FLM: gg
03/12/2015
Item No. 29.

AN ORDINANCE 2015-03-12-0202

AUTHORIZING THE EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND THE SAN ANTONIO RIVER AUTHORITY (SARA) AND AUTHORIZING THE EXECUTION OF TWO TASK ORDERS FOR THE FOLLOWING PROJECTS - TASK ORDER #1 "OUTFALL MAPPING PROJECT", AND TASK ORDER #2 "DRAINAGE MASTER PLAN" PAYABLE TO SARA IN AN AMOUNT NOT TO EXCEED $2,400,000 FOR SERVICES SUPPORTING SUSTAINABLE LAND USE AND FOR THE DEVELOPMENT, MANAGEMENT, AND OPERATION OF STORM WATER RELATED PROGRAMS, PROJECTS, AND ACTIVITIES; AND APPROPRIATING $2,000,000.00 FROM THE STORM WATER REGIONAL FACILITY FUND.

* * * * *

WHEREAS, the City of San Antonio and San Antonio River Authority (SARA) have collaboratively worked with other local governmental entities since 2004 as part of an Interlocal Agreement that formed the regional management program known as the Bexar Regional Watershed Management Program (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, the BRWM, as well as each governmental entity individually, has worked to apply resources to effectively reduce flooding risks and address threats to water quality through the use of watershed master plans that integrate capital projects, operations, land use, Low Impact Development (LID) and Green Infrastructure (GI) methods for maximum results and community benefits; and

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

WHEREAS, United States Environmental Protection Agency has shown, through recent studies that storm water pollution is the leading cause of water quality contaminants in the nation and currently, there are three river segments in Bexar County that are listed in Section 303(d) of the Clean Water Act with an impairment for bacteria; and

WHEREAS, the City and SARA through the BRWM, collaboratively have worked to address threats to storm water quality through: a) the identification and implementation of project-specific best management practices; b) the joint development of technical manuals for LID and other GI methods; c) Natural Channel Design (NCD); d) the creation of regional master plans for each watershed addressing, flood mitigation, water quality, and stream degradation issues; and e) the establishment of water quality monitoring programs and modeling tools to target sources of contaminants; and

WHEREAS, City and SARA seek to expand the application of sustainable practices, 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 (MS4) Pollutant Discharge Elimination System permits to develop improvements to water quality in streams in Bexar County; and

WHEREAS, this Ordinance authorizes an Interlocal Agreement with SARA to establish and promote cooperative and collaborative development, management and operation of storm water related programs, projects and activities promoting the use of sustainable storm water management practices and leverage current program funding, improve the management of public funding sources and ensure coordination of governmental resources and functions; and

WHEREAS, the Interlocal agreement will also describe roles and responsibilities between the City and SARA, ensure cooperation and coordination on implementation of programs, projects, and activities, and establish procedures to allocate specific funding to support programs, projects and activities identified to support sustainable storm water practices; and

WHEREAS, this Ordinance also authorizes the execution of two Task Orders with the San Antonio River Authority as follows:

Task Order No. 1 in an amount not to exceed $400,000.00 for the Outfall Mapping Project - As part of the City's MS4 permit, Texas Commission on Environmental Quality will require the City to identify all MS4 storm water outfalls (discharge locations) to include the name and location that receive discharges from these outfalls. SARA currently collects similar data for portions of the San Antonio River and the City wishes to expand the data collection to cover the MS4 requirements. The City will partner with SARA to photograph and document up to an estimated 1,300 miles of outfalls along the rivers, creeks, and drainage channels within the city limits of San Antonio;

