

AN ORDINANCE

2012-06-07-0399

AUTHORIZING AN INTERLOCAL AGREEMENT WITH THE SAN ANTONIO RIVER AUTHORITY (SARA) FOR PROJECT MANAGEMENT OF PARK AND STORMWATER IMPROVEMENTS AT ELMENDORF LAKE PARK A 2012 BOND PROJECT AND HIKE AND BIKE TRAIL IMPROVEMENTS IN ASSOCIATION WITH THE WESTSIDE CREEKS RESTORATION PROJECT FOR A TOTAL CONTRACT COST NOT TO EXCEED \$15,116,980.00 LOCATED IN CITY COUNCIL DISTRICTS 1, 3, 5 AND 7.

* * * * *

WHEREAS, the City is authorized to collect up to \$45 million in sales tax revenue under the Parks Development and Expansion Venue Project Proposition 2, which was approved by voters on November 2, 2010; and

WHEREAS, a total of \$10,116,980.00 of this funding was approved in the FY 2012-2017 Capital Improvements Project (CIP) Budget to be expended for the Westside Creeks hike and bike trails; and

WHEREAS, allocation of this funding to the Westside Creeks hike and bike trail projects was also supported through resolutions approved by the Parks and Recreation Board and Creekways Advisory Board in 2011; and

WHEREAS, the City's Elmendorf Lake Park, a 30-acre park located on the near west side, will benefit from the City of San Antonio Regional Stormwater Revenue funding and the City's 2012-2017 Bond Program which was approved by voters on May 12, 2012; and

WHEREAS, a Parks, Recreation & Open Space Improvements project will implement general park improvements and a Drainage & Flood Control project will focus on the reduction of erosion and improvement of lake water quality; and

WHEREAS, as indicated in the Bond information guide, both projects are intended to complement the Westside Creeks Restoration Project; and

WHEREAS, the San Antonio River Authority's (SARA) Westside Creeks Restoration Project is focused on environmental restoration and public enhancement of the Alazan, Apache, Martinez and San Pedro creeks, which are tributaries to the San Antonio River and known as the Westside Creeks; and

WHEREAS, these creeks were channelized as part of a federal flood control project in the 1950s; and

WHEREAS, under the direction and funding of SARA, the Westside Creeks Restoration Oversight Committee (WCROC) has initiated the Westside Creeks Restoration Project plan with goals including environmental enhancements, flood control improvements, bank stabilization, erosion control, water quality enhancement, and creating and retaining of habitat for fish and area wildlife; and

WHEREAS, the goals also include development of recreational amenities specifically including hike and bike trails; and

WHEREAS, under the terms of the proposed Interlocal Agreement between the City and SARA, SARA will serve as the project manager for the development of the hike and bike trails to complement the Westside Creeks Restoration Project and the planned improvements to the Elmendorf Lake Park; and

WHEREAS, utilizing the 2012 Bond funding, Stormwater Revenue funding and 2010 Sales Tax Venue funding, SARA will manage the design and construction of these projects and will deduct a management fee of 6% of project costs from within the total contract amount not to exceed \$15,116,980.00; and

WHEREAS, SARA's involvement and leadership will ensure that both the hike and bike trail improvements and the Elmendorf Lake Park improvements are consistent with the overall Westside Creeks Restoration Project plans and timelines; and

WHEREAS, under this Interlocal Agreement, SARA will continue to coordinate these projects in the context of the larger Westside Creeks Restoration Project with community stakeholders, specifically the Westside Creeks Restoration Oversight Committee (WCROC); and

WHEREAS, the WCROC is comprised of two co-chairs and community leaders representing twenty stakeholder organizations and is responsible for providing community input for this project;
NOW THEREFORE:

