

**CITY OF SAN ANTONIO  
INTERDEPARTMENTAL MEMORANDUM  
PARKS AND RECREATION DEPARTMENT**

**TO:** Mayor and City Council

**FROM:** Malcolm Matthews, Director, Parks and Recreation Department

**THROUGH:** Terry M. Brechtel, City Manager

**COPIES:** Christopher J. Brady; Finance; Management and Budget; Legal; File

**SUBJECT:** San Antonio Water System Demonstration Garden at the San Antonio Botanical Garden

**DATE:** May 20, 2004

**SUMMARY AND RECOMMENDATIONS**

This ordinance establishes a program budget for the San Antonio Water System Demonstration Garden Project at the San Antonio Botanical Garden and authorizes a part-time grant funded position to maintain the garden.

Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

A primary component of the San Antonio Botanical Garden, operated through the Parks and Recreation Department, is its public education programs. San Antonio Water System (SAWS) has requested to utilize an area within the Botanical Garden to build a demonstration garden with interpretive signage for environmentally sound landscaping techniques and to establish outreach programs. A Memorandum of Understanding (MOU) has been executed for this mutually beneficial project.

SAWS will be responsible for design and installation of the garden, at an estimated value of \$125,000.00, in an area approved by the City. Botanical Garden staff will be responsible for daily maintenance of the demonstration garden. During the three year MOU, SAWS will pay the City \$13,000.00 per year for maintenance responsibilities. In addition, \$30,000.00 per year will be paid for use of the garden area. Also, the City may request up to \$30,000.00 per year for public workshops related to the demonstration garden that are conducted by City staff or their designees. Education classes will be developed by the Garden's Education Coordinator to support the demonstration garden objectives. The workshop payment is based upon the number of attendees and duration of the workshops. The City is responsible for repairs to any damage that may occur to the garden, up to a maximum value of \$30,000.00 per year. SAWS and the City will work together on publicity for the demonstration garden and associated workshops.

In order to adequately maintain the garden, the Botanical Garden will hire a part-time employee who will be assigned to this project. The employee will be funded with the SAWS payments. After the three year term, if the agreement and staff funding are not renewed, then the City will determine whether the demonstration garden can be maintained with available staff or whether it should be removed.

### **POLICY ANALYSIS**

This program conforms to the long-standing policy of the City to utilize grant funds to provide services and programs that benefit the residents of our community. A new personnel position requires City Council approval.

### **FISCAL IMPACT**


During each of the three years of the MOU, the amount of \$73,000.00 will be paid to the City by SAWS. Program revenue will be deposited to a project fund that will be utilized for personnel, maintenance, publicity and repair expenses. Approximately \$90,000.00 will be deposited to the Education Classes General Fund revenue code over the three year contract.

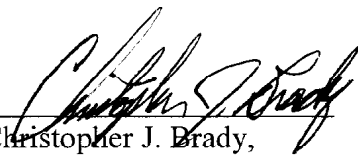
### **COORDINATION**

This project was coordinated with the Finance Department, Office of Management and Budget and Human Resources Department.

### **SUPPLEMENTARY COMMENTS**

An Ethics Ordinance Disclosure Statement is not required.

  
\_\_\_\_\_  
Malcolm Matthews,  
Director of Parks and Recreation

  
\_\_\_\_\_  
Christopher J. Brady,  
Assistant City Manager

Approved:

  
\_\_\_\_\_  
Terry M. Brechtel  
City Manager

**COMMUNITY EDUCATION DEMONSTRATION GARDEN  
MEMORANDUM OF UNDERSTANDING  
SAN ANTONIO WATER SYSTEM**

This Memorandum of Understanding (the "**MEMORANDUM**") is made and entered into by and between the **CITY OF SAN ANTONIO** (herein called "**CITY**") through the **SAN ANTONIO PARKS AND RECREATION DEPARTMENT** acting by and through its Director or his designee, (herein called "**SAPR**"), and **SAN ANTONIO WATER SYSTEM** (herein called "**SAWS**")

This Memorandum of Understanding has not been expressly adopted by the City Council of the City of San Antonio and so is subject to approval by the City Council.

