

AN ORDINANCE 2010-05-20-0450

**AUTHORIZING AND APPROVING THE TERMS AND
CONDITIONS OF A TELECOMMUNICATIONS NON-
EXCLUSIVE LICENSE AGREEMENT FOR THE INSTALLATION
OF A DISTRIBUTED ANTENNA SYSTEM (DAS) ON MUNICIPAL
RIGHTS-OF-WAY BETWEEN THE CITY OF SAN ANTONIO
AND ATC OUTDOOR DAS, LLC**

* * * * *

WHEREAS, ATC, Outdoor DAS, LLC (ATC) is a certificated telecommunications provider (CTP) licensed by the Texas Public Utility Commission under Service Provider Certificate of Operating Authority No. 60801 to provide facilities-based and resale telecommunications services; and

WHEREAS, ATC does not provide retail telecommunications service in San Antonio; and

WHEREAS, ATC will provide distributed antenna system (DAS) service in San Antonio as a wholesale telecommunications service to wireless providers in order to increase network capacity in areas where the providers' retail customers are experiencing poor wireless coverage; and

WHEREAS, in order to provide this service, ATC requires the use of municipal rights-of-way within a specified geographic area in order to install, maintain and operate a DAS Network – a network of spatially separated antenna nodes located and connected to a common source via fiber optic cable; and

WHEREAS, ATC and the City have negotiated a non-exclusive license agreement for the use of municipal rights-of-way in District 8 in the area where Kyle Seale Parkway meets Loop 1604 West; and

WHEREAS, the non-exclusive license agreement will authorize ATC to use the space above, below and on the surface of the affected rights-of-way, but does not include the right to place attachments on City-owned traffic poles, buildings, bridges and other structures, or on CPS Energy poles; and

WHEREAS, ATC has separately entered into a pole attachment agreement with CPS Energy which authorizes the installation of fiber optic cable and DAS antenna equipment on CPS Energy poles for the construction of the proposed DAS Network; and

WHEREAS, the construction of ATC's proposed DAS Network will include sections of aerial and underground fiber to be installed in compliance with all City of San Antonio regulations, including the City's Right-of-Way Management Ordinance and Utility Excavation Criteria Manual; and

GG
05/20/10
Item # 19

WHEREAS, in consideration for granting the non-exclusive license agreement, the City will receive five percent (5%) of ATC's gross revenues over the 10 year term of the agreement and six (6) fiber strands; **NOW THEREFORE:**

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

SECTION 1. The Non-Exclusive License Agreement between the City of San Antonio and ATC Outdoor DAS, LLC for the Use of Public Rights-of-Way is hereby authorized and its terms and conditions are approved. A substantially complete copy of said license agreement is attached as Exhibit A and is incorporated into this Ordinance for all purposes. Upon complete execution of the license agreement by both parties, a signed version of the agreement will replace Exhibit A.

SECTION 2. The Chief Technology Officer is authorized to execute the license agreement within 60 days and execute any other documents necessary to carry out the intent of this Ordinance.

SECTION 3. This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall take effect on the tenth (10th) day after passage.

PASSED AND APPROVED, this 20th day of May 2010.



M A Y O R
Julián Castro

ATTEST:

APPROVED AS TO FORM:



Leticia M. Vacek, City Clerk



for Michael Bernard, City Attorney



Agenda Voting Results - 19

Name:	4, 5, 7, 8, 11, 13, 16, 18, 19						
Date:	05/20/2010						
Time:	09:22:12 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing and approving the terms and conditions of a telecommunications non-exclusive license agreement for the installation of a Distributed Antenna System (DAS) on municipal rights-of-way between the City of San Antonio and ATC Outdoor DAS, LLC. [Richard Varn, Chief Information Officer, Hugh Miller, Director, Information Technology Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x			x	
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

STATE OF TEXAS

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COUNTY OF BEXAR

**NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN THE
CITY OF SAN ANTONIO AND ATC OUTDOOR DAS, LLC
FOR THE USE OF PUBLIC RIGHTS-OF-WAY**

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**NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN THE
CITY OF SAN ANTONIO AND ATC OUTDOOR DAS, LLC
FOR USE OF PUBLIC RIGHTS-OF-WAY**

This LICENSE AGREEMENT is made and entered into by and between the City of San Antonio, a Texas Municipal Corporation and Home-Rule Municipality, acting herein through its City Manager, or designee, pursuant to Ordinance No. _____, passed and approved on May 20, 2010, as Licensor, and ATC Outdoor DAS, LLC (“ATC”), a Delaware corporation, as Licensee.

WHEREAS, ATC, is a certificated telecommunications provider licensed by the Texas Public Utility Commission to offer wholesale and retail telecommunications and data services in the state, but does not currently offer retail telecommunications service in San Antonio; and

WHEREAS, ATC, desires the use of certain public rights-of-way within the City of San Antonio for the purpose of installing, maintaining and operating a DAS Network as defined by this License Agreement and pursuant to state and federal laws; and

WHEREAS, the installation, maintenance, and operation of ATC’s DAS Network on public rights-of-way will be done in a manner consistent with the City’s Rights-of-Way Management Ordinance and Utility Excavation Criteria Manual, and any other applicable regulations; and

WHEREAS, ATC has entered into a Pole Attachment Agreement with CPS Energy for the purpose of installing its DAS Network on CPS Energy poles erected on public rights-of-way; and

WHEREAS, installation of the ATC’s DAS Network is in the public interest and will further the convenience of the business community and citizens of the City of San Antonio; and

WHEREAS, the License Agreement is consistent with Section 54.205 of the Public Utility Regulatory Act (Texas Utilities Code) which reserves “a municipality’s historical right to control and receive reasonable compensation for access to the municipality’s public streets, alleys, or rights-of-way or to other public property;” and

WHEREAS, the City hereby set forth rights, duties and obligations of ATC in this License Agreement;

NOW THEREFORE THE ABOVE PARTIES AGREE TO THE FOLLOWING:

SECTION 1. DEFINITIONS

For purposes of this License Agreement the following terms shall have the same meanings herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive.

- (a) “CITY” means the City of San Antonio, Texas, a home-rule municipality.
- (b) “DAS Network” means the LICENSEE’S network of spatially separated antenna nodes located in the City of San Antonio Public Rights-of-Way and as identified in Exhibit “A” and connected to a common source via fiber optic cable providing DAS wireless service within a geographic area.
- (c) “Chief Technology Officer” means the CITY’S Chief Technology Officer in his capacity as the head executive officer over the Information Technology Services Department.
- (d) “Effective Date” means the latest date on which this License Agreement is signed by both parties following approval of the License Agreement by the San Antonio City Council.
- (e) “Excavation Manual” means the Utility Excavation Criteria Manual approved by the Director of Public Works on April 2, 2001 (as amended from time to time) pursuant to the authority granted by the Right-of-Way Management Ordinance, Ordinance No. 93319 (January 25, 2001).
- (f) "Facilities" means any and all of the LICENSEE'S ducts spaces, manholes, poles,

conduits, antennas, control boxes, fiber optic cables, repeaters, power sources, underground and overhead passageways, and other equipment, structures, plant, and appurtenances located within the Public Rights-of-Way.

(g) "Gross Revenues" means all revenues received by LICENSEE from the operation of the DAS Network, including, but not limited to:

- (1) All monetary compensation that LICENSEE is entitled to receive pursuant to all agreements with third-party wholesale customers, whether wireless carriers or not, for the use of the DAS Network. For the purpose of this subsection, the term "monetary compensation" includes all rents, payments, fees, non-recurring capital contributions, make-ready payments, maintenance charges, and other amounts actually collected from wholesale customers for each calendar year, or fractional part thereof, during the term of this License Agreement.
- (2) The revenues collected by LICENSEE from all third-party retail customers for services provided with the DAS Network whose connections do not qualify as access lines under Texas PUC Substantive Rule 26.461.
- (3) All other revenues collected by LICENSEE for services provided with the DAS Network that do not qualify as access lines under Texas PUC Substantive Rule 26.461.

For the purpose of this definition, all revenues from telecommunications services that actually qualify as access lines under Texas PUC Substantive Rule 26.461 shall be excluded from Gross Revenues. In addition, expenses for electric utility charges and property taxes which LICENSEE recovers from wholesale customers as pass-through charges will be excluded from Gross Revenues. The obligation to include revenues from wholesale or retail customers ends when their contracts expire or terminate.

(h) "LICENSEE" means ATC Outdoor DAS, LLC

(i) "Rights-of-Way" or "Public Rights-of-Way" means the surface of, and the space above and below, any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive, or other easement now

or hereafter-held by the CITY or over which the CITY exercises any rights of management control and shall include other easements or rights-of-way as shall now be held, or hereafter held, by the CITY, but only as necessary to build the DAS Network as identified in Exhibit A.

- (j) "Right-of-Way Management Ordinance" means the San Antonio Right-of-Way Management Ordinance passed by the San Antonio City Council on January 25, 2001 as Ordinance No. 93319.
- (k) "Right-of-Way Manager" means the Manager of the Right-of-Way Management Division of the Public Works Department.
- (l) "Texas PUC" means the Public Utility Commission of Texas.
- (m) "Transmission Media" shall mean all the LICENSEE'S cable, fibers, wires, antennas or other physical devices used to provide DAS service.

SECTION 2. GRANTING CLAUSE

- (a) The CITY hereby grants LICENSEE, a non-exclusive License to use and occupy the Rights-of-Way listed and shown in Exhibits "A" to erect, install construct, replace, reconstruct, maintain and operate its DAS Network in, across or under the Rights-of-Way in Exhibit "A" including all necessary Facilities and Transmission Media in connection with the DAS Network, subject to the laws of the State of Texas and the CITY'S charter and laws as they exist now or may be amended from time to time, except as provided in Section 38 of this License Agreement, and subject to the conditions outlined in this License Agreement. LICENSEE shall install its Facilities and Transmission Media consistent with the CITY'S Right-of-Way Management Ordinance and Excavation Manual.
- (b) The LICENSEE'S right to use and occupy the Public Rights-of-Way shall not be exclusive and the CITY reserves the right to grant a similar use of same to itself or any person or entity at any time during the period of this License Agreement.
- (c) The LICENSEE shall not have the ability to expand its Facilities or Transmission Media beyond Rights-of-Way as depicted in Exhibits "A" above. Any additions or expansions of the LICENSEE'S DAS Network as shown in Exhibit "A," except as permitted under Section 33 of this License Agreement, requires the approval of

the CITY, as evidenced by the passage of an ordinance approved by the City Council.

- (d) Consistent with the City's Right-of-Way Management Ordinance and Public Works policies, the Right-of-Way Manager shall assign priorities among competing private uses of the Public Right-of-Way according to the order completed permit applications are received.
- (e) If the CITY authorizes abutting landowners to occupy space under the surface of any Rights-of-Way, the grant shall be subject to the rights of LICENSEE.
- (f) If the CITY vacates a Right-of-Way containing the LICENSEE'S Facilities and/or Transmission Media, the conveyance shall be subject to the rights of the LICENSEE under this License Agreement.
- (g) In consideration for the rights granted under this License Agreement, LICENSEE waives all claims, demands, causes of action, and rights it may assert against the City because of any loss, damage, or injury to any equipment or any loss or degradation of services not caused by the CITY.

SECTION 3. ADDITIONAL AUTHORITY REQUIRED

The LICENSEE and any of its affiliates are not authorized to provide cable television service as a cable service provider or to operate an open video system in the city under this License Agreement, but must first obtain a separate State-Issued Certificate of Franchise Authority from the Texas PUC.

SECTION 4. TERM

The License term and the rights, privilege and authority hereby granted shall be in force and effect for a term beginning upon final execution of this License agreement, and shall continue in effect for a term of ten (10) years.

SECTION 5. CONSTRUCTION WORK-REGULATION BY CITY

- (a) The work done by LICENSEE in connection with the installation, construction, reconstruction, maintenance, repair, betterment, permanent improvement, or operation of the DAS Network within the Public Rights-of-Way shall be subject

to and governed by all pertinent local and state laws, rules, regulations, including the CITY'S Right-of-Way Management Ordinance, that are applicable to insuring the work done does not unduly inconvenience the public in the use of the surface of the streets and sidewalks.

- (b) All excavations and other construction in the streets shall be carried on as to minimize interference with the use of CITY'S Rights-of-Way and with the use of private property, in accordance with all regulations of the CITY necessary to provide for public health, safety and convenience.

SECTION 6. CONSTRUCTION, RESTORATION & MAINTENANCE OF STREETS

- (a) In the installation, construction and maintenance of the DAS Network, LICENSEE shall comply with the provisions of the Right-of-Way Management Ordinance and Excavation Manual (which is applicable to all utilities operating within the San Antonio), including provisions pertaining to the following activities:
 - (1) Cut or otherwise disturb the surfaces of the Rights-of-Way;
 - (2) Disruption of vehicular and pedestrian traffic on Rights-of-Way to a minimum as reasonably necessary to execute the required work;
 - (3) Applicable excavation and restoration standards; and
 - (4) Pavement repairs.
- (b) Prior to construction, LICENSEE shall submit engineering plans to the Right-of-Way Manager for review and approval in accordance with the Right-of-Way Management Ordinance.
- (c) Prior to beginning any excavation or boring project on Public Rights-of-Way, LICENSEE shall comply with the provisions of the Texas One Call utility locator service at least 48 hours in advance. LICENSEE has the responsibility to protect and support the various utility facilities of other providers during construction.
- (d) The CITY shall have the authority at any time to order and require LICENSEE to remove and abate any Facilities, Transmission Media or other structure that is in violation of the City Code of Ordinances. In case LICENSEE, after receipt of

written notice and a reasonable opportunity to cure, fails or refuses to comply, the CITY shall have the authority to remove the same at the expense of LICENSEE, all without compensation or liability for damages to LICENSEE.

SECTION 7. WORK BY OTHERS, AND ALTERATION TO CONFORM WITH CONSTRUCTION PROJECTS BY THIRD-PARTIES

- (a) The CITY reserves the right to install, and permit others to install utility facilities in the Rights-of-Way. In permitting such work to be done by others, the CITY shall not be liable to LICENSEE for any damage caused by those persons or entities.
- (b) If the CITY requires LICENSEE to adapt or conform its Facilities or Transmission Media, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the CITY, to use, or to use with greater convenience, any Right-of-Way, LICENSEE shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse LICENSEE for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of LICENSEE'S Facilities; provided, however, that the CITY shall never be liable for such reimbursement.

SECTION 8. ABANDONMENT OF FACILITIES

Whenever LICENSEE intends to abandon any of its Facilities or Transmission Media within a Right-of-Way, it shall submit to the Right-of-Way Manager, the Chief Technology Officer and Supervisor of Public Utilities an application describing the Facilities and/or Transmission Media to be abandoned and the date of the proposed abandonment. CITY may require LICENSEE, at LICENSEE'S expense: (a) to remove the Facilities and/or Transmission Media from the Public Right-of-Way; or (b) to modify the Facilities in order to protect the public health and safety or otherwise serve the public interest. If the LICENSEE fails to respond to the CITY'S request within sixty (60) days, the abandoned Facilities and Transmission Media shall be considered the property of the CITY. Alternatively, the LICENSEE may choose to remove the Facilities other than the

fiber optic cable which shall be considered the property of the CITY.

SECTION 9. RIGHTS IN THE EVENT OF ABANDONMENT OF RIGHT-OF-WAY

In the event that the governing body of the CITY closes or abandons any Right-of-Way which contains the Facilities or Transmission Media of the LICENSEE installed hereunder, any conveyance of land contained in such closed or abandoned Right-of-Way shall be subject to, and conditioned upon, the rights of the LICENSEE.

SECTION 10. SUPERVISION BY CITY OF LOCATION OF POLES AND CONDUITS

In the event LICENSEE finds it necessary to install poles on Public Rights-of-Way in order to complete its DAS Network, such poles shall be of sound material and reasonably straight, and shall be set so that they will not interfere with the flow of water in any gutter or drain, and so that they will not unduly interfere with ordinary travel on the streets or sidewalk. The location and route of all poles, stubs, guys, anchors, conduits, fiber, and cables placed and constructed by the LICENSEE in the installation, construction and maintenance of its DAS Network shall be subject to the lawful, reasonable and proper control, direction and/or approval of the Right-of-Way Manager.