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

SECTION 1. The City Manager or her designee or the Director of the Parks and Recreation Department or his designee, is hereby authorized to execute a Interlocal Agreement with the San Antonio River Authority (SARA) for project management of park and stormwater improvements at Elmendorf Lake Park a 2012 Bond Project and hike and bike trail improvements in association with the Westside Creeks Restoration Project for a total contract cost not to exceed \$15,116,980.00 located in City Council Districts 1, 3, 5 and 7. A copy of the agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Payment is authorized to be encumbered and made payable to the San Antonio River Authority for management, land acquisitions, design and construction in the amount not to

exceed \$10,116,980.00 in SAP Fund 40005000, Park Improvements from the SAP WBS Elements as follows:

SAP Project Definition	Project Name	Project Amount
26-00598	ALAZAN CREEK (WOODLAWN LAKE TO	\$614,000
26-00599	APACHE CREEK (COMMERCE ST. TO	\$578,400
26-00601	APACHE CREEK (19th St. to San	\$1,140,000
26-00602	APACHE CREEK/SAN PEDRO CREEK S	\$3,232,000
26-00608	MARTINEZ CREEK (FREDERICKSBURG	\$720,980
26-00617	WESTSIDE CREEKS UNDESIGNATED T	\$3,831,600
		\$10,116,980.00

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 3. Payment is authorized to be encumbered and made payable to the San Antonio River Authority for management, land acquisitions, design and construction in the amount not to exceed \$1,500,000.00 in SAP Fund 40099000. Other Capital Projects from the SAP WBS Element as follows:

SAP Project Definition	Project Name	Project Amount
23-01301	Elmendorf Lake Improvements	\$1,500,000.00

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. Payment is authorized to be encumbered and made payable to the San Antonio River Authority for management, land acquisitions, design and construction in the amount not to exceed \$3,750,000.00 in SAP Fund 45099000, General Obligation Capital Projects, from the SAP WBS Element as follows:

SAP Project Definition	Project Name	Project Amount
40-0XXXX	ELMENDORF PARK	\$2,250,000.00
40-0XXXX	ELMENDORF LAKE AREA	\$1,500,000.00
		\$3,750,000.00

Payments for services are contingent upon the availability of funds and the sale of future City of San Antonio, General Obligation Bonds in accordance with the adopted capital budget. 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 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance 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 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 7th day of June, 2012.



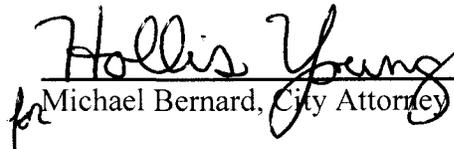
M A Y O R
Julián Castro

ATTEST:

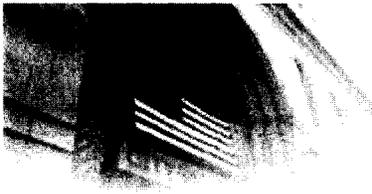


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



for Michael Bernard, City Attorney



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 6

Name:	6						
Date:	06/07/2012						
Time:	09:57:27 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an Interlocal Agreement with the San Antonio River Authority for project management of 2010 Sales Tax Venue – Greenway Project for hike and bike trail improvements in association with the Westside Creeks Restoration Project located in City Council Districts 1, 3, 5 and 7, as well as the 2012 Bond Project and 2012 Stormwater Regional Facilities Project for park and stormwater improvements in the Elmendorf Lake Park area located in City Council District 5, for a total contract cost not to exceed \$15,116,980.00 to be leveraged with a projected \$7,000,000.00 in Bexar County Flood Control funding to enhance water quality of the lake and flood control enhancements of the associated tributary. [Ed Belmares, Assistant City Manager; Xavier Urrutia, Director, Parks & Recreation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x			x	
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				x
Carlton Soules	District 10		x				

