

AN ORDINANCE

2020-01-16-0017

**APPROVING TWO INTERLOCAL AGREEMENTS WITH
THE BEXAR COUNTY CRIMINAL DISTRICT
ATTORNEY'S OFFICE TO SHARE PROCEEDS FROM
ASSET FORFEITURE CASES PURSUANT TO CHAPTERS
18 AND 59 OF THE TEXAS CODE OF CRIMINAL
PROCEDURE.**

* * * * *

WHEREAS, the City of San Antonio (COSA) and the Bexar County Criminal District Attorney's Office (BCCDAO) are authorized to enter into interlocal agreements for the division of the proceeds of assets forfeited pursuant to Chapters 18 and 59 of the Texas Code of Criminal Procedure; and

WHEREAS, the COSA and the BCCDAO wish to enter into two interlocal agreements, one addressing asset forfeiture cases other than gambling, the Contraband Forfeiture agreement, and the other addressing asset forfeiture cases involving gambling, the Contraband Forfeiture of Gambling Property and Proceeds agreement; and

WHEREAS, both agreements will commence April 1, 2019 and end October 31, 2020; **NOW THEREFORE:**

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

SECTION 1. The City Manager and designee, and the San Antonio Chief of Police and designee, are hereby authorized to execute a Contraband Forfeiture agreement and a Contraband Forfeiture of Gambling Property and Proceeds agreement with the BCCDAO, both with a term commencing April 1, 2019, and ending October 31, 2020, and both thereafter automatically renew for one month terms unless terminated by either party by written notice. These agreements provide for the division of proceeds of assets forfeited pursuant to Chapters 18 and 59 of the Texas Code of Criminal Procedure. The terms and conditions of said agreements, which are attached hereto as **Exhibit A** and **Exhibit B**, respectively, are hereby approved.

SECTION 2. Funds generated by this ordinance will be deposited per the table below:

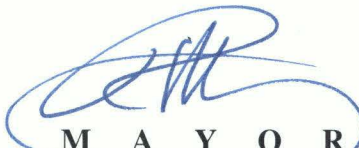
General Ledger	Internal Order	Fund
Various	217000000027	29038000
Various	217000000046	29040000
Various	217000000015	29043000

SECTION 3: The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to

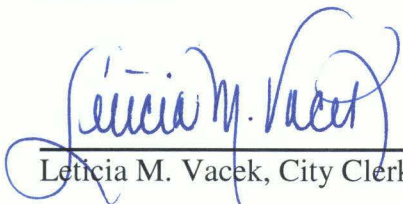
specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance is effective immediately upon passage upon receipt of eight or more affirmative votes; otherwise, this ordinance is effective ten days after passage.

PASSED and APPROVED this 16th day of January, 2020.

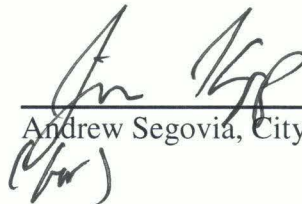

M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney
(for)

Exhibit A

STATE OF TEXAS	§	INTERLOCAL AGREEMENT
	§	BETWEEN BEXAR COUNTY
	§	CRIMINAL DISTRICT ATTORNEY
	§	AND CITY OF SAN ANTONIO FOR
COUNTY OF BEXAR	§	CONTRABAND FORFEITURES

This Interlocal Agreement ("Agreement") is entered into by and between the Bexar County Criminal District Attorney and the City of San Antonio, a home rule municipal corporation of the State of Texas, acting on behalf of the San Antonio Police Department, pursuant to authorization granted in Chapter 791 of the Government Code ("the Interlocal Cooperation Act").

WITNESSETH

WHEREAS, the San Antonio Police Department ("SAPD") is a major law enforcement agency in Bexar County, Texas; and

WHEREAS, the Bexar County Criminal District Attorney ("PROSECUTOR") is charged with representing the State of Texas in criminal matters before the Courts of Bexar County; and

WHEREAS, both SAPD and PROSECUTOR depend on forfeited property and money pursuant to Chapter 59 of the Code of Criminal Procedure (C.C.P.) to assist in the investigation of the criminal laws of this State; and

WHEREAS, it is the desire of both SAPD and PROSECUTOR not to supplant but to supplement existing programs; and

WHEREAS, it is in the best interest of the community that both parties work with each other in the seizure and forfeiture of property secured pursuant to Chapter 59 C.C.P.

