

AN ORDINANCE **2016-11-10-0897**

**AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN
THE CITY OF SAN ANTONIO AND SAN ANTONIO WATER SYSTEM
FOR ASSISTANCE IN ENFORCEMENT OF THE COAL TAR SEALANT
PAVEMENT PRODUCT BAN**

* * * * *

WHEREAS, Ordinance 2016-06-30-0518, approved on June 30, 2016 by the San Antonio City Council, found that coal tar sealant pavement products pose a public health and safety threat to the citizens and environment of the City, and banned the use of coal tar sealant pavement products within the City of San Antonio; and

WHEREAS, City staff has identified several possible entities to assist in the testing of coal tar sealants when violations are reported and has determined that the best partner to assist in sampling and testing is the San Antonio Water System (SAWS); and

WHEREAS, SAWS and the City currently have an agreement for our municipal separate storm sewer system (MS4) permit which includes inspections, use of their lab for testing, and their enforcement abilities, and this partnership provides existing testing which the proposed agreement would only minimally increase; and

WHEREAS, this ordinance authorizes an Agreement between the City and SAWS to provide sampling services to ensure compliance with the ban on coal tar sealant pavement products, in an amount not to exceed \$50,000.00 annually starting January 1, 2017, for a term of one year with three one year renewal options, with funds available through the FY 2017 Storm Water Operating Fund Budget; **NOW THEREFORE**,

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

SECTION 1. The City Manager, or her designee, or the Director, Transportation and Capital Improvements Department, or his designee, is hereby authorized to enter into an Agreement with the San Antonio Water System (SAWS) to provide sampling services to ensure compliance with the ban on coal tar sealant pavement products, in an amount not to exceed \$50,000.00 annually starting January 1, 2017, for a term of one year with three one year renewal options. A copy of the Agreement, in substantially final form, is attached and incorporated verbatim herein as **Attachment I**. The execution authority granted by this Ordinance shall expire 60 days after the effective date of the Ordinance.

SECTION 2. Funding in the amount of \$50,000.00 for this ordinance is available from Fund 29070000, Cost Center 2304050001 and General Ledger 5201040, as part of the Fiscal Year 2017 Budget.

SECTION 3. Payment not to exceed the budgeted amount is authorized to San Antonio Water Systems (SAWS) and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

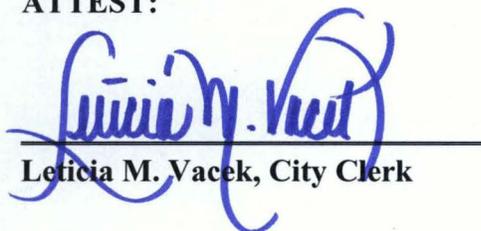
PASSED and APPROVED this 10th day of November, 2016.



M A Y O R

Ivy R. Taylor

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



for City Attorney

Agenda Item:	20 (in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20)						
Date:	11/10/2016						
Time:	10:13:09 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an Interlocal Agreement with San Antonio Water System for assistance in enforcement of the coal tar sealant pavement product ban. [Peter Zanoni, Deputy City Manager; Mike Frisbie, Director, Transportation & Capital Improvements]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				x
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7	x					
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

STATE OF TEXAS
COUNTY OF BEXAR

§ CITY OF SAN ANTONIO
§ AGREEMENT WITH SAN ANTONIO
§ WATER SYSTEM FOR COAL TAR
SEALANT BAN SUPPORT

THIS AGREEMENT (hereafter referred to as “the Agreement” or “this Agreement”) for **COAL TAR SEALANT BAN SUPPORT** is effective as of the _____ day of _____, 20____ (hereafter referred to as “Effective Date”), by and between the **CITY OF SAN ANTONIO, TEXAS**, a Texas Home Rule Municipality (hereafter referred to as “City”) and its water and sewer utility, the **SAN ANTONIO WATER SYSTEM**, (hereafter referred to as “SAWS”), acting by and through its officers, hereto duly authorized. City and SAWS singularly or collectively shall be referred to herein as “Party” or “the Parties.”

