

TO: San Antonio Water System Board of Trustees

FROM: Tracey B. Lehmann, P.E., Director, Development, and Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: UTILITY SERVICE AGREEMENT FOR WATER SERVICE TO A TRACT LOCATED IN KENDALL COUNTY, OUTSIDE THE SAN ANTONIO WATER SYSTEM WATER CERTIFICATE OF CONVENIENCE AND NECESSITY AND OUTSIDE THE CITY OF SAN ANTONIO EXTRA TERRITORIAL JURISDICTION

Board Action Date: June 5, 2018

**SUMMARY AND RECOMMENDATION:**

The attached resolution approves a Utility Service Agreement (USA) to provide water service to the specified tract of land located in Kendall County, outside the San Antonio Water System’s (the “System”) water Certificate of Convenience and Necessity (CCN) and the City of San Antonio Extra Territorial Jurisdiction.

- This board item consists of one tract, which totals 374.86 acres (the “Biedenharn Tract” or “Tract”); 2,075 water Equivalent Dwelling Units (EDUs); and zero wastewater EDUs.
- Board approval is required since the Tract is located outside the System’s water CCN.
- The Biedenharn Tract is located in Kendall County, and is part of a 1,056 acre area called the Kendall County Water Control & Improvement District No.3 (the “WCID”). The Tract is outside the City of San Antonio Extra Territorial Jurisdiction, outside the System’s water CCN and outside the wastewater CCN.
- The System has been requested to provide water service to this Tract due to the challenges in securing water service and reliable infrastructure. There is not an entity obligated to provide water service to this Tract as it is not within an existing CCN.
- The System, through its contractual agreement with the Guadalupe Blanco River Authority (GBRA; such agreement being referred to as the “GBRA Agreement”), is currently unable to serve the Tract with water supplied to the System by the GBRA without modifications and approvals from the GBRA. In the event the GBRA water supply to the System is interrupted or impaired, the System currently is further legally prohibited from providing the alternate water supply of Edwards aquifer water under the Edwards Aquifer Authority (EAA) jurisdiction, as water produced from the Edwards Aquifer shall be used within the boundaries of the Edwards Aquifer Authority, which does not include Kendall County.

- Because of the service limitations for this USA, the System's service commitment through this USA is initially limited to 200 EDU's; however, in the event that the Developer, (i) provides infrastructure required by the System for back up water supply, constructs a 1.5 million gallon elevated storage tank and secures long term water supply from the GBRA beyond 2037, or (ii) removes limitations on the System's ability to provide water to Kendall County that is produced from the Edwards Aquifer or provides an alternate water supply acceptable to System staff in its sole discretion by September 1, 2021, or (iii) constructs a pipeline from the Salado Pump Station to deliver non-Edwards Aquifer water to the tract, the 200 EDU cap will be removed, as applicable, up to a total of 2,075 EDUs requested in the USA.
- The System's obligation to provide any service to the Tract is conditioned upon the following (the "Conditions Precedent"), which must be satisfied in the System's discretion, within 180 days after the effective date of the USA:
  1. An amendment to the GBRA Agreement for the System to provide service to the area.
  2. The Developer providing the System with a Declaration of Restrictive Covenants imposing certain development conditions on the entire area within the Kendall County Water Control and Improvement District No. 3 (the "WCID"), including regulations related to Drainage Pollution Prevention and Control, Tree Preservation and Canopy Coverage, Dark Sky Requirements, and Drought Management Restrictions.
  3. Agreement with the WCID that it will not apply for a CCN affecting the Tract and it will not impose obligations or requirements on or affecting the System.
  4. Agreement that the Developer will pay any fines, penalties or costs incurred by the System to provide service if the GBRA service is interrupted or impaired.
  5. An interconnection agreement with Kendall West Utility LLC ("Kendall West") or other third party provider acceptable to the System in its discretion to provide the back-up supply for the retail service to be provided by the System.
- The Developer is required to install all necessary on-site facilities in accordance with the Board's regulations and at the Developer's total cost.
- The Developer is responsible for the construction and engineering costs associated with all required water and/or wastewater mains to serve the tract (on-site and off-site).
- Developer shall pay for all costs related to the design and construction of infrastructure related to interconnections with Kendall West or any other entity providing a back-up water supply.

- The Developer must agree to certain development conditions specific to the Tract as outlined the USA because of the unique nature of the development and its location before the System can provide water service to the Tract.
- Approval is this item and new USA shall terminate the existing USA and rescind the Board Resolution No. 18-072, which was passed on March 6, 2018.

Staff recommends that the Board approve this resolution.

No.	Tract Name	Developer	Acres	W EDUs	WW EDUs	CoSA / CoSA ETJ / Outside	EARZ / CZ	JBSA	Board Reason	W CCN	WW CCN
1	Biedenharn Tract	Bakke Development	374.86	2,075	0	OUTSIDE	INSIDE	Y	CCN	OUTSIDE	OUTSIDE

Acronyms:

EARZ = Edwards Aquifer Recharge Zone    OVR = Oversizing    CCN = Certificate of Convenience and Necessity  
 CZ = Edwards Aquifer Contributing Zone    WW = Wastewater    IFC = Impact Fee Credits  
 CoSA = City of San Antonio limits    ETJ = Extraterritorial Jurisdiction    JBSA = Joint Base San Antonio Buffer Zone

**EXTENT AND CONDITIONS OF UTILITY SERVICE AGREEMENT:**

Upon approval by the System of this USA, subject to the satisfaction of the Conditions Precedent, the Developer Customer has 36 months to complete the required utility master plan and to start construction. If the Developer Customer fails to complete these requirements within the 36-month period, or the Conditions Precedent are not satisfied within the 180 day timeframe, then the USA will expire and a request for a new agreement must be submitted to the System. During the effective term of this USA, capacity in the System’s water system will be set aside. The Developer Customer is not guaranteed capacity until all required off-site infrastructure is built by the Developer, accepted by the System, and all impact fees are paid.

**FINANCIAL IMPACT:**

In compliance with the System’s Board of Trustees water extension policy, Developer Customer applicants are responsible for financing all required local benefit facilities and for payment of all applicable impact fees. The Developers will contribute all impact fees in effect at the time of plat recordation or the latest date allowable by law for each subdivision unit. The fees to be collected

by the System will be recorded in the Service Recovery Account and are estimated as follows, based on current charges and full build out of the tracts:

No.	Tract Name	Water Impact Fees	Wastewater Impact Fees	Total Impact Fees
1	Biedenharn Tract	\$10,086,575.00	\$0.00	\$10,086,575.00

The Developer is required to install all other necessary on-site facilities in accordance with the Board's regulations at the Developer's total cost.

If the limitations on the System's ability to provide water from the Edwards Aquifer or from the GBRA Agreement are not removed by 2037, then the System will be required to provide alternative supplies to serve this tract and the associated infrastructure. The System would include in the future master plan(s) such potential infrastructure requirements. The cost to provide alternative supplies to this tract in the year 2037 is uncertain at this time.



Tracey B. Lehmann, P.E.  
Director  
Development



Andrea L.H. Beymer, P.E.  
Vice President  
Engineering and Construction

APPROVED:



Robert R. Puente  
President/Chief Executive Officer

Attachments:

1. Table 1, Tract Information

**Table 1  
Tract Information**

No.	Tract Name	Developer	Principal	CoSA / CoSA ETJ / Outside	EARZ / CZ	JBSA	PZ	Acres	Water EDU	WW EDU	Watershed	Board Reason
1	Biedenharn Tract	Bakke Development	Phil Bakke	OUTSIDE	INSIDE	Y	12	374.86	2,075	0	Balcones Creek-Cibolo Creek Watershed	OUTSIDE CCN

Acronyms:

EARZ = Edwards Aquifer Recharge Zone  
 CZ = Edwards Aquifer Contributing Zone  
 CoSA = City of San Antonio limits

OVR = Oversizing  
 WW = Wastewater  
 ETJ = Extraterritorial Jurisdiction

IFC = Impact Fee Credits  
 PZ = Pressure Zone  
 JBSA = Joint Base San Antonio Buffer Zone

**RESOLUTION NO.**

**OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING THE UTILITY SERVICE AGREEMENT (USA) TO PROVIDE WATER SERVICES TO THE SPECIFIED 374.86 ACRE TRACT OF LAND IN KENDALL COUNTY, TEXAS, SUBJECT TO CERTAIN CONDITIONS PRECEDENT; TERMINATING THE EXISTING USA AND RESCINDING RESOLUTION NO. 18-072 UPON THE EXECUTION OF THE NEW USA; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, the Developer Customer, specified in the table below, has requested the San Antonio Water System (the “System”) to provide water service, and has satisfied the requirements of the Board's Regulations for Developer Customers Applicant; and

No.	Tract Name	Developer	Acres	W EDUs	WW EDUs	CoSA / CoSA ETJ Outside	FEARZ / CZ	JBSA	Board Reason	W CCN	WW CCN
1	Biedenharn Tract	Bakke Development	374.86	2,075	0	OUTSIDE	INSIDE	Y	CCN	OUTSIDE	OUTSIDE

**WHEREAS**, the Developer Customer’s provisions to acquire water services within the System’s jurisdiction is generally illustrated in the attached Project Site Maps; and

**WHEREAS**, the Developer Customer is obligated to pay the prescribed fees and to comply with other applicable requirements as set forth in the Regulations for Water Service; and

**WHEREAS**, the System’s obligation to provide service to the Tract is conditioned upon the following (the “Conditions Precedent”), which must be satisfied in the System’s discretion, within 180 days of the Effective Date of the USA:

1. An amendment to the Agreement between the System and the Guadalupe-Blanco River Authority (“GBRA”) dated March 17, 2000 to provide service to the area.
2. The Developer providing the System with a Declaration of Restrictive Covenants imposing certain development conditions on the entire area within the Kendall County Water Control and Improvement District No. 3 (“WCID”), including regulations related to Drainage Pollution Prevention and Control, Tree Preservation and Canopy Coverage, Dark Sky Requirements, and Drought Management Restrictions.
3. An Agreement with the WCID that it will not apply for a CCN affecting the Tract and it will not impose obligations or requirements on or affecting the System.
4. An Agreement that the Developer will pay any fines, penalties or costs incurred by the System to provide service if the GBRA service is interrupted or impaired; and
5. An interconnect agreement with Kendall West Utility LLC, or any other

provider in the System's discretion, to provide the back-up water supply for all retail services to be provided by the USA; and

**WHEREAS**, the San Antonio Water System Board of Trustees desires (i) to approve the Utility Service Agreement and to provide water services to a 374.86 acre tract of land in Kendall County, Texas, (ii) to authorize the President/CEO to negotiate and execute all of the agreements and other documents required or advisable in order to satisfy the Conditions Precedent and determine the satisfaction of the Conditions Precedent; and (iii) to provide that the Utility Service Agreement will be honored for a period of thirty-six months, and that if not exercised during this period, or if the Conditions Precedent are not satisfied within 180 days of its effective date, the Utility Service Agreement will expire; now, therefore:

**BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:**

1. That the System hereby approves the Utility Service Agreement in substantially the form attached as Attachment 2 to this resolution, and agrees to provide water services to the Tract as generally illustrated in the attached Project Site Maps hereto, on a Developer Customer basis as provided for in the Board's Regulations, applicable amendments to the Regulations, and any other applicable federal, state or local regulations.
2. That the President/CEO is hereby authorized to negotiate and execute all of the agreements and other documents required or advisable in order to satisfy the Conditions Precedent, and determine that satisfaction of the Conditions Precedent. Board Resolution No. 18-072, which was passed March 6, 2018, and the USA executed pursuant thereto, shall be respectively rescinded and terminated upon the effective date of the USA approved by this Resolution.
3. That the Utility Service Agreement shall be honored for a period of thirty-six months, and if not exercised during this thirty-six month period, or if the Conditions Precedent are not satisfied within 180 days of its effective date, the Utility Service Agreement will expire.
4. It is officially found, determined and declared that the meeting at which this resolution is adopted was open to the public and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this resolution, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.
5. If any part, section, paragraph, sentence, phrase or word of this resolution is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid or ineffective.

