

AN ORDINANCE

2013-03-21-0185

**AUTHORIZING THE ACQUISITION OF APPROXIMATELY 48.824 ACRES OF SAN ANTONIO WATER SYSTEM-OWNED REAL PROPERTY AND A 25-FOOT INGRESS/EGRESS/UTILITY EASEMENT CONVEYED FROM PREVIOUS OWNER (HENRY DAUGHTY) TO SAN ANTONIO WATER SYSTEM, AND ANY ADDITIONAL REAL ESTATE NECESSARY, LOCATED IN NCBS 34449 AND 17635 IN COUNCIL DISTRICT 6, FOR THE LESLIE ROAD SERVICE CENTER PROJECT; DECLARING IT TO BE A PUBLIC PROJECT AND AUTHORIZING EXPENDITURES IN AN AMOUNT NOT-TO-EXCEED \$800,000 AND, AMENDING THE FY 2013 – 2018 CAPITAL IMPROVEMENT BUDGET WITH THE REALLOCATION OF \$350,000 IN NORTHWEST SERVICE CENTER (AT CALLAGHAN ROAD) FUNDS TO BE USED TOWARD THE PURCHASE OF SUBJECT PROPERTY.**

\* \* \* \* \*

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

**SECTION 1.** The City authorizes and directs the City Manager and her designee, severally, to accept on behalf of the City the deeds, drainage easements, and temporary construction easements as follows:

From San Antonio Water System:

A transfer of use, benefit, and control substantially in the form attached as **Attachment I** of approximately 48.824 acres located in the area of the northwest corner of Culebra Road and Loop 1604

From Henry Daughty:

Such additional easement rights as may reasonably be necessary to support the City's intended activities.

Such other real property or rights therein in NCBS 34449 and 17635 as may reasonably be necessary to support the City's intended activities.

**SECTION 2.** The City Manager and her designee, severally, should take all other actions necessary or convenient to effectuate the City's acquisition of the 9.5 acres and other properties and rights reasonably related to the proposed Leslie Road Service Center Project.

**SECTION 3.** The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 40-00162, Northwest Service Center, shall be revised by decreasing SAP WBS Element 40-00162-05-02-01-01 entitled City Construction, SAP GL account 5201140, by the amount of \$350,000.00.

**SECTION 4.** The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 40-00162, Northwest Service Center, shall be revised by decreasing SAP WBS element 40-00162-90-05 entitled Transfer from IO# 390000001354, SAP GL account 6101100, by the amount of \$350,000.00.

**SECTION 5.** The amount of \$350,000.00 is reverted in SAP Fund 55002001, Improvement & Contingency, SAP IO# 390000001354, SAP GL account 6102100 – Interfund Transfer out entitled Transfer to 40-00162-90-05. The amount of \$350,000.00 is authorized to be transferred from SAP Fund 43099000.

**SECTION 6.** The amount of \$350,000.00 is authorized to be transferred from SAP Fund 55002001, Improvement & Contingency, SAP IO# 390000001592, SAP GL account 6102100 – Interfund Transfer out entitled Transfer To 40-00434-90-14-02, to SAP Fund 43099000, Certificates of Obligation Capital Projects.

**SECTION 7.** The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 40-00434, Leslie Road Service Center, shall be revised by increasing SAP WBS Element 40-00434-90-14-02 entitled Transfer from IO# 390000001592,, SAP GL Account 6101100 – Interfund Transfer In, by the amount \$350,000.00.

**SECTION 8.** The amount up to \$350,000.00 is appropriated in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 40-00434, Leslie Road Service Center, SAP WBS Element 40-00434-03-02-04, entitled Acquisition, SAP GL Account 5209010.

**SECTION 9.** Payment amount not-to-exceed \$800,000.00 in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 40-00434, Leslie Road Service Center, is authorized to be encumbered and made payable to the selected title company for the acquisition of 48.824 acres of San Antonio Water System owned real property and 25-foot ingress/egress/utility easement located in NCB 34449 and NCB 17635 in Council District 6 in Bexar County, Texas.

