

INFRASTRUCTURE SERVICES DEPARTMENT

ORDER authorizing approval of an Interlocal Agreement between Bexar County and City of San Antonio to establish the terms and conditions for Watershed Management Projects: (1) managing the design and construction associated with the projects; (2) funding the construction; (3) transfer of fee interest or easement rights in land and improvements; and (4) operating and maintaining the projects upon substantial completion of the construction. Precinct Numbers 1, 2, 3, and 4.

PASSED THIS 8th DAY OF July, 2008.

STATE OF TEXAS

§ INTERLOCAL AGREEMENT FOR

§ WATERSHED PROJECTS

COUNTY OF BEXAR

§

THIS INTERLOCAL AGREEMENT FOR WATERSHED PROJECTS ("Agreement") is effective as of the _____ day of _____, 2008 ("Effective Date") by and between **COUNTY OF BEXAR** a political subdivision of the State of Texas ("County"), and **CITY OF SAN ANTONIO, TEXAS**, a Texas Home Rule Municipality ("City"). This Agreement is entered into by County and City pursuant to the authority granted by the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791. This Agreement is intended to further the purpose of the Interlocal Cooperation Act by increasing the efficiency and effectiveness of local governments.

WITNESSETH

WHEREAS, County and City have historically worked together to fund and deliver watershed management projects to benefit the citizens of Bexar County which was accomplished through interlocal agreements between the Parties and by contracts with other governmental entities and private sector service providers; and

WHEREAS, through the Texas Local Government Code, Section 411.002, the commissioners court of a county may contract with a governmental unit, including a municipality, to jointly construct or maintain improvements for the purpose of providing flood control or drainage as it relates to flood control; and

WHEREAS, County, City, and the San Antonio River Authority entered into an Interlocal Agreement in 2003 for the implementation of a Regional Management Program for unified and equitable flood control, drainage, and storm water management; and

WHEREAS, County has selected the projects described herein from the Regional Management Program; and

WHEREAS, County desires to improve City's existing drainage improvements designated and referenced herein, collectively, as Projects or, individually, as Project, through County's provision of funding and project management during the design and construction phases of the Projects; and

WHEREAS, if City does not have fee interest or easement rights in the land or parcels of land upon which the Project is constructed and all other parcels or easements necessary for the Project's flood control, drainage or storm water management operations, upon substantial completion, City shall accept transfer from COUNTY or San Antonio River Authority of its fee interests or easement rights in the parcels of land and improvements; and

WHEREAS, upon substantial completion, City will provide funding as well as maintenance and repair of the Projects; and

WHEREAS, this Agreement will establish and promote collaborative management of the Projects through: (1) City's provision of oversight of County's management of the Projects through substantial completion; and (2) City's maintenance and repair of the Projects improvements following substantial completion of the Projects; and

WHEREAS, the Parties desire to establish the rights and obligations of the Parties with regard to the improvements constructed pursuant to this Agreement.

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

ARTICLE I **RECITALS**

- 1.01 The foregoing recitals are incorporated into the terms of this Agreement and shall be binding on the Parties.

ARTICLE II **PURPOSE**

- 2.01 The purpose of this Agreement is to establish the terms and conditions for: (1) managing the design and construction associated with the Projects; (2) funding the construction; (3) transfer of fee interest or easement rights in land and improvements; and (4) operating and maintaining the Projects upon substantial completion of the construction.
- 2.02 Attached hereto and incorporated herein as Exhibit A is a list of the Projects that the County desires to commence during the Term. Exhibit A may be amended from time to time during the Term to add or delete Projects. It shall not be a breach of this Agreement if a listed Project is not commenced during the Term.

ARTICLE III **DESIGNATION OF REPRESENTATIVES**

- 3.01 County hereby appoints the Executive Director of the Bexar County Infrastructure Services Department ("County Project Director"), as its representative under this Agreement. County's Project Director shall be the primary point of contact for City unless County's Project Director delivers to City, in writing, a notice designating another individual as Project Director.
- 3.02 City hereby appoints the City of San Antonio Director of Public Works, as its designated representative under this Agreement ("City's Designated Representative"). Should City's Designated Representative appoint another individual to act as City's Designated Representative, City shall notify County of same in writing. City's Designated Representative shall be the primary point of contact for County.

ARTICLE IV
TERM

- 4.01 Except as otherwise provided herein, this Agreement shall commence upon the execution date of the last signatory party to the Agreement. The term of this Agreement is for three years ("Term"). The Agreement is renewable at the end of the Term for additional three-year terms until all Projects are completed by the County and accepted by the City.

