

AN ORDINANCE 2006-05-04-0537

AUTHORIZING THE EXECUTION OF AN INTERLOCAL AGREEMENT WITH THE NORTHSIDE INDEPENDENT SCHOOL DISTRICT FOR CONSTRUCTION OF A PORTION OF THE KYLE SEALE PARKWAY PROJECT, LOCATED IN DISTRICT 8, AND APPROPRIATING \$850,000.00 FROM CERTIFICATES OF OBLIGATION.

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WHEREAS, the City wishes to enter into an Interlocal Agreement with the Northside Independent School District for the construction of a portion of Kyle Seale Parkway thoroughfare from the DeZavala Road extension to Hausman Road; and

WHEREAS, the City will donate 86 feet of right of way within City property between the Northern NISD boundaries and Hausman Road west; and

WHEREAS, NISD will donate 86 feet of right of way within NISD boundaries North of the new DeZavala Road construction; and

WHEREAS, NISD will construct one two-lane road on City property, along the Eastern side of the right of way next to the proposed Hausman Road Branch Library; and

WHEREAS, the City will assist in expediting approvals to provide platting and permitting of road improvements to Hausman Road, and will contribute financial support for construction of said two lanes within City Property; and

WHEREAS, approval of this Ordinance will be a continuation of City Council policy to complete previously approved Certificate of Obligation funded projects and 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 the Northside Independent School District for construction of a portion of the Kyle Seale Parkway Project. A copy of the Agreement is attached hereto and incorporated herein for all purposes as Attachment I.

SECTION 2. The following financial adjustments are hereby approved:

A. The amount of \$850,000.00 is appropriated in Fund 43902012, 2006 Library Certificates of Obligation, WBS CO-20068-01-01-02 GL account 6102100 – Interfund Transfer out entitled Transfer to 23-03004-90-01. The amount of \$850,000.00 is authorized to be transferred to fund 43099000.

B. The budget in fund 43099000, Project Definition 23-03004, Hausman Road Branch Library Infrastructure Improvements, shall be revised by increasing WBS element 23-03004-90-01 Trf Fr CO-20068-01-01-02 , GL account 6101100 – Interfund Transfer In, by the amount of \$850,000.00.

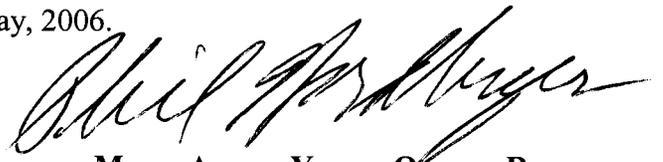
C. The amount of \$850,000.00 is appropriated in Fund 43099000, Certificates of Obligation Capital Projects, Project Definition 23-03004, Hausman Road Branch Library Infrastructure Improvements, WBS element 23-03004-05-02-01 and is authorized to be encumbered and made payable to the North East Independent School District when a purchase order is issued.

D. This ordinance is also a declaration of the City's official intent to reimburse itself from the proceeds derived from the sale of the City of San Antonio, Certificates of Obligation, Series 2007 for any authorized expenditures from any lawfully available funds of the City. This reimbursement is contingent upon the sale of the City of San Antonio, Certificates of Obligation, Series 2007.

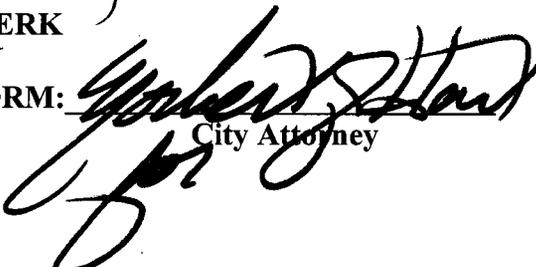
E. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP 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 on May 14, 2006.

PASSED AND APPROVED this the 4th day of May, 2006.


