AZJ
01/29/2015
Item No. 10.

AN ORDINANCE 2015-01-29-0061

AUTHORIZING A JOINT USE AGREEMENT WITH GATES REALTY LLC TO USE APPROXIMATELY 0.019 OF AN ACRE OF A CITY DRAINAGE EASEMENT LOCATED AT 2930 MACARTHUR VIEW FOR THE INSTALLATION OF A FENCE AND LANDSCAPING IN COUNCIL DISTRICT 10.

* * * * *

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

SECTION 1. The City Manager and her designee, severally, are authorized and directed to grant a joint use agreement for installation of a fence and landscaping on approximately 0.019 of an acre of city drainage easement located at 2930 MacArthur View, as shown in **Attachment I**, in City Council District 10 for a $500 fee. In furtherance of the preceding, the City Council authorizes and directs the City Manager or her designee, severally, to execute and deliver on behalf of the City a Joint Use Agreement substantially in the form attached as **Attachment II**, which is incorporated into this ordinance by reference for all purposes as if it were fully set forth. The City Manager and her designee, severally, should take all other actions reasonably necessary or convenient to effectuate the transaction described in Attachment II, including agreeing to nonmaterial changes to its terms and executing and delivering ancillary documents and instruments conducive to effectuating the transaction.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 256000000002 and General Ledger 4202410.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

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

PASSED AND APPROVED this **29th** day of **January, 2015**.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek

Leticia M. Vacek, City Clerk

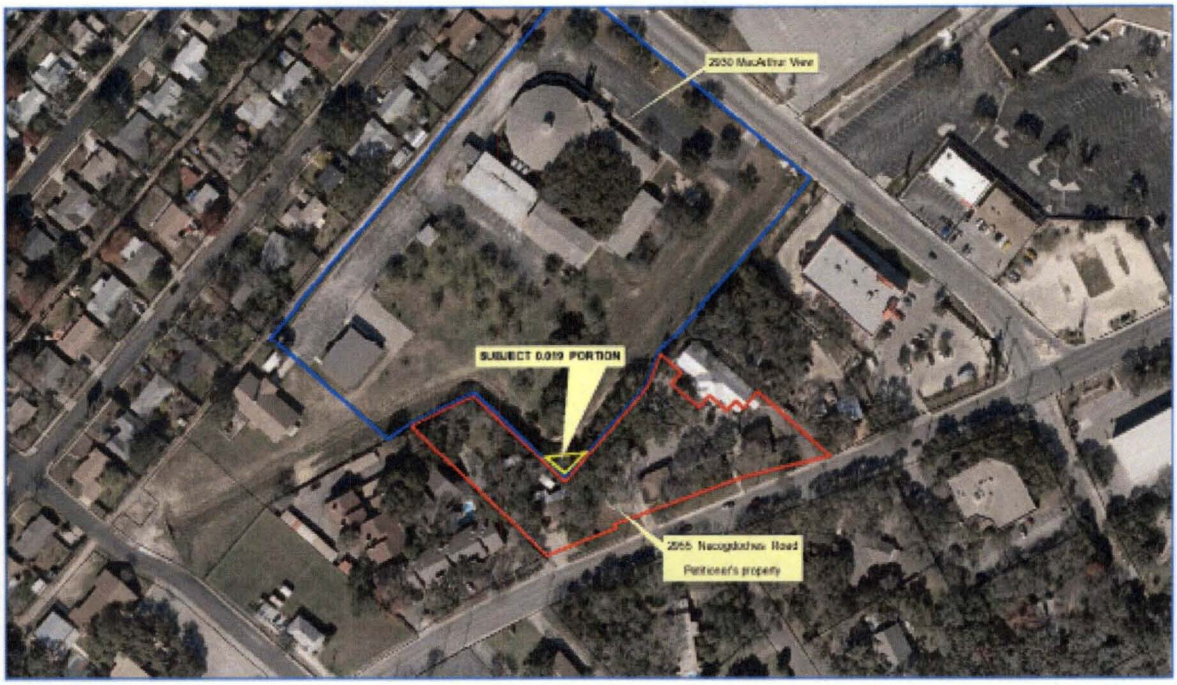
APPROVED AS TO FORM:

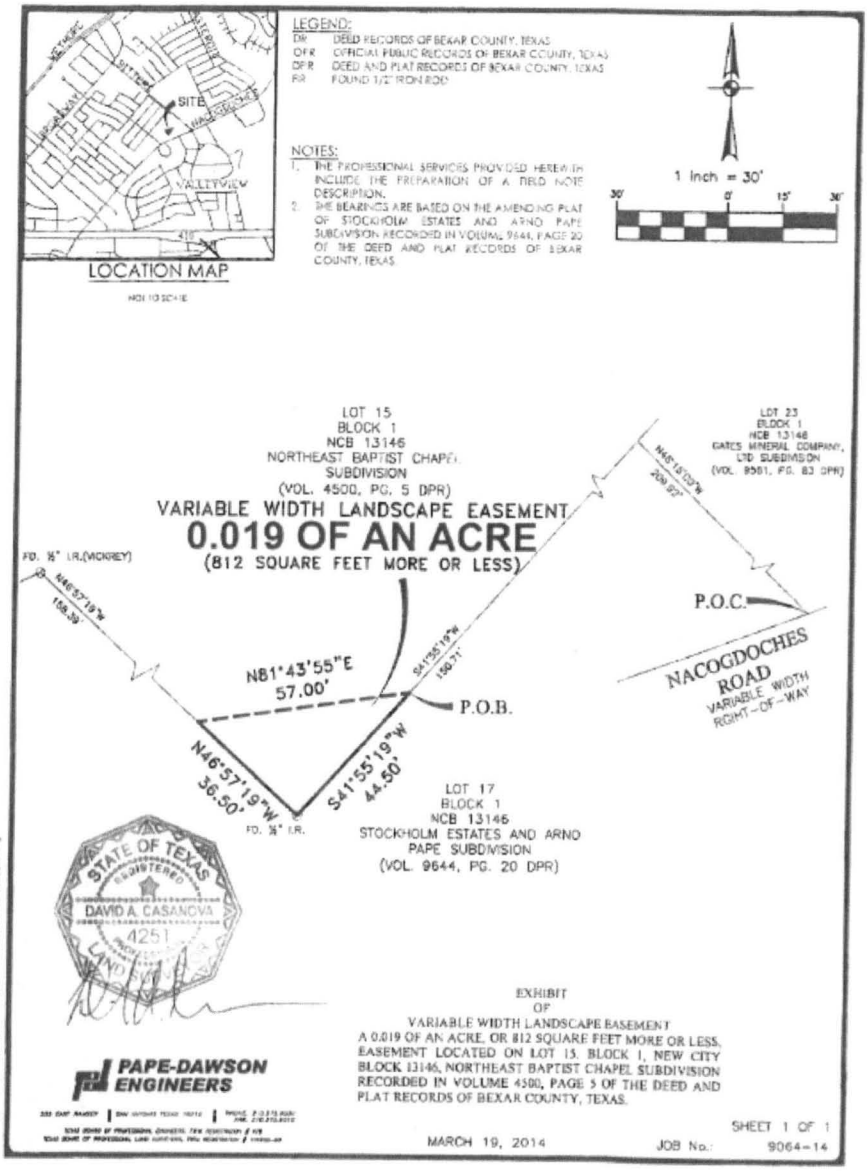
Martha G. Sepeda, Acting City Attorney

Agenda Item:	**10 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 27)**
Date:	01/29/2015
Time:	11:23:36 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a Joint Use Agreement with Gates Realty LLC to use 0.019 of an acre of a public drainage easement located at 2930 MacArthur View in Council District 10 for the construction of a fence and landscaping. [Peter Zanoni, Deputy City Manager; Mike Etienne, Director, EastPoint & Real Estate Services Office]
Result:	Passed

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

Attachment I




LEGEND:
DR DEED RECORDS OF BEXAR COUNTY, TEXAS
OPR OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS
DPR DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS
FR FOUND 1/2" IRON ROD
NOTES:
1. THE PROFESSIONAL SERVICES PROVIDED HEREWITH INCLUDE THE PREPARATION OF A FIELD NOTE DESCRIPTION.
2. THE BEARINGS ARE BASED ON THE AMENDING PLAT OF STOCKHOLM ESTATES AND ARNO PAPE SUBDIVISION RECORDED IN VOLUME 9644, PAGE 20 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS.
1 inch = 30'
30' 0' 15' 30'
SITE
VALLEYVIEW
LOCATION MAP
NOT TO SCALE
LOT 15
BLOCK 1
NCB 13146
NORTHEAST BAPTIST CHAPEL SUBDIVISION
(VOL. 4500, PG. 5 DPR)
VARIABLE WIDTH LANDSCAPE EASEMENT
0.019 OF AN ACRE
(812 SQUARE FEET MORE OR LESS)
LOT 23
BLOCK 1
NCB 13146
GATES MINERAL COMPANY, LTD SUBDIVISION
(VOL. 9581, PG. 83 DPR)
N45°15'03"W
209.92'
FD. ½" I.R.(MCKREY)
N46°57'19"W
158.39'
N81°43'55"E
57.00'
S41°55'19"W
150.71'
P.O.B.
P.O.C.
NACOGDOCHES ROAD
VARIABLE WIDTH RIGHT-OF-WAY
N46°57'19"W
36.50'
S41°55'19"W
44.50'
FD. ½" I.R.
LOT 17
BLOCK 1
NCB 13146
STOCKHOLM ESTATES AND ARNO PAPE SUBDIVISION
(VOL. 9644, PG. 20 DPR)
STATE OF TEXAS
REGISTERED
DAVID A. CASANOVA
4251
LAND SURVEYOR
EXHIBIT
OF
VARIABLE WIDTH LANDSCAPE EASEMENT
A 0.019 OF AN ACRE, OR 812 SQUARE FEET MORE OR LESS, EASEMENT LOCATED ON LOT 15, BLOCK 1, NEW CITY BLOCK 13146, NORTHEAST BAPTIST CHAPEL SUBDIVISION RECORDED IN VOLUME 4500, PAGE 5 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS.
PAPE-DAWSON ENGINEERS
MARCH 19, 2014
JOB No.: 9064-14
SHEET 1 OF 1