WITNESSETH

WHEREAS, through Ordinance 2016-06-30-0518, the San Antonio City Council found coal tar sealant pavement products pose a public health and safety threat to the citizens and environment of the City of San Antonio; and

WHEREAS, the San Antonio City Council recognizes lakes, rivers, streams and other bodies of water are natural assets which enhance the environmental, recreational, cultural and economic resources of the City of San Antonio and contribute to the general health, safety and welfare of the community; and

WHEREAS, pursuant to the City Council’s recognition and determination coal tar sealant pavement products are harmful to the natural assets of the City, the use of coal tar sealant pavement products are hereby banned and their use is prohibited within the City of San Antonio; and

WHEREAS, all officials duly authorized, including but not limited to peace officers of the state and those authorized by statute to issue citations for Class C misdemeanors, may assist the City of San Antonio in enforcement of the coal tar sealant pavement product ban; and

WHEREAS, the City has identified SAWS as the most appropriate party to assist the City in the testing of the coal tar sealant pavement products; and

WHEREAS, through this Agreement, SAWS accepts the responsibilities associated with assisting the City in the testing of coal tar sealant pavement products, said responsibilities outlined herein; and

WHEREAS, the Parties desire to enter into this Agreement, to establish the rights and obligations of the Parties for the enforcement of the ban of coal tar sealant pavement products within the San Antonio city limits and to establish the procedures for funding this assistance.

NOW, THEREFORE, in consideration of the mutual covenants and agreement stated herein, the Parties agree as follows:

ARTICLE I
RECITALS

Each of the above Recitals stated herein above are incorporated into and made a part of this Agreement.

ARTICLE II
PURPOSE

The purpose of this Agreement is to establish the terms and conditions for SAWS assisting the City with the testing of coal tar sealant pavement products applied within the limits of the City of San Antonio.

ARTICLE III
TERM

- 3.01 Except as otherwise provided herein, this Agreement shall commence upon the execution date of the last signatory party to the Agreement and terminate upon the expiration of this Agreement. This Agreement shall be for a period of one (1) year (hereafter referred to as the "Initial Term") with three one-year options (hereafter referred to as the "Option Period").
- 3.02 Either Party may terminate this Agreement following the Initial Term and/or before exercising any of the Option Period annual renewals or as designated in **Article XI** herein.

ARTICLE IV
FINANCIAL COMMITMENT

- 4.01 City's annual commitment under this Agreement shall not exceed **FIFTY THOUSAND DOLLARS AND NO/100 (\$50,000.00)** (hereafter referred to as "City's Contribution"). City's Contribution shall be utilized to reimburse SAWS for expenses incurred from the investigation and testing of coal tar sealant products. Such expenses shall be as specified on the cost schedule in "Exhibit A", attached hereto and incorporated herein by reference. SAWS shall update the costs shown in "Exhibit A" for use in the following year no later than November 30th of current year. SAWS shall not be responsible for performing any work or incurring any expenses that exceed City's Contribution.
- 4.02 The Parties acknowledge City's Contribution defined in this Agreement, to reimburse SAWS for expenses incurred in the testing of coal tar sealant pavement products, is independent of the necessary enforcement expenses that are and shall remain City's responsibilities during the duration of and after this Agreement has been terminated. The Parties further acknowledge none of SAWS' revenues, including those from its water,

wastewater, recycled water and chilled water services, shall be used to support the services it provides the City under this Agreement.

