

AN ORDINANCE      2011-01-20-0050

**AUTHORIZING THE EXECUTION OF AN INTRAGOVERNMENTAL JOINT USE AGREEMENT WITH CPS ENERGY FOR THE RELOCATION, INSTALLATION, AND MAINTENANCE OF A GAS TRANSMISSION AND DISTRIBUTION LINE AT SAN ANTONIO INTERNATIONAL AIRPORT.**

\* \* \* \* \*

**WHEREAS**, CPS Energy currently holds an easement for a gas pipeline running through the airfield at San Antonio International Airport (SAT);

**WHEREAS**, SAT is extending Runway 3/21 by 1,000 feet necessitating the relocation of a 24 inch gas pipeline and other airfield facilities to remove them from the new extended safety area; and

**WHEREAS**, it is now necessary to authorize the attached joint use agreement for the relocation, installation, and maintenance of a gas transmission and distribution line at SAT; **NOW THEREFORE:**

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

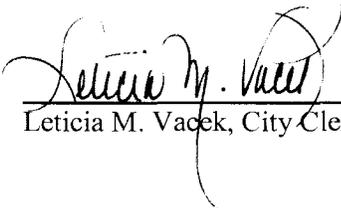
**SECTION 1.** The City Manager or her designee is authorized to execute an Intragovernmental Joint Use Agreement, attached hereto as Attachment I, for the relocation, installation, and maintenance of a gas transmission and distribution line at San Antonio International Airport

**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.

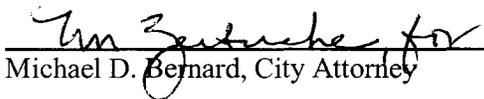
**PASSED and APPROVED** this 20th day of January, 2011.

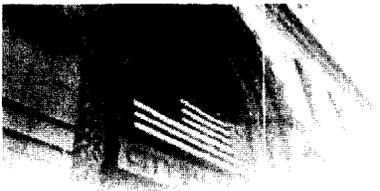
  
M A Y O R  
Julián Castro

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
 ACTION

City of San Antonio



## Agenda Voting Results - 30A

<b>Name:</b>	7, 8, 9, 10, 11, 15, 16, 19A, 19B, 20A, 20B, 21, 22, 23, 25, 27, 28, 29, 30A, 30B, 31, 33, 34						
<b>Date:</b>	01/20/2011						
<b>Time:</b>	10:46:00 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing an Intrajurisdictional Agreement between the City of San Antonio and CPS Energy for the relocation, installation and maintenance of gas transmission and distribution lines and to grant permission to CPS Energy for the joint-use and benefit of the real property for the relocation of a gas pipeline within the airport operations area.						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			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				
Elisa Chan	District 9		x				x
John G. Clamp	District 10		x				

# ATTACHMENT I

**INTRAJURISDICTIONAL AGREEMENT BETWEEN CITY AND CPS ENERGY  
FOR RELOCATION, INSTALLATION AND MAINTENANCE OF  
GAS TRANSMISSION AND DISTRIBUTION LINES**

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, and its municipal board, the City Public Service Board of San Antonio (hereinafter referred to as "CPS Energy").

**WHEREAS**, City is the owner of certain property upon which CPS Energy currently holds existing rights for the operation, and maintenance of an existing gas pipeline at the San Antonio International Airport (the "Airport") to supply gas to residential and commercial customers within the northeast portion of the CPS Energy service territory in the City of San Antonio, Bexar County, Texas, and

**WHEREAS**, said existing gas pipeline is covered by an easement granted to the City of San Antonio, as part of its electric and gas system (a/k/a CPS Energy), by Paul Klar and Annie Klar, dated March 13, 1962 as recorded in Volume 4741, Page 251 of the Deed Records of Bexar County, Texas as more particularly described in Exhibit "A."

**WHEREAS**, it is necessary to relocate a portion of the gas pipeline to accommodate the extension of a Runway 3/21 at San Antonio International Airport, and the City has agreed to assume all expenses and costs associated with the relocation of the pipeline to accommodate the runway extension.

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

**WHEREAS**, because of the relocation of a portion of said gas pipeline, the City desires to grant to CPS Energy limited joint use and benefit of the property described below under the covenants and conditions set forth herein;

**NOW THEREFORE**, in consideration for 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 and Benefit of Premises** – City hereby grants permission to CPS Energy for the joint-use and benefit of the following real property ("the Premises") for the relocation, installation, operation and maintenance of the gas pipeline.

Said Premises being known as (Legal Description) all of said property being situated within the corporate limits of the City of San Antonio, Bexar County, Texas, and being more particularly described in Deed recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_, Deed Records of Bexar County, Texas.

