

AN ORDINANCE **96517**

AUTHORIZING THE CITY MANAGER OR HER DESIGNATED REPRESENTATIVE TO EXECUTE A DEVELOPMENT AGREEMENT FOR UPPER HUEBNER CREEK WITH DE ZAVALA CAPITAL ASSOCIATES 1992-1 LTD. IN CONNECTION WITH A REGIONAL STORM WATER FACILITY AND RELATED DRAINAGE IMPROVEMENTS AT PRUE ROAD AND HUEBNER CREEK LOCATED IN COUNCIL DISTRICT 8, AND APPROPRIATING FUNDS AND APPROVING PAYMENT TO DE ZAVALA CAPITAL ASSOCIATES 1992-1 LTD. IN AN AMOUNT NOT TO EXCEED \$99,000.00 IN CONNECTION THEREWITH.

* * * * *

WHEREAS, the City of San Antonio has adopted Ordinance No. 86711, passed and approved September 25, 1997, which places certain obligations relating to stormwater drainage on new developments; and

WHEREAS, Ordinance No. 86711 provides that a developer shall satisfy these obligations by on-site detention unless the Director of Public Works allows the developer to make payment of fees in lieu of on-site detention; and

WHEREAS, De Zavala Capital Associates 1992-1, Ltd., ("Developer") has sought to replat approximately 8.731 acres as the De Zavala Business Park Subdivision; and

WHEREAS, said subdivision is located within the Upper Huebner Creek Watershed; and

WHEREAS, the Director of Public Works has made a prior determination that any development in the proximity of the proposed subdivision would require on-site detention due to certain drainage factors in the area; and

WHEREAS, the Developer has proposed to provide the funding for engineering and surveying services associated with the preparation of the design and construction drawings for replacing the low water crossing with an all weather crossing on Prue Road at Huebner Creek and for providing a detention facility for Huebner Creek upstream of Prue Road (hereinafter the "Study"); and

WHEREAS, City Council deems it desirable to have the results of this Study in order to facilitate future construction of the aforementioned low water crossing and detention facility; and

WHEREAS, City Council acknowledges that the cost for providing this Study exceeds the cost for payment of fee in lieu of stormwater detention for this development; and

WHEREAS, City Council deems it appropriate therefore to authorize the issuance to Developer of certificates ("Certificates") that may be used for payment of fee in lieu of on-site detention for 33-acres of commercial property within the Upper Huebner Creek Watershed in order to offset part of the cost for the Study; and

WHEREAS, it is uncertain whether or not the Certificates may be marketable in the Upper Huebner Creek Watershed; and

WHEREAS, City staff recommends approval; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The Development Agreement between the City of San Antonio and De Zavala Capital Associates 1992-1, Ltd., which is attached hereto as **Attachment I** and incorporated herein for all purposes, is hereby approved, and the Director of Public Works is hereby authorized to execute said Development Agreement.

SECTION 2. The Director of Public Works is hereby authorized to issue to De Zavala Capital Associates 1992-1, Ltd., Certificates that may be used for the payment of fee in lieu of on-site detention for 33 acres of commercial property as provided for in the Development Agreement. The Certificates shall be issued in accordance with the provisions of the Development Agreement.

SECTION 3. Payment in the amount of up to and no more than \$99,000.00 to De Zavala Capital Associates 1992-1, Ltd. is authorized in exchange for the repurchase of certain of the Certificates as set out in Exhibit A.

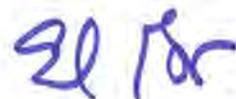
SECTION 4. Funds will be appropriated in Fund No. 29-023001 (Miscellaneous Special Revenue Fund - Stormwater Regional Facilities Fund) in Index Code 443028 entitled "Fees to Professional Contractors" for \$99,000.00.

SECTION 5. Funds will be encumbered in Fund No. 29-023001 (Miscellaneous Special Revenue Fund - Stormwater Regional Facilities Fund) in Index Code 443028 entitled "Fees to Professional Contractors" and made payable to **De Zavala Capital Associates 1992-1 Ltd.**

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocation to specific Index Codes and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 7. This Ordinance shall take effect on the 20th day of October, 2002.

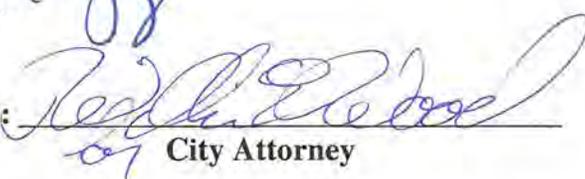
PASSED AND APPROVED this 10th day of October, 2002.



