

JOINT USE AGREEMENT

An Agreement is made this day between the City of San Antonio ("CITY") in cooperation with the San Antonio Water System ("SAWS"), acting by and through duly authorized representatives, as follows:

WHEREAS, CITY owns or controls certain properties upon which SAWS desires to establish as a Joint Use Area to install a sewer replacement line on the properties located in the parking lot of Nelson W. Wolff Municipal Stadium ("Stadium") as part of the W6 Upper Segment Sewer Project ("Project"), said properties ("Properties") being:

- a 0.0826 acre tract – tract 1 and a 1.227 acre tract – tract 2 (P19-081),
- a 0.2291 acre tract (P19-081A) and
- a 1.088 acre tract (P19-081T)

more particularly described by Exhibits A - H, which are attached and incorporated into this Agreement; and

WHEREAS, Stadium is operated and maintained by the San Antonio Missions Baseball Club, Inc.; and

WHEREAS, SAWS has requested permission to use the above-described Properties for the purpose of installing and operating a sewer replacement line in conjunction with its W-6 Upper Segment: Hwy 90 to SW Military Drive Sewer Main project; and

WHEREAS, SAWS is a municipally owned utility of CITY and joint use of the Properties would benefit both parties.

NOW THEREFORE, THE PARTIES AGREE TO THE FOLLOWING JOINT USE OF THE PROPERTIES:

SECTION I. CITY agrees to allow the SAWS and/or its agents, employees and contractors to enter the Properties following execution of this instrument on a non-exclusive basis for the purpose of using the Properties for any and all things necessary for constructing, operating, replacing, repairing, adding, removing, inspecting and maintaining a sewer line and all necessary and desirable improvements and appurtenances (collectively, the "Improvements"). SAWS' use of the Properties may begin July 1, 2020 and, with respect to the use of tract P19-081T and the use of the surface of tract P19-081 (excluding rights of ingress and egress with respect to tract P19-081), shall terminate upon completion of construction of the Improvements and all related testing, demobilization and restoration activities, which shall be completed no later than December 31, 2023. CITY acknowledges and agrees that SAWS shall continue to have the right to operate and maintain the Improvements located on tract P19-081 following completion of construction, but that SAWS activities on such parcel shall be limited to subsurface uses, save and except for vehicular ingress and egress over and across tract P19-081. CITY acknowledges and agrees that SAWS shall have continued use of tract P19-081A, including the right, with prior notification to City, to fence such parts of Tract P19-081 that are not part of the Stadium parking lot or existing drives.

SECTION II. Prior to the commencement of construction on the Properties, CITY and SAWS and/or their contractors shall coordinate with one another in order to ensure such construction will not conflict with any ongoing or scheduled projects and/or activities. CITY Staff Contact is Guillermo G. Moya, City of San Antonio Convention & Sports Facilities Department, 210-207-8528, Guillermo.Moya@sanantonio.gov. SAWS Staff Contact is Cristina de la Garza, San Antonio Water System, 210-233-3255, Cristina.DeLaGarza@saws.org.

SECTION III. SAWS shall pay CITY a total of \$276,726 for its use of the Properties under this Agreement and the loss of parking revenue associated with such use. One payment will be made to City of San Antonio within 30 days of final execution of this Agreement.

SECTION IV. The parties acknowledge and understand that they are both self-insured. Prior to the commencement of any construction activity, SAWS shall cause its contractors to provide to CITY executed certificates of insurance naming CITY as an additional insured on all liability insurance policies for which SAWS is named as an additional insured.

SECTION V. CITY and SAWS acknowledge that they are both political subdivisions of the State of Texas and that they are subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in 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. This Agreement will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas. This Agreement is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.

SECTION VI. If SAWS defaults in the performance of any of SAWS's obligations under this Agreement, then CITY may, after notice to SAWS and reasonable opportunity for SAWS to cure the default, at CITY's option, suspend SAWS' use of the surface of the Properties (except in the case of emergencies) until such default is remedied. No waiver by CITY of any breach of any of the covenants to be performed by SAWS shall be construed as a waiver of any other breach of any of the covenants of this Agreement.

SECTION VII. CITY will not alter or modify any Improvements without the prior written approval of SAWS, and CITY will not construct any buildings on the Properties. SAWS shall retain ownership of the Improvements on the Properties and will operate and maintain said Improvements. NOTWITHSTANDING THE FOREGOING, CITY reserves for CITY and CITY's successors and assigns shall have the right to continue to use and enjoy said Properties for all purposes which do not unreasonably interfere with or interrupt its use by SAWS, including, without limitation, the development of said Properties for non-building structures and improvements over and upon said Properties, including but not limited to: surface parking lots, roads, driveways, sidewalks, trails, landscaping, and fencing. Should CITY's improvements or Properties be damaged as a result of SAWS' work involved in constructing, operating, replacing and repairing its Improvements, SAWS will restore CITY's improvements or Properties to their condition prior to said work. SAWS' repair and restoration plans shall be subject to prior review and approval by CITY. CITY may, at its option and sole discretion, cause such work to be performed and SAWS shall promptly reimburse CITY for any and all reasonable costs and expenses incurred. It is expressly agreed and understood that SAWS shall be required at the time of expiration of use of tract P19-081T and expiration of surface use of P19-081 to surrender same in good repair and at a minimum in the same condition as such Properties were at the beginning of the Agreement period, and SAWS shall similarly promptly restore all affected areas of tract P19-081A, subject to all permanent at-grade and above ground facilities installed by SAWS.

SECTION VIII. Neither SAWS nor CITY by execution of this Agreement, waive or relinquish any right which they may have under the law or constitution, state or federal. SAWS agrees to comply with all valid laws, ordinances, codes, and regulations of any governmental authority having jurisdiction, applicable to SAWS's occupancy or use of the Properties. This Agreement does not constitute a conveyance or release of any real property rights held by CITY. The parties are acting for their own benefit and no benefit shall accrue to any third party.

SECTION IX. If any portion or section of this Agreement is found to be invalid, it shall not invalidate the entire Agreement. The remaining portion or sections of this Agreement shall be valid and in effect.

SECTION X. SAWS agrees to keep the site free of litter, garbage and other debris generated by its use under this Agreement, save and except normal construction related soils and other materials.

SECTION XI. This Agreement shall immediately terminate should CITY sell or otherwise convey the entirety of Properties. If only a portion of the Properties is sold or conveyed, this Agreement shall immediately terminate as to that portion of the Properties. In the event of such full or partial conveyance, CITY shall reserve an easement for the benefit of SAWS, covering such portion of the Properties as are affected by such conveyance, reserving for SAWS easement rights to the Properties consistent with SAWS' uses of the Properties provided for in this Agreement.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures effective this _____ day of _____, 2020.

CITY OF SAN ANTONIO

Carlos J. Contreras, III
Assistant City Manager

ATTEST:

City Clerk

Approved as to Form:

City Attorney

STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this _____ day of _____, 2020,
by Carlos J. Contreras, III, Assistant City Manager of the **CITY OF SAN ANTONIO**, on its behalf.

Notary Public

SAN ANTONIO WATER SYSTEM

By: Nancy Belinsky, Vice President and General Counsel

STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this _____ day of _____, 2020,
by Nancy Belinsky, Vice President and General Counsel of the **SAN ANTONIO WATER SYSTEM**,
a municipal utility of the City of San Antonio, a Texas municipal corporation, on behalf of said
municipal utility.

Notary Public