

**INTERLOCAL COOPERATION AGREEMENT FOR
STORM WATER MANAGEMENT PROGRAMS
OF THE CITY OF AUSTIN AND TRAVIS COUNTY**

This Interlocal Cooperation Agreement, hereinafter referred to as "Agreement" is made and entered into by and between the City of Austin, Texas (the "City") and Travis County, Texas (the "County"), hereinafter collectively referred to as the "Parties," upon the premises and for the consideration stated herein.

WHEREAS, the County has certain responsibilities and authority pursuant to Chapter 573 of the Texas Local Government Code for protecting the health and safety of the public and for protecting the environment through the management of storm water in Travis County, including the City of Austin's extraterritorial jurisdiction ("ETJ"); and,

WHEREAS, the City has authority to adopt ordinances to extend its regulatory authority into its ETJ and has adopted Title 25 of the City of Austin Code specifically for the protection of water quality; and,

WHEREAS, effective May 4, 2009, the County's coverage under the TCEQ-issued Small Municipal Separate Storm Sewer System ("MS4") permit was approved (authorization number TXR040327), thus establishing the County's role as a regulatory authority for the protection of water quality within unincorporated Travis County; and,

WHEREAS, the Parties desire to cooperate closely in the City's ETJ to implement effective standards that protect water quality through administering both the City's Texas Pollutant Discharge Elimination System ("TPDES") Phase I Storm Water Management Program ("SWMP") and the County's TPDES Phase II SWMP; and,

WHEREAS, the Parties have adopted SWMPs for their respective jurisdictions, and to be effective the programs may overlap in the City's ETJ; and,

WHEREAS, the Parties have adopted Title 30, Austin/Travis County Subdivision Regulations, that includes design and construction standards for transportation, drainage, and the environment for subdivisions; and,

WHEREAS, the Parties desire to eliminate duplication, reduce administrative costs, clarify responsibility, and expedite implementation of their respective SWMPs in that part of the City's ETJ that is located within Travis County, including the City's limited purpose annexation areas; and

WHEREAS, the Parties intend to conform this Agreement in all respects with the Interlocal Cooperation Act, Texas Government Code Section 791.001, et seq.;

NOW, THEREFORE, the Parties agree to clarify and describe in this Agreement the specific SWMP tasks each Party will implement through their respective storm water management programs in the City of Austin ETJ.

A. Purpose

- 1) The Parties agree to work cooperatively with the goal of efficient and effective coordination to implement the City's TPDES Phase One SWMP in concert with the County's TPDES Phase Two SWMP, as required by §402(p) of the federal Clean Water Act, 40 Code of Federal Regulations ("CFR") §§122.26 and 122.34, TPDES regulations, and permits issued to the Parties by the TCEQ.
- 2) These cooperative efforts will address the implementation of the Program Elements and Best Management Practices ("BMPs") specified in the City's Phase One individual MS4 permit (TXS000401 and WQ0004705-000) and the County's implementation of seven Minimum Control Measures ("MCMs") specified in the TCEQ's Phase 2 MS4 General Permit (TXR040000) under which the County is authorized (TXR040327).
- 3) Sections B through F of this Agreement describe the specific tasks, coordination, and responsibilities of each Party and taken together demonstrate the intent of the Parties to effectively exercise their power and authority to meet the storm water management goals established in their respective MS4 permits.
- 4) Unless otherwise specifically noted, the Parties agree that this Agreement applies to the ETJ of the City of Austin that is located within Travis County, Texas, including the City's limited purpose annexation areas.

B. Public Education and Public Participation Programs

- 1) General. The Parties agree to work cooperatively to implement certain public education, public outreach, public involvement, and public participation programs.
- 2) Watershed Signs. The County will install and maintain Watershed Signs on County roads as described in the County SWMP, consistent with current City formats or as mutually agreed and revised in the future.
- 3) Storm Inlet Markers.
 - a) The County agrees to install storm inlet markers as described in the County SWMP, consistent with current City formats or as mutually agreed and revised in the future.
 - b) The City agrees to annually report to the County the number of inlet markers installed through known volunteer efforts or efforts initiated or coordinated by City staff or programs.
- 4) Education and Outreach.

