

AN ORDINANCE

2014 - 10 - 02 - 0739

AUTHORIZING A JOINT USE AGREEMENT WITH CITY PUBLIC SERVICE ENERGY (CPS) TO USE APPROXIMATELY 5,834 SQUARE FEET OF CITY PROPERTY LOCATED AT RICHLAND HILLS DRIVE AND INGRAM ROAD FOR THE INSTALLATION OF AN ELECTRIC LINE IN COUNCIL DISTRICT 6.

* * * * *

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

SECTION 1. The City Manager and her designee, severally, are authorized and directed to grant a joint use agreement for installation of an electric line on City property, as described in **Attachment I**, in City Council District 6 for a \$500 fee. In furtherance of the preceding, the City Council authorizes and directs the City Manager or her designee, severally, to execute and deliver on behalf of the City a Joint Use Agreement substantially in the form attached as **Attachment II**, which is incorporated into this ordinance by reference for all purposes as if it were fully set forth. The City Manager and her designee, severally, should take all other actions reasonably necessary or convenient to effectuate the transaction described in Attachment I, including agreeing to nonmaterial changes to its terms and executing and delivering ancillary documents and instruments conducive to effectuating the transaction.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 240000000061 and General Ledger 4202410.

SECTION 3. 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 4. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

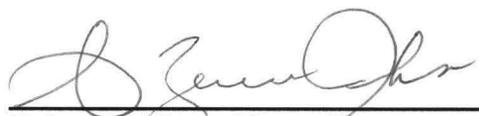
PASSED AND APPROVED this 2nd day of October, 2014.


