

AN ORDINANCE 2015-10-29-0917

AUTHORIZING A JOINT USE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND THE SAN ANTONIO WATER SYSTEM FOR CONSTRUCTION OF AN ODOR CONTROL STATION OVER TWO AREAS THAT TOTAL APPROXIMATELY 0.0348 OF AN ACRE WITHIN A PUBLIC DRAINAGE EASEMENT RECORDED IN THE NORTHWOODS SUBDIVISION PLAT IN COUNCIL DISTRICT 9 FOR A FEE OF \$500.00.

* * * * *

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 odor control station on approximately 0.0348 of an acre in a public drainage easement, as shown in **Attachment I**, in City Council District 9 for a \$500.00 fee. The City Council further 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 this transaction, including agreeing to nonmaterial changes and executing and delivering ancillary documents conducive to effectuating the transaction.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 223000000254 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.

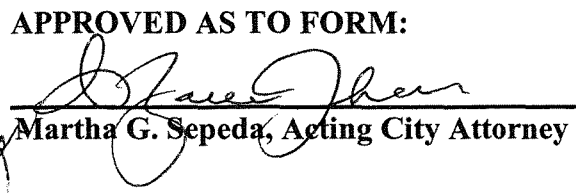
SECTION 4. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this 29th day of October, 2015.


M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vasek, City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda, Acting City Attorney

Agenda Item:	10 (in consent vote: 5, 6, 7, 8, 9A, 10, 12A, 12B, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25A, 25B)
Date:	10/29/2015
Time:	10:27:24 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a Joint Use Agreement between the City of San Antonio and the San Antonio Water System (SAWS) to allow SAWS within the Northwoods Subdivision in Council District 9 to construct an odor control station on two areas within a City owned public drainage easement and accepting a \$500.00 processing fee payment from SAWS. [Peter Zanoni, Deputy City Manager; Mike Frisbie, Director, Transportation and Capital Improvements]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5	x					
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Exhibit A

Project Name: McAllister Oiler Control Site
SAWS Job No: 13-2511
SAWS Parcel No: P14-033
Page 1 of 3

EXHIBIT "A"

FIELD NOTES
for a 0.0294 of an Acre (1,280 SQ. FT.)
Joint Use Agreement

BEING A 0.0294 OF AN ACRE (1,280 SQ. FT.) TRACT OF LAND, MORE OR LESS, OUT OF THE JUAN ESCAMELLA SURVEY No. 91 1/2, ABSTRACT NO. 217, N.C.B. 17474, BEXAR COUNTY, TEXAS, SHOWN AS A DRAINAGE EASEMENT ON THE SUBDIVISION PLAT OF NORTHWOODS, RECORDED IN VOLUME 8515, PAGE 186 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS AND OUT OF A 467.83 ACRE TRACT, CONVEYED TO SAN PEDRO NORTH, LTD. IN SPECIAL WARRANTY DEED, RECORDED SEPTEMBER 21, 1961, IN VOLUME 4645, PAGE 549 OF THE DEED RECORDS OF BEXAR COUNTY, TEXAS; SAID 0.0294 OF AN ACRE (1,280 SQ. FT.) TRACT AS SHOWN ON THE ACCOMPANYING PARCEL PLAT, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a set 1/2" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, in the east line of an existing sanitary sewer and drainage easement, shown on said plat of Northwoods, for the northwest corner of the herein described tract, from said point a found iron rod for an angle point of said Northwood's drainage easement and for the east corner of Lot 41, Block 4 of the Arthur Park Subdivision as recorded in Volume 9336, Page 131 of the Deed and Plat Records of Bexar County, Texas, bears S. 76°05'55" W., 16.09 feet and N. 13°54'05" E., 32.00 feet.

(1) Thence S. 76°05'55" E., 40.00 feet, leaving the east line of said sanitary sewer and drainage easement and crossing said Northwood's drainage easement, to a set 1/2" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, for the northeast corner of the herein described tract.

(2) Thence S. 13°54'05" W., 32.00 feet, continuing across said Northwood's drainage easement, to a set 1/2" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, for the southeast corner of the herein described tract.

(3) Thence N. 76°05'55" W., 40.00 feet, continuing across said Northwood's drainage easement, to a set 1/2" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, in the east line of said existing sanitary sewer and drainage easement, for the southwest corner of the herein described tract.

(4) Thence N. 13°54'05" E., 32.00 feet, continuing across said Northwood's drainage easement, along said existing sanitary sewer and drainage easement, to the **POINT OF BEGINNING** and containing 0.0294 of an acre (1,280 Square Feet) of land, more or less.

Project Name: MacAllister Odor Control Site
SAWS Job No: 13-2311
SAWS Parcel No: P14-033
Page 2 of 3

Bearings based on NAD 83(93), Texas South Central Zone, Surface Coordinates, Scale
Factor 1.00017.

All distances are surface.
A plat of even date herewith accompanies this metes and bounds description.

THE STATE OF TEXAS)
) KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF BEXAR)

That I, Victor Mendez, Jr., a Registered Professional Land Surveyor, do hereby certify that
the above description is true and correct to the best of my knowledge and belief and that the
property described herein was determined by a survey made on the ground under my direction and
supervision.

