

MEMORANDUM OF AGREEMENT FOR THE SOUTHERN EDWARDS PLATEAU HABITAT CONSERVATION PLAN

This Memorandum of Agreement for the Southern Edwards Plateau Habitat Conservation Plan (this “*Memorandum of Agreement*”) is entered in to by and between the City of San Antonio, Texas (the “*Administrator*”), as plan administrator on behalf of Bexar County, Texas (the “*County*”) and the City of San Antonio, Texas (the “*City*”), and Texas Department of Transportation (the “*Participant*”), dated effective as of the date indicated on the signature page below. The Administrator and the Participant are sometimes individually referred to herein as a “*Party*” and collectively referred to herein as the “*Parties*.”

BACKGROUND

A. The County and the City (collectively, the “*Permittees*”) are the permittees under federal Endangered Species Act (the “*ESA*”) incidental take permit number TE-48571B dated effective January 18, 2016 (the “*Permit*”).

B. The Permit authorizes incidental take of certain listed species of wildlife occurring in the County, the City, and the City’s extra territorial jurisdiction conditioned upon implementation of the Southern Edwards Plateau Habitat Conservation Plan (the “*Plan*”) and compliance with the terms and conditions of the Permit. As used herein, “incidental take” shall have the meaning provided in the ESA and its regulations.

C. The Administrator administers the Plan, which includes granting to applicants who enter into agreements with the Administrator the right to mitigate through the Plan and the Permit in accordance with the US Fish and Wildlife Service (the “*USFWS*”) section 7 Consultation No. 02ETAU00-2016-F-0214-R. Through mitigation through the Plan and compliance with the terms and conditions of the USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R and this Memorandum of Agreement, the Participant shall complete its obligations in order to receive authority for incidental take of listed species as covered by the USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R and this Memorandum of Agreement.

D. The Participant is the owner of the tract or tracts of land located in Bexar County, Texas, and described on Exhibit “A” attached to this Memorandum of Agreement (the “*Property*”).

E. The Participant has submitted an application to Administrator requesting the right to mitigate for unavoidable impacts to the Covered Species through the Plan and Administrator has agreed to such request subject to the further terms and conditions in the USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R and Exhibit “C”.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Grant of Rights and Obligations of the Participant.** The Administrator hereby grants to the Participant the right to mitigate through the Plan with respect to the species identified on Part I of **Exhibit “B”** attached hereto (the “*Covered Species*”) and the Participant’s activities on the Property described on Part II of **Exhibit “B”** (the “*Allowed Activities*”). The Participant represents and warrants that the Allowed Activities will be carried out in full compliance with the USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R, and all applicable laws and regulations. This Memorandum of Agreement covers only the mitigation requirements and does not authorize any Allowed Activities as described by the USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R. The Participant shall consult with the USFWS before deviating in any material respect from the Allowed Activities as described in the USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R. This Memorandum of Agreement is entered into subject to all terms and conditions of the USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R, and applicable law and regulations, and the Participant assumes and agrees to be bound by all of such terms and conditions.

2. **Mitigation Fee.** The Participant has paid to the Administrator the total sum shown on **Exhibit “C”** attached hereto (the “*Mitigation Fee*”), as the Participant’s fee to mitigate through the Plan with respect to the Participant’s Allowed Activities on the Property as described in the USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R.

3. **Default and Termination.** If either party is in breach or default of any provisions hereof, the non-defaulting Party, as a condition precedent to exercise any of its remedies (including, without limitation, any Party receiving or retaining any sums paid by Participant hereunder), must give the defaulting Party written notice of the default (the “Notice of Default”). The defaulting Party shall have 10 days from receipt of the Notice of Default to cure the default. If the default is timely cured, this Agreement shall continue in full force and effect as if such default had not occurred. If either Party is in default beyond any applicable cure period, then the other Party may terminate this Agreement by delivering written notice to the defaulting Party and seek any damages allowable by law.

4. **Covenants Do Not Run With the Land.** The Participant agrees that the covenants provided herein are not intended to be binding upon any of its heirs, successors, and assigns in interest to the Property.

5. **Venue and Choice of Law.** The obligations and undertakings of each of the Parties and this Memorandum of Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America.

