

AN ORDINANCE 2018-05-31-0388

APPROVING A CHANGE ORDER TO A CONSTRUCTION CONTRACT WITH SPAWGLASS CIVIL CONSTRUCTION, INC. AS PART OF THE TERMINAL AREA TAXIWAY IMPROVEMENTS—PACKAGE 3 AT THE SAN ANTONIO INTERNATIONAL AIRPORT FOR AN AMOUNT NOT TO EXCEED \$178,263.56.

* * * * *

WHEREAS in December, 2015 the City authorized a construction contract with Spawglass Civil Construction, Inc. for Package 3 of the Terminal Area Taxiway Improvements project; and

WHEREAS, upon completion of the work, Spawglass Civil Construction, Inc. submitted a delay claim in the amount of \$301,844.92 in July 2017; and

WHEREAS, the parties have negotiated an agreement to settle the matter for the amount of \$178,263.56; **NOW THEREFORE**,

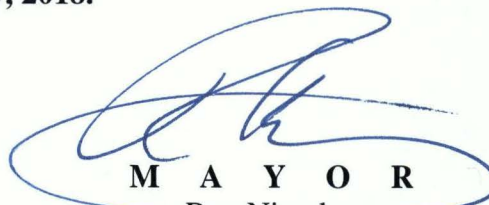
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is authorized to execute a change order with Spawglass Civil Construction, Inc. in the amount of \$178,263.56, attached as **Exhibit 1**.

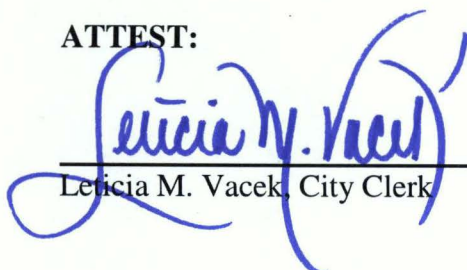
SECTION 2. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 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 31st day of May, 2018.

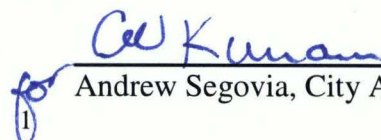

M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	10 (in consent vote: 4, 6, 7, 8, 9, 10, 12, 13A, 13B, 14, 15, 16, 18, 19, 20, 21, 22, 23, 27)						
Date:	05/31/2018						
Time:	09:52:18 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving a change order to a construction contract with SpawGlass Civil Construction, Inc. as part of the Terminal Area Taxiway Improvements - Package 3 at the San Antonio International Airport for an amount to not to exceed \$178,263.56. [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				
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			x	
Clayton H. Perry	District 10		x				

MAT
05/31/18
Item No. 10

EXHIBIT 1—CHANGE ORDER

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:	AT&T
Joint User's Address:	4119 Broadway Street, San Antonio TX, 78209
Term:	Thirty (30) years, subject to rights of termination set out in Section 7.5 of this agreement.
Premises:	8922 Airport Blvd., on the grounds of San Antonio International Airport, and adjacent areas necessary for the installation of telephone lines for the gas station facility constructed thereon. Said Premises being more particularly described and shown by Exhibit A attached hereto and incorporated herein.
Scope of Permission:	The joint use and benefit of the Premises by Joint User and its contractors and subcontractors, including ingress and egress over adjacent land for the purpose of installation, construction, reconstruction, inspection, maintenance, repair and replacement of underground telephone lines and

associated equipment for the provision of telephone and cable services to the property.

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 shall place the Telephone Lines and Appurtenances in the locations set out in Exhibit A, Premises.

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

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

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.

[The remainder of this page left intentionally blank]

ARTICLE 4. CONSTRUCTION, MAINTENANCE, AND OPERATIONS

4.1. 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").

4.2. 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.

4.3. Installation and Maintenance. All Telephone Lines and Appurtenances must be installed in the location set out in Exhibit A. 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.

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

4.5. 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.

4.6. Restoration. If Joint User buries any Telephone Lines and/or Appurtenances, promptly upon covering said lines, 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 5. INSURANCE

5.01. Without limiting City's rights to indemnity, Joint User must provide and maintain insurance, at its own expense, with companies admitted to do business in the State of Texas and with a rating of A- or better by A. M. Best and Company in the following types and amounts:

Type	Amount
a. Worker's Compensation during the performance of improvements to the Premises or an approved alternate plan at other periods during the Term.	Statutory, with a waiver of subrogation in favor of City
b. Employers' Liability during improvements to the Premises or an approved alternate plan at other periods during the Term.	\$500,000 per category, with a waiver of subrogation in favor of City
c. Commercial General (Public) Liability – to include coverage for the following where the exposure exists: (a) Premises/Operations (b) Independent Contractors (c) Products/Completed (d) Personal Injury Liability (e) Contractual Liability (f) Explosion, Collapse and Underground Property (g) Broad Form Property Damage	For Bodily Injury and Property Damage: \$1,000,000 per Occurrence, \$2,000,000 general aggregate or its equivalent in Umbrella or Excess Liability coverage.
d. Property Insurance -- for physical damage to the property of Joint User including improvements and betterments to the Premises.	Coverage for a minimum of 80% of the actual cash value of the improvements.