ARTICLE V
PARTIES' FINANCIAL COMMITMENT

- 5.01 County shall pay for all design and construction costs on the Project from commencement through substantial completion of the Project; including consulting fees for design and construction documents, architectural and engineering fees, surveying, permitting, construction, infrastructure upgrades, and any fees and costs for acquisition of land and easements. Substantial completion is the date, certified by the County, County's design professional and the City's Designated Representative, as stated in Article 3.02, that a contractor has reached that stage of completion when the owner accepts use of the facility for its intended purposes, even though all work is not completed.
- 5.02 County shall develop, through its consultants, an estimate of cost for each Project and provide said estimate to City prior to the County commencing the Project. The estimated cost will consist of the necessary engineering, real estate and construction cost.
- 5.03 The Parties anticipate that City shall have no financial contribution for Project costs from commencement through substantial completion of the Project other than the cost the City incurs for the oversight of the Project by City staff. In the event City desires to incorporate additional improvements to County's proposed Project improvements which will increase the cost of the Project, City shall be responsible for all costs resulting from the modifications to proposed improvements including any additional acquisition fees and costs.
- 5.04 Following substantial completion of the Project, City shall be responsible for all costs associated with operating, maintaining, and repairing the Project and County shall have no further financial obligation.

ARTICLE VI
OBLIGATIONS OF COUNTY

- 6.01 County's responsibilities. Pursuant to this Agreement, County shall perform and/or hire third parties to provide the following:
- a. serve as Project manager and administrator for the Project through substantial completion including responsibility for contract administration of third party contracts.

- b. identify all affected utilities, protect utilities during construction, and coordinate utility relocation, if necessary.
- c. acquire fee interest and/or easement rights necessary for the Project.
- d. plan and coordinate all tests required for design of the Project.
- e. conduct public meetings, as needed, at conclusion of the Preliminary, Intermediate and Final Design Phases to advise adjacent landowners of the scope of the Project and to determine landowners concerns.
- f. provide status presentations on the Project to City staff, as requested by City's Designated Representative, and attend City Council meetings, as necessary, to provide briefings on the Project.
- g. obtain warranties from contractors and the right to transfer said warranties to City upon substantial completion.
- h. transfer fee interests, easements, and warranties to City upon substantial completion.

ARTICLE VII **OBLIGATIONS OF CITY**

7.01 The City shall review plans, specifications and other submittals, including Preliminary (Engineering/Report), Design Phase (Intermediate/Final) and the Final Submittal. County Project Director shall deliver to City's Designated Representative one (1) paper and one (1) Adobe Acrobat PDF file copy of each of the plans, specifications and other submittals for review and approval. If the plans and/or specifications, in City's determination, require modifications, corrections, alterations or additions, City's Designated Representative shall notify County's Project Director in writing within thirty (30) business days of receipt of the documents detailing the modifications necessary. County shall incorporate City's modifications unless County is not in agreement that the modifications are necessary. In such case, the Parties, their staff, and third party consultants, if requested, shall meet to make a final determination regarding the City's modifications. If no comments are received by the County within thirty (30) business days, County will proceed with the Project with the understanding that the City has approved the submittals as presented.

7.02 City's responsibilities. Pursuant to this Agreement, City shall perform and/or provide the following:

- a. City has a duty to provide general oversight of the work performed by County, and third parties hired by County, on the Project and to provide written acceptance from City's Designated Representative of Project work in accordance with the terms herein.

- b. have City staff in attendance at each of the public meetings conducted by County on the Project to represent City's role in the Project. City should refer citizens with concerns regarding the Project to County's Project Director unless the issues pertain to City's past obligations for the existing drainage improvements or for future maintenance and repair of the Project improvements.
 - c. as part of City's advisory and oversight role in the Project, City will provide County with prompt written notice whenever City staff observes, or otherwise becomes aware of: (i) any defect in the Project design or construction; (ii) any defect in the work performed by the County and/or consultants; or (iii) any development that adversely affects the scope or timing of the Project.
 - d. assist County, when requested, in obtaining approvals and permits from governmental authorities having jurisdiction over the Project including providing any supporting documentation in City's possession which would aid County in preparing permit applications.
 - e. provide County with data in the possession of City pertaining to the watershed within which the Project is located (i.e., maps, plans, field notes, statistics and computations).
 - f. allow County to enter and remain on any land owned by City, or land which City owns an interest or a right, so that County can fulfill its duties pursuant to this Agreement.
 - g. provide written acceptance of the improvement at substantial completion.
 - h. provide normal maintenance at construction sites, unless the construction makes access impractical.
 - i. provide public work response (equipment and personnel) to emergencies caused by heavy rains, flooding, wind or storms.
- 7.03 City shall advise the appropriate City offices and departments about the Project and update those offices and departments regarding the status of the Project as the City determines is necessary.
- 7.04 City shall accept transfers of fee interests, easements, and warranties upon substantial completion.

