

STATE OF TEXAS §
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 COUNTY OF BEXAR §

**INTERLOCAL AGREEMENT
 BETWEEN CITY OF SAN
 ANTONIO, TEXAS, AND THE SAN
 ANTONIO RIVER AUTHORITY
 FOR SECTION 408 REVIEWS OF
 CITY PROJECTS**

This Interlocal Agreement (“Agreement”) is entered into by and between City of San Antonio, A Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. _____, dated _____ 2025 (“City”), and the San Antonio River Authority, a conservation and reclamation district ("River Authority"), and all of which may also be referred to herein individually as a "Party" or collectively as the "Parties".

WHEREAS, River Authority has a Section 1156(a)(2) Funding Agreement with the U.S. Army Corps of engineers/Department of the Army (“USACE”) to contribute funds voluntarily to be used by the federal government to evaluate a request under 33 U.S.C. 408 (hereinafter “Section 408”); and

WHEREAS, City has projects which require review under Section 408 and would like to collaborate with River Authority on moving such reviews forward; and

WHEREAS, River Authority in cooperation with City acknowledge a mutual benefit to collaborating on Section 408 reviews; and

WHEREAS, River Authority has authority to enter this Agreement pursuant to Board approval on April 16, 2025; and

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

I. PURPOSE

This Agreement outlines the roles and responsibilities of the Parties to facilitate Section 408 reviews of City projects by USACE, according to the terms and conditions detailed herein and all applicable laws, rules, and regulations.

II. AUTHORITY

Parties are authorized to make this Agreement, which is intended to increase the efficiency and effectiveness of the Parties in the Section 408 review process, in accordance with the provisions of the Interlocal Cooperation Act, being Chapter 791 of the Texas Government Code. USACE has authority to accept requests for Section 408 reviews through River Authority’s 1156(a)(2) Funding Agreement for City under Section 1156(a)(2) of the Water Resources Development Act of 2016, which amended Section 14 of the Rivers and Harbors Act of 1899, 33 USC 408 to authorize the acceptance and expenditure of funds received from non-federal public or private entities to evaluate requests under Section 408.

III. SCOPE OF THE PROJECT

The Scope of Work includes the City projects listed in Exhibit A needing Section

408 reviews, which are listed in further detail, attached and incorporated herein. By the mutual written consent of the Parties, this list may be updated by the Parties as needed by their respective designated representatives in writing at any time. Any such updates will be incorporated automatically into this Agreement in accordance with the general administrative approval authority limits of each Party.

IV. ROLES AND RESPONSIBILITIES FOR THE PROJECT

City's Responsibilities:

- (1) City identifies projects which require Section 408 review and prepares engineering plans, and all other information related to request under Section 408, files said request with USACE and communicates all such information to River Authority on a timely basis.
- (2) City's Director for Public Works or their designee must review and approve changes in the City projects listed as well as any changes to the budget listed in Exhibit A. Once approved by the designated representatives of each party, the changes will be automatically incorporated herein.
- (3) City will submit requested funds to River Authority for the costs of such Section 408 reviews in accordance with the terms and conditions of Article VI and Exhibit A.
- (4) City shall participate in meetings as needed with River Authority's designees and USACE.
- (5) City acknowledges that no work will begin on Section 408 reviews until USACE identifies and receives the requested funds and further acknowledge that USACE may request additional funds to complete a Section 408 review.

River Authority's Responsibilities:

- (1) River Authority will collaborate with City to coordinate Section 408 reviews for the projects listed and budgeted for in Exhibits A, respectively.
- (2) River Authority shall serve as local sponsor with the USACE. River Authority shall coordinate the Section 408 Review process involving the USACE.
- (3) River Authority's Engineering Manager or their designee must agree to any changes to the projects listed in Exhibit A.
- (4) River Authority shall provide the budget prepared and set by USACE to City for each individual City project needing review as shown in Exhibit A and submit the request for payment due for the Section 408 Review. USACE generates quarterly financial status reports, which River Authority will provide to City.
- (5) River Authority shall participate in meetings as needed with City's project contact(s), or designee(s) and USACE.
- (6) River Authority will provide to City all quarterly reports generated by USACE for City projects funded by this Agreement.

V. TERM

This Agreement shall commence upon the execution date of the last signatory Party and shall continue until all projects needing review under Section 408 have completed the review process by USACE, unless terminated earlier by the Parties.

VI. FUNDING & PAYMENT

At the time of execution of this Interlocal Agreement, available funding consists of City Funding as outlined below. Should additional funding become available, this Agreement does not preclude the incorporation and use of such funding to supplement or expand scopes of work, as mutually agreed to by Parties, with such additional funding to be incorporated into this Interlocal Agreement by City, through an administrative amendment approved by a Department Director or Executive Leadership Team member authorized to sign contracts on behalf of the City, as appropriate.

