

ORDINANCE

2022-02-10-0094

**APPROVING A TRI-PARTY COOPERATIVE AGREEMENT WITH
BEXAR COUNTY AND SAN ANTONIO RIVER AUTHORITY FOR
THE FUNDING AND PROJECT MANAGEMENT OF THE
CONSTRUCTION OF HOWARD W. PEAK GREENWAY TRAILS
UNDER THE COUNTY'S RIVERS, CREEKS, TRAILS, AND
PARKS CAPITAL IMPROVEMENT PROGRAM.**

* * * * *

WHEREAS, the City of San Antonio has made significant investments towards the preservation of green space, park connectivity, and pedestrian mobility opportunities through the development of the Howard W. Peak Greenway Trails System; and

WHEREAS, this system is a growing network of approximately 86 miles of developed multi-use and accessible trails winding through natural landscapes along many of San Antonio's waterways; and

WHEREAS, there are four major segments of Greenway trails which include Salado Creek, Leon Creek, Medina River, and the Westside Creeks; and

WHEREAS, there are over 60 major trailheads and neighborhood connections to access the trail system around the city; and

WHEREAS, in addition, the Greenway trails connect many local parks and have preserved and incorporated over 1,600 acres of creek-side open space and natural areas; and

WHEREAS, through the Proposition 2 Sales Tax Initiative, the San Antonio River Authority (SARA) served as project manager on behalf of the City of San Antonio for the design and construction of the Howard W. Peak Greenway Trails along the Westside Creeks- Alazan, Apache, Martinez, San Pedro, and Zarzamora; and

WHEREAS, in September 2021, the County funded and adopted year one of a ten year plan developed as the Rivers, Creeks, Trails, and Parks Capital Improvement Program; and

WHEREAS, the program will continue and complete previous City and County capital investments including: green infrastructure; ecosystem restoration; improved water quality and storm water management; additional trails, parks, and other recreational amenities; and connecting neighborhoods, public institutions, and parks to the existing trail system; and

WHEREAS, the program includes 24.6 miles of recreational trails at a cost of approximately \$83.7 million which will be funded by the County; and

WHEREAS, under the proposed Tri-Party Cooperative Agreement, SARA will serve as the administrator and project manager for the Rivers, Creeks, Trails, and Parks Capital Improvement Program; and

WHEREAS, the City will also have the ability to assign City-funded linear trail connection projects under the Howard W. Peak Greenway Trails System to be managed by SARA; and

WHEREAS, SARA will procure and coordinate services including acquisition, design, permitting, and construction of these trail projects; and

WHEREAS, SARA, the City, and the County will participate and work collaboratively to provide management and oversight of the projects; and

WHEREAS, each City-funded project to be managed by SARA will require a Task Order which is subject to the approval of City Council; and

WHEREAS, once construction is completed, all City and County-funded Greenway trail projects managed will become property of the City and operated by the Parks and Recreation Department unless otherwise agreed to and negotiated by the parties; **NOW THEREFORE:**

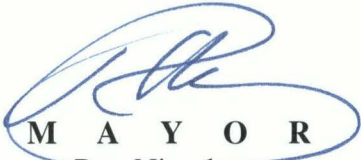
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or designee, or the Director of the Parks and Recreation Department or designee, is authorized to execute Tri-Party Cooperative Agreement with Bexar County and San Antonio River Authority. A copy of the Agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. There is no fiscal impact associated with this action. Approval of this ordinance will authorize the City of San Antonio to issue task orders pursuant to this agreement.

SECTION 3. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 10th day of February, 2022.


M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:



Debbie Racca-Sittre, Acting City Clerk



Andrew Segovia, City Attorney



City of San Antonio

City Council Meeting February 10, 2022

18.

2022-02-10-0094

Ordinance approving a Tri-Party Cooperative Agreement with Bexar County and San Antonio River Authority for the funding and project management of the construction of Howard W. Peak Greenway Trails under the County's Rivers, Creeks, Trails, and Parks Capital Improvement Program. [David W. McCary, Assistant City Manager; Homer Garcia III, Director, Parks & Recreation]

Councilmember Viagran moved to Approve on the Consent Agenda. Councilmember Courage seconded the motion. The motion carried by the following vote:

Aye: Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello
Havrda, Sandoval, Pelaez, Courage

Absent: Perry

SW/ah
2/10/2022
Item #18

ATTACHMENT I

STATE OF TEXAS	§	COOPERATIVE AGREEMENT
	§	BETWEEN CITY OF SAN ANTONIO,
COUNTY OF BEXAR	§	TEXAS, THE COUNTY OF BEXAR AND
	§	THE SAN ANTONIO RIVER
	§	AUTHORITY TO COMPLETE THE
	§	RIVERS, CREEKS AND PARKS
	§	CAPITAL IMPROVEMENT PROGRAM

This Cooperative Agreement ("Agreement") is entered into by and between City of San Antonio, a Texas municipal corporation, acting by and through its City Manager or his designee, pursuant to Ordinance No. _____ dated February__, 2022 (hereinafter referred to as "**CITY**"), the County of Bexar, a political subdivision of the State of Texas acting by and through its Commissioners Court (hereinafter referred to as "**COUNTY**"), and the San Antonio River Authority, a conservation and reclamation district (hereinafter referred to as "**RIVER AUTHORITY**"), and all of which may also be referred to herein individually as a "PARTY" or collectively as the "PARTIES".

