

STATE OF TEXAS	§	INTERLOCAL AGREEMENT FOR FUNDING
	§	INSTALLATION OF ADVANCE
	§	WARNING FLASHING BEACON
COUNTY OF BEXAR	§	AT LADY BIRD JOHNSON HIGH SCHOOL

This **INTERLOCAL AGREEMENT FOR FUNDING THE INSTALLATION OF FLASHING BEACONS AT LADY BIRD JOHNSON HIGH SCHOOL** (the "Agreement") is hereby made and entered into by and between the City of San Antonio, a Texas Home Rule Municipality ("City"), and the County of Bexar, a political subdivision of the State of Texas ("County"). Collectively, City and County are referred to herein as the "Parties" and individually referred to as a "Party".

### RECITALS

**WHEREAS**, County submitted a written request for the installation of three (3) mast arm mounted solar powered flashing beacon assemblies (hereafter referred to as "Beacon"), along (a) the southbound direction of Bulverde Rd. between Marshall Rd. and TPC Parkway; (b) the northbound direction of Bulverde Rd. between Regal Park and TPC Parkway; and (c) the westbound direction of TPC Parkway between Waterhole Ln. and Bulverde Rd. (collectively referred to as the "Project"); and

**WHEREAS**, the City is currently installing and maintaining such flashing beacons at various schools throughout the City of San Antonio; and

**WHEREAS**, County will provide and be responsible for all equipment, personnel and related services necessary to complete the Project and will exercise its best judgment in the design and implementation of the Project. County will own the Project at all times. Following completion of the Project, County will provide and pay for all maintenance and equipment and services necessary to maintain the Beacon in good working order; and

**WHEREAS**, County owns a right-of way located on Bulverde Rd. and TPC Parkway; and

**WHEREAS**, County is willing and able to install the Project and City is willing and able to provide funding to the County for such installation; and

**WHEREAS**, the Parties have agreed to participate in purchasing and installing the Project; and

**WHEREAS**, the total cost of the Project is estimated at **NINETY THOUSAND DOLLARS AND NO/100 (\$90,000.00)** as set forth in the County Project Summary Sheet, attached hereto and incorporated herein as "**Exhibit A**" (the "Project Estimate"); and

**WHEREAS**, City has agreed to contribute funds toward the completion of the Project in the estimated amount of **NINETY THOUSAND DOLLARS AND NO/100 (\$90,000.00)** from the City Council District 9 NAMP funds ("City Funds"); and

**WHEREAS**, the Parties desire to enter into this Agreement, through which County will oversee and administer the construction of the Project.

**NOW THEREFORE**, in consideration of these premises and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

### **I. RECITALS**

- 1.01 Each of the Recitals stated herein above are incorporated into and made a part of this Agreement.

### **II. TERM**

- 2.01 This Agreement shall continue in full force and effect from the date of its execution by the Parties and shall continue until City Funding is provided to and accepted by County, all construction is complete, and Project is accepted by County.

### **III. RESPONSIBILITIES OF CITY**

- 3.01 In consideration of County's pledge to perform all services and activities set forth in this Agreement, City agrees to fund the cost of construction of the Project. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed **NINETY THOUSAND DOLLARS AND NO/100 (\$90,000.00)**.
- 3.02 Funds will not be disbursed until the Agreement has been approved by both the San Antonio City Council and the Bexar County Commissioners Court. Subject to approval and execution of this Agreement by County, City shall provide County the full amount of City Funds within fifteen (15) calendar days following City's receipt of written notice from County of the approval of this Agreement by the Bexar County Commissioners Court.
- 3.03 The funds provided under this Agreement may not be used for any purpose other than for work directly related to the Project.
- 3.04 City is neither obligated nor liable to any party, other than County, for payment of any monies or the provision of any goods or services pursuant to this Agreement.
- 3.05 City agrees the total cost of the Project is based on the Project Estimate and, while every effort has been made to anticipate and include all relevant expenses, the total Project cost may exceed the Project Estimate. Should costs arise that exceed County's Estimate, written notice pursuant to **Article XII. NOTICES**, shall be provided to City for review. City accepts and agrees, should the total Project cost exceed Project Estimate, City shall contribute the funds required for completion of the Project within fifteen (15) calendar days following City's receipt of written notice from County that the Project costs have exceeded County's Estimate.
- 3.06 City represents and warrants that all funds being paid by City will be from current revenues available to City, in accordance with Texas Government Code Section 791.011(d)(3).
- 3.07 The Parties accept and agree that this Agreement does not obligate City's General Fund or any other monies or credits of the City unless budgeted and appropriated by City.