A. City Funding

- (1) USACE has prepared a Scope of Work and Cost Estimate, which are the basis for the Budget for the City projects that have been submitted and are attached and incorporated as Exhibit A.
- (2) City has designated funding ("City Funding"), to be utilized for all costs associated with Section 408 reviews, as reflected in attached Exhibit A. Allowable expenses from the City Funding are to pay costs for Section 408 review in accordance with the Budget attached and incorporated as Exhibit A.
- (3) City is responsible for submitting payment within 60 days of receipt of request from River Authority for payment in the amount listed in the Budget for all projects on which they wish to proceed. City also understands that USACE may at any time determine that additional funds are necessary and update the Budget by sending an additional request for funds to River Authority. Such updated cost estimates will be automatically incorporated into the Budget in Exhibit A and paid out of the available contingency. City acknowledge that additional funding may be needed. City Funding for such updates must be available to River Authority to pay USACE the additional funds for the Section 408 review within 15 days of a request for payment from USACE.
- (4) The Parties acknowledge that the availability of the City Funding is dependent on appropriation by City Council. City Council may appropriate funding as part of the approved budgets for individual projects independent of this Agreement and the annual appropriation process. The Parties will work together to plan and implement the objectives of this Agreement. Funds appropriated in line items designating their use for section 408 reviews that have been approved by City Council action can be utilized as City Funding under this Agreement without the need of additional City Council action.
- (5) City will provide timely direction to River Authority as needed to respond to USACE and comply with the terms of this Agreement and the Section 408 review process.

- (6) In each City fiscal year, City staff will request that the City Council appropriate a portion of the City Funding, based on the Budget and any updates thereto. City cannot guarantee that City Council will appropriate the requested City Funding. Once the City has allocated City Funding for one of its projects, every effort will be made to fund the full Section 408 review of said City project in one fiscal year.

B. River Authority:

- (1) After receiving and processing payments from City, River Authority is responsible for ensuring that all City Funding received is paid to USACE for City's projects in accordance with River Authority's agreement with USACE.
- (2) River Authority will provide prompt updates to City on any new USACE cost estimates, use of any contingency funds, and accompanying requests for payment.
- (3) No River Authority funds will be used to pay USACE for any of City's projects listed in Exhibit A.
- (4) Any unspent City Funding remaining after completion of USACE's Section 408 review, may either be refund or applied to another City project requiring Section 408 review. River Authority will inform City promptly if this situation arises and be responsible for communicating City's choice to USACE. Should the City choose to be refunded, River Authority will have 60 days to refund the remaining City Funding once those funds have been received from USACE. Should the City choose to have the remaining funds allocated to another City project, City will indicate which project and what amount to apply. Once City has made this determination and informed the River Authority, then River Authority will communicate that decision to USACE in a timely manner. Any such changes will be automatically incorporated into the Budget in Exhibit A.

VII. AUDIT

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

VIII. THIRD PARTY CLAIMS

River Authority and City acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 *el seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

IX. APPLICABLE LAWS

All the work performed under this Agreement by the Parties and their contractors shall comply with all applicable laws, rules, regulations and codes of the United States and State of Texas and with the charter, ordinances, bond ordinances and rules and regulations of City of San Antonio and River Authority. In the event of a conflict between the terms of this Agreement and the Section 1156(a)(2) Funding Agreement between River Authority and USACE, the Parties will work cooperatively in good faith to amicably resolve the conflict to avoid any default of River Authority's obligations to USACE thereunder.

X. DEFAULT/TERMINATION

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 is the result of Force Majeure as defined in this Article.

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

Should the Party in default fail to cure an alleged default, the Party not in default has the right to terminate this Agreement by sending written notice to the other Party in default of such termination and specifying the effective date thereof, which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent. Upon termination of this Agreement, each Party shall be entitled to receive just and equitable compensation for any work satisfactorily performed prior to such termination. City understands that any funds transferred to USACE may only be returned in accordance with the Section 1156(a)(2) Funding Agreement between USACE and River Authority and in accordance with all applicable laws and regulations.

Neither Party shall be liable to the other Party for the failure to perform its obligations under this Agreement when such failure is attributable solely to Force Majeure. Force Majeure shall mean any cause beyond the reasonable control of any Party, including, without limitation, failure, or imminent threat of failure, of facilities or equipment, flood, freeze, earthquake, storm, fire, lightning, other acts of God, declared epidemic, war, acts of a public enemy, riot, civil disturbance or disobedience, strike, lockout, work stoppages, other industrial disturbances or dispute, labor or material shortage, sabotage, restraint by court order or other public authority, and action or non-action by, or failure or inability to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by the exercise of due diligence it could not overcome; provided that none of the circumstances listed above shall be considered to be an event of Force Majeure to the extent such circumstance: (i) is due to the act, neglect, omission, breach of contract or of statutory duty, negligence or misconduct of the Party claiming Force Majeure, its representatives, agents, contractors or subcontractors or (ii) could have been prevented, overcome or remedied if the Party claiming Force Majeure had exercised reasonable diligence. Nothing contained herein shall be construed 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.