NOW THEREFORE, the parties hereby agree as follows:

ARTICLE I

PURPOSE

- 1.01 The purpose of this Agreement is to determine the equitable distribution of money and property forfeited pursuant to Chapter 59 C.C.P. from seizures submitted by SAPD.

ARTICLE II

TERM

- 2.01 The term of this Agreement will commence on April 1, 2019 and end on October 31, 2020. This Agreement shall automatically renew for additional one-month terms.

unless either party provides a written notice of termination as discussed in Article 2.05.

- 2.02 This Agreement covers all money and property seized by SAPD and submitted to PROSECUTOR for forfeiture action in accordance with Chapter 59 C.C.P. including that, which is:

currently in the possession of SAPD and already forfeited to SAPD or the State; currently in the possession of SAPD for which forfeiture proceedings are currently pending or anticipated to be filed, and seized by SAPD and subject to forfeiture during the term of this Agreement.

- 2.03 This Agreement covers all SAPD seizures currently pending as well as all other SAPD forfeiture cases submitted to PROSECUTOR during the term of this Agreement regardless of whether the forfeiture cases have been resolved prior to the date on which the Agreement terminates.
- 2.04 This Agreement specifically excludes any money or property seized by SAPD dealing with the forfeiture of proceeds derived from items believed to be gambling paraphernalia, devices, equipment, and other property, whether personal, mixed or real (gambling property) and proceeds and cash (proceeds) submitted to PROSECUTOR for forfeiture proceedings. A separate interlocal agreement between SAPD and PROSECUTOR covers those forfeiture actions.
- 2.05 Either party may terminate this Agreement by giving thirty (30) days advance written notice to the other party.

ARTICLE III

DISPOSITION OF FORFEITURE SEIZURES

- 3.01 PROSECUTOR agrees to use its best efforts in the use of its personnel to forfeit money and property seized by SAPD.
- 3.02 SAPD shall endeavor to have all money seized by SAPD deposited in the Prosecutor's Forfeiture Trust Fund as soon as possible, but in no event later than fifteen (15) days after seizure.
- 3.03 All property including vehicles, other than money seized by SAPD, shall be held, maintained, and preserved by SAPD until final disposition. Upon final determination that the property is subject to forfeiture, and provided that the court order or judgment reflects that the forfeited property be distributed to SAPD or the State of Texas, SAPD shall use its best efforts to dispose of said property by sale or other means. As the filing agency, SAPD will be the only agency to divide the seizure with PROSECUTOR regardless of whether another agency assisted SAPD. Should SAPD choose to divide its allocation of the seizure with another agency, it shall be SAPD's responsibility to do so out of SAPD's share.
- 3.04 SAPD and PROSECUTOR may agree that forfeitures of money and property be

shared with other law enforcement agencies due to the existence of special circumstances, such as assistance by other law enforcement agencies, in certain seizures. Under those circumstances, the PROSECUTOR, SAPD, and the other law enforcement agency(ies) may agree to allocate money and property in accordance with a written agreement among the PROSECUTOR, SAPD, and the other law enforcement agency(ies), to be negotiated on a case-by-case basis.

3.05 SAPD and PROSECUTOR may agree that the percentages of proceeds attributable to forfeitures of money and property be increased for PROSECUTOR, above the percentages allocated below, due to an original investigation initiated by PROSECUTOR with a higher level of participation in a particular case. In those special circumstances, the PROSECUTOR and SAPD may agree to allocate money and property in accordance with a written agreement between the PROSECUTOR and SAPD to be negotiated on a case-by-case basis.

3.06 Forfeited money (i.e., cash, securities, negotiable instruments, stocks and bonds) shall be allocated as follows:

- Seventy percent (70%) to SAPD; and
- Thirty percent (30%) to PROSECUTOR.