M A Y O R
Ivy R. Taylor

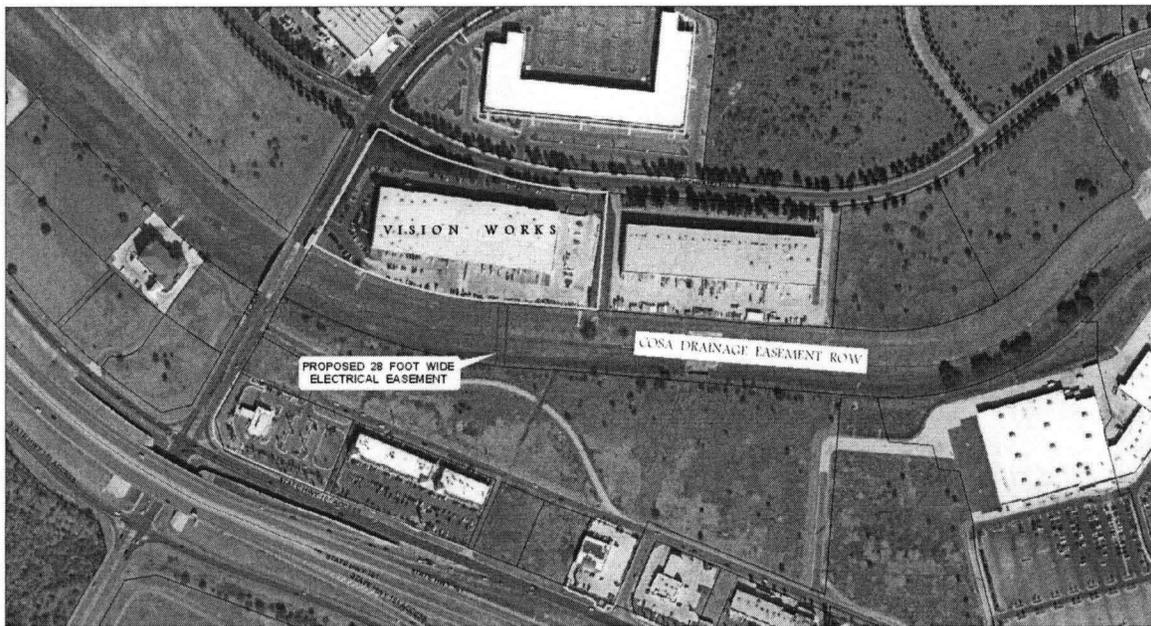
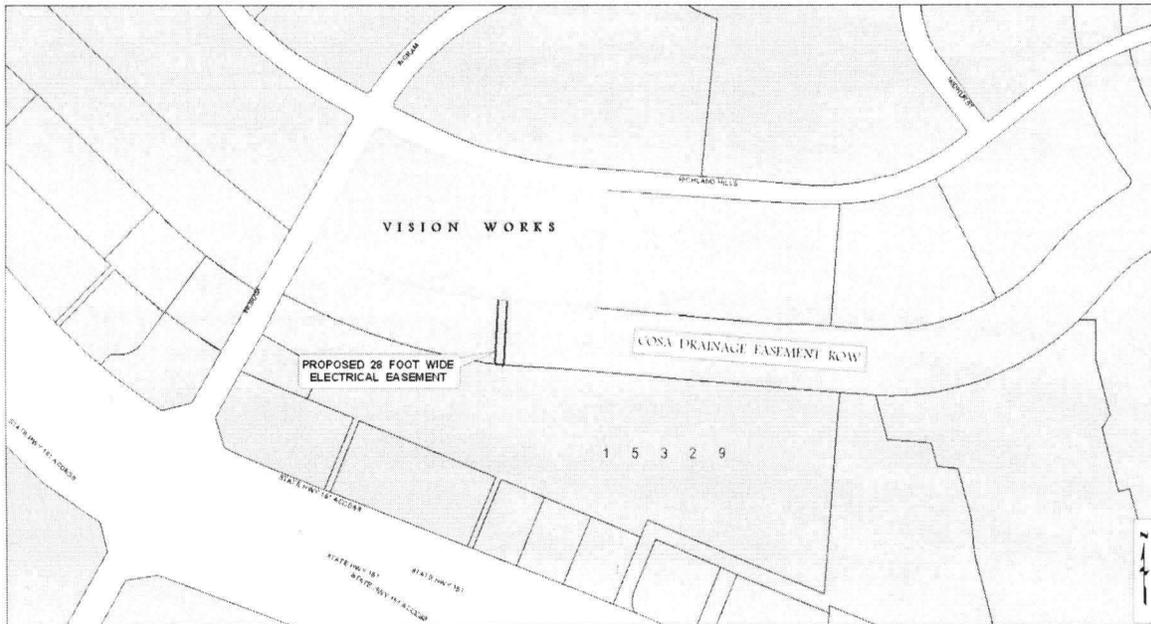
ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


Robert F. Greenblum, City Attorney

Attachment I



Attachment I

Joint Use Agreement

(VISIONWORKS: INGRAM ROAD and RICHLAND HILLS DRIVE)

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1. Pertinent Information.

Authorizing Ordinance:

SP No: 1781

City: City of San Antonio

City's Address: City Hall, P.O. Box 839966, San Antonio, Texas 3966
(Attention: Director, EastPoint and Real Estate Services)

Joint User: City Public Service Board of San Antonio

Joint User's Address: CPS Energy, Right-of-Way Management, P.O. Box 1771,
Mail Drop 100504, San Antonio, Texas 78296

Term: Indefinite duration subject to rights of termination set out
in this agreement.

Premises: A 0.134 acre (5,834 square feet- 28' wide) strip of land
situated in New City Block 15329, City of San Antonio,
Bexar County, Texas; being a portion of a 207.7-foot wide
drainage right-of-way created by plat recorded in Volume
9517, Page 9 of the Bexar County Deed and Plat and as
more particularly described on **Exhibits A and B.**

Scope of Permission:

Relocation, installation, construction, reconstruction, realignment, inspection, patrolling, operation, maintenance, repair, addition, removal and replacement of an overhead electric-distribution line and appurtenances thereto, including the rights (a) of ingress and egress over the Premises to accomplish the acts authorized by this agreement, (b) to relocate the facilities along the same general direction and location of the lines and within the Premises, and (c) to remove vegetation, including trees, and other obstructions from the Premises that may endanger or interfere with the efficiency of the lines and other facilities.

