

ORDINANCE

2022-05-12-0333

**APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND BEXAR COUNTY IN AN AMOUNT NOT TO EXCEED \$4,000,000.00 FOR THE DESIGN, ENVIRONMENTAL AND CONSTRUCTION-RELATED COSTS FOR SEELING CHANNEL PHASE IV DRAINAGE, A PREVIOUSLY AUTHORIZED GENERAL OBLIGATION BOND AND STORM WATER REGIONAL FACILITIES FUNDED PROJECT, LOCATED IN COUNCIL DISTRICT 7; AND AUTHORIZING THE ACCEPTANCE AND APPROPRIATION OF FUNDS IN THE AMOUNT NOT TO EXCEED \$4,000,000.00 FROM BEXAR COUNTY FOR THE SEELING CHANNEL PHASE IV DRAINAGE PROJECT.**

\* \* \* \* \*

**WHEREAS**, on May 6, 2017, voters approved the 2017 Bond Program, which included funds in the amount of \$18,000,000.00 for the continuation of a multi-phase floodplain improvement project of Seeling Channel from Morning Glory to upstream of St. Cloud to include curbs, sidewalks and driveway approaches as needed located in Council District 7; and

**WHEREAS**, the Seeling Channel project will be designed to maximize drainage conveyance through the area and reduce the flood extents and localized residential flooding for approximately 100 properties relative to the 100-year floodplain and result in a realignment of the Federal Emergency Management Administration (FEMA) floodplain; and

**WHEREAS**, Bexar County recognizes this project as a regional flood control project that aligns with Bexar County's objective of improving regional flood control; and

**WHEREAS**, Phase III of the Seeling Channel project is currently under construction and nearing completion, allowing for the preliminary engineering and design of Phase IV of the project to be completed; and

**WHEREAS**, this project phase is part of the overall, ongoing drainage initiative to design and construct a vital underground storm drainage system upstream of Seeling Boulevard and St. Cloud; and

**WHEREAS**, on September 10, 2019, the Bexar County Commissioners Court approved the FY 2020 Capital Improvements Project Budget which included funding in the amount of \$4,000,000.00 for Phase IV of the Seeling Channel Drainage project for the preliminary engineering, design, real estate, environmental and construction-related costs of the Project; and

**WHEREAS**, the City will manage the design and construction of the project; and

**WHEREAS**, this Agreement will assist the City with furthering the efficiency and effectiveness of its flood control efforts; and

**WHEREAS**, this Ordinance authorizes the execution of an Interlocal Agreement between the City of San Antonio (City) and Bexar County in an amount not to exceed \$4,000,000.00 for Seeling Channel Phase IV Drainage project located in Council District 7; and, authorizes the acceptance and appropriation of funds in the amount not to exceed \$4,000,000.00 from Bexar County for this project; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager or designee, or the Director of the Public Works Department or designee, is authorized to execute an Interlocal Agreement between the City of San Antonio and Bexar County. Upon acceptance of the Interlocal Agreement funds in an amount not to exceed \$4,000,000.00 are authorized to be received from Bexar County. A copy of the amendment in substantially final form is attached as **Exhibit I**.

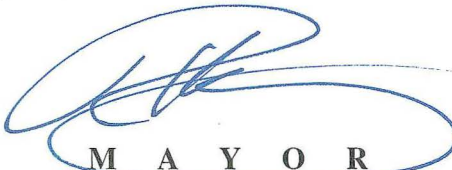
**SECTION 2.** Upon acceptance of the funds \$4,000,000.00 is appropriated and authorized to be transferred to Fund 40099000 Other Capital Projects.

**SECTION 3.** The budget in Project 23-01843 shall be revised by increasing the WBS 23-01843-90-xx-xx with GL 4502280 and WBS 23-01843-05-02-xx with GL 5201245 each by \$4,000,000.00.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Fund Numbers, Project Definitions, WBS Elements, Internal Orders, Fund Centers, Cost Centers, Functional Areas, Funds Reservation Document Numbers, and GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

**PASSED AND APPROVED** this 12th day of May, 2022.

  
**M A Y O R**  
Ron Nirenberg

**ATTEST:**

  
Debbie Racca-Sittre, Acting City Clerk

**APPROVED AS TO FORM:**

  
Andrew Segovia, City Attorney



## City of San Antonio

### City Council Meeting May 12, 2022

8.

2022-05-12-0333

Ordinance approving an Interlocal Agreement between the City of San Antonio and Bexar County in an amount not to exceed \$4,000,000.00 for the design, environmental and construction related costs for Seeling Channel Phase IV Drainage, a previously authorized General Obligation Bond and Storm Water Regional Facilities funded project, located in Council District 7; and authorizing the acceptance and appropriation of funds in the amount not to exceed \$4,000,000.00 from Bexar County for the Seeling Channel Phase IV Drainage Project. [Roderick Sanchez, Assistant City Manager; Razi Hosseini, Director, Public Works]

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

**Aye:** Nirenberg, Bravo, McKeeRodriguez,  
Viagran, Rocha Garcia, Castillo, Cabello  
Havrda, Sandoval, Pelaez, Courage

**Absent:** Perry

**Exhibit I**  
**Interlocal Agreement Seeling Channel Phase IV Drainage-Bexar County**





## **BEXAR COUNTY COMMISSIONERS COURT**

### **PUBLIC WORKS DEPARTMENT Capital Improvement Projects**

#### **COURT ORDER**

ORDER authorizing Discussion and appropriate action regarding approval of the Interlocal Agreement between Bexar County and the City of San Antonio (City) in the amount not to exceed \$4,000,000 to assist the City in the continuation of the Seeling Channel Phase IV Drainage Project, Precinct 2.

