

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF SAN ANTONIO, TEXAS, AND
THE SAN ANTONIO RIVER AUTHORITY
FOR SERVICES IMPLEMENTING GREEN
STORMWATER INFRASTRUCTURE
MEASURES IN THE 2017 CAPITAL
IMPROVEMENT PROGRAM BOND**

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

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 her designee, pursuant to Ordinance No. _____, dated _____, 2019 (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, over the past ten (10) years the BRWM collectively, as well as each governmental entity individually, has worked to apply resources effectively to reduce flooding risks and address threats to water quality through the use of watershed master plans that integrate capital projects, operations, land use, recreation and Low Impact Development (hereafter referred to as “LID”) and Green Infrastructure (hereafter referred to as “GI”) methods for maximum results and community benefits; and

WHEREAS, the City has published a Sustainability Plan as part of the SA Tomorrow planning effort, wherein the strategy of expanding education, outreach, and technical assistance associated with LID is highlighted as the public’s top choice to address the stated outcome of improving water quality through the use of storm water best management practices throughout the city.

WHEREAS, LID and GI are cornerstone concepts of land sustainability in the Natural Resources and Environmental Sustainability section of the City of San Antonio 2020 Vision; and

WHEREAS, the United States Environmental Protection Agency (hereafter referred to as “USEPA”) has shown through recent studies that storm water pollution is the leading cause of water quality contaminants in the nation. Currently, there are various river segments in Bexar County that are listed in Section 303(d) of the Clean Water Act with an impairment for bacteria; and

WHEREAS, City and River Authority, through the BRWM, collaboratively have worked to address threats to storm water quality through:

- the identification and implementation of project-specific best management practices;
- the joint development of technical manuals for LID and other GI methods;
- Natural Channel Design (hereafter referred to as “NCD”);
- LID, GI and NCD are types of Green Storm water Infrastructure (hereafter referred to as “GSI”);
- the creation of regional master plans for each watershed addressing, flood mitigation, water quality, and stream degradation issues; and
- the establishment of water quality monitoring programs and modeling tools to target sources of contaminants; and

WHEREAS, LID and GI are land development or re-development approaches seeking to manage storm water as close to its source as possible and to engineer storm water infrastructure mimicking the natural hydrology, to detain storm water, polish storm water for improved quality and to reduce the erosive force of storm water in its degradation of streams; and

WHEREAS, NCD relies on the principles of fluvial geomorphology, through which NCD may evaluate the current state of a degraded stream and the potential for restoring its historic functions. The fluvial geomorphology of a particular stream may include the interactions of climate, geology, topography, vegetation and land use in its watershed. NCD may be used to restore impaired streams but can also be used to enhance conveyance as part of a flood control project or other multi-benefit project; and

WHEREAS, City and River Authority seek to expand the application of Green Storm water Infrastructure, such as LID, GI, and NCD, along with conservation subdivision development in land use and development practices, to respond to the trends within Municipal Separate Storm Sewer System (hereafter referred to as “MS4”) Pollutant Discharge Elimination System permits to develop improvements to water quality in streams in Bexar County; and

WHEREAS, GSI techniques support development practices that increase green space, improve the environment and promote economic development by creating a visually attractive product that may be as economically feasible as traditional land development methods; and

WHEREAS, City and River Authority have collaborated, through recent past agreements to promote GSI practices through ordinances; and

WHEREAS, City and River Authority wish to collaborate to incorporate Green Stormwater Infrastructure (GSI) measures into the mutually agreed upon 2017 Bond Projects in a manner so as not to compromise the original goals of each Bond Project in order to accommodate GSI;

