AZJ
03/06/2014
Item No. 7

AN ORDINANCE 2014-03-06-0133

DECLARING A CHANGE IN USE OF AN APPROXIMATELY 0.95 ACRE PARCEL OF PARKLAND LOCATED AT 600 EAST CESAR CHAVEZ AND AUTHORIZING AN AGREEMENT AND REAL PROPERTY EXCHANGE WHEREBY THE CITY TRANSFERS TO SAN ANTONIO HOUSING AUTHORITY THE 0.95 ACRE PARCEL IN EXCHANGE FOR AN APPROXIMATELY 1.95 ACRE PARCEL LOCATED AT 440 LABOR STREET TO BE USED AS PARKLAND.

* * * * *

WHEREAS, Victoria Park's location on a busy thoroughfare, Cesar Chavez, limits its utility as a neighborhood park; and

WHEREAS, San Antonio Housing Authority has proposed deeding to the City a 1.95 acre tract on Labor Street in exchange for Victoria Park property; and

WHEREAS, the alternative location on Labor street would provide a much improved delivery of park uses and opportunities for recreation for the neighborhood including improved accessibility and neighborhood walkability; and

WHEREAS, the exchange of these properties would result in an increase of the city's parkland in the neighborhood and place the park into a more interior neighborhood centric location; and

WHEREAS, San Antonio Housing Authority, pursuant to Texas Local Government Code section 392.061, has the power of eminent domain which allows it to acquire real property for purposes of the authority, including acquiring property already devoted to a public use belonging to a municipality with the consent of the municipality; and

WHEREAS, the Texas Supreme Court has consistently held that the sale of park land to a governmental entity with the power of eminent domain does not require the approval of the voters through the holding of a referendum election;

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

SECTION 1. In accordance with Chapter 26, Texas Parks & Wildlife Code, the City Council of the City of San Antonio hereby finds that there is no feasible and prudent alternative to the change in use of the 0.95 acres of parkland known as Victoria Park located at 600 east Cesar Chavez. The City Council hereby further finds and determines that the proposed change in use includes all reasonable planning to minimize harm to the land, as a park, resulting from the change in use, specifically by the acquisition of the approximately 1.95 acre parcel located at 440 Labor street to be used as park land.

SECTION 2. The two properties subject to the Ordinance are depicted on **Attachment I**. The parcel presently owned by the City is labeled as "Victoria Park." The parcel currently owned by the San Antonio Housing Authority is labeled "Victoria Commons."

SECTION 3. The San Antonio Housing Authority property is more particularly described on **Attachment II**. The City of San Antonio property is more particularly described on **Attachment III**.

SECTION 4. The City Manager or her designee is authorized and directed to execute and deliver on behalf of the City an instrument in substantially the form attached as **Attachment IV**, which is incorporated for all purposes as if fully set forth. The City Manager and her designee, severally, are also authorized and directed to take all actions necessary or convenient to effectuate the exchange of the San Antonio Housing Authority property for the City of San Antonio property and otherwise to execute and deliver all necessary or convenient ancillary instruments and agreements.

SECTION 5. All attachments to this Ordinance are incorporated into it for all purposes as if fully set forth.

SECTION 6. The sale of property owned by the City of San Antonio must be coordinated through the city's Finance Department to assure the removal of these assets from the City's financial records and to record the proper accounting transactions.

SECTION 7. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 8. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this **6th** day of **March, 2014**.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

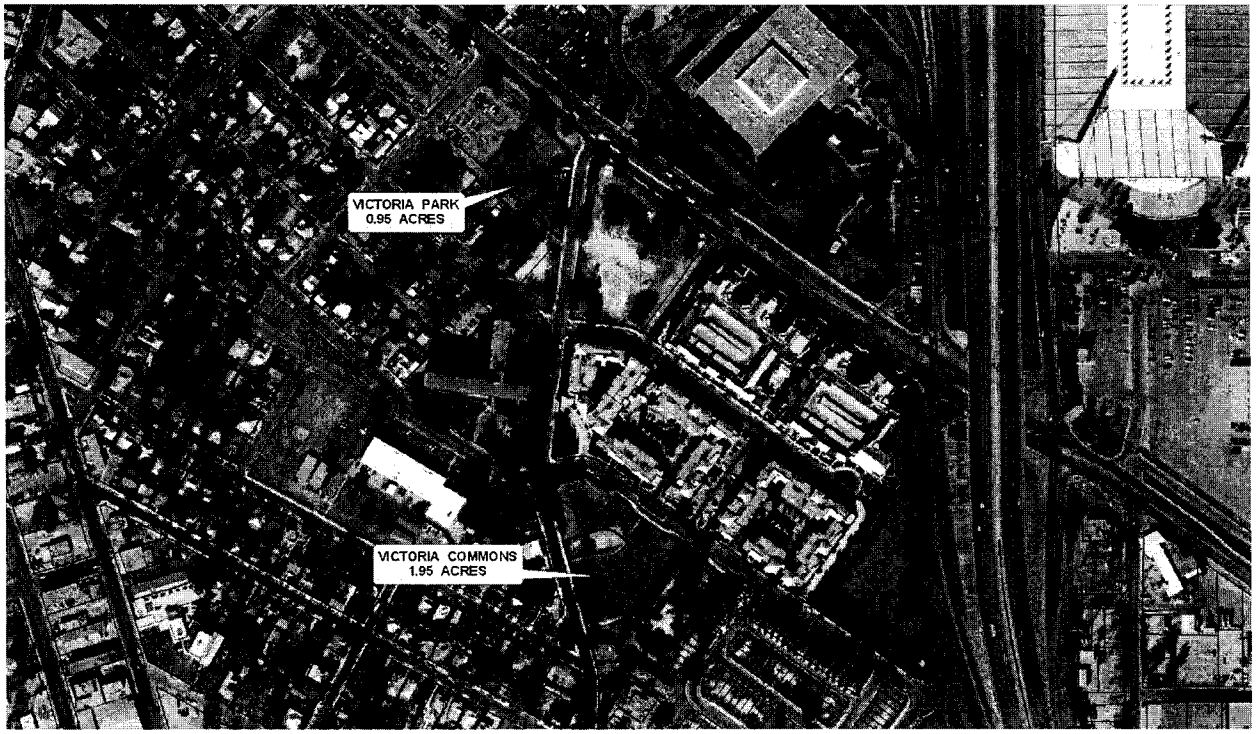
APPROVED AS TO FORM:

for Robert F. Greenblum, City Attorney

Agenda Item:	**7 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18, 18A, 18B, 19)**
Date:	03/06/2014
Time:	10:01:17 AM
Vote Type:	Motion to Approve
Description:	An Ordinance declaring a change in use of 0.95 acre parcel of parkland located at 600 East Cesar Chavez and authorizing a real property exchange and agreement whereby the City transfers to the San Antonio Housing Authority the 0.95 acre parcel in exchange for an approximately 1.95 acre parcel located at 440 Labor Street to be used as parkland. [Carlos Contreras, Assistant City Manager; Lori Houston, Director, Center City Development Office]
Result:	Passed

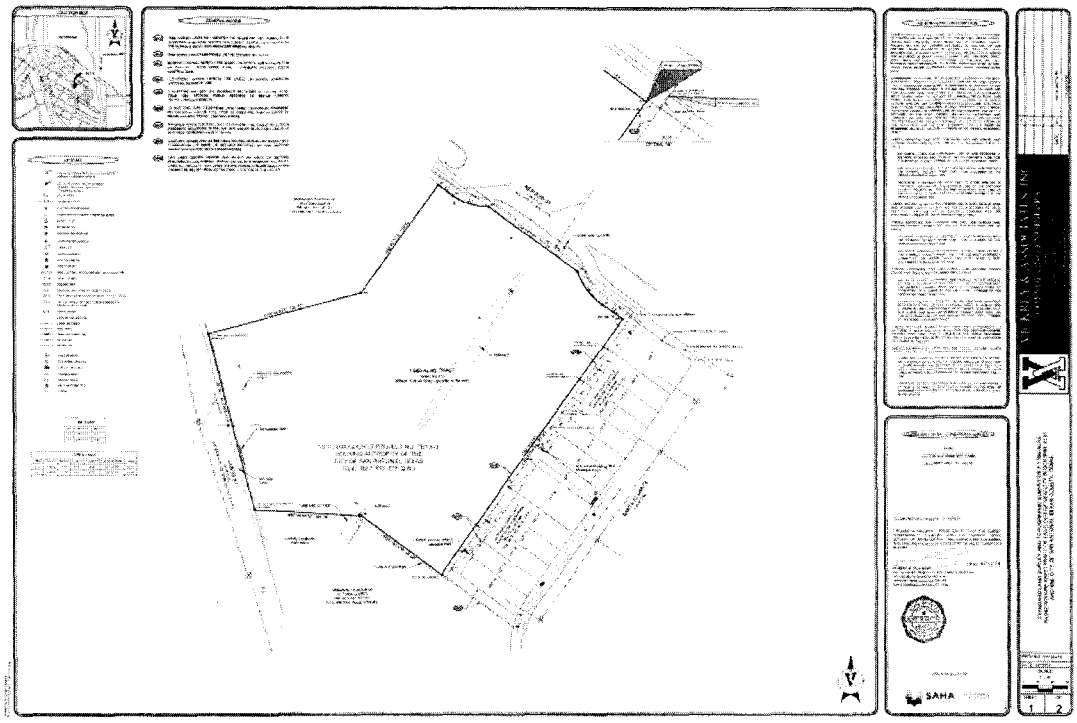
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x			x	
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Attachment I



