

STATE OF TEXAS
COUNTY OF BEXAR

§ INTERLOCAL AGREEMENT FOR THE
§ BARBARA DRIVE DRAINAGE
§ PROJECT (SA-3)

THIS INTERLOCAL AGREEMENT (hereafter referred to as “Agreement”) for the **BARBARA DRIVE DRAINAGE PROJECT, SA-3** is effective as of the _____ day of _____, 2014 (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 the **COUNTY OF BEXAR**, a political subdivision of the State of Texas (hereafter referred to as “County”), acting by and through its officers, hereto duly authorized. City and County singularly or collectively shall be referred to herein as “Party,” -or “the Parties.” This Agreement is entered into by City and County pursuant to the authority granted by the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791. This Agreement is intended to further the purpose of the Interlocal Cooperation Act by increasing the efficiency and effectiveness of local governments.

WITNESSETH

WHEREAS, County proposed that the County’s project SA-3 (Barbara Drive Drainage Project) between Barbara Drive and Shannon Lee from McCullough Avenue to Skipper Drive, be part of the City’s Barbara Drive Project; and

WHEREAS, City and County have agreed to incorporate County’s SA-3 (hereafter referred to as “the Project”) into the City’s Barbara Drive Project; and

WHEREAS, the Project consists of removing and widening the existing concrete channel east of McCullough Avenue by replacing existing concrete box culverts with an earthen channel to just beyond Skipper Drive or upsizing the existing concrete box culverts; and

WHEREAS, County shall provide advance funding to City as a lump sum amount for the estimated engineering, environmental, real estate, and construction related costs of the Project as part of City’s Barbara Drive Project; and

WHEREAS, City shall be responsible for the maintenance of the Project after its completion; and

WHEREAS, the Parties desire to enter into this Agreement to establish the rights and obligations of the Parties for the design, construction, operations and maintenance of the Project and to establish the procedures for funding the Project:

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

ARTICLE I
PURPOSE

- 1.01 The purpose of this Agreement is to establish the terms and conditions for: (1) managing the design and construction services associated with the Project, including construction disruption; (2) funding the engineering, environmental, real estate, and construction related costs for the Project; and (3) operating and maintaining the Project upon completion.

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ARTICLE II
TERM

- 2.01 Except as otherwise provided herein, this Agreement shall commence upon the execution date of the last signatory party to the Agreement and shall end upon completion of the Project. ~~The City shall execute a design consultant contract no later than 180 days after the execution of this Agreement.~~
- 2.02 City has the duty to maintain the Project and to enforce warranties associated therewith. These duties shall survive the termination of this Agreement.

ARTICLE III
COUNTY'S FINANCIAL COMMITMENT

- 3.01 County shall provide funds to City not to exceed **Eight Million Five Hundred Thousand dollars and no/100 (\$8,500,000.00)** (hereafter referred to as "County's Contribution").
- 3.02 The Parties acknowledge that the financial commitments stated in this Agreement are independent of the necessary operating and maintenance expenses that are and will remain City's responsibilities during and after the Project.
- 3.03 **Eight Million Five Hundred Thousand dollars (\$8,500,000.00)** is the total maximum County funds commitment to City for the Project, as set forth in the Project Cost Estimate and Funds Committed by County attached hereto, incorporated herein and labeled as "**Exhibit "A"**" hereto. County funding for the Project shall be used for engineering, environmental, real estate and construction-related costs of SA-3. If City and County approve scope modifications to SA-3, the break out of costs shown in **Exhibit "A"** may be modified, so long as the maximum County budget commitment is not increased. No other funds shall be available from County for the Project.

