

AN ORDINANCE 2012-11-15-0898

AUTHORIZING THE NEGOTIATION AND EXECUTION OF AN INTERLOCAL AGREEMENT WITH BEXAR COUNTY AND ACCEPTING UP TO \$5,200,000.00 FROM SAN ANTONIO WATER SYSTEM (SAWS) FOR THE CITY'S HAUSMAN ROAD PROJECT AND ACCEPTING UP TO \$16,800,000.00 FROM BEXAR COUNTY IN CONNECTION WITH BEXAR COUNTY FLOOD CONTROL PROJECTS LC-9 AND LC-10 LOCATED WITHIN THE PROJECT LIMITS OF THE CITY'S HAUSMAN ROAD (LOOP 1604 TO IH 10) PROJECT.

* * * * *

WHEREAS, Bexar County has two flood control projects, named LC-9 and LC-10, located within the project limits of the City's Hausman Road Project; and

WHEREAS, these Projects are scoped to replace low water crossings with bridges along Hausman Road from Huntsman to Roadrunner Way; and

WHEREAS, these Projects also involve channel improvements to Huesta Creek and rebuilding Hausman Road from Huntsman to Roadrunner Way to four lanes with curbs, sidewalks, bike lanes, and traffic signals and turn lanes at major intersections; and

WHEREAS, Bexar County has agreed to allow the City to incorporate the remaining work on Bexar County's LC-9 and LC-10 flood control projects into the City's Hausman Road Project through an Interlocal Agreement; and

WHEREAS, Bexar County will reimburse the City for all costs associated with design, right-of-way acquisition, environmental processes, construction, and project administration as required for completion of LC-9 and LC-10; and

WHEREAS, this Ordinance authorizes the negotiation and execution of an Interlocal Agreement with Bexar County in connection with Bexar County Flood Control Projects LC-9 and LC-10 located in the project limits of the Hausman Road from Loop 1604 to IH 10 Project; and

WHEREAS, this Ordinance accepts up to \$5,200,000.00 from SAWS for the City's Hausman Road Project; and

WHEREAS, approval of this Ordinance will be a continuation of City Council policy to collaborate with other governmental 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 an Interlocal Agreement with Bexar County in connection with Bexar County Flood Control Projects LC-9 and LC-10 located in the project limits of the Hausman Road from Loop 1604 to IH 10 Project. A copy of the Interlocal Agreement is attached and incorporated herein for all purposes as

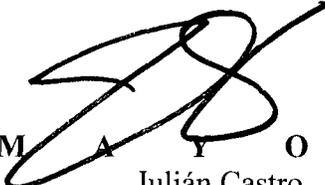
Attachment A. The execution authority granted by this Ordinance expires 120 days from the effective date.

SECTION 2. The following financial adjustments are hereby approved:

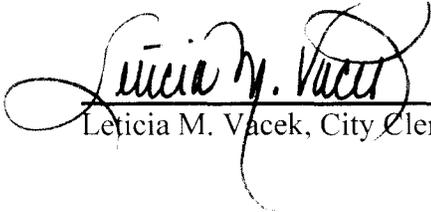
- a) A contract has been awarded to Sundt Construction, Inc. in the amount up to \$62,000,000.00 for design and construction on the Hausman Road Project, of this amount up to \$5,200,000.00 will be reimbursed by SAWS according to a reimbursement agreement authorizing the receipt of funding from SAWS for projects related to the FY 2013 – FY 2018 budget previously approved in Ordinance No. 2012-10-11-0795, dated October 11, 2012.
- b) Funds are authorized to be appropriated in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00420, Hausman Road (Loop 1604 to IH 10), and the budget shall be revised by increasing WBS element 40-00420-90-10-08, entitled SAWS Contributions, SAP GL Account 4502280 – Contribution from other Agencies, by the amount up to \$5,200,000.00.
- c) The amount up to \$2,000,000.00 is appropriated in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00420, Hausman Road (Loop 1604 to IH 10), SAP WBS Element 40-00420-05-02-03, entitled SAWS Sewer, SAP GL Account 5201140
- d) The amount up to \$3,200,000.00 is appropriated in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00420, Hausman Road (Loop 1604 to IH 10), SAP WBS Element 40-00420-05-02-04, entitled SAWS Water, SAP GL Account 5201140.
- e) Funds are authorized to be received from Bexar County to SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00420, Hausman Road (Loop 1604 to IH 10), and the budget shall be revised by increasing WBS element 40-00420-90-10-01, entitled Bexar County Contributions, SAP GL Account 4502280 – Contribution from other Agencies, by the amount up to \$16,800,000.00.
- f) The amount up to \$16,800,000.00 is appropriated in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00420, Hausman Road (Loop 1604 to IH 10), SAP WBS Element 40-00420-05-02-08, entitled Bexar County, SAP GL Account 5201140.
- g) 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 allocations 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.

