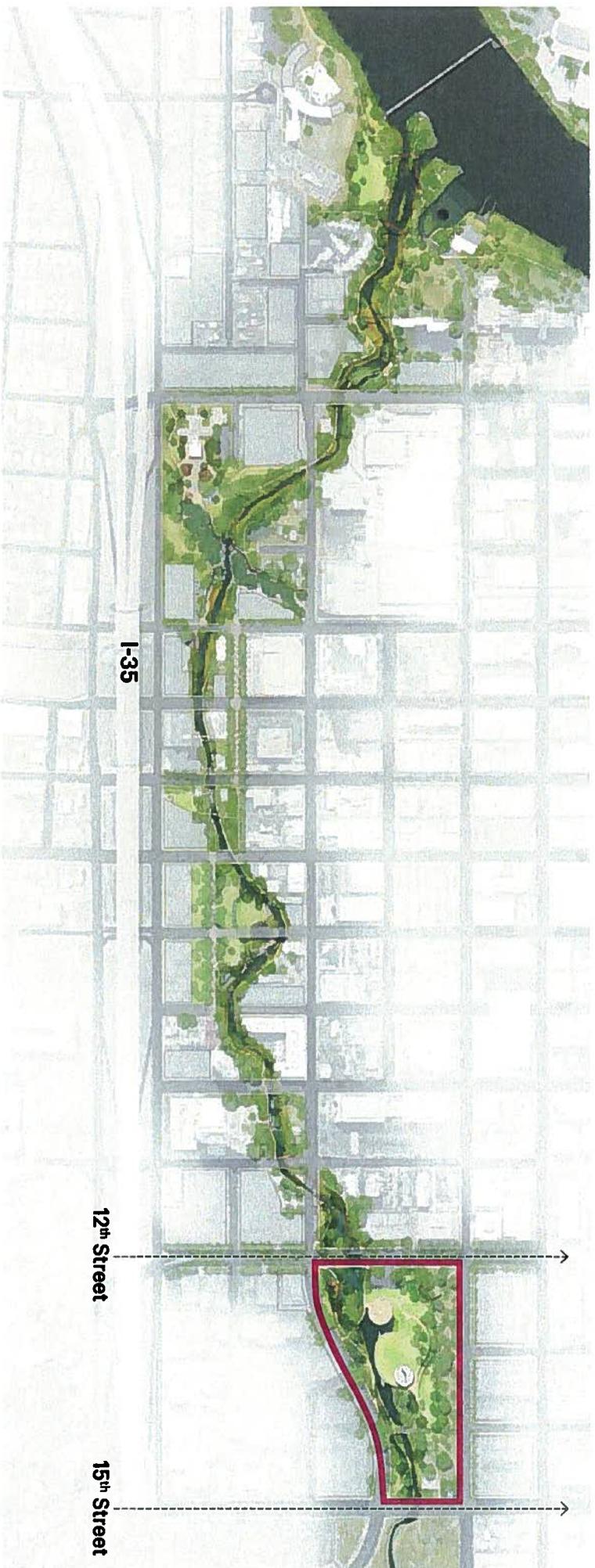
Red River



**AFTER: A New Park at Creek Level**



# WATERLOO PARK: Vibrant Gathering Spaces



# +1.0 Acres Reclaimed Parkland and Diversified Program

Trinity Street

Upland Park

Hauke House

13<sup>th</sup> Street

Great Lawn

The Poppy

Red River Street

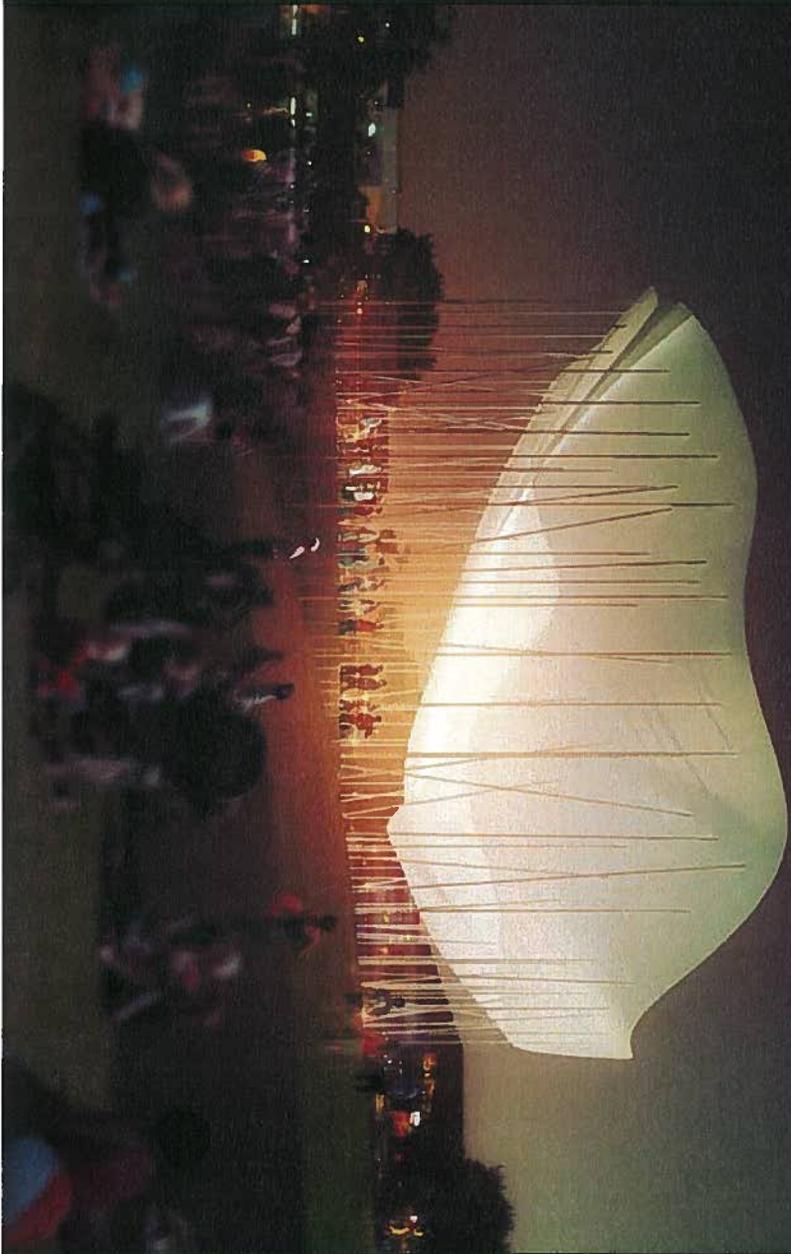
Cypress Wetland

Healing Garden

12<sup>th</sup> Street

Brackensridge Hospital





**EXHIBIT "F"**

**WALLER DISTRICT DESIGN GUIDELINES**

**[SEE ATTACHED]**

# WALLER DISTRICT DESIGN GUIDELINES

Finalized: October 25, 2013

## District Wide Standards

### **Alleys**

- Alleys should be retained and all development abutting an alley should be required to use alleys for loading, servicing and parking access.
- Alley vacation should not be permitted, unless more than half is owned by same owner, then vacation only with approval of responsible directors and the Land Use Commission, provided that service access is maintained generally along the same alignment and that such abandonment does not impact access to any adjacent property.
- The City should work with property owners to eliminate dumpsters and above-grade grease traps from alleys. In older areas more efficient systems for trash collection, recycling and composting should be established.
- When possible, primary or secondary access and egress to and from on-site parking should be taken from the alley. This will be more possible once alleys become less cluttered with dumpsters and other obstacles.

### **Building Setbacks**

- Buildings should be built to property line of street or within 5', unless greater setback is needed to implement the typical Great Streets 18' sidewalk.
- Buildings along I-35 should be set back 5'.

### **Great Streets:**

- Great Streets should be required for all new development on all street frontages.
- In-lieu fee should be collected where deemed not reasonable with the proceeds directed into Great Streets improvements within the Waller District.

### **Publicly-Accessible Open Space:**

- Exceptions will be granted to building setbacks if buildings are made to accommodate publicly accessible open space that meet the following criteria:
  - The open space has a minimum area of 600 square feet, and a minimum dimension of 15 feet;
  - The area is accessible and useable by the general public throughout daylight hours and is visible from the public sidewalk or Waller Creek;
  - The area provides public seating and/or serves as a public pedestrian passageway connecting one public sidewalk with another or with a creekside trail/path;
  - The area has no conditioned building space above it and at least 75 percent of the area is open to the sky; and
  - The area has interior ground level building space overlooking and accessible to it, with public entry door(s);
  - The use of switchback ramps for creek access should be prohibited.