**Consent Agenda Item # 88**

**PASSED THIS 11<sup>TH</sup> DAY OF JANUARY, 2022**

STATE OF TEXAS	§	INTERLOCAL AGREEMENT FOR THE
	§	SEELING CHANNEL PHASE IV
COUNTY OF BEXAR	§	DRAINAGE PROJECT

**THIS INTERLOCAL AGREEMENT FOR THE SEELING CHANNEL PHASE IV DRAINAGE PROJECT** (hereinafter referred to as the "Agreement") is made and entered by and between the **COUNTY OF BEXAR**, a political subdivision of the State of Texas ("County"), and the **CITY OF SAN ANTONIO, TEXAS**, a Texas Home Rule Municipality ("City") (also, individually, a "Party" or, collectively, the "Parties"), pursuant to the authority granted by the provisions of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

### RECITALS

WHEREAS, this Agreement is entered into by the County and City pursuant to the authority granted by the provisions of the Interlocal Cooperation Act which is found in Chapter 791, Texas Government Code; and

WHEREAS, this Agreement is intended to further the purpose of the Interlocal Cooperation Act by increasing the efficiency and effectiveness of local governments and assisting with flood control efforts in the City and County; and

WHEREAS, the voters of San Antonio approved an \$850,000,000.00 2017-2022 Bond Program in May of 2017; and

WHEREAS, included in the City's 2017-2022 Bond Program was the Seeling Drainage Project Phase III; and

WHEREAS, City is in construction and will be completing Phase III of the Seeling Drainage Project and is initiating Phase IV ("Project" or "City's Project"); and

WHEREAS, the City's Project is part of an ongoing drainage project to design and construct a vital underground storm drainage system upstream of Seeling Blvd. and St. Cloud ("Project Site") as depicted in Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, the City's Project will be designed to maximize drainage conveyance through the area and reduce the flood extents and localized residential flooding for approximately 100 properties relative to the 100-year floodplain within the Project area and result in realignment of the Federal Emergency Management Administration ("FEMA") floodplain; and

WHEREAS, the County recognizes the City's Project as a regional flood control project and believes the Project will accomplish the County's objective of improving regional flood control; and

WHEREAS, the Bexar County Commissioners Court approved the FY20 Capital Improvements Projects Budget on September 10, 2019, which included the Project in the amount of \$4,000,000.00; and

WHEREAS, the County shall provide \$4,000,000.00 to City, in one lump sum payment, for the design, environmental, and construction-related costs of City's Project and City shall incorporate County's lump sum amount into City's overall Project budget; and

WHEREAS, the City shall be responsible for the maintenance of the Project after its completion; and

WHEREAS, the Parties desire to enter into this Interlocal Agreement, to establish the rights and obligations of the Parties regarding the Project, and to establish the procedures for funding the Project.

NOW THEREFORE, for and in consideration of the mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE I**

### **PURPOSE**

1.01 The purpose of this Agreement is to establish the rights and obligations of the Parties in connection with the Project and to establish the procedures for funding the Project.

## **ARTICLE II**

### **TERM**

2.01 This Agreement shall commence upon the execution date of the last signatory party to the Agreement (the "Effective Date") and shall terminate upon completion of the Project or as otherwise provided for herein.

2.02 City shall have the duty to maintain the Project and to enforce the warranties associated therewith. Such duties shall survive termination of the Agreement.

## **ARTICLE III**

### **COUNTY'S FINANCIAL COMMITMENT**

3.01 County shall provide funds to City not to exceed FOUR MILLION DOLLARS (\$4,000,000.00) (the "County Contribution").

3.02 The Parties acknowledge and agree that the financial commitments stated in this Agreement are independent of the necessary operating and maintenance expenses that are and shall remain the City's responsibility during and after the Project.

3.03 FOUR MILLION DOLLARS (\$4,000,000.00) is the total maximum County budget commitment to the City for the Project. County funding for the Project shall be used for preliminary engineering, design, real estate, environmental, and construction-related costs of the Project. No other funds shall be available from County to City for the Project unless agreed to in writing in the form of an amendment to this Agreement executed by both Parties.

3.04 Each Party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying Party.



**ARTICLE IV**  
**CITY'S OBLIGATIONS**

4.01 City shall perform and provide the following:

a. Upon the receipt of the County Contribution, the City will deposit the funds in the City's account established for the Project and limit use of the funds to preliminary engineering, design, environmental, and construction-related costs associated with the Project.

b. City shall be responsible for paying all fees and expenses associated with the Project, including maintenance of the Project.

c. City shall manage, oversee, administer, and carry out all activities and services required for the Project, to ensure that the Project is designed, constructed, equipped, furnished and completed with new materials in a good and workmanlike manner and in accordance with the terms of this Agreement and the design and construction documents of the Project.

