

EXCHANGE AGREEMENT

Between

**THE CITY OF SAN ANTONIO (“COSA”),
a Texas municipal corporation,**

and

**SOUTHWEST RESEARCH INSTITUTE® (“SwRI®”),
a Texas nonprofit corporation,**

and

**CITY PUBLIC SERVICE BOARD OF SAN ANTONIO,
a municipal board of the City of San Antonio, Texas.**

EXCHANGE AGREEMENT

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This EXCHANGE AGREEMENT is made as of **April 4, 2011** (the “Effective Date”), between THE CITY OF SAN ANTONIO (“COSA”), a Texas municipal corporation, whose mailing address is P.O. Box 839966, San Antonio, Texas 78283-3966, and SOUTHWEST RESEARCH INSTITUTE® (“SwRI®”) a Texas nonprofit corporation, whose mailing address is 6220 Culebra Road, San Antonio, Texas 78238-5166, and CITY PUBLIC SERVICE BOARD OF SAN ANTONIO, a municipal board of the City of San Antonio, Texas, whose mailing address is P.O. Box 1771, San Antonio, Texas.

A. The purpose of this Exchange Agreement is to set forth the terms of the exchange of certain real property owned by COSA and SwRI, associated with the construction of Callaghan Road in San Antonio, Texas (the “Callaghan Road Project”).

B. The Callaghan Road Project will require the acquisition by COSA from SwRI of certain parcels of real property for road relocation; the acquisition of certain parcels of real property as permanent drainage easements; obtaining temporary construction access to SwRI’s real property, which is adjacent to Callaghan Road; and closing that portion of Callaghan Road that will no longer be used as a public roadway.

C. This Exchange Agreement sets out the terms agreed to by the parties, related to the specific transfer of the real property required, as well as the good and valuable consideration for such transfer, as stated below:

I. Fee Simple Conveyances

1. Conveyances to COSA. In consideration of the agreements of COSA set forth in Section I.2, Section IV, Section V and Section VI of this Agreement, the premises and other agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SwRI will convey to COSA, in fee simple, the following parcels of land located in Bexar County, Texas, each of which are, respectively, more particularly described in the form of Special Warranty Deeds attached hereto as Exhibit A, Exhibit B, Exhibit C and Exhibit D attached hereto (collectively, the "New Callaghan Road Parcels"), to be executed and delivered by SwRI to COSA on the Effective Date:

Parcel 18487 – (Exhibit A)
0.3190 acre (13,896 sq. ft.)

Parcel 18478 – (Exhibit B)
0.1225 acre (5,337 sq. ft.)

Parcel 18479 – (Exhibit C)
0.7608 acre (33,140 sq. ft.)

Parcel 18480 – (Exhibit D)
3.069 acres (133,680 sq. ft.)

2. Closed Portion of Callaghan Road. In consideration of the agreements of SwRI set forth in Section I.1. and Section II of this Agreement, the premises and other agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, COSA will close, vacate, and abandon, in the manner described below, the approximate 4.0908 acres of land located in Bexar County, Texas ("Abandoned Old Callaghan Road"), being the portion of the present Callaghan Road that will be closed by COSA upon the completion of the Callaghan Road Project. In consideration thereof, COSA and SwRI agree as follows:

(a) COSA shall prepare the necessary documentation for the abandonment of Old Callaghan Road, as a city-initiated abandonment as required by Section 37-11 of the Code in lieu of a petition for abandonment by SwRI. No fees associated with the abandonment as required by Section 37-11(c) of the Code will be owed by SwRI, including any expenses associated with the procurement, installation or removal of signs notifying the public of the abandonment and closure of the right of way.

(b) The Abandoned Old Callaghan Road exists by public-street right-of-way easement and, upon closure, vacation, and abandonment, title to it will vest in the owners of abutting property as their interests may appear. The closure, vacation, and

abandonment of Abandoned Old Callaghan Road shall be pursuant to an ordinance passed by City Council of the COSA in accordance with Section 37-11 of the Municipal Code of COSA (“the Code”) together with the survey and field notes provided by COSA attached hereto as Exhibit E. The ordinance will be recorded in the Official Public Records of Bexar County, Texas at COSA’s expense.