### **Pedestrian-Oriented Streetfront Use**

- Ground level uses will be determined by the adjacent street. Two types of frontages are proposed, Pedestrian Activity Streets and Mixed Use Streets. See map below for frontage locations throughout the Waller District.



**Figure 1: Waller District Street Types**

**LEGEND**

- PEDESTRIAN ACTIVITY STREET:** 75% of Parcel Frontage along street in active Civic or Commercial uses.
- MIXED USE STREET:** 60% of Parcel Frontage along street in Pedestrian-oriented Residential, Civic or Commercial uses (with exceptions for residential along certain streets as per sub-district standards).
- PEDESTRIAN ACTIVITY CREEK FRONT:** 75% of Parcel Frontage along creek in active Civic or Commercial uses.
- MIXED USE CREEK FRONT:** 60% of Parcel Frontage along creek in pedestrian-oriented Residential, Civic or Commercial uses (with exceptions for residential along certain creek frontages as per sub-district standards).
- WATERFRONT OVERLAY ZONE**

***Pedestrian Activity Streets (See Figure 1: Waller District Street Types)***

- 75% of developed parcel frontage should be occupied by one or more of the following uses:
  1. Art Gallery
  2. Art Workshop
  3. Cocktail Lounge
  4. Consumer Convenience Service
  5. Food Sales
  6. General Retail Sales
  7. Hotel-Motel
  8. Liquor Sales, up to a maximum gross floor area of 5,000 square feet per site
  9. Personal Services
  10. Restaurant
  11. Theater
  12. Cultural Services
  13. Other uses as determined by the Director

***Mixed Use Streets (See Figure 1: Waller District Street Types)***

- 60% of the developed parcel frontage should be occupied by one or more of the “Pedestrian Activity Street” uses and/or one or more of the following commercial, civic or residential uses:
  1. Residential
  2. Consumer Repair Services
  3. Financial Services
  4. Administrative Offices
  5. Indoor Entertainment
  6. Indoor Sports and Recreation
  7. Liquor Sales
  8. Pet Services
  9. Club or Lodge
  10. College/University
  11. Day Care
  12. Education
  13. Religious Assembly
  14. Other uses as determined by the Director

**Pedestrian-Oriented Creekfront Use (See Figure 1: Waller District Street Types)**

- 75% of developed parcel to be pedestrian-oriented use (as defined under Pedestrian Activity Streets) along Pedestrian Activity Creekfronts unless otherwise specified in the sub-district standards.
- 60% of developed parcel frontage to be pedestrian-oriented use (as defined under Mixed Use Streets) along Mixed Use Creekfronts

**Cocktail Lounge**

- Currently a permitted use, Cocktail Lounge should become a conditional use in the District.
- The following criteria to be used in the determining appropriateness as use:
  1. The Cocktail Lounge use does not occupy more than 23 percent of its blockface or 70 linear feet, whichever is less;
  2. The use meets the ground floor streetfront requirements within these Standards;
  3. Business has had no criminal convictions in the last 36 months.