WHEREAS, CITY has made significant investments toward the improvement and restoration of the San Antonio River through the San Antonio River Improvement Project managed by the **RIVER AUTHORITY** and toward the improvement and development of the Howard Peak Greenway System throughout the **CITY** limits; and

WHEREAS, COUNTY has made significant investments toward the improvement of San Pedro Creek through the San Pedro Creek Project, toward the improvement and restoration of the San Antonio River through the San Antonio River Improvement Project, both managed by the **RIVER AUTHORITY**, and toward flood control structures throughout the **COUNTY** limits; and

WHEREAS, RIVER AUTHORITY has a long established and successful history

of collaboration with both **CITY** and **COUNTY** for the management and construction of river and creek projects throughout the district of the **RIVER AUTHORITY**; and

WHEREAS, RIVER AUTHORITY, in cooperation with **CITY** and **COUNTY**, has developed the Rivers, Creeks, and Parks Capital Improvement Program (the “Program”) which includes a list of proposed rivers, creeks, trails, and parks projects, which support or improve **CITY** and **COUNTY** facilities (hereinafter referred to as the “CIP Projects”) that would be beneficial to the community and that are desirable to the **PARTIES**; and

WHEREAS, the CIP Projects would accomplish various mutually beneficial objectives including: continuing or complementing previous **CITY** and **COUNTY** capital investments; green infrastructure; restoring degraded aquatic or riparian ecosystems; improving water quality and storm water management; promoting the addition of trails and other recreational and park amenities; connecting neighborhoods, public institutions, and **CITY** and **COUNTY** parks to the existing trail networks; leveraging funding with other CIP Project collaborators to promote cost-effectiveness; and serving as a catalyst for future economic development along rivers and creeks in the City of San Antonio, Texas and Bexar County, Texas; and

WHEREAS, certain designated CIP Projects will be owned, operated, and maintained by **CITY** upon completion and require coordination and approval by the **CITY** and **CITY** may provide funding for certain CIP Projects (the “COSA Projects”); and

WHEREAS, COUNTY will consider the funding of capital costs related to CIP Projects to include at least 24.6 miles of recreational trails at a cost of approximately 83.7 million over at least ten years starting in the Fiscal Year 2021-22 Capital Improvement Project Budget and in subsequent Fiscal Years; and

WHEREAS, the **PARTIES** wish to enter into an agreement whereby the **PARTIES**

will collaborate together to accomplish CIP Projects in a mutually beneficial and efficient manner;

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

I. PURPOSE/TERM

This Agreement outlines the roles and responsibilities of the PARTIES with regard to the funding, project management, permitting, land acquisitions, design, construction, construction management, operation and maintenance of the CIP Projects approved pursuant to the procedures set forth herein. While this Agreement is intended to set out the general roles and responsibilities of the Parties, the specific terms and conditions for each approved CIP Project will be governed by negotiated and agreed-upon terms set forth in a Task Order specific to the CIP Project ("Task Order"), as detailed in Article V, below. As of the date of this Agreement, **COUNTY** is the primary funding source for CIP Projects. **COUNTY** funding for CIP Projects may be combined with funding from the **CITY**, the U.S. Army Corps of Engineers, hereinafter referred to as "USACE", and other funding sources. Parties understand additional terms may be needed depending on funding sources, which will be detailed in relevant Task Order.

The term of this Agreement shall commence upon the execution dated of the last signatory PARTY to the Agreement (the "Effective Date") and shall terminate on the later of: (1) ten (10) years from the Effective Date; or (2) the completion of all CIP Projects approved under this Agreement, whichever is later (the "Term"), unless terminated earlier as provided for herein. This Agreement may be extended by the written agreement of all PARTIES.

II. AUTHORITY

The PARTIES are authorized to make this Agreement which is intended to increase the efficiency and effectiveness of the Parties in completing the CIP Projects.

