



WALSH GALLEGOS
TREVIÑO RUSSO & KYLE P.C.

November 18, 2019

Sean D. Strong, P.E.
Senior Engineer/ Project Manager
Transportation & Capital Improvements
P.O. Box 839966
San Antonio, Texas 78283-3966

Certified Mail, RRR No. 70172620000024965805

Re: Interlocal Agreement Between Fort Sam Houston ISD and the City of San Antonio – Design, Construction and Joint Use of Road Between Winans and Rittiman Roads

Dear Mr. Strong,

Enclosed are three (3) originals of the Interlocal Agreement referenced above. Please have these originals signed by Assistant Manager Roderick J. Sanchez and the City Attorney. Once finalized, please return a signed copy of the Interlocal Agreement to our office in the enclosed return envelope.

If you have any questions, please feel free to call our office. Thank you for your assistance with this.

Sincerely,

Valerie J. Dufocher Herbert
Paralegal to Stacy Tuer Castillo

/vjh
Enclosures

**INTERLOCAL AGREEMENT BETWEEN
FT. SAM HOUSTON INDEPENDENT SCHOOL DISTRICT AND
THE CITY OF SAN ANTONIO FOR DESIGN, CONSTRUCTION AND
JOINT USE OF ROAD BETWEEN WINANS AND RITTIMAN ROADS**

The Parties to this Agreement (“Agreement”) are the **Fort Sam Houston Independent School District** (the “District”) and the **City of San Antonio** (the “City”) (collectively referred to as the “Parties”) political subdivisions of the State of Texas acting through their respective governing bodies. The Parties enter into this Agreement under the general provisions of the Interlocal Cooperation Act, Texas Government Code Chapter 791. This Agreement is made for the purpose of efficient and effective use of resources and is in the best economic interests of the Parties.

WHEREAS, on May 6, 2017, City of San Antonio voters approved the 2017 - 2022 Bond Program, consisting of six propositions totaling \$850 Million which included design and construction of a road between Winans and Rittiman Roads (the “Project” or “Road Project”), located in Council District 2; and

WHEREAS, the Road Project will consist of the design and construction of a public road between Winans and Rittiman Roads; and

WHEREAS, on February 22, 2018, the Board of Trustees of Fort Sam Houston Independent School District considered and voted to approve contributing \$150,000 to the design of the Road Project; and

WHEREAS, through the terms of this Agreement, the District desires to contribute \$150,000.00 (“District Contributed Funds”) to the City for the City to supplement the funds approved in the 2017-2022 Bond Program for design and construction of a road between Winans and Rittiman Roads in San Antonio, Texas in City Council District 2, benefitting the District; and

WHEREAS, both Parties agree that the design and construction of the Road Project is for the construction of a public roadway and will serve the public purpose of each of the public entities; and

WHEREAS, the City has publicly procured and awarded a design contract for this Road Project; and

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

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, it is agreed between the parties as follows:

**ARTICLE 1.
TERM, TERMINATION, AND REMEDIES**

1.1 **Term.** Unless sooner terminated in accordance with provisions in this Agreement, the term of this Agreement will begin on the date this Agreement is fully executed and will continue until the Project is completed, at which time this Agreement shall terminate. Project completion shall occur when the construction of the Project is accepted by the City and retainage is released to the contractor.

1.2 **Termination Following Default.** In the event either Party materially breaches or fails to perform any covenant or condition which it is required to observe and to perform under this Agreement, that Party shall be deemed to be in default under this Agreement. In such event, the defaulting Party shall have an opportunity to cure such default of not fewer than thirty (30) days following written notice received from the Party asserting such default. In the event of such default, the Party asserting a default shall deliver a written notice to the defaulting Party specifying the nature of the default, setting out in detail what actions must be taken to cure such default, and the deadline for the cure of the default. In the event that the defaulting Party fails to cure its default, the non-defaulting Party shall have the right to exercise one or more of the following options: (A) perform obligation of the other and seek reimbursement; (B) terminate this Agreement effective upon the defaulting Party's receipt of notice thereof; and/or (C) pursue any other remedy, at law or in equity, to which the non-defaulting Party may be entitled. The provisions of this Paragraph 1.3 shall survive the termination of this Agreement.

1.3 **Alternative Dispute Resolution.** The Parties agree that any dispute arising out of this Agreement shall be submitted in good faith to mediation as a condition precedent to filing suit. Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) days or more than ninety (90) days following the date of the request, except upon agreement of both parties. In the event the Parties are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent to filing suit in this article shall be deemed to have occurred.

**ARTICLE 2.
DESIGN AND CONSTRUCTION OF THE PROJECT**

2.1 **Design Standards.** The City has publicly procured and awarded a design contract for this Project. The City agrees to design and construct, or cause to be designed and constructed, a public road between Winans and Rittiman Roads. The City is solely responsible for the design and construction of the Project.

2.2 **Estimated Costs.** The estimated cost of the design and construction for the Project is \$1,725,000.00 (One Million Seven Hundred Twenty-Five Thousand Dollars and No Cents).

**ARTICLE 3.
SHARED COST OF DESIGN**

3.1 **Cost Sharing.** The District and the City agree to share the cost of the design of the Road Project as follows:

3.1.1 **District Costs.** The District shall pay to the City from current revenues, the sum of \$150,000.00 (One Hundred Fifty Thousand Dollars and No Cents) (“District Contributed Funds”) to be applied by the City toward the design of the Road Project. Under no circumstances will the District construct any type of access control or any other device or obstacle that would impede the free flow of pedestrian or vehicular traffic on the road to be constructed between Winans and Rittiman Roads.

