

AN ORDINANCE **72473**

AUTHORIZING THE EXECUTION OF A LAND USE AGREEMENT WITH CITY PUBLIC SERVICE BOARD FOR A TWENTY-FIVE YEAR TERM, WHICH AGREEMENT PROVIDES FOR CITY MANAGEMENT AND CONTROL OF 144+ ACRES OF CPSB-OWNED LAND REFERRED TO AS THE CALAVERAS PARK PROJECT SITE, SUCH CITY MANAGEMENT AND CONTROL BEING FOR PARK PURPOSES WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, PUBLIC RECREATION AND RELATED ACTIVITIES, HOWEVER, SUCH USE SHALL NEVER BE INCONSISTENT WITH CPSB'S OPERATIONS AND MAINTENANCE OF SAID SITE FOR FLOOD CONTROL PURPOSES, AND NOTHING HEREIN SHALL BE CONSTRUED AS DEDICATING SAID SITE FOR PERMANENT PARK PURPOSES; AUTHORIZING THE EXECUTION OF (1) A SUBLEASE AGREEMENT WITH EAST CENTRAL INDEPENDENT SCHOOL DISTRICT, AND (2) A SUBLEASE AGREEMENT WITH THE SAN ANTONIO AREA COUNCIL OF GIRL SCOUTS, INC., EACH SUBLEASE AGREEMENT TO BE FOR THE USE OF PORTIONS OF SAID CALAVERAS PARK PROJECT SITE; AND FURTHER AUTHORIZING THE EXECUTION OF A RIGHT OF ENTRY AGREEMENT WITH EACH SUBLESSEE TO ALLOW ITS CONTRACTORS AND SUBCONTRACTORS TO COMMENCE INITIAL SITE WORK.

* * * * *

WHEREAS, the CITY OF SAN ANTONIO ("CITY") is engaged in providing various parks and recreational programs and services to the community; and

WHEREAS, by the Land Use Agreement authorized herein, CITY proposes to provide and make available land for park programs and services from the property identified as the CALAVERAS PARK PROJECT SITE ("SITE") and to thereby enhance the actual use of such land for the purpose of providing and making available recreational programs, services and facilities to the public; and

WHEREAS, CITY PUBLIC SERVICE BOARD ("CPS") is vested with the management and control of the electric and gas systems of the CITY, including extensions thereof and improvements thereto, and CPSB currently has control of the SITE, being approximately 144+ acres of land; and

WHEREAS, the CITY, through its various departments including the Parks and Recreation Department, has proposed that the SITE be made available for park purposes, the community having expressed a need for park facilities and it being recognized that benefits would accrue to citizens of the area by having park facilities developed on the SITE; and

WHEREAS, CPS is willing to relinquish control and management of the SITE to the CITY for such purposes, which shall include, but not be limited to public recreation and related purposes, HOWEVER

such use shall never be inconsistent with CPS's operations and maintenance of said SITE for flood control purposes and nothing herein shall be construed as dedicating said SITE for permanent park purposes; and

WHEREAS, in order to carry out its proposal, the CITY intends, among other things, to manage and operate the site for recreational use, including development of recreational facilities, sports fields, picnic facilities, camping facilities, pedestrian trails, playgrounds, pavilions, and related infrastructure; and

WHEREAS, the CITY proposes to use the SITE for park purposes through its own resources and those of other entities, including public and not-for-profit organizations, specifically at this time, the EAST CENTRAL INDEPENDENT SCHOOL DISTRICT and the SAN ANTONIO AREA COUNCIL OF GIRL SCOUTS, INC., which organizations desire to sublease portions of said CALAVERAS PARK PROJECT SITE, from the CITY; and

WHEREAS, CPS and the CITY believe that it would be in the best interest of the public to use the SITE in a manner consistent with the desire of the CITY to provide, and allow use of the SITE for, park programs and services; and

WHEREAS, CPS is willing to enter into a Land Use Agreement with the CITY for such purposes; and

WHEREAS, the development of the SITE for park purposes requires that the CITY use and control the SITE through its various departments, including the Parks and Recreation Department, in order to properly locate, plan, design, operate and maintain the contemplated recreational facilities; and

WHEREAS, CPS has no current plans for use of the SITE, except for the operations and maintenance of the SITE for flood control purposes, to which CPS endeavors the CITY is willing to subordinate its use of the SITE for park purposes;

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

SECTION 1. The City Manager or the Assistant City Manager is hereby authorized to execute a Land Use Agreement with CITY PUBLIC SERVICE BOARD which provides for City management and control of 144± acres of land referred to as the Calaveras Park Project Site, such City management and control being for park purposes which shall include, but not be limited, to public recreation and related activities.

SECTION 2. A copy of said Land Use Agreement is attached hereto as Attachment I and incorporated herein for all purposes.

SECTION 3. The City Manager or the Assistant City Manager is further authorized to execute (1) a Sublease Agreement and Right-of-Entry Agreement with EAST CENTRAL INDEPENDENT SCHOOL DISTRICT for a portion of said CALAVERAS PARK PROJECT SITE and (2) a Sublease Agreement and Right of Entry Agreement with SAN ANTONIO AREA COUNCIL OF GIRL SCOUTS, INC., for a portion of said aforementioned SITE, with the right of entry agreements intended to allow the respective contractors and sub-contractors of said SCHOOL DISTRICT and GIRL SCOUT organizations to commence initial work on the SITE.

SECTION 4. Copies of the respective Sublease Agreements and Right of Entry Agreements are collectively attached hereto as Attachment II.

PASSED and APPROVED this 11th day of October, 1990.

Lila Cockrell
M A Y O R

ATTEST: *[Signature]*
ASSISTANT city clerk .

APPROVED AS TO FORM: *Tom Simlan*
city Attorney

90-46

ATTACHMENT I

ORDINANCE NO. ^{TO} 7 2 4 7 3

PASSED AND APPROVED

ON

October 11, 1990

CALAVERAS PARK PROJECT SITE

LAND USE AGREEMENT

WITH CITY PUBLIC SERVICE BOARD

**LAND USE AGREEMENT FOR
CALAVERAS PROPERTY**

LAND USE AGREEMENT FOR CALAVERAS PROPERTY

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LAND USE AGREEMENT FOR CALAVERAS PARK

THIS AGREEMENT, executed to be effective the 21st day of October, 1990, is by and between the City Public Service Board of San Antonio (hereinafter referred to as "CPS"), a municipal gas and electric utility organized in and having its principal office and place of business at 145 Navarro Street, P. O. Box 1771, San Antonio, Texas 78296, acting pursuant to CPS Board Resolution passed and approved the 24th day of September 1990; and the City of San Antonio (hereinafter called "the CITY"), a Texas municipal corporation, acting pursuant to Ordinance No. 72473, passed and approved the 17th day of October, 1990.

