

SUBDIVISION IMPROVEMENT AGREEMENT

For

PARK IMPROVEMENT DEVELOPMENT AGREEMENTS

STATE OF TEXAS

COUNTY OF DENTON

This ~~Subdivision Improvement~~ Park Development Agreement (the "Agreement") is made and entered into by and between Jesey Lane LLC, a ~~Texas limited liability company~~ [STATE] [CORPORATION TYPE] (the "~~Owner~~ Developer") and the City of Lewisville, Texas, (the "City"), hereinafter collectively referred to as the "**Parties**".

WHEREAS, the ~~Owner~~ Developer owns the tract of real property described in Exhibit A and made a part hereof (the "**Property**"); and

WHEREAS, the City's Unified Development Code (the "UDC") requires the ~~Owner~~ Developer to dedicate a certain amount of land to the City for use as parkland ("Parkland Dedication") ~~for a residential project being developed by Developer at [ADDRESS] (the "Project"), or pay a fee to the City in lieu of such dedication ("Cash in Lieu Fee") for a residential project being developed by Owner at 1717 Main Street, Ste 2600, Dallas, TX 75201 (the "Project")~~ for the purposes set forth in Chapter X.1 of the UDC, and

WHEREAS, Developer intends to dedicate the Property to satisfy its Parkland Dedication requirements for the Project;

WHEREAS, the UDC ~~further~~ requires the ~~Owner~~ Developer to pay the City a park development fee for the purposes set forth in Chapter X.1 of the UDC ("Park Development Fee"); and

WHEREAS, the ~~Owner~~ Developer wishes to fully develop a park (the "Park") on the ~~land designated for Parkland Dedication with improvements~~ Property (the "Park Improvements") meeting or exceeding the City's park improvement standards and subsequently dedicate such Park to the City; and

WHEREAS, the City wishes to escrow the ~~Owner~~ Developer's Park Development Fee until such time as the developed Park is completed, determined to meet or exceed the City's park improvement standards, and dedicated to and accepted by the City, and return the escrowed fee at that time, pursuant to section X.1.4.B of the UDC; and

WHEREAS, the ~~Owner~~ Developer has agreed to dedicate a portion of the property for the Park to the City as shown in Exhibit B as part of its Parkland Dedication requirements; and

~~WHEREAS, the City wishes to waive the Owner's remaining Cash in Lieu Fee in order to ensure that a park is built and dedicated to the City at the specific location set forth for the Park; and~~

WHEREAS, pursuant to section X.1.4.A-B of the UDC, the Parties wish to enter into this

Commented [LC1]: Options to add:

Requirement that all manufacturers' warranties be provided to the City upon completion
Require provision of revised or as-builts to the City in digital format
Copy of application and subsequent report prepared by TDLR for compliance with the Architectural Barriers Act (Gov't Code Sec. 469)

Commented [LC2R1]: Yes add all

Commented [LC3R1]: See revised throughout

Commented [LC4]: Keep this in as optional language

Commented [SA5R4]: Yes, is it possible to "escrow" remaining Cash in Lieu fees rather than waive them?

Commented [LC6R4]: Per our conversation, I am only comfortable escrowing park development fees.

Agreement detailing certain information regarding the completion of the Park improvements, the dedication of the Park to the City, and the escrow of the ~~Owner~~Developer's Park Development Fee.

NOW, THEREFORE, the Parties agree as follows:

I. Term

1.1 The term of this Agreement shall commence on the date executed by authorized representatives of both Parties (the "Effective Date") and shall continue in full force and effect until the Park Development Fee escrowed hereunder is refunded to the ~~Owner~~Developer, unless earlier terminated by either Party as set forth herein.

II. ~~Owner~~Developer Obligations

2.1 Park Improvements.

2.1.1 Approval of Improvements. -The ~~Owner~~Developer shall submit a park plan including all proposed Park Improvements for the Park in accordance with section X.1.4.A-~~5B~~ of the UDC (the "Park Plan") for approval by the City's Director of Parks and Recreation (the "Director"). Such approval shall be provided in writing. The Park Plan shall be approved if found to be in compliance with all City ordinances and this Agreement. ~~Owner~~Developer shall not begin construction or installation of the Park Improvements until the Park Plan is approved as set forth herein. Once approved, the Park Plan shall be attached hereto as **Exhibit C**.

