

11-1-05  
Final

## INTERLOCAL AGREEMENT

**BETWEEN THE CITY OF CASTROVILLE, TEXAS AND BEXAR-MEDINA-ATASCOSA (BMA) WCID #1 FOR THE USE OF BMA PROPERTY ALONG THE CANAL OF THE MEDINA RIVER LOCATED INSIDE OF CITY LIMITS OF THE CITY OF CASTROVILLE AS PART OF THE CITY'S NATURE/HIKING TRAIL SYSTEM; AND PROVIDING FOR INDEMNIFICATION BY THE CITY.**

**WHEREAS**, the citizens of the City of Castroville, in a 2001 survey, expressed their desire for safe walking trails, and nature and hiking trails in the hills surrounding the City park; and

**WHEREAS**, the City of Castroville has requested the Regional Park Advisory Board for the City to develop nature and hiking trails in the city limits; and

**WHEREAS**, the Creek Trail, the Cross-Hill Trail, and the Rocky Ravine Trail are already complete except for signage; and

**WHEREAS**, the Pond Trail and Birding Trail are almost completed and the Scout Trail, the most challenging of all trails, is presently being engineered; and

**WHEREAS**, the City wishes to include a portion of the BMA Medina Lake canal system adjacent to the Castroville Regional Park as a "connecting trail"; and

**WHEREAS**, at the presentation made to the BMA Board of Directors on July 11, 2005, the Board expressed concern regarding the liability issues of allowing the public to hike along its canal; and

**WHEREAS**, this interlocal agreement between the City of Castroville and the BMA WCID #1 shall be passed and approved by both Boards to address the liability concerns raised by the BMA Board.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF CASTROVILLE AND THE BOARD OF DIRECTORS FOR THE BEXAR-MEDINA-ATASCOSA WCID #1:**

The City Council of the City of Castroville and the Board of Directors of the Bexar-Medina-Atascosa WCID #1 hereby enter into the following interlocal agreement as authorized by Tex. Loc. Gov't Code Chapter 791:

**City of Castroville's Use of the Bexar-Medina-Atascosa WCID #1  
Canal Berm and Service Road Located in Castroville Regional Park as  
Part of the City's Hiking/ Nature Trail System**

**I. Designated Area.**

The Medina Lake Canal System is owned and managed by the Board of Directors of the Bexar-Medina-Atascosa WCID #1. The City of Castroville has asked

that a specific section of the canal berm and service road for that portion of the Medina Lake Canal System located within the city limits of the City of Castroville, such portion being the approximately three fourths of a mile that is adjacent to the Castroville Regional Park as of the date of this Agreement, be part of the nature/hiking trail system proposed by the City of Castroville for use by the public.

Bexar-Medina-Atascosa WCID #1 Board of Directors approves the non-exclusive use of the above-described portion of the Medina Lake Canal System as part of the nature/hiking trail system of the City of Castroville for use by the public.

## **II. Duration of Agreement.**

This agreement shall be for a term of ten (10) years beginning December 1, 2005 and shall be renewable by both the BMA Board and City Council for two (2) additional ten (10) year terms for a total of thirty (30) years; provided, however, that during the first two years of this Agreement, either the BMA or the City may cancel this Agreement by giving the other Party ninety (90) days written notice of such intent to cancel. Should this agreement be cancelled or terminated for whatever reason, any/all improvements installed by the City during the term of the agreement, may or may not be removed, at the discretion of the City. If not removed by the City within thirty (30) days from date of termination or cancellation, BMA will have the right to remove them or retain them as property of BMA.

### **III. Indemnification.**

a. The City of Castroville shall indemnify and defend the Bexar-Medina-Atascosa WCID #1 from any property damage or personal injury resulting in the use by the public of the canal berm and service road along the Medina Lake Canal System as described in paragraph I. above. Said indemnification shall include any property damage, personal injury, or death resulting from the public's use of the BMA property as described above. Said indemnification shall be for any negligence on the part of the agents or employees of the City of Castroville and/or the agents or employees of the Bexar-Medina-Atascosa WCID #1. However, said indemnification shall not include any property damage, personal injury or death resulting from the sole negligence of the employees or agents of Bexar-Medina-Atascosa WCID #1.

b. This indemnification shall include the defense of any claim against BMA WCID #1 resulting from the use of the canal berm and service road along the Medina Lake Canal and shall include any damages resulting from said incident up to the limitations authorized by the Texas Tort Claims Act.

