

ORDINANCE 2022-12-15-0995

**APPROVING THE EXECUTION OF AN INTERLOCAL AGREEMENT
WITH THE CITY OF OLMOS PARK TO GRANT THE CITY OF SAN
ANTONIO RIGHT-OF-ENTRY PERMISSION TO INSTALL, MAINTAIN,
REPAIR, AND REPLACE A FLOOD GAUGE INCLUDING SIGNAGE
WITHIN OLMOS PARK.**

* * * * *

WHEREAS, residents along Holland Avenue report property and street flooding during rain events when storm water runs down the local streets towards the intersection of Annie Street and Gillespie Street, where it enters a drainage ditch within the limits of the City of Olmos Park; and

WHEREAS, at the intersection of Annie Street and Gillespie Street water builds up to heights that could potentially be dangerous for vehicles and pedestrians; and

WHEREAS, while Gillespie Street is within City of San Antonio limits, Annie Street and the intersection where the drainage channel begins are within the City of Olmos Park limits; and

WHEREAS, the proposed Interlocal Agreement (ILA) allows City staff or contractors to install or perform maintenance, repair, or replacement of a flood gauge within the right-of-way of the City of Olmos Park to alert drivers and pedestrians when water is too high and potentially dangerous; and

WHEREAS, an agreement is required to grant the City right-of-entry permission to complete this recommended safety measure by the City; and

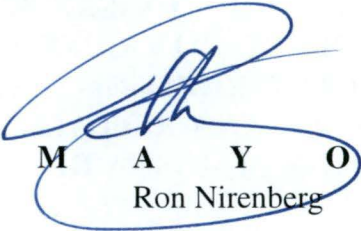
WHEREAS, on September 21, 2022, the Olmos Park City Council approved the proposed ILA, allowing the City of San Antonio to install and maintain the flood gauge at the intersection of Gillespie Street and Annie Street. Upon approval by Council, the City intends to have the installation completed by Spring 2023; **NOW THEREFORE:**

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

SECTION 1. The City Manager, or his designee, is authorized to execute execution of an Interlocal Agreement (ILA) with the City of Olmos Park to grant the City of San Antonio right-of-entry permission to install, maintain, repair, and replace a flood gauge, including signage within Olmos Park. A copy of the Agreement in substantially final form is attached as **Exhibit A**.

SECTION 2. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

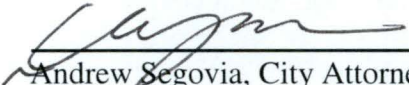
PASSED AND APPROVED this 15th day of December, 2022.


M A Y O R
Ron Nirenberg

ATTEST:


Debbie Racca-Sittre, City Clerk

APPROVED AS TO FORM:


Andrew Segovia, City Attorney



City of San Antonio

City Council Meeting December 15, 2022

55.

2022-12-15-0995

Ordinance approving the execution of an Interlocal Agreement with the City of Olmos Park to grant the City of San Antonio right-of-entry permission to install, maintain, repair, and replace a flood gauge including signage within Olmos Park. [Roderick Sanchez, Assistant City Manager; Razi Hosseini, Director, Public Works]

Councilmember Rocha Garcia moved to Approve on the Consent Agenda. Councilmember Castillo seconded the motion. The motion carried by the following vote:

Aye: Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello Havrda, Sandoval, Pelaez, Courage, Gallagher

EXHIBIT A

STATE OF TEXAS	§	INTERLOCAL AGREEMENT FOR
	§	INSTALLATION AND MAINTENANCE OF A
COUNTY OF BEXAR	§	FLOOD GAUGE FOR MONITORING
		FLOODING EVENTS

THIS INTERLOCAL AGREEMENT (hereinafter "Agreement") FOR INSTALLATION, MAINTENANCE, REPAIR AND REPLACEMENT OF ONE (1) FLOOD GAUGE IN OLMOS PARK is made and entered into by and between CITY OF SAN ANTONIO, TEXAS, a Texas Home Rule Municipality (hereinafter, "COSA"), and CITY OF OLMOS PARK, a Texas General Law Municipality (hereinafter, "COOP"). COSA and COOP shall collectively be referred to herein as the "Parties."

