

ORDINANCE 2022-10-20-0777

APPROVING THE EXECUTION OF A TASK ORDER UNDER THE EXISTING TRI-PARTY COOPERATIVE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, BEXAR COUNTY, AND THE SAN ANTONIO RIVER AUTHORITY IN AN AMOUNT NOT TO EXCEED \$3,553,550.00 TO BE PAID TO SAN ANTONIO RIVER AUTHORITY FOR PROJECT MANAGEMENT, DESIGN, AND CONSTRUCTION SERVICES RELATED TO THE 2022 CITY BOND WESTSIDE CREEKS LIGHTING PROJECT LOCATED IN COUNCIL DISTRICTS 1, 3, 5, 6, AND 7.

* * * * *

WHEREAS, a Tri-Party Cooperative Agreement between the City of San Antonio, Bexar County, and the San Antonio River Authority (“SARA”) allows for SARA to serve as the administrator and project manager for the County’s Rivers, Creeks, Trails and Parks Capital Improvement Program; and

WHEREAS, 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

WHEREAS, the Howard W. Peak Greenway Trails System is a growing network of approximately 92 miles of developed multi-use and accessible trails built through the natural landscapes along the San Antonio waterways; and

WHEREAS, under the proposed Task Order, SARA will serve as the administrator and project manager for the 2022 City bond Westside Creeks Lighting Project, performing vendor procurement and coordinating with the engineers, inspectors, contractors, and permitting agencies on behalf of the City; and

WHEREAS, this project will evaluate feasibility and perform design and construction of trail lighting along the Westside Creeks Greenway Trails, which include Apache, San Pedro, Alazan, Martinez, and Zarzamora Creeks to provide safe access during early morning and late evening hours; **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 a task order (**ATTACHMENT 1**) under the existing Tri-Party Cooperative Agreement in an amount not to exceed \$3,553,550.00 to be paid to SARA for project management, design, and construction services related to the 2022 City bond Westside Creeks Lighting Project.

SECTION 2. 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 SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

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 20th day of October, 2022.



M A Y O R
Ron Nirenberg

ATTEST:



Debbie Racca-Sittre, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council Meeting October 20, 2022

15.

2022-10-20-0777

Ordinance approving a task order under the existing Tri-Party Cooperative Agreement between the City of San Antonio, Bexar County, and the San Antonio River Authority in an amount not to exceed \$3,553,550 to pay the San Antonio River Authority for project management, design, and construction services related to the Westside Creeks Lighting Project. Funding is from the 2022- 2027 General Obligation Bond and included in the FY 2023 – FY 2028 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 Rocha Garcia seconded the motion. The motion carried by the following vote:

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

CEH
10/20/22
Item No. 15

ATTACHMENT 1

**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**

STATE OF TEXAS §
CITY OF SAN ANTONIO §

**TASK ORDER NO. XX
WESTSIDE CREEKS LIGHTING PILOT PROJECT**

This Task Order is an addendum to the Cooperative Agreement entered into by and between City of San Antonio (CITY), County of Bexar (COUNTY), and the San Antonio River Authority (RIVER AUTHORITY), effective February 21, 2022 to complete the 2022 bond program. 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. The Westside Creeks Lighting Pilot Project will be identified in this Task Order as the “Project”.

I. Project Background

The Howard W. Peak Greenway Trail System (Greenway) is a growing network of approximately 90 miles of developed multi-use and accessible trails open from sunrise to sunset and is built through natural landscapes along San Antonio waterways. The City of San Antonio Parks and Recreation Department (COSA Parks) manages, operates, and maintains the Greenway. The Project will evaluate the feasibility, design and construct trail lighting along the Westside Creek Greenway Trails to provide safe access during early morning and late evening hours.

CITY has requested RIVER AUTHORITY to perform or provide feasibility, design and construction for the Project. CITY has agreed to provide funding for costs related to the Project as set forth herein and in accordance with the Agreement. CITY has committed the funding for the Project through the 2022 Bond Program.

RIVER AUTHORITY will act as Project Manager and Administrator for the Project and provide additional services for the Project as detailed below.

II. Scope of Work:

The Scope of Work (SOW) includes the following:

Project consists of preliminary engineering report, design, and construction of approximately 14 miles of Greenway trail lighting on the Westside Creeks including Apache, Alazán, San Pedro, Zarzamora and Martinez creeks, to the San Antonio River Mission Reach to provide safe access between the trail networks. Upon its completion, COSA Parks will own, manage, operate, and maintain the Project as part of the Greenway.