WITNESS MY HAND AND SEAL at San Antonio, Bexar County, Texas, this 14th day
of February, 2014, A.D.



Shirley Medina Basin, Inc.
7033 San Pedro Ave.
San Antonio, Texas 78216
210-494-7223


Victor Mendez, Jr.
Registered Professional Land Surveyor
No. 6056 - State of Texas
Revised: November 7, 2014

SWW 00 00077.101

Parcel name: SWW 00 00077
North: 11700216.4811 East: 2130207.1167
Line Course: N 78-01-14 E Length: 40.00
North: 11700208.8712 East: 2130211.9451
Line Course: S 11-14-01 W Length: 37.00
North: 11700173.8211 East: 2130212.1171
Line Course: N 78-01-14 E Length: 40.00
North: 11700181.4716 East: 2130210.4286
Line Course: N 11-14-01 E Length: 37.00
North: 11700216.4811 East: 2130207.1167
Perimeter: 144.00 Area: 1.280 sq. ft. 0.0004 acres
Loopback Closure: Lines listed above, radii, and deltas
Error Closure: 0.0000 Course: 1 90-00-00 E
Error North: 0.0000 East: 0.0000
Precision: 1: 100,000,000.00

Page 1

Project Name: McAllister Odor Control Site
SAWS Job No: 13-2511
SAWS Parcel No: P14-035
Page 1 of 3

EXHIBIT "A"

FIELD NOTES
for a 0.0054 of an Acre (237 SQ. FT.)
Joint Use Agreement

BEING A 0.0054 OF AN ACRE (237 SQ. FT.) TRACT OF LAND, MORE OR LESS, OUT OF THE JUAN ESCAMILLA SURVEY No. 91 1/2, ABSTRACT NO. 217, N.C.B. 17474, BEXAR COUNTY, TEXAS, SHOWN AS A DRAINAGE EASEMENT ON THE SUBDIVISION PLAT OF NORTHWOODS, RECORDED IN VOLUME 9515, PAGE 186 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS AND OUT OF A 467.83 ACRE TRACT, CONVEYED TO SAN PEDRO NORTH, LTD. IN SPECIAL WARRANTY DEED, RECORDED SEPTEMBER 21, 1961, IN VOLUME 4645, PAGE 549 OF THE DEED RECORDS OF BEXAR COUNTY, TEXAS; SAID 0.0054 OF AN ACRE (237 SQ. FT.) TRACT AS SHOWN ON THE ACCOMPANYING PARCEL PLAT, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a set 1/2" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, in the west line of said Northwoods Subdivision and the west line of an existing sanitary sewer and drainage easement, shown on said plat of Northwoods and the east line of Lot 41, Block 4 of the Arbor Park Subdivision as recorded in Volume 9536, Page 131 of the Deed and Plat Records of Bexar County, Texas, for the north corner of the herein described tract, from said point a found iron rod for an angle point of said Northwood's drainage easement and for the east corner of said Lot 41, Block 4 of the Arbor Park Subdivision, bears N. 13°54'05" E., 82.07 feet;

(1) Thence S. 40°10'42" E., 19.76 feet, crossing said Northwood's drainage easement, and said existing sanitary sewer and drainage easement, to a set 1/2" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, in the east line of said existing sanitary sewer and drainage easement for the east corner of the herein described tract;

(2) Thence S. 13°54'05" W., 14.82 feet, along the east line of said existing sanitary sewer and drainage easement and continuing across said Northwood's drainage easement, to a set 1/2" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, for the south corner of the herein described tract;

(3) Thence N. 40°10'42" W., 19.76 feet, leaving the east line of said existing sanitary sewer and drainage easement and continuing across said Northwood's drainage easement, to a point, in the west line of said Northwoods subdivision and the west line of said existing sanitary sewer and drainage easement and the east line of said Lot 41, Block 4 of the Arbor Park Subdivision;

Project Name: McAllister Odor Control Site
SAWS Job No: 13-2511
SAWS Parcel No: P14-0341
Page 2 of 3

(6) Thence N. 13°54'05" E., 25.00 feet, continuing across said Northwood's drainage easement, along said existing sanitary sewer and drainage easement, to a set 1/2" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, for a re-entrant corner of the herein described tract;

(7) Thence S. 76°05'55" E., 40.00 feet, leaving the east line of said sanitary sewer and drainage easement and continuing across said Northwood's drainage easement, to a set 1/2" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, for an interior corner of the herein described tract;

(8) Thence N. 13°54'05" E., 32.00 feet, continuing across said Northwood's drainage easement, to a set 1/2" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, for an interior corner of the herein described tract;

(9) Thence N. 76°05'55" W., 40.00 feet, continuing across said Northwood's drainage easement, to the **POINT OF BEGINNING** and containing 0.0921 of an acre (4,013 Square Feet) of land, more or less.

Bearings based on NAD 83(93), Texas South Central Zone, Surface Coordinates, Scale Factor 1.00017.

All distances are surface.
A plat of even date herewith accompanies this meter and bounds description.


THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF BEXAR §

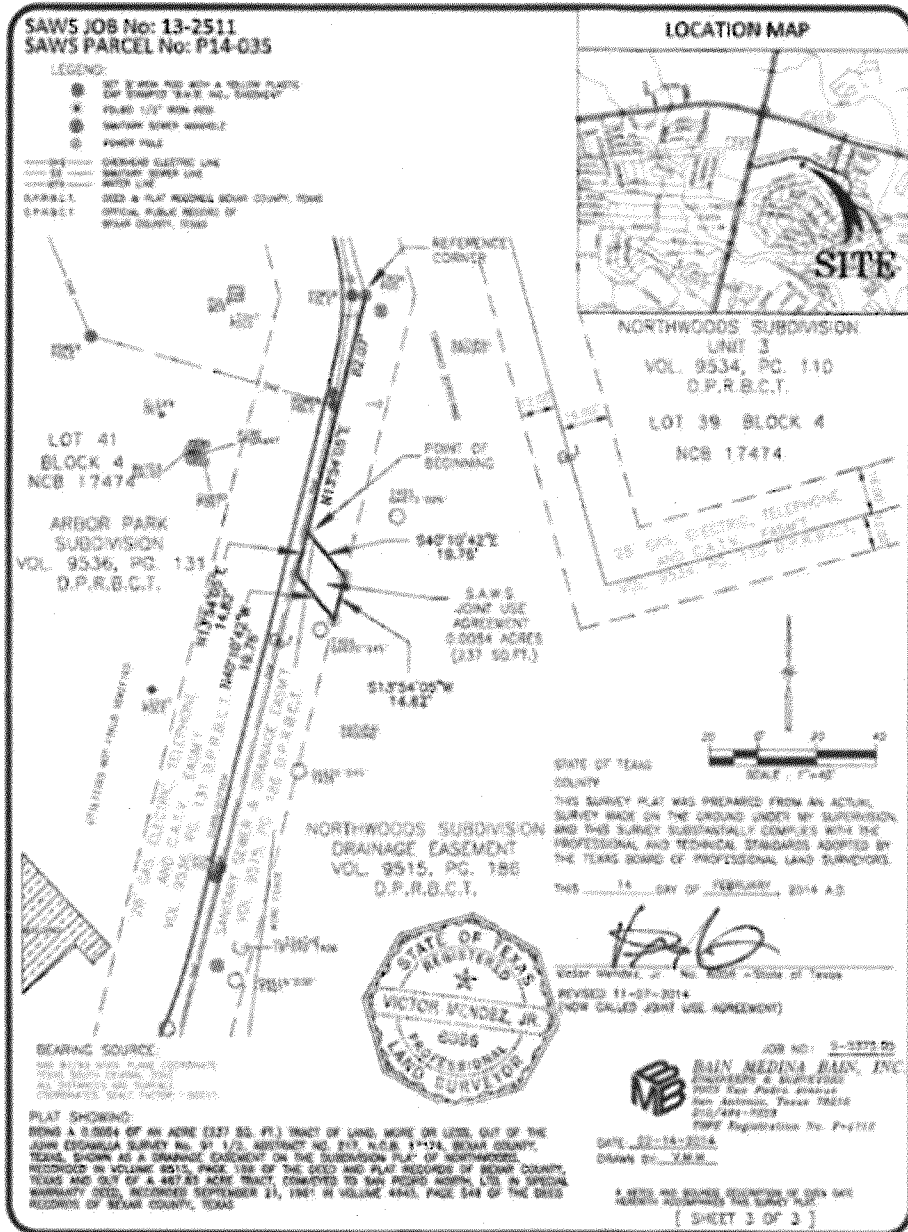
That I, Victor Mendez, Jr., a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

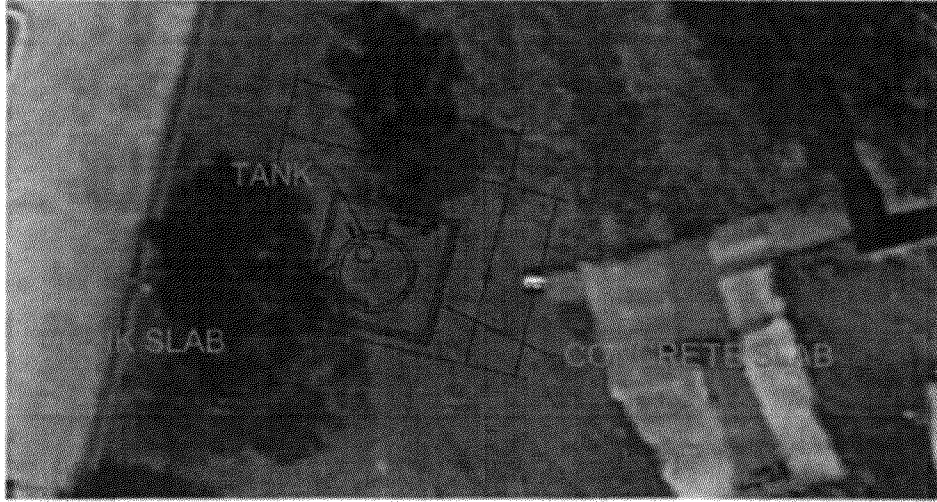
WITNESS MY HAND AND SEAL at San Antonio, Bexar County, Texas, this 14th day of February, 2014, A.D.