2. Permission.

2.01. City acknowledge that Joint User's activities, if within the Scope of Permission and conforming to the terms and conditions of this Agreement, do not, as of the date of the City's execution of this Permission set forth below, unreasonably interfere with the use by the City. The Permission is non-exclusive. This instrument does not create an easement, but only a license defined by the terms of this instrument. City will coordinate with Joint User any access or use that could affect Joint User's infrastructure within the Premises.

2.02. City will not construct permanent improvements over the Premises that would unreasonably interfere with Joint User's use within the Scope of Permission.

2.03. This Permission does not exempt Joint User from rules of general applicability governing activities within the Scope of Permission or from getting permits required generally for activities within the Scope of Permission.

3. Construction, Maintenance, and Operations.

3.01. **Costs.** Joint User is solely responsible for all costs of construction, installation, repairs, maintenance, operation, and the like of any property placed by Joint User in the Premises, including the cost to relocate any lines, facilities or other Joint User property when required to accommodate a public necessity.

3.02. **Installation and Maintenance.** All lines and other facilities must be installed according to industry standards and according to any other applicable standards imposed by local, state, or federal law. Joint User must maintain all improvements constructed or installed by Joint User. In so doing, Joint User must adhere to all applicable safety standards and must adhere to all applicable federal, state, or local laws. Without limiting the foregoing, Joint User must assure that nothing it does causes the Premises to fail to comply with any aspect of the Unified Development Code.

3.03. **No Power to Bind.** Joint User cannot bind or permit another to bind City for payment of money or for any other obligation.

3.04. **Contractors and Subcontractors.** Joint User must promptly pay anyone who could file a mechanics' or materialmen's lien on the Premises, unless there is a good faith dispute about the right to payment. If any such lien is filed, Joint User shall pay or bond around such claim within 30 days after Joint User's notice of the lien, failing which, City may treat it as

an event of default and terminate this Permission as provided in Section 6 below entitled "Termination." Joint User remains obligated to clear the lien without cost to City even after termination.

3.05 **Restoration.** If Joint User buries any lines, promptly upon covering them, Joint 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 City. If an area has a natural appearance, Joint User must restore that natural appearance unless City otherwise agrees in writing. City's determination of natural appearance controls.

4. Insurance.

Joint User and City are political subdivisions of the State of Texas. As such they 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.

5. Indemnity.

5.01. For so long as Joint User is part of the City, it need not indemnify under this contract. Subject to the indemnity provisions below when they apply, each party is liable for its own actions, the actions of its employees, and the actions of others acting on its behalf under this agreement.

5.02. If Joint User ceases to be part of the City or if this agreement is assigned to another, Joint User or its assignee must indemnify as provided in this article. **These definitions apply to the indemnity provisions of this Contract:**

5.02.01 "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising, in whole or in part, out of acts or omissions of any person other than an Indemnatee that give rise to assertions of Indemnatee liability under this Contract. A claim is an Indemnified Claim even if the person alleged to be at fault is not a party to this agreement. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death. Indemnified Claims also include claims in which an Indemnatee shares liability with the Indemnitor.

5.02.02. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

5.02.03. "Indemnitor" means Joint User.

5.03. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

5.04. If one or more Indemnitees are finally adjudged to be liable for an Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnitee negligence or other fault, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying Indemnitees finally adjudged to be negligent and must continue to indemnify other Indemnitees.

5.05. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees.