PAPE-DAWSON ENGINEERS

LAND DEVELOPMENT ENVIRONMENTAL TRANSPORTATION WATER RESOURCES SURVEYING

FIELD NOTES
FOR
VARIABLE WIDTH LANDSCAPE EASEMENT

A 0.019 of an acre, or 812 square feet more or less, easement located on Lot 15, Block 1, New City Block 13146, Northeast Baptist Chapel Subdivision recorded in Volume 4500, Page 5 of the Deed and Plat Records of Bexar County, Texas. Said 0.019 of an acre easement being more fully described as follows, with bearings based on the Amending Plat of Stockholm Estates and Arno Pape Subdivision recorded in Volume 9644, Page 20 of the Deed and Plat Records of Bexar County, Texas:

COMMENCING: At a point on the northwest right-of-way line of Nacogdoches Road, a variable width right-of-way, the southwest corner of Lot 23, Block 1, Gates Mineral Company, Ltd. Subdivision recorded in Volume 9561, Page 83 of the Deed and Plat Records of Bexar County, Texas, the southeast corner of Lot 17, Block 1 of said Stockholm Estates and Arno Pape Subdivision;

THENCE: N 46°15'00" W, departing the northwest right-of-way line of said Nacogdoches Road, along and with the west line of said Lot 23, the east line of said Lot 17, a distance of 209.92 feet to the northwest corner of said Lot 23, the northeast corner of said Lot 17, on the south line of said Lot 15;

THENCE: S 41°55'19" W, along and with a northwest line of said Lot 17, the southeast line of said Lot 15, a distance of 150.71 feet to the POINT OF BEGINNING of the herein described easement;

THENCE: S 41°55'19" W, continuing along and with a northwest line of said Lot 17, the southeast line of said Lot 15, a distance of 44.50 feet to a found ½" iron rod, being the southeast corner of said Lot 15, and a reentrant corner of said Lot 17;

THENCE: N 46°57'19" W, along and with a southwest line of said Lot 15, a northeast line of said Lot 17, a distance of 36.50 feet to a point, from which a found ½" iron rod with cap stamped "Vickrey" bears N 46°57'19" W, 158.39 feet;

THENCE: N 81°43'55" E, over and across said Lot 15, a distance of 57.00 feet to the POINT OF BEGINNING, and containing 0.019 of an acre in the City of San Antonio, Bexar County, Texas. Said easement being described in accordance with an exhibit prepared under job number 9064-14 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: March 19, 2014
JOB NO. 9064-14
DOC. ID.N: Survey14-14-9000 9064-14 Word 9064-14 FN-0.019 AC LS-ESMT.docx
TBPE Firm Registration #470
TBPLS Firm Registration #100288-00

STATE OF TEXAS REGISTERED DAVID

Page 1 of 1

SAN ANTONIO / AUSTIN
HOUSTON / FORT WORTH

555 East Ramsey San Antonio, Texas 78216
P 210.375.9000 F 210.375.9010 www.pape-dawson.com

Attachment II

Joint Use Agreement

(Drainage Easement/Gates Realty: Nacogdoches Road)

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1. Pertinent Information.

Authorizing Ordinance:

S.P. No.:	1823
City:	City of San Antonio
City's Address:	City Hall, P.O. Box 839966, San Antonio, Texas 3966 (Attention: Director, Capital Improvements Management Services Department)
Joint User:	Gates Realty LLC
Joint User's Address:	3011 Nacogdoches Road #1, San Antonio, Texas 78217
Term:	Indefinite duration subject to rights of termination set out in this agreement.
Premises:	0.019 acre parcel over drainage easement as shown and described in **Exhibit A**.
Scope of Permission:	Construction, inspection, patrol, repair, removal,

replacement, and maintenance of a fence, and the repair, replacement and maintenance of landscape within such fence as it abuts Joint Users adjacent property, but only as it bears upon the rights City holds in the Premises.