SECTION 11. ATTACHMENTS TO POLES AND SPACE IN DUCTS

- (a) Nothing contained in this License Agreement shall be construed to require or permit any pole attachments of Transmission Media owned, leased, or controlled by the LICENSEE to be attached to the CITY-owned poles or other physical plant or placed in the CITY'S conduit. If the LICENSEE desires to place attachments for any Transmission Media on CITY-owned poles, or if the LICENSEE desires to place any Transmission Media in CITY duct, then a further separate agreement shall be required for such attachments or use of such ducts by the LICENSEE.
- (b) Nothing contained in this License Agreement shall obligate or restrict the LICENSEE in exercising its rights voluntarily to enter into pole attachment agreements with electric power companies or with other wire-owning companies

which are authorized to operate within the CITY.

SECTION 12. INTERFERENCE WITH OTHER FACILITIES PROHIBITED

- (a) LICENSEE may not impede, obstruct or otherwise interfere with the installation, existence and operation of any other facility in the public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical infrastructure, cable television and telecommunication wires, public safety and CITY networks, and other telecommunications, utility, or municipal property unless:
- (1) the owner(s) of the affected property expressly authorize LICENSEE'S actions in writing; or
 - (2) as permitted by law.
- (b) Upon request, the LICENSEE will remove or raise or lower its Transmission Media to permit the moving of houses or other bulky structures. The reasonable and necessary expense of such temporary rearrangements shall be paid by the party or parties requesting them and the LICENSEE may require payment in advance. The LICENSEE shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary rearrangements.

SECTION 13. TREE TRIMMING

The right, license, privilege and permission is granted to the LICENSEE, its contractors and agents, to trim trees upon and overhanging the Rights-of-Way so as to prevent the branches of such trees from coming in contact with LICENSEE'S DAS Network, and when so directed by the CITY, the tree trimming shall be done under the supervision and direction of the CITY or of any CITY official to whom those duties have been or maybe delegated.

SECTION 14. RELOCATION OR REMOVAL OF FACILITIES

- (a) LICENSEE shall remove or relocate its Facilities and Transmission Media at its own expense not later than 120 days after receiving written notice that removal,

relocation, or change to the Facilities or Transmission Media is reasonably necessary:

- (1) for the construction, repair, relocation, or maintenance of a public improvement project in Public Rights-of-Way;
 - (2) to protect or preserve the public health or safety; or
 - (3) where the CITY affords LICENSEE a technically and financially reasonable alternative location for installation of LICENSEE'S Facilities and Transmission Media.
- (b) In the event that LICENSEE'S DAS Network interferes with the CITY'S traffic lights, public safety radio system, or other CITY communications infrastructure operating on spectrum where the CITY is legally authorized to operate, LICENSEE will respond to the CITY'S request to address the source of the interference within 24 hours of receiving notice pursuant to the escalation process outlined in Section 15 of this License Agreement.
- (c) The protocol for responding to events of interference within 24 hours will require LICENSEE to provide the Chief Technology Officer an Interference Remediation Report that includes the following items:
- (1) Remediation Plan. Devise a remediation plan to stop the event of inference;
 - (2) Time Frame for Execution. Provide the expected time frame for execution of the remediation plan; and
 - (3) Additional Information. Include any additional information relevant to the execution of the remediation plan.

In the event that interference cannot be eliminated, LICENSEE shall relocate or remove the Facilities or Transmission Media that is the source of the interference as soon as possible, but in no event longer than the time period set out in Section 14(a) herein.

- (d) The LICENSEE and the CITY shall cooperate to the extent possible to assure continuity of service during relocation of Facilities or Transmission Media.
- (e) Nothing in this section shall be construed as preventing the LICENSEE from recovering the cost of removal or relocation of its facilities from a non-

governmental third party responsible for the request.

- (f) If the LICENSEE fails to remove or relocate its facilities to the satisfaction of the Chief Technology Officer by the 120th day after the date of notice or has not diligently commenced such removal as directed by the CITY, the CITY may remove or relocate the Facilities or Transmission Media at the expense of LICENSEE and without liability to the CITY other than the gross negligence or willful misconduct of or by the CITY.
- (g) Any damage to the Public Rights-of-Way or adjacent property that occurs during the removal or relocation of LICENSEE'S Facilities or Transmission Media shall be promptly repaired or replaced at LICENSEE'S sole expense. Should LICENSEE not make nor diligently pursue adequate repairs after receiving written notice, the CITY may make all reasonable and necessary repairs on behalf of LICENSEE, and reimburse itself from proceeds from the surety bond required under Section 17. Any remaining amount will be charged to LICENSEE. LICENSEE shall promptly remit payment of such costs when invoiced by the CITY.

SECTION 15. EMERGENCY CONTACTS

- (a) In case of an emergency due to interference or any unforeseen event, the CITY will act to protect the public health and safety of its citizens, and to protect public and private property, notwithstanding any provision in this License Agreement. The CITY will make every reasonable effort to coordinate its emergency response with the LICENSEE. To that end, the CITY will use the following emergency contacts:
 - (1) Level One Contact: The LICENSEE'S network operations center may be reached 24/7 at: 1-888-773-4122 and email: support@inoc.com. Please reference American Tower Site ID Kyle Seale DAS
 - (2) Level Two Contact: In the event, the LICENSEE'S network operations center cannot be reached, or the network operations center staff cannot address the emergency situation, the CITY may contact: Director of

Network Operations, Dwayne Baucom, office 919-463-6286, mobile 919-201-2430, email Dwayne.baucom@americantower.com

- (3) Level Three Contact: In the event, the emergency situation calls for a coordinated effort between the CITY and LICENSEE'S management team, the CITY may contact: Vice President of Network Operations, Dan Wojciechowski, office 919-465-6700, mobile 919-345-3412, email Daniel.wojciechowski@americantower.com
- (b) The LICENSEE will maintain the emergency contact information current at all times with the Chief Technology Officer.

SECTION 16. INDEMNITY

- (a) **LICENSEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to LICENSEE'S activities under this License Agreement, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LICENSEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this License Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in the instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE**

WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- (b) LICENSEE shall be liable for the acts and omissions of any contractor, subcontractor, or any party involved directly or indirectly in the construction and installation of LICENSEE'S DAS Network and under LICENSEE'S direct control. Any act or omission of such party shall be considered an act or omission of the LICENSEE.
- (c) LICENSEE shall defend, indemnify and hold the CITY and its officers, employees, appointed and elected officials harmless against all damages, cost, loss or expense arising out of, incident to, directly or proximately resulting from the negligence or willful misconduct of LICENSEE, its agents, employees, or subcontractors in the performance of activities under this license for:
 - (1) the repair, replacement, or restoration of CITY property, equipment, materials, structures, and facilities which are damaged, destroyed, or found to be defective;
 - (2) damage to or loss of the property of any person including, but not limited to LICENSEE, its agents, officers, employees and subcontractors, the CITY'S agents, officers and employees, and third parties; and
 - (3) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person no matter how, or to whom, the loss may occur.
- (d) The Chief Technology Officer shall give prompt written notice to LICENSEE of any claim for which the CITY seeks indemnification. LICENSEE shall have the right to investigate, defend, and compromise these claims subject to the City Attorney's prior approval. Said approval shall not be unreasonably withheld, delayed or conditioned.

SECTION 17. INSURANCE REQUIREMENTS

- (a) Prior to the commencement of any work under this License Agreement, the

LICENSEE shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY'S Information Technology Services Department, which shall be clearly labeled "*ATC Outdoor DAS License Agreement for Use of Public Rights-of-Way*" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this License Agreement until such certificate and endorsements have been received and approved by the CITY'S Information Technology Services Department. No officer or employee, other than the CITY'S Risk Manager, shall have authority to waive this requirement.

- (b) CITY reserves the right to review the insurance requirements of this Section during the effective period of this License Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the CITY'S Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the CITY allow modification whereupon the CITY may incur increased risk. Such review and modification shall not occur more frequently than every five (5) years.
- (c) The LICENSEE'S financial integrity is of interest to the CITY; therefore, subject to the LICENSEE'S right to maintain reasonable deductibles in such amounts as are reasonably approved by the CITY, the LICENSEE shall obtain and maintain in full force and effect for the duration of this License Agreement, and any extension hereof, at the LICENSEE'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

Type of Coverage	Amounts
1. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
2. Workers' Compensation	Statutory
3. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
4. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/complete operations d. Personal Injury e. Contractual liability f. Property damage, to include Fire Legal Liability	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence; General Aggregate limit of \$2,000,000 per occurrence or its equivalent in umbrella or excess liability coverage (f) Property damage, minimum of \$50,000
5. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

(e) The LICENSEE agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the CITY is an additional insured shown on the policy;
 - Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the CITY.
 - Provide thirty (30) calendar days advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- (f) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, the LICENSEE shall provide a replacement Certificate of Insurance and applicable endorsements to the CITY. The CITY shall have the option to suspend the LICENSEE’S performance should there be a lapse in coverage at any time during this License Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this License Agreement.
- (g) In addition to any other remedies the CITY may have upon the LICENSEE’S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order the LICENSEE to stop work hereunder, and/or withhold any payment(s) which become due to the LICENSEE hereunder until the LICENSEE demonstrates compliance with the requirements hereof.
- (h) Nothing herein contained shall be construed as limiting in any way the extent to which the LICENSEE may be held responsible for payments of damages to persons or property resulting from the LICENSEE’S or its subcontractors’ performance of the work covered under this Agreement.
- (i) It is agreed that the LICENSEE’S insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this License Agreement.
- (j) It is understood and agreed that the insurance required is in addition to and

separate from any other obligation contained in this License Agreement.

- (k) The LICENSEE and any subcontractors are responsible for all damage to their own equipment and/or property.

SECTION 18. SURETY BOND

- (a) The LICENSEE shall obtain and maintain at its sole cost a corporate surety bond securing performance of its obligations and guaranteeing faithful adherence to the requirements of the License Agreement. The surety bond must be
 - (1) in an amount not less than \$100,000;
 - (2) issued by a surety company license to do business in the State of Texas; and
 - (3) reasonably acceptable to the City Attorney.
- (b) The LICENSEE shall obtain this bond no later than the 30th day after the effective date of this License Agreement.
- (c) The rights reserved to the CITY under the bond are in addition to all other rights. No action, proceeding or exercise of a right regarding the bond shall affect the CITY'S rights to demand full and faithful performance under this License Agreement or limit the LICENSEE'S liability for damages.

SECTION 19. ADMINISTRATION OF LICENSE

- (a) The City Manager or designee is the principal CITY officer responsible for the administration of this License Agreement. The Right-of-Way Manager shall review the operations of LICENSEE in the Rights-of-Way under this License Agreement.
- (b) LICENSEE shall communicate with the Right-of-Way Manager all matters in connection with or affecting the installation, construction, reconstruction, maintenance and repair of LICENSEE'S DAS Network in the Rights-of-Way and report any material changes to LICENSEE'S Facilities and Transmission Media to the Right-of-Way Manager and the Chief Technology Officer.
- (c) Notices required by this License Agreement may be given by registered or certified mail by depositing the same in the United States mail in the continental

United States, postage prepaid. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to CITY shall be delivered as follows:

Chief Technology Officer	City Clerk's Office
Information Technology Services	City of San Antonio
Department	P.O. Box 839933
City of San Antonio	San Antonio, Texas 78283-3933
P.O. Box 839966	(210) 207-7253
515 S. Frio Street	
San Antonio, Texas 78283	
(210) 207-8140	

Until any such change is made, notices to LICENSEE shall be delivered as follows:

ATC Outdoor DAS LLC	Copy to:	ATC Outdoor DAS, LLC
116 Huntington Avenue		10 Presidential Way
Boston, MA 02116		Woburn, MA 01801
Attn: Law Department		Attn: Director, DAS

SECTION 20. RECORDS

- (a) LICENSEE shall keep complete and accurate maps, financial documents, and other records of its DAS Network. The CITY may require the keeping of additional records or maps which are reasonably necessary for purposes of identifying, accounting for, and reporting changes in the DAS Network.
- (b) The CITY may, at reasonable times and for reasonable purposes, examine, verify and review the financial documents, maps, plans and other records of LICENSEE pertaining to the DAS Network installed in the Rights-of-Way. LICENSEE shall make the above records available to the CITY for review within ten (10) working days after requested by the Chief Technology Officer or Right-of-Way Manager.
- (c) Within ten (10) working days of executing any contract with a new customer, or renewal or modification of an existing customer contract, the LICENSEE shall provide the CITY a detailed base-line financial report necessary for the CITY to verify Gross Revenues. The financial report shall include, but not be limited to, the following information: (1) effective date of agreement; (2) effective date of

commercial operations; (3) term of agreement; (4) all recurring and non-recurring payments to be received by LICENSEE under the agreement; (5) any pass-through charges to be excluded from Gross Revenues; (6) time frame for receiving payments; and (7) other information as agreed by the parties. Upon request by the CITY, the LICENSEE will make available for review at CITY'S offices a copy of any and all customer contracts for the DAS Network.

SECTION 21. MONETARY COMPENSATION

To compensate the CITY for the use and occupancy of the Public Rights-of-Way, LICENSEE shall be required to pay the following fees:

- (a) Processing Fee. LICENSEE has remitted to the CITY a one time processing fee of two thousand five hundred dollars (\$2,500.00).
- (b) Right-of-Way Access Fees. The LICENSEE shall pay the CITY for the use of Public Rights-of-Way access fees totaling five percent (5%) of Gross Revenues from the DAS Network. The percentage of Gross Revenues access fees will be paid over the 10 year term of the License Agreement on an annual basis as prescribed under subsection (e). At the option of the CITY, at any time during the term of this License Agreement, the Chief Technology Office may require the LICENSEE to make access fee payments on an annual basis as prescribed under subsection (e).
- (c) Fiber Strands. In addition to the annual access fee payments, LICENSEE shall make an in-kind contribution to the CITY of six (6) strands of the fiber installed in the DAS Network ("City Fiber") In the event that such consideration is declared illegal by any court or governmental agency of competent jurisdiction, LICENSEE and the CITY shall negotiate for mutually acceptable alternate consideration. The connection of electronic equipment to the City Fiber shall be the responsibility of the CITY and will be made at the sole cost and expense of the CITY. The costs of construction, maintenance, repair and operation of the CITY'S network facilities and equipment not comprising a part of the DAS Network shall be the sole responsibility of the CITY. The City will enjoy the use of the City Fiber under the terms and conditions of a sixty (60) year indefeasible

right of use (IRU) agreement to be negotiated by the parties within ten (10) business days of City Council approval of this License Agreement, which will be included as Exhibit C to this License Agreement. The IRU will survive the expiration of this License Agreement, the early termination of this License Agreement, the assignment of this License Agreement, the assumption of the DAS Network by a third party, and the abandonment of the DAS Network by the LICENSEE.

- (d) Construction Permits. In addition to the aforementioned fees, the LICENSEE shall be required to obtain construction permits from the Right-of-Way Management Office in order to install, construct, and maintain the DAS Network in Public Rights-of-Way, including paying the appropriate permitting fees. The aforementioned construction permits (i.e., non-discretionary, ministerial permits) shall be the only permits required by the CITY.
- (e) Remittance of Access Fees. Within ten (10) business days of acceptance of this License Agreement, the LICENSEE shall pay the CITY \$7,800.00 and thereafter begin making Right-of-Way access fee payments to the CITY in the amount of five percent (5%) of Gross Revenues on an annual basis. Each annual access fee payment will be due on February 15th of the year. Each payment shall be accompanied by a statement, substantially in the form provided in Exhibit B, which mathematically verifies the accuracy of the payment. Exhibit B is a financial report which will include Gross Revenues received during the applicable reporting period, a calculation of five percent (5%) of Gross Revenues, electric utility charges and property taxes excluded from Gross Revenues, and an explanation that the annual payment is made pursuant to this License Agreement. The financial report will be certified by an officer of the LICENSEE and will be accompanied by supporting documents to verify the accuracy of the reported information. The last payment under this License Agreement shall be paid within thirty (30) calendar days following termination or expiration of the License Agreement.
- (f) Annexation. Subsequent to the Effective Date of this License Agreement, should the City exercise the right to annex any area in which the LICENSEE has

installed a portion of its DAS Network, the LICENSEE shall be responsible for paying additional access fees under this License Agreement associated with DAS Network that previously were found outside the CITY'S geographic boundaries, but following annexation will lie within the new CITY boundaries. The effective date of the additional payment will consistent with the annual payment process as defined in subsection (e) herein. The additional payment will be prorated by the number of months during the previous year following annexation.