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 and incorporation of GSI related infrastructure into City 2017 Capital Improvement Program (CIP) Bond Projects (hereafter referred to as “the Project”). This Agreement shall leverage current program funding, improve the management of public funding sources and 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 allocate specific funding to support 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 management of municipal storm water, agree that targeting the technical and operational resources and funding of each Party shall equip City to improve storm water quality, in an effort to minimize the fiscal and operational impact of future MS4 trends. The Parties agree the collaboration of expertise, resources, and projects has the potential to reduce duplication in the utilization of public resources and the development of more effective and efficient tools and programs to meet the current requirements of the MS4 program as prescribed by the Texas Commission on Environmental Quality (hereafter referred to as “TCEQ”), as well as to prepare City for future measures to reduce pollutants.
- 3.2 The Parties acknowledge and agree the scope of work outlined in this Agreement broadly shall focus on select 2017-2022 Bond Projects: Broadway Street Corridor, South Alamo Street, District 9 Senior Center, World Heritage Center, Woodlawn Multi-Generational Center and Fire Station #24. Additional projects can be added by mutual consent of the parties.
- 3.3 It is the intent of the Parties to this Agreement that GSI strategies will be specific to the projects and jointly agreed upon. The Parties acknowledge that City funding shall be limited to work within its jurisdictional boundaries but that improvements to water quality within these boundaries may improve water quality beyond these boundaries.

IV. TASK ORDERS

- 4.1 Each project performed under this agreement will be authorized by a mutually agreed-to task order as issued by City.
- 4.2 Each task order shall provide the specific Statement of Work (SOW) to be performed by the Parties.
- 4.3 Each task order will provide funding responsibilities of the Parties.

V. ROLES AND RESPONSIBILITIES FOR THE PROJECT

A. CITY'S RESPONSIBILITIES

- 5.1 City shall be responsible for sharing information in a timely manner on the CIP projects that have been approved by the 2017 Bond and engaging River Authority technical personnel to identify projects that should be considered for incorporation of GSI features.
- 5.2 City shall include River Authority technical personnel in kickoff meetings for projects the City and River Authority have agreed should be considered for incorporation of GSI features. City shall ensure River Authority inclusion in design effort (to ensure technically sound design of GSI features) and construction effort (to ensure correct installation of GSI features) of selected projects.
- 5.3 City shall collaborate with River Authority to develop a conceptual plan to incorporate GSI features into projects. For projects selected for GSI features, City commits to funding both design and construction of GSI.
- 5.4 City shall utilize and incorporate River Authority's expertise in the assessment, review, approval, education and development of City procedures and practices relating to the use, application, development, implementation, monitoring, operation and maintenance of GSI.
- 5.5 City shall utilize and incorporate Watershed Master Plans that have been collaboratively developed through the BRWM that holistically address flooding and water quality concerns through the use of multi-purpose projects when considering identification of projects for GSI incorporation.
- 5.6 Upon completion of CIP projects, City commits to maintaining the GSI features so they function properly.

B. RIVER AUTHORITY'S RESPONSIBILITIES

- 5.7 River Authority shall provide technical personnel with appropriate expertise to collaborate with City to identify projects from the CoSA 2017 CIP Bond Program that should be considered for incorporation of GSI features.
- 5.8 River Authority shall collaborate with City and design consultants to develop a conceptual plan to incorporate GSI features into projects and develop a cost estimate differential between traditional design and design incorporating GSI (the "GSI Differential Cost"). River Authority will pay City 50% of the GSI Differential Cost for projects selected for GSI features. This GSI Differential Cost will be the basis for a one-time lump sum payment from the River Authority to the City to be applied to construction and/or the operation and maintenance of the specific GSI feature.
- 5.9 River Authority shall provide construction inspection services for GSI features installed as part of selected 2017 Bond Projects to ensure compliance with the San Antonio River Low Impact Development Technical Guidance Manual and construction drawings and specifications.
- 5.10 River Authority shall provide training to design and construction team members upon request.
- 5.11 River Authority shall provide monitoring of water quality for GSI features' performance for a minimum of two years, for select projects as described in the task orders.

VI. FUNDING

- 6.1 The Parties shall independently invest significant resources toward the accomplishment of the Project and agree that coordination of each Party's resources has the potential to improve the effectiveness and efficiency of the Project.
- 6.2 River Authority and City shall, subject to each Party's budget approval, provide funding to support the activities detailed herein and work to acquire funding to meet the requirements of the Project.
- 6.3 For all task orders, River Authority shall pay the GSI Differential Cost to City upon final completion and satisfactory inspection by the River Authority.
- 6.4 City represents and warrants that the GSI Differential Cost contributed by River Authority will be used solely for the construction costs or the operation and maintenance of the GSI features.