M A Y O R

EDWARD D. GARZA

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
City Attorney

02-38

MEETING OF THE CITY COUNCIL

ALAMODOME
ASSET MANAGEMENT
AVIATION
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
RISK MANAGEMENT
CITY MANAGER
SPECIAL PROJECTS
CITY PUBLIC SERVICE - GENERAL MANAGER
CITY PUBLIC SERVICE - MAPS AND RECORDS
CODE COMPLIANCE
COMMERCIAL RECORDER
COMMUNITY INITIATIVES
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
COUNCIL OFFICES
CULTURAL AFFAIRS
CUSTOMER SERVICE/311 SYSTEM
DEVELOPMENT SERVICES
HOUSE NUMBERING
LAND DEVELOPMENT SERVICES
TRAFFIC & DRAINAGE PLAN REVIEW
ECONOMIC DEVELOPMENT
ENVIRONMENTAL SERVICES
SOLID WASTE
EXTERNAL RELATIONS
PUBLIC INFORMATION OFFICE
FINANCE - DIRECTOR
FINANCE - ASSESSOR
FINANCE - CONTROLLER
FINANCE - GRANTS
FINANCE - PUBLIC UTILITIES SUPERVISOR
FINANCE- TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
MANAGEMENT & BUDGET (OFFICE OF) OMB
MAYOR'S OFFICE
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
NEIGHBORHOOD ACTION
PARKS AND RECREATION
MARKET SQUARE
YOUTH INITIATIVES
PLANNING DEPARTMENT -NEIGHBORHOOD PLNG; URBAN DESIGN/HISTORIC PRESERVATION
DISABILITY ACCESS OFFICE
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
PARKING DIVISION
REAL ESTATE DIVISION
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)
VIA

AGENDA ITEM NUMBER: 9

DATE: OCT 10 2002

MOTION: _____

ORDINANCE NUMBER: 96517

RESOLUTION NUMBER: _____

ZONING CASE NUMBER: _____

TRAVEL AUTHORIZATION: _____

NAME	ROLL	AYE	NAY
BOBBY PEREZ District 1			
JOHN H. SANDERS District 2			
ANTONIETTE "TONI" MOORHOUSE District 3			
ENRIQUE "KIKE" MARTIN District 4			
DAVID A. GARCIA District 5			
ENRIQUE M. BARRERA District 6		-	
JULIAN CASTRO District 7			
BONNIE CONNER District 8		ABSENT	
CARROLL W. SCHUBERT District 9			
DAVID CARPENTER District 10			
EDWARD D. GARZA Mayor			

02-38
88-20

CONSENT AGENDA

DEVELOPMENT AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This AGREEMENT is made and entered into by and between the City of San Antonio, Texas (hereinafter referred to as "CITY"), a Texas municipal corporation, acting by and through its Director of Public Works, DeZavala Capital Associates 1992-1, Ltd., having its principal place of business at 12332 IH 10 West (San Antonio, Texas 78230) (hereinafter referred to as "DEVELOPER"), acting by and through Melbourne O'Banion, General Partner, and Civil Engineering Consultants, having its principal place of business at 11550 IH 10 West, Suite 395, San Antonio, Texas 78230-1037 (hereinafter referred to as "CEC"), acting by and through Joe Nix, its Senior Engineer.

I. DEFINITIONS

DEVELOPMENT means the replat establishing Lot 5,6,7 & 8 in the DeZavala Business Park Subdivision (approximately 8.731 acres) and previously known as Lots 1,2,3,4 and the Lots shown in Exhibit "C". A copy of the proposed replat is attached hereto as Exhibit "A," and incorporated herein for all purposes.

STUDY means the engineering and surveying services associated with the preparation of the design and construction drawing for replacing the low water crossing on Prue Road at Huebner Creek with an all weather crossing and for providing a detention facility for Huebner Creek upstream up Prue Road. A description of the services that the DEVELOPER shall fund and provide to City is set out in Exhibit "B", which is the proposal by CEC dated October 1, 2002. Exhibit "C" is a map of all the properties that are immediately exempt from the City's stormwater detention requirements. In the event DEVELOPER does not perform as required in this Agreement DEVELOPER'S rights hereunder shall be automatically terminated. This means that the Lot's (defined below) development is not subject to the application of City of San Antonio Unified Development Code Sec. 35-504 requirement (hereinafter Requirement) of either on-site stormwater detention, or the payment of a fee in lieu of on-site stormwater detention. With regard to the aforementioned Lots the exemption from the Requirement shall extend to the issuance of building permits. These Lots are known as NCB 17451, BLK 2, LOT 5,6,7,8; NCB 16820, BLK 1, LOT 5,6,7,9,10,11,12,13,14; NCB 17455, BLK 6, LOT 1; NCB 17454, BLK 5, LOT 9,10; NCB 17453, BLK 4, LOT 14,15,16,17,18,19; NCB 17452, BLK 3, LOT 1; NCB 17199, BLK 1, LOT 20. Exhibits A, B and C are attached hereto and incorporated by reference for all purposes.

