

AN ORDINANCE 2018-06-14-0450

**AUTHORIZING THE EXECUTION OF A JOINT USE AGREEMENT
WITH THE SAN ANTONIO WATER SYSTEM TO ALLOW ACCESS TO
PROPERTY ON THE SAN ANTONIO INTERNATIONAL AIRPORT FOR
THE REPLACEMENT OF EXISTING SEWER PIPES.**

* * * * *

WHEREAS, the San Antonio Water System wishes to replace and upgrade an existing section of sewer pipe located at the San Antonio International Airport; and

WHEREAS, it is now necessary to authorize the attached Joint Use Agreement to allow SAWS to access the property, and install and maintain the upgraded sewer lines; **NOW THEREFORE**,

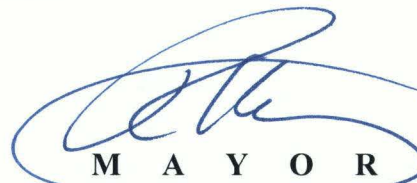
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is authorized to execute an Intergovernmental Joint Use Agreement with the San Antonio Water System, for the replacement and maintenance of an existing sewer line at San Antonio International Airport, a copy of which is set out in **Exhibit 1**.

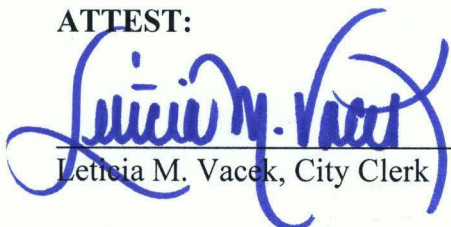
SECTION 2. SAWS is solely responsible for all costs of construction, installation, repairs, maintenance, operation, and the like, for any property placed by SAWS at the Antonio International Airport. There is no cost to be borne by the Airport.

SECTION 3. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED this 14th day of June, 2018.

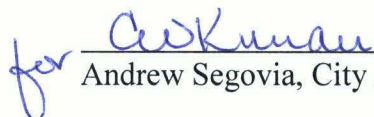

M A Y O R
Ron Nirenberg

ATTEST:



Letecia M. Vacek, City Clerk

APPROVED AS TO FORM:



for Andrew Segovia, City Attorney

| | | | | | | | |
|---------------------|---|--------------------|------------|------------|----------------|---------------|---------------|
| Agenda Item: | 25 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19A, 19B, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33) | | | | | | |
| Date: | 06/14/2018 | | | | | | |
| Time: | 10:22:38 AM | | | | | | |
| Vote Type: | Motion to Approve | | | | | | |
| Description: | Ordinance approving a Joint Use Agreement with the San Antonio Water System to allow access to property on the San Antonio International Airport for the replacement of existing sewer pipes. [Carlos Contreras, Assistant City Manager; Russell Handy, Director, Aviation] | | | | | | |
| Result: | Passed | | | | | | |
| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
| Ron Nirenberg | Mayor | | x | | | | |
| Roberto C. Treviño | District 1 | | x | | | x | |
| William Cruz Shaw | District 2 | | x | | | | x |
| Rebecca Viagran | District 3 | | x | | | | |
| Rey Saldaña | District 4 | | x | | | | |
| Shirley Gonzales | District 5 | | x | | | | |
| Greg Brockhouse | District 6 | | x | | | | |
| Ana E. Sandoval | District 7 | | x | | | | |
| Manny Pelaez | District 8 | | x | | | | |
| John Courage | District 9 | | x | | | | |
| Clayton H. Perry | District 10 | | x | | | | |

MAT
06/14/18
Item No. 25

EXHIBIT 1—JOINT USE AGREEMENT WITH SAN ANTONIO WATER SYSTEM

Joint Use Agreement

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ARTICLE 1. PERTINENT INFORMATION

| | |
|------------------------------|---|
| City: | City of San Antonio |
| City's Address: | 9800 Airport Boulevard (Attention: Director, Aviation Department) |
| Joint User: | San Antonio Water System |
| Joint User's Address: | 2800 Highway 281 North, P.O. Box 2449, San Antonio, Texas 78298-2449 |
| Term: | Twenty-five years with perpetual automatic renewal, subject to rights of termination set out in Section 8.1 of this agreement. |
| Premises: | Said Premises more particularly described and shown by detailed drawing shown as Exhibit A attached hereto and incorporated herein. |
| Scope of Permission: | The joint-use and benefit of the Premises for the replacement of an existing sewer line at San Antonio International Airport. |

ARTICLE 2. PERMISSION

2.1 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 currently unreasonably interfere with the operations of San Antonio International Airport which remains the dominant use of the Premises ("Permission"). The Permission is non-exclusive and limited to the stated Term. This instrument does not create an easement, but only a license defined by the terms of this instrument.