III. GENERAL SCOPE

Specific CIP Projects that have been identified by the PARTIES as being mutually desirable and appropriate for consideration for completion at the time of this Agreement are listed and generally described on the proposed CIP Project List attached to this Agreement as **EXHIBIT A** some of which CITY is considering funding with its 2022-2027 bond program. Funding for COSA Projects utilizing 2022-2027 bond program funds will not be given final approval until after May 2022 when the CITY has scheduled a bond election. The proposed CIP Project List is preliminary and is included only to document the general nature of the projects to be considered for approval under this Agreement. **EXHIBIT A** may be amended from time to time to add or delete CIP Projects. It will not be a breach of this Agreement if a listed CIP Project is not commenced during the Term of the Agreement. A detailed Scope of Work ("SOW") for each approved CIP Project will be set out in a Task Order specific to such project.

IV. GENERAL ROLES AND RESPONSIBILITIES FOR APPROVED CIP PROJECTS

A. COMMITTEES:

(1) COSA Project Committee. An executive committee comprised of the CITY the Department Director involved in the CIP Project including but not limited to Parks and Recreation Director, Transportation Director or Public Works Director where deemed appropriate, or their respective designee(s), COUNTY Manager or his designee(s), and the RIVER AUTHORITY General Manager, or designee(s), will

provide executive management oversight of COSA Projects. The committee will meet approximately monthly following approval of COSA Projects and communicate in meetings, e-mails and/or telephone calls more frequently as the PARTIES deem appropriate. **CITY, COUNTY** and **RIVER AUTHORITY** Project Manager(s) and Project Engineer(s) for approved COSA Projects will attend all committee meetings as needed. **RIVER AUTHORITY** will schedule, coordinate, draft and distribute the agenda, with guidance from **CITY** and **COUNTY**, and shall conduct the committee meetings. The committee meetings will include project updates by the Project Managers or designee(s), and items for discussion and direction from the PARTIES. Modifications to Task Orders relating to COSA Projects solicitations, designs and schedules shall be approved as set forth herein and in the relevant Task Order. Budget modifications to a project shall be approved in accordance with Section VII herein and the relevant Task Order. Notwithstanding the foregoing, **COUNTY** is not required to participate in any committee formed for the purpose of providing executive management oversight of COSA Projects when **COUNTY** is not a source of funding for the project, and **COUNTY** review and approval of design and construction solicitations and documents for such projects is not required. Notwithstanding the foregoing, **CITY** is not required to participate in any committee formed for the purpose of providing executive management oversight of CIP Projects that are not COSA Projects or when **CITY** is not a source of funding for the project, and **CITY** review and approval of design and construction solicitations and documents for such projects is not required.

(2) COUNTY/RIVER AUTHORITY Project Committee. For all CIP Projects other than COSA Projects, an executive committee comprised of the **COUNTY**

Manager or his designee(s), and the **RIVER AUTHORITY** General Manager, or designee(s), will provide executive management oversight of such CIP Projects. The committee will meet approximately monthly following approval of a project and communicate in meetings, e-mails and/or telephone calls more frequently as the **COUNTY** and **RIVER AUTHORITY** deem appropriate. **COUNTY** and **RIVER AUTHORITY** Project Manager(s) and Project Engineer(s) for such projects will attend all committee meetings as needed. **RIVER AUTHORITY** will schedule, coordinate, draft and distribute the agenda, with guidance from **COUNTY** and shall conduct the committee meetings. The committee meetings will include project updates by the Project Managers or designee(s), and items for discussion and direction from **COUNTY** and **RIVER AUTHORITY**. Modifications relating to individual CIP Project solicitations, designs and schedules will be approved as set forth herein and in the relevant Task Order. Budget modifications to a CIP Project will be approved in accordance with Section VII herein and the relevant Task Order. **CITY** shall have no oversight of CIP Projects **CITY** is not a source of funding or when the projects are not COSA Projects and **CITY** review and approval of design and construction solicitations and documents for such projects is not required. **COUNTY** shall have no oversight of CIP Projects when **COUNTY** is not the owner of the property owner where the project is located nor the source of funding for the project and **COUNTY** review and approval of design and construction solicitations and documents for such projects is not required.

(B) CITY'S RESPONSIBILITIES:

(1) **CITY** will provide specifications and coordination to support the **CITY's** acceptance and ownership of the completed COSA Projects. The **CITY** will deliver

timely direction to **RIVER AUTHORITY** on decisions relating to COSA Projects and requiring action by **CITY** relating to designs, construction, and implementation.

(2) **CITY** designates the Parks and Recreation Director as the primary project contact unless otherwise designated in an applicable Task Order.

(3) **CITY** authorizes the **CITY** Linear Creek Advisory Board to continue to serve the Program in its advisory capacity on the development of the CIP Projects related to the Howard Peak Greenway System.