3.07 Net proceeds from the disposition of forfeited property, other cash proceeds, shall be allocated as follows:

- Seventy percent (70%) to SAPD; and
- Thirty percent (30%) to PROSECUTOR.

For all forfeitures of money (3.06) and property, (3.07), certain expenses shall be deducted from the gross amount of money and proceeds of sale prior to the allocation of money and property between the parties. When applicable, these expenses include: ERAD processing fees, court costs, citations by publication, ad litem fees, court reporter/transcript fees, auction fees (commission to auctioneer, law enforcement overtime for working the auction, and advertising fees for auction), storage costs, disposal costs, and liens when property is to be sold pursuant to 3.07. However, if a lien is filed on the property and the property is going to be placed into service, the party taking possession of the property will bear the cost of the lien.

3.08 On property seized other than money, PROSECUTOR may endeavor to negotiate a cash settlement in lieu of forfeiture of the property. Any money received in this manner shall be divided between SAPD and PROSECUTOR as provided in Section 3.06 above. If SAPD desires to have seized property, other than money forfeited to SAPD for their official use, SAPD shall notify PROSECUTOR of this fact. If SAPD fails to use the forfeited property, namely vehicles, more than two (2) years from the date of the final determination of forfeiture, and the property is subsequently sold, the net proceeds shall be distributed as provided in Section 3.07 above.

- 3.09 Notwithstanding the provisions of Sections 3.06 and 3.07 above, PROSECUTOR may have an interest in converting certain seized property, other than cash proceeds, for PROSECUTOR's official use. If PROSECUTOR desires to have any such property forfeited to PROSECUTOR's office, PROSECUTOR shall make this request to SAPD prior to the forfeiture of the property. SAPD shall endeavor to comply with the request, when feasible, if SAPD does not intend to use the property for its official purposes. If PROSECUTOR fails to use the forfeited property, namely vehicles, more than two (2) years from the date of the final determination of forfeiture, and the property is subsequently sold, the net proceeds shall be distributed as provided in Section 3.07 above.
- 3.10 No provisions of this Agreement shall be construed to prohibit SAPD from submitting seized property for forfeiture through the federal government, when and only when, the case giving rise to the seizure is one in which a federal agency actively participated in the planning and seizure of property subject to forfeiture. In the event that PROSECUTOR or a state judge performs any services related to a seizure that SAPD has submitted to the federal government and SAPD is awarded money and property from the resolution of the federal seizure, the awarded money and property will be distributed pursuant to 3.06 and 3.07. Notwithstanding Section 3.03 above, this provision shall be construed to mean that only the percentages actually received by SAPD shall be divided with PROSECUTOR in accordance with this provision. In the event PROSECUTOR has been individually included in the same distribution of forfeited money and property pursuant to a Form DAG-71 Application for Transfer of Federally Forfeited Property, this provision will not apply to SAPD's awarded share.

ARTICLE IV

BUSINESS RECORDS

- 4.01 The parties hereto agree that during the term of this Agreement and for a three (3) year period thereafter, the parties shall keep and maintain accurate and current records supported by case number, offense, and the date of incident to provide verification of seized funds and equipment, and permit inspection of same by the other party.
- 4.02 SAPD and PROSECUTOR further agree that all expenditures of forfeited property shall comply with Chapter 59 C.C.P.

ARTICLE V

TEXAS LAW TO APPLY

- 5.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

ARTICLE VI

LEGAL CONSTRUCTION

- 6.01 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE VII

AMENDMENT

- 7.01 No amendment, modification, or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto. The Chief of Police for SAPD shall be the party with the authority to amend this Agreement on behalf of SAPD and the City of San Antonio.

ARTICLE VIII

ENTIRE AGREEMENT

- 8.01 This Agreement is intended as a full and complete expression of, and constitutes the entire Agreement between the parties hereto with respect to, the subject matter hereof and all prior and contemporaneous understandings, agreements, promises, representations, terms and conditions, both oral and written, are merged and incorporated into this Agreement, and no such oral or written understandings, agreements, promises, representations, terms or conditions not specifically set forth in this Agreement shall be binding upon the parties.