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ARTICLE IV
OBLIGATIONS OF CITY

- 4.01 Pursuant to this Agreement, City shall perform and provide the following:
- a. ~~Following County's negotiation and execution of a contract for the design of the Project with a design consultant, City shall hire~~ City shall assume the design and environmental consultant(s) consultant contractual obligations from County, to include management of as well as manage the design, as well as the obligations of and ~~permitting of the Project. City shall notify the County of the design consultant it selects.~~

- b. City shall oversee and manage the construction of the Project. Final construction documents for the Project shall be provided to County for review and approval. If the County does not approve the final construction documents of the Project, City shall refund all unused portions of County's funding.
- c. City shall achieve the project goals to reduce the 100-Year Flood Plain in the proximity of Barbara Drive, without causing negative upstream or downstream impacts. If City requests changes to design for the Project, County will require that the same or better flood control benefits are achieved by the change, before it approves the design modification.
- d. City shall be responsible for the staging of construction and all necessary street closures during construction to minimize street closures.
- e. City shall maintain the property included in the Project and City shall be responsible for the maintenance and operating expenses for such property during the Project.
- f. City shall obtain the United States Army Corps of Engineers (hereafter referred to as "USACE") Individual Permit or Nationwide Permit, as determined by final design option. If required by USACE Individual Permit, City shall perform regular site maintenance of the Project, in accordance to the terms and general conditions of the USACE Individual Permit Verification issued under Section 404 of the Clean Water Act, including maintenance requested by the USACE Fort Worth District Regulatory Branch and its Compliance Officer for conformance with the Permit.
- g. City shall provide timely review and approval of design and construction contract documents for the Project.
- h. City shall obtain warranties from third parties and enforce the warranties on behalf of the Parties, if necessary.
- i. City shall acquire all necessary property for Project.

ARTICLE V
OBLIGATIONS OF COUNTY

5.01 Pursuant to this Agreement, County shall perform and/or provide the following:

- a. County shall provide a copy of the Preliminary Engineering Report and Technical Memorandum #1 for the Project to City for review.
- b. County shall negotiate and execute a contract with a design consultant for the design of the Project. Following execution of said design consultant contract, County shall transfer design consultant contractual obligations to City.
- ~~b.c.~~ County hereby identifies its Director of Public Works, or his/her designee, as Project contact.

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e.d. County is responsible to provide Eight Million Five Hundred Thousand dollars and no/100 (\$8,500,000.00) for this Project no later than fifteen (15) days after the San Antonio City Council and Bexar County Commissioners Court approves the Agreement for this Project.

e.e. County shall provide timely review and approval of design and construction contract documents for the Project.

e.f. County shall participate in design Project meetings, as needed.

e.g. County shall have no responsibility to maintain the Project.

ARTICLE VI
JOINT OBLIGATIONS OF THE PARTIES

- 6.01 The Parties have agreed upon the design and construction of the improvements to be integrated into the Project, as reflected in the Preliminary Engineering Report and Technical Memorandum #1 for the Project.
- 6.02 If substantial changes are requested, City shall obtain County's approval that the flood control project goals are satisfied.
- 6.03 If the Project is completed for less than the not to exceed amount of Eight Million Five Hundred Thousand dollars and no/100 (\$8,500,000.00), City shall refund the unused portion to County within (60) days of substantial completion of this Project.

ARTICLE VII
DESIGNATION OF REPRESENTATIVES

- 7.01 City hereby appoints the Transportation and Capital Improvements Department Director/City Engineer, or his/her designee, (hereafter referred to as "City Project Manager"), as its designated representative under this Agreement. City Project Manager shall be the primary point of contact for City.
- 7.02 County hereby appoints the Director of the Public Works Department, or his/her designee, (hereafter referred to as "County Project Manager"), as its designated representative under this Agreement. County Project Manager shall be the primary point of contact for County.

ARTICLE VIII
COUNTY'S RIGHTS UNDER THIRD PARTY CONTRACTS

- 8.01 Upon City's assumption of the Project's design consultant contract from County, County agrees ~~that~~ City shall have the authority to contract, on behalf of the Parties, for all services necessary for the construction of the Project.
- 8.02 City shall provide County with a fully executed copy of each subsequent contract entered into by City for the Project.

