

**CITY OF SAN ANTONIO
PUBLIC WORKS DEPARTMENT
INTERDEPARTMENTAL CORRESPONDENCE**

AGENDA ITEM NO. 19

TO: Mayor and City Council

FROM: Thomas G. Wendorf, P.E., Director of Public Works

THROUGH: Terry M. Brechtel, City Manager

COPIES: Melissa Byrne Vossmer; Rebecca Waldman; Milo Nitschke; Andrew Martin;
Peter Zanoni; File

SUBJECT: Culebra Creek Regional Storm Water Facility

DATE: April 1, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the execution of a Drainage Agreement and other associated agreements required between the City and HRS Partnership, the Developers of the 250 acre tract at the northeast corner of Loop 1604 and Culebra Road for conveyance of approximately 144 acres of property to allow for the construction of the Culebra Creek Regional Storm Water Facility (RSWF).

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

HRS Partnership, a Texas general partnership, owns property at the northeast corner of Loop 1604 and Culebra Road and plans to begin development of the property during the next year. However, in order to develop the property certain portions of the property must be reclaimed from the floodplain. Because of this, the Developer has worked with the City in developing an agreement that allows for the reclamation of limited property from the floodplain and provides property and design work for a future Regional Storm Water Facility at no cost to the City. This facility is consistent with the Leon Creek Watershed Master Drainage Plan adopted by City Council on February 27, 1997.

The property involved with this item (see attached map) includes within its boundary, the junction of Helotes Creek and Culebra Creek with approximately one-third of the total Leon Creek watershed draining through this major junction point of the Leon Creek watershed. Because such a large area of the Leon Creek passes through the property, the placement of the RSWF at this point of the creek would have a major impact on the total flow in the creek. The proposed RSWF is also ideally suited for this location because of the timing of the flow in the Leon Creek. Location and timing make this location optimal for purposes of reducing flows in the Leon Creek. Because of this, the Developer has offered a 144 acre portion of their land to allow for construction of the RSWF.

The Developer will be allowed to fill in the edges of their property and reclaim certain portions of the property in accordance with an approved project Master Plan. In the first phases of the project, the developer will be allowed to fill some of his property to raise it from the floodplain. The Developer and their Engineer must demonstrate, with engineering calculations, for all phases of the project, that they have not raised upstream water surface elevations as a result their project phasing. All work the developer does for the project must be directed toward completion of the Master Plan.

All of the work to this point of the project, including the preparation of the construction plans, is to be paid for and constructed by the Developer. The date for construction of the RSWF has not yet been determined. When it is constructed the RSWF will consist of a large off-line detention pond with the capacity to store 560 acre-feet of storm water. This capacity will allow for up to a 7 percent reduction in the peak flow downstream of the RSWF. The estimated cost of construction for the complete RSWF is \$8 million. The cost to the City to complete the excavation of the storage area, to construct the berm to hold in the water, and to construct the weir (water entrance area) for the RSWF will be reduced by the amount of excavation that is done by the Developer during the course of the private development.

Upon completion of the RSWF, the City will be able to more readily allow participation in the Regional Storm Water Management Program for much of the area upstream of the RSWF. Currently, there are 19 Master Development Plans (MDP) in the Culebra Creek sub-watershed that contain a total of 16,640 developable acres of land. Depending on the mix of development – Commercial and Residential – the potential participation fee is estimated to vary between \$23-\$29 million. (See attached chart) The amount varies due to the uncertainty in the kind of development to occur in the watershed. The high-end fee range assumes more commercial development and the low-end fee range assumes more residential development. The Culebra Creek sub-watershed of the Leon Creek will likely require another RSWF at some point in the future, which could be funded by the fees collected from this proposed RSWF. The entire Culebra Creek sub-watershed is contained within existing city limits and the Extra Territorial Jurisdiction (ETJ) of the city of San Antonio, which allows for participation in the Regional Storm Water Management Program by collecting fees in this area.

POLICY ANALYSIS

Approval of this ordinance is consistent with City policy, as outlined in the Unified Development Code (UDC), to promote regional drainage facilities as the preferred method of managing additional storm water generated by new development. This agreement is also an example of cooperation between a private developer and the City related to implementing the direction of the new UDC. This item was presented to the City Council Quality of Life Committee on March 15, 2004 and is being brought forward at their direction.

FISCAL IMPACT

There is no direct fiscal impact as a result of this council action. The Developer is providing the land and design for the RSWF at no cost to the City. The City will not incur any costs associated with this project until the actual RSWF is constructed, which is not expected to occur for several years when development upstream from this location warrants the construction of the facility. When the construction is warranted, the funds will be taken from the Regional Facilities Fund.

COORDINATION

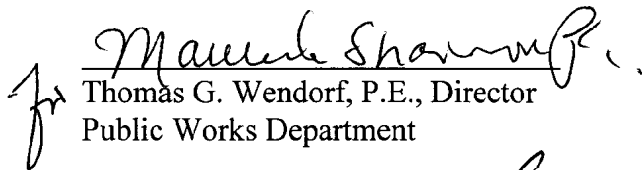
This item was coordinated with the Department of Asset Management, and the City Attorney's Office.

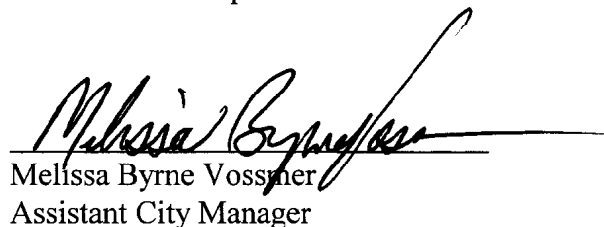
SUPPLEMENTARY COMMENTS

The required Discretionary Contracts Disclosure Form is attached.

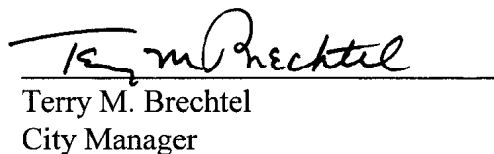
ATTACHMENTS

1. Project Map
2. Agreement


Thomas G. Wendorf, P.E., Director
Public Works Department


Melissa Byrne Vossner
Assistant City Manager

APPROVED:


