

AN ORDINANCE

2012-06-21-0473

**AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING WITH SOUTHWEST RESEARCH INSTITUTE FOR THE COMPLETION OF INFRASTRUCTURE IMPROVEMENTS AT THE INTERSECTION OF CULEBRA ROAD AND OAK HILL ROAD, LOCATED IN COUNCIL DISTRICT 6.**

\* \* \* \* \*

**WHEREAS**, Southwest Research Institute (SwRI) has made a request for the construction of a dedicated eastbound right turn lane at the intersection of Culebra Road and Oak Hill Road, which is the main entrance into the SwRI complex; and

**WHEREAS**, SwRI has agreed to complete the infrastructure improvements necessary to add the right turn lane at their own expense and will dedicate an easement/right of way of approximately 582 square feet through a separate instrument; and

**WHEREAS**, the City will complete the necessary signal improvements to insure the efficient traffic flow once the right turn lane has been completed; and

**WHEREAS**, this Ordinance authorizes the execution of a Memorandum of Understanding with Southwest Research Institute for the infrastructure improvements at Culebra Road and Oak Hill Road; and

**WHEREAS**, approval of this Ordinance will be a continuation of City Council policy to collaborate with other agencies in supporting the City's commitment to maintaining and improving existing infrastructure; **NOW THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or her designee is hereby authorized to execute a Memorandum of Understanding with Southwest Research Institute for the completion of infrastructure improvements at the intersection of Culebra Road and Oak Hill Road. A copy of the Interlocal Agreement is attached and incorporated herein for all purposes as **Attachment A**. The execution authority granted by this Ordinance expires 90 days from the effective date.

**SECTION 2.** The following financial adjustments are hereby approved:

- a) Funding in the amount of \$25,000.00 for this Ordinance is available in Fund 29084000, Cost Center 2309010001 and General Ledger 5201040, as part of the Fiscal Year 2012 Budget.
- b) Payment in the amount of \$25,000.00 is authorized and shall be encumbered with a purchase order.
- c) The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by

the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

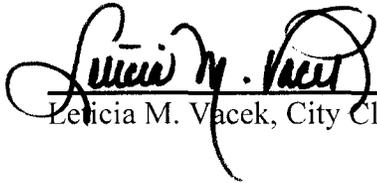
**SECTION 3.** This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

**PASSED and APPROVED** this 21st day of June, 2012.



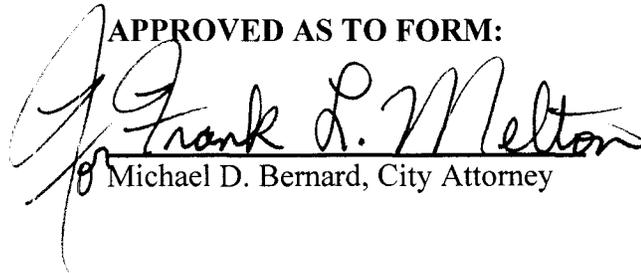
M A Y O R  
Julián Castro

**ATTEST:**

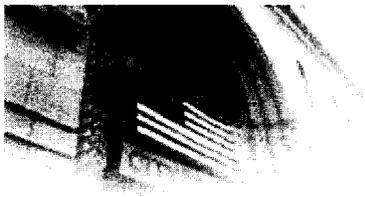


Leticia M. Vacek, City Clerk

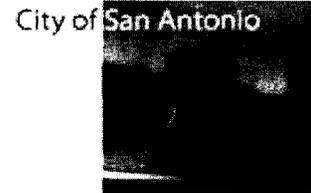
**APPROVED AS TO FORM:**



Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
 ACTION



### Agenda Voting Results - 21

<b>Name:</b>	5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25A, 25B, 26, 27, 28, 30, 31, 32A, 32B, 32C, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 49, 50, 51, 52, 53, 54, 56, 57, 58, 59, 60, 62, 63, 65A, 65B
<b>Date:</b>	06/21/2012
<b>Time:</b>	10:01:34 AM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An Ordinance authorizing the execution of a Memorandum of Understanding with Southwest Research Institute for the completion of infrastructure improvements at the intersection of Culebra Road and Oak Hill Road, located in Council District 6. [Ed Belmares, Assistant City Manager; Majed A. Al Ghafry, Director, Public Works]
<b>Result:</b>	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x			x	
Leticia Ozuna	District 3	x					
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

