

AN ORDINANCE 2012-03-08-0177

AUTHORIZING A JOINT USE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND THE SAN ANTONIO WATER SYSTEM FOR USE OF PUBLIC RIGHTS-OF-WAY FOR THE RECENT CONSTRUCTION OF A SANITARY SEWER MAIN WITHIN CONCEPCION CREEK ADJACENT TO LOTS 30 THRU 33, BLOCK 13, NCB 3916 IN COUNCIL DISTRICT 5, FOR A FEE OF \$123.00.

* * * * *

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

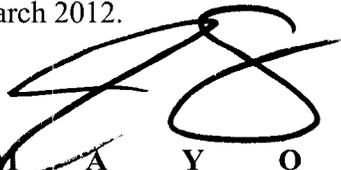
SECTION 1. The City Manager and her designee, severally, are authorized and directed to grant an indefinite-term joint use agreement assuring noninterference with the City’s drainage rights on a drainage easement. In furtherance of the preceding, the City Council authorizes and directs the City Manager or her designee, severally, to execute and deliver on behalf of the City a Joint Use Agreement substantially in the form attached as **Attachment I**, 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 I, 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 240000000061 and General Ledger 4202410.

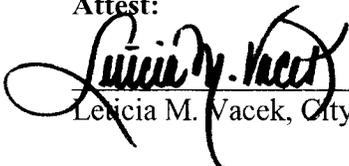
SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

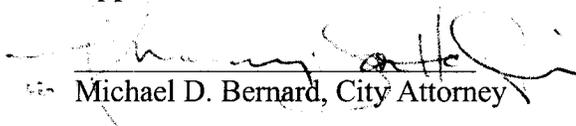
PASSED AND APPROVED this 8th day of March 2012.


M A Y O R
Julián Castro

Attest:


Leticia M. Vacek, City Clerk

Approved As To Form:


Michael D. Bernard, City Attorney



Request for
COUNCIL
 ACTION

City of San Antonio



Agenda Voting Results - 21

Name:	5, 6, 7, 8, 9, 11, 12, 13, 15, 16A, 16B, 16C, 16D, 16E, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29						
Date:	03/08/2012						
Time:	10:00:39 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing execution of a Joint Use Agreement between the City of San Antonio and the San Antonio Water System for use of public right-of-way for the recent construction of a sanitary sewer main within Concepcion Creek adjacent to Lots 30 thru 33, Block 13, NCB 3916 in Council District 5, for a fee of \$123.00. [Peter Zaroni, Assistant City Manager; Mike Frisbie, Director, Capital Improvements Management Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x			x	
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

Joint Use Agreement

Eldorado Sewer

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1. Pertinent Information.

Authorizing Ordinance:

SP No.: 1584

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: San Antonio Water System

Joint User's Address: 2800 Highway 281 North, P.O. Box 2449, San Antonio,
Texas 78298-2449 (Attn: Manager Corporate Real Estate)

Term: Indefinite duration subject to rights of termination set out
in this agreement.

Premises: A 0.0565 tract of land out of Lots 34, 35, 36 and 37, Block
13, NCB 3916 within Concepcion Creek as further
described in the attached Exhibit A.

Scope of Permission: Installation, construction, reconstruction, realignment,
inspection, patrolling, operation, maintenance, repair,

addition, removal and replacement of an eight inch sanitary sewer main, including all facilities and appurtenances convenient to accomplishing the purpose, and additions and replacements thereto

Fee: \$123

2. Permission.

2.01. City acknowledge that Joint User's activities, if within the Scope of Permission and conforming to the terms and conditions of this Agreement, do not, as of the date of the City's execution of this Permission set forth below, unreasonably interfere with the use by the City. The Permission is non-exclusive. This instrument does not create an easement, but only a license defined by the terms of this instrument. City will coordinate with Joint User any access or use that could affect Joint User's infrastructure within the Premises.

2.02. City will not construct permanent improvements over the Premises that would unreasonably interfere with Joint User's use within the Scope of Permission.

2.03. This Permission does not exempt Joint User from rules of general applicability governing activities within the Scope of Permission or from getting permits required generally for activities within the Scope of Permission.