2.1.2 Park Plan. The Park Plan shall adhere to development standards established in the Healthy Infrastructure Plan and guidelines used by the Parks and Recreation Department, attached hereto as **Exhibit D**. No deviation from a standard in those documents which would require approval by the City's Director of Parks and Recreation will be accepted.

2.1.3 Construction, Installation and Inspection. The ~~Owner~~Developer shall construct and install all Park Improvements in a good and workmanlike manner in accordance with all ordinances and the approved Park Plan. The Director of Parks and Recreation, or her designee, will be permitted to conduct periodic inspections during installation and provide a final inspection to verify conformance with the Park Plan prior to City's acceptance of the Park. Prior to completion of the Park Improvements, the Developer shall provide the City with a copy of the application and subsequent report prepared by the Texas Department of Licensing and Regulation (TDLR) for compliance with the Architectural Barriers Act (Gov't Code Sec. 469) for the Park Improvements.

2.1.4 Completion. Upon completion of the Park Improvements, the Director of Parks and Recreation or her designee shall perform a final inspection to ensure that Park Improvements were constructed and installed in accordance with the Park Plan. If the Director of Parks and Recreation is satisfied that the Park Improvements have been constructed and installed in accordance with the Park Plan and this Agreement, the Director shall issue a written letter outlining such to the ~~Owner~~Developer (the "Completion Letter"). Upon receipt of the Completion Letter, ~~Owner~~Developer will provide the City with as-built plans with a detailed, scaled drawing reflecting the exact location of the Park Improvements, as well as all documentation regarding design, maintenance, manufacturer's warranties, or other documentation necessary for the ongoing maintenance of the Park Improvements. The Park Improvements shall be completed no later than June 30, 2026. The Director of Parks

Commented [LC7]: Clarify timing here in ordinance - site plan will be approved with escrow, park plan will come later. (by when? First building permit?)

Commented [LC8R7]: has been moved to 2.1.1.3.2

Commented [LC9]: as-built

and Recreation may, but is not required to, extend this deadline by up to 120 days in her sole and absolute discretion.

2.2 Conveyance. Developer shall label the Property as an “open space lot” on the final plat initially submitted to the City. Upon completion of the Park Improvements and issuance of the Completion Letter as set forth in section 2.1.4, above, Owner/Developer shall amend the submitted plat in order to clearly convey the Park, including all Park Improvements, to the City as parkland, free and clear of any liens and at no cost to the City. The conveyance must be by and through dedicating the lot in fee simple to the City on a plat or by separate instrument filed with the appropriate county, free of all liens and encumbrances. The conveyance of the Park shall be completed, including filing any necessary documents with the appropriate county, by no later than August 15, 2026. The Director of Parks and Recreation may, but is not required to, extend this deadline by up to 120 days in her sole and absolute discretion.

2.3 Fee Escrow. Owner/Developer shall pay to the City the Park Development Fee of \$149,600 at the time set forth in chapter X.1 of the UDC. Any interest earned on such fee shall belong to the City. Upon completion and acceptance of the Park, including the Park Improvements, by the City as set forth in section 2, below, and the conveyance of the Park to the City, the Owner/Developer may request that the escrowed fees be returned to the Owner/Developer in accordance with section 2.3, below.

2.4 Warranty for Maintenance Period; Maintenance Bond. The Owner/Developer warrants the Park Improvements will be designed and constructed in strict accordance with the Park Plan and free from defects. The Owner/Developer agrees to maintain and correct any defects for a period of two (2) years from the date the City accepts the construction of the Park Improvements (the “Maintenance Period”). The Owner/Developer shall correct and repair, or cause to be corrected and repaired, any defects in materials or workmanship of the Park Improvements that occur before and during the Maintenance Period due to any cause. The Developer shall also provide the City a two (2) year maintenance bond covering 100% of all Park Improvements prior to the start of construction.

III. City’s Obligations

3.1 Inspection and Approval. The City may inspect the Park Improvements during and at the completion of construction to ensure compliance with the Park Plan, and the Director of Parks and Recreation, or her designee, may accept the Park Improvements in writing by issuing a Completion Letter, as set forth in section 2.1.4, above.