2.2 Joint User must coordinate with City and place the pipes and associated infrastructure and equipment in the manner and locations set out in Exhibit B, Project Description.

2.3 This Permission does not exempt Joint User from rules of general applicability that govern activities within the Scope of Permission or from getting permits required generally for activities Joint User will be conducting within the Scope of Permission.

ARTICLE 3. RESTRICTIONS ON USE

3.1 This Permission does not grant Joint User authority to use any area beyond the Premises.

3.2 This Permission grants only a privilege to use the Premises. City conveys no real property interest. City may enter and use the Premises at any time for any purpose not unreasonably interfering with the permitted use.

3.3 Upon completion of the installation of the sewer line on airport property, which is the subject of the Agreement, Joint User will prepare a detailed drawing with GPS coordinates of the by-pass sewer line. This detailed drawing will replace and become Exhibit A hereto.

ARTICLE 4. PROJECT DESCRIPTION

Joint User currently has a sewer pipeline on airport property that cannot handle current capacity. With this Agreement, Joint User will install a new sewer pipeline with a higher capacity pipe, in the area shown in Exhibit A, attached hereto. This will increase capacity downstream and will reduce the number of potential future Sanitary Sewerage Overflows (SSOs) on airport property. This is a public health and safety issue the resolution of which will benefit the traveling public and airport tenants and users.

ARTICLE 5. CONSTRUCTION, MAINTENANCE, AND OPERATIONS

5.1 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 (hereafter "Joint User's Responsibilities").

5.2 No Liability. City assumes no liability or expense under this instrument. City is not liable to Joint User or otherwise for damage to the Premises arising from or related to activities of City in the vicinity.

5.3 Installation and Maintenance. All pipes must be installed in the location and manner set out in Exhibit B. 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 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.

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

5.5 Contractors and Subcontractors. Joint User must promptly pay anyone who could file a mechanics' or materialmen's lien on the Premises. If any such lien is filed, City may treat it as an event of default and terminate this Permission by delivering 10 days prior written notice to Joint User. Joint User remains obligated to clear the lien without cost to City even after termination.

5.6 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.

ARTICLE 6. INSURANCE

6.1 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 actions that may be asserted by third parties for accident, injury or death.

6.2 To the extent permitted by law, Joint User can maintain and provide evidence of their current insurance program that provides a fully funded self-insured and self-administered Auto Liability program with its General Liability and Workers' Compensation Program being a funded self-insured and self-administered program with Board approved excess coverage.

ARTICLE 7. INDEMNITY

7.1 For so long as Joint User is part of the City, it need not indemnify under this contract. If Joint User ceases to be part of the City or if this agreement is assigned to another, Joint User or its assignee must indemnify as provided in this article.

7.2 These definitions apply to the indemnity provisions of this Contract:

7.2.1 "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.

7.2.2 "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.

7.2.3 "Indemnitor" means Joint User.

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

7.4 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.

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

7.6 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.

7.7 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.

7.8 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.

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

7.10 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 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.

ARTICLE 8. RENEWAL AND/OR TERMINATION

8.1 Either Party may elect to cancel this Agreement at the conclusion of the Twenty-Five Year term. Notice of intent to cancel the Agreement must be in writing, and provided to the other Party via Certified Mail, Return Receipt Requested at the address listed in Article I of this Agreement. **Should neither party elect to cancel the Agreement at the conclusion of each Term, the Agreement shall automatically renew for another period of Twenty-Five Years.** In the event that City, in its sole discretion, determines that Joint User's Permissive Use conflicts or interferes with City's use of the Premises as an airport or Aviation Department project, the initiation of an Aviation Department capital or operations project, or a Federal Aviation Administration requirement or directive, City may terminate this Permission at any time before expiration by giving Joint User 60 days prior written notice.

8.2 Joint User may terminate this License at any time by abandoning its use of the Premises and delivering notice to City.

8.3 Upon expiration or termination, all rights and privileges cease, and Joint User must promptly cease use of the Premises. Joint User shall be responsible for all costs of (A) removing existing facilities permitted by this agreement, (B) acquiring a new location for the facilities, up to a maximum of the fee charged by this agreement, (C) installing replacement facilities in the new location, and (D) restoring the Premises to a condition substantially equivalent to the condition of the Premises prior to this Agreement, 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.

8.4 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.

ARTICLE 9. ASSIGNMENT

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

ARTICLE 10. CONDEMNATION

If the Premises are taken, in whole or in part, by eminent domain, then this Permission, at the option of City, ceases on the date title to the land so taken or transferred vests in the condemning authority. Joint User waives all rights to any condemnation proceeds.

ARTICLE 11. TAXES

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

ARTICLE 12. DISPUTE RESOLUTION

12.1 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.

12.2 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.

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

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

12.5 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.