3. Construction, Maintenance, and Operations.

3.01. **Costs.** Joint User is solely responsible for all costs of construction, installation, repairs, maintenance, operation, and the like of any property placed by Joint User in the Premises.

3.02. **Installation and Maintenance.** All pipes must be buried to a depth satisfactory to City. In determining proper depth, City may consider expected future as well as present uses of the Premises. If another governmental or other regulatory body prescribes a depth, that depth will be satisfactory to the City. 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 applicable federal, state, or local laws, rules, or regulations. Without limiting the foregoing, Joint User must assure that nothing it does causes the Premises to fail to comply with any aspect of the Unified Development Code relating to drainage.

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

3.04. **Contractors and Subcontractors.** Joint User must promptly pay anyone who could file a mechanics' or materialmen's lien on the Premises, unless there is a good faith dispute about the right to payment. If any such lien is filed, Joint User shall pay or bond around such claim within 30 days after Joint User's notice of the lien, failing which, City may treat it as an event of default and terminate this Permission as provided in Section 6 below entitled "Termination." Joint User remains obligated to clear the lien without cost to City even after termination.

3.05 **Restoration.** If Joint User buries any pipes, promptly upon covering the pipes, Joint User must restore the original contours and vegetation disturbed by the burial to a condition

substantially equivalent to their pre-existing condition, substantial equivalence to be determined by City. If an area has a natural appearance, Joint User must restore that natural appearance unless City otherwise agrees in writing. City's determination of natural appearance controls.

4. Insurance.

Joint User and City are political subdivisions of the State of Texas. As such they are subject to, and comply with the applicable provisions of, the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et. seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

5. Indemnity.

5.01. For so long as Joint User is part of the City, it need not indemnify under this contract. Subject to the indemnity provisions below when they apply, each party is liable for its own actions, the actions of its employees, and the actions of others acting on its behalf under this agreement.

5.02. If Joint User ceases to be part of the City or if this agreement is assigned to another, Joint User or its assignee must indemnify as provided in this article. **These definitions apply to the indemnity provisions of this Contract:**

5.02.01 "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising, in whole or in part, out of acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Contract. A claim is an Indemnified Claim even if the person alleged to be at fault is not a party to this agreement. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death. Indemnified Claims also include claims in which an Indemnitee shares liability with the Indemnitor.

5.02.02. "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.

5.02.03. "Indemnitor" means Joint User.

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

5.04. If one or more Indemnitees are finally adjudged to be liable for an Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnitee negligence or other fault, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously

spent defending or otherwise indemnifying Indemnites finally adjudged to be negligent and must continue to indemnify other Indemnites.

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

5.06. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnites. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnites, not Indemnitor.

5.07. 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.

5.08. 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.

5.09. Nothing in this Contract waives governmental immunity or other defenses of Indemnites under applicable law.

5.10. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnites, collectively, and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnites' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

6. Termination.

6.01. City may terminate this Permission at any time before expiration by giving Joint User 365 days written notice, but only if City Council passes a resolution finding that Joint User's use of the Premises has, or in the future may reasonably be expected to, interfere with use of the Premises. City shall use good faith efforts to notify Joint User at least ten (10) days in advance of any such public meeting at which such resolution will be considered by City Council.

City will consider Joint User's request for more than 365 days within which to remove and relocate its infrastructure.

6.02. Upon expiration or termination, all rights and privileges cease, and Joint User must promptly cease use of the Premises. If City terminates, City will then reimburse Joint User for the reasonable costs of (A) removing existing facilities permitted by this agreement, (B) acquiring a new location for the facilities, and (C) installing replacement facilities in the new location.

6.03. 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.

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

6.05. If a Memorandum of Permission substantially in the form of **Exhibit B** is recorded in the real property records of the county in which the Premises are located and if the City Council does not terminate this agreement according to the terms of this article, upon City's sale of the Premises, Joint User's rights under this agreement become an easement in gross for the purposes described in the Scope of Permission, for the benefit of Joint User, its successors and assigns. Joint User is responsible for recording fees.