d. City shall provide timely review and approval of design and construction contract documents for the Project. During the design process City shall provide County with design documents at 30%, 60% and 90% design completion. County shall promptly provide input to the design documents for City's consideration at those stages of completion. Additionally, final design and construction documents for the Project shall be provided to the County for review and approval. County may only disapprove the final design and/or construction documents if County determines that the final design and/or construction documents will not reasonably fulfill the Project's purpose to alleviate flooding at the Project Site. If County does not approve the final design/construction documents of the Project for the afore stated reason, City shall refund all unused portions of the County's Contribution. City shall not make substantial changes to approved design/construction documents without County's approval. In the event that County does not approve substantial changes after having approved the documents, City shall refund all unused portions of the County's Contribution.

e. If required, City shall obtain the United States Army Corps of Engineers (hereafter referred to as "USACE") Individual Permit or Nationwide Permit, as determined by final design option. If required by USACE Individual Permit, City shall perform regular site maintenance of the Project in accordance with the terms and conditions of the USACE Individual Permit Verification issued under Section 404 of the Clean Water Act, including maintenance requested by the USACE Fort Worth District Regulatory Branch and its Compliance Officer for conformance with the Permit.

f. City shall maintain the property included in the Project and City shall be responsible for the maintenance and operating expenses for such property.

g. Upon request by County, City shall provide updates on the progress of the Project, including a date for substantial completion of each phase of the Project, in sufficient detail to allow County to monitor the progress of the Project.

h. City shall promptly furnish County with copies of all legal notices received by City affecting the Project, including, without limitation, notices from governmental authorities and notices from any party claiming default in any payment obligation and any other notice not of a routine nature.



City shall promptly give notice of any suit, proceeding or action that is initiated or threatened in connection with the Project.

i. Within thirty (30) days following substantial completion of the Project, City shall notify County in writing of the substantial completion of construction, whereupon County may inspect the completed work to determine if construction has substantially been completed in accordance with the plans and specifications for such work.

j. City shall maintain the books, records and documents pertaining to those portions of the Project for which the County Contribution was utilized. County representatives shall have access to and the right to examine same, upon reasonable notice to City. City's books, records, and documents relating to the Project must be maintained separately from other City projects so that an examination by County representatives shall be limited to the documents for this Project. In the event that County determines that the County's Contribution has not been spent as specified in this Agreement, City shall refund all improperly spent portions of County's Contribution.

k. Within one hundred eighty (180) days after final completion of the Project, City shall deliver to County a final construction report which shall set out the total costs incurred in connection with those portions of the Project for which the County and City made financial contributions and detailing the specific use of the County Contribution.

## **ARTICLE V**

### **COUNTY'S OBLIGATIONS**

5.01 County shall perform and provide the following:

a. County shall provide the total County Contribution for this Project no later than thirty (30) days after the receipt of an invoice from the City of San Antonio for this Project.

b. County shall provide timely review and approval of the partially completed and final design and construction documents for the Project in accordance with Section 4.01(d). If no comments are provided by County to City within thirty (30) days of County receiving the aforementioned design and construction documents County will be deemed to have fully approved such documents. **The approvals given in this Section do not relieve City, and City fully releases and waives claims against the County, as well as the County's elected officials, employees, contractors, agents, and representatives, with respect to the responsibility for (including, without limitations, any associated monetary cost, assessment, fine, or penalty) the correction of City's mistakes, errors, or omissions contained in the design and construction documents for the Project, including any mistakes or errors which may be the result of circumstances unforeseen at the time the Plans were developed or approved.**

c. County shall have no responsibility to maintain the Project at any time.

## **ARTICLE VI**

### **COUNTY'S RIGHTS UNDER THIRD PARTY CONTRACTS**

6.01 County agrees City shall have the authority to contract, on behalf of the Parties, for all services necessary for the completion of the Project.

6.02 City shall provide County, upon County request, a fully executed copy of each contract entered into by City for the Project.

6.03 In all Project contracts entered into by City, City shall include the following:

- a. County shall be named as an additional insured on all policies naming City as an additional insured and shall be entitled to make claims, to the extent of County's interest in the Project, under all insurance coverage. Prior to the commencement of any work by any service provider, vendor, consultant, contractor, sub-consultant or subcontractor under this Agreement, City shall provide County's Risk Management office with copies of completed Certificates of Insurance and endorsements or policy materials necessary to document compliance with these requirements. Certificates shall be completed by an agent authorized to bind the named underwriters and their companies to the coverage limits and termination provisions shown thereon. City shall not allow any modifications whereupon County may incur increased risks.
- b. City shall require all contractors, consultants, and service providers, including, but not limited to, all sub-consultants and subcontractors, to maintain statutory worker's compensation insurance for all of their employees with a waiver of subrogation in favor of City and County.
- c. City shall require in its contracts for services, construction, and materials, that the contracting parties, along with all sub-consultants and subcontractors, be required to indemnify County and City, their officials, employees and agents, for claims by third parties, as allowed by law.
- d. City shall require all consultants, sub-consultants, contractors, and subcontractors to provide all statutorily required performance and payment bonds at no additional cost to the Parties. On services for which performance bonds are not statutorily required, City shall determine whether to require performance bonds.
- e. City shall state in all agreements with third-parties that County is a third-party beneficiary to those agreements.

**ARTICLE VII**  
**RESERVED**

**ARTICLE VIII**  
**DEFAULT**

8.01 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 at least thirty (30) days to cure the breach. If the breach is not corrected to the satisfaction of the non-breaching Party by the end of the thirty (30) day period, the non-breaching Party may (but has no obligation to) either: (a) provide for an extension if the



breaching Party has commenced work to cure the breach and is making a good faith effort to complete the work, or (b) give written notice of termination to the breaching Party and seek to recover damages.

