

RESOLUTION NO. R-2017-74A

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING AN EMERGENCY WATER INTERCONNECT AGREEMENT BETWEEN THE CITY OF BASTROP AND AQUA WATER SUPPLY CORPORATION; AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, The City Council has appointed the City Manager as the Chief Administrative Officer of the City; and

WHEREAS, The City Manager is responsible for the proper administration of all affairs of the City; and

WHEREAS, The City of Bastrop has an interest in protecting the health and safety of the citizens of Bastrop and Bastrop County; and

WHEREAS, The City of Bastrop has recognized the need to have an emergency water supply readily available in the event of a disruption of service rendering the City unable to provide its Citizens with potable water; and

WHEREAS, Pursuant to Chapter 290, Section 290.44, of the Texas Administrative Code, the City of Bastrop may contract with a water control body to perform, jointly with a water control body or independently; and

WHEREAS, the City Council finds that a very significant public interest is served by the completion of an Emergency Water Interconnect Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1: That the City Manager is hereby authorized to execute an Emergency Water Interconnect Agreement and all other documents necessary for the completion of an interconnect between the City of Bastrop and Aqua Water Supply Corporation in Bastrop, Texas.

Section 2: All orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 3: That this Resolution shall take effect immediately upon its passage, and it is so resolved.

PASSED AND APPROVED this 26th day of September, 2017.

CITY OF BASTROP, TEXAS



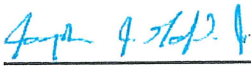
Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Joseph J. Gorfida, Jr.
Interim City Attorney

**EMERGENCY WATER INTERCONNECT AGREEMENT
BETWEEN THE CITY OF BASTROP, TEXAS AND
AQUA WATER SUPPLY CORPORATION**

THE STATE OF TEXAS §

COUNTY OF BASTROP §

This Emergency Water Interconnect Agreement is entered into as of September 26, 2017, (the “Effective Date”), by and between Aqua Water Supply Corporation (“Aqua”), a nonprofit water supply corporation acting pursuant to Chapter 67 of the Texas Water Code, and the City of Bastrop, Texas (“Bastrop”) a home-rule city and political subdivision of the State of Texas for the purpose of providing an emergency interconnection between the water systems of both Parties (“Parties”).

R E C I T A L S

WHEREAS, Aqua is the holder of retail water Certificate of Convenience and Necessity No. 10294 issued by the Texas Commission on Environmental Quality and the owner and operator of a public water supply system; and

WHEREAS, Bastrop is the holder of retail water Certificate of Convenience and Necessity No. 11198 issued by the Texas Commission on Environmental Quality and the owner and operator of a public water supply system; and

WHEREAS, Aqua and Bastrop each have and intend to continue operating their respective public water supply systems; and

WHEREAS, the Parties desire to develop an alternative source of potable water in the event of an emergency disrupting one’s capability to provide potable water to is customers; and

WHEREAS, the Parties operate adjacent water systems and it would be to the advantage and benefit of the Parties to construct the required facilities to interconnect their water systems so that in the event of an emergency or water shortage by one Party, the other Party can sell any water surplus under and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the governing bodies of Aqua and Bastrop have determined it would serve the public interest for the Parties to provide such alternate water service to the other in the event of an emergency and in accordance with the terms and conditions set forth in the Agreement; and

WHEREAS, Aqua and Bastrop are desirous of setting forth in an agreement the terms and conditions for providing water service in the event of an emergency as more particularly defined below.