Terry M. Brechtel
City Manager

Area of Influence

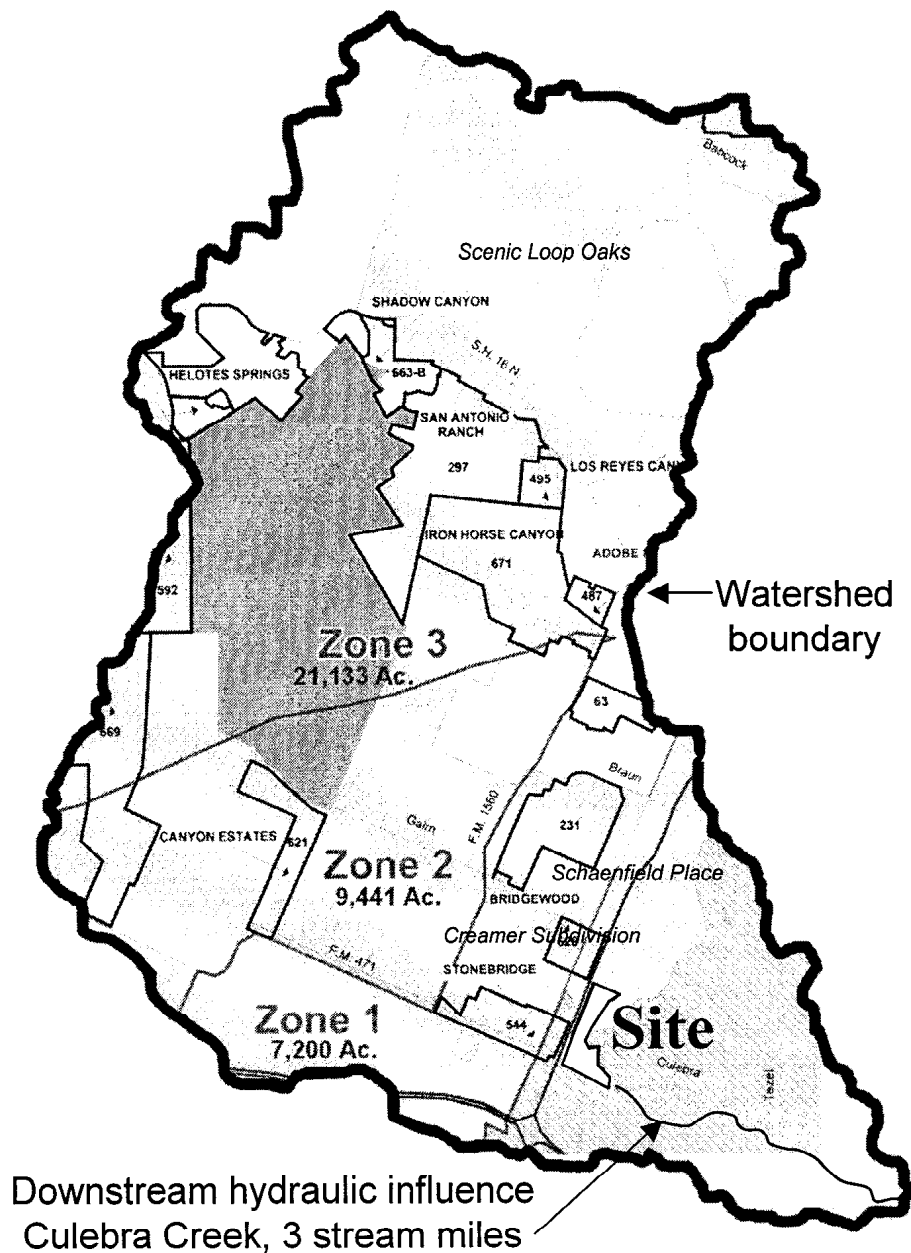
Upstream Service Area

List of Known POADPs/MDPs

- | | |
|------------------------|--------------------------|
| 1. Shadow Canyon | 10. Helotes Hills |
| 2. Helotes Springs | 11. Braun Road |
| 3. Wild Horse Overlook | 12. Canyon Estates |
| 4. San Antonio Ranch | 13. Bridgewood |
| 5. Los Reyes Canyons | 14. Stonebridge |
| 6. Government Hill | 15. *Creamer Subdivision |
| 7. Iron Horse Canyon | 16. *Scenic Loop Oaks |
| 8. Adobe Ranch Acres | 17. *Shaenfield Place |
| 9. Wind Gate Ranch | 18. Retablo Ranch |
| | 19. Canyon Ranch |

* MDPs currently under review

7



Range of Estimates for Fees to City

Range of Estimates for Fees					
Assumed Future Development	Percent	Acres	Fees	Amount	
Commercial	10%	1664	\$3,000.00	\$ 4,992,000.00	
Residential	90%	14976	\$1,200.00	\$17,971,200.00	
Total		16640		\$22,963,200.00	
Assumed Future Development	Percent	Acres	Fees	Amount	
Commercial	20%	3328	\$3,000.00	\$ 9,984,000.00	
Residential	80%	13312	\$1,200.00	\$15,974,400.00	
Total		16640		\$25,958,400.00	
Assumed Future Development	Percent	Acres	Fees	Amount	
Commercial	30%	4992	\$3,000.00	\$14,976,000.00	
Residential	70%	11648	\$1,200.00	\$13,977,600.00	
Total		16640		\$28,953,600.00	

City of San Antonio
Discretionary Contracts Disclosure*

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.*

** This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.*

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

None

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

HRS Partnership

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

Pape – Dawson Engineers

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

Leslie Rudd
Krumsick Interests, Ltd.
Stevens Family LP

¹ A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

Bebb Francis
The Francis Law Firm
112 E. Pecan Street
Suite 525
San Antonio, TX 78205

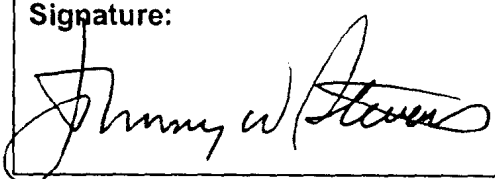
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
None		

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

None		
Signature: 	Title: GENERAL PARTNER Company: STEVENS FAMILY L.P. a GENERAL PARTNER OF HRS PARTNERSHIP	Date: 3-22-04

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

CULEBRA ROAD/HELOTES CREEK STORM WATER DRAINAGE AGREEMENT

This Contract for certain considerations regarding property located near the northeast corner of the intersection of Loop 1604 and Culebra Road, dated as of _____, 2003 (hereinafter the "Effective Date") is entered into by and between the City of San Antonio, a Texas Municipal Corporation, and HRS Partnership, a Texas General Partnership, pursuant to Ordinance No. _____ passed by the City of San Antonio City Council on _____, 2003.

DEFINITIONS:

The following terminology shall be used in this Contract (defined below) and incorporated by reference herewith. Each term will be identified by initial capitalization and the meaning of each term will, by reference, comply with the following:

1. "Contract" means this contract between the City of San Antonio, Texas and HRS Partnership.
2. "Contract Documents" means this Contract and exhibits A through G attached hereto and incorporated herein by reference for all purposes as if copied at length.
3. "City" means the City of San Antonio, Texas, a Texas municipal corporation.
4. "Developer" means HRS Partnership, a Texas general partnership.
5. "Property" means the property, 275.1 acres, more or less, owned or controlled by Developer, and more fully described in **Exhibit A**.

6. "COSA Site" means the property, 144 acres more or less within the Property, to be conveyed to the City by the Developer. The COSA Site is more fully described in **Exhibit B**.

7. "Reclaimed Tract" means that property, 9.6 acres, more or less, and is that portion of the Property intended to be developed by Developer after issuance of a Flood Plain Development Permit. The Reclaimed Tract is more fully described in **Exhibit C**.

8. "Developer Tract" means the property, 121.5 acres, more or less, within the Property and located along Loop 1604, more fully described in **Exhibit D**. The Developer Tract includes 114.7 acres presently owned by Developer and 6.8 acres owned by a third party but controlled by Developer as further referred to in Section 20 of the General Provisions hereof (the "6.8 Acre Tract").

9. "Project" means the regional stormwater facility represented and depicted in the Construction Documents, defined below, which will be built at City's sole expense (except for (i) Developer's obligations to pay for engineering expenses expressly prescribed hereunder and (ii) Developer's obligations to pay for any costs it incurs with respect to Developer excavating and/or removing fill from the COSA Site.

10. "Construction Documents" means the plans, specifications and estimates for the Project which shall be provided by the Developer pursuant to the terms of this Contract. The Construction Documents shall illustrate dimensions, materials, methods of construction, methods of excavation, and other details of the Project. The scope of the Construction Documents is more specifically described in **Exhibit E**.

11. "Master Plan" means the Developer's plan that determines the overall use, scale, quality, scope and methods utilized for the development of the Property. The scope of the Master Plan is more specifically described in **Exhibit F**.

12. "Permit" means a Flood Plain Development Permit issued by the City to the Developer, to allow certain reclamation/construction on the Reclaimed Tract and the Developer Tract for a period of one year. City agrees to approve reasonable extensions requested by Developer provided that the scope of the development on the Reclaimed Tract and/or the Developer Tract has not materially changed from the scope and purview of the Master Plan. Notwithstanding the foregoing, in no event shall the Permit terminate without two weeks prior written notice of City's intent to terminate same, whereupon the Permit will terminate at the expiration of such two week period unless Developer has taken all reasonable steps to cure any breach of any of its obligations under the Permit.

13. "Work" means all obligations to be performed and executed by Developer as allowed by the Permit with respect to reclaiming the Developer Tract and/or Reclaimed Tract, as applicable.

14. "Fill Plan" means a plan prepared by the Engineer and approved by Developer and City which will describe the contours of the Property, primary and optional fill areas, permitted quantities, compaction requirements and permitted timelines for filling each such category of areas. A Preliminary Fill Plan is attached hereto as **Exhibit G**. The parties anticipate the preliminary Fill Plan will change as information becomes available from Engineer.

15. "Engineer" means Pape-Dawson Engineers, Inc.

RECITALS:

A. Developer is the owner of certain Property in Bexar County. The area surrounding the Property is subject to flooding and drainage problems.

6. "COSA Site" means the property, 144 acres more or less within the Property, to be conveyed to the City by the Developer. The COSA Site is more fully described in **Exhibit B**.

7. "Reclaimed Tract" means that property, 9.6 acres, more or less, and is that portion of the Property intended to be developed by Developer after issuance of a Flood Plain Development Permit. The Reclaimed Tract is more fully described in **Exhibit C**.

8. "Developer Tract" means the property, 121.5 acres, more or less, within the Property and located along Loop 1604, more fully described in **Exhibit D**. The Developer Tract includes 114.7 acres presently owned by Developer and 6.8 acres owned by a third party but controlled by Developer as further referred to in Section 20 of the General Provisions hereof (the "6.8 Acre Tract").

9. "Project" means the regional stormwater facility represented and depicted in the Construction Documents, defined below, which will be built at City's sole expense (except for (i) Developer's obligations to pay for engineering expenses expressly prescribed hereunder and (ii) Developer's obligations to pay for any costs it incurs with respect to Developer excavating and/or removing fill from the COSA Site.