7. Assignment.

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

7.02. Subject to the City's rights of termination set out in Section 6.01 above, if City sells the Property of which the Premises are a part, and Joint User is an agency or a part of the City at the time of the sale, City will reserve a perpetual easement for Joint User for the use permitted herein, without additional cost to Joint User.

8. Condemnation.

If the Premises are taken, in whole or in part, by eminent domain not for the benefit of City, 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, unless Joint User is an agency or other part of the City. If Joint User remains an agency or other part of the City, the parties will equitably allocate the proceeds.

9. Taxes.

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

10. Appropriations.

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for an obligation arising under this agreement, the City cannot be required to fulfill the obligation.

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 to seek emergency injunctive relief.

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 shall comply with the requirements of this Agreement but will have no liability or obligation relating to the period after transfer.

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, Capital Improvements Management Services Department, City of San Antonio, as designee of the City Manager, without council action, unless the City Charter requires City Council action.

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

12.06. **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.

12.07. **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.**

12.08. **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.

12.09. **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.

12.10. **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. 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.

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

12.12. **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.

12.13. **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.

13. Public Information.

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

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

City:

City of San Antonio, a Texas municipal corporation

By: _____

Printed Name: _____

Title: _____

Date: _____

Joint User:

San Antonio Water System, an agency of the City of San Antonio

By: _____

Printed Name: _____

Title: _____

Date: _____

Approved As To Form:

City Attorney

Exhibit A

**FIELD NOTES
20-FOOT WIDE JOINT USE AREA
0.0565 OF AN ACRE (2,460 SQUARE FOOT)**

A 0.0565 of an acre (2,460 square foot) 20-foot wide tract of land (Joint Use Area) out of Lots 34, 35, 36 and 37, Block 13, N.C.B. 3916 of the San Fernando Addition conveyed to the City of San Antonio in the Warranty Deed recorded in Volume 4843, Page 246 of the Deed Records of Bexar County, Texas, in the City of San Antonio, Bexar County, Texas, said joint use area being more particularly described as follows:

BEGINNING: at a set 1/2" iron rod with a yellow plastic cap marker "LNV SA" on the east line of a 15-foot wide Alley recorded in Volume 1625, Page 170 of the Deed and Plat Records of Bexar County, Texas, the northwest corner of Lot 34, Block 3916, the southwest corner of Lots 30-33, Block 3916 recorded in Volume 3650, Page 477 of the Official Public Records of Real Property of Bexar County, Texas, the northwest corner of the herein described joint use area;

THENCE: N 89°42'41" E, departing the east line of the aforementioned 15-foot wide Alley, along and with the north line of the aforementioned Lot 34, a distance of 123.00 feet to a set 1/2" iron rod with a yellow plastic cap marker "LNV SA", on the west right-of-way line of Nunes Street, a 50-foot right-of-way recorded in Volume 105, Page 320 of the Deed and Plat Records of Bexar County, Texas, the northeast corner of the herein described joint use area;

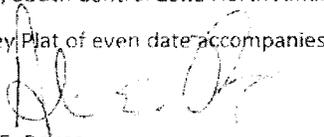
THENCE: S 00°41'09" E, along and with the west right-of-way line of Nunes Street, a distance of 20.00 feet to a point, the southeast corner of the herein described joint use area;

THENCE: S 89°42'41" W, departing the west right-of-way line of Nunes Street, a distance of 123.00 feet to a point, the southwest corner of the herein described joint use area;

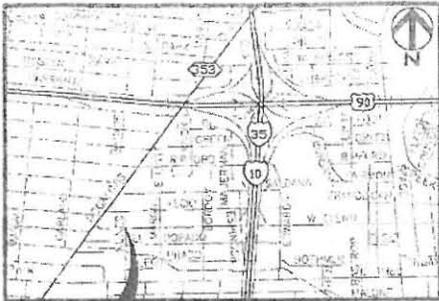
THENCE: N 00°41'09" W, a distance of 20.00 feet to the **POINT OF BEGINNING** containing 0.0565 of an acre of land.

The Basis of Bearing for this Metes and Bounds Description is Grid North, Texas State Plane Coordinate System, South Central Zone North American Datum 1983(93).

