

AN ORDINANCE    2011-01-20-0040

**AUTHORIZING THE USE OF 0.336 ACRE OF CITY PROPERTY TO  
INSTALL AN 8-INCH SEWER MAIN OFF OF CULEBRA ROAD, IN  
BETWEEN CALLAGHAN ROAD AND EL CENTRO DRIVE IN  
COUNCIL DISTRICT 7.**

\* \* \* \* \*

**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 for property in District 3, 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.

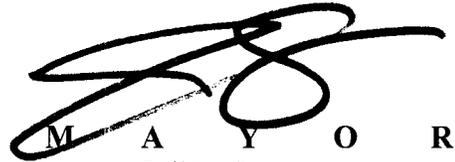
**SECTION 2.** Funds generated by this ordinance will be deposited into Fund 11001000 per the table below.

<b>Amount</b>	<b>General Ledger</b>	<b>Internal Order</b>
\$600	4202410	240000000061
\$804	4202410	240000000061
Total Amount:	\$1,404	

**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

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

**PASSED AND APPROVED** this 20<sup>th</sup> day of January 2011.



M A Y O R  
Julián Castro

**Attest:**

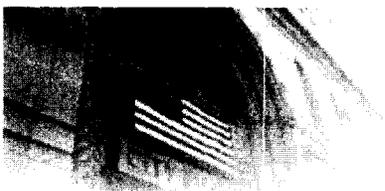


Leticia M. Vacek, City Clerk

**Approved As To Form:**



For Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



## Agenda Voting Results - 20B

<b>Name:</b>	7, 8, 9, 10, 11, 15, 16, 19A, 19B, 20A, 20B, 21, 22, 23, 25, 27, 28, 29, 30A, 30B, 31, 33, 34						
<b>Date:</b>	01/20/2011						
<b>Time:</b>	10:46:00 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the use of 0.336 acre of City property to install an 8-inch sewer main off of Culebra Road, in between Callaghan Road and El Centro Drive in NCB 11493 in Council District 7.						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				x
John G. Clamp	District 10		x				

# Attachment I

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## Joint Use Agreement

(SP1528)

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#### 1. Pertinent Information.

##### Authorizing Ordinance:

SP No.: 1528

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 0.336 acre tract as more particularly described in the  
attached **Exhibit A** that is incorporated herein by reference  
for all purposes as if fully set forth.

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

addition, removal and replacement of gravity collection systems, including all facilities and appurtenances convenient to accomplishing the purpose, and additions and replacements thereto

**Fee:** \$804

## **2. Permission.**

2.01. City acknowledges that Joint User's activities, if within the Scope of Permission and conforming to the terms and conditions of this Agreement, do not, 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, including attorneys' fees and court costs, directly or indirectly arising, in whole or in part, out of the acts or omissions of any person other than Indemnitees. Indemnified Claims include those arising from property damage and from personal or bodily injury, including death.

5.02.02. "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.

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

**5.03. If Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for 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, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.**

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

5.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim.

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 Indemnitees. 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 Indemnitees, not Indemnitor.

5.06. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

5.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

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

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

## **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

**MATKIN-HOOVER**

**ENGINEERING & SURVEYING**

8 Spencer Road, Suite 300, Boerne, Texas 78006  
Phone: 830-249-0600 FAX: 830-249-0099

FIELD NOTES FOR A  
0.336 OF AN ACRE (14,619.4 SQUARE FEET)  
35 FEET WIDE JOINT USE AREA

BEING A 0.336 ACRE, 14,619.4 SQUARE FEET, 35 FEET WIDE, JOINT USE AREA OUT OF THAT CERTAIN 0.0585 ACRE TRACT RECORDED IN VOLUME 2400, PAGES 1983-1984, OFFICIAL PUBLIC RECORDS, BEXAR COUNTY, TEXAS, THAT CERTAIN 0.034 ACRE TRACT RECORDED IN VOLUME 2365, PAGES 396-399, OFFICIAL PUBLIC RECORDS, BEXAR COUNTY, TEXAS, THAT CERTAIN 0.0891 ACRE TRACT RECORDED IN VOLUME 2365, PAGES 400-402, OFFICIAL PUBLIC RECORDS, BEXAR COUNTY, TEXAS AND THAT CERTAIN 1.52 ACRE TRACT RECORDED IN VOLUME 2365, PAGES 396-399, OFFICIAL PUBLIC RECORDS, BEXAR COUNTY, TEXAS, SAID 0.336 ACRE JOINT USE AREA BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**Beginning** at a 1/8" iron rod found in the south right-of-way line of Culebra Road for the northwest corner of the herein described joint use area, said point also being the northwest corner of the above referenced 0.0585 acre tract;

**Thence**, with the south right-of-way line of Culebra Road, the north line of said 0.0585 acre tract, the north line of the above referenced 0.0891 acre tract, the north line of the above referenced 0.034 acre tract and the north line of the above referenced 1.52 acre tract, **South 89 degrees 55 minutes 43 seconds East**, a distance of 431.07 feet to a calculated point for the northeast corner of the herein described joint use area, said point also being the northeast corner of said 1.52 acre tract, the northwest corner of that certain 2.84 acre tract recorded in Volume 2364, Pages 1649-1651, Official Public Records, Bexar County, Texas and bears North 89 degrees 55 minutes 43 seconds West, a distance of 20.47 feet from a 1/8" iron rod found at the northernmost northeast corner of said 2.84 acre tract;

**Thence**, departing the south right-of-way line of Culebra Road, with the west line of said 2.84 acre tract and the east line of said 1.52 acre tract, **South 00 degrees 01 minutes 46 seconds East**, a distance of 35.00 feet to a calculated point for the southeast corner of the herein described joint use area;

**Thence**, departing the west line of said 2.84 acre tract, severing said 1.52 acre tract, said 0.034 acre tract, said 0.0891 acre tract and said 0.0585 acre tract, **North 89 degrees 55 minutes 43 seconds West**, a distance of 404.32 feet to a calculated point in the southwest line of said 0.0585 acre tract and the northeast line of that certain 0.0251 acre tract recorded in Volume 11130, Pages 1135-1137, Official Public Records, Bexar County, Texas, said point also being the southwest corner of the herein described joint use area and bears North 37 degrees 22 minutes 32 seconds West, a distance of 53.21 feet from a 3/8" iron rod found at a point of curvature of said 0.0585 acre tract;

**Thence**, in part with the northwest line of said 0.0251 acre tract and the southwest line of said 0.0585 acre tract, **North 37 degrees 22 minutes 32 seconds West**, a distance of 44.09 feet to the **Point of Beginning** containing 0.336 acres.

Note: This description is based on an on the ground survey performed in March of 2010. The bearings are based on GPS observations. A survey drawing of the above described joint use area was prepared.



Wes Rexrode  
Registered Professional Land Surveyor No.6001  
Job Number: 10-4005.05



## Exhibit B

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# Recordable Memorandum of Permission

(Joint Use Agreement)

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**Effective Date:** The effective date of the Authorizing Ordinance

**Authorizing Ordinance:**

**SP No.:** 1528

**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 0.336 acre tract out of that certain 0.0585 acre tract recorded in Volume 2400, Pages 1983-1984 of the Official Public Records of Bexar County, Texas and more particularly described in the Joint Use Agreement described herein.

**Scope of Permission:** Installation, construction, operation, maintenance, repair, removal and replacement of gravity collection systems, 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.

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: \_\_\_\_\_