

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
AMENDMENT #1**

THIS AMENDMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, called the State, and City of Seguin, acting by and through its duly authorized officials, called the Local Government.

W I T N E S S E T H

WHEREAS, the State and the Local Government executed a contract on November 10th of 2015 to effectuate their agreement to construct sidewalk in Seguin within Community Park and on N. Vaughan and San Antonio Avenue; and,

WHEREAS, it has become necessary to amend that contract;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, the State and the Local Government do agree as follows:

A G R E E M E N T

1. This agreement has been deleted and replaced by Local Transportation Project Advance Funding Agreement for a Transportation Alternatives Program Project MPO selected off-system.

A. Article 1.2 Period of Performance has been deleted in its entirety and replaced with:

1. The Performance Period for each phase of work begins on the date specified in the Federal Project Authorization Agreement ("FPAA") for that phase of work. Local Government may not begin work until issued the State Letter of Authority ("SLOA") for that phase of work.
2. The Performance Period for each phase of work ends on the date specified in the FPAA for that phase of work.

B. Article 2 Termination of Agreement, subpart 2.4.d. is deleted in its entirety.

C. Article 2 Termination of Agreement, subpart 2.5 is deleted in its entirety and replaced with:
State, at its sole discretion, may terminate this Agreement if State does not receive project invoice within 270 days of Construction FPAA.

D. Article 4 Scope of Work, Use of Project, and Project Location Subpart 4.2 has been deleted in its entirety and replaced with:

Any project changes proposed must be submitted in writing by Local Government to State. Changes may also require an amendment to this Agreement and the approval of the FHWA, State, MPO, or the Commission. Any changes undertaken without written approval and amendment of this Agreement may jeopardize not only the federal funding for the changes, but the federal funding of the entire Project.

E. Article 5 Right of Way and Real Property Acquisition Subparts 5.3, 5.6, 5.7, 5.11 have been deleted in its entirety and replaced with:

5.3 Local Government shall assume all costs and perform all work necessary to obtain needed evidence of title or right of use to the real property required for development of Project. Evidence of title or right of use shall be acquired in the name of (1) State, if the real property is to be made part of the State Highway System, and (2) Local Government, otherwise. The evidence of title or rights shall be acceptable to State, and be free and clear of all encroachments. Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop Project according to the approved Project plans. Local Government shall be responsible for securing any additional real property required for completion of Project.

5.6 For State-selected projects, Local Government shall not use eminent domain or condemnation to acquire real property for this TAP Project.

5.7 Reimbursement for real property costs will be made to Local Government for real property purchased in an amount not to exceed 80 percent of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed 80 percent of State's predetermined fair market value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to Local Government for necessary payments to appraisers for expenses incurred in order to assure good title.

5.11 Local governments receiving federal funds must comply with 23 CFR Part 710 and 49 CFR Part 24, and with the procedures provided in Chapter 6 of the State's Local Government Project Policy Manual. Local Government agrees to monitor Project to ensure: (1) continued use of the property for approved activities, and (2) the repayment of the Federal funds, as appropriate. Local Government agrees to the review of their Project accounts and site visits by State during the development of Project at any time. Upon Project completion, State will continue to perform periodic visits to confirm Project's continued use and upkeep.

F. Article 6 Utilities has been deleted in its entirety and replaced with:

Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to State of a delay resulting from Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. Unless specified in (1) the nomination form approved by State or MPO in consultation with State and (2) this agreement, Local Government will not be reimbursed with federal or state funds for the cost of required utility work. Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, Local Government shall provide, at State's request, a certification stating that Local Government has completed the adjustment of all utilities that must be adjusted before construction begins. Additional utility work may be required due to unknown conditions discovered during construction. These costs may be eligible for TAP participation if: (1) the activity is required to complete Project; (2) the cost is incidental to Project; and (3) TAP funding is available. Any change orders must be approved by State prior to incurring any cost for which reimbursement is sought.

G. Article 7 Environmental Assessment and Mitigation Subparts 7.2, 7.3, have been deleted in its entirety and replaced with:

7.2 Local Government is responsible for the cost of any environmental problem's mitigation and remediation. These costs will not be reimbursed or credited towards Local Government's financial share of Project unless specified in the nomination form and approved by State or MPO in consultation with State.

7.3 Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment.

Add subpart 7.4 as follow: Before the advertisement for bids, Local Government shall provide to State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

H. Article 11 Local Project Sources and Uses of Funds Subparts 11.1, 11.3, 11.5

11.1 A Project Budget Estimate and Source of Funds is provided as Attachment C, showing the total estimated development cost of Project. This estimate shows the itemized cost of real property, utilities, environmental assessments, construction, and other construction related costs. To be eligible for reimbursement or as in-kind contribution, costs must have been included in the nomination form approved by the Texas Transportation Commission or MPO in consultation with State. State and the Federal Government will not reimburse Local Government for any work performed outside the Performance Period. After federal funds have been obligated, State will send to Local Government a copy of the formal documentation showing the obligation of funds including federal award information. Local Government is responsible for 100 percent of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.

11.3 The Project budget and source of funds estimate based on the budget provided in the nomination form is included as Attachment C. Attachment C shows the percentage and estimated

dollar amounts to be contributed to Project by state and local sources, as well as the maximum amount in federal Transportation Alternative Program funds assigned by the Commission or MPO in consultation with State to Project. This Agreement may be amended from time to time as required to meet the funding commitments based on revisions to the Transportation Improvement Program, Federal Project Authorization and Agreement (“FPAA”), or other federal documents.