- a) The Parties agree to continue existing public education and outreach program efforts to improve environmental awareness by residents, and to periodically review, adjust, or expand these efforts.
- b) These existing efforts include, but are not limited to: the Grow Green Program and Science Education efforts with Texas Agri-Life Extension, the Household Hazardous Waste Collection Program, and Keep Austin Beautiful.
- c) The Parties agree to cooperate on regional training and outreach efforts to assist businesses and construction site personnel to improve compliance with Austin/Travis County standards for development permits, construction Storm Water Pollution Prevention Plans (“SWP3s”), and Erosion Sediment Controls (“ESC”).
- d) The Parties agree to share the content of existing storm water, SWP3, and ESC educational materials (with each Party bearing the reproduction costs for the materials it produces) and consultation resources.
- e) The County will provide such materials to customers and applicants of the County’s Development Services Division.
- f) To the extent practical, the Parties agree to consult with one another to assist on storm water related program content for Travis County Television (TCTV) and City of Austin public access channel broadcasts.
- g) The Parties agree to consult with one another to assist on storm water related program content for each Party’s storm water program websites and to include hyperlinks to the other Party’s website on each of its own program websites.
- h) The County agrees to include the City’s storm water related materials and announcements in the County SWMP broadcasts or website, if requested by the City.
- i) The City agrees to include the County’s storm water related materials and announcements in the City’s SWMP broadcasts or website, if requested by the County.

C. Construction Development Permit Review and Inspection Programs

- 1) General. The Parties agree to work cooperatively to implement and enforce programs to reduce pollutants in storm water runoff from construction activities that result in land disturbance.
- 2) Subdivision Proposal Review.
 - a) Pursuant to §242.001 of the Texas Local Government Code, the Parties agree to continue to jointly administer and enforce Title 30, Austin/Travis County Subdivision Regulations through a single office for permit applicants in accordance with an interlocal agreement of the Parties dated November 12, 2004, along with any subsequent amendments to that agreement.
 - b) The City agrees to notify the County of the final inspection of new subdivisions. Travis County SWMP staff, in addition to Travis County Development Services staff, will be invited to attend each final inspection by e-mail notification of the completed subdivision, to ensure surveys of all new drainage structures for the County MS4 map.
- 3) Site Plan (Non-Subdivision) Review.

- a) The Parties will continue their respective SWP3/ESC and post-construction review and permitting programs for construction projects required to obtain site plan permits.
 - b) The Parties agree to coordinate site plan development permit reviews and approvals with the other Party's processes to prevent conflicting directives to applicants.
 - c) The County agrees it will issue site plan development permit approvals either following City approval or contingent upon the City's approval of the site plan and SWP3 for the proposal. This mechanism will prevent site construction activities, including initial actions like clearing and grading, prior to approval of a site plan by the City.
- 4) Construction Inspection and Monitoring.
- a) The City agrees to continue a lead role on behalf of both Parties on inspection and enforcement of ESC and permanent BMPs on construction projects subject to City subdivision and site plan permits.
 - b) At a minimum, City inspections of these construction projects under construction will occur at milestones of the project as described in the City Land Development Code ("LDC"), Environmental Criteria Manual ("ECM"), and the 1800 Series of the City's standard specifications.
 - c) The Parties agree that public interest or other factors may result in the need for the additional involvement of the County for SWP3/ESC inspection of construction projects.
 - d) As soon as is practical prior to inspection, the County will inform the appropriate staff contact of the City when County staff will undertake an inspection of a construction project.
 - e) Based upon the nature of an issue and in consideration of the authority of each Party, staff of each Party will promptly refer the matter and share inspection-related information through agreed upon protocols and contacts.
 - f) The Parties will each provide points of contact for receipt of data, information, or reports from the other Party, in an instance when there is insufficient evidence that a person has commenced a development activity with authorization from either the City of Austin or Travis County.
 - g) The Parties will routinely exchange up-to-date lists of inspection and related staff contacts, including assigned roles and territories, whenever these lists are updated.
 - h) Following execution of this Agreement, the Parties will develop and implement more detailed procedures for staff to follow in the ongoing implementation of this Section and this Agreement.
- 5) Technical Standards.
- a) As provided in Section 30-1-61(A), Austin/Travis County Subdivision Regulations, an administrative rule to implement, administer, or enforce Title 30, Austin/Travis County Subdivision Regulations, is not valid unless adopted by both the City and the County. As provided in Section III.B of the Agreement on Subdivision Platting in the ETJ between the City of Austin and Travis County, the Parties are each required to notify each other at least 30

