

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN CITY OF AUSTIN, TEXAS
AND LOWER COLORADO RIVER AUTHORITY
REGARDING BUOYS AT TOM MILLER DAM**

THIS AGREEMENT is entered into by and between the Lower Colorado River Authority, a conservation and reclamation district of the State of Texas, and the City of Austin, Texas shown below as contracting parties, pursuant to the authority granted and in compliance with the provisions of the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code.

I. CONTRACTING PARTIES

The Lower Colorado River Authority (LCRA) through its Water Services division operates and maintains dams along the Highland Lakes. LCRA's authority is the control, storage, and preservation of the waters of the Colorado River and for hydroelectric generation and flood control. LCRA also controls the surface of the Highland Lakes pursuant to Chapter 222, Texas Water Code and Chapter 31, Texas Parks & Wildlife Code. The City of Austin (Austin) is a home rule municipality of the State of Texas which operates and regulates Lake Austin in Travis County. The parties recognize that Tom Miller Dam on Lake Austin is currently leased to LCRA by Austin under separate agreements.

II. PURPOSE

In 2005, LCRA completed major renovations to Tom Miller Dam as part of a dam modernization program. As part of the renovations and, in order to protect the construction site, LCRA placed and maintained a system of buoys upstream of the floodgates and spillway of Tom Miller Dam. The parties now intend to continue the arrangement for the placing of buoys at that location by allowing LCRA to place and maintain the buoys.

The parties recognize that there is no legal obligation to locate, maintain, or replace buoys or warnings of any kind on Lake Austin. The parties further acknowledge that the decision to place markers, warnings, or buoys and the type, manner, location, and maintenance of any markers, warnings, or buoys set out on the surface of Lake Austin is entirely within the discretion of the parties, as political subdivisions of the State of Texas.

III. STATEMENT OF SERVICES TO BE PERFORMED:

LCRA agrees to install, maintain, and replace buoys, signs, cables, and/or markers and appurtenances (Buoys) to assist boaters in recognizing hazards associated with Tom Miller Dam. LCRA shall be responsible for providing all labor and equipment (including boats and tools) necessary to set out the Buoys, at LCRA's expense. Austin shall reimburse LCRA for the actual cost

of materials to replace or repair Buoys which are lost, destroyed, or damaged. The parties agree to mutually determine the location, type, number, and anchoring of the Buoys, it being left to the discretion of LCRA as to the method of installation. Subject to available manpower, funding or water and weather conditions, the Parties agree to use best efforts to maintain the Buoys or to repair or replace damaged Buoys. The parties shall not be required to follow any published guidelines, recommendations or standards that do not have the force of law.

Austin and LCRA may loan equipment to each other in furtherance of this Agreement, but any such equipment remains the property of the loaning agency and must be returned upon request. Austin shall provide the assistance of the Austin Park Police, if requested, to further the purposes of this Agreement. Austin shall provide any official action by the Austin City Council necessary to carry out the purposes of this Agreement.

Each party is paying for the performance of governmental functions or services and payments to be made by a party will be made from current revenues available to that party.

IV. AUTHORITY

The exercise of duties by any of the Parties' agents, officers or employees in connection with this Agreement shall be pursuant to the fullest authority of each Party. LCRA is specifically authorized to place and maintain Buoys as mutually determined without further official action under any City of Austin ordinance and without need for permit approvals.

V. LEGAL RESPONSIBILITIES

This Agreement does not create any partnership, employee, fiduciary, insurance, or agency relationship between the parties or any of their agents, employees, volunteers, or officers. No party to this Agreement will be responsible for the acts of the other party or any agent or officer of the other party by virtue of this Agreement. It is expressly understood and agreed that in the execution of this Agreement, no party waives, nor shall be deemed to waive, any immunity or defense otherwise available to it against any claims by third parties. Each party to this Agreement waives all claims against every other party to the Agreement for compensation or any loss, damage, personal injury, or death, occurring as a consequence of the performance of this Agreement, except for acts in violation of the criminal laws.

VI. TERM OF AGREEMENT

This Agreement is to begin January 1, 2007 and shall terminate on December 31, 2017. Either party may terminate this Agreement for convenience at any time by giving 30 days advance notice to the other party.

VII. NOTICE

Any notice and invoices for reimbursement given hereunder by any party to the other party shall be in writing and may be effected by personal delivery in writing, by registered or certified mail, return receipt requested, when mailed to the addresses of the parties indicated below, in care of the official signing this Agreement, or by facsimile transmission as agreed to by the Parties and as evidenced by a confirming return facsimile transmission:

City of Austin
Director, Parks and Recreation Department
P.O. Box 1088
Austin, Texas 78767

Lower Colorado River Authority
Lake Surface and Shoreline Management
3700 Lake Austin Blvd.
Austin, Texas 78703

VIII. LEGAL CONSTRUCTION

Whenever the context of this Agreement requires, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others. Any portion 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.

IX. ENTIRE AGREEMENT

This is the complete and entire Agreement between the parties with respect to the matters herein and supersedes all prior negotiations, agreements, representations, and understandings, if any. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by the parties hereto. No official, representative, or employee of either party has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the governing body of the party.

X. APPLICABLE LAW

This Agreement shall be construed under the laws of the State of Texas. All obligations hereunder are performable within Travis County.

XI. NO THIRD PARTY BENEFICIARY

Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Agreement. Nothing in this Agreement shall be construed as creating an obligation or duty of either party to any third party or any member of the public.

XII. MULTIPLE COUNTERPARTS

This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original and all of which together constitute one and the same instrument.

The Parties certify that: (1) the services specified above are necessary and essential for activities that are properly within their statutory functions, (2) the proposed arrangements serve the interest of efficient and economical administration of State Government, (3) each party has the necessary authority to enter into this Agreement, and (4) the services, supplies or materials contracted for are not required by Section 21 or Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

IN WITNESS WHEREOF, LCRA and AUSTIN, through their duly authorized representatives, have made and executed this Agreement on the respective dates written below their signatures.

City of Austin:

By: 

Name: Bert Lumberras

Title: Assistant City Manager

Date signed: 2/26, 2007

Lower Colorado River Authority:

By: 

Name: Marcus W. Pridgeon

Title: Assistant General Manager

Date signed: 2/21, 2007

