

**FT. SAM HOUSTON VETERAN ADMINISTRATION ROADWAY EXTENSION
FUNDING AGREEMENT**

This Funding Agreement for the extension of a public roadway located near Ft. Sam Houston (“*Agreement*”) is made and entered into as of the Effective Date by and among the City of San Antonio, a municipal corporation (“*City*”) pursuant to Ordinance No. _____ approved on _____, 2021, and the United States Department of Veterans Affairs (“*VA*”). The City, VA is each referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the City is the fee simple owner of a section of land paralleling Winans Road by Fort Sam Houston; and

WHEREAS, the City is constructing a public roadway from Rittiman Road to Winans Road; and

WHEREAS, the City and VA desire to extend the aforementioned roadway from the end of the 2017 Bond Project - Fort Sam ISD New Roadway (Winans Road to Rittiman Rd) approximately 1,000 feet to the east, parallel to Winans Road, (“*Project*”) as more fully detailed in “**Exhibit A**”; and

WHEREAS, the extension of the roadway will provide a secondary access to the Ft. Sam Houston National Cemetery; and

WHEREAS, City will execute an access easement with VA for the roadway to be used as an alternate entry to the Ft. Sam Houston National Cemetery which easement will be attached hereto as “**Exhibit D**”; and

WHEREAS, VA has provided to City the Project construction plans and specifications (“*Plans*”), a copy of the Index for such Plans/Drawings and the Table of Contents for such Specifications are attached hereto as “**Exhibit C**”, and will a) construct the Project to meet or exceed the City of San Antonio Design Guidance Manual, Appendix 10A City of San Antonio Pavement Design Standards for a Local A Street (“*Design Standards*”), b) provide construction administration for the Project, c) provide quality control testing during the construction of the Project, and d) maintain the roadway after completion; and

WHEREAS, City, having reviewed the Plans and Environmental Documents, will provide periodic inspections during construction and conduct quality assurance testing on subgrade before asphalt placement and on asphalt placement by completing asphalt material sample tests and asphalt core compaction tests to verify compliance with the Design Standards; and

WHEREAS, the total cost of Project design and construction described above is estimated to be THREE HUNDRED FIFTY AND 00/100 DOLLARS (\$350,000.00), as set forth in the Cost

Estimate, attached hereto, marked as “**Exhibit B**” and made a part hereof for all purposes (“*Estimated Project Cost*”); and

WHEREAS, VA has agreed to pay to City FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.000) (“*VA Funding*”) for performing the obligations set out in **Article IV**; and

WHEREAS, the Parties intend this Agreement to set forth each Party’s responsibilities and obligations in connection with the donations and its use for the Project:

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

I. PURPOSE

The Parties have determined that VA, having provided the Plans and Environmental Documents, will construct the Project, provide construction administration services, and pay to City the VA Funding for an approximately 1000-foot extension of a public roadway from the end of the 2017 Bond Project - Fort Sam ISD New Roadway (Winans Road to Rittiman Rd) to the east, parallel to Winans Road. City will review and approve the Plans and Environmental Documents for the roadway extension, provide periodic inspections during construction, and conduct testing to verify pavement complies with the Design Standards, subject to the provisions of this Agreement. Upon completion of the Project, VA will own the roadway paving material and will be responsible for maintaining the roadway in accordance with the standards of the VA National Cemetery Administration.

II. TERM

Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon City Council approval (“*Effective Date*”) and continue until the Project has attained final completion as mutually determined by both Parties, at which time this Agreement shall terminate.

III. OBLIGATIONS OF VA

3.1 VA shall manage, oversee, administer, and carry out all activities and services required for the Project, to ensure that the Project is designed, constructed, and completed with new materials in a good and workmanlike manner and in accordance with the terms of this Agreement, the Plans, and the Design Standards. The project includes, but is not limited to the following:

- a. Provide design services and full and complete construction Plans to include construction bid services, construction phase services, and project close out.