10. "Construction Documents" means the plans, specifications and estimates for the Project which shall be provided by the Developer pursuant to the terms of this Contract. The Construction Documents shall illustrate dimensions, materials, methods of construction, methods of excavation, and other details of the Project. The scope of the Construction Documents is more specifically described in **Exhibit E**.

11. "Master Plan" means the Developer's plan that determines the overall use, scale, quality, scope and methods utilized for the development of the Property. The scope of the Master Plan is more specifically described in **Exhibit F**.

12. "Permit" means a Flood Plain Development Permit issued by the City to the Developer, to allow certain reclamation/construction on the Reclaimed Tract and the Developer Tract for a period of one year. City agrees to approve reasonable extensions requested by Developer provided that the scope of the development on the Reclaimed Tract and/or the Developer Tract has not materially changed from the scope and purview of the Master Plan. Notwithstanding the foregoing, in no event shall the Permit terminate without two weeks prior written notice of City's intent to terminate same, whereupon the Permit will terminate at the expiration of such two week period unless Developer has taken all reasonable steps to cure any breach of any of its obligations under the Permit.

13. "Work" means all obligations to be performed and executed by Developer as allowed by the Permit with respect to reclaiming the Developer Tract and/or Reclaimed Tract, as applicable.

14. "Fill Plan" means a plan prepared by the Engineer and approved by Developer and City which will describe the contours of the Property, primary and optional fill areas, permitted quantities, compaction requirements and permitted timelines for filling each such category of areas. A Preliminary Fill Plan is attached hereto as **Exhibit G**. The parties anticipate the preliminary Fill Plan will change as information becomes available from Engineer.

15. "Engineer" means Pape-Dawson Engineers, Inc.

RECITALS:

A. Developer is the owner of certain Property in Bexar County. The area surrounding the Property is subject to flooding and drainage problems.

B. It is in the City's interest to construct the Project. Obtaining the Construction Documents and the COSA Site will further the Project.

C. Obtaining the Construction Documents, COSA Site and receiving other consideration running to the City, as described herein, benefits the City because, among other things: (i) the Project would reduce flooding in the area of the Leon Creek Watershed and downstream from the Property; (ii) the City obtains the COSA Site without monetary consideration; and (iii) future use of the Project may allow the City to collect fees in lieu of detention from certain developments within the watershed provided there is no adverse impact.

D. This Contract benefits the Developer by enabling the Developer to reclaim a portion of the Property that is in the flood plain.

E. The City and Developer wish to perform and receive the Considerations anticipated herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby covenant and agree as follows:

SPECIFIC PROVISIONS:

1. Conveyance of COSA Site. Developer shall convey the COSA Site to City by a Special Warranty Deed, subject only to exceptions to title reasonably approved by City. The conveyance of the COSA Site shall be by Developer at no cost to the City and shall be of good and marketable title, free of any encumbrances, and by Special Warranty Deed in form reasonably approved by City. In conjunction with such conveyance City will be granted (in such Special Warranty

Deed or by separate instrument) limited fill easements (in a form reasonably approved by City) as provided in Exhibit "G" or as same may be subsequently revised. Such fill easements shall grant the City rights to engage in fill activities within designated areas of the Reclaimed Tract and the Development Tract incidental and ancillary to City's rights in the COSA Tract. City acknowledges and agrees that the duration of any fill easements over and upon the Reclaimed Tract and/or the Developer Tract will in no event extend beyond that date that Developer, or its successors or assigns, has completed any permitted fill activities within those areas of the Reclaimed Tract or Development Tract that would otherwise be affected by any such fill easements; it being the intent of the parties that no development or construction will be materially delayed or interrupted by any permitted filling activities. The COSA Site shall be conveyed to City at the time of receipt by Developer from the City of the Permit.

2. Permit. Upon completion by the Engineer of the Master Plan, Construction Documents and the Fill Plan in a manner approved by City, and upon Developer conveying the COSA Site to City, City shall grant Developer the Permit. Developer shall perform the Work in accordance with the requirements of the Permit and all applicable federal, state and local ordinances and/or regulations, including, without limitation, all provisions of the City's Unified Development Code.

3. Construction Documents, Master Plan and Fill Plan. Developer shall provide complete Construction Documents for the Project, a Master Plan for development of the Property, and a Fill Plan. The Construction Documents, Master Plan and Fill Plan shall be developed in accordance with this Contract and Exhibits. The Construction Documents, Master Plan, and Fill Plan shall be prepared in and comply with the standards of the Unified Development Code. The Construction Documents shall show a capacity for the Project of 560 acre feet and a reduction in the downstream peak flow of approximately seven (7%) percent from the current level. The Construction Documents shall also include an estimate of the

cost of construction, by phase if requested by City. The Developer shall cause the Engineer to provide City, upon City's request, with copies of any hydraulics and other information in its files that are within the scope of Developer's engagement of the Engineer with respect to the subject matter of this Contract. Developer shall provide to City complete, accurate and detailed Construction Documents, a detailed Master Plan and a Fill Plan ready for execution, no later than six (6) months from the date of full execution of this Contract. The Construction Documents, Master Plan and Fill Plan shall be prepared by and bear the seal of the Engineer. Developer shall pay all engineering costs of the preparation of the Construction Documents, Master Plan and Fill Plan (and any other Developer obligations expressly set forth hereunder, including without limitation, any Developer Contract obligations). Upon issuance of the Permit, the Construction Documents shall be owned solely by the City and may be thereafter used in common with Developer and reproduced by City for any purposes. Developer shall cause the Engineer to complete the Construction Documents, Master Plan and Fill Plan in accordance with the standards described herein, including Exhibits. The Construction Documents, Master Plan and Fill Plan shall be (separately) subject to review and approval by the City. City shall be entitled to disapprove the Construction Documents, Master Plan, and/or Fill Plan. In the event the Construction Documents, Master Plan and/or Fill Plan do not conform to the requirements of this Contract, Exhibits and/or applicable law, disapproval shall be provided by City to Developer within thirty days of receipt by City of the later of the Construction Documents, Master Plan and/or Fill Plan. In the event of disapproval, Developer shall have an additional thirty days to rectify any objections raised by City. City shall review the corrected documents and respond to Developer within five (5) days after second receipt. Upon final approval, the Developer must provide the Construction Documents, Master Plan and Fill Plan to City in the following electronic format: microstation.dgn. The parties shall diligently cooperate with one another in the approval process and endeavor to promptly resolve any differences in a commercially reasonable manner.

4. Relocation of Fill Materials. City or its agents may relocate fill in 8" to 12" uncompacted lifts on the Developer Tract and/or Reclaimed Tract in accordance with the Fill Plan and the fill easements granted to City earlier described herein. With regard to the development of the Reclaimed Tract and/or Developer Tract, Developer shall be required to excavate fill from the COSA Site pursuant to the Fill Plan for so long as Developer is in need of fill for the development of the Developer Tract and or the Reclaimed Tract, such excavation to be carried out in accordance with the Construction Documents (other than with changes that do not affect Developer or its property), and shall continue to be so entitled thereafter with City's approval, such approval not to be unreasonably withheld, and place such fill upon the Reclaimed Tract and/or the Developer Tract in accordance with the Permit and/or Fill Plan. Excavation and fill activity conducted by either party shall comply with the specifications of the Fill Plan and where applicable, the Construction Documents, the Master Plan, and this Contract. All excavation activities conducted by either party shall be coordinated with the other party, by reasonable prior notice to the other. Each party shall minimize any material interruption with development or construction activities being carried on the other party's tract(s). Notwithstanding the foregoing, Developer expressly reserves the right to excavate and relocate fill from one portion of the Developer Tract and/or Reclaimed Tract to other portions of either such tract, so long as same is carried out in accordance with the Fill Plan. In addition, Developer reserves the right to use off-site "select" fill in connection with building foundation preparation and similar construction activities where the final users of any improvements to be situated upon the Developer Tract and/or the Reclaimed Tract require the usage of "select" fill with respect to such construction activities based on industry construction standards.

5. Non-application of Tree Ordinance. Notwithstanding any other provisions herein contained to the contrary, City represents to Developer that City's tree ordinance (Section 35-253 of Chapter 35 of City's Unified Development Code)

shall have no application whatsoever to any and all portions of the Developer Tract and/or the Reclaimed Tract that will be encumbered by a fill easement that is within the scope and purview of this Agreement.