Any substitute for Workers' Compensation and Employer's Liability must be approved in advance by City's Risk Manager.

5.02. City's Risk Manager may reasonably modify the requirements set forth above if he determines that such modification is in the City's best interest. If Joint User believes the requested change is unreasonable, Joint User has 60 days to give notice of termination. The termination provisions hereof then apply.

5.03. With respect to the above required insurance, each insurance policy required by this Permission must contain the following clauses:

"No insurance provided by Joint User can be canceled, limited in scope or coverage, or non-renewed until after 30 days' prior written notice has been given to:

- (a) City Clerk, City of San Antonio
City Hall/Military Plaza
P.O. Box 839966/2nd Floor, City Hall
San Antonio, Texas 78283-3966
Attention: Risk Manager

And

- (b) Department of Aviation
City of San Antonio
9800 Airport Boulevard
San Antonio, Texas 78216
Attention: Aviation Director

"Any insurance provided by Joint User is primary to any insurance maintained by the City of San Antonio.

"Any insurance maintained by the City of San Antonio applies in excess of, not in contribution with, insurance provided by this policy."

5.04. Each insurance policy required by this Permission, excepting policies for Workers' Compensation, Employer's Liability and Professional Liability, must contain the following clause:

"The City Of San Antonio, its elected officials, employees, agents, and representatives are added as additional insureds."

5.05. Joint User must deliver to City, within 30 days after the Effective Date, endorsements to the above-required policies adding the applicable clauses referenced above. Such endorsements must be signed by an authorized representative of the insurance company and show the signatory's company affiliation and title. Joint User must deliver to City documentation acceptable to City confirming the authority of those signing the endorsements.

5.06. The Notices and Certificates of Insurance must be provided to the same addresses as for notice of cancelation or nonrenewal:

- (a) City Clerk, City of San Antonio
P.O. Box 839966/2nd Floor, City Hall
San Antonio, Texas 78283-3966
Attn: Risk Manager

And

- (b) Department of Aviation
City of San Antonio
9800 Airport Boulevard
San Antonio, Texas 78216
Attention: Aviation Director

5.07. This Permission does not limit Joint User's liability arising out of or related to the Premises or Joint User's activities thereon.

5.08. Joint User waives all claims against City for injury to persons or property on or about the Premises, whether or not caused by City's negligence.

To the extent permitted by law, Joint User can maintain and provide evidence of its 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 6. INDEMNITY

6.01. These definitions apply to the indemnity provisions of this agreement:

6.01.01. "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.

6.01.02. "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.

6.01.03. "Indemnitor" means Joint User.

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

6.03. 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 Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.

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

6.05. 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.

6.06. In addition to the indemnity required under this agreement, 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.

6.07. 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.

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

6.09. 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 7. TERMINATION/RENEWAL

- 7.1 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.
- 7.2 Joint User may terminate this License at any time by abandoning its use of the Premises and delivering notice to City.
- 7.3 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.
- 7.4 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.
- 7.5 Either Party may elect to cancel this Agreement at the conclusion of the Thirty 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 Thirty 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.

ARTICLE 8. ASSIGNMENT

This Permission cannot be assigned by Joint User except to a certificated utility provider succeeding to Joint User's telephone and/or cable utilities in the area in which the Premises are located.

ARTICLE 9. 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 10. 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 11. DISPUTE RESOLUTION

- 11.1 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.
- 11.2 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.

- 11.3 Mediation must be conducted in San Antonio, Bexar County, Texas.
- 11.4 The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.
- 11.5 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.
- 11.6 Mediator fees must be borne equally.
- 11.7 The parties need not mediate before going to court to seek emergency injunctive relief.

ARTICLE 12. MISCELLANEOUS PROVISIONS

- 12.1 **Relationship Limited.** This instrument creates only the relationship of City and Joint User. The parties are not principal and agent, partners, joint venturers, or participants in any common enterprise.
- 12.2 **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.
- 12.3 **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.
- 12.4 **Severability.** If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.
- 12.5 **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.

