

**PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT
COMMUNICATION**

**SAN ANTONIO WATER SYSTEM
INTEROFFICE MEMORANDUM**

TO:	Robert R. Puente President & CEO		
		<u>Initials</u>	<u>Date</u>
FROM:	Edward F. Guzman Senior Vice President – Chief Legal and Ethics Officer	<u>EG</u>	<u>01/15/2025</u>
THROUGH:	Andrea Beymer Executive Vice President – Chief Operating Officer	<u>ALB</u>	<u>01/15/2025</u>
	Juan D. Gomez Vice President – Engineering and Construction	<u>JDG</u>	<u>01/15/2025</u>
SUBJECT:	MOU between the City of San Antonio and SAWS for City Bond Projects		

Background: A Memorandum of Understanding between the City and SAWS has been negotiated for the 2022 – 2027 City bond program. This MOU has a term of five (5) years, effective upon signature of both parties, and will extend into the City’s next bond program and can be modified or extended further upon agreement of the parties.

The MOU includes provisions that address: the importance of coordinating design and engineering between the parties including the selection of engineers, architects, contractors, and sub-contractors; expectations for subsurface utility engineering; criteria for designation of high-risk projects; the creation of a framework for Dispute Resolution that can be engaged at any point during a project; and providing for reimbursement for engineering design services and construction of projects.

The SAWS Board of Trustees approved the MOU at their meeting on January 14, 2025.

Recommendation: Execution of the attached MOU with the City of San Antonio.

PLEASE RETURN THE SIGNED DOCUMENTS TO EDWARD GUZMAN UPON EXECUTION

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SAN ANTONIO AND SAN ANTONIO WATER SYSTEM FOR COORDINATION OF BOND PROGRAM PROJECTS

Background

The City of San Antonio (“COSA”), and San Antonio Water System (“SAWS”), (collectively referred to as the “Parties”), recognize that effective coordination and management of COSA public works projects and SAWS’s capital infrastructure projects associated with the City’s Bond Program(s) will lead to efficiencies, cost savings, and timely completion of projects.

This MOU is intended to establish a framework for cooperation and coordination so that projects can move forward in a timely cost-efficient manner for the benefit of both COSA residents and SAWS customers.

Memorandum of Understanding

A. Guiding Principles

The following guiding principles shall establish a general framework for coordination and management of Bond projects that involve both COSA and SAWS work:

- a. The Parties will maintain consistent communication and coordination through the entire life cycle of Bond projects with an emphasis on pre-planning and scheduling.
- b. Communications with contractors, stakeholders, affected and surrounding property owners, the press, and the public will be coordinated to ensure consistency, accuracy, and effectiveness of messaging.
- c. Any issues that may result in cost increases or delays will be quickly identified and the Parties will work together to address those issues so that the Dispute Resolution Process becomes the exception and not the rule.
- d. The Parties shall inform and instruct their respective teams to share the objectives and expectations of how joint construction projects should be conducted going forward.

B. Identification of Existing Infrastructure.

The accurate identification of existing infrastructure, such as water/ sewer lines, is central to project design and timing. COSA and SAWS will work together to draft solicitation documents that provide ample time and budget for subsurface investigation to include utility location, environmental conditions, or other subsurface issues related to the project.

Pursuant to City Code, SAWS has the responsibility for accurately identifying its existing utility lines for a project through one or a combination of the following:

- a. Sharing of existing plans, maps, field notes, statistics, and other data depicting the horizontal and vertical locations of all SAWS's facilities in the impacted right of way, or if those do not accurately depict the existing facilities;
- b. Performing Subsurface Utility Engineering (SUE) in accordance with generally accepted engineering definitions, standards, and practices.

SAWS shall be responsible for the cost of "designating" SAWS underground utilities according to SUE Quality Level B and/ or "locating" SAWS underground utilities according to SUE Quality Level A, including "potholing" to accurately identify locations. COSA will timely notify SAWS of upcoming Bond projects and associated schedule that will require SAWS SUE information for design work. If timely notice is provided by COSA, SAWS shall provide SUE information to COSA in a manner that provides sufficient time for COSA to develop design and scope of work for each project. The location work and analysis may be performed by a SAWS contractor during the design phase of a project.

COSA and/or its Design Consultant shall promptly notify SAWS in writing with substantiating information that the location information provided by SAWS is not accurate, or that reasonable, prudent, and ordinary engineering practice calls for more specific location information that cannot be readily confirmed by COSA or its Design Consultant by on-the-ground observation and/or measurement.

