

AN ORDINANCE 2007-01-04-0012

APPROPRIATING FUNDS, AND AUTHORIZING THE EXECUTION OF A DEVELOPER PARTICIPATION CONTRACT TO OVERSIZE A MUNICIPAL DRAINAGE FACILITY IN THE SLICK RANCH CREEK WATERSHED, WITH SLICK CREEK, LLC, IN ACCORDANCE WITH SUBCHAPTER C. DEVELOPER PARTICIPATION IN CONTRACTS FOR PUBLIC IMPROVEMENTS, SECTIONS 212.071 – 212.074 OF THE LOCAL GOVERNMENT CODE; THE TOTAL ESTIMATED COST OF THE PROJECT IS \$4,531,246.20 AND IS LOCATED IN DISTRICT 6.

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WHEREAS, Slick Creek, LLC, (hereinafter “Owner”) owns 103.49 acres out of the Westpoint Retail & Business Centre adjacent to Potranco Road north of Highway 151 at Loop 410, is developing a portion of the properties; and

WHEREAS, the provisions of the Unified Development Code outlining the Regional Storm Water Management Program require that detention be provided for new developments proposed upstream of certain drainage concerns; and

WHEREAS, the Slick Ranch Creek Watershed has been declared a “Mandatory Detention” area because the Slick Ranch Creek floodplain in the vicinity of W. Military Drive impacts approximately 200 downstream homes; and

WHEREAS, to develop Slick Ranch Creek, the City requires Slick Creek, LLC to adequately carry water resulting from a 100-year storm event by constructing a drainage facility that must be sized to carry storm water runoff generated by approximately 103.49 acres of future ultimate development of Owner’s property; and

WHEREAS, the Owner desires to construct a mitigation project to meet the City’s requirements; and

WHEREAS, the City has agreed to grant to Owner a temporary construction easement in the City’s drainage facility, and Slick Creek, LLC has agreed to construct its mitigation project in the City’s drainage facility at no cost to the City; and

WHEREAS, in conjunction with the City’s requirements for the Owner’s mitigation project, and the Owner’s agreement for oversizing the project, the City will pay 100% of the oversizing costs; and

WHEREAS, it is anticipated that the majority of the City’s contribution will be reimbursed through Storm Water Regional Facilities Fees collected from future development in the Slick Ranch Creek Watershed; **NOW THEREFORE**;

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

SECTION 1. The City Manager or her Designee is hereby authorized to execute a Developer Participation Contract with Slick Ranch, LLC, in substantially the same form as Attachment I

attached hereto and incorporated herein for all purposes, providing for Slick Creek, LLC to pay 100% of the cost for its mitigation project and the City to pay 100% for the oversizing of the project in the Slick Ranch Creek Watershed for a total estimated project cost of \$4,531,246.20.

SECTION 2. The temporary construction easement from the City to Slick Creek, LLC is hereby in all things approved, and the City Manager or her designee are authorized and directed to execute and deliver an easement and directed to do all other things necessary or convenient to effect the transaction contemplated hereby.

SECTION 3. The following financial adjustments are hereby approved:

A.. The amount of \$4,117,426.20 is appropriated in fund 29071000, Drain Detention Project, Internal Order # 390000000370, GL account 6102100 – Interfund Transfer out entitled Transfer to 23-01060-90-01. The amount of \$4,117,426.20 is authorized to be transferred to fund 40099000.

B. The budget in fund 40099000, Project Definition 23-01060, Slick Ranch Creek Regional Storm Water Facility, shall be revised by increasing WBS element 23-01060-90-01 entitled Trf Fr I/O# 390000000370, GL account 6101100 – Interfund Transfer In, by the amount \$4,117,426.20.

C. The amount of \$4,117,426.20 is appropriated in Fund 40099000, Other Capital Projects, Project Definition 23-01060, Slick Ranch Creek Regional Storm Water Facility, WBS element 23-01060-05-02-01, entitled City Construction, G/L Account 5201140, and is authorized to be encumbered and made payable to Slick Creek, LLC for construction costs.

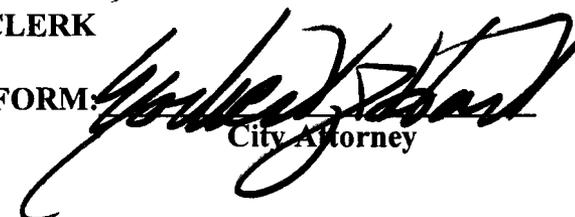
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, 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 5. This Ordinance shall be effective on January 14, 2007.

PASSED AND APPROVED this the 4th day of January, 2007. *LV*


M A Y O R

ATTEST: 
CITY CLERK

APPROVED AS TO FORM: 
City Attorney

Agenda Voting Results

Name: 16.

Date: 01/04/07

Time: 10:52:06 AM

Vote Type: Multiple selection

Description: An Ordinance, appropriating funds, authorizing the execution of a Developer Participation Contract, and oversizing a municipal drainage facility in the Slick Ranch Creek Watershed, with Slick Creek, LLC, in accordance with Sections 212.071 - 212.074 of the Local Government Code; the total estimated cost of the Project is \$4,531,246.20 and is located in District 6. [Presented by Thomas Wendorf, Director, Public Works; Jelyne LeBlanc Burley Deputy City Manager] FRANK MELTON

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		



CMS or Ordinance Number: CN4600005844

TSLGRS File Code:1075-16

Document Title:

CONT - 23-01060: Slick Ranch Creek Regional Storm Water Facility, District 6
[Ordinance 2007-01-04-0012; 1/4/2007; Original Appropriation \$4,117

Commencement Date:

2/28/2007

Expiration Date:

2/19/2013

**DEVELOPER PARTICIPATION CONTRACT
SLICK RANCH CREEK
STORM WATER DRAINAGE PROJECT**

THIS DEVELOPER PARTICIPATION CONTRACT (“Contract”) entered into as of February 28th, 2007, (hereinafter the “Effective Date”) by and between **THE CITY OF SAN ANTONIO, TEXAS**, a Texas municipal corporation, (“City”) and **SLICK CREEK, LLC**, a Texas limited liability company (“Developer”), pursuant to Ordinance No. 2007-01-04-0012 passed by the City of San Antonio City Council on January 4, 2007.

RECITALS

Whereas, Developer plans to develop certain properties located in the Slick Ranch Creek watershed (the “Development,” as is further described below), and certain public drainage improvements are needed on City property in connection with such development; and

Whereas, in order to accommodate other contemplated future development within the Slick Ranch Creek watershed, the City desires oversizing of the public drainage improvements to be constructed by Developer; and

Whereas, oversizing is also necessary because floodplain analyses have shown that more than 200 existing homes downstream of the properties contemplated to be developed by Developer are located within the 100-year floodplain of Slick Ranch Creek;

Whereas, storm water detention has been required by the Public Works Department Storm Water Engineering Division (PW / SWE Division) of City for areas upstream of said homes; and

Whereas, in order to alleviate flooding and drainage problems downstream of the properties to be developed by Developer, drainage improvements are proposed to be constructed and oversized by Developer on City property, from approximately 1800 l.f. downstream of W Military Drive to approximately 2300 l.f. upstream of W Military Drive (north of Marbach Road and south of State Highway 151)(the “Project,” as is further defined below);

Whereas, said floodplain analyses demonstrate that said drainage improvements will reduce the existing Slick Ranch Creek 100-year floodplain area to the extent that said 200 homes will be effectively removed from the floodplain; and

Whereas, by deepening and thereby increasing the drainage capacity of the existing drainage channel within the herein described existing City drainage easement (the “City Property,” as is further described below) the proposed improvements will effectively increase the capacity of other existing drainage systems and thereby accommodate the City of San Antonio regulatory storm event; and

Whereas, this Contract benefits the Developer by allowing development of the Developer Property (hereinafter described) without the construction cost and loss of developable land area associated with on-site detention systems; and

Whereas, said loss of developable land area would negatively impact the City by reducing property values and associated property tax revenues and also reducing the Regional Storm Water Management Participation funds available from fee-in-lieu payments; and

Whereas, the construction of the Project is in the City's interest and obtaining the Construction Documents (as defined below) will further the Project; and

Whereas, construction of the Project will benefit the City because, among other things: (i) the Project will reduce flooding in the area of the Slick Ranch Creek watershed and will increase public safety in the area adjacent to the City Property; (ii) the Project will enable economic development of the areas surrounding the City Property, and (iii) fees-in-lieu of on-site detention for developable land within the Slick Ranch Creek watershed are anticipated to substantially exceed the City's share of the Project Costs;

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

A. DEFINITIONS:

Certain terms used in this Contract (defined below) shall have the meanings set forth as follows:

1. "City" means the City of San Antonio, Texas, a Texas municipal corporation.
2. "City Property" means those two certain drainage easement areas that have been dedicated to public use and which are situated in the City of San Antonio, Texas, and more fully described in **Exhibit A**, **Exhibit A-1** and **Exhibit A-2** attached hereto.
3. "City's Representative" means the Director of Public Works or such other person as the City Manager may designate.
4. "City Share" means One Hundred Percent (100%) of total Project Costs which pertain to oversizing of improvements required by the City, as authorized by Section 212.072(c) of the TEXAS LOCAL GOVERNMENT CODE.
5. "Contract" means this Developer Participation Contract between the City of San Antonio, Texas and Slick Creek, LLC.
6. "Contract Documents" means this Contract and **Exhibit A** through **Exhibit F** attached hereto and made a part hereof for all purposes.
7. "Construction Documents" means the plans, specifications and estimates for the Project which shall be provided by the Developer pursuant to the terms of this Contract. The Construction Documents shall illustrate the dimensions, materials, methods of construction, methods of excavation, and other details of the Project. A description of the Construction Documents is provided in **Exhibit C**.

8. “Developer” means Slick Creek, LLC, a Texas limited liability company.
9. “Developer Property” means the Westpointe Retail & Business Center property described in **Exhibit B** attached hereto, comprising 103.49 acres.
10. “Developer’s Representative” means Lee Faris, or such other person as Developer may designate.
11. “Developer’s Share” means Three Hundred Ten Thousand Four Hundred Seventy Dollars (\$310,470.00).
12. “Development” means the Westpointe Retail & Business Center property described on **Exhibit B** attached hereto, which is located within the Park 410 West Preliminary Overall Area Development Plan #107, stamped “Accepted” by the City P.O.A.D.P. Committee October 21, 1985 and attached hereto as **Exhibit B-1.**
13. “Director” means the Director of Public Works, City of San Antonio.
14. “Project” means the public improvements consisting of the storm water drainage facility and associated improvements to be constructed on the City Property by Developer pursuant to the Construction Documents, as more fully described in **Exhibit E** attached hereto and made a part hereof for all purposes.
15. “Project Costs” means all costs and expenses incurred by Developer with respect to the Project in accordance with this Contract, including without limitation all costs to (i) prepare the Construction Documents, including but not limited to (a) all engineering fees and expenses for all studies, estimates of probable costs and other work performed by the Project Engineer (b) all environmental reports; (c) all title work; (d) all legal fees; and (e) all other fees and expenses relating to the Project; and (ii) all costs and expenses to construct the Project.
16. “Project Engineer” means Pape-Dawson Consulting Engineers, Inc.
17. “Work” means the installation and construction of the Project by Developer on the City Property in accordance with the Construction Documents and as provided herein.