3.2 Notice of Defect. The City will notify the Owner/Developer if an inspection reveals that any portion of the Park Improvements is not constructed in accordance with the Park Plan or is otherwise defective. The City is not responsible for the construction of the Park Improvements, the quality of the material, or the construction or installation methods utilized. In addition, the City is not responsible under this Agreement for making continuous on-site inspections of the construction work and the City has no privity with or responsibility for the construction or installation contractor or any subcontractors.

3.3 Refund/Release of Escrowed Park Development Fee. Upon completion and acceptance of the Park, including the Park Improvements, by the City, and the conveyance of the

Commented [SA10]: Prior to conveyance do we want to require developer to label future park as “open space” or an “x” lot? This may be a question for Michele

Commented [LC11R10]: Per Michele’s email, they should be labeled “open space” on the plat. See revised throughout this section.

Commented [LC12]: Took this out because only plat dedication has been contemplated during all our discussions; if someone wants to dedicate by separate instrument we can amend as needed at that time.

Commented [SA13]: I guess we need to make this fillable

Commented [LC14R13]: Yes; see revised

Commented [LC15]: See revised

Commented [LC16]: Add two year maintenance bond

Commented [LC17R16]: See revised

Commented [SA18]: Marcus, do we want to ask for the maintenance bond before or after construction? I’d hate to lose the maintenance time covered during construction

Commented [LC19R18]: Regardless of when it’s provided, the maintenance period doesn’t start until the improvements are accepted.

Commented [LC20]: Release, not refund

Commented [LC21R20]: See revised

Commented [SA22]: See question about cash in lieu

Park to the City, the ~~Owner~~Developer may request that the escrowed Park Development Fee be returned to the ~~Owner~~Developer. Such request shall be made in writing to the Director of Parks and Recreation within 120 days of the conveyance of the Park to the City. The City shall refund the escrowed Park Development Fee within 30 days of receipt of the request from the ~~Owner~~Developer. Any interest earned on the escrowed Park Development Fee shall remain with the City.

3.4 Waiver of Remaining Cash-in-Lieu Requirement. By this Agreement, the City waives the ~~Owner~~Developer's remaining cash-in-lieu fee of ~~\$96,058~~ for the Project.

Commented [SA23]: This will be optional; also see questions about CIL

Commented [LC24R23]: See revised

IV. Events of Default and Termination

4.1 Events of Default. The following shall constitute an Event of Default:

4.1.1 Either Party's failure to comply with any material provision of this Agreement shall constitute an Event of Default; or

4.1.2 ~~Owner~~Developer's sale of the Property or any portion of the Property upon which the Park is located during the Term of this Agreement without assigning ~~Owner~~Developer's interest in this Agreement to the purchaser as set forth in section 5.2, below.

4.2 City's Remedies. Upon an Event of Default by the ~~Owner~~Developer, the Director of Parks and Recreation, or her designee, shall provide the ~~Owner~~Developer with written notice of the Event of Default, outlining the specific failure/s to comply with a material provision of this Agreement. The ~~Owner~~Developer shall have the opportunity to cure for a period of thirty (30) days following the date of such written notice. At the end of such cure period, if all outstanding failures to comply with this Agreement are not rectified, this Agreement shall automatically terminate.

4.3 ~~Owner~~Developer's Remedies. Upon an Event of Default by the City, the ~~Owner~~Developer shall provide the Director of Parks and Recreation with written notice of the Event of Default, outlining the specific failure/s to comply with a material provision of this Agreement. The City shall have the opportunity to cure for a period of thirty (30) days following the date of such written notice. At the end of such cure period, if all outstanding failures to comply with this Agreement are not rectified, the ~~Owner~~Developer may elect to terminate this Agreement by providing written notice to the City.

4.4 Effect of Termination. Upon termination of this Agreement by either Party for any reason, the Park Development Fee shall no longer be escrowed, but shall permanently convey to the City for use for the purposes set forth in Chapter X.1 of the UDC for park development fees, and the cash-in-lieu fee waived by section 3.4, above, shall become immediately due and payable to the City by the ~~Owner~~Developer. Nothing in this section shall limit the City's remedies in case of termination.