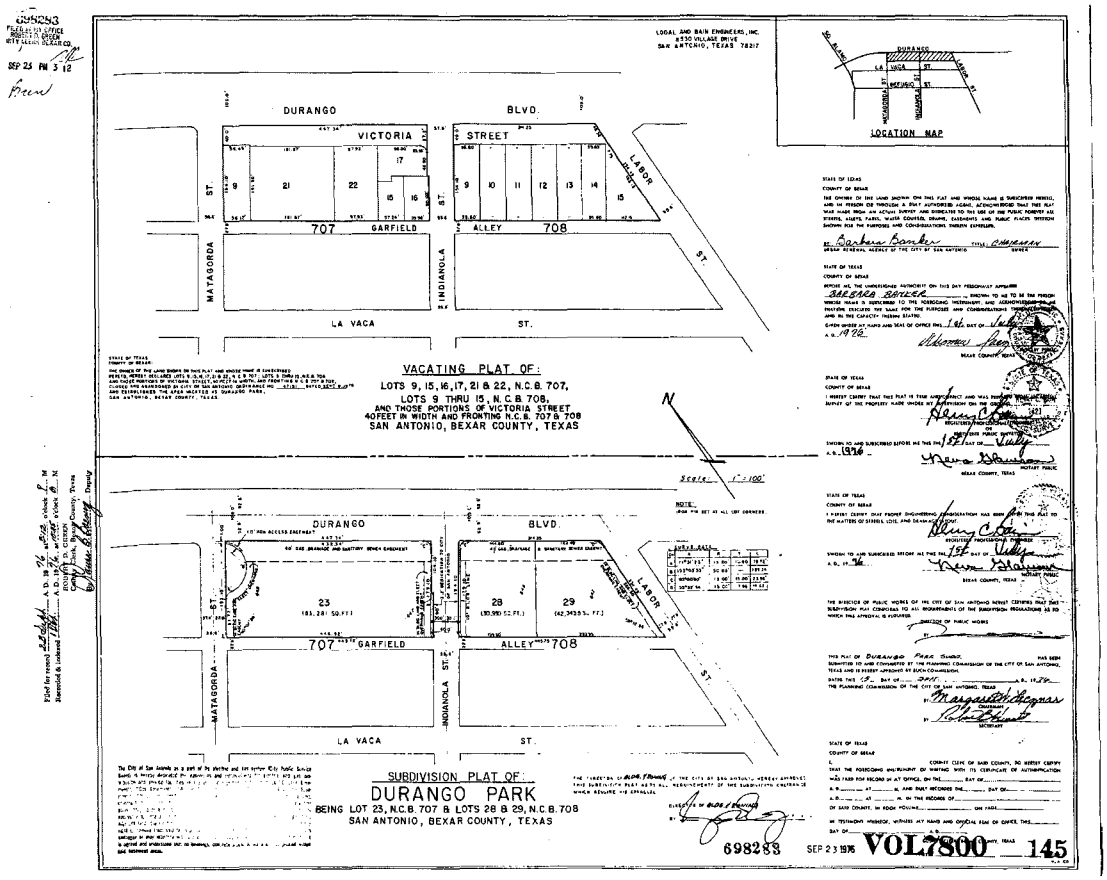
Attachment II

A 1.95 acre portion of the land commonly known as 440 Labor Street



Attachment III

NCB 708, Lot 29



Attachment IV

Real Estate Exchange Contract

(East Cesar Chavez /Labor Street)

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Authorizing Ordinance:

Authority for Negotiated Disposition: Local Government Code § 272.001 (b)(3), (6); § 272.001 (g)

City: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: David McGowen, CCDO)

Phone: 207-4081

Email: david.mcgowen@sanantonio,gov

Type of Entity: Texas municipal corporation

City's Counsel:	Audrey Zamora
Address:	City Attorney's Office, P.O. Box 839966, San Antonio, Texas 78283-3966
Phone:	207-2094
Email:	audrey.zamora@sanantonio.gov
San Antonio Housing Authority:	Ramiro Maldonado
Address:	818 S. Flores, San Antonio, TX 78204
Phone:	(210) 477-6017
Email:	Ramiro_maldonado@saha.org
Type of Entity:	A Municipal Housing Authority
Property A:	NCB 708, Lot 29 as indicated in the Durango Park Plat, recorded at Volume 7800, Page 145 of the Bexar County records, commonly known as 600 East Cesar Chavez and more fully described in **Exhibit A**, together with improvements to the Land ("Improvements").
Property B:	A 1.95 acre portion of the land commonly known as 440 Labor Street and more fully described in **Exhibit B**, together with improvements to the Land ("Improvements").
Title Company:	Texas Title Assurance (attn: Theresa Wernette)
Address:	400 North Loop 1604 East, Suite 105 San Antonio, TX 78232
Phone:	(210) 798-5555
Email:	twernette@texastitleassurance.com
Survey Category:	Category 1A Land Title Survey, Condition I
Independent Consideration:	The reciprocal options City and San Antonio Housing Authority grant each other under this agreement
Effective Date:	The date the Title Company acknowledges receipt of a fully executed copy of this agreement
County for Performance	Bexar County, Texas

1. Exchange.

1.01. City and San Antonio Housing Authority will exchange Property A for Property B.

1.02. As to Property A, the Cesar Chavez site:

a. San Antonio Housing Authority is the Transferee and City is the Transferor.

b. The agreed value of Property A for the purpose of this exchange is $1,365,000.

1.03. As to Property B, the Labor Street site:

a. City is the Transferee and San Antonio Housing Authority is the Transferor.

b. The agreed value of Property B for the purpose of this exchange is $1,360,000.

1.04. Because the agreed value of Property A exceeds the agreed value of Property B, in addition to title to Property B, San Antonio Housing Authority must procure and deliver surveys of both properties to the City at or prior to closing.

1.05. Wherever this agreement speaks of the rights and obligations of Transferor and Transferee, those rights and obligations apply to both City and San Antonio Housing Authority in their roles as Transferor and Transferee of the tracts they are transferring and accepting, respectively, except as otherwise specifically provided. Wherever this agreement refers to the "Property," in determining the rights and obligations of the parties that are Transferee and Transferor of a particular tract, the reference is to either Property A or Property B as the context may require.

2. Deadlines and Other Dates.

All deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or federal or local holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or holiday. Time is of the essence.

2.01.	Delivery of Title Commitment	20	Days after the Effective Date
2.02.	Delivery of Survey	30	Days after the Effective Date
2.03.	Delivery of Asbestos Survey	20	Days after the Effective Date
2.04.	Delivery of Title and Survey Objections	15	Days after Delivery of both Survey and Title Commitment
2.05.	End of Inspection Period	60	Days after the Effective Date
2.06.	Closing Date	30 days after end of Inspection Period	
2.07.	Closing Time	10:00 A.M.	