EXECUTED IN DUPLICATE COPIES, EACH OF WHICH SHALL HAVE THE
FULL FORCE AND EFFECT OF AN ORIGINAL. THIS THE _____ DAY OF
_____, 2019.

**BEXAR COUNTY
CRIMINAL DISTRICT ATTORNEY**



JOE GONZALES
CRIMINAL DISTRICT ATTORNEY
PAUL ELIZONDO TOWER
101 W. NUEVA STREET
SAN ANTONIO, TEXAS 78205-3030

Date: _____

CITY OF SAN ANTONIO

ERIK WALSH
CITY MANAGER
CITY HALL
100 S. FLORES, FIRST FLOOR
SAN ANTONIO, TX 78205

Date: _____

APPROVED AS TO FORM:

ANDY SEGOVIA
CITY ATTORNEY

JK
1/16/20
Item No. 26

Exhibit B

STATE OF TEXAS

COUNTY OF BEXAR

**INTERLOCAL AGREEMENT
BETWEEN BEXAR COUNTY
CRIMINAL DISTRICT ATTORNEY
AND CITY OF SAN ANTONIO FOR
CONTRABAND FORFEITURE OF
GAMBLING PARAPHERNALIA,
DEVICES, EQUIPMENT AND OTHER
PROPERTY (GAMBLING PROPERTY)
AND PROCEEDS AND CASH
(PROCEEDS), AND OTHER CHAPTER
18 CCP FORFEITURES**

This Interlocal Agreement ("Agreement") is entered into by and between the Bexar County Criminal District Attorney and the City of San Antonio, a home rule municipal corporation of the State of Texas acting on behalf of the San Antonio Police Department, pursuant to authorization granted in Chapter 791 of the Government Code ("the Interlocal Cooperation Act").

WITNESSETH

WHEREAS, the San Antonio Police Department ("SAPD") is a major law enforcement agency in Bexar County, Texas; and

WHEREAS, the Bexar County Criminal District Attorney ("PROSECUTOR") is charged with representing the State of Texas in criminal matters before the Courts of Bexar County; and

WHEREAS, both SAPD and PROSECUTOR depend on forfeited contraband and proceeds to assist in the investigation of the criminal laws of this State; and

WHEREAS, SAPD currently seizes items believed to be gambling paraphernalia, devices, equipment and other property, whether personal, mixed, or real (gambling property) and proceeds and cash (proceeds), and other contraband pursuant to the Code of Criminal Procedure ("C.C.P."), and stores certain gambling property at SAPD's expense; and

WHEREAS, PROSECUTOR currently prosecutes crimes involving gambling property and proceeds and represents the State in subsequent forfeiture proceedings held in accordance with Chapter 18 and Chapter 59 of the C.C.P.; and

WHEREAS, it is the desire of both SAPD and PROSECUTOR not to supplant but to supplement existing programs; and

WHEREAS, it is in the best interest of the community that both parties work with each other in the seizure and forfeiture of contraband;

NOW THEREFORE, the parties hereby agree as follows:

ARTICLE I

PURPOSE

- 1.01 The purpose of this Agreement is to determine the equitable distribution of all property and proceeds forfeited under Chapter 18, C.C.P. and gambling property and proceeds forfeited pursuant to either Chapter 18 or Chapter 59 C.C.P. from seizures submitted by SAPD.