Said Premises more particularly described and shown by field notes and drawings shown as Exhibit "B" attached hereto and incorporated herein.

**Term** – CPS Energy shall have the perpetual use of the Premises so long as CPS Energy abides by the covenants and conditions contained herein and for so long as such use and

benefit, as further defined in Permitted Uses, does not conflict with the City's intended use of the Premises as a whole.

If the Permitted Uses of the Premises by CPS Energy conflicts with the City's use of the remaining portion of the Premises, the City may terminate the Permitted Use by giving CPS Energy 275 days written notice of the same, except in cases of national emergencies or federal mandate, but only if the City Council passes a resolution finding termination to be in the best interests of the City after expressly considering the impacts of termination upon CPS Energy. City shall use good faith efforts to provide CPS Energy ten (10) days advance notice of any such public hearing. If such a resolution is passed and the City's existing use allows, the City shall provide an alternate location in the area of which the existing Premises are a portion to relocate the said gas pipeline and appurtenant facilities at the City's expense, subject to the appropriation of funds by the San Antonio City Council for such expenses. The City, at City's expense, shall provide CPS Energy an as-built survey of the pipes, including field notes. The field notes will then become a part of this Agreement as if originally a part thereof. City will consider Joint User's request for more than 275 days within which to remove and relocate its infrastructure.

Upon expiration or termination by City Council resolution and the City's use does not allow for the relocation of the pipeline on the City's property, all rights and privileges cease, and CPS Energy must promptly cease the Permitted Uses of the Premises. City will then reimburse CPS Energy for the reasonable costs of (A) removing existing gas pipeline and appurtenant facilities permitted by this agreement, (B) acquiring a new location for the gas pipeline and appurtenant facilities, and (C) installing replacement gas pipeline and appurtenant facilities in the new location.

Improvements or appurtenances not removed within 180 days after termination of the Permitted Uses, whether by expiration or otherwise, become the property of City. City may without liability to CPS Energy, dispose of such property as City in its sole discretion deems appropriate without notice to CPS Energy.

CPS Energy may terminate this Agreement at any time by abandoning its Permitted Uses of the Premises and delivering notice to City.

If this Agreement is recorded in the real property records of the county in which the Premises are located and if the City Council does not terminate this agreement according to the terms of this article, upon City's sale of the Premises, CPS Energy's rights under this agreement become an easement in gross for the purposes described in this Agreement, for the benefit of CPS Energy, its successors and assigns.

Other than relocations requested by the City or required by actions of the City, any cost resulting from CPS Energy's relocation, operation, maintenance or installation of facilities, or for relocation necessary to cure a breach by CPS Energy shall be at the sole cost of CPS Energy. Upon completion of any such relocation, CPS Energy, at CPS Energy's expense, shall provide City an as-built survey of the gas pipeline and appurtenant facilities, including field notes. The field notes will then become a part of this Agreement as if originally a part thereof.

**Consideration** – City transfers to CPS Energy the use and benefit of the Premises in consideration of the relocation of said gas pipeline and CPS Energy's willingness to abandon the portion of its existing rights for the operation, and maintenance of an existing gas pipeline that encompassed the section of pipeline to be relocated.

**Permitted Uses** – CPS Energy shall enter the Premises on a nonexclusive basis only to use the Premises for the sole purpose of relocating, installing, constructing, inspecting, maintaining, removing and replacing said gas pipeline and appurtenant facilities (hereinafter the “Permitted Use”). This Agreement does not create an easement, but only a license defined by the terms of this Agreement. This Agreement does not grant CPS Energy authority to use any area beyond the Premises. CPS Energy’s Permitted Use of the Premises shall be subordinate to all Aviation Uses of the area of which the Premises are a part and must not interfere with any such uses. Aviation Uses being those services and facilities related to the operation of aircraft or otherwise associated with flight safety and Airport security. Additionally, the City reserves the right to place underground utilities, including, but not limited to, power and communications cables, sanitary sewer lines and water lines, in and through the Premises, provided such placement does not unreasonably interfere with any CPS Energy gas pipeline and/or attendant facilities within the Premises. City shall contact CPS Energy’s Right-of-Way Management Section to coordinate the work associated with the construction of the City’s underground utilities. The City will ensure that proper separations will be maintained and all applicable rules and regulations are followed when installing any underground utilities within Premises. City will take good and reasonable measures in constructing such underground utilities such that they do not interfere with CPS Energy’s Permitted Uses and will not construct improvements or conduct other activities, other than Aviation Uses over, under or upon the Premises that would unreasonably interfere with CPS Energy’s Permitted Use. Upon completion of the work, the City shall provide CPS Energy with an as-built survey, including field notes, showing the exact location of such underground utilities.