V. Miscellaneous

5.1 No Impact Fee. Nothing in this Agreement, the Agreement itself, and the dealings between the Parties shall be considered an impact fee. ~~Owner~~Developer agrees and stipulates that all terms of Local Government Code section 212.904 have been met by the City, and that the City has not required as a condition of approval for ~~Owner~~Developer's development, or any portion

thereof, that ~~Owner~~Developer bear a portion of the costs of municipal infrastructure improvements by the making of dedications, the payment of fees, or the payment of construction costs. ~~Owner~~Developer, its related entities, successors and assigns fully and forever releases and discharges the City, its past and present employees, officers, councilmembers, attorneys and other representatives, including City consultants (including city attorney and city engineer, and city bond counsel), from any and all claims, demands, controversies, and causes of action of every conceivable character, without limitation, including for breach of contract (including under Local Government Code sections 271.151-271.160), takings, exactions, negligence, and for any claims under any statute or code, local, state or federal, including under Local Government Code chapter 395, and the Private Real Property Rights Preservation Act, Chapter 2007, Texas Government Code, including that the City's execution or performance of this Agreement or any authorized amendment or supplements hereto may constitute, either now or in the future, a "Taking" of ~~Owner~~Developer's, ~~Owner~~Developer's grantee's, or a grantee's successor's "Private Real Property," as such terms are defined in the Private Real Property Rights Preservation Act. Any claims against the City, the City consultants (including city attorney, city engineer, and city bond counsel) and their respective employees and agents which are not specifically released above are hereby assigned in full to the City.

5.2 Remedies. The remedies available to the City and the ~~Owner~~Developer under this Agreement and Texas law are cumulative in nature.

5.3 No Third-Party Beneficiaries. This Agreement is solely for the benefit of ~~Owner~~Developer and the City and is not intended to be nor shall it be construed to be for the benefit of any third party. It is understood and agreed between the Parties that the ~~Owner~~Developer, in performing its obligations thereunder, is acting independently, and the City assumes no responsibility or liabilities in connection therewith to third parties.

5.4 Indemnification. ~~OWNER~~DEVELOPER ASSUMES THE ENTIRE RESPONSIBILITY AND LIABILITY FOR, AND AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, REPRESENTATIVES AND INSURERS HARMLESS FROM ANY AND ALL LIABILITIES, CLAIMS, COSTS, EXPENSES, JUDGMENTS, ATTORNEYS FEES, LITIGATION EXPENSES, CAUSES OF ACTION, DEMANDS, LOSSES AND/OR DAMAGES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY INCIDENTAL TO THE PERFORMANCE OF WORK OR SERVICES BY ~~OWNER~~DEVELOPER, ITS AGENTS, EMPLOYEES, REPRESENTATIVES AND INDEPENDENT CONTRACTORS. THIS INDEMNITY IS TO BE CONSTRUED AS BROADLY AS POSSIBLE TO INCLUDE ANY AND ALL LIABILITIES, CLAIMS, COSTS, EXPENSES, JUDGMENTS, CAUSES OF ACTION, DEMANDS, LOSSES WHATSOEVER, INCLUDING BUT NOT LIMITED TO CAUSES OF ACTION OR DAMAGES SOUNDING IN TORT, PERSONAL INJURIES, CONTRACT DAMAGES, ECONOMIC DAMAGES, PUNITIVE DAMAGES, STRICT LIABILITY, COMMON LAW NEGLIGENCE AND GROSS NEGLIGENCE, INTENTIONAL TORTS, FEDERAL AND STATE STATUTORY AND COMMON LAW, CLAIMS UNDER THE TEXAS TORT CLAIMS ACT, EMPLOYMENT DISPUTES, FEDERAL AND STATE CIVIL RIGHTS, CLAIMS FOUNDED IN CONTRACT OR QUASI-CONTRACT, BREACH OF WARRANTY, CLAIMS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, AND ANY AND ALL CLAIMS CAUSES OF ACTION OR DEMANDS WHEREBY ANY LOSS IS SOUGHT AND/OR INCURRED AND/OR

