

# AGENDA



## Recommendation for Council Action

Austin City Council

Item ID

57693

Agenda Number

14.

Meeting Date:

5/12/2016

Department:

Watershed Protection

### Subject

Approve a resolution declaring the City's official intent to reimburse itself from Certificates of Obligation to be issued for expenditures related to the Waller Creek Tunnel Project in the total amount of \$7,500,000. Related to Item # 13.

### Amount and Source of Funding

\$7,500,000 in settlement proceeds and/or Certificates of Obligation to be issued in August 2017 or later.

### Fiscal Note

A fiscal note is attached.

**Purchasing  
Language:**

**Prior Council  
Action:**

**For More  
Information:**

Joe Pantalion, Watershed Protection Department Director, 512-974-3438; Ed Van Eenoo, Financial Services Department Deputy CFO, 512-974-1380.

**Council  
Committee,  
Boards and  
Commission  
Action:**

**MBE / WBE:**

**Related Items:**

### Additional Backup Information

For the city to spend money today, but reimburse itself from the issuance of debt obligations in the future, a reimbursement resolution is required by state and federal law. The resolution must contain certain information and is generally reviewed by bond counsel to protect the tax-exempt status of the future issuance. The resolution must be passed not more than 60 days after the date that the cost to be reimbursed is paid. Failure to adopt a qualified declaration of official intent will prohibit the city from reimbursing the cost with the proceeds of tax exempt obligations. Reimbursement bonds generally must be issued 18 months after the later of, the date the expenditure was made, or the date that the project, with respect to which the expenditure was made, is placed in service.

This action expresses the city council's intent to authorize the reimbursement for costs associated with the Waller Creek Tunnel in the amount of \$7,500,000.

### Background

The Waller Creek Flood Control Project, when completed, will improve public safety and contribute to economic

development of the entire City through transformation of the Waller Creek District into more vibrant area. The removal of ~28 acres from the flood zone will mitigate flooding throughout the District and allow development of both recreational amenities and commercial facilities. The increase in value in the properties being removed from the flood zone is being captured through a Tax Increment Financing district, which is the primary funding mechanism for the project.

Currently, much of the District lies within a 100-year flood plain and is subject to severe flooding, erosion, and litter. The project will reduce the risk of severe flooding and stream bank erosion along lower Waller Creek by capturing and diverting flood waters from the upper creek basin (above 12th Street) into a large tunnel located 70 feet underground. The main tunnel begins in Waterloo Park where an inlet facility and pond will accept flood waters and screen out trash and debris. Creek side inlets between 4th and 5th Streets and between 8th and 9th Streets will capture additional flood waters below 12th street. The tunnel will discharge to an outlet facility/lagoon (completed) on the shores on the Lady Bird Lake. The reduction in floodplain area of over 25 acres resulting from the Waller Creek Tunnel project will increase the amount of developable land area in the lower Waller Creek watershed.

To finance the Waller Creek Tunnel project, the City Council created the Waller Creek Tax Increment Financing Reinvestment Zone No. 17 (Tax Increment Financing) in June 2007 as allowed by state law. In a Tax Increment Financing, one or more political subdivisions contribute up to 100% of the property tax on the increase in value of real property in the district (tax increment) for Tax Increment Financing purposes. Under the terms of this Tax Increment Financing and the Agreement to Participate in this Tax Increment Financing between the City of Austin and Travis County, the City of Austin will contribute 100% of its tax increment, and Travis County will contribute 50% of its tax increment. The first year of tax collections occurred in FY 2009 and in FY 2016, the estimated revenue generated by the City of Austin's tax increment is projected at \$2.4 million, and the contribution from Travis County at 50% of its tax increment is projected at \$1.1 million.

The Waller Creek Flood Control Project consists of four contracts, which reflect the interrelated components identified above. Each of these projects must be completed to ensure that the total project can be successfully completed and the Tax Increment Financing benefit fully realized. The complexity of the project and ensuring a path to completion requires that Council take action on seven separate measures simultaneously. The current status of each of the project's components and the relationships to the actions before Council are provided below:

#### **Waterloo Park Inlet**

The scope of work consists of construction of the major inlet and connections to the tunnel, improvements to Waterloo Park, and coordination with the Waller Creek Conservancy and the Central Health District on adjacent projects. Completion of this project was adversely impacted by conflicts with the Capital View Corridor, and the City has been collaborating with the design joint venture on remedies. The anticipated completion of the inlet and City-related work is September 2016. Contract changes will be required to address delays due to the CVC issues (including deconstruction of noncompliant work), scope modifications to accommodate the lower profile building, and revisions to site work and grading plans. These modifications are provided for by Agenda Item # 3 listed under Capital Contracting Office - Authorize additional contingency funding for the construction contract with Oscar Renda Contracting for the Waller Creek Inlet Facility at Waterloo Park project in the amount of \$5,000,000, for a total contract amount not to exceed \$39,781,250.

