

**THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED
ORDINANCE OR RESOLUTION ADOPTED BY THE CITY COUNCIL**

ORDINANCE

AUTHORIZING THE CITY OF SAN ANTONIO TO TRANSFER USE AND CONTROL TO CPS A 0.100 ACRE (4,374 SQUARE FEET) TRACT OF LAND LOCATED AT 401 VILLITA STREET IN NCB 124 THAT WAS DEDICATED BY CPS ENERGY TO THE CITY OF SAN ANTONIO BY ORDINANCE 18,763 IN 1953 FOR THE EXPANSION OF ARNESON THEATRE.

* * * * *

WHEREAS, CPS Energy is preparing to sell the property located at 401 Villita Street, known as the Villita Assembly Building; during due diligence, it was discovered that Ordinance 18763, authorized in 1953, dedicated 0.100 of an acre (4,374 square feet) of the property to the City of San Antonio ("City") for the expansion of Arneson Theatre; the property was never utilized for the intended purpose, and the City has no plans for theater expansion into the walled patio area; the 1953 dedication was also never recorded, allowing the City's right to the property to go largely undetected for decades; and

WHEREAS, when CPS Energy most recently platted the property in 2012, the 1953 dedication was not acknowledged; and

WHEREAS, a boundary adjustment is proposed to clarify ownership before the property is sold to a third party; in a single coordinated action, the City will first transfer the 0.100-acre property back to CPS, effectively reversing the 1953 dedication and then CPS will transfer to the City a 0.042-acre (1,842 square foot) tract; and

WHEREAS, CPS Energy will replat the property and is expected to dedicate 0.024 acres of right-of-way to the City following the boundary adjustment; and

WHEREAS, this mutual boundary adjustment will remove the City's interest in the CPS property, aligning title documents with the longtime use and current maintenance responsibilities of the properties; the cleanup will also locate public improvements entirely on City-owned property; lastly, this will clear title issues related to the Villita Assembly Building patio, allowing the property to be sold to a third party; and

WHEREAS, the proposed property exchange will rectify these discrepancies and align ownership with the actual operation, maintenance, and control of these tracts; and

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

SECTION 1. The City Manager or designee, severally, are authorized to transfer use and control of 0.100-acre as shown and described in **Attachment A** in an agreement substantially similar to **Attachment B** to CPS.

SECTION 2. All attachments to this Ordinance are incorporated into it by reference for all purposes as if fully set forth. The City Manager, or designee, is further authorized to execute and deliver all other documents necessary or convenient to effect the transactions contemplated in the above agreement; and other to do all things necessary or convenient to effectuate the transaction.

SECTION 3. The disposition of property must be coordinated through the city's Finance Department to assure the removal of these assets into the City's financial records and to record the proper accounting transactions.

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 allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. All presently existing water and wastewater lines and facilities, electric transmission and distribution lines and facilities, gas lines and facilities, communication lines and facilities, or any other public utility lines and facilities, if any, may remain in place despite this Ordinance and may continue to be used, repaired, enlarged, and maintained in the ordinary course of business. Any person wanting removal of an existing utility line or facility must negotiate separately with the pertinent utility. Any person building on the released utility easements without first reaching an agreement with a utility having lines or facilities in the segment does so at his own risk. After the date of this Ordinance, no utility may add additional utility lines or facilities in the released utility easements.

SECTION 6. 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 ____ day of June, 2021.

M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

Tina Flores, City Clerk

Andrew Segovia, City Attorney

VS
6/17/21
Item No. _____

ATTACHMENT A

DRAFT



Attachment A



CIVIL ENGINEERING CONSULTANTS
DON DURDEN, INC.

**FIELD NOTES FOR
0.100 Acre
City of San Antonio Tract**

Being a 0.100 acre parcel of land in the San Antonio Town Tract Survey, Abstract No. 20 of Bexar County, Texas, and being out of the remainder of Lot 1, NCB 124, all as shown on the plat recorded in Volume 9647, Page 59, Public Records (P.R.) of Bexar County, Texas; said 0.100 acre tract being that land conveyed to the City of San Antonio by board action according to the Minutes of the City Public Service Board of San Antonio dated January 07, 1953 being, more particularly described by metes and bounds as follows:

BEGINNING at a found mag-nail at the southeast corner Lot 1 described above, and lying on the north right-of-way (ROW) line of La Villita Street;