6. **Entirety of Agreement and Modification.** This instrument constitutes the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Memorandum of Agreement are of no force or effect. Any oral representations or modifications concerning this Memorandum of Agreement shall be of no force or effect, excepting a subsequent modification in writing signed by the Party to be charged and expressly approved by an authorized representative of such Party.

7. **Non-Assignment.** The Participant shall not sell, transfer, or assign all or any part of this Memorandum of Agreement to a party.

8. **Successors and Assigns.** This Memorandum of Agreement shall not be binding upon and does not inure to the benefit of the heirs, successors, and assigns of the respective Parties hereto, except as and where authorized pursuant to this Memorandum of Agreement.

9. **Notice.** All notices under this Memorandum of Agreement shall be in writing and shall be deemed to have been properly given, delivered and received (a) as of the date of delivery if personally delivered, or (b) as of the date of deposit in the mail system if sent by United States certified mail, return receipt requested, postage prepaid. For purposes of notices, the addresses of the Parties are as follows

PARTICIPANT:

Texas Department of Transportation (TxDOT)
San Antonio District Engineer
4615 NW Loop 410
San Antonio, TX 78229
Attn: Gina E. Gallegos, P.E.
Email: Gina.Gallegos@txdot.gov
Phone: 1.210.615.5801

ADMINISTRATOR:

Southern Edwards Plateau Habitat Conservation Plan
Plan Administrator
City of San Antonio, Texas
Development Services Department
1901 S. Alamo St.
San Antonio, TX 78204
Attn: Melissa Ramirez
Email: Melissa.Ramirez@sanantonio.gov
Phone: 1.210.207.7038

or to such other address as hereafter shall be designated in writing by the applicable Party and delivered to the other Party.

10. **Term of Memorandum of Agreement.** This Memorandum of Agreement shall terminate upon the expiration or termination of the USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R, unless terminated earlier as provided herein. Termination of this Memorandum of Agreement does not terminate any designated setback and/or avoidance areas within the Property.

11. **Headings.** The headings at the beginning of the various provisions of this Memorandum of Agreement have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Memorandum of Agreement.

12. **Number and Gender Defined.** As used in this Memorandum of Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.

Executed to be effective as of the last day set forth below.

ADMINISTRATOR:**PARTICIPANT:**

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit List:

Exhibit "A" - Description of the Participant's Property, including GPS coordinates/points (if available)

Exhibit "B" - Covered Species and the Participant's Allowed Activities Relative to Memorandum of Agreement

Exhibit "C" - Mitigation Fee

ACKNOWLEDGEMENT

THE STATE OF TEXAS

§

COUNTY OF

§

§

This instrument was acknowledged before me on _____, 20__, by _____, _____ of _____, a _____, on behalf of such _____.

NOTARY PUBLIC, State of Texas

Print Name: _____

My Commission Expires:

ACKNOWLEDGEMENT

THE STATE OF TEXAS

§

COUNTY OF

§

§

This instrument was acknowledged before me on _____, 20____, by
 _____, _____ of _____,
 a _____, on behalf of such _____.

 NOTARY PUBLIC, State of Texas

Print Name: _____

My Commission Expires:

EXHIBIT "A"
TO MEMORANDUM OF AGREEMENT

Description of the Participant's Property, including GPS coordinates/points (if available)