**INTERLOCAL AGREEMENT BETWEEN
CITY OF SAN ANTONIO, TEXAS, AND THE
SAN ANTONIO RIVER AUTHORITY TO
COMPLETE ELMENDORF LAKE PARK
IMPROVEMENTS AND LINEAR CREEWAY
TRAIL PROJECTS ADJACENT TO THE
WESTSIDE CREEKS**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Interlocal Agreement (“Agreement”) is entered into by and between City of San Antonio, a Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. _____, dated _____, 2012 (hereinafter referred to as “**CITY**”), 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 committed significant funding toward the improvement and restoration of the San Antonio River through the San Antonio River Improvement Project managed by the **RIVER AUTHORITY**; and

WHEREAS CITY has made significant investment in providing access to our local rivers and creeks through the construction of parks and linear hike and bike trails; and

WHEREAS, RIVER AUTHORITY in cooperation with **CITY** and involving extensive stakeholder participation completed the Westside Creeks Restoration Project Conceptual Plan that identified a community-based vision for Westside Creeks, which has rich historical and environmental significance to the founding of the city and is today a concrete drainage channel through the heart of the governmental center of downtown; and

WHEREAS, RIVER AUTHORITY is responsible for the implementation and funding of the Westside Creeks Restoration Project, to include portions of the Alazan, Apache, Martinez and San Pedro Creeks; and

WHEREAS, the PARTIES both desire the development of parks and linear hike and bike trails to complement the **RIVER AUTHORITY** Westside Creeks Restoration Project; and

WHEREAS, CITY has authority to 1) improve Elmendorf Lake Park using Stormwater Revenue Funds, 2012 Bond funds from the Parks, Recreation and Open Space Proposition and 2012 Bond funds from the Drainage and Flood Control Proposition and to 2) develop Linear Creekway Parks using revenue from a 1/8 cent sales tax proposition (Proposition 2) approved by voters on November 2, 2010; and

WHEREAS \$2,250,000 of the 2012 Bond funds has been approved for Elmendorf Lake Park improvements project in the Parks, Recreation and Open Space Proposition by the San Antonio City Council and the voters; and

WHEREAS \$1,500,000 of the 2012 Bond funds has been approved for the Elmendorf Lake Area in the Drainage and Flood Control Proposition by the San Antonio City Council and voters; and

WHEREAS \$1,500,000 from the **CITY's** Regional Storm Water Fund has been approved for Elmendorf Lake area improvements; and

WHEREAS \$10,116,980 of the voter-approved Proposition 2 funding has been recommended for Westside Creeks linear hike and bike trail development, including at Elmendorf Lake Park by the Linear Creekway Parks Advisory Board (LCPAB), the San Antonio Parks Board and the Westside Creeks Restoration Oversight Committee

(WCROC) and corresponding projects have been approved by the San Antonio City Council for funding under the FY12-17 City of San Antonio CIP budget; and

WHEREAS, the PARTIES wish to enter into an agreement whereby the **RIVER AUTHORITY** will manage and implement the design and construction of Elmendorf Lake Park improvements and linear hike and bike trail projects adjacent to the Westside Creeks for **CITY**.

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

This Agreement outlines the roles and responsibilities of the PARTIES with regard to the land acquisitions, design, and construction of the PROJECTS, as defined in Section II below, (including project management and construction management), according to the terms and conditions detailed below.

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 PROJECTS.

III. SCOPE OF THE PROJECT

The Scope of Work includes the following:

1) The Bond Project (“BOND PROJECT”), which includes work for the Elmendorf Lake area funded through 2012 Bond funds (\$2.25M for Elmendorf Park improvements and \$1.5M for Elmendorf Lake Area Drainage and Flood Control work) and \$1.5M from the **CITY**’s Regional Storm Water Fund for Elmendorf Lake Area

improvements to be used for allowable expenses, and 2) the Proposition 2 Project (“PROPOSITION 2 PROJECT”), which includes work funded through the voter-approved Proposition 2 (\$10,116,980 for linear hike and bike trails adjacent to the Westside Creeks Restoration Project, including in Elmendorf Lake Park), which are collectively referred to as PROJECTS. The PROJECTS will design and construct Elmendorf Lake Park improvements and drainage and flood control improvements, linear hike and bike trails, and other related improvements along the Westside Creeks. It is the intent of the PARTIES that the PROJECTS will result in the construction of park improvements, drainage and flood control improvements and paved hike and bike trails adjacent to sections of the Alazan, Apache, Martinez and San Pedro Creeks.