SECTION 22. RIGHT TO AUDIT

The CITY, or its designees, shall have the right to audit, examine or inspect, at the CITY'S election and at CITY'S expense, all of the LICENSEE'S records at any and all LICENSEE'S locations relating to the DAS Network ("LICENSEE'S Records") during the term of the License Agreement and retention period herein. The audit, examination or inspection may be performed by a CITY designee, which may include its internal auditors or an outside representative engaged by the CITY. The LICENSEE agrees to retain the LICENSEE'S Records for a minimum of four (4) years following termination of the License Agreement, unless there is an ongoing dispute under the License Agreement, then, such retention period shall extend until final resolution of the dispute.

The LICENSEE'S Records shall be made available at the CITY'S designated offices within thirty (30) calendar days of the CITY'S request and shall include any and all information, materials and digital data of every kind and character generated as a result of this License Agreement. Examples of LICENSEE'S Records include but are not limited to billings, billing reports, remittance records, books, trial balances, subsidiary ledgers, general ledgers, audited financial statements, invoices, receipts, customer contracts and other documents that are necessary to substantiate Gross Revenues and the items reported in the certification provided pursuant to Section 21(e) of this License Agreement. The LICENSEE bears the cost of producing, but not reproducing any and all requested business records.

The CITY agrees that it will exercise the right to audit, examine or inspect only during regular business hours. The LICENSEE agrees to allow the CITY'S designee access to all of the LICENSEE'S Records, facilities, deemed necessary by CITY or its

designee(s), to perform such audit, inspection or examination. The LICENSEE also agrees to provide adequate and appropriate work space necessary to CITY or its designees to conduct such audits, inspections or examinations if required.

If an audit inspection or examination discloses that LICENSEE'S remittances to the CITY as previously reported for the period audited were underpaid, LICENSEE shall pay within 30 days to the CITY the underpaid amount for the audited period together with interest at the Interest Rate of five percent (5%) from the date(s) such amount was originally due. Further, if such understatement was in excess of five percent (5%) of LICENSEE'S actual remittances to the CITY, the reasonable actual cost of the CITY'S audit shall be reimbursed to the CITY by the LICENSEE up to \$10,000.00.

Failure by the LICENSEE to comply with the provisions of this audit clause may result in termination by the CITY of all rights provided under this License Agreement to the LICENSEE. In the event of termination, the LICENSEE is responsible for the cost of termination and agrees to hold the CITY harmless for any and all claims resulting from termination due to the LICENSEE'S failure to comply with the audit clause.

SECTION 23. ASSIGNMENT OF LICENSE

The rights granted by this License Agreement inure to the benefit of LICENSEE and shall not be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise by force or involuntary sale, without the expressed written consent of the CITY, approved by passage of an ordinance. Notwithstanding this provision, a transfer of this License Agreement may be approved by the Chief Technology Officer without further City Council ordinance in the following circumstance: (i) an assignment or transfer to entities that control, are controlled by, or are under common control with LICENSEE, or (ii) the acquisition of all or substantially all of LICENSEE'S assets in the San Antonio market by reason of a merger, acquisition or other business reorganization. In order to effect an assignment of this License Agreement as listed in (i) and (ii) above without City Council approval, the LICENSEE must provide the Chief Technology Officer a Notice of Assumption acceptable to the Chief Technology Officer which contractually binds the purchasing or acquiring party to meet all the obligations of this License Agreement. Any such consent by the CITY shall

not be unreasonably withheld.

Additionally, LICENSEE may mortgage or grant a security interest in this License Agreement and the Facilities and Transmission Media, and may assign this License Agreement and the Facilities and Transmission Media to any mortgagees or holders of security interest, including their successors or assigns (collectively "Mortgagees"), provided such Mortgagees' interests in this License Agreement are subject to all of the terms and provisions of this License Agreement. In such event, CITY shall execute such consent to financing as may reasonably be required by Mortgagees.

SECTION 24. FUTURE CONTINGENCY

Notwithstanding anything contained in this License Agreement to the contrary, in the event that this License Agreement, in whole or in part, is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful, or otherwise inapplicable, the LICENSEE and the CITY shall meet and negotiate an amended License Agreement that is in compliance with the authority's decision or enactment and, unless explicitly prohibited, the amended License Agreement shall provide the CITY with a level of compensation comparable to that set forth in this License Agreement.

SECTION 25. VENUE AND GOVERNING LAW

- (a) VENUE OF ANY COURT ACTION BROUGHT DIRECTLY OR INDIRECTLY BY REASON OF THIS LICENSE AGREEMENT SHALL BE IN BEXAR COUNTY, TEXAS. THE PROVISIONS OF THE AGREEMENT SHALL BE CONSTRUED UNDER, AND IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER SHALL BE PERFORMED IN BEXAR COUNTY, TEXAS.
- (b) This License Agreement shall be construed in accordance with the CITY Charter and municipal Code(s) in effect on the date of passage of this License Agreement, and as may be subsequently amended, except as provided in Section 38 of this License Agreement, to the extent that such Charter and Code(s) are not in conflict

with or in violation of the Constitution and laws of the United States or the State of Texas.

SECTION 26. LICENSE RENEWAL PROCEDURES

- (a) Upon application by the LICENSEE, this License Agreement may be renewed for additional successive terms by the CITY pursuant to the procedures established in this Section, and in accordance with the applicable laws, regulations, and the rules of the State of Texas.
- (b) At least six (6) months prior to the expiration of the License Agreement, the LICENSEE shall inform the Chief Technology Officer in writing of its intent to seek renewal of the License Agreement. During this time period, the parties may re-negotiate terms of the License Agreement. A processing fee will apply to a renewal of the License Agreement.
- (c) Upon determination by the Chief Technology Officer that the LICENSEE'S performance is satisfactory, including payment of all access fees, a renewal, subject to the agreed re-negotiation of compensation and other terms may be granted for a period of ten (10) years.
- (d) CITY shall not unreasonably withhold renewal of the License Agreement upon such terms and conditions as the parties may agree provided that at the time LICENSEE requests renewal LICENSEE is in substantial compliance with all terms set forth in this License Agreement, including the payment of all access fees.

SECTION 27. LICENSE AGREEMENT VIOLATIONS AND TERMINATION

The Chief Technology Officer shall have the right to declare this License Agreement terminated at any time for failure of the LICENSEE to comply with any term, condition, or provision of the License Agreement as follows.

- (a) For material breaches of this License Agreement, the LICENSEE will have an opportunity to cure following receipt of written notice from the CITY. If the LICENSEE fails to cure, or fails to diligently pursue a cure of a violation within ninety (90) days after receiving written notice, then the CITY may pursue

termination of this License Agreement.

- (b) Any termination of this License Agreement shall be declared in writing by the Chief Technology Officer following an opportunity to cure a violation of the License Agreement, and following a public hearing before City Council during which LICENSEE may present evidence and testimony of witnesses. .
- (c) The LICENSEE shall not be excused from complying with any of the terms and conditions of this License Agreement by the previous failure of the CITY to insist upon or seek compliance with such terms and conditions.

SECTION 28. NON-BINDING MEDIATION

- (a) Prior to filing suit, the parties to this License Agreement shall use non-binding mediation to resolve any controversy, claim or dispute arising under the License Agreement, expressly excluding disputes involving the applicability or effect of superior laws, the constitutionality of any requirement in this License Agreement or the preemptive effect of federal law.
- (b) To initiate non-binding mediation, a party shall give written notice to the other party. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party. Any mediator so designated must be acceptable to all party.
- (c) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt with the assistance of the mediator, to reach an amicable resolution of the dispute. Any finding by the mediator shall be a non-binding determination.
- (d) The mediation will be treated as a settlement discussion and therefore will be confidential in accordance with Tex. Civ. Prac. & Rem. Code § 154.073. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.
- (e) Each party will bear its own costs in the mediation. The fees and expenses of the

mediator will be shared equally by the parties.

SECTION 29. WAIVER

None of the material provisions of this License Agreement may be waived or modified except expressly in writing signed by the LICENSEE and CITY, as authorized by City Council by passage of an ordinance. Failure of either party to require the performance of any term in this License Agreement or the waiver by either party of any breach thereof shall not prevent subsequent enforcement of this term and shall not be deemed a waiver of any subsequent breach.

SECTION 30. SEVERABILITY

If any clause or provision of the License Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this License Agreement, then and in that event it is the intention of the parties hereto that the remainder of this License Agreement shall not be affected thereby, and it is also the intention of the parties that in lieu of each clause or provision of this License Agreement that is illegal, invalid, or unenforceable, there be added as part of this License Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

SECTION 31. CAPTIONS

The captions contained in this License Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this License Agreement.

**SECTION 32. CONFORMITY TO CONSTITUTION, STATUTES,
CHARTER AND CITY CODE**

- (a) This License Agreement and referenced ordinance is passed subject to the provisions of the Constitution and the laws of the State of Texas and the Charter provisions of the City of San Antonio and applicable sections of the San Antonio City Code.

- (b) In addition to these provisions, CITY expressly reserves the right to adopt, from time to time, ordinances, rules and regulations it may deem necessary in the exercise of CITY'S governmental powers. LICENSEE agrees to abide by any laws of the CITY within a reasonable time after passage thereof.
- (c) CITY expressly reserves the right to enforce reasonable regulations concerning LICENSEE'S access to or use of Public Rights-of-Way or public facilities, including requirements for ministerial permit applications. It is understood and agreed that LICENSEE is responsible for obtaining all necessary ministerial permits and other licenses necessary to install, maintain and operate its DAS Network.

SECTION 33. WORK PLANS

Prior to commencing any work associated with the DAS Network, or alteration to the DAS Network, the LICENSEE will submit to the Chief Technology Officer for review (not to exceed fifteen (15) calendar days from date of receipt) its network engineering work plans and specifications ("Work Plans"). The purpose of this review is to assess any potential negative impact that the Work Plans may pose to the CITY'S communications network which utilize City Fiber. Any necessary adjustment to the Work Plans will be agreed upon between the CITY and LICENSEE prior to the LICENSEE presenting its Work Plans to the City's Right-of-Way Manager in order to request a construction permit. The Work Plans will be reviewed by the City's Right-of-Way Manager for conformance with the terms and requirements of the CITY'S Rights-of-Way Management Ordinance and Utility Excavation Criteria Manual, and accepted engineering practices. The City's Right-of-Way Manager will determine if the Work Plans are acceptable within 15 days following the submission of the Work Plans to the CITY and will promptly notify LICENSEE of any deficiencies in the Work Plans, which LICENSEE shall promptly correct. If the City's Right-of-Way Manager finds the work described in the Work Plans acceptable, the CITY will issue a work permit authorizing LICENSEE to commence the described work.

SECTION 34. EXTENT OF AGREEMENT

This License Agreement, together with its attached exhibits and the authorizing ordinance, embodies the complete agreement of the parties, superseding all oral or written previous and contemporary agreements between the parties and relating to this License Agreement.

SECTION 35. AUTHORITY

The signer of this License Agreement for the LICENSEE and the CITY hereby represents and warrants that he or she has full authority to execute this License Agreement on behalf of the LICENSEE or the CITY respectively.

SECTION 36. NON-WAIVER OF RIGHTS

By entering this License Agreement, neither the CITY nor the LICENSEE has waived any rights they may have under applicable state and federal law pertaining to the provision of telecommunications services.

SECTION 37. FORCE MAJEURE

In the event LICENSEE'S performance of any of the terms, conditions, obligations or requirements of this License Agreement is prevented or impaired due to a force majeure event beyond LICENSEE'S reasonable control, such inability to perform will be deemed to be excused and no penalties or sanctions will be imposed as a result thereof, provided LICENSEE took steps to mitigate damages and accepts responsibility to cure the performance breach. However, LICENSEE'S obligation to pay annual access payments to the CITY in a timely manner is absolute and shall not be subject to force majeure provisions. For purposes of this section, "force majeure" means an act of God, a natural disaster or an act of war (including terrorism), civil emergencies and labor unrest or strikes, untimely delivery of equipment, pole hits, and unavailability of essential equipment, services and/or materials. It also includes an explosion, fire or other casualty or accident, which is not the result of gross negligence, an intentional act or misconduct on the part of the LICENSEE. In addition to relief expressly granted in this License Agreement, the CITY may grant relief from performance of this License

Agreement if the LICENSEE is unable to comply or perform due to an event of force majeure. The burden of proof for the need for such relief shall rest upon the LICENSEE. To obtain release based upon this section, LICENSEE must file a written request with the CITY'S Information Technology Services Department for consideration and approval by the Chief Technology Officer, which approval shall not be unreasonably denied.

SECTION 38. CHANGE OF LAW CLAUSE

The CITY will draft of new section of Chapter 37 of the City Code of Ordinances that will recognize Distributed Antenna System (DAS) providers as telecommunications providers eligible to access municipal Rights-of-Way and compensate the CITY based on a percentage of gross revenues methodology and other in-kind contributions. Upon the San Antonio City Council approval of such new section to Chapter 37 of the City Code, and at LICENSEE'S option to expand DAS networks and service in San Antonio beyond the DAS Network's geographic area as specified in Exhibit A, LICENSEE and CITY shall negotiate a new license agreement pursuant to the provisions of said new section which shall be applicable to LICENSEE'S current and future DAS networks in the San Antonio. Such new license agreement will supersede and replace this License Agreement. However, should LICENSEE choose not to expand its DAS business in San Antonio, this License Agreement shall remain in effect, but shall not be amended to expand the DAS Network beyond the geographic service area outlined in Exhibit A. Except for the option to maintain this License Agreement in effect, due to a decision not to expand DAS service in San Antonio, LICENSEE shall be required to comply with all applicable local, state and federal laws and regulations as they currently exist and as they may be amended.

EXECUTED and AGREED.

CITY OF SAN ANTONIO

ATC OUTDOOR DAS, LLC

(Signature)

Printed Name: **Hugh Miller**
Title: **Chief Technology Officer**
Date: _____

(Signature)

Printed Name: **Gerard Ainsztein**
Title: **Senior Vice President**
Date: _____

APPROVED AS TO FORM:

City Attorney

EXHIBIT A – MAP OF ATC DAS NETWORK

CONSTRUCTION PLANS

ISSUED FOR: CONSTRUCTION

DATE ISSUED: 08/25/09

LATEST ISSUE: 09/2/09

INDEX

NO.	DRAWING TITLE
1	SHEET INDEX
2	STRAND MAP
3	NODE POLE PROFILE DETAILS
4	TRAFFIC MANAGEMENT PLAN
5-22	CONSTRUCTION DRAWINGS

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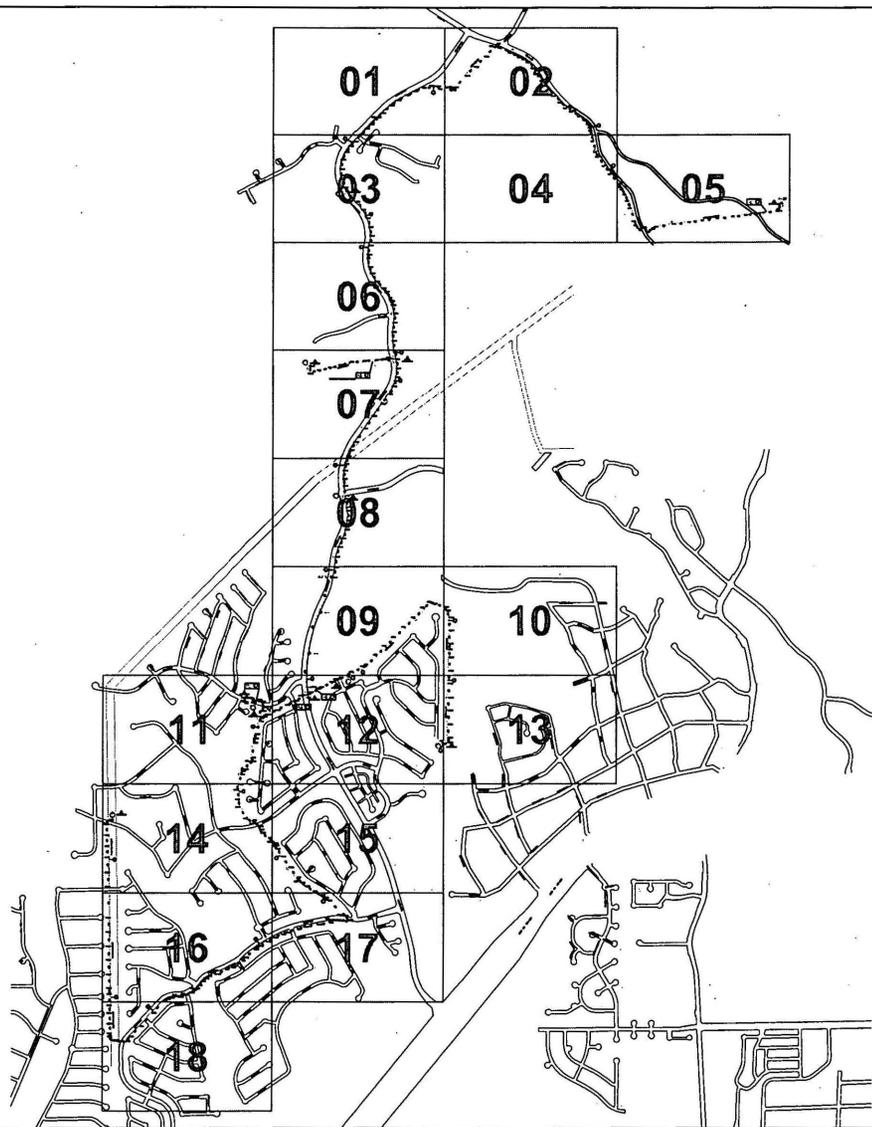
CONSTRUCTION DRAWINGS

SAN ANTONIO, TX

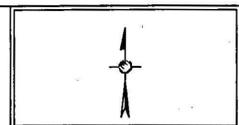


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AMERICAN TOWER®



PRELIMINARY
08/25/09



SCALE: N.T.S.



