

ORDINANCE 2023-06-22-0466

APPROVING A TASK ORDER AGREEMENT UNDER THE EXISTING INTERLOCAL AGREEMENT (ILA) WITH THE SAN ANTONIO RIVER AUTHORITY (SARA) TO REIMBURSE SARA IN AN AMOUNT NOT TO EXCEED \$900,000.00 FOR THE APACHE CREEK REMEDIATION PROJECT, AND REALLOCATING FUNDING IN THE AMOUNT OF \$900,000.00 FROM THE STORM WATER OPERATING FUND AND AMENDING THE FY 2023 – FY 2028 CAPITAL IMPROVEMENT PROGRAM.

* * * * *

WHEREAS, an ILA between the City and the San Antonio River Authority (SARA) was approved by City Council on February 10, 2022, through Ordinance 2022-02-10-0094, for SARA to serve as the administrator and project manager for the County's Rivers, Creeks, Trails, and Parks Capital Improvement Programs; and

WHEREAS, additionally, the Tri-Party Cooperative Agreement allows for the City to assign SARA to manage 2022 City bond-funded linear trail connection projects under the Howard W. Peak Greenway Trails System and to date, eight (8) task orders have been authorized in accordance with this ILA.; and

WHEREAS, the City is requesting SARA assist in remediation activities to address perceived soil issues adjacent to Apache Creek, and in advance of the Westside Creeks Ecosystem Restoration Project, the United States Army Corps of Engineers is requesting that the site be remediated as to prevent future contamination from entering and having deleterious impacts to the restored Apache Creek Ecosystem; and

WHEREAS, this task order allows SARA to provide site characterization, preparation of required TCEQ documentation, development of a remediation plan, inter-agency coordination, and project management to include procurement for remediation design services with project completion anticipated in Fiscal Year 2026; **NOW THEREFORE**,

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

SECTION 1. The City Manager or designee is hereby authorized to execute a Task Order Agreement with the San Antonio River Authority for services related to the Apache Creek Remediation Project, a copy of which is attached hereto and incorporated herein as **Attachment I**.

SECTION 2. Payment is authorized to be encumbered and made payable to San Antonio River Authority (SARA) in an amount not to exceed \$900,000.00. Payment is in support of the Apache Creek Remediation project and is in Fund 45099000, WBS Element 23-01655-05-02-01 and GL Account 5201140. Funding for this project is available from Certificates of Obligation, General

Obligation bonds and the General Fund and included in the FY 2023 - FY 2028 Capital Improvement Program.

SECTION 3. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.

SECTION 4: The reallocation of funds in the amount of \$4,600,000.00 is authorized and shall be appropriated in SAP per the table below and amends the FY 2023 – FY 2028 Capital Improvement Program.

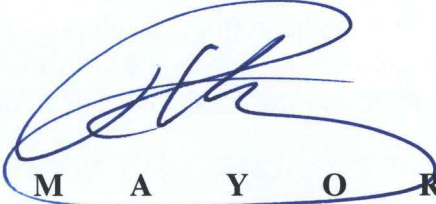
<u>Amount</u>	<u>WBS Element/Internal Order</u>	<u>GL Account</u>
900,000.00	39000000xxxx	6102100
-900,000.00	23-0xxxx-90-14-01	6101100
900,000.00	23-0xxx-05-02-01	5201140

Total Amount: 900,000.00


SECTION 5. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Fund Numbers, Project Definitions, WBS Elements, Internal Orders, Fund Centers, Cost Centers, Functional Areas, Funds Reservation Document Numbers, and GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.


PASSED and APPROVED this 22nd day of June 2023.


M A Y O R
Ron Nirenberg

ATTEST:


Debbie Racca-Sittre, Acting City Clerk

APPROVED AS TO FORM:


Andrew Segovia, City Attorney
by Sean T. Bester



City of San Antonio

City Council Meeting June 22, 2023

25.