- 4.03 SAWS shall submit an invoice to City on a monthly basis for the reimbursement of expenses incurred, pursuant to this Agreement. Said invoicing by SAWS shall be through City's internet-based Project Management System, also known as *PRIMELink*.
- 4.04 SAWS has no obligation to pay any of City's incurred expenses for enforcement of the ban of coal tar sealant pavement products.
- 4.05 **FIFTY THOUSAND DOLLARS AND NO/100 (\$50,000.00)** is the total annual maximum City Contribution committed under this Agreement. No other funds shall be available from City under this Agreement unless City increases its requested scope of work to SAWS, pursuant to this Agreement.
- 4.06 City's Contribution only may exceed **FIFTY THOUSAND DOLLARS AND NO/100 (\$50,000.00)** annually with the written concurrence of the Parties hereto.

ARTICLE V
OBLIGATIONS OF CITY

- 5.01 Pursuant to this Agreement, City shall perform and provide the following:
 - a. City shall be responsible for performing all documentation and research regarding possible instances/locations of coal tar sealant pavement product usage within the San Antonio city limits.
 - b. City solely shall be responsible for directing SAWS to test locations. As such, City has the responsibility to ensure SAWS personnel have the necessary permission to access sampling sites, as directed by City, pursuant to Chapter 26, Pollution Control, of the City of San Antonio Code (specifically Article IV – Coal Tar Sealant Pavement Products).
 - c. Upon discovery of possible usage of coal tar sealant pavement product usage, City shall direct SAWS to those usage sites for SAWS's testing and sampling.
 - d. If/When coal tar sealant pavement product usage is confirmed, based on test results on samples collected by SAWS and sent to a certified lab (and/or sub-consulting lab) of SAWS's choosing, City shall address all enforcement options afforded to it, to include citizen notification.
- 5.02 City hereby identifies its Director of Transportation & Capital Improvements (hereafter referred to as "TCI") or his/her designee as its contact person for this Agreement. The Director of TCI shall designate a City representative as Project Manager for this work.

ARTICLE VI
OBLIGATIONS OF SAWS

- 6.01 Pursuant to this Agreement, SAWS shall perform and/or provide the following:
- a. Upon City's site/location identification, within thirty (30) days of said identification, SAWS representatives shall proceed to the City-identified location(s) and conduct on-site field tests on the identified possible coal tar sealant pavement product.
 - b. If the on-site field tests on the identified coal tar sealant pavement product(s) test positive, SAWS shall sample as many locations within the identified site as SAWS deems necessary, collecting samples for off-site laboratory testing.
 - c. Upon collecting the necessary on-site field samples as necessary, SAWS shall send the collected field samples to a certified laboratory of SAWS's choosing for confirmation testing.
 - d. Upon receipt of the lab results from the SAWS-selected certified laboratory, SAWS shall forward said laboratory test verification results to City for any necessary action then to be undertaken by City. The information SAWS shall forward to City shall include, but not be limited to:
 1. Lab results;
 2. QA/QC of said lab results;
 3. Photos and written documentation of SAWS efforts;
 4. Calculations for the 16 PAHs, to determine if the percent of PAHs is >2%;
 5. A cover letter stating SAWS's finding(s) and its recommendation to City.
 - e. Pursuant to this Agreement, SAWS shall have no responsibility to enforce City's ban on coal tar sealant pavement products, other than sampling for compliance of the ban on coal tar sealant pavement products.
 - f. In the event City wishes the assistance of SAWS in the enforcement of City's ban on coal tar sealant pavement products, City shall seek a formal amendment to this agreement with SAWS in accordance with Article XVII.
- 6.02 SAWS hereby identifies its Director of Resource Protection & Compliance or his/her designee as its contact person for this Agreement. SAWS's Director of Resource Protection & Compliance shall designate a SAWS representative as Project Manager for this work.

ARTICLE VII
JOINT OBLIGATIONS OF THE PARTIES

- 7.01 The Parties shall agree upon the SAWS pricing for its efforts under this Agreement and shall adhere to said agreed upon pricing schedule through the duration of this Agreement. Said agreed upon pricing schedule has been attached hereto and labeled as “**Exhibit A**”. This agreed upon pricing shall include costs to be incurred for the SAWS-selected certified laboratory chosen by SAWS to perform the additional off-site testing.
- 7.02 Any changes to the agreed upon pricing schedule of this Agreement shall be in writing and signed by the Parties to this Agreement.