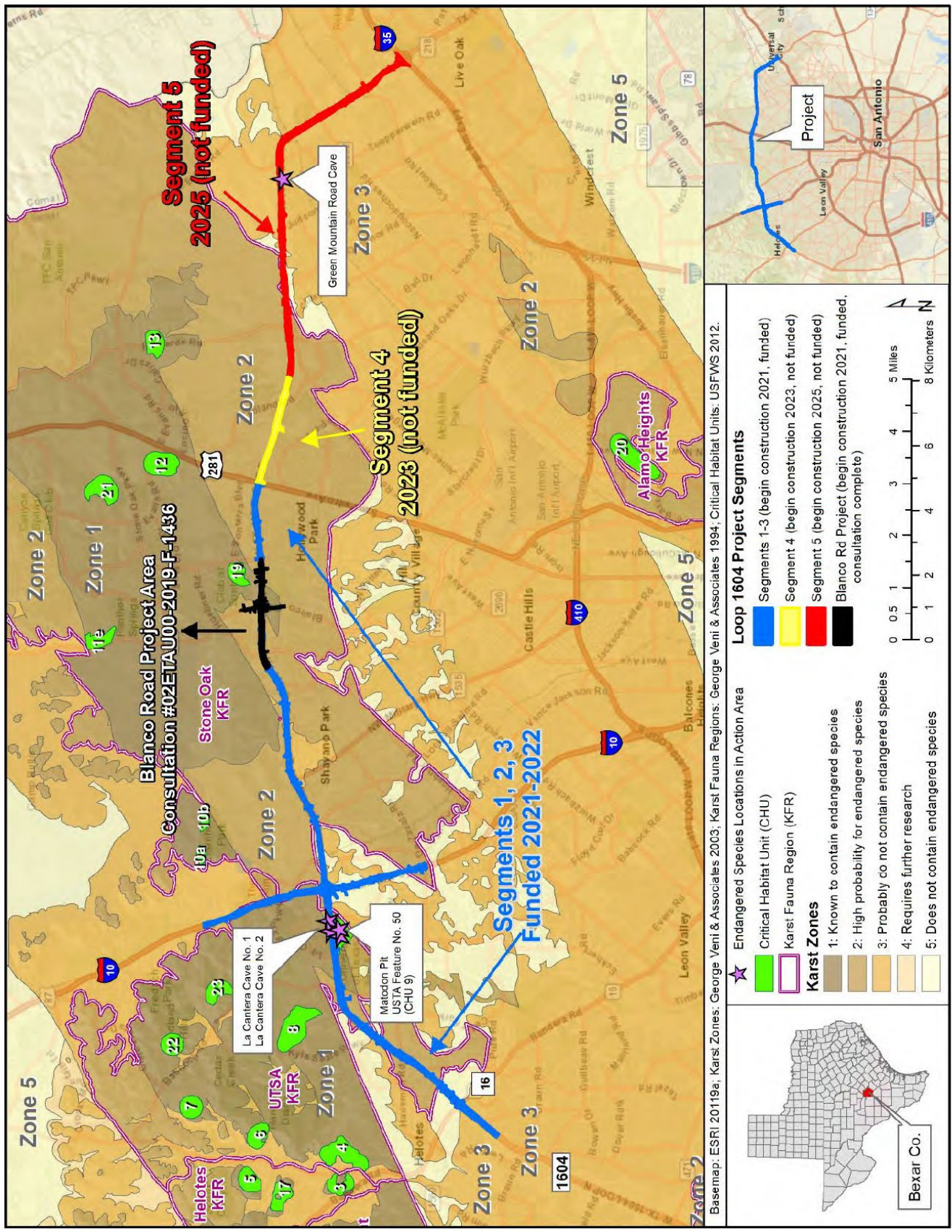
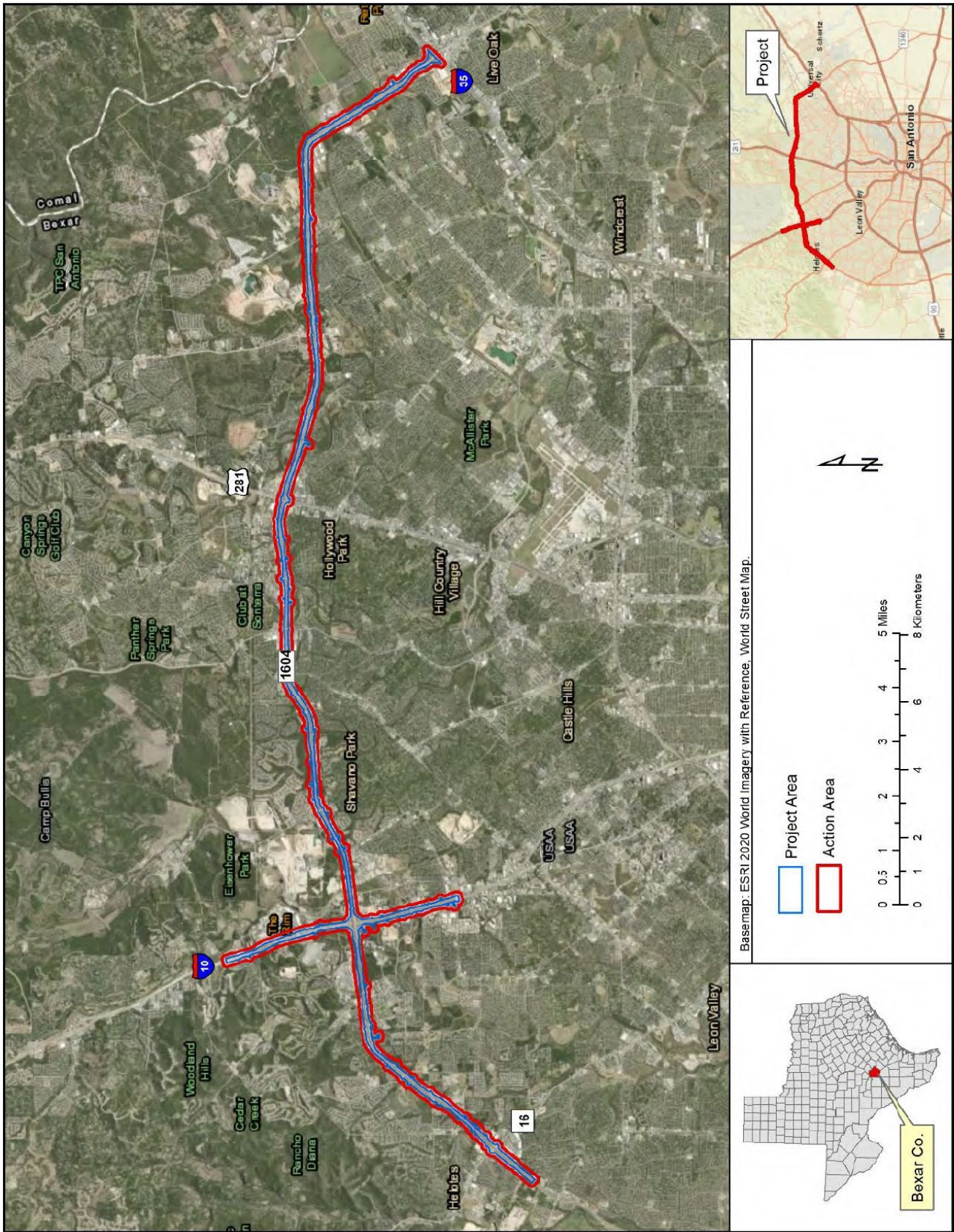