Location: SAN ANTONIO, TX

Project #: 39250

Job Title: Engineering

Engineer: UCS

Date Issued: 08/25/09

LEGEND:

- POLE
- SPAN
- ATC POLE NODE
- WOOD POLE NODE
- AERIAL PATHWAY
- BURIED PATHWAY
- HUB LOCATION
- SLACK LOOP / MAINT. COIL

REVISIONS

Date	Description	By

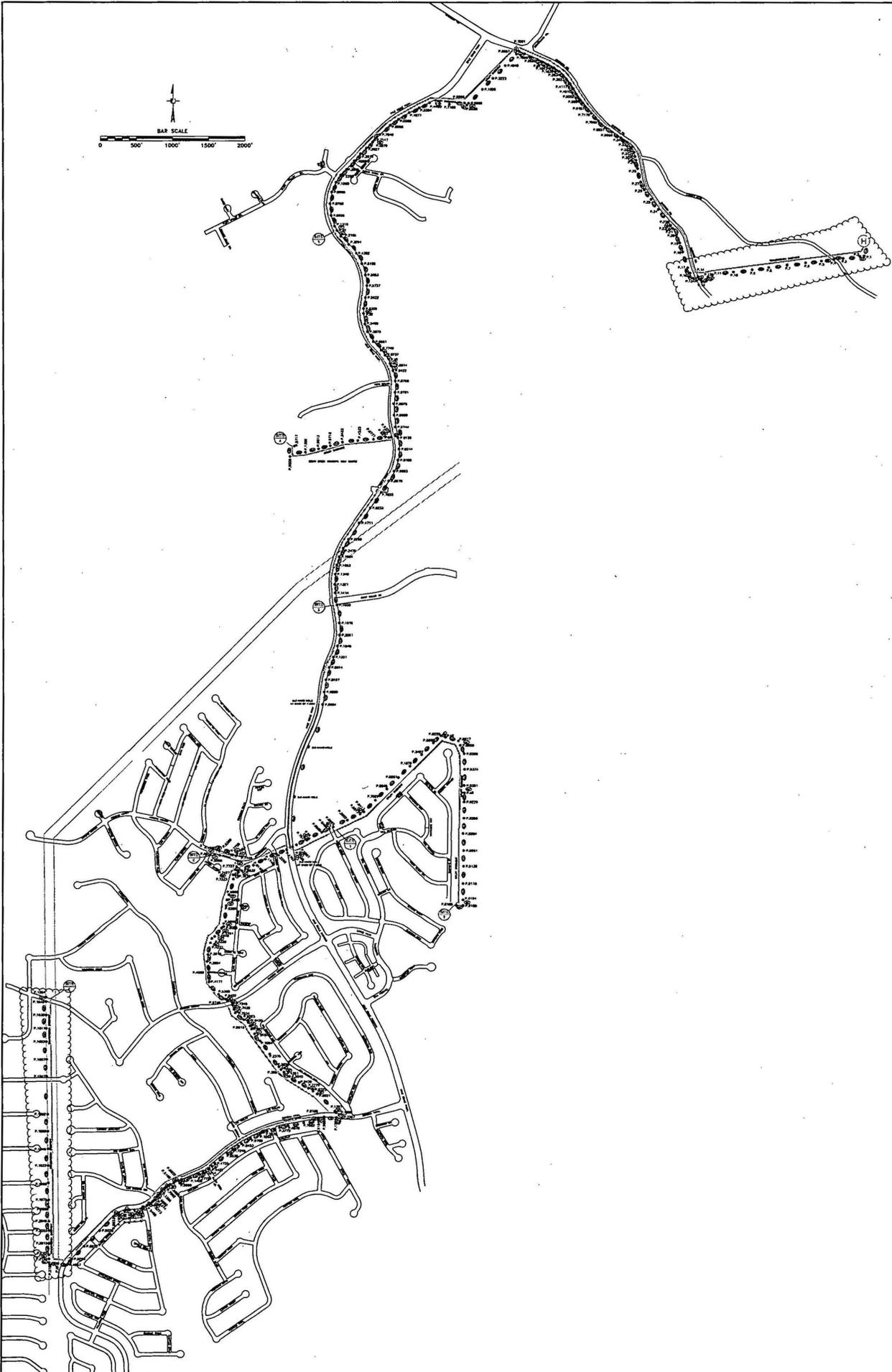
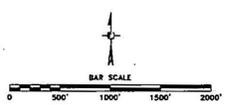
PREPARED BY:

 INNOVATIVE THINKING. ENGINEERING SOLUTIONS.
 603 WEST STREET
 MAHFIELD, MA 02048
 www.ucsynergistic.com 1-800-261-4536

Sheet Number: OF

PROJECT: SAN ANTONIO, TX
BEXAR COUNTY

- LEGEND:
- ⊗ POLE
 - ⊖ SPAN
 - ⊕ ATC POLE NODE
 - ⊙ WOOD POLE NODE
 - AERIAL PATHWAY
 - CONDUIT CONSTRUCTION REQUIRED
 - UNDERGROUND LICENSE REQUIRED



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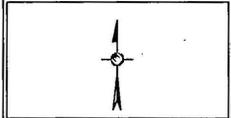
PREPARED FOR:

603 WEST STREET
MANSFIELD, MA 02548
www.ucsynergetic.com 508-261-4050

JOB:
**KYLE SEALE PKWY
STRAND MAP**

REVISIONS		
REV	DESCRIPTION	DATE

DRAWN BY: EDR
CHECKED BY: UCS
SCALE: N.T.S.
DRAWING NAME: KYLE SEALE STRAND MAP (20)
PLOT DATE: 08/20/09 P-SHT: 1 OF 1



SCALE: 1" = 200'



Location: SAN ANTONIO, TX

Project #: 39250

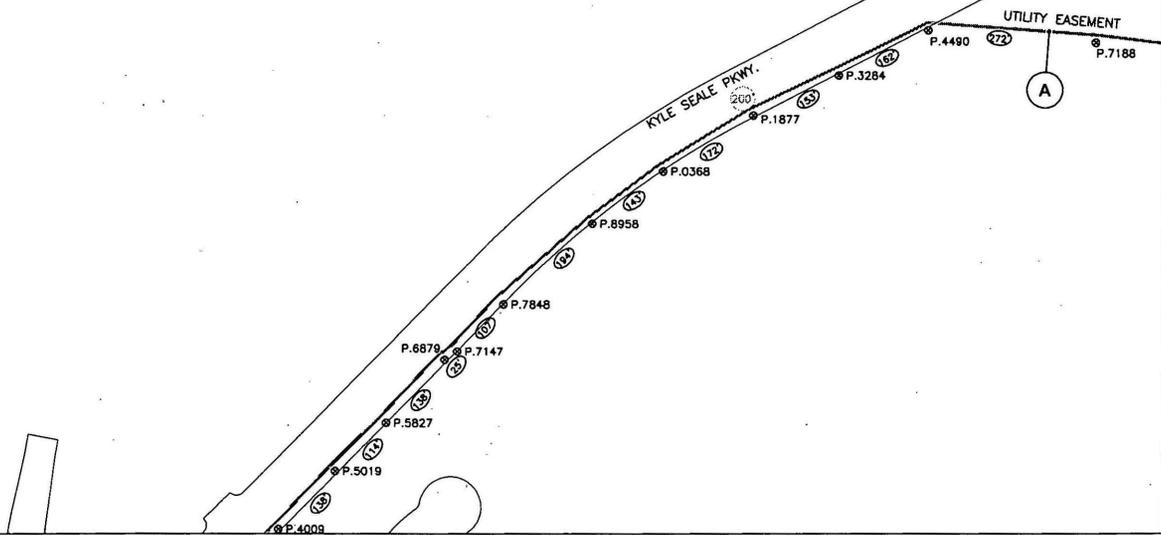
Job Title: Engineering

Engineer: UCS

Date Issued: 08/25/09

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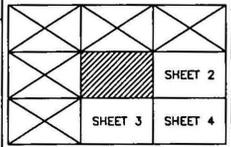
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REVISIONS

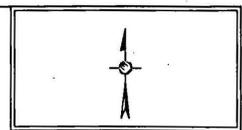
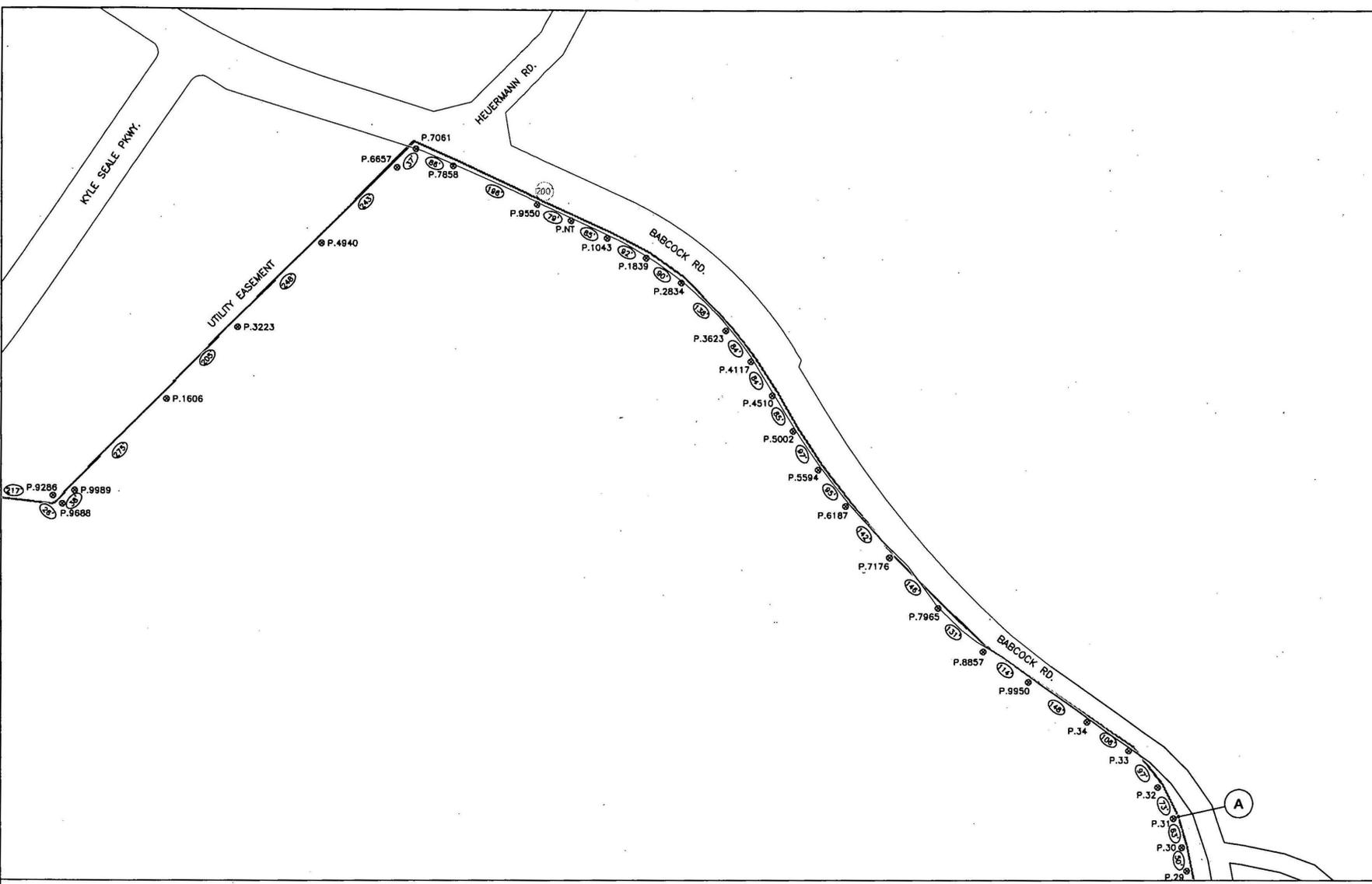
Date	Description	By

PREPARED BY:
UC SYNERGETIC
CONSTRUCTIVE THINKING. ENGINEERED SOLUTIONS.
 603 WEST STREET
 MANSFIELD, MA 02048
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Sheet Number: 1 OF 18

PRELIMINARY
08/25/09



SCALE: 1" = 200'



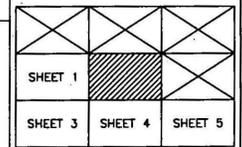
Location: SAN ANTONIO, TX
 Project #: 39250
 Job Title: Engineering
 Engineer: UCS
 Date issued: 08/25/09

- LEGEND:**
- ⊗ POLE
 - ⌢ SPAN
 - ⊕ ATC POLE NODE
 - ⊙ WOOD POLE NODE
 - AERIAL PATHWAY
 - - - BURIED PATHWAY
 - (H) HUB LOCATION
 - (X) SLACK LOOP / MAINT. COIL