6. This resolution shall take effect immediately from and after its passage.

PASSED AND APPROVED this 5<sup>th</sup> day of June, 2018.

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Berto Guerra, Jr., Chairman

ATTEST:

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Amy Hardberger, Secretary

Attachments:

1. Project Site Maps
2. Utility Service Agreement with Conditions Precedent and Development Conditions

DRAFT



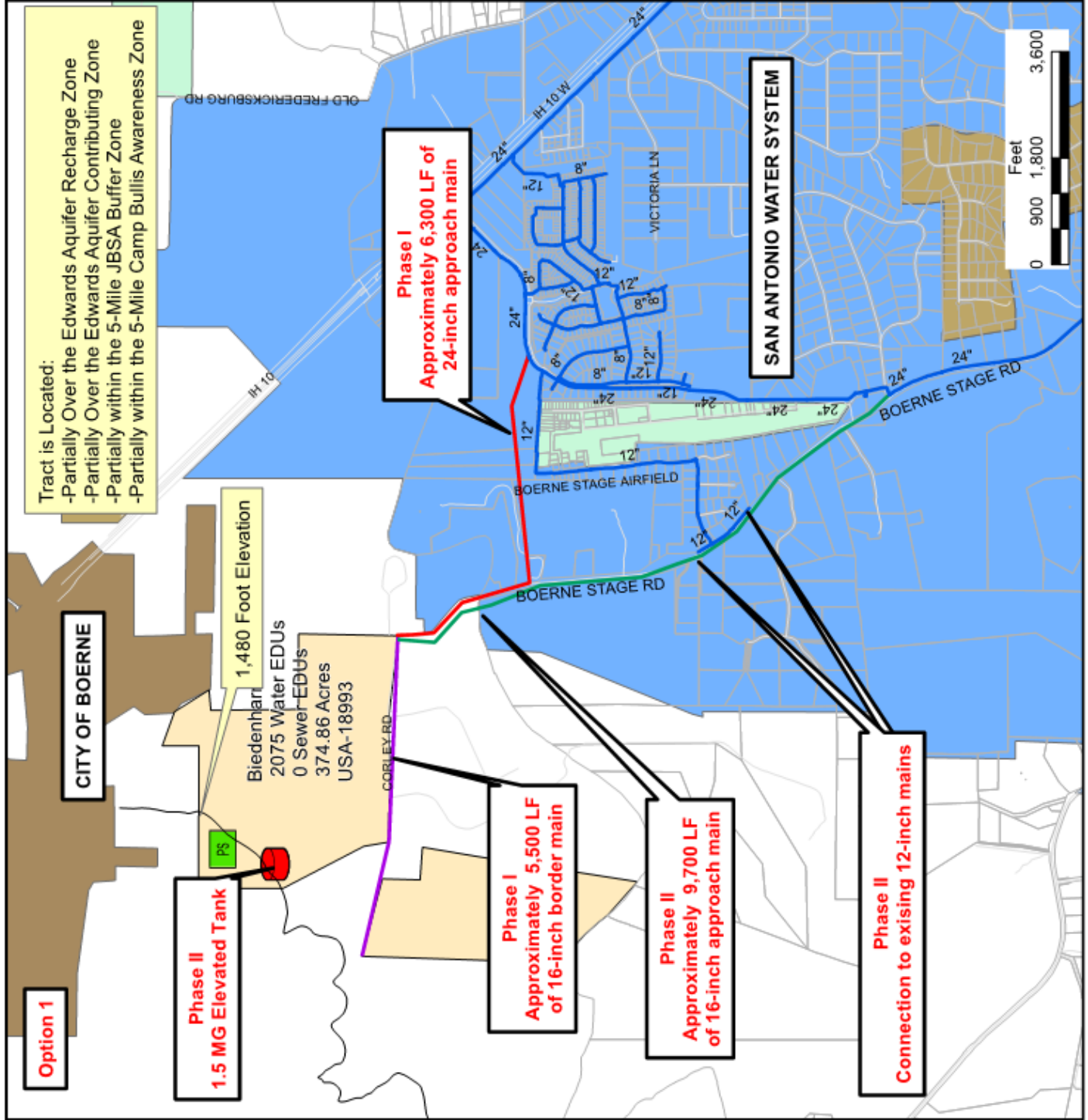
Attachment III:  
 USA-18993  
 Biedenharn Tract  
 Proposed Water Infrastructure Map  
 374.86 Acres



**Legend**

- Existing Water Main
- USA Tract
- Parcels Update
- Proposed 16-inch Approach Main
- Proposed 24-inch Approach Main
- Proposed 16-inch Border Main
- 1,480 Foot Elevation
- Proposed Booster Station
- Proposed Elevated Tank

Project Location

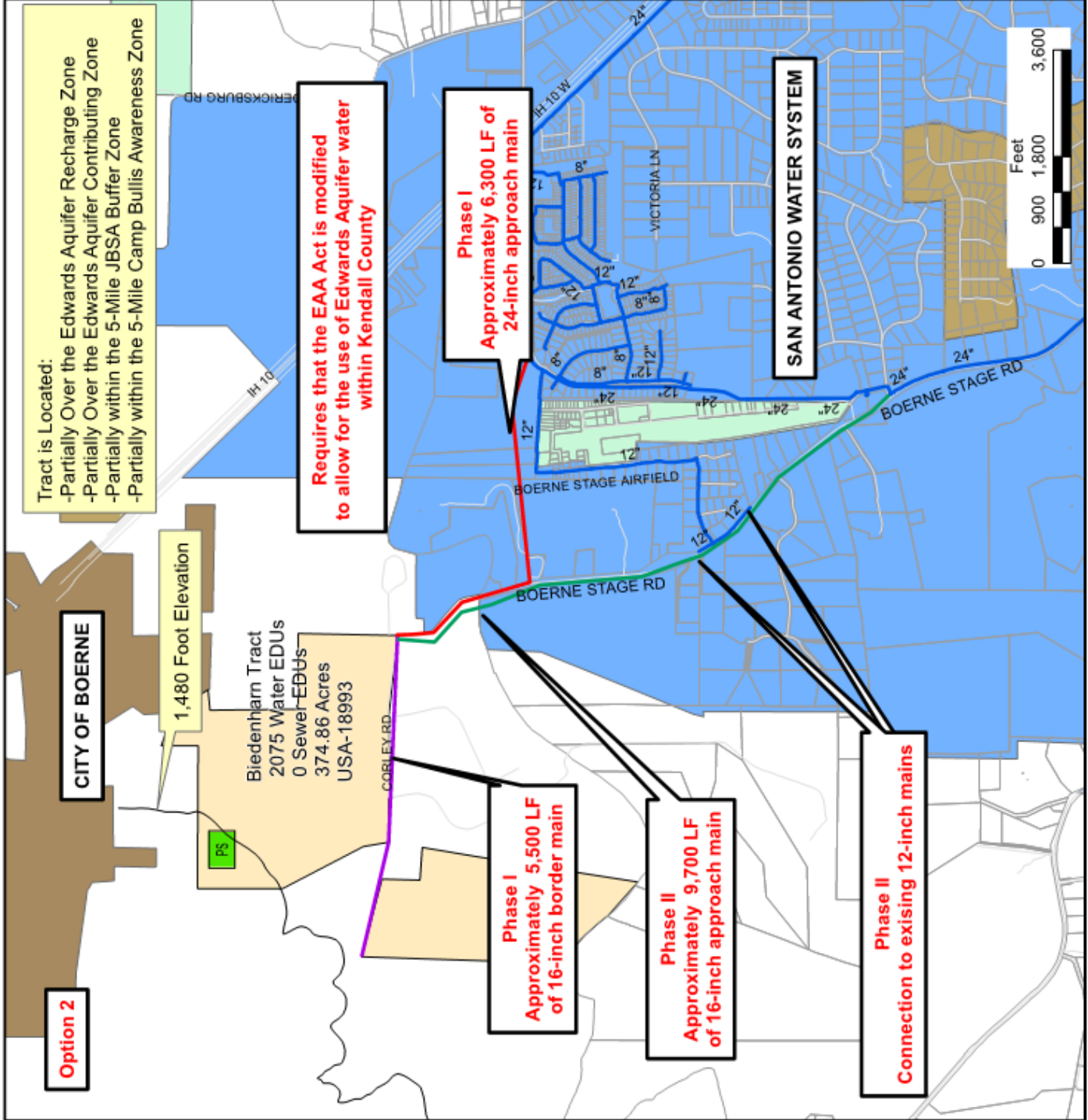


Attachment III:  
 USA-18993  
 Biedenharn Tract  
 Proposed Water Infrastructure Map  
 374.86 Acres



- Legend**
- Existing Water Main
  - USA Tract
  - Parcels Update
  - Proposed 16-inch Approach Main
  - Proposed 24-inch Approach Main
  - Proposed 16-inch Border Main
  - 1,480 Foot Elevation
  - Proposed Booster Station

