

STATE OF TEXAS §
§
COUNTY OF BEXAR §

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF SAN ANTONIO AND THE
SAN ANTONIO RIVER AUTHORITY
RELATED TO FLOOD AND PARK
IMPROVEMENTS AND LINEAR
CREEKWAY TRAIL PROJECT AT SAN
PEDRO CREEK**

This Interlocal Agreement (“Agreement”) is entered into by and between the City of San Antonio, a Texas municipal corporation, (hereinafter referred to as “**COSA**”), and the San Antonio River Authority, a conservation and reclamation district (hereinafter referred to as “**RIVER AUTHORITY**”), which may also be referred to herein individually as a “**PARTY**” or collectively as the “**PARTIES**”.

WHEREAS, RIVER AUTHORITY and Bexar County have undertaken a project along San Pedro Creek that will provide important drainage and flood control improvements, and provide linear park amenities along 1.4 miles of San Pedro Creek, the San Pedro Creek Improvements Project (hereinafter referred to as “**PROJECT**” or “**SPCIP**”); and

WHEREAS, RIVER AUTHORITY is serving as Project Manager for the SPCIP; and

WHEREAS, COSA and **RIVER AUTHORITY** agreed to collaborate on the San Pedro Creek Improvements Project (hereinafter referred to as “**PROJECT**” or “**SPCIP**”) through a letter agreement dated September 4, 2012; and

WHEREAS, the SPCIP design plans has been provided to COSA; and

WHEREAS, the SPCIP will require the relocation of utility facilities; and

WHEREAS, COSA has committed a specified amount of funds to the SPCIP for the relocation of utility facilities required by the **PROJECT**;

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

I. PURPOSE

This Agreement outlines the roles and responsibilities of the PARTIES with regard to the PROJECT, as defined in Section II below, and COSA's financial contribution to the PROJECT, as set out in Section III. This Agreement may be changed only by written agreement mutually agreed to by the PARTIES. This Agreement supersedes all oral or written previous and contemporary agreements between the Parties and relating to the PROJECT.

II. SCOPE OF THE PROJECT

The Scope of Work includes the following: Facilitate utility relocation through the installation of a single conduit along the San Pedro Creek path that cross at the Houston Street, Commerce Street, Dolorosa Street, and Nueva Street bridges, as specified by the SPCIP, which will result in the design of a linear park and related improvements, including drainage and flood control improvements. The Parties may mutually agree to add additional Scope of Work to this Agreement through the adoption of mutually agreeable task orders; provided however, that the maximum amount to be paid by COSA under this Agreement shall not exceed three hundred thousand dollars (\$300,000.00). Task orders shall be in written form and shall be executed by the Parties.

III. ROLES AND RESPONSIBILITIES FOR THE PROJECT

A. COSA'S RESPONSIBILITIES:

COSA shall contribute One hundred sixty three thousand, seven hundred and fifty one dollars and eighty-two cents (\$163,751.82) towards the Scope of Work set out in Section II of the Agreement, which addresses the relocation of certain fiber utilities required by the PROJECT. **COSA's** contribution will be paid to **RIVER AUTHORITY** within one hundred eighty (180) days of the execution of the Agreement.

B. RIVER AUTHORITY'S RESPONSIBILITIES:

RIVER AUTHORITY serves as project manager and administrator of the PROJECT, and shall acquire all required local, state and federal permits for the PROJECT, including but not limited to permits required by the Texas Department of Licensing and Regulation; the Texas Commission on Environmental Quality; the United States Army Corp of Engineers; **COSA** ordinances, rules and regulations; and requirements associated with the Texas Accessibility Standards.

IV. NOTICE

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

COSA:

Chief Technology Officer
Information Technology Services Department
City of San Antonio
P.O. Box 839966
515 S. Frio Street
San Antonio, Texas 78283
(210) 207-8140

And

RIVER AUTHORITY:

Suzanne Scott
General Manager
San Antonio River Authority
P.O. Box 839990
100 E. Guenther St.
San Antonio, TX 78283-9980
(210) 227-1373

City Clerk's Office
City of San Antonio
P.O. Box 839933
San Antonio, Texas 78283-3933
(210) 207-7253

Notices of changes of address must be made in writing delivered to the last known address of each other PARTY within five (5) business days of the change.

V. GOVERNING LAW AND VENUE

The PARTIES agree that 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, Texas.

VI. INDEMNITY

The RIVER AUTHORITY and the COSA acknowledge that they are political subdivisions of the State of Texas and are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et. seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. The RIVER AUTHORITY and COSA shall each promptly notify the other in writing of any claims or demands that become known against them in relation to or arising out of activities under this Agreement.

The provisions of this Section are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other government body, person or legal entity.

VII. INDEPENDENT CONTRACTOR

It is expressly agreed and understood that each PARTY is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the other PARTY shall be in no way responsible therefore, and that no 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. Nothing herein contained shall be deemed or construed to create the relationship of employer-employee, principal-agent, an association, joint venture, partners, or partnership or impose a partnership duty, obligation or liability among 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.

VIII. DEFAULT AND TERMINATION

As used in this Article, “default” shall mean the failure of **COSA** or **RIVER AUTHORITY** to perform any obligation in the time and manner required by this Agreement, except where such failure to perform is the result of Force Majeure as defined in this Article.

Upon failure of either PARTY to perform any obligation required hereunder, the PARTY not in default may give written notice of such default to the PARTY in default. The PARTY in default shall have thirty (30) days within which to cure such default, and if cured within such time, the default specified in such notice shall cease to exist.

Should the PARTY in default fail to cure an alleged default, the PARTY not in default shall thereupon have the right to terminate this Agreement by sending written notice to the other PARTY in default of such termination and specifying the effective date thereof, which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent. Upon termination of this Agreement, each PARTY shall be entitled to receive just and equitable compensation for any work satisfactorily performed prior to such termination.

Neither PARTY shall be liable to the other PARTY for the failure to perform its obligations under this Agreement when such failure is attributable solely to Force

Majeure. Force Majeure shall mean any cause beyond the reasonable control of any PARTY, including, without limitation, failure, or 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 action or non-action by, or 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: (i) 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 (ii) could have been prevented, overcome or remedied if the PARTY claiming Force Majeure had exercised reasonable diligence. 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.

IX. AUDIT

Each PARTY reserves the right to conduct, or cause to be conducted an audit of all funds received or disbursed under this Agreement at any and all times deemed necessary by that PARTY. Each PARTY's staff, a Certified Public Accounting firm, or other auditors as designated by that PARTY, may perform such audit(s). Each PARTY reserves the right to determine the scope of every audit. Each PARTY agrees to make available to the other PARTY all books, records, documents and reports with respect to

matters covered by this Agreement.

X. 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.

XI. ASSIGNMENT

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

XII. AUTHORITY

The signers of this Agreement represent that they have full authority to execute this Agreement on behalf of **COSA** and **RIVER AUTHORITY**, respectively, and that the respective governing bodies of **COSA** and **RIVER AUTHORITY**, have authorized the execution of this Agreement.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, the ____ Day of _____, 2017.

(signatures on following page)

COSA City of San Antonio	RIVER AUTHORITY San Antonio River Authority
<hr/> Kevin Goodwin, Acting Director Information Technology Services Division	<hr/> Suzanne B. Scott General Manager
<hr/> Approved as to Form: Andrew Segovia City Attorney	<hr/> Approved as to Form: Allison Elder Director of Legal Services