5.06. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

5.07. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

5.08. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

5.09. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

5.10. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees, collectively, and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

6. Termination.

6.01. City may terminate this Permission at any time before expiration by giving Joint User 120-days' written notice, but only if City Council passes a resolution finding that Joint User's use of the Premises has, or in the future may reasonably be expected to, interfere with use of the Premises. City shall use good faith efforts to notify Joint User at least 10 days in advance of any such public meeting at which such resolution will be considered by City Council. City will consider Joint User's request for more than 120 days within which to remove and relocate its infrastructure.

6.02. Upon expiration or termination, all rights and privileges cease, and Joint User must promptly cease use of the Premises and remove all its property installed on the Premises at its own expense.

6.03. Improvements or appurtenances not removed within 90 days after termination of the Permission, whether by expiration or otherwise, become the property of City. City may, without liability to Joint User, dispose of such property at a public or private sale, or in any other manner, without notice to Joint User.

6.04. Joint User may terminate this License at any time by providing the City with notice and documentation of the termination of its use of the Premises and delivering such notice to City at least 60 days prior to termination. Such requirement may be waived or altered if approved by the City in writing.

7. Assignment.

7.01. This Permission cannot be assigned by Joint User except to a certificated utility provider succeeding to Joint User's utility in the area in which the Premises are located.

7.02. Subject to the rights of termination set out in Section 6.01 above, if City sells the Property of which the Premises are a part, and Joint User is an agency or a part of the City at the time of the sale, City will reserve a perpetual easement for Joint User for the use permitted herein, without additional cost to Joint User.

8. Condemnation.

If the Premises are taken, in whole or in part, by eminent domain not for the benefit of City, then this Permission, at the option of City, ceases on the date title to the land so taken or transferred vests in the condemning authority. Joint User waives all rights to any condemnation proceeds, unless Joint User is an agency or other part of the City. If Joint User remains an agency or other part of the City, the parties will equitably allocate the proceeds.

9. Taxes.

City is a governmental entity and does not expect to pay taxes. Joint User is responsible for taxes, if applicable and Joint User no longer has tax exempt status, arising from its use of the Premises under this agreement. In no case will City ever be responsible for taxes, local, state, or federal, if any, that may be assessed against Joint User.

10. Appropriations.

All obligations of the City of San Antonio under this instrument 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. If the City Council fails to appropriate money for an obligation arising under this agreement, the City cannot be required to fulfill the obligation.

11 Dispute Resolution.

11.01. As a condition precedent to bringing any action arising out of or relating to this agreement 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.

11.02. 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 defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

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

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

11.05. 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.

11.06. Mediator fees must be borne equally.

11.07. The parties need not mediate before going to court to seek emergency injunctive relief.

12. Miscellaneous Provisions.

12.01. **Relationship Limited.** This instrument creates only the relationship of City and Joint User. The parties are not principal and agent, partners, joint venturers, or participants in any common enterprise.

12.02. **Nondiscrimination.** Joint 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.

12.03. **Release from Liability/Notice of Sale.** If City transfers ownership of the Premises, City shall comply with the requirements of this Agreement but will have no liability or obligation relating to the period after transfer.

12.04. **Consent/Approval of City.** As to any matter hereunder in which City's consent is required, the consent may be granted by the Director, EastPoint and Real Estate Services, City of San Antonio, as designee of the City Manager, without council action, unless the City Charter

requires City Council action.

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

12.06. **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.

12.07. **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.**

12.08. **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.

12.09. **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.

12.10. **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.

12.11. **Captions.** Paragraph captions in this Permission are for ease of reference only and do not affect the interpretation hereof.

12.12. **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.

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

13. Public Information.

Joint User acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

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

City:

Joint User:

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: _____

By: _____

Printed Name: _____

Blake Williams, Interim Senior Director, Substation and Transmission Engineering, Construction And Maintenance, on behalf of the City Public Service Board

Title: _____

Date: _____

Date: _____

Approved As To Form:

City Attorney

State of Texas §
County of Bexar §

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

Date: _____

Notary Public, State of Texas

My Commission expires: _____

STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this _____ day of _____, 2014 by BLAKE WILLIAMS, Interim Senior Director, Substation and Transmission Engineering, Construction And Maintenance.