PAYABLE BY CITY, ITS AGENTS, EMPLOYEES, REPRESENTATIVES AND/OR INSURERS OR RISK POOLS. THIS PROVISION IS TO BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS, AND IT IS EXPRESSLY RECOGNIZED BY ALL PARTIES THAT IT COMPLIES WITH THE CONSPICUOUSNESS REQUIREMENT AND THE EXPRESS NEGLIGENCE TEST, AND IS VALID AND ENFORCEABLE AGAINST OWNERDEVELOPER, ITS AGENTS, EMPLOYEES, REPRESENTATIVES, AND INDEPENDENT CONTRACTORS. OWNERDEVELOPER HAS CAREFULLY READ, FULLY UNDERSTANDS, AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS PROVISION AND THE INDIVIDUAL SIGNING THIS AGREEMENT ON BEHALF OF OWNERDEVELOPER HAS FULL AUTHORITY TO BIND OWNERDEVELOPER TO ~~THIS~~ THIS AGREEMENT AND ~~THIS~~ THIS INDEMNITY PROVISION. IT IS FURTHER RECOGNIZED AND AGREED, THAT SHOULD ANY PARTICULAR PORTION OR PROVISION OF TIDS INDEMNITY PROVISION BE HELD INVALID, VOID AND/OR UNENFORCEABLE, IT SHALL NOT AFFECT THE VALIDITY AND ENFORCEABILITY OF THE REMAINDER OF THIS PROVISION. THIS PROVISION SURVIVES TERMINATION OR COMPLETION OF THIS AGREEMENT AND THE OBLIGATIONS CONTAINED HEREIN.

5.5 No Waiver. The waiver of any provision of this Agreement will not constitute a waiver of any other provision, nor will it constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement. The City's failure to enforce any provision of this Agreement will not constitute a waiver or estoppel of the right to do so.

5.6 Successors and Assigns. The terms and conditions of this Agreement are binding upon the successors and assigns of all Parties hereto. This Agreement cannot be assigned by the OwnerDeveloper unless written permission is first granted by the City, the assignee agrees to be bound by all terms and conditions of this Agreement, and the assignment includes a statement signed by the OwnerDeveloper and the requested assignee assigning the escrowed Park Development Fee to the assignee contingent upon the City's approval of the assignment of this Agreement. Any assignment made without meeting the required conditions is void. The City may assign some or all of its rights under this Agreement and any such assignment shall be effective upon notice to the OwnerDeveloper.

5.7 Notice. Notices required to be given to either Party to this Agreement shall be given by email, personally, or by nationally-recognized overnight courier or certified mail with return receipt requested to the party at its address as set forth below, and shall be deemed delivered one (1) day after the date deposited with the overnight courier and three (3) days after the date deposited in the United States' mail at the address provided below. Notice delivered by email will be deemed to have been received when sent, even if the sender receives a machine-generated message that delivery has failed. If a party sending an email notice under this agreement receives a machine-generated message that delivery has failed, for that notice to be valid the sender must no later than ten business days after sending the email message deliver a tangible copy of that notice as otherwise set forth herein.

For OwnerDeveloper by notice to:
~~Josey Lane LLC~~
~~Tom Andrews, Vice President~~
~~1717 Main Street Ste 2600,~~
~~Dallas, Texas 75201~~

Commented [LC25]: Please fill in

tandrews@trigatecapital.com

For City by notice to:
Director of Parks and Recreation
City of Lewisville, Texas
191 Civic Circle
Lewisville, Texas 75067
sanaya@cityoflewisville.com

with a copy to:
City Manager
City of Lewisville, Texas
151 W. Church Street
Lewisville, Texas 75057
clairepowell@cityoflewisville.com

Either Party may change the address or email address to which notices are to be sent by giving the other Party written notice in the manner provided in this paragraph.

5.9 Severability. If any provision contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. In lieu of each invalid, illegal or unenforceable provision, there shall be added a new provision by written agreement of the Parties as similar in terms to such invalid, illegal or unenforceable provision as may be possible and yet be valid, legal and enforceable.

5.10 Jurisdiction and Venue. This Agreement concerns real property located in Lewisville, Texas, and shall be governed and construed under Texas law. Venue for any action arising under this Agreement shall be exclusively in Denton County, Texas.