**1. WITNESSETH:**

- 1.1. **SAPR** desires to increase the availability of public information regarding environmentally sound landscapes.
- 1.2. **CITY** is the owner of the San Antonio Botanical Center (the "**BOTANICAL CENTER**"), and has the authority to grant to **SAWS** the rights set forth in this **MEMORANDUM**.
- 1.3. For the benefit not only of the **SAWS** but also of all the citizens of San Antonio, **SAPR** desires to accept the **SAWS** offer to establish outreach programs that promote environmentally sound landscaping techniques and **SAPR** agrees to allow **SAWS** to place interpretive signage and demonstration gardens in the area of the **BOTANICAL CENTER** depicted in Exhibit 1 hereto (the "**GARDEN AREA**") and permit **SAWS** to fund education efforts and promote these educational efforts at the **BOTANICAL CENTER**.
- 1.4. For and in consideration of the mutual benefits to the citizens of San Antonio and **SAWS**, and the observance of the terms and conditions set forth herein, the parties agree to the following:

**2. APPOINTMENT**

- 2.1. **SAPR** designates **SAWS** as contractor and funding source for the development of the Landscape Design Garden Concept to be located in a location mutually acceptable to **SAPR** and **SAWS** in the **BOTANICAL CENTER**, San Antonio, Bexar County, Texas in the **GARDEN AREA** during the below stated term, and **SAWS** and **SAPR** hereby accept their respective obligations and each agree to perform such services and as required herein.

### 3. PLACEMENT OF THE LANDSCAPE DESIGN GARDEN CONCEPT PROJECT BY SAWS

- 3.1. **SAPR** hereby grants to **SAWS** its employees, agents, contractors, representatives and assigns, non-exclusive right of ingress and egress without charge at all times over, across and upon the **BOTANICAL CENTER** and permission to enter and construct not more than six (6) designer sheds and not more than six (6) accompanying landscapes (collectively, the "**IMPROVEMENTS**") that reflect distinct landscape styles found in the same geographical area of the **BOTANICAL CENTER**. It is anticipated that the cost of the Improvements by **SAWS** will be approximately \$125,000.00 (the "**COST OF IMPROVEMENTS**").
- 3.2. Although permission to enter and use herein above **BOTANICAL CENTER** and the **GARDEN AREA** is not exclusive, **SAPR** shall give **SAWS** priority use of this area for the placement of the exhibits for the education and enjoyment by the citizens of San Antonio.
- 3.3. The **GARDEN AREA** shall be occupied by **SAWS** for display and educational purposes only. **SAWS** agrees and specifically understands that permission given does not grant to **SAWS** any interest or estate in the **GARDEN AREA** but is a mere personal privilege to do certain acts of a temporary character upon the **GARDEN AREA**, and that **SAPR** retains dominion, possession and control of the **GARDEN AREA**, including access thereto at all times. **SAPR** reserves the right to impose and enforce all reasonably necessary and proper rules for the management and operation of the **GARDEN AREA** and **SAPR** shall provide a copy of said rules to **SAWS** prior to enforcement.
- 3.4. **SAWS** agrees that its members and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws, ordinances, rules and regulations and that it will not do or permit to be done anything in violation hereof. If the attention of **SAWS** is called to any such violation, **SAWS** or those under its control will as soon as reasonably possible desist from and correct such violation.
- 3.5. **SAWS** expressly acknowledges that the placement of the assets and materials identified hereinbefore is at the sole risk of **SAWS** and that **CITY** and **SAPR** make no representations or guarantee towards the replacement, security, protection or promise to repair said **GARDEN AREA** in the event of theft or damage, either intentional, accidental or by act of God.