NOW, THEREFORE, in consideration of the foregoing promises and the mutual agreements, covenants, and conditions hereinafter set forth, Aqua and Bastrop agree as follows:

A R T I C L E I.
Definitions

As utilized herein, the following terms shall have these meanings:

- A. Water: means potable water meeting applicable requirements of the Texas Commission on Environmental Quality or any successor agency of competent jurisdiction delivered at the normal operating pressure of the Providing Utility.
- B. Emergency: means an act of God or similar unforeseen and unpreventable catastrophic circumstance or disaster, or any other event that renders Aqua or Bastrop substantially unable to provide water to its customers to the degree that would threaten the health, safety and welfare of its customers.
- C. Points of Delivery: means the points of interconnection between the Parties' respective water systems as shown on Exhibit "A" at which the Providing Utility can deliver water to the Receiving Utility.
- D. Providing Utility: means Aqua when Aqua is providing emergency water service to Bastrop under this Agreement and shall mean Bastrop when Bastrop is providing emergency water service to Aqua.
- E. Receiving Utility: means Aqua when Aqua is receiving emergency water service from Bastrop under this Agreement and shall mean Bastrop when Bastrop is receiving emergency water service from Aqua.
- F. Appropriate Representative: means the General Manager for Aqua and the City Manager for Bastrop.

A R T I C L E II.
General Conditions for Provision of Emergency Water Service

- A. Provision of Service During an Emergency. Subject to the terms and conditions stated herein, the Providing Utility Agrees to provide water service required for operation of the water system of the Receiving Utility in the event of an Emergency.
- B. Volume and Demand Limitations. The amount of water delivered to the Receiving Utility and the rate of flow thereof shall not exceed the rated capacity of the water facilities installed for delivery of emergency water service.
- C. Subject to Availability. Subject to the remaining conditions set forth herein, the Providing Utility will provide emergency water service to the Receiving Utility depending on

availability of water in excess of that required to service the Providing Utility's customers as determined by the Appropriate Representative of the Providing Utility.

D. Duration of Service. The Providing Utility agrees to provide emergency water service to the Receiving Utility in accordance with this Agreement for the shortest of the following periods:

- (1) the reasonable duration of the Emergency giving rise to the request for emergency service; or
- (2) the reasonable duration needed to repair damage to the Receiving Utility's water system occasioned by the Emergency; or
- (3) the duration of the Providing Utility's ability to provide water service to the Receiving Utility after meeting the requirements of its own customers; or
- (4) thirty-six months.

In the event the Emergency exceeds the shorter of the foregoing periods, the Receiving Utility may make written request to the Appropriate Representative of the Providing Utility to continue or resume emergency water service beyond said period. The Appropriate Representative of the Providing Utility may continue or resume such service for an additional two-week period or such other and further period as the Appropriate Representative of the Providing Utility shall determine appropriate if:

- (a) the disability caused by the Emergency has not abated and the Receiving Utility has exercised diligence in attempting to remove such disability; and
- (b) the Providing Utility continues to have water available to service the Receiving Utility in excess of that required to service the Providing Utility's own customers.

E. Procedure for Commencement of Service. If, upon the occurrence of an Emergency, the Receiving Utility needs emergency water service from the Providing Utility, the following protocol shall be utilized to confirm the existence of an emergency and to commence Emergency water service to the Receiving Utility:

- (1) The following person(s) are authorized to make requests for emergency water service or to confirm the existence of an Emergency and authorize commencement of emergency water service:

Aqua Water Supply Corporation: The General Manager or designee

The City of Bastrop: The City Manager or designee

- (2) The designated contact person of the Receiving Utility shall notify the Providing Utility's dispatcher or designated contact person of the fact and nature of the

Emergency and the reason why the Receiving Utility is unable to provide water service to its customers. Such notification, if given verbally, shall be confirmed in writing and addressed to the Providing Utility's dispatcher or designated contact person within 24 hours of the verbal notification.

- (3) The Providing Utility's dispatcher or contact person shall report the foregoing information to the Appropriate Representative of the Providing Utility and obtain confirmation from the general manager that an Emergency exists and for authorization to commence service to the Receiving Utility.
- (4) Following such confirmation and authorization, the Providing Utility and Receiving Utility will dispatch their crews to open the interconnection between the Providing Utility and the Receiving Utility to commence emergency water service.
- (5) The Receiving Utility shall cooperate at all times with the Providing Utility to ensure the safe and efficient delivery of emergency water service.