WITNESSETH:

WHEREAS, the CITY is engaged in providing various parks and recreational programs and services to the community; and

WHEREAS, by this agreement, CITY proposes to provide, and make available, land for park programs and services from the hereinafter described Calaveras Park Project Site (hereinafter referred to as "the SITE") and to thereby enhance the actual use of such land for the purpose of providing and making available recreational programs, services and facilities to the public; and

WHEREAS, CPS is vested with the management and control of the electric and gas systems of the CITY, including extensions thereof and improvements thereto, and CPS currently has control of the SITE; and

WHEREAS the CITY, through its various departments, including the Parks and Recreation Department, has proposed that the SITE be made available for park purposes, the community having expressed a need for park facilities and it being recognized that benefits would accrue to citizens of the area by having park facilities developed on the SITE; and

WHEREAS, CPS is willing to relinquish control and management of the SITE to the CITY for such purposes, subject to the reservations contained herein; and

WHEREAS, in order to carry out its proposal, the CITY intends, among other things, to manage and operate the SITE for recreational use, including development of recreational facilities, sports fields, picnic facilities, camping facilities, pedestrian trails, playgrounds, pavilions, and related infrastructure; and

WHEREAS, the CITY will carry out its proposal to use, and allow the use of, the SITE for park purposes through its own resources and those of other entities, including public and not-for-profit organizations; and

WHEREAS, CPS and the CITY believe that it would be in the best interest of the public to use the SITE in a manner consistent with the desire of the CITY to provide, and allow use of the SITE for, park programs and services; and

WHEREAS, CPS is willing to enter into an agreement with the CITY for such purposes; and

WHEREAS, the development of the SITE for park purposes requires that the CITY use and control the SITE through its various departments, including Parks and Recreation Department, in order to properly locate, plan, design, operate and maintain the contemplated recreational facilities; and

WHEREAS, CPS has no current plans for use of the SITE which are inconsistent with the use of the SITE for park and recreation purposes;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

I.
DEMISE OF PREMISES

1.1 CPS does hereby relinquish and transfer to the CITY, and the CITY does hereby accept from CPS, the management and control of the public use of that certain real property, (herein referred to as the Calaveras Park Project Site, or "the SITE") which is described and shown in Exhibit A attached hereto, and which contains approximately 144 acres of land described in that one certain conveyance as part of CPS electric and gas system dated February 1, 1951, and recorded in Volume 2966, Page 287-376 of the Deed Records of Bexar County, Texas.

II.
CONSIDERATION

2.1 The use and occupancy of the SITE by the CITY is in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration.

III.
TERM/OPTION TO RENEW

3.1 The term of this Agreement shall commence upon the effective date hereof and shall continue in full force and effect until December 31, 2014, unless terminated sooner as hereinafter provided or as provided in Article XIII set out below.

3.2 CPS hereby grants to the CITY the option to renew and extend the original term of this base agreement for two (2) additional periods of twenty-five (25) years each. Each of the two renewal options shall be exercised by CITY

upon the tendering of written notice to CPS advising of CITY'S intent to so exercise the option and so extend the term. Such notice shall be given at least six (6) months prior to the expiration date of the then-current term.

IV.

INGRESS AND EGRESS

4.1 The CITY, its agents, employees and contractors, shall at all times have the right of ingress and egress over and across the SITE in order to have reasonable access to the SITE and otherwise to carry out the purpose and intent of this Agreement. CPS, its agents, employees and contractors shall also have, at all times, the right of ingress and egress over and across the SITE in order to carry out its functions as a municipal gas and electric utility. Provisions for ingress and egress which are appropriate to any lessees of CITY shall be provided in each of the Lease Agreements between CITY and any of its lessees. To the extent required in order to effect transfer of control of the SITE, CPS also relinquishes control of any approach or entrance to SITE to CITY. Any such approach may be relocated at the discretion of the CITY.

V.

USE AND DEVELOPMENT OF FACILITIES

5.1 The SITE is made up of floodplain and flood control area. The SITE shall be used for park purposes which shall include but not be limited to public recreation and related activities. The planning, construction, and maintenance of any roads, fencing, picnic areas, sports complex recreation buildings, camping facilities, pedestrian trails, playgrounds, pavilions, related infrastructure and such other recreation facilities, as CITY may deem proper to utilize the SITE, may be developed on the SITE; however, all such uses and development shall be conducted at all times and in such manner as to not interfere with or limit the usefulness of the SITE for the primary flood control purposes for which the same are held by CPS. Any use, development or activity undertaken by CITY or any

lessee of CITY shall be at no cost or expense to CPS. CPS has installed fencing around the perimeter of the SITE; however, any additional fencing deemed necessary by CPS and CITY to prevent intrusion into CPS plant property by unauthorized individuals shall be maintained on the SITE by CITY and its lessees.

5.2 It is anticipated that the SITE, or parts of the SITE, will be leased by CITY to individual entities. If any such lessee utilizes the SITE, or any part thereof, for any purpose other than those permitted above, CPS shall have at its option, and subject to the right-to-cure provision in Article XIII hereof, the right to terminate this Agreement as to that lessee's demised premises. CITY as lessor shall require any such lessees to so utilize their respective demised premises in a manner consistent with the limitations on use of the SITE stated above. Failure to use the SITE, or a particular portion of the SITE, for park purposes as stated above shall be a default for which this agreement may be terminated as to that portion of the SITE, subject to a right to cure provision contained herein; and failing cure of the condition of default as provided in Article XIII hereof, the CITY and any of its lessees shall surrender such portion(s) of the SITE area to CPS upon sixty (60) days written notice to CITY of such termination.

5.3 CITY agrees that use of the SITE by CITY and/or any of CITY'S lessees is in all respects subordinate to CPS's operations and to any encumbrances existing on, over or under the property as of the effective date hereof. With regard to this paragraph, CPS operations include, but are not limited to, any activity which is deemed necessary or desirable, in the sole discretion of CPS, to perform the functions associated with a gas and electric utility.