- b. Provide environmental services and all required Environmental Documents to include NEPA documentation, including FONSI, and risk assessments, including Phase I ESA and Phase II ESA (if warranted from Phase I ESA).
- c. Competitively solicit, oversee administer and manage the construction of the Project in accordance with the Plans. Oversight shall include management of material testing consultant, and environmental due diligence, monitoring and permitting.
- d. Staging of construction and all necessary street closures during construction.
- e. Participate in all Project meetings.
- f. During the construction of the Project through final completion, the duty to obtain warranties from third parties and enforce the warranties on behalf of the Parties, if necessary.
- g. Provide quality control testing during the construction of the Project. VA has worked with the City during design to ensure compliance with City standards. VA is responsible for ensuring pavement quality control compliance in the construction contract.
- h. Comply with environmental permits and commitments outlined in the approved environmental document and EPIC sheet during construction.

3.2 VA shall provide all necessary funding for the completion of the Project.

3.3 VA has provided the Plans for the Project to the City for review and approval pursuant to Exhibit C. VA shall coordinate with City on any changes to the roadway design during construction.

3.4 VA shall pay to City the VA Funding in the amount of FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00). VA shall pay the VA Funding to City in a single lump sum within thirty (30) days of City Council approval of this Agreement. This includes inspection and quality assurance testing by the City.

3.5 Upon request by City, VA shall provide updates on the progress of the Project, including a date for substantial completion of the Project, in sufficient detail to allow City to monitor the progress of the Project. Additionally, VA, upon request by City, shall attend site visits with City to Project location during construction. VA shall cause its on-site Resident Engineer professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans.

3.6 Within thirty (30) days following substantial completion of the Project, VA shall notify City in writing of the substantial completion of construction, whereupon City may inspect the completed work to determine if construction has substantially been completed in accordance

with the Plans. The roadway paving material shall remain the property of VA upon final completion of the Project.

3.7 VA shall promptly furnish City with copies of all legal notices received by VA 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. VA shall promptly give notice of any suit, proceeding or action that is initiated or threatened in connection with the Project.

3.8 VA shall be responsible for maintaining and operating the Project after final completion at its own expense.

IV. OBLIGATIONS OF THE CITY

4.1 City shall provide timely review and approval of the Plans for the Project. **The approvals given in this Section do not relieve VA, and VA fully releases and waives claims against the City, as well as the City's elected officials, employees, agents, and representatives, with respect to the responsibility for (including, without limitations, any associated monetary cost, assessment, fine, or penalty) the correction of VA's mistakes, errors, or omissions contained in the design and construction documents and Environmental Documents for the Project, including any mistakes or errors which may be the result of circumstances unforeseen at the time the Plans and Environmental Documents were developed or approved.**

4.2 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans and to request copies of construction inspections performed by VA and third parties. City shall conduct quality assurance testing on the subgrade before asphalt placement and on the asphalt placement by completing asphalt material sample tests and asphalt core compaction tests to verify pavement compliance with the Design Standards. Inspections and testing scheduling and execution must be coordinated with the on-site VA Senior Resident Engineer. VA shall cause its on-site Senior Resident Engineer to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans.

4.3 City shall have authority to test the pavement constituting this Project upon completion to verify such pavement complies with the Design Standards. If the pavement fails to meet the Design Standards, the City shall notify VA of such failure, and the parties shall work together in good faith to determine a mutually acceptable resolution which VA shall implement at VA's sole cost.

4.4 City shall use VA Funding solely in connection with the Project.

V. DESIGNATION OF REPRESENTATIVES

5.1 City hereby appoints the Public Works Department Director or his/her designee (“*City Project Manager*”) as its designated representative under this Agreement. City’s Project Manager shall be the primary point of contact for City.

5.2 VA hereby appoints Bryan Bodner or his/her designee, (“*VA Project Manager*”), as its designated representative under this Agreement. VA’s Project Manager shall be the primary point of contact for VA.

