

**STATE OF TEXAS §
 §
COUNTY OF BEXAR §**

**INTERLOCAL AGREEMENT
C5 & C28 - APACHE CREEK PROJECTS**

This Interlocal Agreement (hereinafter referred to as the “Agreement”) is made and entered into this _____(day) of _____ (month), 2016 by and between the **CITY OF SAN ANTONIO**, a municipal corporation of the State of Texas (“City”), and **SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES**, a political subdivision of the State of Texas (“SAWS”) (also, individually, a “Party” or, collectively, the “Parties).

PURPOSE

1.01 The purpose of this Agreement is to incorporate the City’s improvement of ten (10) foot wide hike and bike trails at Apache Creek (“City Project”) into the proposed SAWS Sanitary Sewer Replacement Project, C 5 Culebra – Castroville to Laredo and C 28 Zarzamora Creek San Gabriel to NW 23rd Street Project, Phase 1B, Escobar Park at Laredo Street to Houston (“SAWS Project”), SAWS’s JOB NO. 15-450. These projects will include the replacement of existing surface trails affected by the installation of the proposed sanitary sewer main. The joint SAWS Project and City Project are referred to herein as the “Projects.”

1.02 City desires for SAWS to include in the SAWS Project the construction of improved 10 foot wide existing hike and bike trails and surface amenities along the Apache Creek from 19th Street to Potosi Street by including the City Project’s design and specifications in the SAWS Project, thus facilitating the coordination of demolition and reconstruction of the City’s existing hike and bike trail with SAWS’s adjustments and installations for the Projects.

SERVICES

2.01 Through its contractor and Project Manager, City agrees to provide the design and specifications for the City Project to SAWS and those design and specifications provided by the City shall be incorporated by reference herein, and SAWS agrees to bid in its contract for the SAWS Project, the performance of the City Project in accordance with the design and specifications provided to SAWS. SAWS is not responsible for providing any engineering or design services under this Agreement for the Project and is not responsible for the constructability or fitness of the design and specifications.

2.02 Upon tabulation of all the bids received for the Projects, SAWS will notify City in writing of the lowest bid contractor name to be awarded the construction contract for the Projects (the “Contractor”) and the bid amount (the “Original Bid”) for the Projects. City will respond in writing to SAWS in the affirmative or not based upon the bid amount and City’s pro rata share of the City Project.

2.03 SAWS agrees to enforce all provisions of the awarded construction contract for the purpose of completion of the Projects as referenced herein.

2.04 SAWS agrees to allow the City’s contractor and Project Manager access to the Projects site to (i) manage the work of the City Project, (ii) inspect and witness testing of the City Project work and to determine if the City Project work is in conformity with the plans, specifications and special

provisions applicable thereto and is in good working order, and (iii) verify all quantities used in connection with the City Project work. If City is the owner of, or otherwise controls, any part of the site for the Projects, City shall permit SAWS or its authorized representative (including but not limited to the Contractor) access to the site to perform any activities required to execute the work for the Project subject to the City's terms and conditions of the City controlled site.

2.05 SAWS or its Contractor will be responsible for obtaining all necessary environmental and other applicable permits, for the SAWS Project only. City, through its contractor and Project Manager, shall be responsible for obtaining any and all permits necessary for the City Project.

2.06 SAWS will be responsible at its expense for obtaining all necessary easement rights for the SAWS Project only. City, through its contractor and Project Manager, shall be responsible for obtaining all necessary easement rights for the City Project.

FEES AND REIMBURSEMENT

3.01 For materials used and construction work performed for the Project, City shall deliver to SAWS good and sufficient funds (the "Funds") as agreed to by the parties for its percentage share for the City Project work. This amount is based upon the Original Bid amount of the Project work and the percentages agreed to by the parties for their proportionate shares as follows: a. For approximately 32,700 square feet of existing trail within the Projects limits, City shall pay 35% of the cost for the trail demolition and SAWS shall pay 65% of the cost for the trail demolition. b. For approximately 61,300 square feet of new trail within the Project limits, City shall pay 65% of the trail installation and SAWS shall pay 35% of the cost of the trail installation; as outlined in Attachment A.

3.02 If the cost of constructing the City Project exceeds the Original Bid, the following provisions shall apply:

- (a) Contractor Change Orders. Once SAWS receives notice from its Contractor that additional funds will be needed for City Project work, SAWS will notify City in writing of the change order. City agrees to evaluate the request in a timely manner to prevent additional costs due to delay. City may fund the change order request as received or request modifications to the City Project or a combination of both in order to complete construction of the trail. In the event City's delay in processing the change order request causes additional costs for completion of the work for the Project, City shall be responsible to pay SAWS for any such related costs.
- (b) City Change Orders. If change orders are requested by City, City will make a change order request to SAWS staff. If SAWS requires a change order that affects the City work, the change order will be submitted to City staff for review and approval. City staff agrees to use good faith efforts to respond to change orders in a timely manner upon receipt. Such review and approval shall not be unreasonably withheld based on the circumstances and complexity of the change order. In no event will the Parties' deliberative process be allowed to jeopardize timely completion of the Projects.
- (c) If a change order for the City Project results in total costs exceeding the amount stated in

§3.01, SAWS will send copies of invoices covering the additional amounts authorized by a change order approved by City staff, and City shall pay SAWS the additional amounts in the approved change order within 30 days, unless further time is required for Council action to appropriate funds.