Because the Premises are located on and are a part of Airport facilities, all activities and action associated with the Permitted Use shall be coordinated with the City and shall be subordinate to and subject to all Airport, Transportation Security Administration (“TSA”) and Federal Aviation Administration (“FAA”) uses, rules, and regulations, provided CPS Energy’s Permitted Use is not an emergency requiring immediate access. City may enter and use the Premises at any time for any purpose not unreasonably interfering with the Permitted Use. All ingress and egress to the Premises required to accomplish the Permitted Use must be in accordance with Airport, Transportation Security Administration and Federal Aviation Administration security protocol and be coordinated with City’s Aviation Department Planning and Development Manager, provided CPS Energy’s Permitted Use is not an emergency requiring immediate access. The use of all equipment on the Premises must be coordinated with and approved by City’s Aviation Department Planning and Development Manager to ensure the equipment does not obstruct air navigation or interfere with air navigational aids, and shall not be unreasonably denied. Any soil excavation by CPS Energy will be coordinated by CPS Energy with City’s Aviation Department Planning and Development Manager prior to beginning any excavation to evaluate the need for special soil handling procedures. If City determines that special handling of the soil to be excavated is necessary, CPS Energy must comply with and initiate such handling procedures as are reasonably required by the City, and the City shall incur the costs of any required special handling if the work being performed is a result of City’s request to relocate the gas pipeline and/or appurtenant facilities. CPS Energy agrees to restore the surface of the Premises to substantially the same condition existing prior to CPS Energy’s work pursuant to this Agreement except for the special handling which costs the City shall incur if the work being performed is a result of City’s request to relocate the gas pipeline and/or appurtenant facilities.

**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 conditions of the Agreement. **CITY MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY OF THE PREMISES FOR USE BY CPS Energy.**

**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 to confer upon any person or entity, other than City or CPS Energy, any right, remedy, or claim, legal or equitable.

**Liability** – Subject to the Indemnity provisions following when they apply, **each Party shall be responsible for its own actions and those of its employees and/or persons acting by or on its behalf along with any liability arising from such activities while carrying out the purpose of this Agreement. Each party agrees to have sufficient insurance in place to cover all obligations assumed in this Agreement and any liabilities arising while carrying out those obligations. Notwithstanding the foregoing, CPS Energy acknowledges and hereby specifically consents to the City providing all insurance coverage required pursuant to this Agreement through the City’s Self-insurance program.**

**Indemnity** - **For so long as CPS Energy is owned by the City, it need not indemnify under this contract.** If CPS Energy ceases to be owned by the City or if this agreement is assigned to another, CPS Energy or its assignee must indemnify as provided in this article. These definitions apply to the indemnity provisions of this Contract:

“Indemnified Claims” mean all loss, cost, liability, or expense, including attorneys’ fees and court costs, directly or indirectly arising out of the acts or omissions of any person other than Indemnitees. Indemnified Claims include those arising from property damage and from personal or bodily injury, including death.

“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.

“Indemnitor” means CPS Energy.

**Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims. If Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for 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 Indemnatee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnatee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.**

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

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 Indemnatee 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.

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.

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.

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

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 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.

**Airport Security** - CPS Energy must adhere to, and require its Subcontractors to abide by, all present and future applicable safety and security standards and must adhere to all federal, state or local laws, rules or regulations to include policies and regulations set by the Airport, City, TSA and Federal Aviation Administration FAA, provided however that the City shall grant CPS Energy immediate access to the Premises in the case of emergency situations as designated by CPS Energy.

Except as noted in the paragraph immediately above, to the extent CPS Energy will be responsible for work which necessitates entrance to the Air Operations Area or other secure areas of the Airport, this Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("Airport Security Act"), the provisions of which govern airport security and are incorporated by reference, including without limitation the rules and regulations promulgated under it.

All CPS Energy personnel, to include any subcontractors of CPS Energy, performing work in the Security Identification Display Areas (SIDA), Secured Areas, Sterile Areas or the Airport Operations Area must have a valid San Antonio International Airport identification badge ("SAT ID Badge") or be under an airport approved escort by a person having a SAT ID Badge with the white "E" (escort endorsement) on the badge. If the person is disqualified from receiving a SAT ID Badge during the badge application process, or becomes disqualified after receiving a SAT ID Badge, the individual can no longer be present anywhere within the SIDA, Secured Area, Sterile area and/or the project areas.

If driving is involved, the person must have a valid SAT ID Badge and the appropriate airfield driver's license to operate a vehicle in the SIDA and/or the project site. If a vehicle escort is required, each SAT ID Badge holder with the white "E" on his badge (and the appropriate airfield driver's license) may escort up to two (2) vehicles if there is only one unbadged person

in each vehicle being escorted.