Task Order No. 2 in an amount not to exceed $ 2,000,000.00 for the Drainage Master Plan: The City will partner with SARA to develop a Drainage Master Plan for the major watersheds within the San Antonio city limits, to include Leon Creek, Salado Creek, and Upper San Antonio River. In conformance with the Regional Storm Water Management Program, the proposed Drainage Master Plan will utilize a watershed-wide approach to analyze potential flooding problems across the city. For this project, SARA will dedicate staff and resources, and implement a comprehensive planning approach by comparing its Regional Watershed Master Plans with an inventory provided by City of all known local drainage problems within each watershed. This will allow SARA to analyze the relationship between the regional and local drainage problems, identify the types of drainage infrastructure needed to address specific concerns, and prioritize an initial list of capital drainage projects. SARA will also identify applications for sustainable storm water practices and other activities to reduce the risk to life and property from flooding, and mitigate the impact of storm water on water quality and stream degradation;

NOW THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is authorized to execute an Interlocal Agreement with **San Antonio River Authority** to establish procedures and allocate specific funding to support programs, projects and activities identified to support sustainable storm water practices. Said Interlocal Agreement appears in substantially the same form as **Attachment I** attached hereto and incorporated herein for all purposes.

SECTION 2. The City Manager or her designee is hereby authorized to execute two Task Orders with the **San Antonio River Authority** as follows: Task Order 1 in the amount not to exceed $400,000.00 for the Outfall Mapping Project and Task Order 2 in the amount not to exceed $2,000,00000 for the Drainage Master Plan.

SECTION 3. Funding in the amount of $400,000.00 for this ordinance is available for Fund 29070000, Cost Center 2304050001 and General Ledger 5201040, as part of the Fiscal Year 2015 Budget.

SECTION 4. The amount of $2,000,000.00 is appropriated for this ordinance in Fund 29071000, Cost Center 2304110001, General Ledger 5201040 and the Fiscal Year 2015 Budget is amended to reflect this change.

SECTION 5. Payment not to exceed the budgeted amount is authorized to **San Antonio River Authority** and should be encumbered with a purchase order.

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 7. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 12th day of March, 2015.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Frank L. Metton

Martha G. Sepeda, Acting City Attorney

Agenda Item:	**29**
Date:	03/12/2015
Time:	10:33:52 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the execution of an Interlocal Agreement between the City of San Antonio and the San Antonio River Authority and authorizing payment to SARA to complete the "Outfall Mapping Project", and the "Drainage Master Plan" Project, in an amount not to exceed $2,400,000 for services supporting sustainable land use and for the development, management, and operation of storm water related programs, projects, and activities; and appropriating $2,000,000.00 from the Storm Water Regional Facility Fund for this purpose. [Peter Zanoni, Deputy City Manager; Mike Frisbie, Director, Transportation & Capital Improvements]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x			x	
Joe Krier	District 9		x				x
Michael Gallagher	District 10		x				

STATE OF TEXAS	§	**INTERLOCAL AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, TEXAS, AND THE SAN ANTONIO RIVER AUTHORITY FOR SERVICES SUPPORTING SUSTAINABLE LAND USE AND STORM WATER PROGRAMS AND PRACTICES**
	§	
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 _____, 2015 (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, 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 three 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;

Attachment I

- Natural Channel Design (hereafter referred to as "NCD");
- the creation of regional master plans for each watershed addressing, flood mitigation, water quality, and stream degradation issues;
- 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 sustainable practices, 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, sustainable storm water and land use 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.

WHEREAS, City and River Authority have collaborated, through recent past agreements to promote sustainable storm water practices through ordinances:

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, management and operation of storm water related programs, projects and activities promoting the use of sustainable storm water management practices (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 programs, projects, and activities, and establish procedures for the Parties to allocate specific funding to support programs, projects and activities identified to support 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 of each Party shall better equip City to improve storm water quality, in an effort to minimize the fiscal and operational impact of future MS4 trends. In meeting its mission to sustain and enrich life in the San Antonio River Watershed, River Authority continues to invest in technical expertise, projects, plans, operational programs and community education and engagement activities aimed at understanding, addressing and reducing the impact of storm water on the San Antonio River and its tributaries. Increasingly, the Parties agree the collaboration of expertise, resources and projects have 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 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 the San Antonio River Basin and its sub-watersheds, specifically including but not be limited to, portions of the Medina Creek Watershed, Leon Creek Watershed, Upper San Antonio River Watershed, Salado Creek Watershed and Cibolo Creek Watershed, within the San Antonio City limits and extra-territorial jurisdiction of the City of San Antonio, recognizing that the impact of storm water is not limited to these jurisdictional boundaries and the identification and mitigation of storm water sources may require activities to extend beyond these boundaries.