Rain Medina Bain, Inc
7073 San Pedro Ave.
San Antonio, Texas 78216
210-494-7221




Victor Mendez, Jr.
Registered Professional Land Surveyor
No. 6056 - State of Texas
Revised 04-08-2014
(Changed Parcel No. P14-034 to P14-0341)





ATTACHMENT II

Joint Use Agreement

(Henderson Pass JUA (P14-033, P14-034T, & P14-035))

Table of Contents

1. Pertinent Information.....	1
2. Permission.....	2
3. Construction, Maintenance, and Operations.....	3
4. Insurance.....	4
5. Indemnity.....	4
6. Termination.....	6
7. Assignment.....	6
9. Taxes.....	7
10. Appropriations.....	7
11. Dispute Resolution.....	7
12. Miscellaneous Provisions.....	8
13. Public Information.....	9
Exhibit A.....	12
Exhibit B.....	21
Exhibit C.....	24

1. Pertinent Information.

Authorizing Ordinance:

SP No.:

Joint User: San Antonio Water System

Address: 2800 Highway 281 North, P.O. Box 2449, San Antonio,
Texas 78298-2449 (Attn: Manager Corporate Real Estate)

City: City of San Antonio

Address: City Hall, P.O. Box 839966, San Antonio, Texas 3966
(Attention: Director, Capital Improvements Management
Services Department)

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

Premises: 0.0294 acre out of a variable width drainage easement as
shown on the Northwoods Subdivision plat, recorded in
Volume 9515, Page 186 of the Deed and Plat Records of
Bexar County, Texas, being more particularly described on
Exhibit A; 0.0054 acre out of a variable width drainage
easement as shown on the Northwoods Subdivision plat,

recorded in Volume 9515, Page 186 of the Deed and Plat Records of Bexar County, Texas, being more particularly described on **Exhibit A**.

Scope of Permission: Installation, construction, reconstruction, realignment, inspection, patrolling, operation, maintenance, repair, addition, removal and replacement of a new slab, chemical tank and dosing pumps, eye wash station, extension of water service, Supervisory Control and Data Acquisition (SCADA) monitoring capabilities, and other equipment and appurtenances to ensure a fully operational odor control station; also a temporary construction easement over the area shown in **Exhibit C** for construction of the improvements granted in this Scope of Permission.

Consideration: The reciprocal options, covenants, rights and interest City and San Antonio Water System grant each other under this agreement.

Defined Terms: As used herein, "City" shall refer to the City of San Antonio and "Joint User" shall refer to the San Antonio Water System.

2. Permission.

2.01. City acknowledges 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 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 other than a temporary construction easement, but only a license defined by the terms of this instrument. The temporary construction easement shall terminate December 31, 2016, unless extended by written agreement of the parties. 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.

2.04. City does not guarantee title to or exclusive rights in the Premises. Joint User accepts the Premises at Joint User's risk regarding title matters. The Permission granted by this instrument bears only upon such rights as City may have in the

Premises. Persons other than City may have rights in some or all of the Premises. City does not give permission to trespass on or otherwise affect or impair other's rights.

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.

3.02. Installation and Maintenance. All pipes must be buried to a depth satisfactory to City. In determining proper depth, City may consider expected future as well as present uses of the Premises. If another governmental or other regulatory body prescribes a depth, that depth will be satisfactory to the City. 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, rules, or regulations. 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 relating to drainage.

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 pipes, promptly upon covering the pipes, 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.

3.06 Conditions. Joint User agrees to the following conditions.

- (a) Tank refills occur no later than 8p.m. and no earlier than 7a.m. and the facility lighting should be pointed directly at the SAWS odor control station.
- (b) CPS has existing overhead power lines along the area in question. Pole Bracing will also be required for excavation near power poles, and to be charged to the petitioner. CPS Energy Underground Engineering requests the plans of the installed SAWS facilities to include pipe size, location, and amount of cover over.

4. Insurance.

Both parties 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 San Antonio Water System 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 San Antonio Water System ceases to be part of the City or if this agreement is assigned to another, San Antonio Water System 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 Indemnitee that give rise to assertions of Indemnitee 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 Indemnitee 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 San Antonio Water System.

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

5.04. If one or more Indemnitees are finally adjudged to bear fault outside the scope of this indemnity, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability for such fault. But despite allegations that one or more Indemnitees bear such fault, Indemnitor must nevertheless defend all Indemnitees until final adjudication and all appeals have been exhausted. An Indemnitee may but need not waive appeals. Indemnitor may not recover sums previously spent defending or otherwise indemnifying Indemnitees finally

adjudged to bear fault outside the scope of this indemnity and must continue to indemnify other Indemnitees if claims are still asserted against them.

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 365 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 ten (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 365 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. If City terminates, City will then reimburse San Antonio Water System for the reasonable costs of (A) removing existing facilities permitted by this agreement, (B) acquiring a new location for the facilities, and (C) installing replacement facilities in the new location.

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, without notice to Joint User.

6.04. Joint User may terminate this Agreement at any time by abandoning its use of the Premises and delivering notice to City. Notice must be delivered at least 30 calendar days prior to abandonment.

6.05. If City becomes the fee simple owner of the Premises and if a Memorandum of Permission substantially in the form of **Exhibit B** is recorded in the real property records of the county in which the Premises are located and if the City Council or San Antonio Water System Board of Trustees does not terminate this agreement according to the terms of this article, upon City's sale of the Premises, Joint User's rights under this agreement become an easement in gross for the purposes described in the Scope of Permission, for the benefit of Joint User, its successors and assigns. Joint User is responsible for recording fees.

