

AN ORDINANCE 2008-09-11-0790

AUTHORIZING THE EXECUTION OF AN INTRAGOVERNMENTAL JOINT USE AGREEMENT WITH CPS ENERGY FOR THE CONSTRUCTION OF A STEP-DOWN TRANSFORMER AND OTHER INFRASTRUCTURE AT THE INTERSECTION OF NORTHERN AND INTERNATIONAL BOULEVARDS, AT SAN ANTONIO INTERNATIONAL AIRPORT.

* * * * *

WHEREAS, in an effort to meet the electrical needs of San Antonio International Airport (Airport), CPS Energy proposed the construction, operation and maintenance of site for step-down transformer(s) and related switchgear and facilities; and

WHEREAS, CPS Energy and Aviation staff have identified a 100' by 100' vacant tract of land at the intersection of Northern and International Boulevards, suitable for the proposed project; and

WHEREAS, it is now necessary to authorize the attached agreement allowing CPS Energy access to the site at the Airport; **NOW THEREFORE**:

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

SECTION 1. The City Manager or her designee is authorized to execute an Intragovernmental Joint Use Agreement in substantially the same form as the document set out in Attachment I. Said Agreement shall grant CPS Energy access to a 100' by 100' vacant tract of land at the intersection of Northern and International Boulevards for purposes of constructing step-down transformer(s) and related switchgear and facilities.

SECTION 2. This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

PASSED AND APPROVED this 11th day of September, 2008.



M A Y O R

PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

ATTACHMENT I

Intragovernmental Joint Use Agreement

(City Fee Owned Property)

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1. Pertinent Information.

Authorizing Ordinance:

Owner: City of San Antonio

**Owner's Representative
and Address:** City Hall, P.O. Box 839966, San Antonio, Texas 78283-
3966 (Attention: Director, Aviation Department)

User: City Public Service Board of San Antonio

**User's Representative
and Address:** Attention: Manager, Right-of-Way Management Section
Mail Stop 100504
145 Navarro (78205)
P.O. Box 1771, San Antonio, Texas 78296-1771

Premises: A 100'X100' tract located at the intersection of Northern
Blvd. and International Blvd., identified on the attached
Exhibit A, in San Antonio, Bexar County, Texas

Term: Perpetual duration, subject to rights of termination set out
in this Permission.

Scope of Permission: Construction, operation and maintenance of step-down
transformers and switch gear, as well as reconstruction,
location, relocation, maintenance, and operation of electric
transmission and distribution lines, together with necessary
or desirable appurtenances related to the above activities

and aforementioned facilities, to serve the San Antonio International Airport as a principal objective.

Allowable Width: NOT APPLICABLE.

2. Permission.

2.01. Owner grants permission to User ("Permission") to use, maintain, and operate the Premises, non-exclusively and only within the Scope of the Permission. This instrument does not create an easement, but only a contractual right defined by the terms of this instrument.

2.02. After the lines are built, User must provide Owner, upon Owner's written request and at User's expense, an as-built survey of the facilities and appurtenances, including field notes showing an area centered on the center of the line and not wider than the Allowable Width, if applicable. Any field notes, to be labeled as **Exhibit B**, will then become a part of this Permission as if originally a part thereof and will be the definitive description of the Premises.

2.03. Owner does not guarantee title to or exclusive rights in the Premises. User deals with Owner regarding the Premises at User's risk regarding title matters, and User should obtain such outside assurance of title as it deems appropriate.

2.04. Owner will not construct improvements or conduct other activities, over, under or upon the Premises that would unreasonably interfere with User's uses within the Scope of Permission.

3. Restrictions on Use/Recording.

3.01. This Permission does not grant User authority to use any area beyond the Premises.

3.02. A memorandum of this Permission may be recorded by User, at User's expense and option, in the Official Public Records of Real Property of Bexar County, Texas. After delivery of the as-built survey required above, User may record this Permission in the Official Public Records of Real Property of Bexar County, Texas. User is responsible for recording fees. The metes and bounds from the as-built survey will be **Exhibit B** to the recorded version of this Permission.

4. Construction, Maintenance, and Operations.

4.01. Costs. User is solely responsible for all costs of construction, installation, repairs, maintenance, operation, and the like of any property User places in the Premises (hereafter "User's Responsibilities"). However, if Owner, its successors or assigns, requires the relocation of User's facilities, the Owner, its successors or assigns, is responsible for the cost of relocating the improvements, as provided herein. If relocation is required solely to satisfy User's purposes, User is solely responsible for such cost of relocation.

4.02. No Liability. Owner assumes no liability or expense under this instrument except for and unless Owner is in breach of this Permission. Owner is not liable to User or otherwise for damage to the Premises arising from or related to activities of Owner in the vicinity.

4.03. Installation and Maintenance. User must adhere to all applicable safety standards and must adhere to all applicable federal, state, or local laws, rules, or regulations.

4.04. No Power to Bind. User cannot bind or permit another to bind Owner for payment of money or for any other obligation.