3.3 It is the intent of the Parties this Agreement not be limited to the specific sub-watersheds listed herein but be used for other projects affecting the San Antonio River Basin and any of its sub-watersheds. 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.

3.4 It is the intent of both Parties that Task Orders will be issued by City to be undertaken by River Authority throughout the duration of this Interlocal Agreement.

IV. ROLES AND RESPONSIBILITIES FOR THE PROJECT

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A. CITY'S RESPONSIBILITIES

4.1 City shall be responsible for the operations of its MS4 to support the Project, including, but not limited to, the following activities:

- operations and maintenance rivers, creeks, channels, underground storm water infrastructure, bridge crossings, downtown tunnel systems and high water detection systems;
- televising and cleaning of the underground storm water infrastructure;
- natural creekway maintenance, in accordance with UTSA "Technical and Field Guide: Management Practices for Natural Waterways", to include debris removal, selective thinning and invasive species removal along natural creeks and rivers within the San Antonio City limits;
- vegetation control of City-improved channels, rights-of-way, medians and buyout properties, to ensure adequate storm water conveyance, including herbicide treatment to reduce invasive vegetation; and
- street sweeping of city roadways, to reduce pollutants entering the MS4.

4.2 City shall, when feasible, integrate and embrace activities throughout the municipal government policies and practices that support cost effective sustainable management of storm water through the use of land use best management practices focused on reducing the contribution of storm water to water quality impairments and degradation of riparian ecosystems.

4.3 City shall promote, when feasible, land use and development policies that encourage the use of sustainable land use and development best management practices, such as LID, GI, NCD, conservation subdivision development and other best management practices for both new and re-development projects, including City adopted design guidelines, modifications to the Unified Development Code (UDC) and other land use policies, to incentivize or, evaluate sustainable land use practices to achieve a comparable regulatory standard as traditional development practices.

4.4

4.5 City shall incorporate, when feasible, design and engineering assessment of the application and cost effectiveness of sustainable storm water practices within the scope of work for City-funded capital projects, using a methodology that utilizes a life-cycle, triple bottom-line return-on-investment calculation that quantifies economic, environmental and quality of life components of each City-funded capital project.

4.6 City shall promote, when feasible, the application of sustainable storm water practices in City-funded capital projects.

4.7 City shall provide educational and technical training opportunities to its staff to ensure awareness, understanding and technical and policy applications, to support the implementation of the Project.

4.8 City shall demonstrate leadership on sustainable storm water management practices through work with local, state and national entities, as well as through its work with community stakeholders.

4.9 City shall recognize River Authority's agency mission, its institutional knowledge of the San Antonio River Basin and its sub-watersheds. City further shall recognize River Authority's technical expertise in the area of sustainable storm water management practices, regional water quality monitoring and data management, watershed master plans, watershed modeling, floodplain modeling and mapping, ecosystem restoration, river and creek operation and maintenance, low impact development, natural channel design and other related areas.

4.10 City shall recommend private developers and professional service providers consult with River Authority, as the current leader in sustainable storm water management practices, to support implementation of sustainable land use and development best management practices. River Authority acknowledges that over time, City and other agencies such as the San Antonio Water System (hereafter referred to as "SAWS") will develop expertise in sustainable storm water management practices and may reduce the amount of reliance on River Authority.