B. CONTRACT PROVISIONS

1. Background. This Contract qualifies as a “Developer Participation Contract” pursuant to Sections 212.071-212.072 et. seq. of the TEXAS LOCAL GOVERNMENT CODE. In this regard, Developer shall construct the Project on the City Property. In order to adequately carry the onsite water resulting from a 100-year storm event, the drainage facility comprising Developer’s Development would have been sized to carry storm water runoff generated by approximately 103.49 acres of future ultimate development runoff from the Developer Property, at a cost of \$135,937.00. Developer shall pay the cost for Developer’s Development by paying the Developer Share. To accommodate City needs, Developer has agreed to oversize this facility to convey 3,386 acres of future ultimate development storm water runoff generated within the overall Slick Ranch Creek watershed. City shall pay the cost for oversizing the original facility by paying the City Share. The total Project Cost is estimated to be \$ 4,531,246.20. A detailed

estimate of the Project Costs is attached hereto as **Exhibit D**. A calculation of the City Share is also illustrated in **Exhibit D**. Notwithstanding anything in this Contract to the contrary, either party will have the right to terminate this Contract if any situation is discovered during the engineering and design phase of the Project or at any time prior to commencement of construction that materially increases the Project Costs over the cost estimates as set forth on **Exhibit D** hereto. For purposes hereof, an increase of more than ten (10%) in the Project Costs will be deemed to be material. Notice of any such termination must be given prior to commencement of construction of the Project

2. Temporary Construction Easement and Other Easements. City shall grant the Temporary Construction Easement to Developer pursuant to and in the form of **Exhibit F**. The Temporary Construction Easement Document shall be executed by City, as Grantor, and delivered to Developer simultaneously with execution of this Contract by City.

City shall provide or be responsible for obtaining any easements or the necessary permission required to construct the Project, including third-party consents and approvals, subject to any other governmental requirements or controls. In addition, City shall be responsible for obtaining any permission required to relocate any utilities in connection with the construction of the Project. City will use its best efforts (without cost or expense to City) to obtain any third party consents and approvals in a timely manner so as not to cause Project construction delays.

3. Construction. Developer shall commence construction of the Project within ten days after the later of (i) approval of the Construction Documents by the Director, and (ii) receipt by Developer of all governmental and regulatory permits and approvals required in connection with the construction of the Project (the "Permits"). Developer's obligation to commence construction of the Project is conditioned upon the receipt by Developer of the Permits on such terms and conditions as Developer may deem to be acceptable in Developer's reasonable discretion. City agrees to use its best efforts (without cost or expense to City) to obtain and shall assist Developer in obtaining the Permits. Without limiting the foregoing, City agrees to use its best efforts (without cost or expense to City) to apply for and obtain all requisite approvals from any regulatory authority in connection with the construction of the Project. Construction of the Project shall at all times be performed in a good and workmanlike manner in accordance with the Construction Documents using only new, first class materials as specified in the Construction Documents. Any variations from the Construction Documents shall require approval by City's Representative not to be unreasonably withheld or delayed. In the event change orders are necessary in connection with the construction of the Project, Developer shall submit the same to City's Representative for its review and approval, not to be unreasonably withheld or delayed. Upon written approval of any change order by both Developer and City's Representative, the Project Costs shall be adjusted accordingly. The Project may be designed and built in stages as Developer may determine subject to City's reasonable approval.

Developer may, at its option, submit periodic draw requests to City no more often than once per month during engineering or construction of the Project, for payment of that portion of City Share as may be attributable to the completed engineering or construction of the Project since the last periodic draw request. Any such draw request shall be accompanied by a certificate from the Project Engineer certifying the amount of the Work performed to date on a

percentage of completion basis, separately as to Work relating to oversizing of improvements required by the City and Work which does not pertain to oversizing of improvements required by the City, confirming that such portions of the Work were performed in accordance with the Construction Documents, stating the amount of the City Share attributable thereto based upon the stated percentage in paragraph 4 of Article A, above, and Developer's Share, based on percentage of completion basis, and including a breakdown of labor, names of contractors and materials used. City shall pay the City Share within thirty (30) days following City's receipt of each such periodic draw request. Developer shall pay all costs incurred from time to time with respect to the non-oversizing Work.

Notwithstanding anything in this Contract to the contrary, it is understood and agreed that Developer shall pay the entire cost of the non-oversizing portion of the Project, regardless of amount, whether more or less than the Developer's Share, and that if the entire amount actually paid by Developer upon completion of the Project and final payment of all costs related thereto, is less than Developer's Share, Developer shall pay the difference to the City.

Developer shall enter into a contract (the "Construction Contract") for construction of the Project with a licensed contractor selected by Developer (the "Contractor") subject to City's approval, which approval shall not be unreasonably withheld provided such contractor has the proven capacity, solvency and expertise to construct the Project. Once commenced, Developer shall use commercially reasonable efforts to cause construction of the Project to be prosecuted diligently and continuously by the Contractor in accordance with the Construction Contract until completion in accordance with the Construction Documents as certified jointly by the Project Engineer and the Director. The Director shall have the authority to accept the Project on behalf of City, and City shall accept ownership and maintenance of the Project upon approval of the completed Project by the Director.

Prior to the commencement of construction, Developer shall cause the Contractor to provide City with (i) a performance bond in accordance with and in satisfaction of Section 212.073 of the TEXAS LOCAL GOVERNMENT CODE, reflecting the City as beneficiary thereunder (it being understood and agreed that Developer itself shall have no obligation to provide a bond other than the bond to be provided by Contractor), and (ii) insurance certificates showing the City as a named insured in types and amounts reasonably required by the City's Risk Management Department. The foregoing shall remain in force and effect throughout the course of construction of the Project.

The Construction Contract shall prohibit third party beneficiaries other than City which shall be specifically designated as a third party beneficiary, shall not be assignable by the Contractor and shall provide City access to the Project at all reasonable times for inspection purposes. The Contractor shall acknowledge therein that it has read this Contract and understands that City has certain rights hereunder and pursuant to the Construction Contract. "As Built" Plans shall be provided to the City no later than 60 days after completion of the Project, as jointly certified by the Project Engineer and the Director.

During construction of the Project, Developer shall provide the Director with status reports showing the percentage of completion of the Work and expenditures incurred in connection with the construction of the Project, all in accordance with current project

management practices using the City's web portal. In all cases it is Developer's sole responsibility to connect to the City's web portal (system) at no cost to the City.

4. Inspections. The Project shall be accessible at all reasonable times to the Director or his designee for inspection. The Developer acknowledges any inspections performed by City during the course of construction for purposes of this Contract (as opposed to routine building and construction inspections performed by City for permitting and acceptance purposes common to all similar construction projects) are for the benefit of City only and may not be relied upon by others, be claimed by Developer as an approval by City, a permit granted by City, a waiver by City, or used for any purpose by Developer, the Contractor or any third party. Developer further acknowledges that Developer and Contractor are required to perform their own inspections and inspections by City do not address any obligations of Developer or others. Subject to the foregoing, City shall promptly notify Developer of any defects or non-conformances discovered during any City inspection.

5. Construction Documents. Developer shall provide City with a complete set of Construction Documents meeting the requirements of this Contract and in conformance with all applicable local, state and federal codes and regulations and customary engineering practices. The Construction Documents shall be prepared by and bear the seal of the individual engineer working on behalf of the Project Engineer. Construction of any part of the Project shall in no event commence prior to City approval of the Construction Documents for that part of the Project. Developer shall cause the Project Engineer to commence preparation of the Construction Documents promptly upon completion of engineering and design and to diligently continue same to completion. Developer shall provide City with copies of the Project Engineer's invoices for the Project as such invoices are received by Developer, and City shall pay the City Share thereof. City shall own the Construction Documents upon payment by City of the City Share of the total Project Engineer charges and Developer shall thereupon obtain and provide Project Engineer's assignment of its interest to City. Developer hereby assigns its interest in the Construction Documents to City, to become effective upon receipt by Developer of the total City Share. City shall own the Construction Documents for all purposes and may duplicate them, license them, use them and re-use them for any and all purposes.

6. Warranty. If the Work is found to be defective, either wholly or in part, and/or found to be non-conforming with the Contract Documents and/or the Construction Documents during the 12-month period following completion of the Project as defined in the Construction Contract, City shall immediately give Developer written notice thereof, specifying the defect and/or non-conforming Work with particularity. Developer shall correct such defective or non-conforming Work within thirty (30) days of notice thereof given by City, or within such longer time as may be reasonably necessary, provided Developer is working diligently and continuously towards a cure. If Developer fails to so cure such defective or non-conforming Work, then City may, at its own expense, correct such defective or non-conforming Work by City's own crews or by outside contractors, at City's option, and the reasonable cost of such correction shall be deemed to be sums due City by Developer, and may be offset against any outstanding sums due by City to Developer under this Contract. The cost of City crews shall be determined by prevailing market rates for performing the work required to correct such defects and/or non-conforming work. At the end of said 12-month period, all available product and workmanship

material warranties, including all warranties given by Contractor, shall be assigned to City, to the extent assignable. This provision shall survive termination of this Contract.

7. Fee-in-Lieu. The City agrees that from and after the Effective Date, subdivision plats shall be released for recording and building permits released for properties within the Slick Ranch Creek watershed, including Developer's Property, on a "fee-in-lieu" basis instead of a requirement for on or off-site storm water detention. It is understood and agreed that Developer's Share represents prepayment of the entire fee-in-lieu of on-site detention payments for Developer's entire 103.49 acres at \$3,000.00 per acre. Accordingly, while the Developer Property shall remain subject to fee-in-lieu payment requirements for recording of subdivision plats and issuance of building permits to any third parties, City agrees that it shall, within five (5) business days following Developer's requests from time to time, issue to Developer, at no further cost or expense to Developer or any owner or purchaser of all or any part of the Developer Property, a written waiver or certificate for the benefit of any owner or purchaser of all or any part of the Developer Property specified by Developer, certifying that the City unconditionally deems the specified property and any and all initial development which may be constructed thereon by the particular purchaser or owner or its assigns to have satisfied the requirements of Section 35.504 (b)(1)(B)(1) of the San Antonio City Code and/or any other successor or related provision of such Code, such that all such initial development on the specified property (regardless of the scope and nature thereof) will be permitted and approved by the City without the necessity of any further fee-in-lieu payment and without requirement for construction of any on or off-site detention facilities, whether under this Contract or otherwise; provided that each particular applicant for a subdivision plat and building permit shall remain responsible for complying with on-site development design requirements of the City relating to the on-site distribution of storm water, such as providing drainage easements and rights of way, streets, gutters, drainage channels and water courses. If any purchaser, for whatever reason, pays its fee-in-lieu payment directly to the City, the City will remit such direct payment to Developer so that the City does not receive a double fee-in-lieu payment for any part of the Developer Property.