c. During the original term of this Agreement and any renewal thereof, the City shall purchase and maintain in full force and effect liability insurance which provides coverage for the indemnity obligations assumed by the City under this Agreement in amounts equal to the City's limit of liability under the Texas Torts Claims Act.

d. The City's duty under this Agreement to indemnify and defend the Bexar-Medina-Atascosa WCID #1 shall expressly include, but shall not be limited to, the death or injury to persons, or the damage or destruction of property as a result of entering or

falling into the canal adjacent to the berm and service road and being drowned, nearly drowned, or swept downstream by the force of water flowing in the canal and that injury or death of persons or damage or destruction of property caused directly or indirectly by use of the canal to transport water shall not be considered to be or deemed to be the "sole negligence" of BMA or its employees. The City's duty under this Agreement to indemnify and defend the Bexar-Medina-Atascosa WCID #1, shall expressly include, but shall not be limited to its directors, officers, employees, agents, engineers, and attorneys.

e. The City has made its own inspection of that portion of the canal system, including the canal berm and service road, and find the same to be suitable for the City's intended use and that the City did not rely upon any statement or representation by the BMA regarding the suitability of the BMA's property for the intended use or for any other purpose or any agreement or representation as to the manner that the canal is operated. Without limiting the above-statement, BMA specifically warns the City that the property to be used by the City is located upstream of a siphon, which presents a greater risk of drowning than other portions of the canal.

#### **IV. Maintenance.**

For the purpose of maintenance and improvement issues only, the BMA will appoint and authorize its Field Manager to act in its behalf and the City will appoint and authorize its Public Works Director to act in its behalf.

In exchange for the use of the canal berm and service road in the City's hike and trail system:

The City will install three (3) remote controlled gates, with the size, type and specific location to be agreed upon by the BMA and the City, or their respective designees. One gate will be located near the north property line, one just south of the Creek Trail, and one to secure siphon area as addressed below.

The City will augment BMA's maintenance by keeping mowed to a height no more than five (5) inches, an eight foot (8') wide "trail" down the center of the service road from north gate to south gate, and from trail to each of three (3) trailheads: Pond Trail, Rocky Ravine Trail, and Creek Trail. This trail down the center of the service road will be for use by the walkers/joggers/hikers only. Wheeled and/or motorized vehicles, other than those necessary for maintenance and compliance with the Americans with Disabilities Act, and/or horses will not be permitted.

The City will **not** mow, trim, or otherwise maintain the entire width/area of the service road and/or berm, but the City will keep said area free from litter and debris created by walkers/hikers/joggers. BMA is not obligated to mow, trim, or otherwise maintain the service road or berm.

The City will not be responsible for erosion, leakages and/or acts of man or nature that cause damage to the service road/berm and/or siphon, however, the City will be responsible for damage, if proven to be directly related to foot traffic generated by the public's use of the trail, or by wheeled vehicles used by the City for maintenance.

The City will install and maintain a six (6) foot high chain link fence around the area containing siphon # 5 and the concrete "tunnel" preceding it, and will install and maintain a remote controlled gate in said fence to allow BMA easy access to the siphon.

The City will, if deemed necessary, install and maintain a secondary gate (with chain and lock) in said fence to allow the City and/or emergency personnel access to the siphon area.

The exact location of above fence and gates shall be agreed upon BMA and the City, or their respective designees.

The City will further protect its interests as well as those of BMA, by installing a cable with a "DANGER" sign across the canal just ahead of said concrete "tunnel", with the type of sign and exact location agreed upon by BMA and the City or their respective designees.

The City will install and maintain a "collar" around each of its two (2) pipelines that cross the canal to discourage any/all attempts to traverse them, with the type and exact location of the collars agreed upon by BMA and the City or their respective designees.

The City will install and maintain warning, instructional, and/or directional signs at locations agreed upon by BMA and the City, or their respective designees.

The City will install and maintain a minimum of one (1) pedestal mounted 18" X 24" interpretative panel that will illustrate in color the history of Medina Lake and the canal system, as well as its continuing importance to the economy of the area. Additional panels may be installed at the request of BMA provided that BMA equally shares in the cost of the additional panels. The exact location(s) of said panel(s) shall be agreed upon by BMA and the City, or their respective designees.

The City shall take any other actions that it deems appropriate to protect its interest, as well as BMA's property, from damage or harm by persons using the property in accordance with this Agreement.

The City will obtain written permission from the BMA Field Manager before making any improvements not already covered in this agreement.

BMA will abstain from depositing material dredged from the canal on the trail or on the areas designated as the marked entrances (AKA trailheads) to the three (3) trails, i.e. Rocky Ravine Trail, Creek Trail and Pond Trail. In addition, BMA will make reasonable efforts when depositing dredged material adjacent to the trails to minimize the impact to the trails including possible erosion or deposit of material from run-off.