### 4. TERM OF MEMORANDUM

- 4.1. The term of this **MEMORANDUM** is three (3) years, beginning on December 1, 2003, which is hereafter referred to as the commencement date, and expiring on November 30, 2006, if not earlier terminated according to the terms hereof.

## 5. ACCEPTANCE AND CONDITIONS OF PREMISES

- 5.1. **SAWS** has had sufficient time and opportunity to examine the premises of the **GARDEN AREA** and to the extent permitted by applicable law hereby waives any claim for damages that may arise from defects of that character after occupancy. **SAWS** taking possession of the **GARDEN AREA** shall be conclusive evidence of **SAWS** acceptance thereof in good and satisfactory order in its present condition AS IS, WHERE IS AND WITH ALL FAULTS as suitable for the purpose for which agreed.
- 5.2. **SAWS** agrees that no representations respecting the condition of the **GARDEN AREA** and no promises to decorate, alter, repair, or improve the **GARDEN AREA**, either before or after the execution hereof, have been made by **SAPR** or its agents to **SAWS**, except as set forth in this **MEMORANDUM**.

## 6. SAWS OBLIGATIONS AND DUTIES

- 6.1. During the term of this **MEMORANDUM**, **SAWS** agrees to provide the following:
- 6.1.1. **SAWS** shall provide all construction coordination and costs associated with the construction of the **IMPROVEMENTS** to the **GARDEN AREA**.
- 6.1.2. **SAWS** shall use good faith efforts, in its sole discretion, to use its existing media commitments to provide the **GARDEN AREA** as a destination point for the public to learn about environmentally sound landscapes.
- 6.1.3. **SAWS** agrees to make the following payments/grants to **SAPR** for use at the **BOTANICAL CENTER** during the term of this **MEMORANDUM** as follows:
- 6.1.3.1. \$13,000.00 per year for **SAPR**'s maintenance responsibilities set forth in Section 7.1. below (the "**MAINTENANCE GRANT**"), which **MAINTENANCE GRANT** shall be payable by **SAWS** in advance quarterly installments of \$3,250.00 each, within 30 days after receipt of an invoice therefor.
- 6.1.3.2. \$30,000.00 per year for use of the **GARDEN AREA** and **BOTANICAL CENTER** (the "**USE GRANT**"), which **USE GRANT** shall be payable by **SAWS** in advance quarterly installments of \$7,500.00 each, within 30 days after receipt of an invoice therefor.
- 6.1.3.3. An amount not to exceed \$30,000.00 for each full calendar year after the Effective Date of this **MEMORANDUM** (the "**WORKSHOP GRANT**") for public workshops related to the **GARDEN CENTER** conducted by the **SAPR** staff or their designees, which **WORKSHOP GRANT** shall be calculated in accordance with the table attached as Exhibit 2 hereto and shall be payable by **SAWS** within thirty (30) days following receipt of an invoice (not more than once per month) documenting the date of the workshop, the number of attendees (as evidenced by a sign-in sheet including phone numbers) and duration of the workshop. **SAWS** shall be notified in writing at least fifteen (15) days in advance of any

workshop as a condition precedent to **SAWS'** obligation to pay any **WORKSHOP GRANT**.