8. Default. Upon the occurrence of a default by Developer in the performance of its obligations hereunder and the failure of Developer to cure such default within thirty (30) days following receipt of written notice of default from City (or such reasonably longer time as may be necessary provided the Developer commences the cure within thirty (30) days and continuously and diligently pursues the cure to completion) (a "Default"), City shall have the right to terminate this Contract.

In the event of Default by Developer, City may require Developer to cease construction and City may, at its option, take over construction of the Project with its own contractor. This Contract shall operate as an agreement by Developer to allow City access to the City Property as necessary to complete the Project in accordance with the Contract Documents. These remedies are in addition to any money damages and/or legal, equitable and/or other contract rights City may have in the event of a Default; provided that it is expressly agreed that neither party shall have the right to seek consequential, special or punitive damages against the other for any default under this Contract.

9. Record. This Contract, at City's option, may be filed and recorded in the real property records of Bexar County, Texas, as to the City Property only. This Contract is a

covenant that shall be and is binding on subsequent owners of the City Property or any part thereof, and operates as a covenant that runs with the land as to the City Property. This Contract shall be binding upon Developer, but not be binding upon purchasers of the Developer's Property, and shall not run with Developer's Land.

10. Representations and Warranties. Developer and City represent, warrant, certify and agree that neither this Contract, nor the Contract Documents, nor any part of the relationship between the parties hereto shall be construed in any way or operate as creating a joint venture, partnership or other business entity between Developer and City.

11. Assignment. Except for Developer's right to deliver written City waivers of fees-in-lieu pursuant to paragraph 7 hereof, Developer may not assign its rights or obligations under this Contract without the prior written consent of City. Any such assignment, whether voluntary or involuntary, by operation of law, under legal process or proceedings, by receivership, in bankruptcy or otherwise, without the prior written consent of City shall, at City's option, be of no force and effect whatsoever. Any consent to any such assignment or transfer shall not constitute a waiver of any of the restrictions of this section and the provisions of this section shall apply to each successive assignment or other transfer hereunder, if any.

12. Indemnity. Developer covenants and agrees to **FULLY REIMBURSE, INDEMNIFY, and HOLD HARMLESS, City and the elected officials, agents, employees, officers, directors, volunteers, contractors, subcontractors, consultants, subconsultants and representatives of City individually or collectively, (collectively, the "City Parties") from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury, death and property damage, (the "Damages") made upon City, arising out of or resulting from Developer's negligent activities or omissions under this Contract, including any negligent acts or omissions of any agent, officer, director, representative, employee, consultant, subconsultant, licensee, sublicensee, contractor or subcontractor of Developer, and their respective officers, agents, employees, directors and representatives (collectively "Developer Parties") while in the exercise of the performance of the rights or duties under this Contract, all without, however, waiving any governmental immunity available to City under Texas law and without waiving any defenses of the parties under Texas law. THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, OR THE CITY PARTIES IN SUCH INSTANCE WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH OR PROPERTY DAMAGE. IN THE EVENT DEVELOPER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Developer shall promptly advise City in writing of any claim or demand against City or Developer known to Developer and related to or arising out of Developer's negligent activities or omissions**

under this Contract, and shall see to the investigation and defense of such claim or demand at Developer's cost. Notwithstanding any condition imposed by a policy of insurance to which Developer and City are named, City shall retain the right, at its option and at its own expense, to participate in such defense provided by any insurance or self-insurance of Developer under this section without relieving Developer of any of its obligations under this section.

To the extent provided by law, City shall be responsible for all claims, demands, and causes of action against City arising in favor of any person, because of personal injuries or death or damage to property, occurring, growing out of, or incident to, related to or resulting directly or indirectly from the occurrence of activities or omission of activities contemplated by this Contract, caused by the negligence of City and/or any of the City parties.

13. Entire Agreement. The terms of this Contract are intended to be a final expression of the parties agreement and may not be contradicted by evidence of any prior or contemporaneous statements, representations, agreements or understandings, whether written or oral. The parties expressly agree that no such statements, representations, agreements or understandings exist. The parties further intend that this Contract constitutes the complete and exclusive statement of the parties' intent and that no extrinsic evidence may be introduced in any proceeding involving the Contract Documents. No addition to, deletion from, or modification of any term or provision of this Contract shall be effective unless it is made in a writing signed by the parties hereto.

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

15. Waiver. It is understood and acknowledged that City exercises no control over the means of accomplishing the Work. No approval by City shall impose any liability on City for any risk or damage to persons or property or the City Property or shall imply or guarantee any drainage implications or the operation of the drainage facilities to the parties, any other party or otherwise.

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

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

If to Developer: Slick Creek, LLC
 Attn: Lee Faris
 405 N. St. Mary's Street, Suite 222

San Antonio, TX 78205
Telephone No.: (210) 224-7035

If to City:

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

City of San Antonio
Attn: City Clerk
P.O. Box 839966
San Antonio, Texas 78283-3966
Telephone No.: (210) 207-8940

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

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

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

20. Authority of Signatory. The persons signing on behalf of each of the parties to this Contract represent that they each have the authority to bind their respective party to this Contract. The signature on this Contract or any document on behalf of City is subject to passage of an ordinance approving the authority of such signatory.

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

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

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

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

25. Force Majeure. In the event Developer or City is unable in whole or in part by force majeure to carry out any covenant, agreement, obligation or undertaking to be kept or performed under this Contract, the time for the performance of such covenant, agreement, obligation or undertaking so delayed shall be extended for the period of such delay, and such default shall be remedied with all reasonable dispatch. The term "force majeure" as employed in this section shall include acts of God, acts of terrorism, strikes, lockouts, or other industrial disturbances, acts of a public enemy, war, blockades, riots, epidemics, earthquakes, explosions, accidents, or repairs to machinery or pipes, the delays of carriers, or inability by reason of governmental regulation to obtain materials, acts of public authorities, or other causes, whether or not of the same kind as specifically enumerated, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to overcome. If the Contractor suffers any event of "force majeure", such event shall likewise constitute force majeure with respect to Developer.

[Signatures on next page]

IN WITNESS WHEREOF, this Contract is entered into as of the day and year set forth above.

CITY:

CITY OF SAN ANTONIO,
a Texas Municipal Corporation



By: *J. Murling*
Name: JELYNNE TOURKEY
Title: DCM

T.W. 2/22/17
Attest: *Stacia Vick, City Clerk*
DEVELOPER:

SLICK CREEK, LLC, a
Texas limited liability company

By: *L. Lee Faris*
Lee Faris, Manager

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this _____ day of February, 2007, by Jelyna Barley, Deputy City Manager of the **CITY OF SAN ANTONIO**, a Texas municipal corporation on behalf of said corporation.



Melinda Uriegas
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this 13th day of February, 2007, by **LEE FARIS**, the manager of **SLICK CREEK, LLC**, a Texas limited liability company, on behalf of said limited liability company.



Annette M. Martinez
Notary Public, State of Texas

Schedule of Exhibits:

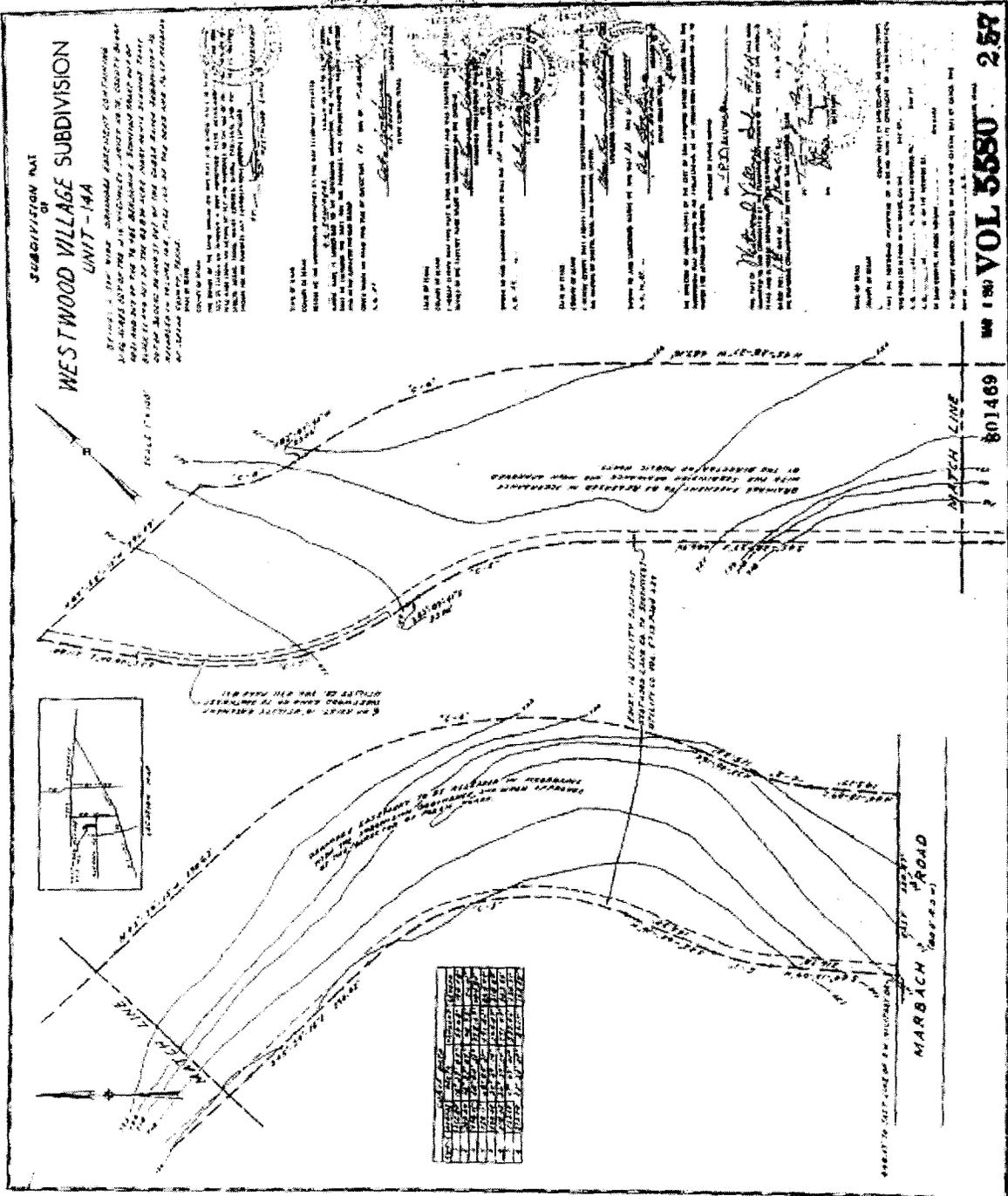
- Exhibit A – City Property Description
- Exhibit B – Developer Property
- Exhibit C – Construction Documents
- Exhibit D – Cost Estimates
- Exhibit E – Depiction of Project
- Exhibit F – Temporary Easement

**EXHIBIT A
TO
DEVELOPER PARTICIPATION CONTRACT**

PROPERTY DESCRIPTION

Those two certain drainage easements, as established and dedicated to the use of the public by subdivision plats recorded in volume 5970 at page 55 and in volume 5580 at page 257, of the Deed and Plat Records of Bexar County, Texas, known as Westwood Village, Unit-22A and Westwood Village Subdivision Unit-14A, respectively, and containing 7.915 acres and 21.56 acres, respectively.