days in advance of amendments to regulations that apply to subdivisions in the ETJ. The Parties agree not to implement, administer, or enforce any regulation applicable to subdivisions in the ETJ until it has been adopted by both Parties.

- b) The City agrees to maintain the existing process of notification to external stakeholders of draft revisions to technical standards, including proposed revisions of the ECM, Austin Standard Specifications, and the Austin Drainage Criteria Manual, prior to formally proposing revisions.
- c) The County agrees to notify the City of the staff contacts who wish to receive notice of draft revisions to technical standards.
- d) Insofar as these standards apply to subdivisions in the ETJ, the Parties agree to seek consensus to cooperatively resolve technical differences on revising the ECM, Austin Standard Specifications, and the Austin Drainage Criteria Manual prior to formally proposing revisions for public comment.
- e) Nothing herein limits the City's discretion in, or prohibits the City from, adopting any revision to the ECM, Austin Standard Specifications, and the Austin Drainage Criteria Manual if the revision does not apply to subdivisions in the ETJ

6) Single Family Residential Lot Construction.

- a) The County will inform single family residential ("SFR") development permit applicants of basic SWP3, ESC, and notice of intent requirements through published technical guidelines.
- b) In consideration of the requirements for the County to issue a basic development permit to authorize construction of a SFR and the City's requirements regarding ESC, tree protection, cut and fill associated with a SFR, the City will review and provide input on the County's guidelines with the objective of providing SFR builders consistent regulatory direction.
- c) The Parties acknowledge resource constraints and different regulations as impediments to a joint process for response to ESC complaints relating to SFR construction. Each Party will respond to ESC complaints when received, in accordance with the Party's authority and policies. Coordination between the Parties on a specific SFR compliance issue will occur when appropriate.

D. Illicit Discharge Detection and Elimination ("IDDE")

1) General. The Parties agree to work cooperatively to implement programs to detect and eliminate illicit discharges to the MS4s and water in the State.

2) MS4 Map.

- a) The Parties agree to coordinate and share data as much as feasible to ensure the development of an accurate, up-to-date, comprehensive MS4 map (each party will bear its own respective reproduction costs).
- b) The County will lead the production of the MS4 map on behalf of both Parties using a GIS geo-database with Global Positioning System ("GPS") survey data of the drainage structures.
- c) At a minimum, the County MS4 map will include all above-ground drainage structures, ponds, outfalls, and features as described in the County's SWMP.

- d) The County will consider the inclusion of additional features, such as underground storm sewers and private and commercial site ponds and outfalls, if additional funding and resources are approved in the future.

3) Compliance Evaluations of Illicit Discharges.