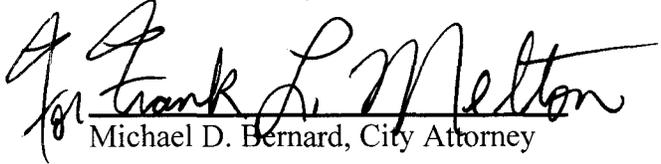
PASSED and APPROVED this 15th day of November, 2012.


M A Y O R
Julián Castro

ATTEST:

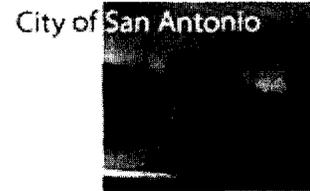

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


for Frank L. Melton
Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION



Agenda Voting Results - 14B

Name:	6, 7, 8, 9, 10, 13A, 13B, 14A, 14B, 14C, 17, 19, 20, 21, 22, 23, 24, 25						
Date:	11/15/2012						
Time:	09:56:02 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the negotiation and execution of an Interlocal Agreement with Bexar County and authorizing receipt of funds from Bexar County in connection with Bexar County flood control projects LC-9 and LC-10 located within the project limits of the City's Hausman Road (Loop 1604 to IH 10) Project.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2	x					
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				x
Ray Lopez	District 6		x				
Cris Medina	District 7	x					
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

STATE OF TEXAS
COUNTY OF BEXAR

§ INTERLOCAL AGREEMENT FOR THE
§ HAUSMAN ROAD PROJECT (LC-9
§ AND LC-10)

THIS INTERLOCAL AGREEMENT FOR THE HAUSMAN ROAD PROJECT (hereafter referred to as "Agreement") is effective as of the _____ day of _____, 20____ (hereafter referred to as "Effective Date"), by and between the **CITY OF SAN ANTONIO, TEXAS** (hereafter referred to as "City"), a Texas Home Rule Municipality and the **COUNTY OF BEXAR** (hereafter referred to as "County"), a political subdivision of the State of Texas, acting by and through its officers, hereto duly authorized. City and County collectively shall be referred to herein as "the Party" or "the Parties."

WITNESSETH

WHEREAS, City has proposed the Hausman Road Project to be part of the 2012-2017 Bond Program approved by voters on May 12, 2012; and

WHEREAS, City and County have agreed to incorporate County's Hausman Drainage Project Phases I and II (hereafter referred to as "LC-9" and "LC-10" respectively) on Hausman Road, from Huntsman Road to Roadrunner Way (hereafter referred to as "the Project"), into City's approved 2012-2017 Bond Project along the Hausman Road; and

WHEREAS, the Project consists of eliminating the low water crossings along Hausman Road at Huesta Creek, Huesta Creek Tributary A, Maverick Creek, and at Roadrunner Way. In addition, the Project reconstructs the Babcock/Hausman intersection to match the ultimate design conditions of Hausman Road; and

WHEREAS, City intends to construct the Project in order to coordinate the Project into the overall construction of the Hausman Road Project; and

WHEREAS, County shall provide funding for actual cost to City for the construction of LC-9 and advance funding as a lump sum amount for the engineering, real estate and construction of LC-10 as part of City's Hausman Road Project.

WHEREAS, City shall be responsible for the maintenance of the Project after its completion; and

WHEREAS, County supports City's Hausman Road Project and desires to enter into this Agreement with City, in order to establish the rights and obligations of the Parties, with regard to the design, construction, operations and maintenance of the Project and to establish the procedures for funding the Project:

NOW, THEREFORE, in consideration of the mutual covenants and agreement stated herein, the Parties agree as follows:

Attachment A

ARTICLE I
PURPOSE

- 1.01 The purpose of this Agreement is to establish the terms and conditions for: (1) managing the construction services associated with the Project, including construction disruption; (2) funding the design, real estate and construction costs for this Project; and (3) operating and maintaining the Project upon completion.