ARTICLE II

TERM

- 2.01 The term of this Agreement will commence on April 1, 2019 and end on October 31, 2020. This Agreement shall automatically renew for additional one-month terms, unless either party provides a written notice of termination as discussed in Article 2.05.
- 2.02 This Agreement covers: (A) all property seized by SAPD as a result of criminal investigations and submitted to PROSECUTOR for forfeiture action in accordance with Chapter 18 C.C.P.; and (B) all gambling property and proceeds seized by SAPD as the result of a gambling investigation and submitted to PROSECUTOR for forfeiture action in accordance with Chapter 18 or Chapter 59 C.C.P. including that, which is:
- currently in the possession of SAPD and already forfeited to SAPD or the State; currently in the possession of SAPD for which forfeiture proceedings are currently pending or anticipated to be filed; and seized by SAPD and subject to forfeiture during the term of this Agreement.
- 2.03 This Agreement covers all SAPD seizures currently pending as well as all other SAPD cases submitted to PROSECUTOR during the term of this Agreement regardless of whether the forfeiture case has been resolved prior to the date on which the Agreement terminates.
- 2.04 With the exception of gambling property, and proceeds seized as a result of a gambling investigation, this Agreement specifically excludes any other money or property seized by SAPD under Chapter 59 C.C.P. dealing with the forfeiture of money and property derived from crimes named in Chapter 59 C.C.P. and submitted to PROSECUTOR for forfeiture proceedings in accordance with Chapter 59 C.C.P. A separate Interlocal Agreement between SAPD and PROSECUTOR covers those forfeiture actions.
- 2.05 Either party may terminate this Agreement by giving thirty (30) days advance written notice to the other party.

ARTICLE III

DISPOSITION OF FORFEITURE SEIZURES

- 3.01 PROSECUTOR agrees to use its best efforts in the use of its personnel to forfeit all gambling property and proceeds, and other property identified in article 18.18 CCP, seized by SAPD.
- 3.02 SAPD shall endeavor to have all proceeds seized by SAPD deposited in the Prosecutor's Gambling Trust Fund as soon as possible, but in no event later than fifteen (15) days after seizure.
- 3.03 All property, other than cash proceeds seized by SAPD, shall be held, maintained, and preserved by SAPD until final disposition. Upon final determination that the property is subject to forfeiture, and provided that the court order or judgment reflects that the forfeited property be distributed to CITY, SAPD or the State of Texas, SAPD shall use its best efforts to dispose of said property, which may be by sale or other means. As the filing agency, SAPD will be the only agency to divide the property with PROSECUTOR, regardless of whether another agency assisted SAPD. Should SAPD choose to divide its share of the seizure with another agency, it shall be SAPD's responsibility to do so, and the division shall come out of SAPD's share.
- 3.04 SAPD and PROSECUTOR may agree that forfeitures of money and property be shared with other law enforcement agencies due to the existence of special circumstances, such as assistance by other law enforcement agencies, in certain seizures. Under those circumstances, the PROSECUTOR, SAPD, and the other law enforcement agency(ies) may agree to allocate money and property in accordance with a written agreement among the PROSECUTOR, SAPD, and the other law enforcement agency(ies) to be negotiated on a case-by-case basis.
- 3.05 SAPD and PROSECUTOR may agree that the percentage of proceeds attributable to forfeitures of money and property be increased for PROSECUTOR, above the percentages allocated below, due to an original investigation initiated by PROSECUTOR with a higher level of participation in a particular case. In those circumstances, the PROSECUTOR and SAPD may agree to allocate money and property in accordance with a written agreement between the PROSECUTOR and SAPD to be negotiated on a case-by-case basis.
- 3.06 Forfeited cash proceeds shall be allocated as follows:
- Fifty percent (50%) to SAPD; and
 - Fifty percent (50%) to PROSECUTOR.
- 3.07 Net proceeds from the disposition of forfeited property, other than cash proceeds, shall be allocated as follows:
- Sixty percent (60%) to SAPD; and

--Forty percent (40%) to PROSECUTOR.

For all forfeitures of money (3.06) and property (3.07), certain expenses shall be deducted from the gross amount of money and proceeds of sale prior to the allocation of money and property between the parties. When applicable, these expenses include: ERAD processing fees, court costs, citations by publication, ad litem fees, court reporter/transcript fees, auction fees (commission to auctioneer, law enforcement overtime for working the auction and advertising fees for auction), storage costs, disposal costs, and liens when property is to be sold pursuant to 3.07. However, if a lien is filed on the property and the property is going to be placed into service, the party taking possession of the property will bear the cost of the lien.