12.6 Mediator fees must be borne equally.

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

ARTICLE 13. MISCELLANEOUS PROVISIONS

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

13.2 **Nondiscrimination.** Joint User understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

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

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

13.5 **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.

13.6 **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.

13.7 **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.

13.8 **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.

13.9 **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. If the addressee is a corporation, notices must be addressed to the attention of its President. 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.

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

13.11 **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.

13.12 **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.

ARTICLE 14. PUBLIC INFORMATION

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

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

City:

Joint User:

City of San Antonio, a Texas municipal corporation

San Antonio Water System

By: _____

By: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

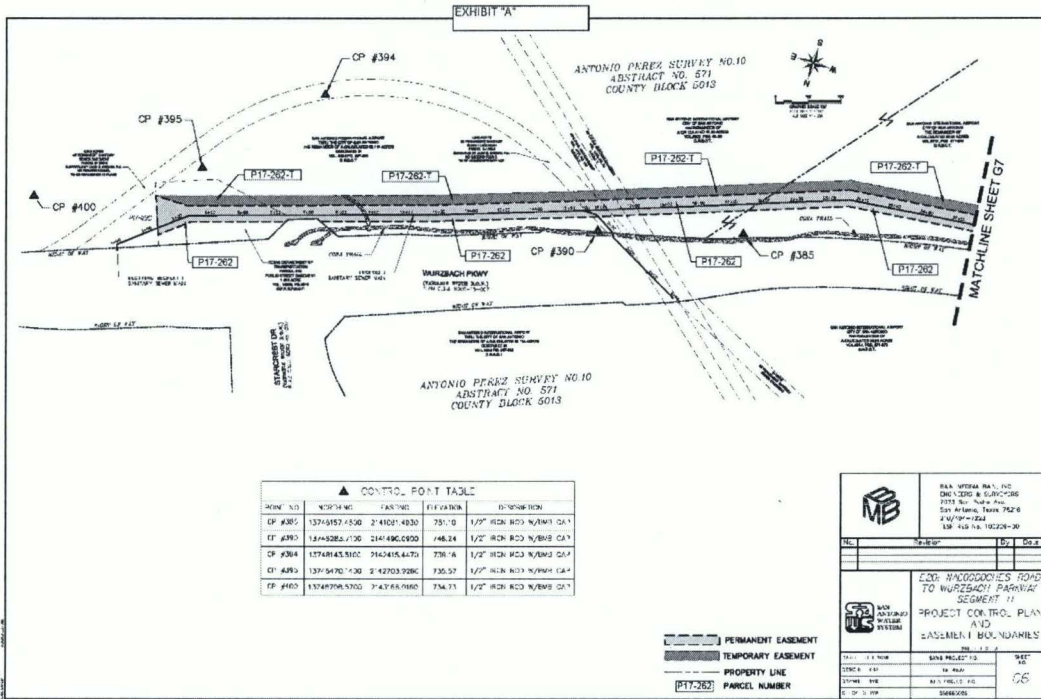
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Date: _____

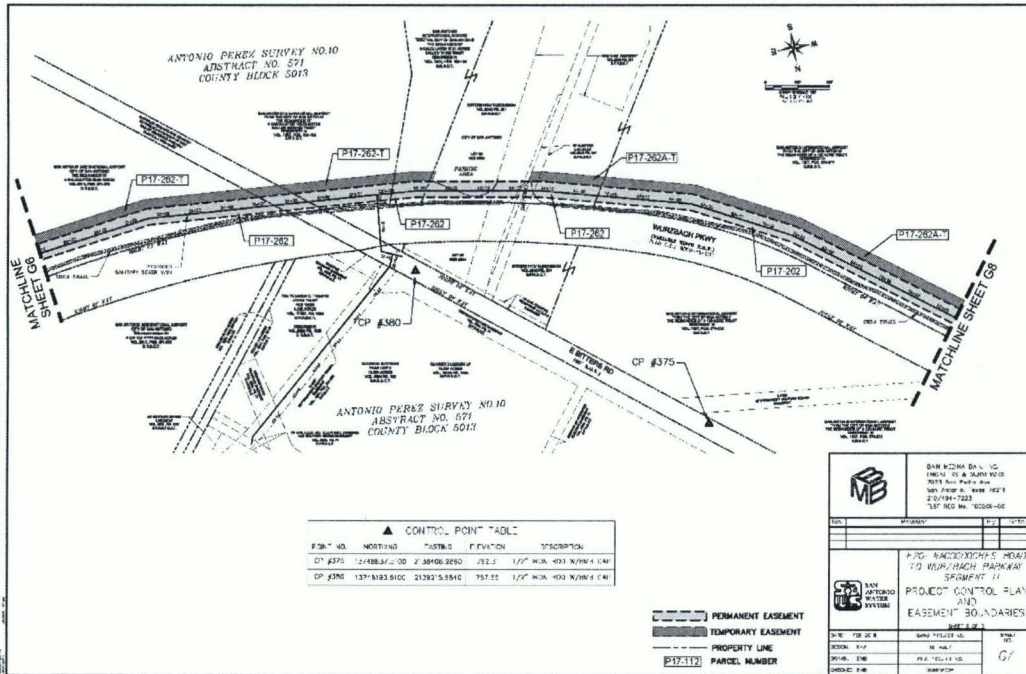
Approved As To Form:

City Attorney

Exhibit A Premises



SAWS E-20 Wurzbach Parkway Segment 2 Project—Job No. 16-4507



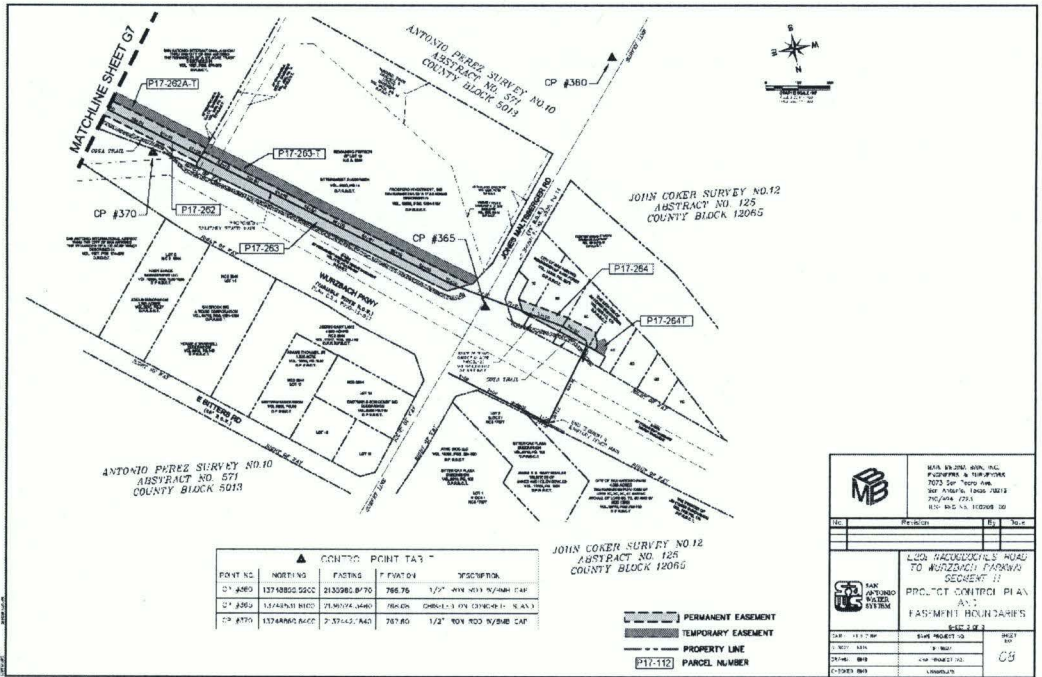


Exhibit B
Project Description

Joint User will be replacing an existing sewer line to provide increased sewer main capacity in the San Antonio Water System eastern sewershed. This portion of the project, requiring a long-term Joint Use Agreement, will take place in parcel P17-262, which is shown in Exhibit A.

The existing sewer pipes shall be excavated and removed, and replaced with larger diameter pipe to provide added capacity.

Joint User will maintain a distance of at least fifteen (15) feet from the Airport perimeter security fence at all times. Further, Joint User will not allow any vehicle or equipment parking along the security fence at any time.

The following Sequence of Work is provided for general informational purposes only, and is subject to change:

E-20 Segment 2 - Sequence of Work

- Proposed 36-inch sewer main to be installed via open cut from Station 1+00 to Station 61+25. (Trench Safety Equipment, Excavator, Loader, Dump Trucks, Compactor)
- Proposed 8-inch slip line of existing 27-inch will be made at Station 15+50. (Trench Safety Equipment, Excavator, Loader, Dump Trucks, Compactor)
- 54-inch casing will be tunneled from Station 15+50 to Station 16+70. (Tunneling machine, tunnel shafts, shoring, excavator, loader, dump trucks)
- Proposed 12-inch connection to existing 27-inch will be made at Station 38+65. 27-inch to remain though flow will be minimal (Trench Safety Equipment, Excavator, Loader, Dump Trucks, Compactor)
- 54-inch casing will be tunneled from Station 40+00 to Station 43+70 to cross under Bulk Solid Waste facility parking lot. (Tunneling machine, tunnel shafts, shoring, excavator, loader, dump trucks)
- Existing 27-inch and 36 inch main through airport property to be abandoned.