**Off-Site Parking Accessory**

- Currently allowed as a Conditional Use.
- Surface parking should be permitted if:
  1. It serves a specific use and is located on a parcel less than ¼ block in size
  2. It is not feasible to provide on-site parking
  3. Such parking lot:
    - Has no more than 60 spaces;
    - Is not located on a Pedestrian Activity Street;
    - Does not occupy more than 70 linear feet of street frontage;
    - Includes improved sidewalks along all adjacent street frontages to meet the minimum standard;
    - Is screened at its perimeter with a low masonry wall or hedge of at least 36 inches in height but no more than 54 inches located at/near the back of sidewalk along street frontages;
    - Provides adequate lighting (minimum 1 footcandle) to ensure pedestrian safety; and
    - Is available for public parking when not occupied by the primary use.
- Freestanding parking garages will be allowed if such garages comply with ground-level streetfront and Great Streets requirements set forth in these Guidelines, and if at least 25 percent of the parking is available to the public at all times and is located on the levels most accessible to the street.

## **Drive-Through Facilities**

- Drive-Through Facilities are not allowed.

## **Ground Level Commercial Treatment along Streetfronts**

All ground-level commercial or civic uses facing public streets should be subject to the following building design standards:

### **Pedestrian Activity Streetfronts** (See Figure 1: Waller District Street Types)

- 60 percent of the wall area between 2-10' above grade should be glazed storefront;
- All glazing on ground floor facades that face a public street or creekfront should have a Visible Transmittance of 0.6 or higher;
- Shading devices should be required along at least 75% of street frontage;
- Public building entries should be oriented to streetfronts and generally flush with the elevation of the sidewalk; no ramps or stairs are permitted to project within the public right-of-way, or front setback areas; and
- The minimum floor-to-floor height of non-residential ground floor space should be 18 feet. The minimum depth of such uses should be 30 feet along the required frontage

### **Mixed Use Streetfronts** (See Figure 1: Waller District Street Types)

- 40 percent of the wall area between 2-10' above grade should be glazed storefront;
- All glazing on ground floor facades that face a public street or creekfront should have a Visible Transmittance of 0.6 or higher;
- Shading devices should be required along at least 50 percent of street frontage;
- Public building entries should be oriented to streetfronts and generally flush with the elevation of the sidewalk; no ramps or stairs are permitted to project within the public right-of-way, or front setback areas; and
- The minimum floor-to-floor height of non-residential ground floor space should be 15 feet. The minimum depth of such uses should be 30 feet along the required frontage

## **Ground Level Commercial Treatment along Creekfronts**

- Outdoor spaces are permitted and encouraged on the frontage of buildings adjacent to creeks. Outdoor spaces and access-ways should be located within the boundaries of the property, and, where permitted to encroach onto public easements (subject to license agreement requirements), as provided for below:
  - 50% of wall area of the ground level facing a creekfront between 2 and 10 feet above grade should be storefront glazing. All glazing should have a Visible Transmittance (VT) of 0.6 or higher.
  - Shading devices required over all entries and 50% of any publicly-accessible space on the creek frontage. Canopy trees may be substituted for shading devices for publicly accessible spaces.
  - Accessible building entries should be oriented to publicly-accessible outdoor spaces, at intervals no greater than 100'.
  - Minimum ground level floor-to-floor height should be no less than 15 feet except for creek-oriented basement space.

## **Ground level treatment – Residential**

- Where permitted ground level residential spaces are encouraged to be separated from public sidewalks, trails and other public spaces by a setback of at least 5 feet or as required by zoning whichever is greater.
- Unit entries with stoops are encouraged along streetfronts and portions of the creek trail, as appropriate.