Fee: $500

2. Permission.

2.01. City acknowledges that Joint User's activities, if within the Scope of Permission and conforming to the terms and conditions of this agreement, do not unreasonably interfere with City's rights in the Premises ("Permission"). The Permission is non-exclusive and limited to the stated Term. This instrument does not create an easement, but only a revocable license defined by the terms of this instrument. The permission granted by this instrument is subordinate to all existing uses of the area of which the Premises are a part, and Joint User must not interfere with any such uses.

2.02. In determining placement of the fence, Joint User must coordinate with City and place the fence only in a mutually agreeable location. After the fence is built, Joint User must provide City, at Joint User's expense, an as-built survey of the fence, including field notes. The field notes and survey will then become a part of this agreement as if originally a part thereof and will be the definitive description of the Premises. If Joint User does not provide the as-built survey within 6 months of execution of this Joint Use Agreement, City, through its director of EastPoint and Real Estate Services, may terminate this Agreement without any further cause, in its sole discretion.

2.03. City does not guarantee title to or exclusive rights in the Premises. Joint User deals with City regarding the Premises at Joint User's risk regarding title matters. **The Permission granted by this instrument bears only upon such rights as City may have in the Premises. Persons other than City may have rights in some or all of the Premises. City does not give permission to trespass on or otherwise affect or impair other's rights.**

2.04. **Joint User must ascertain all rights affected by the Scope of Use and obtain consent from all holders of such rights (Owners). As a condition to the Permission, Joint User must obtain the written consent of all Owners. Joint User must deliver copies of the consents to City, together with a title report prepared by a title company adequate for City to ascertain that the consent of all required persons has been obtained.** Hollerbach & Associates is deemed an acceptable title company to prepare the title report contemplated in this Section 2.04.

2.05. Except for drainage-related items, City will not construct permanent improvements over the Premises that would unreasonably interfere with Joint User's use within the Scope of Permission. City makes no representation what other property interest holders may do, and Joint User is free to seek such assurances as it may desire from other property interest holders.

2.06. 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.

3. Restrictions on Use/Recording.

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

3.02. This Permission grants only a privilege to use the Premises and is revocable by City. 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. Nothing contained herein shall be construed as allowing City to enter onto the real property owned in fee simple by Joint User located immediately adjacent to the Premises, except in instances where City's access is reasonably required solely due to the improvements made by Joint User on the Premises, and, prior to such entry, City shall give Joint User one (1) days' notice prior to such entry (except in the case of an emergency, in which case City may enter without notice).

3.03. Conditions of Use:

A. At a minimum the adjacent side slope of the existing earthen channel shall be stabilized with reinforced concrete. A storm water management plan shall be approved by the TCI Storm Water Engineering Review Team (SWERT) prior to construction on within the subject drainage easement. Hydrologic and Hydraulic (H&H) design calculations shall be submitted for the review and approval of the SWERT. These calculations shall demonstrate that the existing earthen channel has the regulatory capacity to accept runoff drainage thereto with a maximum velocity of six feet per second (6fps). Additional channel capacity and/or concrete stabilization may be required If the velocity will be exceeded. The fence shall not obstruct any drainage flow within the capacity of this drainage channel. While in construction, no items or fill can be staged within the channel capacity to include equipment. All vegetation disturbances will need to be re-established back to original native grass. No impervious surfaces (e.g. compacted gravel, asphalt or concrete roadways or sidewalks) or permanent structures may be constructed within the subject drainage easement. To allow for maintenance of the existing earthen channel, a minimum of 12 feet of drivable pathway (free of utility poles) shall remain between any fencing of the subject property and the top bank of said channel.

B. Joint User acknowledges that the San Antonio Water System ("SAWS"), an agency of the City, has an eight inch (8") sanitary sewer line and manhole (collectively, the "SAWS Facilities") located within the Premises. Joint User shall, at its expense, install two (2) ten foot (10') wide gates, immediately next to each other and at a location to be approved by SAWS, so as to allow a twenty foot (20') wide opening across the fence Joint User intends to build on the Premises, and SAWS and CITY shall have permanent and unimpeded access through such gates. If a lock on the gates is required by either SAWS, the City or Joint User, then SAWS or Joint User if Joint User has the key, will provide the lock and keys to either or both Joint User and City as applicable. Joint User shall, at their sole expense, insure that SAWS, at all time, has access to the SAWS Facilities over and across the Premises, for the purpose of inspecting, maintaining, constructing, reconstructing, adding, replacing and removing of the SAWS Facilities. Should any damage to or failure in the Facilities result from the activities of Joint User or its agents, guests, employees, contractors, or subcontractors on the Premises, Joint User shall, upon notice from SAWS, promptly reimburse SAWS for any and all costs resulting damage, and for any expense incurred by SAWS in repairing and/or replacing SAWS Facilities. SAWS shall have no