III. Party Roles and Responsibilities

In addition to the general roles and responsibilities set forth in the Agreement, the PARTIES agree as follows:

A. CITY RESPONSIBILITIES:

1. CITY will provide timely direction to the RIVER AUTHORITY for decisions requiring action by the CITY, relating to any changes to the Project (SOW), Project budget (BUDGET), Project schedule (SCHEDULE), Project designs, and implementation.
2. CITY will provide timely review of all design and construction documents pursuant to the Agreement.
3. The approval or acceptance by CITY of any design or construction documents related to the Project will not be deemed an assumption of responsibility or liability by CITY for any defect in the design, working drawings, specifications, or other documents and work performed or provided by RIVER AUTHORITY.
4. CITY identifies the Director of the Parks and Recreation Department or their designee as the designated representative for the Project.
5. CITY will participate in Project coordination meetings as needed.
6. CITY will provide CITY Funding, as that term is defined in Section V. Funding below, to the RIVER AUTHORITY in accordance with the Agreement and this Task Order.
7. CITY will nominate representative(s) to be appointed to the selection committee for procurement, as needed.
8. CITY will advise of any additional requirements, which may be attached to CITY Funding for the Project.
9. CITY shall have no responsibility to operate or maintain the Project or Project Site at any time until project completion and acceptance by the CITY.
10. CITY will nominate a representative to be appointed to the selection committee for procurement if needed.
11. CITY will advise of any additional requirements, which may be attached to CITY's operations and maintenance of the Project.
12. CITY will facilitate coordination with the Linear Creeks Advisory Board to serve in an advisory capacity for the Project.
13. CITY will provide RIVER AUTHORITY access to the Project Site at all times for inspections, survey, construction, and other activities related to the completion of the Project, as necessary including a Right of Entry and Temporary Construction Easement for the Project in a form that is mutually agreed upon with RIVER AUTHORITY.
14. CITY will own the constructed and installed improvements and will manage, operate, and maintain the constructed and installed improvements resulting from the Project.

B. RIVER AUTHORITY RESPONSIBILITIES:

1. RIVER AUTHORITY will 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 the engineers, inspectors, contractors, permitting agencies, utilities, and government authorities, to ensure that Project is designed, constructed, equipped, furnished, and completed with new

materials in a good and workmanlike manner and in accordance with the design and construction documents of the Project.

2. RIVER AUTHORITY includes the following in its scope of services for the Project:
 - i. Procurement Plan – The RIVER AUTHORITY anticipates utilizing their Prequalified Professional Services List for procuring design services. The RIVER AUTHORITY anticipates utilizing a request for competitive sealed proposals for procuring construction services necessary for the Project. CITY representative(s) will be appointed to the procurement selection committee for the Project.
 - ii. Design – RIVER AUTHORITY shall provide signed and sealed construction documents and specifications.
 - a. Environmental Review – if applicable RIVER AUTHORITY will provide all necessary environmental permitting services including wetlands, endangered species, NEPA compliance, and geological.
 - b. Archaeological Review - RIVER AUTHORITY will provide cultural resource management, including archaeological surveys, literature searches, records reviews, formal site testing, data recovery excavations, laboratory analysis, and report writing. RIVER AUTHORITY, when constructing in CITY property, shall coordinate Antiquities Permits, Section 106 reviews, archaeological scopes of work, field investigations, and reporting with City Archaeologists. RIVER AUTHORITY shall comply with the Texas Health and Safety Code and Texas Antiquities Code.
 - c. Permitting – The RIVER AUTHORITY shall obtain all necessary permits and permissions for completion of the Project. Construction within public property or right-of-way is subject to review under UDC 35-640.
 - iii. Construction – RIVER AUTHORITY shall provide or contract for construction services, which include procurement, contract management, project management, and construction oversight services.
 - iv. Real Estate Services – The RIVER AUTHORITY shall acquire a temporary Right of Entry (ROE) agreement to perform environmental survey and due diligence services. RIVER AUTHORITY will conduct title work and analyze for lien clearances, order appraisals, negotiate and obtain purchase agreements, and close transaction(s) with an approved title company. CITY understands cost increases and delays to the Project Implementation Schedule may occur should condemnation be needed. Parties will continue to communicate to assess any impacts on the Project budget and schedule regularly as needed.
3. RIVER AUTHORITY will submit all design and construction documents to CITY for review and approval pursuant to the Agreement. Approved design and construction documents will automatically be incorporated into this Task Order as Exhibit B.
4. RIVER AUTHORITY will ensure that all work related to the Project is conducted in compliance with all applicable local, state, and federal guidelines, to include conformance with EPA regulations and the Antiquities Code of Texas.
5. RIVER AUTHORITY or its contractor will be responsible for paying all applicable fees and expenses associated with the Project through final acceptance of the Project by CITY.
6. RIVER AUTHORITY will be responsible and accountable to the CITY to ensure execution of the Project within available funding.