IV. ROLES AND RESPONSIBILITIES FOR THE PROJECT

A. EXECUTIVE COMMITTEE:

An Executive Committee comprised of the **CITY** Parks and Recreation Director, **CITY** Capital Improvements Management Services Department Director and **CITY** Public Works Director or their designee(s), and **RIVER AUTHORITY** General Manager, or designee(s), will provide executive management oversight of the PROJECTS. The Executive Committee will meet approximately monthly and communicate in meetings, e-mails and/or telephone calls more frequently as the PARTIES deem appropriate. **RIVER AUTHORITY** Project Manager(s) and **RIVER AUTHORITY** Project Engineer(s) will attend all Executive Committee meetings. **RIVER AUTHORITY** will schedule, coordinate, draft and distribute the agenda, with guidance from **CITY** and conduct the Executive Committee meetings. The Executive Committee meetings will include project updates by the **RIVER AUTHORITY** General Manager, or designee(s), and items for discussion, direction and approval from **CITY**.

B. CITY'S RESPONSIBILITIES:

- (1) **CITY** provides oversight and approval on the **PROJECTS** and delivers timely direction to **RIVER AUTHORITY** on decisions requiring action by **CITY** relating to project budgets, schedules, designs, construction and implementation.
- (2) **CITY** identifies the Parks and Recreation Director, or designee(s), Capital Improvement Management Services (CIMS) Director, or designee(s), and Public Works Director, or designee(s) as project contact(s) for the **PROJECTS**, with the Parks and Recreation Director as the primary project contact.
- (3) **CITY** authorizes the WCROC to provide citizen oversight in an advisory capacity to SARA staff on the development of the **PROJECTS**.
- (4) **CITY** shall provide timely review and approval of design, construction documents, and budgets for the **PROJECTS** and any necessary associated land acquisitions. The **CITY's** Parks and Recreation Director or designee(s), **CITY's** CIMS Director or designee(s) and **CITY's** Public Works Director or designee(s) must review and approve changes in scope and/or modifications to design of **PROJECTS**.
- (5) **CITY** shall participate in project meetings as needed.
- (6) **CITY** will fund the costs of **PROJECTS** in accordance with the terms and conditions of Article VI.
- (7) **CITY** will adhere to all applicable law relative to the **PROJECTS** including **CITY** ordinances relating to design and construction within the River Improvement Overlay.

- (8) **CITY** shall operate and maintain improvements under this agreement located on **CITY**-owned land.

C. RIVER AUTHORITY'S RESPONSIBILITIES:

- (1) **RIVER AUTHORITY** serves as project manager and administrator of the **PROJECTS** and is responsible and accountable to the **CITY** to ensure quality design, construction and execution of the **PROJECTS** within available funding to support the **PROJECTS**.
- (2) **RIVER AUTHORITY** will contract and manage all professional services and construction services on the **PROJECTS**. All solicitation documents will be submitted to **CITY** for review and approval.
- (3) **RIVER AUTHORITY** shall submit all design and construction documents to **CITY** for review and approval prior to implementation.
- (4) **RIVER AUTHORITY** shall manage and deliver the **PROJECTS** within authorized funding levels and within **CITY**'s total funding commitment set out in this Agreement.
- (5) The design and construction documents will be prepared to allow value engineering of the **PROJECTS** and shall be prepared to allow for additive alternatives based upon funds available for the **PROJECTS**.
- (6) **RIVER AUTHORITY** shall provide not less than monthly status reports on the **PROJECTS** to the Executive Committee throughout the duration of the **PROJECTS**. The format for the monthly status reports shall be in paper and electronic (.pdf) format and will also be entered into **CITY**'s **PRIME Link** project management system.