Project Location



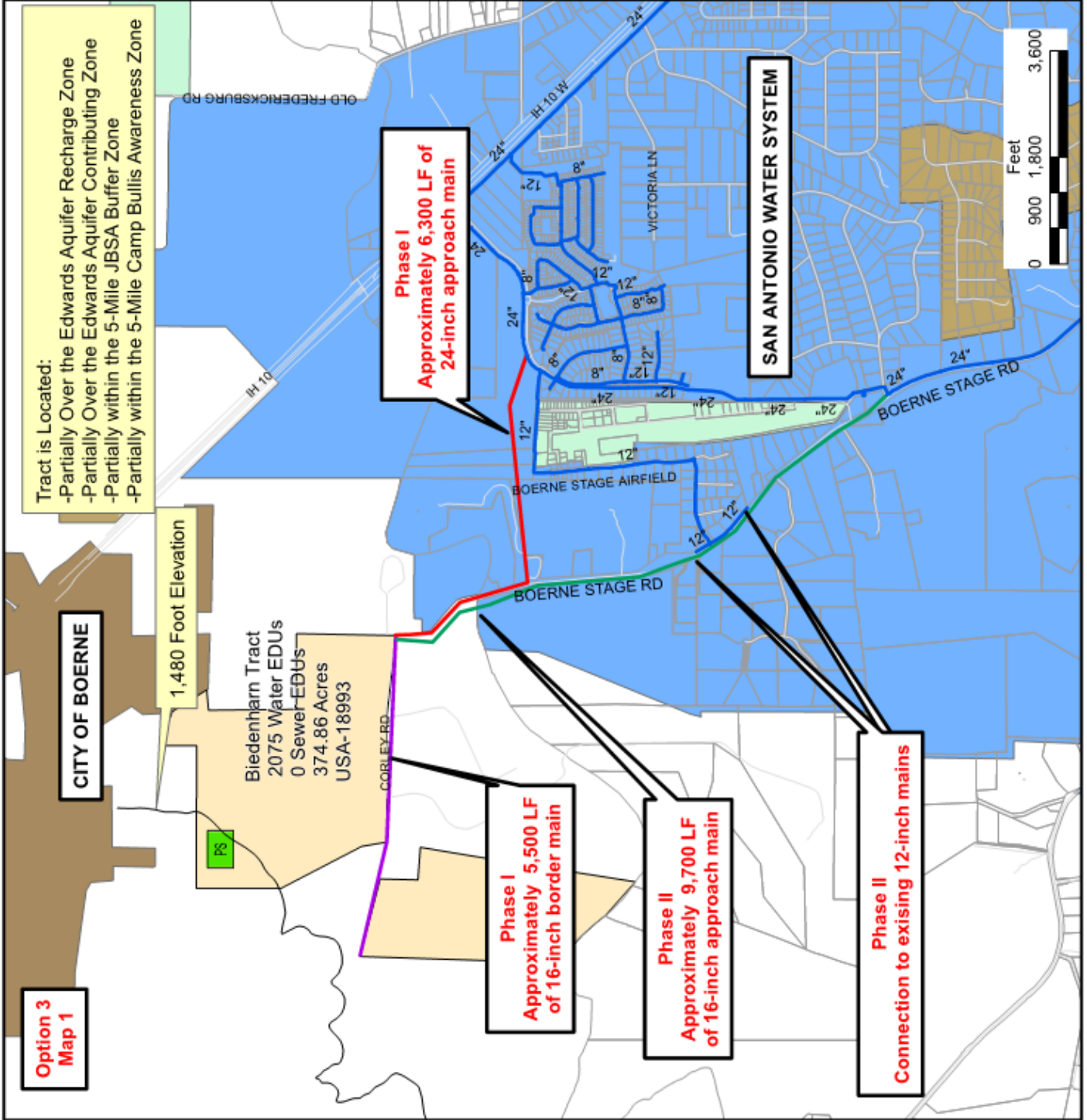
Attachment III:  
 USA-18993  
 Biedenharn Tract  
 Proposed Water Infrastructure Map  
 374.86 Acres



**Legend**

- Existing Water Main
- USA Tract
- Parcels Update
- Proposed 16-inch Approach Main
- Proposed 24-inch Approach Main
- Proposed 16-inch Border Main
- 1,480 Foot Elevation
- Proposed Booster Station

Project Location



Tract is Located:  
 -Partially Over the Edwards Aquifer Recharge Zone  
 -Partially Over the Edwards Aquifer Contributing Zone  
 -Partially within the 5-Mile JBSA Buffer Zone  
 -Partially within the 5-Mile Camp Bullis Awareness Zone

Attachment III:  
 USA-18993  
 Bledenharn Tract  
 Proposed Water Infrastructure Map  
 374.86 Acres



**Legend**

- Existing Water Main
- USA Tract
- Parcels Update
- Proposed 60-Inch Main
- SAWS Facilities
- Camp Bullis

**Project Location**



**Tract is Located:**

- Partially Over the Edwards Aquifer Recharge Zone
- Partially Over the Edwards Aquifer Contributing Zone
- Partially within the 5-Mile JBSA Buffer Zone
- Partially within the 5-Mile Camp Bullis Awareness Zone

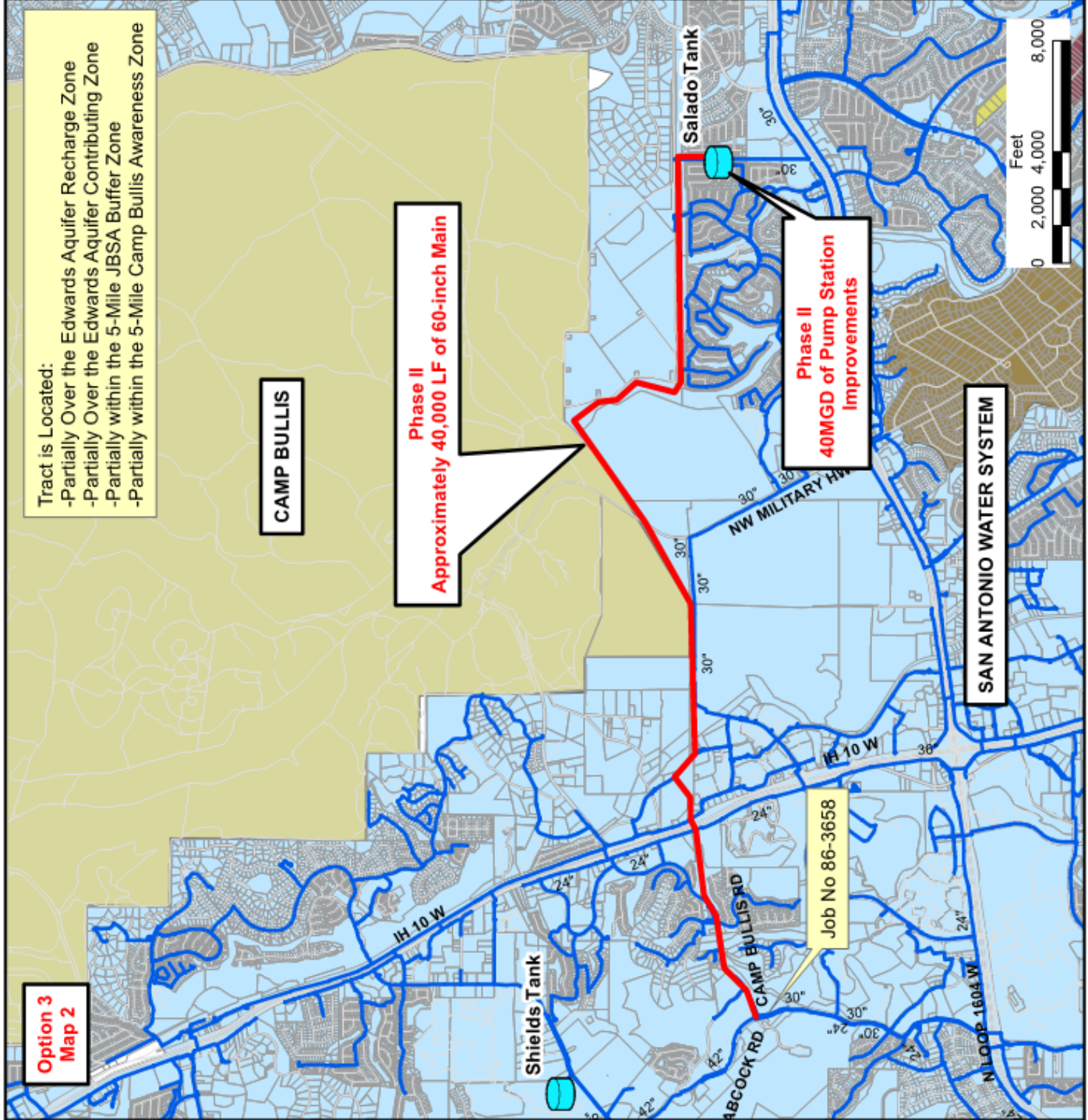
**CAMP BULLIS**

**Phase II  
 Approximately 40,000 LF of 60-inch Main**

**Phase II  
 40MGD of Pump Station  
 Improvements**

**SAN ANTONIO WATER SYSTEM**

**Option 3  
 Map 2**



Job No 86-3658

**UTILITY SERVICE AGREEMENT WITH**  
**CONDITIONS PRECEDENT AND DEVELOPMENT CONDITIONS**

**STATE OF TEXAS**                   §  
  §  
**COUNTY OF BEXAR**               §

This Utility Service Agreement (“Agreement”) is entered into by and between the San Antonio Water System Board of Trustees, through Resolution Number \_\_\_\_\_, acting by and through its President/Chief Executive Officer (“SAWS”) and Bakke Development (“Developer”) together the Parties (“Parties”).

**Recitals**

**Whereas**, Developer has requested that SAWS provide Water service (the “Services”) to an approximate 374.86-acre tract of land, (the “Biedenharn Tract” or “Tract”), which is located outside SAWS water CCN, outside SAWS wastewater CCN, and does not require SAWS’ financial participation in the development of infrastructure through oversizing or impact fee credits, therefore, Board action is required; and

**Whereas**, the Tract is located over the Edwards Aquifer Contributing Zone, which is located within the 5-mile Awareness Zone of Camp Bullis, such Tract being more particularly described in Attachment VI hereto, as accepted by SAWS; and

**Whereas**, the Edwards Aquifer Authority Act (the “EAA Act”), Section 1.34 provides that water withdrawn from the Edwards aquifer must be used within the boundaries of the Edwards Aquifer Authority (the “EAA Act Prohibition”), which does not include Kendall County where this Tract is located; and

**Whereas**, SAWS and the Guadalupe Blanco River Authority (“GBRA”) entered into a Regional Water Supply Project for Portions of Comal, Kendall, and Bexar Counties (the “GBRA Agreement”) that provides in Section 3.11 that all water delivered by GBRA to SAWS under the GBRA Agreement shall be used exclusively within SAWS service area which is defined by a Certificate of Convenience and Necessity or within the certificated service area of a wholesale customer of SAWS, and further provides that all water delivered by GBRA to SAWS under the GBRA Agreement shall be used within Bexar County, unless and except to the extent that SAWS obtains GBRA’s prior written approval for the use outside Bexar County (the “GBRA Prohibition”); and

**Whereas**, because of the EAA Act Prohibition and the GBRA Prohibition, SAWS does not currently have the legal authority to provide the Services to the Tract with the two sources of water that are required to provide redundant service to the Tract, and as such, Conditions Precedent (as defined in S.C. 11.00 of the Special Conditions, and referred to herein as the “Conditions Precedent”) and certain Development Conditions (as defined in Section S.C. 12.00 of the Special Conditions, and referred to herein as the “Development Conditions”) related to the effectiveness

and extension of this Agreement are set forth in Special Conditions that must be satisfied in order to permit SAWS to guarantee capacity and provide the Services under this Agreement; and

**Whereas**, the Developer has also agreed to construct all development on the Tract in accordance with the City of San Antonio's Tree Preservation, Pollution Prevention and Control, Drought Management and Dark Sky Ordinances, in addition to SAWS' construction standards, all as more fully described in the Special Conditions; and

**Whereas**, SAWS desires upon satisfaction of the Conditions Precedent, and compliance with the Development Conditions, to provide the Services to the Developer pursuant to this Agreement, the SAWS Utility Service Regulations, and all applicable local, state, and federal regulations, as amended.