#### **Main Tunnel and 4th Street Side Inlet Facility Project**

The contract scope includes construction of the main tunnel, the 4th Street creek side inlet structure, and related creek improvements. The tunnel has been in service since May 2015, although repair work was still required but not completed. Work on the 4th Street Inlet is still in progress, with anticipated completion in the October – December 2016 timeframe. Contract changes will be required to address modifications required for the 4th Street Inlet construction, Creekside retaining walls, and unforeseen conditions due to utilities locations, and these changes are addressed by Agenda Item # 4 under the Capital Contracting Office - Authorize additional contingency funding for the construction contract with SJ Louis Construction for the Waller Creek Tunnel Main Tunnel and 4th Street Creek Side Inlet project in the amount of \$500,000, for a total contract amount not to exceed \$50,400,500).

### **8th Street Creek Side Inlet Facility Project**

The contract includes construction of a creek side inlet at 8th Street and the related connections to existing storm water facilities. Work on the 8th Street Inlet is in progress, with a projected completion of spring 2017. This Agenda Item is #5 under the Capital Contracting Office.

### **Waller Beach Site Improvements Outlet Facility/Lagoon Project**

This project consists of the outlet facility and lagoon, connections to the tunnel structure, trail improvements, and related work. Construction of these assets is substantially completed. The contract is being closed out, and no Council action is required at this time.

### **Construction Easement**

Item #9 under the Office of Real Estate Services - Authorize negotiation and execution of all documents and instruments necessary or desirable to acquire a temporary construction easement, totaling approximately 14,458 square feet, for the Waller Creek Tunnel Project, located at 701-703 East 9th Street, City of Austin, Travis County, Texas, from Ashland Equities Company LP, in an amount not to exceed \$119,221 (District 9) is also necessary to complete this project. During the course of construction ownership of the property has changed hands, and the extension of construction easement had to be renegotiated.

### **Project Funding**

The additional funding required to execute the changes presented above is addressed in two Agenda Items from the Watershed Protection Department. Item 13 - Approve an ordinance amending the Fiscal Year 2015-2016 Watershed Protection Department Capital Budget (Ordinance No. 20150908-002) to increase appropriations by \$7,500,000 for the Waller Creek Tunnel Project – places the funds in the appropriate accounts so that the contract changes can be executed and capital project can be completed. Item 14 - Approve a resolution declaring the City of Austin's official intent to reimburse itself from Certificates of Obligation to be issued for expenditures in the total amount of \$7,500,000 – provides the funding source for the work.

It should be noted that Council did approve an additional \$6 million in funding in June 2015. At the time, staff's best estimate was that the funding would be sufficient to address construction changes due to redesign, unforeseen conditions, and related delays. Staff also believed that discussions and negotiations with the joint venture design team would be resolved concurrently with the settlement of construction disputes, so that any requests presented to Council would show a balance of additional costs versus the recovery. Unfortunately, the settling of these matters has not been synchronous, so that outlay of additional funds prior to recovery is required and the fiscal impact is mitigated.

### **Maintenance, Inspection, and Warranty Work**

As the entry of the tunnel into service nears its on-year anniversary, the Watershed Protection Department will require that the tunnel be dewatered so warranty inspections can be performed, repair work be accomplished, and sedimentation can be removed. Due to the unique nature of the requirement, Staff believes the best way to procure these services is through the use of the Competitive Sealed Proposal method. Under state statute, approval from the Governing Body is required before an alternative delivery method can be employed. Agenda Item #2 under Capital Contracting Office - Authorize the use of the Competitive Sealed Proposal method for solicitation of maintenance, inspection, warranty, and construction work consisting of dewatering, providing access, and removal of sedimentation in support of the Waller Creek Tunnel Project - seeks this approval.