XI. ASSIGNMENT

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

XII. NOTICE

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

CITY:

Director of Public Works
City of San Antonio
P.O. Box 839966
San Antonio, TX 78283-3966

RIVER AUTHORITY:

General Manager
San Antonio River Authority
100 E. Guenther St.
San Antonio, TX 78283-9980

With a copy to:
contracts@sariverauthority.org

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

XIII. GOVERNING LAW AND VENUE

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 City of San Antonio, Texas.

XIV. INDEPENDENT CONTRACTOR

It is expressly agreed and understood that each Party is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that each of the other Parties shall be in no way responsible therefore, and that no Party hereto has authority to bind the other Party nor to hold out to third parties that it has the authority to bind the other Party. Nothing herein contained shall be deemed or construed to create the relationship of employer-employee, principal-agent, an association, joint venture, partners, or partnership or impose a partnership duty, obligation or liability among the Parties. No third-party beneficiaries are created by this Agreement. This Agreement is not

intended to and shall not create any rights in or confer any benefits upon any other person other than the Parties.

XV. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to Local Government Code Chapter 271, then and in that event it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties that in lieu of each clause or provision of this Agreement that is invalid, illegal or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provisions as may be possible, to be legal, valid and enforceable.

XVI. AMENDMENT

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

EXECUTED by authorized representatives of each party this the ____ day of _____, 2025.

CITY OF SAN ANTONIO

SAN ANTONIO RIVER AUTHORITY

John Peterek
Interim Assistant City Manager

DocuSigned by:
Derek E. Boese, JD, PMP

Derek E. Boese, JD, PMP
General Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

On behalf of Andrew Segovia
City Attorney

DocuSigned by:
Xochil Peña Rodriguez

Luis A. Garcia
General Counsel

EXHIBIT A

City Projects and Budget

The individual Projects and their Budgets are listed below. There is a contingency fee of 15% totaling \$13,050. The Total for all City Projects listed including the contingency is \$100,050.

Project Name	Project No.	Budget
COSA Roosevelt Pedestrian Bridge	408-SWF-2021-0026	\$29,000
COSA Elmira Area Drainage	408-SWF-2023-0045	\$24,000
COSA Frio City Road Outfall	408-SWF-2023-0046	\$24,000
COSA South Brazos Improvements	408-SWF-2023-0047	\$10,000
Contingency		\$13,050
	TOTAL:	\$100,050

This budget is based on a cost estimate generated by USACE on February 27, 2025, for the individual City projects. The contingency may not be sufficient to cover potential cost increases from USACE or it may also not be utilized by USACE. Per the 1156(a)(2) Funding Agreement:

“Cost Estimate. The costs for Section 408 activities vary based upon the scope, complexity, and nature of a specific proposed alteration. The costs will vary among different SWF Review Team disciplines. The costs will cover labor (time) and travel for a range of possible SWF Review Team disciplines. The SWF Review Team Lead (technical lead) will work together with the Section 408 Coordinator to identify and assemble the appropriate disciplines necessary to comprise the SWF Review Team. At a minimum, in addition to the SWF Review Team Lead and Section 408 Coordinator, the SWF Review Team must include: a licensed Professional Engineer specializing in the main area of the request, a qualified Biologist for the environmental and National Environmental Policy Act (NEPA) compliance, a qualified Archeologist or Cultural Resources professional for compliance with applicable cultural resources laws, a Realty Specialist or comparable Real Estate professional, and an attorney with the SWF Office of Counsel for legal and policy compliance. Other specialized disciplines may be required which are not listed below, such as Structural, and Hazardous, Toxic, and Radioactive Waste/Environmental Engineering.

Minimum disciplines expected for these reviews include:

- ☐ Operations/engineering
- ☐ Hydrology and hydraulics/engineering
- ☐ Real Estate
- ☐ Cultural Resources/Archaeology
- ☐ Geotechnical
- ☐ Section 408 Coordinator, Project Management, and NEPA/Biology/Environmental

It is unknown how much labor funding each discipline will require at this time. The cost for each project below is an estimate of the combined labor funding for all disciplines. A single funds request letter will be provided and will include the individual projects and costs and will include a grand total which may be sent in one electronic funds transfer.”