

AN ORDINANCE 2010-12-09-1016

**AUTHORIZING THE CHANGE OF THE USE OF PARK PROPERTY
AND AUTHORIZING AN INTRAJURISDICTIONAL AGREEMENT FOR
THE TRANSFER OF USE, BENEFIT AND CONTROL OF
APPROXIMATELY 1.3 ACRES OF PARK PROPERTY TO CPS
ENERGY.**

* * * * *

WHEREAS, in accordance with Chapter 26 of the Texas Parks and Wildlife Code, the Parks and Recreation Department is requesting authorization of a change in use of approximately 1.3 acres of park land in Cathedral Rock Park in order to permit CPS Energy (“CPS”) to expand an existing electrical substation located adjacent to the park; and

WHEREAS, ordinance 97494 authorized an intrajurisdictional agreement between the City of San Antonio (“City”) and CPS which permitted the transfer of use, benefit and control (“Use”) of approximately 17 acres of CPS owned property located on Hausman Road to the City’s Use and operation of Bonnie Conner Park; and

WHEREAS, in exchange, the City transferred the Use of approximately 4.5 acres of property on Starcrest Drive to CPS; and

WHEREAS, since the market value of CPS’ Hausman Road property exceeded the market value of the City’s Starcrest property, the City agreed to consider the transfer of Use of additional City owned property to CPS in order to satisfy the difference; and

WHEREAS, CPS plans to expand an existing electrical substation located adjacent to Cathedral Rock Park and has requested the City’s consideration for the transfer of Use of approximately 1.3 acres of property located within Cathedral Rock Park for the substation expansion; and

WHEREAS, the expansion of the substation will not interfere with park operations or future improvement plans at Cathedral Rock Park; and

WHEREAS, the proposed change in use of park land was presented and endorsed at the Parks and Recreation Board meeting on August 23, 2010; **NOW THEREFORE:**

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

SECTION 1. In accordance with Chapter 26, Texas Parks & Wildlife Code, the City Council hereby finds that there is no feasible and prudent alternative to the change in use of the approximately 1.3 acres located in Cathedral Rock Park from public park use to public electrical utility use for the expansion of an existing CPS Energy (“CPS”) electrical substation as illustrated on exhibit A to the Intrajurisdictional Agreement attached hereto as **Attachment I**. The City Council hereby further finds and determines that the proposed realignment includes all reasonable planning to minimize harm to the land, as a park, resulting from the change in use.

SECTION 2. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee is hereby authorized to execute an Intra-jurisdictional Agreement with CPS for the transfer of the use, benefit and control of approximately 1.3 acres of land in Cathedral Rock Park. A copy of said Intra-jurisdictional Agreement is attached hereto and incorporated herein for all purposes as **Attachment I**

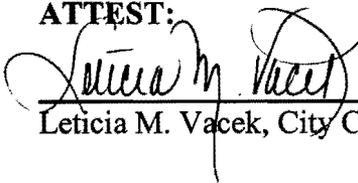
SECTION 3. The financial fiscal allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP 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 4. This ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED AND APPROVED this 9th day of December, 2010.

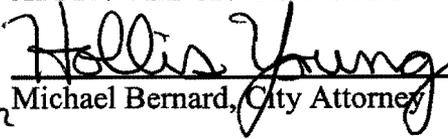

M A Y O R
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



for Michael Bernard, City Attorney



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 12

Name:	6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23A, 23B, 25, 27A, 27B, 29, 30, 31, 34, 35, 36, 37, 38A, 38B, 39A, 39B, 39C, 40A, 40B, 41, 42						
Date:	12/09/2010						
Time:	10:12:31 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the change of the use of park property and authorizing an intrajurisdictional agreement for the transfer of use, benefit and control of approximately 1.3 acres of park property to CPS Energy. [Sharon De La Garza, Assistant City Manager; Xavier Urrutia, Director, Parks & Recreation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6	x					
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				x
Elisa Chan	District 9		x				
John G. Clamp	District 10		x			x	

INTRAJURISDICTIONAL AGREEMENT BETWEEN CITY AND CPS ENERGY FOR THE EXPANSION OF THE GRISSOM ROAD SUBSTATION

This Intrajurisdictional Agreement ("Agreement") is entered into by and between the City of San Antonio, a Texas municipal corporation (herein referred to as "City"), acting by and through its City Manager or her designee, pursuant to city Ordinance No. _____, passed and approved on _____, and its municipal board, the City Public Service Board of San Antonio (hereinafter referred to as "CPS Energy").