6. Standards. The Work shall be performed in a good, thorough and first class workman-like manner, in accordance with, or better than, industry standards and to the reasonable satisfaction of the Director of Public Works. The Director of Public Works (or his designee), and all consultants, assistants and inspectors under the Director's supervision shall at all times have free access to the Work as it is being conducted as well as have open communication with the Developer and/or its contractors and engineers. City shall have the right to access the Developer Tract and the Reclaimed Tract at all reasonable times to determine whether Developer has been and is complying with its obligations herein set forth, with the Master Plan, with the Fill Plan, with the Permit and with any and all applicable law and regulations. Developer acknowledges and agrees that Developer will have the sole responsibility to obtain any map revisions from the Federal Emergency Management Agency ("FEMA") necessary or appropriate to remove any portions of the Developer Tract and/or the Reclaimed Tract from the 100 year flood plain as designated by any FEMA maps, and that City shall have no responsibility with respect to obtaining such map revisions from FEMA other than to reasonably cooperate with Developer with respect thereto.

7. Termination. The Contract shall terminate upon an uncured breach by Developer of any obligation set forth herein. Such breach shall be noticed to Developer, in writing, and Developer shall be allowed a reasonable period, but no less than thirty (30) days, for cure of such breach. If the breach is not cured, or cure is not diligently pursued within the aforesaid time, this Contract shall terminate upon notice in writing by City to Developer. Any early termination of this Contract shall not bar Developer from pursuing the Permit from City through other legal procedures.

This Contract shall not be recorded. The Fill Plan and related easements shall be recorded in the Real Property Records of Bexar County, Texas.

8. Development of Developer's Tract and Reclaimed Tract. The platting and development of the Developer Tract and the Reclaimed Tract are subject to the platting and building regulations of City, as well as the other applicable provisions of the City's Unified Development Code and other applicable law. Notwithstanding the foregoing, City agrees that the Permit will be issued without any payment of regional stormwater participation fees and that any plat approvals for the Developer Tract and Reclaimed Tract, or any portions thereof, will not be conditioned upon the construction or maintaining of any on site detention facilities and/or the payment of any fees in lieu thereof as set forth in Section 35-C109 of the Unified Development Code. Nothing contained in this Section 8 shall be construed to alleviate the subsequent requirement to pay any and all stormwater user fees imposed by the City on the Reclaimed Tract and/or the Developer Tract, and such stormwater user fees shall continue to be applicable for all purposes.

GENERAL PROVISIONS:

1. The City's Representative. The City hereby designates the Director of Public Works and/or such other person or persons as the Director may hereafter designate, upon prior written notice to Developer, as the "City's Representative."
2. Developer's Representative. Developer hereby designates Johnny Stevens, or such other person as Developer may hereafter designate, upon prior written notice to the City, as "Developer's Representative."
3. Representations and Warranties. Developer and City represent, warrant, certify and agree that this Agreement and the other Contract Documents and/or

the Master Plan, the Fill Plan and/or the Permit shall not be construed in any way as creating a joint venture, partnership or other business entity between Developer and the City.

4. Assignment. Developer may not assign its rights or obligations under this Contract without the prior written consent of City, such consent not to be unreasonably withheld, conditioned or delayed. Any such assignment, whether voluntary or involuntary, by operation of law, under legal process or proceedings, by receivership, in bankruptcy or otherwise, without the prior written consent by City shall, at City's option, be of no force and effect whatsoever. Any consent to any such assignment or transfer, shall not constitute a waiver of any of the restrictions of this section and the provisions of this section shall apply to each successive assignment or other transfer hereunder, if any. This section of this Contract shall have no effect on any other provisions of this Contract.

5. Indemnity. Developer hereby agrees to defend, protect, indemnify and hold harmless City from and against all claims, damages to persons or property, or death to persons, demands, causes of action, liability or proceedings and all costs and expenses of any kind and attorneys' fees and cost of suit, arising, in whole or part, whether now known or otherwise, out of or resulting, in part or fully, from Developer's performance of the Work and/or from Developer's entry onto the COSA Site to excavate and/or remove fill. Developer acknowledges, without limitation as to Developer's obligations, such indemnity will require Developer and its contractors, agents, invitees and others to exercise utmost care to avoid accident or injury to property or injury or death to persons.

6. Entire Agreement. The terms of this Contract are intended to be a final expression of the parties and may not be contradicted by evidence of any prior or contemporaneous statements, representations, agreements or understandings, whether written or oral. The parties expressly agree that no such statements,

representations, agreements or understandings exist. The parties further intend that this Contract constitutes the complete and exclusive statement of the parties' intent and that no extrinsic evidence may be introduced in any proceeding involving this Contract. No addition to, deletion from, or modification of any term or provision of this Contract shall be effective unless it is made in a writing signed by both of the parties hereto.

7. Conflicts Between Documents. In the event of any conflict between the Exhibits hereto and the terms and provisions of this Contract, the terms and provisions of this Contract shall control.

8. Contractor's Risk. Developer shall be responsible for all risk of loss, defects and/or damage and/or liability for all materials on the ground located on Developer's Tract or the Reclaimed Tract.

9. Waiver. It is understood and acknowledged that City will exercise no control over the means of accomplishing the Work except as set forth in the Permit. The issuance of the Permit by City or the approval of any phase of the Work by the City or City's agent or inspectors shall not imply or be deemed a waiver by City of the right to disapprove another phase or part of the Work. No approval by City shall impose any liability on City for any risk or damage to persons or property related to the Work, and/or the Permit or shall imply or guarantee any drainage implications to the parties, any other party or otherwise. Nothing herein nor any approval by the City, verbal or written, or other subsequent act by City shall relieve the Developer or his contractor from full compliance with the specifications regarding all Work, any indemnity set forth herein, nor compliance with any applicable law. Any cost, delay, or damage occasioned by defects in the Work, failure to meet specifications, or for any other reason impacting on Developer shall be borne solely by the Developer.

10. Attorneys' Fees. If either party commences an action against the other to enforce any of the terms of this Contract or for damage relative to this Contract, the losing party shall pay to the prevailing party the costs and expenses incurred in connection with the prosecution or defense of such action, including reasonable attorneys' fees and all other costs of suit.

11. Notices. Any notice required or permitted to be given under this Contract shall be in writing and shall be (1) mailed by certified mail, postage prepaid, return receipt requested, or (2) delivered by a nationally recognized overnight air or ground courier service, at its address set forth as follows:

If to Developer: HRS Partnership
 Attn: Herb Krumsick / Johnny Stevens
 1223 North Rock Road
 Building H., Suite. 200
 Wichita, Kansas 67206
 Telephone No.: (316) 636-2100

If to the City: City of San Antonio
 Attn: Thomas Wendorf,
 P.E. Director of Public Works
 P.O. Box 839966
 San Antonio, Texas 78283-3966
 Telephone No.: (210) 207-8024

Any communication so addressed and mailed shall be deemed to be given on the earliest of: (a) when actually received or delivered; (b) when proof of return of certified mail is received; or (c) on the first business day after deposit with an overnight air courier service, if proof to the address of the intended addressee is provided. A change of address may be given by written notice as provided herein.

12. Third Party Beneficiaries. There shall be no third party beneficiaries to this Contract.

13. Partial Invalidity. Any provisions or part of this Contract held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties and construed as close as reasonably possible to their original intent.

14. Authority of Signatory. The persons signing on behalf of Developer herein represent he/she has the authority to bind their party to this Contract. City will be bound upon signature by the representative authorized by official action of City Council in Ordinance No. _____.

15. Gender and Number. Other Terms. Where the context of this Contract permit, the singular shall include the plural, the plural the singular, and the masculine shall include the neuter and feminine.

16. Governing Law and Venue. This Contract shall be construed and interpreted under and shall be governed and enforced according to the laws of the State of Texas. Venue for any legal proceeding arising out of or in connection with this Contract shall be in Bexar County, Texas.

17. No Oral Modification. This Contract shall not be modified orally or by course of conduct or dealing. Any modification of this Contract shall be in writing and signed by the authorized party.

18. Counterparts. The Contract Documents may be executed in counterparts, each of which shall be deemed an original and together shall constitute a single instrument.

19. Force Majeure. In the event Developer or City is unable in whole or in part by force majeure to carry out any covenant, agreement, obligation or undertaking to be kept or performed under this Contract the time for the performance of such covenant, agreement, obligation or undertaking so delayed shall be extended for

the period of such delay, and such default shall be remedied with all reasonable dispatch. The term "force majeure" as employed in this section shall include acts of God, acts of terrorism, strikes, lockouts, or other industrial disturbances, acts of a public enemy, war, blockades, riots, epidemics, earthquakes, explosions, accidents, or repairs to machinery or pipes, the delays of carriers, or inability by reason of governmental regulation to obtain materials, acts of public authorities, or other causes, whether or not of the same kind as specifically enumerated, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to overcome.