## **7. SAPR'S OBLIGATIONS AND DUTIES**

- 7.1. For the duration of this **MEMORANDUM**, **SAPR** agrees to provide the following:
  - 7.1.1. General Maintenance: During the term of this **MEMORANDUM**, **SAPR** shall, at its sole cost and expense, maintain and provide maintenance service as necessary to keep the **IMPROVEMENTS** and the **GARDEN AREA** in good, clean and safe condition and repair, including, without limitation, irrigation, mowing, edging, weeding, pruning and replacing dead, sick, damaged or destroyed plant material, as needed.
  - 7.1.2. **SAPR** shall repair and replace any damage to the **GARDEN AREA** or **IMPROVEMENTS** caused by the use by **SAWS** or those persons under its control in an amount not to exceed \$30,000 or the value of goods and services not to exceed \$30,000 for any given year. Notwithstanding any contrary provisions herein contained, should the **GARDEN AREA** or **IMPROVEMENTS** be damaged by fire, tornado or other casualty, **SAPR** shall be under no obligation to rebuild or repair the **GARDEN AREA** or **IMPROVEMENTS**.
  - 7.1.3. In carrying out the maintenance, repair and replacement responsibilities, **SAPR** agrees to provide at its sole cost and expense all manpower, utilities and equipment needed to accomplish aforesaid maintenance, repair and replacement responsibilities.
  - 7.1.4. Immediately following the Effective Date of this **MEMORANDUM**, **SAPR** shall identify and remove any vegetation in the **GARDEN AREA** for the installation of the **IMPROVEMENTS**.
  - 7.1.5. **SAPR** shall develop public workshops and volunteer activities as mutually established by **SAWS** and **SAPR** based on the context of the demonstration garden in the **GARDEN AREA**.
  - 7.1.6. **SAPR** shall use existing media and supporters of the **BOTANICAL CENTER** to provide outreach services to historically underutilized communities. **SAPR** and **SAWS** agree to establish a mutually approved plan to affect such outreach.
  - 7.1.7. **SAPR**, through existing staff or as coordinated with volunteer agencies, shall use its best efforts to train all docents to promote environmentally sound landscape practices to the public and use the **GARDEN AREA** as a destination point at the **BOTANICAL CENTER**.

## **8. SAPR'S RIGHT OF INSPECTIONS AND USE**

- 8.1. **SAPR**, through the Director and/or his representative(s) shall have the right to inspect the **GARDEN AREA** at any time.
- 8.2. **SAWS** agrees to use good faith efforts give **SAPR**, and the **BOTANICAL CENTER** proper credit when making any formal references to the **GARDEN AREA** while temporarily installed in or affiliated with the location of **BOTANICAL CENTER**.

## 9. IMPROVEMENTS

- 9.1. **SAWS** may, subject to having first obtained the written approval of the Director, install and/or construct the **IMPROVEMENTS** in the **GARDEN AREA**. Said **IMPROVEMENTS** may include, but are not necessarily limited to plant bedding and fencing.
- 9.2. During any period of construction or installation, **SAWS**, its members, employees, agents and contractors shall use good faith efforts to try to insure that the performance of said construction or installation does not cause or result in damage to **SAPR** property or adjoining property.
- 9.3. **SAWS** shall present, for review and written approval, all designs, plans, and specifications (collectively, the "**PLANS**") to the Director prior to commencing any construction or installation upon the **GARDEN AREA**. While **SAPR** may render any assistance it deems advisable, all costs for construction and related activities shall be borne solely by **SAWS**. In the event the Director fails to reject said **PLANS**, with specific reasons therefore within five (5) business days after submission, said **PLANS** shall be deemed approved.
- 9.4. **SAWS** agrees that it shall obtain any and all plan approvals, necessary permits and clearances relative to any and all construction or installation from appropriate local, state and federal regulatory agencies. A copy of said permits or clearances shall be provided to the Director prior to the start of any construction.
- 9.5. **SAWS** covenants that it shall not bind, or attempt to bind, **SAPR** for payment of any money in connection with any construction authorized hereunder and that to the extent permitted by law it will fully indemnify and hold harmless the **SAPR** against any and all claims, liens, suits or actions asserted on account of payment for labor, materials or services furnished to **SAWS** during the performance of any said construction.

## 10. DEFAULTS AND TERMINATION RIGHTS

- 10.1. Default: Any of the following events shall constitute default under this **MEMORANDUM**:
  - 10.1.1 Failure to keep, observe, or perform any provision of this **MEMORANDUM**.
- 10.2. Remedies: Upon the occurrence of an event of default as specified in Paragraph 10.1.1, the non-defaulting party shall be entitled to terminate this **MEMORANDUM** as its sole and exclusive and neither **SAWS** nor **SAPR** shall have any further obligations hereunder.
- 10.3. Either **SAPR** or **SAWS**, with or without cause, may cancel this **MEMORANDUM** by giving thirty (30) days written notice thereof to the other party.
- 10.4. Upon the expiration of the term or earlier termination of this **MEMORANDUM** for any reason, **SAWS** shall have the right to remove any **IMPROVEMENTS** and **SAPR**

shall immediately refund to **SAWS** any prepayment of the **MAINTENANCE GRANT** and/or the **USE GRANT**.