8.03 In all Project contracts entered into by City, in which County has made a financial contribution, City shall include provisions reflecting:

- a. With regard to insurance coverage, City shall require all consultants, sub-consultants, contractors, subcontractors and suppliers to maintain the insurance coverage limits set out in the written notice to County's Risk Manager. A summary of Project costs and Project description also shall be required. County 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 County's interest in the Project, under all insurance coverage. Prior to the commencement of any work by any service provider, vendor, consultant or contractor under this Agreement, City shall provide County's Risk Manager with copies of the completed Certificates of Insurance, with the Certificates completed by an agent authorized to bind the named underwriters and their companies to the coverage limits and termination provisions shown thereon. County shall have no duty to pay for any services or work performed under this Agreement until the Certificates of Insurance relating to the services or work for which payment is being requested have been delivered to County's Risk Manager. County 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 their limits when deemed necessary and prudent by County's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. City shall not allow any modifications whereupon County may incur increased risks.
- b. City shall require all contractors, consultants and service providers, including, but not limited to, all sub-consultants and subcontractors, to maintain statutory worker's compensation insurance for all of their employees with a waiver of subrogation in favor of City and County.
- c. City shall require in its contracts for services, construction and materials that the contracting parties, along with all sub-consultants and subcontractors, be required to indemnify County 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 that County is a third-party beneficiary to those agreements.

ARTICLE IX
PROJECT MANAGEMENT DURING DESIGN AND CONSTRUCTION

9.01 Upon City's assumption of the design consultant contract negotiated and executed by County for the Project, City shall manage, oversee, administer and carry out all of the activities and services required for the design and construction of the Project, to ensure that this Project is design,

constructed, equipped, furnished and completed with new materials in a good and workmanlike manner and in accordance with the terms of this Agreement and the design and construction documents of the Project.

- 9.02 City shall enforce substantial compliance, pursuant to the terms of the agreements with the contractors and subcontractors, and require that work continuously and diligently be performed to achieve substantial completion on or before the scheduled completion date set out in the Project schedule.
- 9.03 Upon approval of this Agreement by the governing bodies of the Parties, the Parties' respective Directors shall schedule a meeting to finalize the team structure and develop the procedures and processes necessary to coordinate design and construction in accordance with the standard business practices of those disciplines.
- 9.04 City's Project Manager shall provide written notice to County's Project Manager a minimum of ten (10) business days prior to the issuance of a Notice to Proceed for the start of construction on the Project.
- 9.05 In addition to the requirements of **Article XVIII** herein, City promptly shall furnish County's Project Manager with copies of all legal notices received by City affecting the Project including, without limitation, notices from governmental authorities and notices from any party claiming default in any payment obligation and any other notice not of a routine nature. City promptly shall give notice under **Article XVIII** herein of any suit, proceeding or action that is initiated or threatened in connection with the construction of the Project or against City and/or County in connection with construction of the Project.
- 9.06 For any environmental event that is caused by or at the direction of either City or County employees at the Project site, the Party hiring the event-causing employee(s) shall be liable. An environmental event shall mean spills, discharge, leakage, pumpage, drainage, pourage, emission, emptying, injecting, dumping, disposing or other release of a hazardous material which may cause a threat or actual injury to human health or the environment.
- 9.07 Within thirty (30) business days following substantial completion of construction of the Project, City shall:
- a. notify County in writing upon the substantial completion of construction, whereupon County may inspect the completed work to determine if construction has been completed in a satisfactory and workmanlike manner and substantially completed in accordance with the plans and specifications for such work.
 - b. submit all permits and inspection reports and, if applicable, obtain a Final Acceptance Letter and submit a copy of each of these documents to the County.
 - c. submit "record" drawings to County, along with copies of all warranties and operations documents.
- 9.08 Both City and County shall participate in a walk through at the point of substantial completion of the Project to identify the punch list items. City shall supervise and coordinate the completion of punch list items and warranty work. Both Parties shall participate in a final walk through to

determine whether all punch list items have been resolved.