Attachment I
To Ordinance No. _____
Passed and Approved on
October 10, 2002

II. PURPOSE

In consideration for funding and providing the STUDY within one (1) year of execution of this Agreement, the CITY hereby acknowledges that the DEVELOPER has met every and all obligations relating to stormwater drainage for the DEVELOPMENT, described in Section I immediately above. Specifically, the CITY acknowledges that fulfillment of the terms of this Agreement by the DEVELOPER shall satisfy the requirements for onsite detention or payment of fees in lieu of onsite detention, as required by Ordinance No. 86711 passed and approved September 25, 1997, (the "Ordinance"), for the Development described in Section I and any other ordinances past or future amending the Ordinance. It is understood by the parties that the Developer may replat or amend existing plats within the DEVELOPMENT without any further obligation to meet the requirements for onsite detention or payment of fees in lieu of onsite detention.

III. RECOGNITION OF VALUE

CITY shall issue to DEVELOPER certificates ("Certificates"), which may be used by the bearer for payment of the fee in lieu of onsite detention required by the Ordinance. Specifically, CITY shall issue to DEVELOPER one hundred thirty two (132) Certificates in one-quarter (1/4) acre units that may be used for the payment of fees in lieu of onsite detention for 33 acres of commercial property. The Certificates shall be assignable and transferable for only a single transfer and shall be accepted by the CITY, instead of payment of fee in lieu of or requiring onsite detention, for any property within the Upper Huebner Creek watershed. The CITY shall issue the Certificates within ten (10) business days from the passage of an ordinance authorizing the execution of this Agreement. DEVELOPER shall, simultaneously upon receipt of the Certificates, execute an agreement authorizing CEC to commence and diligently pursue the work set forth in Exhibit "B" which agreement shall bind DEVELOPER to fully fund the STUDY. In the event DEVELOPER is unable to sell the Certificates for \$99,000.00 or more within one year after the date of receipt by DEVELOPER of the Certificates, CITY agrees to repurchase from DEVELOPER, at a cost of \$750.00 per Certificate, the remaining Certificates, up to a total repurchase price of \$99,000.00, less any consideration received by DEVELOPER from the sale of said Certificates. DEVELOPER shall provide to CITY evidence of all consideration received during the aforesaid one (1) year for the sale of the Certificates prior to any repurchase of Certificates by CITY. CITY shall have the right to audit DEVELOPER'S books and records in this regard only. Regardless of the number of Certificates actually repurchased by CITY, DEVELOPER shall provide CITY all unsold Certificates at the time of repurchase.

It is understood between the parties that it is the CITY's current policy not to accept fee in lieu of onsite detention within the Upper Huebner Creek watershed. Moreover, it is further understood between the parties that, save and except the above referenced certificates, it shall continue to be the CITY's policy not to accept fee in lieu of onsite detention in the Huebner Creek watershed until such time as a regional detention facility is constructed for the watershed. The terms of this DEVELOPMENT AGREEMENT notwithstanding, the CITY shall not be prohibited from entering into development contracts or agreements, similar in economic consideration to this DEVELOPMENT AGREEMENT, with other owners of property within the

Upper Huebner Creek watershed provided any such future development contract or agreement shall not be executed until after eight (8) months from the date of execution of this Agreement.

IV. ENGINEERING AGREEMENT

By its signature below, CEC acknowledges that a part of the consideration for this Agreement is the performance of the STUDY set out in the proposal attached in Exhibit "B". Further CEC acknowledges that (a) CEC will commence work on the project described in Exhibit "B" immediately upon execution of their agreement with DEVELOPER, and (b) the work set out therein will take no more than a twelve (12) month period to complete.

V. CITY APPROVALS

City staff shall proceed to have approval of this Agreement placed on the earliest available City Council agenda. City staff shall recommend to City Council that this Agreement should be approved. Approval of this Agreement by City Council shall be memorialized by the passage of an ordinance.