See Attached Exhibit A-1 and Exhibit A-2



**SUBDIVISION MAP
OF
WESTWOOD VILLAGE SUBDIVISION
UNIT - 14A**

BEING A PART OF THE WESTWOOD VILLAGE SUBDIVISION, UNIT - 14A, AS SHOWN ON THE MAP OF THE COUNTY OF MARBACH, MISSOURI, FILED FOR RECORD IN THE OFFICE OF THE CLERK OF THE COUNTY COURT, MARBACH, MISSOURI, ON THE 14TH DAY OF FEBRUARY, 1957, UNDER RECORD NO. 5580.

THESE LOTS ARE BEING SUBDIVIDED INTO THE FOLLOWING LOTS:

1	0.10	10.00%
2	0.10	10.00%
3	0.10	10.00%
4	0.10	10.00%
5	0.10	10.00%
6	0.10	10.00%
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97	0.10	10.00%
98	0.10	10.00%
99	0.10	10.00%
100	0.10	10.00%

EXHIBIT A-1

**EXHIBIT B
TO
DEVELOPER PARTICIPATION CONTRACT
DEVELOPER PROPERTY DESCRIPTION**

See Attached.



Westpointe Retail & Business Centre

- Tract 1 Being that 11.73 acres more or less out of that 388.35 acre tract conveyed to Park 410 Westplex Joint Venture by Substitute Trustees Deed recorded in Volume 6230, Pages 1341-1344 of the Official Public Records of Real Property of Bexar County, Texas in New City Block 15329 being all of the property bounded on the southwest by Lot 2, Block 1 of the Sonic on Potranco Subdivision recorded in Volume 9569, Page 199, on the northwest by Potranco Road, a 120-foot right-of-way, and on south east by a 19.80 acre tract, and on the northeast by Ingram Road, an 86-foot right-of-way dedicated in the Park 410 West Unit 1 Subdivision recorded in Volume 9517, Pages 9-18 of the Deed and Plat Records of Bexar County, Texas;
- Tract 2 Being that 4.03 acres more or less out of that 388.35 acre tract conveyed to Park 410 Westplex Joint Venture by Substitute Trustees Deed recorded in Volume 6230, Pages 1341-1344 of the Official Public Records of Real Property of Bexar County, Texas in New City Block 15329 bounded on the west by Ingram Road, an 86-foot right-of-way dedicated in the said Park 410 West Unit 1 Subdivision, on the northwest by Potranco Road, a 120-foot right-of-way, on the northeast by Lot 3, Block 2 of the Willow Bend Apartments Subdivision recorded in Volume 9564, Page 126 of the Deed and Plat Records of Bexar County, Texas, on the southeast by a 14.89 acre tract and on the southwest by Richland Hills Drive, a variable width right-of-way 72-foot minimum, dedicated in said Park 410 West Unit 1 Subdivision;
- Tract 3 Being that 32.61 acres more or less out of that 388.35 acre tract conveyed to Park 410 Westplex Joint Venture by Substitute Trustees Deed recorded in Volume 6230, Pages 1341-1344 of the Official Public Records of Real Property of Bexar County, Texas bounded on the northwest by Ingram Road, an 86-foot right-of-way, on the northeast by Midhurst Avenue, a 60-foot right-of-way, and on the south by Richland Hills Drive, a variable width right-of-way 72-foot minimum, all dedicated in the said Park 410 West Unit 1 Subdivision;
- Tract 4 Being that 9.98 acres more or less out of that 388.35 acre tract conveyed to Park 410 Westplex Joint Venture by Substitute Trustees Deed recorded in Volume 6230, Pages 1341-1344 of the Official Public Records of Real Property of Bexar County, Texas bounded on the north by Richland Hills Drive, a variable width right-of-way 72-foot minimum, on the east by a 165.96-foot Drainage easement, on the south by a variable width drainage right-of-way, all dedicated in the said Park 410 West Unit 1 Subdivision and on the west by Lot 2, Block 49, N.C.B 15329, Casey Park 410 West Subdivision recorded in Volume 9540, Page 57 of the Deed and Plat Records of Bexar County, Texas, the Richland Hills Center;
- Tract 5 Being that 20.21 acres more or less out of that 388.35 acre tract conveyed to Park 410 Westplex Joint Venture by Substitute Trustees Deed recorded in Volume 6230, Pages

Page 1 of 2.

PAPE-DAWSON ENGINEERS, INC.

355 East Ramsey | San Antonio, Texas 78216 | Phone: 210.373.9000 | Fax: 210.373.9010 | info@pape-dawson.com

Westpointe Retail & Business Center
Remainder of 388.35 Acres
Job 6313-00
103.49 Acres

1341-1344 of the Official Public Records of Real Property of Bexar County, Texas bounded on the west by a 165.96-foot drainage easement, on the south by Richland Hills Drive, a variable width right-of-way 72-foot minimum, and Edenbridge Boulevard, a variable width right-of-way, all dedicated in the said Park 410 West Unit 1 Subdivision, on the southeast by a line 600-feet offset from the northwest right-of-way line of Interstate Loop 410, on the northeast by that 22.96 acres owned by Commonwealth SA-Apts LLC, a 31.000 acre tract conveyed to Santikos Raw Land, Ltd in Volume 1165, Page 1345, 9.835 acres and 24.504 acres conveyed to Gracie Holdings in Volume 9806, Pages 641-659 of the Official Public Records of Real Property of Bexar County, Texas;

Tract 6 Being that 9.53 acres more or less out of that 388.35 acre tract conveyed to Park 410 Westplex Joint Venture by Substitute Trustees Deed recorded in Volume 6230, Pages 1341-1344 of the Official Public Records of Real Property of Bexar County, Texas, bounded on the north by Richland Hills Drive a variable width right-of-way 72-foot minimum, and Edenbridge Boulevard, an 86-foot right-of-way, on the west by a 165.96-foot Drainage easement, all dedicated in the said Park 410 West Unit 1 Subdivision, and on the southeast by De La Cruz Place a 60-foot right-of-way dedicated in the Westover Market Place Subdivision recorded in Volume 9561, Pages 198-204 of the Deed and Plat Records of Bexar County, Texas;

Tract 7 Being that 3.43 acres out of that 388.35 acre tract conveyed to Park 410 Westplex Joint Venture by Substitute Trustees Deed recorded in Volume 6230, Pages 1341-1344 of the Official Public Records of Real Property of Bexar County, Texas bounded on the northeast by Richland Hills Drive, a variable width right-of-way 72-foot minimum, on the south by a variable width drainage right-of-way, both dedicated in the said Park 410 West Unit 1 Subdivision, on the northwest by De La Cruz Place, a 60-foot right-of-way dedicated in the Westover Market Place Subdivision recorded in Volume 9561, Pages 198-204 of the Deed and Plat Records of Bexar County, Texas, and on the southeast by a line 600-feet offset from the northwest right-of-way line of Interstate Loop 410.

Tract 8 Being that 11.97 acres more or less out of that 388.35 acre tract conveyed to Park 410 Westplex Joint Venture by Substitute Trustees Deed recorded in Volume 6230, Pages 1341-1344 of the Official Public Records of Real Property of Bexar County, Texas in New City Block 15329 bounded on the northwest by a 14.89 acre tract, on the east by a 165.96-foot drainage right-of-way of said Park 410 West Unit 1 Subdivision, on the south by Richland Hills Drive, a variable width right-of-way 72-foot minimum, dedicated in said Park 410 West Unit 1 Subdivision, and on the southwest by Midhurst Avenue, a 60-foot right-of-way dedicated in said Park 410 West Unit 1 Subdivision;

**EXHIBIT C
TO
DEVELOPER PARTICIPATION CONTRACT**

DESCRIPTION OF CONSTRUCTION DOCUMENTS

See Attached.