7. RIVER AUTHORITY will hold regular progress meetings and updates as requested by CITY.
8. RIVER AUTHORITY will promptly furnish CITY with copies of all legal notices received by RIVER AUTHORITY affecting the Project, including, without limitation, notices from governmental authorities and notices from any party claiming default in any payment obligation.
9. RIVER AUTHORITY will conduct public coordination and notifications, including outreach to area businesses, residents, and associations, and public meetings as needed.
10. Within thirty (30) days following substantial completion of the Project, RIVER AUTHORITY shall notify CITY in writing in order that CITY may inspect the completed work to determine if construction has substantially been completed in accordance with the plans and specifications for such work.
11. Within one hundred eighty (180) days after final completion of the Project, RIVER AUTHORITY shall deliver to CITY a final construction report which shall set out the total costs of the Project.
12. RIVER AUTHORITY identifies the Engineering Design & Construction Manager or their designee as Project Manager to remain available throughout the Project to attend meetings, if requested by CITY as necessary.
13. RIVER AUTHORITY will adhere to the Texas Prompt Payment Act and require prime contractors adhere to it as well.

IV. Project Implementation Schedule

The Project will begin in the CITY's fiscal year 2023. The projected durations for each phase are shown on Exhibit D.

The Parties agree that the Project Implementation Schedule as set forth above is preliminary and will be updated from time to time. Approved changes to the Project Implementation Schedule shall automatically be incorporated into this Task Order.

V. Compensation

At the time of execution of this Task Order, available funding for the Project consists of CITY funding in the total not-to-exceed amount of \$3,553,550.00 (THREE MILLION FIVE HUNDRED FIFTY-THREE THOUSAND FIVE HUNDRED FIFTY DOLLARS AND 00/100) (the Project FUNDS), as outlined below and in the BUDGET attached as Exhibit C. Should additional funding become available, this Task Order does not preclude the incorporation of such funding to supplement or expand the BUDGET and SOW, as mutually agreed to by the PARTIES.

A. FUNDING:

1. CITY hereby agrees to the BUDGET as provided in Exhibit C and approves a not-to-exceed amount of \$3,553,550.00 (THREE MILLION FIVE HUNDRED FIFTY-THREE THOUSAND FIVE HUNDRED FIFTY DOLLARS AND 00/100) for the Project (the CITY Funding). CITY Funding shall be utilized for only the following expenses: 1) contractual payments to design professionals and other consultants; 2) survey and materials testing costs; 3) utility location services; 4) contractual payments to construction contractors; 5) inspection costs; 6) permit fees; 7) environmental assessments; 8) right of

way acquisition costs and other administrative services to include RIVER AUTHORITY's real estate staff costs (direct and indirect costs); 9) RIVER AUTHORITY's project management costs; 10) administrative costs for SWMBE/SBEDA/HUB ; and 11) other expenditures which may be approved by the CITY (the CITY'S Allowable Expenses). The CITY Funding amount may be modified by mutual consent of the RIVER AUTHORITY and CITY pursuant to the terms of this Task Order and the Agreement.

B. RIVER AUTHORITY ADMINISTRATIVE AND Project MANAGEMENT COSTS:

1. RIVER AUTHORITY will receive six percent (6%) of the approved total Project Fund for administrative and project management costs (Administrative Fee) in addition to SWMBE administrative fees (SWMBE Fee). The SWMBE FEE is the actual cost to SARA 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 SARA for SWMBE tracking. At the time of execution of this Task Order, the RIVER AUTHORITY Administrative Fee is expected to be \$201,144.34 (TWO HUNDRED AND ONE THOUSAND, ONE HUNDRED AND FOURTY FOUR DOLLARS and 34/100). The Administrative Fee shall be based on the greater of the actual total project cost of the Project or the Budgeted cost of the Project.
2. Any change in the percentage of the RIVER AUTHORITY Administrative Fee will be determined by the Executive Committee. This consideration will be used by the RIVER AUTHORITY to cover administrative and project management costs (direct and indirect). RIVER AUTHORITY's project management costs are based upon the current Project Schedule and SOW.