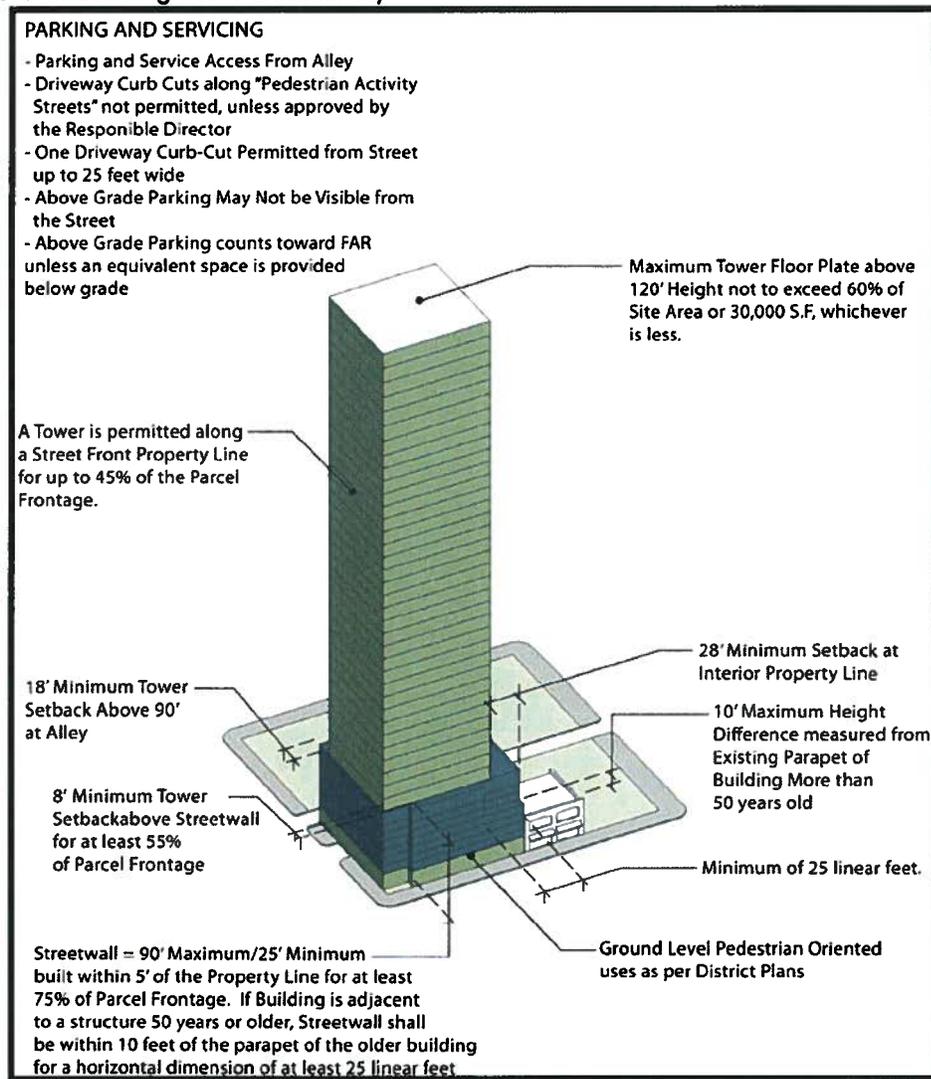
## **Building massing**

Development is subject to the following building form standards:

- Streetfront setbacks: at least 55 percent of building mass above 90 feet should stepback 8 feet minimum. Buildings within historic districts or landmarks adjacent to historic structures should stepback 8

feet minimum no greater than 10 feet above or below the building for a horizontal distance of at least 25 feet.

- Tower length: No tower should occupy more than 220 feet or 80 percent of the block length or frontage along a street.
- Tower floor plate: The maximum floorplate of a tower above 120 feet should not exceed 60 percent of the site area or 30,000 square feet, whichever is less.
- Non-reflective materials: No glazing or other cladding of highly reflective material.
- Creekfront setbacks: all development within 60 feet of the centerline of Waller Creek should not exceed 60 feet in height.
- Tower spacing: All towers should be setback 56 feet minimum from other towers, 18 feet from an alley, and 28 feet from an interior property line. Setbacks may be waived by the responsible directors if an adjoining property has height limits or easements that would prevent future development to exceed 90 feet. (See Figure 2: Building Form Guidelines)



**Figure 2: Building Form Guidelines**

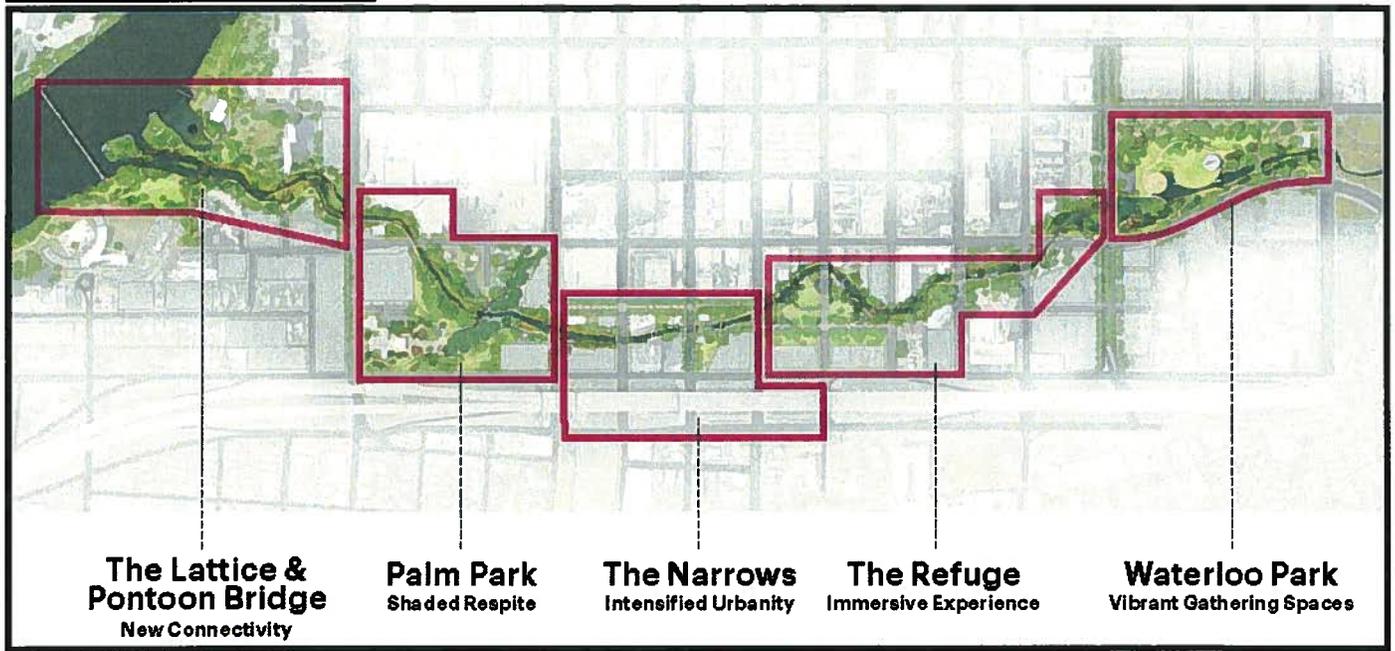
- Curb cuts & driveways: No curb cuts or driveways should be permitted along Pedestrian Activity Streets. One will be permitted for each 140 feet of parcel frontage along Mixed Use streets, unless otherwise stated in the Sub-District Standards. Waivers may be granted by the responsible director, if it is found that there are no practical means of compliance.