VI. NOTICE

Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

If to the City:

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

If to the VA:

Bryan J. Bodner, P.E.
Senior Project Manager
Office of Facilities and Construction Management
U.S. Department of Veterans Affairs
425 I (Eye) Street NW
Washington D.C., 20001
Email: bryan.bodner@va.gov

and

Alea Barnes
Contracting Officer
Office of Facilities Acquisition
Office of Construction and Facilities Management (CFM)
Department of Veterans Affairs
1425 Tri-State Parkway, Suite 140
Gurnee, IL 60031
Email: Alea.barnes@va.gov

VII. INDEMNITY

7.1 To the extent permitted by law, each Party expressly agrees that it shall be solely and exclusively responsible for its own agents, servants, and/or employees and that neither party looks to the other to save or hold harmless for the consequences of one of its own agents, servants and/or employees. Neither party is hereby waiving any rights or protection it presently enjoys by reason of any applicable state or federal law.

7.2 The liability, if any, of the United States for injury or loss of property, or personal injury or death shall be governed exclusively by the provisions of the Federal Tort Claims Act.

VIII. INSURANCE REQUIREMENTS

8.1 Prior to the commencement of any work under this Agreement, VA shall provide City with a letter of self-insurance evidencing that VA is self-insured for workers compensation insurance and commercial general liability. Additionally, prior to commencing any work under the Agreement, VA shall require its contractor providing work in connection with the Project (“*Contractor*”) to furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City’s Public Works Department, which shall be clearly labeled “Ft. Sam Houston Veteran Administration Roadway Extension” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier and list the agent’s signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Public Works Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

8.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

8.3 VA shall require Contractor to obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at VA’s or VA’s Contractor’s sole expense, subject to Contractor’s right to maintain reasonable deductibles in such amounts as are approved by the City, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors f. Damage to property rented by you	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage must be on a per project aggregate.
4. Professional Liability	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.
5. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
6. Environmental Insurance –(Contractor’s Pollution Liability (Claims-made coverage)	\$1,000,000 per occurrence; \$2,000,000 general aggregate for claims associated with hazardous materials, to include spills and mitigation.
7. Explosion, Collapse, Underground Property Hazard Liability	\$2,000,000 per claim
8. Umbrella or Excess Liability Coverage	\$2,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage. (per occurrence limit depends on scope of operation)

8.4 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements from VA, if applicable. VA shall require Contractor to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. VA or Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Public Works Department
P.O. Box 839966
San Antonio, Texas 78283-3966

8.5 VA agrees that with respect to the above required insurance, it shall require all such insurance policies obtained by Contractor to contain or be endorsed to contain the following provisions:

- a) Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- b) Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- c) Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- d) Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

8.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Grantee shall require Contractor to provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

8.7 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder until Contractor demonstrates compliance with the requirements hereof.

8.8 Nothing herein contained shall be construed as limiting in any way the extent to which VA or Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

8.9 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

8.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

IX. TERMINATION

VA may terminate this Agreement upon 30 calendar days' notice. Upon termination, the City shall return any of such VA Funding that the City has not expended in performing its obligations under Article IV. If this Agreement is terminated, VA shall not begin construction of the Project until the Parties have executed a new Funding Agreement.

X. APPLICABLE LAW

10.1 This agreement shall be governed by and enforced in accordance with the laws of the United States and, to the extent such laws do not apply, then by the laws of the State of Texas without regard to its principles of conflicts of law.

10.2 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.

XI. COMPLIANCE WITH LAWS

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.

XII. AMENDMENTS

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. The Director of the City's Public Works Department shall have the authority to execute amendments to modify minor changes in scope without City Council approval.

XIII. SEVERABILITY

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.

XIV. LEGAL AUTHORITY

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.

XV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, 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.

XVI. COUNTERPARTS

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.

Signatures to follow

THE CITY OF SAN ANTONIO

By: _____
Razi Hosseini, P.E.,R.P.L.S.
City Engineer/Public Work Department Director

**UNITED STATES
DEPARTMENT OF VETERANS
AFFAIRS**

DocuSigned by:
Alea Barnes

Alea Barnes
Contracting Officer

APPROVED AS TO FORM:

City Attorney

**EXHIBIT A
PROJECT**

Pursuant to the 2017 Bond Project - Fort Sam ISD New Roadway the City is constructing a public roadway from Rittiman Road to Winans Road. The City has granted the VA an easement which will allow the VA to extend the aforementioned roadway from the end of the 2017 Bond approximately 1,000 feet to the east, parallel to Winans Road. The roadway extension will provide the VA with a secondary entrance for maintenance of the Fort Sam Houston National cemetery. The roadway extension will be a two-lane roadway that is 24' wide and will include asphalt base and surface material along with header curbs on each side of the roadway.