The deadlines may be altered by the mutual agreement of the parties. City's consent may be made by the Director of Center City Development Office (CCDO) without further authorization of City Council.

3. Closing Documents.

3.01. At closing, the Transferor of each Property will deliver the following items:

Deed without Warranty to the Property owned by Transferor

IRS Nonforeign Person Affidavit

Evidence of Transferor's authority to close this transaction

Notices, statements, and certificates as specified in **Exhibit D**

A down-dated Title Policy Commitment, subject only to Transferee's Permitted Exceptions, issued by or through the Title Company for the Property, and showing Transferee as the insured, in the amount of the Total Consideration.

Such other instruments or documents reasonably required by Title Company to close the transaction.

3.02. At closing, the Transferee of each Property will deliver the following items:

Evidence of Transferee's authority to consummate this transaction

Such other instruments or documents reasonably required by Title Company to close the transaction.

3.03. The documents listed above are collectively known as the "Closing Documents." Unless otherwise agreed by the parties before closing, the deed will be substantially in the form attached as **Exhibit E**.

4. Exhibits.

The following exhibits are incorporated into this contract for all purposes as if fully set forth:

Exhibit A—Description of Property A

Exhibit B—Description of Property B

Exhibit C—Representations

Exhibit D—Notices, Statements, and Certificates

Exhibit E—Form of Deed

5. Transfer and Acceptance of Property.
Transferor will transfer and convey the Property to Transferee, and Transferee will accept transfer of the Property. The promises by Transferor and Transferee stated in this contract are the consideration for the formation of this contract.

6. Title and Survey.

6.01. *Review of Title.* The following statutory notice is provided to Transferee on behalf of the real estate licensees, if any, involved in this transaction: **Transferee is advised that it should either have the abstract covering the Property examined by an attorney of Transferee's own selection or be furnished with or obtain a policy of title insurance.**

6.02. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract. "Title Policy" means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Transferee.

6.03. *Survey.*

6.03.01. "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Title Company, dated after the Effective Date, and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

6.03.02. If Transferee does not object to the survey within the time allowed in article 2, the land subject to the survey automatically becomes the Land subject to this contract, and the field notes and plat of the survey automatically become Exhibit A to this agreement, whether or not physically attached.

6.04. *Delivery of Title Commitment, Survey.* San Antonio Housing Authority must deliver the Title Commitment and Surveys to City by the deadlines stated in article 2.

6.05. *Title Objections.* Transferee has until the deadline stated in article 2. ("Title Objection Deadline") to review the Survey, Title Commitment, and notify Transferor of Transferee's objections to any of them ("Title Objections"). Transferee will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Transferee has made no Title Objection by the Title Objection Deadline. The matters that Transferee either approves or is deemed to have approved are "Permitted Exceptions." If Transferee notifies Transferor of any Title Objections, Transferor has five days from receipt of Transferee's notice to notify Transferee whether Transferor agrees to cure the Title Objections before closing ("Cure Notice"). If Transferor does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Transferee may, within five days after the deadline for the giving of Transferor's Cure Notice, notify Transferor that this contract

is terminated. If termination notice is given, this contract is terminated, and both parties receive a refund of their Earnest Money, in which event neither party shall have any further rights or obligations under this Agreement. Without timely notice, Transferee must proceed to close, waiving its objections. At or before closing, Transferor must at its own expense cure Title Objections that Transferor has agreed to cure. Transferor may use Transferor's proceeds from this sale, or other funds, at its discretion, to obtain releases of any liquidated liens, land contracts, or mortgages that encumber title to the Property on the Closing Date.

6.06. Both Properties must be free of leases at closing.

7. Inspection Period.

7.01. *Entry onto the Property.* Transferee may enter the Property before closing to inspect it, subject to the following:

b. Transferee may not unreasonably interfere with existing operations or occupants of the Property;

c. Transferee must notify Transferor in advance of Transferee's plans to conduct tests so that Transferor may be present during the tests;

d. If the Property is altered because of Transferee's inspections, Transferee must return the Property to its preinspection condition promptly after the alteration occurs;

e. Transferee must deliver to Transferor copies of all inspection reports that Transferee prepares or receives from third-party consultants or contractors within three days of their preparation or receipt; and

f. Transferee must abide by any other reasonable entry rules imposed by Transferor.

7.02. Transferee may extend the Inspection Period by an additional 60 days on prior written notice to Transferor that Transferee finds it prudent to conduct a Phase II environmental site assessment on the Property. If the Inspection Period is entended for one tract, it is extended for both tracts, whether or not both need Phase II environmental site assessments.

7.03. *Transferee's Right to Terminate.* Transferee may terminate this contract for any reason by notifying Transferor before the end of the Inspection Period. The Independent Consideration is compensation to Transferor for Transferee's right of cancellation. If either party terminates one end of the exchange, the entire exchange is terminated.

8. Representations.

The parties' representations stated in **Exhibit C** are true and correct as of the Effective Date and must be true and correct on the Closing Date.

9. Condition until Closing; No Recording of Contract.

9.01. *Maintenance and Operation.* Until closing, Transferor will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty

damage; (b) operate the Property in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting the Property.

9.02. *Casualty Damage.* Transferor will notify Transferee promptly after discovery of any casualty damage to the Property. Transferor need not repair or replace the Property if it is damaged by casualty before closing. Transferee may terminate this contract if the casualty damage that occurs before closing would materially affect Transferee's intended use of the Property, by giving notice to Transferor within 15 days after receipt of Transferor's notice of the casualty (or before closing if Transferor's notice of the casualty is received less than fifteen days before closing). If Transferee does not terminate this contract, Transferor will convey the Property to Transferee in its damaged condition.

