

AN ORDINANCE 2012-06-07-0401

AUTHORIZING THE APPROVAL OF AN INTERAGENCY PARTICIPATION AGREEMENT WITH SAN ANTONIO WATER SYSTEM (SAWS) IN WHICH THE CITY WILL RECEIVE UP TO \$100,000.00 FROM SAWS FOR DESIGN AND CONSTRUCTION RELATED TO WATER CONSERVATION AND STORM WATER MANAGEMENT FEATURES AT THE PHIL HARDBERGER PARK URBAN ECOLOGY CENTER.

* * * * *

WHEREAS, in an effort to identify and encourage alternatives in landscape design and on-site storm water management, an Interagency Participation Agreement with the Phil Hardberger Park Urban Ecology Center project has been developed to provide funding assistance from SAWS for design and construction of park features such as BioSwales, rain gardens and rainwater collection systems that demonstrate water conservation and storm water quality management efforts in an amount not to exceed \$100,000.00; **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 of the Capital Improvements Management Services Department or his designee is hereby authorized to approve a Interagency Participation Agreement with San Antonio Water System (SAWS) in which the City will receive up to \$100,000.00 from SAWS for design and construction related to water conservation and storm water management features at the Phil Hardberger Park Urban Ecology Center. A copy of the agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I.**

SECTION 2. Funds are authorized to be received from SAWS to SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00134, Hardberger Park (formerly Voelcker Park), and the budget shall be revised by increasing WBS element 40-00134-90-10, entitled SAWS Contribution, SAP GL Account 4502280 – Contribution from other Agencies, by the amount of \$100,000.00.

SECTION 3. The amount of \$100,000.00 is appropriated in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00134, Hardberger Park (formerly Voelcker Park), SAP WBS Element 40-00134-05-08-04-01-02, entitled SAWS Water, SAP GL Account 5201140.

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

SW/vv
06/07/12
Item #7B

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 is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 7th day of June, 2012.



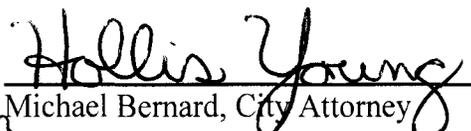
M A Y O R
Julián Castro

ATTEST:



Lencia M. Vacek, City Clerk

APPROVED AS TO FORM:

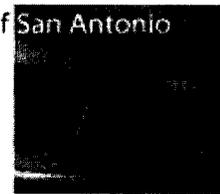


for Michael Bernard, City Attorney



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 7B

| Name: | 4, 7A, 7B, 8A, 8B, 9, 11, 12, 13, 14, 15 | | | | | | |
|---------------------|--|-------------|-----|-----|---------|--------|--------|
| Date: | 06/07/2012 | | | | | | |
| Time: | 09:25:30 AM | | | | | | |
| Vote Type: | Motion to Approve | | | | | | |
| Description: | An Ordinance authorizing the approval of an Interagency Participation Agreement with San Antonio Water System (SAWS) in which the City will receive up to \$100,000.00 from SAWS for design and construction related to water conservation and storm water management features at the Phil Hardberger Park Urban Ecology Center. | | | | | | |
| Result: | Passed | | | | | | |
| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
| Julián Castro | Mayor | | x | | | | |
| Diego Bernal | District 1 | | x | | | | |
| Ivy R. Taylor | District 2 | | x | | | | |
| Leticia Ozuna | District 3 | | x | | | | |
| Rey Saldaña | District 4 | | x | | | | |
| David Medina Jr. | District 5 | | x | | | | |
| Ray Lopez | District 6 | | x | | | | x |
| Cris Medina | District 7 | | x | | | | |
| W. Reed Williams | District 8 | | x | | | x | |
| Elisa Chan | District 9 | | x | | | | |
| Carlton Soules | District 10 | | x | | | | |

STATE OF TEXAS § **CITY – SAWS INTERAGENCY PARTICIPATION**
 § **AGREEMENT FOR FUNDING FOR PHIL HARDBERGER**
 PARK URBAN ECOLOGY CENTER
 COUNTY OF BEXAR §

This Interagency Participation Agreement (the “Agreement”) regarding funding for Phil Hardberger Park Urban Ecology Center (the “Project”), compensation toward the design and construction of an integrated BioSwale, rain garden and rainwater collection demonstration feature to demonstrate the relationship between water conservation and storm water quality management for the Project, and other associated costs is made and entered into by and between the CITY OF SAN ANTONIO, TEXAS (the “City”), a Texas home-rule municipal corporation, and the SAN ANTONIO WATER SYSTEM (the “SAWS”), a municipal water and sewer utility owned by the City.