- a) The County agrees to continued implementation of an inspection and enforcement program that identifies illicit discharges and seeks corrective actions by responsible parties, with a focus upon previously-identified dischargers, commercial and industrial operations covered under TPDES storm water and other TCEQ requirements, and responding to public complaints of pollution.
- b) The City agrees to continue to implement an investigation and enforcement program to respond to public complaints and reports of illicit discharges and to seek corrective actions by responsible parties. The City will immediately respond to priorities such as actual or imminent discharges into a waterway or storm drain, incidents involving hazardous substances, and incidents that could adversely affect public health.
- c) The City will refer certain non-priority illicit discharge complaints or requests for assistance to the County for investigation, including on-site sewerage facility (OSSF) issues and issues regarding County-issued permits.
- d) The Parties agree to regularly share information on illicit discharges from commercial and industrial activities and facilities. Information shared will include inventories of such facilities and results from inspection and monitoring activities.
- e) The Parties will routinely exchange up-to-date lists of IDDE-related inspection staff contacts, including assigned roles and territories, whenever these lists are updated.

4) Emergency Response.

- a) Except as described in b), the City agrees to continued implementation of an emergency response program to address discharges and dumping of oil, hazardous materials, or other pollutants. The City will coordinate with Travis County Emergency Services personnel in accordance with established spill response plans.
- b) The County will maintain its lead role in emergency response to address discharges and dumping of oil, hazardous materials, or other pollutants on a County roadway, County right-of-way, or County-owned property.
- c) A Spill Response Coordination Plan will be maintained by the Parties and will include staff contacts, telephone numbers for 24-hour access, assigned roles and territories, procedures for referral between the Parties, processes for updating contact lists, and convening periodic meetings.

5) IDDE Regulations.

- a) The County staff will recommend adoption of additional IDDE regulations to the County Commissioners' Court.
- b) The City will be afforded a meaningful opportunity to review and comment on proposed revisions to County IDDE regulations, prior to formal proposal of the revisions for public comment.

- c) To the extent practicable in consideration of their respective regulatory authority and staff enforcement resources, the Parties will develop lists of allowable non-storm water discharges and conditions for discharge that are the same or similar.
- d) Any additional County IDDE regulations and programs implemented will be consistent with City IDDE codes and program activities as mutually negotiated or agreed.

E. Post-Construction Storm Water Management

- 1) General. The Parties agree to work cooperatively to develop, implement, and enforce programs to reduce post-construction pollutant discharges in storm water runoff from new development and redevelopment.
- 2) Permanent Water Quality Control Monitoring and Enforcement.
 - a) The City will continue its existing monitoring and enforcement program for permanent detention and water quality control structures.
 - b) The City inspection and enforcement program includes detention and water quality control residential ponds and commercial site ponds.
 - c) For water quality control ponds that also serve as flood detention structures and where the detention structure is integral to a County roadway, the County will carry out the inspection and enforcement responsibilities for the combined structures.
 - d) For flood detention and water quality control structures associated with County land facilities, parks, and preserves, the County will lead in carrying out the inspection and enforcement responsibilities. If the City wishes to inspect such a structure, it will first provide advance notification to the County point of contact, to provide the County the opportunity for joint inspection.
 - e) The County agrees to continue its outfall and permanent BMP reconnaissance inventory ("ORI") mapping and monitoring program, as described in the County SWMP.
 - f) The Parties agree to cooperate in this effort where possible, including sharing information, MS4 map data, records relating to specific water quality control and flood detention structures identified on site plans and design specifications as available, staff contacts, staff roles, staff territories, and the referral of cases between the Parties.
 - g) The Parties agree to coordinate to ensure identical information is maintained in their respective pond database inventories in order to most efficiently perform and coordinate the agreed-on responsibilities.
- 3) Maintenance of County Ponds.
 - a) Until annexation by the City, the County agrees to maintain ponds that were installed as water quality control structures associated with County road rights-of-way and easements. The County agrees to maintain these water quality control structures as described in the County SWMP (Minimum Control Measure 6) and consistent with the design standards of the constructed BMP.