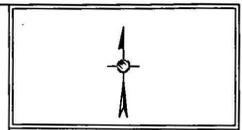
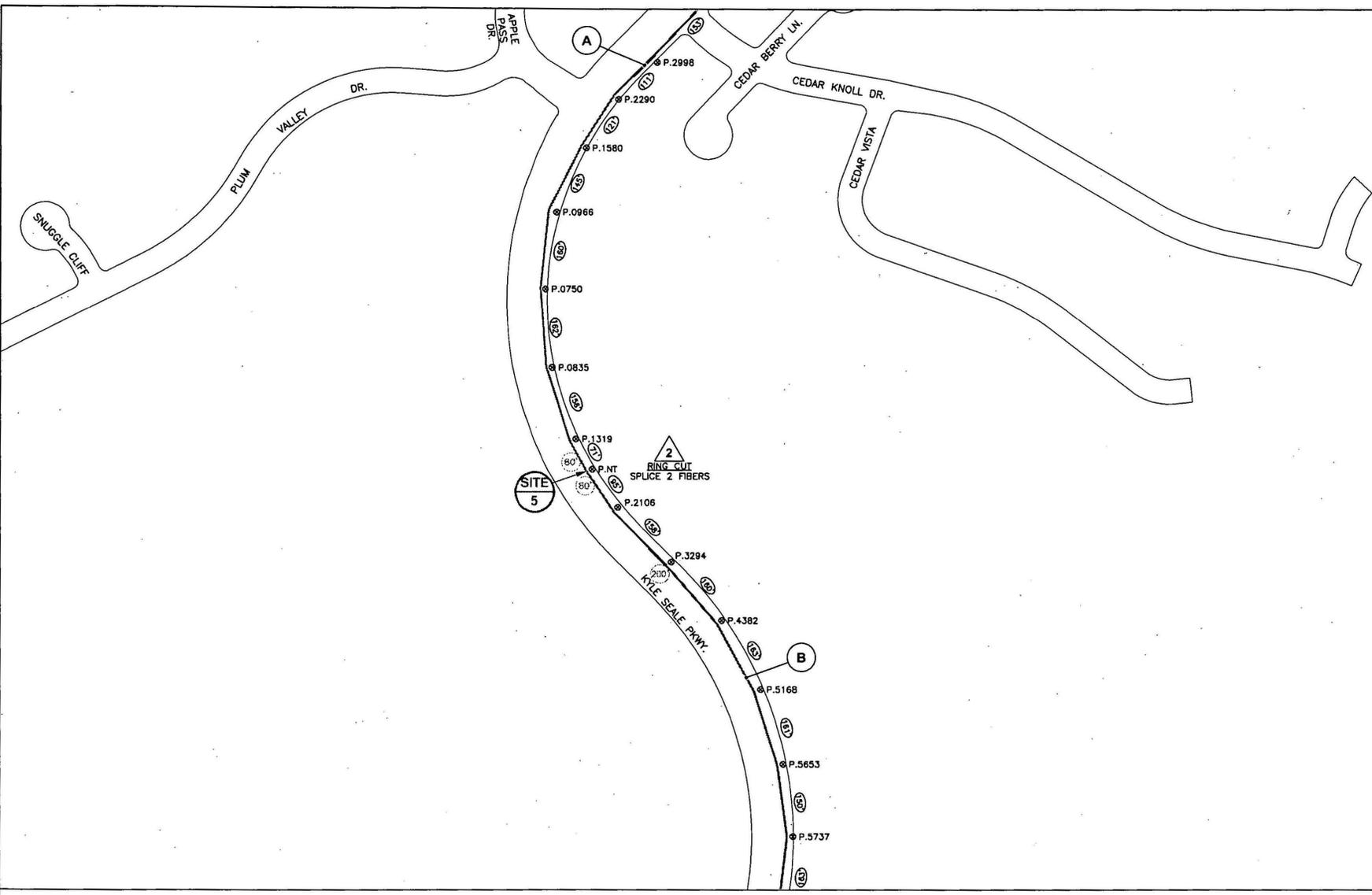
REVISIONS

Date	Description	By

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PRELIMINARY
08/25/09



SCALE: 1" = 200'

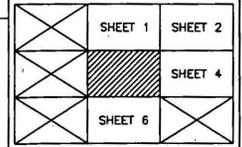


Location: SAN ANTONIO, TX
 Project #: 39250
 Job Title: Engineering
 Engineer: UCS
 Date issued: 08/25/09

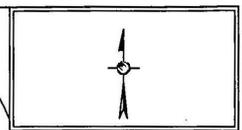
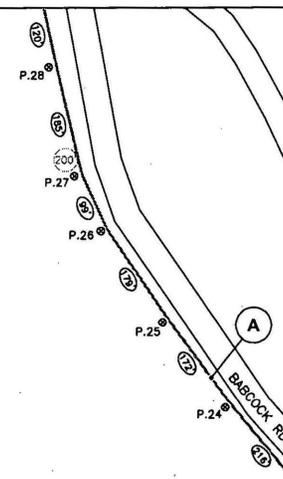
- LEGEND:
- POLE
 - SPAN
 - ATC POLE NODE
 - WOOD POLE NODE
 - AERIAL PATHWAY
 - BURIED PATHWAY
 - HUB LOCATION
 - SLACK LOOP / MAINT. COIL

REVISIONS		
Date	Description	By

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PRELIMINARY
08/25/09



SCALE: 1" = 200'



Location: SAN ANTONIO, TX
 Project #: 39250
 Job Title: Engineering
 Engineer: UCS
 Date issued: 08/25/09

- LEGEND:
- POLE
 - SPAN
 - ATC POLE NODE
 - WOOD POLE NODE
 - AERIAL PATHWAY
 - BURIED PATHWAY
 - HUB LOCATION
 - SLACK LOOP / MAINT. COIL

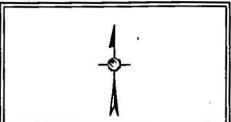
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Date	Description	By

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SHEET 1	SHEET 2	X
SHEET 3		SHEET 5
SHEET 6	X	X

Sheet Number: 4 OF 18

PRELIMINARY
08/25/09



SCALE: 1" = 200'



Location: SAN ANTONIO, TX

Project #: 39250

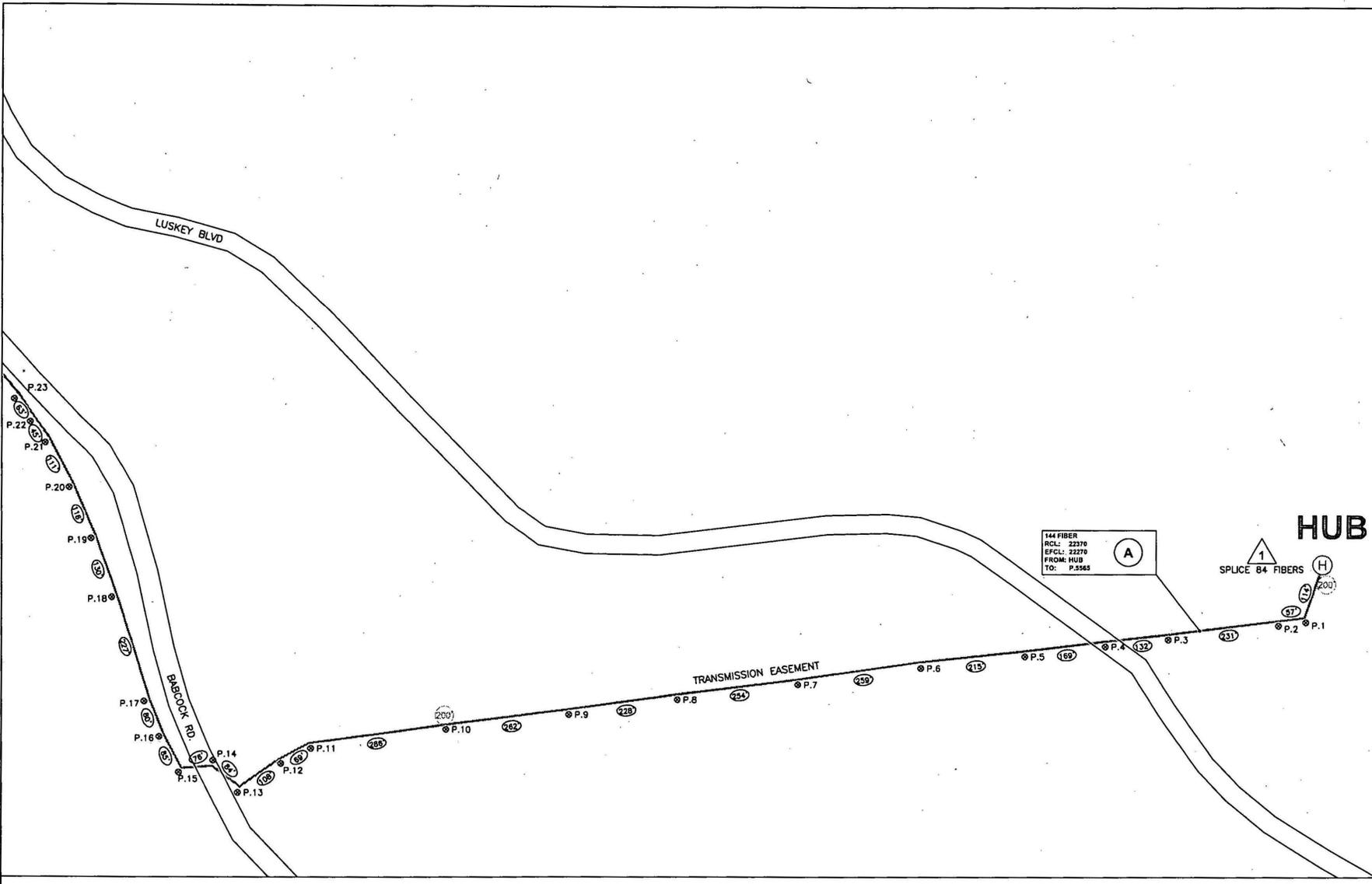
Job Title: Engineering

Engineer: UCS

Date issued: 08/25/09

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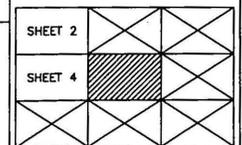
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- SPAN
- ATC POLE NODE
- WOOD POLE NODE
- AERIAL PATHWAY
- BURIED PATHWAY
- HUB LOCATION
- SLACK LOOP / MAINT. COIL



REVISIONS

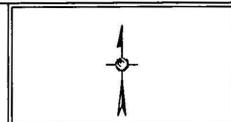
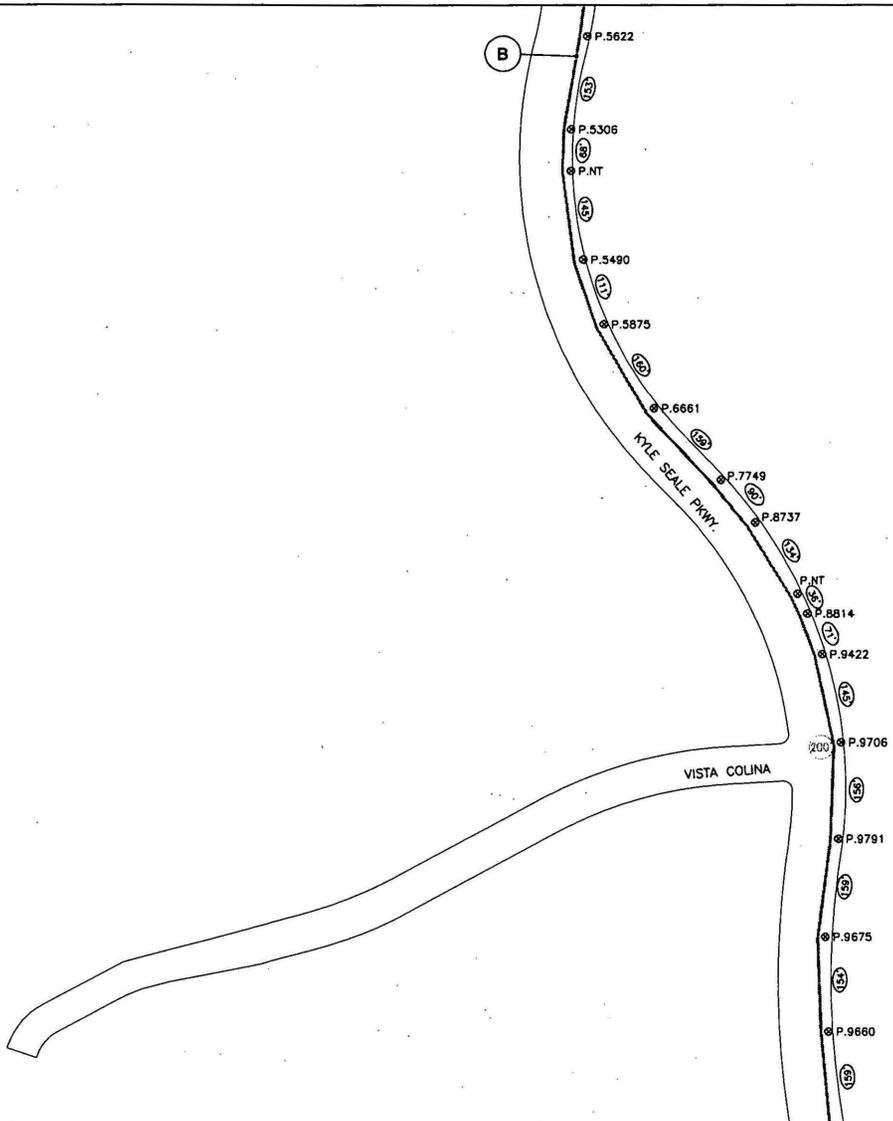
Date	Description	By

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Sheet Number: 5 OF 18

PRELIMINARY
08/25/09



SCALE: 1" = 200'

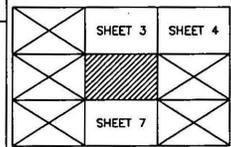


Location: SAN ANTONIO, TX
 Project #: 39250
 Job Title: Engineering
 Engineer: UCS
 Date issued: 08/25/09

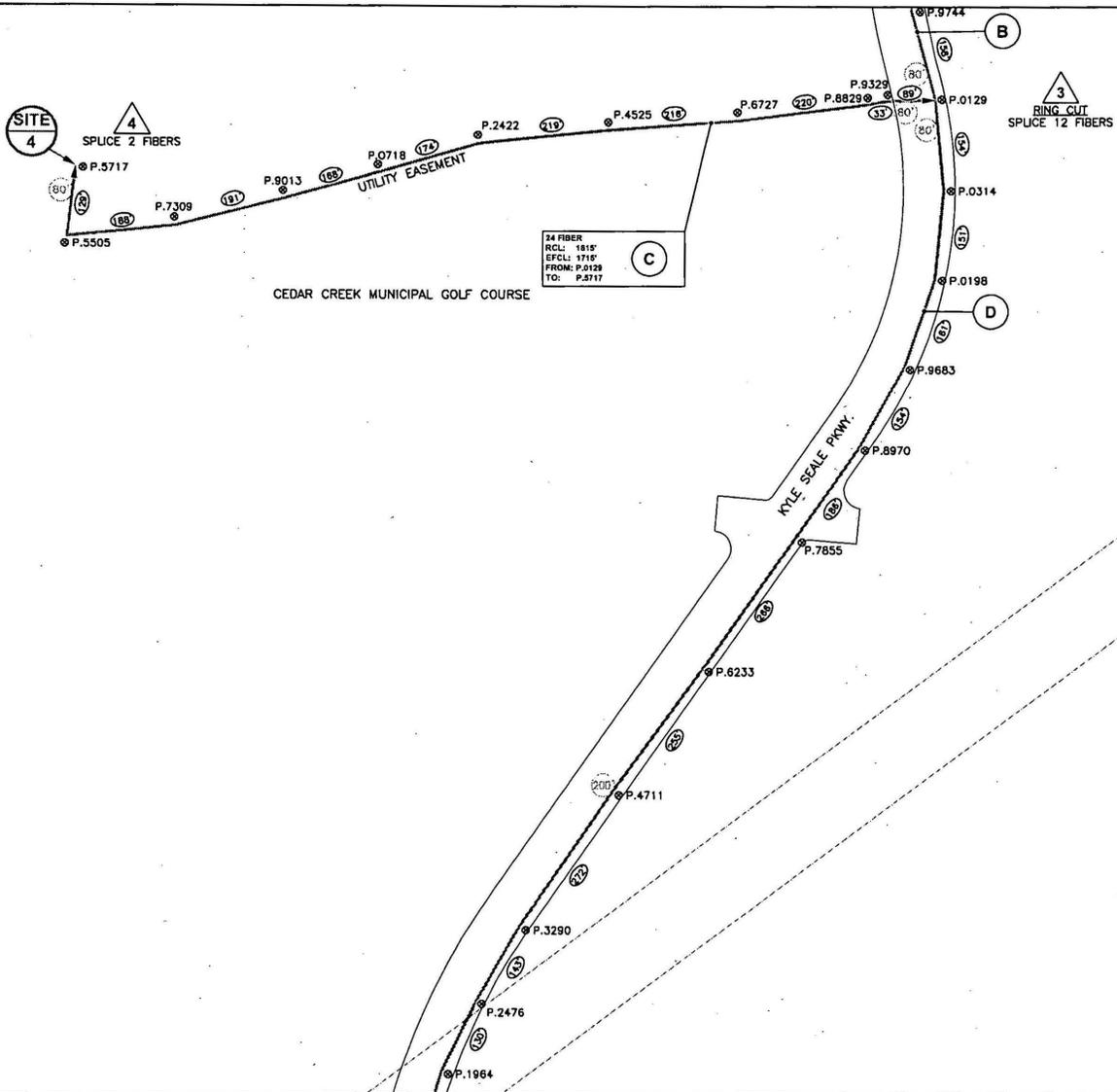
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 - SPAN
 - ATC POLE NODE
 - WOOD POLE NODE
 - AERIAL PATHWAY
 - BURIED PATHWAY
 - HUB LOCATION
 - SLACK LOOP / MAINT. COIL

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PRELIMINARY
08/25/09



24 FIBER
 RCL: 1815'
 EFCL: 1715'
 FROM: P.0129
 TO: P.5717

CEDAR CREEK MUNICIPAL GOLF COURSE

KYLE SCALE PKWY.