VI.

REVIEW OF FACILITY PLANS

6.1 The CITY shall submit to the General Manager of CPS or the General Manager's designee, for CPS review, all plans for proposed improvements described in or contemplated by Article V hereof or for any other improvements proposed to be made or constructed on the SITE by the CITY, or any of its lessees.

6.2 CPS, through its General Manager or the designee of the General Manager, shall respond to CITY within thirty (30) calendar days from the date the plans for proposed improvements are submitted pursuant to Section 6.1, and such response shall specify in reasonable detail any objections to the plans. If CPS fails to respond within such thirty (30) day period, it is presumed that CPS has no objections to the plans.

6.3 The CITY shall be responsible for ensuring that any and all permits, licenses and authorizations are obtained which are necessary to undertake any activities conducted at the SITE by CITY or any of its lessees. CITY and each lessee of CITY shall comply with all federal, state, county and city statutes, laws and ordinances regulating any such activity and shall be responsible for any claim or liability arising from or based on any violations of the same, including any and all expense or cost related thereto.

VII.

MAINTENANCE AND OPERATION

7.1 The CITY shall maintain and operate, or cause to be maintained and operated, at no cost or expense to CPS, all of the grounds of the SITE and all of the facilities and amenities constructed thereon in a good and safe condition comparable to similar grounds and facilities owned and operated by the CITY.

VIII.
UTILITIES

8.1 The CITY, and/or its respective lessees, shall provide or cause to be provided, all desired utility services, including gas, water, sewer, electricity and telephone to the grounds, athletic fields, or to improvements at no cost or expense to CPS and shall be responsible for all connection charges therefore, at no cost or expense to CPS.

8.2 The CITY, or its respective lessees, shall also be responsible, at no cost or expense to CPS, for all utilities used or consumed in or upon the SITE, including all outside lighting installed or connected by or for the CITY.

8.3 In no event shall CPS be held liable or responsible for the furnishing of any such utilities; and CPS shall not be liable for any damage or liability arising from the interruption of any such utilities unless resulting from the sole, active negligence of CPS.

IX.
CONDITION OF PREMISES

9.1 The CITY and its respective lessees agree to accept possession and control of the SITE areas in the condition in which they exist at the effective date of the respective land use and lease agreements for the SITE, or any portion thereof. The use of the SITE by the CITY, and any lessee of CITY, shall be at CITY'S risk, and at the risk of the respective lessee or other user.

9.2 CITY shall also be responsible for all public property located within the SITE including all existing property of CPS; and shall make its best efforts to ensure that any lessee of the SITE, or any part thereof, shall be responsible

for private property on the SITE, and for CPS property on the SITE. CPS does not warrant or represent that the SITE is habitable or useable for any particular purpose, and CPS expressly disclaims all such warranties. CPS does not guarantee or warrant fire protection of any kind or in any manner.

X.
INSURANCE

10.1 During the entire term of this Agreement the CITY shall provide evidence of any existing insurance or shall declare whether it is self-insured with respect to the SITE or activities conducted thereon. However, in connection with the SITE and/or activities conducted thereon, CITY shall require, and ensure that, all of its lessees maintain the following insurance coverages, as a minimum, with policies issued by a company or companies qualified to do business in the State of Texas and acceptable to the City of San Antonio, in the following types and amounts:

| Type | Amount |
|--|--|
| 1. Workers' Compensation and Employer's Liability | Statutory \$100,000.00 each occurrence |
| 2. Comprehensive General (Public) Liability - to include coverage for the following where the exposure exists: | |
| A) Premises/Operations | \$500,000.00 |
| B) Independent Contractors | combined single |
| C) Products/Completed Operations | limit coverage |
| D) Personal Injury | |
| E) Contractual Liability | |
| F) Legal Liquor Liability | |

3. Comprehensive Automobile Liability Insurance-
to include coverage for:

- A) Owned/Leased Automobiles \$500,000.00
- B) Non-Owned Automobiles
- C) Hired Automobiles

4. Property Insurance for physical damage to the property of the City including improvements and betterments to leased property.
80% of Replacement Cost

10.2 The CITY agrees that with respect to the above required insurances, the City of San Antonio shall require each of its lessees to:

A) Name the CITY as additional named insured/or an insured, as its interest may appear;

B) Provide sixty (60) days advance notice, in writing, of any cancellation or material change.

C) Be provided with Certificates of Insurance evidencing the above required insurances, prior to the commencement of this Lease and thereafter with certificates evidencing renewals or replacement of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies.

Said Notice and Certificates shall be provided to:

- 1) City Public Service
P. O. Box 1771
San Antonio, TX 78296
Attn: Insurance

2) City Clerk
P. O. Box 839966
San Antonio, TX 78283-3966

XI.

CITY'S RESPONSIBILITY

11.1. As between CPS and CITY, CITY agrees to be fully responsible for all claims, liens, encumbrances, actions, loss, damage, expenses, and/or liability arising from or growing out of loss of or damage to property, including CPS's property, or injury to or death of any person, including but not limited to, the employees of either party, and the public, which results in any manner whatsoever, directly or indirectly, by reason of the acts, omissions or conduct of employees, contractors, agents or the public in exercise of the rights hereby granted to the CITY, or granted by the CITY to any of its lessees, for use of or occupancy of the SITE, except to the extent that the injury, death or damage is caused by the sole active negligence of CPS, its agents, employees or Contractors. It is the express intention of the parties, including any lessee of CITY, that the attribution of responsibility provided for in this paragraph is a protection to CPS by CITY and others for events, injuries and damages which are, or which are said to be, the consequences of CPS' negligence, or alleged negligence including where same is the concurring cause of the injury, death, or damage; excluding only those injuries, death or damage caused by the sole active negligence of CPS or solely resulting from CPS activities on the SITE. The attribution of responsibilities contained herein shall survive the termination hereof.

The parties further agree that any lease of the SITE or any portion thereof shall contain indemnification provisions whereby lessee agrees to indemnify and holds harmless CITY and CPS, such indemnification to include appropriate protections against the claims and causes of action referred to in section 12.2 below.