4.11 City shall utilize and incorporate, as applicable, 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 sustainable storm water management practices.

4.12 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 sustainable storm water practices for multi-purpose projects.

B. RIVER AUTHORITY'S RESPONSIBILITIES

4.13 River Authority shall maintain and update Regional Watershed Master Plans for the following major watersheds: Cibolo Creek, Leon Creek, Medina River, Salado Creek, and Upper San Antonio River and Lower San Antonio River. Said updated and maintained Regional Watershed Master Plans shall utilize the most updated hydraulic and hydrologic models, floodplain maps and water quality data and modeling to identify and prioritize site specific capital projects, applications for sustainable storm water practices and other

activities, to reduce the risk to life and property from flooding and mitigate the impact of storm water on water quality and stream degradation.

4.14 River Authority shall update and maintain all hydraulic and hydrologic models, floodplain maps, a Geographical Information System (hereafter referred to as "GIS") databases, water quality models, site specific water quality historical data and analysis, project related information, scientific and technical assessment, review, telemetry and all other activities performed by River Authority staff necessary to support the Project and make said data accessible for use by City and SAWS.

4.15 River Authority shall provide and maintain a library of technically based documents, to include manuals, case studies, databases and other information, to serve as the public entity with the resources to assess the application, cost-benefit and effectiveness of sustainable storm water.

4.16 River Authority, upon request from City, shall assist with the City's review of public and private projects, to both encourage the use and application of sustainable storm water practices and to assess the effectiveness and appropriateness of proposed sustainable storm water practices to meet the goals and policies of the Project.

4.17 River Authority shall develop and maintain a coordinated GIS database with City referencing all storm water outfalls to the San Antonio River and other creeks, as well as identifying associated drainage areas, to target sources of pollutant loads in storm water.

4.18 River Authority, upon request from City, shall provide storm water quality sampling and monitoring, in conjunction with SAWS sampling and monitoring, as well as providing quality sampling and results as directed by City and SAWS, in support of the Project and other studies.

4.19 River Authority, upon request from City, shall provide field inspection services of implemented LID and GI sustainable storm water management best management practices, to ensure compliance with City policies.

4.20 River Authority, upon request from City, shall conduct training and educational programs to increase awareness and technical understanding of sustainable storm water management practices and to advance the implementation of the Project.

4.21 River Authority is and shall remain responsible for the maintenance and operation of segments of rivers and creeks that, through other agreements and practices, have been designated the responsibility of River Authority.

V. FUNDING

5.1 The Parties independently shall 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. The Parties agree to review current expenditures, work to develop detailed budgets and to allocate funding responsibilities toward specific responsibilities. The Parties further agree future funding commitments toward the Project are contingent on budget approval by the Parties' respective governmental bodies and particular funding commitments to support requested services may be reciprocal and require future funding agreements.

5.2 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.

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. DEFAULT/TERMINATION

7.1 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 VII**.

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 day time 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:

Director
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
P.O. Box 839980
San Antonio, Texas 78283-9980

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

14.1 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. TASK ORDERS/COMPENSATION

16.1 City shall provide River Authority a defined scope of services for each proposed Task Order to be issued by City. The process shall be as follows:

16.1.1 City shall submit a proposed scope of services to River Authority through an e-mail;

16.1.2 upon its receipt and review of City's proposed scope of services, River Authority shall either accept or reject City's proposed scope of services;

16.1.3 if River Authority rejects City's proposed scope of services, River Authority shall notify City of said rejection via e-mail or any other means deemed acceptable by both City and River Authority;

16.1.4 if River Authority elects to accept City's proposed scope of services, River Authority shall notify City of its acceptance, shall provide City a detailed written proposal to perform the defined scope of services and shall deliver its written proposal to perform the defined scope of services to City via e-mail or any other means deemed acceptable by both City and River Authority;

