SW/vv
03/12/15
Item #17

AN ORDINANCE 2015-03-12-0190

AUTHORIZING AMENDMENT NO. 1 TO THE LAND USE AGREEMENT WITH CPS ENERGY AT CALAVERAS PARK AND AMENDMENT NO. 1 TO THE SUBLEASE AGREEMENT WITH EAST CENTRAL INDEPENDENT SCHOOL DISTRICT AT CALAVERAS PARK FOR THE PURPOSE OF PROVIDING ON-GOING RECREATIONAL AND SPORTS PROGRAMS, AND SERVICES TO THE COMMUNITY, THROUGH EAST CENTRAL INDEPENDENT SCHOOL DISTRICT.

* * * * *

WHEREAS, in October of 1990, the City Public Service Board (CPS) authorized a Land Use Agreement with the City of San Antonio Parks and Recreation Department (Department) for approximately 146 acres, to provide and make available recreational programs and services to the public; and

WHEREAS, both organizations recognized that the community would benefit from the development of park programs and services at the site, and CPS relinquished control and management of the site for these purposes; and

WHEREAS, the Land Use Agreement established a term of twenty-five (25) years with two (2), twenty-five (25) year renewal options; and

WHEREAS, in order for CPS to address potential mitigation or remediation should new federal Environmental Protection Act (EPA) standards and requirements come into effect, an amendment to the renewal provision of the agreement is necessary; and

WHEREAS, three five (5) year renewal terms will replace the existing renewal options; and

WHEREAS, in August of 1991, the City approved a Sublease Agreement with East Central Independent School District (ECISD) which authorized the use of approximately 69 acres of the site for sports and recreational programs such as training of their cross-country track and field teams and related activities; and

WHEREAS, ECISD maintains, operates and provides security for the subleased area in a manner consistent with City-owned parkland serving similar purposes; and

WHEREAS, the Sublease Agreement mirrors the Land Use Agreement with CPS and as such an amendment to the renewal provision is required; and

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WHEREAS, as a result, the amendment to the Sublease Agreement is changed to reflect three five (5) year renewal options; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee, is authorized to execute Amendment No. 1 to the Land Use Agreement with CPS Energy at Calaveras Park and Amendment No. 1 to the Sublease Agreement with East Central Independent School District at Calaveras Park for the purpose of providing on-going recreational and sports programs, and services to the community, through East Central Independent School District. A copy of the land use agreement and the sublease agreement, in substantially final form, are attached hereto and incorporated herein for all purposes as **Attachment I** and **II**.

SECTION 2. 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 SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 3. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 12th day of March, 2015.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Hollis Young

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**17 (in consent vote: 7, 8, 9, 10, 11, 12, 14, 17, 18B, 19A, 19B, 20, 21, 22, 24, 25, 26, 28, 30, 31)**
Date:	03/12/2015
Time:	10:06:53 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing Amendment No. 1 to the Land Use Agreement with CPS Energy at Calaveras Park and Amendment No. 1 to the Sublease Agreement with East Central Independent School District at Calaveras Park for the purpose of providing on-going recreational and sports programs, and services to the community, through East Central Independent School District. [Gloria Hurtado, Assistant City Manager; Xavier D. Urrutia, Director, Parks & Recreation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x				x
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x			x	

FIRST AMENDMENT TO LAND USE AGREEMENT FOR CALAVERAS PARK

The City of San Antonio, acting by and through City Public Service Board ("CPS Energy"), and City of San Antonio (the "City") are parties to that certain Land Use Agreement for Calaveras Park pursuant to Ordinance No. 72473, and dated October 21, 1990, and any subsequent amendments thereto (collectively, the "Agreement"). CPS Energy and the City mutually desire to modify the Agreement as set forth in this First Amendment (the "First Amendment").

FOR AND IN CONSIDERATION of the promises set forth herein, the sufficiency of which is hereby acknowledged, CPS Energy and the City agree to modify the contract as follows:

1. Section 3.2 is hereby deleted in its entirety and replaced with the following:

   3.2 CPS Energy hereby grants the City the option to renew the term of this lease for three (3) successive additional five (5) year terms each (each an "Extension Term") provided that the City gives written notice of its desire to renew this Agreement to CPS Energy no less than six (6) months prior to expiration of the relevant Extension Term and CPS Energy agrees to such renewal in writing.

2. Section 10.1 is hereby deleted in its entirety and amended as follows:

   10.1 CPS and the City each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

3. Section 11.2 is added as follows:

   11.2 INDEMNITY

   CPS Energy and the City acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. CPS Energy and City shall each promptly notify the other in writing of any claims or demands that become known against them in relation to or arising out of activities under this Agreement.

4. Section 13.6 is hereby amended as follows:

> 13.6 Notwithstanding any of the foregoing provisions which may be to the contrary, CPS Energy shall have the right to terminate this Agreement at will with at least six (6) months written notice to the City.

5. Notwithstanding anything to the contrary either stated or implied herein, the changes set forth in this First Amendment shall be effective January 1, 2015.