SLICK RANCH CREEK STORMWATER DRAINAGE PROJECT

Description	Sheet No.
COVER SHEET	C-1
GENERAL PROJECT MASTER PLAN	G-1
PLAN PROFILE	P-1
PROJECT DETAILS	D-1



LOCATION MAP

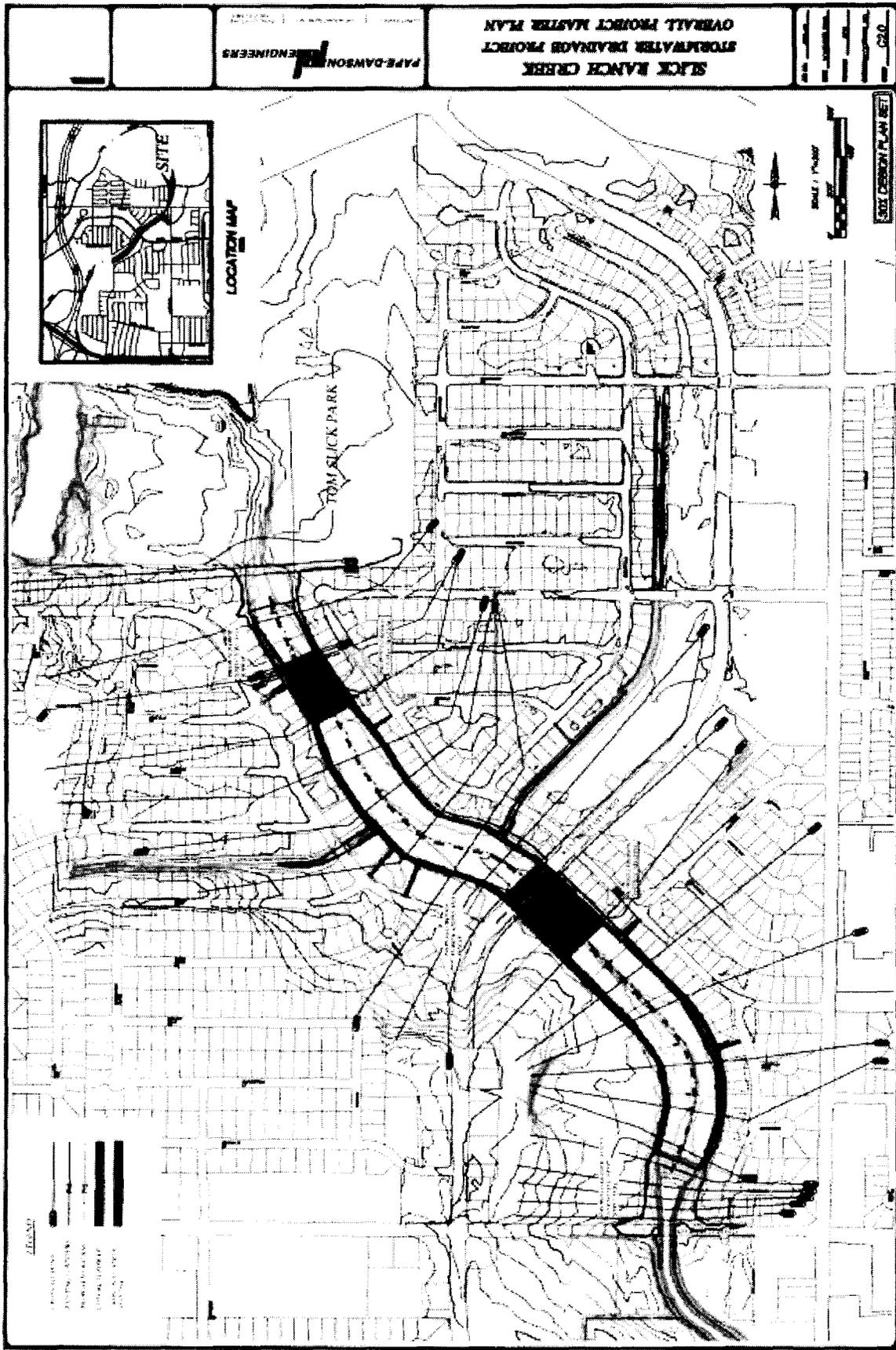
SLICK CREEK, LLC
405 N. ST. MARY'S STREET, SUITE 222