SCALE: 1" = 200'

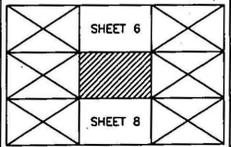


Location: SAN ANTONIO, TX
 Project #: 3925D
 Job Title: Engineering
 Engineer: UCS
 Date Issued: 08/25/09

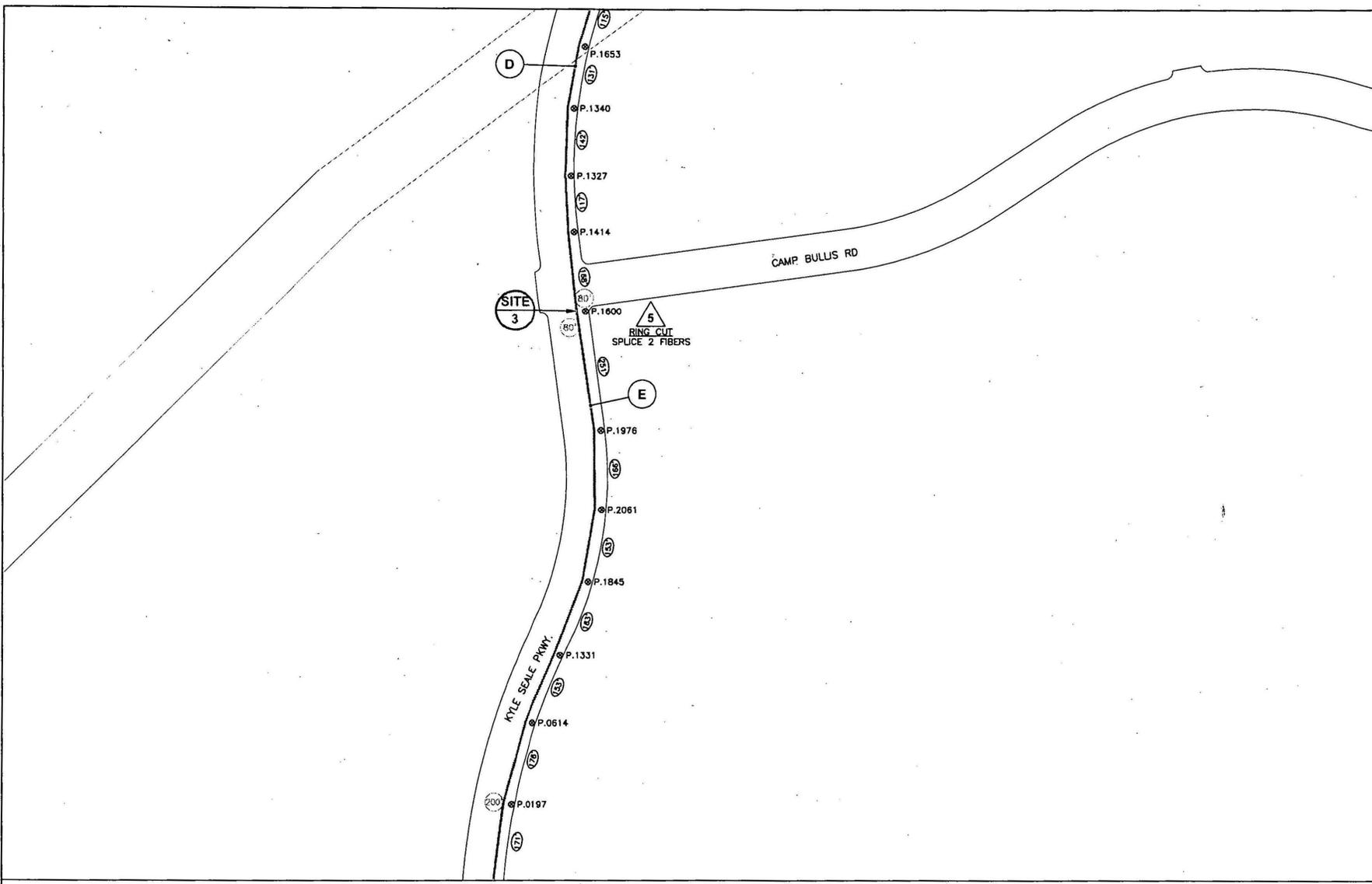
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 - ⊖ SPAN
 - △ ATC POLE NODE
 - ⊕ WOOD POLE NODE
 - AERIAL PATHWAY
 - - - BURIED PATHWAY
 - ⊙ HUB LOCATION
 - ⊗ SLACK LOOP / MAINT. COIL

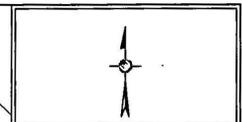
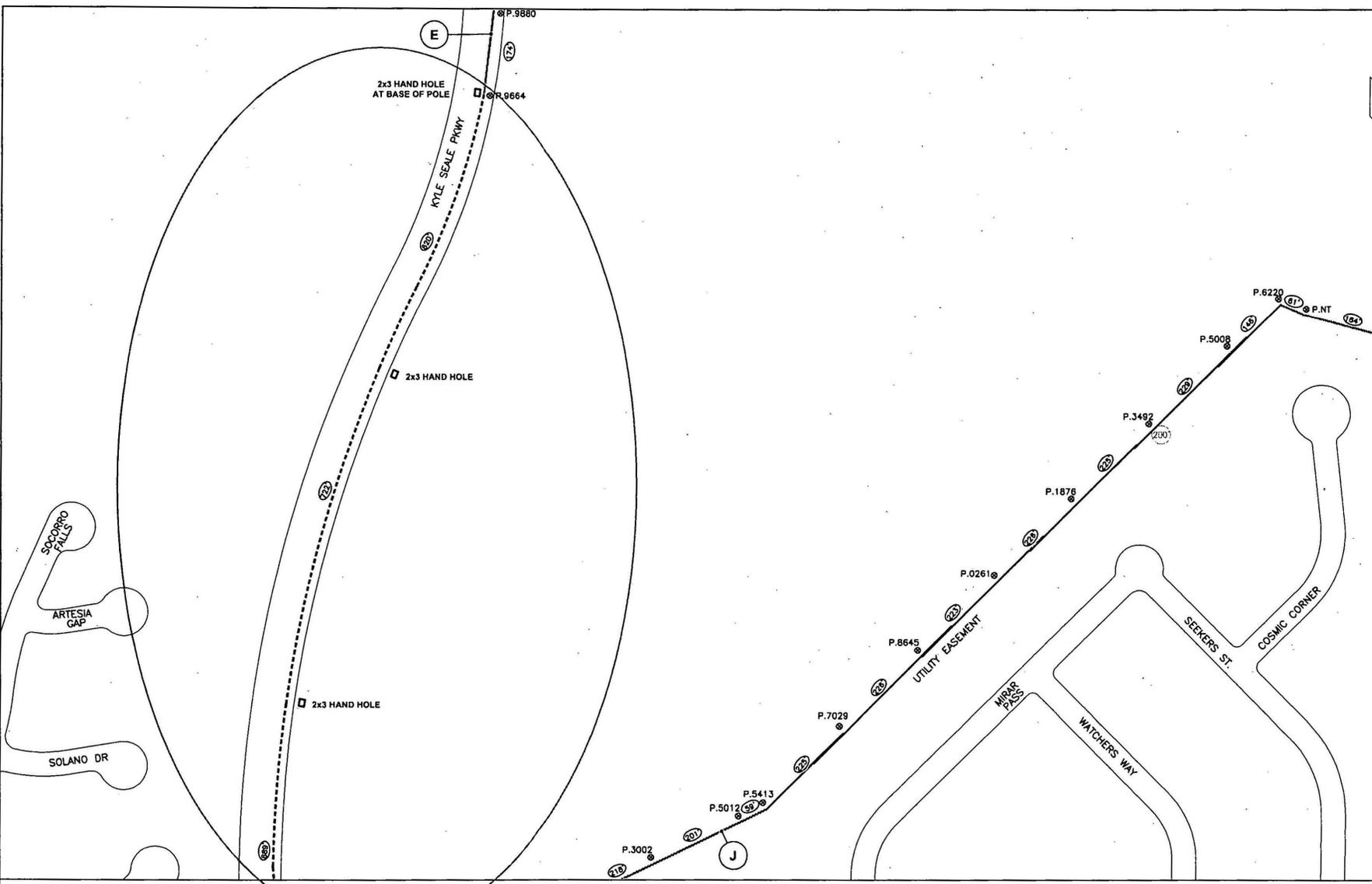
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PRELIMINARY
08/25/09





SCALE: 1" = 200'



Location: SAN ANTONIO, TX
 Project #: 39250
 Job Title: Engineering
 Engineer: UCS
 Date Issued: 08/25/09

- LEGEND:**
- POLE
 - SPAN
 - ATC POLE NODE
 - WOOD POLE NODE
 - AERIAL PATHWAY
 - BURIED PATHWAY
 - HUB LOCATION
 - SLACK LOOP / MAINT. COIL

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	SHEET 8	
		SHEET 10
SHEET 11	SHEET 12	SHEET 13

PRELIMINARY
08/25/09



SCALE: 1" = 200'



Location: SAN ANTONIO, TX

Project #: 39250

Job Title: Engineering

Engineer: UCS

Date Issued: 08/25/09

LEGEND:

- POLE
- SPAN
- ATC POLE NODE
- WOOD POLE NODE
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- BURIED PATHWAY
- HUB LOCATION
- SLACK LOOP / MAINT. COIL

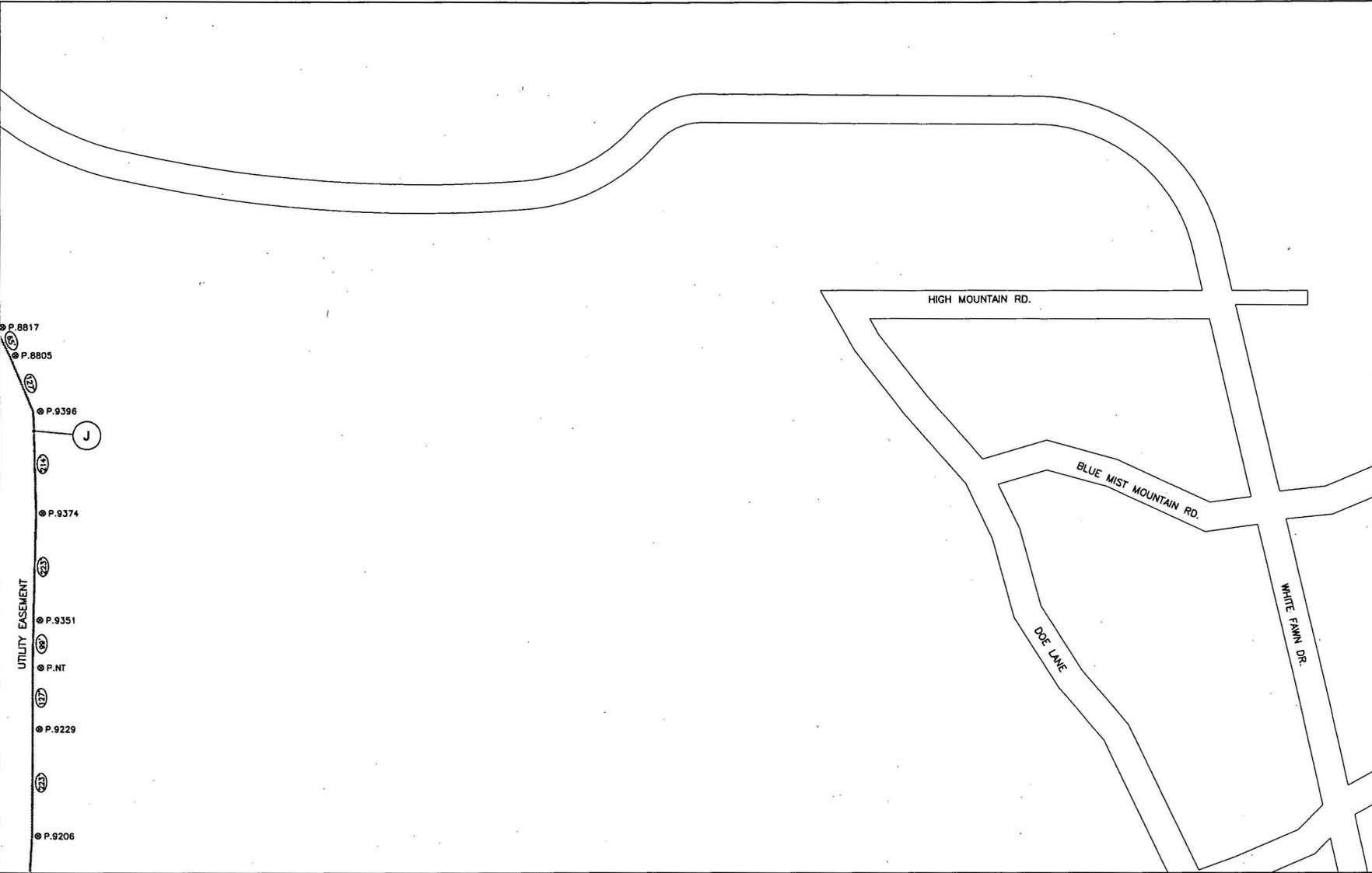
REVISIONS		
Date	Description	By

PREPARED BY:

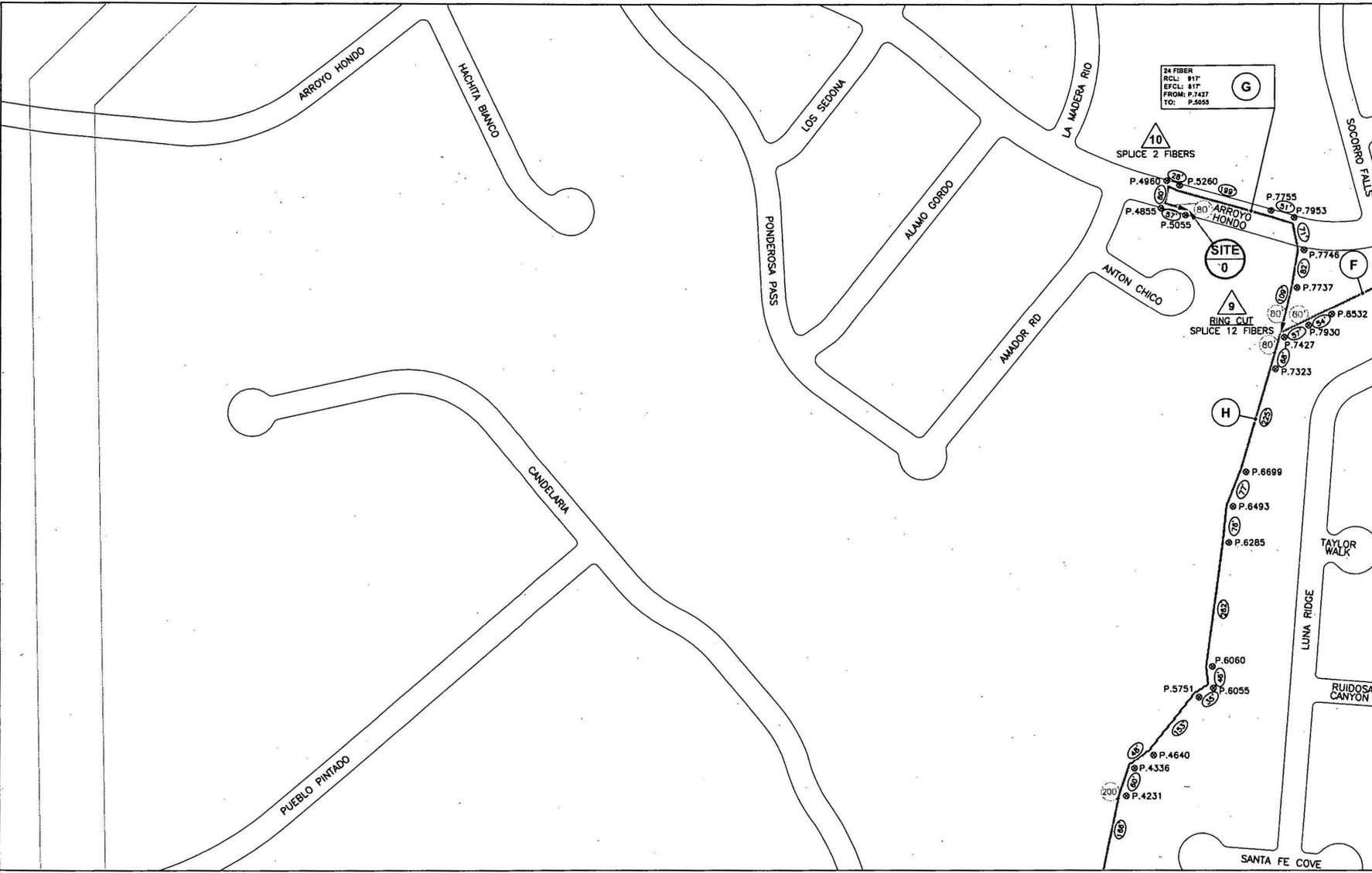
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 MANSFIELD, MA 02048
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SHEET 9		SHEET 13
SHEET 12	SHEET 13	