obligation to restore and/or replace any of Joint User's property on the Premises damaged or destroyed by SAWS during its operations. Joint User expressly covenants and agrees that no new (after the date of execution of this Agreement) building or structure (except for the above referenced fence, gates and landscaping) will be built or placed within fifteen feet (15') of the SAWS sewer line and that the removal of any building or structure placed within said twenty foot area shall be at Joint User's expense. If any demolition or new construction occurs on the Premises, Joint User must ensure that the SAWS Facilities are protected and that no debris enters into SAWS' collection system.

4. Construction, Maintenance, and Operations.

4.01. **Costs**. Joint User is solely responsible for all costs of construction, installation, repairs, maintenance, operation, and the like of any property placed in the Premises (hereafter "Joint User's Responsibilities").

4.02. **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.

4.03. **Relocation.** If City's needs reasonably require relocation, maintenance, or adjustment in the Premises or improvements by Joint User thereto, the relocation, maintenance, or adjustments will be at Joint User's sole cost and expense. Relocation must be reflected by a revised metes and bounds defining the Premises prepared at the expense of Joint User.

4.04. **Installation and Maintenance.** All fences and support systems must be installed in a manner satisfactory to City. In determining proper depth and installation, City may consider expected future as well as present uses of the Premises. 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 or building codes relating to fences, drainage or construction.

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

4.06. **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 20 days prior written notice to Joint User. Joint User remains obligated to clear the lien without cost to City even after termination.

4.07 **Restoration**. If this agreement is terminated, Joint User must restore the Premises to a condition substantially equivalent to its pre-existing condition provided, however, Joint User is authorized to landscape the Premises in a manner reasonably acceptable to Joint User and the City and which has been approved by the Special Canvassing Report dated on or prior to the date of this Agreement and may leave such landscaping instead of restoring if City approves at such time.

5. Indemnity.

5.01. These definitions apply to the indemnity provisions of this Contract:

5.01.01. "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.

5.01.02. "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.

5.01.03. "Indemnitor" means Joint User.

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

5.03. If an Indemnitee is finally adjudged to be solely negligent, Indemnitor need not further indemnify the so-adjudged Indemnitee from its sole negligence. 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 solely negligent and must continue to indemnify other Indemnitees.

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

5.05. 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. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

5.06. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph, provided, however, Indemnitor shall not be liable for such amounts spent by Indemnitee should Indemnitee choose to participate in its defense by separate counsel of its choosing.

5.07. 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.

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

5.09. 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.

5.10. If this agreement is assigned to the San Antonio Water System, for so long as the San Antonio Water System is a part of the City of San Antonio, it need not indemnify City under this article.

6. Insurance.

6.01. Without limiting City's rights to indemnity, (i) Joint User must provide and maintain insurance identified in (c) and (d) below, 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 below types and amounts and (ii) any contractor or non-employee performing work on behalf of Joint User on the Premises must provide and maintain insurance identified in (a), (b), (c) and (d) below, 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 below 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.

6.02. 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.

6.03. 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) Transportation and Capital Improvements Department
> City of San Antonio
> P.O. Box 839966
> San Antonio, Texas 78283-3966
> Attention: Drainage Manager"
>
> "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."

6.04. 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."

6.05. 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.

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

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

6.08. **Joint User waives all claims against City for injury to persons or property on or about the Premises, except those claims arising from City's breach of this Permission and those arising from City's sole active negligence or willful misconduct**.

7. Termination.

7.01. City may terminate this Permission at any time before expiration by giving Joint User 180 days written notice, but only if Joint User's use interferes with the City's rights. If City's rights in the Premises terminate through conveyance or otherwise, Joint User's rights under this Permission likewise terminate.

7.02. It is an event of default entitling City to terminate on 30 days notice if Joint User trespasses on the interests of other holders of property interests in the Premises.

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

7.04. Upon expiration or termination, all rights and privileges immediately cease, and Joint User must immediately cease use of the Premises. City, at its option, may direct Joint User to either (a) abandon the encroaching improvements and appurtenances, including fences, pipes or equipment; or (b) remove all or any part of the improvements and appurtenances and restore the Premises, at Joint User's sole cost, to original condition. 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. Joint User is liable for City's actual costs incurred in connection with Joint User's property.