9.03. *Condemnation other than by City.* Transferor will notify Transferee promptly after Transferor receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority other than City. Transferee may terminate this contract if the condemnation would materially affect Transferee's intended use of the Property by giving notice to Transferor within 15 days after receipt of Transferor's notice to Transferee (or before closing if Transferor's notice is received less than fifteen days before closing). If Transferee does not terminate this contract, (a) Transferor and Transferee will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Transferee, and (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

9.04. *No Recording.* Transferee may not file this contract or any memorandum or notice of this contract in the real property records of any county. If, however, Transferee records this contract or a memorandum or notice, Transferor may terminate this contract and record a notice of termination. Any such termination terminates both ends of the exchange.

10. Termination.

10.01. *Duties after Termination.* If this contract is terminated, Transferee will promptly return to Transferor all documents relating to the Property that Transferor has delivered to Transferee and all copies that Transferor has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract.

11. Closing.

11.01. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

a. *Closing Documents.* The parties will execute and deliver the Closing Documents.

b. *Payment of Purchase Price.* Transferee will deliver the Purchase Price and other amounts that Transferee is obligated to pay under this contract to Title Company in funds acceptable to Title Company.

c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.

d. *Possession.* Transferor will deliver possession of the Property to Transferee, subject to the Permitted Exceptions existing at closing.

11.02. *Transaction Costs*

a. *Tranferor's Costs.* Transferor will pay:

(i) the basic charge for the Title Policy;

(ii) one-half of the escrow fee charged by Title Company;

(iii) the costs to prepare the deed;

(iv) the costs to obtain, deliver, and record releases of all liens to be released at closing;

(v) the costs to record all documents to cure Title Objections agreed to be cured by Transferor;

(vi) Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession;

(vii) the additional premium for removing the survey and encroachment exception;

(viii) the cost to obtain certificates or reports of ad valorem taxes;

(ix) the costs to obtain the Survey; and

(x) Transferor's expenses and attorney's fees.

b. *Transferee's Costs.* Transferee will pay:

(i) one-half of the escrow fee;

(ii) the costs to obtain, deliver, and record all documents other than those to be recorded at Transferor's expense;

(iii) the cost to obtain the Survey

(iv) the costs of work required by Transferee to have the survey reflect matters other than those required under this contract; and

(v) Transferee's expenses and attorney's fees.

c. *Ad Valorem Taxes.* For tracts as to which the City is the Transferor, property taxes will be prorated as of the Closing Date according to Texas Tax Code § 26.10. For tracts as to which the City is the Transferee, property taxes will be prorated as of the Closing Date according to Section 26.11 of the Texas Tax Code.

d. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within 90 days after closing, Transferor and Transferee will make postclosing adjustments to correct the errors within fifteen days of receipt of notice of the errors.

e. *Brokers' Commissions.* Transferor and Transferee each represent to the other that they have not acted or omitted to act in any way that could give rise to an entitlement to a commission for the transaction to which this agreement relates except as noted at the beginning. At closing, each party will provide the other party with a release of broker's or appraiser's liens from all brokers or appraisers for which each party was responsible.

11.03. *Issuance of Title Policy.* Transferor will, at its expense, cause Title Company to issue the Title Policy to Transferee as soon as practicable after closing.

12. Default and Remedies.

12.01. *Transferor's Default.* If Transferor fails to perform any of its obligations under this contract or if any of Transferor's representations is not true and correct as of the Effective Date or on the Closing Date ("Transferor's Default"), Transferee may elect either of the following as its sole and exclusive remedy:

a. *Termination.* Transferee may terminate this contract by giving notice to Transferor and have the Earnest Money returned to Transferee. Transferor must also pay to Transferee as liquidated damages Transferee's Liquidated Damages.

b. *Specific Performance.* Transferee may enforce specific performance of Transferor's obligations under this contract. If title to the Property is awarded to Transferee, the conveyance is subject to the matters stated in the Title Commitment.

12.02. *Transferee's Default.* If Transferee fails to perform any of its obligations under this contract ("Transferee's Default"), Transferor may elect either of the following as its sole and exclusive remedy:

a. *Termination; Liquidated Damages.* Transferor may terminate this contract by giving notice to Transferee on or before the Closing Date and Closing Time and have the Earnest Money paid to Transferor.

b. *Specific Performance.* Transferor may enforce specific performance of Transferee's obligations under this contract. If title to the Property is awarded to Transferor, the conveyance will be subject to the matters stated in the Title Commitment.

12.03. *Liquidated Damages.* The parties agree that just compensation for the harm that would be caused by a failure by either party to timely close as required by this agreement cannot be accurately estimated or would be very difficult to accurately estimate and that the Earnest Money and Transferee's Liquidated Damages are reasonable forecasts of just compensation to the nondefaulting party for the harm that would be caused by a default.

13. Prohibited Interests in Contracts.

13.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

(i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

13.02. San Antonio Housing Authority warrants and certifies as follows:

(i) San Antonio Housing Authority and its officers, employees and agents are neither officers nor employees of the City.

(ii) San Antonio Housing Authority has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

13.03. San Antonio Housing Authority acknowledges that City's reliance on the above warranties and certifications is reasonable.