A Survey Plat of even date accompanies this Metes and Bounds Description.

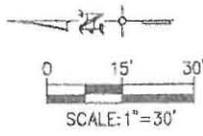

Adrian E. Reyes
Registered Professional Land Surveyor
State of Texas Registration No. 5806



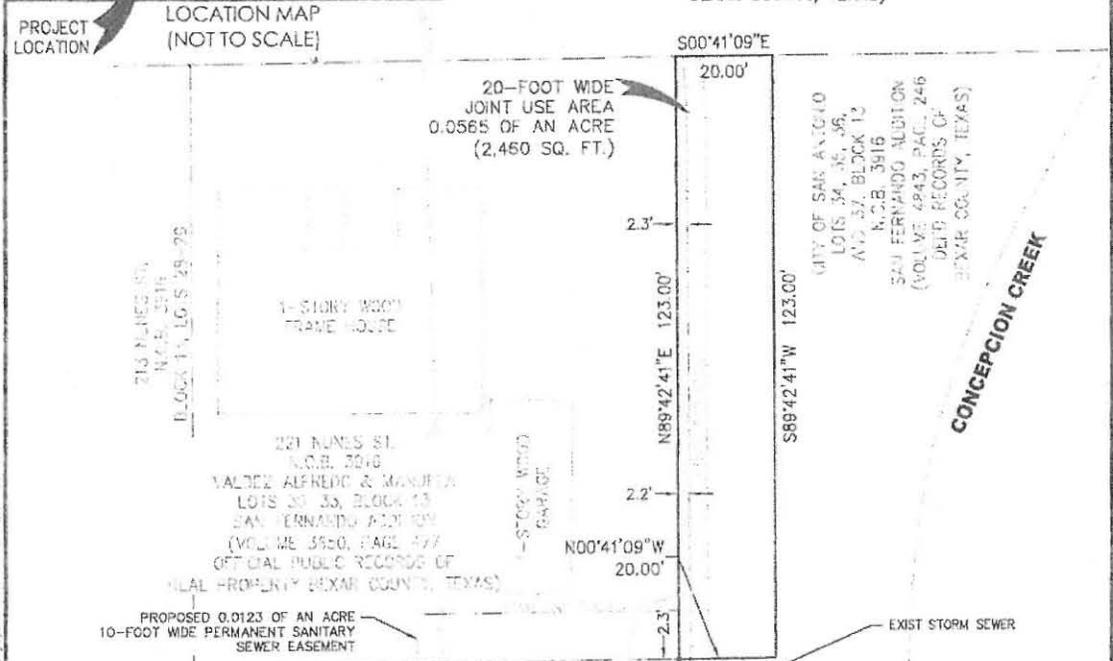


- NOTE: Exhibit "B"**
1. BEARINGS ARE BASED ON GRID NORTH, TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS SOUTH CENTRAL ZONE, N.A.D. 83 (93)
 2. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS SURVEY PLAT.

PROJECT: ELDORADO SEWER
 PARCEL #: P11-001



NUNES ST.
 (50-FOOT R.O.W.)
 VOLUME 105, PAGE 320
 DEED AND PLAT RECORDS
 BEXAR COUNTY, TEXAS)



PROPOSED 0.0123 OF AN ACRE
 10-FOOT WIDE PERMANENT SANITARY
 SEWER EASEMENT

20-FOOT WIDE
 JOINT USE AREA
 0.0565 OF AN ACRE
 (2,460 SQ. FT.)

221 NUNES ST.
 N.C.B. 3040
 VALDEZ ALFREDO & MANUELA
 LOTS 30, 33, BLOCK 13
 SAN FERNANDO ADDITION
 (VOLUME 3520, PAGE 477
 OFFICIAL PUBLIC RECORDS OF
 BEXAR COUNTY, TEXAS)

VOLUME 1025, PAGE 170
 (DEED AND PLAT RECORDS
 OF BEXAR COUNTY, TEXAS)
 LOT 16, N.C.B. 2345
 EL DONADO

CITY OF SAN ANTONIO
 LOTS 34, 35, 36, 37,
 AND 37, BLOCK 13
 N.C.B. 3916
 SAN FERNANDO ADDITION
 (VOLUME 4843, PAGE 246
 DEED RECORDS OF
 BEXAR COUNTY, TEXAS)