WHEREAS, as a municipally-owned utility created by City ordinance, SAWS, through its Board of Trustees, is vested with the authority to manage daily operations and affairs of the utility; and

WHEREAS, the City is currently designing and constructing a new Urban Ecology Center at Phil Hardberger Park; and

WHEREAS, SAWS, working in cooperation with representatives of the City, has identified alternatives in both landscape design and on-site storm water management to include the construction of an integrated BioSwale, rain garden and rainwater collection system (collectively, and together with all appurtenances thereto, the “On-Site Reclaim System”) as an alternative to traditional parking lot design that can provide benefits to improve water quality and water conservation, which shall be deemed part of the overall Project; and

WHEREAS, the area weather patterns are characterized by drought conditions interrupted by heavy rainfall; and

WHEREAS, land development designs that take into account frequent dry conditions punctuated by heavy rain will benefit the region; and

WHEREAS, SAWS Conservation department encourages the use of alternative landscape designs that negate the need for supplemental water to further the approved Water Management Plan goals through water conservation; and

WHEREAS, by its participation in the Project pursuant to this Agreement, SAWS staff will be able to obtain practical hands on experience in the implementation of alternative storm water management methods that also result in water conservation in commercial settings as well as alternatives that can apply to residential development to better assist customers wanting to employ this technology; and

WHEREAS, the Project is in a premier location to showcase alternative development strategies for water conservation activities alongside other conservation minded activities, including the use of low impact development for improvement of storm water quality; and

2. City Participation.

(a) The City shall manage all design and construction related to this Project, and shall cause the construction of the On-Site Reclaim System in accordance with the Plans.

(b) The City at its sole cost shall operate and maintain all equipment and landscape that is part of and associated with the On-Site Reclaim System, including, but not limited to, pumps, tanks, water treatment injection system, irrigation system and controls for a minimum of ten years from the date the construction is certified to be complete (the "Term").

(c) Subject to the City's design, construction, operation and maintenance obligations set forth in this Agreement, the City shall not be obligated, or liable, under this Agreement to any other party for payment of any monies, or provision of any goods or services, other than re-payment to SAWS as provided in Section 7 (b) below.

(d) The City facilities management shall follow horticultural and irrigation scheduling advice provided by SAWS during the Term.

(e) The City shall allow SAWS to gather data from the demonstration Project and provide data to SAWS on water use and maintenance costs associated with the system including general maintenance and costs.

(f) The City shall allow SAWS to host and sponsor public workshops from time to time at the Urban Ecology Center and other Phil Hardberger Park locations for developers, facility managers, other facility professionals and the general public regarding the design, construction, operation, management and maintenance of a storm water management system that benefits water quality and water conservation.

(g) The City shall obtain SAWS prior approval of content and design of any educational signage for the Project, content of any press materials or other printed materials relating to the Project produced for the web, print or other sources.

(h) The City agrees that SAWS potable water will not contribute to any irrigation or water features on site. All supplemental water used for irrigation and water features will be provided through on-site reclamation of rainwater and condensate.

(i) The City agrees that on-site reclaimed water will not be used to provide supplemental water for indoor plumbing fixtures such as toilets, urinals, sinks.

(j) The City agrees to ensure that sub-metering will be included at points determined by SAWS for the purpose of research on the site. SAWS shall have access to said submeters. It should be expected that the data will be shared and analyzed as this is funded on the grounds that it is a new technology that needs evaluation and study.

(k) The City shall allow SAWS access to all system components to assess how they function over time. All information will be shared with the City.

(l) The City shall designate a point person that is responsible for the development and implementation of the maintenance plan. It is recognized that the On-Site Reclaim System is a complex system that the City will need to support with Operation and Maintenance funding.

(m) The City shall include SAWS in planning and construction meetings and inspections during construction as they progress. The City shall allow SAWS to inspect the On-Site Reclaim System during construction to confirm that construction is proceeding according to the Plans. SAWS right of inspection shall not impose any obligation on SAWS regarding construction and shall not relieve the City of responsibility for ensuring construction of the On-Site Reclaim System in accordance with the Plans.

(n) SAWS shall have the right to collect information on the effectiveness of the Project, on an as-needed basis, in order to determine the success of the Project in achieving the

WHEREAS, the SAWS' Conservation Department and the City's Parks and Recreation Department have proposed a water conservation project that will act as a demonstration site for commercial landscapes that will include opportunities to gather information on the use and management of On-Site Reclaim Systems, operating exclusive of any potable water back-up systems, that can be applied to commercial landscapes throughout the community; and

WHEREAS, the mission of this park includes education, and the Urban Ecology Center will provide a premier demonstration venue for conducting workshops and seminars for green jobs and green job technologies related to storm water management and innovative landscape management that promotes water conservation on commercial properties as well as lessons for residential application; and

WHEREAS, the development of alternative management of storm water and water conservation for landscaping is consistent with the City's overall Mission Verde Plan and SA2020, and