- **Porte-Cocheres and On-site drop-off areas:** Permitted on a case-by-case basis, subject to the following:
  - Volume of drop-offs requires a drop-off area on-site, AND
  - Driveways that cross sidewalk are 25 feet maximum in width and at the same height of sidewalk surface, clearly demarcated with contrasting paving and texture.
- **Treatment of service area:** Should be located along public alleys and where located along public streets, frontages should be minimized. All truck maneuvering should occur within the interior of the structure or loading area. Service areas and/or their service roads should not be visible from the creek.
- **Parking treatment:** Surface parking should follow accessory parking guidelines. Parking garages should be underground or encapsulated and architecturally-integrated and screened from public view. Freestanding garages should include ground level “liner uses” along streetfronts and the creek in compliance with the ground level requirements above.

**Fencing**

- Fencing/enclosures on properties facing Waller Creek shall not exceed 6’ average height within the 60’ creek setback.
- Fencing should be constructed of materials approved for exterior use and have an exterior surface treatment specifically manufactured for weather and decay resistance. Discouraged materials include barbed wire, razor wire, fiberglass or corrugated metal panels, electrified fencing, hog fencing, tarp fencing, and chain-link fencing with the following exceptions:
  - Fencing which can support the growth of non-invasive climbing vegetation (and the incorporation of such planting is encouraged.
  - Vinyl-coated chain-link fencing with mesh size less than 2 inches is permitted in this application.

**Sub-District Standards**



**THE LATTICE**

**Pedestrian Oriented Streetfront Use**

- Use should be the same as district-wide standards, except ground-level living is not permitted along Cesar Chavez or IH 35. (Lobbies and common areas are excepted from this provision.)

### **Pedestrian Oriented Creekfront Use**

- Developments are encouraged to include pedestrian and family-oriented uses on at least 50% of building frontage that faces the creek.
- Excessive lighting along the creek-facing frontage is discouraged and should comply with International Dark-Sky Association's Model Lighting Ordinance.

### **Building Massing/Stepbacks**

- Eliminate the following requirement of the Waterfront Overlay North Shore Central Subdistrict:
  - Structure must fit within a 70-degree angle starting at a line 45 feet above the property boundary nearest Lady Bird Lake or Waller Creek.
- No changes to the Waterfront Overlay requirements along Lady Bird Lake frontage.

### **Density Bonus**

The following apply within this district in addition to the overall Downtown density bonus (part of Downtown Austin Plan):

- On the HACA site (south of Cesar Chavez St. and east of Trinity St.) the floor area of on-site low-income housing units at or below 50% MFI should not be counted toward Floor Area Ratio (F.A.R.).
- The assembled parcels, south of Cesar Chavez St. and between Waller Creek and Red River St.; 10 square feet of additional floor space should be allowed for each square foot of a public accessible pedestrian way and associated open space provided the pedestrian path:
  - Is open to the public during daylight hours;
  - Is not less than 10 feet in width and includes a clear space (from building wall to building wall) no less than 20 feet in width or 6,000 square feet in total area; and
  - Includes pedestrian-oriented uses on at least 25 percent of the frontage along its length.
- Publicly accessible open space = 12 square feet bonus floor area/ 1 SF open space provided, if the following criteria is met:
  - Has a minimum area of 2,400 square feet and no dimension less than 40 feet;
  - Includes shaded areas over at least 25 percent of the open space, with the use of trees, pergolas, canopies, etc.
  - Includes 30 percent of the area in "softscape" (turf, planting beds or ground cover);
  - Includes pedestrian-oriented uses along at least 50 percent of its frontage;
  - Includes at least one public entrance directly from the open space.

### **Curb Cuts & Site Access**

- No curb cuts or driveways should be allowed on Cesar Chavez, except in the vicinity of the small parcel south of Cesar Chavez between existing easements to provide trail access and/or development that is provided on-site, 1 mid-block curb cut should allowed everywhere else.
- Parking and service access should occur on Red River and Trinity Streets, and/or the public alley between Lakeside Apartments and Trinity St. Joint Ventures property.
- Curb cuts should be consolidated and minimized where possible.
- Parking and service access should be provided from Driskill St. for properties south of Cesar Chavez Street and north of Driskill Street, and between Red River Street and IH 35 Frontage Road.

### **Publicly Accessible Open Space and Circulation**

- Strengthen pedestrian accommodation at the termini of Red River and Trinity Streets south of Cesar Chavez.
- Integrate small-scale open spaces along or at the end of the east-west passages that can serve an emerging residential community near the Lattice Sub-District/Rainey Street. Possible uses include: "tot-lot" playgrounds, dog-runs, etc.

- Establish the intersection of Red River and Cesar Chavez Streets as the “gateway” to the north-south axis of Waller Creek by encouraging safe and inviting pedestrian crossings and fostering north-south connectivity at the creek-level.