**V. Castroville Regional Park Rules of the Trails.**

The City has adopted "Rules of the Trails". These rules will be distributed to users of the park trails and will be displayed in prominent locations along the trails.

The City will not allow any activities that may constitute a nuisance or would disturb, unreasonably interfere with, or endanger other persons residing within 300 feet of the area.

Persons using the park trail shall be considered guests or invitees of the City and shall not be considered to be or deemed to be guests or invitees of the BMA.

BMA rules and regulations relating to the use and protection of BMA property shall also apply within the portion of the Medina Lake Canal System subject to City use in accordance with this Agreement.



**VI. Disputes.**

Should a dispute arise between the parties regarding this Interlocal Agreement, the parties agree to alternative dispute resolution procedures to resolve the dispute. Each entity shall be responsible for its own attorney's fee.

**VII. Subordination to the operation, maintenance, and improvement of the canal.**

The use of the berm and service road by the City of Castroville and the public in accordance with this agreement shall be subordinate to the Bexar-Medina-Atascosa WCID #1's use of the canal, berm, and service road to transport water and the right and duty to operate, maintain, repair, and improve the canal, the berm, or the service road.

If BMA finds it necessary to mow the eight (8) foot nature/hiking trail, or otherwise maintain the berm and service road, as a result of the City's use, BMA may, after notifying the City, perform the necessary maintenance. The City shall then pay BMA for such work at BMA's standard rates and such payment shall be made within forty-five days of the invoice for such work. If City does not timely pay the amount due, BMA may cancel this Agreement upon sixty days notice without liability or damages to the City.

The City shall not install any property or make any modifications without the consent of the BMA and without prior written approval of the BMA Field Manager.

BMA will use its best efforts to notify the City whenever maintenance, improvements, and/or repairs involving the service road/berm/siphon are planned. Upon such notice, all trails leading to the service road will be closed to the public, and will remain closed until such time as BMA notifies the City that they may re-open.

### **VIII. Annexation.**

If the portion of the Canal System to be used by the City is not located within the corporate limits as of the effective date this Agreement, BMA does not intend to and this Agreement shall not be construed to be a request that the property be annexed into the corporate limits and City agrees not to annex the property into the corporate limits without the consent of the BMA during the term of this Agreement.

### **IX. Termination.**

All obligations of City hereunder not fully performed as of the expiration or earlier termination of this Agreement, such as restoration of the premises and all indemnifications and waivers of liability, will survive the expiration or earlier termination hereof.

### **X. Neutrality as to Existing Rights.**

This Agreement is not intended and should not be construed to limit or impair the rights of any person who currently holds rights to use the Premises based upon rights reserved by deed(s) conveying the Premises to BMA, based upon recorded deeds, licenses or easements or by adverse possession, or based upon agreements or conveyances by or to the City separate and apart from this Agreement. By execution of this Agreement, BMA neither confirms nor denies the existence of such rights, but in any event, this Agreement shall have no effect on same.

**XI. Access and Maintenance.**

City shall at all times grant BMA immediate and unimpeded access on and across the Premises for purposes of inspection of the Premises; accessing the Canal; and if necessary, using the Premises for purposes related to the operation, maintenance, and control of the Canal. Any improvement which might interfere with BMA's access upon or across the Premises is expressly subject to removal by BMA at its discretion and at the sole expense of City. City shall maintain the Premises by keeping the Premises completely free of any and all debris, litter and/ or refuse. If City fails to so maintain the Premises after thirty (30) days written notice from BMA specifying the maintenance required, BMA may, at its sole discretion, then clear the Premises of any debris, litter and/or refuse, in which event City shall be responsible for any and all related costs and fees. If City fails to timely pay BMA, BMA may terminate this agreement.

**XII. Effective Date.**

This Agreement shall become effective upon the date that the last Party to approve this Agreement approves and signs the same.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF  
CASTROVILLE ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.**

**ATTEST:**

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**Jesse F. Byars, Mayor**  
City of Castroville, Texas

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Gloria Peche, City Secretary  
City of Castroville, Texas

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Susan C. Rocha, City Attorney  
City of Castroville, Texas

**PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE  
BEXAR-MEDINA-ATASCOSA WCID #1 ON THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 2005.**

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**Tommy Fey, President**  
Bexar-Medina-Atascosa WCID #1

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**Ed Berger, Business Manager**  
Bexar-Medina-Atascosa WCID #1