ARTICLE VIII

JOINT OBLIGATIONS OF THE PARTIES

- 8.01 The Parties shall approve the scope of work for the Project improvements prior to the County commencing the Project.

- 8.02 Any modifications to the design or scope of services of the Project proposed by City which will result in a financial commitment to the Project by City prior to acceptance of the Project must first be approved in writing by City's Designated Representative. City shall then obtain approval from its governing body of the modifications as well as the financial commitment. Likewise, any modifications to the design or scope of services of the Project proposed by County which will increase the total cost of the Project for County must be approved in writing by County's Project Director and County's Project Director shall then obtain approval from its governing body.

ARTICLE IX
CITY'S RIGHTS UNDER THIRD PARTY CONTRACTS

- 9.01 County shall provide City with copies of any requests for proposals ("RFPs"), requests for qualifications ("RFQs"), and invitations for bids ("IFBs") at a minimum of ten (10) business days prior to the issuance of same in order that City may have the opportunity to modify the terms, or incorporate additional terms, pertaining to the Project. City shall submit its modifications to those documents at a minimum of five (5) business days prior to issuance of same by County. All RFPs, RFQs, and IFBs shall reflect that City is a third party beneficiary to contracts entered into by County on the Project. Copies of all proposals and bids shall be furnished by County to City within a timely manner following County's receipt of all proposals and bids in order that City may have adequate time to review same. City may attend, if City desires, County meetings for review and evaluation of the proposals and bids.
- 9.02 City agrees that County shall have the authority to contract on behalf of the Parties for all services necessary for the design and construction of the Project.
- 9.03 County shall provide City with a fully executed copy of each contract entered into by County on the Project.
- 9.04 In all contracts entered into by County on the Project, County shall include provisions reflecting:
- a. With regard to insurance coverage during the construction phase of the Project, County shall require all consultants, contractors, subcontractors and suppliers to maintain the insurance coverage limits which are sufficient to compensate County and City for their respective interests in the Project with regard to any liability a third party may have due to the services, equipment, or materials provided for construction of the Project. City shall be named as an additional insured on all policies naming County as an additional insured. County shall provide City's Designated Representative with copies of the completed Certificates of Insurance which 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. City reserves the right to review the insurance requirements during the effective period of this Agreement, and any extension or renewal hereof, and to modify insurance coverage and limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory

law or court decisions. County will not allow any modifications to the insurance coverage through which City may incur increased risks.

- b. County shall require all contractors and service providers to maintain statutory worker's compensation insurance for all of their employees with a waiver of subrogation in favor of County and City.
- c. County shall require in its contracts with third party providers of services, construction, and materials an indemnification of County and City, their officials, employees, and agents from all claims by third parties.
- d. County will require the consultants, contractors, and any 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, County shall determine whether to require performance bonds.

ARTICLE X

PROJECT MANAGEMENT DURING DESIGN AND CONSTRUCTION

- 10.01 County has, to the extent design work has been performed by County prior to execution of the Agreement, kept City informed about the Project design program elements.
- 10.02 City and County staff shall hold periodic conferences with third party consultants and contractors throughout the term of the Project in order that County and third party consultants and contractors may benefit from experience and knowledge of the City and in order that the work is performed in compliance with current City policies and standards.
- 10.03 For future meetings between County staff and its Project consultants, County shall provide City with written (e.g.: letter, e-mail or fax) notice at least twenty-four (24) hours in advance, of the location, date, and time of all meetings in order that City representatives may participate in the meetings.
- 10.04 Upon approval of this Agreement by the governing bodies of the Parties, the Parties' designated representatives shall schedule a meeting to develop the procedures and processes necessary to coordinate the design and construction of the Project.
- 10.05 County will manage, oversee, administer and carry out all of the activities and services required for design and construction of the Project to ensure that the Project is constructed with new materials in a good and workmanlike manner and in accordance with the terms of this Agreement and the design and construction documents.
- 10.06 County shall enforce substantial compliance with the terms of the agreements with Project design consultants, architects, engineers, contractors, and subcontractors and require that work be continuously and diligently performed to achieve substantial completion on or before the scheduled completion.