It is understood and agreed that this First Amendment does not alter or change any other provision within the Agreement and all other terms and conditions of the Agreement shall remain in full force and effect.

The City of San Antonio, acting by and through City Public Service Board	The City of San Antonio
By: _____	By: _____
Printed Name: John L. Benedict	Printed Name: _____
Title: Senior VP Chief Administrative Officer	Title: _____
Date: 2-23-15	Date: _____

AMENDMENT No.1 TO SUBLEASE AGREEMENT

AT CALAVERAS PARK

This Amendment No.1 to the Sub-Lease Agreement with East Central Independent School District at Calaveras Park is made by and through the CITY OF SAN ANTONIO, a Texas municipal corporation ("**CITY**"), acting by and through its City Manager or her designee, pursuant to Ordinance No. 74205, dated August 28, 1991, and EAST CENTRAL INDEPENDENT SCHOOL DISTRICT ("**ECISD**").

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

WHEREAS, a land use agreement was entered into with the CITY PUBLIC SERVICE BOARD ("**CPS**"), whereby **CITY** was provided approximately 146.725 acres of land for Park programs and services at Calaveras Park ("SITE"); and

WHEREAS, **ECISD** currently subleases 68.857 acres of Calaveras Park through a Sublease Agreement with **CITY**, terminating on December 31, 2014 as authorized by Ordinance No. 74205; and

WHEREAS, **ECISD** conducts sports and outdoor recreational activities on the SITE; and

WHEREAS, **CITY** and **CPS** have agreed to modify the Land Use Agreement to extend the term for one primary term of five (5) years, with an option for two (2) five (5) year renewals unless provided otherwise within that Agreement; and

WHEREAS, **CITY** desires to continue providing recreational programs and services to the community through a Sublease Agreement with **ECISD**; and

WHEREAS, **CITY** and **ECISD** have agreed to modify the Sublease Agreement to renew the lease for three (3) successive additional five (5) year terms unless otherwise terminated sooner as provided within this Amendment, or as provided in Article XIV of the Sublease Agreement; and

NOW THEREFORE, the **CITY** and **ECISD** hereby agree to amend the Sublease Agreement as follows:

1. ARTICLE IV. TERM/OPTION TO RENEW is modified as follows:

   Paragraph 4.2 is hereby deleted in its entirety and replaced with the following:

   "So long as ECISD is not in violation of any provision of this Sublease Agreement at the commencement of each such renewal period, and so long as the City Charter does not prevent the granting of such renewal and extension, then CITY hereby grants to ECISD the option to renew and extend the original term of this agreement for three (3) successive additional five (5) year terms each (each an "Extension Term"), provided that ECISD gives written notice of its desire to renew this Agreement to CITY no less than nine (9) months prior to expiration of the relevant Extension Term and CITY agrees to such renewal in writing. ECISD understands and agrees (1) that each such Extension Term is contingent upon CITY exercising its corresponding Extension Term with CPS under that certain Land Use Agreement referenced herein; (2) that no term

hereunder, original or Extension Term, shall extend beyond the original and renewal terms granted by CPS to the CITY under said Land Use Agreement; and (3) that any renewals of the Land Use Agreement by the CITY and this Sublease Agreement by the CITY shall be made in writing and duly executed by the parties hereto, without further consideration by City Council. CITY understands and agrees that, if it exercises its option to renew the Land Use Agreement, then ECISD shall have the right to renew this sublease".

Paragraph 4.3 is deleted in its entirety and no longer applies.

2. ARTICLE XI. INSURANCE is modified as follows:
Paragraph 11.1 is hereby deleted in its entirety and replaced with the following:

"ECISD and the CITY each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees".

Paragraph 11.2 is deleted in its entirety and no longer applies.

3. ARTICLE XII. Responsibility is modified as follows:

Paragraph 12.2 is hereby added as follows:

"ECISD and the CITY acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et se.q*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. ECISD and City shall each promptly notify the other in writing of any claims or demands that become known against them in relation to or arising out of activities under this Contract".

4. ARTICLE XIV. TERMINATION is hereby modified as follows:
Paragraph 14.5 is hereby deleted in its entirety and replaced with the following:

"Notwithstanding any of the foregoing provisions which may be to the contrary, CITY shall have the right to terminate this Agreement at will with at least six (6) months written notice to ECISD".

5. ARTICLE XXVI. NONDISCRIMINATION Is hereby modified as follows:

Paragraph 26.1 is hereby deleted in its entirety and replaced with the following:

"As a party to this contract, ECISD understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further shall not discriminate on the basis of race, color, religion national origin, sex, sexual orientation, gender identity veteran status, age or disability unless exempted by state or federal law ors as otherwise established herein".

All other terms of the original License Agreement shall stand as otherwise stated.

Signed this _____day of _____, 20____.

CITY OF SAN ANTONIO

By: _____

Name: Xavier D. Urrutia

Title: Director

Department of Parks and Recreation

EAST CENTRAL INDEPENDENT SCHOOL DISTRICT

By: _____

Name: _____

Title: _____