All vehicles operating in the SIDA or the project area must have the appropriate airport approved company signage on the vehicle. The signage must meet the following requirements: Company name must be in at least six inch (6") tall lettering and/or the company logo must be at least twelve inches (12") tall. The signage must be placed on both vertical sides of any self propelled, motorized vehicle at all times while within the SIDA or the project site.

CPS Energy may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. CPS Energy acknowledges that all such knowledge and information is of a highly confidential nature and will use its best efforts in protecting such information from disclosure.

**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.

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

City: City of San Antonio  
Attn: Planning and Development Manager  
9700 Airport Boulevard  
San Antonio, Texas 78216

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 its rights in the 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.

**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.

**Consent/Approval of City.** As to any matter hereunder in which City's consent is required, the consent may be granted by the Director, Aviation Department, City of San Antonio, as designee of the City Manager, without council action, unless the City Charter or this Agreement requires City Council action.

**Sale by City** – If the City sells the property of which the Premises are a part, and CPS Energy is owned by the City at the time of the sale, City will reserve a perpetual easement for CPS Energy for the use permitted herein, without additional cost to CPS Energy.

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

**Modification** – This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought.

**Recording** – CPS Energy may record this Agreement in the Official Public Records of Real Property of Bexar County, Texas. CPS Energy is responsible for recording fees.

**Governing Law** – This Agreement shall be governed by Texas law and 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. The Parties agree 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.

**Public Information** – The Parties 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.

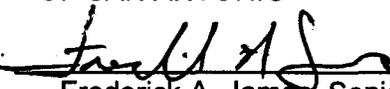
**Counterparts** – This Agreement may be executed in one or more counterparts, each of which shall be considered an original document.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

CITY OF SAN ANTONIO,  
a Texas Municipal Corporation

By: \_\_\_\_\_  
Sheryl L. Sculley  
City Manager

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:  \_\_\_\_\_  
Frederick A. James, Senior Director  
Electric Engineering and  
Technical Services

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

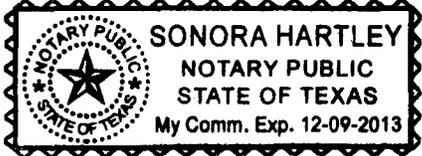
STATE OF TEXAS     §  
                                  §  
COUNTY OF BEXAR   §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, \_\_\_\_\_ on behalf of the CITY OF SAN ANTONIO, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS     §  
                                  §  
COUNTY OF BEXAR   §

This instrument was acknowledged before me on this 12<sup>th</sup> day of July, 2010, by Frederick A. James, Senior Director, on behalf of the CITY PUBLIC SERVICE BOARD of the CITY OF SAN ANTONIO, Texas.



Sonora Hartley  
Notary Public, State of Texas

**INTRAJURISDICTIONAL AGREEMENT BETWEEN CITY AND CPS ENERGY  
FOR RELOCATION, INSTALLATION AND MAINTENANCE OF  
GAS TRANSMISSION AND DISTRIBUTION LINES**

This Intra-jurisdictional 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, and its municipal board, the City Public Service Board of San Antonio (hereinafter referred to as "CPS Energy").

**WHEREAS**, City is the owner of certain property upon which CPS Energy currently holds existing rights for the operation, and maintenance of an existing gas pipeline at the San Antonio International Airport (the "Airport") to supply gas to residential and commercial customers within the northeast portion of the CPS Energy service territory in the City of San Antonio, Bexar County, Texas, and

**WHEREAS**, said existing gas pipeline is covered by an easement granted to the City of San Antonio, as part of its electric and gas system (a/k/a CPS Energy), by Paul Klar and Annie Klar, dated March 13, 1962 as recorded in Volume 4741, Page 251 of the Deed Records of Bexar County, Texas as more particularly described in Exhibit "A."

**WHEREAS**, it is necessary to relocate a portion of the gas pipeline to accommodate the extension of a Runway 3/21 at San Antonio International Airport, and the City has agreed to assume all expenses and costs associated with the relocation of the pipeline to accommodate the runway extension.

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

**WHEREAS**, because of the relocation of a portion of said gas pipeline, the City desires to grant to CPS Energy limited joint use and benefit of the property described below under the covenants and conditions set forth herein;

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

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Said Premises being known as (Legal Description) all of said property being situated within the corporate limits of the City of San Antonio, Bexar County, Texas, and being more particularly described in Deed recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_, Deed Records of Bexar County, Texas.

Said Premises more particularly described and shown by field notes and drawings shown as Exhibit "B" attached hereto and incorporated herein.

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