

14-121

RESOLUTION NO. \_\_\_\_\_

OF THE SAN ANTONIO WATER SYSTEM (THE "SYSTEM") BOARD OF TRUSTEES DECLARING A PUBLIC NECESSITY FOR PUBLIC USE, THE ACQUISITION OF CERTAIN PRIVATELY OWNED REAL PROPERTY IN THE CITY OF SAN ANTONIO (THE "CITY") BEING PERMANENT SEWER LINE EASEMENTS AND TEMPORARY CONSTRUCTION EASEMENTS (COLLECTIVELY, THE "EASEMENTS"), THIS PROJECT BEING GENERALLY LOCATED ALONG A 4.2-MILE ALIGNMENT BEGINNING NEAR THE INTERSECTION ELEGANTE WAY AND MANDOLINO LANE, TERMINATING NEAR THE INTERSECTION OF JUDSON ROAD AT LOOKOUT ROAD, IN NORTHEAST QUADRANT OF BEXAR COUNTY, TEXAS, WHICH EASEMENTS SHALL BE ACQUIRED BY NEGOTIATION AND/OR CONDEMNATION, IF NECESSARY, FOR THE PUBLIC USE OF THE EXPANSION AND OPERATION OF THE SYSTEM THROUGH THE CONSTRUCTION OF THE CIBOLO CREEK SEWER SHED FLOW DIVERSION PROJECT (THE "PROJECT"); REQUESTING THAT THE CITY COUNCIL OF THE CITY OF SAN ANTONIO ("CITY COUNCIL") ADOPT AN ORDINANCE TO: (I) REAFFIRM AND DECLARE THAT THE PROJECT IS FOR A PUBLIC USE AND A PUBLIC NECESSITY EXISTS FOR THE ACQUISITION OF THE EASEMENTS, (II) AUTHORIZE THE SYSTEM TO TAKE ALL APPROPRIATE ACTION TO ACQUIRE THE EASEMENTS BY NEGOTIATION AND/OR CONDEMNATION, (III) DECLARE THAT THE CONVEYANCE OF THE EASEMENTS SHALL BE TO THE CITY OF SAN ANTONIO FOR THE USE, BENEFIT AND CONTROL OF THE SYSTEM, AND (IV) AUTHORIZE THE FILING OF EMINENT DOMAIN PROCEEDINGS, IF NECESSARY AND PROSECUTE SUCH PROCEEDINGS THROUGH FINAL JUDGMENT AND ANY APPEALS, IF DEEMED NECESSARY; PROVIDING AND APPROVING FUNDING FOR THE PROJECT; FINDING THIS RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the Project, which calls for design and installation of 4.2 miles of a new wastewater force main and gravity collection mains located in northeast Bexar County; and

**WHEREAS**, the System has determined that acquisition of the Easements is necessary for the Project, the general location and general description of the Project, being more particularly set out in Attachment I to this Resolution, and the route of the Project being depicted on Attachment II to this Resolution, both attached hereto and incorporated herein for all purposes; and

**WHEREAS**, the System intends to use every effort available to obtain the required Easements through good faith negotiations, but may require eminent domain if the negotiations fail; and

**WHEREAS**, the System finds that the acquisition of such Easements for the Project is necessary for the public health, safety, welfare, and best interests of the citizens of the City and the surrounding region; and

**WHEREAS**, the San Antonio Water System Board of Trustees desires to (i) affirm and declare that the Project is for a public use and the acquisition of the Easements is for public use and is a public necessity for the completion of the Project, (ii) direct the System staff to negotiate the acquisition of the Easements, (iii) authorize and direct the institution and prosecution to conclusion of all necessary proceedings to condemn such Easements, in the event that the System's staff is unable to acquire one or more parcels of the Easements by negotiation, (iv) request that the City Council adopt an ordinance to (a) reaffirm and declare that the Project is for a public use and the acquisition of the Easements is for public use and is a public necessity for the completion of the Project, (b) authorize the System to take all appropriate action to acquire the Easements by negotiation and/or condemnation, (c) declare that the conveyance of such Easements shall be to the City for the use and benefit of the System, and (d) authorize the City Manager, or designees, including the City Attorney, SAWS General Counsel and/or designated Special Counsel to file eminent domain proceedings and prosecute such proceedings through final judgment and any appeals, if deemed necessary; and (v) provide and approve funding for the acquisition of the Easements; now therefore:

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

1. That the Project is hereby declared to be a necessary public project and a public necessity is hereby declared for the acquisition of the Easements for public use by negotiation and/or condemnation, if necessary, for the Project.
2. That a public necessity hereby exists to acquire the Easements over, under and across certain privately owned real property, by negotiation and/or condemnation, if necessary, for the location, construction, operation, reconstruction, improvement, repair and maintenance of public improvements, including, but not limited to improvements and expansion of the public sanitary sewer system as part of the Project.
3. That the System's staff is hereby directed to negotiate with the owner(s) of the respective parcels for the acquisition of the Easements, to execute easements and/or sales agreements or other documents acquiring the Easements from the owners of the Easements and to finalize such acquisitions on behalf of the City, for the use and benefit of the System.

4. That in the event the System's staff is unable to acquire one or more parcels of the Easements by negotiation by reason of its inability to agree with the owners thereof as to the value of the Easements, or is unable to acquire the Easements for any other reason, the City Manager, or designees, including the City Attorney, SAWS General Counsel and/or designated Special Counsel, are hereby authorized and directed to institute and prosecute to conclusion all necessary proceedings to condemn such Easements.

5. That the City Council of the City is hereby requested to (i) adopt an ordinance to reaffirm and declare that the Project is for a necessary public use and the acquisition of the Easements is for a public use and is a public necessity for the completion of the Project, (ii) authorize the System to take all appropriate action to acquire the Easements by negotiation and/or condemnation, (iii) declare that the conveyance of such Easements shall be to the City for the use, benefit and control of the System and (iv) authorize the City Manager, or designees, including the City Attorney, SAWS General Counsel and/or designated Special Counsel to file eminent domain proceedings and prosecute such proceedings through final judgment and any appeals, if deemed necessary.


6. That funding for the acquisition of the Easements is found in the 2014 Capital Improvements Program, Wastewater Core Business, Wastewater Core Business, Mains - New, Cibolo Creek Sewer Shed Flow Diversion Project.

7. 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.

8. 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.

9. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 5th day of May, 2014.

  
Berto Guerra, Jr., Chairman

ATTEST:

  
Patricia E. Merritt, Secretary

Attachments:

- I Description of general route and location of Project
- II Depiction of Project route