- b) The County agrees to maintain water quality control structures associated with County land facilities, parks, preserves, and Capital Improvement Projects as described in the County SWMP (Minimum Control Measure 6) and consistent with the design standards of the constructed BMP.
- 4) Maintenance of County Roads.
- a) Until annexation by the City, the County agrees to maintain any accepted County road and right-of-way, in accordance with the ESC and all related standards described in the County SWMP (MCM 6).
 - b) When Austin Energy proposes to conduct maintenance activities associated with aerial electric lines in a County road ROW, it agrees to implement the tree preservation requirements of Chapter 108 of the Travis County Code and City ECM tree protection guidelines.
 - c) Austin Energy will provide a designated County point of contact with each proposed Vegetation Work Plan (VWP) for review and comment. VWPs may be submitted singly or in batches.
 - d) Within ten (10) working days of receipt of the VWP by the point of contact, the County will respond to Austin Energy with any issues or concerns. If no response is provided by the County within this time frame, the VWP may be considered approved.
 - e) Annually, Austin Energy will provide the County an up-to-date notification regarding the name(s) of contractors conducting tree pruning, and the methods utilized for tree pruning and traffic control.

F Coordination and Reporting

- 1) Points of Contact.
- a) The Parties agree to designate staff points of contact for each of the program areas listed above in sections B. through E. to coordinate development and implementation.
 - b) This information shall include staff assigned roles and territories where appropriate.
 - c) The Parties agree to meet as needed to ensure program coordination.
- 2) Annual Reporting.
- a) The Parties agree to provide their respective Party's Annual SWMP Report to TCEQ.
 - b) The Parties agree to provide a copy of their respective SWMP Annual Reports to each other at the time each is submitted to the TCEQ.

G. Miscellaneous Provisions

- 1) Liability. To the extent allowed by Texas law, the Parties agree that each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions.

- 2) Financial Obligations. The Party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.
- 3) Force Majeure. In the event that the performance by either Party of any of its obligations or undertakings hereunder is interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God, an act of the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party or privy hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects hereto.
- 4) Notice. Any notice given hereunder by either Party pursuant to either provision C.5)a), D.5)b), or G. to the other shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses:

CITY: Sue Edwards, Assistant City Manager
Development & Environmental Services Dept.
505 Barton Springs Road
Austin, Texas 78704

WITH COPY TO: Gordon Bowman
City of Austin Law Department
301 W. 2nd Street
Austin, Texas 78701

COUNTY: Steven M. Manilla, P.E.
Executive Manager, Transportation & Natural
Resources Dept.
P. O. Box 1748
Austin, Texas 78767

WITH COPY TO: David Escamilla
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767

- 5) Any other notice, reporting, or information exchange between the Parties not identified in Provision G.4), can occur by United States mail, personal delivery, e-mail, or facsimile to the appropriate person identified by each Party.
- 6) Number and Gender Defined. As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.
- 7) Entire Agreement.

- a) This Agreement contains the complete and entire Agreement between the Parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the Parties.
 - b) This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by authorized representatives of the Parties.
 - c) No official, representative, agent, or employee of Travis County, Texas has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the Commissioners Court of Travis County, Texas.
 - d) The recitals set forth above are incorporated herein.
- 8) Effective Date. This Agreement takes effect upon the last date of due execution of the Agreement by the County and the City.
- 9) Other Instruments. The Parties hereto covenant and agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.
- 10) Invalid Provision. Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.
- 11) Current Funds. The party or parties paying for the performance of governmental functions or services shall make payments therefore from current revenues available to the paying party.

CITY OF AUSTIN, TEXAS

By: *Sue Edwards*
Sue Edwards, Assistant City Manager

Date: *June 28, 2011*

Approved as to Form:

Jordan Bann
Assistant City Attorney

TRAVIS COUNTY, TEXAS

By: *Samuel T. Biscoe*
Samuel T. Biscoe, County Judge

Date: *7-12-11*