XII.
INSPECTION

12.1 The CITY agrees to conduct, or cause to be conducted by its lessees or otherwise, inspections of the SITE at reasonable times to insure that fire, safety and sanitation regulations and other provisions contained herein or in the City Code (if applicable) are being adhered to by the CITY or any occupants of the SITE. CITY or its respective lessees shall at all times maintain the SITE in a clean and sanitary condition.

12.2 Excluding any liability for pre-existing adverse environmental conditions relating strictly to the release or threat of release of hazardous substances as that term is defined in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as that Act and those circumstances existed on the effective date hereof, the CITY hereby assumes full responsibility for all claims and causes of action asserted by any person coming upon or using the SITE either with or without the consent of the CITY; and including all of the CITY'S invitees, lessees, employees, and contractors, arising as a result of the use of any of the SITE and the presence or condition of all structures and personal property located or to be located on the SITE.

XIII.
TERMINATION

13.1 The following shall constitute an event of default under this Agreement:

A) Interference. The CITY or any of its lessees interferes with the operation of CPS by virtue of their respective presence at the SITE under this Agreement; and such interference continues or recurs after 30 days from the date of delivery to the CITY by CPS of written notice of such interference.

B) Abandonment. The CITY shall abandon, vacate or cease operations on the SITE;

C) Other Obligations and Opportunity to Cure Default. The CITY shall fail to perform any obligation, covenant or condition or to comply with any of the provisions of this Agreement and such failure shall continue after thirty (30) days from the date of delivery to the CITY by CPS of written notice of such failure;

D) Civil Unrest. In times of civil unrest, or the threat of civil unrest, to be determined in the sole discretion of CPS, national emergency or under wartime conditions so as to prevent or lessen the danger of sabotage or other physical harm to CPS's facilities on and adjacent to the area; or

E) Notice to Lessees. Failure of the CITY to include in any lease of any portion of the SITE the notice specified in paragraph 19.1.

13.2 Upon the occurrence of an event of default, CPS shall have one or more of the following remedies:

A) Termination. Subject to the provisions contained of paragraph 13.1(C) hereof, relating to notice to CITY and opportunity of CITY to cure, CPS may terminate this Lease by thirty (30) days written notice to the CITY. No re-entry or other act performed or omitted by CPS shall be deemed to have terminated this Agreement unless CPS shall expressly notify the CITY in writing that CPS has elected to terminate this Agreement. As to CPS remedies, the default by a lessee of a given portion of the SITE shall not affect the lease of any other lessee (of a different portion of the SITE), conditioned upon the nondefaulting lessee otherwise being in compliance with its lease agreement.

B) Re-Entry. CPS may re-enter the SITE.

C) Reletting. With or without terminating this Agreement, CPS may relet the SITE or any part thereof, either in the name of CPS or otherwise, for a term or terms which may at CPS's option be less than or exceed the period which would otherwise have constituted the balance of the Term, and may charge such rent and grant such concessions as CPS deems desirable. CPS shall not be required to relet the SITE, either pursuant to this Agreement or by any requirements of law or equity, but may allow the SITE to remain vacant without terminating this Agreement.

D) Other Remedies. CPS shall have the right to an injunction and to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not provided for. In the event CPS prevails in obtaining such remedy or remedies, CPS shall be entitled to recover from a responsible party if other than the CITY, and have paid, all reasonable expenses CPS may have incurred including those expenses incurred in connection with its efforts to secure such injunctive relief or other remedy, such as court costs and attorneys fees. The words "re-enter" and "re-entry" as used in this Agreement are not restricted to their technical meanings.

13.3 The right of CPS to terminate this Agreement upon the occurrence of any of the events specified in Section 13.1 A-E above, and the remedies specified in Section 13.2 above shall be the exclusive remedies of CPS, and upon any such termination by CPS, the CITY shall have no further obligations or liabilities to CPS hereunder.

13.4 In addition to the rights granted herein, the CITY shall have the right, prior to the termination of this Lease, whether such termination be by the expiration of the term or an earlier termination under any provision of this Agreement, to remove any structure, improvement or equipment installed on the SITE. All additions, fixtures and improvements made by the CITY shall be removed at the request of CPS and at no cost or expense to CPS. The CITY shall have the obligation to restore the SITE to its condition prior to such removal subject to any change in condition of the SITE which would be reasonable if the Site were

not used for Park and/or related purposes, provided that, if any property of any lessee remains in or on the Calaveras Park Project SITE after the termination of this Agreement and no renewal agreement has been executed, such remaining property shall be deemed, in the sole discretion of CPS, to have become the property of CPS and may be disposed of as CPS sees fit, without liability to account to the City or any of its lessees, or any secured parties thereof, for the proceeds of any sale thereof. Any pollutant or substances regulated under Subtitle C of the Resource Conservation and Recovery Act or the Toxic Substance Control Act shall not be disposed of or stored on the SITE.

13.5 CITY shall have the right to terminate this agreement at any time, with ninety (90) days written notice to CPS. Upon any such termination, all leases of the SITE or any portion thereof shall also terminate without liability of any kind to CPS.

13.6 Notwithstanding any of the foregoing provisions which may be to the contrary, CPS shall and does have the right to terminate this agreement and require the SITE to be vacated by CITY or any lessee when or if it is ever determined by CPS in its sole discretion that a greater public need would be served by a change in the utilization of the SITE, with notice to vacate SITE of not less than 30 months. Such provision may be waived by CPS, and the minimum time to vacate as provided herein may be unilaterally enlarged by CPS upon written notice thereof to the City by the General Manager of CPS.

XIV. ASSIGNMENT

14.1 The CITY shall not assign, sublet, sell, hypothecate or otherwise transfer its rights and obligations hereunder without the prior written approval by CPS. No such assignment or lease shall in any manner operate to release the CITY from the full performance of all the terms and conditions of this Agreement.

14.2 A copy of this agreement shall be delivered to any lessee of any portion of the SITE, and its delivery shall be receipted and the receipt thereof maintained by the CITY.

XV.

DESTRUCTION OF PREMISES

15.1 In the event the SITE or any portion of it, is destroyed or rendered untenable by fire, storm, earthquake, or other casualty not caused by the negligence of CPS, this Agreement and any affected lease between the CITY and a third party, shall, at CPS's option, be at an end from such time and CPS shall have no obligation to restore the premises.

XVI.