**CONTRACT FOR DEDICATED  
EASTBOUND RIGHT TURN LANE AND TRAFFIC  
SIGNAL MODIFICATIONS AT  
MAIN ENTRANCE TO SOUTHWEST RESEARCH INSTITUTE®**

This CONTRACT FOR DEDICATED EASTBOUND RIGHT TURN LANE AND TRAFFIC SIGNAL MODIFICATIONS AT MAIN ENTRANCE TO SOUTHWEST RESEARCH INSTITUTE (this “AGREEMENT”) is hereby made and entered into as of \_\_\_\_\_, 2012, by and between the CITY OF SAN ANTONIO, TEXAS (hereinafter “CITY”), a Texas Municipal Corporation, and SOUTHWEST RESEARCH INSTITUTE, a Texas non-profit corporation (hereinafter “SwRI®”), referred to collectively as “Parties.”

**WITNESSETH**

WHEREAS, SwRI desires and has requested authority to construct a dedicated eastbound right turn lane at the intersection of Culebra Road and Oak Hill Road (hereinafter “SwRI Main Entrance”) as shown on construction plans, entitled “SwRI Main Entrance” (hereinafter “Plans”), attached hereto and incorporated herein as Exhibit “A”; and

WHEREAS, SwRI has completed a traffic study for the SwRI Main Entrance which indicates that a dedicated eastbound right turn lane is necessary; and

WHEREAS, CITY agrees with SwRI that an eastbound dedicated right turn lane is necessary at the SwRI Main Entrance; and

WHEREAS, SwRI will, at SwRI’s sole cost, risk, and expense and at no expense to the City, design and construct, in compliance with the Unified Development Code, hereinafter, “UDC,” the dedicated eastbound right turn lane for entry into the SwRI Main Entrance (the “Turn Lane”); and

WHEREAS, SwRI will at SwRI's sole cost, risk, and expense and at no expense to the CITY, design and construct, in compliance with the UDC, the storm water drainage improvements (the "Drainage Improvements") necessary for construction of the dedicated eastbound right turn lane for entry into the SwRI Main Entrance; and

WHEREAS, SwRI will prepare and send VIA Metropolitan Transit ("VIA") the proposed location plans for relocation of the VIA bus stop (the "Bus Stop"); and

WHEREAS, SwRI will prepare and send to the CITY the estimated costs for proposed design and construction of the Turn Lane, Drainage Improvements, and relocation of the Bus Stop; and

WHEREAS, SwRI will dedicate an easement/right of way by separate instrument OR amended plat of approximately 582 square feet to the CITY for the Turn Lane; and

WHEREAS, CITY agrees to accept and maintain the Turn Lane; and

WHEREAS, CITY agrees at CITY's sole cost, risk, and expense and at no expense to SwRI, to design and construct signal modifications to the intersection, as necessary, for the Turn Lane; and

WHEREAS, CITY will coordinate with VIA for relocation of the Bus Stop; and

### **I. AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants and agreement of the Parties, to be undertaken by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

## **II. SwRI OBLIGATIONS**

A. SwRI shall prepare and send to the CITY and VIA, respectively, estimated costs for proposed design and construction of the Turn Lane, Drainage Improvements, and relocation of the Bus Stop.

B. SwRI shall at SwRI's sole cost, risk, and expense and at no expense to CITY, design and construct, in compliance with the UDC, the Turn Lane.

C. SwRI shall, at SwRI's sole cost, risk, and expense and at no cost to CITY, design and construct, in compliance with the UDC, Drainage Improvements necessary for construction of the Turn Lane.

D. SwRI shall dedicate an easement/right of way by separate instrument or amended plat of approximately 582 square feet to the City for the Turn Lane.

E. SwRI shall prepare and send VIA proposed location plans for relocation of the Bus Stop.

## **III. CITY OBLIGATIONS**

A. CITY shall inspect, accept and maintain at CITY's sole cost, risk and expense and at no expense to SwRI, the Turn Lane.

B. CITY shall at CITY's sole cost, risk and expense and at no expense to SwRI, design and construct signal modifications to the intersection as necessary for the Turn Lane.

C. CITY shall coordinate the relocation of the Bus Stop.

D. CITY hereby grants SwRI temporary construction licenses, to the extent reasonably necessary, over CITY owned or controlled property to perform construction and related activity pursuant to this Agreement. Such license expires upon acceptance by the CITY of the Turn Lane and Drainage Improvements.