#### **Setbacks**

- New buildings should be prohibited an additional 30’ from the existing Downtown Creeks Overlay requirement of 60’ of creek channel centerline.
- Development should provide a minimum 10 foot setback from shared lot lines, or provide one passage at least 20 feet wide per 150 feet of street frontage.
- New development on the block between Sabine Street, IH 35 Frontage Road, Cesar Chavez and 2<sup>nd</sup> Street should be setback from Cesar Chavez Street to align with the northern edge of the pre-1960’s addition (approximately 140 feet).

#### **Private Development**

- Between the MACC and Lake Shore Apartments, introduce unifying site furnishings (such as pole lights and benches) and planting (such as canopy trees) to reinforce the sense of public space.
- Development should meet the American Forests Organization recommendation for tree canopy coverage measured by the publication “Tree Measuring Guidelines of the Eastern Native Tree Society.
- Provide east-west connectivity, with either new mid-block passages or improved alleys, between Waller Creek, Red River Street, and Rainey Street.

### **PALM PARK (THE GROVE)**

#### **Pedestrian-Oriented Creek and Streetfront Uses:**

- Ground level residential not permitted (Lobbies and common areas are excepted from this provision.)
- Ground level use for Ironworks and Cesar Chavez property immediately overlooking the Creek is limited to restaurant or pedestrian-oriented use as determined by director
- At least 50% frontage of the entire building frontage should be for pedestrian-oriented uses as defined in the District-wide Guidelines.

#### **Historic Preservation:**

- Consider relocating the Castleman-Bull House to the Convention Center property east of Red River Street, preserved and adaptively reused for a restaurant or other active, public-oriented use.
- Use of Trask House should become a more public-oriented use.
- Publicly-accessible open space between the historic houses should be created.
- Consider relocating or reconfiguring the existing water quality pond into an amenity and is integral with the open space.

#### **Curb Cuts & Site Access**

- No new curb cuts or driveways should be proposed along Cesar Chavez.
- Service access should be provided along 3<sup>rd</sup> or Red River Sts.

#### **Creek Setbacks:**

- New buildings should be prohibited an additional 30’ from the existing Downtown Creeks Overlay requirement of 60’ of creek channel centerline.

#### **Existing Open Space**

- Encourage vehicle service and parking access to development sites from streets that bound internal open space (IH 35 Frontage Road, 4<sup>th</sup> Street, Cesar Chavez, and Sabine Streets). No roadways should be

constructed within the interior of the open space. All parking accommodation should be located below street level.

- All development that faces onto the open space should be grade-separated from open spaces. At least 50 percent of the entire building frontage should be for pedestrian-oriented uses.
- 35 percent of publicly accessible open space areas should be shaded.
- At least 50 percent of privately owned public space areas facing the Grove should be hardscape.
- Sites should avoid obstructing sightlines between the Grove and points of connection.
- Provide clearly indicated, universally accessible walks to interior open space.
- Size programming of ground floor uses to accommodate family-oriented and large group activities. Developments are encouraged to offer public bathrooms facing the open space associated with the Grove.

### **Public Development**

- Materials of pathways and site fixtures should be unified character coordinated with PARD performance criteria.

### **Density Bonus**

- The following apply within this district in addition to the overall Downtown density bonus (part of Downtown Austin Plan):
  - Cultural and/or community-oriented space accessible from Palm Park = 4 SF/ 1 SF cultural space provided

## **THE NARROWS**

### **Building Setbacks**

- Along Sabine Street buildings should be built up to the property line. Setbacks may be granted if allows publicly accessible open space or passage between Sabine Street and the creek.

### **Encroachments within the Creek Corridor**

- Encroachments will be permitted subject to the following provisions:
  1. The encroachment is utilized for outdoor restaurant or café seating and/or public open space or accessways, and does not include any habitable or conditioned interior space;
  2. The encroachment does not protrude more than 20 feet into an easement or into parkland. (Note: greater encroachments may be permitted, if the responsible director finds that such additional encroachment complements the creek improvements and does not impede public access or enjoyment of the creek.)
  3. The encroachment occurs subsequent to approved improvements within the creek corridor, including but not limited to: re-vegetation, bank stabilization, removal of dams or other obstructions, creation of public access to adjacent streets, etc. These should be negotiated individually with private property owners as a condition for the encroachment.
  4. Any encroachment into designated parkland must be approved by PARD and is subject to review and approval in accordance with Chapter 26, Texas Parks and Wildlife code.
- Decks, patios, and balconies adjacent to new frontage should not cover more than 25% of the width of creek as measured from the top of bank.

### **Pedestrian-Oriented Streetfront Use**

- Ground level residential not permitted (Lobbies and common areas are excepted from this provision.)

### **Historic Preservation**

- Establish a street wall along 3<sup>rd</sup> Street (between Red River Street and extension of Sabine Street) to create a relationship with the Waterloo Compound. This area should be preserved and adaptively reused.

#### **Parking**

- No on-site parking should be allowed east of Sabine Street and west of the creek.

#### **Curb cuts & site access**

- No curb cuts should be allowed along the south face of 4<sup>th</sup> Street, along Sabine Street and allowed along IH 35 only at alleys.
- Access should be limited to alleys or a single mid-block location.

#### **Private Development**

- Development should incorporate east-west mid-block connections between Sabine Street, IH 35 frontage road and the creek edge, either inside or outside the building.
- Lighting should be installed on facades of creek-facing buildings. The quality of light (temperature and rendition) should be coordinated with that of the overall creek development.
- Awnings should be required at building entries and 50% of privately-owned public open space.
- Create new creek frontage in both existing building stock and new development.
- Leasing space below street level should be fine-grained to accommodate local and small businesses, no more than 1,000 square feet, at least 50% of creek frontage should be storefront glazing.

#### **Public Development**

- Alleys should not be vacated and should accommodate universal access to the creek channel.
- Concrete pavement is preferred over asphalt for all pavement surfaces.
- Utilize plant species appropriate to handle drought and reflected heat conditions.

## **THE REFUGE**

#### **Encroachments within the Creek Corridor**

- Encroachments into existing and proposed public easements along the creek corridor, will be permitted subject to the following provisions:
  1. The encroachment is utilized for outdoor restaurant or café seating and/or public open space or access-ways, and does not include any habitable or conditioned interior space;
  2. The encroachment does not protrude more than 40 feet into an easement or into parkland. (Note: greater encroachments may be permitted, if the responsible director finds that such additional encroachment complements the creek improvements and does not impede public access or enjoyment of the creek.)
  3. The encroachment occurs subsequent to approved improvements within the creek corridor, including but not limited to: re-vegetation, bank stabilization, removal of dams or other obstructions, creation of public access to adjacent streets, etc. These should be negotiated individually with private property owners as a condition for the encroachment.
  4. The encroachment maintains a minimum 8' clear zone to facilitate and ensure public circulation and access ways through Creek Corridor encroachment areas.
  5. Any encroachment into designated parkland must be approved by PARD and is subject to review and approval in accordance with Chapter 26, Texas Parks and Wildlife code.

#### **Creek Setbacks:**

- New buildings should be prohibited an additional 30' from the existing Downtown Creeks Overlay requirement of 60' of creek channel centerline.

#### **Pedestrian-Oriented Streetfront Uses**

New developments along street frontages should incorporate ground level pedestrian-oriented uses defined within the District-wide Standards.

- Ground level residential (not including lobbies and common areas is not permitted).
- 50 percent of building frontage of entire development should be pedestrian oriented.

#### **Building Massing and Configuration**

- Redevelopment of APD site: building above 45' should be stepped back 20' from the creek.
- Massing and configuration of site should bring the amenity of the creek into the site.
- Arcades, pergolas, canopies and other shading devices should be provided along the edges of the creek.

#### **Private Development**

- New development should have frontage onto Waller Creek with privately-owned public open space at building entries that should be at street level.
- Developments are encouraged to install public seating and necessary facilities to support non-amplified outdoor performances and markets.
- Provide vehicle services and parking access to development sites from streets that bound internal open space (IH 35 Frontage Roads, 7<sup>th</sup> Street, and 11<sup>th</sup> Street).
- No roadways should be constructed within interior open space facing the Refuge.
- All parking should be located below street level.
- Fencing/enclosures on properties facing Waller Creek shall not exceed 6' average height within the 60' creek setback.
- Existing structures elevated on stilts no longer in the floodplain are encouraged to provide short-term leases for events and cultural programs.
- Publicly accessible open space should be at least 35 percent shaded.

#### **Public Development**

- Developments are encouraged to remove existing parking and not propose new parking directly over the creek.
- Expand pedestrian sidewalk.

### **WATERLOO PARK (THE CONFLUENCE)**

#### **Pedestrian-Oriented Streetfront Uses**

New developments along street frontages should incorporate ground level pedestrian-oriented uses defined within the District-wide Standards

- Ground level residential (not including lobbies and common areas) is not permitted.

#### **Building Massing and Configuration**

- Buildings adjacent to Symphony Square should be stepped back 20 feet above 30 feet.
- Buildings on block faces along 11<sup>th</sup> & Red River Streets should be stepped back 8 feet above 30feet.
- A pedestrian access should be provided to Symphony Square from the parcel to the east.

#### **Public Development**

- Provide multiple pedestrian crossing points across Red River Street for Brackenridge Hospital, not only at 12<sup>th</sup> and 15<sup>th</sup> Streets, but also at least two between either end of the campus.

- Remove parking lane along Red River Street and restripe for back-in diagonal parking.

## EXHIBIT "G"

### M/WBE REQUIREMENTS

- (a) The Managing Party shall comply with the applicable standards and principles of the **M/WBE Program Ordinance** in the design and construction of Projects, provided, however, Contractors and their subcontractors under contracts executed and delivered by the Conservancy as of the date of this Agreement for the scope of work contemplated in the Design Plan approved by City Council shall not be required to comply with this Exhibit G. A change in the scope of work or Contractors or subcontractors, including adding Contractors or subcontractors shall require compliance with this Exhibit G. Prior to any changes or additions the Managing Party shall consult with and provide SMBR information regarding the proposed change in scope or change or deletions of Contractors or subcontractors to determine the necessary steps to achieve compliance with the M/WBE Program.

With respect to any design or construction projects for a Project, the Contractors shall meet the gender and ethnic-specific participation goals or subgoals for each year in which design or construction occurs as determined by the Director of SMBR in accordance with the M/WBE Program Ordinance and rules. Before advertising a bid for any portion of the design or construction work, the Managing Party shall submit to SMBR a copy of a proposed solicitation in order for the City to determine the gender and ethnic-specific participation goals or subgoals for the project. The determination by the Director shall be based on the proposed size, type and scope of work to be undertaken by the Managing Party and described in the bid documents, and the availability of each group of M/WBEs to perform elements of the work. The City may utilize either the cumulative M/WBE goal or the subgoals for each group of minority persons in the proposed solicitation, or set M/WBE participation goals for each Project as provided in City Code Section 2-9A-19 (*Establishment of MBE/WBE Participation Levels for Individual Contracts in Construction*), or as may subsequently be modified, amended or replaced. The Director shall have 10 Business Days from receipt of a bid package from the Managing Party in order to evaluate and determine the required level for utilization of M/WBE project or phase-specific goals or subgoals, and shall notify the Managing Party in writing of the Director's determination.