ARTICLE VIII
SAWS’S RIGHTS UNDER THIRD PARTY CONTRACTS

- 8.01 SAWS agrees City shall have the authority to contract, on behalf of City, for all services necessary for any additional testing and/or enforcement of City’s ban on coal tar sealant pavement products.
- 8.02 City shall provide SAWS, upon SAWS’s request, a fully executed copy of each contract entered into by City pursuant to this coal tar sealant pavement product ban and enforcement.
- 8.03 In all such coal tar sealant pavement product ban contracts entered into by City, City shall include provisions reflecting:
- a. SAWS shall be named as an additional insured on all policies naming City as an additional insured and shall be entitled to make claims, to the extent of SAWS’s interest in the Project, under all insurance coverage. If requested, prior to the commencement of any work by any service provider, vendor, Consultant, Contractor, Sub-Consultant or Subcontractor of City related to the coal tar sealant pavement product ban, City shall provide SAWS’s Risk Management office with copies of completed Certificates of Insurance and endorsements or policy materials necessary to document compliance with these requirements. Certificates shall be completed by an agent authorized to bind the named underwriters and their companies to the coverage limits and termination provisions shown thereon. SAWS reserves the right to review the insurance requirements during the effective period of this Agreement, any extension or renewal hereof, and to modify insurance coverage and minimum limits when deemed necessary and prudent by SAWS, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. City shall not allow any modifications whereupon SAWS may incur increased risks.
 - b. City shall require all Contractors, Consultants, suppliers and service providers, including, but not limited to, all Sub-Consultants and Subcontractors, engaged to assist City with enforcing the coal tar sealant pavement product ban to maintain

statutory worker's compensation insurance for all of their employees with a waiver of subrogation in favor of City and SAWS.

- c. City shall require in its contracts for services relating to the ban on coal tar sealant pavement products the contracting parties, along with all Sub-Consultants and Subcontractors, be required to indemnify SAWS and City, their officials, employees and agents, for claims by third parties, as allowed by law.
- d. City shall require all Consultants, Sub-Consultants, Contractors, and Subcontractors to provide all statutorily required payment and performance bonds at no additional cost to the Parties. On services for which performance bonds are not statutorily required, City shall determine whether to require performance bonds.
- e. City shall state in all agreements with third-parties SAWS is a third-party beneficiary to those agreements.

ARTICLE IX

COAL TAR SEALANT PAVEMENT PRODUCTS BAN MANAGEMENT

- 9.01 City shall manage, oversee, administer and carry out all of the activities and services required for the enforcement of the ban on coal tar sealant pavement products, to ensure the ban is being enforced as the San Antonio City Council directed.
- 9.02 Upon approval of this Agreement by the governing bodies of the Parties, the Parties' respective Directors or their designees shall schedule a meeting to finalize the team structure and develop the procedures and processes necessary to finalize:
 - a. Coordination of the testing of coal tar sealant pavement products;
 - b. the required follow up testing by a certified laboratory; and
 - c. SAWS pricing schedule for its efforts hereunder.
- 9.03 City's Project Manager shall provide written notice to SAWS's Project Manager a minimum of ten (10) business days prior to the issuance of the first request for a field test of coal tar sealant pavement products.

ARTICLE X **DEFAULT**

In the event of a material breach of this Agreement, the non-breaching Party shall give the breaching party written notice of such breach which shall detail the nature of the breach. The Party receiving the notice of breach shall be given thirty (30) days to cure the breach. If the breach is not corrected to the reasonable satisfaction of the non-breaching Party by the end of the thirty (30) day period, the non-breaching Party may give written notice of termination of this Agreement to the breaching party and seek to recover damages not to exceed the amount paid by

the non-breaching party for the Project.