20. Special Provisions Regarding 6.8 Acre Tract. City acknowledges and agrees that Developer does not own, but does control the 6.8 Acre Tract which comprises a portion of the Developer Tract. City and Developer acknowledge the mutual benefits to be derived by both parties as a result of the inclusion of the 6.8 Acre Tract for the purpose of developing the various plans referred to in this Agreement. Developer expressly reserves the right, however, to remove the 6.8 Acre Tract from the scope and purview of this Agreement prior to the time that the Special Warranty Deed covering the COSA Site is exchanged for the Permit, but it is not anticipated by the parties hereto that such removal will take place unless Developer is not able to effectuate a binding agreement with the owner of the 6.8 Acre Tract with respect to certain obligations attributable to the 6.8 Acre Tract despite diligent efforts, which said diligent efforts Developer agrees to expend. In order to remove the 6.8 Acre Tract from the scope and purview of this Agreement, Developer must notify City in writing of such removal, whereupon Developer shall thereafter cause Engineer to promptly modify all plans within the scope and purview of this Agreement accordingly, any such modified plans to require the prior approval by City in writing, such approval not to be unreasonably withheld, conditioned or delayed.

IN WITNESS WHEREOF, this Agreement is entered into as of the day and year first above.

OWNER:

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

By: _____

Name: _____

Title: _____

Date: _____, 2004

DEVELOPER:

HRS Partnership, a Texas General Partnership

By: Johnny W Stevens

Name: Johnny W Stevens

Title: PARTNER

Date: 1-15, 2004

STATE OF TEXAS }
 }
COUNTY OF BEXAR }

 This instrument was acknowledged before me on _____,
2004, by _____, _____ of the City of San
Antonio, a Texas municipal corporation, on behalf of said corporation.

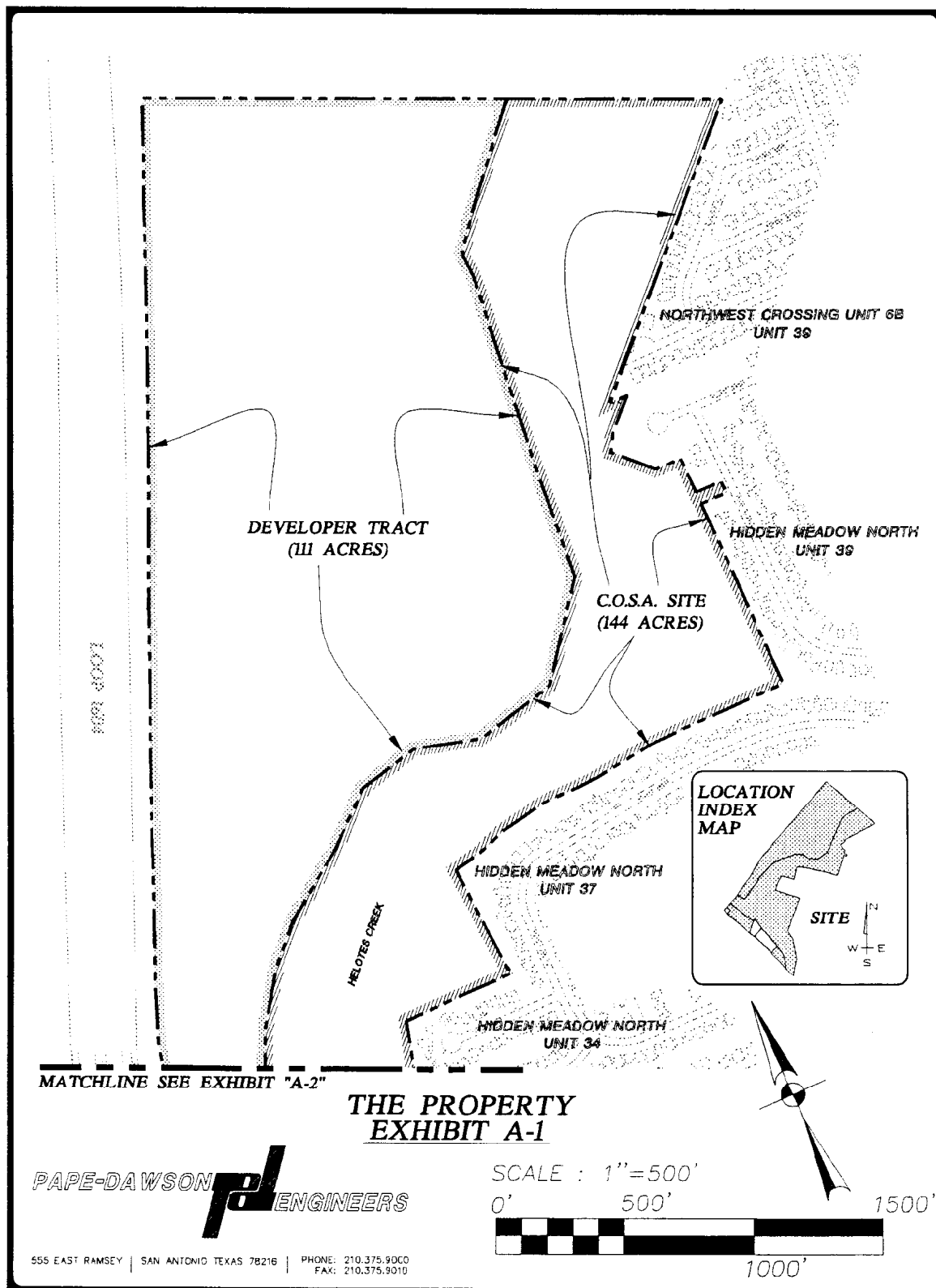
Notary Public, State of Texas

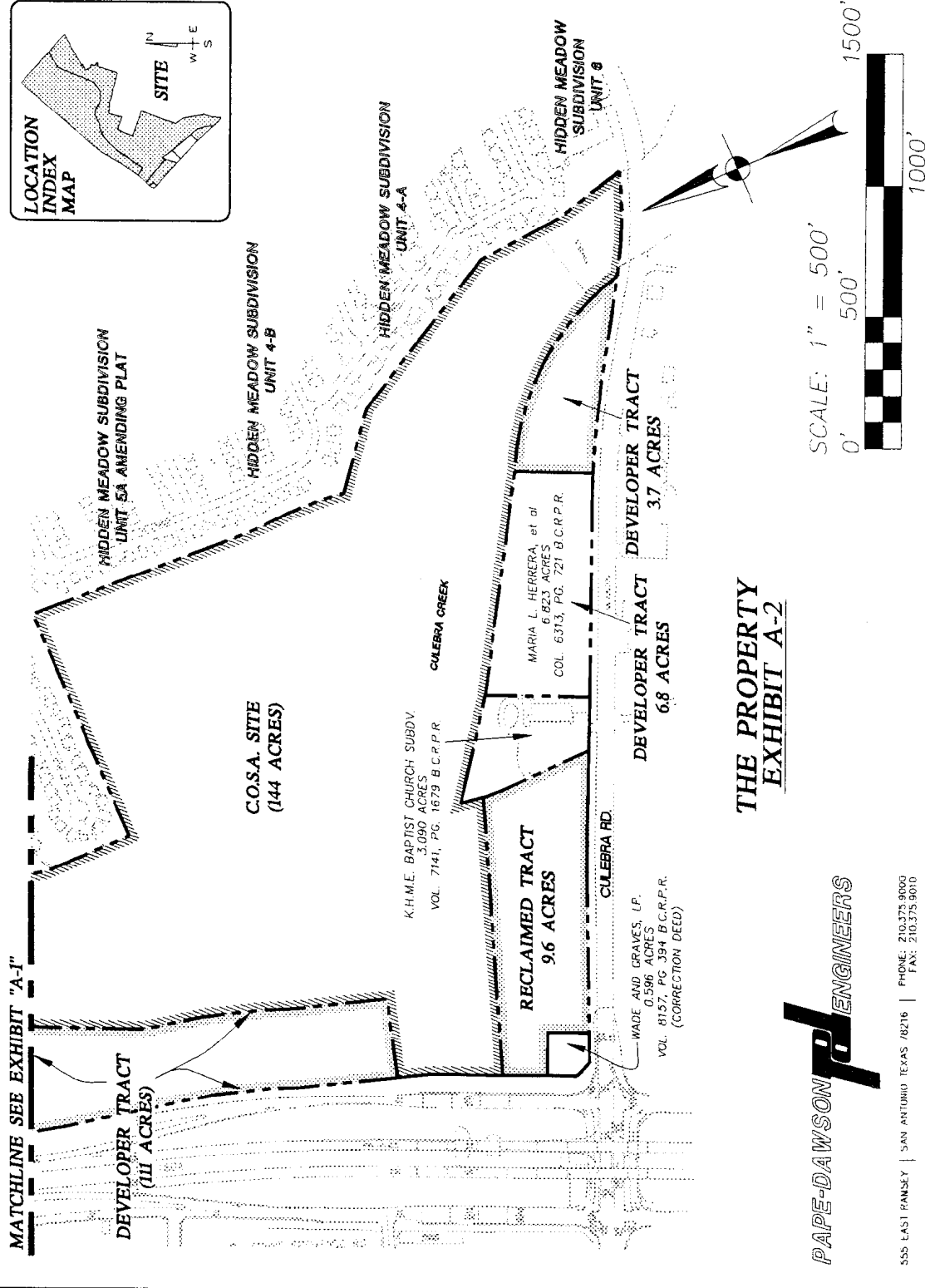
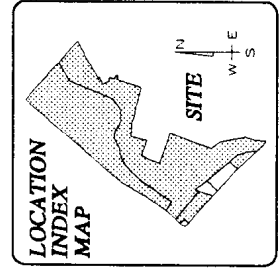
STATE OF _____ }
 }
COUNTY OF _____ }

 This instrument was acknowledged before me on _____,
2004, by _____, partner on behalf of HRS Partnership,
a Texas General Partnership.