16.1.5 River Authority's detailed written proposal shall include a description of the services to be provided, to include the level of effort needed for the performance of the work, along with the total cost to provide the scope of services requested. The total costs to perform the scope of services shall be broken down on a per person basis, by position and by the hourly rate to be paid each person/position, as well as itemized to include all other costs associated with executing the proposed scope of service and clearly shall define if the Task Order is, upon its acceptance, shall be issued as Lump Sum payment or issued as a not-to-exceed time and material-defined Task Order;

16.1.6 upon City's receipt of River Authority's detailed written proposal to perform the defined scope of services, City and River Authority shall negotiate said written proposal and come to an agreement as to the cost, time and other details necessary to perform the defined scope of services;

16.1.7 upon reaching an agreement on the elements of the submitted proposal to perform the defined scope of service, City shall create a Task Order, attaching River Authority's final and accepted written proposal, and route the created Task Order through City's PRIMELink system (defined in **Section 21.2** herein) for River Authority's acceptance and approval;

16.1.8 Upon River Authority's approval in PRIMELink of the City-created Task Order, City then shall approve the Task Order in PRIMELink and City shall submit the approved Task Order to City's PRIMELink team. The PRIMELink team than shall set PRIMELink up to allow River Authority to bill against the Task Order for services performed on the subject Task Order;

16.2 Each created, issued and accepted Task Orders shall be numbered sequentially, starting with number one (1), shall reference this Agreement and shall be entered into PRIMELink;

16.3 Each Task Order shall be issued based on a defined and specific Scope of Service and each Task Order shall be issued on a Task Order-by-Task Order basis and shall, upon acceptance, become a part of this Agreement;

16.4 Any significant scope or cost change to an authorized Task Order must be approved in writing;

XVII. RIVER AUTHORITY'S WARRANTY

River Authority warrants that the services required 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 VII** herein.

XVIII. INSURANCE REQUIREMENTS

18.1 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 **"SARA Storm Water Programs and Practices Interlocal Agreement"** 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.

18.2 City reserves the right to review the insurance requirements of this **Article XVIII** 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.

18.3 River Authority's Contractor(s) 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
3. Commercial General Broad Form Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual liability	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence; General Aggregate limit of $2,000,000 or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. Professional Liability (Claims made form)	$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.

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.

18.4 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 certificate and endorsement, prior to the commencement of any Work by any Consultant, Sub-Consultant, Contractor and/or Subcontractor and through the period referenced in **Section XVIII.** 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.

18.5 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 and Open Records Request, under the Texas Freedom of Information Act or other public information law asking to view or copy River Authority's Contractor's policy, City shall submit the received request, along with River Authority's Contrator'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's Contractor's information pursuant to a court order or a litigation discovery rule requiring or directing City to disclose any of River Authority's Contractor's information.

18.6 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.

18.7 Within ten (10) calendar days of receipt by River Authority or its Contractor of a notice of cancellation or the non-renewal of coverage, River Authority's 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.

18.8 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.

18.9 Nothing herein contained shall be construed as limiting in any way the extent to which River Authority's Contractor(s) may be held responsible for payments of damages to persons or property resulting from River Authority's Contractor(s) or its Sub-Consultants' and/or Subcontractors' performance of the Work covered under this Agreement.

18.10 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.

18.11 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's Contractor(s).

18.12 River Authority and any Consultant, Contractor, Sub-Consultant and/or Subcontractors are responsible for all damage to their own equipment and/or property.

XIX. INDEMNIFICATION

19.1 **RIVER AUTHORITY SHALL REQUIRE ITS CONSULTANTS AND SUB-CONSULTANTS FULLY TO 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 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 UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW**

19.2 Contractors and Subcontractors to River Authority shall 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 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.

19.3 In addition to the above, Contractors and Subcontractors 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.

19.4 Intellectual Property Indemnification. Contractor's Subcontractors, 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

19.5 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.