- 3.08 On property seized other than cash proceeds, PROSECUTOR may endeavor to negotiate a cash settlement in lieu of forfeiture of the property. Any money received in this manner shall be allocated between SAPD and PROSECUTOR as provided in Section 3.06 above. If SAPD desires to have seized property, other than cash proceeds forfeited to SAPD for its official use, SAPD shall notify PROSECUTOR of this fact. If SAPD fails to use the forfeited property, namely vehicles, more than two (2) years from the date of the final determination of forfeiture, and the property is subsequently sold, the net proceeds shall be distributed as provided in 3.07 above.
- 3.09 Notwithstanding the provisions of Sections 3.06 and 3.07 above, PROSECUTOR may have an interest in converting certain seized property, other than cash proceeds, for PROSECUTOR's own official use. If PROSECUTOR desires to have any such property forfeited to PROSECUTOR's office, PROSECUTOR shall make such request to SAPD prior to the forfeiture of the property. SAPD shall endeavor to comply with said requests when feasible if SAPD does not intend to use said property for its own official purposes. If PROSECUTOR fails to use the forfeited property, namely vehicles, more than two (2) years from the date of the final determination of forfeiture, and the property is subsequently sold, the net proceeds shall be distributed as provided in Section 3.07 above.
- 3.10 No provisions of this Agreement shall be construed to prohibit SAPD from submitting seized property for forfeiture through the federal government, when and only when, the case giving rise to the seizure is one in which a federal agency actively participated in the planning and seizure of the property subject to forfeiture. In the event that PROSECUTOR or a state judge performs any services related to a seizure that SAPD has submitted to the federal government and SAPD is awarded money and property from the resolution of the federal seizure, the awarded money and property will be distributed pursuant to 3.06 and 3.07. Notwithstanding Section 3.03 above, this provision shall be construed to mean that only the percentages actually received by SAPD shall be divided with PROSECUTOR in accordance with this provision. In the event PROSECUTOR has been individually included in the same distribution of forfeited money and property pursuant to a Form

DAG-71 Application for Transfer of Federally Forfeited Property, this provision will not apply to SAPD's awarded share.

ARTICLE IV

BUSINESS RECORDS

- 4.01 The parties hereto agree that during the term of this Agreement and for a three (3) year period thereafter, the parties shall keep and maintain accurate and current records supported by case number, offense, and the date of incident to provide verification of seized funds and equipment, and permit inspection of same by the other party.

ARTICLE V

TEXAS LAW TO APPLY

- 5.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

ARTICLE VI

LEGAL CONSTRUCTION

- 6.01 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE VII

AMENDMENT

- 7.01 No amendment, modification, or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto. The Chief of Police for SAPD shall be the party with the authority to amend this Agreement on behalf of SAPD and the City of San Antonio.


ARTICLE VIII

ENTIRE AGREEMENT

8.01 This Agreement is intended as a full and complete expression of, and constitutes the entire Agreement between the parties hereto with respect to, the subject matter hereof and all prior and contemporaneous understandings, agreements, promises, representations, terms and conditions, both oral and written, are merged and incorporated into this Agreement, and no such oral or written understandings, agreements, promises, representations, terms or conditions not specifically set forth in this Agreement shall be binding upon the parties.

EXECUTED IN DUPLICATE COPIES, EACH OF WHICH SHALL HAVE
THE FULL FORCE AND EFFECT OF AN ORIGINAL ON THIS THE
____ DAY OF _____ 2019.

**BEXAR COUNTY
CRIMINAL DISTRICT ATTORNEY**


JOE GONZALES
CRIMINAL DISTRICT ATTORNEY
PAUL ELIZONDO TOWER
101 W. NUEVA STREET
SAN ANTONIO, TEXAS 78205-3030

Date: _____

CITY OF SAN ANTONIO

ERIK WALSH
CITY MANAGER
CITY HALL
100 S. FLORES, FIRST FLOOR
SAN ANTONIO, TX 78205

Date: _____

APPROVED AS TO FORM:

ANDY SEGOVIA
CITY ATTORNEY