ARTICLE II
TERM

- 2.01 Except as otherwise provided herein, this Agreement shall commence upon the execution date of the last signatory party to the Agreement. The Agreement performance period shall begin not later than fifteen (15) days after the last signatory approves this Agreement and shall end upon completion of the Project.
- 2.02 The duty to maintain the Project and to enforce warranties are City's responsibilities and survives the termination of this Agreement.

ARTICLE III
COUNTY'S FINANCIAL COMMITMENT

- 3.01 County shall provide funds to City not to exceed **SIXTEEN MILLION, SIX HUNDRED AND FORTY THOUSAND DOLLARS (\$16,640,000.00)** (hereafter referred to as "County's Contribution").
- 3.03 The Parties acknowledge that the financial commitments stated in this Agreement are independent of the necessary operating and maintenance expenses that are the City's responsibilities during and after the Project.
- 3.04 **SIXTEEN MILLION, SIX HUNDRED AND FORTY THOUSAND DOLLARS (\$16,640,000.00)** is the total maximum County budget commitment to the Project, as set forth in the Project Cost Estimate and Funds Committed by Funding Source attached hereto, incorporated herein and labeled as Exhibit "A." County funding for the Project shall be used for construction and administrative cost of LC-9 and for the engineering, real estate, construction and administration cost of LC-10. No other funds shall be available from County for this Project.

ARTICLE IV
OBLIGATIONS OF CITY

- 4.01 Pursuant to this Agreement, City shall perform and provide the following:
- a. City shall oversee and manage the construction of the Project. Final construction documents for the Project shall be provided to County for review.
 - b. City shall keep the scope intact, as documented in the approved plans and specifications for the Project.

- c. City shall be responsible for the staging of construction and all necessary street closures during construction to minimize street closures.
- d. City shall maintain the property included in the Project and City shall be responsible for the maintenance and operating expenses for such property during the Project. Additionally, City shall perform regular site maintenance of LC-9, in accordance to the terms and general conditions of the UNITED STATES ARMY CORPS OF ENGINEERS (hereafter referred to as "USACE") Nationwide 27 Permit Verification issued under Section 404 of the Clean Water Act, including maintenance requested by the USACE Fort Worth District Regulatory Branch and its Compliance Officer for conformance with the permit.
- e. City shall provide timely review and approval of design and construction contract documents for the Project.
- f. City shall monitor LC-9 for compliance with USACE for five (5) years after Substantial Completion. This includes the submittal of the annual maintenance reports to the USACE.
- g. City shall participate in design Project meetings, as needed.
- h. City has duty to obtain warranties from third parties and enforce the warranties on behalf of the Parties, if necessary.
- i. City shall acquire all necessary property for Project.
- j. For LC-10, City is utilizing the Design/Build method for design and construction and County is providing to the City the completed Preliminary Engineering Report.

ARTICLE V
OBLIGATIONS OF COUNTY

5.01 Pursuant to this Agreement, County shall perform and/or provide the following:

- a. County shall provide a copy of the preliminary engineering study for LC-10 and construction documents (plans and specifications) for LC-9 to City for review.
- b. County shall be involved throughout the construction of the Project to review and respond to Request for Information (hereafter referred to as "RFI"), review and approve change orders and participate in Project meetings.
- c. County identifies its Director of Public Works, or his/her designee, as Project contact.
- d. County is responsible to provide funding for this Project no later than fifteen (15) days after the later of.
 - 1. City executing a Design/Build contract with a selected Design/Build contractor; or
 - 2. the San Antonio City Council approves the Design/Build contract for this Project.
- e. County has no responsibility to maintain the Project.

- f. County shall provide the design professional for LC- 9, whose duties shall include providing detailed design documents and construction phase services. City shall allow the design professional to attend any meetings, inspect the Project and to participate in the Project as needed.
- g. County shall procure and submit the Letter of Map Revision (LOMR) for LC-9 based on the approved Conditional Letter of Map Revision (CLOMR).
- h. With USACE's approval, County shall transfer USACE Nationwide 27 Permit for LC-9 to the City. County shall transfer other Permits including, but are not limited to the Texas Commission on Environmental Quality (TCEQ) Water Pollution Abatement Plan.

ARTICLE VI
JOINT OBLIGATIONS OF THE PARTIES

- 6.01 The Parties have agreed upon the design and construction of the improvements to be integrated into the Project, as reflected in the preliminary engineering report for LC-10 and the construction plans for LC-9.