4.05. Contractors and Subcontractors. User must promptly pay anyone who could file a mechanics' or materialmen's lien on the Premises arising out of or relating to User's activities. If such a lien is ever filed, Owner may, at any time after providing User written notice and reasonable opportunity to discharge the lien, choose to pay to discharge the lien. If Owner does so, the amount paid by Owner bears interest at 10% per annum from the date of Owner's payment until reimbursed by User.

4.06. Restoration. If User buries any facilities, promptly upon covering the facilities and except as altered by the use granted under the Permission, User must restore the original contours and vegetation disturbed by the burial to a condition substantially equivalent to their pre-existing condition, substantial equivalence to be determined by Owner's reasonable discretion. If an area has a natural appearance, User must restore that natural appearance unless Owner otherwise agrees in writing. Owner's reasonable determination of natural appearance controls.

5. Termination.

5.01. Owner may terminate this Permission at any time by giving User 180 days written notice, but only if City Council passes a resolution finding termination to be in the best interests of the City after expressly considering the impacts of termination upon User. Owner will provide written notice to User of any proposal for the City Council to terminate Permission at least 30 days prior to the date the City Council will consider the issue. If Owner terminates this Permission, it must pay User the reasonable cost of removing its property from the Premises and installing comparable improvements in an alternative location, if alternative facilities are required. If alternate facilities are required by User, Owner will use good faith efforts to provide an alternative location acceptable to User on its other properties at no cost to User; provided, however, that if no acceptable alternative location on Owner's properties is identified, then User is responsible for costs of acquiring the alternative location.

5.02. User may terminate this License at any time by abandoning its use of the Premises and delivering notice to Owner.

5.03. Upon expiration or termination, all rights and privileges cease, and User has 180 days to remove from the Premises its above-ground lines and other improvements in the Premises, unless Owner, in its reasonable discretion, directs User to abandon the improvements and appurtenances. Underground improvements or appurtenances may be abandoned in place. To the extent permitted by law, improvements or appurtenances not removed within 180 days after termination of the Permission, whether by expiration or otherwise, and whether the improvements are above or below ground, become the property of Owner. Owner may, without liability to User, dispose of such property at a public or private sale, without notice to User.

6. Assignment/Sublicensing.

This Permission cannot be assigned, sublicensed, leased, or subleased by User without Owner's written consent, not unreasonably withheld, except that no consent is required if the Permission is assigned, sublicensed, leased or subleased by User to an entity succeeding in whole or in part to User's utility operations.

7. Condemnation.

If the Premises are taken, in whole or in part, by eminent domain, then this Permission ceases on the date title to the land so taken or transferred vests in the condemning authority. Owner agrees that the provisions of section 5.01 shall apply to Owner as if the City Council determination to terminate the Permission had been made. In the eminent domain proceedings, the User is free to seek its own award, but User waives all rights to any condemnation proceeds pertaining to ownership of the Premises.

8. Taxes.

Both Owner and User are governmental entities, and neither expects to pay taxes. In no case, however, will one party ever be responsible for any taxes, local, state, or federal, that may be assessed against the other.

9. Appropriations.

All obligations of the City of San Antonio under this Permission are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. It is not a breach of this Permission for Owner not to pay any liability for which the City Council does not make an appropriation.

10. Dispute Resolution.

10.01. As a condition precedent to bringing any action arising out of or relating to this Permission or any aspect thereof, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

10.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another

party's right. A party does not waive mediation for so long as, within a reasonable time after appearing, the party gives written notice to the other party or its counsel of intent to require compliance with this paragraph.

10.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

10.04. The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

10.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

10.06. Mediator fees must be borne equally.

10.07. The parties need not mediate before going to court for either party to seek emergency injunctive relief.

11. Miscellaneous Provisions.

11.01. Nondiscrimination. User must not discriminate against any individual or group on account of race, color, gender, age, religion, national origin, or handicap, in employment practices or in the use of the Premises.

11.02. Release From Liability/Notice of Sale. If Owner transfers ownership of the Premises, Owner must reserve and execute an easement in favor of User, its successors or assigns that is consistent with the scope of this Permission. After recording of such easement, this Permission will terminate and Owner will have no liability or obligation relating to the period after transfer. Owner's transferee will succeed to all Owner's rights and responsibilities hereunder.

11.03. Consent/Approval Of Owner. As to any matter hereunder in which Owner's consent is required, the consent may be granted by the Director, Aviation Department, City of San Antonio ("City"), as designee of the City Manager, without council action, unless the City Charter requires that the City Council consent to the particular matter by the passage of a City ordinance.

11.04. Yielding Up. User must, at termination, yield the Premises up peacefully, including any improvements and fixtures (other than trade fixtures).