SAN ANTONIO, TEXAS 78205

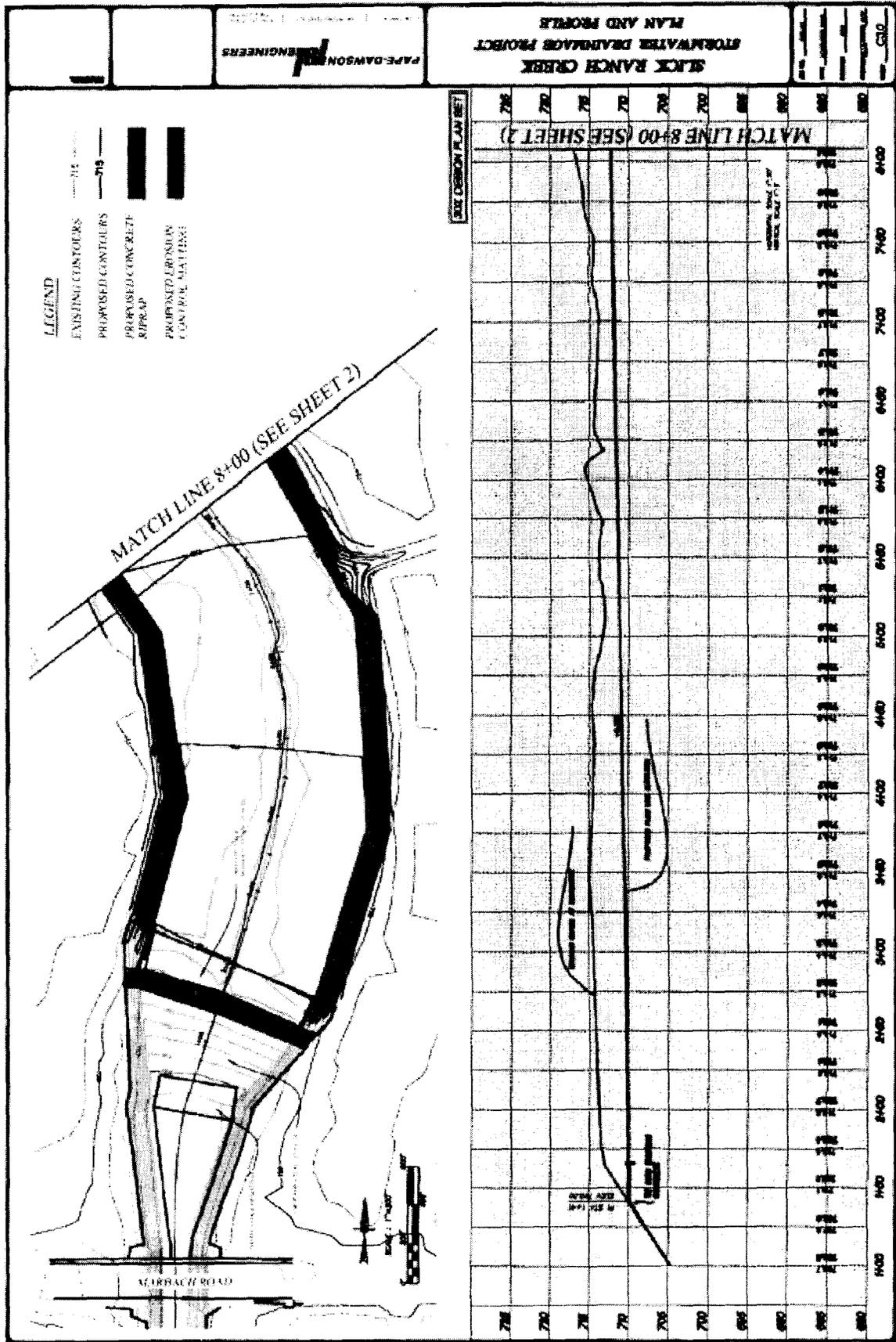
NOVEMBER 2006

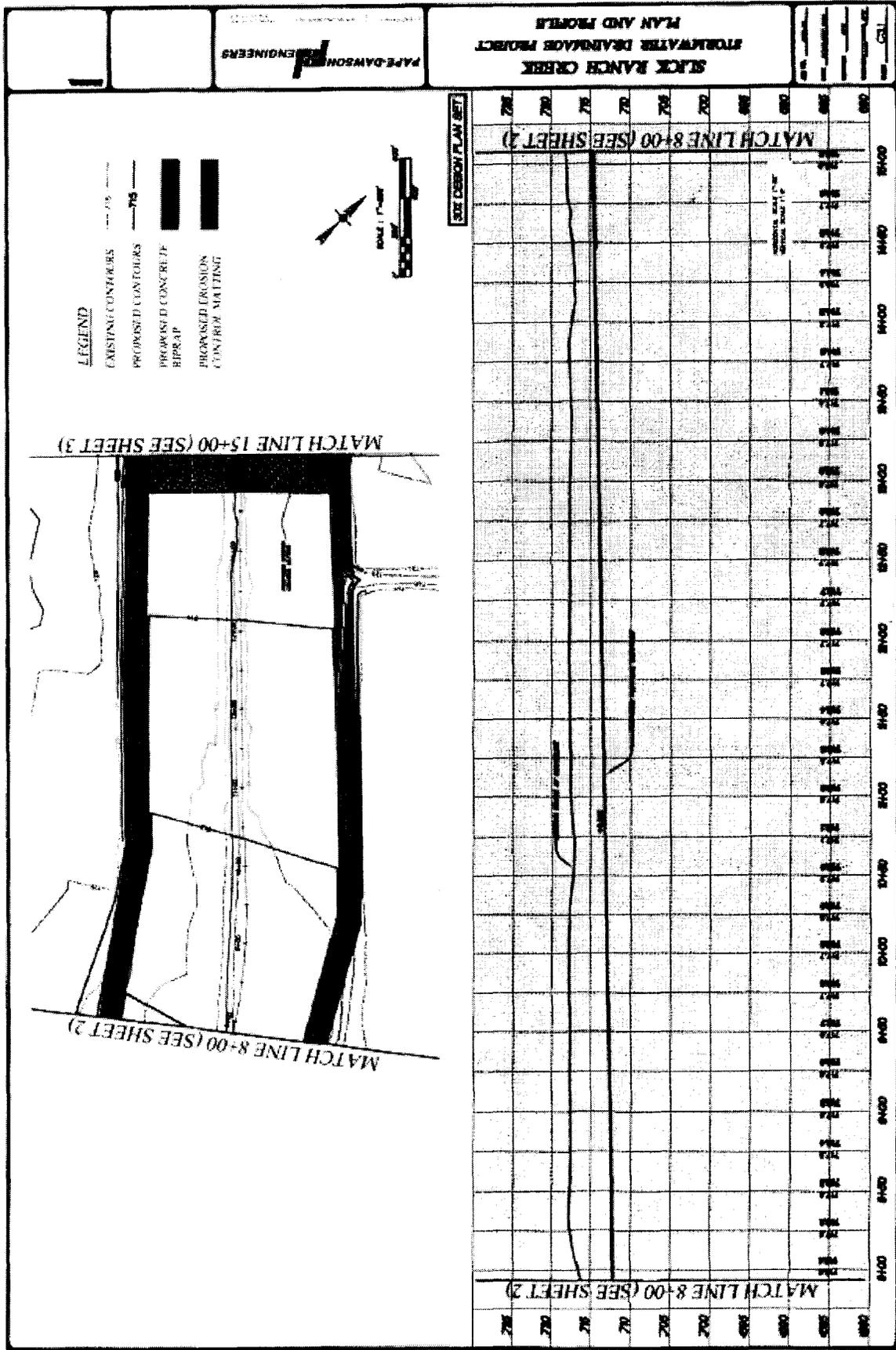
PAPE-GAWSON ENGINEERS

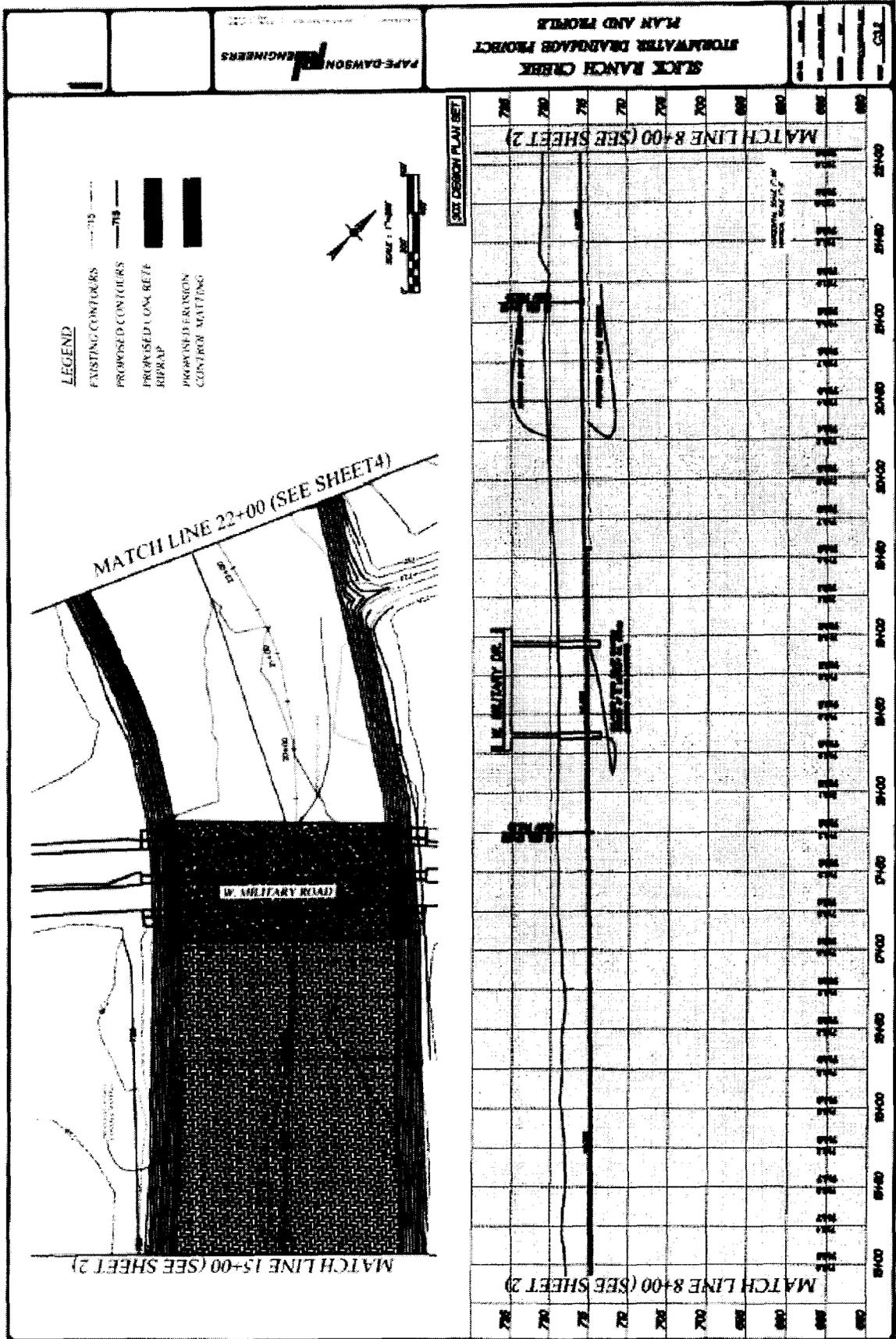
SEE DESIGN PLAN SET

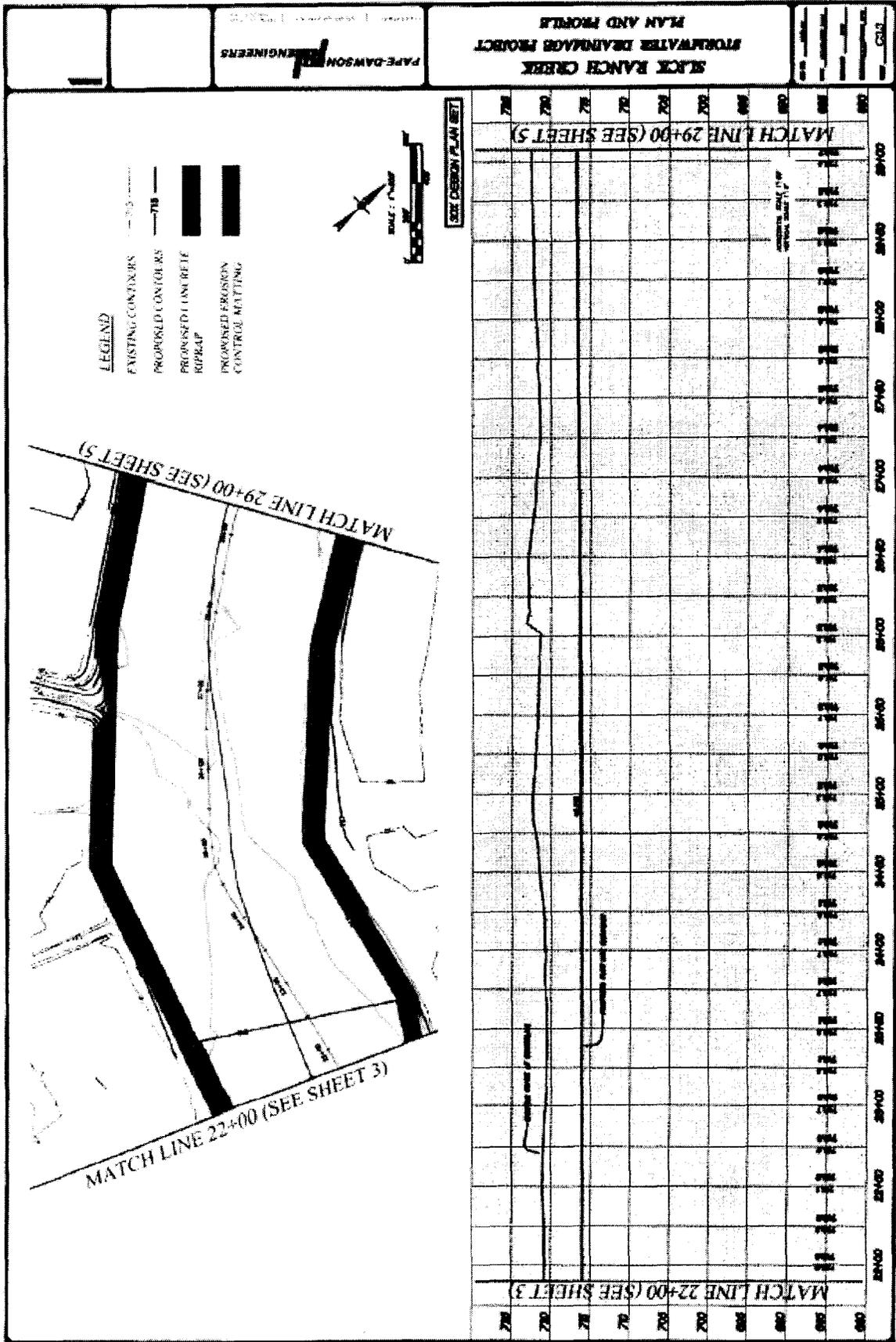
SCALE 1" = 100'