EXHIBIT B
ESTIMATED PROJECT COSTS

ESTIMATED PROJECT COSTS	
Design	\$ 50,000.00
Construction	\$ 300,000.00
Total	\$ 350,000.00

**EXHIBIT C
PLANS**

Fort Sam Houston National Cemetery
Phase 3 Expansion & Improvements

NCA Project # 846PC2045
12-18-20
Bid Documents

**DEPARTMENT OF VETERANS AFFAIRS
NCA MASTER SPECIFICATIONS**

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Fort Sam Houston National Cemetery
Phase 3 Expansion & Improvements

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**EXHIBIT D
EASEMENT**

IN WITNESS WHEREOF the City of San Antonio, a municipal corporation, caused this Easement to be executed in its name and on its behalf this _____ day of _____, 2021.
City of San Antonio, a municipal corporation

By: _____ Date: _____
Razi Hosseini, P.E., R.P.L.S.
Director/City Engineer
Public Works Department

State of Texas §
County of Bexar §

This instrument was acknowledged before me this date, _____ of _____, 2021, by Razi Hosseini, as Director of the Public Works Department, City of San Antonio, in the capacity therein stated and on behalf of that entity.

Notary Public State of Texas

My Commission Expires:

GRANTEE:

Department of Veterans Affairs, acting for and in behalf of the United States of America

BY: _____
NAME:
ITS:

State of _____ §
County of _____ §

This instrument was acknowledged before me on this date _____ of _____, 2021, by _____, in the capacity therein stated and on behalf of that entity.

Notary Public, State of Texas

My Commission expires:
Exhibit A - ACCESS EASEMENT

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Exhibit A



METES AND BOUNDS DESCRIPTION
FOR A 100-FOOT ACCESS EASEMENT

A 1.897 acre, or 82,619 square feet more or less, easement located on a 48.51 acre tract conveyed to the City of San Antonio in deed recorded in Volume 7259, Page 257 of the Official Public Records of Bexar County, Texas, situated in the G. Rodriguez Survey No. 131, Abstract 621 in New City Block 12175 of the City of San Antonio, Bexar County, Texas. Said 1.897 acre easement being more fully described as follows, with distances recited in grid values and bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00:

COMMENCING: At a found brass disk stamped "1997" at the southwest corner of said 48.51 acre tract, on the east line of Cole High School described in plat recorded in Volume 9541, Pages 104-155 of the Deed and Plat Records of Bexar County, Texas;

THENCE: N 89°52'50" E, with the south line of said 48.51 acre tract, a distance of 146.96 feet to a set 1/2" iron rod with a yellow cap stamped "Pape-Dawson" and the POINT OF BEGINNING of the herein described easement;

THENCE: Departing the south line of said 48.51 acre tract, over and across said 48.51 acre tract the following bearings and distances:

N 00°07'10" W, a distance of 100.00 feet to a set 1/2" iron rod with a yellow cap stamped "Pape-Dawson";

N 89°52'50" E, a distance of 810.68 feet to a set 1/2" iron rod with a yellow cap stamped "Pape-Dawson";

S 17°21'10" E, a distance of 104.70 feet to a set 1/2" iron rod with a yellow cap stamped "Pape-Dawson" at the southeast corner of said 48.51 acre tract and the southwest corner of a 41.137 acre tract conveyed to the City of San Antonio in deed recorded in Volume 7053, Page 85 of the Deed Records of Bexar County, Texas, from which a found concrete monument with brass disk marked "B-45" bears N 89°52'50" E, a distance of 1169.23 feet and S 15°25'05" E, a distance of 20.00 feet;

1.897 Ac.
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THENCE: S 89°52'50" W, with the south line of said 48.51 acre tract, a distance of 841.70 feet to the POINT OF BEGINNING and containing 1.897 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in conjunction with a survey made on the ground and a survey map prepared under job number 9111-19 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: May 12, 2020; REVISED May 27, 2020, REVISED February 24, 2021
JOB NO. 9111-19
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