- (7) **RIVER AUTHORITY** shall allow approved **CITY** representatives access to the PROJECTS during construction to ensure conformance of construction with the approved plans and specifications, permits and easements.
- (8) **RIVER AUTHORITY** shall provide presentations and reports on PROJECTS as requested by **CITY**.
- (9) **RIVER AUTHORITY** shall acquire all necessary rights-of-way and easements for the PROJECTS, subject to approval of **CITY**. **PARTIES** will determine which entity will own the rights-of-way and easements after acquisition.
- (10) **RIVER AUTHORITY** shall serve as local sponsor with the USACE. **RIVER AUTHORITY** shall coordinate all aspects of the implementation of the PROJECTS involving the United States Army Corps of Engineers.
- (11) **RIVER AUTHORITY** shall acquire all required local, state and federal permits for the 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 to effective execution of the PROJECT.
- (13) **RIVER AUTHORITY** shall coordinate appropriate involvement of the WCROC and other stakeholders to facilitate the effective implementation of the PROJECTS. **RIVER AUTHORITY** shall coordinate all meetings of the WCROC and other meetings as appropriate in a coordinated effort with **CITY**'s

project contact(s), or designee(s), in advance of the date, time, and location for all meetings.

(14) **RIVER AUTHORITY** shall adhere to all applicable laws relative to the PROJECT 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 **CITY**.

V. PROJECT SCHEDULE

Project Implementation Schedules (“SCHEDULES”) for the PROJECTS will be developed by the **RIVER AUTHORITY** within ninety (90) calendar days following execution of this Agreement and submitted to **CITY** for its review and approval.

RIVER AUTHORITY may recommend modifications to the SCHEDULES, which will be subject to the review and approval of **CITY**. Regular SCHEDULE updates identifying progress and changes will be submitted to the **CITY** throughout the duration of the PROJECTS.

VI. FUNDING

At the time of execution of this Interlocal Agreement, available funding consists of **CITY FUNDING** and **RIVER AUTHORITY FUNDING** as outlined below. Should additional funding become available, this agreement does not preclude the incorporation and use of such funding to supplement or expand PROJECT budgets and scopes of work, as mutually agreed to by PARTIES, with such additional funding to be incorporated into this Interlocal Agreement by **CITY**, through its Parks and Recreation Director.

A. CITY FUNDING

CITY has established PROJECT funding of \$5,000,000 for the BOND PROJECT and \$10,116,980 for the PROPOSITION 2 PROJECT (“CITY FUNDING”) to be utilized for all costs associated with the design and construction of the PROJECTS, including **RIVER AUTHORITY** project management fees. Allowable expenses from the CITY FUNDING are: a) contractual payments to design professionals, b) permit fees, c) contractual payments to construction contractors, d) fees paid to **RIVER AUTHORITY** to manage the PROJECTS, e) environmental evaluation and remediation costs, f) right of way acquisition costs, g) other expenditures which may be approved by **CITY**.

Within ninety (90) calendar days following execution of the Agreement, **RIVER AUTHORITY** will develop budgets for the PROJECTS, based on the CITY FUNDING, to incorporate all allowable costs (“BUDGETS”). The BUDGETS will be subject to the **CITY**’s review and approval.

The PARTIES acknowledge that the availability of the CITY FUNDING is dependent on the receipt of bond and sales tax revenue by **CITY**. The PARTIES will work together to plan and implement the PROJECTS based on the SCHEDULE and **CITY** reserves the right to modify the SCHEDULE as needed based on actual and/or projected bond and sales tax revenue.

RIVER AUTHORITY may recommend modifications to the BUDGETS, which will be subject to **CITY**’s review and approval; however, such modifications must remain within the limits of the CITY FUNDING.

In each **CITY** fiscal year, **CITY** staff will request that the City Council appropriate a portion of the **CITY FUNDING** in the **CITY**'s Capital Budget, based on the **SCHEDULES** and **BUDGETS**.