NOTICES

16.1 Wherever any notice, consent or approval is required or permitted hereunder, such notice, consent or approval shall be in writing and shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties hereto at the respective addresses as hereinbelow set forth, or at such other addresses as the parties may have theretofore designated by notice. CPS is not required to give any notice to any lessee that may be affected by a notice otherwise required hereunder to be given to CITY.

XVII.

WAIVER

17.1 CPS's failure to object to any default on the part of the CITY or any lessees shall not be construed as a waiver thereof, nor shall any custom or practice that may arise between the parties in the course of administering this

Agreement be construed to waiver or to lessen the right of CPS to insist upon compliance with the provisions hereof.

XVIII.

CAPTIONS

18.1 The captions used in the Agreement are for convenience only and are not intended to in any way limit or amplify the terms and provisions of this Agreement. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender wherever the context requires. This Agreement shall not be construed against either party more or less favorably by reason of authorship or origin of language.

XIX.

BINDING EFFECT

19.1 This Agreement and all of the terms and conditions contained herein shall apply to, be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns. Any lease of any portion of the SITE by the CITY shall contain a provision that specifies, at a minimum, that such lease is subject to the conditions and restrictions contained herein.

XX.

RELATIONSHIP TO PARTIES

20.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto.

XXI.

TEXAS LAW TO APPLY

21.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

XXII.

SEVERABILITY

22.1 In the event any provision of this Agreement or the application thereof to any person or circumstances shall be finally determined by a court of proper jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such determination, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

XXIII.

AMENDMENT

23.1 This Agreement together with the authorizing ordinance constitute the entire agreement between the parties. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties.

23.2 Subject to the limitations set out in Section XI, CPS shall be responsible for and shall bear all legal liability in connection with CPS's activities on the area, including liability to employees of the Board and all other persons entering upon the area acting under the direction of CPS or under contract with CPS.

XXIV.

CPS EXTENSIONS/RESPONSIBILITY

24.1 This Agreement is subject to the right of CPS to extend and/or locate gas and/or electric lines or other facilities on or across the SITE as the need arises; subject, however, to any and all Federal and State regulations affecting the same. CPS shall be responsible for the repair of any damage to City property by such extensions or locations. Notwithstanding the provisions hereof, if it is determined by CPS, in its sole discretion, that the siting of utilities or utility extensions which disrupt park functions or which cause abandonment of park use for Site areas, is necessary to carry out the primary function of CPS as a provider of gas and utility service, then such locations and extensions shall be done without right of reimbursement for the expense or damage resulting from carrying out such functions. CPS shall be responsible for and bear all legal liability in connection with activities which are solely those of CPS, its agents and/or contractors on the SITE including liability of employees of CPS acting in the course and scope of their employment.

XXV.

NONDISCRIMINATION

25.1 Any discrimination by any lessee of CITY against that lessee's agents or employees, on account of race, color, sex, age, religion, handicap or national origin, in employment practices or in the use of or admission to the SITE, is prohibited, unless otherwise exempt therefrom by law.

XXVI.

HUNTING PROHIBITED

25.1 Hunting on Area: It is agreed that no hunting will be permitted on the SITE, and that appropriate rules will be placed in effect and enforced against the carrying or possession by any person of guns or firearms of any kind upon the area except by designated armed guards and officers of the law authorized to carry firearms.

XXVII

CONFLICT OF INTEREST

CPS and CITY acknowledge that Texas law prohibits contracts between the CITY and any local public official, such as a CITY officer or employee, and that the prohibition extends to an officer and employee of CITY agencies such as a CITY-owned utilities and certain CITY boards and commissions, and to contracts involving a business entity in which the officer or employee has a substantial financial interest, as defined by Texas law, if it is reasonable foreseeable that an action on the matter would confer an economic benefit on the business entity. CPS and CITY acknowledge that no person having a substantial financial interest in this Contract is an officer or employee of CITY, or any of its agencies.

XXVIII
HEADINGS

All headings in this Contract have been inserted for convenience and reference only and shall not in any manner be construed as modifying, amending, or affecting in any way the express terms and provisions thereof.

XXIX
Authority

The signer of this Agreement for CPS hereby represents and warrants that he or she has full authority to execute this agreement on behalf of CPS.

EXECUTED to be effective the 21st day of October, 1990 ("Effective Date").

CITY OF SAN ANTONIO

By: 
Its:

Attest:


City Clerk

CITY PUBLIC SERVICE

By: 
Its:

Project: Calaveras Park
Project Site
Sublease-East Central
Independent
School District

RIGHT OF ENTRY AGREEMENT

This Agreement between the CITY OF SAN ANTONIO, a Texas municipal corporation, acting pursuant to Ordinance No. 72473 passed and approved on October 11, 1990, hereinafter referred to as "CITY", and EAST CENTRAL INDEPENDENT SCHOOL DISTRICT, hereinafter referred to as "E.C.I.S.D." is as follows:

WHEREAS, the CITY has been granted the right to occupy, manage and control 144+ acres of land known as the CALAVERAS PARK PROJECT SITE ("SITE"), pursuant to a Land Use Agreement with CITY PUBLIC SERVICE BOARD; and

WHEREAS, the CITY and E.C.I.S.D. are in the process of finalizing the terms and conditions of a certain Sublease Agreement for the use by E.C.I.S.D. of a portion of said SITE; and

WHEREAS, E.C.I.S.D., acting by and through its contractors and subcontractors, desires to have the right to immediately enter upon the portion of the SITE being subleased so that initial site work on said portion may commence prior to the execution date of the Sublease Agreement; and

WHEREAS, CITY is agreeable to such entry for the limited purpose of commencing initial site work; and

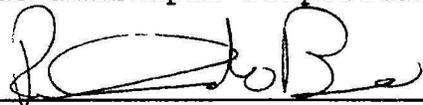
WHEREAS, E.C.I.S.D. acknowledges and fully understands and agrees that such initial site work cannot begin until October 21, 1990, that is, ten (10) days after the passage and approval date of the above-referenced Ordinance, in accordance with the San Antonio city Charter.

NOW THEREFORE, for the consideration of the sum of ONE DOLLAR (\$1.00) and other valuable consideration, the CITY OF SAN ANTONIO does hereby consent and agree to allow the EAST CENTRAL INDEPENDENT SCHOOL DISTRICT, its contractors, and subcontractors to enter upon the portion of the CALAVERAS PARK PROJECT SITE as described on Exhibit "A" attached hereto, pending final execution of a Sublease Agreement between said parties.