2023-06-22-0466

Ordinance authorizing the execution of Task Order 9 to the Interlocal Agreement (ILA) between the City of San Antonio (City) and the San Antonio River Authority (SARA) in an amount not to exceed \$900,000 reimbursable to SARA for the Apache Creek Remediation Project, and reallocating funding in the amount of \$900,000 from the Storm Water Operating Fund and amending the FY 2023 – FY 2028 Capital Improvement Program. [Roderick Sanchez, Assistant City Manager; Razi Hosseini, Director, Public Works]

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

Aye: Nirenberg, Kaur. McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello
Havrda, Gavito, Pelaez, Courage, Whyte

ATTACHMENT I

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

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

TASK ORDER NO. 9

Plan Design for Remediation of Contamination along southern bank of Apache Creek

This Task Order No. 9 is an addendum to the Cooperative Agreement entered into by San Antonio River Authority (RIVER AUTHORITY), City of San Antonio (CITY), and Bexar County (COUNTY) effective February 21, 2022 to complete the Rivers, Creeks, and Parks Capital Improvement Program (Agreement). This Task Order incorporates the terms and conditions of the Agreement. In the event of a conflict between this Task Order and the Agreement, this Task Order will take precedence. All capitalized terms not specifically defined herein shall have the meaning ascribed to them in the Agreement.

I. Project Background:

In 2015, a Phase I Environmental Site Assessment was conducted on behalf of the San Antonio Housing Authority (SAHA) at the location of the Brazos Street Warehouse near Apache Creek. Soil sampling of the SAHA property indicated lead contamination along the north central property line exceeding the Texas Commission on Environmental Quality (TCEQ) Tier 1 protective concentration levels. The source of the contamination was presumed to be the historical CITY Incinerator No. 5 which was believed to have a footprint that encompassed the northern property line of the SAHA site and the Apache Creek bank to the north. The SAHA site was entered into the TCEQ's Voluntary Cleanup Program in 2018 and was issued a Conditional Certificate of Completion in 2020. The adjacent northern area of land on the Apache Creek bank owned by the CITY also contains lead impacted soils. This property, which is the subject of this Task Order, has an open case with TCEQ to further delineate the extent of contamination (Texas Risk Reduction Program, TRRP, case #T3421).

The CITY conducted extensive subsurface investigation, including soil delineation and groundwater sampling along the southern bank of Apache Creek. Soil remediation estimates were developed based on the sampling results. To minimize costs and assist with the regulatory process, the RIVER AUTHORITY will utilize this information with preparation of regulatory documents for assessment and remediation activities in accordance with TCEQ's regulations.

The CITY is requesting the RIVER AUTHORITY to assist in remediation activities to address the contamination. In advance of the Westside Creeks Ecosystem Restoration Project, the United States Army Corps of Engineers is requesting that the site be remediated as to prevent future contamination from entering and having deleterious impacts to the restored Apache Creek

Ecosystem. The intent is for the TCEQ to issue a No Further Action letter or equivalent at the completion of remediation activities.

II. Scope of Work

The RIVER AUTHORITY shall provide environmental investigation and oversight as well as design and construction administrative support for remediation of the Apache Creek contamination site located at 1300 South Brazos Street and Apache Creek (PROJECT). The RIVER AUTHORITY will work with a contracted environmental firm to complete response action requirements as directed by the TCEQ through issuance of a No Further Action letter for the PROJECT site (TRRP case #T3421). The RIVER AUTHORITY's Consultant will review the CITY's assessment report to determine if further sampling is required for delineation purposes and development of the Affected Property Assessment Report (APAR). If necessary, an additional environmental investigation may be warranted and will include additional sampling to delineate the area of soil contamination. Based on the extent of contamination, a remediation plan will be developed including an Affected Property Assessment Report, Response Action Plan for excavation of contaminated soil, confirmation sampling, backfill with clean soil, and Response Action Completion Report. The RIVER AUTHORITY will provide a design plan for the extent of the excavation required, including any necessary shoring system for safety, and bank reconstruction. This PROJECT with additional amendments to this Task Order includes services for facilitation, procurement, contract negotiation, and PROJECT management of the environmental investigation and remedial actions, which may include TCEQ meetings, notifications, and report preparation, utility coordination, in-progress field inspections, environmental permitting preparation, and a waste disposal plan. The specific scope of work will be further defined and mutually agreed to by the Parties during the performance of this Task Order.