Parties agree that the final STUDY shall be subject to approval by the CITY's Director of Public Works and that such approval and acceptance shall not be unreasonably withheld.

VI. NOTICE

Any Notice required or permitted to be given under this Agreement shall be sufficient if given in writing by registered or certified mail to CITY or to DEVELOPER at the addresses first set forth below or to any other address of which written notice of change is given.

**CITY OF SAN ANTONIO
ANDREW MARTIN, CITY ATTORNEY
PO BOX 8399666
SAN ANTONIO, TEXAS 78283-3966**

**DE ZAVALA CAPITAL ASSOCIATES, 1992-1, LTD.
MELBOURNE O'BANION, GENERAL PARTNER
12332 IH 10 WEST
SAN ANTONIO, TEXAS 78230**

**CIVIL ENGINEERING CONSULTANTS
JOE NIX, SENIOR ENGINEER
11550 IH 10 WEST SUITE 395
SAN ANTONIO, TEXAS 78230-1037**

VII. SEVERABILITY

Should any section, sentence or word of this Agreement be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder shall, nevertheless, stand effective and valid as if it had been written without the portion held to be invalid or unenforceable.

EXECUTED this ____ day of _____, 2002.

CITY OF SAN ANTONIO

By: _____
Printed Name: _____
Its: _____

DE ZAVALA CAPITAL ASSOCIATES, 1992-1, LTD.

By: 
Printed Name: MELODINE Q. BANO
Its: General Partner

CIVIL ENGINEERING CONSULTANTS

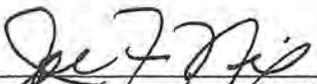
By: 
Printed Name: Joe F. Nix
Its: Principal, Senior Project Engineer

Exhibit A

Copy of Plat No. 010455 is attached to original Development Agreement filed in City Attorney's Office.

EXHIBIT "B"



CIVIL ENGINEERING CONSULTANTS
DON DURDEN, INC.
MUNICIPAL • DEVELOPMENT
SURVEYING • TRANSPORTATION

October 1, 2002

Mr. George Gaiser
De Zavala Capital Associates 1992-1, Ltd.
12332 IH 10, West
San Antonio, Texas 78230

Fax: 699-3700 (Original to be delivered)

RE: Prue Road at Huebner Creek
SUBJECT: Proposal for Engineering and Surveying Services

Dear Mr. Gaiser:

Civil Engineering Consultants (CEC) is pleased to present this proposal to provide engineering and surveying services associated with the preparation of the design and construction drawings for replacing the low water crossing on Prue Road at Huebner Creek and for providing a detention facility for Huebner Creek upstream of Prue Road.

CEC will provide the following Scope of Services:

- CEC will prepare a topographic survey of Huebner Creek by means of conducting at least nine cross-sectional surveys of Huebner Creek from Lockhill Road upstream to the existing small dam structure, upstream of Prue Road, including the drainage structure at Woodwaters, immediately east of Huebner Creek and any buildings located within the reach of the study (the reach of the study being the cross section of the creek up to five feet in elevation above the FEMA 100-year flood plain). The topographic survey would also include detailed survey information for the existing drainage structures along Prue Road and along Woodwaters. The profile of Prue Road would be determined within the limits of the study reach. The topographic survey will be based on a FEMA datum, referencing a FEMA benchmark identified on the FIRM Panel.
- CEC will utilize hydrology data for Huebner Creek, as provided by the City of San Antonio for the 25-year, and 100-year design storms based on existing conditions and

P01-0053B.wpd

1.1550 I.H. 10 WEST SUITE 395 SAN ANTONIO, TEXAS 78230-1037
TEL: 210.641.9999 FAX: 210.641.6440 EMAIL: CEC@CECTEXAS.COM
WWW.CECTEXAS.COM



the 25-year, and 100-year design storms based on ultimate development of the Huebner Creek water shed upstream of Prue Road. CEC will develop a 5-year design storm for existing and ultimate conditions using the hydrologic model provided by the City of San Antonio. The hydrology data will be used to prepare a design storm model of Huebner Creek between Lockhill Road and the dam.