Figure 1-1. Project location of proposed improvements to Loop 1604 from SH 16 to I-35 in San Antonio, Texas.



**EXHIBIT “B”
TO MEMORANDUM OF AGREEMENT**

Part I - Covered Species

Identify which of the following species are covered by this Memorandum of Agreement.

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Golden-cheeked warbler (<i>Setophagia chrysoparia</i>)
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Black-capped vireo (<i>Vireo atricapilla</i>)
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Karst Zones 1 and 2
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Karst Zones 3 and 4
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Braken Bat Cave Meshweaver (<i>Cicurina venii</i>)
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Government Canyon Bat Cave Meshweaver (<i>Cicurina vespera</i>)
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Government Canyon Bat Cave Spider (<i>Neoleptoneta microps</i>)
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Helotes Mold Beetle (<i>Batrisodes venyivi</i>)
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Madla Cave Meshweaver (<i>Cicurina madla</i>)
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<i>Rhadine exilis</i> (no common name)
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<i>Rhadine infernalis</i> (no common name)

Part II - Participant's Allowed Activities

TxDOT proposes to expand Loop 1604 from a four-lane expressway to a 10-lane expressway by adding two general purpose lanes and one high-occupancy vehicle special purpose lane each way. The layout of auxiliary lanes and entrance and exit ramps will be reconfigured. The interchange at I-10 will be modernized by removing the cloverleaf connectors, adding direct connectors, and replacing the signalized frontage road intersections with a continuous flow configuration. The project will include accommodations for bicyclists and pedestrians, water quality protection, and other highway features. All improvements will be located within the existing ROW and easements (project area). The project will not include any toll components. Select vegetation and sediment removal may be required within existing easements throughout the project area. As part of the Project's formal USFWS section 7 Consultation (USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R for unavoidable impacts to *R. exilis*, *R. infernalis*, *C. vespera*, and/or *C. madla*, TxDOT is required to mitigate through the SEP-HCP. Mitigation was based on the anticipated

disturbances within Karst Zone 1, 2, and 3 within the Project Area. TxDOT will secure mitigation for Project impacts through payment into the SEP-HCP for the establishment of a karst fauna preserve.