Notary Public, State of Texas

M:\data\rlk\HRS-ANC\HelotesCulebraDevAgreement13.doc

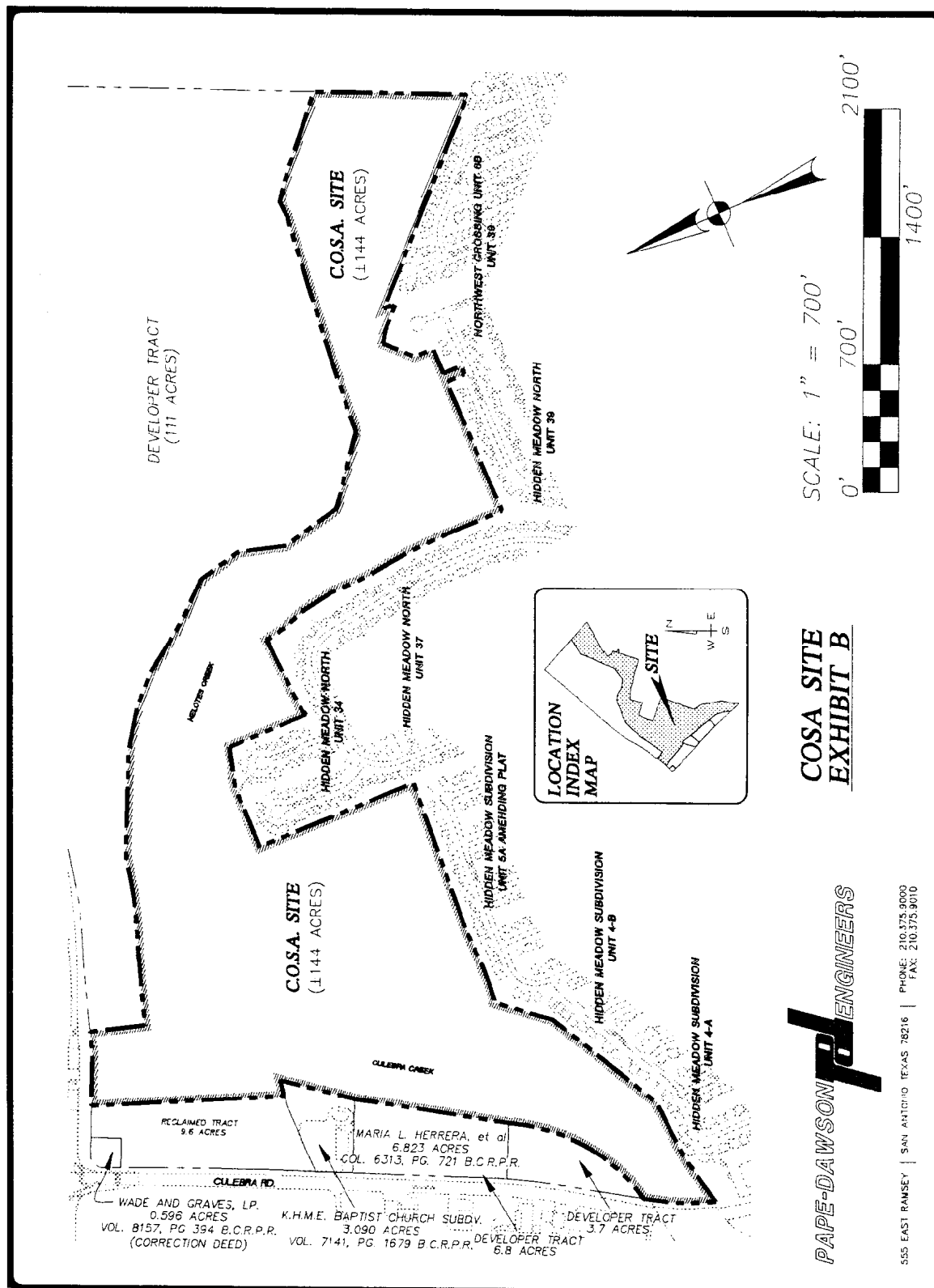




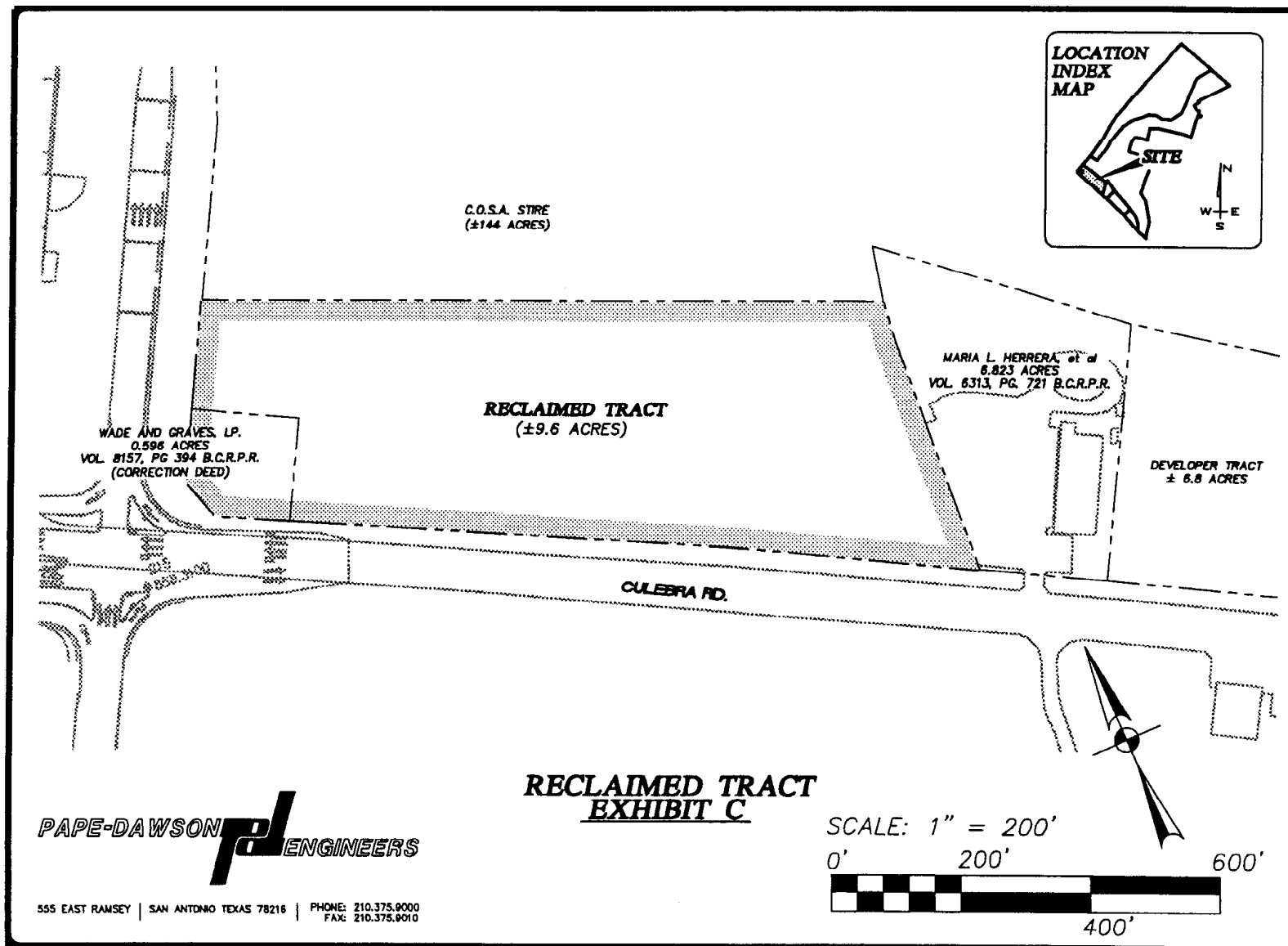
THE PROPERTY EXHIBIT A-2

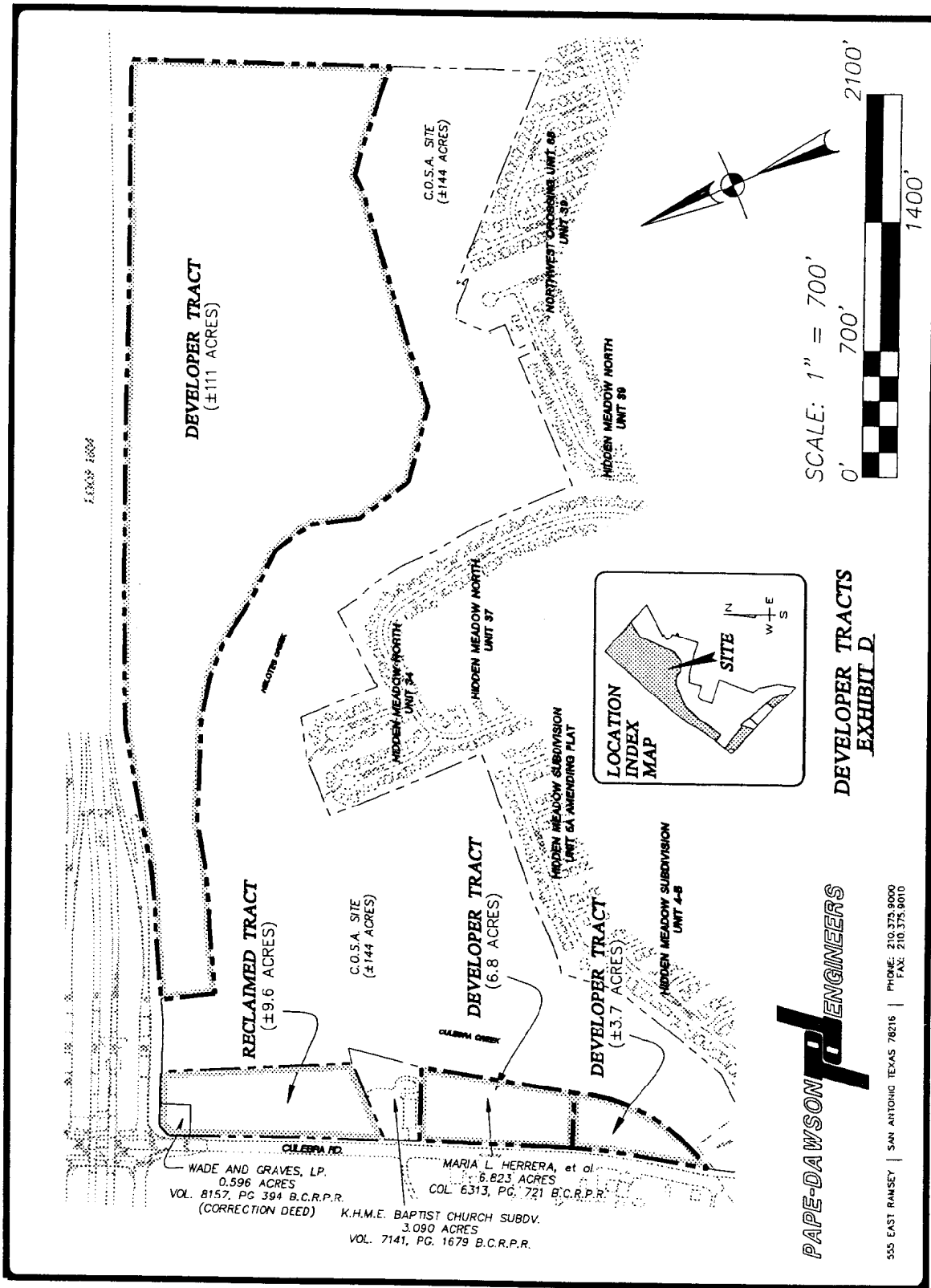
PAPE-DAWSON **pd** ENGINEERS

555 EAST RAMSEY | SAN ANTONIO TEXAS 78216 | PHONE: 210.375.9000
FAX: 210.375.9010



DRAFT





PAPE-DAWSON ENGINEERS

555 EAST RAMSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.375.9000
FAX: 210.375.9010

Exhibit "E"

Scope of the Construction Documents For Culebra Creek RSWF Project

The Culebra Creek Regional Storm Water Facility Project (RSWF) proposes to construct an offline detention facility near the confluence of Culebra Creek and Helotes Creek. The proposed design includes excavation of a 560 acre-ft detention pond, including significant channel improvements to Culebra Creek and a portion of Helotes Creek at the confluence. The scope of services for the Culebra Creek RSWF Project consists of engineering design and preparation of construction plans, specifications, and estimates for the City of San Antonio. The detailed description of the scope of services is as follows:

- Preparation of plans for improvements to Culebra Creek and Helotes Creek, including grading plans, cross sections, profiles, alignment and horizontal control sheets, and rip rap detail sheets.