F. Ingress and Egress. The Parties agree to ensure the ingress and egress of each Party to the Points of Delivery and interconnection for all reasonable purposes incident to this Agreement including, without limitation, inspection, installation, operation, maintenance, repair or removal of the interconnection and all valves, meters and other equipment utilized therewith.

G. Discontinuance of Emergency Service. The Receiving Utility shall promptly notify the Appropriate Representative of the Providing Utility or its designated contact person of the completion of repairs to its system or the abatement of the Emergency giving rise to the request for emergency service hereunder and the Providing Utility will then remove the interconnection within a reasonable time of such notice not to exceed twenty-four (24) hours.

H. Rates. The Receiving Utility agrees to pay the Providing Utility for emergency water service delivered under this Agreement at the initial rate of \$3.50 per 1,000 gallons, with a charge of \$60.00 for each separate time that the interconnection is opened after hours. The initial charge of \$3.50 per 1,000 gallons for water delivered to the Receiving Utility remains in effect until December 31, 2022, after which either Party may adjust the price at any time. Notice of any price change shall be given at least sixty (60) days prior to the same going into effect. In executing this Agreement, the Receiving Utility acknowledges that the Providing Utility's rates are just, reasonable, and nondiscriminatory.

I. Billing Protocol. The Providing Utility shall bill the Receiving Utility in a monthly itemized bill for water service based on the readings from the master meter at the interconnect point. Should the Receiving Utility request that the metering equipment be calibrated to determine any error in accuracy, the Providing Utility shall pay calibration cost if the inaccuracy is found to be in excess of plus or minus 3%. If inaccuracy is less than 3%, the Receiving Utility shall pay cost of calibration. If either Party is due a refund or entitled to additional payment, the same shall be invoiced by the Party claiming same as

above, and failure to pay or refund same shall be subject to the same provisions as are applicable to the usual sale of water as provided above.

- J. Payment. Payment shall be made by the Receiving Utility no later than thirty (30) days following the date of the bill for water consumed by the Receiving Utility in the previous billing cycle. Payments not made within the period provided shall be subject to a service charge of 10%, and if the payment plus service charge is not made to the Providing Utility within the thirty (30) day period immediately following the month water is taken, the interconnection may be disconnected by the Providing Utility at the expense of the Receiving Utility and this Agreement shall be null and void. If suit is required to collect the amount due for the water taken, service charge and/or disconnection expenses, the Receiving Utility shall be liable for the reasonable attorney's fees of the Providing Utility and all court costs incurred.
- K. Receiving Utility Rates. The Receiving Utility may charge its individual water customers such uniform rate(s) as the Receiving Utility shall determine.
- L. Conservation Restrictions. The Receiving Utility agrees to impose on its customers all voluntary and mandatory conservation and use restrictions imposed by the Providing Utility on its customers in such instances provided, however, that the Receiving Utility shall not be required to impose more stringent controls than the Providing Utility imposes on its own customers in such instances.
- M. Water Quality. Each Party shall provide potable water through the interconnection of the same quality provided to its own customers. The Parties shall not be liable for delivering water of a standard less than the potable water standard of the State so long as they are providing the same quality of water provided their own customers. The Parties neither represent nor agree to furnish water at any particular pressure. Any water delivered pursuant to this Agreement shall be measured at the Points of Delivery, being at the meter installed to record the amount of water taken by the Receiving Utility and the proper conveyance and distribution of water taken shall be the sole responsibility of the Receiving Utility.
- N. Water Volume. The Parties neither represent nor agree to provide any particular volume of water at any specific time, and shall not be liable for the refusal or failure to provide water through the interconnection, or for any losses or damages resulting or alleged to be the result of any refusal or failure to provide water through the interconnection. TO THE EXTENT ALLOWED BY LAW, THE RECEIVING UTILITY AGREES TO INDEMNIFY THE PROVIDING UTILITY, ITS SUCCESSORS AND ASSIGNS, AND HOLD IT FREE AND HARMLESS FROM AND AGAINST ANY AND ALL LIENS, CLAIMS, DEBTS, CHARGES, DAMAGES, LOSS, PENALTIES, AND EXPENSES, LIQUIDATED OR UNLIQUIDATED, EXECUTED OR EXECUTORY, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ACTUAL OR CONTINGENT, WHETHER OR NOT HEREBY EXPRESSLY LISTED OR DESCRIBED, BUT WHICH MAY BE ASSERTED NEVERTHELESS AGAINST THE PROVIDING UTILITY, ITS SUCCESSORS OR ASSIGNS, RESULTING from the delivery of water upon passing