In an effort to meet the gender and ethnic-specific M/WBE utilization goals, the Managing Party shall implement an outreach program designed to solicit participation of M/WBEs. These outreach efforts should also target small businesses generally. The Managing Party may seek the assistance of SMBR in these outreach efforts as described in paragraph (b) below.

For any year in which the Managing Party, the Contractors fail to meet each of the goals or subgoals established by the Director, the Managing Party, the Contractors must demonstrate good faith efforts to meet the goals as described in the M/WBE Program Ordinance. The Managing Party shall submit documentation demonstrating its own and

the Contractors' good faith efforts to meet the goals as is required under the following paragraph (d). If the Managing Party provides documentation to SMBR evidencing its own and its Contractors' good faith efforts, the Managing Party shall be deemed in compliance with this paragraph (a). Failure to perform this obligation shall be considered a material breach of this Agreement. The City acknowledges that this obligation does not require the Managing Party to modify, nullify or abrogate any contracts that the Managing Party has entered into before the Effective Date of this Agreement.

- (b) The Managing Party shall apprise SMBR when the Managing Party desires assistance from SMBR in its efforts to meet the gender and ethnic specific M/WBE utilization goals. This assistance may include providing a list of certified M/WBE firms from which the Managing Party may solicit or cause the Contractors to solicit participation in the design and construction of any improvements, identifying potential scopes of work, establishing the bid packages, scheduling and hosting outreach meetings, and assisting the Managing Party, its Contractors in soliciting M/WBE firms to provide bids. The Managing Party is not required to solicit participation during a period in which the Managing Party is not engaged in designing and/or constructing a Project, but rather, the Managing Party is required to incorporate the standards and principles of the M/WBE Program Ordinance including the foregoing M/WBE utilization goals into its development process as and when such process exists in connection with a Project.
- (c) The Managing Party shall provide monthly reports to SMBR no later than the 10<sup>th</sup> day of each month to track (i) the utilization on a percentage basis of M/WBE firms in the design and construction of the Projects; and (ii) a summary of the Managing Party's efforts to implement the standards and principles of the M/WBE Program Ordinance. SMBR shall provide the forms to be used by the Managing Party in submitting such reports.
- (d) Within thirty (30) days of receipt of the Managing Party's final monthly report (as is required under paragraph (e) above for the preceding year, January 1<sup>st</sup> through December 31<sup>st</sup> (the "**SMBR Compliance Period**"), SMBR shall determine whether the Managing Party is in compliance with the requirements of this **Exhibit "G"**.

**SCHEDULE 3.01C**

[SEE ATTACHED]

## Waller Creek Tunnel and Redevelopment Funding

### Prior/Current Capital Investments

Project	Amount	Funding Source	Entity	Status
Tunnel	\$ 146,551,000	Bonds, Certificates of Obligation, & Cash	City	Approved
MVVA review of tunnel surface components	\$ 270,000	Land sale proceeds	City	Approved
Internal costs related to tunnel surface components redesign	\$ 250,000	Land sale proceeds	City	Approved
Tunnel surface components redesign	\$ 250,000	Land sale proceeds	City	Approved
<b>Sub-Total Prior/Current Capital Investments</b>	<b>\$ 147,321,000</b>			

### Planned Capital Investments

Project	Amount	Funding Source	Entity	Status
Surface Infrastructure - Streambank/Trail	\$ 22,000,000	Certificates of Obligation	City	Approved
	\$ 10,000,000	2012 Bond Program	City	Approved
	\$ 7,500,000	Drainage Utility Fund	City	Approved
	\$ 1,000,000	2010 Bond Program	City	Approved
	\$ 2,700,000	Grant	City	Approved
Sabine and Rainey Street	\$ 700,000	8010 Bond Program	City	Approved
	\$ 16,100,000	Amount not final/Source to be identified	City	Approved
Palm and Waterloo Parks - Initial Assessments	\$ 3,400,000	2012 Bond Program	City	Approved
Park amenities/improvements	\$ 188,000	Parkland Dedication Fees	City	
Surface Improvements	TBD	Donations	WCC	
<b>Sub-Total Planned Capital Investments</b>	<b>\$ 63,000,000</b>			

### Planned Operating/Maintenance Investments

Project	Amount	Funding Source	Entity	Status
Park Maintenance (Waterloo and Palm Parks)	\$ 29,250	Operating budget*	City	
Operations Endowment	TBD	Donations	WCC	
<b>Sub-Total Planned Operating/Maintenance Investments</b>	<b>\$ 29,250</b>			

### Waller Creek Conservancy Operating Support

Project	Amount	Funding Source	Entity	Status
Design Competition	\$ 400,000	Donations	WCC	Approved
Design Competition	\$ 400,000	Operating budget	City	Approved
Outside legal services for COA/WCC agreements	\$ 250,000	Operating budget	City	Approved
Conservancy Operating Start-up Costs	\$ 150,000	Not identified/Pending Council review	City	
Executive Director Salary (Fiscal Years 2012 and 2013)	\$ 36,582	Operating budget	City	Approved
WCC Project Coordinator	\$ 75,000	Land sale proceeds	City	Approved
<b>Sub-Total Waller Creek Conservancy Support</b>	<b>\$ 1,311,582</b>			

### Related Projects (not part of official Waller Creek effort)

Project	Amount	Funding Source	Entity	Status
6th Street from IH-35 to Congress Avenue	\$ 1,000,000	2010 Bond Program	City	Approved

\* Operating budget funds are dependent upon City Council action to approve the annual budget.