#### **ARTICLE IX** **TERMINATION**

9.01 If either Party terminates this Agreement prior to initiating construction, City shall refund to County the unused portion of the County's Contribution. Once City initiates construction on the Project, neither Party shall be able to terminate this Agreement for convenience. Once construction on the Project has commenced, this Agreement may be terminated only for cause. If County terminates this Agreement for cause after construction on the Project commences, County shall be refunded the unused portion of the County's Contribution. If City does not complete construction of the Project by May 1, 2028, the Agreement shall terminate for cause.

#### **ARTICLE X** **ENTIRE AGREEMENT**

10.01 This Agreement, including all exhibits, supersedes any and all other agreements, either oral or in writing, and no other agreement, statement, or promise relating to the subject matter of this Agreement that is not contained herein shall be valid or binding.

#### **ARTICLE XI** **ASSIGNMENT OR TRANSFER OF INTEREST**

11.01 Neither Party may assign its rights, privileges and obligations under this Agreement, in whole or in part, without the prior written consent of the other Party. Any attempt to assign without such approval shall be void.

#### **ARTICLE XII** **TEXAS LAW TO APPLY**

12.01 This Agreement is performable in Bexar County, Texas and the validity of any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas.

#### **ARTICLE XIII** **SEVERABILITY**

13.01 If any one or more of the provisions contained in the Agreement is for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provision and this Agreement will be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

#### **ARTICLE IX** **COMPLIANCE WITH LAWS AND ORDINANCES**

14.01 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 XV**  
**AMENDMENT**

15.01 No amendment, supplementation, modification, or alteration of the terms hereof will be binding unless it is in writing, dated subsequent to the date hereof and duly executed by the Parties.

**ARTICLE XVI**  
**NOTICES**

16.01 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, unless a provision of this Agreement designates another Party and provides an address. 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 COUNTY:       Bexar County Judge  
                          Bexar County Commissioners Court  
                          Paul Elizondo Tower  
                          101 W. Nueva, Suite 1019  
                          San Antonio, Texas 78205

With a copy to:       Director of Public Works  
                          Bexar County Public Works Department  
                          1948 Probandt  
                          San Antonio, Texas 78214

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

With a copy to:       Razi Hosseini, P.E., R.P.L.S.  
                          Director/City Engineer, Public Works Department Improvements  
                          P.O. Box 839966  
                          San Antonio, Texas 78283-3966

**ARTICLE XVII**  
**FORCE MAJEURE**

17.01 Neither Party shall be responsible for delays or lack of performance by such entity or its elected officials, agents or employees which result from any act that is: (a) beyond that entity's reasonable control, and (b) not caused by, resulting from or arising out of the negligence or willful misconduct of that same entity's delay or inability (or alleged inability) to perform including, without limitation, acts of God, strikes, or other labor disturbances, or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses (each, an "Event of Force Majeure"). 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.

17.02 The Party claiming an Event of Force Majeure under this Article shall promptly give the other Party written notice of such claim (but in no less than five (5) days after the event or incident which gave rise to such claim). Such notice must include, at a minimum: (a) a detailed description of the event or incident giving rise to such claim, and (b) the known or estimated duration of such delay or inability to perform.

#### **ARTICLE XVIII** **MULTIPLE COUNTERPARTS**

18.01 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.

*Signatures to follow*

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH WILL HAVE FULL FORCE  
AND EFFECT ON THIS 11 DAY OF January, 2022.

BEXAR COUNTY, TEXAS

By: 

Nelson W. Wolff  
County Judge

Date: 1-11-2022

APPROVED AS TO LEGAL FORM:

By: 

Siobhan Karger  
Assistant Criminal District Attorney-  
Civil Division

APPROVED AS TO FINANCIAL FORM:

By: 

Leo S. Caldera, CIA, CGAP  
County Auditor

By: 

David Smith  
County Manager

APPROVED:

By: 