#### **IV. GENERAL RESPONSIBILITIES OF COUNTY**

- 4.01 Provided County receives City Funding, County hereby accepts full responsibility for the performance of all services and activities described in this Agreement to fully construct the Project.
- 4.02 County's Public Works Department ("Public Works") Director ("Director") or his/her designee is responsible for the administration of this Agreement on behalf of County.
- 4.03 County will provide and be responsible for all equipment, personnel and related services necessary to complete the Project and will exercise its best judgment in the design and implementation of the Project. County will own the Project at all times. Following completion of the Project, County will provide and pay for all maintenance equipment and services necessary to maintain the Project in good working order.
- 4.04 County shall utilize all best efforts to complete the Project by May 31, 2023, contingent upon a timely receipt of City Funds as outlined in **Article III. RESPONSIBILITIES OF CITY**.
- 4.05 The Parties accept and agree that this Agreement does not obligate County's General Fund or any other monies or credits of County unless budgeted and appropriated by County.

#### **V. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

- 5.01 County warrants and represents it will comply with all federal, state and local laws and/or regulations and will use all reasonable efforts to ensure said compliance by all contractors and subcontractors that may work on the Project.
- 5.02 If applicable, plan design shall conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin.

#### **VI. LEGAL AUTHORITY**

- 6.01 City represents, warrants, assures, and guaranties it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.
- 6.02 The signer of this Agreement for City represents, warrants, assures, and guaranties he/she has full legal authority to execute this Agreement on behalf of City and to bind City to all terms, performances and provisions herein contained.
- 6.03 Unless written notification, pursuant to **Article XII. NOTICES**, by County to the contrary is received and approved by City, (Renee Green, PE), (County Engineer/Director of Public Works), is the authorized representative responsible for the management of this Agreement on the part of County.
- 6.04 City's Department of Public Works Director or his/her designee is responsible for the administration of this Agreement on behalf of City.

- 6.05 County represents, warrants, assures, and guarantees it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

#### **VII. PERFORMANCE BY COUNTY**

- 7.01 Subject to and contingent upon receipt of City Funding of the Project, in accordance and compliance with the terms, provisions, and requirements of this Agreement, County shall oversee, manage, perform, and provide all of the activities and services necessary to satisfactorily complete the Project.
- 7.02 Performance of County's obligations under this Agreement shall be subject to extension, due to delay by reason of events of force majeure, and County's obligations shall be abated during any period of force majeure. For purposes of this Agreement, force majeure shall include damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the parties' reasonable control, including but not limited to any court or judgment resulting from any litigation affecting the Project or this Agreement (hereafter referred to as "Force Majeure").

#### **VIII. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS**

- 8.01 County agrees to maintain a numbered account for the receipt and disbursement of all funds received pursuant to this Agreement and further agrees all checks and withdrawals from such account shall have itemized documentation in support thereof, pertaining to the use of City Funds provided under this Agreement.
- 8.02 County agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement.

County further agrees:

- (A) maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting principles; and
  - (B) County's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.
- 8.03 County agrees to retain all books, records, documents, written accounting policies and procedures, and all other relevant materials pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion of the Project.

#### **IX. ALLOWABLE EXPENDITURES AND OWNERSHIP OF PROPERTY**

- 9.01 Upon preparation of a construction plan, schedule of work, and budget by County, such plans, schedule of work, and budget shall not be changed without approval by the Parties. Costs shall be considered allowable only if incurred directly and specifically in the performance of and in

compliance with this Agreement and with all city, state, and federal laws, regulations, and/or ordinances affecting County's operations hereunder.

