

Mayor and Council Communication

DATE: 06/27/23

M&C FILE NUMBER: M&C 23-0537

LOG NAME: 60MOASLOPESM338B&M280B-USACE/THC/CFW

SUBJECT

(CD 11) Authorize Execution of a Memorandum of Agreement for the Amount of \$117,463.20 Between the United States Army Corps of Engineers, Fort Worth District, the Texas State Historic Preservation Officer and the City of Fort Worth for the Twin 90 inch Sanitary Sewer Mains M-338B and M-280B Slope Stabilization Project

RECOMMENDATION:

It is recommended that the City Council authorize execution of a memorandum of agreement for the amount of \$117,463.20 between the United States Army Corps of Engineers, Fort Worth District, the Texas State Historic Preservation Officer and the City of Fort Worth for the Twin 90 inch Sanitary Sewer Mains M-338B and M-280B Slope Stabilization project.

DISCUSSION:

The purpose of this Mayor and Council Communication (M&C) is to request authorization for execution of a Memorandum of Agreement (MOA) with the United States Army Corps of Engineers USACE, Fort Worth District, the Texas State Historic Preservation Officer THC for the resolution of the violation with special condition number 2 for archaeological monitoring in the USACE permit authorization dated March 3, 2020 under Section 404 of the Clean Water Act for construction of slope stabilization for the Twin 90 inch Sanitary Sewer Mains M-338B and M-280B Slope Stabilization project.

In the Spring of 2016 significant erosion of the Trinity River streambank occurred due to heavy rains and upstream reservoir releases. The streambank erosion jeopardized the stability of the two 90-inch diameter West Fork Collector sanitary sewer lines, which convey a significant portion of Fort Worth's wastewater to the downstream Village Creek Water Reclamation Facility. In order to construct the necessary slope stabilization to protect both sanitary sewer mains, a permit was obtained from the USACE pursuant to Section 404 of the Clean Water Act constituting an undertaking under section 106 of the National Historic Preservation Act (NHPA) of 1966 (as amended). Special Condition No. 2 of the permit required the City to perform archaeological monitoring during the activity authorized by the permit.

Additional heavy rains in the Fall of 2018, Spring of 2019 and subsequent rainfall events resulted in additional erosion of the streambank necessitating additional design (requiring modification for archaeological monitoring) and emergency work. Due to the frantic pace of construction to install the slope protection before the rains started again and to also prevent the two sewer mains from being undermined and discharging a significant volume of sewage into the Trinity River, the required monitoring for the additional construction work scope was inadvertently overlooked. The City subsequently voluntarily notified USACE about the non-compliance, who in turn issued a Cease-and-Desist (C&D) Order on May 24, 2021 due to the violation.

On July 8, 2021, City Staff met with representatives of the USACE and THC at the project site to assess the situation and discuss a plan for resolving the violation. Both USACE and THC indicated that after-the-fact mitigation measures by the City would be required in order to regain compliance with their permits, and that the level of mitigation required would be based on the Archaeological Value (AV) of the areas that were impacted by construction without the required archaeological monitoring.

The project has been completed and only a small portion of the site was impacted by direct effects. The stabilization project protects the site from being eroded away by the river.

Based on the estimated metric volume of the project area that was excavated without archaeological monitoring, AVs were determined to mitigate for the impacts to the site and the following mitigation tasks (with appropriate costs) are included in the Memorandum of Agreement to satisfy the USACE's section 106 responsibilities for this project:

Task 1: Donation to the Friends of the Texas Historical Commission for the development of a Texas Archeological Sites Atlas (TASA) internship program. Approximately 55% (\$80,755.95) of the funds will be spent on this task in order to aid in the creation and digitization of archeological content for the TASA.

Task 2: Donation to the Texas Beyond History (TBH) website. Approximately 15% (\$22,024.35) of the funds will be spent on this task to aid TBH in the creation of North Texas archeological content.

Task 3: Regulatory Training for City of Fort Worth staff. Approximately 20% (\$29,365.80) of the funds will be spent on the development and execution of a training event to educate City staff on Section 404 permitting, Section 106 of the National Historic Preservation Act (NHPA), and the Antiquities Code of Texas (ACT). (This cost of this task is not included in the MOA total cost as it will be performed by Freese and Nichols, Inc., at no cost to the City).

Task 4: Production of Texas Archeology Month Public Outreach Kits to be donated to the Friends of the Texas Historical Commission or local archeological societies. The final 10% (\$14,682.90) of funds will be dedicated to using archeological staff time and material costs to produce

1,000 kits.

The contractor, Humphrey and Morton Construction Company, has contributed \$15,000.00 towards the MOA cost and the consultant, Freese and Nichols, Inc., will conduct task 3 at no cost to the City as its contribution towards the cost of the MOA.

The agreement shall remain in effect for a period of five (5) years from the date the MOA goes into effect unless terminated or amended and the City shall provide to all parties of the MOA a summary report detailing work undertaken pursuant to its terms.

Funding is budgeted in the Wastewater Dept Public Utility Departments Water & Sewer Bond 2017A Fund for the purpose of funding the Twin 90 inch sanitary sewer mains M-338B and M-280B project.

Funding for the Slope stabilization of Twin 90 inch sanitary sewer mains M-338B and M-280B project is depicted below:

Fund	Existing Appropriations	Additional Appropriations	Project Total*
W&S Capital Projects - Fund 56002	\$2,315,031.00	\$0.00	\$2,315,031.00
Sewer Capital Fund - Legacy 59607	\$1,144,300.00	\$0.00	\$1,144,300.00
Water & Sewer Bond 2017A - Fund 56011	\$1,695,825.00	\$0.00	\$1,695,825.00
Project Total	\$5,155,156.00	\$0.00	\$5,155,156.00

*Numbers rounded for presentation purposes.

The project is located in COUNCIL DISTRICT 11.

A Form 1295 is not required because: This M&C does not request approval of a contract with a business entity.

FISCAL INFORMATION / CERTIFICATION:

The Director of Finance certifies that funds are available in the current capital budget, as previously appropriated, in the Water & Sewer Bond 2017A Fund for the Twin 90 inch M-280B and M-338B project to support the approval of the above recommendation and execution of the agreement. Prior to any expenditures being incurred, the Water Department has the responsibility to validate the availability of funds.

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