Notary Public, State of Texas

My Commission expires: _____

Exhibit A: Metes and Bounds



1000 Central Parkway N., Suite 100
San Antonio, Texas 78232-5050

TEL 210 494 5511
FAX 210 494 5519

AUSTIN
HOUSTON
SAN ANTONIO
COLLEGE STATION
DALLAS
BREHMAN
ROSENBERG
THE WOODLANDS

Texas Board of Professional Engineers Registration No. F-439

EXHIBIT A METES AND BOUNDS DESCRIPTION OF A 0.134 ACRE STRIP OF LAND

A Metes and Bounds description of a 0.134 acre (5,834 square feet – 28' wide) strip of land situated in New City Block 15329, City of San Antonio, Bexar County, Texas; being a portion of a 207.7-foot wide drainage right-of-way created by plat recorded in Volume 9517, Page 9 of the Bexar County Deed and Plat Records; and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod found marking the southeastern-most corner of Lot 1, Block 49 of Texas Wilson Subdivision, plat of which is recorded in Volume 9533, Page 32 of the Bexar County Deed and Plat Records, and the southwestern-most corner of Lot 2, Block 49 of Casey Park 410 West Subdivision, plat of which is recorded in Volume 9540, Page 57 of the Bexar County Deed and Plat Records, situated in the northerly boundary of said 207.7-foot wide drainage right-of-way; said commencing point having Texas State Plane Grid Coordinates: North 13,707,809.08 feet, East 2,078,522.77 feet;

THENCE, North 85°45'09" West, 312.80 feet along the southerly boundary of said Lot 1 to the POINT OF BEGINNING of the herein described strip of land;

THENCE, South 00°19'48" East, 208.36 feet to a point for corner situated in the southerly boundary of said 207.7-foot wide drainage right-of-way, same being the northerly boundary of Lot 30, Block 3, New City Block 15329 of Westpointe Commercial Unit 2 Subdivision, plat of which is recorded in Volume 9649, Page 189 of the Bexar County Deed and Plat Records;

THENCE, North 85°45'09" West, 28.09 feet along said northerly boundary to a point for corner;

THENCE, North 00°19'48" West, 208.38 feet to a point for corner situated in the southerly boundary of aforesaid Lot 1;

10/4/2013 

Carson Design Associates – Texas Wilson Subdivision - 655 Richland Hills Dr. @ Ingram Dr.
28' CPS electric easement across drainage ROW - 0.134 acre - Job No. S0811-001-00
Revised: October 4, 2013
Page 1 of 2

Smart Engineering Smart Solutions.™

www.jonescarter.com

THENCE, along the southerly boundary of said Lot 1 the following two(2) courses and distances:

1. in an easterly direction, along the arc of a curve to the left having a radius of 1548.71 feet, a central angle of $00^{\circ}15'04''$, a long chord bearing South $85^{\circ}37'37''$ East, 6.79 feet, a total arc length of 6.79 feet to a 1/2-inch iron rod found marking a point of tangency;
2. South $85^{\circ}45'09''$ East, 21.30 feet to the POINT OF BEGINNING, containing 0.134 acre of land in Bexar County, Texas as shown on drawing filed under Job No. S0811-001-00 in the office of Jones & Carter Inc., San Antonio, Texas.

Note: All bearings, distances, areas and coordinates referenced herein are Texas State Plane Coordinate System grid, South Central Zone (NAD'83) as established by Global Positioning System (GPS). The grid to surface scale factor is 1.00016793.