Renee D. Green, PE  
Director of Public Works/County Engineer

THE CITY OF SAN ANTONIO

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

Eric Walsh  
City Manager

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

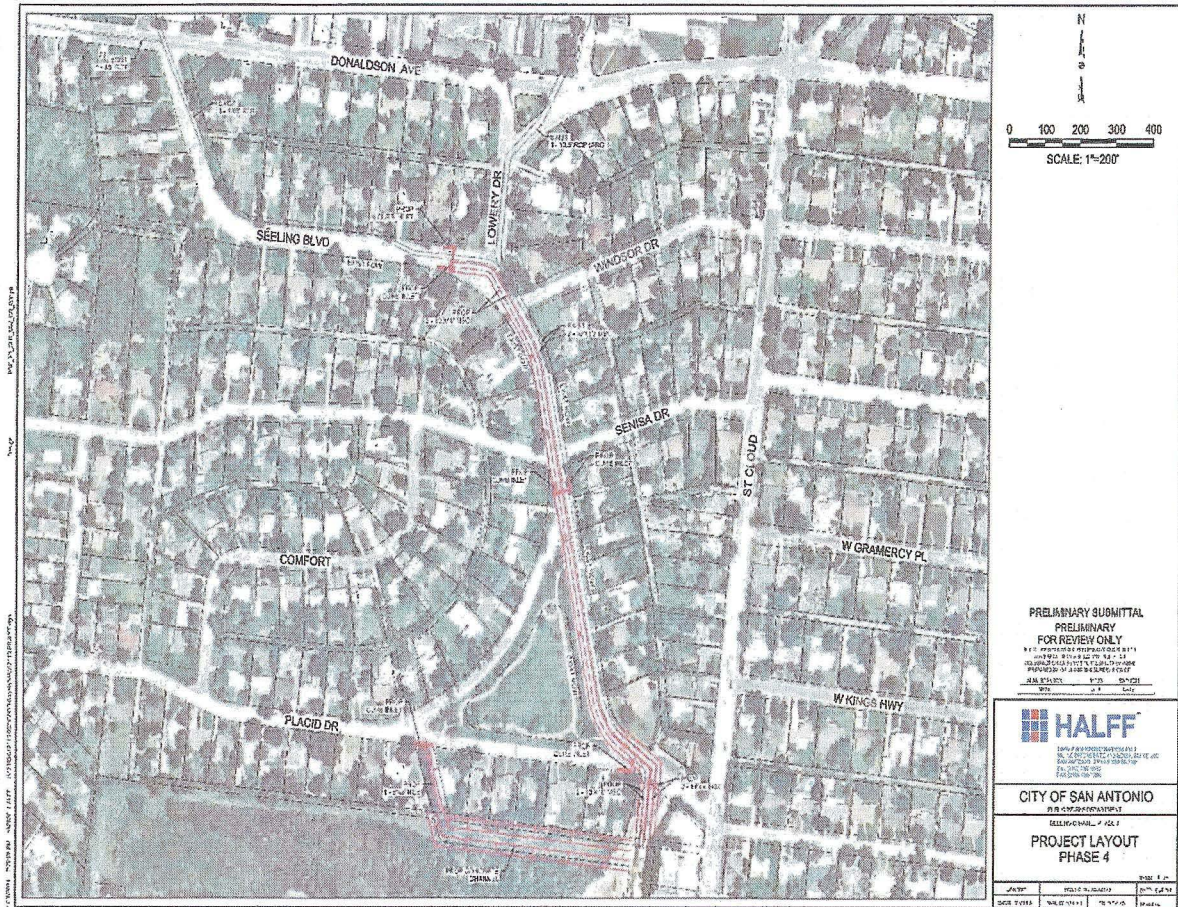
APPROVED AS TO LEGAL FORM:

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

City Attorney

**EXHIBIT A**

**PROJECT SITE**





STATE OF TEXAS                   §           INTERLOCAL AGREEMENT FOR THE  
   §           SEELING CHANNEL PHASE IV  
COUNTY OF BEXAR           §           DRAINAGE PROJECT

**THIS INTERLOCAL AGREEMENT FOR THE SEELING CHANNEL PHASE IV DRAINAGE PROJECT** (hereinafter referred to as the "Agreement") is made and entered by and between the **COUNTY OF BEXAR**, a political subdivision of the State of Texas ("County"), and the **CITY OF SAN ANTONIO, TEXAS**, a Texas Home Rule Municipality ("City") (also, individually, a "Party" or, collectively, the "Parties"), pursuant to the authority granted by the provisions of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

**RECITALS**

WHEREAS, this Agreement is entered into by the County and City pursuant to the authority granted by the provisions of the Interlocal Cooperation Act which is found in Chapter 791, Texas Government Code; and

WHEREAS, this Agreement is intended to further the purpose of the Interlocal Cooperation Act by increasing the efficiency and effectiveness of local governments and assisting with flood control efforts in the City and County; and

WHEREAS, the voters of San Antonio approved an \$850,000,000.00 2017-2022 Bond Program in May of 2017; and

WHEREAS, included in the City's 2017-2022 Bond Program was the Seeling Drainage Project Phase III; and

WHEREAS, City is in construction and will be completing Phase III of the Seeling Drainage Project and is initiating Phase IV ("Project" or "City's Project"); and

WHEREAS, the City's Project is part of an ongoing drainage project to design and construct a vital underground storm drainage system upstream of Seeling Blvd. and St. Cloud ("Project Site") as depicted in Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, the City's Project will be designed to maximize drainage conveyance through the area and reduce the flood extents and localized residential flooding for approximately 100 properties relative to the 100-year floodplain within the Project area and result in realignment of the Federal Emergency Management Administration ("FEMA") floodplain; and

WHEREAS, the County recognizes the City's Project as a regional flood control project and believes the Project will accomplish the County's objective of improving regional flood control; and

WHEREAS, the Bexar County Commissioners Court approved the FY20 Capital Improvements Projects Budget on September 10, 2019, which included the Project in the amount of \$4,000,000.00; and



WHEREAS, the County shall provide \$4,000,000.00 to City, in one lump sum payment, for the design, environmental, and construction-related costs of City's Project and City shall incorporate County's lump sum amount into City's overall Project budget; and

WHEREAS, the City shall be responsible for the maintenance of the Project after its completion; and

WHEREAS, the Parties desire to enter into this Interlocal Agreement, to establish the rights and obligations of the Parties regarding the Project, and to establish the procedures for funding the Project.

NOW THEREFORE, for and in consideration of the mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE I**

### **PURPOSE**

1.01 The purpose of this Agreement is to establish the rights and obligations of the Parties in connection with the Project and to establish the procedures for funding the Project.