3.1.2 **City Costs.** Any costs and expenses for the design and construction and/or operation and maintenance of the Road Project in excess of the District Contribution Funds will be provided solely by the City.

3.2 **Unrestricted Funds.** The District warrants that the District Contribution Funds are unrestricted funds which are not in any way encumbered with any federal, state or other regulations or obligations other than those set out in this Agreement.

ARTICLE 4. CITY RESPONSIBILITIES

4.1 The City shall be responsible for the design and construction of the Road Project and providing all maintenance, repairs, replacement, and upkeep of the Road once constructed.

4.2 The City shall give the District periodic updates concerning the design and construction of the Road, with a minimum of updates provided every 6 months. The City shall provide updates to the District upon the District’s written request. The updates shall include stage of Project completion and cost of construction to date as well as site inspections upon request.

4.3 Should the Road Project not reach Substantial Completion within 15 years or is otherwise terminated prior to completion, the City will return all of the District Contributed Funds to the District within 10 business days of a request for refund by the District to the City, or within 30 days of the termination of the uncompleted Project or of the City’s notice that the Project will not reach Substantial Completion within 15 years.

ARTICLE 5. DISTRICT RESPONSIBILITIES

5.1 The District agrees to contribute a maximum of \$150,000.00 (One Hundred Fifty Thousand Dollars and No Cents) for the design of the Road Project, but in no event shall the District’s contribution exceed the District Contribution Funds amount of \$150,000.00.

5.2 The District shall pay to the City \$150,000.00 within 30 business days of receiving notice and copies of 100% Construction Documents from the City.

**ARTICLE 6.
GOVERNMENTAL FUNCTIONS**

Governmental Functions. Notwithstanding any provision to the contrary herein, this Agreement is a contract for, and with respect to, the performance of governmental functions by governmental entities. The services provided for and functions performed herein are governmental functions, and the City and District shall be engaged in the conduct of a governmental function while providing and/or performing any service pursuant to this Agreement

**ARTICLE 7.
MISCELLANEOUS**

7.1 Notices and Addresses. All notices required hereunder must be given by certified mail or registered mail, addressed to the proper Party, at the following addresses:

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

To District:

Dr. Gary Bates
Superintendent of Schools
Fort Sam Houston ISD
4005 Winans Rd.
San Antonio, TX 78234

With a copy to:

Stacy Tuer Castillo, Attorney for District
Walsh Gallegos Treviño Russo & Kyle P.C.
1020 N.E. Loop 410, Suite 450
San Antonio, Texas 78209

Either Party may change the address to which notices are to be sent by giving the other Party notice of the new address in the manner provided in this section. Notices shall be deemed to have been received three (3) days after deposit in the mail.

7.2 Designated Representatives. For ease of administration of this contract, a main contact person has been designated for each of the Parties as follows:

For the City: Razi Hosseini, P.E., R.P.L.S.
Interim Director, Transportation & Capital
Improvements City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

For District: Dr. Gary Bates,
Superintendent of Schools,
Fort Sam Houston Independent School District
4005 Winans Rd
San Antonio, Texas 78234

7.3 Parties Bound. This Agreement shall be binding upon, and inure to the benefit of, the Parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

7.4 Prior Agreements Superseded. This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof. There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties relating to the subject matter hereof which are not fully expressed herein. This Agreement may not be modified or amended except by written agreement executed by the parties hereto. This Agreement supersedes and makes void all prior Agreements between the parties regarding the construction of and payment for the Road Project.

7.5 Amendment. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the Parties to this Agreement.

7.6 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.

7.7 Enforceability. If any provision of this Agreement proves unlawful or unenforceable by a court having jurisdiction over the Parties or the subject matter, such provision shall be severable from the other provision of this Agreement, and all remaining provisions shall be fully enforceable.

7.8 Governing Law and Place for Performance. 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. 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.

7.9 Signature Warranty Clause. The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the City and the District, respectively.

7.10 No Waiver of Immunities. Nothing in this Agreement shall be construed to waive any immunities from suit or liability enjoyed by the City, the District, their past or present trustees, elected officials, officers, employees, or agents.

7.11 No Third Party Beneficiary. This Agreement inures to the benefit of and obligates only the parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. The parties hereto shall cooperate fully in opposing any attempt by

any third person or entity to claim any benefit, protection, release or other consideration under this Agreement.

7.12 **No Joint Venture.** 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 venturers or any other similar such relationship between the parties hereto.

7.13 **Approval by Governing Bodies.** This Agreement has been approved by the Governing bodies of the City and of the District.

7.14 **Assignment.** Neither Party may assign their interests in this Agreement except upon receiving the written consent of the other Party.

7.15 **Media.** All press releases or other public communications of any nature whatsoever relating to the District Contribution of Funds 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.

EXECUTED TO BE EFFECTIVE this _____ day of _____, 2019.

FORT SAM HOUSTON INDEPENDENT SCHOOL DISTRICT

By: 
Dr. Gary Bates, Superintendent of Schools

CITY OF SAN ANTONIO

By: _____
Roderick J. Sanchez, AICP, CBO
Assistant City Manager

APPROVED AS TO FORM

City Attorney's Office