

ORDINANCE 2020-03-05-0157

AUTHORIZING THE EXECUTION OF AN AMENDMENT TO A CONTRIBUTION AGREEMENT WITH CIVITA S CORP 2019 IN THE AMOUNT NOT TO EXCEED \$300,000.00 FOR REIMBURSEMENT OF CONSTRUCTION PHASE ENGINEERING SERVICES RELATED TO THE WEST MILITARY DRIVE & INGRAM ROAD CONNECTORS PROJECT, A 2017 BOND FUNDED PROJECT.

* * * * *

WHEREAS, on May 6, 2017, San Antonio voters approved the 2017 Bond Program, consisting of six propositions totaling \$850 Million to be used on various capital improvement projects to address community infrastructure needs and improve the overall quality of life in San Antonio; and

WHEREAS, on the June 20, 2019, the San Antonio City Council by and thru ordinance 2019-06-20-0536 authorized the execution of a Contribution Agreement with Civita S Corp 2019 (“Civita”) as part of Proposition 1 Streets, Bridges & Sidewalk Improvements in the amount of \$10,000,000.00 for the West Military Drive and Ingram Road Connectors Project and \$1,000,000.00 for the Ingram Road (Potranco Road to Dead End); and

WHEREAS, project construction began in July 2019 and is estimated to be complete by July 2020; and

WHEREAS, this Ordinance authorizes the execution of an Amendment, in an amount not to exceed \$300,000.00 for reimbursement of construction phase engineering services as a part of the previously allocated \$11,000,000.00 construction obligation; **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 Transportation and Capital Improvements Department (TCI) or designee, is hereby authorized to amend the Contribution Agreement between the City of San Antonio and Civita in an amount not to exceed \$300,000.00 for reimbursement of construction phase engineering services. The terms and conditions of the Amendment, in the form attached hereto and incorporated herein for all purposes as **Exhibit I**, are hereby approved.

SECTION 2. Payment is authorized to be encumbered and made payable to Civita S Corp 2019 for reimbursement of construction phase engineering services, in an amount not to exceed \$300,000.00. Payment is in support of the West Military Drive & Ingram Road Connectors Project, using Fund 45099000, with WBS 23-01618-01-02-01 and General Ledger Account 5201170. Funding is provided by GO Bonds and is budgeted in the FY2020-FY2025 CIP Budget.

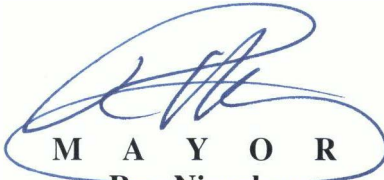
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Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.

SECTION 3. 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 4. This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

PASSED AND APPROVED this 5th day of March, 2020.




M A Y O R
Ron Nirenberg

ATTEST:

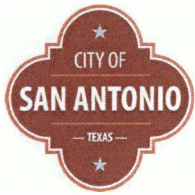


City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council

March 05, 2020

Item: 9

File Number: 19-7999

Enactment Number:

2020-03-05-0157

Ordinance amending the Contribution Agreement with Civita S Corp 2019 in an amount not to exceed \$300,000.00 for reimbursement to Civita S Corp 2019 of construction phase engineering services related to the West Military Drive & Ingram Road Connectors project, a 2017 Bond funded project. [Roderick Sanchez, Assistant City Manager; Razi Hosseini, Interim Director, Transportation & Capital Improvements]

Councilmember Jada Andrews-Sullivan made a motion to adopt. Councilmember Adriana Rocha Garcia seconded the motion. The motion passed by the following vote:

Aye: 11 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia, Gonzales, Cabello Havrda, Sandoval, Pelaez, Courage and Perry

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EXHIBIT I

AMENDMENT OF THE CONTRIBUTION AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO AND CIVITA S CORP 2019

This Amendment to the Contribution Agreement by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation (“City”) and CIVITA S CORP 2019 (“Civita”), a Texas for-profit corporation, is hereby entered into by the parties. Together, City and Civita may be referred to herein collectively as the “Parties”.