The TxDOT Loop 1604 Project Area includes 0 acres of golden-cheeked warbler (GCW) habitat within the Project Area and 0 acres of GCW habitat within 300 feet of the Project Area.¹ The TxDOT Loop 1604 Project Area will require a total of 0 GCW conservation credits (direct impacts at 2 credits :1 acre mitigation ratio = 0 conservation credits and indirect impacts at 0.5 credits :1 acre mitigation ratio = 0 conservation credits).

The TxDOT Loop 1604 Project Area does not have any black-capped vireo (BCV) habitat and will not require any BCV conservation credits.

Additional information regarding the TxDOT Loop 1604 Project Area and associated effects to Karst Zones 1, 2, and 3 are included within the USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R documents.

¹ The Participant provided a copy of the USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R, which determined that that the proposed action was not likely to adversely affect the Golden-cheeked Warbler (GCWA) (*Setophaga chrysoparia*). The Service concurred that the proposed project is not likely to adversely affect the GCWA. Per the Biological Opinion, the Participant will not be required to mitigate for the GCWA or submit any other documentation to the Permittees as part of the requirements for mitigating for karst impacts through the SEP-HCP.

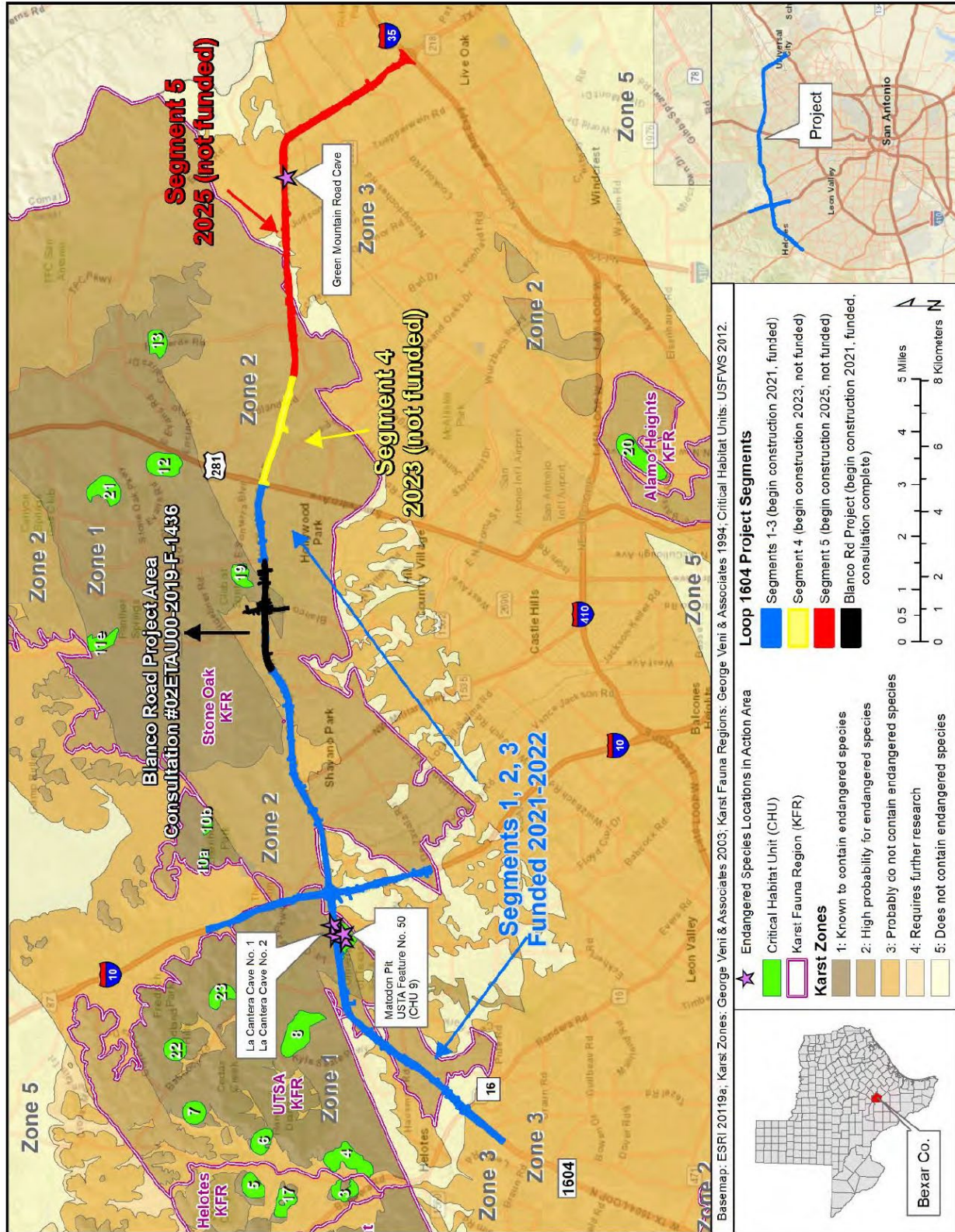


Figure 1-1. Project location of proposed improvements to Loop 1604 from SH 16 to I-35 in San Antonio, Texas.

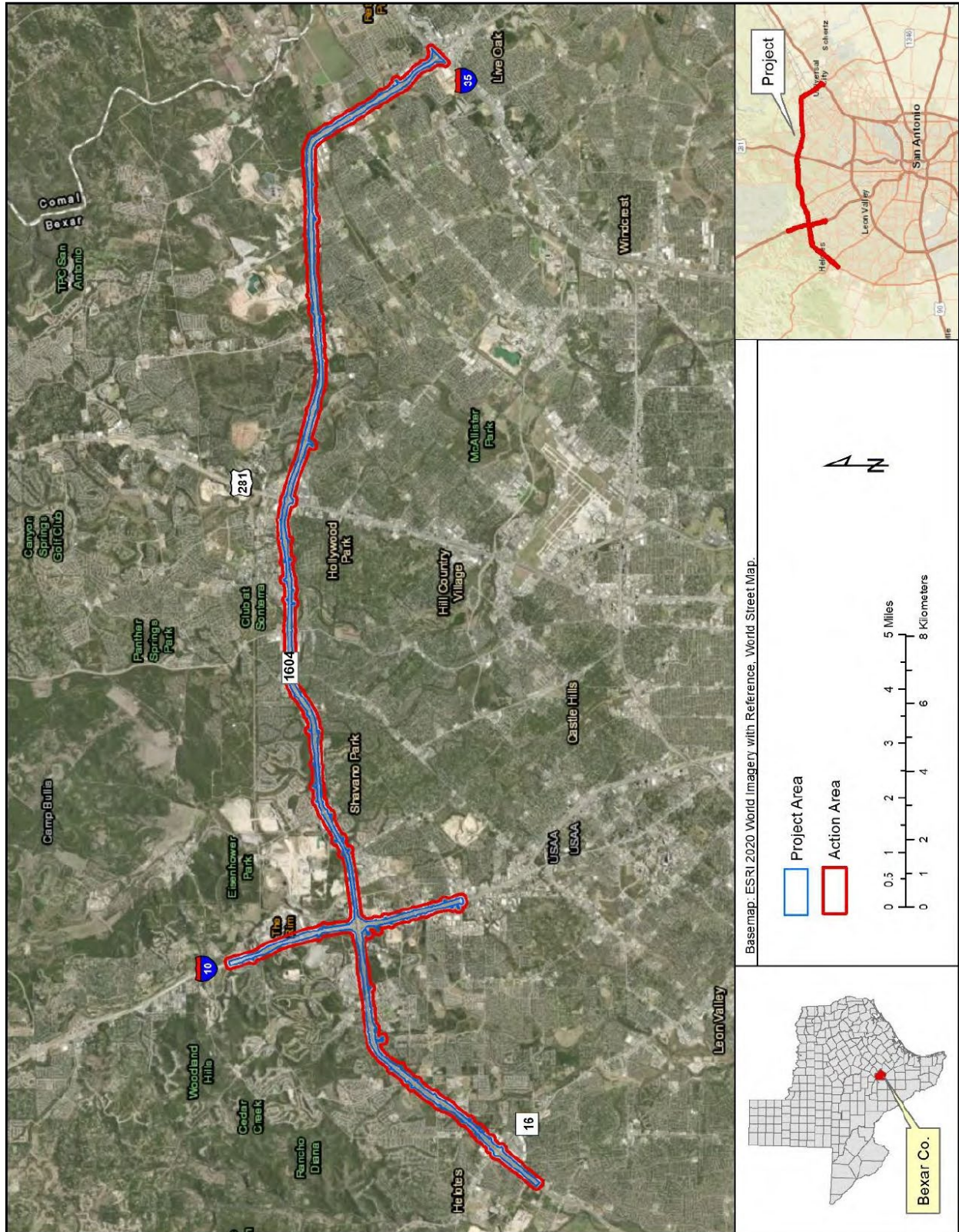


Figure 2-1. The action area for Loop 1604 from SH 16 to I-35 includes a 345-foot radius around the project area.