It is understood and agreed that said entry and commencement of initial site work will not begin until October 21, 1990.

EXECUTED this the 18th day of October, A.D., 1990.

CITY OF SAN ANTONIO,
a Texas municipal corporation

By: 

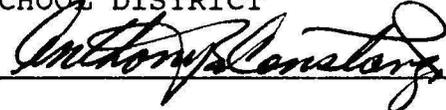
ROLANDO BONO

Typed or printed name

Assistant
Title: City Manager

ATTEST: 
City Clerk

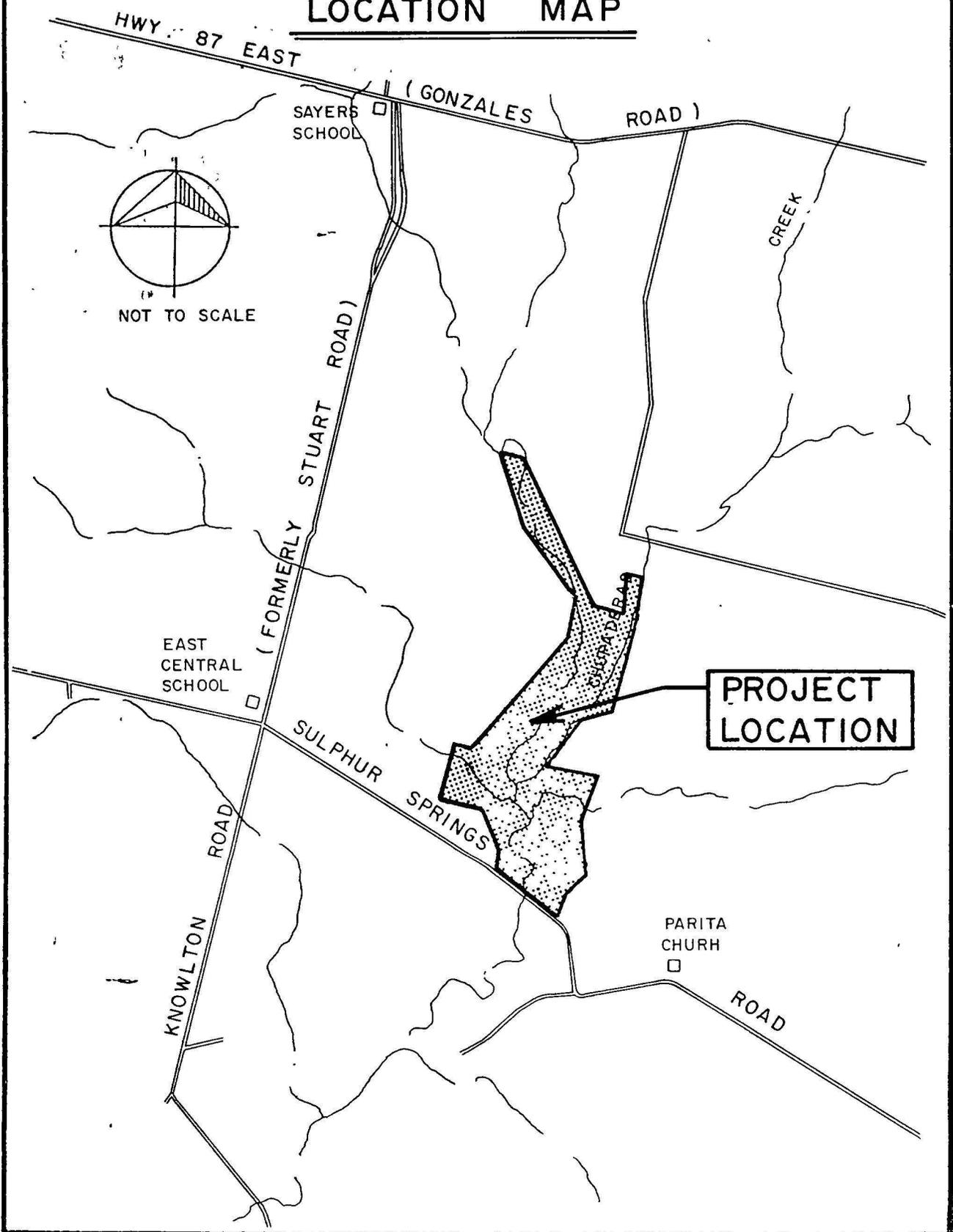
EAST CENTRAL INDEPENDENT
SCHOOL DISTRICT

By: 

Anthony B. Constanzo

Title: Superintendent of Schools

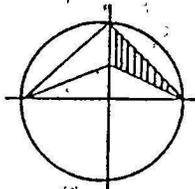
LOCATION MAP



HWY 87 EAST

(GONZALES ROAD)

SAYERS SCHOOL



NOT TO SCALE

CREEK

(FORMERLY STUART ROAD)

EAST CENTRAL SCHOOL

PROJECT LOCATION

SULPHUR SPRINGS

KNOWLTON ROAD

PARITA CHURCH

ROAD

ATTACHMENT II

TO

ORDINANCE NO. 72473

PASSED AND APPROVED

ON

October 11, 1990

CALAVERAS PARK PROJECT SITE

- | | |
|-------------------------------|------------------------------|
| (1) SUBLEASE AGREEMENT } | WITH EAST CENTRAL |
| (2) RIGHT OF ENTRY AGREEMENT} | INDEPENDENT SCHOOL DISTRICT |
| (3) SUBLEASE AGREEMENT} | WITH SAN ANTONIO AREA |
| (4) RIGHT OF ENTRY AGREEMENT} | COUNCIL OF GIRL SCOUTS, INC. |

AGREEMENT PROVISIONS

1. 25-year term with two, 25-year renewal options
2. Ingress and egress by City and CPSB
3. Right to develop recreational facilities. No expense to CPSB.
4. Sub-lessees must comply with terms of the agreement.
5. CPSB retains the right to any activity to perform functions related to a gas and electric utility.
6. CPSB reserves the right to review development plans.
7. City must require sub-lessees to carry Workman's Comp, comprehensive general public liability insurance, and comprehensive automobile liability naming the City as additional insured.
8. All sub-leases must contain provisions to indemnify both the City and CPSB.
9. The agreement may be terminated if the activities on the site interfere with CPSB operations, if the City abandons the property, or if civil unrest threatens the safety of CPSB operations.
10. City may terminate by giving 90-day notice.
11. No assignment without CPSB approval, except for authorized sub-leases
12. Severability, amendment, non-discrimination and conflict of interest clauses
13. CPSB reserves the right to construct, extend or locate gas and/or electric lines on the property.
14. Hunting on the site is prohibited.