VII. 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.

VIII. DEFAULT/TERMINATION

- 8.1 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**.
- 8.2 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 day time period, the default specified in such notice shall cease to exist.
- 8.3 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.
- 8.4 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:

- 8.4.1 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
 - 8.4.2 could have been prevented, overcome or remedied if the Party claiming Force Majeure had exercised reasonable diligence.
- 8.5 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.

IX. 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.

X. 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.

XI. NOTICE

11.1 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 Transportation & Capital Improvements
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

- 11.2 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.
- 11.3 All task order funding milestones detailed in Section VI are required to be in writing and approved by the Landscape Architect of the River Authority.

XII. 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.

XIII. 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.

XIV. 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.

XV. INDEPENDENT CONTRACTOR

15.1 It is expressly agreed and understood by the Parties hereto:

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

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

15.1.3 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.

15.2 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.

XVI. 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.

XVII. COMPENSATION

17.1 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.

17.2 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.

17.3 Each task order amount shall be based on the Scope of Services for a particular Project.

XVIII. 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.

XIX. INSURANCE REQUIREMENTS

- 19.1 Prior to the commencement of any Work under this Agreement, River Authority shall furnish copies of all required endorsements and completed Certificate(s) of Insurance for its contractors to City's Transportation and Capital Improvements Department's (hereafter referred to as "TCI") Contract Services Division, which clearly shall be labeled **"INTERLOCAL AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, TEXAS, AND THE SAN ANTONIO RIVER AUTHORITY FOR SERVICES IMPLEMENTING GREEN STORMWATER INFRASTRUCTURE MEASURES IN 2017 BOND PROJECTS"** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed and signed by an Agent. If City so requests, said Certificates also shall be accompanied by an affidavit signed by River Authority, attesting that the furnished Certificate(s) represent River Authority's Contractor's current insurance coverages. City shall not accept a Memorandum of Insurance or Binder from River Authority's Contractor as proof of insurance. The certificate(s) shall have the agent's signature and phone number and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's TCI Contract Services Division. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.
- 19.2 City reserves the right to review the insurance requirements of this **Article XIX** during the effective period of this Agreement and to request the modification of insurance coverage and limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. In no instance will City allow modification of insurance coverages whereby City may incur increased risk.
- 19.3 River Authority's contractor shall obtain and maintain in full force and effect for the duration of this Agreement, at the contractor's sole expense, insurance coverage written

on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. These listed insurance limits are standard limits for all City projects/contracts. If a project/contract does not justify these standard limits of insurance coverages, River Authority may request a review and modification of the City’s insurance requirements, to be considered on a project-by-project/contract-by-contract basis:

1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
<p>3. Commercial General Broad Form Liability Insurance to include coverage for the following:</p> <ul style="list-style-type: none"> a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual liability 	<p><u>C</u>ombined <u>S</u>ingle <u>L</u>imit for <u>B</u>odily <u>I</u>njury and <u>P</u>roperty <u>D</u>amage of \$1,000,000 per occurrence;</p> <p>General Aggregate limit of \$2,000,000 or its equivalent in umbrella or excess liability coverage</p>
<p>4. Business Automobile Liability</p> <ul style="list-style-type: none"> a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles 	<p>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</p>
<p>5. Professional Liability (Claims made form)</p>	<p>\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.</p>

City may request, without expense to City, to inspect copies of River Authority’s Contractor’s policies and endorsements as they apply to the limits and forms required by City.