through a Point of Delivery occurring during or in connection with the provision of water to the Receiving Utility.

ARTICLE III.
Requirements for Interconnection

- A. Points of Delivery. Emergency water service provided shall be delivered from the Providing Utility to the Receiving Utility to the Points of Delivery described on Exhibit "A" attached hereto. The location of the Points of Delivery may be modified, at the sole expense of the party requesting the modification, by agreement between the Parties. A Party making request for an additional connection of its facilities to the other's water system shall accompany each such request with an engineering report and plans prepared by a registered professional engineer which detail the area to be served and include the quantity of water and characteristics of service to be provided to the additional point of delivery.
- B. Nature of Interconnection. A master meter shall be installed at each Point of Delivery between Aqua and Bastrop's System for measuring the flow of water from one system to the other.

ARTICLE IV.
Construction Responsibilities

- A. Construction Responsibilities. Aqua shall construct, at its sole expense, all approach and delivery facilities required for receipt of emergency water service from Bastrop hereunder, as well as a meter vault of suitable installation. Bastrop shall construct, at its sole expense, all approach and delivery facilities required for receipt of emergency water service from Aqua hereunder as well as a meter vault of suitable installation. Both Parties shall be responsible for obtaining all easements and rights of way necessary for construction of their respective approach and delivery facilities and the meter vault (interconnect area).
- B. Approval of Plans. Prior to commencement of construction of the water facilities, all plans and specifications must be approved in writing by both Aqua and Bastrop before actual construction begins.
- B. Inspection. In order to ensure compliance with the standards and specifications set forth herein, each Party shall have the right to inspect, at its expense, all phases of the construction of water facilities required to be constructed by the other Party in order to receive emergency water service hereunder.

ARTICLE V.
Operation and Maintenance Responsibilities

- A. System Operation and Maintenance. The Parties shall be solely responsible for the operation and maintenance of its own water distribution system in its entirety including:

- (1) those facilities of a party located within its corporate limits or service area used to transport water to or from the Points of Delivery;
 - (2) those facilities constructed by a party for the purpose of transporting water to or across the corporate limits or service area of the other; and
 - (3) the interconnection facilities constructed by the party.
- B. Maintenance Standard. The Parties agree that operation and maintenance of the facilities used to transport water shall be in accordance with the standards and procedures used by Aqua and Bastrop in the operation and maintenance of their other distribution facilities.
- C. Operation and Maintenance of Interconnection. Aqua shall be responsible for the installation, operation, maintenance and security of the interconnection to and the water meter used to serve Bastrop. Bastrop shall be responsible for the installation, operation, maintenance and security of the interconnection to and the water meter used to serve Aqua.
- D. Protective Measures. Except as specifically provided herein, the Receiving Utility shall be solely responsible for undertaking all measures to protect its system from damage or harm caused by the connection of its system to the other or otherwise from the receipt of emergency water service hereunder.
- E. Routine Maintenance. Both Parties agree that water lines should be flushed frequently to prevent the water from becoming stagnant, and the mechanical/electrical equipment should be exercised. To this end the appropriate water lines will be flushed as needed, as determined by mutual agreement of the Parties, but no less that twice per calendar year and without charge. At the time of these flushings, appropriate testing will be done on the mechanical/electrical equipment. These activities will be scheduled at a time agreeable to both Parties, and personnel from both will conduct the testing on their own equipment.