**Now Therefore, The Parties Hereto Agree To The Following Terms and Conditions:**

**1.00 Interpretation of Agreement.**

1.01 The Parties acknowledge that the Services contemplated by this Agreement shall be provided in accordance with the SAWS Utility Service Regulations, Design Criteria, Schedules, Attachments and Instruments thereto, as amended (together "USR"). In the event the specific terms of this Agreement are in conflict with the USR, the specific terms of this Agreement shall apply. The above notwithstanding, for the specific conflicting terms to prevail, the conflict must be expressly noted in the Agreement. The Parties further acknowledge that this Agreement is subject to future acts of the City Council of the City of San Antonio with respect to the adoption or amendment of impact fee ordinances/resolutions.

1.02 The Parties agree that the purpose of this Agreement is the reservation of the designated water supply and /or wastewater discharge capacity for the Tract. Any rights that the Developer claims arise under Chapter 245, Texas Local Government Code, that are related to this Agreement shall comply with the Unified Development Code Article IV, Division 1, Chapter 35-410 and applicable requirements in Article VII, Division 2 *Vested Rights*. If Developer intends to rely on this USA as its application for the purposes of vested rights under Chapter 245, then please contact Development Services Department, Land Entitlement team at 210-207-1111 or 1901 S. Alamo, San Antonio, TX. 78204. In no event shall the Utility Service Regulations replace or conflict with the City's Unified Development Code, Article IV, Division 1, Chapter 35-410 and applicable requirements in Article VII, Division 2 *Vested Rights*.

**2.00 Obligation Conditioned.**

In addition to the Conditions Precedent and Development Conditions found in the Special Conditions of this Agreement, the obligation of SAWS to provide the Services is conditioned upon present rules, regulations and statutes of the United States of America and the State of Texas and any court order that directly affects the SAWS' Regional Water Production and Distribution System and/or Regional Wastewater Transportation and Treatment System and/or the utility infrastructure directly servicing the Tract. Developer acknowledges that if the rules, regulations and statutes of the United States of America and/or the State of Texas that are in effect upon the execution date of this Agreement are repealed, revised or amended to such an extent that SAWS becomes incapable of, or prevented from, providing the Services, then no liability of any nature is

to be imposed upon SAWS as a result of SAWS' compliance with such legal or regulatory mandates.

### **3.00 Term.**

3.01 The term of this Agreement shall be seven (7) years from the Effective Date if the Developer complies with the requirements set out in G.C. 19.00 (attached) within the time period therein stated. This Agreement shall automatically expire if Developer fails to comply with the requirements of G.C. 19.00 within the time period therein provided. The term of this Agreement may be extended to fifteen (15) years from the Effective Date, if Developer complies with the requirements to extend the term set forth in G.C. 19.00 within the time period therein stated. Certain obligations of SAWS (described in Section 3.03 below) may survive the expiration of the term of this Agreement, to the extent that the Conditions Precedent are satisfied, and Developer has (i) paid all applicable impact fees for the Services at the then-current rate, and (ii) complied with all On-Site and Off-Site utility infrastructure requirements of this Agreement (described in the Special Conditions), including over-sizing requirements. The Conditions Precedent must be satisfied and the Developer must comply with the Development Conditions prior to the extension of this Agreement beyond its initial 3 year term found in G.C. 19.00, which is identified in the Water Service Special Conditions attached to this Agreement. In addition to the requirements of this term provision and those found in G.C. 19.00, the Developer must be in full compliance with the Development Conditions in order to extend this Agreement beyond its initial 3 year term as described in G.C. 19.00. SAWS shall have no obligation to guarantee capacity or provide any Services unless and until the Conditions Precedent and all of the Development Conditions are met. The planning, design and construction of any infrastructure prior to the satisfaction of the Conditions Precedent and all Development Conditions by the Developer shall be at the sole risk, cost and expense of Developer.

3.02 To the extent that SAWS' obligations do not survive the expiration of this Agreement, Developer understands and agrees that a new Utility Service Agreement must be entered into with SAWS to receive the Services for the development project that is the subject of this Agreement.

3.03 To the extent that the Conditions Precedent are satisfied, and Developer has complied with the Development Conditions found in the Special Conditions, timely pays all applicable impact fees and complies with all On-Site and Off-Site utility infrastructure requirements prior to the expiration of this Agreement, the following obligations will survive expiration of this Agreement:

- (i) SAWS' recognition of the EDUs referenced as the subject of this agreement as Guaranteed Capacity.
- (ii) SAWS' continued recognition of impact fee credits previously earned by the Developer pursuant to Sections 15.8 and 15.9 of the USR.
- (iii) SAWS' continued provision of the Services to retail customers located in the Tract, so long as such customers pay for the services and comply with the regulations applicable to individual customers.

#### **4.00 Entire Agreement.**

The following documents attached hereto and incorporated herein are as fully a part of this Agreement as if herein repeated in full, together with this Agreement, comprise the Agreement in its entirety:

Attachment I:	General Conditions
Attachment II:	Special Conditions, including the Conditions Precedent and Development Conditions
Attachment III:	Description of Proposed Water and/or Wastewater Infrastructure
Attachment IV:	Board Summary & Recommendation and Resolution (if necessary)
Attachment V:	Developer Water and/or Wastewater Master Plan (if necessary)
Attachment VI:	Engineering Study Including Description of the Tract
Attachment VII:	Lift Station & Force Main Supplemental Agreement (if necessary)
Attachment VIII:	Water Recycling and Conservation Plan (if necessary)
Attachment IX:	Legal Description of the DRC Property (as defined in S.C. 12.0)

Any of the above attachments that are created and submitted by the Developer as an attachment to this USA shall be limited to providing relevant engineering, planning or managing information for the purposes of setting aside or reserving water and/or wastewater service capacity as specified in the body of this Agreement, the General Conditions and the Special Conditions. Developer agrees that it will not attempt to rely on, and SAWS does not authorize, any of the contents of any attachments created and submitted by the Developer as a basis for claiming rights under Chapter 245 of the Texas Local Government Code, except as specifically required by Section 1.02 of this USA.

Developer understands that this Agreement, including, its General Conditions, Special Conditions and Attachments, is subject to the Texas Public Information Act; and, therefore, agrees that it will not claim that any of the information contained herein is subject to any third party exception under that Act.

#### **5.00 Developer's Obligations.**

The Developer acknowledges and agrees that the capacity provided by this Agreement runs with the land and shall be an appurtenance to the Tract. The Developer shall record this Agreement in the Real Property Records of the County in which the Tract is located within three (3) months of the Effective Date of this Agreement; otherwise, this Agreement will automatically terminate. Developer shall deliver to the Director of Infrastructure Planning a file stamped copy of this Agreement evidencing the recording required herein within three (3) months of the Effective date of this Agreement. The Developer shall maintain records of EDU's remaining on the Tract pursuant to the approved Developer Master Plan. Developer shall provide SAWS with such records upon SAWS written request.



## **6.00 Indemnity.**

**TO THE EXTENT ALLOWED BY LAW AND TEXAS CONSTITUTION, THE DEVELOPER FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS SAWS AND ITS SUCCESSOR AND ASSIGNS FROM THE CLAIMS OF THIRD PARTIES ARISING OUT OF SAWS' RECOGNITION OF THE TRANSFER OF CAPACITY UNDER THIS AGREEMENT TO DEVELOPER'S SUBSEQUENT PURCHASERS, SUCCESSORS AND ASSIGNS.**

## **7.00 Notices.**

Any notice, request, demand, report, certificate or other instrument which may be required or permitted to be furnished to or served upon the parties shall be deemed sufficiently given or furnished or served if in writing and deposited in the United States mail, registered or certified, return receipt requested, addressed to such party at the address set forth below:

### **IF TO SAN ANTONIO WATER SYSTEM:**

**SAN ANTONIO WATER SYSTEM  
POST OFFICE BOX 2449  
SAN ANTONIO, TEXAS 78298-2449  
ATTN: TRACEY B. LEHMANN, P.E., DIRECTOR, DEVELOPMENT**

### **IF TO DEVELOPER:**

**Bakke Development  
3511 Broadway  
San Antonio, TX 78209  
Attn: Mr. Phil Bakke**

## **8.00 Severability.**

If for any reason any one or more paragraph of this Agreement are held legally invalid, such judgment shall not prejudice, affect impair or invalidate the remaining paragraphs of the Agreement as a whole, but shall be confined to the specific sections, clauses, or paragraphs of this contract held legally invalid.

## **9.00 Venue and Governing Law.**

Any disputes related to this Agreement must be brought within Bexar, County Texas and governed by the laws of the State Texas and local laws.

## **10.00 No Third Party Beneficiaries**

The terms and obligations found in this Agreement are for the sole benefit of the Parties to this Agreement and shall not be construed to the benefit of or enforced by any third parties and shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other rights. Any reliance by third parties related to this Agreement shall be at the sole risk, cost

and expense of such third parties, and SAWS shall have no duties, responsibilities, obligations or liabilities therefor.

#### **11.00 Both Parties Drafted Agreement**

The Parties have participated jointly in the negotiating and drafting of this Agreement. In the event that an ambiguity, whether in a question of intent, interpretation or otherwise, arises, then that ambiguity shall not be construed against either party solely on the account of authorship. The Parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed Agreement or any earlier draft.

#### **12.00 Acting Reasonably and in Good Faith; Discretion**

Each party shall act reasonably and in good faith in the exercise of its rights hereunder, except where a party has the right to act in its “discretion” by the express terms hereof. When a party has “discretion”, it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Agreement. When a party does not have “discretion” it means that the party shall act reasonably. A party may exercise any termination right hereunder in its discretion. SAWS’ discretion means it is in the sole discretion of the President/CEO of SAWS, unless otherwise required by the SAWS’ Board.

#### **13.00 Effective Date.**

The Effective Date of this Agreement shall be the date signed by the authorized representative of the San Antonio Water System.

#### **14.00 Ownership and Certificate of Convenience and Necessity.**

By signing this Agreement the Developer represents and warrants that (i) it is the owner of the Tract or has the authority of the Tract owner to develop the Tract, and (ii) that the Tract is not within the jurisdiction of a Certificate of Convenience and Necessity (“CCN”) for water service held by any person or entity, including, without limitation, the Kendall County WCID No. 3 (the “WCID”), nor has an application for a CCN for water service been made, or during the term will be made, by the WCID or any entity under common control or affiliated in any way with Developer. Any breach of the representations or warranty in this Section 14.00 shall make this Agreement voidable by SAWS. If the Developer does not own the Tract, then the Developer must provide documentation from the owner of the Tract to show that Developer has the proper authority to develop the Tract.