THENCE N 80°12'21" W with the south line of said Lot 1 for a distance of 9.00 feet to a point being the southwest corner of this description;

THENCE through Lot 1 for the following three (3) courses:

North 08°04'28" East, for a distance of 83.60 feet to a point;

With a non-tangent curve to the left having a radius of 108.70 feet and a central angle of 38°30'17", the chord bears North 32°39'47" West – 71.68 feet, for an arc length of 73.05 feet to a point;

North 08°04'28" East, for a distance of 54.18 feet to a point;

THENCE South 52°43'46" East, for a distance of 63.90 feet to a point on the west ROW line of King Phillip V Alley (formerly Womble Alley), a chiseled X in the west line of said alley bears North 08°04'28" East, - 18.81 feet;

THENCE South 08°04'28" West, for a distance of 161.20 feet to the **POINT OF BEGINNING** and containing 0.100 acres of land, more or less.

I hereby certify that this description was made according to an actual survey made on the ground by employees of Don Durden, Inc. dba Civil Engineering Consultants.

Bearing Source: The Basis of Bearing is based on NAD83 (2011) Datum-Texas State Plane Coordinate System- South Central Zone.

Date: *September 30, 2020*

Gary B. Neill

Gary B. Neill
R.P.L.S. #3964
Firm No. 10041000



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VS
6/17/21
Item No. _____

ATTACHMENT B

DRAFT

Attachment B

Transfer of Use and Control Agreement

This Transfer of Use Agreement ("Agreement") is made and entered into by and between the City of San Antonio ("City") and the CPS Energy ("CPS") on ____ day of _____, 2021 ("Effective Date"). The parties may be identified individually as party ("Party") or collectively as the parties ("Parties").

RECITALS

WHEREAS, in 1953, Ordinance 18,763 authorized the dedication 0.100 of an acre of property located at 401 Villita Street, known as the Villita Assembly Building, from CPS to the City of San Antonio for the expansion of Arneson Theatre, which was never realized;

WHEREAS, neither Ordinance 18,763 nor the dedication was recorded in the deed and plat records of Bexar county;

WHEREAS, CPS Energy is preparing to sell the property located at 401 Villita Street and a boundary adjustment between the City and CPS is necessary to clarify ownership and clear title prior to the sale;

WHEREAS, City is the owner of 0.100 acre of real property which is more particularly described in **Exhibit C** and depicted in **Exhibit D** ("City Property"), attached and incorporated hereto;

WHEREAS, CPS is the beneficial user of 0.042 acre of real property owned by the City of San Antonio which is more particularly described in **Exhibit A** and depicted in **Exhibit B** ("CPS Property"), attached hereto and incorporated;

WHEREAS, the Parties desire to transfer the use and control of the properties described above in order to align ownership with current operation, maintenance, control of the properties; and

WHEREAS, the transfer of the properties described above will not result in any costs due between the Parties;

WHEREAS, CPS is a municipally-owned utility of the City; and

WHEREAS, CPS Property is titled in the name of the "City of San Antonio, as Part of its Electric and Gas System Acting By and Through the City Public Service Board, a Municipal Board of the City of San Antonio, created pursuant to the authority contained in §1502.070 of the Texas Government Code and its predecessor statute" and this Agreement shall take place of what would otherwise be deeds between the City and CPS.

WHEREAS, following the transfer of the use of the above-described properties below, CPS plans to replat its property at 401 Villita Street, commonly known at the Villita Assembly Building, and is expected to dedicate 0.024 acres of right-of-way to the City at that time;

Attachment B

furthermore, City is expected to enter into an agreement with the subsequent owner of 401 Villita Street for the maintenance of certain infrastructure on or around 401 Villita Street.