M A Y O R

ATTEST: 
CITY CLERK

APPROVED AS TO FORM: 
City Attorney

**INTERLOCAL AGREEMENT FOR
CONSTRUCTION OF EXTENSION OF KYLE SEALE PARKWAY**

This Interlocal Agreement (this "Agreement") is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City"), acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2005 and Northside Independent School District, a Texas independent school district, acting by and through its Superintendent (hereinafter referred to as "NISD"), both of which may be referred to herein collectively as the "Parties").

WHEREAS, NISD is in the process of planning and/or developing certain real property it owns along and to the east of that portion of Loop 1604 situated between Hausman Road West and the future extension of DeZavala Road (the "NISD Land") for use as a sports stadium, a natatorium and a future high school site; and

WHEREAS, the City plans to develop certain property owned by the City bounded by Hausman Road West to the north and located to the north and east of the NISD Land (the "City Land") as a public park and/or related public library.

WHEREAS, NISD and the City are in the process of planning and designing two lanes that will constitute a portion of the extension of that thoroughfare known as Kyle Seale Parkway and to be situated between Hausman Road West to the north, and the southern boundary of NISD property to the south, being generally depicted on Exhibit A attached hereto and being comprised of four two-lane segments identified and referred to herein and depicted on Exhibit A as "Segment A", "Segment B", "Segment C" and "Segment D" (collectively, the "Roadway ") on land partly out of the NISD Land and partly out of the City Land.; and

WHEREAS, the City and NISD are mutually desirous of coordinating the timing, planning, designing, developing, construction and/or dedication of the Roadway together with infrastructure and improvements including landscaping related thereto; and

WHEREAS, the City and NISD have agreed, in the interest of promoting the greater good of the citizens and taxpayers of the City and the patrons and taxpayers of NISD, and pursuant to the terms hereof, to jointly participate in the planning, designing, developing, construction and/or dedication of the Roadway and related infrastructure and improvements including landscaping, together with a mechanism for the funding of the costs of same; and

WHEREAS, the City and NISD desire to enter into an Interlocal Agreement to implement the construction of the Roadway and related infrastructure and improvements including landscaping on an expedited basis.

NOW THEREFORE, for and in consideration of the premises and the terms and conditions described herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. THE PROJECT

NISD and the City shall jointly pursue the planning, design, development and/or construction of the Roadway and related infrastructure and improvements including landscaping described, depicted or referred to herein or on Exhibit A (collectively referred to herein as the "Project").

II. OBLIGATIONS OF PARTIES WITH RESPECT TO PROJECT

A. NISD shall with respect to the Project:

1. Dedicate 86' of right-of-way ("ROW") necessary for the Segment B portion and the Segment D portion of the Roadway situated within the boundaries of NISD's Land;
2. Construct as soon as commercially practicable to City's 2004 Unified Development Code ("UDC") standards the two-lane secondary arterial section comprising the Segment B portion of the Roadway situated along and upon the westerly side of the ROW situated within the NISD's Land adjacent to NISD's proposed high school;
3. Construct to 2004 UDC standards the two-lane secondary arterial section comprising the Segment A portion of the Roadway situated along the easterly side of the ROW situated within City's Land;
4. Construct the right turn lane and signalization improvements at the proposed intersection of Kyle Seale Parkway and Hausman Road West in a manner reasonably required by City, in compliance with all applicable local and state laws.

B. The City shall, with respect to the Project:

1. Provide or otherwise set aside from the City Land that portion of the 86' of ROW owned or controlled by City necessary for the two-lane secondary arterial sections comprising the Segment A portion

and the Segment C portion of the Roadway Extension to be situated within the boundaries of City's Land;