**ACCEPTED AND AGREED TO IN ALL THINGS:**

**San Antonio Water System**

**Developer**

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Print Name:** Robert R. Puente

**Print Name:** \_\_\_\_\_

**Title:** President/Chief Executive Officer

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ACKNOWLEDGEMENTS**

**STATE OF TEXAS, COUNTY OF BEXAR**

**§**

**BEFORE ME**, the undersigned Notary Public, on this day personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed to the foregoing instrument and that he has executed the same as \_\_\_\_\_ for the purposes and consideration therein expressed and in the capacity therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 2018.**

(seal)

\_\_\_\_\_  
**Notary Public**

**STATE OF TEXAS, COUNTY OF BEXAR**

**§**

**BEFORE ME**, the undersigned Notary Public, on this day personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed to the foregoing instrument and that he has executed the same as \_\_\_\_\_ for the purposes and consideration therein expressed and in the capacity therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 2018.**

(seal)

\_\_\_\_\_  
**Notary Public**

## **GENERAL CONDITIONS OF THE UTILITY SERVICE AGREEMENT**

### **G.C.1.00 Definitions.**

#### **G.C.1.01 Developer.**

Owner of the tract, his subsequent purchasers, successors, and/or assigns.

#### **G.C.1.02 Director of Infrastructure Planning.**

The Director of Infrastructure Planning of the San Antonio Water System or his/her designated representative.

### **G.C. 1.03 Definition of Terms.**

Unless defined in the Utility Service Agreement (the "Agreement"), the terms used in this General Conditions of the Utility Service Agreement (the "General Conditions") shall have the same definitions and meaning as those set out in Chapter 2, Definitions, of the Utility Service Regulations ("USR"). In the event a term is specifically defined in the General Conditions, and the definition is in conflict with that found in the USR, and such conflict is acknowledged in the General Conditions, the definition set out in the General Conditions shall apply.

### **G.C.2.00 Required Submittals.**

If determined to be necessary by the Director of Infrastructure Planning ("Director"), the Developer hereby agrees to submit the following documents prior to the execution of the Agreement: Developer Master Plan, Developer Utility Layout, Water Recycling and Conservation Plan, and Engineering Report. The Parties agree that such documents are included instruments to the Agreement. The submittal of such documents is a condition precedent to plat recordation and initiation of Services. Developer shall modify such documents as may be reasonably required by the Director. Such documents shall be updated as required by the Director and the USR.

### **G.C.3.00 Dedication to SAWS.**

The Developer agrees to dedicate, grant, and convey to SAWS all rights, title and interest of Developer in both the Off-Site and On-Site utility infrastructure that the Developer is required to construct under the Special Conditions of the Utility Service Agreement (the "Special Conditions"), and to dedicate, grant, and convey to SAWS easements for such utility infrastructure. Upon written acceptance of Off-Site and On-Site utility infrastructure by SAWS, the infrastructure shall be owned, operated and maintained by SAWS.

### **G.C.4.00 Design and Construction Requirements.**

The design and construction of all Off-Site and On-Site utility infrastructure shall, at a minimum, comply with the requirements established by SAWS, including the USR, the City of San Antonio, the County of Bexar, the State of Texas, and any agency thereof with jurisdiction, including but not limited to the Texas Commission on Environmental Quality and the Texas Department of Health. Off-Site and On-Site utility infrastructure shall be constructed under the inspection of SAWS. Provision of the Services to the Tract shall not commence until the Director has accepted and approved Off-Site and On-Site utility infrastructure in writing.

### **G.C.5.00 Joint Venture Agreements.**

In the event the Developer enters into a Joint Venture Agreement covering the costs for supplying the Services to the Tract, the Developer shall send a copy of such agreement to the attention of the Director.

### **G.C.6.00 Assignment.**

This Agreement may not be assigned in whole or in part; however, Developer may assign, convey or transfer EDU capacity ("EDU capacity transfer") to buyers of portions of the Tract in accordance with the terms in G.C. 20.00.

**G.C.7.00 Event of Foreclosure.**

In the event Developer's interest in the Tract described in Attachment VI are extinguished by an act of foreclosure, and the foreclosing party has supplied sufficient evidence to SAWS that they are the successor in interest to the Tract as a result of such foreclosure, and that there are no lawsuits pending concerning the Tract, SAWS shall consider the foreclosing party a successor in interest if the foreclosing party executes a utility service agreement with SAWS after the Director determines that the execution of such an agreement will not be adverse to SAWS' interest.

**G.C.8.00 Payment for Provision of Utility Service.**

In the event payment for the Services provided to a subdivision plat within the Tract is not billed by SAWS, the amount of the monthly fees for the provision of the Services will be those charged to the various customer classifications as set by City Ordinances, with the billing and collection thereof on behalf of SAWS, being the responsibility of the billing utility purveyor. To facilitate this arrangement, Developer is to insert into any utility agreement with whatever utility purveyor is to bill for utility services to a subdivision plat within the Tract, a provision requiring said purveyor to enter into a Contract with SAWS to bill and collect SAWS' monthly utility services fees and transmit said fees to SAWS. The billing utility purveyor shall advise customers that delinquent non-payment of any of SAWS' fees will result in interruption and/or termination of the Services provided by SAWS, in accordance with applicable interruption and termination policies and procedures, as amended. SAWS shall not be obligated to provide the Services to any plat within the Tract unless and until the utility purveyor has executed a contract with SAWS to provide for the billing and collection of the Services provided by SAWS.

**G.C.9.00** Omitted.-.

**G.C.10.00 Oversizing.**

Developer must pay for all mains and other utility facilities needed to serve the Tract. SAWS may require the installation of oversized water mains and wastewater mains and related facilities. SAWS' requirements for oversizing, if any, are set forth in the Special Conditions. SAWS will execute a trilateral contract with Developer and a contractor for the construction of oversized facilities. Contracts for the construction of oversized facilities must be competitively bid as required by law. SAWS will reimburse the Developer for the oversize construction cost differential upon completion of the approved facility installation and SAWS' acceptance of such facility. SAWS will determine whether to provide such reimbursement in the form of a cash reimbursement or in credits to be applied to impact fees. All oversizing shall be done in accordance with the USR.

**G.C.11.00 Off-Site /On-Site Facilities.**

Developer shall construct and install all required Off-Site and On-Site utility infrastructure in accordance with the USR and Special Conditions, at no cost to SAWS. Any specific requirements related to the facilities are set forth in the Special Conditions.

**G.C.12.00 Impact Fee Payment.**

Developer agrees that the Agreement does not constitute an assessment of impact fees. Developer agrees to pay all applicable impact fees at the time and in the amount prescribed by ordinance or resolution of the City Council of the City of San Antonio and the USR, as amended. An estimate of the impact fees for the development Tract is provided in the Special Conditions. The estimate does not constitute an assessment of impact fees, and the amount of impact fees is subject to change by the City Council of the City of San Antonio as provided by law.

**G.C.13.00 SAWS' Obligation to Supply Service.**

To the extent that the Conditions Precedent are satisfied and Developer complies with the Development Conditions, pays all applicable impact fees and complies with all Off-Site and On-Site utility infrastructure requirements, Developer shall be entitled to the permanent use and benefit of the Services and is entitled to receive immediate service from any existing facilities with actual capacity to serve the development for which impact fees were paid, subject to compliance with other valid regulations. If, after collecting the impact fees, there is no actual capacity in existing

facilities to provide the Services, SAWS will provide the Services within a reasonable period of time not to exceed five (5) years, as prescribed by Chapter 395 of the Local Government Code, as amended. In the event Services are required by Developer earlier than the five (5) year period, Developer and SAWS may agree that Developer may construct or finance the capital improvements or facility expansions required to provide Services, and the costs incurred or funds advanced will be credited against impact fees otherwise due from the new development or reimbursed to Developer from impact fees paid from other new developments that will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to Developer at the time the other new development records its plat.

**G.C.14.00 Facility Design and Construction.**

The Developer shall design and construct all On-Site and Off-Site utility infrastructure described in the Special Conditions, including any oversizing, in accordance with the USR and all applicable local, state and federal requirements. Developer further recognizes that SAWS' approval in all respects as to facility right-of-way adequacy, location, size, grade and invert elevation is a condition precedent to any further obligation of SAWS. Specific design and construction requirements are set forth in the Special Conditions.

**G.C.15.00 Use of Capacity by SAWS.**

Developer understands that capacity in Off-Site and On-Site utility infrastructure resulting from the Agreement for the Tract may be utilized by SAWS for other tracts requesting service from SAWS. SAWS shall keep accurate records of the capacity provided to the Tract under the Agreement, whether Set-Aside or Guaranteed Capacity, and in no event will Developer be denied capacity as a result of SAWS' utilization of such capacity for another tract. Set-Aside capacity shall not survive the expiration of the Agreement.

**G.C.16.00 Utility Master Plan Requirements.**

The Developer will prepare a utility master plan, which details the water and/or wastewater systems for the Tract pursuant to the USR, as amended.

**G.C.17.00 Phased Utility Master Plans.**

If the Developer's water and/or wastewater systems are to be installed in phases or units, the Developer shall submit overall utility master plans to SAWS for review and approval. The overall utility master plan(s) shall be submitted before the first construction phase is submitted for plat approval. The overall utility master plan(s) shall show the development phases or units including the sequence and a timetable for build-out. The Developer shall also provide SAWS with a digital version of the proposed recorded plat, as submitted for plat recordation in a format acceptable to SAWS, for each phase or unit of the development project.

**G.C.18.00 Conformance of Plans to Utility Master Plan.**

All water and wastewater system facilities to serve the Tract shall be designed and constructed in conformance with the approved utility master plan. Changes in the water and wastewater system design shall be resubmitted to SAWS for written approval.

**G.C.19.00 Timing Requirements for Submission of Plans.**

Developer shall have three (3) years from the Effective Date of the Agreement to complete and submit the required utility master plan and to start construction of the Off-Site and On-Site utility infrastructure described in the Special Conditions. Developer agrees that the Agreement for the provision of Services shall automatically expire if Developer has not submitted a utility master plan and started construction of required Off-Site and On-Site utility infrastructure within three (3) years of the Effective Date of the Agreement, and a new request for the Services must be submitted to SAWS, which SAWS will grant based on then existing policies and regulations. In the event Developer meets the above-mentioned requirements within the three (3) year period provided, the Agreement shall remain in effect for seven (7) years from the Effective Date. If Developer submits a revised Utility Master Plan in accordance with the

USR prior to the expiration of the seven (7) year period, the Agreement for the provision of Services may be extended to a maximum term of fifteen (15) years from the Effective Date.