8. Assignment.

This Permission cannot be assigned by Joint User without prior written approval of the City. This Permission inures to the benefit of sucessors to Joint User's title to the property served by the fence.

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.

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.

11. Dispute Resolution.

11.01. As a condition precedent to bringing any action arising out of or relating to this agreement or any aspect thereof, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

11.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

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

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

11.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

11.06. Mediator fees must be borne equally.

11.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

12. Miscellaneous Provisions.

12.01. **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.

12.02. **Nondiscrimination**. Joint User must not discriminate against any individual or group on account of race, color, gender, age, religion, national origin, or handicap, in employment practices or in the use of the Premises.

12.03. **Release From Liability/Notice of Sale.** If City transfers ownership of the Premises, City will have no liability or obligation relating to the period after transfer. City's transferee will succeed to all City's rights hereunder.

12.04. **Consent/Approval of City.** As to any matter hereunder in which City's consent is required, the consent may be granted by the Director, Transportation and Capital Improvements Department, City of San Antonio, as designee of the City Manager, without council action, unless the City Charter requires that the City Council consent by the passage of a City ordinance.

12.05. **Yielding Up.** Joint User must, at termination, whether by expiration or otherwise, yield the Premises up peacefully, including any improvements and fixtures (other than trade fixtures).

12.06. **Authority To Execute.** The party or parties executing this Permission on behalf of Joint User personally warrant that each of them has full authority to do so.

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

12.08. **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.

12.09. **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**.

12.10. **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.

12.11. **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.

12.12. **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.

12.13. **Pronouns**. In construing this Permission, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Permission, not to any particular provision of it.

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

12.15. **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.

12.16. **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

12.17. **Ambiguities Not to Be Construed Against Drafter**. Ambiguities in this Permission must be resolved without construing against the drafter.

13. Public Information.

Buyer 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.

[SIGNATURES ON FOLLOWING PAGE]

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:
Gates Realty, LLC, a Texas limited liability company

By: Gates Mineral Company, Ltd., a Texas limited partnership, its member

By: Espejo Minerals, LLC, a Texas limited liability company, its general partner

By: _____
David B. Elliott, Manager

Date: _____

By: _____
Thomas A. Gates, Manager

Date: _____

By: _____
Alonzo E. Gates, II, Manager

Date: _____

Attest:

_____
City Clerk

Approved As To Form:

_____
City Attorney

Exhibit A

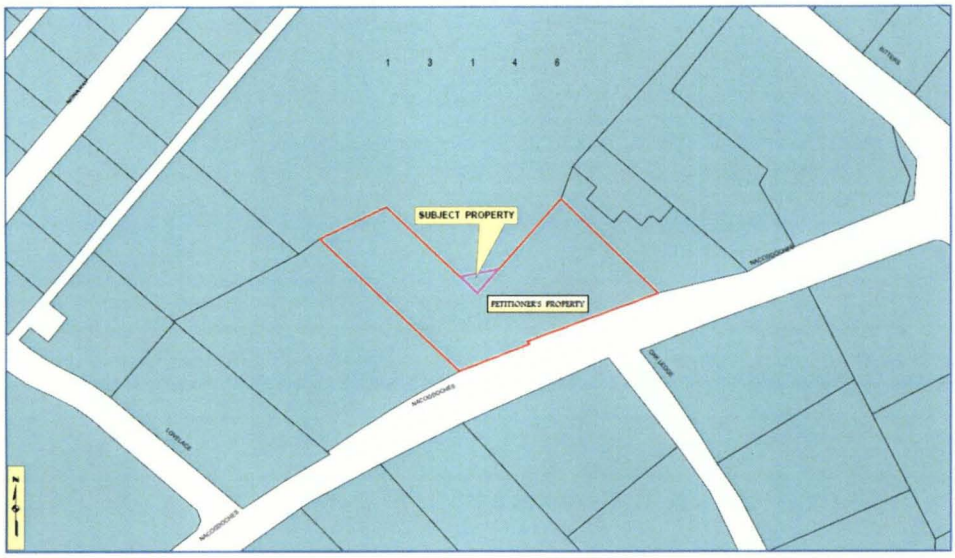
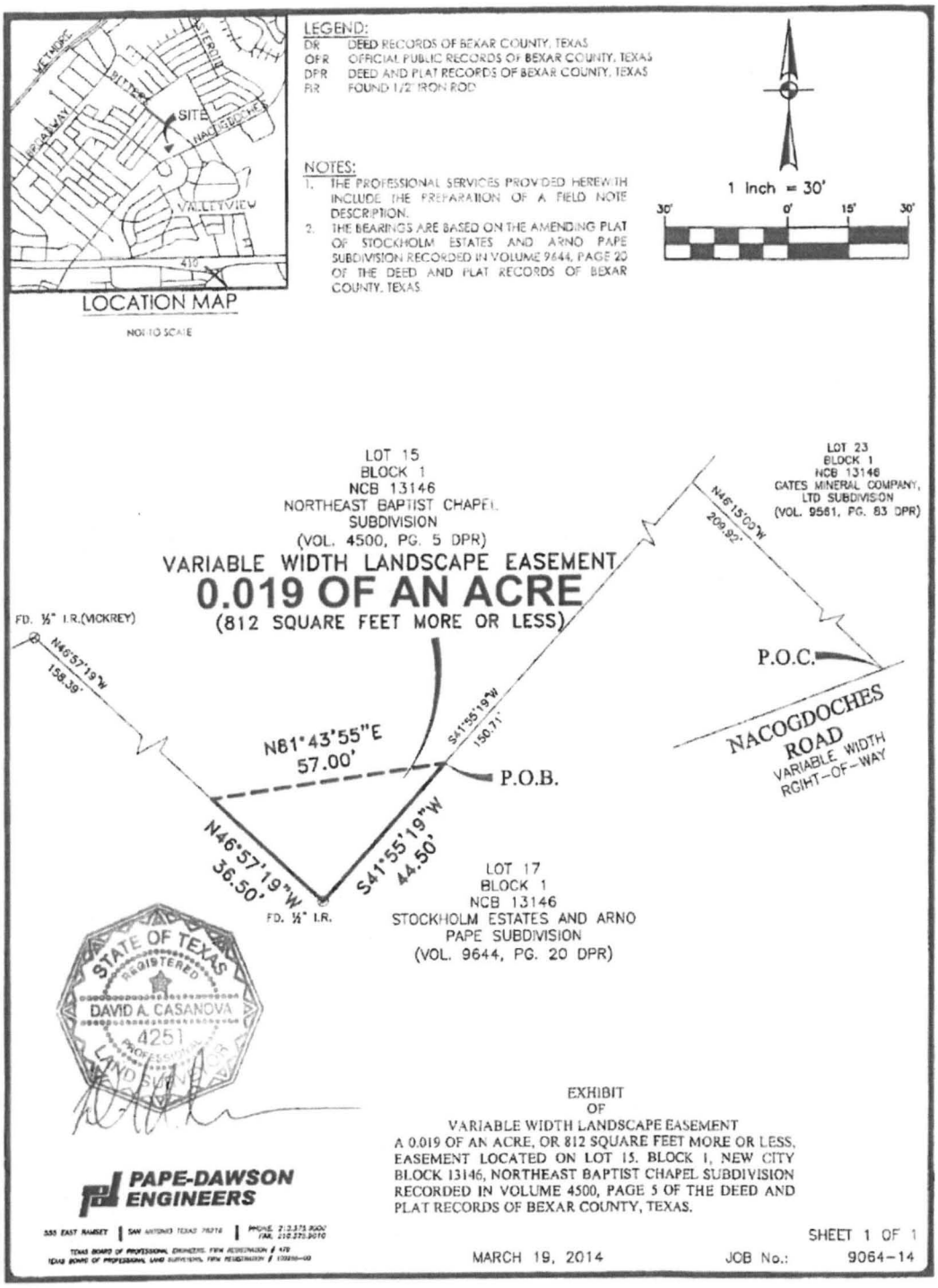