(c) As a city-initiated abandonment of the designated tract, COSA agrees that the ordinance presented to the City Council of COSA will release any public rights in the subject tract for drainage, water and wastewater lines, electric transmission and distribution lines, gas lines, communication lines of all types and the public right to travel on the subject tract.

Said electric transmission and distribution lines originally located within the right-of-way of the Old Callaghan Road will be relocated in the right-of-way of the New Callaghan Road. The distribution facilities located at the southwest corner of Culebra Road and Callaghan Road will remain.

(d) The ordinance required for closure, vacation, and abandonment of Old Callaghan Road will be presented to the City Council for consideration no later than 90 days after the completion of the replacement segment of Old Callaghan Road and the date that it is open to the public.

(e) SwRI acknowledges that COSA’s abandonment of the abandoned Old Callaghan Road will vacate in favor of SwRI, as the owner of property abutting on the abandoned Old Callaghan Road, only such title as COSA possesses with respect to such abutting property (to the centerline of abandoned Old Callaghan Road), by virtue of the release by COSA of the public’s rights to the use of abandoned Old Callaghan Road, such that the right to the exclusive use of the abandoned Old Callaghan Road will revert to the owners of property abutting abandoned Old Callaghan Road, each abutting owner’s interest extending to the center line. No representation or warranty is made by COSA with respect to the state of the title in the property reverting to abutting owners by virtue of abandonment of Old Callaghan Road. In addition, COSA makes no representation or warranty as to the physical condition of the property which may revert by virtue of COSA’s abandonment of Old Callaghan Road, which will be vacated and abandoned by COSA “AS IS, WHERE IS, and WITH ALL FAULTS.” COSA further acknowledges that COSA’s abandonment of the COSA’s public right-of-way encumbering such property of SwRI, to the extent that SwRI is the abutting landowner, neither constitutes a conveyance of property nor gives rise to the creation of a separate tax parcel.

II. Permanent Drainage Easements

In conjunction with the conveyance of the property to be conveyed by SwRI to COSA as described in Section I.A. above, SwRI will grant to COSA a permanent drainage easement on each of the parcels respectively described, and upon the terms set forth, in the form of Easement Agreements attached hereto respectively as Exhibit F, Exhibit G, Exhibit H and Exhibit I (collectively, the “Easement Agreements”), to be executed and delivered by SwRI

to COSA on the Effective Date, being the following parcels of land located in Bexar County, Texas:

Parcel 18480 A-E – (Exhibit F)
0.1791 acre (7,800 sq. ft.)

Parcel 18487 A-E – (Exhibit G)
0.0551 acre (2,400 sq. ft.)

Parcel 18487 B-E – (Exhibit H)
0.0092 acre (400 sq. ft.)

Parcel 18490 B-E – (Exhibit I)
0.0563 acre (2,450 sq. ft.)

III. Temporary Construction License for Access to SwRI Property; Construction Restoration; Indemnity

1. SwRI agrees to provide to COSA a temporary license to access its property along the location of the New Callaghan Road Parcels for the purpose of permitting the work of construction incident to the Callaghan Road Project, subject to (i) the erection of temporary and movable fencing, during the construction period, acceptable to SwRI, (ii) the replacement of the existing fencing of SwRI along Callaghan Road of the same or similar quality, and (iii) the cleaning (including the removal of all debris and trimmings) and restoration of SwRI's property along the New Callaghan Road to as nearly as practicable the same condition as it was prior to the work, or otherwise acceptable to SwRI, upon completion of the construction. The foregoing temporary license shall terminate automatically without need for further instrument of release upon the completion of the work of construction.

2. COSA agrees to use reasonable efforts to minimize the disturbance of the area that is to be the Abandoned Old Callaghan Road in the course of construction of the new Callaghan Road, and, upon the completion of the Callaghan Road Project, to restore any of the area that is to be the Abandoned Old Callaghan Road as may necessary so that the Abandoned Old Callaghan Road remains a usable roadway for the exclusive benefit of SwRI following the conveyance of the Abandoned Old Callaghan Road to SwRI.