NOW, THEREFORE, THE PARTIES AGREE TO THE FOLLOWING TRANSFER OF USE OF CERTAIN PROPERTY;

1. CPS hereby surrenders and transfers use and control of the CPS Property to the City.
2. City hereby surrenders and transfers use and control of the City Property to CPS.
3. Neither City nor CPS by execution of this Agreement waive or relinquish any right which they may have under the law, constitutional, state, or federal.
4. Condition of the CPS Property and City Property.
 - a. Disclaimer. Each party specifically disclaims any warranty, guaranty, or representation as of, to, or concerning: (i) the nature and condition of the properties exchanged; (ii) the manner of construction and condition and state of repair or lack of repair of any improvements located thereon; (iii) the nature or extent of any easement, right-of-way, lease, possession, lien, encumbrance, license, reservation, condition, or otherwise; and (iv) the compliance of the properties of the operation of the properties with any laws, rules, ordinances, or regulations of any government or other body. Neither party has not made, and does not make, any representations, warranties, or covenants of any kind or character whatsoever, whether express or implied, with respect to the quality or condition of the properties, the suitability of the properties for any and all activities, and uses which the Parties may conduct thereon, compliance by the properties with any laws, rules, ordinances or regulations of any applicable government authority of habitability, merchantability, or fitness for a particular purpose. By accepting the transfer of use, benefit, and control of the properties at closing, the Parties acknowledge that each has inspected the other's properties to its satisfaction. The Parties agree to accept the transfer of use, benefit, and control of the other Party's properties being in its present as-is, condition with all faults.
 - b. Property Condition. The Parties acknowledge and agree that they are experienced in the ownership, development, and/or operation of properties similar to the properties being exchanged and that the Parties have inspected the properties to each Party's satisfaction and is qualified to make such an inspection. Each Party acknowledges that it is fully relying on its own (or its representatives' own) inspections of the properties and not made upon any other state, oral or written, which may have been made or may be made by the other Party. Each Party acknowledges that it has thoroughly inspected and inspected the properties to the extent deemed necessary by

Attachment B

each Party in order to enable that Party to evaluate the condition of the properties; and each Party acknowledges that it is relying solely upon its own inspection, examination, or evaluation of the properties. Each Party expressly assumes all risks, liabilities, claims, damages, and costs resulting from, arising from, or related to the ownership, use, condition, location, maintenance, repair, or operation of the properties attributable to the period from and after the date hereof.

City of San Antonio,
A Texas municipal corporation

By: _____
City Manager or Designee

Approved as to form:

Assistant City Attorney

City of San Antonio, acting by and through the
City Public Service Board

By: _____

Printed Name: _____

Title: _____

Attachment B

EXHIBIT A



CIVIL ENGINEERING CONSULTANTS
DON DURDEN, INC.

FIELD NOTES FOR 0.100 Acre City of San Antonio Tract

Being a 0.100 acre parcel of land in the San Antonio Town Tract Survey, Abstract No. 20 of Bexar County, Texas, and being out of the remainder of Lot 1, NCB 124, all as shown on the plat recorded in Volume 9647, Page 59, Public Records (P.R.) of Bexar County, Texas; said 0.100 acre tract being that land conveyed to the City of San Antonio by board action according to the Minutes of the City Public Service Board of San Antonio dated January 07, 1953 being, more particularly described by metes and bounds as follows:

BEGINNING at a found mag-nail at the southeast corner Lot 1 described above, and lying on the north right-of-way (ROW) line of La Villita Street;

THENCE N 80°12'21" W with the south line of said Lot 1 for a distance of 9.00 feet to a point being the southwest corner of this description;

THENCE through Lot 1 for the following three (3) courses:

North 08°04'28" East, for a distance of 83.60 feet to a point;

With a non-tangent curve to the left having a radius of 108.70 feet and a central angle of 38°30'17", the chord bears North 32°39'47" West - 71.68 feet, for an arc length of 73.05 feet to a point;

North 08°04'28" East, for a distance of 54.18 feet to a point;

THENCE South 52°43'46" East, for a distance of 63.90 feet to a point on the west ROW line of King Phillip V Alley (formerly Womble Alley), a chiseled X in the west line of said alley bears North 08°04'28" East, - 18.81 feet;

THENCE South 08°04'28" West, for a distance of 161.20 feet to the **POINT OF BEGINNING** and containing 0.100 acres of land, more or less.

I hereby certify that this description was made according to an actual survey made on the ground by employees of Don Durden, Inc. dba Civil Engineering Consultants.

Bearing Source: The Basis of Bearing is based on NAD83 (2011) Datum-Texas State Plane Coordinate System- South Central Zone.

