

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

**§ INTERLOCAL AGREEMENT FOR THE**  
**§ MENDER CREEK DRAINAGE AND**  
**§ CHANNEL IMPROVEMENTS**  
**PROJECT**

**THIS INTERLOCAL AGREEMENT** (hereafter referred to as “the Agreement” or “this Agreement”) for the **MENDER CREEK DRAINAGE AND CHANNEL IMPROVEMENTS PROJECT** is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (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, the voters of San Antonio approved a \$595,000,000.00 2012 – 2017 Bond Program in May of 2012 to: improve City streets, bridges and sidewalks; for drainage and flood control; for parks, recreation and open space improvements; for library, museum and cultural arts facilities improvements; and for public safety facilities improvements; and

WHEREAS, included in City’s 2012 – 2017 Bond Program was \$6,526,000 for the Menger Creek Drainage and Channel Improvements Project (hereafter referred to as “the Project” or “City’s Project”), to construct channel improvements from North Walters Street to Rio Grande Street and to improve the Rio Grande Street crossing and railroad crossing; and

WHEREAS, City’s Project shall include a new pedestrian bridge to replace the existing one at Grimes Street, allowing safe public access across the Menger Creek Channel, a span bridge to replace box culverts across the channel at Rio Grande Street and additional drainage culverts at the Union Pacific Railroad Bridge; and

WHEREAS, Bexar County has identified and designated 49 properties within the Menger Creek Channel area for removal from that floodplain to make the Menger Creek Channel area more of an amenity to benefit the public; and

WHEREAS, the Bexar County Commissioner’s Court passed a resolution, dated February 4, 2014, authorizing the County Manager to identify funding, in the amount up to \$4,000,000.00, for improvements to Menger Creek Channel and to negotiate an Interlocal Agreement with the City of San Antonio; and

WHEREAS, City and County have agreed City shall incorporate County’s scope of work – to remove up to 49 properties identified by County within the Menger Creek Channel flood plain – into City’s Project, as identified in the 2012 – 2017 Bond Program, and in exchange County shall pay City \$4,000,000.00, and

WHEREAS, County shall provide said \$4,000,000.00 to City, in a lump sum amount, for the estimated engineering, environmental, real estate, demolition and construction-related costs of the Project and City shall incorporate County's lump sum amount into City's overall budget for the Project; and

WHEREAS, the acceptance of \$4,000,000.00 from Bexar County for the improvement of the Menger Creek Drainage Channel shall allow for scope changes to both the Ray Ellison Boulevard Project and the Martin Luther King Park Project, both 2012 – 2017 Bond Projects, by moving \$2,000,000.00 to the Ray Ellison Boulevard Project to allow for improved drainage improvements within that project; moving \$2,000,000.00 from Ray Ellison Boulevard Streets Project to the Martin Luther King Park Project will allow for street improvements at that Park; and moving \$2,000,000.00 from the Martin Luther King Park Project into the Menger Creek Channel Improvements Project will allow for the development of a destination park; and

WHEREAS, City shall be responsible for the maintenance of all of the Projects after their completions; and

WHEREAS, the Parties desire to enter into this Interlocal Agreement, to establish the rights and obligations of the Parties for the engineering, real estate acquisition, construction, operations, demolition 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, demolition 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.

## **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.

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 **Four Million dollars and no/100 (\$4,000,000.00)** (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 **Four Million dollars (\$4,000,000.00)** is the total maximum County funds commitment to City for the Project. County funding for the Project shall be used for removing the approximately 49 properties, identified by County to City, from the floodplain and making the channel area more of an amenity to benefit the public, to include City incurred engineering, environmental, real estate, demolition and construction-related costs of the Project. No other funds shall be available from County to City for the Project, unless County increases its requested scope for the Project.
- 3.04 County has no obligation to pay any of the Project's design consultant's fees or expenses.

#### **ARTICLE IV** **OBLIGATIONS OF CITY**

- 4.01 Pursuant to this Agreement, City shall perform and provide the following:
- a. City shall be responsible for paying all fees and expenses incurred in the performance of the Project, to include County's Project scope request to remove up to 49 properties identified by County located within the Menger Creek Channel floodplain.
  - b. City shall oversee and manage all aspects 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 be responsible for the staging of construction and all necessary street closures, if any, during construction, in an effort to minimize street closures.
  - d. 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.
  - e. If required, 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.
  - f. City shall provide timely review and approval of design and construction contract documents for the Project.
  - g. City shall obtain warranties from third parties and enforce the warranties on behalf of the Parties, if necessary.
  - h. 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 hereby identifies its Director of Public Works, or his/her designee, as Project contact.
  - b. County is responsible to provide Four Million dollars and no/100 (\$4,000,000.00) for this Project no later than fifteen (15) days after the San Antonio City Council approves the Interlocal Agreement for this Project.
  - c. County shall provide timely review and approval of design and construction contract documents for the Project.
  - d. County shall participate in design Project meetings, as needed or requested by City.
  - e. County shall have no responsibility to maintain the Project.

**ARTICLE VI**  
**JOINT OBLIGATIONS OF THE PARTIES**

- 6.01 The Parties shall agree upon the design, demolition and construction of the improvements to be integrated into the Project.
- 6.02 If substantial changes are requested, City shall obtain County's approval that the flood control project goals are satisfied.

**ARTICLE VII**  
**DESIGNATION OF REPRESENTATIVES**

- 7.01 City hereby appoints the Transportation & 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 County agrees City shall have the authority to contract, on behalf of the Parties, for all services necessary for the completion of the Project.

- 8.02 City shall provide County, upon County's request, a fully executed copy of each contract entered into by City for the Project.
- 8.03 In all Project contracts entered into by City, City shall include provisions reflecting:
- a. 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, contractor, sub-consultant or subcontractor under this Agreement, City shall provide County's Risk Management office with copies of completed Certificates of Insurance and endorsements or policy materials necessary to document compliance with these requirements. 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. 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 minimum limits when deemed necessary and prudent by County, 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 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 designed, 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 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**

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**

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**

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**

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**

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**

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**

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**

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**

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**

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

**ARTICLE XX**  
**MULTIPLE COUNTERPARTS**

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: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
LETICIA VACEK  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
ROBBIE GREENBLUM  
City Attorney

**COUNTY OF BEXAR**

By: \_\_\_\_\_  
NELSON W. WOLFF  
County Judge

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
GERRY RICKHOFF  
County Clerk

APPROVED AT 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