3. COSA shall require its contractors performing work on SwRI's premises to carry and maintain, throughout the period when work is performed and until final acceptance (a) Workers' Compensation and Employer's Liability insurance with available limits of no less than \$1,000,000 each employee/each accident/each disease; (b) Commercial General Liability insurance with combined Bodily Injury and Property Damage available limits of no less than \$1,000,000 per occurrence, \$2,000,000 Ongoing-Completed Operations, and \$2,000,000 General Aggregate. Such insurance shall include Contractual Liability coverage (including but not limited to coverage for third party action-over claims brought against SwRI by contractor's employees) and shall include COSA and SwRI as Additional Insureds; and (c) Business Automobile Liability insurance coverage owned, non-owned and hired

vehicles with available combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. Such insurance shall include COSA and SwRI as Additional Insureds. All required insurance listed above shall provide for a Waiver of Subrogation in favor of COSA and SwRI.

Additionally, the parties agree, that in order to trigger the contractual insurance coverage third party action-claims (i.e. claims made against SwRI by contractor's injured employee), the contract between COSA and its contractors must provide that contract will indemnify and defend SwRI for those types of claims (i.e. that contractor has contractually assumed that liability). COSA will include language in the contract between COSA and its contractors performing work on SwRI's premises to indemnify and defend SwRI for injuries to their employees, except as a result of SwRI's sole gross negligence and willful misconduct.

IV. CPS Energy Gas Right of Way – Service Connection

In consideration of the transfer to SwRI by CPS Energy all rights, title and interest in the Gas Pipeline described in Section V, SwRI will grant to CPS Energy a gas right of way easement to establish a service connection of the new CPS Energy gas pipeline being constructed beneath New Callaghan Road with SwRI existing internal gas pipeline infrastructure. Such gas right-of-way easement is to be prepared by CPS Energy and will include the metes and bounds of the right of way.

V. CPS Energy Gas Pipeline and Related Gas Vault

COSA will cause the CPS Energy gas pipeline located beneath the Abandoned Old Callaghan Road (the "Abandoned Area Pipeline and Related Gas Vault") to be abandoned in place and conveyed by CPS Energy to SwRI by written instrument in the form attached hereto as Exhibit J, to be executed and delivered by CPS Energy concurrently with the delivery by COSA of a certified copy of the Ordinance of closing. In connection with the abandonment by CPS of the Abandoned Area Pipeline and Related Gas Vault:

(a) CPS shall cease transmission through the Abandoned Area Pipeline and Related Gas Vault, not later than the completion of the Callaghan Road Project, of all natural gas and/or other substances;

(b) CPS shall cause the Abandoned Area Pipeline and Related Gas Vault to be cut off and/or sealed at point at which the Abandoned Area Pipeline and Related Gas Vault is re-routed under the new Callaghan Road;

(c) The physical abandonment, cutting off and/or sealing the Abandoned Area Pipeline and Related Gas Vault from the transmission of any substance shall be done in conjunction with the construction of the new Callaghan Road so as to minimize the disturbance of the Abandoned Old Callaghan Road, and, in relocating, abandoning, cutting off and/or sealing the Abandoned Area Pipeline and Related Gas Vault, CPS shall (i) not remove the pipeline from its current location, and (ii) shall restore any portion of the Abandoned Old Callaghan Road which has been disturbed,

so that it remains a usable roadway for the exclusive benefit of SwRI following the conveyance of the Abandoned Old Callaghan Road to SwRI; and

(d) SwRI acknowledges that if it should at a future date desire to remove the Abandoned Area Pipeline and Related Gas Vault for any reason, it will assume responsibility for such removal.