## **ARTICLE II**

### **TERM**

2.01 This Agreement shall commence upon the execution date of the last signatory party to the Agreement (the "Effective Date") and shall terminate upon completion of the Project or as otherwise provided for herein.

2.02 City shall have the duty to maintain the Project and to enforce the warranties associated therewith. Such duties shall survive termination of the Agreement.

## **ARTICLE III**

### **COUNTY'S FINANCIAL COMMITMENT**

3.01 County shall provide funds to City not to exceed FOUR MILLION DOLLARS (\$4,000,000.00) (the "County Contribution").

3.02 The Parties acknowledge and agree that the financial commitments stated in this Agreement are independent of the necessary operating and maintenance expenses that are and shall remain the City's responsibility during and after the Project.

3.03 FOUR MILLION DOLLARS (\$4,000,000.00) is the total maximum County budget commitment to the City for the Project. County funding for the Project shall be used for preliminary engineering, design, real estate, environmental, and construction-related costs of the Project. No other funds shall be available from County to City for the Project unless agreed to in writing in the form of an amendment to this Agreement executed by both Parties.

3.04 Each Party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying Party.

**ARTICLE IV**  
**CITY'S OBLIGATIONS**

4.01 City shall perform and provide the following:

a. Upon the receipt of the County Contribution, the City will deposit the funds in the City's account established for the Project and limit use of the funds to preliminary engineering, design, environmental, and construction-related costs associated with the Project.

b. City shall be responsible for paying all fees and expenses associated with the Project, including maintenance of the Project.

c. City shall manage, oversee, administer, and carry out all activities and services required for the Project, to ensure that the Project is designed, constructed, equipped, furnished and completed with new materials in a good and workmanlike manner and in accordance with the terms of this Agreement and the design and construction documents of the Project.

d. City shall provide timely review and approval of design and construction contract documents for the Project. During the design process City shall provide County with design documents at 30%, 60% and 90% design completion. County shall promptly provide input to the design documents for City's consideration at those stages of completion. Additionally, final design and construction documents for the Project shall be provided to the County for review and approval. County may only disapprove the final design and/or construction documents if County determines that the final design and/or construction documents will not reasonably fulfill the Project's purpose to alleviate flooding at the Project Site. If County does not approve the final design/construction documents of the Project for the afore stated reason, City shall refund all unused portions of the County's Contribution. City shall not make substantial changes to approved design/construction documents without County's approval. In the event that County does not approve substantial changes after having approved the documents, City shall refund all unused portions of the County's Contribution.

e. If required, City shall obtain the United States Army Corps of Engineers (hereafter referred to as "USACE") Individual Permit or Nationwide Permit, as determined by final design option. If required by USACE Individual Permit, City shall perform regular site maintenance of the Project in accordance with the terms and conditions of the USACE Individual Permit Verification issued under Section 404 of the Clean Water Act, including maintenance requested by the USACE Fort Worth District Regulatory Branch and its Compliance Officer for conformance with the Permit.

f. City shall maintain the property included in the Project and City shall be responsible for the maintenance and operating expenses for such property.

g. Upon request by County, City shall provide updates on the progress of the Project, including a date for substantial completion of each phase of the Project, in sufficient detail to allow County to monitor the progress of the Project.

h. City shall promptly furnish County with copies of all legal notices received by City affecting the Project, including, without limitation, notices from governmental authorities and notices from any party claiming default in any payment obligation and any other notice not of a routine nature.



City shall promptly give notice of any suit, proceeding or action that is initiated or threatened in connection with the Project.

i. Within thirty (30) days following substantial completion of the Project, City shall notify County in writing of the substantial completion of construction, whereupon County may inspect the completed work to determine if construction has substantially been completed in accordance with the plans and specifications for such work.

j. City shall maintain the books, records and documents pertaining to those portions of the Project for which the County Contribution was utilized. County representatives shall have access to and the right to examine same, upon reasonable notice to City. City's books, records, and documents relating to the Project must be maintained separately from other City projects so that an examination by County representatives shall be limited to the documents for this Project. In the event that County determines that the County's Contribution has not been spent as specified in this Agreement, City shall refund all improperly spent portions of County's Contribution.

k. Within one hundred eighty (180) days after final completion of the Project, City shall deliver to County a final construction report which shall set out the total costs incurred in connection with those portions of the Project for which the County and City made financial contributions and detailing the specific use of the County Contribution.

## **ARTICLE V**

### **COUNTY'S OBLIGATIONS**

5.01 County shall perform and provide the following:

a. County shall provide the total County Contribution for this Project no later than thirty (30) days after the receipt of an invoice from the City of San Antonio for this Project.

b. County shall provide timely review and approval of the partially completed and final design and construction documents for the Project in accordance with Section 4.01(d). If no comments are provided by County to City within thirty (30) days of County receiving the aforementioned design and construction documents County will be deemed to have fully approved such documents. **The approvals given in this Section do not relieve City, and City fully releases and waives claims against the County, as well as the County's elected officials, employees, contractors, agents, and representatives, with respect to the responsibility for (including, without limitations, any associated monetary cost, assessment, fine, or penalty) the correction of City's mistakes, errors, or omissions contained in the design and construction documents for the Project, including any mistakes or errors which may be the result of circumstances unforeseen at the time the Plans were developed or approved.**

c. County shall have no responsibility to maintain the Project at any time.