- 19.4 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 the insurance coverage required of herein 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.
- 19.5 If City requests a copy/copies of an insurance policy, River Authority's contractor promptly shall comply and shall mark those portions of the policy, if any, the contractor regards as confidential. In the event a third party makes an Open Records Request, under the Texas Freedom of Information Act or other public information law asking to view or copy River Authority's policy, City shall submit the received request, along with River Authority's information, to the Texas Attorney General (hereafter referred to as "AG") for an opinion regarding the release of River Authority's policy information. River Authority and City agree that City shall be bound by the AG opinion/decision. Similarly, River Authority agrees and accepts City will provide all River Authority information pursuant to a court order or a litigation discovery rule requiring or directing City to disclose any of River Authority's information.
- 19.6 River Authority agrees, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions, to the extent permitted by policy provisions, terms and conditions:
- Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement or within policy provisions, terms or conditions, with respect to operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy, as allowed by respective policy provisions, terms and conditions;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of City; and
 - Where allowed by respective policy provisions, terms and conditions, provide thirty (30) calendar days advance written notice to City of any cancellation or non-renewal or material change in coverage, any change in policy limits by endorsement and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 19.7 Within ten (10) calendar days of receipt by River Authority or contractor of a notice of cancellation or the non-renewal of coverage, contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend River Authority's contractor's performance under this Agreement, should there be a lapse in insurance coverages at any time. Failure of River Authority's contractor to both provide and maintain the required insurance coverages shall constitute a material breach of this Agreement.
- 19.8 In addition to any other remedies City may have, upon River Authority's contractor failure to provide and maintain any insurance or policy endorsements, to the extent and within the time herein required, City shall have the right to order River Authority immediately to stop Work and River Authority immediately shall stop work until River Authority's contractor demonstrates compliance with the insurance requirements hereof.
- 19.9 Nothing herein contained shall be construed as limiting in any way the extent to which River Authority may be held responsible for payments of damages to persons or property resulting from River Authority's or its Sub-Consultants' and/or Subcontractors' performance of the Work covered under this Agreement.
- 19.10 It is agreed that River Authority's contractor's insurance shall be deemed primary and non-contributory, with respect to any insurance or self insurance carried by the City of San Antonio, for liability arising out of operations under this Agreement.
- 19.11 It is understood and agreed that the insurance coverages required are in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided by River Authority.
- 19.12 River Authority and any Sub-Consultant and/or Subcontractors are responsible for all damage to their own equipment and/or property.

XX. INDEMNIFICATION

- 20.1 RIVER AUTHORITY SHALL REQUIRE ITS CONTRACTORS AND SUB-CONTRACTORS 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 RIVER AUTHORITY OR ITS AGENT, CONSULTANT UNDER CONTRACT OR ANOTHER ENTITY OVER WHICH RIVER AUTHORITY EXERCISES CONTROL WHILE IN THE EXERCISE OF RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THIS INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT IN INSTANCES WHERE THE NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF A COURT OF COMPETENT JURISDICTION FINDS RIVER AUTHORITY'S CONTRACTORS OR SUBCONTRACTORS AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY OR RIVER AUTHORITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 20.2 CONTRACTORS AND SUB-CONTRACTORS 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 CONTRACTOR AND OF CITY) DAMAGE TO PROPERTY (OTHER THAN THE WORK ITSELF AND INCLUDING PROPERTY OF CONTRACTOR AND OF CITY), 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, CONTRACTOR, ITS AGENTS, SERVANTS, EMPLOYEES OR ITS SUBCONTRACTORS 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 Contractor 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 Contractor 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.

- 20.3 **IN ADDITION TO THE ABOVE, CONTRACTORS AND SUB-CONTRACTORS SHALL ALSO COVENANT AND AGREE TO HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY, PROTECT AND DEFEND CITY, ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF CITY, 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 CONTRACTOR AND OF CITY) DAMAGE TO PROPERTY (OTHER THAN THE WORK ITSELF AND INCLUDING PROPERTY OF CONTRACTOR AND OF CITY), BUT ONLY TO THE EXTENT CAUSED BY THE INTENTIONAL OR DELIBERATE MISCONDUCT, GROSSLY NEGLIGENT, WILLFUL ACTS OR OMISSIONS OF CONTRACTOR, ITS AGENTS, SERVANTS, EMPLOYEES, OR ITS SUBCONTRACTORS 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 CONTRACTOR 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 Contractor 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