- Design and prepare detailed plans of two-drop structures / stilling basins on Culebra and Helotes Creeks just upstream of their confluence, including structural details of rip rap and dissipater blocks.
- Preparation of grading plans for detention pond, including horizontal control sheets, cross sections, details of berm construction, design of road on top of berm, design of ramp access, and rip rap detail sheets.
- Design and prepare detailed plans of weir structure, including layout, structural details, and rip rap details.
- Design of detailed plans for outlet structures, including culvert layouts, structural details, and flap gate details.
- Prepare mass grading plans for adjacent fill sites, including layout of fill easement properties and horizontal control.
- Prepare SWPPP plans for construction.
- Prepare utility plan, identifying existing utilities within the limits of construction.
- Prepare security fence layout, including gate layouts at access points.
- Prepare general notes and specifications for construction.
- Prepare final quantity summary sheets.
- Prepare estimate of construction cost.

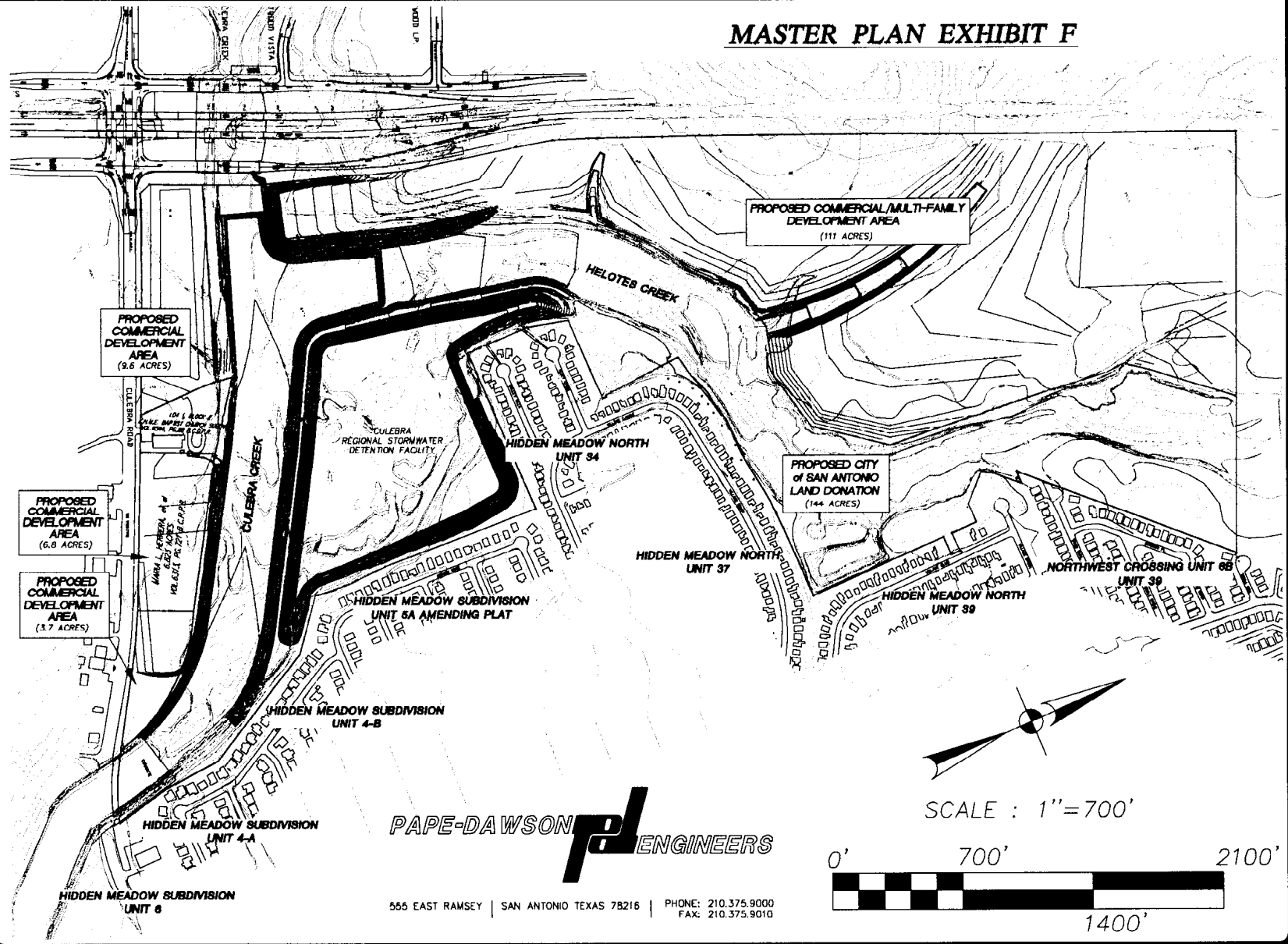
Exhibit “E”

