

## **APPLEWHITE INTERSECTION DONATION AGREEMENT**

This Applewhite Intersection Donation Agreement (the "Agreement") is made and entered into as of the Effective Date by and among the City of San Antonio, a municipal corporation (the "City") pursuant to Ordinance No. \_\_\_\_\_ approved on \_\_\_\_\_, the City Of San Antonio (City) and Hanford-Southport, LLC and Avanzar Interior Technologies, Ltd. (the "Co-Donors"). The City and the Co-Donors are each referred to herein as a "Party" and collectively as the "Parties."

### **RECITALS**

**WHEREAS**, on May 6, 2017, San Antonio voters approved the 2017 - 2022 Bond Program, consisting of six propositions totaling \$850 Million which included \$1,000,000.00 for improvements at the Applewhite Road Intersection (the "Project"), located in Council District 3.

**WHEREAS**, this Project will consist of the reconstructing and widening the Applewhite intersection south of Watson, including traffic signal modifications as appropriate

**WHEREAS**, through the terms of this Agreement, the Co-Donors desire to contribute \$200,000.00 (the "Donation") to the City for the benefit of the City to supplement the funds approved in the 2017-2022 Bond Program for improvements to the Applewhite Road Intersection (the "Project") located in City Council District 3; and

**WHEREAS**, the base bid of the project will consist of the addition of a left turn lane on southbound traffic approaching the intersection just south of the Applewhite – Watson intersection. The additive alternate of the project will consist of an additional leg of the traffic signal and accompanying infrastructure entering the development just west of the intersection just south of the Applewhite-Watson intersection. This additive alternate is further described in Exhibit A – "Southport Blvd. San Antonio, Texas Intersection Exhibit".

**WHEREAS**, the City has solicited and is awarding a contract for the construction in which City funds will be used for the base bid and the Co-Donors funds will be used for the additive alternate. Co-Donors, at their expense, will provide to the City the detail engineering design, specifications, and drawings for the additive alternate prepared by Pape-Dawson Engineers.

**WHEREAS**, the Parties intend this Agreement to set forth each Party's responsibilities and obligations in connection with the Donation and its use for the Project; **NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, it is agreed between the parties as follows:

## **I. PURPOSE**

1.1 The Parties have determined that the Co-Donors will provide a donation of \$200,000.00 and the detailed drawings and specifications of the additive alternative to the City for the benefit of the City for planned improvements to the Applewhite Road Intersection Project..

## **II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence once the agreement has been executed by all parties and continue until the Project is completed, at which time this Agreement shall terminate.

## **III. OBLIGATIONS OF THE CO-DONORS**

3.1 The Co-Donors shall contribute to the City an amount of \$200,000.00 to be paid in full no later than 30 days after the effective date of this Agreement, solely for the use by the City in connection with planned improvements to the Project, including the additive alternative shown on Exhibit A.

## **IV. OBLIGATIONS OF THE CITY**

4.1 Upon receipt of the Donation, the City will deposit the Donation in the City's account established for the Project and limit use of the Donation to costs associated with the Project.

4.2 Upon request by the Co-Donors or his/her representative, the City will provide updates on the progress of the Project and the specific use of the Donation in connection therewith, and subject to availability, attend site visits to the location of the Project..

## **V. MEDIA**

5.1 All press releases or other public communications of any nature whatsoever relating to the subject matter of this Agreement, and the method of the release for publication thereof, will be subject to the prior mutual approval in writing of the Parties. Notwithstanding anything herein to the contrary, each Party has the right to publicly disclose this Agreement and its subject matter as required by applicable laws without the prior written approval of the other Parties.

## **VI. NOTICE**

6.1 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.  
Interim Director, Transportation & Capital Improvements  
P.O. Box 839966  
San Antonio, Texas 78283-3966

**If to the Co-Donors:**

William L. Gavan  
Managing Member, Hanford-Southport, LLC  
5255 Misty Pine Ln S  
Salem, OR 97302  
e-mail: wlgavan@aol.com

**VII. APPLICABLE LAW**

7.1 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.

7.2 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.

**VIII. COMPLIANCE WITH LAWS**

8.1 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.

**IX. AMENDMENTS**

9.1 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.

**X. SEVERABILITY**

10.1 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.

#### **XI. LEGAL AUTHORITY**

11.1 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.

#### **XII. ENTIRE AGREEMENT**

12.1 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 be 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.

#### **XIII. COUNTERPARTS**

13.1 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.

**THE CITY OF SAN ANTONIO**

By: \_\_\_\_\_  
**Roderick J. Sanchez, AICP, CBO**  
**Assistant City Manager**

**CO-DONORS**

**HANFORD-SOUTHPORT, LLC,**  
**a California limited liability company**

BY:  6/26/2019  
**WILLIAM L. GAVAN, Managing Member**

**AVANZAR INTERIOR TECHNOLOGIES, LTD.,**  
**a Texas limited partnership**

**BY IT'S GENERAL PARTNER:**

**AVANZAR INTERIOR TECHNOLOGIES GP, LLC,**  
**a Texas limited liability company**

BY: \_\_\_\_\_  
**HERIBERTO GUERRA, JR.,**  
**Chairman and CEO**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**City Attorney**

**THE CITY OF SAN ANTONIO**

**By:** \_\_\_\_\_  
**Roderick J. Sanchez, AICP, CBO**  
**Assistant City Manager**

**CO-DONORS**

**HANFORD-SOUTHPORT, LLC,**  
**a California limited liability company**

**BY:** \_\_\_\_\_  
**WILLIAM L. GAVAN, Managing Member**

**AVANZAR INTERIOR TECHNOLOGIES, LTD.,**  
**a Texas limited partnership**

**BY IT'S GENERAL PARTNER:**

**AVANZAR INTERIOR TECHNOLOGIES GP, LLC,**  
**a Texas limited liability company**

**BY:**  \_\_\_\_\_  
**HERIBERTO GUERRA, JR.,**  
**Chairman and CEO**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**City Attorney**