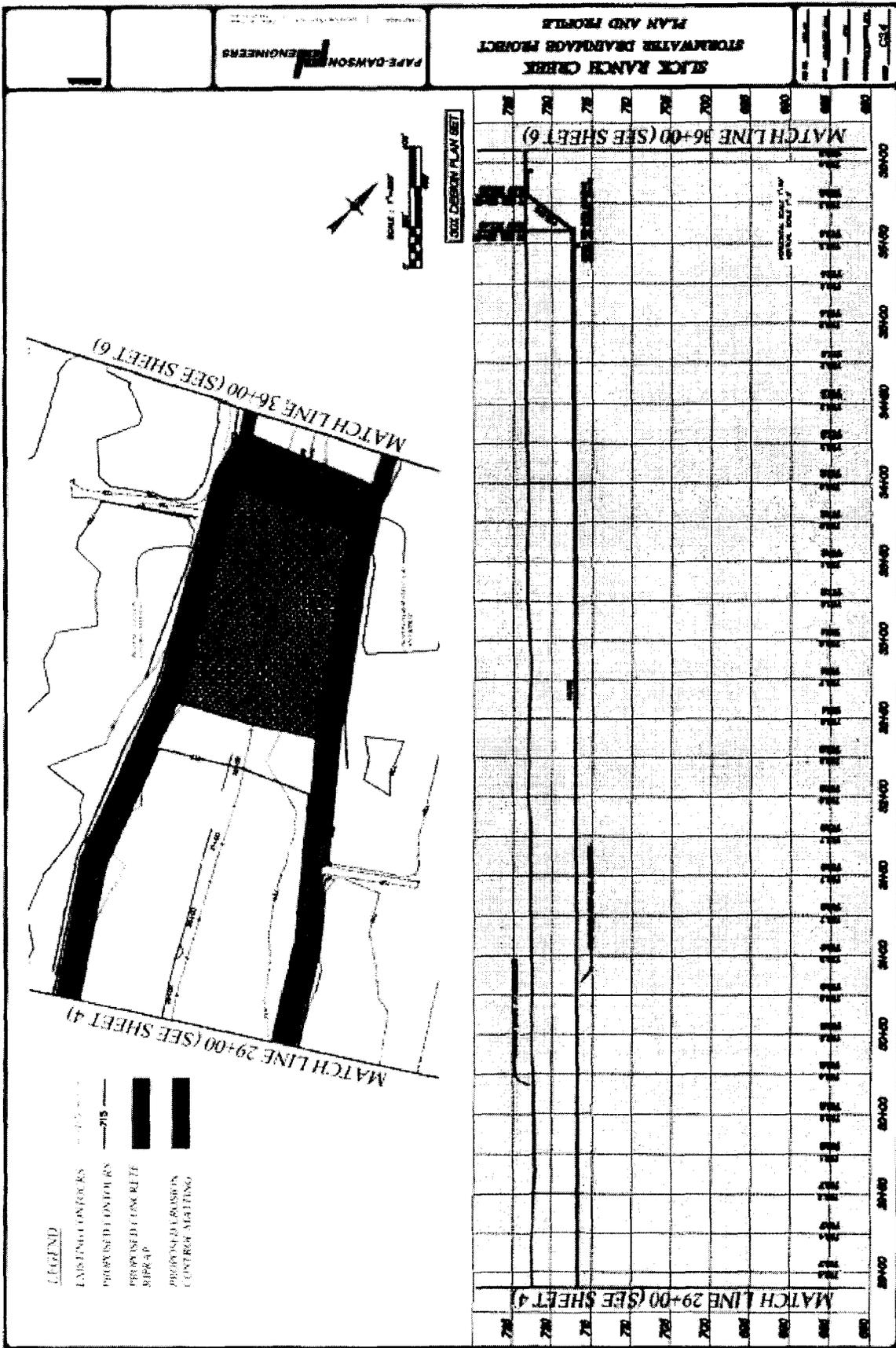


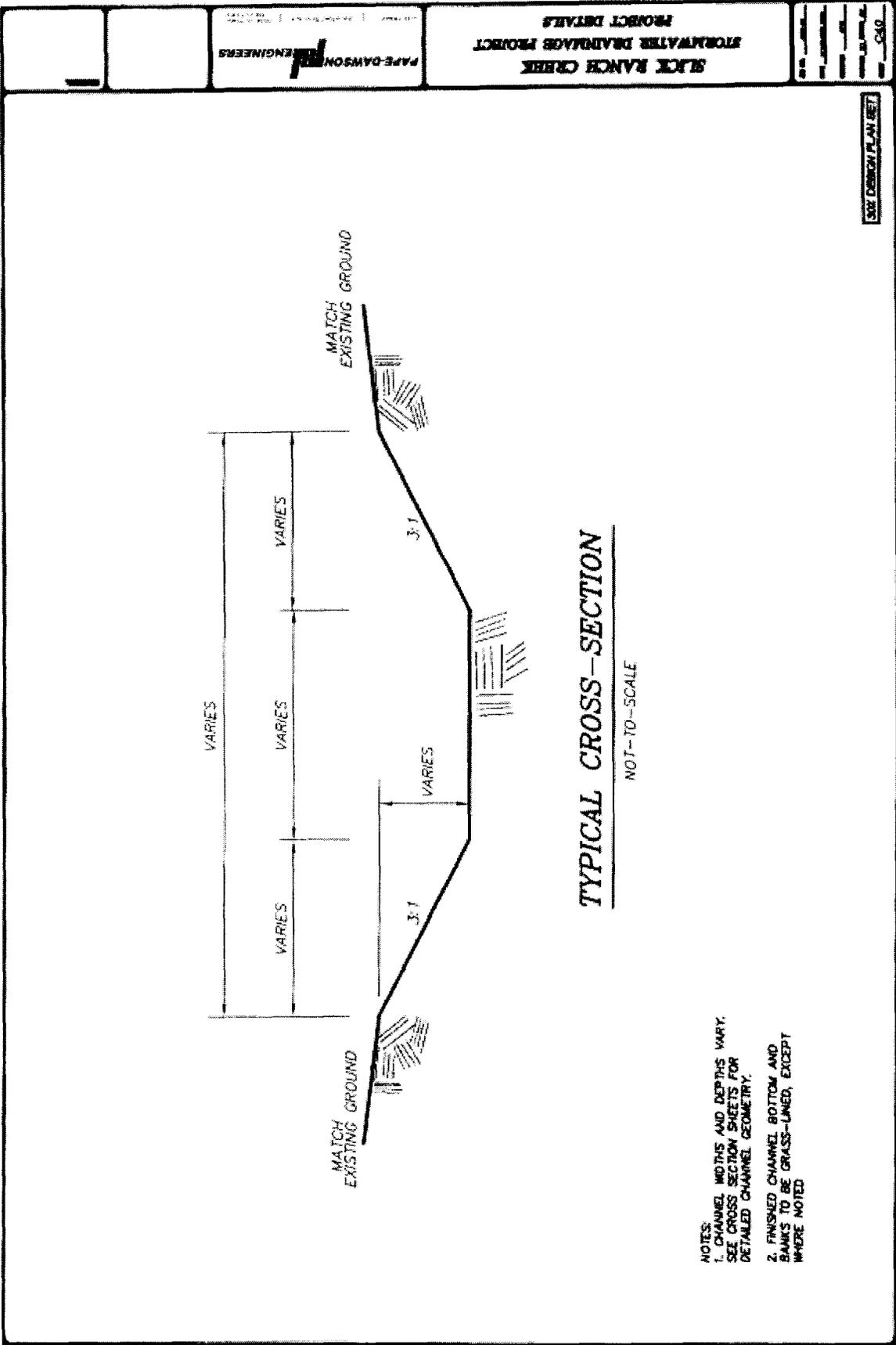












**EXHIBIT D
TO
DEVELOPER PARTICIPATION CONTRACT**

COST ESTIMATES

See Attached.



**SLICK CREEK RANCH
STORM WATER DRAINAGE PROJECT
ENGINEER'S OPINION OF PROBABLE COST
1/03/07**

ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL AMOUNT
<u>CHANNEL CONSTRUCTION</u>					
1.	Stripping	AC	30	\$2,000.00	\$60,000.00
2.	Construction Entrance	EA	1	\$4,000.00	\$4,000.00
3.	Silt Fence	LF	10,000	\$2.00	\$20,000.00
4.	Rock Berm(TY III)	LF	1,000	\$16.00	\$16,000.00
5.	Excavation	CY	216,000	\$11.65	\$2,516,400.00
6.	Concrete Riprap	CY	1,300	\$350.00	\$455,000.00
7.	Pyramat	SY	6,700	\$30.00	\$201,000.00
8.	Hyromulch	SY	130,000	\$0.50	\$65,000.00
9.	Bridge Column Repair Allowance	LS	1	\$44,000	\$44,000.00
10.	Bridge Paint Allowance	LS	1	\$10,000	<u>\$10,000.00</u>
Subtotal:					\$3,391,400.00
11.	Construction Contingency (10%)				\$339,140.00
12.	Bond and Insurance (3%)				\$101,742.00
13.	Materials Testing (2%)				\$67,828.00
14.	Engineering Fees				\$339,762.00
15.	Engineering Contingency (10%)				\$33,976.20
16.	Construction Staging Area Lease				\$20,000.00
17.	Project Administration				<u>\$237,398.00</u>
Subtotal:					\$1,139,846.20
PROJECT TOTAL:					\$4,531,246.20

PAPE-DAWSON ENGINEERS, INC.

555 East Ramsey | San Antonio, Texas 78216 | Phone: 210.375.9000 | Fax: 210.375.9010 | info@pape-dawson.com

**SLICK CREEK RANCH
STORM WATER DRAINAGE PROJECT
ENGINEER'S OPINION OF PROBABLE COST**

1/3/07
(continued)

ENGINEERING FEES

1.	Phase I Environmental Site Assessment	\$3,500
2.	Phase II Environmental Site Assessment	\$5,000
3.	Waters of the U.S. Determination	\$3,430
4.	Cultural Resources Evaluation	\$8,770
5.	TPDES Storm Water Pollution Prevention Plan	\$750
6.	Flood Study	\$4,500
7.	Civil Construction Design Plan Preparation	\$203,484
8.	Civil Structural Design	\$15,000
9.	Construction Phase Services	\$67,828
10.	FEMA Letter of Map Revision (LOMR)	\$20,000
11.	Plan of Record Drawings	\$7,500
Total Engineering Fees:		\$339,762

**SLICK CREEK RANCH
STORM WATER DRAINAGE PROJECT
ENGINEER'S OPINION OF PROBABLE COST**

1/3/07
(continued)

COST SHARING

PROJECT OVERZING

Developer Property (future ultimate development property) 103 Acres

Total Watershed (future ultimate development property) 3,386 Acres

Slick Creek, L.L.C. Share (103/3,386) = 3%

City of San Antonio Share (3,283/3,386) = 97%

	<i>Oversizing Project Cost</i>	<i>Non-Oversizing Project Cost</i>	<i>Project Total</i>
Slick Creek, L.L.C.	\$0 (0%)	\$ 135,937 (100%)	\$135,937
City of San Antonio	\$4,395,309 (100%)	\$ 0 (0%)	\$4,395,309
<i>Project Total</i>	<i>\$4,395,309</i>	<i>\$135,937</i>	<i>\$4,531,246</i>

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: January 3, 2007

JOB NO.: 6313-00

DOC. ID.: p:\6313\00\word\cost estimates\070103a1.doc

**EXHIBIT E
TO
DEVELOPER PARTICIPATION CONTRACT**

DEPICTION OF PROJECT

See Attached.

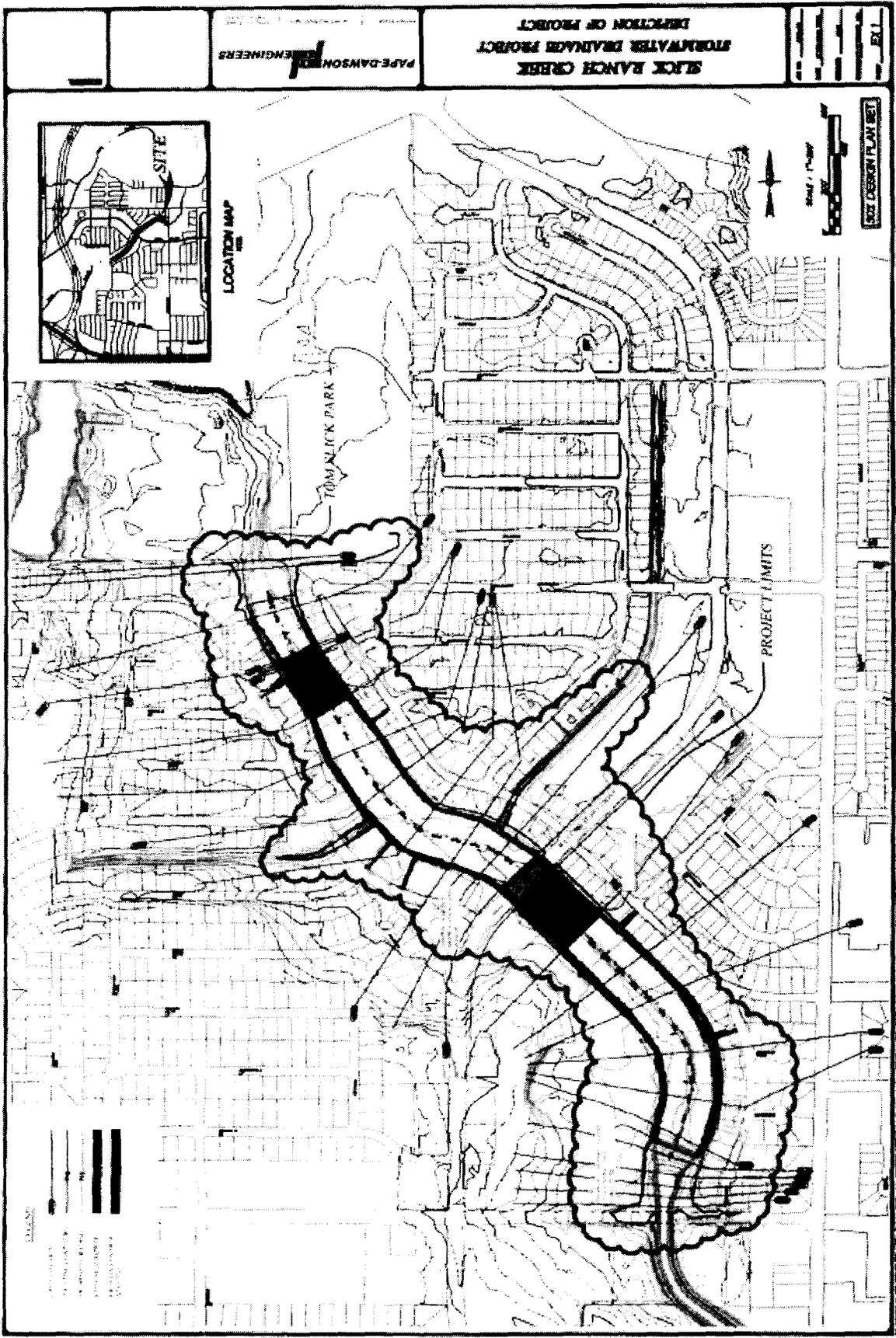


EXHIBIT F
TO
DEVELOPER PARTICIPATION CONTRACT

TEMPORARY CONSTRUCTION EASEMENT

STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF BEXAR §

That, the **CITY OF SAN ANTONIO**, a Texas municipal corporation (“Grantor”), acting by and through its duly authorized officer and/or employee, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration in hand paid by **SLICK CREEK, LLC**, a Texas limited liability company (“Grantee”), the receipt and sufficiency of which are hereby acknowledged and confessed, has granted, sold and conveyed and by these presents does hereby grant, sell and convey unto Grantee, whose mailing address is 405 N. St. Mary’s Street, San Antonio, Texas 78205, an easement (the “Easement”) for the specific purpose of permitting Grantee and Grantee's contractors, subcontractors, employees, consultants and labor and material suppliers to construct storm water improvements and related pipes, lines and appurtenances (collectively, the “Project”) within that certain real property located in the City of San Antonio, Bexar County, Texas, as more particularly described on **Exhibit A** and a drawing marked **Exhibit B** attached hereto and made a part hereof (the “Easement Area”), all in accordance with that certain Developer Participation Contract Slick Ranch Creek Storm Water Drainage Project between Grantor and Grantee (the "Contract").