Sheet Number: 10 OF 18



PRELIMINARY
08/25/09



SCALE: 1" = 200'



Location: SAN ANTONIO, TX
 Project #: 39250
 Job Title: Engineering
 Engineer: UCS
 Date issued: 08/25/09

- LEGEND:
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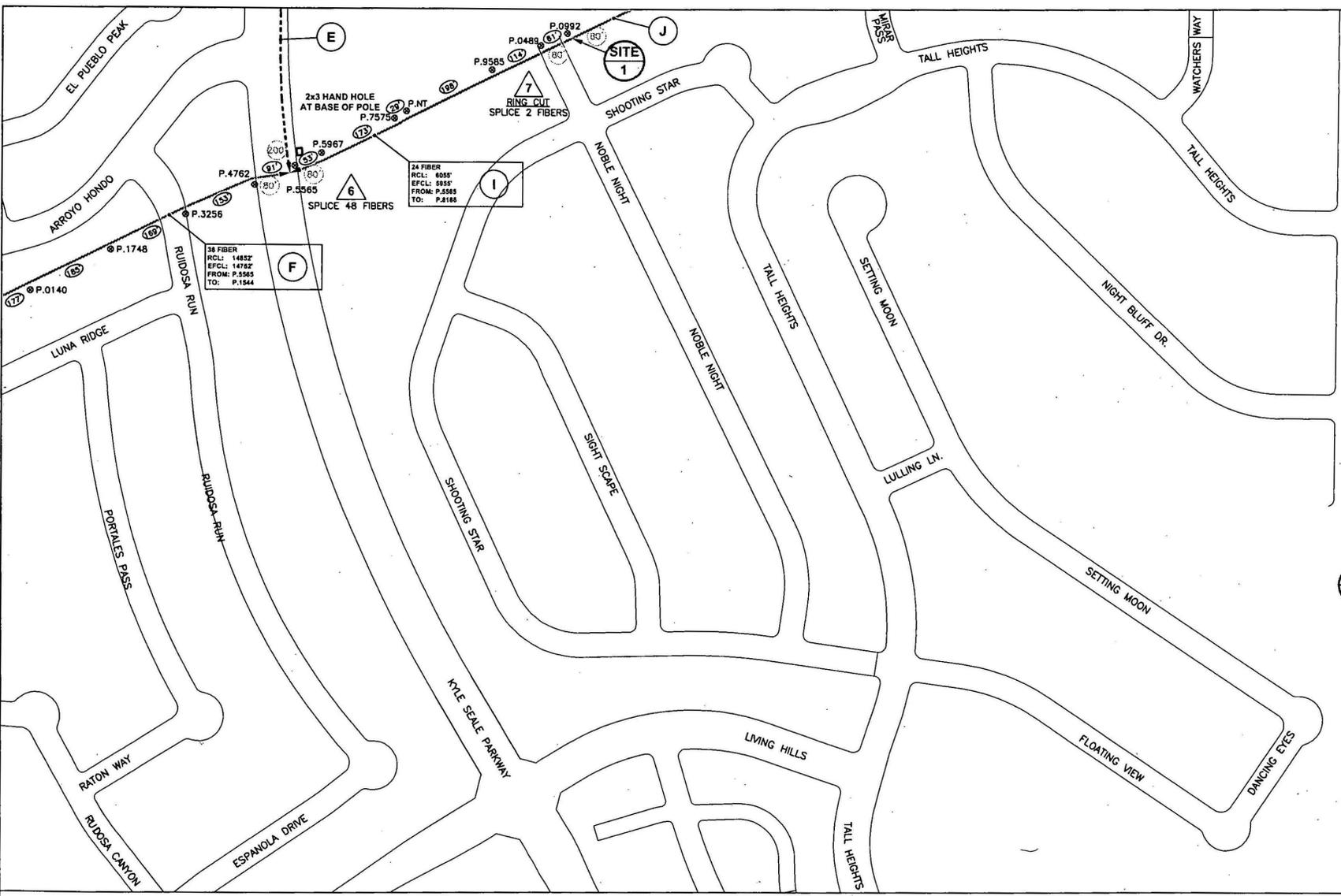
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Date	Description	By

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	SHEET 9
	SHEET 12
	SHEET 14
	SHEET 15

Sheet Number: 11 OF 18

PRELIMINARY
08/25/09





SCALE: 1" = 200'



Location: SAN ANTONIO, TX
 Project #: 39250
 Job Title: Engineering
 Engineer: UCS
 Date issued: 08/25/09

LEGEND:

- POLE
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- WOOD POLE NODE
- AERIAL PATHWAY
- BURIED PATHWAY
- HUB LOCATION
- SLACK LOOP / MAINT. COIL

P.8186
SITE 2
J

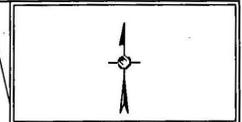
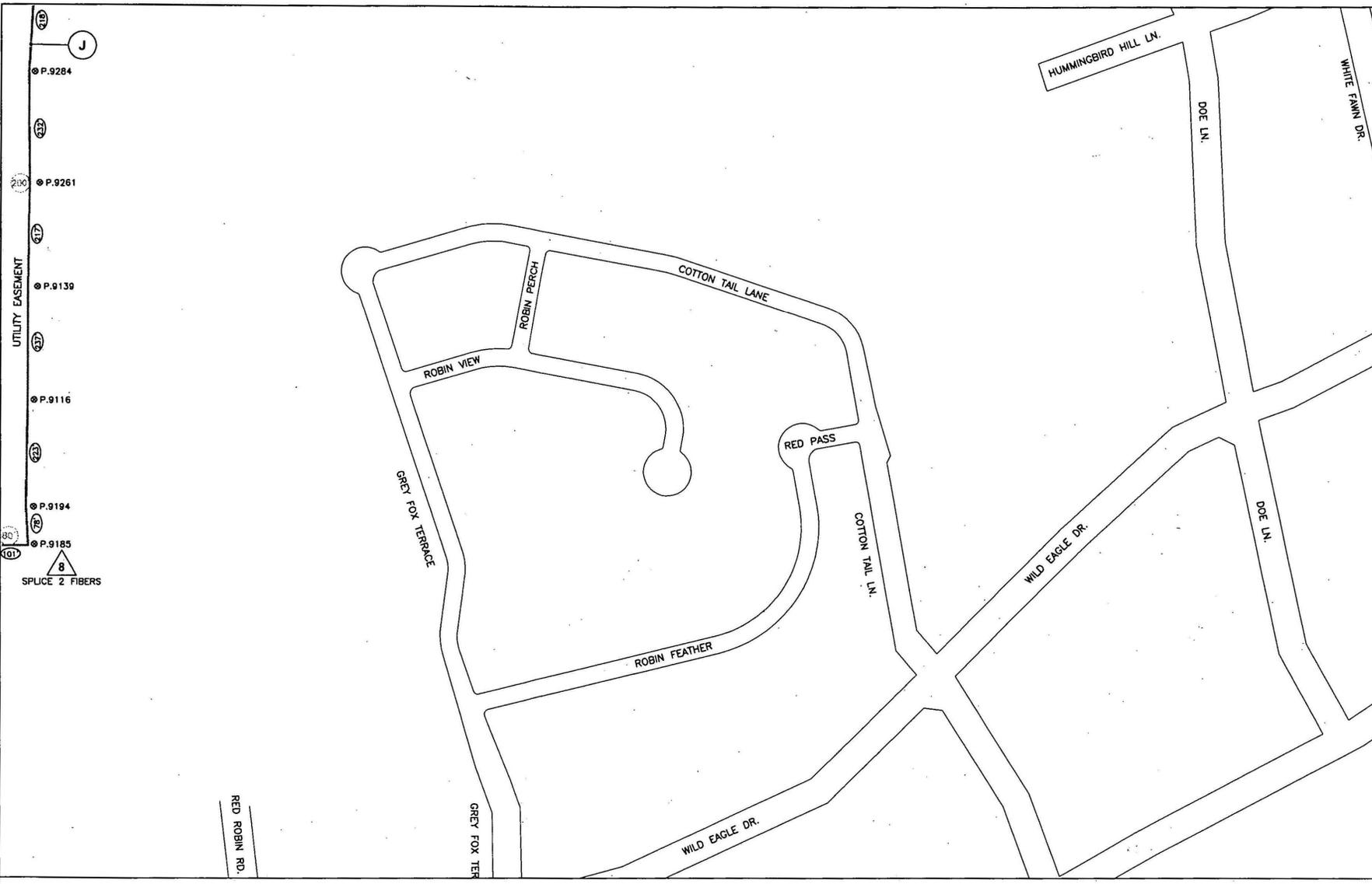
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SHEET 11	X	SHEET 13	X
SHEET 14	SHEET 15	X	X

Sheet Number: 12 OF 18

PRELIMINARY
08/25/09



SCALE: 1" = 200'



Location: SAN ANTONIO, TX
 Project #: 39250
 Job Title: Engineering
 Engineer: UCS
 Date Issued: 08/25/09

- LEGEND:**
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 - WOOD POLE NODE
 - AERIAL PATHWAY
 - BURIED PATHWAY
 - HUB LOCATION
 - SLACK LOOP / MAINT. COIL

REVISIONS

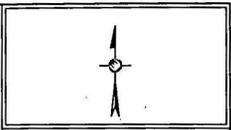
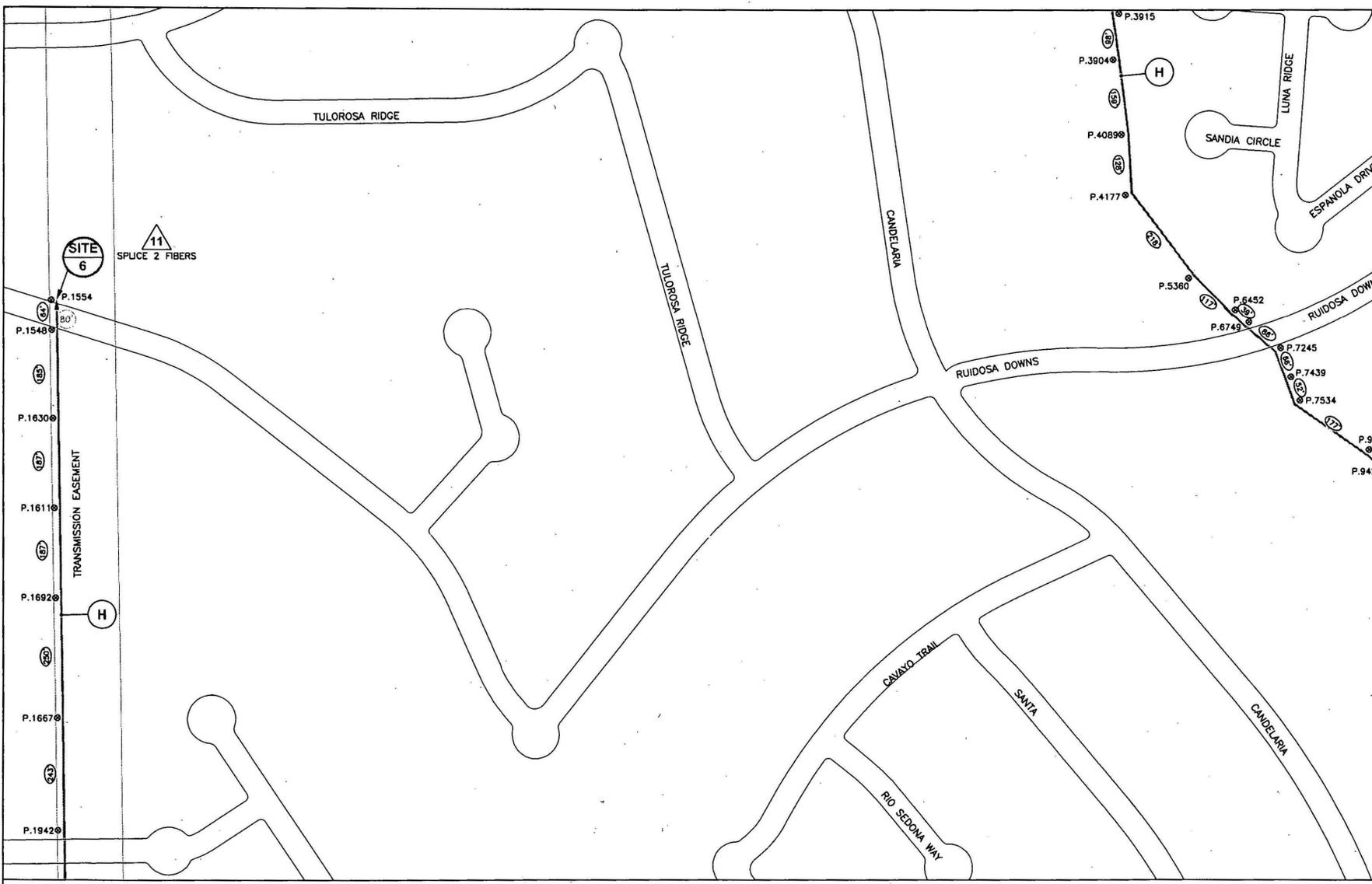
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SHEET 9	SHEET 10	
SHEET 12		
SHEET 15		

Sheet Number: 13 OF 18

PRELIMINARY
08/25/09



SCALE: 1" = 200'



Location: SAN ANTONIO, TX
 Project #: 39250
 Job Title: Engineering
 Engineer: UCS
 Date Issued: 08/25/09

- LEGEND:**
- POLE
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 - ATC POLE NODE
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 - AERIAL PATHWAY
 - BURIED PATHWAY
 - HUB LOCATION
 - SLACK LOOP / MAINT. COIL