RIVER AUTHORITY will receive **6%** of the **BUDGETS** in consideration of its project management responsibilities (“**MANAGEMENT FEE**”) and will be utilized by the **RIVER AUTHORITY** to cover its administrative and project management costs as well as costs associated with stakeholder/public input activities.

B RIVER AUTHORITY FUNDING:

- (1) **RIVER AUTHORITY** has contributed \$1,500,000 toward the completion of the Westside Creeks Restoration Project Conceptual Plan.
- (2) **RIVER AUTHORITY** has contributed \$800,000 toward a San Antonio River Watershed Master Plan, including San Pedro Creek and \$5,659,807 toward the completion of updated Digital Flood Insurance Rate Maps and associated hydraulic and hydrologic models for the San Antonio River Watershed, including San Pedro Creek, and will continue to commit funding to keep the flood plain maps and models updated. Data and information from these two projects will be used during the design phase of the **PROJECT**.

VII. PAYMENT

PAYMENT FROM CITY:

RIVER AUTHORITY will prepare and submit to **CITY** initial estimates of necessary and reasonable funds “the **ADVANCE**” needed for 90 days of cash flow at the beginning of the Design and Construction Phases, respectively for each **PROJECT**. These initial estimates will reflect approved **PROJECT** costs based on **PROJECT**

SCHEDULES and BUDGETS. Upon review and approval by **CITY**, **CITY** will provide a funds advance for each PROJECT to **RIVER AUTHORITY** equal to said estimates and **RIVER AUTHORITY** will place all ADVANCE funds in an interest-bearing bank account and interest earned will be used for the PROJECTS. **RIVER AUTHORITY** will use COSA PRIME Link to invoice **CITY** for actual expenditures (including the MANAGEMENT FEE in proportion to the invoice) on a monthly basis for each PROJECT.

Each monthly invoice shall include copies of paid invoices and evidence of **RIVER AUTHORITY** payment. **CITY** will make monthly payments to **RIVER AUTHORITY** upon approval of the monthly invoice.

Upon completion of the Design Phase (100% construction documents) for each PROJECT, **CITY** will work with **RIVER AUTHORITY** to reconcile the net ADVANCE. Any remaining ADVANCE funds will be deducted from the estimates needed for the Construction Phase ADVANCE for each PROJECT. Ninety (90) days prior to the final inspection for the Construction Phase of each PROJECT, **CITY** will work with **RIVER AUTHORITY** to reconcile the net ADVANCE and use up the ADVANCE through final completion and closeout of the PROJECTS. **RIVER AUTHORITY** shall continue to submit monthly invoices through the end of the PROJECTS even if expenses are paid from the ADVANCE.

CITY will only fund up to the approved amount for the PROJECTS as defined in Article VI. Any ADVANCE (including interest earned on the ADVANCE and not expended on the PROJECTS) held by **RIVER AUTHORITY** upon project completion and close-out shall be returned to **CITY**.

VIII. ENVIRONMENTAL MATTERS

CITY 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 PROJECT. In that event, **RIVER AUTHORITY**, subject to the prior approval of **CITY**, 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 **CITY** to review and comment on any required environmental remediation and **CITY** approval will be required for environmental remediation on **CITY**-owned land. In the event **RIVER AUTHORITY** identifies a potential environmental remediation on **RIVER AUTHORITY**-owned land in connection with the PROJECTS, **CITY** and **RIVER AUTHORITY** will work cooperatively to determine an appropriate course of action and any use of CITY FUNDING for such remediation is subject to the approval of **CITY**. If the cost of projected remediation causes the projected cost of the PROJECTS to exceed the amounts authorized by project BUDGETS, **RIVER AUTHORITY** shall engage **CITY**'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 PROJECTS within the project BUDGETS, the PARTIES may agree to reduce the scope of or delay the PROJECTS. **CITY** 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.

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 PROJECTS.