WHEREAS, subject to the terms and conditions of this Agreement, SAWS will contribute funds for the design and construction of the On-Site Reclaim System to mitigate parking lot design impacts and landscape elements that meet the goals of the demonstration project;

NOW, THEREFORE, in consideration of the actions and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. SAWS Participation.
 - (a) SAWS will work closely with the City to finalize the plans for the On-Site Reclaim System. The final, agreed plans for the On-Site Reclaim System shall be deemed the "Plans."
 - (b) SAWS will provide a portion of funding for the construction of the On-Site Reclaim System, as well as a portion of any design costs attributed to revisions incorporated into the Plans that SAWS deems necessary for the landscape to be sustained by the design, in a total amount not to exceed \$100,000.00 (the "Maximum Participation").
 - (c) SAWS will collaborate with the facility maintenance staff for a minimum period of five years during the 10 year Term (hereinafter defined) to determine the effectiveness of the design and operation of the system.
 - (d) SAWS agrees to fully participate in a collaborative community project to plant the court yard, BioSwales, rain gardens and other landscape areas associated with the Project, as described in section 3(d)(a) of this Agreement.
 - (e) SAWS agrees to a minimum of two conservation centered education programs a year at the Project location for a minimum of 5 years during the 10 year Term (hereinafter defined) in coordination with the Parks Department.
 - (f) SAWS will make available if requested access to the OnCell program for a minimum of 5 years. This support is for the annual subscription. Associated signage and other ancillary items will be provided by the Parks Department or other Project stakeholders unless a separate agreement is negotiated.
 - (g) SAWS will not be responsible for any repairs or maintenance to the On-Site Reclaim System or the larger Project. SAWS will not be responsible for any costs for any other items associated with the Phil Hardberger Park buildings, contents or grounds.
 - (h) SAWS shall not be obligated, or liable, under this Agreement to any party other than the City for payment of any monies, or provision of any goods or services, and in no event shall SAWS be liable to the City for more than the Maximum Participation set forth in Section 1(b) above.

predicted results. The total water savings calculation will compare climate data, system capabilities, modifications, and any other factor affecting the Project.

3. Notices. To be effective, notices provided under this Agreement must be in writing, and shall be deemed to have been received for all purposes upon the earlier to occur of (a) actual receipt, or (b) three (3) days after the same are mailed by U.S. certified or registered mail, return receipt requested, and addressed as follows:

If to SAWS:

SAWS
Attn: Director of Water Conservation
P.O. Box 2449
San Antonio, Texas 78298-2449

With copy to:

SAWS
Attn: General Counsel
P.O. Box 2449
San Antonio, Texas 78298-2449

If to the City:

City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

With copy to:
Director, Parks and Recreation Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

or addressed to such other address as is provided by written notice from one party to the other.

(a) Binding Effect. This Agreement will be effective and is conditioned upon approval from the SAWS Board of Trustees by resolution and by the San Antonio City Council by ordinance.

(b) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, and shall be fully performable and enforceable in Bexar County, Texas.

(c) Formal Matters. The relationship between SAWS and the City under this Agreement shall be that of independent contractors, and not that of partners, joint ventures, or any other relationship. This Agreement sets out the entire agreement of the parties in connection with the subject matter addressed herein, and may be modified or amended only in a writing executed by both SAWS and the City.

(d) Conditions of Funding

a. The Project will not have any irrigation supplied by potable water. The Project will not have any water features supplied by potable water. Plant material and planting for the Urban Ecology Center and associated parking facilities will be secured and planted through a collaborative event including the primary sponsors and community partnerships and at a time of year determined best, based on horticultural practices and current weather conditions.

b. The project will not use onsite reclaimed water for primary indoor water use including but not limited to toilets, urinals and sinks.

c. If SAWS determines that the equipment or facilities constituting the On-Site Reclaim System (i) have been removed or repurposed in a manner that resumes utilization of potable water, (ii) have not been properly maintained, or (iii) fail to achieve efficiencies associated with operating the Project, SAWS shall provide written notice to the City ("Notice of Default"), and the City shall have ninety (90) calendar days from delivery of the Notice of Default to make necessary corrections. If corrections are not made within said ninety (90) day period, SAWS shall receive a refund from the City (or SAWS may offset from sums next due and owing from SAWS to the City) of a portion of the original funding provided by SAWS which amount shall be equal to the total of SAWS original funding multiplied by a fraction, the numerator of which is the number of months remaining in the ten year Term, and the denominator is 120.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL BE CONSIDERED AN ORIGINAL, AS OF THE ____ DAY OF ____, 2012, TO BE EFFECTIVE UPON SATISFACTION OF THE CONDITIONS SET FORTH IN SECTION 4.

CITY OF SAN ANTONIO, TEXAS

By: _____
Sheryl Sculley
San Antonio City Manager

Approved as to form: _____
Michael D. Bernard
City Attorney

SAN ANTONIO WATER SYSTEM

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