14. Dispute Resolution.

14.01. As a condition precedent to bringing any action arising out of or relating to this agreement or any aspect thereof, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

14.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

14.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

14.04. The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

14.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

14.06. Mediator fees must be borne equally.

14.07. The parties need not mediate before going to court for either party to seek emergency injunctive relief.

15. Miscellaneous Provisions.

15.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, state of Texas. **THE CONSTRUCTION OF THIS AGREEMENT AND THE RIGHTS, REMEDIES, AND OBLIGATIONS ARISING THEREUNDER ARE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

15.02. *Severability.* If any portion hereof is determined to be invalid or unenforceable, such determination does not affect the remainder hereof.

15.03. *Successors.* This Agreement inures to the benefit of and is binding on the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

15.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

15.05. *Modification.*

15.05.01. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to the foregoing, any of the terms of this Agreement may be modified at any time by the party entitled to the benefit thereof, but no such modification, express or implied, affects the right of the modifying party to require observance of either (i) the same term or condition as it applies on a subsequent or previous occasion or (ii) any other term hereof.

15.05.02 The Director of the Center City Development and Operations Department may, without further action of City Council, agree on behalf of City to extensions of deadlines or other non-material modifications to the rights and obligations of the parties under this Agreement.

15.06. *Third Party Beneficiaries.* This Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.

15.07. *Notices.* Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble hereof. If the addressee is a corporation, notices must be addressed to the attention of its President. The giving of notice is complete three days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is given only upon actual receipt. Address for notice may be changed by giving notice hereunder.

15.08. *Pronouns.* In construing this Agreement, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Agreement, not to any particular provision of it.

15.09. *Captions.* Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

15.10. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

15.11. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, shall alter the rights or obligations of the parties as contained in this agreement

15.12. *Survival.* The obligations of this contract that cannot be performed before termination of this contract or before closing survive termination of this contract or closing, and the legal doctrine of merger does not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents control.

15.13. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

15.14. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

15.15. *Waiver of Consumer Rights.* **Both Parties Waive Their Rights Under The Texas Deceptive Trade Practices-Consumer Protection Act, Section 17.41 *et seq.* of The Texas Business and Commerce Code, A Law That Gives Consumers Special Rights and Protections. After Consultation With an Attorney of Its Own Selection, the Parties Voluntarily Consent To This Waiver.**

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16. Public Information.
San Antonio Housing Authority acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

In Witness Whereof, the parties have caused their representatives to set their hands.

City:	**San Antonio Housing Authority:**
City of San Antonio, a Texas municipal corporation	**San Antonio Housing Authority**, a Municipal Housing Authority
Signature:_____	Signature:_____
Printed Name:_____	Printed Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

Approved as to Form:

_____
City Attorney

Title Company Acceptance of Escrow and Receipt for Contract

San Antonio Housing Authority:	San Antonio Housing Authority	
	Address:	818 South Flores San Antonio, TX 78204
City:	City of San Antonio	
	Address:	P.O. Box 839966, San Antonio, Texas 78283-3966
Property A:	NCB 708, Lot 29 as indicated in the Durango Park Plat, recorded at Volume 7800, Page 145 of the Bexar County records, commonly known as 600 East Cesar Chavez.	
Property B:	A 1.95 acre portion of the land commonly known as 440 Labor Street	

Title Company agrees to act as escrow agent according to the terms of this Contract. Further, Title Company acknowledges receipt from Buyer of three fully executed counterpart originals of the Contract on the same date, with one fully executed original Contract being returned to each of Seller and Buyer.