WHEREAS, Pursuant to City Ordinance No. 97113, City and CPS Energy entered into a Joint Use Agreement to permit CPS Energy's joint use of 13,000 square feet of City controlled property located in the vicinity of Iron Horse Canyon and both City and CPS Energy agreed to identify additional property for which City sought transfer of use, benefit and control from CPS Energy and also property for which CPS Energy sought transfer of use, benefit and control from City to the benefit of each party; and

WHEREAS, City and CPS Energy subsequently entered into an Intrajurisdictional Agreement authorized by City Ordinance 97494 for transfer of use, benefit, and control of, but not the fee simple interest in, 17.239 acres of property on Hausman Road (now dedicated as Bonnie Conner Park) from CPS Energy to City and City transferred use, benefit and control of, but not the fee simple interest in, 4.506 acres of property on Starcrest Road to CPS Energy; and

WHEREAS, the fair market value of the Hausman Road property is higher than the combined fair market value of the Iron Horse Canyon and Starcrest Road properties; and

WHEREAS, CPS Energy has identified additional City-owned property located in Cathedral Rock Park and has requested the transfer of use, benefit and control of, but not fee simple interest in, a portion of Cathedral Rock Park.

WHEREAS, CPS Energy will use a portion of Cathedral Rock Park for the expansion of the CPS Energy Grissom Road Substation, for use in the installation, operation and maintenance of an electric substation and/or switching station consisting of power transformers, power circuit breakers with associated switchgear structures, electric transmission and electric distribution lines, each line to consist of a variable number of wires, and each such line with all necessary or desirable appurtenances (including cables, conduits, vaults, towers, and/or poles made of wood, metal or other materials, communication facilities, props and guys), and

WHEREAS, CPS Energy has inspected the property and found it to be suitable for its purposes based upon its independent investigation; and

WHEREAS, because of the expansion of the CPS Energy Grissom Road Substation along Old Grissom Road, the City desires to transfer the use, benefit, and control to CPS Energy of the property described below under the covenants and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual covenants and conditions expressed herein, and other valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

Transfer of Use, Benefit, and Control of Premises – City hereby transfers to CPS Energy the use, benefit, and control of, but not the fee simple interest in, the following real property (“the Premises”) for the expansion of the CPS Energy Grissom Road Substation related to that specific use:

Said Premises being an approximately 1.3 acre parcel out of 24.134 acres of land out of a 27.024 acre tract out of the Elizabeth Plunkett Survey No. 72, Abstract 573, New City Block 18049, San Antonio, Bexar County, Texas, as described in Deed recorded in Volume 8359, Page 1358, Official Public Records of Real Property, Bexar County, Texas.

Said Premises are more particularly shown by drawing marked Exhibit “A” attached hereto and incorporated herein.

Term – CPS Energy shall use the Premises so long as CPS Energy abides by the covenants and conditions contained herein and for so long as such use, benefit, and control (“use”) does not conflict with the Premises as a whole. If the use of the Premises by CPS Energy conflicts with the remaining portion of the Premises, the City shall notify CPS Energy of the same and provide a portion of the existing Premises to relocate the said substation at the City’s expense, subject to the appropriation of funds by the San Antonio City Council for such expenses. Other than relocations requested by the City, any cost resulting from CPS Energy’s operation, maintenance or installation of the facilities shall be at the sole cost of CPS Energy.

Consideration – CPS Energy’s transfer of use, benefit and control of the Hausman Road property to the City. CPS Energy understands and agrees that this transfer of use constitutes a portion of the debt owed by City to CPS Energy for the 17.239 acres of property on Hausman Road transferred from CPS Energy to the City with the remaining debt to be satisfied through the transfer of mitigation credits at the Iron Horse Canyon property or transfer of use, benefit and control of additional property at a later date.