(4) **CITY** shall provide timely review and approval of design and construction solicitations and documents for COSA Projects and any necessary associated land acquisitions. If any **CITY**-requested change to design and construction results in an increase to a CIP Project budget, **CITY** shall fund the full amount of the increase. The **CITY's** Parks and Recreation Director or designee(s), must review and approve changes in scope and/or modifications to design of COSA Projects. The **CITY's** Director of Transportation or designee must review and approve changes in scope and/or modifications to design of COSA Project for Rails to Trails or other transportation projects. The **CITY's** Director of Public Works must review and approve changes in scope and/or modification to design of public works projects.

(5) **CITY** shall participate in COSA Project meetings as needed.

(6) **CITY** may provide funding of CIP Projects as mutually agreed to by the PARTIES in writing through a Task Order.

(7) **CITY** will adhere to all applicable law relative to the CIP Projects including **CITY** ordinances relating to design and construction within the River Improvement Overlay.

(8) **CITY** shall accept, own, operate and maintain COSA Projects improvements

located on **CITY**-owned land and/or that are integrated into **CITY** parks or infrastructure.

(9) **CITY** will coordinate all public communications activities related to the COSA Projects with the **RIVER AUTHORITY** and **COUNTY** to promote continuity and consistency in public information.

(10) **CITY** shall allow **COUNTY** to incorporate signage and/or other forms of communication that recognize the **COUNTY's** funding contribution to COSA Projects.

(C) RIVER AUTHORITY'S RESPONSIBILITIES:

(1) **RIVER AUTHORITY** will serve as project manager and contract and construction administrator of all CIP Projects and is responsible and accountable to the **COUNTY** and, if related to a COSA Project, to the **CITY** to ensure quality design, construction, and execution of the CIP Projects within the funding limits established in each annual Work Program described in subsection 4(C)(3) and the funding limit set out in each approved Task Order.

(2) **RIVER AUTHORITY** will procure, contract, and manage all professional services and construction services on the CIP Projects. With regard to any CIP Project involving **COUNTY** funds, **RIVER AUTHORITY** and **COUNTY** will work cooperatively to develop a procurement plan, such plan to be detailed in the individual Task Order for the project, and a representative of **COUNTY** will be appointed to the selection committee for the project if such a committee is needed. Regarding any CIP Project involving **CITY** funds, **RIVER AUTHORITY** and **CITY** will work cooperatively to develop a procurement plan, such plan to be detailed in the individual Task Order for the project, and a representative of **CITY** will be appointed to the

selection committee for the project if such a committee is needed. All design and construction documents will be submitted to the **COUNTY** and, if related to a COSA Projects, to the **CITY** for review and approval prior to implementation. If **RIVER AUTHORITY** does not receive comments from **CITY** and/or **COUNTY**, as applicable, within thirty (30) days of submission of the design or construction documents, such documents will be considered approved.

(3) On or before July 1st of each year during the term of this Agreement, **RIVER AUTHORITY** shall prepare and submit for approval to **COUNTY** a Work Program for the succeeding fiscal year setting forth the CIP Project(s) to be undertaken in that year and the projected annual costs of the projects. Additionally, **RIVER AUTHORITY** shall provide an update on the entire River, Creeks and Parks Capital Improvement Program. Once approved by the Bexar County Commissioners Court, the Work Program shall act as a capital budget for the purpose of determining **COUNTY**'s annual financial commitment. Individual CIP Projects to be undertaken in the succeeding fiscal year will be presented in the form of Task Orders for approval simultaneously with the annual Work Program, or at a later date, pursuant to Article V herein.

(4) **RIVER AUTHORITY** shall ensure that the design and construction costs of CIP Projects are within budget before proceeding with any phase of a project.

(5) **RIVER AUTHORITY** will require that design and construction documents are prepared to allow value engineering of the CIP Projects and be prepared to allow for additive alternatives based upon funds available for the CIP Projects.

(6) **RIVER AUTHORITY** shall provide not less than monthly status reports on the CIP Projects to the appropriate committee for such project(s) throughout the

duration of the project(s). The format for the monthly status reports shall be detailed in the Task Order specific to the CIP Project.

(7) **RIVER AUTHORITY** shall allow approved **COUNTY** and, if related to a COSA Projects, **CITY** representatives access to the CIP Project during construction of such project to ensure conformance of construction with the approved plans and specifications, permits and easements.

(8) **RIVER AUTHORITY** shall provide presentations and reports on CIP Projects as requested by **COUNTY** and **CITY**.

(9) Generally, **RIVER AUTHORITY** shall acquire all necessary rights-of-way and easements for the CIP Projects, subject to approval of the **COUNTY** and/or **CITY**, as applicable. Initially, acquired properties may be established under the ownership of **RIVER AUTHORITY**. **PARTIES** will determine which entity will own the rights-of-way and easements, as appropriate, and set forth procedures for transfer of ownership, when necessary, in the Task Order related to the right-of-way or easement.