VI. Extension of Existing Martin Goland Avenue to New Callaghan Road; Drainage Improvements

In consideration of the agreements of SwRI set forth in Section I.1. and Section II of this Agreement, COSA agrees to construct, as part of the Callaghan Road Project and at no cost to SwRI, an asphalt surface road extending the existing interior road located on the property of SwRI, named "Martin Goland Avenue", beginning at the point where Martin Goland Avenue terminates at the present Callaghan Road and continuing across the property of SwRI in a straight line to a point intersecting the New Callaghan Road, as depicted on the site plan attached as Exhibit K, together with any necessary drainage improvements. COSA represents and warrants to SwRI that the authority granted to COSA to enter into and complete the Callaghan Road Project, including the acquisition from SwRI of the New Callaghan Road Parcels, includes the authority and funding to extend Martin Goland Avenue as described in this Section V of this Agreement.

VII. Installation of Traffic Light and Left Turn Lane

In consideration of the agreements of SwRI set forth in Section I.1. and Section II of this Agreement, COSA agrees to construct, as part of the Callaghan Road Project and at no cost to SwRI, northbound and southbound left turn lanes at the traffic light to be installed at the intersection of Stiffkey Drive and Martin Goland Avenue (as extended to the new Callaghan Road).

VIII. Deadlines and Other Dates.

All deadlines in this Exchange Agreement expire at 5:00 P.M. Central Time. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

8.01	Closing Date	20 days after the Effective Date
8.02	Closing Time	10:00 A.M.

The deadlines may be altered by the mutual agreement of the parties. The Director of the Capital Improvements Management Services Department may consent to such changes on behalf of COSA without further authorization of City Council.

IX. Title and Survey.

9.01. *Review of Title.* The following statutory notice is provided to COSA on behalf of the real estate licensees, if any, involved in this transaction: COSA is advised that it should either have the abstract covering the New Callaghan Road Parcels examined by an attorney of COSA's own selection or obtain a policy of title insurance.

9.02. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, stating the condition of title to the New Callaghan Road Parcels. The "effective date" stated in the Title Commitment must be after the Effective Date of this Exchange Agreement.

9.03. *Survey.* "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the New Callaghan Road Parcels previously prepared by the surveyor engaged by COSA.

9.04. *Title Objections.* If COSA's examination discloses clouds or encumbrances in the title to the New Callaghan Road Parcels unacceptable to COSA, COSA may extend the closing date up to an additional 60 days to try to cure the clouds and encumbrances. If COSA does not cure the clouds and encumbrances or determines in its discretion that doing so is uneconomical, COSA may refuse to close. COSA's cancellation does not impair COSA's right later to take the Property in condemnation.

X. Intentionally Omitted.

XI. Condition until Closing; Cooperation.

11.01. *Condemnation.* SwRI will notify COSA promptly after SwRI receives notice that any part of the New Callaghan Road Parcels has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. COSA may terminate this Exchange Agreement if the condemnation would materially affect COSA's intended use of the New Callaghan Road Parcels by giving notice to SwRI within fifteen days after receipt of SwRI's notice to COSA (or before closing if SwRI's notice is received less than fifteen days before closing). If COSA does not terminate this Exchange Agreement, (a) COSA and SwRI will each have the right to appear and defend their respective interests in the New Callaghan Road Parcels in the condemnation proceedings, (b) any award in condemnation will be assigned to COSA, and (c) if the taking occurs before closing, the description of the New Callaghan Road Parcels will be revised to delete the portion taken.

11.02. *Claims; Hearings.* SwRI will notify COSA promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that affects the Property.

XII. Allocation of Closing Costs.

12.01. COSA will pay all usual and customary closing costs, except for SwRI's attorney's fees and any other costs SwRI incurs itself in connection with this transaction.

12.02. *Ad Valorem Taxes.* Ad valorem taxes for the New Callaghan Road Parcels for the calendar year of closing will be prorated between COSA and SwRI as of the Closing Date according to Section 26.11 of the Texas Tax Code. In no event is COSA liable for any roll back taxes.

12.03. *Brokers' Commissions.* Each party represents to the other that no commissions are due in respect of this transaction.