Each Party agrees to engage and coordinate with the other before the design of the project moves beyond 40 percent completion. Each Party agrees to pay for any necessary redesign of its own infrastructure or lines prior to construction. A Party will not be responsible for redesign costs that could have been avoided or substantially mitigated by coordination with the other Party in the design process before moving beyond 40 percent completion of design.

COSA shall be responsible for the cost of SUE to determine the locations of COSA infrastructure. COSA will share all available information it receives related to other subsurface facilities or infrastructure from other entities (CPS Energy, ATT, etc.) to SAWS in a manner that provides sufficient time to develop design and scope of work for each project.

By entering into this MOU COSA does not waive its rights under right of way Ordinance 93319, City Code Chapter 29, Art. IV, Sec. 29-110, including COSA's right to reimbursement for relocation of facilities located in the City's right of way.

C. Joint Bid Projects

“Joint Bid Projects” are projects that are jointly solicited and contracted by COSA/SAWS for design, construction, or both. All Bond projects will be designated Joint Bid Projects unless the Parties mutually agree otherwise. For all Joint Bid Projects, COSA and SAWS will be joint parties and/or joint signatories to an awarded design and/or construction contract, and that joint status will be reflected in the solicitation documents. COSA and SAWS will each individually and collectively have the rights and duties as a party to the joint contract.

For Joint Bid Projects, SAWS and COSA will determine before solicitation whether the project will be managed by SAWS or by COSA based on whether COSA or SAWS work constitutes the majority of the project scope and cost. The lead Party will be primarily responsible for soliciting, contracting, and managing construction, but the other Party shall remain a joint party to the contract, subject to the terms of this MOU.

The following will generally apply for all Joint Bid Projects:

- The Parties will coordinate to select engineers, architects, contractors, sub-contractors, and other vendors that will be assigned to work on joint projects;
- The Parties shall review and approve engineering plans before start of construction of any infrastructure;
- The Parties will agree to a baseline schedule for each Joint Bid Project, including any schedule modifications;
- The Parties will be responsible to timely inspect their work in progress and, consistent with construction contract terms, shall accept the completion of all work for the construction of that Party’s infrastructure determined to be satisfactory;
- If the construction work includes elements tied to SAWS’s regulatory compliance, SAWS shall ensure that 1) the specific compliance work is included in the necessary solicitation and contract documents, 2) COSA is aware of the regulatory requirement, and 3) the Parties will implement an inspection schedule to address specific compliance work and to quickly address concerns that construction work may have deviated from contract documents so as to minimize delays, repairs, or re-performance of construction work;
- If a Party determines that work is unsatisfactory, that Party shall immediately convey to the other Party what element of the work it deems unsatisfactory and specifically state what it feels is necessary to bring the work to a satisfactory and acceptable level consistent with contractual requirements;
- If an unsafe or dangerous condition is identified, then the identifying Party may stop work on a temporary basis and coordinate measures to resume work as quickly and safely as possible in consultation with the other Party and the contractor performing the work;
- The Parties will work together to recoup damages associated with delays and unsatisfactory

work by contractors or subcontractors taking into consideration: impact on ongoing work, potential delays, other potential claims under the contract, and litigation analysis and costs.

Both Parties are responsible for their proportionate costs associated with a project.

Both Parties acknowledge that the timely execution of decisions is necessary to maintain the project schedule and limit delays that result in cost increases.

D. High Risk Projects

“High Risk” Projects shall be designated by agreement between SAWS and COSA, guided by the following Project criteria:

- a. either SAWS or COSA has determined that the Project presents significant design, engineering, or construction challenges;
- b. there is a high likelihood of encountering historical artifacts;
- c. there is a high likelihood of encountering conflicts with unrecorded underground water, sewage, or stormwater-related utilities, due to the age of City infrastructure;
- d. The project is located in one of the following areas:
 1. the downtown or original historic area of the City of San Antonio;
 2. in or along congested corridors such as the Medical Center;
 3. in a sensitive business district such as St. Mary’s Street or Broadway;
- e. The project is critical to or otherwise disrupts a high-profile project or event such as the Hemisfair redevelopment or the NCAA Final Four; or
- f. The project is critical to State or Federal considerations such as emergency evacuation routes or transportation of military vehicles.