WITNESSETH

WHEREAS, both Parties to this Agreement are political subdivisions of the State of Texas, and desire to enter into this Agreement in accordance with the provisions of the Interlocal Cooperation Act, being Chapter 791 of the Texas Government Code; and

WHEREAS, COSA has agreed to install, maintain, inspect, repair and replace one (1) flood gauge within the city limit of COOP for monitoring flooding events (hereinafter, "Project"); and

WHEREAS, COSA will be responsible for all costs of the Project; and

WHEREAS, COSA and COOP desire to enter into this Agreement in order to establish the obligations of the Parties with regard to the access, installation and maintenance of the Project; and

NOW, THEREFORE, in consideration of the mutual covenants and agreement stated herein, the Parties agree as follows:

ARTICLE I
PURPOSE AND LEGAL AUTHORITY

- 1.01 The purpose of this Agreement is to establish the terms and conditions for access, installation, maintenance, inspection, repair and replacement of the Project.
- 1.02 The Parties certify that the services provided in this Agreement are services that are properly within the legal authority of the Contracting Parties in accordance with the Interlocal Cooperation Act, being Chapter 791 of the Texas Government Code.

ARTICLE II
TERM

- 2.01 Except as otherwise provided herein, this Agreement shall commence upon the execution date of the last signatory party to the Agreement and shall continue for three (3) years, subject to rights of termination set out in this Agreement.
- 2.02 This Agreement renews automatically without the necessity of further action by the either Party for an additional term of three years ("Extended Term") effective immediately upon the expiration of the previous term, unless one of the Parties desires to terminate this Agreement.
- 2.03 If a Party desires to terminate this Agreement, the terminating Party must provide written notice of the terminating Party's intent not to renew to the non-terminating Party at least thirty (30) days prior to the expiration of the original term or Extended Term.
- 2.04 Each effective Extended Term will be upon the same terms and conditions as initially provided in this Agreement, unless this Agreement has been amended in accordance with the provisions of this Agreement.

ARTICLE III

DESIGNATION OF REPRESENTATIVES

- 3.01 COSA hereby appoints the City of San Antonio Public Works Director, or designee, (“COSA Project Manager”) as its designated representative under this Agreement. COSA’s Project Manager shall be the primary point of contact for COOP.
- 3.02 COOP hereby appoints the City of Olmos Park Public Works Director, or designee, (“COOP Project Manager”), as its designated representative under this Agreement. COOP’s Project Manager shall be the primary point of contact for COSA.

ARTICLE IV COOP’S RESPONSIBILITIES

- 4.01 COOP will allow COSA the right to access the site, as described in Exhibit “A” herein, for the installation, maintenance, inspection, repair and replacement of the Project.
- 4.02 COOP shall have no financial commitment towards the Project.

ARTICLE V COSA’S RESPONSIBILITIES

- 5.01 COSA will install, maintain, inspect, repair and replace one (1) flood gauge at the site described in Exhibit “A” within COOP right-of-way. The location will comply with all applicable laws and ordinances, and will not create a road hazard or obstruction. COSA will inspect the Project from time to time, including but not limited to within a reasonable time of a significant flood event, and will keep the Project in reasonably good repair and generally free of debris.
- 5.02 COSA shall be solely responsible for all costs of the Project.
- 5.03 COSA shall notify COOP at least twenty-four (24) hours of the day of the initial installation of the Project.

- 5.04 COSA will repair or replace the Project within a reasonable time of receiving notice from the COOP of damage or debris, or of COSA becoming aware Project has suffered damage or is obstructed by debris. If COOP has determined (in its sole discretion) the flood gauge has become a road hazard, road obstruction, or nuisance due to damage or other cause, COOP may immediately remove and store the sign, and provide COSA notice of the same as soon as reasonably possible.

ARTICLE VI **DEFAULT**

- 6.01 In the event of a material breach of this Agreement, the non-breaching Party shall give the breaching Party written notice of such breach which shall detail the nature of the breach. The Party receiving the notice of breach shall be given sixty (60) days to cure the breach. If the breach is not corrected to the satisfaction of the non-breaching Party by the end of the sixty (60) day period, the non-breaching Party may be given written notice of termination to the breaching Party and seek to recover damages not to exceed the amount paid by the non-breaching Party toward maintenance of the Project.

