

Transfer of Use and Control Agreement

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

RECITALS

WHEREAS, by resolution dated January 7, 1953 ("1953 Resolution"), CPS dedicated to the City the portion of the property located at 401 Villita Street, commonly known as the Villita Assembly Building, described in the 1953 Resolution, for the expansion of the Arneson River Theatre, which such expansion was never realized; and

WHEREAS, the City accepted such dedication pursuant to Ordinance 18, 763 adopted February 5, 1953 ("Ordinance"); and

WHEREAS, neither the Ordinance nor the 1953 Resolution was recorded in the deed and plat records of Bexar county; and

WHEREAS, CPS 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; and

WHEREAS, City is the owner of the property described in the 1953 Resolution and the Ordinance, such property being an approximately 0.100 acre of real property which is more particularly described in **Exhibit A** and depicted in **Exhibit B** ("City Property"), attached and incorporated hereto; and

WHEREAS, in order to align the ownership with current operation, maintenance and control of the properties, City desires to transfer the use and control of the City Property to CPS and for CPS to transfer to the City an approximately 0.042 acre of real property owned by the City of San Antonio but beneficially used by CPS, more particularly described in **Exhibit C** and depicted in **Exhibit D** ("CPS Property"), attached and incorporated hereto; and

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

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

WHEREAS, this Agreement shall take place of what would otherwise be deeds between the City and CPS, and shall have the same legal effect as deeds between the Parties; and

WHEREAS, following the transfer of the use and control of the above-described properties below, CPS plans to replat its property at 401 Villita Street (with the boundary lines of the re-platted property to be generally as reflected in the depiction of the balance (i.e. the 401 Villita Street property other than the CPS Property) of the property in **Exhibit D**), and is expected to dedicate 0.024 acres of right-of-way to the City at that time; 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 AND CONTROL OF CERTAIN PROPERTY:

1. The above recitals are incorporated herein for all purposes.
2. Effective on the Effective Date, City hereby surrenders and transfers use and control of the City Property to CPS.
3. Effective on the Effective Date, CPS hereby surrenders and transfers use and control of the CPS Property to the City.
4. 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.
5. 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 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 on the Effective Date, 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 are 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 statement, 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 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 Effective Date.

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:  _____

Curt D. Brockmann

Interim VP of Compliance, Ethics and Facility
Master Planning

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

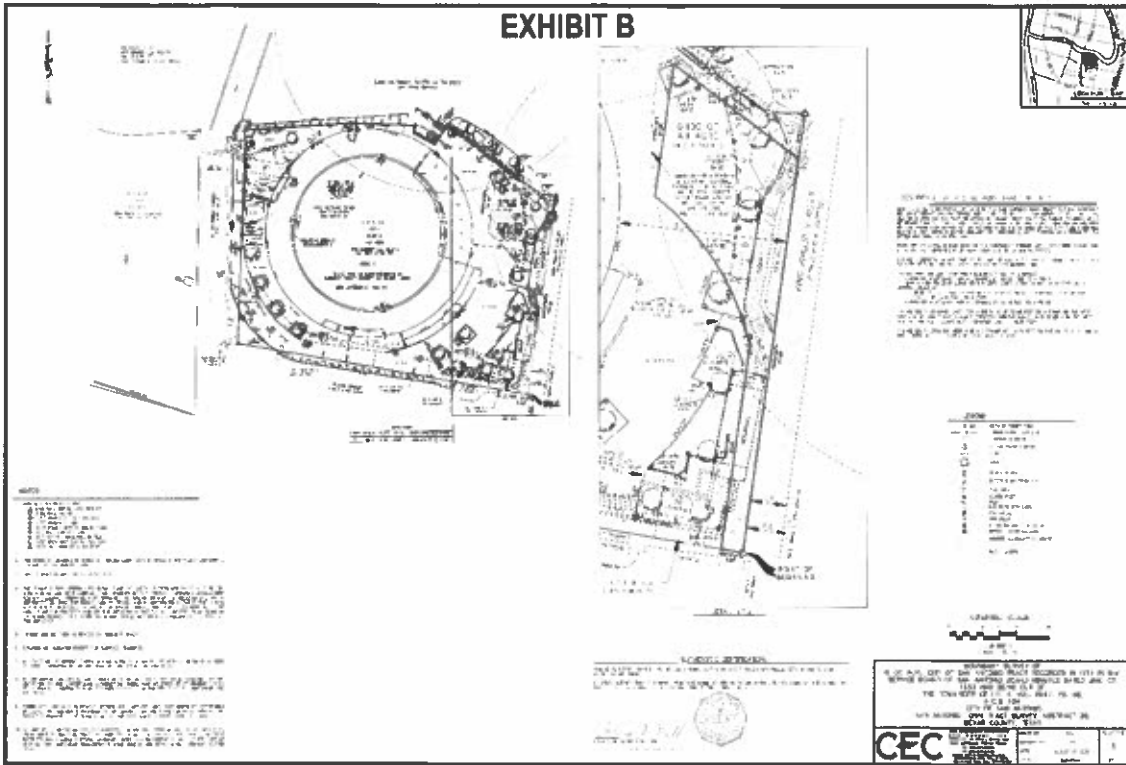


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LAREDO · SAN ANTONIO · BRYAN/COLLEGE STATION

115501.H. 10 WEST, SUITE 395 | SAN ANTONIO, TEXAS 78230-1037 | (210) 641-9999 | FAX: (210) 641-6440
TEXAS FIRM REGISTRATION NUMBERS: ENGINEERING F-2214 | SURVEY 10041000 | WWW.CECTEXAS.COM

EXHIBIT B





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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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.

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.

