

AN ORDINANCE

99668

REAFFIRMING AND DECLARING THAT THE SAN ANTONIO WATER SYSTEM'S WESTERN WATERSHED SEWER RELIEF LINE W-04 ("PROJECT") IS A NECESSARY PUBLIC PROJECT; FURTHER REAFFIRMING AND DECLARING THAT A PUBLIC NECESSITY EXISTS FOR THE ACQUISITION OF PERMANENT AND TEMPORARY EASEMENT INTERESTS ACROSS, OVER, UPON AND UNDER CERTAIN PRIVATELY OWNED REAL PROPERTIES, BY NEGOTIATION AND/OR CONDEMNATION, IF NECESSARY FOR PUBLIC USE AS A PART OF THE PROJECT; AUTHORIZING THE SAN ANTONIO WATER SYSTEM ("SAWS") TO ACQUIRE PERMANENT AND TEMPORARY EASEMENT INTERESTS ACROSS, OVER, UPON AND UNDER CERTAIN PRIVATELY OWNED REAL PROPERTIES DESCRIBED BELOW, BY NEGOTIATION AND/OR CONDEMNATION, IF NECESSARY, FOR PUBLIC USE AS A PART OF THE PROJECT TO WIT: A 5.7638-ACRE PERMANENT SANITARY SEWER EASEMENT, RECORDED IN VOLUME 9504, PAGES 63-69, OUT OF AN ABANDONED SECTION OF POTRANCO ROAD P100, QUITCLAIMED TO ITHACA INVESTMENTS, AND A 2.6068-ACRE TEMPORARY CONSTRUCTION EASEMENT, OUT OF LOT 1, BLOCK 3, NEW CITY BLOCK 17242, BOTH EASEMENTS, PERMANENT AND TEMPORARY, ARE OUT OF THE WESTPARK SUBDIVISION UNIT 1, LOCATED IN SAN ANTONIO, BEXAR COUNTY, TEXAS AND LOCATED ON PROPERTY OWNED BY ITHACA INVESTMENTS, LTD., BY ANALIT USA INCORPORATED, GENERAL PARTNER, PAUL S. COVEY, PRESIDENT, SUBJECT TO OBTAINING SUCH REAFFIRMATIONS AND AUTHORIZATIONS FROM THE CITY COUNCIL AS DESCRIBED ABOVE; AUTHORIZING THE SAWS STAFF AND/OR ITS AUTHORIZED INDEPENDENT NEGOTIATOR TO NEGOTIATE AND EXECUTE ALL NECESSARY AGREEMENTS WITH THE OWNERS OF CERTAIN PRIVATELY OWNED PROPERTIES FOR THE ACQUISITION OF PERMANENT AND TEMPORARY EASEMENT INTERESTS AS DESCRIBED ABOVE AND TO TAKE ALL OTHER LAWFUL ACTIONS NECESSARY OR INCIDENTAL TO SURVEY, SPECIFY, CLARIFY, DEFINE AND ACQUIRE THE PERMANENT AND TEMPORARY EASEMENTS AS DESCRIBED ABOVE; FURTHER AUTHORIZING THE SAWS DESIGNATED GENERAL COUNSEL TO FILE EMINENT DOMAIN PROCEEDINGS, IF NECESSARY, AND PROSECUTE ALL SUCH CONDEMNATION PROCEEDINGS THROUGH FINAL JUDGMENT AND ALL NECESSARY APPEALS FOR THE CONDEMNATION OF EASEMENT INTERESTS IN CERTAIN PRIVATELY OWNED PROPERTIES AS DESCRIBED ABOVE; APPROVING, RATIFYING, AND DECLARING VALID ALL PRIOR ACTS DONE OR INTERPRETED BY ATTORNEYS, AGENTS, AND

EMPLOYEES OF AND/OR ACTING FOR THE SAWS TO ACQUIRE SUCH EASEMENTS, AND DECLARING THAT THE CONVEYANCE OF ALL SUCH EASEMENT INTERESTS IN CERTAIN PRIVATELY OWNED PROPERTIES AS DESCRIBED ABOVE SHALL BE TO THE CITY OF SAN ANTONIO FOR THE USE AND BENEFIT OF SAWS; AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, the public health, safety and best interest of the City of San Antonio and its citizens require the continued construction, operation and maintenance of sewer line facility; and

WHEREAS, it is necessary to construct, operate, and maintain such a facility, the Western Watershed Sewer Relief Line Project (the "Project") located partially upon the property described herein, which is privately owned; and