5.11 Captions Immaterial. The captions or headings of the paragraphs of this Agreement are for convenience only and shall not be considered in construing this Agreement.

5.12 Modifications. This Agreement may be modified only by a writing signed by both of the Parties or their duly authorized agents.

[signatures on the following page]

DATED this the _____ day of _____, 202__.

CITY OF LEWISVILLE, TEXAS

Claire Powell, City Manager

ATTEST:

Thomas Harris III, City Secretary

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

| **OWNERDEVELOPER:**

By: _____

Name: _____

Title: _____

Date: _____

| **OWNERDEVELOPER'S ACKNOWLEDGEMENT**

STATE OF TEXAS

COUNTY OF DENTON

This instrument was acknowledged before me on (date) by (name of acknowledging member, manager, authorized officer, or agent), a (member, manager, authorized officer, or agent) of Josey Lane LLC on behalf of Josey Lane LLC, a limited liability company.

Notary – State of Texas

EXHIBIT A – PROPERTY DESCRIPTION

EXHIBIT B – PARK SITE PLAN

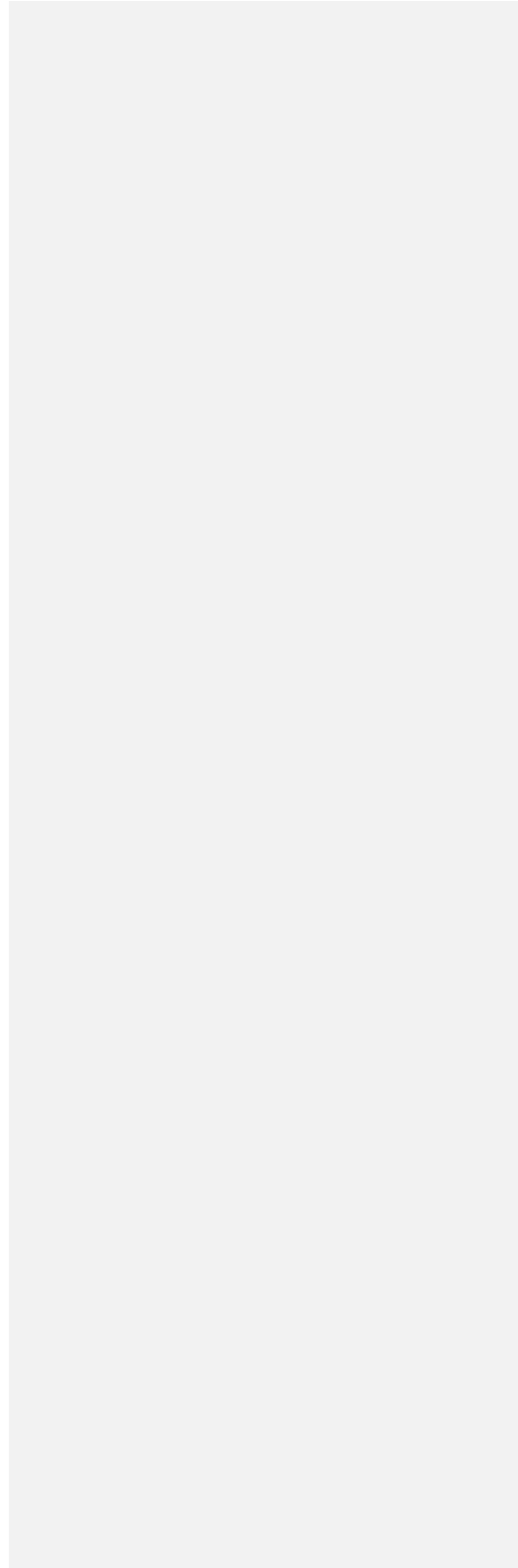


EXHIBIT C – PARK PLAN (ATTACHED UPON APPROVAL)

EXHIBIT D
PARK DEVELOPMENT STANDARDS ESTABLISHED IN THE HEALTHY
INFRASTRUCTURE PLAN AND GUIDELINES USED BY THE PARKS AND
RECREATION DEPARTMENT