C. PAYMENT

1. In accordance with the Agreement, thirty (30) days before each quarter, RIVER AUTHORITY will prepare and submit to CITY quarterly estimates of Project costs based upon the current Project Schedule and SOW. 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 statements of actual direct and indirect costs incurred for the Project 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 Manager. 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 RIVER AUTHORITY and CITY shall work to amend the Project SOW, extend the Project Schedule, or authorize additional funding to complete the Project. If the Project cannot be completed with the Project Funding available after coordination, the RIVER AUTHORITY and CITY may elect to terminate this Task Order and no Party shall be obligated further under same.
3. In the event that 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

- A. 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. RIVER AUTHORITY shall set types of coverage and limits of liability. At a minimum, when Project is funded by the CITY, the funding entity shall be listed as an Additional Insured on the required insurance policies and such policies shall include a waiver of subrogation in favor of the funding entity. Funding entity may request copies of all required insurance certificates from RIVER AUTHORITY.
- B. If CITY has money or property in the Project, then RIVER AUTHORITY will include the following in all contracts for the Project funded by that entity:
1. CITY shall be named as an additional insured on all insurance policies naming RIVER AUTHORITY as an additional insured and shall be entitled to make claims, to the extent of CITY's interest in the Project, under all insurance coverage. Prior to the commencement of any work by any service provider, consultant, contractor, sub-consultant or subcontractor under this Agreement, RIVER AUTHORITY shall require contractor(s) provide CITY with copies of completed Certificates of Insurance and endorsements or policy materials necessary from any service provider, consultant, contractor, sub-consultant, or subcontractor under this Agreement to document compliance with these requirements. Certificates shall be completed by an agent authorized to bind the named underwriters and their companies to the coverage limits and termination provisions shown thereon. CITY reserves the right to review the insurance requirements during the effective period of this Agreement, any extension or renewal hereof, and to modify insurance coverage and minimum limits when deemed necessary and prudent by all Parties, based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. Any increase required by CITY will require agreement by the CITY to fund the increased costs associated with any modification of insurance coverage in advance. RIVER AUTHORITY shall not authorize any decrease or loss of coverage by a service provider, consultant, contractor, sub-consultant, or subcontractor under this Agreement and inform CITY of any such change in status.
 2. RIVER AUTHORITY shall require all contractors, consultants, and service providers, including, but not limited to, all sub-consultants and subcontractors, to maintain statutory worker's compensation insurance for all of their employees with a waiver of subrogation in favor of RIVER AUTHORITY and CITY.
 3. RIVER AUTHORITY shall require all contractors, consultants, and service providers, including, but not limited to, all sub-consultants and subcontractors, to maintain adequate general liability insurance (which includes premises/operations, independent contractors, products/completed operations, personal injury, contractual liability and if applicable, explosion/collapse/underground property damage) but not less than \$1,000,000/\$2,000,000. RIVER AUTHORITY and CITY shall be named as additional insureds on this policy.
 4. RIVER AUTHORITY shall require all contractors, consultants, and service providers, including, but not limited to, all sub-consultants and subcontractors, to maintain adequate commercial automobile liability insurance covering all owned/leased, rented, borrowed, hired, and non-owned motor vehicles including fuel transports used in connection with the

- work being performed under the Agreement but not less than \$1,000,000 combined single limit; RIVER AUTHORITY and CITY shall be named as additional insureds on this policy.
5. RIVER AUTHORITY shall require all contractors, consultants, and service providers, including, but not limited to, all sub-consultants and subcontractors to be responsible for all damage to their own equipment and/or property.
 6. RIVER AUTHORITY shall require in its contracts for services and construction that the contracting parties, along with all subcontractors be required to indemnify CITY, and RIVER AUTHORITY, their officials, employees, and agents, for claims by third parties, as allowed by law.
 7. RIVER AUTHORITY shall require the contractors and subcontractors to provide all statutorily required performance and payment bonds. On services for which performance bonds are not statutorily required, RIVER AUTHORITY shall determine whether to require performance bonds.
 8. RIVER AUTHORITY shall state in all agreements with third parties that CITY is a third-party beneficiary to those agreements.

