

**STATE OF TEXAS            §        FUNDING AGREEMENT FOR INSTALLATION**  
**§        OF FLASHING BEACON AT IDEA SOUTH FLORES**  
**COUNTY OF BEXAR        §**

This **FUNDING AGREEMENT FOR INSTALLATION OF FLASHING BEACONS AT IDEA SOUTH FLORES** (hereafter referred to as "the Agreement") is hereby made and entered into by and between the City of San Antonio, a Texas Home Rule Municipality (hereafter referred to as "City"), and IDEA Public Schools South Flores, a 501c3 non-profit organization (hereafter referred to as "IDEA"). City and IDEA collectively are referred to herein as "the Parties" and individually referred to as "a Party".

**Recitals**

**WHEREAS**, IDEA is a nonprofit public school; and

**WHEREAS**, IDEA desires the installation of flashing beacon solar powered assemblies (hereafter referred to as "Beacons"), on West Harding Boulevard, Ware Boulevard, and South Flores Street adjacent to the IDEA campus (collectively referred to as "the Project"); and

**WHEREAS**, the City is currently installing and maintaining such flashing beacons at various schools throughout the City of San Antonio; and

**WHEREAS**, 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 Beacons in good working order; and

**WHEREAS**, City shall utilize all best efforts to complete the Project by December 31, 2016; and

**WHEREAS**, City owns the right-of ways located at South Flores, West Harding Boulevard and Ware Boulevard and

**WHEREAS**, City is willing and able to install two (2) roadside mounted Beacons each on West Harding Boulevard and Ware Boulevard and two (2) overhead mast arm mounted Beacons on South Flores, and IDEA is willing to provide certain funding to the City for such installation ; and

**WHEREAS**, the Parties have agreed to participate in the City's 50/50 cost-share program through the ATD for purchasing and installing Beacons adjacent to IDEA campus along West Harding Boulevard, Ware Boulevard and South Flores; and

**WHEREAS**, the total cost of the above construction is estimated at **EIGHTY THOUSAND, ONE HUNDRED TWENTY EIGHT DOLLARS AND NO/100 (\$80,128.00)**, as set forth in the City Project Summary Sheet, attached hereto, marked as "Exhibit A" and made a part hereof for all purposes (hereafter referred to as "City's Estimate"); and

**WHEREAS**, City has agreed to contribute funds toward the completion of this conversion in the amount of **FORTY THOUSAND SIXTY FOUR DOLLARS AND NO/100 (\$40,064.00)** from ATD FY 2016 Pedestrian Safety (23-01471-05-02-01) funds (hereafter referred to as "City Funding"); and

**WHEREAS**, City agrees to accept a total of **FORTY THOUSAND SIXTY FOUR DOLLARS AND NO/100 (\$40,064.00)** from IDEA (hereafter referred to as "IDEA Funding") to complete the infrastructure improvements necessary to install the overhead flashing traffic beacon, in accordance with the City Standards and City's Estimate (hereafter referred to as "the Project"); and

**WHEREAS**, the Parties desire to enter into this Funding 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. RECITALS**

Each of the Recitals stated herein above are incorporated into and made a part of this Agreement.

### **II. TERM**

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

### **III. GENERAL RESPONSIBILITIES**

3.1 Provided City receives IDEA Funding, 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.

32 Unless written notification by IDEA to the contrary is received and approved by City, Albin Benavides is the designated representative responsible for the management of this Agreement on the part of IDEA.

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

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

#### **IV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

41 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.

42 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.

#### **V. LEGAL AUTHORITY**

51 I D E A r e p r e s e n t s , 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.

52 The signer of this Agreement for IDEA r e p r e s e n t s , warrants, assures and guaranties he/she has full legal authority to execute this Agreement on behalf of IDEA and to bind IDEA to all terms, performances and provisions herein contained.

53 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**

6.1 Subject to and contingent upon receipt of IDEA 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. The anticipated date of completion of construction of the Project is December 31, 2016, subject to the proceeding and subsequent provisions of this Agreement. If the Project is not completed on or before December 31, 2016, subject to the provisions of this Agreement, the funds or remaining funds contributed by IDEA shall be returned.

6.2 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. IDEA FUNDING RESPONSIBILITIES**

7.1 In consideration of City's pledge to perform all services and activities set forth in this Agreement, IDEA 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 IDEA hereunder shall be **FORTY THOUSAND SIXTY FOUR DOLLARS AND NO/100 (\$40,064.00)**

7.2 Subject to approval and execution of this Agreement by City, IDEA shall provide City the amount of **FORTY THOUSAND SIXTY FOUR DOLLARS AND NO/100 (\$40,064.00)** within fifteen (15) calendar days following IDEA's receipt of written notice from City of the approval of this Agreement by the San Antonio City Council.

7.3 IDEA 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.

7.4 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.

7.5 IDEA 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 IDEA for review. IDEA accepts and agrees, should the total Project cost exceed City's Estimate, IDEA shall contribute 50% of the funds required for completion of the Project within fifteen (15) calendar days following IDEA's receipt of written notice from City the Project costs have exceeded City's Estimate.

#### **VIII. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS** **BY VILLAGARCIA AND BERLTEX**

81 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 Funding and IDEA Funding provided under this Agreement.

82 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.

83 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.

#### **IX. ALLOWABLE EXPENDITURES AND OWNERSHIP OF PROPERTY**

91 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.

92 Expenditures of City Funding and IDEA 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.

## **X. SEVERALBILITY 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.

## **XI. NON-WAIVER OF PERFORMANCE**

11.1 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.

11.2 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.

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

## **XII. 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.

### **XIII. NOTICES**

13.1 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:

**CITY:** Mike Frisbie, PE  
Director/City Engineer  
Transportation & Capital Improvements Department

P.O. Box 839966

San Antonio, Texas 78283-3966

#### **IF TO IDEA PUBLIC SCHOOL:**

Constantine Polites  
Principal –ISFCP  
IDEA South Flores  
6919  
S. Flores St.  
San Antonio, Texas 78221

13.2 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.

### **XIV. 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.

### **XV. 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.

### **XVI. 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.

#### **XVII. 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.

#### **XVIII. 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.

*(Signature Page immediately to follow)*

**EXECUTED IN DUPLICATE ORIGINALS**, each of which shall have the full force and effect of an original on this the 19 day of August, 20 16.

**CITY OF SAN ANTONIO IDEA SOUTH FLORES**

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

Printed name: Constantine Polites

Title: Principal

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

## **EXHIBIT A**

### **PROJECT SUMMARY SHEET**

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