IX. USE OF LAND

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

X. AUDIT

Each PARTY reserves the right to conduct, or cause to be conducted an audit of all funds received or disbursed under this Agreement 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 all books, records, documents and reports with respect to matters covered by this Agreement.

XI. SBEDA COMPLIANCE

The City of San Antonio (CITY), through City Ordinance No. 2010-06-17-0531, and as amended, has adopted and implemented a Small Business Economic Development Advocacy ("SBEDA") Program. Information regarding the SBEDA Ordinance may be

found on the City's Economic Development Department (EDD) website and is also available in hard copy form upon request to the **CITY**. **RIVER AUTHORITY** understands and agrees that for portions of the **PROJECTS** undertaken by **RIVER AUTHORITY** in the award of contracts, subcontracts and other opportunities for design, construction and operation of the **PROJECTS**, this Agreement shall be subject to the SBEDA Affirmative Procurement Initiative and goal as determined by the applicable SBEDA Goal Setting Committee. **IMMEDIATELY UPON THE COMPLETION OF THE SCOPE OF WORK FOR CONSTRUCTION AND PRIOR TO ISSUING BIDS OR SOLICITATIONS FOR ANY PRIME OR SUBCONTRACTORS, RIVER AUTHORITY** shall submit a copy of the scope of work to EDD's Small Business Office (the "SBO"). The SBO shall submit information related to the completed scope of work to the Goal Setting Committee for determination regarding the applicability of an Affirmative Procurement Initiative (API), relative goal and required date for return of a Subcontractor/Supplier Utilization Plan (the "Plan"). The applied API, goal and Plan shall be attached to and become a binding part of this Agreement.

XII. THIRD PARTY CLAIMS

RIVER AUTHORITY and **CITY** 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 101.001 *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.

XIII. INSURANCE

Prior to the commencement of any work under this Agreement, **RIVER AUTHORITY** shall require its contractor to furnish copies of all required endorsements

and completed Certificate(s) of Insurance to the **CITY's** Parks and Recreation Department, which shall be clearly labeled "*Westside Creeks Project*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the **CITY's** Parks and Recreation Department. No officer or employee, other than the **CITY's** Risk Manager, shall have authority to waive this requirement.

The **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by **CITY's** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will **CITY** allow modification whereby **CITY** may incur increased risk.

The **RIVER AUTHORITY's** contractor's financial integrity is of interest to the **CITY**; therefore, subject to **RIVER AUTHORITY's** contractor's right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **RIVER AUTHORITY's** contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at **RIVER AUTHORITY's** contractors sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory

2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

RIVER AUTHORITY agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of **RIVER AUTHORITY**'s contractor herein, and provide a certificate of insurance and endorsement that names the **RIVER AUTHORITY** and the **CITY** as additional insureds. Any such subcontractor shall provide the **CITY** with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by **CITY**'s Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by **CITY**'s Risk Manager, which shall become a part of the contract for all purposes.

As they apply to the limits required by the **CITY**, the **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto

or the underwriter of any such policies). **RIVER AUTHORITY**'s contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided below within 10 days of the requested change. **RIVER AUTHORITY**'s contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Parks and Recreation Department
P.O. Box 839966
San Antonio, Texas 78283-3966

RIVER AUTHORITY will require its contractor to agree that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the **CITY**, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the **CITY**.
- Provide advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **RIVER AUTHORITY**'s contractor shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **RIVER AUTHORITY**'s contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

In addition to any other remedies the **CITY** may have upon **RIVER AUTHORITY**'s contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **RIVER AUTHORITY**'s contractor to stop work hereunder, and/or withhold any payment(s) which become due to **RIVER AUTHORITY**'s contractor hereunder until **RIVER AUTHORITY**'s contractor demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which **RIVER AUTHORITY**'s contractor may be held responsible for payments of damages to persons or property resulting from **RIVER AUTHORITY**'s contractor or its subcontractors' performance of the work covered under this Agreement.

It is agreed that **RIVER AUTHORITY**'s contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided..