Interdepartment Correspondence Sheet

AGENDA ITEM NO. 38

TO: City Council

FROM: Ronald R. Darner, Director, Department of Parks and Recreation

COPIES TO: _____

SUBJECT: Land Use Agreement With CPSB (Calaveras Park Project Site)

DATE: October 2, 1990

SUMMARY AND RECOMMENDATION: This ordinance authorizes a 25-year land use agreement with CPSB which provides for City (through the Department of Parks and Recreation) management and use of 144± acres of CPSB controlled land near the northeast corner of the intersection of Knowlton and Sulphur Springs Roads. A location map is attached. The agreement includes two, 25-year renewal options.

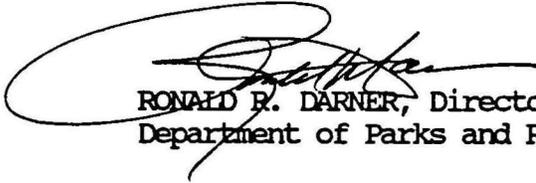
The purpose of this agreement is to provide land for future development of recreational facilities by other public entities and civic organizations through sub-agreements. The East Central Independent School District has expressed strong interest in using a portion of the property to develop athletic fields. The Girl Scouts plan to develop a day camp and hiking facilities. The YMCA has also indicated an intention to become similarly involved. All of these developments, along with operations and maintenance costs, will be at sub-lessees' expense. Development by the City, if any occurs in the future, will be through private donations under the auspices of the Parks Foundation.

All of the property is in a flood plain, so its potential use for other than recreational purposes is extremely limited. A summary of agreement provisions is attached.

I recommend approval of this ordinance.

POLICY ANALYSIS: This program, and the agreement which makes it possible, was formulated by the Calaveras Park Steering Committee composed of representatives from CPSB, East Central School District, Girl Scouts, YMCA, citizens of the surrounding area, and staff. The agreement with CPSB is very similar to the one covering Lady Bird Johnson Park. Sub-leases, subject to City Council approval, will be much the same as the many agreements the City now has with Little Leagues and other youth sports groups.

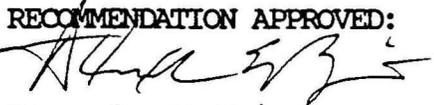
FISCAL DATA: No cost to the City. The City has no commitment to expend development or maintenance funds on the property.



RONALD R. DARNER, Director
Department of Parks and Recreation

Attachments (2):
Location Map
Essential Agreement Provisions

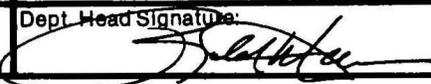
RECOMMENDATION APPROVED:



Alexander E. Briseño
City Manager

CITY OF SAN ANTONIO

Request For Ordinance/Resolution

| | | |
|--|---|---|
| Date October 2, 1990 | Department Parks and Recreation | Contact Person/Phone # Dale Bransford/#8480 |
| Date Council Consideration Requested October 11, 1990 | Deadline for Action Execute agreement ASAP | Dept. Head Signature  |

SUMMARY OF ORDINANCE

This ordinance authorizes a 25-year land use agreement with CPSB which provides for City (through the Department of Parks and Recreation) management and use of 144± acres of CPSB controlled land near the northeast corner of the intersection of Knowlton and Sulphur Springs Roads. A location map is attached. The agreement includes two, 25-year renewal options.

The purpose of this agreement is to provide land for future development of recreational facilities by other public entities and civic organizations through sub-agreements. The East Central Independent School District has expressed strong interest in using a portion of the property to develop athletic fields. The Girl Scouts plan to develop a day camp and hiking facilities. The YMCA has also indicated an intention to become similarly involved. All of these developments, along with operations and maintenance costs, will be at sub-lessees' expense. Development by the City, if any occurs in the future, will be through private donations under the auspices of the Parks Foundation.

All of the property is in a flood plain, so its potential use for other than recreational purposes is extremely limited. A summary of agreement provisions is attached.

I recommend approval of this ordinance.

Council Memorandum Must Be Attached To Original

Other Depts, Boards, Committees Involved (please specify)
 Legal (Mr. Fassnidge), CPSB, East Central ISD, Girl Scouts, YMCA

Contract signed by other party
 Yes No

| FISCAL DATA (If Applicable) | Budgetary Implications |
|---|---|
| Fund No <u>N/A</u> Amt Expended <u>N/A</u> | Funds/Staffing Budgeted <u>N/A</u> Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Activity No <u>N/A</u> SID No <u>N/A</u> | Positions Currently Authorized <u>N/A</u> |
| Index Code <u>N/A</u> Project No <u>N/A</u> | Impact on future O & M <u>None</u> |
| Object Code <u>N/A</u> | If positions added, specify class and no |

Comments:

- Individual
- No controversy anticipated
- Three or four minutes

This agreement commits no City funds. Fund raising, in the future, will be under the auspices of the Parks Foundation.

Not applicable

Coordinator -- White
 Legal -- Green
 Budget -- Canary
 Finance -- Pink
 Originator -- Gold

CITY OF SAN ANTONIO

Interdepartment Correspondence Sheet

TO: Dick Porter, Assistant City Clerk

FROM: Warner F. Fassnidge, Assistant City Attorney

COPIES TO: File No. 900241, 900241A, 900241B

SUBJECT: Calaveras Park Project Site - Ordinance No. 72473; Our File No. 900241, 900241A and 900241B

Date November 13, 1990

Please associate the attached fully-executed original Right-of-Entry Agreements with Ordinance No. 72473 passed and approved on October 11, 1990.