Scope of the Construction Documents For Culebra Creek RSWF Project

In addition, to providing construction plans, specifications, and estimates, a detailed hydraulic report will be provided outlining all assumptions, methodologies, hydraulic and hydrologic models used to design the operation of the offline detention pond. The scope of services does not include coordination, obtaining, or preparing documents for permitting. Exclusions from this scope of services include the following:

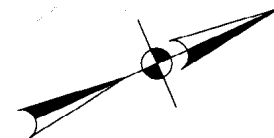
- Preparing and submitting for any permits or approvals that may be required for this project, including but not limited to:
 - Preparing Conditional or Final Letters of Map Revisions for the final design of the regional storm water facility or improvements to Culebra or Helotes Creeks.
 - Preparing or coordinating for Dam Permits with the TCEQ, including performing probably maximum flood modeling or dam breach analysis.
 - Preparing documents or providing coordination to obtain a US Army Corps of Engineers' Individual 404 Permit.
- Performing construction phase services, construction staking, or preparing as-built plans.
- Preparing landscape or irrigation plans.
- Preparing tree survey or coordinating Tree Ordinance compliance.
- Performing environmental services or endangered species determinations.

MASTER PLAN EXHIBIT F

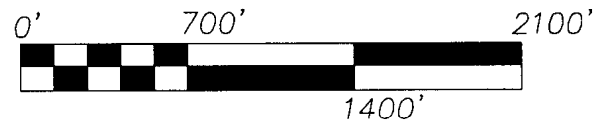


PAPE-DAWSON **PD** ENGINEERS

555 EAST RAMSEY | SAN ANTONIO TEXAS 78216 | PHONE: 210.375.9000
FAX: 210.375.9010



SCALE : 1"=700'



DRAFT

PAPE-DAWSON ENGINEERS
 555 EAST RAMPART | SAN ANTONIO TEXAS 78216 | PHONE: 210.375.9000
 FAX: 210.375.9010

General Notes:

Fill shall be placed within the fill easements designated and in accordance to the lines and grades shown on the Fill Plan (Exhibit F).

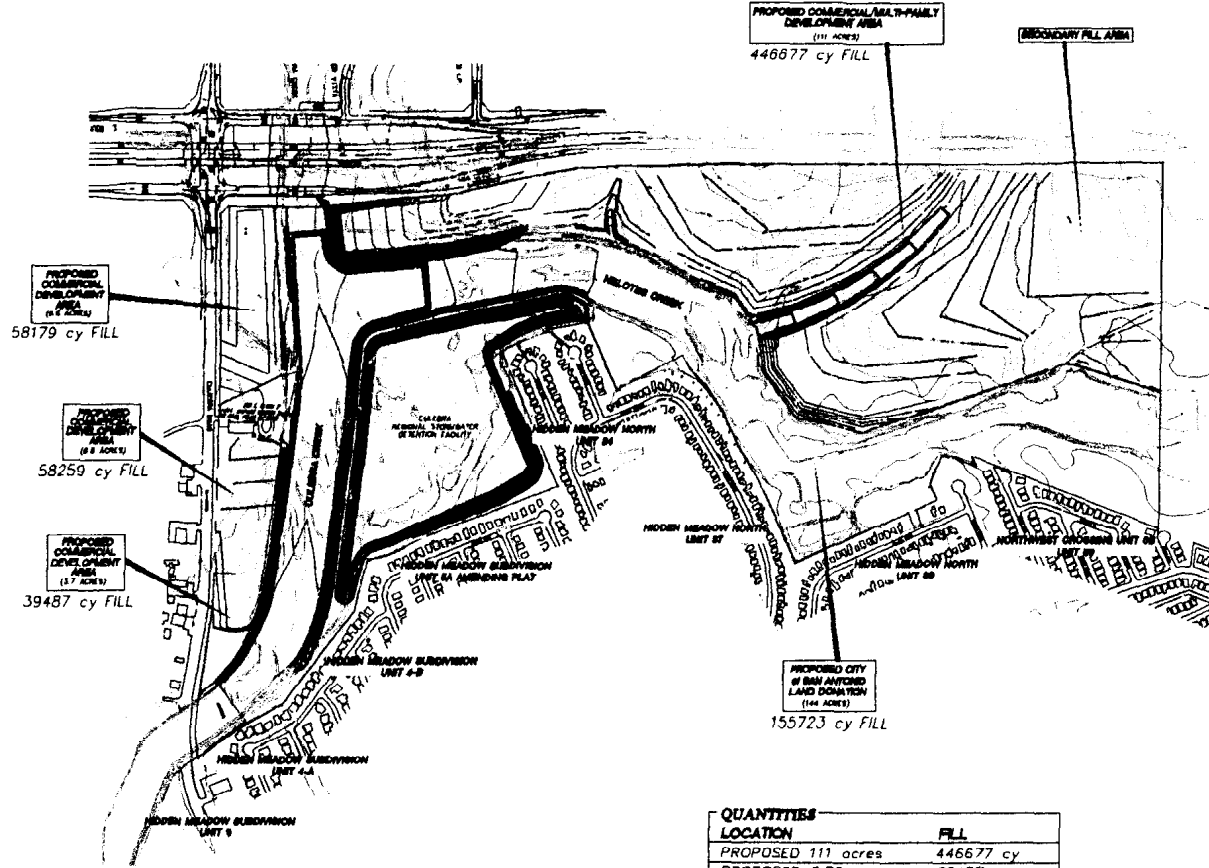
Areas to be filled shall be prepared by removing trees, stumps, bushes, shrubs, brush, roots, vegetation, logs, rubbish, concrete rubble, and all debris that is not in conformance with the City's acceptable fill material.

The existing topsoil in the areas to be filled shall be removed and salvaged on site for re-establishing vegetation.

Earth and rock fill material from the channel and pond excavation, shall be placed in the designated fill areas in no greater than 12 inch lifts. There are no compaction or density requirements for this fill. Upper layer of fill shall contain no stones larger than 4 inches in their greatest dimension. Fill areas shall be graded to drain properly as per City standards.

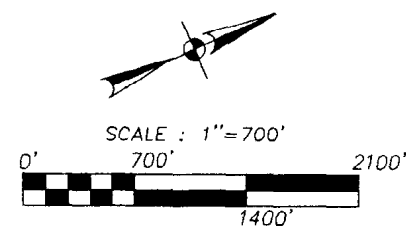
The topsoil salvage onsite shall be spread over the fill areas to a minimum thickness of 4 inches to re-establish vegetation. Placing topsoil and hydromulching of the fill site shall be in conformance with Item 515 "Topsoil" and Item 520 "Hydromulching" of COSA's Standard Specifications for Construction.

Prior to the start of construction, the contractor shall prepare a Storm Water Pollution Prevention Plan (SW3P) and obtain required permits as per Item 540 "Temporary Erosion, Sedimentation and Water Pollution Prevention and Control" in the City's Standard Specifications for Construction.



FILL PLAN EXHIBIT G

QUANTITIES	
LOCATION	FILL
PROPOSED 111 acres	446677 cy
PROPOSED 3.75 acres	39487 cy
PROPOSED 6.8 acres	58259 cy
PROPOSED 9.6 acres	58179 cy
PROPOSED 144 acres	155723 cy
TOTAL FILL =	758325 cy FILL
LOCATION	CUT
CHANNEL & POND	1247625 cy
TOTAL CUT =	1247625 cy



PAPE-DAWSON ENGINEERS

FILL PLAN EXHIBIT G

JOB NO. _____
 DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____
 SHEET: _____