- 10.07 County agrees that during the construction phases of the Project, City's Designated Representative shall be given written notice of all County staff meetings affecting the Project in order that City may participate in those decisions. County also agrees that City's Designated Representative and City staff participating in the Project shall be given access at all times to the Project site.
- 10.08 County shall provide City Designated Representative with the schedule for permitting and construction of the Project (such schedule, as revised from time to time, with City being furnished copies of the revisions). The schedule shall establish a date for completion of each construction deliverable in sufficient detail to allow City to monitor the progress of the construction of the Project.
- 10.09 County's consultants shall perform all necessary structural and environmental assessments and any and all necessary tests, reports and other pre-construction steps deemed necessary by County prior to the start of construction on the Project.
- 10.10 County's Project Director shall provide written notice to City's Designated Representative a minimum of ten (10) business days prior to the start of construction on the Project.
- 10.11 County shall promptly furnish City's Designated Representative with copies of all legal notices received by County affecting the Project, including, without limitation, notices from governmental authorities, notices from any party claiming default in any payment obligation, and any other notice not of a routine nature. County shall promptly notify City's Designated Representative in writing of any suit, proceeding or action that is initiated or threatened in connection with the Project or against County and/or City.
- 10.12 For any environmental event that is caused by County employees, or at their direction, at the Project site, County shall be liable to the extent the environmental event was directly caused by County employees and not a result of the condition of City's existing drainage improvements on the Project site. 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.
- 10.13 County's Project Director shall issue written notice to City's Designated Representative when fifty percent (50%) of the total construction budget has been expended by County. City shall have fifteen (15) business days to inspect the Project work and the current construction documents and Project schedule. On or before the sixteenth (16th) business day following receipt of County's notice, City must provide County with written notice that the work appears, to the best of City's knowledge, to have been completed in accordance with the design and construction documents approved by the City. If City believes the work has not been completed in accordance with the design and construction documents, City must provide written notice to County's Project Director detailing the discrepancies between the design and construction documents and the Project work. County and City shall work together to determine whether the Project work has been performed in accordance with the design and construction documents. Within three (3)

days of the date the Parties reach a resolution regarding the discrepancies, City shall provide a written approval of the Project work through that date.

- 10.14 Both County and City shall participate in an inspection at substantial completion of the Project to identify the "punch list" items. City shall supervise and coordinate the completion of the punch list items. Both Parties shall participate in the final inspection which shall occur at the one-year anniversary of substantial completion.
- 10.15 Within ninety (90) days after substantial completion of the Project, County shall deliver to City's Designated Representative a final construction report which shall set out the total costs incurred in connection with the Project.
- 10.16 County shall maintain the books, records, and documents pertaining to the Project. City representatives shall have access to, and the right to examine, same upon reasonable notice to County's designated representative.

ARTICLE XI DEFAULT

- 11.01 In the event of a material breach of this Agreement, the non-breaching party shall give the breaching party written notice of such breach which shall detail the nature of the breach. The party receiving the notice of breach shall be given thirty (30) days to cure the breach. If the breach is not corrected to the 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 to the breaching party and seek to recover damages.

ARTICLE XII ENTIRE AGREEMENT

- 12.01 This Agreement, including the exhibit, constitutes the entire Agreement of the Parties regarding the subject matter of this Agreement and supersedes all previous agreements and understandings, whether written or oral, relating to such subject matter. If there is a conflict between or among the provisions of this agreement and any of the following items, the order of precedence shall be as follows: (a) the Agreement, and (b) the exhibit to the Agreement.

ARTICLE XIII ASSIGNMENT OR TRANSFER OF INTEREST

- 13.01 Neither Party may assign its rights, privileges and obligations under this Agreement in whole, or in part, without the prior written consent of the other party. Any attempt to assign without such approval shall be void.

ARTICLE XIV
LEGAL CONSTRUCTION

- 14.01 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalid, illegal, or unenforceable provision shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE XV
COMPLIANCE WITH LAWS AND ORDINANCES

- 15.01 Both Parties shall comply with all federal, state, and local laws and ordinances in connection with the work and services performed under this Agreement.

ARTICLE XVI
TEXAS LAW TO APPLY

- 16.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas.

ARTICLE XVII
AMENDMENT

- 17.01 No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and be duly executed by the Parties hereto.

ARTICLE XVIII
NOTICES

- 18.01 All notices provided to be given under this Agreement shall be in writing and shall either 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 an 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: Executive Director
Bexar County Infrastructure Services Department
233 N. Pecos, Suite 420
San Antonio, Texas 78207
fax: 210-335-6713

If to CITY: Director of Public Works
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
fax: 210-207-4406

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

ARTICLE XIX
FORCE MAJEURE

- 19.01 Neither Party shall be responsible for delays or lack of performance by such entity or its officials, agents or employees which result from acts beyond that entity's reasonable control including acts of God, strikes or other labor disturbances, or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses. In the event of any delay or failure excused by this Section, the time of delivery or of performance shall be extended for a reasonable time period to compensate for delay.