Date: *September 30, 2020*

Gary B. Neill

Gary B. Neill
R.P.L.S. #3964
Firm No. 10041000

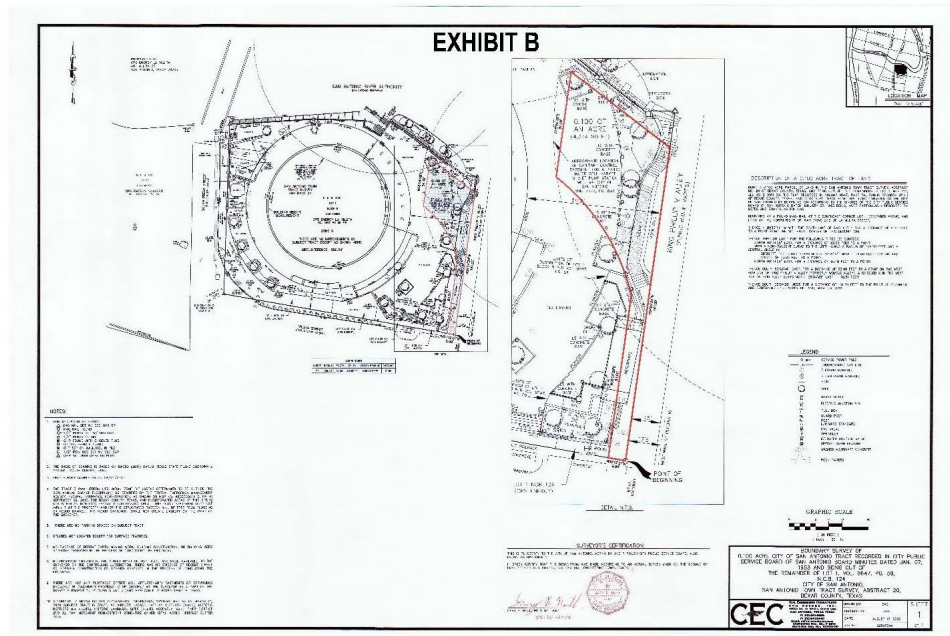


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Attachment B



Attachment B

EXHIBIT C



CIVIL ENGINEERING CONSULTANTS
DON DURDEN, INC.

FIELD NOTES FOR 0.042 Acre Tract

Being a 0.042 acre parcel of land in the San Antonio Town Tract Survey, Abstract No. 20 of Bexar County, Texas, and being part of a called 1.113 acre Lot 1, Block 8, and also out of the remainders of Lot 1, NCB 124, all as shown on the plat recorded in Volume 9647, Page 59, Public Records (P.R.) of Bexar County, Texas; said 0.042 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a found mag-nail with Civil Engineering Consultants (CEC) washer at the southeast corner of the above-mentioned Lot 1;

THENCE North 80°12'21" West, with the south line of said Lot 1 for a distance of 8.97 feet to point for the southwest corner of this description; a set chisel plus in concrete bears North 80°12'21" West – 0.97 feet;

THENCE crossing a concrete walk and continuing with the face of a rock wall for the following four courses:

North 10°03'43" East for a distance of 15.44 feet to a point; a set chisel plus in concrete bears North 78°27'12" West – 0.95 feet;
South 80°34'50" East for a distance of 2.32 feet to a point; a set chisel plus in concrete bears North 82°14'16" West – 0.90 feet;
North 10°49'16" East for a distance of 13.03 feet to a point; a set chisel plus in concrete bears North 79°32'56" West – 0.92 feet;
South 78°50'41" East for a distance of 2.01 feet to a point;
North 12°13'47" East for a distance of 1.88 feet to a point;
North 79°12'44" West, with the north face of a rock wall for a distance of 13.82 feet to a point, a set 1/2" rebar with a "CEC" plastic cap Bears South 10°06'05" West – 1.76 feet;

THENCE North 11°31'23" East, with the exterior concrete foundation line of a restroom building, for a distance of 40.23 feet to a point; a set chisel plus in concrete bears North 11°13'00" East – 1.44 feet;

THENCE along the face of a rock wall for the following four (4) courses:

South 78°02'22" East for a distance of 13.64 feet to a point; a set chisel plus in concrete bears North 04°47'20" East – 1.79 feet;
North 08°31'41" East for a distance of 3.99 feet to a set chisel plus in concrete;
With a curve to the left having a radius of 5.28 feet and a central angle of 26°05'49", the chord bears North 08°09'19" West – 2.40 feet, for an arc length of 2.41 feet to a set chisel plus in concrete;
North 19°21'51" West for a distance of 20.74 feet to a set chisel plus in concrete;

THENCE along the edge of a concrete sidewalk for the following five (5) courses:

North 17°12'04" West for a distance of 1.45 feet to a set chisel plus in concrete;

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EXHIBIT C



CIVIL ENGINEERING CONSULTANTS
DON DURDEN, INC.