CONCEPCION CREEK

STATE OF TEXAS §
 COUNTY OF BEXAR §

I, ADRIAN E. REYES, A REGISTERED PROFESSIONAL LAND SURVEYOR, OF LNV INC., DO HEREBY CERTIFY THAT THE FOREGOING EXHIBIT WAS PREPARED FROM INFORMATION OF RECORD AND FROM A SURVEY MADE ON THE GROUND UNDER MY DIRECTION, AND THAT THIS SURVEY SUBSTANTIALLY COMPLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL SURVEYOR'S STANDARDS AND SPECIFICATIONS FOR A CATEGORY 1B, CONDITION II SURVEY.

THIS THE 9th DAY OF February, 2011

ADRIAN E. REYES, REGISTERED PROFESSIONAL LAND SURVEYOR
 STATE OF TEXAS REGISTRATION NO. 5806



LNV
 engineers | architects | contractors

8514 TESORO DR., STE. #11
 SAN ANTONIO, TEXAS 78117
 TSPS FIRM NO. P-352

FIL (210) 822-2227
 FAX (210) 822-4832
 WWW.LNVINC.COM

**AN EXHIBIT OF A 0.0565 OF AN ACRE
 20-FOOT WIDE JOINT USE AREA**

A 0.0565 of an acre (2,460 square foot) 20-foot wide tract of land (Joint Use Area) out of Lots 34, 35, 36 and 37, Block 13, N.C.B. 3916 of the San Fernando Addition conveyed to the City of San Antonio in the Warranty Deed recorded in Volume 4803, Page 246 of the Deed Records of Bexar County, Texas, in the City of San Antonio, Bexar County, Texas

DRAWN BY: AV
 PLAT SHEET: 1
 DATE: 10/15/2010
 SHEET: **2 OF 2**

Exhibit B

Recordable Memorandum of Permission

(Joint Use Agreement)

Effective Date: The effective date of the Authorizing Ordinance

Authorizing Ordinance:

SP No.: 1584

City: City of San Antonio

City's Address: City Hall, P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Director, Capital Improvements Management Services Department)

Joint User: San Antonio Water System

Joint User's Address: 2800 Highway 281 North, P.O. Box 2449, San Antonio, Texas 78298-2449, Attn: Manager of Corporate Real Estate

Premises: A 0.0565 tract of land out of Lots 34, 35, 36 and 37, Block 13, NCB 3916 within Concepcion Creek as further described in Joint Use Agreement

Scope of Permission: Installation, construction, operation, maintenance, repair, removal and replacement of n eight inch sanitary sewer line, including all facilities and appurtenances convenient to accomplishing the purpose, and additions and replacements thereto

City has given permission to Joint User according to the Scope of Permission on the Premises according to the terms of a Joint Use Agreement effective as of the Effective Date. The terms and conditions of the permission may be ascertained by referring to the Joint Use Agreement.

If the Joint Use Agreement has not been terminated upon City's sale of the Premises, Joint User's rights under this agreement become an easement in gross for the purposes described in the Scope of Permission, for the benefit of Joint User, its successors and assigns.

This memorandum is executed and recorded under paragraph 6.05 of the Joint Use Agreement.

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

City:

Joint User:

City of San Antonio, a Texas municipal corporation

San Antonio Water System

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved As To Form:

City Attorney

THE STATE OF TEXAS §

COUNTY OF BEXAR ▪

This instrument was acknowledged before me on this date by _____, of the City of San Antonio, a Texas municipal corporation, in the capacity therein stated and on behalf of that entity.

Date: _____

Notary Public, State of Texas

My Commission expires: _____

THE STATE OF TEXAS §

COUNTY OF BEXAR ▪

This instrument was acknowledged before me on this date by _____, of San Antonio Water System, an agency of the City of San Antonio, in the capacity therein stated and on behalf of that agency.

Date: _____

Notary Public, State of Texas

My Commission expires: _____