ARTICLE XI
TERMINATION FOR CONVENIENCE

Whenever either Party, in its sole discretion, deems it to be in that Party's best interest, it may terminate this Agreement at will for convenience. Such termination shall be effective thirty (30) days after the terminating Party delivers written notice of termination of convenience to the other Party. If the Agreement is terminated by a Party prior to verification and payment by City to SAWS for any unpaid obligations for completed testing work, by SAWS or SAWS's certified laboratory conducting testing pursuant to this Agreement, City shall pay SAWS any remaining money due SAWS for completed testing or independent laboratory work. The Parties shall have no additional liability to one another for termination under this **Article XI**.

ARTICLE XII
PRIOR AGREEMENTS SUPERSEDED

This Agreement, including the exhibits, constitute the entire Agreement of the Parties regarding the subject matter of this Agreement and supersede all previous agreements and understandings, whether written or oral, relating to such subject matter.

ARTICLE XIII
ASSIGNMENT OR TRANSFER OF INTEREST

Neither Party may assign its rights, privileges and obligations under this Agreement, in whole or in part, without the prior written consent of the other Party. Any attempt to assign without such approval shall be void.

ARTICLE XIV
LEGAL CONSTRUCTION

In case 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 invalid, illegal or unenforceable provision shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE XV
COMPLIANCE WITH LAWS AND ORDINANCES

Both Parties shall comply with all federal, state and local laws and ordinances, in connection with the work and services performed under this Agreement.

ARTICLE XVI
TEXAS LAW TO APPLY

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 San Antonio, Bexar County, Texas.

ARTICLE XVII
AMENDMENT

No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and be duly executed by the Parties hereto.

ARTICLE XVIII
NOTICES

All notices required to be given under this Agreement shall be in writing and either shall be personally served against a written receipt therefore or given by certified mail or registered mail, return receipt requested, postage prepaid and addressed to the proper party at the address which appears below, or at such other address as the Parties hereto may hereafter designate in accordance herewith, unless a provision of this Agreement designates another party and provides a different address. All notices given by mail shall be deemed to have been given at the time of deposit in the United States mail and shall be effective from such date.

If to City: Mike Frisbie, PE
Director/City Engineer
Transportation & Capital Improvements Department
114 West Commerce
P.O. Box 839966
San Antonio, Texas 78283-3966

With a copy to: Art Reinhardt, PE, CFM
Assistant Director
Transportation & Capital Improvements Department
114 West Commerce
P.O. Box 839966
San Antonio, Texas 78283-3966

If to SAWS: Steven M. Clouse
Chief Operating Officer
San Antonio Water System
2800 US Highway 281 North
San Antonio, Texas 78298-2449

With a copy to: Scott R. Halty
Director of Resource Protection & Compliance
San Antonio Water System
2800 US Highway 281 North
San Antonio, Texas 78298-2449

ARTICLE XIX
FORCE MAJEURE

Neither Party shall be responsible for delays or lack of performance by such entity or its officials, agents or employees which result from acts beyond that entity's reasonable control, including acts of God, strikes or other labor disturbances or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses. In the event of any delay or failure excused by this Article, the time of delivery or of performance shall be extended for a reasonable time period to compensate for delay.

ARTICLE XX
MULTIPLE COUNTERPARTS

This Agreement may be executed in separate identical counterparts by the Parties hereto and each counterpart, when so executed and delivered, shall constitute an original instrument and all such separate identical counterparts shall constitute but one and the same instrument.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original, on this _____ day of _____, 20_____.

CITY OF SAN ANTONIO

SAN ANTONIO WATER SYSTEM

By: _____
SHERYL SCULLEY
City Manager

By: _____
Steven M. Clouse
Chief Operating Officer

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney's Office

EXHIBIT A

FIELD TESTING COSTS
and
CERTIFIED LABORATORY TESTING COSTS