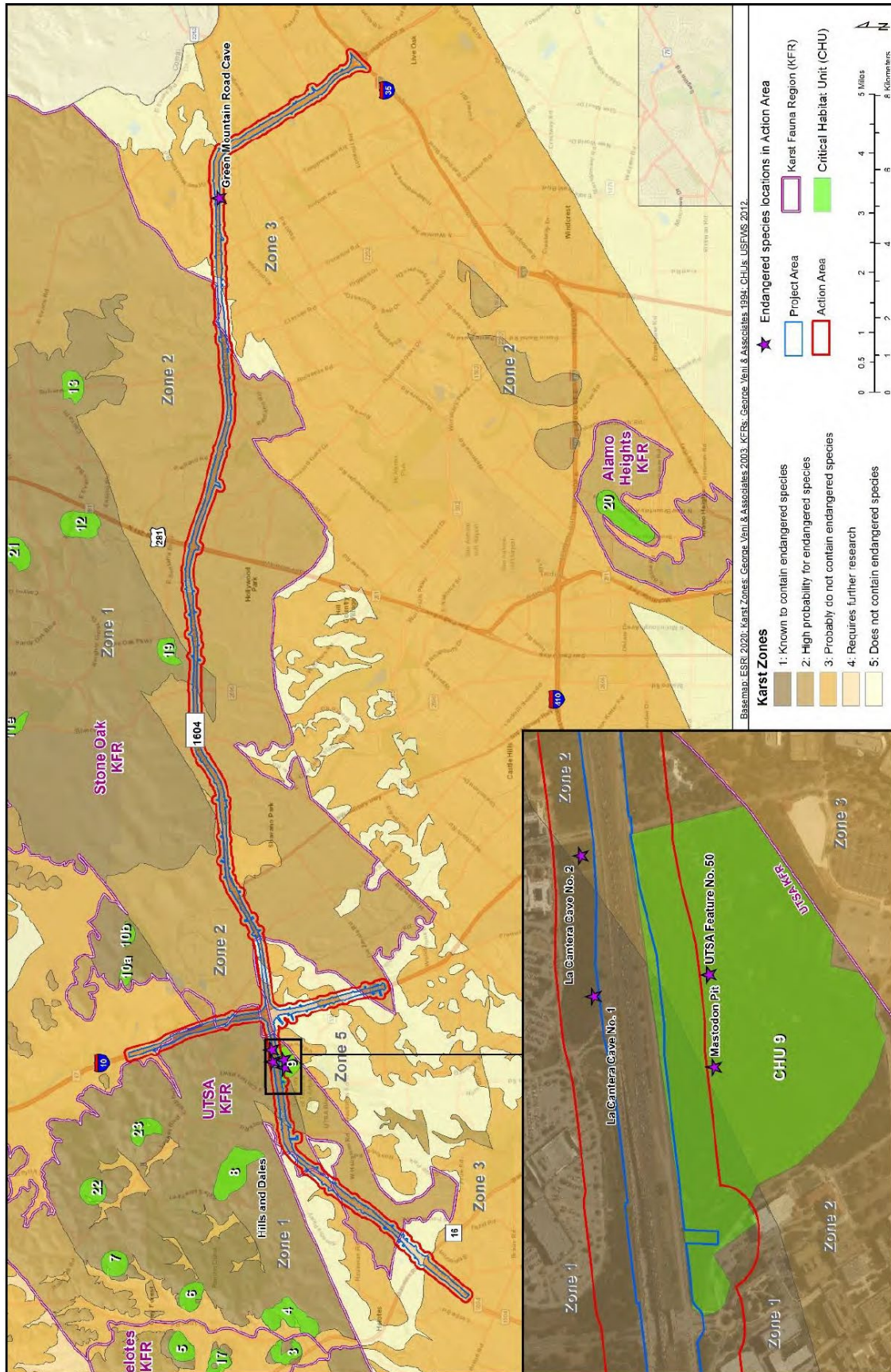


Figure 3-1. The Loop 1604 project area and action area include areas mapped as karst zones 1, 2, 3, and 5.