2. Assist in and expedite all necessary and/or appropriate procedures necessary to provide platting and permitting of the Segment A, Segment B, Segment C and Segment D portions of the Roadway from time to time as they are platted and/or built and certain future road improvements to Hausman Road West directly related to the improved intersection of such thoroughfare with Kyle Seale Parkway in a manner mutually and reasonably approved by NISD and City;;
3. Contribute, contemporaneous with NISD entering into a construction contract with the contractor who is awarded the bid to construct the Segment A portion and Segment B portion of the Roadway, financial support for the engineering and construction by NISD of those two future lanes of the Section A portion of the Roadway in the amount of \$837,393.39; such sum to be placed in a mutually acceptable Escrow Agreement by and among NISD, City and Ameripoint Title providing a mechanism whereby such funds may be drawn by NISD from time to time to make progress payments to the contractor constructing Segment A and Segment B as the construction of same progresses;
4. Acquire any remaining ROW necessary for the platting and/or construction of the future two lanes for the Segment A portion of the Roadway presently owned by a third party (i.e., the southwesterly portion of Segment A) not theretofore previously donated or otherwise set aside by NISD and/or City and to cause to be constructed by any third party, its heirs, successors or assigns, the Segment C portion of the Roadway (it being agreed that NISD will have no further financial obligations whatsoever with respect to the acquisition of any portions of any needed land comprising the ROW for Segment A and/or with respect to the platting or construction of Segment C).

C. NISD agrees to use diligent efforts to commit to the future needed funding of Segment D of the Roadway in a timely, as-needed manner and to cause Segment D to be completed as soon as practicable thereafter based upon traffic generated with respect to the respective facilities of NISD and City, as well as future traffic volumes in the immediate area of the Roadway resulting from the future westerly extension of DeZavala Road from the east of Kyle Seale Parkway and from the future southerly extension of Kyle Seale Parkway from its proposed intersection with the future extension of DeZavala Road to the then existing extension of Kyle Seale Parkway situated in close proximity to and to the north of Prue Road. In this connection one or more traffic impact analyses (each a "TIA")

will be conducted so as to determine when the additional lanes comprising the Segment D portion of the Roadway Extension will need to be built. NISD will hereinafter diligently work toward timely obtaining the needed future financing for any such resulting engineering and construction costs related to Segment D. City agrees to coordinate any needed TIA's necessary or appropriate to determine the proper timing of the engineering and construction of Segment D of the Roadway.

III. COOPERATION

City and NISD do hereby acknowledge and agree that given the nature and scope of the joint undertaking that are the subject matter of this Interlocal Agreement, it will be imperative for the parties to cooperate with one another in good faith as to all material elements hereof so as to effectively coordinate all joint activities in an economic and efficient manner that will provide the maximum benefits to their respective taxpayers, citizens and/or patrons, and in this connection they agree to deal fairly with one another throughout the term of this Interlocal Agreement in a reasonable manner, and to exercise good faith and reasonable judgment with respect to all joint endeavors within the scope hereof, it being the express intent hereof for this Interlocal Agreement to be fair and equitable to both parties, and with no resulting benefit to inure to any party, public or private not a named party to this agreement. All approvals herein required shall not be unreasonably withheld, conditioned or delayed.

IV. MISCELLANEOUS

1. NISD shall cause the plans and specifications for the Segment A and Segment B portions of the Roadway (the "Plans") to be prepared by M. W. Cude Engineers, L.L.C. (the "Engineer") at NISD's expense and provided to the City's Public Works Department contemporaneously with the execution of this Agreement and incorporated for all purposes as Exhibit B. The Plans are subject to the prior reasonable approval by City which must be obtained prior to award of any work for any portion of the Project. Preliminary cost estimates for the Roadway portion of the Project are set forth on Exhibit A.
2. The parties agree that NISD will be responsible for conducting all appropriate sealed bid proposal processes for the project in accordance with all applicable local and state laws. The parties further agree that the City Engineer, or his designee, will participate in the sealed bid proposal process at all stages, including but not limited to proposal evaluation and approval.
3. Any subsequent plans and specifications for further improvements contemplated herein with respect to the Segment C portion of the Roadway shall be jointly developed in a manner to be mutually agreed

upon by NISD and City, acting reasonably and in good faith, but with respect to Segment C of the Roadway shall be financed solely by City and/or third parties who plat property abutting Segment C to the west thereof.