- 12.6 **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.
- 12.7 **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.
- 12.8 **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.
- 12.9 **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.
- 12.10 **Captions.** Paragraph captions in this Permission are for ease of reference only and do not affect the interpretation hereof.
- 12.11 **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.
- 12.12 **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 13. 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:

City of San Antonio, a Texas municipal corporation

By: _____

Printed Name: _____

Title: _____

Date: _____

Joint User:

City of San Antonio, Texas acting by and through the **City Public Service Board Of San Antonio**, a Municipal Board of the City of San Antonio

By: R. Van Zandt

Printed Name: Ryan Van Zandt

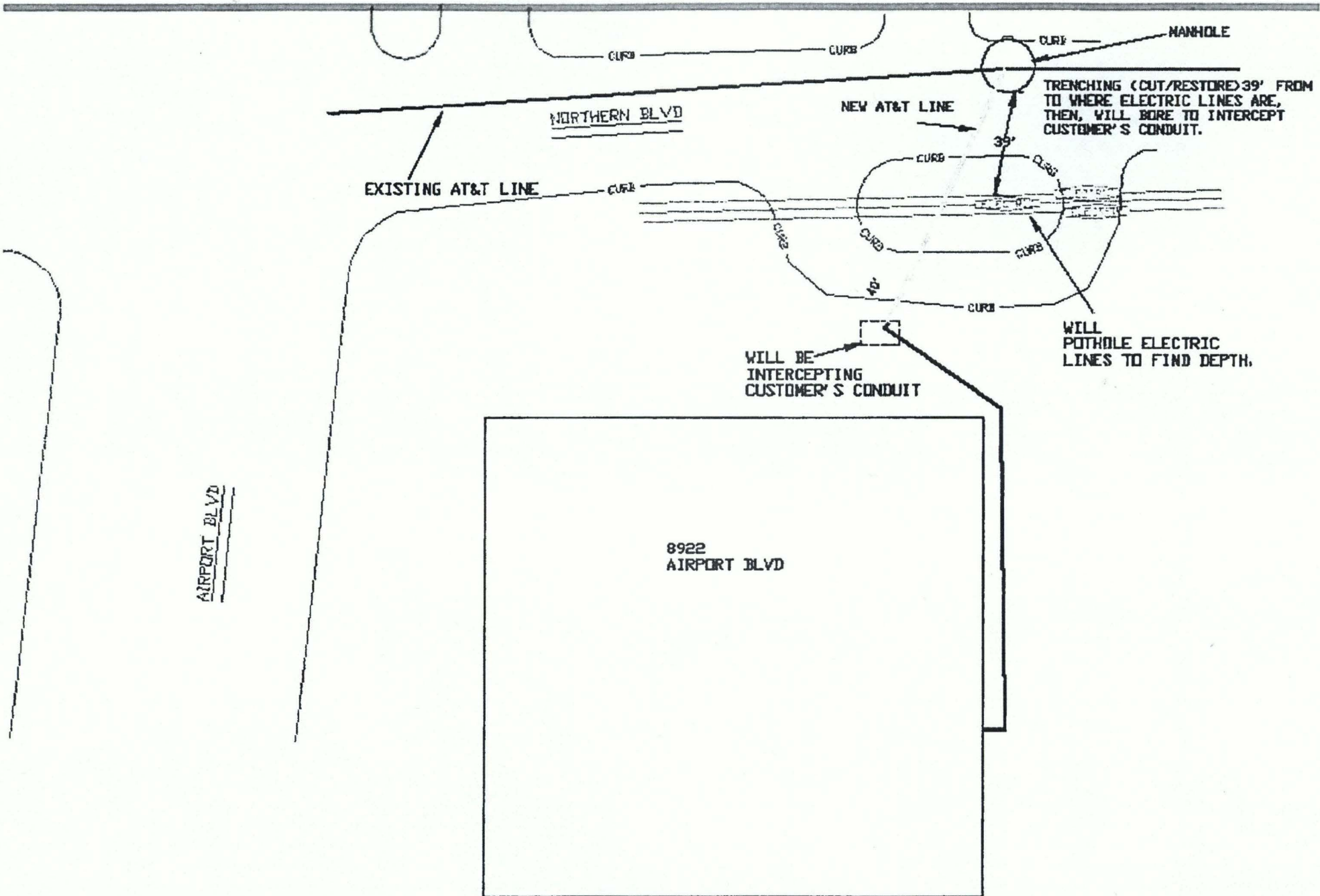
Title: AT&T OSP Engineer

Date: 03-01-18

Approved As To Form:

City Attorney

Exhibit A
Premises



MANHOLE

TRENCHING (CUT/RESTORE) 39' FROM TO WHERE ELECTRIC LINES ARE, THEN, WILL BORE TO INTERCEPT CUSTOMER'S CONDUIT.

NORTHERN BLVD

NEW AT&T LINE

EXISTING AT&T LINE

WILL POthOLE ELECTRIC LINES TO FIND DEPTH.

WILL BE INTERCEPTING CUSTOMER'S CONDUIT

8922 AIRPORT BLVD

AIRPORT BLVD