- 9.02 Expenditures of City Funding provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement and all applicable city, state, and federal laws, regulations, and/or ordinances.

#### **X. SEVERABILITY OF PROVISIONS**

- 10.01 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, the City Charter, City Code or ordinances of City, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and the remainder of this Agreement shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein. It also is the intention of the Parties hereto, in lieu of each clause or provision of this Agreement that is determined to be invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

#### **XI. NON-WAIVER OF PERFORMANCE**

- 11.01 No waiver by any Party of a breach of any of the terms, conditions, covenants, or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant, or guarantee herein contained. Further, any failure of any Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by any Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.
- 11.02 No act or omission of a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to a Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.
- 11.03 No representative or agent of City may waive the effect of the provisions of this **Article XI** without formal action from the San Antonio City Council.
- 11.04 No representative or agent of County may waive the effect of the provisions of this **Article XI** without formal action from the Bexar County Commissioners Court.

#### **XII. NOTICES**

- 12.01 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

If to County: Bexar County Public Works  
Attn: Renee Green, P.E., Director of Public Works/County Eng.  
1948 Probandt St. San Antonio, TX 78214

If to City: City of San Antonio  
Public Works Department  
Attn: Razi Hosseini, PE, Director/City Engineer  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- 12.02 Notice of change of address by any Party must be made in writing and mailed to the other Party's last known addresses within five (5) business days of such charge.

### **XIII. PARTIES BOUND**

- 13.01 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

### **XIV. RELATIONSHIP OF PARTIES**

- 14.01 Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between the Parties hereto.

### **XV. TEXAS LAW TO APPLY AND VENUE**

- 15.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the Parties created hereunder are performable in Bexar County, Texas and exclusive venue shall lie in Bexar County, Texas.

### **XVI. GENDER**

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

### **XVII. CAPTIONS**

- 17.01 The captions contained in this Agreement are for convenience of reference only and in no way limit or enlarge the terms and/or conditions of this Agreement.

### **XVIII. INCORPORATION OF EXHIBITS**

- 18.1 Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits:

Exhibit A: Project Summary Sheet

**XIX. AMENDMENTS**

- 19.1 No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to this Agreement, and be duly executed by the Parties under authority granted by formal action of the Parties' respective governing bodies.**

**XX. NO WAIVER OF SOVEREIGN IMMUNITY**

- 20.1 The Parties expressly acknowledge that there are constitutional and statutory limitations on the authority of the City and County to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on either Party's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements, and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on either Party except to the extent authorized by the Constitution and the laws of the State of Texas. Neither the execution of this Agreement by the Parties nor any other conduct, action, or inaction of any representative of the Parties relating to this Agreement constitutes or is intended to constitute a waiver of the Party's sovereign immunity to suit, and their immunity is expressly retained to the extent it is not clearly and unambiguously waived by state law.**

**XXI. ENTIRE AGREEMENT**

- 21.1 This Agreement constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties.**

**XXII. COUNTERPARTS, FACSIMILE OR EMAIL SIGNATURES**

- 22.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile or email counterparts of the signature pages.**

**IN WITNESS THEREOF**, the Parties hereto have made and executed this Agreement, to be effective on the date of the last signature below ("Effective Date").

**COUNTY OF BEXAR**

By: \_\_\_\_\_

Printed Name \_\_\_\_\_

**CITY OF SAN ANTONIO**

DocuSigned by:  
By: Roderick Sanchez  
4EF13B29DFDE47D...

Printed Name Roderick Sanchez

Title \_\_\_\_\_

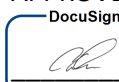
Date: \_\_\_\_\_

Title Assistant City Manager

Date: 2/10/2023

APPROVED AS TO FORM:

DocuSigned by:



0687D21A3811469  
ASSISTANT CITY ATTORNEY

\_\_\_\_\_  
Genevieve "Jean" Gill

Assistant District Attorney – Civil Division



**EXHIBIT A**

**PROJECT SUMMARY SHEET**

Plans and Budget Summary will be attached, once they are approved by COUNTY.

**Project Budget**