WHEREAS, the City of San Antonio acting by and through representatives of the San Antonio Water System, have been unable to acquire the permanent and temporary easements, on the tracts described herein; and

WHEREAS, the San Antonio Water System Board of Trustees (the "Board") finds that the acquisition of such easements is necessary for the public health, safety, and best interests of the citizens of the City of San Antonio and the surrounding region; and

WHEREAS, the Board hereby requests that the City of San Antonio adopt an ordinance declaring a public necessity for the acquisition of such easements described herein, through the filing of lawsuits when deemed necessary to construct, operate and maintain the project, through the exercise of its eminent domain authority; and

WHEREAS, the Board further requests the San Antonio City Council to authorize the San Antonio Water System to undertake such proceedings; and

WHEREAS, the City Council of the City of San Antonio desires (i) to reaffirm and declare that the System's Western Watershed Relief Line W-04 Project is a necessary public project, (ii) to reaffirm and declare that a public necessity exists for the acquisition of permanent and temporary easement interests across, over, upon and under certain privately owned real properties described below, by negotiation and/or condemnation, if necessary, for construction of public improvements for use as a part of the Western Watershed Relief Line W-04 Project, (iii) to authorize SAWS to acquire permanent and temporary easement interests, as described herein, by negotiation and/or condemnation, if necessary, for construction of public improvements for use as a part of the Western Watershed Relief Line W-04 Project, (iv) to authorize SAWS, its employees, agents and/or their authorized independent negotiators to negotiate and execute all sales agreements, easements and other necessary documents with the owners of certain privately owned properties described above and to take all other lawful actions necessary or incidental to survey, specify, clarify, define and acquire the permanent and temporary easement interests across, over, upon and under certain privately owned properties as described herein, (v) to further

authorize SAWS and its attorneys to file eminent domain proceedings, if necessary, and prosecute all such condemnation proceedings through conclusion (including final judgment and all necessary appeals) for the condemnation of these permanent and temporary easement interests across, over, upon and under certain privately owned properties as described herein, (vi) to approve, ratify and declare valid all prior acts and proceedings done or initiated by attorney, agents and employees or an/or acting for SAWS to acquire such permanent and temporary easement interests across, over, upon and under certain privately owned properties as described herein, and (vii) declare that the conveyance of all such permanent and temporary easement interest in certain privately owned properties as described herein shall be to the City of San Antonio for the use and benefit of SAWS; **NOW, THEREFORE,**

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

SECTION 1. It is hereby reaffirmed and declared that the Western Watershed Relief Line W-04 Project is a necessary public interest.

SECTION 2. It is further reaffirmed and declared that a public necessity exists for the acquisition of these permanent and temporary easement interests in certain privately owned properties as described herein and attached hereto and incorporated herein for all purposes as **Attachment I** by negotiation and/or condemnation, if necessary, for public improvements for use as part of the Western Watershed Relief Line W-04 Project.

SECTION 3. SAWS, acting on behalf of the City of San Antonio, is hereby authorized (i) to acquire permanent and temporary easement interests, as described herein, by negotiation and/or condemnation, if necessary, for public improvements for use as a part of the Western Watershed Relief Line W-04 Project, (ii) that SAWS, its employees, agents and/or their authorized independent negotiators, to negotiate and execute all sales and other agreements, easements, and other necessary documents with the owners of certain privately owned properties described above, and to take all other lawful actions necessary or incidental to survey, specify, clarify, define and acquire the permanent and temporary easement interests across, over, upon and under certain privately owned properties as described herein, and (iii) SAWS and its attorneys, to file eminent domain proceedings, if necessary, and to prosecute all such condemnation proceedings through conclusion (including final judgment and all necessary appeals) for the condemnation of the permanent and temporary easement interests across, over, upon and under certain privately owned properties as described herein.

SECTION 4. All prior acts and proceedings done or initiated by attorneys, agents and employees of and/or acting for SAWS to acquire such permanent and temporary easement interests are hereby approved, ratified, and declared valid.

SECTION 5. It is further declared that the conveyance of the permanent and temporary easements shall be to the City of San Antonio for the use and benefit of SAWS.

SECTION 6. It is officially found, determined and declared that the meeting at which this ordinance 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.

SECTION 7. 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.

SECTION 8. This Ordinance becomes effective on the 19th day of September, 2004.

PASSED AND APPROVED this 9th day of September, 2004.



M A Y O R

EDWARD D. GARZA

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY