

**MEMORANDUM OF AGREEMENT
BETWEEN
CITY OF SAN ANTONIO
AND
SAN ANTONIO WATER SYSTEM**

THIS MEMORANDUM OF AGREEMENT (the “Agreement”) is made by and among the **CITY OF SAN ANTONIO, TEXAS** (hereafter referred to as “City”), a Texas Municipal Corporation, acting by and through its City Manager, or designee, and the **SAN ANTONIO WATER SYSTEM** (hereinafter referred to as "SAWS"), a municipally-owned water and wastewater utility.

RECITALS:

WHEREAS, City procures large quantities of street and maintenance services; and

WHEREAS, SAWS utilizes such services ancillary to its operations as a water and wastewater utility and is unable to obtain the pricing benefit City is able to obtain due to its volume of work; and

WHEREAS, the Parties have determined that it is in the Parties’ mutual interest to extend the pricing of the acquisition of certain services in order to foster greater economy and efficiency by extending bidder’s unit pricing to SAWS; and

WHEREAS, this Agreement is necessary to identify each party's rights, duties and obligations in such joint procurement process; and

WHEREAS, this Agreement is subject to the approval of the San Antonio City Council by ordinance acknowledging the terms and conditions of the Agreement; and

NOW THEREFORE, the City and SAWS agree to the terms and conditions of this Agreement as follows:

1. PURPOSE

1.1. The express purpose of this Agreement is to set out the terms and conditions by which City will bid the acquisition of certain goods and services and allow the bidder to extend the unit bid prices to SAWS. City in no way warrants or guaranties that bidders will agree to extend their pricing to SAWS. If bidder, through the solicitation process, agrees to extend the unit bid prices to SAWS, and that bidder is the successful vendor, SAWS will then contract separately with such bidders. No new or separate legal or administrative entity is created by this Agreement or to administer this Agreement.

1.2. The parties shall work collaboratively to develop written procedures bid documents within sixty (60) days of the Effective Date of this Agreement which procedures shall become Exhibit A hereto. TCI shall have final control over bidding documents.

1.3. SAWS shall provide City with a written list of goods and services for which it wishes City to request bidders to extend the same pricing to SAWS that it submits to City with its bid. City in its sole discretion may agree to include such a request for extending pricing in its contract solicitation. If City agrees to include the request to extend pricing to SAWS in the solicitation, SAWS shall provide to City for inclusion in the solicitation a bid sheet listing such goods and services, a copy of the SAWS contract, and such other documents required by City, such that bidder can make an informed decision, based on the terms and conditions of the SAWS contract, whether to agree to extend its pricing. Additionally, SAWS must provide the anticipated budgeted amount of the estimated contract value that SAWS will be awarding.

1.4. If City agrees, City shall request bidders to indicate in its bid response if they will extend the pricing for a particular bid to SAWS in the event the bidder is the successful vendor. SAWS ability to contract is limited to whether the successful bidder agrees to extend its pricing and enter into a contract with SAWS. SAWS shall not enter into a separate contract with a non-successful bidder for a particular solicitation solicited under this Agreement.

2. CITY OBLIGATIONS

In the event SAWS and City mutually agree to include a request for extended pricing with a City solicitation, City shall be responsible for preparing the solicitation documents, obtaining the necessary documents from SAWS for inclusion in the solicitation, publicizing the solicitation, and administering the solicitation, evaluation and selection process. City will within three business days of selection of successful respondent inform SAWS whether such respondent has agreed to extend its pricing to SAWS. SAWS will then be responsible for contracting with such vendor for the purchase of the goods and services that were solicited. City shall have no involvement with or be responsible for negotiating such agreement between SAWS and the vendor.

3. SAWS OBLIGATIONS

3.1. For any solicitation for which City has agreed to include the option for a contractor to extend its pricing to SAWS, SAWS shall provide a separate bid sheet in a format agreeable to City. Additionally, SAWS shall provide City with the not to exceed contract amount for the work that SAWS is providing bid sheets for. Additionally, SAWS shall provide to City a copy of the contract that SAWS will require the successful contractor to enter into. SAWS shall further provide any documents the City reasonably requests for inclusion in the solicitation. If SAWS fails to provide City such requested documents or information, City, in its sole discretion, may proceed with the solicitation without including the option for vendors to extend its pricing to SAWS.

3.2. If the successful bidder has agreed to extend its pricing to SAWS, SAWS shall contract directly with such bidder. SAWS shall be solely responsible for the work performed by such contractor and any and all obligations and responsibilities associated with the work, including but not limited to, project management, construction administration services, funding, processing contractor payments, contractor payments, project scheduling, wage and hour monitoring, small business monitoring, claims resolutions, billing issues, litigation and any and all other responsibilities and obligations associated with such work and/or agreement. City shall be in no way responsible for any work contractor performs for SAWS or any claims or disputes arising out of such work or contract.

4. RIGHT TO CONTRACT INDEPENDENTLY

Each party reserves the right to solicit and contract goods and services independently without notice to the other party and shall not be bound or obligated to the other party to participate in the activity.

5. PAYMENT

Each party shall be responsible for all payments to vendors/ contractors and the funding for the goods and services that such party utilizes. Under no circumstance shall a party be responsible for payment of the acquisition price of any goods or services contracted for or intended for use by the other party.

6. TERM & TERMINATION

This Agreement shall become effective as of the last date of execution by the Parties hereto, and shall remain in effect for a period of twelve months. After the initial twelve month term, the Agreement shall automatically renew for an additional twelve month extension period for a maximum of five additional extensions, unless sooner terminated in accordance with the terms of this Agreement.

The Parties agree that this Agreement may be terminated with or without cause by City or SAWS at any time prior to the expiration of the Term by giving the other party ninety (90) days prior written notice of such termination to the addresses provided in Article 10 of this Agreement.

7. NONASSIGNMENT

Neither party may assign this Agreement without the prior written consent of the other.

8. DISPUTES

The Parties agree to use due diligence and to cooperate with each other in resolving any and all disputes, which may arise under this Agreement.

9. AMENDMENT

No amendment, modification or alteration of the terms of this Agreement shall be binding unless it be in writing, dated subsequent to the date hereof, agreed to and duly executed by the Parties, and as required, approved by the governing body of City and SAWS.

10. NOTICES

All notices required or permitted hereunder shall be in writing and shall be deemed delivered the earlier of (i) when actually received by personal delivery if received during normal business hours; or (ii) on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed; or (iii) on the date of receipt if mailed by certified mail, return receipt requested, addressed to the respective other Party at the address set out below, or at such other address as the receiving Party may designate by giving the other Party ten (10) days' prior notice.

CITY

Razi Hosseini, P.E, R.P.L.S.
Interim Director
Transportation &
Capital Improvements Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

SAWS

Mike, Frisbie, P.E.
Senior Vice President/
Chief Operating Officer
San Antonio Water System
P.O. Box 2449
San Antonio, TX 78298

11. INDEPENDENT CONTRACTORS

The Parties expressly agree that in performing their services under this Agreement, neither the CITY nor SAWS shall at any time act as agents for the other. The Parties further agree that any and all consultants or contractors engaged by a Party to this Agreement shall not be an independent contractor of the other Parties to this Agreement. No Party to this Agreement shall be liable for any claims that may be asserted by any third party occurring in connection with services performed by another Party to this Agreement and/or any developer, under this Agreement unless any such claims are due to the fault of the Party.

12. NO WAIVER OF IMMUNITY

No Party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of its execution of this Agreement and performance or non-performance of the covenants contained herein. CITY and SAWS acknowledge that the CITY and SAWS are both political subdivisions of the State of Texas and that the CITY and SAWS are both subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, Section 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. This Agreement will be interpreted according to the Constitution and general laws of the State. Nothing in this Agreement waives any governmental immunity available to the CITY or SAWS under the laws of the State of Texas.

13. VENUE AND GOVERNING LAW

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. Venue and jurisdiction for any claim or dispute arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas. Further, the privileges granted hereunder shall be construed to be only those authorized by pertinent Texas Statutes and the City Charter of the City of San Antonio, Texas and not to include anything inconsistent with the rights of the public

14. LEGAL CONSTRUCTION

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

15. COMPLIANCE WITH LAWS AND ORDINANCES

The Parties hereby agree to comply with all federal, state, and local laws and ordinances applicable to the work or services to be performed under this Agreement.

16. PARTIES' REPRESENTATIONS

The CITY and SAWS jointly negotiated this Agreement, which shall not be construed against or in favor of a Party simply because that Party primarily assumed responsibility for drafting.

17. CAPTIONS

All captions used in this Agreement are for the convenience of reference only and shall not be construed to have any effect or meaning as to the Agreement between the Parties.

18. LEGAL AUTHORITY

Each person executing this Agreement represents and guarantees that he or she has legal authority to execute this Agreement on behalf of their respective Party and to bind said Party and their successors and assigns to all of the terms, conditions and obligations of this Agreement.

-----*Signatures to follow*-----

IN WITNESS THEREOF, the Parties hereto have made and executed this Agreement, to be effective on the date of the last signature below (“Effective Date”).

CITY OF SAN ANTONIO

SAN ANTONIO WATER SYSTEM

Erik Walsh
City Manager
Date: _____

Robert R. Puente
President/CEO
Date: _____

Approved
As to Form:

City Attorney