

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF SAN ANTONIO, TEXAS, AND
THE SAN ANTONIO RIVER AUTHORITY
FOR THE DEVELOPMENT AND USE OF A
PREDICTIVE FLOOD MODELING SYSTEM**

This Interlocal Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation, acting by and through its City Manager or his designee, pursuant to Ordinance No. _____, dated _____, 2020 (hereafter referred to as “City”), and the San Antonio River Authority, a conservation and reclamation district (hereafter referred to as “River Authority”) (City and River Authority also may be referred to herein individually as a “Party” or collectively as the “Parties”).

This Agreement is entered into by the City and River Authority 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.

WHEREAS, City and River Authority collaboratively have worked with other local governmental entities since 2004 as part of an Interlocal Agreement that formed the regional management program known locally as the Bexar Regional Watershed Management Program (hereafter referred to as “the BRWM”) to deliver regional flood control, drainage, storm water and water quality projects and services to more effectively address associated public safety and resource management issues; and

WHEREAS, it is to the mutual benefit of COSA and SARA that timely flood warning and forecasting with computerized mapping be available throughout the City of San Antonio during declared emergencies, and that its residents continue to be protected from damage and danger; and

WHEREAS, COSA has a duty to protect its citizens by providing advance warning of impending flooding and high water situations, and to provide continuous protection of police, fire and medical services during emergency situations and therefore must guarantee adequate information to make sure residents and displaced persons can obtain information about changing high water and flood conditions;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties hereto agree to the terms and conditions outlined below.

I. PURPOSE

1.1 This Interlocal Agreement (hereafter referred to as “Agreement”) between City and River Authority shall establish and promote cooperative and collaborative development of a predictive flood modeling system. This Agreement shall ensure coordination of governmental resources and functions to support the Project. This Agreement also shall establish roles and responsibilities between the Parties hereto, ensure cooperation and

coordination on implementation of projects and establish procedures for the Parties to support the implementation of the Project.

- 1.2 This Agreement only may be amended by a written agreement, executed by both Parties hereto.

II. AUTHORITY

The Parties hereto are authorized to make this Agreement, which is intended to increase the efficiency and effectiveness of the Parties in completing the Project.

III. SCOPE OF THE PROJECTS

- 3.1 The Parties, observant of the discussion and trends at the federal and state level regarding the value of real-time flood information for establishing situational awareness, agree that optimizing the technical and operational resources of each Party shall equip City to improve emergency responses to catastrophic flooding to save lives and property. The Parties agree that the collaboration of expertise, resources, and projects has the potential to reduce duplication in the use of public resources and the develop more effective and efficient tools and programs to meet the needs of public.
- 3.2 The Parties acknowledge and agree the scope of work outlined in this Agreement shall focus on agency jurisdictions within Bexar County.
- 3.3 The Parties agree that the initial scope of work for this Project is the development, implementation, and maintenance of a predictive flood modeling system by the River Authority. Additional related work may be authorized in the future through the execution of mutually agreeable task orders.
- 3.4 The Parties agree that public communications regarding the use or interpretation of the Project will be coordinated by both Parties and will be co-branded by both Parties in a mutually agreeable manner.

IV. ROLES AND RESPONSIBILITIES FOR THE PROJECT

A. CITY'S RESPONSIBILITIES

- 4.1 City shall be responsible for sharing requested data and information related to the Project with the River Authority on request in a timely manner. City shall be responsible for sharing requested information on the high-water and rainfall detection system's operational status and design details a timely manner.
- 4.2 City shall fully incorporate the predictive flood modeling system as part of its Emergency Management System.

- 4.3 City shall include River Authority technical personnel in flood event planning and response activities as the flood events develop.
- 4.4 City shall collaborate with River Authority to develop a plan to incorporate the predictive flood model into table-top exercises focused on planning for flood response.
- 4.5 City shall work with River Authority to integrate River Authority technical personnel into emergency response the operation center to provide predictive flood model support when virtual support no longer meets the needs of the response operations.

B. RIVER AUTHORITY'S RESPONSIBILITIES

- 4.6 River Authority shall develop, manage and maintain the predictive flood modeling system and keep City informed of any updates, modification, or outage. Maintenance shall include ordinary and customary updates so as to ensure that the Project is accurate and reliable. River Authority shall serve as the chief operator of the flood modeling system.
- 4.7 River Authority shall provide technical personnel with appropriate expertise upon request by City to collaborate with City during heavy rain/flood events.
- 4.8 River Authority shall provide virtual and/or hands-on training on the use and interpretation of predictive flood model results upon request.