For projects designated High Risk, SAWS and COSA may enter into an additional or substitute MOU that addresses that project’s specific design, construction, and/or stakeholder concerns. Both Parties agree to be responsive to each other with the goal of timely completion of the project. Topics including, but not limited to the following should be addressed in MOUs or contracts associated with High Risk projects:

- The allocation of the Parties’ proportionate share of responsibilities, rights, authority, and costs, for that project;
- The respective Parties’ rights and obligations for direction and control of the contractors and subcontractors;
- A review process for decisions that will result in redesign, de-scoping, or a change of schedule for the overall project;
- A schedule for review and approval of pay applications, shop drawings, material

submittals, Request for Information (RFI), contractor delay claims (TIA), and any other form or submittal requiring review and/or approval in accordance with the contract documents.

Each “High Risk” project will have a designated individual authorized to execute or recommend decisions, consistent with the Party’s policies and procedures (which may include approval by the SAWS Board of Trustees or San Antonio City Council) and act as a “project director”. The designated project director for each Party shall have sufficient knowledge and understanding of the project scope and schedule to make informed decisions regarding matters related to their Party’s work on the project. Consistent with the terms of this MOU, the project directors will abide by requirements for coordination and consultation with the other Party regarding any decision that will impact the overall project’s scope, budget or schedule and will be responsible for identifying matters that must be escalated through COSA or SAWS leadership, a Dispute Resolution Board, the escalation matrix, or another established Dispute Resolution process.

High Risk projects may include the establishment of a standing Dispute Resolution Board at the outset of the project, or group of projects, consistent with the framework in Section F below, that can review emergent matters associated with potential design deficiencies, project management, change orders, or other matters that impact a project, or designated group of projects.

E. Reimbursement of Costs

Each Party will reimburse the other Party for each project for design and construction costs and any other costs under this MOU in Joint Bid Projects within 30 days of receipt and approval of an invoice from the lead Party. Invoices may be submitted periodically over the course of design and construction.

F. Dispute Resolution

Over the course of project development, issues may arise in which COSA and SAWS will have conflicting positions or disputes related to the project, such as responsibility for delays and associated costs.

The Parties will establish a Dispute Resolution Board (“DRB”) that may be engaged when issues require escalation to the level of review and consideration. A DRB may be identified at the outset of a project so that it can be engaged in a timely manner when necessary. The Parties may designate a DRB to review matters associated with a single project, or a group of projects.

The DRB will be comprised of three members. COSA and SAWS will select one member each and the two selected members will then select a third party that will serve as Chairman. Criteria

and expertise for the Board members will be determined before the appointment. The Parties will also determine the criteria, expertise, timing, compensation, and other process protocols based on the nature and scope of the dispute.

Notwithstanding the above, the Parties acknowledge that issues are best resolved timely and efficiently, preferably at the lowest possible level of project management in proportion to the nature and scope of the conflict. The Parties will endeavor to use the Escalation Matrix below to resolve major project issues that impact the critical path of the project's schedule. The City Manager and SAWS President/CEO may mutually agree to extend the time for review at any of the levels identified below.

COSA Positions	SAWS Positions	Estimated Business Days to Resolve
Project Manager	Construction Management	5
Engineering Programs Manager	Manager – Construction	2
Assistant City Engineer	Director – Construction	3
Assistant Director / Director	Vice President – Engineering & Construction	3
City Manager	President CEO	5
Dispute Resolution Board		15

To facilitate timely resolution of project issues and avoid undue delays and mitigate costs overruns, if the COSA City Manager and the SAWS President/CEO do not resolve the dispute within the timeframe outlined within the Escalation Matrix, then the Parties will engage the Dispute Resolution Board that will evaluate the dispute and provide a recommended resolution to COSA and SAWS. The Board will review the submitted dispute fairly and impartially. After review of a submitted dispute, which might include a request for additional information, the Board will provide a written recommendation to COSA and SAWS with a brief explanation of its reasoning. The COSA City Manager and SAWS President/CEO will accept the recommendation of the Board as the resolution of the dispute, subject to Board or City Council approval as may be required, unless they mutually agree that the Board recommendation is not in the best collective interest of COSA and SAWS.

G. Effective Date and Term.

This MOU shall become effective upon the signatures of both Parties and will have a term of five years unless the Parties mutually decide to terminate.

City of San Antonio

By: _____
Erik Walsh
City Manager

San Antonio Water System

By:  _____
Robert R. Puente
President/CEO