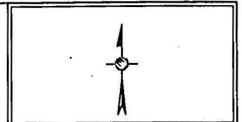
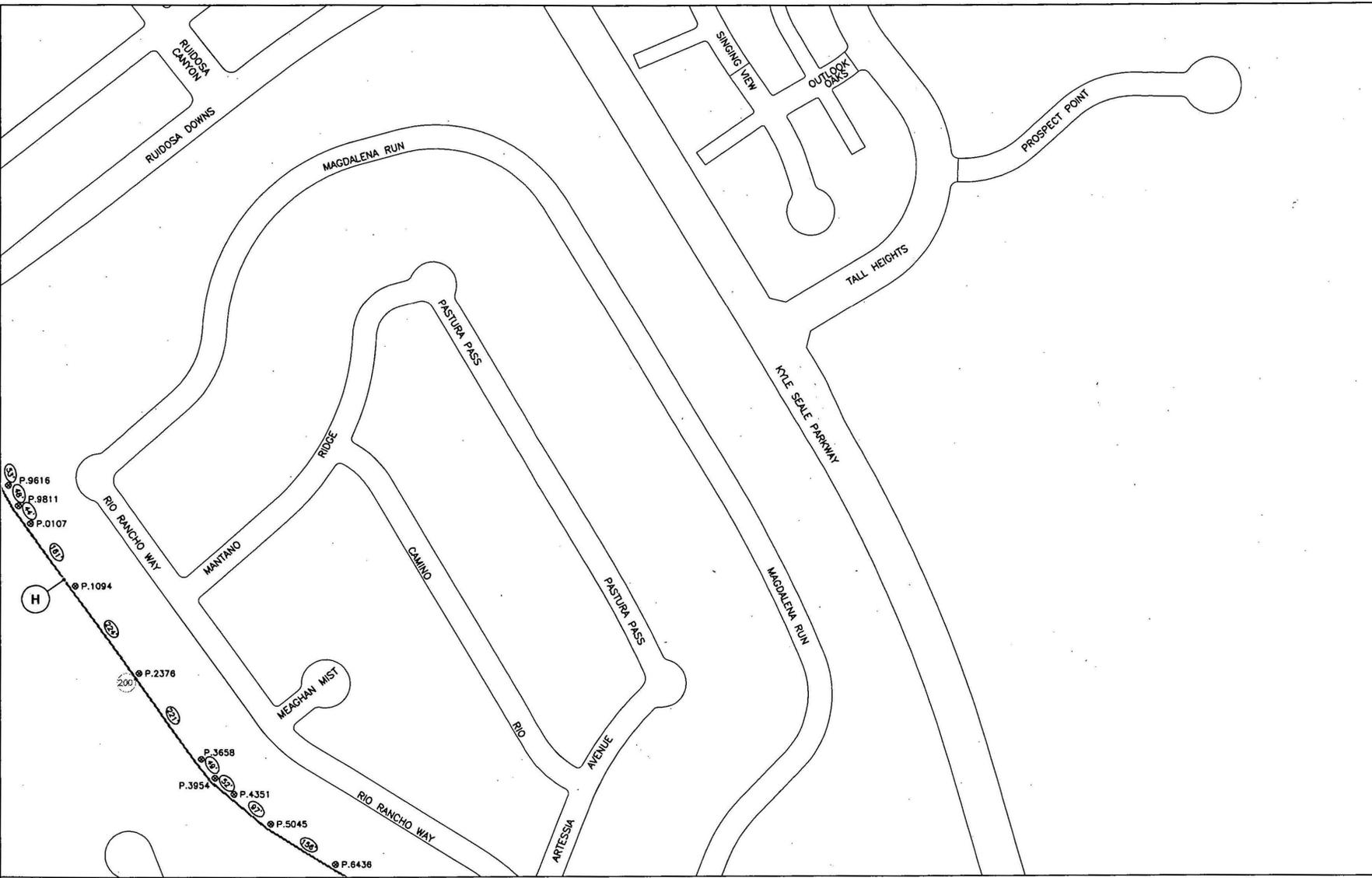
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	SHEET 11	SHEET 12
	SHEET 13	SHEET 15
	SHEET 16	SHEET 17

Sheet Number: 14 OF 18

PRELIMINARY
08/25/09



SCALE: 1" = 200'



Location: SAN ANTONIO, TX
 Project #: 39250
 Job Title: Engineering
 Engineer: UCS
 Date issued: 08/25/09

- LEGEND:**
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 - SPAN
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 - WOOD POLE NODE
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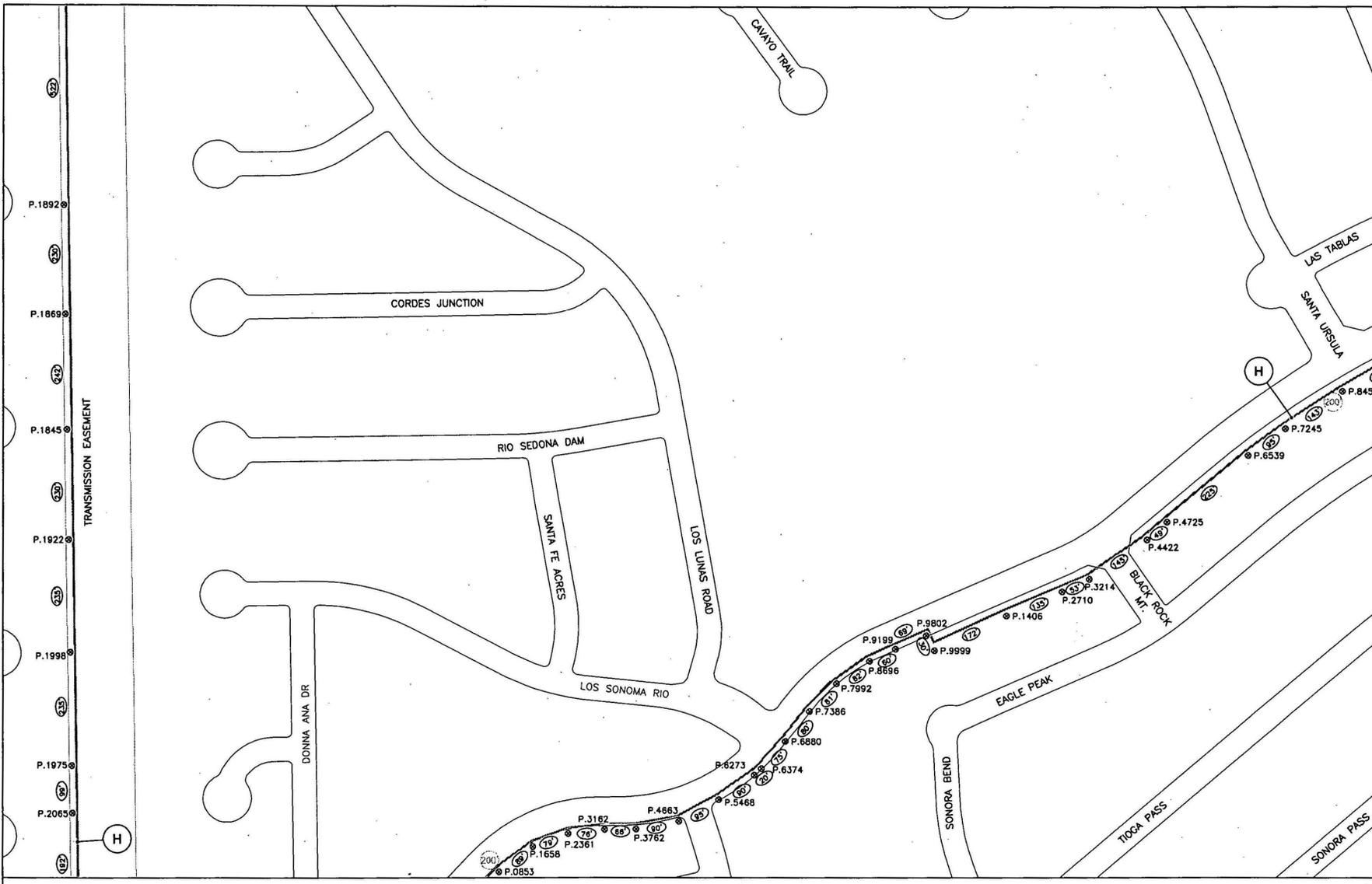
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Date	Description	By

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 MANSFIELD, MA 02048
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SHEET 11	SHEET 12	SHEET 13
SHEET 14		
SHEET 16	SHEET 17	

Sheet Number: 15 OF 18

PRELIMINARY
08/25/09



SCALE: 1" = 200'



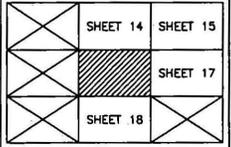
Location: SAN ANTONIO, TX
 Project #: 39250
 Job Title: Engineering
 Engineer: UCS
 Date Issued: 08/25/09

- LEGEND:**
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 - ⊖ SPAN
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 - ⊕ H HUB LOCATION
 - ⊗ SLACK LOOP / MAINT. COIL

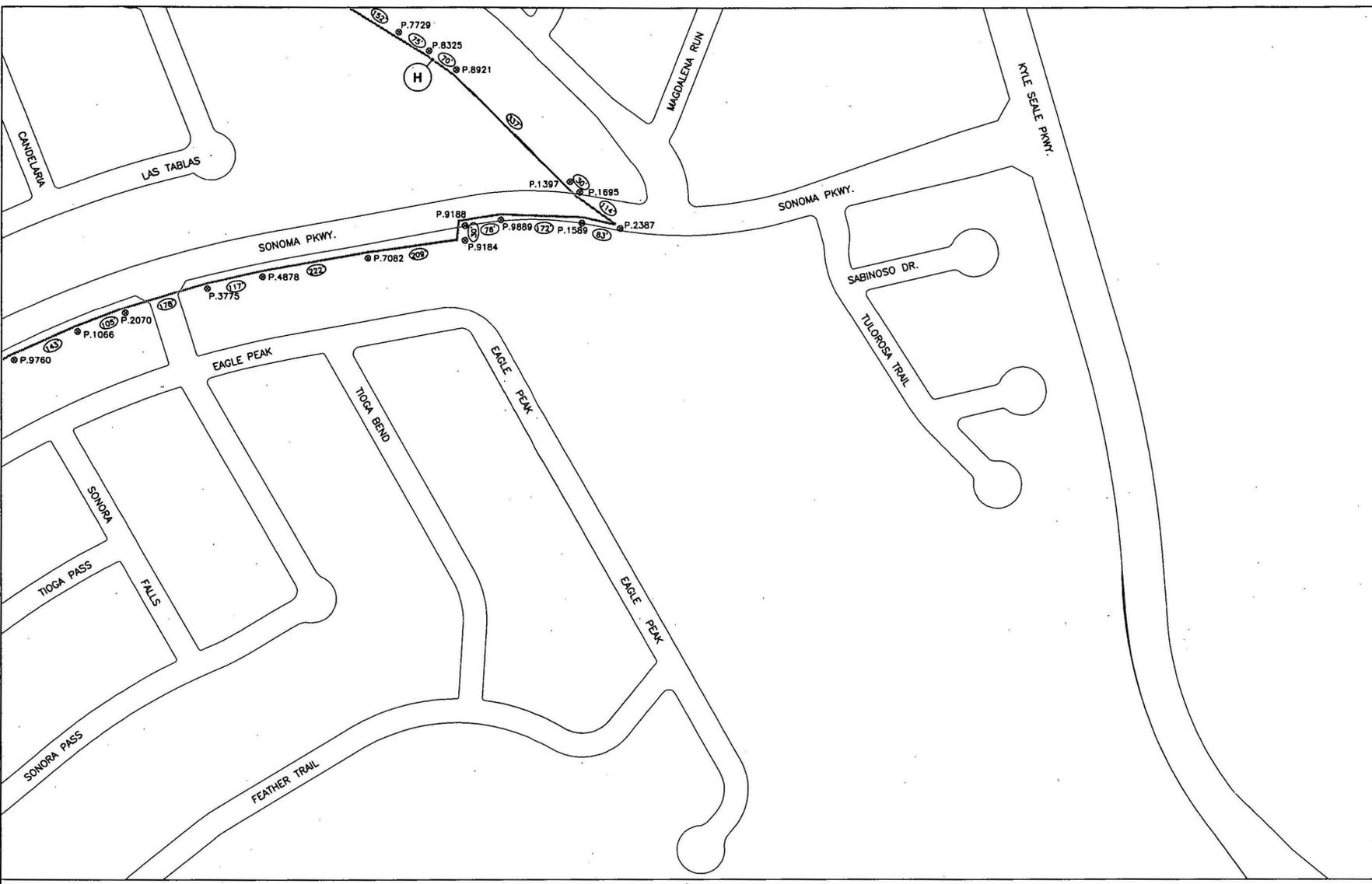
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PRELIMINARY
08/25/09



SCALE: 1" = 200'



Location: SAN ANTONIO, TX
 Project #: 39250
 Job Title: Engineering
 Engineer: UCS
 Date Issued: 08/25/09

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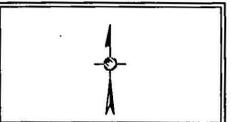
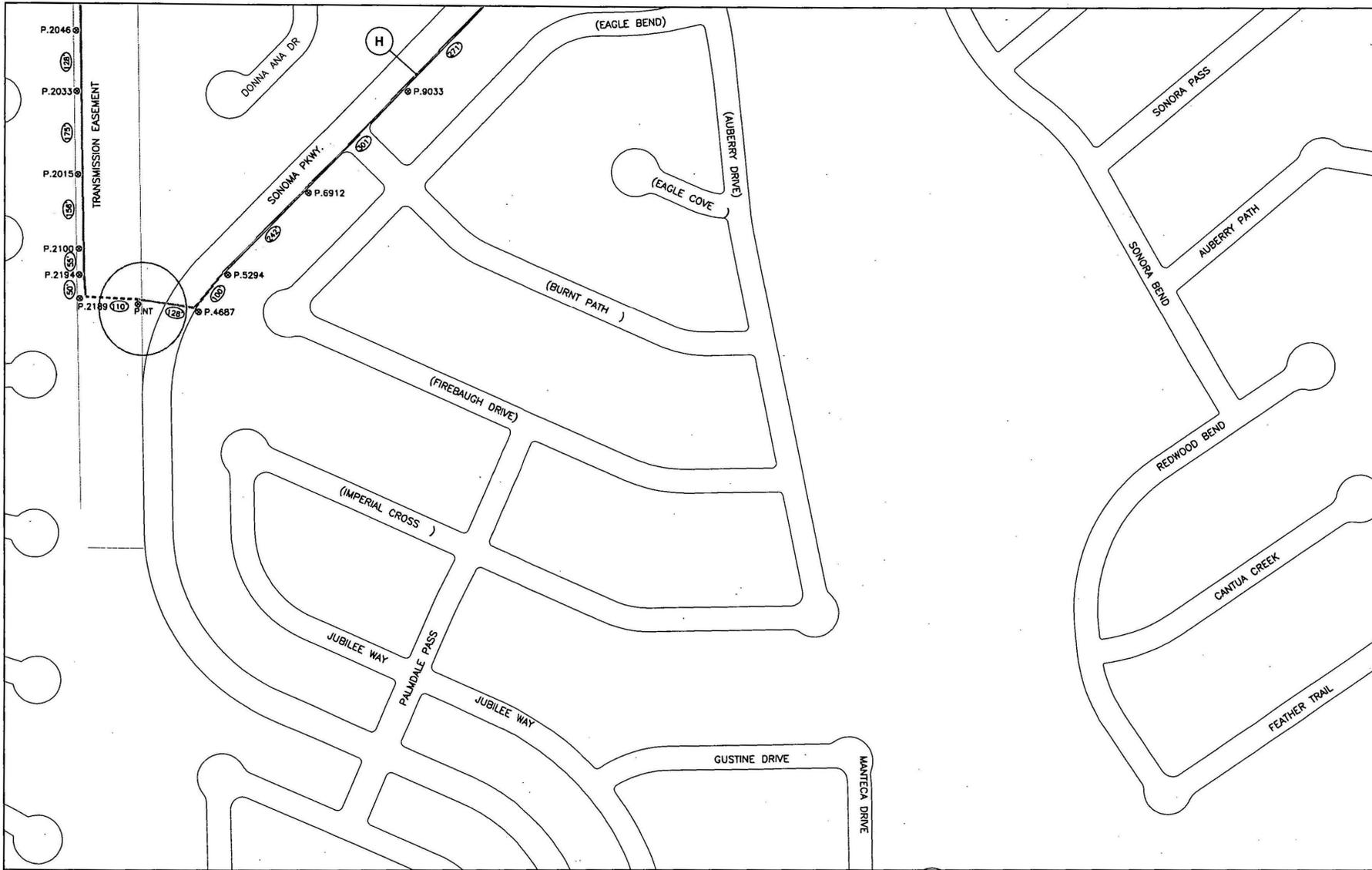
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SHEET 14	SHEET 15	
SHEET 16		
SHEET 18		

Sheet Number: 17 OF 18

PRELIMINARY
08/25/09



SCALE: 1" = 200'



Location: SAN ANTONIO, TX
 Project #: 39250
 Job Title: Engineering
 Engineer: UCS
 Date Issued: 08/25/09

- LEGEND:
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 - AERIAL PATHWAY
 - - - BURIED PATHWAY
 - ⊙ HUB LOCATION
 - ⊗ SLACK LOOP / MAINT. COIL

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X	X	X
X	X	X
X	X	X

Sheet Number: 18 OF 18

PRELIMINARY
08/25/09

EXHIBIT B – ANNUAL REVENUE REPORT

Kyle Seale ATC-City License Agreement – Annual Revenue Report

Gross Revenues Collected by ATC	5% Revenue Share to City	Electric Utility Charges	Property Taxes
\$	\$	\$	\$

Please find attached the following supporting documentation for each category:

Gross Revenue Collected by ATC:

1.

5% Revenue Share to City

1.

Electric Utility Charges:

1.

Property Taxes:

1.

_____(name), _____(title) of ATC
OUTDOOR DAS, LLC certifies that, to his best knowledge and belief, the foregoing
information is true and correct.

Signature

Date

(ADD JURAT)

EXHIBIT C – IRU AGREEMENT