The PROJECT scope of work (SOW) is summarized below:

- 1) Site characterization including sampling and analysis to determine the extent of soil contamination;
- 2) Preparation and submittal of the Affected Property Assessment Report (APAR) to TCEQ for review and approval; APAR needs to be approved prior to submittal of Response Action Plan;
- 3) Development of a remediation plan including a Response Action Plan for excavation of contaminated soil, confirmation sampling, and stabilization of the streambank;
- 4) PROJECT management including procurement for remediation design services;
- 5) Inter-agency coordination including notification, report preparation and other actions necessary for TCEQ processes; and
- 6) Utility coordination.

III. Party Roles and Responsibilities:

A. CITY:

- (1) Shall provide all environmental reports, sampling data, exhibits, and remediation estimates to the RIVER AUTHORITY to consider as part of their environmental activities to achieve regulatory site closure.
- (2) Shall provide timely direction to RIVER AUTHORITY on decisions requiring action by CITY, relating to any changes to the PROJECT, SOW, budget, or schedule.
- (3) Shall identify CITY Environmental Manager or his/her designee as the contact for the PROJECT.
- (4) Shall participate in the coordination meetings, as needed.
- (5) Shall reimburse the RIVER AUTHORITY for the actual costs of the PROJECT initially not to exceed \$900,000, including reasonable interest costs.
- (6) CITY will provide RIVER AUTHORITY access to CITY owned land within the PROJECT site at all times for inspections, survey, construction, and other activities related to the completion of the PROJECT without the need for additional permissions or permits for the PROJECT for access and use of the PROJECT site.
- (7) CITY will provide permitting assistance with CITY department(s) involved with permitting for the PROJECT.
- (8) Shall amend the Task Order to include additional funding for the completion of the remediation plan implementation and closure activities, as needed to receive a No Further Action letter from TCEQ.

B. RIVER AUTHORITY:

- (1) Shall serve as PROJECT Manager and Administrator of the PROJECT and will manage, oversee, administer, and carry out all activities and services required for the PROJECT from commencement to completion, including coordination with environmental engineer, inspectors, contractors, permitting agencies, utilities, and government authorities, procurement, invoicing, laboratory testing, excavation services, waste hauling and disposal services, and TCEQ reviews and permitting.
- (2) Shall be responsible and accountable to the CITY to ensure execution of the PROJECT within available funding to support the PROJECT.
- (3) Shall hold regular progress meetings, at least monthly.
- (4) Designee shall remain available throughout the PROJECT to attend meetings, if requested by CITY, as necessary.

IV. Project Schedule:

- A. Coordination for the environmental investigation shall begin by July 1, 2023, and the Response Action Completion Report shall be submitted to and approved by TCEQ by or before December 31, 2025, or upon completion if past that date. The duration of the PROJECT shall extend through the issuance of a No Further Action letter from TCEQ and subsequent closure of case #T3421 by TCEQ.
- B. Termination for Cause. In the event of a material breach of this Task Order, the non-breaching Party shall give the breaching Party written notice of such breach which shall detail the nature of the breach. The Party receiving the notice of breach shall be given at least thirty (30) days to cure the breach. If the breach is not corrected to the satisfaction of the non-breaching Party by the end of the thirty (30) day period, the non-breaching Party may (but has no obligation to) either: (a) provide for an extension if the breaching Party has commenced work to cure the breach and is making a good faith effort to complete the work, or (b) give written notice of termination of this Task Order to the breaching Party and seek to recover damages.