(10) **RIVER AUTHORITY** shall serve as local sponsor with USACE and if USACE funding is utilized for any CIP Project all **PARTIES** understand **RIVER AUTHORITY** must own all property for such projects in fee and that USACE may impose additional restrictions, which will be incorporated into the relevant Task Order. **RIVER AUTHORITY** shall coordinate all aspects of the implementation of a project involving USACE. **RIVER AUTHORITY** will notify the **PARTIES** if, and when, **RIVER AUTHORITY** becomes aware that USACE funding is available for a project. To the extent any portion of **COUNTY** funding is applied to fund USACE funding requirements on a CIP Project and **RIVER AUTHORITY** receives cash

reimbursement from USACE for such expenditure and USACE, if necessary, authorizes disbursement, **RIVER AUTHORITY** will disburse all funds received from USACE on a dollar-for-dollar basis, when received, to **COUNTY** for use by **COUNTY**, and shall continue to disburse such funds received from USACE after completion of the CIP Project to **COUNTY**. Parties acknowledge and accept that all such disbursements will need to be in accordance with USACE requirements.

(11) **RIVER AUTHORITY** shall acquire all required local, state and federal permits for the CIP Projects, including but not limited to permits required by the Texas Department of Licensing and Regulation, the Texas Commission on Environmental Quality, the USACE and those associated with the Texas Accessibility Standards.

(12) **RIVER AUTHORITY** shall coordinate with appropriate local, state and federal governmental agencies to facilitate the effective execution of the CIP Projects.

(13) **RIVER AUTHORITY** shall coordinate appropriate involvement of stakeholder entities, advisory committees, and the public to facilitate the effective implementation of the CIP Projects including public communication and engagement programs and activities.

(14) **RIVER AUTHORITY** shall coordinate all public meetings and public communications activities with the **COUNTY** and/or **CITY** project contact(s), as applicable, or designee(s), to ensure the appropriate involvement of each entity in the public communications related to the CIP Projects.

(15) **RIVER AUTHORITY** shall adhere to all applicable laws relative to the CIP Projects including **CITY** ordinances relating to design and construction within the San Antonio city limits, the River Improvement Overlay, or other applicable districts

established by the **COUNTY** and/or the **CITY**.

(16) **RIVER AUTHORITY** may elect to perform operations and maintenance of specific CIP Projects by mutual written agreement of the **PARTIES**, to be set forth in the Task Order for such CIP Projects.

(D) COUNTY'S RESPONSIBILITIES:

(1) **COUNTY** will provide oversight and approval on the CIP Projects, with the exception of COSA Projects where **COUNTY** is not a funding source, and will deliver timely direction to **RIVER AUTHORITY** on decisions requiring action by **COUNTY**, including, but not limited to, decisions relating to SOWs, project budgets, schedules, designs, construction and implementation in a timely manner.

(2) **COUNTY** identifies the County Manager, or designee(s) as project contact(s) for the CIP Projects.

(3) **COUNTY** recognizes that the **CITY** Linear Creek Advisory Board and/or Parks Advisory Board will provide citizen oversight in an advisory capacity to the **PARTIES** on the development of COSA Projects.

(4) **COUNTY** may establish one or more committees and may utilize existing citizen oversight committees to serve in an advisory capacity to the **PARTIES** on the development of the CIP Projects.

(5) **COUNTY** will coordinate all public communications activities related to the CIP Projects with the **RIVER AUTHORITY** to promote continuity and consistency in public information.

(6) **COUNTY** shall provide timely review and approval, when necessary, of procurement plan, design and construction documents, and budgets for the CIP Projects involving **COUNTY**, as well as review and approval of any necessary

associated land acquisitions. If any **COUNTY**-requested change to design and construction results in an increase to a CIP Project budget, **COUNTY** shall fund the full amount of the increase. The **COUNTY** Manager or designee(s) must review and approve changes in scope and/or modifications to design of CIP Projects involving **COUNTY**.

(7) **COUNTY** shall participate in project meetings as needed. For CIP Projects that are located on or connect to **COUNTY** parks, Bexar Heritage and Parks Department will participate in the review and approval process for such projects.

(8) **COUNTY** will fund costs of CIP Projects in accordance with the terms and conditions of this Agreement and any Task Order entered into pursuant to this Agreement.

(9) **COUNTY** will adhere to all applicable laws relative to the CIP Projects including **CITY** ordinances relating to design and construction within the River Improvement Overlay.

V. TASK ORDERS

Each Task Order hereafter executed pursuant to this Agreement must: (1) be approved by the appropriate PARTY's governing body if required; and (2) state that it is made as an addendum to this Agreement and, that on its effective date, it incorporates the terms of this Agreement. If there is a conflict between this Agreement and a Task Order, the Task Order will take precedence.