XIII. Closing.

13.01. *Closing.* This transaction will close at the Law Offices of King & Sommer, LLP, 200 Concord Plaza, Suite 425, San Antonio, Texas 78216 on the effective date and time or the date and time mutually agreed to by the parties. At closing the following will occur:

At closing, SwRI will deliver the following items:

Special Warranty Deeds in the form attached as Exhibits A-D

Easement Deeds in the form attached as Exhibits F-I

IRS Nonforeign Person Affidavit

Evidence of SwRI's authority to close this transaction

At closing, COSA will deliver the following items:

A copy of the proposed Ordinance authorizing closing to be presented to the City Council in accordance with Section I.2.(d) herein

Abandonment of Pipeline Agreement, in the form attached as Exhibit J, to be executed and delivered by CPS Energy concurrently with the delivery by COSA of a certified copy of the Ordinance of Closing

13.02. *Exceptions to Title.* The deeds may except all matters of record that affect the New Callaghan Road Parcels, excluding any subsequent assessments for prior years, due to the change in land usage, ownership, or both, or as the result of the conveyances of the New Callaghan Road Parcels. It may not except rights of parties in possession, survey-related matters, or other rights not arising out of a recorded instrument.

13.03. *Closing Documents.* The parties will execute and deliver the Closing Documents.

13.04. *Recording; Copies.* COSA will be responsible for cost, if any, of recording the deeds, easements and Ordinance authorizing the closing. SwRI will be responsible for the cost associated with the recording of the Abandonment of Pipeline Agreement. Each party will be responsible for the payment of their own attorney's fees and expenses.

13.05. *Possession.* SwRI will deliver possession of the Property to COSA, subject to the Permitted Exceptions existing at closing.

13.06. *Indefeasible Title.* COSA need not close if SwRI cannot or does not deliver indefeasible title at closing.

13.07. *Failure to Close.* If either party fails to close, the other party is not entitled either to damages or to specific performance, except if COSA has begun construction or is otherwise using any part of SwRI's property, SwRI retains any claim it would otherwise have to inverse condemnation.

XIV. Prohibited Interest in Contracts.

14.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

14.02. SwRI warrants and certifies as follows:

- (i) SwRI and its officers, employees and agents are neither officers nor employees of the City.
- (ii) SwRI has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

14.03. SwRI acknowledges that City's reliance on the above warranties and certifications is reasonable.

XV. Public Information.

SwRI acknowledges that this instrument and all documents ancillary to it are public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

XVI. Miscellaneous.

1. Authority of SwRI. SwRI represents that it has the authority of the Board of Directors of SwRI to enter into this Exchange Agreement, through Board of Directors Resolution No. 2010-12 and Resolution 2010-13 on September 27, 2010.

2. Authority of COSA. COSA represents that it has the authority to enter into this Exchange Agreement, as stated by Authorizing Ordinance No. 2009-05-07-0350, duly authorized by City Council of the City of San Antonio on May 6, 2009, a true and correct copy of which is attached hereto as Exhibit L.

3. Entire Agreement. This Exchange Agreement embodies the entire agreement between COSA and SwRI and supersedes all prior agreements and understandings relating to the subject matter hereof. This Exchange Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.


4. Counterparts. This Exchange Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement.

5. Governing Law. This Exchange Agreement shall be governed by the laws of the State of Texas.


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THIS AGREEMENT IS EXECUTED on behalf of each party hereto, by the authorized officers, respectively, as of the day and year set forth on the first page of this Agreement.

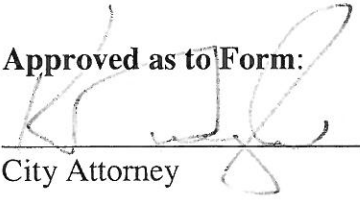
CITY OF SAN ANTONIO

By: 
Name: Steve Hodges
Title: RE Manager
Date: 3-17-11


SOUTHWEST RESEARCH INSTITUTE

By: 
Name: J. Dan Bates
Title: President
Date: April 4, 2011

Approved as to Form:


City Attorney

CPS Energy

By: 
Name: Frederick A. James
Title: SVP OF ENS
Date: 4/4/2011

The City of San Antonio executes and delivers this agreement under the authority of the following ordinances:

2009-05-07-0350