RECITALS

On June 20, 2019, the West Military Drive & Ingram Road Connectors Project Contribution Agreement (“Agreement”) was passed and approved by the City Council through Ordinance No. 2019-06-20-0536 (“Ordinance”). Subsequent to the passing of this Agreement through the Ordinance it has become necessary to issue this Amendment to address invoicing and reimbursements.

AMENDMENT

NOW THEREFORE, in consideration of the mutual promises, covenant, and terms contained herein, the Parties hereby agree and amend as follows:

1. **DEFINITIONS:** All capitalized terms used in this Renewal without definitions herein shall have the meanings assigned to such terms in the Agreement.

2. **ADDITIONS:** Section 4.5 added to read as follows:

4.5 City shall reimburse Civita an amount not to exceed three hundred thousand dollars and no cents (\$300,000.00) for expenses to the developer for construction phase engineering services performed by KFW Engineers + Surveying (“Project Engineer”).

Section 4.6 added to read as follows:

- 4.6 City shall reimburse Civita on a monthly basis upon receipt and approval of an invoice through City's Project Reporting Information Management Exchange Link (hereafter referred to as "PRIMELink") within thirty (30) days after receipt of an invoice approved in accordance with this Article.

Section 4.7 added to read as follows:

- 4.7 All requests for reimbursement shall be submitted through PRIMELink. Civita shall sign a Business Level Agreement reasonably acceptable to Grantee and ensure all of its employees or representatives utilizing PRIMELink sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed utilizing PRIMELink or utilizing forms and instructions reasonably approved by TCI, which approval shall not be unreasonably withheld, conditioned or delayed. Any changes to the schedule of values once approved shall be processed and approved as task orders through the PRIMELink portal.

Section 4.8 added to read as follows:

- 4.8 Prior to reimbursement, City shall have the right to inspect the Project Work completed to ensure conformance with the approved Project Scope. Invoices should include all supporting documentation that costs have been incurred, as required by City.

Section 4.9 added to read as follows:

- 4.9 No later than ten (10) business days following receipt of a request for reimbursement, the City agrees to provide Civita written notice regarding any expenditure for which Civita has requested reimbursement under this Agreement which City reasonably determines to be outside the permissible parameters of this Agreement. Said notice shall provide Civita thirty (30) days from receipt of said notice to cure the deficiency or refund to City any sum of money paid by City to Civita determined to: (a) have not been spent by Civita strictly in accordance with the terms of this Agreement; or (b) not

be supported by adequate documentation to fully justify the expenditure. Failure of City to object to the request of payment within (5) business days of the date upon which a request for Payment is actually approved or is deemed approved.

Section 4.10 added to read as follows:

4.10 Civita agrees to maintain readily identifiable records providing, to Civita's actual knowledge, accurate, current, separate, and complete disclosure of the status of any City Funding received pursuant to this Agreement. Civita further agrees:

(A) Maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and

(B) Civita's record system shall contain sufficient documentation to provide, in detail full support and justification for each expenditure.

Section 4.11 added to read as follows:

4.11 Civita shall retain all books, records, documents, reports, written accounting policies and procedures all other relevant materials (hereinafter "Records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion of the Project.

3. **PROVISIONS REMAIN IN EFFECT:** All other terms, conditions, covenant, and provisions of this Agreement, as previously amended, not specifically mentioned herein and revised by this document, are retained in their entirety, unchanged, and remain in full force in effect for the duration of said contract, and any renewals thereof.
4. **CHOICE OF LAW.** This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

5. **ENTIRE AGREEMENT:** This Agreement, as amended, embodies the complete agreement of the parties hereto with regard to the subject matter contained herein, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein.

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO

CIVITA S CORP 2019



Print Name: _____

Print Name: Michael Westheimer

Title: _____


Title: Manager

Date: _____

Date: 1-16-20

ATTEST:

APPROVED AS TO FORM:



Leticia M. Vacek, City Clerk

Assistant City Attorney