**G.C. 20.00      EDU Transfers.**

The transfer of EDU capacity outside the original boundaries of this Utility Service Agreement will not be allowed. The San Antonio Water System considers this Agreement to run with the land; however, EDU capacity transfers to subdivided tracts within the Tract of this Agreement are the responsibility of the Developer and approval of such transfers is not required by the San Antonio Water System. The Developer shall maintain an accounting of the EDU capacity that is used by the Developer and/or transferred after the effective date of this Agreement to portions of the Tract. If the Developer sells a portion of the Tract and transfers part of the EDU capacity contained in this Agreement, then that EDU capacity transfer must be included in the deed, bill of sale or instrument conveying the land and the Developer must require the buyer of the land who receives the allocated EDUs to record the instrument effectuating the transfer. Developer may file a Master Development Plan or an EDU Plan, prepared by an engineer, that shows specific EDU capacity allocations within the Tract and shall ensure that the Master Development Plan or EDU Plan is attached to this Agreement and properly recorded. SAWS will recognize the capacity allocations within the Master Development Plan or EDU Plan so long as those allocations are within the parameters of this Agreement. For properties that have areas of unplanned use, the demand will be calculated at four (4) EDUs per acre unless the engineering report specifies otherwise or there is not enough EDU capacity remaining for the Tract to allocate four (4) EDUs per acre.

In no event will the System be responsible to 3<sup>rd</sup> parties for providing water supply or wastewater discharge capacity beyond the total EDU capacity identified in this Agreement for the Tract. Developer expressly disclaims, releases and holds harmless SAWS from any liability, damages, costs or fees, and agrees to indemnify SAWS for any liability, including, costs and attorney's fees, associated with any dispute related to the transfer of all or a portion of EDU capacity approved for the Tract in this Utility Services Agreement.

**G.C. 21.00      Camp Bullis Awareness Zone.**

In the event that the Tract is located within, or partially within, the Camp Bullis Awareness Zone, the Developer acknowledges that certain lighting regulations may apply within at least a 3-mile radius of Camp Bullis, commonly referred to as down-lighting or dark sky lighting, and Developer will comply with those regulations. Developer agrees to comply with any local, state or federal law, rule or regulation related to the protection of the environment or endangered species, including but not limited to, any site assessments or surveys and notice to the United States Fish & Wildlife when required by law, rule or regulation. Developer acknowledges that any required assessment, survey or notice shall be current or updated as may be required by law, rule or regulation.

**G.C. 22.00      Written Project Information.**

The project associated with this Utility Service Agreement is described in the forms submitted by the applicant including but not limited to 1) a cover sheet clearly stating "USA Request" and the project name; 2) the Engineering Report; and 3) a legal description, metes and bounds description, or Master Development Plan (MDP), subdivision plat, or similar document of the Tract.

## SPECIAL CONDITIONS OF THE UTILITY SERVICE AGREEMENT

### WATER SERVICE

#### **S.C.1.00 Tract Location and Ultimate Demand.**

Biedenharn Tract, a 374.86-acre tract outside the City of San Antonio limits, is located east of Reed Rd and Scenic Loop Rd, as shown in Attachment VI (the "Tract"). The tract is located over the Edwards Aquifer Contributing Zone and is located within the 5-mile Awareness Zone of Camp Bullis. The proposed Tract is located outside SAWS' water CCN, outside SAWS' wastewater CCN and does not require SAWS' financial participation in the development of infrastructure through oversizing or impact fee credits, therefore, Board Action is required.

On March 27<sup>th</sup> of 2018, the San Antonio Water System executed a Utility Service Agreement for the Biedenharn Tract for 2,075 EDUs of potable water service. This Utility Service Agreement replaces and terminates that previous Utility Service Agreement for the Biedenharn Tract and thereby reduces the water supply available to this Tract through that USA by 2,075 EDUs.

The ultimate demand from the proposed development, on SAWS' water infrastructure, shall not exceed 2,075 equivalent dwelling units (EDUs) of water supply.

#### **S.C.2.00 Infrastructure Requirements.**

Water Supply to the Tract will be from Pressure Zone (PZ 12). The flow capacity of a 24-inch main is required to supply water to the 374.86-acre Tract, in conformance with SAWS' Utility Service Regulations (USR).

##### **Phase I**

The Developer shall construct approximately 6,300 LF of 24-inch approach main from the existing 24-inch main on Balcones Creek, to the Tract as shown in Attachment III. The Developer will then be required to install an isolation valve on the proposed 24-inch approach main to the specifications and location approved by SAWS. The Developer shall then construct approximately 5,500 LF of 16-inch border main from the proposed 24-inch approach main, along the Tract's entire frontage bordering Corley Rd as shown in Attachment III. The Developer will be required to submit plans for a proposed facility with an elevated storage tank having a capacity of 1.5 MG.

The Developer will then be required to construct a booster station in accordance with SAWS USR to serve all connections above an elevation of 1,480 feet. This booster station shall be designed and sized to specifications determined by SAWS and is subject to SAWS approval and acceptance.

The Developer shall then construct a series of looped 12-inch and 8-inch mains throughout the Tract with no less than two connections to the proposed 16-inch border main along Corley Rd.

Upon completion of the required infrastructure, the Developer shall then be allowed to connect up to 200 EDUs to the proposed series of looped 8-inch and 12-inch mains throughout the Tract.



## **Phase II**

Before making any connections beyond 200 EDUs, the Developer will be required to complete Option 1, Option 2, or Option 3. Once one of these options is complete, the Developer will receive the remaining 1,875 additional EDUs of capacity as described below.

For all three options, the Developer shall construct approximately 9,700 LF of 16-inch approach main from the existing 24-inch main on Boerne Stage Rd, along Boerne Stage Rd, to the Tract. The Developer shall make two connections to the existing 12-inch main along Boerne Stage Rd as shown in Attachment III. The Developer will be required to install an isolation valve on the 16-inch approach main to the specifications and location approved by SAWS. The Developer will then be allowed to connect remaining services to the proposed series of looped 8-inch and 12-inch mains throughout the Tract.

### **Option 1**

The Developer shall design and construct all infrastructure necessary to provide a redundant water supply with sufficient capacity to meet or exceed 2075 EDUs to ensure uninterrupted service to the tract as identified in S.C. 11.05 below in the Conditions Precedent.

The Developer shall construct the 1.5 MG elevated storage tank per the plans submitted at Phase I.

The WCID will work to facilitate an agreement between SAWS and GBRA for a water supply beyond 2037. As an alternative, after exhausting efforts to facilitate such agreement, in lieu of such direct agreement, the Developer shall provide SAWS with an assignment agreement to provide water service from the GBRA beyond 2037. The assignment agreement will be in a form and substance acceptable to SAWS in its discretion and will have water quality requirements consistent with those within the existing SAWS/GBRA Agreement.

### **Option 2**

In the event that the EAA Act is modified or other legislation is passed to allow for the use of Edwards Aquifer water within Kendall County, or the Developer provides SAWS with another source of water acceptable to SAWS in its discretion to provide retail water service for a total of 2,075 EDUs, then the Developer may submit a plan for the design and construction of the infrastructure necessary to deliver the Edwards Aquifer or other water supply to the Tract in lieu of the foregoing option. This Edwards Aquifer or other water supply option must be legally authorized and finalized by September 1, 2021.

### **Option 3**

The Developer shall construct approximately 40,000 LF of 60-inch main from the Salado Pump Station to the existing 42-inch main (Job No 86-3658) at the intersection of Camp Bullis Rd and Babcock Rd as shown in Attachment III. The Developer shall then be required to make all improvements to the Salado Pump Station to accommodate an additional 40 MGD of pumping

capacity to provide an alternative supply other than Edwards Aquifer water to the Northwest area. This water is expected to be available by mid-2020.

Upon concurrence in writing by SAWS that the Edwards Aquifer or other water supply may be utilized to serve the Tract and completion of the required infrastructure, the Developer shall then connect remaining services to the proposed series of looped 8-inch and 12-inch mains throughout the Tract.

**S.C. 3.00 SAWS Master Plan and Oversizing Requirements.**

N/A

**S.C.4.00 Impact Fee Credit Eligibility.**

N/A

**S.C.5.00 Engineering Study Report and/or Pro-Rata Refund Eligibility.**

The engineering study report “Biedenharn Tract, Utility Service Agreement Engineering Report”, by Pape-Dawson Engineering, dated December 2017 is included as Attachment VI.

**S.C.6.00 Developer On-Site and/or Off-Site Requirements.**

The Developer shall acquire any right-of-way or easements, and install all On-Site and Off-Site utility infrastructure required to serve the Tract in accordance with SAWS’ USR, solely at the Developer’s cost, unless otherwise stated in S.C.3.00 or S.C.4.00. Other On-Site requirements within the Tract will be determined at such time as the engineer submits an overall Utility Master Plan, and any subsequent revisions, for the Tract.

**S.C.7.00 Requirement to Install Approved Pressure Regulators and/or Booster Pumps.**

A portion of the Tract is below ground elevation of 1425 feet where the static pressure will theoretically exceed 80 psi. Any service connections within the Tract, at elevations lower than this ground elevation, shall require the installation of a Pressure Reducing Valve (PRV), on the customer(s) side of the meter, rated for a maximum working pressure of no less than 300 psi, prior to a SAWS meter being installed. Installation shall be in conformance with the current Plumbing Code with Local Amendments adopted by the City of San Antonio.

**S.C.8.00 Time for Water Impact Fee Assessment and Payment.**

Water Impact Fees will be assessed at the rates in effect at the time of plat recordation or the latest date allowed by law. Impact fees will be collected at either the time of plat recordation or connection to the SAWS’ water system, at the discretion of the Developer.

**S.C.9.00 Water Impact Fee Estimates Based Upon Current Charges.**

Following is an estimate of impact fees for the provision of Services contemplated under the Agreement, which are based on current impact fee rates. This estimate shall not constitute an assessment of impact fees and impact fee rates are subject to change by the San Antonio City Council.

Type of Impact Fee	EDUs	\$/EDUs	Current Total
Flow Development	2075	\$1,182	\$2,452,650
System Development High	2075	\$883	\$1,832,225
Water Supply	2075	\$2,796	\$5,801,700
Total			\$10,086,575

**S.C.10.00 Pro-Rata Charge Requirement.**

Developer shall be required to pay a Pro-Rata Charge pursuant to the USR, as amended, prior to connection to the SAWS water system if Developer is tying into a main that is subject to a pro-rata refund.

**S.C. 11.00 Conditions Precedent**

The following conditions set forth in S.C. 11.01, 11.02, 11.03, 11.04 and 11.05 below (the “Conditions Precedent”) must be satisfied in SAWS’ discretion as a condition precedent to performance by SAWS of any duties or obligations of SAWS under this Agreement, including providing any capacity or providing the Services under this Agreement. The Conditions Precedent must be satisfied within one hundred and eighty (180) days after the Effective Date of this Agreement, or such later date as may be approved in writing by SAWS in SAWS’ discretion, or this Agreement shall automatically terminate, and neither Party shall have any further rights, duties or obligations, and SAWS shall not be obligated to issue a new Utility Service Agreement to the Developer or for the benefit of the Tract. Upon request of either Party, SAWS and Developer agree to execute an acknowledgement of the satisfaction of, or failure to satisfy, the Conditions Precedent, in such form as may be acceptable to Developer and SAWS to be recorded in the Real Property records in the county in which this Agreement is recorded.