VII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) ORDINANCE REQUIREMENTS

VIII. MISCELLANEOUS

- A. Parties may update their respective Project Manager as needed without need for approval from the other parties.
- B. Any dispute resulting from or related to this Task Order will first be evaluated by the Executive Committee.
- C. Termination.
 - i. 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.

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

CITY: City of San Antonio, a Texas Municipal Corporation:

Homer Garcia III
Director, Parks and Recreation Department

Approved as to Form:

Andy Segovia
City Attorney

RIVER AUTHORITY:

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

Derek Boese, JD, PMP
General Manager

Approved as to Form:

Allison Elder
Director of Legal Services

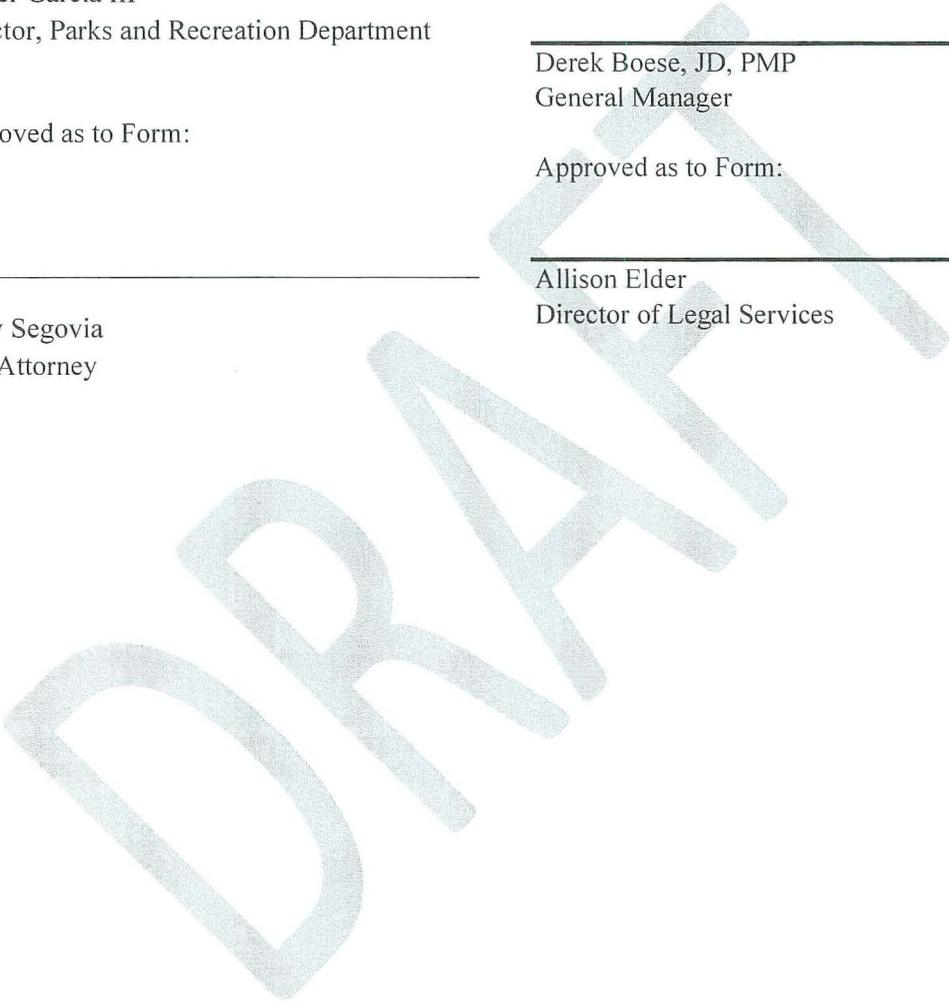


Exhibit A – Project SITE MAP

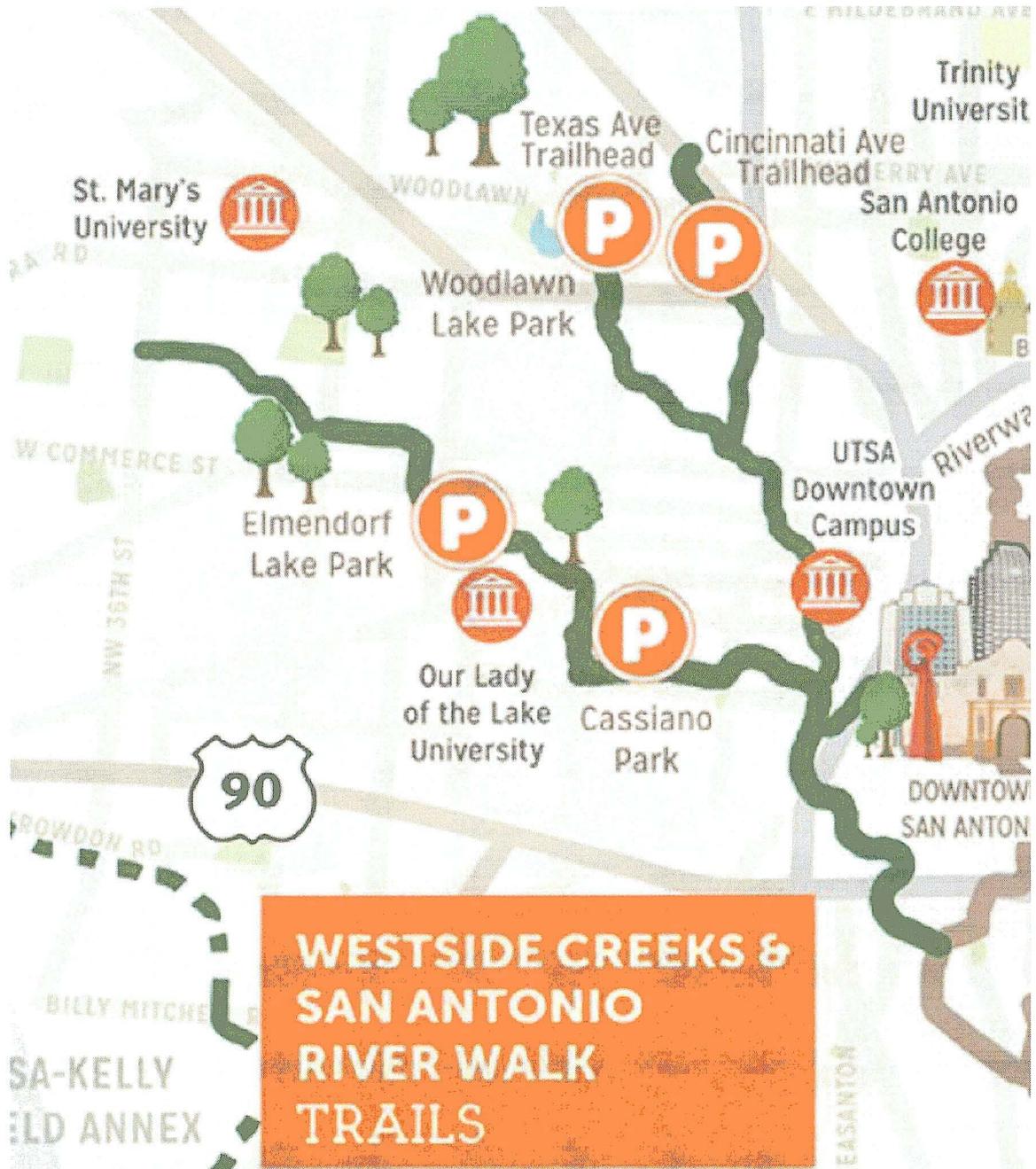


Exhibit B – DESIGN AND CONSTRUCTION DRAWINGS

(to be automatically incorporated)

DRAFT

Exhibit C – PRELIMINARY Project BUDGET

Preliminary Budget

Design/Environmental/Permitting	\$	587,069
ROW Acquisition	\$	79,250
Project Management	\$	201,144
<u>Construction</u>	\$	<u>2,686,087</u>
Total Project Cost	\$	3,553,550

Funding Commitments

City of San Antonio	\$	3,553,550
Total Project Funding	\$	3,553,550

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Exhibit D – PRELIMINARY Project SCHEDULE

West Side Creeks Lighting	FY 2022									FY 2023									FY 2024					
	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Council District 1, 3, 5, 6, 7																								
Procurement																								
Design/Environmental																								
Construction																								
West Side Creeks Lighting	FY 2024									FY 2025									FY 2026					
	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Council District 1, 3, 5, 6, 7																								
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