4. NISD acknowledges that some or all of the construction and installation of the Project will occur in present or future dedicated and/or City owned ROW and accordingly will be subject to City's applicable ROW standards and controls. No term or condition contained within this agreement in any way serves as a waiver of ROW standards and controls or UDC provisions for an individual.
5. Any modifications to this Agreement must be in writing, and signed by both parties hereto. Any material modifications to the Agreement must be approved by City Council and NISD School Board.
6. NISD shall not execute or effectuate any change orders from the Plans once they are mutually approved by City and NISD, without the prior reasonable consent of the City. In order to avoid delay in securing City consent, NISD will provide reasonable advance notice to the City of potential change orders or modifications which affect the project.
7. The terms of this Agreement shall be binding upon and inure to the benefit of the named parties hereto. Neither party may, without the prior written consent of the other party, assign any rights, powers, duties, or obligations, in whole or in part, hereunder. This Agreement shall not inure to the benefit of any party other than the parties to this Agreement and their successors and permitted assigns.
8. Neither this Agreement nor any part thereof shall be construed as creating a partnership, joint venture or other business affiliation between the parties hereto.
9. This Agreement and the exhibits attached hereto supersede any and all other prior or contemporaneous agreements, oral or written, among the parties hereto with respect to the Project.
10. All notices given with respect to this Agreement shall be in writing and shall be deemed delivered upon receipt if hand delivered or sent by confirmed facsimile transmission, and, if mailed, deemed received on the third business day after deposit in the United States mail, postage prepaid, addressed to the parties shown below:

IF TO THE CITY:

**IF TO NORTHSIDE INDEPENDENT
SCHOOL DISTRICT:**

City of San Antonio
ATTN: CITY MANAGER
PO Box 839966
San Antonio, Texas 78283-3966
Facsimile: (210) 207-4217

Northside Independent School District
ATTN: JOHN M. FOLKS, Superintendent
5900 Evers Road
San Antonio, Texas 78238
Facsimile: (210) 706-8772

WITH A COPY TO:

City of San Antonio
Department of Public Works
Director's Office
Municipal Plaza Building, 6th Floor
PO Box 839966
San Antonio, Texas 78283-3966
Facsimile: (210) 207-4406

WITH A COPY TO:

Northside Independent School District
Attn: Jim Martin
5900 Evers Road
San Antonio, Texas 78238
Facsimile: (210) 257-1212

11. This Agreement shall be governed by and construed under the laws of the State of Texas. Venue for any legal action arising out of this Agreement shall be exclusively in Bexar County, Texas.
12. The parties hereto agree they will execute such other and further instruments and documents from time to time as are or may become reasonably necessary or convenient to supplement or effectuate the purpose of this Agreement.
13. Each signatory hereof represents to the other party to this Agreement that he or she has been duly authorized to do so and in so doing shall bind the party on whose behalf he or she is signing to the terms hereof.
14. Each party hereto shall pay its own attorney's fees with respect to the drafting, review and negotiation of this Interlocal Agreement and all subsequent instruments and agreements related to the Project. In the event it should ever become necessary for any party to retain the services of any attorney to enforce its rights hereunder against the other party hereto, then, should such party prevail, shall be entitled to recover, in addition to any other damages and awards to which it may be entitled, its reasonable attorneys' fees from the defaulting party.
15. Any cost estimates appearing on Exhibit A pertaining to the Roadway are current estimates compiled by the Engineer and are subject to change as the joint undertakings described herein move forward. In all instances of potential and actual cost changes, the notice and consent provisions contained in Article IV, Section 6 shall apply.

- 16. The parties agree that all construction work related to the Roadway shall be implemented in a manner that is in full compliance with any and all bidding and/or purchasing procedures required by Texas statutes for political subdivisions.
- 17. This Agreement may be executed in duplicate counterparts, each of which shall be deemed to be an original, but both of which, taken together, shall constitute but one and the same instrument.

EXECUTED and **AGREED** to this the _____ day of _____, 2005.

CITY OF SAN ANTONIO

NORTHSIDE INDEPENDENT SCHOOL DISTRICT

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____