7. Assignment.

7.01. This Permission cannot be assigned by San Antonio Water System except to a certificated utility provider succeeding to San Antonio Water System's wastewater utility in the area in which the Premises are located.

7.02. This Permission cannot be assigned by City except to storm water utility succeeding to City's utility in the area in which the Premises are located.

7.03. Subject to the City's rights of termination set out in Section 6.01 above, if City becomes the fee simple owner of the Premises and sells the property of which the Premises are a part, and San Antonio Water System is an agency or a part of the City at the time of the sale, City will reserve a perpetual easement for San Antonio Water System for the use permitted herein, without additional cost to San Antonio Water System.

8. Condemnation.

If the Premises are taken, in whole or in part, by eminent domain not for the benefit of the City, then this Permission, at the option of the City, ceases on the date title to the land so taken or transferred vests in the condemning authority. San Antonio Water System waives all rights to any condemnation proceeds, unless San Antonio Water System is an agency or other part of the City. If San Antonio Water System 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. San Antonio Water System is responsible for taxes arising from its use of the Premises under this agreement, if San Antonio Water System loses its tax-exempt status, or if taxes are otherwise owing for any reason. In no case will City ever be responsible for taxes, local, state, or federal, if any, that may be assessed against San Antonio Water System.

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 as applicable. 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. If San Antonio Water System is the beneficial owner of fee title of the Premises and transfers ownership of the Premises, San Antonio Water System 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, Capital Improvements Management Services Department, 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.

City and San Antonio Water System acknowledge 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.

San Antonio Water System, a
municipally-owned utility of the City of San
Antonio

City of San Antonio, a Texas municipal
corporation

By: Nancy Belinsky

By: _____

Printed Name: Nancy Belinsky

Printed Name: _____

Title: Vice President & General Counsel

Title: _____

Date: 7/22/15

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.

Date: _____
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 Nancy Belinsky, of San Antonio Water System, a municipally-owned utility of the City of San Antonio, in the capacity therein stated and on behalf of that utility.

Date: 7-22-2015
JMcClain
Notary Public, State of Texas

My Commission expires: 6-17-2016



Exhibit A

Project Name: McAllister Older Cemetery Site
SAWS Job No: 13-2511
SAWS Parcel No: P14-033
Page 1 of 3

EXHIBIT "A"

FIELD NOTES
for a 0.0294 of an Acre (1,280 SQ. FT.)
Joint Use Agreement

BEING A 0.0294 OF AN ACRE (1,280 SQ. FT.) TRACT OF LAND, MORE OR LESS, OUT OF THE JUAN ESCAMELLA SURVEY No. 51 ET, ABSTRACT NO. 217, S.C.B. 17474, BEXAR COUNTY, TEXAS, SHOWN AS A DRAINAGE EASEMENT ON THE SUBDIVISION PLAN OF NORTHWOODS, RECORDED IN VOLUME 8853, PAGE 156 OF THE DEED AND PLAN RECORDS OF BEXAR COUNTY, TEXAS AND OUT OF A 467.80 ACRE TRACT, CONVEYED TO SAN PEDRO NORTH, LTD. BY SPECIAL WARRANTY DEED, RECORDED SEPTEMBER 21, 1961, IN VOLUME 8645, PAGE 689 OF THE DEED RECORDS OF BEXAR COUNTY, TEXAS; SAID 0.0294 OF AN ACRE (1,280 SQ. FT.) TRACT AS SHOWN ON THE ACCOMPANYING PARCEL PLAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a set 1/2" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, in the east line of an existing sanitary sewer and drainage easement, shown on said plat of Northwoods, for the northwest corner of the herein described tract, from said point a found iron rod for an angle point of said Northwood's drainage easement and for the east corner of Lot 43, Block 4 of the Arbor Park Subdivision as recorded in Volume 9536, Page 131 of the Deed and Plan Records of Bexar County, Texas, bears N. 76°05'55" W., 18.00 feet and N. 13°54'05" E., 32.00 feet.

- (1) Thence S. 76°05'55" E., 40.00 feet, leaving the east line of said sanitary sewer and drainage easement and crossing said Northwood's drainage easement, to a set 1/2" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, for the southeast corner of the herein described tract;
- (2) Thence S. 13°54'05" W., 32.00 feet, continuing across said Northwood's drainage easement, to a set 1/2" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, for the southeast corner of the herein described tract;
- (3) Thence N. 76°05'55" W., 40.00 feet, continuing across said Northwood's drainage easement, to a set 1/2" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, in the east line of said existing sanitary sewer and drainage easement, for the southeast corner of the herein described tract;
- (4) Thence N. 13°54'05" E., 32.00 feet, continuing across said Northwood's drainage easement, along said existing sanitary sewer and drainage easement, to the **POINT OF BEGINNING** and containing 0.0294 of an acre (1,280 Square Feet) of land, more or less.

Project Name: McAllen Oiler Control Site
SAWS Job No: 13-2511
SAWS Parcel No: P14-023
Page 2 of 3

Bearings based on NAD 83(93), Texas South Central Zone, Surface Coordinates, Scale
Factor 1.00017.