**S.C. 11.01** Pursuant to the GBRA Agreement and the GBRA Prohibition, SAWS cannot currently provide the Services to the Tract, as all water delivered by GBRA to SAWS under the GBRA Agreement is currently required to be used exclusively within SAWS service area which is defined by a Certificate of Convenience and Necessity or within the certificated service area of a wholesale customer of SAWS. Further, all water delivered by GBRA to SAWS under the GBRA Agreement is required to be used within Bexar County, unless and except to the extent that SAWS obtains GBRA’s prior written approval for the use outside Bexar County. Therefore, this Agreement and SAWS’ obligations under this Agreement are expressly conditioned upon SAWS acquiring an amendment to the GBRA Agreement and/or written approval of GBRA for SAWS to provide the Services to this Tract, which amendment and/or consent shall be in such form and content as is acceptable to SAWS in its discretion. SAWS offers no opinion and makes no representation or

warranty as to whether it can satisfy this condition precedent, and shall have no express or implied duty or obligation to do so.

**S.C. 11.02** The Developer shall provide SAWS with the original Declaration of Restrictive Covenants (as defined in S.C. 12.06 below), in such form and content as is acceptable to SAWS in its discretion, which has been file stamped and recorded in the Real Property Records of the county in which the Tract is located, all as more particularly described in S.C. 12.06 below.

**S.C. 11.03** The Developer must provide SAWS with an agreement, in such form and content as is acceptable to SAWS in its discretion, from Kendall County WCID No. 3 stating that it shall not: 1) compete with SAWS or provide water services to the Tract; 2) apply for a CCN to provide water services to the Tract and 3) impose any duties, obligations or requirements on or affecting SAWS.

**S.C. 11.04** The Developer and SAWS must enter into an agreement, in such form and content as is acceptable to SAWS and in its discretion, that requires the Developer to pay any and all fees, costs, expenses, fines or penalties of whatsoever nature incurred by SAWS to provide the Services in the event of or in any way related to the interruption, degradation or impairment of the water supply to the Tract.

**S.C. 11.05** The Developer secures a redundant water supply from Kendall West Utility, LLC or another 3<sup>rd</sup> party water purveyor acceptable to SAWS in its discretion to ensure uninterrupted service to the tract until the resolution of the EAA issue. The Developer shall be responsible for all costs related to the design and construction of the infrastructure to connect to the redundant water supply. SAWS shall have the right to review and approve those plans to ensure the interconnection is sufficient to serve the Tract.

## **S.C. 12.00 Development Conditions**

The following S.C. 12.01 through S.C. 12.05 are development conditions upon which Developer has agreed shall apply to all of the real property encumbered by the WCID (approximately 1,012 acres) as more particularly described in Attachment IX (the "DRC Property") as a condition for SAWS to provide the Services under this Agreement (the "Development Conditions").

### **S.C. 12.01 Drainage Pollution Prevention and Control**

All acreage within the DRC Property shall be subject to Article VI Pollution Prevention and Control of the San Antonio City Code, found in Sections 34-912 to 34-959 as it applies drainage area in Section 34-914. In addition, Developer agrees that the DRC Property shall be subject to Section 34-930 Pollution Prevention Criteria in Category 2, specifically the impervious cover limits as outlined. These requirements may be administered by the SAWS Edwards Aquifer Protection water quality staff.

### **S.C. 12.02 Tree Preservation and Canopy Coverage**

All construction and/or development on the DRC Property shall comply with all City of San Antonio Tree Preservation and Adequate Canopy Coverage requirements, as codified in Section 35-523 of the City of San Antonio Uniform Development Code.

**S.C. 12.03 SAWS Construction Standards**

All construction and/or development on the DRC Property shall comply with all SAWS construction standards, including, but not limited to, the Utility Service Regulations and Construction Specifications. All construction shall be subject to inspection and approval by SAWS staff.

**S.C. 12.04 Dark Sky Requirements**

All construction and/or development on the DRC Property shall comply with the City of San Antonio's Dark Sky Ordinance, found in Section 35-339.04, entitled Military Lighting Overlay Districts.

**S.C. 12.05 Drought Management Restrictions**

The DRC Property shall comply with, be governed by and subject to the City of San Antonio's Drought Management Plan and Ordinance City Code Chapter 34, Article IV, Divisions 1-4.

**S.C. 12.06 Declaration of Restrictive Covenants and Enforcement of Development Conditions**

The Developer shall, at its expense, cause to be recorded in the Real Property Records of the county in which the Tract is located, a Declaration of Restrictive Covenants ("DRC") covering the entire DRC Property that includes the Development Conditions, and any such other provisions as may be reasonable and customary for an adequate description and enforcement of the DRC, in SAWS discretion. The DRC shall be in such form as is acceptable to SAWS, in SAWS discretion. The DRC shall run with the land in the DRC Property. The DRC shall contain language expressly granting to SAWS, the City of San Antonio and/or its designee, the right, should SAWS so elect, to enforce and or otherwise pursue to the extent provided at law or in equity, enforcement of the provisions of the DRC. SAWS' and/or the City's rights shall include the right to inspection, sampling and monitoring to assure any compliance. Any violation of or failure to comply with the DRC at any time shall constitute a material breach, and may result in the termination of this Agreement by written notice from SAWS in its discretion, including, the loss of any set-aside or guaranteed, existing capacity. For any violation of the DRC, the DRC shall include the right of SAWS to either impose a reasonable fine or fee on, or disconnect water services from, the resident property owner, or customer occupant, for any violation of the terms of the DRC, , and SAWS shall have a lien against each property within the DRC Property to secure payment of any fines or fees levied by SAWS. In the event of such breach and termination, SAWS shall not be obligated to issue a new Utility Service Agreement to the Developer or for the benefit of this Tract.

Recordation of the DRC by the Developer shall be a Condition Precedent as set forth in S.C. 11.02 above.

DRAFT

**SPECIAL CONDITIONS OF THE UTILITY SERVICE AGREEMENT**

**WASTEWATER SERVICE**

**S.C.1.00 Tract Location and Ultimate Demand.**

Biedenharn Tract, a 374.86-acre tract outside the City of San Antonio limits, is located east of Reed Rd and Scenic Loop Rd, as shown in Attachment VI (the “Tract”) and lies within SAWS’ Upper Collection and Treatment Area (UCTA). The tract is located over the Edwards Aquifer Contributing Zone and is located within the 5-mile Awareness Zone of Camp Bullis. The proposed Tract is located outside SAWS’ water CCN, outside SAWS’ wastewater CCN and does not require SAWS’ financial participation in the development of infrastructure through oversizing or impact fee credits, therefore, Board Action is required.

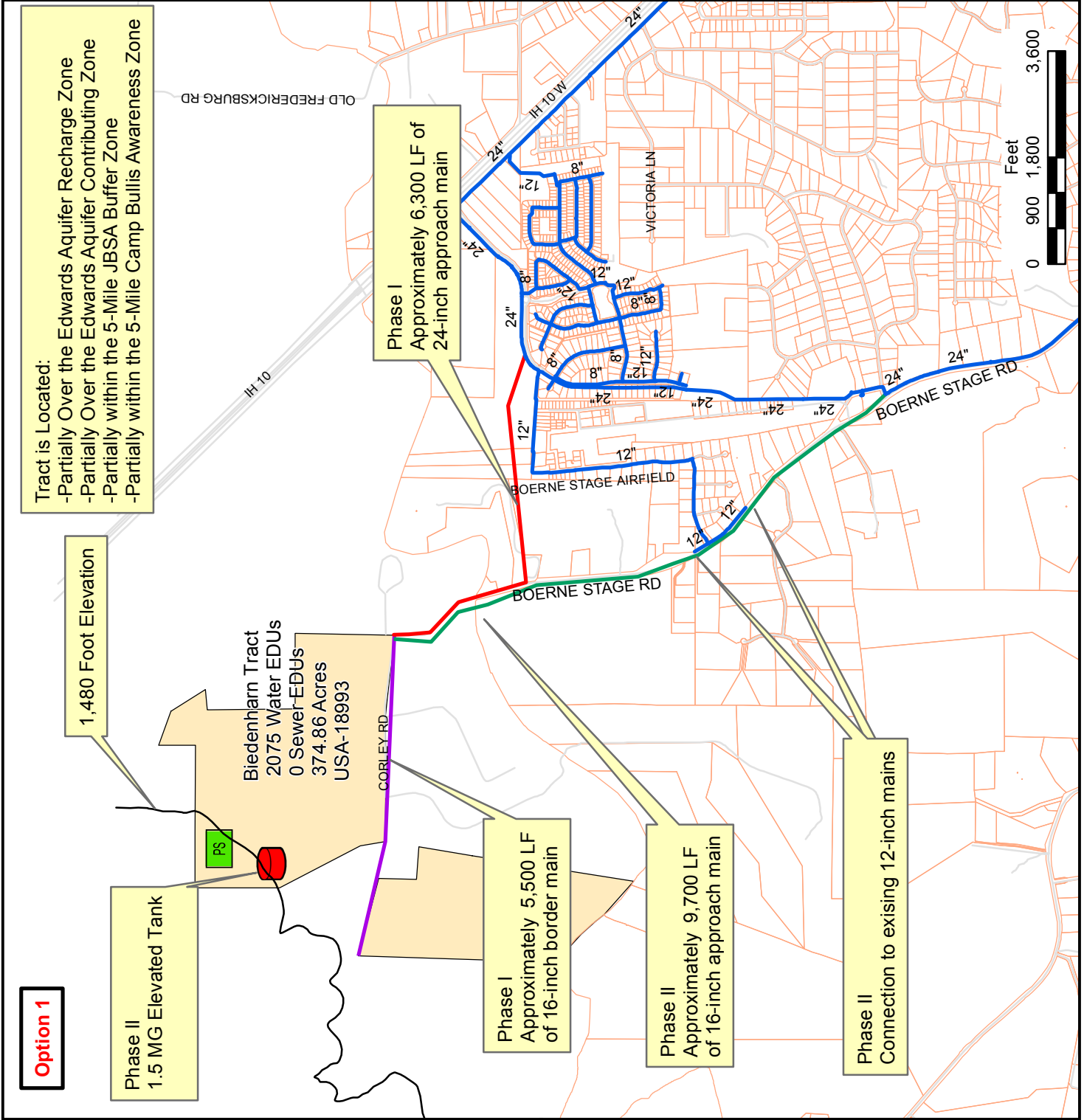
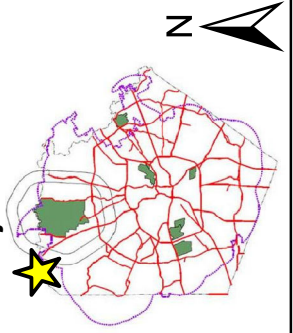
The Developer is not requesting any sewer service from SAWS at this time. The Developer will be required to acquire sanitary sewer service through an authorized utility purveyor and provide documentation to SAWS prior to receiving any service from SAWS.