ARTICLE VII
DESIGNATION OF REPRESENTATIVES

- 7.01 City hereby appoints the City of San Antonio Capital Improvements Management Services Director, or his/her designee, (hereafter referred to as "City Project Manager"), as its designated representative under this Agreement. City's Project Manager shall be the primary point of contact for City.
- 7.02 County hereby appoints the Director of the Public Works Department, or his/her designee, (hereafter referred to as "County Project Manager"), as its designated representative under this Agreement. County's Project Manager shall be the primary point of contact for County.

ARTICLE VIII
COUNTY'S RIGHTS UNDER THIRD PARTY CONTRACTS

- 8.01 County agrees that City shall have the authority to contract on behalf of the Parties for all services necessary for the construction of the Project.
- 8.02 City shall provide County with a fully executed copy of each contract entered into by City for the Project.
- 8.03 In all Project contracts entered into by City, in which County has a financial obligation, City shall include provisions reflecting:
 - a. With regard to insurance coverage, City shall require all consultants, sub-consultants, contractors, subcontractors and suppliers to maintain the insurance coverage limits set out in the written notice to County's Risk Manager. A summary of Project costs and Project description also will be required. County shall be named as an additional insured on all

policies naming City as an additional insured and shall be entitled to make claims, to the extent of County's interest in the Project, under all insurance coverage. Prior to the commencement of any work by any service provider, vendor or contractor under this Agreement, City shall provide County's Risk Manager with copies of the completed Certificates of Insurance which Certificates completed by an agent authorized to bind the named underwriters and their companies to the coverage limits and termination provisions shown thereon. County shall have no duty to pay for any services or work performed under this Agreement until the Certificates of Insurance relating to the services or work for which payment is being requested have been delivered to County's Risk Manager. County reserves the right to review the insurance requirements during the effective period of this Agreement, any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by County's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. City shall not allow any modifications whereupon County may incur increased risks.

- b. City shall require all contractors and service providers, including but not limited to all sub-consultants and subcontractors, to maintain statutory worker's compensation insurance for all of their employees with a waiver of subrogation in favor of City and County.
- c. City shall require in its contracts for services, construction and materials that the contracting parties, along with all sub-consultants and subcontractors, be required to indemnify, County and City, their officials, employees and agents for claims by third parties, as allowed by law.
- d. City shall require all consultants, sub-consultants, contractors, and subcontractors to provide all statutorily required payment and performance bonds at no additional cost to the Parties. On services for which performance bonds are not statutorily required, City shall determine whether to require performance bonds.
- e. City shall state in all agreements with third-parties that County is a third-party beneficiary to the agreement.

ARTICLE IX

PROJECT MANAGEMENT DURING CONSTRUCTION

- 9.01 City shall manage, oversee, administer and carry out all of the activities and services required for construction of the Project to insure that this project is constructed, equipped, furnished and completed with new materials in a good and workmanlike manner and in accordance with the terms of this Agreement and the design and construction documents.
- 9.02 City shall enforce substantial compliance with the terms of the agreements with the contractors and subcontractors and require that work continuously and diligently be performed to achieve substantial completion on or before the scheduled completion date set out in the Project schedule.
- 9.03 Upon approval of this Agreement by the governing bodies of the Parties, the Parties' respective Directors shall schedule a meeting to finalize the team structure and develop the procedures and processes necessary to coordinate design and construction in accordance with the standard business practices of those disciplines.

