

## TEXAS A&M UNIVERSITY AREA STREETS

This Texas A&M University Area Streets Contribution Agreement (the "Agreement") is made and entered into as of the Effective Date by and between the City of San Antonio, a municipal corporation (the "City") pursuant to Ordinance No. \_\_\_\_\_ approved on \_\_\_\_\_, 2022, and Texas A&M University San Antonio, a member of the Texas A&M University System ("A&M System"), a Texas institution of higher education and an agency of the State of Texas, herein after referred to as "A&M-San Antonio". The City and A&M-San Antonio are each referred to herein as a "Party" and collectively as "Parties".

### RECITALS

**WHEREAS**, on May 7, 2022, San Antonio voters approved the 2022-2027 Bond Program, consisting of six propositions totaling \$1.2 Billion, which included \$10,600,000 under Proposition A Streets, Bridges & Sidewalk Improvements associated with the A&M-San Antonio Area Streets (the "Project"); and

**WHEREAS**, the Project will construct roadway improvements to potentially include sidewalks, driveway approaches, drainage and includes phased improvements to Perimeter Loop Road and a connector road to Mauermann Road; and

**WHEREAS**, contingent upon approval by the Board of Regents of The Texas A&M University System ("BOR A&M System"), the A&M System on behalf of A&M-San Antonio, will grant a conditional public roadway easement ("Conditional Roadway Easement") solely for the purpose of constructing and operating a public roadway; and

**WHEREAS**, should the BOR A&M System approve the abovementioned Conditional Roadway Easement, it will be further described and memorialized in a separate roadway easement agreement(s); and

**WHEREAS**, should the abovementioned Conditional Roadway Easement cease to be used as a public roadway, the abovementioned Conditional Roadway Easement will revert back to the A&M System; and

**WHEREAS**, Exhibit B to this Agreement documents the Property upon which the Project will be located, the \$530,000 in funds attributable to A&M-San Antonio ("A&M-San Antonio University Funding"); and

**WHEREAS**, the City has agreed to contribute funds towards the completion of the Project in the amount not to exceed City contribution of \$10,600,000 inclusive of bid amount, project contingency, construction administration and management, and

**WHEREAS**, the Parties intend this Agreement to set forth each Party's responsibilities

and obligations in connection with use for the Project;

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, it is agreed between the Parties as follows:

### **I. PURPOSE**

1.1 This Project will construct roadway improvements, to potentially include sidewalks, driveway approaches, drainage and phased improvements to Perimeter Loop Road and a connector road to Mauermann Road.

### **II. TERM**

2.1 Unless sooner terminated in accordance with provisions in this Agreement, the term of this Agreement shall commence upon City Council approval and execution of the Agreement by all Parties, and continue until Project Completion (defined in 2.2) at which time this Agreement shall terminate.

2.2 Project completion shall occur when the construction of the Project is accepted by the City and retainage is released to the contractor a period not to exceed five years..

### **III. OBLIGATION OF TEXAS A&M UNIVERSITY SAN ANTONIO**

3.1 A&M-San Antonio Project contribution in the amount of \$530,000 which includes the following: the abovementioned Conditional Roadway Easement as described in that certain separate roadway easement agreement(s) and funding towards the project, the total contribution by A&M-San Antonio, not to exceed 5% of the total \$10,600,000 project budget, \$530,000, to account for inflation. The contribution is funded under the Texas A&M University San Antonio FY 2022-2026 Capital Plan, Project Name Physical Plant Projects/Equipment/Other. A&M-San Antonio agrees to work cooperatively with City to take the necessary steps to facilitate the granting of the abovementioned Conditional Roadway Easement to City across the property depicted in Exhibit B.

3.2 A&M-San Antonio's contributions to the City must be used by City solely in connection with the Project. Under no circumstances will A&M-San Antonio be responsible for any amounts or services in excess of A&M-San Antonio University Funding.

### **IV. OBLIGATION OF THE CITY**

4.1 The City will contribute the funding for the Project in an amount not to exceed \$10,600,000. The City's Funding shall constitute the City's total contribution to the Project. No City funding will be directed to A&M-San Antonio . Contingency and any savings that are not expended on the Project shall be retained by the City. Under no circumstances shall the City be responsible for any amounts or services in excess of City's Funding.

4.2 The City will undertake construction of the Project through its contractor and will take reasonable measures to ensure the Project is delivered and completed pursuant to the Project Scope, Project Budget, and Project Schedule described in Exhibit A.

4.3. Should the BOR A&M System approve the abovementioned conditional public roadway easement, the City will record the Conditional Roadway Easement.

4.4 Upon request by A&M-San Antonio or its representative(s), the City will provide updates on the progress of the Project.

## **V. MEDIA**

5.1 All press releases or other public communications of any nature whatsoever relating to the subject matter of this Agreement, and the method of the release for publication thereof, will be subject to the prior mutual written approval of the Parties. Notwithstanding anything herein to the contrary, each Party has the right to publicly disclose this Agreement and its subject matter as required by applicable laws, including without limitation, the Texas Public Information Act, Chapter 552, *Texas Government Code*, without the prior written approval of the other Party.