Permitted Uses – CPS Energy shall use the Premises for the purpose of relocating, installing, constructing, reconstructing, inspecting, patrolling, maintaining, removing and replacing said substation facilities and appurtenances thereto (“Improvements”), which shall include the right of ingress and egress over the surface of adjacent lands in order to accomplish its purposes, the right to relocate said facilities along the same general direction and location of said substation facilities; and the right to remove from said lands all trees and parts thereof by standard industry practices employed in vegetation management or other obstructions, which endanger or may interfere with the efficiency of said substation facilities and said electric transmission and distribution lines or appurtenances thereto, subject to compliance with all applicable City codes and ordinances pertaining to tree preservation/mitigation and subject to the review and approval of all applicable City departments and review boards.

Condition of Property – As of the EFFECTIVE DATE of this Agreement, CPS Energy shall accept for present and future use of the Premises in its existing “AS IS, WHERE IS WITH ALL FAULTS” condition subject to the terms and condition of this Agreement. **CITY MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY OF THE PREMISES FOR USE BY CPS ENERGY.**

CPS Energy shall install a perimeter fence around Improvements upon completion of construction activities. The perimeter fence shall be of a similar height and material as the perimeter fencing located at the existing adjacent substation. Any portion of the Premises located outside of the perimeter fence shall remain open for public use and enjoyment of Cathedral Rock Park visitors.

Upon completion of the installation of Improvements, CPS Energy shall restore the Premises to the same or better condition as existed prior to commencement of this project.

Upon completion of the Improvements, CPS Energy shall be responsible for the maintenance of any portion of the Premises located inside of the perimeter fence. City shall be responsible for maintaining portions of the Premises located outside of the perimeter fence, other than the transmission and distribution lines and appurtenances.

Relationship of the Parties – Except as herein expressly provided to the contrary, the provisions of the Agreement are for the sole and exclusive benefit of the City and CPS Energy. Nothing in this Agreement expressed or implied is intended or shall be construed or confer upon any person or entity, other than City or CPS Energy, any right, remedy, or claim, legal or equitable.

Notices – Any notice, demand or request provided or required to be provided under this Agreement shall be considered properly given if in writing and delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram, to the party to whom the notice is due as specified below:

CPS Energy: CPS Energy
 Right-of-Way Management
 PO Box 1771, Mail Drop 100504
 San Antonio, Texas 78296

City: City of San Antonio
 Parks and Recreation Department
 PO Box 839966
 San Antonio, Texas 78283-3966

The names and addresses set forth above may be changed by notice given as provided in this section. The parties agree that delivery of any notice shall be presumed five (5) days after the date of mailing.

Assignment and Subletting – CPS energy shall not assign, let, or sublet the transferred Premises or any part thereof or any right or privilege pertinent thereto, or permit the occupancy or use of any part there by any other person.

Governing Law – This Agreement shall be construed and endorsed and is strictly subject to any existing applicable municipal ordinances, City Code, City Charter, and any existing applicable federal or state laws, or county ordinances, and regulations. CPS Energy agrees to comply with said existing federal and state laws, and city and county ordinances, and regulations, prior to the exercise of such rights or activities herein transferred.

Captions – The captions and headings of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, describe or otherwise effect the terms, the scope, or intent of this Agreement.

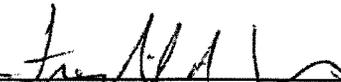
Counterparts – This Agreement may be executed in one or more counterparts, each of which shall be considered an original document.

Executed to be effective ten (10) days after the date of passage of the City Ordinance referenced on Page 1 hereto ("EFFECTIVE DATE").

CITY OF SAN ANTONIO, a
Texas municipal corporation

CITY OF SAN ANTONIO, TEXAS ACTING
BY AND THROUGH THE CITY PUBLIC
SERVICE BOARD OF SAN ANTONIO, A
MUNICIPAL BOARD OF THE CITY OF
SAN ANTONIO

By: _____
CITY MANAGER

By:  _____
FREDERICK A JAMES
INTERIM SENIOR VICE PRESIDENT
ENERGY DELIVERY SERVICES

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

By: _____
CITY ATTORNEY

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this _____ day of _____, 2010, by _____ (Name), _____ (Title), on behalf of the CITY OF SAN ANTONIO, Texas.