ARTICLE XX
MULTIPLE COUNTERPARTS

20.01 This Agreement may be executed in separate identical counterparts by the Parties hereto and each counterpart, when so executed and delivered, will constitute an original instrument, and all such separate identical counterparts will 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 THE _____ DAY OF _____, 2008.

COUNTY OF BEXAR

By: _____

NELSON W. WOLFF
County Judge

CITY OF SAN ANTONIO, TEXAS

By: _____

SHERYL L. SCULLEY
City Manager

ATTEST: _____

GERARD RICKHOFF
County Clerk

ATTEST: _____

LETICIA VACEK
City Clerk

APPROVED AS TO LEGAL FORM:

SUSAN D. REED
Criminal District Attorney
Bexar County, Texas

By: _____

JILL TORBERT
Assistant Criminal District Attorney
Civil Section

APPROVED AS TO FORM:

MICHAEL BERNARD
City Attorney

APPROVED AS TO FINANCIAL CONTENT:



TOMMY J. TOMPKINS
County Auditor

DAVID SMITH
Executive Director/Budget Officer
Planning & Resource Management Department

Project ID	Project Name	Precinct	City Limit (C.D.)	Outside/ Inside Council Districts	Flooding Source	Project Limits	Type of Project	Level
Cibola Creek Watershed								
CB17	Martinez Dam 6A	4	I.C.L.	2	Martinez Creek	3 miles southeast of City of Converse	Detention	2
Leon Creek Watershed								
LC8	Ingram Road Low Water Crossing #58	2	I.C.L.	6,7	Leon Creek	Ingram Road	LWC	2
LC9	Hausman Drainage Project Phase I (1604 to Babcock)	3	I.C.L.	8	Huestia Creek	1604 to Babcock	LWC	2
LC15	Huebner Creek RSWF at Prue Road	3	I.C.L.	8	Huebner	Huebner Creek at Prue Road	Detention	2
LC17	Huebner Creek Enhanced Conveyance NWWC	2	I.C.L.	6	Huebner Creek	Bandera Rd to Leon Creek Confluence	Channelization	2
San Antonio River Watershed								
SA2	Laddie Place RSWF Phase III	2	I.C.L.	1	Kappman Trib	Fredericksburg at Gardemia	Detention	2
SA4	Shane Road LWC #2301	1	I.C.L.	3	Trib to San Antonio River	Shane Road from Bobbie Allen to Southon Road	LWC	2
SA6	Rock Creek NWWC/Outfall	3	I.C.L.	1,8	Rock Creek	Dudley to IH10	Channelization & Outfall Repair	2
SA22	San Pedro Huisache Phase II	2,4	I.C.L.	1	Trib to San Pedro Creek	Woodlawn to San Pedro	Storm Water system	2
SA33	Olmos Dam	3	I.C.L.	9	San Antonio River	Olmos Dam	Detention	1
SA38	Balcones Heights RSWF (Woodlawn)	3	I.C.L.	7	Woodlawn Creek	Lake Ridge to Moss Oak	Detention	2
Salado Creek Watershed								
SC9	Perrin Beitel Bridge Expansion	4	I.C.L.	2	Beitel Creek	Perrin Beitel Road @ Beitel Creek & remove Vicar Rd	Bridge Upgrade/Channelization	2
SC15	Rosillo Creek RSWF	4	I.C.L.	2	Rosillo Creek Trib	Railroad Property Upstream of FM78 & Trib to Rosillo Cr	Detention	2
SC18	Roland Road Bridge	4	I.C.L.	2,3	Salado Creek	Roland Road @ Salado Creek	Bridge Upgrade	2
SC26	Eisenhauer Bridge	4	I.C.L.	2	Salado Creek	Eisenhauer Bridge Expansion @ Salado Creek	Bridge Upgrade	2
SC5	Mid-Beitel Channel Restoration	4	I.C.L.	10	Beitel Creek	N.E. Loop 410 upstream to south of Garden Court East SC	Channelization	2
PW	Bulverde/Evans Road Intersection Improvements	3	I.C.L.	9	N/A	Fully reconstruct the intersection to accommodate planned capacity expansion	Public Works	
CW	High Water Detection System (HWD)	1,2,3,4		-	-	Countywide	-	



EXHIBIT A