## **ARTICLE VI**

### **COUNTY'S RIGHTS UNDER THIRD PARTY CONTRACTS**

6.01 County agrees City shall have the authority to contract, on behalf of the Parties, for all services necessary for the completion of the Project.

6.02 City shall provide County, upon County request, a fully executed copy of each contract entered into by City for the Project.

6.03 In all Project contracts entered into by City, City shall include the following:

- a. County shall be named as an additional insured on all policies naming City as an additional insured and shall be entitled to make claims, to the extent of County's interest in the Project, under all insurance coverage. Prior to the commencement of any work by any service provider, vendor, consultant, contractor, sub-consultant or subcontractor under this Agreement, City shall provide County's Risk Management office with copies of completed Certificates of Insurance and endorsements or policy materials necessary to document compliance with these requirements. Certificates shall be completed by an agent authorized to bind the named underwriters and their companies to the coverage limits and termination provisions shown thereon. City shall not allow any modifications whereupon County may incur increased risks.
- b. City shall require all contractors, consultants, and service providers, including, but not limited to, all sub-consultants and subcontractors, to maintain statutory worker's compensation insurance for all of their employees with a waiver of subrogation in favor of City and County.
- c. City shall require in its contracts for services, construction, and materials, that the contracting parties, along with all sub-consultants and subcontractors, be required to indemnify County and City, their officials, employees and agents, for claims by third parties, as allowed by law.
- d. City shall require all consultants, sub-consultants, contractors, and subcontractors to provide all statutorily required performance and payment bonds at no additional cost to the Parties. On services for which performance bonds are not statutorily required, City shall determine whether to require performance bonds.
- e. City shall state in all agreements with third-parties that County is a third-party beneficiary to those agreements.

## **ARTICLE VII RESERVED**

## **ARTICLE VIII DEFAULT**

8.01 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 at least thirty (30) days to cure the breach. If the breach is not corrected to the satisfaction of the non-breaching Party by the end of the thirty (30) day period, the non-breaching Party may (but has no obligation to) either: (a) provide for an extension if the



breaching Party has commenced work to cure the breach and is making a good faith effort to complete the work, or (b) give written notice of termination to the breaching Party and seek to recover damages.

#### **ARTICLE IX** **TERMINATION**

9.01 If either Party terminates this Agreement prior to initiating construction, City shall refund to County the unused portion of the County's Contribution. Once City initiates construction on the Project, neither Party shall be able to terminate this Agreement for convenience. Once construction on the Project has commenced, this Agreement may be terminated only for cause. If County terminates this Agreement for cause after construction on the Project commences, County shall be refunded the unused portion of the County's Contribution. If City does not complete construction of the Project by May 1, 2028, the Agreement shall terminate for cause.

#### **ARTICLE X** **ENTIRE AGREEMENT**

10.01 This Agreement, including all exhibits, supersedes any and all other agreements, either oral or in writing, and no other agreement, statement, or promise relating to the subject matter of this Agreement that is not contained herein shall be valid or binding.

#### **ARTICLE XI** **ASSIGNMENT OR TRANSFER OF INTEREST**

11.01 Neither Party may assign its rights, privileges and obligations under this Agreement, in whole or in part, without the prior written consent of the other Party. Any attempt to assign without such approval shall be void.

#### **ARTICLE XII** **TEXAS LAW TO APPLY**

12.01 This Agreement is performable in Bexar County, Texas and the validity of any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas.

#### **ARTICLE XIII** **SEVERABILITY**

13.01 If any one or more of the provisions contained in the Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provision and this Agreement will be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

#### **ARTICLE IX** **COMPLIANCE WITH LAWS AND ORDINANCES**

14.01 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 XV**  
**AMENDMENT**

15.01 No amendment, supplementation, modification, or alteration of the terms hereof will be binding unless it is in writing, dated subsequent to the date hereof and duly executed by the Parties.

**ARTICLE XVI**  
**NOTICES**

16.01 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, unless a provision of this Agreement designates another Party and provides an address. 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 COUNTY:       Bexar County Judge  
                          Bexar County Commissioners Court  
                          Paul Elizondo Tower  
                          101 W. Nueva, Suite 1019  
                          San Antonio, Texas 78205

With a copy to:       Director of Public Works  
                          Bexar County Public Works Department  
                          1948 Probandt  
                          San Antonio, Texas 78214

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

With a copy to:       Razi Hosseini, P.E., R.P.L.S.  
                          Director/City Engineer, Public Works Department Improvements  
                          P.O. Box 839966  
                          San Antonio, Texas 78283-3966

**ARTICLE XVII**  
**FORCE MAJEURE**

17.01 Neither Party shall be responsible for delays or lack of performance by such entity or its elected officials, agents or employees which result from any act that is: (a) beyond that entity's reasonable control, and (b) not caused by, resulting from or arising out of the negligence or willful misconduct of that same entity's delay or inability (or alleged inability) to perform including, without limitation, acts of God, strikes, or other labor disturbances, or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses (each, an "Event of Force Majeure"). 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.

17.02 The Party claiming an Event of Force Majeure under this Article shall promptly give the other Party written notice of such claim (but in no less than five (5) days after the event or incident which gave rise to such claim). Such notice must include, at a minimum: (a) a detailed description of the event or incident giving rise to such claim, and (b) the known or estimated duration of such delay or inability to perform.