V. FUNDING

- 5.1 River Authority shall provide 100% funding for the initial development of the predictive flood modeling system to bring it to full operational capability.
- 5.2 River Authority shall, subject to budget approval, provide funding to support the continued maintenance and operational status of the system to meet the requirements of the Project.
- 5.3 Upgrades or customizations to the predictive flood model shall be mutually agreed upon by both Parties through the execution of mutually agreeable task orders. The funding to accomplish the upgrade shall be mutually agreed to and documented within the task order.

VI. APPLICABLE LAWS

All of the work performed by the Parties and their respective contractors pursuant to this Agreement shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas, as well as with the charters, ordinances, bond ordinances, rules and regulations of City and River Authority.

VII. TERM/DEFAULT/TERMINATION

- 7.1 The initial term for this Agreement shall be five (5) years from the date of execution. The term for this Agreement may be extended with the mutual agreement of the Parties for three additional five (5) year terms.
- 7.2 As used in this Article, "default" shall mean the failure of City or River Authority to perform any obligation in the time and manner required by this Agreement, except where such failure to perform an obligation is the result of Force Majeure, as defined in this **Article VIII**.
- 7.2 Upon failure of a Party to perform any obligation required hereunder, the Party not in default shall give written notice of such default to the Party in default. Upon receipt of said written notice of default, the Party in default shall have thirty (30) calendar days within which to cure such default. If such default is cured within such thirty (30) calendar daytime period, the default specified in such notice shall cease to exist.
- 7.3 Should a Party hereto fail to cure an alleged default within thirty (30) calendar days of receipt of a written notice of default, the Party not in default shall thereupon have the right to terminate this Agreement and shall terminate this Agreement by sending written notice to the defaulting Party of such termination and specifying the effective date of said termination, which effective date shall not be sooner than the end of ten (10) calendar days following the day on which such written notice is sent to the defaulting Party. Upon termination of this Agreement, each Party shall be entitled to receive just and equitable compensation for any work satisfactorily performed prior to said termination.
- 7.4 Neither Party shall be liable to the other Party for the failure to perform its obligations under this Agreement when such failure to perform solely is attributable to Force Majeure. For the purposes of this Agreement, Force Majeure means any cause beyond the reasonable control of either Party including, without limitation, failure or the imminent threat of failure of facilities or equipment, flood, freeze, earthquake, storm, fire, lightning, other acts of God, epidemic, war, acts of a public enemy, riot, civil disturbance or disobedience, strike, lockout, work stoppages, other industrial disturbances or dispute, labor or material shortage, sabotage, restraint by court order or other public authority and the action or non-action by or the failure or inability to obtain the necessary authorizations or approvals from any governmental agency or authority, which, by the exercise of due diligence, it could not overcome; provided that none of the circumstances listed above shall be considered to be an event of Force Majeure to the extent such circumstance:
- 7.4.1 is due to the act, neglect, omission, breach of contract or of statutory duty, negligence or misconduct of the PARTY claiming Force Majeure, its representatives, agents, contractors or subcontractors; or
- 7.4.2 could have been prevented, overcome or remedied if the Party claiming Force Majeure had exercised reasonable diligence.

- 7.5 Nothing contained herein shall be construed so as to require the Parties to settle any strike, lockout, work stoppage or any industrial disturbance or dispute in which it may be involved, or to seek review of or take any appeal from any administrative or judicial action.

VIII. ADVERSARIAL PROCEEDINGS

The Parties agree under no circumstances shall the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney's fees incurred in any adversarial proceeding against any Party or any other public entity.

IX. ASSIGNMENT

No Party may assign or transfer its interest – or any portion thereof – in this Agreement without the written consent of the governing body of each of the Parties hereto. Any attempt to transfer, pledge or otherwise assign interest shall be void *ab initio* and shall confer no rights upon any third person or party.

X. NOTICE

- 10.1 For purposes of this Agreement, all notices among the Parties shall be deemed sufficient if in writing and mailed United States certified mail, return receipt requested, postage prepaid, to the addresses set forth below:

If to City:

City Manager
c/o Public Works Department
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966

If to River Authority:

General Manager
San Antonio River Authority
100 East Guenther St.
San Antonio, Texas 78204

- 10.2 Notices of changes of address shall be made in writing and delivered to the last known address of the other Party within five (5) business days of the change.