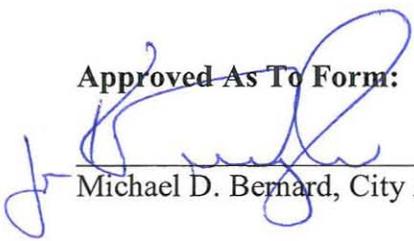
**SECTION 10.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 11.** This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under City Code of San Antonio § 1-15, in which case it becomes effective immediately.

**PASSED AND APPROVED** this 21<sup>st</sup> day of March 2013.

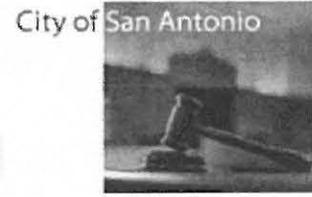
  
M A Y O R  
Julián Castro

**Attest:**  
  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**Approved As To Form:**  
  
\_\_\_\_\_  
Michael D. Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**



## Agenda Voting Results - 20B

<b>Name:</b>	6, 7, 8, 10, 11, 12, 13, 15A, 15B, 16A, 16B, 16C, 18, 20A, 20B, 21, 22, 24A, 24B, 24C, 24D, 27, 28, 29, 30, 31A, 31B, 32A, 32B, 32C, 32D						
<b>Date:</b>	03/21/2013						
<b>Time:</b>	10:40:16 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the acquisition of fee simple title to approximately 48.824 acres of San Antonio Water System owned real property and a 25-foot ingress/egress/utility easement conveyed from previous owner (Henry Daughty) to San Antonio Water System, and any additional real estate necessary, located in NCBs 34449 and 17635 in Council District 6, for the Leslie Road Service Center Project; declaring it to be a public project and authorizing expenditures in an amount not-to-exceed \$800,000.00 payable to the selected title company for land and associated title fees; and, amending the FY 2013 – 2018 Capital Improvement Budget with the reallocation of \$350,000.00 in Northwest Service Center (at Callaghan Road) funds to be used toward purchase of subject property.						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				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				

## Attachment I

Project: \_\_\_\_\_

### TRANSFER OF USE AGREEMENT

**An Agreement is made this day between the City of San Antonio, hereinafter referred to as "CITY" together with the San Antonio Water System, hereinafter referred to as "SAWS", acting by and through duly authorized representatives, as follows:**

WHEREAS, SAWS is the beneficial owner of certain real property which is more particularly described and depicted in Exhibit "A" attached hereto and made a part hereof, herein referred to as the "PROPERTY", and

WHEREAS, CITY desires to use the Property, and

WHEREAS, CITY has agreed to provide compensation to SAWS for the transfer of use and control of the PROPERTY, and

WHEREAS, SAWS is a municipally owned utility of CITY,

NOW THEREFORE, THE PARTIES AGREE TO THE FOLLOWING TRANSFER OF USE OF CERTAIN PROPERTY;

SECTION I. SAWS hereby transfers use and control of the PROPERTY to CITY.

SECTION II. Contemporaneously with the date of execution of this Transfer and Use Agreement, CITY shall pay SAWS \$635,000.00 in consideration of transfer of use and control.

SECTION III. CITY agrees and acknowledges that it is accepting the PROPERTY subject to all matters of record, including but not limited to that certain Reciprocal Easement Agreement and Restrictive Covenants recorded February 16, 2012, 2012 as Document No. 20120028652 in Volume 15356, Page 750 of the Official Public Records of Real Property of Bexar County, Texas. Additionally, the CITY hereby assumes, as the holder of record title and beneficial use of the PROPERTY, the obligations of SAWS contained in Sections 2.9 and 2.10 of that certain Settlement Agreement and Release of Claims (the "Settlement") last executed February 10, 2012 relating to Cause No. 2010-CI-10630 in the 37<sup>th</sup> Judicial District Court of Bexar County, Texas, which Settlement the CITY has received and reviewed, and without limiting the foregoing, agrees to grant such permanent and temporary easements for an extension of the "Interceptor Drainage Facility" (as defined in the Settlement) as required by and in accordance with and subject to the terms and conditions of the Settlement.

SECTION IV. Neither CITY nor SAWS by execution of this Transfer of Use Agreement waive or relinquish any right which they may have under the law or constitution, state or federal.

SECTION V. Condition of Property.