#### **ARTICLE XVIII** **MULTIPLE COUNTERPARTS**

18.01 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.

*Signatures to follow*


EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH WILL HAVE FULL FORCE AND EFFECT ON THIS 11 DAY OF January, 2022.

BEXAR COUNTY, TEXAS


By:   
Nelson W. Wolff  
County Judge

Date: 1-11-2022

APPROVED AS TO LEGAL FORM:

By:   
Siobhan Karger  
Assistant Criminal District Attorney-  
Civil Division

APPROVED AS TO FINANCIAL FORM:

By:   
Leo S. Caldera, CIA, CGAP  
County Auditor

By:   
David Smith  
County Manager

APPROVED:

By:   
Renee D. Green, PE  
Director of Public Works/County Engineer

THE CITY OF SAN ANTONIO

By: \_\_\_\_\_  
Eric Walsh  
City Manager

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

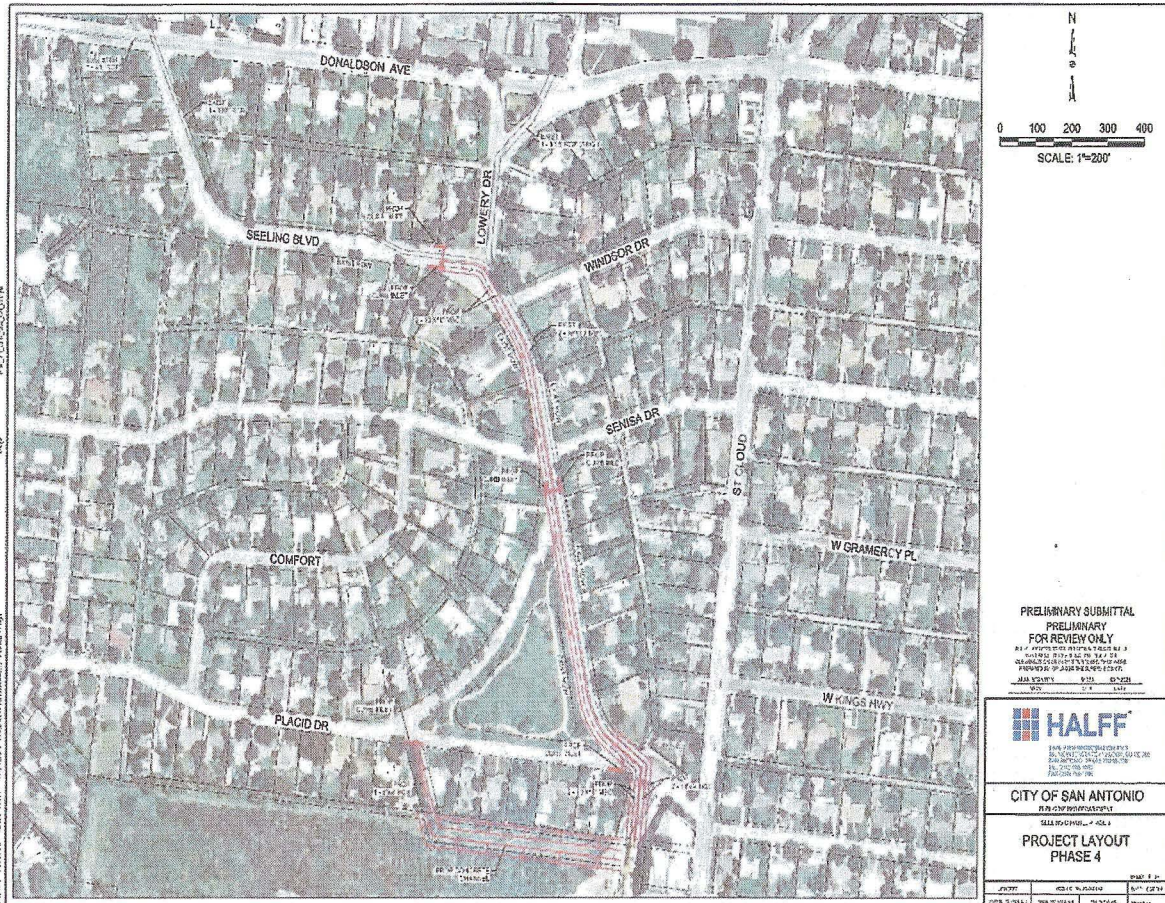
APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
City Attorney



# EXHIBIT A

## PROJECT SITE



Requester nikuma NAOKO IKUMA

Requisition Number 188381 Needs Approval

USD  
Total 4000000.00

leader Miscellaneous Lines Template Drop Ship PO Bill To User Fields Global

FC	Line	Item	Quantity	UOM	Unit Cost	Curr
	1	ILA	1.00	JA	4000000.0000	USD

Line Detail Purchasing Classes/Code Miscellaneous Line User Fields Currency Global Back Order

Item Description ILA with CoSA Needs Approval

Vendor Item

Account 5032 54014 Dist Co 702

Activity 2001201085032 52070 Bill Cat

Asset Template Item Entry Code 1 Item

Requested Delivery Date 01/11/2022 Priority Create PO Y

Item Type S Cost Opt 1

Use Entered Cost Y Add comments

Service Code A Amount

Alternate Item