11.05. Severability. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

11.06. Exhibits. All exhibits to this Permission are incorporated by reference for all purposes as if fully set forth.

11.07. Successors. This Permission inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

11.08. Integration. This Written Permission Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.

11.09. Modification. This Permission may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

11.10. Third Party Beneficiaries. This Permission is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.

11.11. Notices. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. The giving of notice is complete three days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

11.12. Counterparts. This Permission may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Permission, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

11.13. Further Assurances. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this Permission.

In Witness Whereof, the parties have caused their representatives to set their hands:

Owner:

User:

City of San Antonio, a Texas municipal corporation

City Public Service Board of San Antonio

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved As To Form:

City Attorney

THE STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me on this date by _____, of the City of San Antonio, a Texas municipal corporation, in the capacity therein stated and on behalf of that entity.

Dated: _____

Notary Public, State of Texas

My Commission expires: _____

THE STATE OF TEXAS §

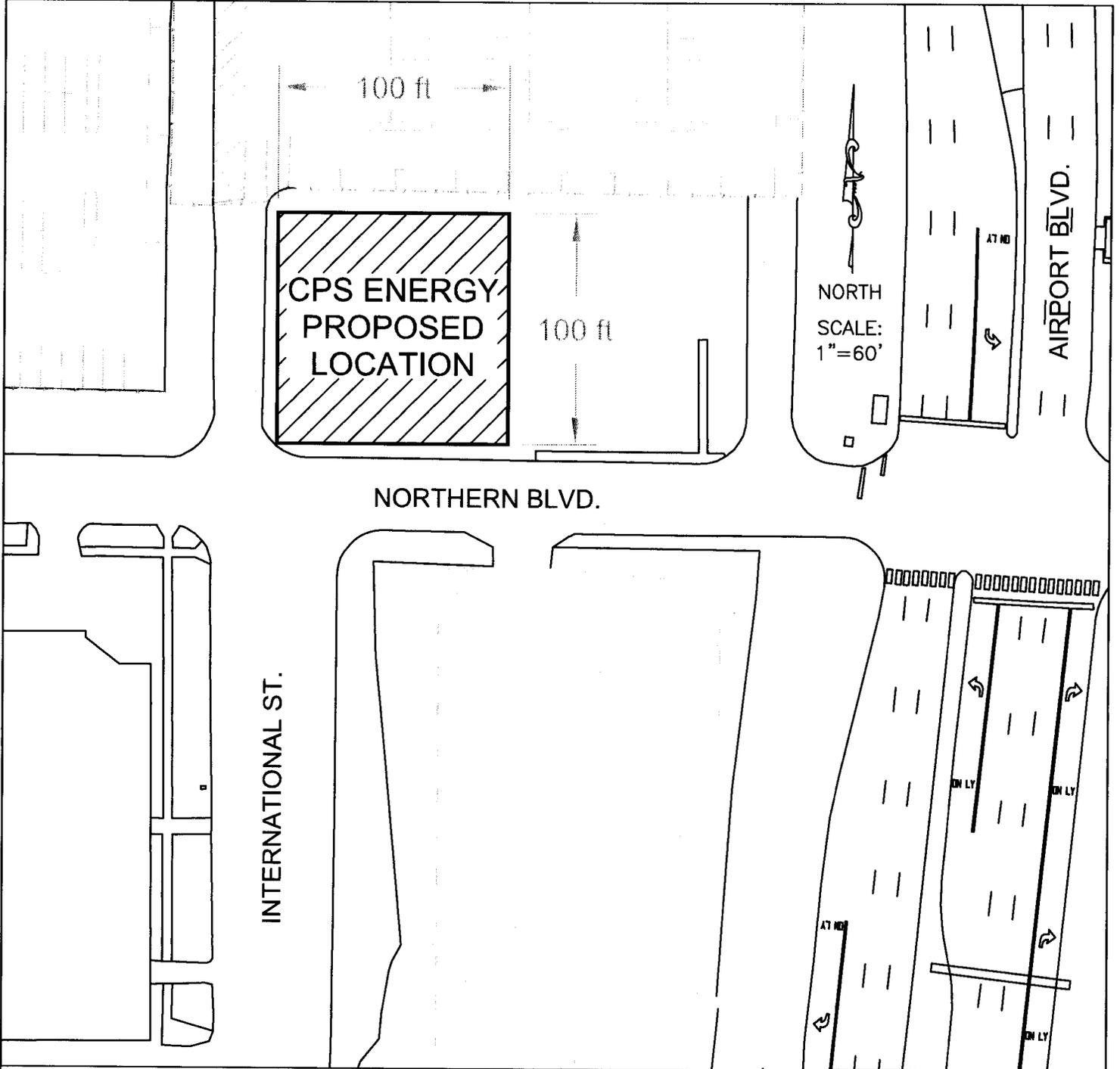
COUNTY OF BEXAR §

This instrument was acknowledged before me on this date by _____,
of the City Public Service Board of San Antonio, in the capacity therein stated and on
behalf of that agency.

Dated: _____

Notary Public, State of Texas

My Commission expires: _____



SAN ANTONIO
AIRPORT SYSTEM

10,000 SQ. FT.
GROUND LEASE

Exhibit __
FOR PREMISES LEASED

CPS Energy

at SAN ANTONIO
INTERNATIONAL AIRPORT

LEASE No. 000