ARTICLE VII **PRIOR AGREEMENTS SUPERSEDED**

- 7.01 This Agreement, including the exhibits, constitute the entire Agreement of the Parties regarding the subject matter of this Agreement and supersede all previous agreements and understandings, whether written or oral, relating to such subject matter.

ARTICLE VIII **ASSIGNMENT OR TRANSFER OF INTEREST**

- 8.01 COSA may not assign its rights, privileges and obligations under this Agreement, in whole, or in part, without the prior written consent of COOP. Any attempt to assign without such

approval shall be void.

ARTICLE IX
LEGAL CONSTRUCTION

- 9.01 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalid, illegal, or unenforceable provision shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE X
COMPLIANCE WITH LAWS AND ORDINANCES

- 10.01 Both Parties shall comply with all federal, state, and local laws and ordinances in connection with the work and services performed under this Agreement.

ARTICLE XI
TEXAS LAW TO APPLY AND VENUE

11.01 This Agreement shall be governed by and construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable and enforceable in Bexar County, Texas. Any legal actions regarding the Parties' obligation under this Agreement must be filed in Bexar County, Texas.

ARTICLE XII
AMENDMENT

12.01 No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and be duly executed by the Parties hereto.

ARTICLE XIII
NOTICES

13.01 All notices provided to be given under this Agreement shall be in writing and shall either be personally served against a written receipt therefore or given by certified mail or registered mail, return receipt requested, postage prepaid and addressed to the proper party at the address which appears below, or at such other address as the Parties hereto may hereafter designate in accordance herewith. All notices given by mail shall be deemed to have been given at the time of deposit in the United States mail and shall be effective from such date.

If to COOP: City of Olmos Park
 Attn: City Manager
 120 W. El Prado Dr
 Olmos Park, Texas 78212

If to COSA: City Clerk
 City of San Antonio
 P.O. Box 839966
 San Antonio, Texas 78283-3966

With a copy to: Director of Public Works
 City of San Antonio
 P.O. Box 839966
 San Antonio, Texas 78283-3966

ARTICLE XIV
FORCE MAJEURE

14.01 Neither Party shall be responsible for delays or lack of performance by such entity or its officials, agents or employees which result from acts beyond that entity's reasonable control including acts of God, strikes or other labor disturbances, or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses. In the event of any delay or failure excused by this Section, the time of delivery or of performance shall be extended for a reasonable time period to compensate for delay.

ARTICLE XV
MULTIPLE COUNTERPARTS

15.01 This Agreement may be executed in separate identical counterparts by the Parties hereto and each counterpart, when so executed and delivered, will constitute an original instrument, and all such separate identical counterparts will constitute but one and the same instrument.

ARTICLE XVI
FORMAL MATTERS

16.01 The relationship between the COSA and COOP under this Agreement shall be that of independent contractors, and not that of partners, joint venturers, or any other relationship. This Agreement sets out the entire Agreement of the parties in connection with the subject matter addressed herein, and may be modified or amended only in a writing executed by both the COSA and COOP.

16.02 Nothing in this Agreement shall be constructed to waive, modify or amend any legal defense available to the Parties or any past or present officer, elected official, agent, or employee of the participating political subdivisions including, but not limited to governmental immunity from suit as provided by law.

16.03 The execution and performance of this Agreement by COOP and COSA have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the COOP and COSA in accordance with its terms.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, ON THIS THE 21st DAY OF September 2022.

COSA:

CITY OF SAN ANTONIO

By: _____
ERIK WALSH, City Manager

Date: _____

ATTEST:

DEBBIE RACCA-SITTRE, City Clerk

APPROVED AS TO FORM:

ANDREW SEGOVIA, City Attorney

COOP:

CITY OF OLMOS PARK

By: Celia DeLeon
CELIA DELEON, City Manager

Date: 9-21-2022

ATTEST:

Kyndra Munoz
KYNDRA MUNOZ, City Secretary

APPROVED AS TO FORM:

[Signature]
RICHARD LINDNER, City Attorney

EXHIBIT A
Flood Gauge Location