**Legend**

- Existing Water Main
- USA Tract
- Parcels Update
- Proposed 16-inch Approach Main
- Proposed 24-inch Approach Main
- Proposed 16-inch Border Main
- 1,480 Foot Elevation
- PS
- Proposed Booster Station
- Proposed Elevated Tank

**Project Location**





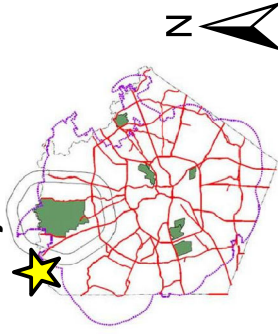
Attachment III:  
USA-18993  
Biedenham Tract  
Proposed Water Infrastructure Map  
374.86 Acres



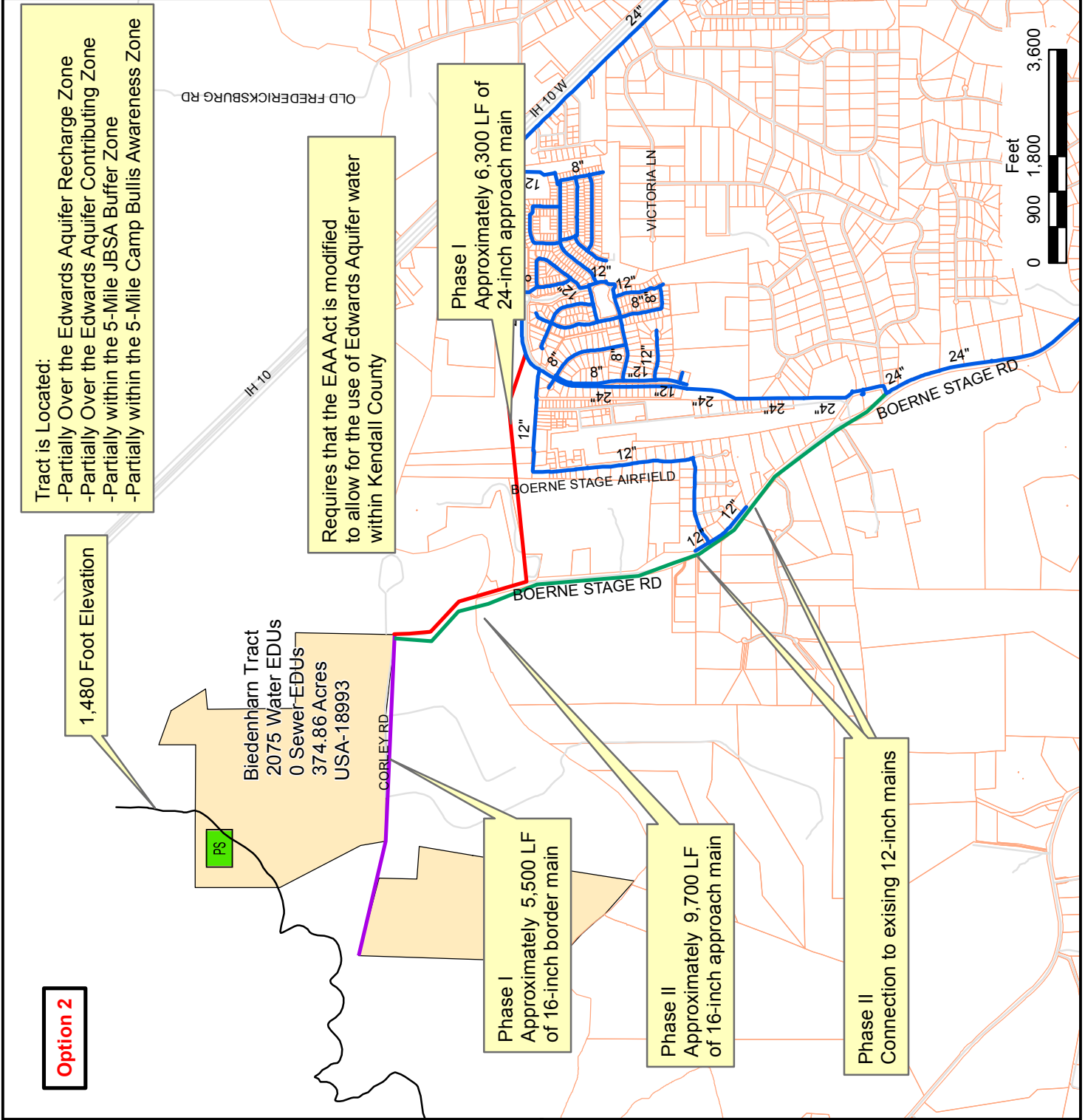
**Legend**

- Existing Water Main
- USA Tract
- Parcels Update
- Proposed 16-inch Approach Main
- Proposed 24-inch Approach Main
- Proposed 16-inch Border Main
- 1,480 Foot Elevation
- Proposed Booster Station

**Project Location**



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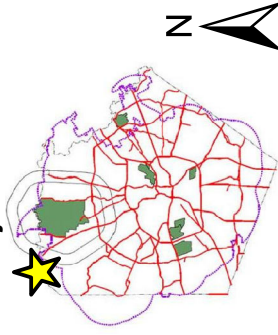
Attachment III:  
 USA-18993  
 Biedenharn Tract  
 Proposed Water Infrastructure Map  
 374.86 Acres



**Legend**

- Existing Water Main
- USA Tract
- Parcels Update
- Proposed 16-inch Approach Main
- Proposed 24-inch Approach Main
- Proposed 16-inch Border Main
- 1,480 Foot Elevation
- Proposed Booster Station

**Project Location**



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**Tract is Located:**  
 -Partially Over the Edwards Aquifer Recharge Zone  
 -Partially Over the Edwards Aquifer Contributing Zone  
 -Partially within the 5-Mile JBSA Buffer Zone  
 -Partially within the 5-Mile Camp Bullis Awareness Zone

1,480 Foot Elevation

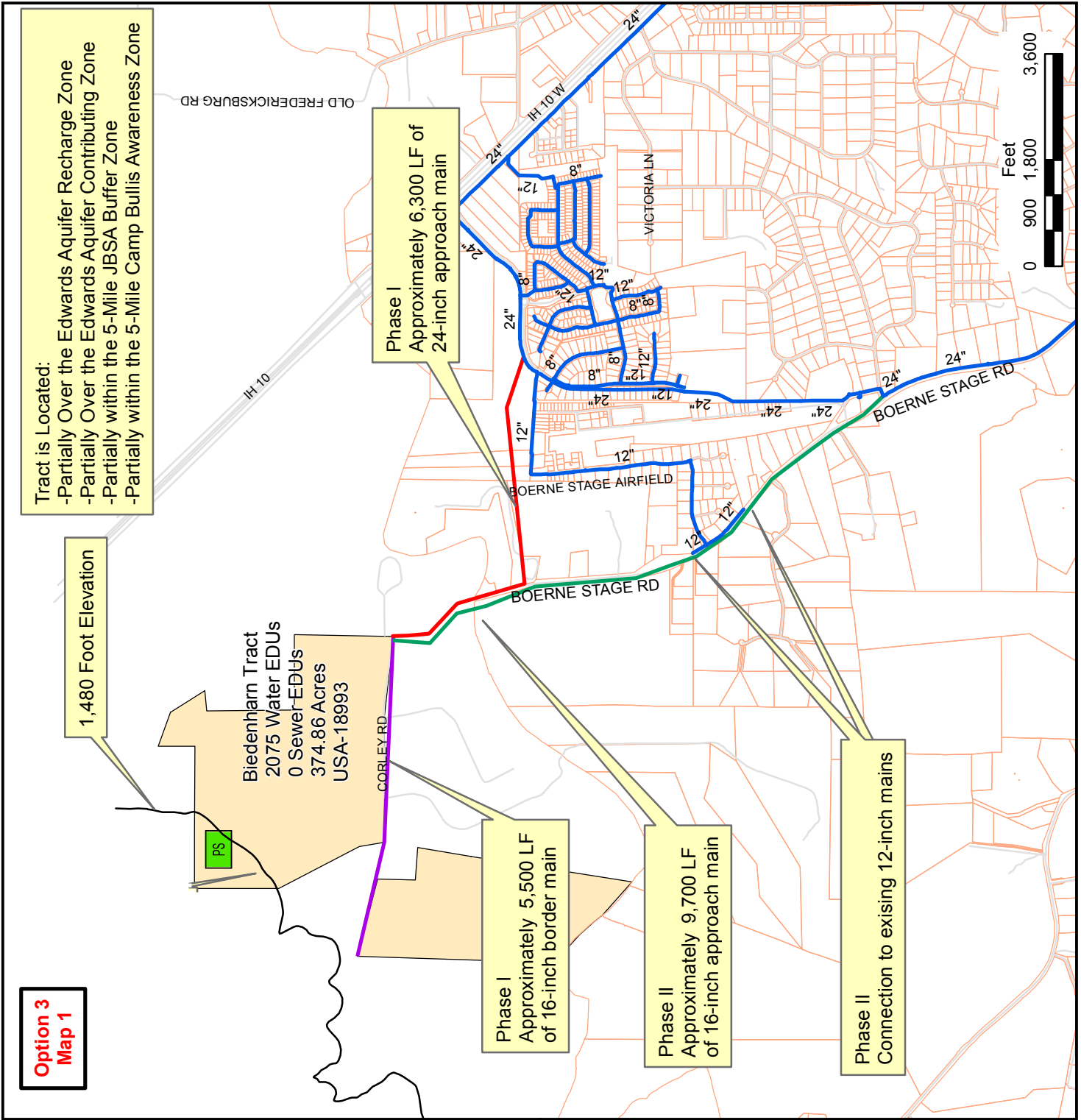
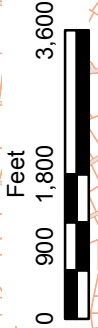
Biedenharn Tract  
 2075 Water EDUs  
 0 Sewer-EDUs  
 374.86 Acres  
 USA-18993

Phase I  
 Approximately 6,300 LF of  
 24-inch approach main

Phase I  
 Approximately 5,500 LF  
 of 16-inch border main







Phase II  
 Approximately 9,700 LF  
 of 16-inch approach main

Phase II  
 Connection to existing 12-inch mains

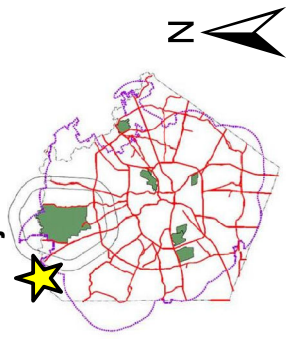




**Legend**

-  Existing Water Main
-  USA Tract
-  Parcels Update
-  Proposed 60-Inch Main
-  SAWS Facilities
-  Camp Bullis

**Project Location**



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