19.6 The indemnification obligations under this **Article XIX** 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.

19.7 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 twenty four (24) 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

XX. RIGHT TO AUDIT

20.1 River Authority grants City or City's designees the right to audit, examine or inspect, at City's election, all of River Authority's records relating to the performance of the Work under this Agreement during the term of this Agreement and during the retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. River Authority agrees to retain its records for a minimum of four (4) years, following the termination of this Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute. "River Authority's records" include any and all information, materials and data, of every kind and character, generated as a result of the Work under this Agreement. Example of River Authority's records include, but are not limited to, billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings, for any issue in question, and any and all other agreements, sources of information and matters which may, in City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

20.2 City agrees it shall exercise the right to audit, examine or inspect only during regular business hours. River Authority agrees to allow City's designee access to all of River Authority's Records, facilities and current or former employees of River Authority deemed necessary by City or its designee(s) to perform such audit, inspection or examination. River Authority also agrees to provide adequate and appropriate Work space necessary to City or its designees to conduct such audits, inspections or examinations.

20.3 River Authority shall include this audit clause in any Sub-Consultant, Subcontractor, Supplier or vendor contract.

20.4 City, in turn, grants River Authority the right to audit City's records with the same rights and responsibilities described in Sections 20.1 through 20.3 of this agreement if: 1) The

River Authority pays the City for services under a task order; 2) the City commits to funding activities under a task order that are not paid directly to the River Authority but are required to be spent for a task order to be completed successfully; or 3) River Authority alleges City is in breach of this Agreement and River Authority is contemplating legal action against City as a result of said breach.

XXI. REIMBURSEABLE EXPENSES/PRIMELINK

21.1 City maintains the right to review any reimbursable expenditure by River Authority or its Consultant, Sub-Consultant or vendor. If any reimbursable items are disputed, the amount should be deducted from the current invoice and the remainder of the approved invoice paid in full. The City and River Authority will work in good faith to resolve the dispute. River Authority and/or any of its responsible entities shall be entitled to reimbursement at actual cost incurred for services and related expenses for the following:

21.1.1 Travel outside San Antonio Metropolitan Statistical Area (SAMSA) only if approved in writing by City prior to such travel. If approved by City, reimbursement for travel costs shall be limited to costs directly associated with River Authority's performance of Service under this Agreement or an issued Task Order. Travel costs are limited to the per diem rates set annually by the Federal Government's General Services Administration. River Authority shall provide detailed receipts for all reimbursable charges. Travel expenses shall not exceed the amount provided under this Agreement or an issued Task Order without further approval of City.

21.1.2 Mailing, courier services and copies of documents requested in writing by City in excess of the copies which are to be provided under this Agreement or an issued Task Order. These costs shall not exceed the amount provided under this Agreement or an issued Task Order without further approval of City.

21.1.3 Graphics, physical models and presentation boards requested in writing by City in excess of those which are to be provided under this Agreement or an issued Task Order. These costs shall not exceed the amount provided under this Agreement or an issued Task Order without further approval of City.

21.1.4 City shall not allow a markup on any of the above reimbursable items and only shall reimburse actual costs incurred with City's written approval.

21.2 City shall administer its services through an Internet-Based Project Management System ("PRIMELink"). In such case, River Authority shall conduct communication through

PRIMELink, whenever possible, and perform all Project-related functions utilizing this system, with the exception of Sub-Consultant payment monitoring activities through CCMS. This includes correspondence, submittals, requests for information, vouchers, invoices or payment requests and processing, amendments, change orders and other administrative activities. City shall administer the software, shall provide training to River Authority and/or Project Team Members as necessary and shall make the software accessible via the Internet to River Authority and/or all Project Team Members.

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

_____

Sheryl Sculley, City Manager

Approved as to Form:

_____

City Attorney

San Antonio River Authority

_____

Suzanne Scott, General Manager

Approved as to Form:

_____

General Counsel