Texas Title Assurance

By:_____

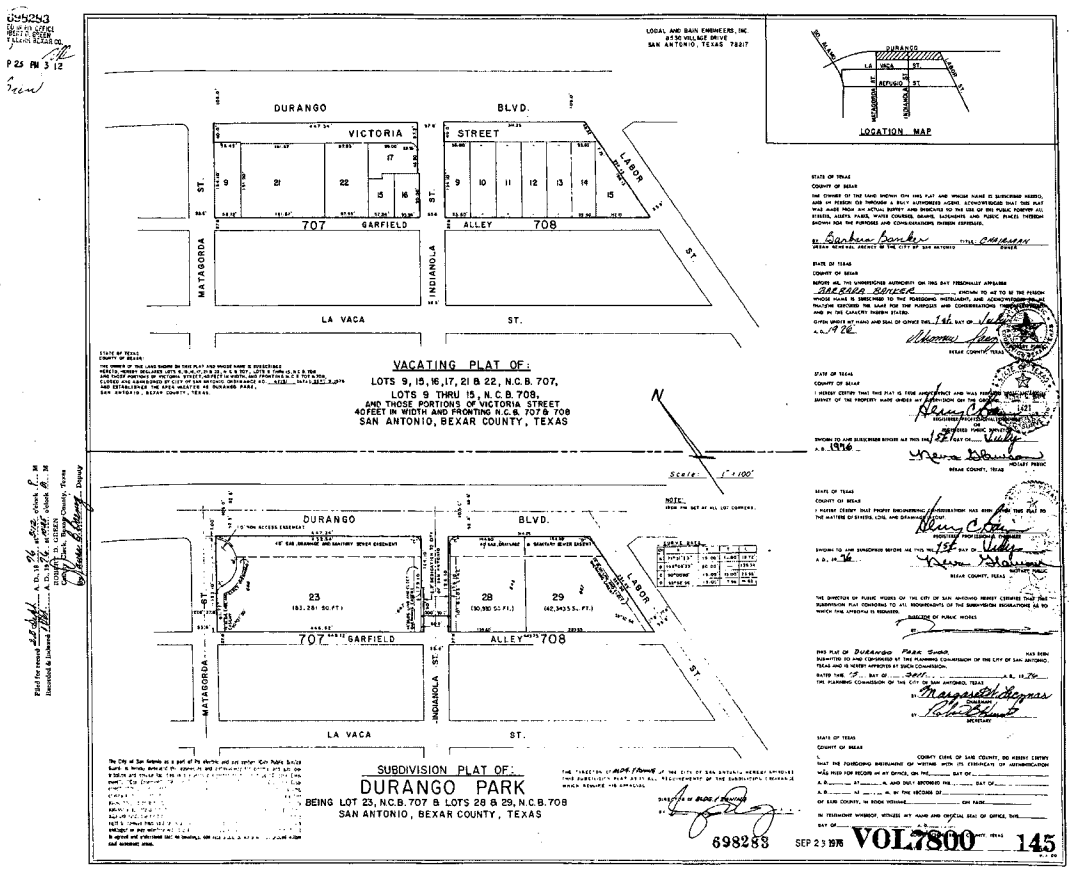
Printed
Name:_____

Title:_____

Date:_____

Exhibit A: Property A Description

NCB 708, Lot 29

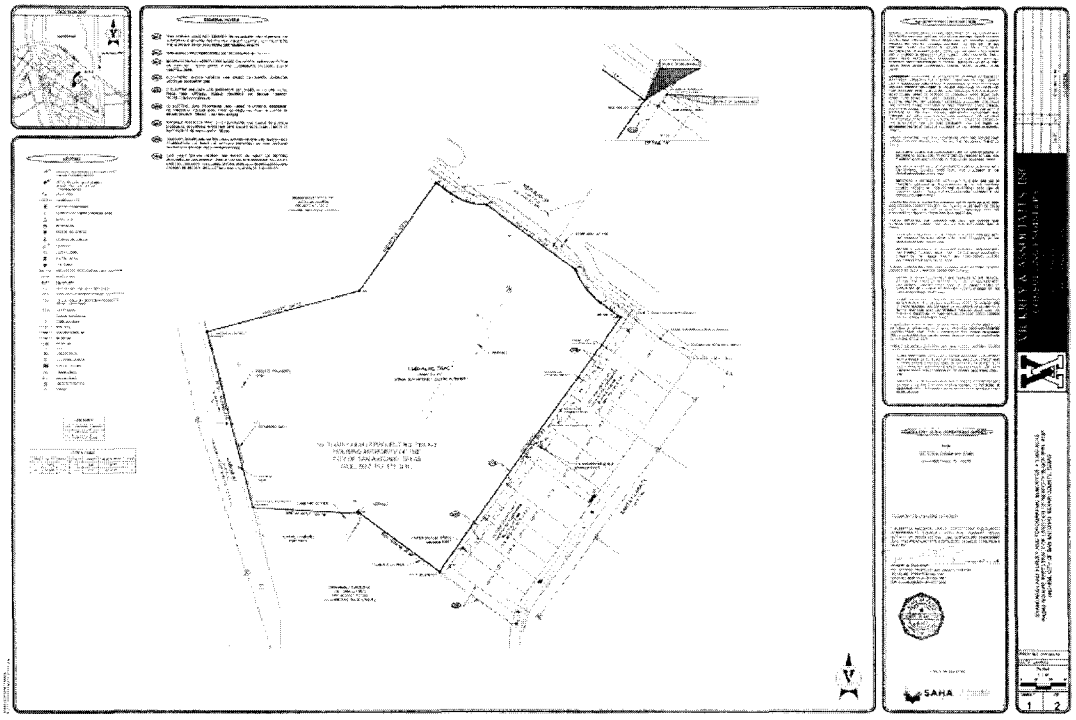


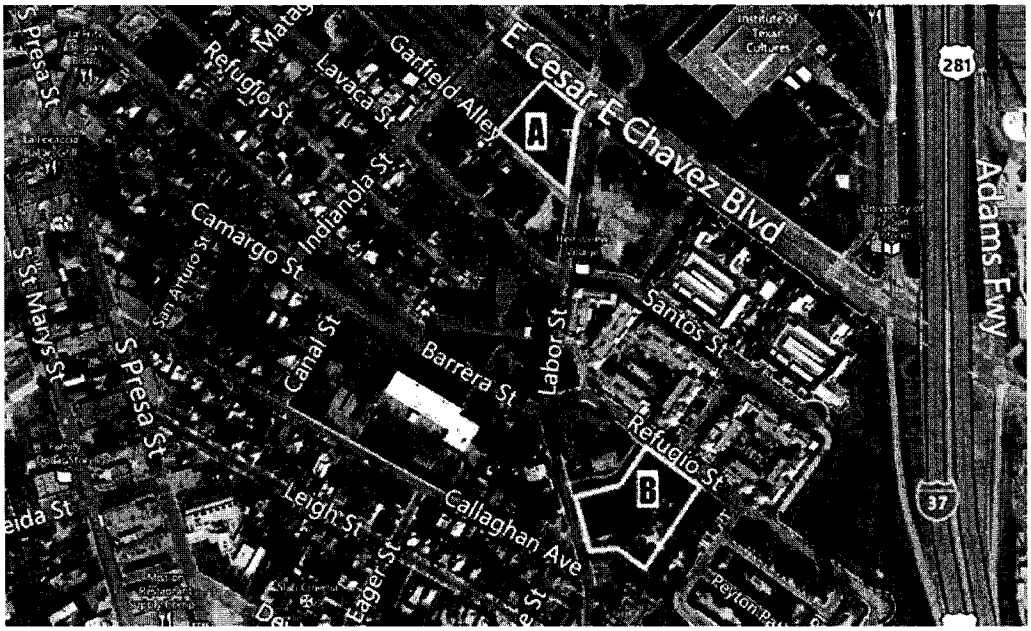
Victoria Park Exchange Exhibit

A - 600 East Cesar Chavez (City of San Antonio)
B - 440 Labor Street (San Antonio Housing Authority)

Exhibit B: Property B Description

A 1.95 acre portion of the land commonly known as 440 Labor Street





Victoria Park Exchange Exhibit

A - 600 East Cesar Chavez (City of San Antonio)
B - 440 Labor Street (San Antonio Housing Authority)

Exhibit C: Representations

Representations.