- 9.09 For information purposes, City shall provide County's Project Manager, as and when available, the schedule for permitting, design and construction of the Project. County shall be furnished said schedule when revised from time to time throughout the duration of the Project. The schedule(s) shall establish a date for substantial completion of each phase in sufficient detail to allow County to monitor the progress of the construction of the Project.
- 9.10 Within one hundred eighty (180) days after final completion of the Project, City shall deliver to County's Project Manager a final construction report which shall set out the total costs incurred in connection with those portions of the Project for which both County and City made financial contributions.
- 9.11 City shall maintain the books, records and documents pertaining to those portions of the Project for which County and City have joint participation. County representatives shall have access to and the right to examine same, upon reasonable notice to City's Project Manager. City's books, records and documents relating to the Project must be maintained separately from other City projects so that an examination by County representatives shall be limited to the documents for this Project.

ARTICLE X
DEFAULT

- 10.01 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

- 11.01 Whenever either party, in its sole discretion, deems it to be in that party's best interest, it may terminate this Agreement 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 completion of the construction of the Project, after payment of any unpaid obligations for completed work, City shall refund to County any remaining portion of County's Contribution. The Parties shall have no additional liability to one another for termination under this **Article XI**.

ARTICLE XII
PRIOR AGREEMENTS SUPERSEDED

- 12.01 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

- 13.01 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

- 14.01 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

- 15.01 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

- 16.01 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

- 17.01 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

- 18.01 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 County: Bexar County Judge
 Bexar County Commissioners Court
 100 Dolorosa, Suite 1.20
 San Antonio, Texas 78205

With a copy to: Bexar County
 Director of Public Works
 233 N. Pecos, Suite 420
 San Antonio, Texas 78207

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

With a copy to: Director of Transportation and Capital Improvements Department
 City of San Antonio
 P.O. Box 839966
 San Antonio, Texas 78283-3966

ARTICLE XIX
FORCE MAJEURE

19.01 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 XIX**, the time of delivery or of performance shall be extended for a reasonable time period to compensate for delay.

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ARTICLE XX
MULTIPLE COUNTERPARTS

20.01 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

By: _____
SHERYL SCULLEY
City Manager
Date: _____

COUNTY OF BEXAR

By: _____
NELSON W. WOLFF
County Judge
Date: _____

ATTEST:

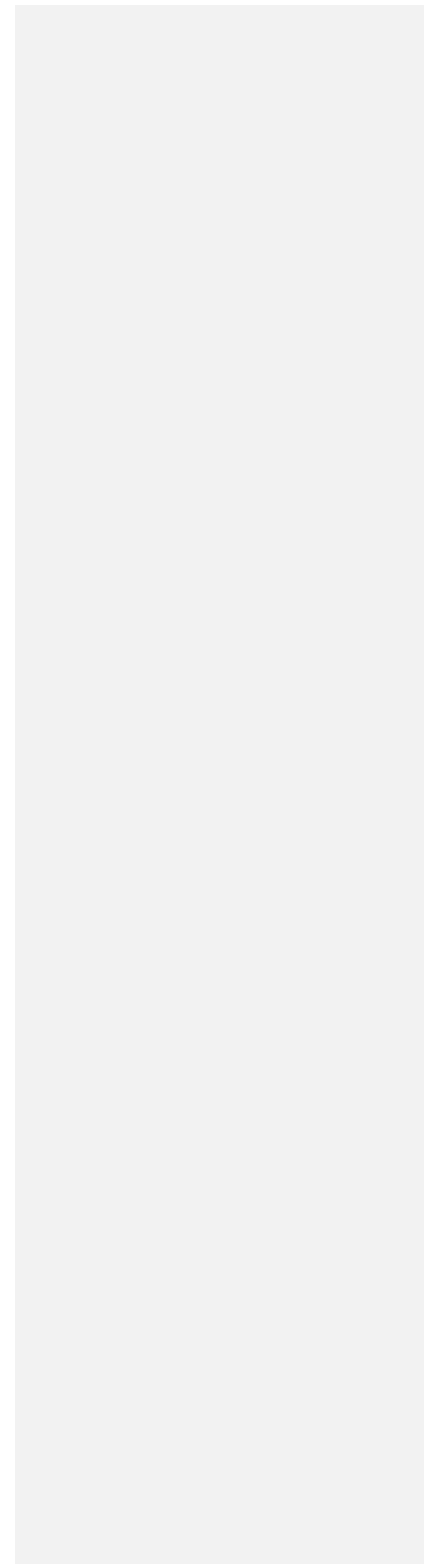
LETICIA VACEK
City Clerk

ATTEST:

GERRY RICKHOFF
County Clerk

APPROVED AS TO FORM:

ROBBIE GREENBLUM
City Attorney



APPROVED AS TO LEGAL FORM:

SUSAN D. REED
Criminal District Attorney
Bexar County, Texas

JILL TORBERT
Assistant Criminal District Attorney—Civil Section

APPROVED AS TO FINANCIAL CONTENT:

SUSAN YEATTS
County Auditor

DAVID SMITH
County Manager

APPROVED:

RENEE D. GREEN, PE
Director of Public Works/County Engineer

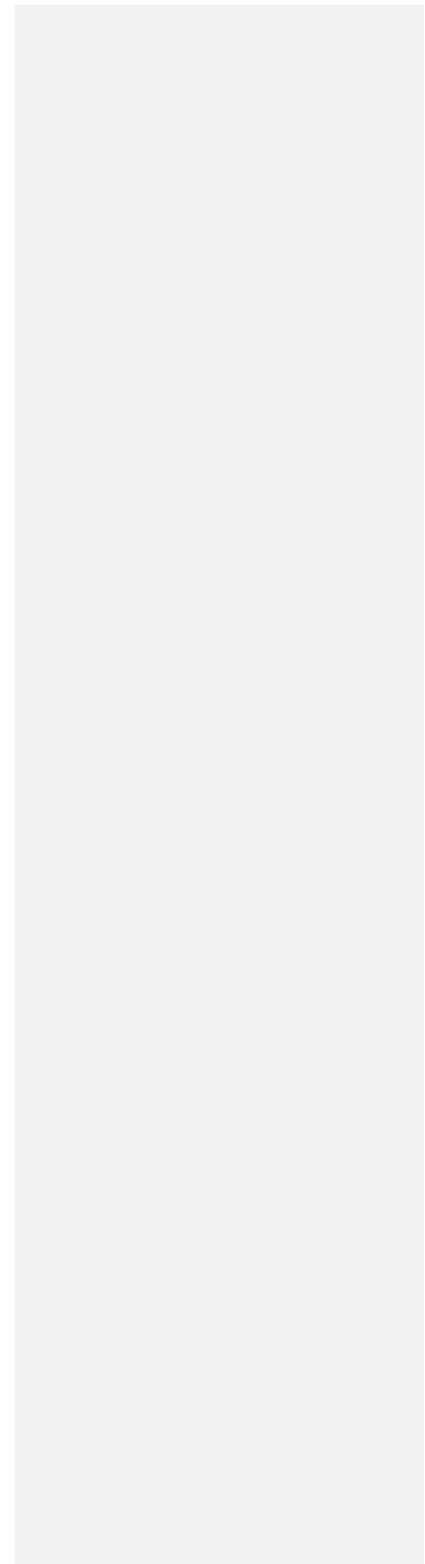


Exhibit “A”
Project Cost Estimate and Funds Committed by County

Cost Estimate – Open Channel	
Cost Category	SA-3
Construction	\$ 2,342,290.00
Engineering ¹	\$ 351,343.50
Environmental	\$ 100,000.00
Real Estate	\$ 8,000,000.00
	\$ 10,793,633.50
City's Contribution =	\$ 2,293,633.50
Total Bexar County Contribution =	\$ 8,500,000.00

1. Engineering estimate includes detailed design, survey, construction phase services and all other services required to bid the Project.

Exhibit "B"
SA-3 PER and SA-3 Map

The final Preliminary Engineering Report for SA-3, dated April 30, 2012, and Technical Memorandum #1 November 12, 2012, is on file with the City of San Antonio Transportation and Capital Improvements Director and Bexar County Director of Public Works and incorporated by reference herein.