All distances are surface.
A plot of even date herewith accompanies this return and bounds description.

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF BEXAR §

That I, Victor Mendez, Jr., a Registered Professional Land Surveyor, do hereby certify that
the above description is true and correct to the best of my knowledge and belief and that the
property described herein was determined by a survey made on the ground under my direction and
supervision.

WITNESS MY HAND AND SEAL at San Antonio, Bexar County, Texas, this 14th day
of February, 2014, A.D.



Sain Medina Rain, Inc.
7073 San Pedro Ave.
San Antonio, Texas 78116
210-494-7223


Victor Mendez, Jr.
Registered Professional Land Surveyor
No. 6036 - State of Texas
Revised: November 7, 2014

SAMS GC EAST 7.134

Parcel Name: SAMS GC EAST 7
North: 13769215.4833 East: 2138287.1167
Line Course: S 70-09-15 E Length: 40.00
North: 13769206.8732 East: 2138273.9451
Line Course: S 11-54-35 W Length: 32.00
North: 13769179.8123 East: 2138278.7571
Line Course: N 70-09-15 W Length: 40.00
North: 13769215.4833 East: 2138287.1167
Line Course: N 11-54-35 E Length: 32.00
North: 13769215.4833 East: 2138287.1167
Perimeter: 144.00 Area: 3.330 sq. ft. 0.0254 acres
Miscellaneous - Lines listed courses, radii, and deflection
Error Closure: 0.0000 Course: S 90-00-00 W
Error North: 0.00000 East: 0.00000
Precision 1: 144,000,000.00

Project Name: McAllister Odor Control Site
SAWS Job No: 13-2511
SAWS Parcel No: P14-035
Page 1 of 3

EXHIBIT "A"

FIELD NOTES
for a 0.0054 of an Acre (237 SQ. FT.)
Joint Use Agreement

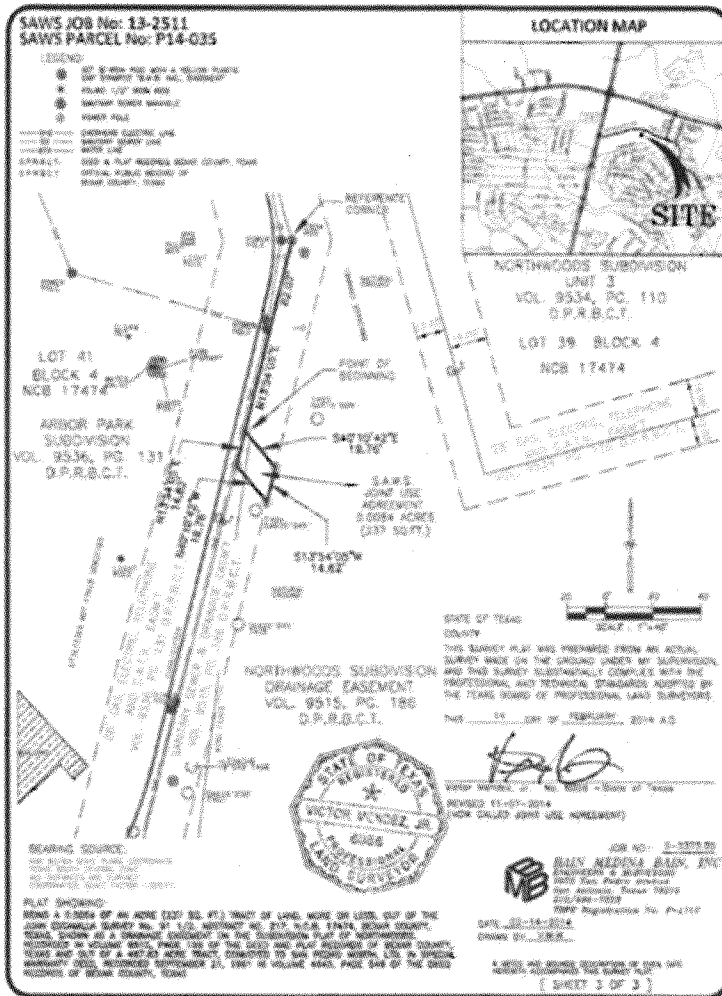
BEING A 0.0054 OF AN ACRE (237 SQ. FT.) TRACT OF LAND, MORE OR LESS, OUT OF THE JUAN ESCAMILLA SURVEY No. 91 1/2, ABSTRACT NO. 117, N.C.B. 17474, BEXAR COUNTY, TEXAS, SHOWN AS A DRAINAGE EASEMENT ON THE SUBDIVISION PLAT OF NORTHWOODS, RECORDED IN VOLUME 9515, PAGE 186 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS AND OUT OF A 467.83 ACRE TRACT, CONVEYED TO SAN PEDRO NORTH, LTD. IN SPECIAL WARRANTY DEED, RECORDED SEPTEMBER 21, 1961, IN VOLUME 4645, PAGE 549 OF THE DEED RECORDS OF BEXAR COUNTY, TEXAS; SAID 0.0054 OF AN ACRE (237 SQ. FT.) TRACT AS SHOWN ON THE ACCOMPANYING PARCEL PLAT, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a set $\frac{1}{8}$ " iron rod with a yellow plastic cap stamped BMB INC EASEMENT, in the west line of said Northwoods Subdivision and the west line of an existing sanitary sewer and drainage easement, shown on said plat of Northwoods and the east line of Lot 41, Block 4 of the Arbor Park Subdivision as recorded in Volume 9536, Page 131 of the Deed and Plat Records of Bexar County, Texas, for the north corner of the herein described tract, from said point a found iron rod for an angle point of said Northwood's drainage easement and for the east corner of said Lot 41, Block 4 of the Arbor Park Subdivision, bears N. $13^{\circ}54'05''$ E., 82.07 feet;