(a) Disclaimer. SAWS hereby specifically disclaims any warranty, guaranty, or representation, oral or written; past, present or future, of, as to, or concerning (i) the nature and condition of the Property, including, but not by way of limitation, the water, soil, geology and the suitability thereof, and of the Property, for any and all activities and uses which CITY may elect to conduct thereon, income to be derived therefrom or expenses to be incurred with respect thereto, or any obligations or any other matter or thing relating to or affecting the same; (ii) the manner of construction and condition and state of repair or lack of repair of any improvements located thereon; (iii) the nature and extent of any easement, right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; and (iv) the compliance of the Property or the operation of the Property with any laws, rules, ordinances, or regulations of any government or other body. SAWS HAS NOT MADE, AND DOES NOT MAKE, ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY OR CONDITION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH CITY MAY CONDUCT THEREON, COMPLIANCE BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SPECIFICALLY, SAWS DOES NOT MAKE ANY REPRESENTATIONS REGARDING HAZARDOUS WASTE, AS DEFINED BY THE LAWS OF THE STATE OF TEXAS AND ANY REGULATIONS ADOPTED PURSUANT THERETO OR THE U. S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OF ANY HAZARDOUS WASTE OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES IN OR ON THE PROPERTY. By accepting transfer of the use, benefit and control of the Property at Closing, CITY acknowledges that it has inspected the Property to its satisfaction. As a material part of the consideration for this agreement, CITY agrees to accept transfer of the use, benefit and control of the Property with the Property being in its present AS IS condition WITH ALL FAULTS.

(b) Property Condition. CITY ACKNOWLEDGES AND AGREES THAT CITY IS EXPERIENCED IN THE OWNERSHIP, DEVELOPMENT AND/OR OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT CITY HAS INSPECTED THE PROPERTY TO ITS SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTION. CITY ACKNOWLEDGES THAT IT IS FULLY RELYING ON CITY'S (OR CITY'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND NOT UPON ANY STATEMENT (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY SAWS OR ANY OF ITS REPRESENTATIVES, AND CITY HEREBY EXPRESSLY DISCLAIMS, RELEASES AND WAIVES ANY CLAIMS BASED

UPON RELIANCE UPON OR INDUCMENT BY ANY STATEMENT (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY SAWS OR ANY OF ITS REPRESENTATIVES. CITY ACKNOWLEDGES THAT CITY HAS (OR CITY'S REPRESENTATIVES HAVE) THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY CITY IN ORDER TO ENABLE CITY TO EVALUATE THE CONDITION OF THE PROPERTY AND ALL OTHER ASPECTS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL CONDITION OF THE PROPERTY); AND CITY ACKNOWLEDGES THAT CITY IS RELYING SOLELY UPON ITS OWN (OR ITS REPRESENTATIVES') INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY. CITY HEREBY EXPRESSLY ASSUMES ALL RISKS, LIABILITIES, CLAIMS, DAMAGES AND COSTS (AND AGREES THAT SAWS SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR OTHER DAMAGES) RESULTING OR ARISING FROM OR RELATED TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE PROPERTY ATTRIBUTABLE TO THE PERIOD FROM AND AFTER THE DATE HEREOF. CITY EXPRESSLY WAIVES (TO THE EXTENT ALLOWED BY APPLICABLE LAW) ANY CLAIMS UNDER FEDERAL, STATE OR OTHER LAW THAT CITY MIGHT OTHERWISE HAVE AGAINST SAWS RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PROPERTY.

This Transfer of Use Agreement does not constitute a conveyance or release of any water rights held by SAWS. The parties are acting herein for their own benefit and no benefit shall accrue to any third party.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**CITY OF SAN ANTONIO**

**SAN ANTONIO WATER SYSTEM**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Michael S. Brinkman  
Vice President Operations Services

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

Points of contact:

Brandon Ross  
Kenneth Bennight  
Bruce Haby  
Mark Brewton

CITY 207-6101  
CITY 207-6168  
SAWS 233-3636  
SAWS 233-3371

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Michael S. Brinkmann, Vice President Operations Services of the San Antonio Water System, on behalf of said Water System.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, \_\_\_\_\_ of the City of San Antonio, a Texas municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas

AFTER RECORDING RETURN TO:  
  
City of San Antonio  
City Clerk  
100 Military Plaza, 2d Floor City Hall  
San Antonio, Texas 78205