RIVER AUTHORITY's contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

XIV. 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 of San Antonio, CITY and RIVER AUTHORITY.

XV. PREVAILING WAGE RATE AND GENERAL LABOR CONDITIONS.

The Provisions of Chapter 2258, Texas Government Code, and City Ordinance 2008-11-20-1045, are expressly made a part of this Agreement. In accordance therewith, the **RIVER AUTHORITY** shall provide the **CITY** with sufficient documentation to verify that the provisions of Chapter 2258, Texas Government Code, and City Ordinance 2008-11-20-1045 are met. The **RIVER AUTHORITY** shall request the applicable wage decision of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this Agreement prior to the bidding of the PROJECT. Such wage decision shall be obtained from the **CITY's** Labor Compliance Office for inclusion by the **RIVER AUTHORITY** or its contractor in the construction solicitation. **RIVER AUTHORITY** shall ensure that the following prevailing wage requirements are met: hold a pre-construction meeting with its Contractor and explain the requirements of this provision and that such requirement are also applicable to all subcontractors; collect certified payrolls on a weekly basis and periodically review said certified payrolls; ensure that apprentices are properly documented per Department of Labor Standards; required postings are on the jobsite in a conspicuous location; perform

site interviews of employees and compare to certified payrolls to assure proper work classification and wage rates; and investigate all claims pertaining to wage violations. **CITY** may request periodic reports or support to ensure adherence to prevailing wage rates provisions. **RIVER AUTHORITY** will maintain completed "Project Certification for Monitoring Prevailing Wages" form (attached hereto) for each construction pay request and make available to the City upon request.

If, as a result of **CITY**'s review, the **CITY** finds any violations, **RIVER AUTHORITY** will ensure that **RIVER AUTHORITY**'s contractor shall forfeit as a penalty to the **CITY** sixty dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said Agreement, by the contractor or any sub-contractor under him.

The establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code and City Ordinance 2008-11-20-1045 shall not be construed to relieve the **RIVER AUTHORITY**, **RIVER AUTHORITY**'s contractor or any subcontractor from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed hereunder. The **RIVER AUTHORITY** and its Contractor and any subcontractor, in the execution of this PROJECT, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. The **RIVER AUTHORITY** and its Contractor and any subcontractors agrees that he/she will not engage in employment practices which have the effect of discriminating against

employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation.

This Agreement provision and the related wage decision shall be included in any subcontract entered into by the **RIVER AUTHORITY**'s contractor.

Any questions regarding this provision shall be made via e-mail at LaborComplianceOffice-LCO@sanantonio.gov

XVI. DEFAULT/TERMINATION

As used in this Article, "default" shall mean the failure of **CITY** 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 either 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.

Neither 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.

XVII. 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.

XVIII. 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.

XIX. NOTICE

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

CITY:

Xavier D. Urrutia, Director of Parks and Recreation
Mike Frisbee, Director of CIMS
Majed Al-Ghafry, Director of Public Works
City of San Antonio
P.O. Box 839966
100 Military Plaza
San Antonio, TX 78283-3966

RIVER AUTHORITY:

Suzanne Scott
General Manager
San Antonio River Authority
P.O. Box 839990
100 E. Guenther St.
San Antonio, TX 78283-9980
210-227-1373

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.

XX. 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.

XXI. GENDER AND TENSE

Words of either gender used in this Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXII. AUTHORITY

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

XXIII. 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.

XXIV. 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.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, The ____ Day of _____, 2012.

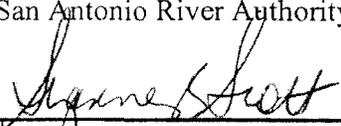
CITY

RIVER AUTHORITY

City of San Antonio, a Texas Municipal Corporation

San Antonio River Authority

Sheryl Sculley, City Manager



Suzanne B. Scott
General Manager

ATTEST:

Approved as to Form:

City Clerk



David W. Ross
General Counsel

Approved as to Form:

City Attorney