- ☛ CEC will prepare alternatives for the design of the Prue Road improvements and for creating a detention facility within Huebner Creek, between Prue Road and the dam, for detaining, to the maximum extent possible, the difference between the runoff from a 100-year design storm based on existing conditions and a 100-year design storm based on ultimate development of the upstream watershed. The crossing under Prue Road would be designed to meter the discharge of Huebner Creek to not exceed the 100-year design storm based on existing conditions. Huebner Creek would be designed to be improved downstream of Prue Road sufficient distance to allow the culvert to operate without raising upstream water surface elevations, and permit a grade to outfall. CEC will coordinate the selection of the most appropriate alternative for the final design with the Storm Water Engineering Section of the Department of Public Works.
- ☛ CEC will evaluate the design alternatives and will prepare a set of plans to implement the alternative deemed most appropriate by the City for the construction of the roadway and creek improvements. CEC will submit the set of plans to the City for review and comment. CEC will make appropriate revisions to the final drawings, based on the anticipated mark-ups from the City's final review of the plans. CEC will identify the need for additional drainage easement acquisitions by the City to accommodate the drainage improvements. CEC will provide survey plats and field notes of the properties that the City will need to acquire to construct the project.
- ☛ CEC will prepare utility relocation plans for those utilities identified as requiring to be relocated for the construction of the project.
- ☛ CEC would prepare the submittal documentation for a Conditional Letter of Map Revision (CLOMR) for the affected portion of Huebner Creek to be submitted to FEMA, as required by and to FEMA standards for roadway and culvert improvements within a designated 100-year flood plain. The CLOMR will require that the hydrologic and hydraulic model for the project be inserted in the overall watershed model for Huebner Creek. The City will supply the existing hydraulic model to CEC for this purpose.

The Scope of Services is based on the following assumptions:

- ☞ The hydrology information used to prepare the alternatives and final design for the roadway and drainage improvements will be based on the 25-year and 100-year storm hydrology information to be provided by the City of San Antonio for both the existing upstream conditions and the ultimate development conditions.
- ☞ The design of the detention facility would be limited to a high water elevation as to prevent the flooding of the homes within the Woodridge Village development along the east side of Huebner Creek and within the Jade Oaks development along the west side of Huebner Creek. 100-year flood elevations for the homes along the east side of the creek will be provided by the City of San Antonio. CEC will verify the elevations in the design process.
- ☞ The preservation of the existing trees on the downstream side of the Prue Road, within the main channel of Huebner Creek will not be a restriction on the design of the drainage channel improvements.
- ☞ The Scope of Services will include the roadway and drainage improvement study of alternatives and design for construction only. The Scope of Services does not include construction management services, such as construction staking. CEC will prepare the bid document package, as per the current criteria of the City. The City of San Antonio will take possession of the construction drawings and the bid document package and will be responsible for the obtaining the services of construction management at a time determined by the City of San Antonio.
- ☞ The time line for the completion of the survey and engineering services is not critical. The final submittal of the construction drawings to the City would be within one year of the approval of this proposal (subject to timely reviews of the referenced submittals).
- ☞ A geotechnical consultant will be required for this work, primarily to ascertain the subsurface conditions for excavation of the detention facility and the roadway improvements (e.g., rock, clay, etc.). The geotechnical consultant will also provide CEC with pavement design criteria. CEC has solicited the services of a geotechnical consultant.
- ☞ Based on discussion with the City of San Antonio and on information provided by the City, a set of box culverts has been determined to be the most practical means of metering the flow under Prue Road.

Any utility modifications that may be required for construction of this project would be provided by the respective utilities. The construction plans would identify the utility locations and the need for modifications, as can be determined from visual evidence on the ground and from utility maps provided by the respective utilities.

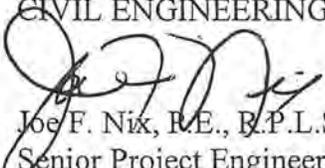
The fees for these services will be based on the number of man-hours required to complete the defined Scope of Services. A budget total will be determined, subject to the acceptance by the City of San Antonio of the defined Scope of Services.

TERMS: You will be invoiced on a monthly basis for work performed. Payment is due upon receipt. If any balances remain unpaid for more than 30 days, we reserve the right to charge interest at the rate of 1% per month and/or suspend work until the account is brought current. Other terms and conditions are included in the Standard Terms and Conditions, attached.

ACCEPTANCE: To accept this proposal and authorize us to proceed, please sign in the space indicated below and return to our office. We appreciate the opportunity to serve you on this matter. If you have any questions, please do not hesitate to contact me.

Very Truly Yours,

CIVIL ENGINEERING CONSULTANTS



Joe F. Nix, R.E., R.P.L.S.