With a curve to the right having a radius of 8.21 feet and a central angle of $44^{\circ}38'23''$, the chord bears North $05^{\circ}45'10''$ West – 6.24 feet, for an arc length of 6.40 feet to a set chisel plus in concrete;
North $10^{\circ}39'32''$ East for a distance of 7.42 feet to a set chisel plus in concrete;
North $10^{\circ}32'53''$ East for a distance of 7.67 feet to a set chisel plus in concrete;
North $09^{\circ}32'13''$ East for a distance of 19.34 feet to a set chisel plus in concrete;

THENCE along the face of a retaining wall for the following ten (10) courses:

North $13^{\circ}31'31''$ East for a distance of 3.48 feet to a set chisel plus in concrete;
North $24^{\circ}48'04''$ East for a distance of 5.40 feet to a set chisel plus in concrete;
North $24^{\circ}49'14''$ East for a distance of 1.32 feet to a set chisel plus in concrete;
With a curve to the left having a radius of 8.67 feet and a central angle of $24^{\circ}39'32''$, the chord bears North $34^{\circ}02'48''$ East – 3.70 feet, for an arc length of 3.73 feet to a set chisel plus in concrete;
North $39^{\circ}14'02''$ East for a distance of 2.51 feet to a set chisel plus in concrete;
With a curve to the left having a radius of 7.63 feet and a central angle of $28^{\circ}06'04''$, the chord bears North $34^{\circ}31'37''$ East – 3.71 feet, for an arc length of 3.74 feet to a set chisel plus in concrete;
With a curve to the left having a radius of 6,071.34 feet and a central angle of $00^{\circ}03'18''$, the chord bears North $21^{\circ}08'14''$ East – 5.82 feet, for an arc length of 5.82 feet to a set chisel plus in concrete;
With a curve to the left having a radius of 8.61 feet and a central angle of $16^{\circ}18'05''$, the chord bears North $14^{\circ}48'59''$ East – 2.44 feet, for an arc length of 2.45 feet to a point;
With a curve to the left having a radius of 9.59 feet and a central angle of $14^{\circ}23'23''$, the chord bears North $03^{\circ}33'25''$ East – 2.40 feet, for an arc length of 2.41 feet to a point;
With a curve to the left having a radius of 21.57 feet and a central angle of $24^{\circ}40'56''$, the chord bears North $14^{\circ}30'50''$ West – 9.22 feet, for an arc length of 9.29 feet to a set chisel plus in concrete;
With a curve to the left having a radius of 12.28 feet and a central angle of $29^{\circ}17'51''$, the chord bears North $51^{\circ}07'15''$ West – 6.21 feet, for an arc length of 6.28 feet to a set chisel plus in concrete;

THENCE North $37^{\circ}44'37''$ East for a distance of 0.97 feet to a point;

THENCE South $88^{\circ}48'51''$ East for a distance of 12.51 feet to a chiseled X on concrete walk for the northeast corner of this description;

THENCE with the east line of Lot 1, NCB 124, South $08^{\circ}04'28''$ West, for a distance of 180.01 feet to the **POINT OF BEGINNING**, and containing 0.042 acres of land, more or less.

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EXHIBIT C



CIVIL ENGINEERING CONSULTANTS
DON DURDEN, INC.

Source: The Basis of Bearing is based on NAD83 (2011) Datum-Texas State Plane Coordinate System- South Central Zone.

I hereby certify that this description conforms to the minimum standards set forth for a ALTA/NSPS Land Title Survey according to an actual survey made on the ground by employees of Don Durden, Inc. dba Civil Engineering Consultants.

Gary B. Neill

Date: *March 02, 2021*

Gary B. Neill
R.P.L.S. #3964
Firm No. 10041000

Project No. S0547644
Project Name - CPS_ROW-La_Villita_ALTA



Warning: Only those copies with the Signature and Seal in red should be relied upon.

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