20.4 **INTELLECTUAL PROPERTY INDEMNIFICATION. CONTRACTORS, SUB-CONTRACTORS, CONSULTANTS AND SUB-CONSULTANTS SHALL PROTECT, INDEMNIFY, AND DEFEND AND/OR HANDLE AT ITS OWN COST AND EXPENSE ANY CLAIM OR ACTION AGAINST CITY, ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF CITY, INDIVIDUALLY OR COLLECTIVELY, FOR INFRINGEMENT OF ANY UNITED STATES PATENT, COPYRIGHT OR SIMILAR PROPERTY RIGHT INCLUDING, BUT NOT LIMITED TO, MISAPPROPRIATION OF TRADE SECRETS AND ANY INFRINGEMENT BY CONTRACTOR AND ITS EMPLOYEE OR ITS SUBCONTRACTORS AND THEIR AGENTS, SERVANTS AND EMPLOYEES, BASED ON ANY DELIVERABLE OR ANY OTHER MATERIALS FURNISHED HEREUNDER BY CONTRACTOR AND USED BY EITHER CITY OR CONTRACTOR WITHIN THE SCOPE OF THIS AGREEMENT (UNLESS SAID INFRINGEMENT RESULTS DIRECTLY FROM CONTRACTOR'S COMPLIANCE WITH CITY'S WRITTEN STANDARDS OR SPECIFICATIONS). CONTRACTOR DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF CITY'S OR DESIGN CONSULTANT'S DESIGN OF ARTICLES OR THEIR USE IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. CONTRACTOR SHALL HAVE THE SOLE RIGHT TO CONDUCT THE DEFENSE OF ANY SUCH CLAIM OR ACTION AND ALL NEGOTIATIONS FOR ITS SETTLEMENT OR COMPROMISE, UNLESS OTHERWISE MUTUALLY AGREED UPON, EXPRESSED IN WRITING AND SIGNED BY THE PARTIES HERETO. CONTRACTOR AGREES TO CONSULT WITH CITY'S CITY ATTORNEY DURING SUCH DEFENSE OR NEGOTIATIONS AND MAKE**

GOOD FAITH EFFORTS TO AVOID ANY POSITION ADVERSE TO THE INTEREST OF CITY. CITY SHALL MAKE AVAILABLE TO CONTRACTOR ANY DELIVERABLES AND/OR WORKS MADE FOR HIRE BY CONTRACTOR NECESSARY TO THE DEFENSE OF CONTRACTOR AGAINST ANY CLAIM OF INFRINGEMENT FOR THE DURATION OF CONTRACTOR'S LEGAL DEFENSE

- 20.5 If such infringement claim or action has occurred or, in Contractor's judgment, is likely to occur, City shall allow Contractor, at Contractor's option and expense, (unless such infringement results directly from Contractor's compliance with City's written standards or specifications or by reason of City's or Design Consultants' design of articles or their use in combination with other materials or in the operation of any process for which the City shall be liable) to either: (1) procure for City the right to continue using said deliverable and/or materials; (b) modify such deliverable and/or materials to become non-infringing (provided that such modification does not adversely affect City's intended use of the deliverable and/or materials as contemplated hereunder); (c) replace said deliverable and/or materials with an equally suitable, compatible and functionally equivalent non-infringing deliverable and/or materials at no additional charge to City; or (d) if none of the foregoing alternatives is reasonably available to Contractor, upon written request, City shall return the deliverable and/or materials in question to Contractor and Contractor shall refund all monies paid by City with respect to such deliverable and/or materials, and accept return of same. If any such cure provided for in this Section shall fail to satisfy the third-party claimant, these actions shall not relieve Contractor from its defense and indemnity obligations set forth in this Article.
- 20.6 The indemnification obligations under this section shall not be limited in any way by the limits of any insurance coverage or any limitation on the amount or type of damages, compensation or benefits payable by, for or to Contractor or any Subcontractor, supplier or any other individual or entity under any insurance policy, workers' compensation acts, disability benefit acts or other employee benefits acts.
- 20.7 The provisions of this **Article XX** 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 COOPERATIVE 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

General Manager

Approved as to Form:

Approved as to Form:

Andrew Segovia, City Attorney

SARA Director of Legal Services