Exhibit A

S. P. No. 1823 **Petitioner: Gates Realty LLC**


LEGEND:
DR DEED RECORDS OF BEXAR COUNTY, TEXAS
OPR OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS
DPR DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS
FIR FOUND 1/2" IRON ROD
NOTES:
1. THE PROFESSIONAL SERVICES PROVIDED HEREWITH INCLUDE THE PREPARATION OF A FIELD NOTE DESCRIPTION.
2. THE BEARINGS ARE BASED ON THE AMENDING PLAT OF STOCKHOLM ESTATES AND ARNO PAPE SUBDIVISION RECORDED IN VOLUME 9644, PAGE 20 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS.
1 Inch = 30'
30' 0' 15' 30'
SITE
VALLEYVIEW
410
LOCATION MAP
NOT TO SCALE
LOT 15
BLOCK 1
NCB 13146
NORTHEAST BAPTIST CHAPEL
SUBDIVISION
(VOL. 4500, PG. 5 DPR)
VARIABLE WIDTH LANDSCAPE EASEMENT
0.019 OF AN ACRE
(812 SQUARE FEET MORE OR LESS)
LOT 23
BLOCK 1
NCB 13146
GATES MINERAL COMPANY,
LTD SUBDIVISION
(VOL. 9561, PG. 83 DPR)
N46°15'00"W
209.92'
FD. ½" I.R.(VICKREY)
N46°57'19"W
158.39'
P.O.C.
NACOGDOCHES
ROAD
VARIABLE WIDTH
RGHT-OF-WAY
S41°55'19"W
150.71'
N81°43'55"E
57.00'
P.O.B.
N46°57'19"W
36.50'
S41°55'19"W
44.50'
FD. ½" I.R.
LOT 17
BLOCK 1
NCB 13146
STOCKHOLM ESTATES AND ARNO
PAPE SUBDIVISION
(VOL. 9644, PG. 20 DPR)
STATE OF TEXAS
REGISTERED
DAVID A. CASANOVA
4251
PROFESSIONAL
LAND SURVEYOR
EXHIBIT
OF
VARIABLE WIDTH LANDSCAPE EASEMENT
A 0.019 OF AN ACRE, OR 812 SQUARE FEET MORE OR LESS, EASEMENT LOCATED ON LOT 15, BLOCK 1, NEW CITY BLOCK 13146, NORTHEAST BAPTIST CHAPEL SUBDIVISION RECORDED IN VOLUME 4500, PAGE 5 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS.
PAPE-DAWSON ENGINEERS
555 EAST RAMSEY | SAN ANTONIO TEXAS 78216 | PHONE 210.375.9000 FAX 210.375.9010
TEXAS BOARD OF PROFESSIONAL ENGINEERS FIRM REGISTRATION # 470
TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS FIRM REGISTRATION # 10028-00
SHEET 1 OF 1
MARCH 19, 2014
JOB No.: 9064-14

PAPE-DAWSON ENGINEERS

LAND DEVELOPMENT ENVIRONMENTAL TRANSPORTATION WATER RESOURCES SURVEYING

FIELD NOTES
FOR
VARIABLE WIDTH LANDSCAPE EASEMENT

A 0.019 of an acre, or 812 square feet more or less, easement located on Lot 15. Block 1, New City Block 13146, Northeast Baptist Chapel Subdivision recorded in Volume 4500, Page 5 of the Deed and Plat Records of Bexar County, Texas. Said 0.019 of an acre easement being more fully described as follows, with bearings based on the Amending Plat of Stockholm Estates and Arno Pape Subdivision recorded in Volume 9644, Page 20 of the Deed and Plat Records of Bexar County, Texas:

COMMENCING: At a point on the northwest right-of-way line of Nacogdoches Road, a variable width right-of-way, the southwest corner of Lot 23, Block 1, Gates Mineral Company, Ltd. Subdivision recorded in Volume 9561, Page 83 of the Deed and Plat Records of Bexar County, Texas, the southeast corner of Lot 17, Block 1 of said Stockholm Estates and Arno Pape Subdivision;

THENCE: N 46°15'00" W, departing the northwest right-of-way line of said Nacogdoches Road, along and with the west line of said Lot 23, the east line of said Lot 17, a distance of 209.92 feet to the northwest corner of said Lot 23, the northeast corner of said Lot 17, on the south line of said Lot 15;

THENCE: S 41°55'19" W, along and with a northwest line of said Lot 17, the southeast line of said Lot 15, a distance of 150.71 feet to the POINT OF BEGINNING of the herein described easement;

THENCE: S 41°55'19" W, continuing along and with a northwest line of said Lot 17, the southeast line of said Lot 15, a distance of 44.50 feet to a found ½" iron rod, being the southeast corner of said Lot 15, and a reentrant corner of said Lot 17;

THENCE: N 46°57'19" W, along and with a southwest line of said Lot 15, a northeast line of said Lot 17, a distance of 36.50 feet to a point, from which a found ½" iron rod with cap stamped "Vickrey" bears N 46°57'19" W, 158.39 feet;

THENCE: N 81°43'55" E, over and across said Lot 15, a distance of 57.00 feet to the POINT OF BEGINNING, and containing 0.019 of an acre in the City of San Antonio, Bexar County, Texas. Said easement being described in accordance with an exhibit prepared under job number 9064-14 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: March 19, 2014
JOB NO. 9064-14
DOC. ID.N:\Survey14\14-9000 9064-14 Word 9064-14 FN-0.019 AC LS-ESMT.docx
TBPE Firm Registration #470
TBPLS Firm Registration #100288-00

STATE OF TEXAS REGISTERED DAVID A. ... 4

Page 1 of 1

SAN ANTONIO / AUSTIN
HOUSTON / FORT WORTH

555 East Ramsey San Antonio, Texas 78216
P 210.375.9000 F 210.375.9010 www.pape-dawson.com