Each Task Order shall include, but is not limited to: (1) a Scope of Work, including the roles and responsibilities of each PARTY to the Task Order; (2) a Project Implementation Schedule (as that term is defined in Article VI below) including a procurement plan if requested; (3) the designated representative(s) of each PARTY; (4) cost documentation

requirements; (5) budget and funding source(s); (6) payment schedule and invoicing requirements; (7) PARTY obligations related to land ownership, and operation and maintenance of completed project improvements (8) insurance requirements; (9) SMWBE and wage requirements appropriate to each PARTY to the Task Order; (10) terms or conditions required by other funding agencies or entities, if any, and (11) any administrative fees to be charged by RIVER AUTHORITY which shall be mutually agreed upon by the PARTIES and (12) any other term or condition set forth in this Agreement or deemed advisable and agreed to by the PARTIES. All Task Orders and exhibits thereto shall be deemed to be incorporated herein by reference. A Task Order may be modified as set forth in this Agreement and in the individual Task Order.

VI. PROJECT SCHEDULE

Project Implementation Schedules ("Schedules") for the CIP Projects will be developed by the **RIVER AUTHORITY** Project Manager in coordination with the **COUNTY** and the **CITY**, as applicable, and will be detailed in each Task Order for approval by the PARTIES to such Task Order. The **RIVER AUTHORITY** Project Manager may recommend modifications to a Schedule, which will be subject to review and approval by the applicable executive committee. Regular Schedule updates identifying progress and changes will be submitted by **RIVER AUTHORITY** to the appropriate PARTY Project Manager(s) throughout the duration of the CIP Projects. PARTIES agree that completion of the CIP Projects is to be in accordance with the Schedule contained in the applicable approved Task Order and any approved modifications.

VII. FUNDING

As of the date of this Agreement, **COUNTY** is the primary source of funding for the CIP Projects. The PARTIES agree that other opportunities for funding, including **CITY 2022**

bond funds or other **CITY** funding, shall be actively pursued throughout the course of this Agreement, including state and federal funding opportunities.

A. COUNTY FUNDING:

(1) At the time of execution of this Agreement, the **COUNTY** has authorized a Program of Capital Projects that include CIP Projects. Subject to annual approval of an amount of funding based on the individual Work Program submitted by **RIVER AUTHORITY** pursuant to subsection 4(C)(3) above, **COUNTY** will fund individual CIP Projects through Task Orders approved by the Bexar County Commissioners Court, as set forth herein. The available funding, including the funding source(s), for a specific CIP Project will be detailed in the corresponding Task Order for that project. As noted in Article V above, a Task Order shall set forth the specific costs for which **COUNTY** funds may be utilized as well as all allowable expenses. Should additional funding become available for CIP Projects authorized under this Agreement, this Agreement does not preclude the incorporation and use of such funding to supplement or expand CIP Projects. Additional funding beyond the annual amount approved by the Bexar County Commissioners Court may be requested by **RIVER AUTHORITY** and will require approval by the Bexar County Commissioners Court.

(2) **RIVER AUTHORITY** will present any proposed budget modifications to a CIP Project involving **COUNTY** funds to the **COUNTY** manager or his designee(s) for review and approval. Nevertheless, if a proposed budget modification to a CIP Project would result in a 10% increase of **COUNTY** funds contributed for such project, or an increase of \$500,000.00, whichever is lower, approval of such modification by the Bexar County Commissioners Court is required. Any approved

budget modification will be incorporated into this Agreement by amendment to the relevant Task Order.

(3) In the event the actual cost of a CIP Project to be paid with **COUNTY** funding is less than the amount approved by the Bexar County Commissioners Court for such project, **COUNTY** shall have the option of committing the remaining funds towards another CIP Project approved by the **COUNTY** or removing the remaining funds from the Program. **COUNTY** shall inform **RIVER AUTHORITY** of its election in writing. If **COUNTY** elects to have remaining funds that have been advanced to **RIVER AUTHORITY** remitted to **COUNTY**, **RIVER AUTHORITY** shall forward the remaining funds to **COUNTY** within thirty (30) days of receipt of **COUNTY**'s written notice of its election.

(4) Should available funding be determined to be inadequate for any Task Order, the PARTIES will work together to mutually agree, in writing, to either increase funding, decrease the scope of work, extend the schedule of work, or **CITY**, if the CIP Project/Task Order is a COSA Projects, **COUNTY**, if **COUNTY** funding is encumbered for the CIP Project/Task Order, and **RIVER AUTHORITY** may mutually elect to withdraw from the CIP Project/Task Order.