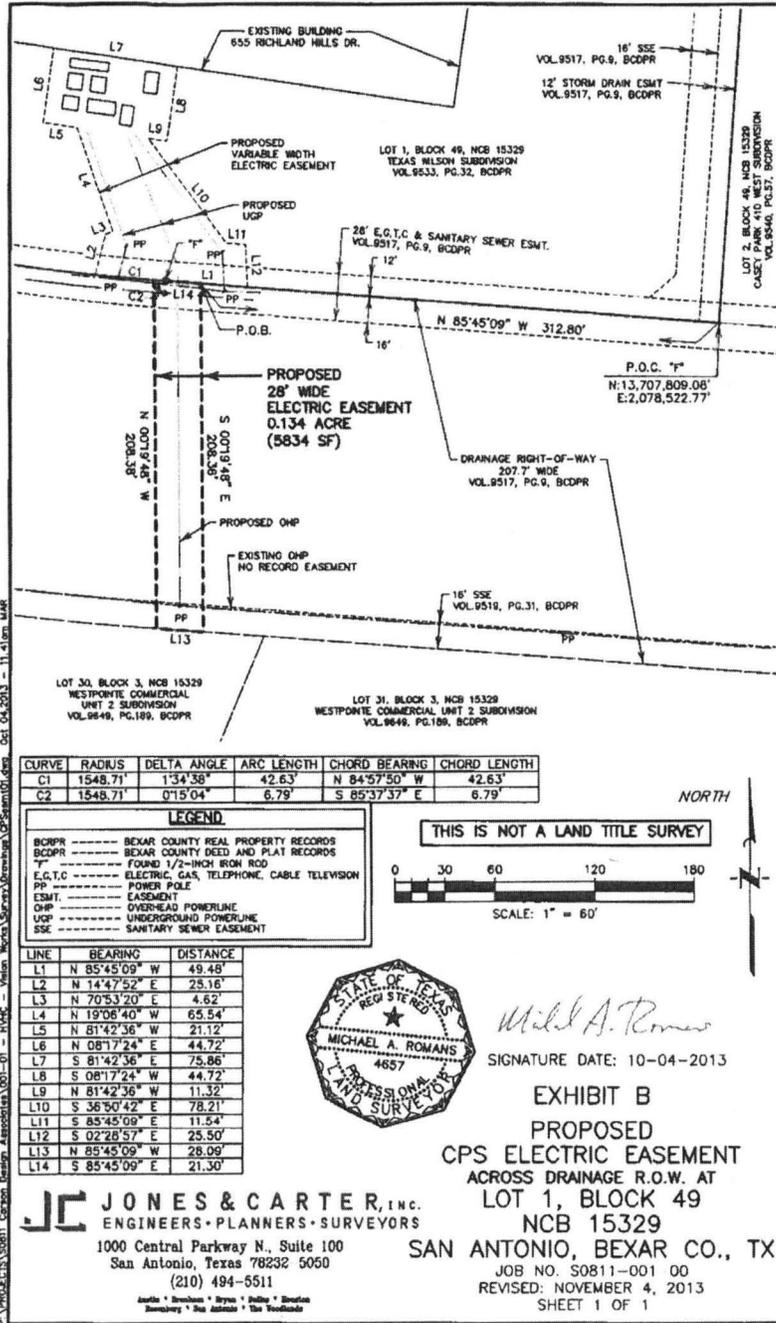
JONES & CARTER INC.
Texas Board of Professional Land Surveyors Registration No. 100461-05



Michael A. Romans

Michael A. Romans
Registered Professional Land Surveyor #4657
Signature Date: 10-4-2013

Exhibit B: Survey Plat



Agenda Item:	15 (in consent vote: 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33)
Date:	10/02/2014
Time:	09:16:19 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a Joint Use Agreement with City Public Service Energy for their use of approximately 5,834 square feet of City-owned property located at Richland Hills Drive and Ingram Road, in Council District 6 for the installation of an electric line. [Peter Zanoni, Deputy City Manager; Mike Etienne, Director, EastPoint & Real Estate Services Office]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Diego Bernal	District 1		x				
Keith Toney	District 2	x					
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x			x	
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Mari Aguirre-Rodriguez	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9	x					
Michael Gallagher	District 10		x				