- 9.04 City's Project Manager shall provide written notice to County's Project Manager a minimum of ten (10) business days prior to the issuance of a Notice to Proceed for the start of construction on the Project. City Project Manager shall provide County with written notice a minimum of five (5) business days prior to any street or sidewalk closures.
- 9.05 In addition to the requirements of Article XIX, City promptly shall furnish County's Project Manager with copies of all legal notices received by City affecting the Project including, without limitation, notices from governmental authorities, and notices from any party claiming default in any payment obligation and any other notice not of a routine nature. City promptly shall give notice under Article XIX herein of any suit, proceeding or action that is initiated or threatened in connection with the construction of the Project or against City and/or County in connection with construction of the Project.
- 9.06 For any environmental event that is caused by or at the direction of either City or County employees at the Project site, the party hiring the event-causing employee(s) shall be liable. An environmental event shall mean spills, discharge, leakage, pumpage, drainage, pourage, emission, emptying, injecting, dumping, disposing or other release of a hazardous material which may cause a threat or actual injury to human health or the environment.
- 9.07 Within thirty (30) business days following substantial completion of construction of the Project, City shall:
- a. notify County in writing upon the substantial completion of construction, whereupon County may inspect the completed work to determine if construction has been completed in a satisfactory and workmanlike manner and substantially completed in accordance with the plans and specifications for such work.
 - b. submit all permits and inspection reports and, if applicable, obtain a Final Acceptance Letter and submit a copy of each of these documents to the County.
 - c. submit "record" drawings to County, along with copies of all warranties and operations documents.
- 9.08 Both City and County shall participate in a walk through at the point of substantial completion of the Project to identify the punch list items. City shall supervise and coordinate the completion of punch list items and warranty work. Both Parties shall participate in a final walk through to determine whether all punch list items have been resolved.
- 9.09 For information purposes, City shall provide County's Project Manager, as and when available, the schedule for permitting, design and construction of the Project. County shall be furnished said schedule when revised from time to time throughout the duration of the Project. The schedule(s) shall establish a date for substantial completion of each phase in sufficient detail to allow County to monitor the progress of the construction of the Project.
- 9.10 Within one hundred eighty (180) days after final completion of the Project, City shall deliver to County's Project Manager a final construction report which shall set out the total costs incurred in connection with those portions of the Project for which both County and City made financial contributions.

- 9.11 City shall maintain the books, records and documents pertaining to those portions of the Project for which County and City have joint participation. County representatives shall have access to and the right to examine same, upon reasonable notice to City's Project Manager. City's books, records and documents relating to the Project must be maintained separately from other City projects so that an examination by County representatives shall be limited to the documents for this Project.

ARTICLE X
DEFAULT

- 11.01 In the event of a material breach of this Agreement, the non-breaching party shall give the breaching party written notice of such breach which shall detail the nature of the breach. The party receiving the notice of breach shall be given thirty (30) days to cure the breach. If the breach is not corrected to the reasonable satisfaction of the non-breaching party by the end of the thirty (30) day period, the non-breaching party may give written notice of termination of this Agreement to the breaching party and seek to recover damages not to exceed the amount paid by the non-breaching party toward construction of the Project.

ARTICLE XI
TERMINATION FOR CONVENIENCE

- 12.01 Whenever either party, in its sole discretion, deems it to be in that party's best interest, it may terminate this Agreement for convenience. Such termination shall be effective thirty (30) days after the terminating party delivers written notice of termination of convenience to the other party. If the Agreement is terminated by a party prior to completion of the Construction of the Project, after payment of any unpaid obligations for completed work, City shall refund to County any remaining portion of County's Contribution. The Parties shall have no additional liability to one another for termination under this Article XI.

ARTICLE XII
PRIOR AGREEMENTS SUPERSEDED

- 13.01 This Agreement, including the exhibits, constitute the entire Agreement of the Parties regarding the subject matter of this Agreement and supersede all previous agreements and understandings, whether written or oral, relating to such subject matter.

ARTICLE XIII
ASSIGNMENT OR TRANSFER OF INTEREST

- 14.01 Neither Party may assign its rights, privileges and obligations under this Agreement, in whole or in part, without the prior written consent of the other party. Any attempt to assign without such approval shall be void.

ARTICLE XIV
LEGAL CONSTRUCTION

- 15.01 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE XIX
FORCE MAJEURE

20.01 Neither Party shall be responsible for delays or lack of performance by such entity or its officials, agents or employees which result from acts beyond that entity's reasonable control, including acts of God, strikes or other labor disturbances or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses. In the event of any delay or failure excused by this Article XIX, the time of delivery or of performance shall be extended for a reasonable time period to compensate for delay.

ARTICLE XX
MULTIPLE COUNTERPARTS

21.01 This Agreement may be executed in separate identical counterparts by the Parties hereto and each counterpart, when so executed and delivered, shall constitute an original instrument and all such separate identical counterparts shall constitute but one and the same instrument.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, ON THIS _____ DAY OF _____, 20____.