ARTICLE VI.
Remedies

- A. If any Party fails to comply with its obligations in accordance with the notice and opportunity to cure provisions set forth hereunder, the other Party shall have the right to request any court, agency, or other governmental authority of appropriate jurisdiction to grant any and all remedies which are appropriate to assure conformance to the provisions of this Agreement. The defaulting Party shall be liable to the other for all costs actually incurred in pursuing such remedies, including reasonable attorneys' fees, and for any penalties or fines as a result of the failure to comply with the terms.
- B. If either Party at any time disputes the amount to be paid by it to the other Party, the Party shall nevertheless promptly make the disputed payment or payments, but the disputing Party shall thereafter have the right to seek a determination whether the amount charged by the other Party is in accordance with the terms of this Agreement.

- C. Notwithstanding any provision in this Agreement to the contrary, if either party (referred to herein as the “Defaulting Party”) fails to comply with its obligations under this Agreement or is otherwise in breach or default under this Agreement (collectively, a “Default”) then the other party (referred to herein as the “Non-Defaulting Party”) shall not have any right to invoke any rights or remedies with respect to any Default until and unless: (i) the Non-Defaulting Party delivers to the Defaulting Party a written notice (the “Default Notice”) which specifies all of the particulars of the Default and specifies the actions necessary to cure the Default; and (ii) the Defaulting Party fails to cure, within thirty (30) days after the Defaulting Party’s receipt of the Default Notice, any matters specified in the Default Notice which may be cured solely by the payment of money or the Defaulting Party fails to commence, within a reasonable period of time after receipt of the Default Notice (to be determined according to the nature of the breach or default), the cure of any matters specified in the Default Notice which cannot be cured solely by the payment of money, or fails to thereafter pursue curative action with reasonable diligence to completion.

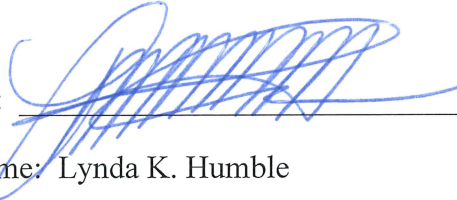
ARTICLE VII.
General Provisions

- A. Term. This Agreement shall continue in effect until December 31, 2022, with subsequent automatic renewals for a period of one year unless terminated by either party in accordance with Paragraph B below.
- B. Termination. Either party may terminate this Agreement upon ninety (90) days written notice to the other.
- C. No Effect on Customer Contracts. This Agreement shall not affect contracts between a party and its customers.
- D. Cooperation. The parties hereto agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.
- E. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.
- F. Amendments. Any amendment hereof must be in writing and signed by the authorized representative of each party hereto.
- G. No Amendment of Other Agreements. Unless otherwise expressly stipulated herein, this Agreement is separate from and shall not constitute an amendment or modification of any other agreement between the parties.
- H. No Third-Party Beneficiaries. This Agreement shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this Agreement. Each party hereto shall be solely responsible for

the fulfillment of its customer contracts or commitments and the Providing Utility shall not be construed to be responsible for same by virtue of this Agreement or any provision contained herein.

- I. Applicable Law. This Agreement shall be construed under and in accordance with Texas law.
- J. Venue. Venue for any action arising hereunder shall be in Bastrop County, Texas.
- K. Effective Date. This Agreement shall be effective from and after the date of due execution hereof by all parties.