#### **11. SIGNS**

- 11.1. **SAWS** hereby agrees not to install or display any sign(s) upon the **GARDEN AREA** without prior written approval of said sign(s) by the **SAPR** through the Director, which approval shall not be unreasonably withheld or delayed and which signs shall be deemed approved unless the Director objects, in writing to **SAWS** with specific reasons therefore within five (5) business days after submission. **SAWS** further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized **SAPR** authority and to comply with established sign review procedures for proposed new signs; provided, however, **SAWS** will not be required to replace any signs previously approved.

#### **12. ASSIGNMENT**

- 12.1. This **MEMORANDUM** is specific to **SAWS**. It cannot be assigned. Any assignment of this **MEMORANDUM** will terminate all privileges granted to **SAWS** hereunder.

#### **13. NOTICES**

- 13.1. Notices to **SAPR** required or appropriate under this **MEMORANDUM** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to:

**City of San Antonio  
Department of Parks and Recreation  
Contract Services Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966**

- 13.2. Notices to **SAWS** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to **SAWS** at:

**Dana Nichols  
San Antonio Water System  
P.O. Box 2449  
San Antonio, Texas 78298-2449  
(210) 704-7354**

or at such other address as **SAWS** may provide from time to time in writing to **CITY**.

#### **14. NON-DISCRIMINATION**



- 14.1. **SAWS** covenants that it will not discriminate, and will use good faith efforts to prevent its agents, employees or anyone under its control, from discriminating against any individual or group on account of race, color, sex, age, religion, national origin, or handicap, in employment practices or in the use of or admission to the **GARDEN AREA**, which said discrimination **SAWS** acknowledges is prohibited.
- 14.2. **SAPR** covenants that it will not discriminate, and it will use good faith efforts to prevent its agents, employees or anyone under its control, from discriminating against any individual or group on account of race, color, sex, age, religion, national origin, or handicap, in employment practices or in the use of or admission to the **BOTANICAL CENTER**, which discrimination **SAPR** acknowledges is prohibited.

### 15. AMENDMENT

- 15.1. No amendment, modification or alteration of the terms of this **MEMORANDUM** shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

### 16. AUTHORITY

- 16.1. The signers of this **MEMORANDUM** for **SAWS** and **SAPR** hereby represent and warrant to the other that the signer has full authority to execute this **MEMORANDUM** on behalf of its respective entity.

### 17. NON-APPROPRIATION

- 17.1. **SAPR** agrees that **SAWS** has projected costs for this **MEMORANDUM** and **SAWS** expects to pay all obligations of this **MEMORANDUM** from projected revenue sources, but all obligations of **SAWS** are subject to annual appropriations by its Board of Trustees in future years after the first year of this **MEMORANDUM**. Accordingly, notwithstanding anything in this **MEMORANDUM** to the contrary, in the event that **SAWS** shall fail to appropriate sums to pay any of **SAWS'** obligations under the terms of this **MEMORANDUM**, and due to such failure to appropriate funds, **SAWS** shall not have the funds to pay such obligations, then following **SAWS** failure to pay such obligations, **SAPR's** sole option shall be to terminate this **MEMORANDUM** in accordance with Section 10.2 above and **SAWS** shall have no further obligations hereunder.

*[Signature Page to Follow]*

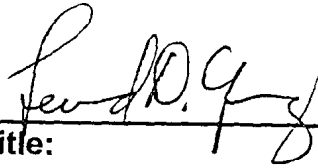
DEPARTMENT OF  
PARKS AND RECREATION

SAN ANTONIO WATER SYSTEM.