## **VI. NOTICE**

6.1 Any notices required or permitted under this Agreement must be in writing and will be deemed given: (a) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (b) the next business day after it is sent by overnight carrier, (c) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (d) on the date of delivery if delivered personally. The parties may change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows::

### **If to the City:**

Razi Hosseini, P.E., R.P.L.S.  
Director/City Engineer, Public Works  
P.O. Box 839966  
San Antonio, Texas 78283-3966

### **If to A&M-San Antonio :**

Leonard Cullo  
Vice President for Business Affairs and Chief Financial Officer  
Texas A&M University San Antonio  
One University Way  
San Antonio, Texas 78224

## **VII. APPLICABLE LAW**

7.1 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. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

## **VIII. COMPLIANCE WITH LAWS**

8.1 Each Party will comply with all applicable federal, state, and local laws, rules, and regulations, which may apply to the performance of their respective obligations under this Agreement.

## **IX. AMENDMENTS**

9.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be effected by an amendment, in writing, executed by the Parties. Notwithstanding the foregoing, the Public Works Department Director, or designee, is authorized to reallocate City Funding between the Project line items set out in the Project Budget without further City Council action, so long as such reallocation does not materially change the Project purpose set out in Article I.

## **X. SEVERABILITY**

10.1 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 the City of San Antonio, Texas, 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 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 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. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto, and will become effective on the date designated by such law or by regulation.

## **XI. LEGAL AUTHORITY**

11.1 The signatories to this Agreement represent, warrant, assure, and guarantee that they have full legal authority to execute this Agreement on behalf of the Party for which they are signing and to bind such Party to all of the terms, conditions, provisions, and obligations herein contained.

## **XII. ENTIRE AGREEMENT**

12.1 This Agreement, together with its authorizing ordinance and its exhibits, constitute the final and entire Agreement between the Parties hereto and contain 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 hereto, unless same is in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with this Agreement. This Agreement shall supersede any and all prior written and oral agreements between the Parties.

## **XIII. COUNTERPARTS**

13.1 For convenience of the Parties hereto, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original for all purposes.

## **XIV. MISCELLANEOUS PROVISIONS**

14.1 Neither Party is liable or responsible to the other Party for any loss or damage or for any delays or failure to perform under this agreement due to causes beyond its reasonable control, including, but not limited to, acts of God, employee strikes, epidemics, war, riots, flood, fire, sabotage, terrorist acts or any other circumstances of like character (force majeure occurrence).

14.2 The Parties will neither assign its rights nor delegate its duties under this Agreement without the prior written consent of the other Party.

14.3 A&M-San Antonio is an agency of the state of Texas and under the Constitution and the laws of the state of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has authority as is granted to it under the Constitution and the laws of the state of Texas. City expressly acknowledges that A&M-San Antonio is an agency of the state of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by A&M-San Antonio of its right to claim such exemptions, remedies, privileges, and immunities as may be provided by law.

14.4 The City of San Antonio is a municipal corporation and under the Constitution and the laws of the state of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has authority granted to it under the Constitution and the laws of the state of Texas. A&M-San Antonio expressly acknowledges that the City of San Antonio is a municipal corporation created under the laws of the state of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by the City of its right to claim such exemptions, remedies, privileges, and immunities as may be provided by law. Nothing in this agreement shall be construed to waive the City's Governmental Immunity from a lawsuit, which immunity is

expressly retained to the extent it is not clearly and unambiguously waived by state law.

14.5 Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading.

14.6 Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by A&M-San Antonio or City's service to A&M-San Antonio. Except as specifically required under the terms of this Agreement, A&M-San Antonio or City (and its representatives, agents, employees and subcontractors) will not represent themselves to be an agent or representative of A&M-San Antonio or A&M SYSTEM. As an independent contractor, A&M-San Antonio or City is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance. A&M-San Antonio or City and its employees must observe and abide by all applicable A&M-San Antonio policies, regulations, rules and procedures, including those applicable to conduct on its premises.

14.7 Unless otherwise noted in this agreement, each Party will be responsible for its own costs and expenses incurred in connection with the undertakings contemplated in this Agreement. There will be no exchange of funds or other resources among the Parties.

14.8 The Parties are aware that there are constitutional and statutory limitations on the authority of A&M-San Antonio (a state agency) to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on A&M-San Antonio'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 A&M-San Antonio except to the extent authorized by the Constitution and the laws of the State of Texas. Neither the execution of this Agreement by A&M-San Antonio nor any other conduct, action, or inaction of any representative of A&M-San Antonio relating to this Agreement constitutes or is intended to constitute a waiver of A&M-San Antonio's or the state's sovereign immunity to suit.

14.9 Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party's reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable

dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).

***[SIGNATURE PAGE TO FOLLOW]***

**THE CITY OF SAN ANTONIO**

**By:**


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Roderick Sanchez  
Assistant City Manager  
City Manager's Office

**TEXAS A&M UNIVERISTY SAN ANTONIO**

**By:**

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Leonard Cullo  
Vice President of Business Affairs and Chief Financial Officer  
Texas A&M University San Antonio

**APPROVED AS TO FORM:**

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City Attorney



## **EXHIBIT A PROJECT SCOPE**

### **Project Description:**

The Project includes design and construction of roadway improvements to include sidewalks, driveway approaches drainage and other improvements as applicable and within available funding. This project includes phased improvements to Perimeter Loop Road and a connector road to Mauermann Road.

### **Project Budget:**

City will utilize allocated funds for design and construction of the project to include the \$10,600,000 authorized under the 2022 Bond Program Proposition A Streets, Bridges and Sidewalks and the \$530,000 contribution from A&M-San Antonio.

### **Project Schedule:**

Project design is anticipated to begin in June 2023. Construction completion is estimated to be April 2026.

**EXHIBIT B**  
**LOCATION OF PROPERTY**

