

STATE OF TEXAS §
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COUNTY OF BEXAR §

**FUNDING AGREEMENT FOR
INSTALLATION OF ADVANCE WARNING
FLASHING BEACONS FOR AT CARVAJAL
ELEMENTARY**

This **FUNDING AGREEMENT FOR THE INSTALLATION OF FLASHING BEACONS AT CARVAJAL ELEMENTARY** ("Agreement") is hereby made and entered into by and between the City of San Antonio, a Texas Home Rule Municipality ("City"), and San Antonio Independent School District ("SAISD"). City and SAISD collectively are referred to herein as "Parties" and individually referred to as "Party".

Recitals

WHEREAS, SAISD desires the installation of 4 (four) roadside mounted solar powered flashing beacons assemblies (hereafter referred to as "Beacons"), two along Barclay Street and two along SW 21st Street adjacent to the Carvajal Elementary campus (collectively referred to as "the Project"); and

WHEREAS, the City's School Flashing Beacon Cost Share Program provides up to a 50% match from the City for the installation of flashing beacons or upgrades to existing flashing beacons for schools; and

WHEREAS, City owns the right-of ways located on Barclay Street and SW 21st Street; and

WHEREAS, City is willing and able to install the Project and SAISD is willing and able to provide certain funding to the City for such installation; and

WHEREAS, the Parties have agreed to participate in the City's School Flashing Beacon Cost Share Program through the City's School Pedestrian Safety Improvement Program for purchasing and installing the Project; and

WHEREAS, the total cost of the Project is estimated at **THIRTY-THREE THOUSAND AND THREE HUNDRED NINETY-SIX DOLLARS AND NO/100 (\$33,396.00)** as set forth in the City Project Summary Sheet, attached hereto and incorporated as "**Exhibit A**" ("Project Estimate"); and

WHEREAS, City has agreed to contribute funds toward the completion of the Project in the estimates amount of **SIXTEEN THOUSAND SIX HUNDRED NINETY-EIGHT DOLLARS AND NO/100 (\$16,698.00)** ("City Funds"); and

WHEREAS, SAISD has agreed to contribute funds toward the completion of the Project in the amount of **SIXTEEN THOUSAND SIX HUNDRED NINETY-EIGHT DOLLARS AND NO/100 (\$16,698.00)** ("SAISD Funds"); and

WHEREAS, the Parties desire to enter into this Agreement, through which City will oversee and administer the construction of the Project.

NOW THEREFORE, in consideration of these premises and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

I. TERM

This Agreement shall continue in full force and effect from the date of its execution by the Parties and shall continue until SAISD Funding is provided to and accepted by City, all construction is complete and construction is accepted by City.

II. RESPONSIBILITIES OF SAISD

2.01 In consideration of City's pledge to perform all services and activities set forth in this Agreement, SAISD agrees to fund a portion of the cost of construction of the Project. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by SAISD hereunder shall be **SIXTEEN THOUSAND SIX HUNDRED NINETY-EIGHT DOLLARS AND NO/100 (\$16,698.00)**.

2.02 Subject to approval and execution of this Agreement by City, SAISD shall provide City the full amount of SAISD Funds within fifteen (15) calendar days following SAISD's receipt of written notice from City of the approval of this Agreement by the San Antonio City Council.

2.03 Upon a timely receipt of SAISD Funds, the City hereby accepts full responsibility for the performance of all services and activities described in this Agreement to fully construct the Project. The funds provided under this Agreement only shall be used for work directly related to the Project.

2.04 SAISD neither shall be obligated nor liable to any party, other than City, for payment of any monies or the provision of any goods or services, pursuant to this Agreement.

2.05 Additionally, the Parties accept and agree this Agreement does not obligate City's General Fund monies or any other monies or credits of City unless budgeted and appropriated by City.

2.06 SAISD agrees the total cost of the Project is based on City's Estimate and, while every effort has been made to anticipate and include all relevant expenses, the total Project cost may exceed City's Estimate. Should costs arise that exceed City's Estimate, written notice shall be provided to SAISD for review. SAISD accepts and agrees, should the total Project cost exceed City's Estimate, SAISD shall contribute 50% of the funds required for completion of the

Project within fifteen (15) calendar days following SAISD's receipt of written notice from City the Project costs have exceeded City's Estimate.

III. GENERAL RESPONSIBILITIES OF CITY

3.01 City shall contribute funds toward the completion of this Project up to the City Funds amount from Pedestrian Safety (23-03788-05-02-01) funds ("City Funding").

3.02 City will provide and be responsible for all equipment, personnel and related services necessary to complete the Project and will exercise its best judgment in the design and implementation of the Project. City will own the Project at all times. Following completion of the Project, City will provide and pay for all maintenance equipment and services necessary to maintain the Project in good working order.

3.03 City shall utilize all best efforts to complete the Project by December 31, 2020 contingent upon a timely receipt of SAISD Funds as outlined in Article II.

3.05 The Parties accept and agree this Agreement does not obligate City's General Fund monies or any other monies or credits of City unless budgeted and appropriated by City.

IV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

4.01 City warrants and represents it will comply with all federal, state and local laws and/or regulations and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Project.

4.02 If applicable, plan design shall conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin.

4.03 Communications between City and SAISD shall be directed to the designated representatives of each, as set forth in **Article XII** of this Agreement.

V. LEGAL AUTHORITY

5.01 SAISD represents, warrants, assures and guaranties it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required

5.02 Unless written notification by SAISD to the contrary is received and approved by City, Sylvia L. Pena is the authorized representative responsible for the management of this Agreement on the part of SAISD.

5.03 City's Department of Transportation & Capital Improvements ("TCI") Director or his/her designee is responsible for the administration of this Agreement on behalf of City.

5.04 City represents, warrants, assures and guarantees it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

VI. PERFORMANCE BY CITY

6.01 Subject to and contingent upon receipt of SAISD Funding of the Project, in accordance and compliance with the terms, provisions and requirements of this Agreement, City shall oversee, manage, perform and provide all of the activities and services necessary to satisfactorily complete the Project.

6.02 Performance of City's obligations under this Agreement shall be subject to extension, due to delay by reason of events of force majeure, and City's obligations shall be abated during any period of force majeure. For purposes of this Agreement, force majeure shall include damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Project or this Agreement (hereafter referred to as "Force Majeure").

VII. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS

7.01 City agrees to maintain a numbered account for the receipt and disbursement of all funds received pursuant to this Agreement and further agrees all checks and withdrawals from such account shall have itemized documentation in support thereof, pertaining to the use of City Funds and SAISD Funds provided under this Agreement.

7.02 City agrees to maintain records that will provide accurate, current, separate and complete disclosure of the status of any funds received pursuant to this Agreement.

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

7.03 City agrees to retain all books, records, documents, written accounting policies and procedures and all other relevant materials pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion of the Project.

VIII. ALLOWABLE EXPENDITURES AND OWNERSHIP OF PROPERTY

8.01 Upon preparation of a construction plan, schedule of work and budget by City, such plans, schedule of work and budget shall not be changed without approval by the Parties. Costs shall be considered allowable only if incurred directly and specifically in the performance of and in compliance with this Agreement and with all city, state and federal laws, regulations and/or ordinances affecting City's operations hereunder.

8.02 Expenditures of City Funding and SAISD Funding provided under this Agreement only shall be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement and all applicable city, state and federal laws, regulations and/or ordinances.

IX. SEVERABILITY OF PROVISIONS

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 City, then and in that event it is the intention of the Parties hereto such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it also is the intention of the Parties hereto, in lieu of each clause or provision of this Agreement that is determined to be 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.

X. NON-WAIVER OF PERFORMANCE

10.01 No waiver by any Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of any Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by any Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

10.02 No act or omission of a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to a Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

10.03 No representative or agent of City may waive the effect of the provisions of this **Article X** without formal action from the San Antonio City Council.

XI. ENTIRE AGREEMENT

This Agreement constitutes the final and entire agreement between the Parties hereto and contains 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.

XII. NOTICES

12.01 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

If to SAISD: San Antonio ISD
Director | Capital Improvement
Construction and Development Services
Attn: Sylvia L. Pena
1702 N. Alamo, Suite 307 | San Antonio, Texas 78215

If to City: City of San Antonio
Interim Director/City Engineer
Transportation & Capital Improvements Department
Attn: Razi Hosseini, PE
P.O. Box 839966
San Antonio, Texas 78283-3966

12.02 Notice of change of address by any Party must be made in writing and mailed to the other Party's last known addresses within five (5) business days of such change

XIII. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XIV. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures or any other similar such relationship between the Parties hereto.

XV. TEXAS LAW TO APPLY AND VENUE

This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the Parties created hereunder are performable in Bexar County, Texas and exclusive venue shall lie in Bexar County, Texas.

XVI. GENDER

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XVII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only and in no way limit or enlarge the terms and/or conditions of this Agreement

-----*Signatures follow*-----

**SAN ANTONIO INDEPENDENT
SCHOOL DISTRICT**

By: Pedro Martinez

Pedro Martinez

Printed Name
superintendent

Title

Date: January 14, 2020

CITY OF SAN ANTONIO

By: _____

Printed Name

Title

Date: _____

APPROVED AS TO FORM:

CITY ATTORNEY

**EXHIBIT A
PROJECT SUMMARY SHEET**

Plans and Budget Summary will be attached, once they are approved by CITY.

Project Budget

A	B
Project Line Items	Line Item Cost
Remove Sign	\$ 360.00
Install solar school zone flasher assem. (Roadside)	\$ 30,000.00
Contingency (10%)	\$ 3,036.00
Total Project Funds:	\$ 33,396.00