V. Compensation:

- A. The CITY hereby agrees to budget and commit an initial not to exceed amount of \$900,000 (NINE HUNDRED THOUSAND DOLLARS AND 00/100) for the PROJECT. Allowable expenses from CITY funding are: a) contractual payments to design professionals and other consultants, b) testing, c) utility location services, d) RIVER AUTHORITY's PROJECT management costs; e) contractual payments for site remediation, creek bank reconstruction, waste hauling and disposal, environmental report preparation and TCEQ coordination, f) permit fees, and g) inspection costs; h) administrative costs for SWMBE/SBEDA/HUB, and i) other expenditures which may be approved by the CITY for this PROJECT. It is anticipated that future amendments to this Task Order will authorize additional funds as needed to implement the remediation plan and closure activities referenced in expense items d through g, mentioned above.
- B. RIVER AUTHORITY ADMINISTRATIVE AND PROJECT MANAGEMENT COSTS: RIVER AUTHORITY will receive six percent (6%) up to and not to exceed \$54,000 (FIFTY-FOUR THOUSAND DOLLARS AND 00/100) of the approved total PROJECT funding for both the administrative and PROJECT management costs (Administrative Fee) and the SWMBE administrative fees (SWMBE Fee). The SWMBE FEE is the actual cost to RIVER AUTHORITY directly attributable to complying with SWMBE requirements set by a third party, and include but are not limited to labor time and a pro rata share of software purchased by RIVER AUTHORITY for SWMBE tracking. Future amendments will include additional funding commitments for PROJECT management and administration, as needed, to support implementation of the remediation plan and closure

activities referenced above. Any such additional funding for the PROJECT will include additional compensation to RIVER AUTHORITY for both its Administrative Fee and SWMBE Fee.

C. PAYMENT:

1. RIVER AUTHORITY shall prepare and submit invoices to CITY of actual costs incurred for the PROJECT, in a form and detail mutually acceptable to CITY and RIVER AUTHORITY. CITY shall reimburse RIVER AUTHORITY within thirty (30) days after receipt of invoice. When necessary to meet unforeseen PROJECT changes or needs, CITY may authorize an advance or carry over of PROJECT funds with the approval of the designated CITY contact. 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.
2. If the RIVER AUTHORITY is unable to contract for the work within the available PROJECT funding amount, the Parties shall work to amend the SOW, extend the schedule, or authorize additional funding to complete the PROJECT. If the PROJECT cannot be completed with the PROJECT funds available after coordination, the Parties may elect to terminate this Task Order and no Party shall be obligated further under same should the termination occur prior to PROJECT site remediation, construction, excavation, creek bank reconstruction, or waste hauling and disposal. However, Parties understand and accept that once these activities have begun there would need to be funding by CITY for full PROJECT site closure and/or containment and resolution of case #T3421 by TCEQ.
3. If this Task Order is terminated by any Party prior to the completion of work, RIVER AUTHORITY will return unused or uncommitted funds to the original funder within sixty (60) days of termination, along with an accounting. The RIVER AUTHORITY is not obligated to cancel contracts in the event of termination. In the event of litigation, the Parties will mutually agree to an appropriate and reasonable alternative timeframe for the return of such funds.

VI. Insurance Requirements

As the financial integrity of the PROJECT is of interest to the Parties, RIVER AUTHORITY will require its consultants and contractors during work on the PROJECT to maintain insurance coverage commensurate with the risk to the PROJECT. Types of coverage and limits of liability shall be set by the RIVER AUTHORITY. RIVER AUTHORITY and CITY shall be listed as an Additional Insured on the required insurance policies and such policies shall include a waiver of subrogation in favor of each of the Parties. CITY may request copies of all required insurance certificates from RIVER AUTHORITY.

EXECUTED as of the date of the last authorized signature below.

CITY: City of San Antonio, a Texas
Municipal Corporation

RIVER AUTHORITY: San Antonio River
Authority, a political subdivision of the State
of Texas

Razi Hosseini, P.E., R.P.L.S.
Director/City Engineer
City of San Antonio

Derek E. Boese, JD, PMP
General Manager
San Antonio River Authority

Date: _____

Date: _____

Approved as to Form:

Approved as to Form:

Andy Segovia
City Attorney

Allison Elder
Director of Legal Services