#### IV. INDEMNIFICATION

SwRI covenants and agrees to FULLY REIMBURSE, INDEMNIFY, and HOLD HARMLESS, CITY and the elected officials, agents, employees, officers, directors, volunteers, contractors, subcontractors, consultants, sub consultants and representatives of CITY individually or collectively, (collectively, the "CITY PARTIES") from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including, but not limited to, personal injury, death and property damage, (the "Damages") made upon CITY, arising out of or resulting from SwRI's negligent activities or omissions under this Agreement, including any negligent acts or omissions of any agent, officer, director, representative, employee, consultant, sub consultant, licensee, sublicensee, contractor or subcontractor of SwRI, and their respective officers, agents, employees, directors and representatives (collectively, "SwRI Parties") while in the exercise of the performance of the rights or duties under this Agreement, all without, however, waiving any governmental immunity available to CITY under Texas law and without waiving any defenses of the parties under Texas law. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, OR THE CITY PARTIES IN SUCH INSTANCE WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH OR PROPERTY DAMAGE. IN THE EVENT SwRI AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY

AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. SwRI shall promptly advise CITY in writing of any claim or demand against CITY or SwRI known to SwRI and related to or arising out of SwRI's negligent activities or omissions under this Agreement, and shall see to the investigation and defense of such claim or demand at SwRI's cost. Notwithstanding any condition imposed by a policy of insurance to which SwRI and CITY are named, CITY shall retain the right, at its option and at its own expense, to participate in such defense provided by any insurance or self-insurance of SwRI under this paragraph without relieving SwRI of any of its obligations under this paragraph.

To the extent provided by law, CITY shall be responsible for all claims, demands, and causes of action against CITY arising in favor of any person, because of personal injuries or death or damage to property, occurring, growing out of, or incident to, related to or resulting directly or indirectly from, the occurrence of activities or omission of activities contemplated by this Agreement, caused by the negligence of CITY and/or any of the CITY Parties.

#### V. INSURANCE

SwRI shall require indemnification from the contractor(s) it hires and shall ensure and be responsible for hiring contractors licensed by the CITY to install any and all equipment for the Turn Lane and Drainage Improvements and to require and confirm that all contractor(s) performing any work authorized by this Agreement carry and maintain, throughout the period when work is performed and until final acceptance (a) Workers'

**Compensation and Employer's Liability insurance with limits of not less than \$500,000 each employee/each accident/each disease; (b) Commercial General Liability insurance with combined Bodily Injury and Property Damage limits of no less than \$1,000,000 per occurrence/\$2,000,000 Ongoing-Completed Operations/\$2,000,000 General Aggregate, and shall include coverage for premises/operations, independent contractor's liability (if applicable), personal injury, contractual liability, broad form property damage liability, and shall include the CITY and SwRI as Additional Insureds by endorsement; (c) Business Automobile Liability insurance coverage for owned, non-owned and hired vehicles with combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, and shall include the CITY and SwRI as Additional Insureds by endorsement; and (d) Builder's Risk (if applicable). All required insurance listed above shall provide for a Waiver of Subrogation in favor of the CITY and SwRI.**

#### **VI. 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 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.

**VII. NON-WAIVER OF PERFORMANCE**

No waiver by either 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 either 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 either 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.

**VIII. 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 hereto unless same is in writing, dated subsequent to the date hereof, and duly executed by the Parties.

**IX. NOTICES**

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:           Majed A. Al-Ghafry  
                      Director, Public Works  
                      City of San Antonio  
                      P. O. Box 839966  
                      San Antonio, Texas 78283-3966

SwRI: Pat Griffith  
Vice President, Facilities and Services  
Southwest Research Institute  
P. O. Drawer 28510  
San Antonio, Texas 78228-0510

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

#### **X. 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.

#### **XI. 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.

#### **XII. 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.

#### **XIII. 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.

**XIV. 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.

**XV. TERMINATION**

SwRI may terminate this Agreement for any reason and at any time prior to the commencement of construction.

IN WITNESS WHEREOF, this Agreement is entered into as of the day and year set forth above.

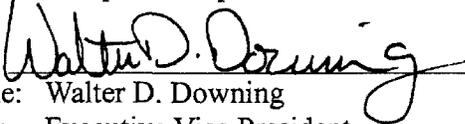
**CITY:**

**CITY OF SAN ANTONIO**  
A Texas Municipal Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SwRI:**

**SOUTHWEST RESEARCH INSTITUTE**  
A Texas non-profit corporation

By:   
Name: Walter D. Downing  
Title: Executive Vice President