Senior Project Engineer

Development Services Division

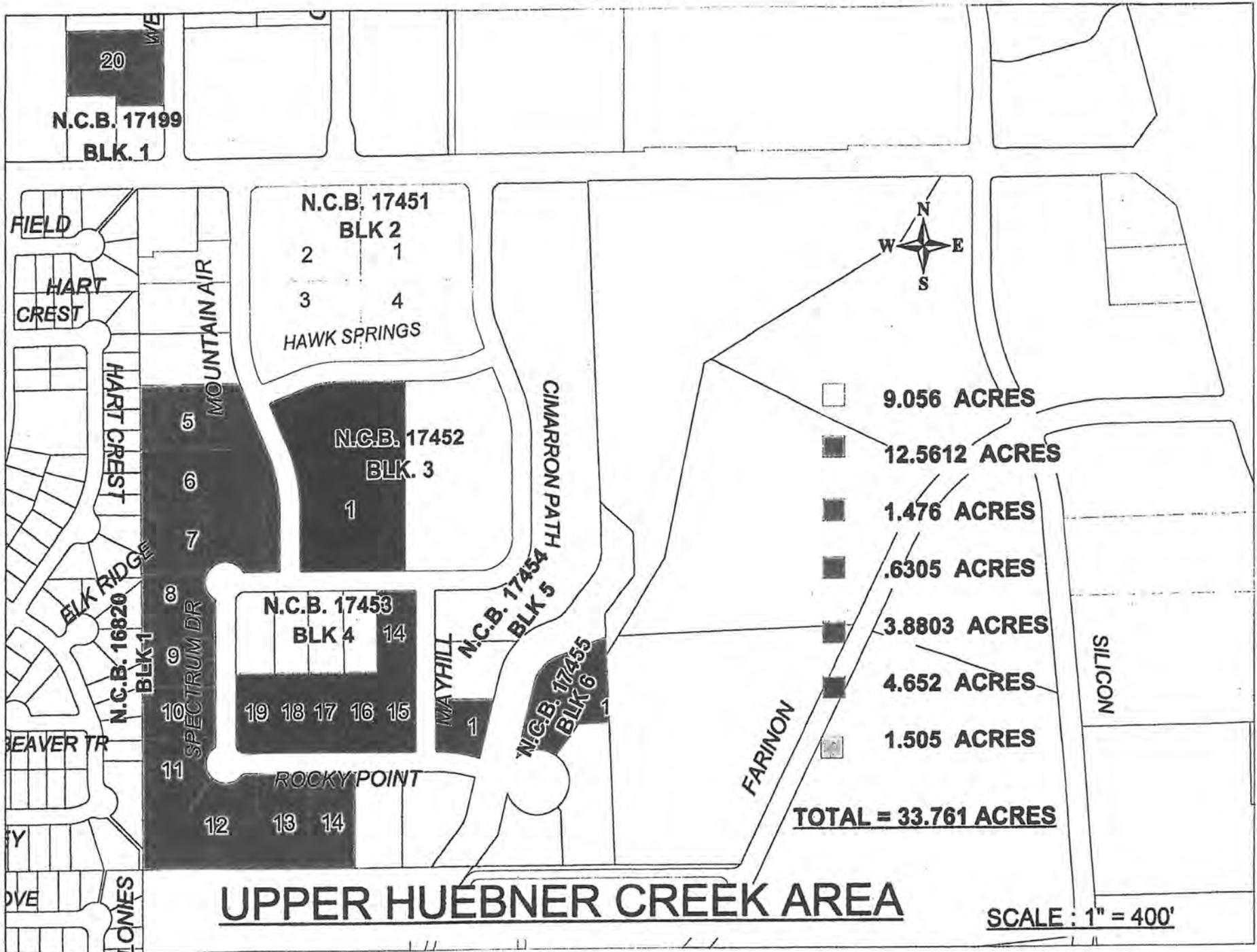
ACCEPTED:

Signature

Printed Name

DATE:

EXHIBIT "C"



UPPER HUEBNER CREEK AREA

SCALE : 1" = 400'

NCB 17451, BLK 2, LOT 5,6,7,8 (formerly LOT 1,2,3,4); NCB 16820, BLK 1, LOT 5,6,7,9,10,11,12,13,14; NCB 17455, BLK 6, LOT 1; NCB 17454, BLK 5, LOT 9,10; NCB 17453, BLK 4, LOT 14,15,16,17,18,19; NCB 17452, BLK 3, LOT 1; NCB 17199, BLK 1, LOT 20