WARNER F. FASSNIDGE
Assistant City Attorney

WFF:dmd
Attachments

Project: Calaveras Park
Project Site
Sublease-San Antonio
Area Council of
Girl Scouts, Inc

RIGHT OF ENTRY AGREEMENT

This Agreement between the CITY OF SAN ANTONIO, a Texas municipal corporation, acting pursuant to Ordinance No. 72473 passed and approved on October 11, 1990, hereinafter referred to as "CITY", and SAN ANTONIO AREA COUNCIL OF GIRL SCOUTS, INC., hereinafter referred to as "G.S.I." is as follows:

WHEREAS, the CITY has been granted the right to occupy, manage and control 144± acres of land known as the CALAVERAS PARK PROJECT SITE ("SITE"), pursuant to a Land Use Agreement with CITY PUBLIC SERVICE BOARD; and

WHEREAS, the CITY and G.S.I. are in the process of finalizing the terms and conditions of a certain Sublease Agreement for the use by G.S.I. of a portion of said SITE; and

WHEREAS, G.S.I., acting by and through its contractors and subcontractors, desires to have the right to immediately enter upon the portion of the SITE being subleased so that initial site work on said portion may commence prior to the execution date of the Sublease Agreement; and

WHEREAS, CITY is agreeable to such entry for the limited purpose of commencing initial site work; and

WHEREAS, G.S.I. acknowledges and fully understands and agrees that such initial site work cannot begin until October 21, 1990, that is, ten (10) days after the passage and approval date of the above-referenced Ordinance, in accordance with the San Antonio city Charter.

NOW THEREFORE, for the consideration of the sum of ONE DOLLAR (\$1.00) and other valuable consideration, the CITY OF SAN ANTONIO does hereby consent and agree to allow the SAN ANTONIO AREA COUNCIL OF GIRL SCOUTS, INC., its contractors, and subcontractors to enter upon the portion of the CALAVERAS PARK PROJECT SITE as described on Exhibit "A" attached hereto, pending final execution of a Sublease Agreement between said parties.

K
9-20-90

FIELD NOTES
FOR

A 146.725 ACRE TRACT OF LAND, OUT OF THE NIGUEL GORTARIS SURVEY NO. 7, ABSTRACT 256, COUNTY BLOCK 5140, AND THE MANUEL MONJARAS SURVEY NO. 6 ABSTRACT 463, COUNTY BLOCK 5146, ALL SITUATED WITHIN BEXAR COUNTY, TEXAS, THE SAID 146.725 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING: At an iron pin found on the Northeast RIGHT-OF-WAY line of New Sulphur Springs Road, said point having State Plane Coordinates - South Central Zone of North 549,347.50 feet and East 2,228,051.31 feet, same point being the Southwest corner of a 26.38 acre tract of land as recorded in Volume 6021, Pages 951-953 of the Deeds Records of Bexar County, Texas, said point also being the Southwest corner of the herein described tract of land;

THENCE: N 14°04'47" E, 299.85 feet to an iron pin found at an angle point;

THENCE: N 23°19'08" W, 615.56 feet to an iron pin found at an angle point;

THENCE: N 77°00'37" W, 624.34 feet to an iron pin found at an angle point;

THENCE: N 14°06'42" E, 857.05 feet to an iron pin found at an angle point;

THENCE: S 65°51'29" E, 252.83 feet to an iron pin found at an angle point;

THENCE: N 41°58'35" E, 2,074.84 feet to an iron pin found at an angle point;

THENCE: N 14°08'25" E, 534.93 feet to an iron pin found at an angle point;

THENCE: N 34°10'08" W, 1,424.05 feet to a fence post found at an angle point;

THENCE: N 15°25'57" W, 1,016.42 feet to an iron pin found at the Northwest corner of a 4.30 Acre tract of land as recorded in Volume 6121, Pages 453-455 of the Deed Records of Bexar County, Texas. Said point having State Plane Coordinates - South Central Zone of North 555,290.94 feet and East 2,228,160.01 feet, same point also being the most Northwesterly corner of the herein described tract of land;

THENCE: S 77°30'43" E, 299.85 feet to an iron pin found at the Northeast corner of a 6.08 Acre tract of land as recorded in Volume 5851, Pages 260-262 of the Deed Records of Bexar County, Texas, said point also being the Northeast corner of the herein described tract of land;

THENCE: S 26°01'55" E, 1,750.63 feet to an iron pin found at an angle point;

THENCE: S 76°33'52" E, 389.00 feet to an iron pin found at an angle point;

THENCE: N 09°56'52" E, 584.60 feet to an iron pin found at an angle point;

THENCE: S 78°09'16" E, 200.08 feet to an iron pin found at an angle point;

THENCE: S 07°44'14" W, 670.18 feet to an iron pin found at an angle point;

THENCE: S 17°40'45" W, 1,343.23 feet to an iron pin found at an angle point;

THENCE: S 77°01'46" W, 431.82 feet to an iron pin found at an angle point;

THENCE: S 36°06'35" W, 799.82 feet to an iron pin found at an angle point;

THENCE: S 79°38'00" E, 749.83 feet to an iron pin found at an angle point;

THENCE: S 20°47'20" W, 700.24 feet to an iron pin found at an angle point;

THENCE: S 04°25'04" E, 769.77 feet to an iron pin found at an angle point;

EXHIBIT A

THENCE: S 45°08'33" W, 388.64 feet to an iron pin found at an angle point;

THENCE: S 20°39'53" W, 275.02 feet to an iron pin found at an angle point;

THENCE: S 00°59'14" E, 120.97 feet to an iron pin set on the Northeast RIGHT-OF-WAY line of New Sulphur Road, said point having State Plane Coordinates - South Central Zone of North 548,713.98 feet and East 2,228,978.49 feet, same point being the Southeast corner of a 16.86 acre tract of land as recorded in Volume 6307, Pages 614-616 of the Real Property Records of Bexar County, Texas, and the Southeast corner of the herein described tract of land;

THENCE: N 51°41'09" W, 650.77 feet along the said Northeast RIGHT-OF-WAY line to an iron pin set at an angle point;

THENCE: N 42°25'40" W, 250.83 feet continuing along the said RIGHT-OF-WAY line to an iron pin set at an angle point;

THENCE: N 56°22'01" W, 299.46 feet continuing along the said Northeast RIGHT-OF-WAY line to the POINT-OF-BEGINNING AND POINT-OF-CLOSURE, containing 146.725 Acres (6,391,337 square feet) of land, more or less, in Bexar County, Texas.