Director



Title:

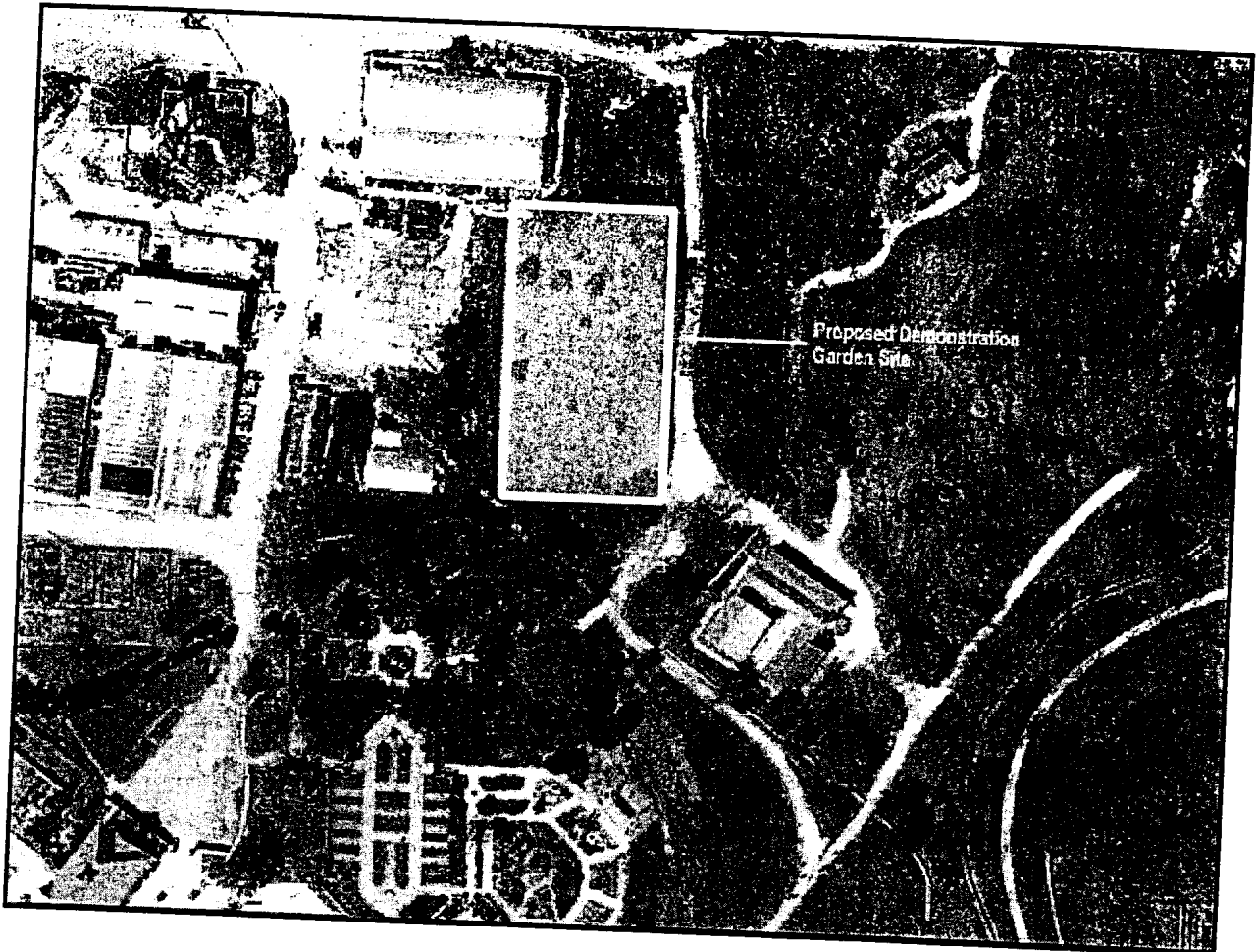


APPROVED AS TO FORM:



, City Attorney's Office

Exhibit I  
Site Plan



## Exhibit II

**SAWS** will pay **SAPR** for the workshops conducted pursuant to Section 6.1.3.3 on the basis of the number of workshops actually held for the public, the length of the workshop, and the number of people (members of the public not including **SAPR's** staff, agents, or volunteers) in attendance at the workshops at the following rates:

Base Rate	\$ 50.00
Workshops, less than 3 hours:	\$100.00
Workshops, 3-6 hours:	\$200.00
Attendance, 1-10 people:	\$ 25.00
Attendance, 1-20 people:	\$ 50.00
Attendance, over 20 people:	\$ 3.00 Per additional person not to exceed \$300.00

Example I: A 2 hour workshop with 13 people in attendance would be charged at \$200.00 (\$50.00 base rate, plus \$100.00 hourly rate, plus \$50.00 attendance rate).

Example II: A 1 hour workshop with 75 people in attendance would be charged at \$365.00 (\$50.00 base rate, plus \$100.00 hourly rate, plus \$215.00 attendance rate at \$50.00 for first 20 people and \$3.00 per each person above 20 (55) in attendance).

Example III: A 4 hour workshop with 22 people in attendance would be charged at \$306.00 (\$50.00 base rate, plus \$200.00 hourly rate, plus \$56.00 attendance rate - \$50.00 for the first 20 people and \$3.00 each for two additional people).

Example IV: A 3 hour workshop with 150 people in attendance would be charged at \$600.00 (\$50.00 base rate, plus \$200.00 hourly rate, plus \$350.00 for attendance - \$50.00 for first 20 people and \$300.00 for addition 100 people at \$3.00 each).

**SAWS** will use good faith efforts to assist in the advertising and have staff participation on a case-by-case basis in the workshop; provided **SAWS** has no duty to advertise or participate in the workshops.

## Attachment I

CITY OF SAN ANTONIO  
PARKS AND RECREATION DEPARTMENT  
SAWS Demonstration Garden Project  
Fund No. 26-000000

Budget for period December 1, 2003 to November 30, 2006

INDEX #.		OBJ-CODE	AMOUNT
	<b>REVENUES</b>		
new	San Antonio Water System	00-004	\$219,000
	<b>Total Revenues:</b>		<b>\$219,000</b>
	<b>EXPENDITURES</b>		
new	Part Time Employees Salaries	01-010	\$31,200
new	Part Time Employees Social Security	01-030	\$2,400
	<b>Total Personnel:</b>		<b>\$33,600</b>
new	Mail & Parcel Post	02-113	\$1,500
new	Printing and Reproduction	02-181	\$15,000
new	Travel	02-124	\$5,400
new	Fees to Professionals	02-160	\$12,000
	<b>Total Contractual:</b>		<b>\$33,900</b>
new	Office Supplies	03-210	\$1,200
new	Clothing & Linen	03-214	\$5,100
new	Fuel and Lubricants	03-222	\$1,200
new	Botanical & Agricultural Materials	03-226	\$12,000
new	Tools	03-232	\$3,000
new	Maint. & Repair Materials	03-240	\$12,000
	<b>Total Commodities:</b>		<b>\$34,500</b>
new	Machinery & Equipment	05-373	\$27,000
	<b>Total Capital:</b>		<b>\$27,000</b>
new	Transfer to General Fund - Education Classes Revenue Code 061770		\$90,000
	<b>Total Transfers:</b>		<b>\$90,000</b>
	<b>Total Expenditures:</b>		<b>\$219,000</b>

Fund Only Index: 0  
Organization Code: 26-11-03

PERSONNEL COMPLEMENT (PART TIME EMPLOYEES)

<u>Class No.</u>	<u>Title</u>	<u># of Positions</u>
0000	Gardener I	1
	<b>Total Personnel:</b>	<b>1</b>