11.5 State will be responsible for securing the federal share of funding required for the development and construction of Project, in an amount not to exceed 80 percent of the actual cost of the work up to the amount of funds approved for Project by the Texas Transportation Commission or MPO in consultation with State. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to issuance of the SLOA are not eligible for reimbursement.

I. Article 20 Single Audit Report Subparts 20.2, and 20.3 have been deleted in their entirety and replaced with:

20.2 If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://www.txdot.gov/inside-txdot/office/audit/contact.html>. If expenditures are less than the threshold during Local Government's fiscal year, Local Government must submit a statement to TxDOT's Audit Office as follows:

We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY_____.

20.3 For each year Project remains open for federal funding expenditures, Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or Project has been formally closed out and no charges have been incurred within the current fiscal year.

Article 20.4 has been deleted in its entirety.

J. Article 21 Civil Rights Compliance has been added

21.1 Compliance with Regulations: The Local Government will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

21.2 Nondiscrimination: The Local Government, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices

when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

- 21.3 Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- 21.4 Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations and instructions. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- 21.5 Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this contract, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
- a. withholding of payments to the Local Government under the contract until the Local Government complies and/or
 - b. cancelling, terminating, or suspending of the contract, in whole or in part.
- 21.6 Incorporation of Provisions: The Local Government will include the provisions of paragraphs 21.1 through 21.6 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Local Government becomes involved in, or is threatened with, litigation with a subcontractor, or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

K. Article 22 Pertinent Non-Discrimination Authorities has been added

During the performance of this contract, the Performing Agency, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- 22.1 Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- 22.2 The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- 22.3 Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- 22.4 Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- 22.5 The Age Discrimination Act of 1975, as amended, (49 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- 22.6 Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- 22.7 The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not).
- 22.8 Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- 22.9 The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- 22.10 Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with

disproportionately high and adverse human health or environmental effects on minority and low-income populations.

22.11 Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).

22.12 Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

L. Attachment C - Project Budget Estimate and Source of Funds is deleted in its entirety and replaced with Attachment C-1, Project Estimate and Source of Funds, attached to this Amendment.

All other provisions of the original contract are unchanged and remain in full force and effect.

2. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

CSJ #0915-46-043
District # 15-San Antonio
Code Chart 64 # 38800
Project: In Seguin within Community
Park and on N Vaughan and
San Antonio Avenue
Federal Highway Administration
CFDA Title: FHWA
CFDA No.: 20.205
Not Research and Development

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

Signature

Typed or Printed Name

Title

Date

THE STATE OF TEXAS

Kenneth Stewart
Director of Contract Services
Texas Department of Transportation

Date

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ATTACHMENT C-1
PROJECT ESTIMATE AND SOURCE OF FUNDS
LG Performs PE Work or Hires Consultant /LG Lets Project to Construction

Work Performed by Local Government ("LG")							
Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation Includes additional percentage for TDC apportionment where applicable		State Participation		Local Government (LG) Participation Includes any EDC reduction where applicable	
		%	Cost	%	Cost	%	Cost
Preliminary Engineering	\$44,353	0%	\$0	0%	\$0	100%	\$44,353
Environmental Cost	\$14,784	0%	\$0	0%	\$0	100%	\$14,784
Construction	\$1,041,888	80%	\$833,510	0%	\$0	20%	\$208,378
Construction (Local)	\$165,000	0%	\$0	0%	\$0	100%	\$165,000
In-kind donation Value (Add to Total Project Cost - 20% Maximum value)	N/A	0%	\$0	0%	\$0	0%	\$0
Work by LG Subtotal	\$1,266,026		\$833,510		\$0		\$432,515
Work Performed by the State (Local Participation paid up front by LG to TxDOT)							
Preliminary Engineering	\$0	0%	\$0	0%	\$0	0%	\$0
Environmental Cost	\$0	0%	\$0	0%	\$0	0%	\$0
Right of Way	\$0	0%	\$0	0%	\$0	0%	\$0
Utilities	\$0	0%	\$0	0%	\$0	0%	\$0
Construction	\$0	0%	\$0	0%	\$0	0%	\$0
Work by State Subtotal	\$0		\$0		\$0		\$0

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Direct and Indirect State Costs Incurred for Review, Inspection, Administration & Oversight							
Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation		State Participation		Local Government (LG) Participation	
		Includes additional percentage for TDC apportionment where applicable				Includes any EDC reduction where applicable	
		%	Cost	%	Cost	%	Cost
Preliminary Engineering ¹	\$3,253	0%	\$0	0%	\$0	100%	\$3,253
Environmental Cost ¹	\$3,253	0%	\$0	0%	\$0	100%	\$3,253
Construction ²	\$5,835	0%	\$0	0%	\$0	100%	\$6,505
Indirect State Costs ²	\$59,804	0%	\$0	100%	\$59,804	0%	\$0
Direct & Indirect State Cost Subtotal	\$72,144		\$0		\$59,804		\$13,010
TOTAL PARTICIPATION	\$1,338,170		\$833,510		\$59,804		\$445,525
In-kind Contribution Credit Applied							N/A
TOTAL REMAINING PARTICIPATION AFTER IN-KIND CONTRIBUTION							\$445,525

The estimated total participation by Local Government is \$445,525, plus 100% of overruns.

Total estimated payment by Local Government to State is \$13,010.

¹Local Government's first payment of \$13,010 is due to State within 30 days from execution of this LPAFA.

³If ROW is to be acquired by State, Local Government's share of property cost will be due prior to acquisition.

The eligible percent of required local match is stated in the nomination and must be 20 percent or greater, unless In-Kind, EDC adjustments or TDCs are applied.

This is an estimate, the final amount of Local Government participation will be based on actual costs.

- Maximum federal TAP funds available for Project are \$833,510.