(1) Thence S. $40^{\circ}10'42''$ E., 19.76 feet, crossing said Northwood's drainage easement, and said existing sanitary sewer and drainage easement, to a set $\frac{1}{8}$ " iron rod with a yellow plastic cap stamped BMB INC EASEMENT, in the east line of said existing sanitary sewer and drainage easement for the east corner of the herein described tract;

(2) Thence S. $13^{\circ}54'05''$ W., 14.82 feet, along the east line of said existing sanitary sewer and drainage easement and continuing across said Northwood's drainage easement, to a set $\frac{1}{8}$ " iron rod with a yellow plastic cap stamped BMB INC EASEMENT, for the south corner of the herein described tract;

(3) Thence N. $40^{\circ}10'42''$ W., 19.76 feet, leaving the east line of said existing sanitary sewer and drainage easement and continuing across said Northwood's drainage easement, to a point, in the west line of said Northwoods subdivision and the west line of said existing sanitary sewer and drainage easement and the east line of said Lot 41, Block 4 of the Arbor Park Subdivision;



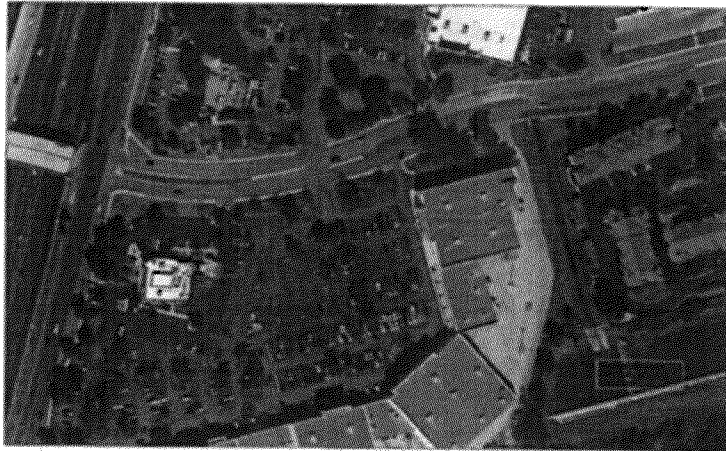
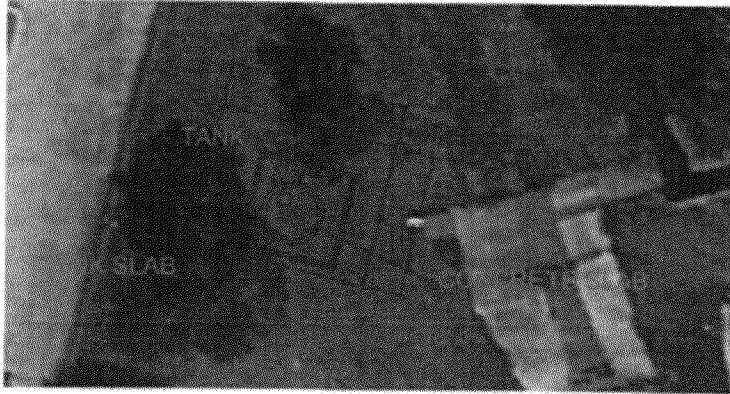


Exhibit B

Recordable Memorandum of Permission

(Reciprocal Joint Use Agreement)

Effective Date: The effective date of the Authorizing Ordinance

Authorizing Ordinance:

Joint User: San Antonio Water System

Address: 2800 Highway 281 North, P.O. Box 2449, San Antonio,
Texas 78298-2449 (Attn: Manager Corporate Real Estate)

City: City of San Antonio

Address: City Hall, P.O. Box 839966, San Antonio, Texas 3966
(Attention: Director, Capital Improvements Management
Services Department)

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

Premises:

Scope of Permission: Installation, construction, reconstruction, realignment,
inspection, patrolling, operation, maintenance, repair,
addition, removal and replacement of a drainage easement,
including all facilities and appurtenances convenient to
accomplishing the purpose, and additions and replacements
thereto

Defined Terms: As used herein, "City" shall refer to the City of San Antonio
and "Joint User" shall refer to the San Antonio Water System.

City has given permission to Joint User according to the Scope of Permission on the
Premises according to the terms of a Reciprocal Joint Use Agreement (////) effective as of
the Effective Date. The terms and conditions of the permission may be ascertained by
referring to the Joint Use Agreement.

If the Joint Use Agreement has not been terminated upon City's sale of the Premises, Joint
User's rights under this agreement become an easement in gross for the purposes described
in the Scope of Permission, for the benefit of Joint User, its successors and assigns.

This memorandum is executed and recorded under paragraph 6.05 of the Reciprocal Joint Use Agreement.