A. Transferor's Representations to Transferee.

Transferor represents to Transferor that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Transferor is the type of entity specified in the signature block adjacent to its name and is duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to convey the Property to Transferor. This contract is, and all documents required by this contract to be executed and delivered to Transferor at closing will be, duly authorized, executed, and delivered by Transferor.

2. *Litigation.* There is no litigation pending or threatened against Transferor that might affect the Property or Transferor's ability to perform its obligations under this contract.

3. *Violation of Laws.* Transferor has not received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Transferor's use of the Property.

4. *Licenses, Permits, and Approvals.* Transferor has not received notice that any license, permit, or approval necessary to operate the Property in the manner in which it is currently operated will not be renewed on expiration or that any material condition will be imposed in order to obtain their renewal.

5. *Condemnation; Zoning; Land Use; Hazardous Materials.* Transferor has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.

6. *No Other Obligation to Sell the Property or Restriction against Transferring the Property.* Transferor has not obligated itself to transfer the Property to any party other than Transferor. Transferor's performance of this contract will not cause a breach of any other agreement or obligation to which Transferor is a party or to which it is bound.

7. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Transferor has given its consent.

8. *No Other Representation.* Except as stated above or in the notices, statements, and certificates set forth in Exhibit D, Transferor makes no representation with respect to the Property.

9. *No Warranty.* Transferor has made no warranty in connection with this contract.

B. "As Is, Where Is."

This Contract Is An Arms-Length Agreement Between The Parties. The Purchase Price Was Bargained On The Basis Of An "As Is, Where Is" Transaction And Reflects The Agreement Of The Parties That There Are No Representations, Disclosures, Or Express Or Implied Warranties, Except For The Warranty Of Title Stated In The Closing Documents And Transferor's Representations To Transferor Set Forth In Section A Of This Exhibit B.

The Property Will Be Conveyed To Transferor In An "As Is, Where Is" Condition, With All Faults. All Warranties Are Disclaimed.

D. Transferee's Representations to Transferor.

Transferee represents to Transferor that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Transferee is the type of entity specified in the signature block adjacent to its name and is duly organized, validly existing, and in good standing under the laws of the state of Texas, with authority to accept the Property from Transferor. This contract is, and all documents required by this contract to be executed and delivered to Transferor at closing will be, duly authorized, executed, and delivered by Transferee.

2. *Litigation.* There is no litigation pending or threatened against Transferee that might affect Transferee's ability to perform its obligations under this contract.

Exhibit D: Notice

The following notices, statements, and certificates are attached for delivery to Transferor, and Transferor acknowledges receipt of the notices, statements, and certificates by executing this contract:

> Notice concerning underground storage tanks, described in section 334.9 of title 30 of the Texas Administrative Code

Exhibit E: Form of Deed

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.

State of Texas }
}
County of Bexar }

Deed without Warranty
(and Assignment of Claims)

Authorizing Ordinance:

Grantor:

Grantor's Address:

Grantee:

Grantee's Address:

Consideration: $10 in hand paid, the benefit to the public to arise from the City's use of the Property, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged.

Property: The real property situated within the corporate limits of the City of San Antonio, Bexar County, Texas more particularly described on **Exhibit A,** which is incorporated by reference for all purposes as if fully set forth.

Grantor, for the Consideration, Grants, Sells, Bargains, and Conveys the Property to Grantee, together with, all and singular, the rights and appurtenances thereto in anywise belonging, to Have and To Hold unto Grantee and Grantee's successors and assigns forever.

The Property is conveyed together with any and all improvements, structures and fixtures located thereon, and with all rights, privileges, rights of way, and easements appurtenant thereto.

Grantor expressly disclaims any and all warranties arising by common law, statute (including without limitation the implied warranties of § 5.023, Texas

Property Code or any successor statute), or otherwise. But Grantor represents that it has not previously conveyed the Property to anyone else.

Assignment of Claims
In addition to the conveyance of real estate addressed above, Grantor hereby assigns to Grantee all choate and inchoate statutory and common-law claims, if any, it may have against its predecessors in title and against any other potentially responsible person for environmental contamination of the Property now known or later found to exist.

In Witness Whereof, Grantor has caused its representative to hereunto set its hand:

Grantor:

???????, a Texas ??????

By:_____

Printed Name:_____

Title:_____

Date:_____

Draft. This is only to show the agreed form of the final document. This draft is neither ready nor suitable to be signed.

THE STATE OF TEXAS ✯

COUNTY OF BEXAR ✯

This instrument was acknowledged before me this date by _____, of /corpname/, a Texas ?????, in the capacity therein stated and on behalf of that entity.

Date:_____

_____
Notary Public, State of Texas

My Commission expires:_____

After Recording, Return To:
City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
(Bexar County)