Grantee shall have the right to remove from the Easement Area by standard industry practices employed in vegetation management, all trees, and parts thereof, any vegetation or obstructions which interfere with the installation, maintenance, and/or repair of the Project within the Easement Area.

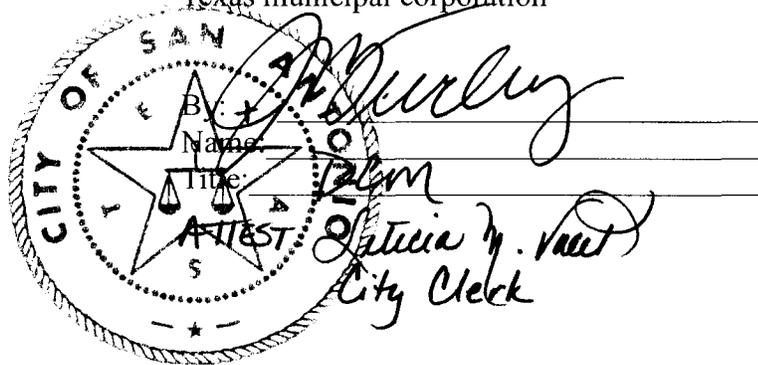
The Easement does not constitute a conveyance of fee simple title to the Easement Area or of the minerals or mineral rights therein and thereunder, but rather a conveyance of the Easement only. This Easement is a grant that is subject to all matters of record in Bexar County, Texas validly subsisting against the Easement Area on this date, and all easements, rights-of-way and prescriptive rights, of record; all presently recorded restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances and other instruments, other than liens and conveyances, that affect the Easement Area; rights of adjoining owners in any wells and fences situated on a common boundary; any discrepancies, conflicts or shortages in area or boundary lines; and any existing encroachments or overlapping of improvements (collectively, the “Permitted Exceptions”).

Grantee shall have access over the drives and access ways situated from time-to-time on any property of Grantor so as to access the Easement Area during construction. Grantee shall promptly restore the surface of any property damaged by Grantee’s use of the Easement, at Grantee’s sole cost and expense. Grantee shall remove any debris resulting from its use of the Easement Area pursuant to the Easement.

TO HAVE AND TO HOLD the Easement and rights unto Grantee, its successors and assigns, until completion of construction of the Project in accordance with the provisions of the Contract. Grantor does hereby bind itself and its successors to warrant and forever defend all and singular the Easement and rights unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, subject to the terms, conditions and provisions set forth herein, including but not limited to the Permitted Exceptions.

EXECUTED this 8th day of MARCH, 2007.

CITY OF SAN ANTONIO, a
Texas municipal corporation



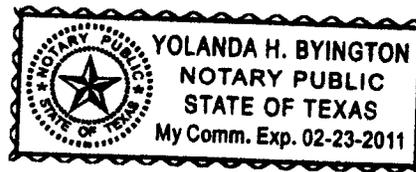
STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this 8th day of March, 2007, by Jelyssa D. Burley, the Deputy City Manager of the CITY OF SAN ANTONIO, a Texas municipal corporation, on behalf of said municipal corporation.

Yolanda H. Byington
Notary Public, State of Texas

Schedule of Exhibits:

- Exhibit A – Easement Area -- Field Notes
- Exhibit B – Easement Area – Drawing



**EXHIBIT A
TO
TEMPORARY CONSTRUCTION EASEMENT**

PROPERTY DESCRIPTION

Those two certain drainage easements, as established and dedicated to the use of the public by subdivision plats recorded in volume 5970 at page 55 and in volume 5580 at page 257, of the Deed and Plat Records of Bexar County, Texas, known as Westwood Village, Unit-22A and Westwood Village Subdivision Unit-14A, respectively, and containing 7.915 acres and 21.56 acres, respectively.



CMS or Ordinance Number: OR00000200701040012

TSLGRS File Code: 1000-05

Document Title:

ORD - 23-01060: Slick Ranch Creek Regional Storm Water Facility, District 6
[Ordinance 2007-01-04-0012; 1/4/2007; Original Appropriation \$4,117

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK
2007 JUN 22 AM 10:55

Ordinance Date:

1/4/2004



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 16
Council Meeting Date: 1/4/2007
RFCA Tracking No: R-842

DEPARTMENT: Public Works

DEPARTMENT HEAD: Tom Wendorf

COUNCIL DISTRICT(S) IMPACTED:
Council District 6

SUBJECT:
Developer Participation Contract with Slick Creek, LLC.

SUMMARY:

This Ordinance authorizes the execution of a Developer Participation Contract between the City of San Antonio and Slick Creek, LLC for the Slick Ranch Creek development project.

This Ordinance also authorizes the City of San Antonio to pay for the cost to oversize a drainage facility in the Slick Ranch Creek watershed for a total amount not to exceed \$4,117,246.20. This Ordinance also authorizes the conveyance of an easement to Slick Creek LLC. Funding for the City contribution is available from the Storm Water Regional Facilities Fund.

It is anticipated that the majority of the City's contribution will be reimbursed through Storm Water Regional Facilities Fees collected from future development in the Slick Ranch Creek Watershed.

BACKGROUND INFORMATION:

Slick Creek, LLC owns and plans on developing certain properties located in the Slick Ranch Creek watershed. Said properties consist of 138 Acres out of the Westpoint Retail & business Centre located adjacent to Potranco Road north of Hwy. 151 at Loop 410.

The provisions of the Unified Development Code which outline the RSWMP require that detention be provided for new developments proposed upstream of identified drainage concerns. As the Slick Ranch Creek floodplain in the vicinity of W. Military Drive impacts approximately 200 homes, the Slick Ranch Creek Watershed has been declared a "Mandatory Detention" area.

Therefore, development of the 138 Acre property would require Slick Creek, LLC, to either (1) construct on-site detention facilities or (2) participate in a drainage mitigation project which would result in reducing the floodplain so that the 200 +/- homes were not adversely impacted by the floodplain.

It is anticipated that this improvement will encourage future development within this watershed.

This development effort of the Slick Ranch Creek requires the developer to adequately carry water resulting from a 100-year storm event by constructing a drainage facility that would need to be sized to carry storm water runoff generated by approximately 138 acres of future ultimate development.

To accommodate the needs of the City of San Antonio, the developer has agreed to over size that drainage facility, at the cost of the City, to convey 3,386 acres of future ultimate development storm water runoff generated within the Slick Ranch Creek watershed. The City has also agreed to convey to the developer a temporary construction easement for the construction of this drainage facility. The construction of this facility will provide several benefits to the community through the reduction in flooding in the Slick Ranch Creek watershed and will increase public safety; it will enable future economic development in the areas surrounding the project; and the fee-in-lieu of on-site detention for developable land within the Slick Ranch Creek watershed are anticipated to substantially exceed the City share of this agreement.

It is estimated that through the implementation of this agreement the construction of this drainage facility will experience a 12 – 18 month project implementation time savings as well as significant cost savings to the City.

Section 212 of the Texas Local Government Code allows municipalities to contract with a developer to construct public improvements related to the development and to participate in the cost thereof. Section 212 also allows municipalities to pay additional funds to “over-size” improvements to allow for development of additional properties (i.e. properties not owned by the developer). This agreement provides funds from the City that will be used to pay for 100% of the project over sizing costs and 30% of the non-over sizing project cost (i.e. costs which are the responsibility of the developer). The total cost of this project is estimated to be \$4,531,246.20.

ISSUE:

This council action authorizes the execution of a Developer Participation Contract with Slick Creek, LLC, which provides for the over sizing of a drainage facility in the Slick Ranch Creek Watershed and also authorizes the City to convey a temporary construction easement to the developer.

ALTERNATIVES:

The drainage facility could be recommended to be included in a future bond program. Through the execution of this Developer Participation contract, this facility can be constructed and other projects can be recommended for the future bond program.

FISCAL IMPACT:

This is a one-time capital expenditure in the amount of \$4,531,246.20. Funds in the amount of \$4,117,246.20 are available from the Regional Facilities Fund and are appropriated and made payable to Slick Creek, LLC. \$414,000 will be provided by Slick Creek, LLC, for this project.

RECOMMENDATION:

Staff recommends approval of this Developer Participation contract.

ATTACHMENT(S):

File Description	File Name
Ordinance/Supplemental Documents	200701040012.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Tom Wendorf Director Public Works

APPROVED FOR COUNCIL CONSIDERATION:

Jelynne Burley Deputy City Manager

MEETING OF THE CITY COUNCIL

Jack Ochs

AGENDA ITEM NUMBER: _____

16^{on}

 JAN 04 2007

DATE: _____

MOTION: _____

Perez / Haass

ORDINANCE NUMBER: _____

2007-01-04-0012

RESOLUTION NUMBER: _____

ZONING CASE NUMBER: _____

TRAVEL AUTHORIZATION: _____

ALAMODOME
ARTS & CULTURAL AFFAIRS
ASSET MANAGEMENT
AVIATION
BUDGET & PERFORMANCE ASSESSMENT
BUILDING INSPECTIONS
HOUSE NUMBERING
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
COMMUNITY RELATIONS
PUBLIC INFORMATION
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
ECONOMIC DEVELOPMENT
FINANCE - DIRECTOR
FINANCE - ASSESSOR
FINANCE - CONTROLLER
FINANCE - GRANTS
FINANCE - TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERGOVERNMENTAL RELATIONS
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
PARKS AND RECREATION
MARKET SQUARE
YOUTH INITIATIVES
PLANNING DEPARTMENT
DISABILITY ACCESS OFFICE
LAND DEVELOPMENT SERVICES
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
ENVIRONMENTAL SERVICES
PARKING DIVISION
REAL ESTATE DIVISION
SOLID WASTE
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)

ROBERT O. FLANNERY District 1				
SHEILA R. HOGAN District 2				
ROLAND G. HENNING District 3				
RICHARD H. HERR District 4				
PAT F. HANLEY District 5				
DELICIA HERNANDEZ District 6				
BLAKE G. HERRON District 7				
ALAN H. HERRON District 8				
KENNETH H. HERRON District 9				
CHRISTOPHER HERRON District 10				
PHIL HERRON Mayor				

VIA

CONSENT AGENDA