Notary Public, State of Texas

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this 30th day of November, 2010, by FREDERICK A. JAMES, INTERIM SENIOR VICE PRESIDENT, ENERGY DELIVERY SERVICES, on behalf of the CITY PUBLIC SERVICE BOARD of the CITY OF SAN ANTONIO, Texas.

Joyce G. Labus
Notary Public, State of Texas

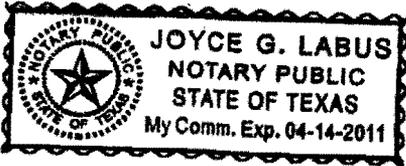
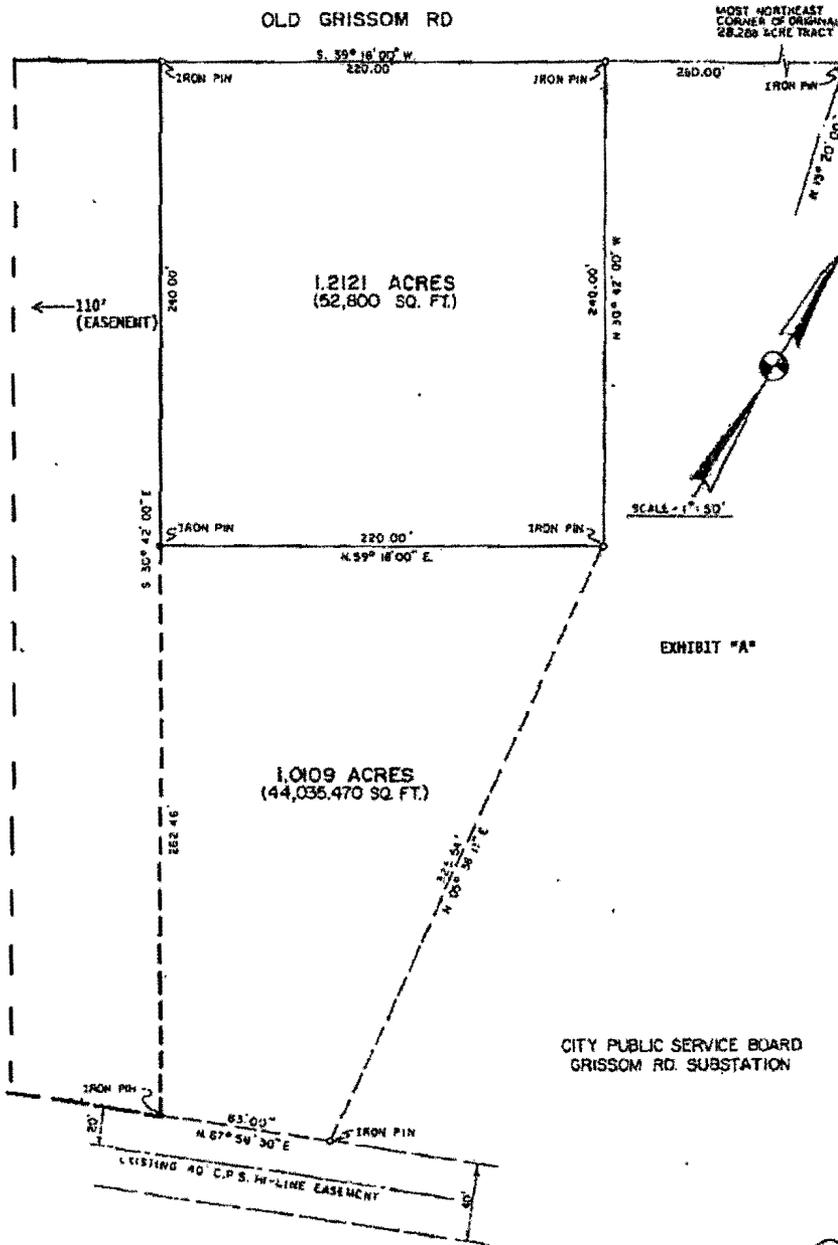


Exhibit A



168

P. - Vol. 509/134, 4699/445, 3097/71

DRAWN - CRAWFORD - 4/25/61