CITY OF BASTROP

By: 

Name: Lynda K. Humble

Title: City Manager

Date: February 22, 2018

AQUA WATER SUPPLY CORPORATION

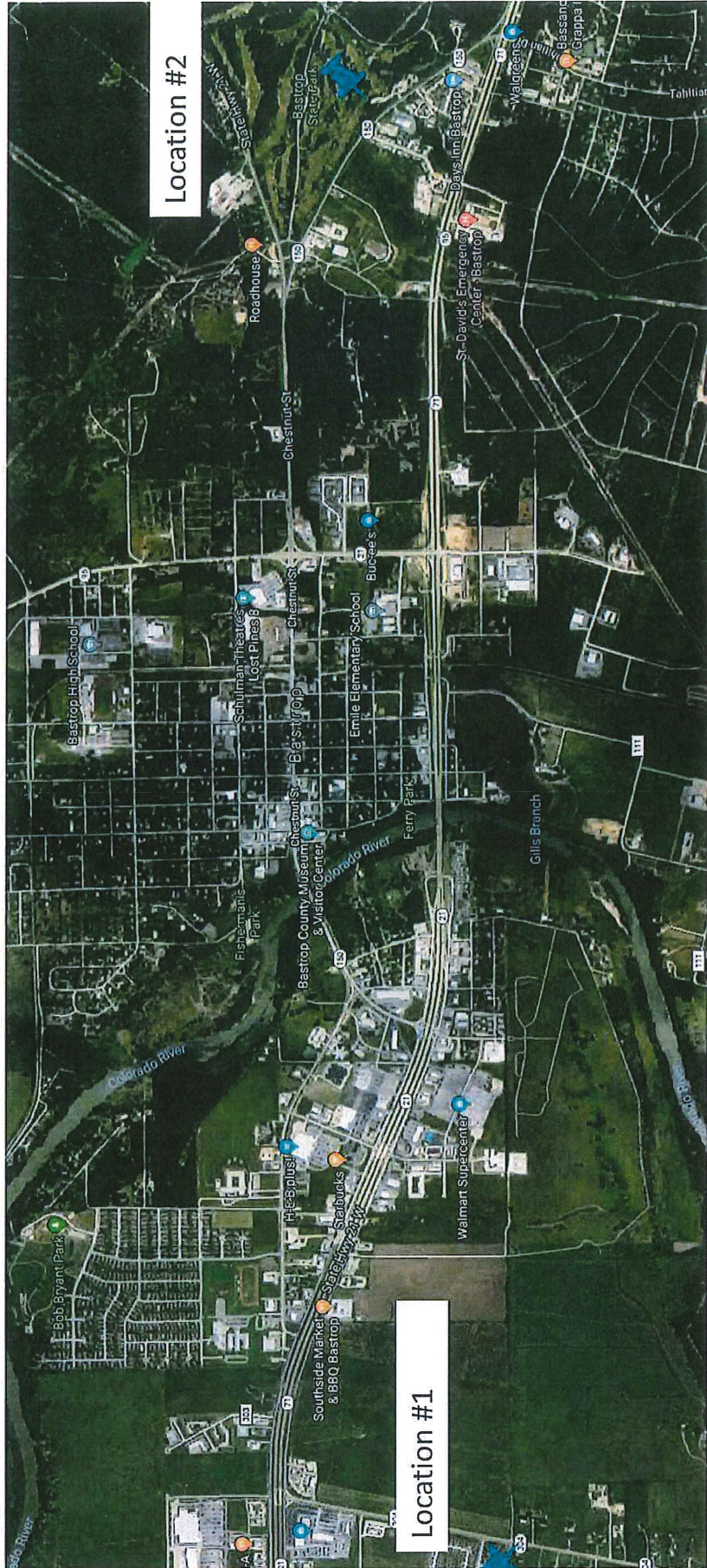
By: 

Name: Dave McMurry

Title: General Manager

Date: 3/9/2018

EXHIBIT "A" – POINTS OF DELIVERY



Location #2

Location #1