**EXHIBIT “C”
TO MEMORANDUM OF AGREEMENT**

Mitigation Fee

Participant’s mitigation requirements, as specified in USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R, includes securing mitigation through the Southern Edwards Plateau Habitat Conservation Plan. Mitigation through the Southern Edwards Plateau Habitat Conservation Plan is subject to the terms and conditions of the Memorandum of Agreement and the USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R.

The Participant will provide funding to the SEP-HCP and the SEP-HCP will acquire a karst preserve for use by the Participant to satisfy their mitigation obligations as specified in USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R. Mitigation fees paid by the Participant includes the costs for preserve establishment (e.g., preserve identification, land acquisition, KFA establishment, etc...), long-term management and monitoring, and endowments as required by the SEP-HCP ITP.

The Parties agree that the Permit Holders are responsible for carrying out all long-term management and monitoring activities in accordance with the SEP-HCP ITP.

Furthermore, the Parties agree that any additional acreage within the karst preserve to be established above and beyond the **40 acres** assigned to the Participant for fulfillment of the Participants mitigation obligations as specified in USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R are hereby assigned to the Permit Holders for their use and discretionary allocation to future mitigation needs of the Southern Edwards Plateau Habitat Conservation Plan.

Based on the following determination, Texas Department of Transportation (TxDOT) - (application # SEP _____), paid a mitigation fee of \$_____ to the Permit Holders on the _____ day of _____, 20__, for the establishment and assignment of **40 acres** of the karst preserve to be established whereby satisfying the Participants mitigation requirements as specified in USFWS section 7 Consultation No. 02ETAU00-2016-F-0214-R.

	Acres / Features / Linear Feet	Mitigation Cost Determination Form (Acres / Feature / Linear Foot)	Mitigation Fee	Total Fee
PRESERVE ESTABLISHMENT				
Preserve Identification ¹	40	1:1	\$4,687.50/acre	\$187,500.00
Land Acquisition	40	1:1	\$140,625.00/acre	\$5,625,000.00
KFA Establishment	40	1:1	\$3,750.00/acre	\$150,000.00
Preserve Establishment Subtotal				\$5,962,500.00
MANAGEMENT & MONITORING²				
Annual Biomonitoring & Reporting	2	1:30	\$10,000.00/feature	\$600,000.00
Annual Cricket Exit Counts & Reporting	2	1:30	\$10,000.00/feature	\$600,000.00
Annual RIFA Inspections, Treatment, & Reporting	2	1:30	\$6,000.00/feature	\$360,000.00
Quarterly Inspections & Reporting	2	1:30	\$7,500.00/feature	\$450,000.00
Cave Gating & Maintenance	2	1:2	\$15,000.00/feature	\$60,000.00
High-Security Fencing & Maintenance	1,500	1:2	\$40.00/linear foot	\$120,000.00
Preserve Boundary Fencing & Maintenance	8,000	1:2	\$20.00/linear foot	\$320,000.00
Management & Monitoring Subtotal				\$2,510,000.00
ENDOWMENT FUNDS				
Karst Preserve Long-Term Management & Monitoring Non-Wasting Endowment	40	1:1	\$14,062.50/acre	\$562,500.00
Karst Preserve Contingency Endowment	40	1:1	\$3,750.00/acre	\$150,000.00
Endowment Funds Subtotal				\$712,500.00
Subtotal (establishment + management and monitoring + endowment funds)				\$9,185,000.00
Plan Administration Fee (establishment + management and monitoring + endowment funds) - 10% total fee:				\$918,500.00
TOTAL				\$10,103,500.00

1 – Preserve identification costs include, but are not limited to, the time and materials associated with: (1) identifying parcels with a high probability of having listed species, (2) contacting landowners of parcels identified, (3) surveying for karst features on parcels identified with cooperative landowners, (4) excavating and surveying for species in features documented, (5) coordination with USFWS and other agencies, as applicable, on eligibility for establishment as a karst fauna preserve.

2 – Unless otherwise specified, per year costs are multiplied out over 30 years (the time in which the management and monitoring endowment fund would take over the annual costs for management and monitoring activities).