CITY OF SAN ANTONIO

COUNTY OF BEXAR

By: _____
SHERYL SCULLEY
City Manager
Date: _____

By: _____
NELSON W. WOLFF
County Judge
Date: _____

ATTEST:

ATTEST:

LETICIA VACEK
City Clerk
APPROVED AS TO FORM:

GERRY RICKHOFF
County Clerk
APPROVED AS TO LEGAL FORM:

MICHAEL BERNARD
City Attorney

SUSAN D. REED
Criminal District Attorney
Bexar County, Texas

JILL TORBERT
Assistant Criminal District Attorney--Civil Section

APPROVED AS TO FINANCIAL CONTENT:

SUSAN YEATTS
County Auditor

DAVID SMITH
County Manager

APPROVED:

RENEE D. GREEN, PE
Director of Public Works/County Engineer

Exhibit "A"
Project Cost Estimate and Funds Committed by Funding Source

Interlocal Agreement for the Hausman Road Project			
City of San Antonio and Bexar County			
Cost Category	LC-9	LC-10	Total
Construction	\$ 7,600,000.00	\$ 6,400,000.00	\$ 14,000,000.00
Design	\$ -	\$ 640,000.00	\$ 640,000.00
Environmental	\$ 100,000.00	\$ 200,000.00	\$ 300,000.00
Real Estate	\$ -	\$ 300,000.00	\$ 300,000.00
Capital Administration	10%	10%	\$ 1,400,000.00
Total Bexar County Contribution =			\$ 16,640,000.00

Exhibit "B"

LC-10 PER and LC-10 Map

The final Preliminary Engineering Report for LC-10, dated May 25, 2012, is on file with the City of San Antonio Capital Improvements Management Services Director and Bexar County Director of Public Works and incorporated by reference herein.

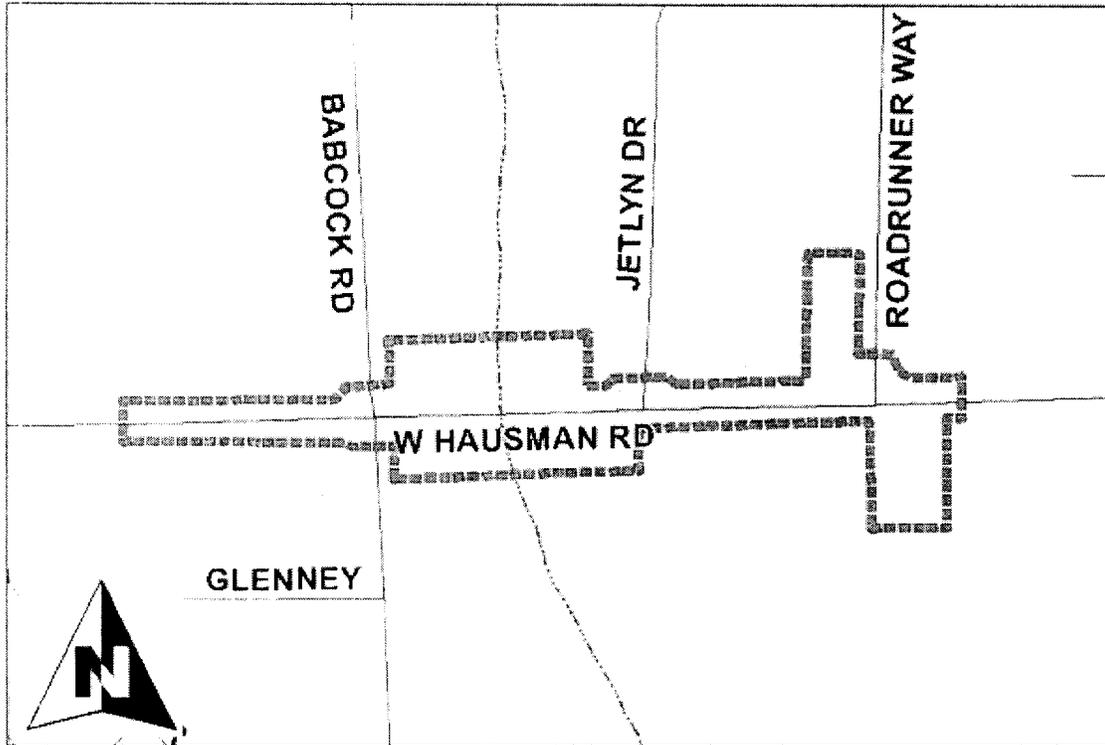


Exhibit "C"

LC-9 Construction Documents and LC-9 Map

The final Construction Plans for LC-9, dated February 27, 2012, and Project Specifications are on file with the City of San Antonio Capital Improvements Management Services Director and Bexar County Director of Public Works and incorporated by reference herein.