3.03 If the cost of performing the City Project work is less than the amount stated in §3.01, SAWS agrees to refund the overpayment to City within 30 days of determination of same.

3.04. After SAWS final recapitulation change order with its Contractor, SAWS will refund City for Funds previously paid but unused.

PAYMENT

4.01 City will provide a funds advance to SAWS at two intervals: 1) within thirty (30) calendar days of the execution of this Interlocal Agreement by the last signatory, whereby SAWS will prepare and submit to City an invoice for advance payment ("Advance") for 50% of City's proportionate share of the Original Bid amount for the Projects, as outlined in § 3.01, above; and 2) upon 50% completion of the Projects, whereby SAWS will prepare and submit to City an invoice for the advance payment ("Advance") equal to the remaining 50% of City's proportionate share of the Original Bid amount for the Projects. Upon review and approval of the invoice by City, City will provide a funds advance to SAWS equal to the invoice. Upon completion of the Projects, City will work with SAWS to reconcile City's funds expensed for the Projects. City will only fund up to the approved amount for the Projects as defined in § 3.01. Any unused portion of the City funds that were advanced shall be returned to the City.

SAWS RESPONSIBILITY

5.01 SAWS agrees to include the City's work in the SAWS contract and facilitate for the City claims by City for deficient work under the City Project.

CITY RESPONSIBILITY

6.01 City through its contractor and Project Manager agrees to accept full responsibility for inspection of work performed by SAWS and Contractor on the Project.

6.02 Following Substantial Completion of the Project, City shall be responsible for all costs associated with operating and maintaining the Project. Substantial Completion is the date, certified by City through its contractor and Project Manager, and SAWS that the contractor has reached that stage of completion when SAWS and City accept use of the Project for its intended purposes.

ENTIRE AGREEMENT

7.01 This Agreement, along with the specifications for the Project, supersedes any and all other agreements, either oral or in writing, and no other agreement, statement, or promise relating to the subject matter of this Agreement that is not contained herein shall be valid or binding.

ATTORNEY'S FEES

8.01 If any action at law or in equity is brought to enforce or interpret the provisions of this

Agreement, to the extent allowed by law, the prevailing Party shall be entitled to reasonable attorney's fees in addition to any other relief to which the prevailing Party may be entitled.

TEXAS LAW TO APPLY

9.01 This Agreement is performable in Bexar County, Texas and the validity of any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas.

SEVERABILITY

10.01 If any one or more of the provisions contained in the Agreement is for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provision and this Agreement will be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

AMENDMENT

11.01 No amendment, supplementation, modification, or alteration of the terms hereof will be binding unless it is in writing, dated subsequent to the date hereof and duly executed by the Parties.

INDEMNIFICATION

12.01 SAWS agrees to include City in the list of parties being indemnified by the SAWS contractors under contract documents, so that City receives the benefit of all indemnities under the contract documents.

INSURANCE

13.01 In all contracts entered into by SAWS for the Project, SAWS shall include provisions reflecting:

- (a) With regard to insurance coverage during the construction phase of the Project, SAWS shall require all consultants, contractors, subcontractors and suppliers to maintain reasonable insurance coverage limits as determined by SAWS that are sufficient to compensate City and SAWS for their respective interests in the Project with regard to any liability a third party may have due to the services, equipment, or materials provided for construction of the Project. City shall be named as an additional insured on all policies naming SAWS as an additional insured. SAWS shall provide City's Designated Representative with copies of the completed Certificates of Insurance which 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. City reserves the right to review the insurance requirements during the effective period of this Agreement, and any extension or renewal hereof, and to modify insurance coverage and limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law or court decisions. If City requests a coverage modification which results in an increased cost, City shall be responsible for the increased cost and SAWS shall have no obligation to request a coverage modification until City submits payment to cover the

increased cost. SAWS will not allow any modifications to the insurance coverage through which SAWS may incur increased risks.

- (b) SAWS shall require all contractors and service providers to maintain statutory worker's compensation insurance for all of their employees with a waiver of subrogation in favor of City and SAWS.
- (c) SAWS will require the consultants, contractors, and any 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, SAWS shall determine whether to require performance bonds.

CURRENT REVENUES

14.01 In accordance with Section 791.011(d)(3) of the Texas Government Code, the party paying for the performance of governmental functions or services, if any, must make those payments from current revenues available to the paying party.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH WILL HAVE FULL FORCE AND EFFECT ON THIS _____ DAY OF _____, 20____.

**CITY OF SAN ANTONIO,
A Municipal Corporation**

**SAN ANTONIO WATER SYSTEM,
a Political Subdivision of the State of Texas**

By: _____
Xavier D. Urrutia, Director
Parks and Recreation Department

By: _____
Robert R. Puente
President/Chief Executive Officer

ATTEST:

By: _____
City Attorney

ATTEST:

By: _____
City Clerk

Attachment A: Fees and Reimbursement