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

City of San Antonio, a Texas municipal corporation San Antonio Water System

By: _____

Printed Name: _____

Title: _____

Date: _____

Draft. This is only to show the agreed form of the final instrument. This example is neither ready nor suitable to be signed.

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.

Date: _____

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 San Antonio Water System, a municipally-owned utility of the City of San Antonio, in the capacity therein stated and on behalf of that utility.

Date: _____

Notary Public, State of Texas

My Commission expires: _____

Exhibit C

Project Name: McAllister Odor Control Site
SAWS Job No: 13-2511
SAWS Parcel No: P14-034T
Page 1 of 3

EXHIBIT "A"

FIELD NOTES
for a 0.0921 of an Acre (4,013 SQ. FT.)
Temporary Construction Easement

BEING A 0.0921 OF AN ACRE (4,013 SQ. FT.) TRACT OF LAND, MORE OR LESS, OUT OF THE JUAN ESCAMILLA SURVEY No. 91 1/2, ABSTRACT NO. 217, N.C.B. 17474, BEXAR COUNTY, TEXAS, SHOWN AS A DRAINAGE EASEMENT ON THE SUBDIVISION PLAT OF NORTHWOODS, RECORDED IN VOLUME 9515, PAGE 186 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS AND OUT OF A 467.83 ACRE TRACT, CONVEYED TO SAN PEDRO NORTH, L.T.D. IN SPECIAL WARRANTY DEED, RECORDED SEPTEMBER 21, 1961, IN VOLUME 4645, PAGE 549 OF THE DEED RECORDS OF BEXAR COUNTY, TEXAS; SAID 0.0921 OF AN ACRE (4,013 SQ. FT.) TRACT AS SHOWN ON THE ACCOMPANYING PARCEL PLAT, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a set 1/2" iron rod with a yellow plastic cap stamped BMB ENC EASEMENT, in the east line of an existing sanitary sewer and drainage easement, shown on said plat of Northwoods, for a re-entrant corner of the herein described tract, from said point a found iron rod for an angle point of said Northwood's drainage easement and for the east corner of Lot 41, Block 4 of the Arbor Park Subdivision as recorded in Volume 9536, Page 131 of the Deed and Plat Records of Bexar County, Texas, bears N. 76°05'55" W., 16.00 feet and N. 13°54'05" E., 76.48 feet;

(1) Thence N. 13°54'05" E., 25.00 feet, crossing said Northwood's drainage easement, along the east line of said existing sanitary sewer and drainage easement, to a point, for the northwest corner of the herein described tract;

(2) Thence S. 76°05'55" E., 58.59 feet, leaving the east line of said sanitary sewer and drainage easement and continuing across said Northwood's drainage easement, to a point, in the west line of a 28 foot wide electric and gas easement as shown on a subdivision plat for Northwoods, Unit 3, recorded in Volume 9534, Page 110 of the Deed and Plat Records of Bexar County, Texas, for the northeast corner of the herein described tract;

(3) Thence S. 15°17'58" E., 13.14 feet, continuing across said Northwood's drainage easement with the said west line of a 28 foot wide gas, electric, telephone and C.A.T.V. easement, to a point, for the east corner of the herein described tract;

(4) Thence S. 13°54'05" W., 70.53 feet, leaving the said west line of a 28 foot wide gas, electric, telephone and C.A.T.V. easement and continuing across said Northwood's drainage easement, to a point, for the southeast corner of the herein described tract;

(5) Thence N. 76°05'55" W., 65.00 feet, continuing across said Northwood's drainage easement, to a point, in the east line of said existing sanitary sewer and drainage easement, for the southwest corner of the herein described tract;

Project Name: McAllister Odor Control Site
SAWS Job No: 13-2511
SAWS Parcel No: P14-034T
Page 2 of 3

(6) Thence N. 13°54'05" E., 25.00 feet, continuing across said Northwood's drainage easement, along said existing sanitary sewer and drainage easement, to a set 3/8" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, for a re-entrant corner of the herein described tract;

(7) Thence S. 76°05'55" E., 40.00 feet, leaving the east line of said sanitary sewer and drainage easement and continuing across said Northwood's drainage easement, to a set 3/8" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, for an interior corner of the herein described tract;

(8) Thence N. 13°54'05" E., 32.00 feet, continuing across said Northwood's drainage easement, to a set 3/8" iron rod with a yellow plastic cap stamped BMB INC EASEMENT, for an interior corner of the herein described tract;

(9) Thence N. 76°05'55" W., 40.00 feet, continuing across said Northwood's drainage easement, to the **POINT OF BEGINNING** and containing 0.0921 of an acre (4,013 Square Feet) of land, more or less.

Bearings based on NAD 83(93), Texas South Central Zone, Surface Coordinates, Scale Factor 1.00017.

All distances are surface.
A plat of even date herewith accompanies this metes and bounds description.


THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF BEXAR §

That I, Victor Mendez, Jr., a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at San Antonio, Bexar County, Texas, this 14th day of February, 2014, A.D.

Bain Medina Bain, Inc.
7073 San Pedro Ave.
San Antonio, Texas 78216
210-494-7223




Victor Mendez, Jr.
Registered Professional Land Surveyor
No. 6056 - State of Texas
Revised 04-08-2014
(Changed Parcel No. P14-034 to P14-034T)