B. ADDITIONAL FUNDING: Additional parties and/or additional funding sources for CIP Projects will be incorporated at the appropriate time by amendment to this Agreement and/or relevant Task Order(s), as necessary.

VIII. PAYMENT

A. PROJECT ADVANCES FROM COUNTY OR CITY:

(1) Thirty (30) days before each quarter, beginning on the quarter that starts in April, **RIVER AUTHORITY** will prepare and submit to **COUNTY** quarterly

estimates of CIP Project costs based on approved Work Programs and Task Orders. **COUNTY** will make payments to **RIVER AUTHORITY** in advance of each quarter in the amount of the estimates prepared by **RIVER AUTHORITY**. **RIVER AUTHORITY** will prepare and submit monthly invoices of direct and indirect costs incurred in designing, constructing, and managing the CIP Project(s) in a form and detail mutually acceptable to **COUNTY** and **RIVER AUTHORITY**. When necessary to meet unforeseen project changes or needs, **COUNTY** may authorize an advance or carry over of project funds outside the quarterly advance with the approval of the **COUNTY** manager. Subsequent advance payments may be adjusted to account for amounts previously advanced. This advance payment provision does not abrogate **COUNTY's** authority to approve the actual monthly invoices.

(2) Thirty (30) days before each quarter, beginning on the quarter that starts in January, **RIVER AUTHORITY** will prepare and submit to **CITY** quarterly estimates of CIP Project costs based on approved Work Programs and Task Orders. **CITY** will make payments to **RIVER AUTHORITY** in advance of each quarter in the amount of the estimates prepared by **RIVER AUTHORITY**. **RIVER AUTHORITY** will prepare and submit monthly invoices of direct and indirect costs incurred in designing, constructing, and managing the CIP Project(s) in a form and detail mutually acceptable to **CITY** and **RIVER AUTHORITY**. When necessary to meet unforeseen project changes or needs, **CITY** may authorize an advance or carry over of project funds outside the quarterly advance with the approval of the **CITY'S** designated representative. Subsequent advance payments may be adjusted to account for amounts previously advanced. This advance payment provision does not abrogate **CITY's** authority to approve the actual monthly invoices.

IX. ENVIRONMENTAL MATTERS

CITY, COUNTY and **RIVER AUTHORITY** acknowledge that unforeseen hazardous substances or hazardous waste, as such terms are defined by 42 U.S.C. 9601 and Texas Health & Safety Code Sections 361.131 and 501.002, may be encountered during the CIP Projects. In that event, **RIVER AUTHORITY** will take appropriate precautions to protect health and welfare, report the conditions to the appropriate authority, and ameliorate any such hazardous substances or hazardous waste that may result from the design and construction. **RIVER AUTHORITY** will allow the **PARTIES** to review and comment on any required environmental remediation and approval will be required for environmental remediation on **PARTY**-owned land. In the event **RIVER AUTHORITY** identifies a potential environmental remediation on **Party**-owned land in connection with the CIP Projects, the **PARTIES** will work cooperatively to determine an appropriate course of action and any use of **Party** funding for such remediation is subject to the approval of the **PARTIES**. If the cost of projected remediation causes the projected cost of the CIP Projects to exceed the amounts authorized by the approved project Task Order, **RIVER AUTHORITY** shall engage **Property Owner's** project contact(s), or designee, in a value engineering review of the design and construction documents. Should value engineering fail to bring the projected cost of the CIP Projects within the approved project Task Order, the **PARTIES** may agree to reduce the scope of or delay the CIP Projects. **PARTIES** shall agree upon the projected cost of remediation prior to the commencement of work or the issuance of a notice to proceed to a contractor. **PARTIES** acknowledge and accept that certain remediation costs may be required by applicable laws, regulations, or funding entity.

The **PARTIES** reserve all rights to seek all available relief from any potentially responsible

party or parties concerning the cost of remediation or any other cost incurred by the PARTIES resulting from encountering hazardous substances or hazardous waste during the construction phases of the CIP Projects.

X. USE OF LAND

The PARTIES agree that the PARTIES will use land owned, purchased or acquired within the scope of the CIP Projects for the purposes of the CIP Projects. The PARTIES agree to cooperate with each other in using land owned, purchased or acquired within the scope of the CIP Projects for purposes compatible with the CIP Projects and will enter into license agreements, as deemed necessary by the PARTIES, to facilitate the CIP Projects. The PARTIES agree that land owned, purchased or acquired within the scope of the CIP Projects may be subject to City of San Antonio ordinances and regulation, including but not limited to the River Improvement Overlay.

XI. AUDIT

Each PARTY reserves the right to conduct or cause to be conducted an audit of all funds received or disbursed under this Agreement for any CIP Project/Task Order they are a party to 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, as applicable, all books, records, documents and reports with respect to matters covered by this Agreement.