XI. GOVERNING LAW AND VENUE

The Parties agree this Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Agreement or adjudicate any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas.

XII. GENDER AND TENSE

Words of either gender used in this Agreement shall be held and construed to include the other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XIII. AUTHORITY

The signers of this Agreement represent that they have full authority to execute this Agreement on behalf of City and River Authority, respectively, and that the respective governing bodies of City and River Authority have authorized the execution of this Agreement.

XIV. INDEPENDENT CONTRACTOR

14. It is expressly agreed and understood by the Parties hereto:

14.1.1 each Party hereto is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions; and

14.1.2 the other Party hereto in no way shall be responsible for the actions of the other Party; and

14.1.3 neither Party hereto has authority to bind the other Party nor to hold out to third parties that it has the authority to bind the other Party.

14.2 Nothing contained herein shall be deemed or construed to create the relationship of employer/employee, principal/agent, an association, joint venture, partners or partnership or to impose a partnership duty, obligation or liability between the Parties. No third-party beneficiaries are created by this Agreement. This Agreement is not intended to and shall not create any rights in or confer any benefits upon any other person other than the Parties hereto.

XV. SEVERABILITY

If any clause or provision of this Agreement or any subsequent agreement related to this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws including, but not limited to, the City of San Antonio Charter, City Code or ordinances of the City of San Antonio, then and in that event it is the intention of the Parties such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision never was contained herein. It further is the intention of the Parties hereto, in lieu of each clause or provision of this Agreement that is held to be

invalid, illegal or unenforceable, there be added, as a part of this Agreement, a clause or provision as similar in terms as may be possible to the invalid, illegal or unenforceable clause or provision to be legal, valid and enforceable.

XVI. COMPENSATION

- 16.1 City shall work cooperatively with the River Authority to develop task orders to be performed under this Agreement. River Authority either will approve or disapprove of each proposed task order. City's approval of River Authority's approved task order shall be evidenced by an executed finalized task order in *PRIMELink*. Task orders shall be numbered sequentially, starting with number one (1), shall reference this Agreement and shall be entered into *PRIMELink*. Each finalized task order, as entered into *PRIMELink*, shall become a part of this Agreement.
- 16.2 River Authority understands and agrees that City makes no minimum guarantees, with regard to the amount of services, if any, River Authority may be extended under this Agreement.
- 16.3 Each task order amount shall be based on the Scope of Services for a particular Project.

XVII. RIVER AUTHORITY'S WARRANTY

River Authority warrants that the professional services required to be performed by River Authority under this Agreement shall be performed with the same degree of professional skill and care typically exercised by similar professionals performing similar services in San Antonio, Bexar County, Texas. For breach of this River Authority's Warranty, City shall have the right to terminate this Agreement under the provisions of **Article VIII** herein.

XVIII. INSURANCE REQUIREMENTS

- 18.1 River Authority agrees to require, by written contract, that all Consultants, Sub-Consultants, Contractors and/or Subcontractors providing goods or services hereunder and/or pursuant to this Agreement shall obtain appropriate insurance coverage as reasonably determined by River Authority and provide to City and River Authority a certificate of insurance and endorsement that names River Authority and City as additional insureds. River Authority shall obtain said certificate and endorsement, prior to the commencement of any Work and during the performance of any Work by any

Consultant, Sub-Consultant, Contractor and/or Subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

XIX. INDEMNIFICATION

- 19.1 RIVER AUTHORITY SHALL REQUIRE ITS CONSULTANTS AND SUB-CONSULTANTS TO FULLY INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS AND REPRESENTATIVES (HEREAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEE") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES OR COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS, MADE UPON INDEMNITEE CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUB-CONSULTANT, SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT WHILE IN THE EXERCISE OF RIGHTS OR PERFORMANCE OF ITS DUTIES UNDER THIS AGREEMENT.**
- 19.2 CONSULTANTS AND SUB-CONSULTANTS TO RIVER AUTHORITY SHALL COVENANT AND AGREE TO HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY, PROTECT AND DEFEND CITY AND RIVER AUTHORITY, ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF CITY AND RIVER AUTHORITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, ACTIONS, LIABILITIES, LIENS, LOSSES, DAMAGES, COSTS AND EXPENSES, OF EVERY KIND AND CHARACTER WHATSOEVER, INCLUDING WITHOUT LIMITATION BY ENUMERATION THE AMOUNT OF ANY JUDGMENT, PENALTY, INTEREST, COURT COSTS AND REASONABLE LEGAL FEES INCURRED IN CONNECTION WITH THE SAME, OR THE DEFENSE THEREOF, FOR OR IN CONNECTION WITH LOSS OF LIFE OR PERSONAL INJURY (INCLUDING EMPLOYEES OF CONSULTANT AND OF CITY OR RIVER AUTHORITY), DAMAGE TO PROPERTY (OTHER THAN THE WORK ITSELF AND INCLUDING PROPERTY OF CONSULTANT AND OF CITY OR RIVER AUTHORITY), BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF, OR INCIDENT TO OR IN CONNECTION WITH OR**

RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF, CONSULTANT, ITS AGENTS, SERVANTS, EMPLOYEES OR ITS SUB-CONSULTANTS AND THEIR AGENTS, SERVANTS AND EMPLOYEES, IN CONNECTION WITH THE WORK TO BE PERFORMED, SERVICES TO BE RENDERED OR MATERIALS TO BE FURNISHED UNDER THIS CONTRACT, INCLUDING BUT NOT LIMITED TO VIOLATIONS OF ANY STATUTE, REGULATION, ORDINANCE OR PROVISION OF THIS CONTRACT. NOTWITHSTANDING ANYTHING TO THE CONTRARY INCLUDED HEREIN, IN NO EVENT SHALL CONSULTANT BE LIABLE FOR CLAIMS ARISING OUT OF ACCIDENTS RESULTING FROM THE SOLE NEGLIGENCE OF CITY, ALL WITHOUT HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 19.3 IN ADDITION TO THE ABOVE, CONSULTANTS AND SUB-CONSULTANTS TO RIVER AUTHORITY SHALL ALSO COVENANT AND AGREE TO HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY, PROTECT AND DEFEND CITY AND RIVER AUTHORITY, ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF CITY AND RIVER AUTHORITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, ACTIONS, LIABILITIES, LIENS, LOSSES, DAMAGES, COSTS AND EXPENSES OF EVERY KIND AND CHARACTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION BY ENUMERATION, THE AMOUNT OF ANY JUDGMENT, PENALTY, INTEREST, COURT COSTS AND REASONABLE LEGAL FEES INCURRED IN CONNECTION WITH THE SAME, OR THE DEFENSE THEREOF, FOR OR IN CONNECTION WITH LOSS OF LIFE OR PERSONAL INJURY (INCLUDING EMPLOYEES OF - CONSULTANT AND OF CITY), DAMAGE TO PROPERTY (OTHER THAN THE WORK ITSELF AND INCLUDING PROPERTY OF CONSULTANT AND OF CITY), BUT ONLY TO THE EXTENT CAUSED BY THE INTENTIONAL OR DELIBERATE MISCONDUCT, GROSSLY NEGLIGENT, WILLFUL ACTS OR OMISSIONS OFCONSULTANT, ITS AGENTS, SERVANTS, EMPLOYEES, OR ITS SUB-CONSULTANTS AND THEIR AGENTS, SERVANTS AND

EMPLOYEES, OR IN CONNECTION WITH THE WORK TO BE PERFORMED, SERVICES TO BE RENDERED OR MATERIALS TO BE FURNISHED UNDER THIS CONTRACT, INCLUDING BUT NOT LIMITED TO VIOLATIONS OF ANY STATUTE, REGULATION, ORDINANCE OR PROVISION OF THIS CONTRACT. NOTWITHSTANDING ANYTHING TO THE CONTRARY INCLUDED HEREIN, IN NO EVENT SHALL CONSULTANT BE LIABLE FOR CLAIMS ARISING OUT OF ACCIDENTS RESULTING FROM THE SOLE NEGLIGENCE OF CITY, ALL WITHOUT HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW

- 19.4 The provisions of this Article XIX solely are for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. River Authority shall advise City in writing within seventy-two (72) hours of any claim or demand against City or River Authority known to River Authority related to or arising out of River Authority's activities under this Agreement.

THIS INTERLOCAL AGREEMENT IS 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

San Antonio River Authority



Erik Walsh, City Manager

Stephen T. Graham, P.E., CFM

Interim General Manager

Approved as to Form:

Approved as to Form:



Andrew Segovia, City Attorney

Allison Elder

SARA Director of Legal Services