XII. SBEDA/SMWBE COMPLIANCE

Requirements for the CITY's Small Business Economic Development Advocacy ("SBEDA") Program and/or COUNTY's Administrative Policy No. 8.0, Small, Minority and Women- Owned Business Enterprise (SMWBE) Program for the Procurement of all County Offices, Departments, Funded Entities and Facilities in the areas of Commodities, Equipment,

Professional Services, Maintenance and Construction may be included in individual Task Orders, as applicable. **CITY** and/or **COUNTY** will collaborate with **RIVER AUTHORITY** to identify and conduct outreach to potential contractors for CIP Projects.

XIII. THIRD PARTY CLAIMS

CITY, **COUNTY**, and **RIVER AUTHORITY** 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 I 01.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

XIV. INSURANCE

Insurance requirements for the construction of funded CIP Projects will be addressed in each Task Order.

XV. APPLICABLE LAWS

All of 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**, **COUNTY** and/or **RIVER AUTHORITY**, as applicable.

XVI. PREVAILING WAGE RATE AND GENERAL LABOR CONDITIONS

CITY and/or **COUNTY** requirements related to prevailing wage rates and general labor conditions will be included in individual Task Orders, as applicable.

XVII. TERMINATION/WITHDRAWAL

As used in this Article, "default" shall mean the failure of **CITY**, **COUNTY** 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 any 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 shall thereupon have 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.

No 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, 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 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.

Notwithstanding the foregoing, in the event a PARTY to this Agreement determines it is in the best interest of that PARTY to withdraw from the Agreement, the PARTY may withdraw by giving 180 days' written notice of such intent to the remaining PARTIES. If the withdrawing PARTY has been given responsibility for the construction of a CIP Project and construction has begun, the withdrawing PARTY shall complete construction of the CIP Project. The withdrawing PARTY shall cooperate with the remaining PARTIES to achieve a proper transition.

XVIII. ADVERSARIAL PROCEEDINGS

The PARTIES agree that under no circumstances will 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.

XIX. 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.

XX. NOTICE

For purposes of this Agreement, all notices among the PARTIES shall be deemed sufficient if in writing and emailed or mailed certified mail, return receipt requested, postage prepaid, to the

addresses set forth below:

CITY:

Director of Parks and
Recreation
City of San Antonio
P.O. Box 839966
100 Military Plaza
San Antonio, TX 78283-
3966

RIVER AUTHORITY:

General Manager
San Antonio River
Authority
100 E. Guenther St.
San Antonio, TX 78204
210-227-1373
Contracts@sariverauthority.org

COUNTY:

Bexar County Manager
101 W. Nueva Street, 10th
Fl.
Paul Elizondo Tower
San Antonio, Texas 78205
david.smith@bexar.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.

XXI. GOVERNING LAW AND VENUE

The PARTIES agree that 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.

XXII. TENSE

Words in the singular number in this Agreement shall be held to include the plural, unless the context otherwise requires.

XXIII. AUTHORITY

The signers of this Agreement represent that they have full authority to execute this Agreement on behalf of **CITY, COUNTY** and **RIVER AUTHORITY**, respectively, and that the respective governing bodies of **CITY, COUNTY** and **RIVER AUTHORITY**, have authorized the execution of this Agreement.

XXIV. 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.**

XXV. 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 hereto 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.

XXVI. AMENDMENT

No amendment, modification, or alteration of the terms of this Agreement or any Task Order entered into pursuant to this Agreement shall be binding unless it be in writing, dated

subsequent to the date hereof, and is agreed to and duly executed by each of the PARTIES after official action by each of the respective governing bodies of the other PARTIES as needed.

XXVII. MULTIPLE COUNTERPARTS

This Agreement may be executed in separate identical counterparts by the PARTIES hereto and each counterpart, when so executed and delivered, will constitute an original instrument, and all such separate identical counterparts will constitute but one and the same instrument.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED IN TRIPPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, the ____ day of _____, 2022.

COUNTY OF BEXAR

CITY OF SAN ANTONIO

By: _____
NELSON W. WOLFF
County Judge

By: _____

Date: _____

Date: _____

APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

By: _____
Siobhan K. Karger
Assistant Criminal District Attorney
Civil Division

By: _____

APPROVED AS TO FINANCIAL CONTENT:

By: _____
Leo S. Caldera, CIA, CGAP
County Auditor

By: _____
David Smith
County Manager

SAN ANTONIO RIVER AUTHORITY

By: _____
DEREK E. BOESE, J.D., PMP
General Manager

Date: _____

APPROVED AS TO LEGAL FORM:

By: _____
ALLISON W. ELDER
Director of Legal Services