

CSJ # 0915-12-558  
District # 15- San Antonio  
Code Chart 64 # 37450  
Project: Construct 2-way Cycle Track,  
Pedestrian Facilities, Trailhead,  
Landscaping and Signage on  
Floyd Curl from Louis Pasteur to  
Fawn Meadow  
Federal Highway Administration  
CFDA Title: Highway Planning &  
Construction  
CFDA No.: 20.205  
Not Research and Development

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 San Antonio, acting by and through its duly authorized officials, called the Local Government.

**WITNESSETH**

**WHEREAS**, the State and the Local Government executed a contract on September 8, of 2015 to effectuate their agreement to construct a 2-way cycle track, pedestrian facilities, trailhead, landscaping and signage on Floyd Curl from Louis Pasteur to Fawn Meadow; 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:

**AGREEMENT**

**1. Description of Amended Items**

Article 4, Scope of Work, Use of Project, and Project Location, of the Original contract is deleted in its entirety and replaced with the following:

4.1 The scope of work for Project (located as shown in Attachment B, Project Location Map) consists of:

Construction of a two-way cycle track, pedestrian facilities, trailhead, landscaping and signage on Floyd Curl from Louis Pasteur to Fawn Meadow.

Attachment B, Project Location Map, is deleted in its entirety and is replaced with Attachment B-1 Project Location Map, which is attached to and made part of this amendment. The limits on the location map have changed.

Articles 1.2, 2.4, 2.5, 5.12, 7.4, 20.2, 21 and 23 of the original agreement are deleted in their entirety and replaced with the following:

1.2 Period of Performance.

- a. 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.
- b. The Performance Period for each phase of work ends on the date specified in the FPAA for that phase of work

2.4 A project may be eliminated from the program as outlined below. If Project is eliminated for any of these reasons, this Agreement will be appropriately terminated. A project may be eliminated from the program, and this Agreement terminated, if:

- a. Local Government fails to satisfy any requirements of the program rules cited in 43 Tex. Admin. Code Subchapter 11.F.
- b. The implementation of Project would involve significant deviation from the activities proposed in the nomination form and approved by the Texas Transportation Commission or MPO in consultation with State.
- c. Local Government withdraws from participation in Project.
- d. State determines that federal funding may be lost due to Project not being implemented and completed.
- e. Funds are not appropriated, in which case this Agreement shall be terminated immediately with no liability to either party. Payment under this Agreement beyond the current fiscal biennium is subject to availability of appropriated funds.
- f. The associated FPAA is not issued by the end of the third federal fiscal year following the federal fiscal year for which the funds are authorized. Federal fiscal years run October 1 through September 30.
- g. Local Government fails to attend progress meetings at least twice yearly, as scheduled by State.

2.5 State, at its sole discretion, may terminate this Agreement if State does not receive project invoice within 270 days of FPAA.

5.12 Before the advertisement for bids, Local Government shall provide a certification to State that all real property has been acquired.

7.4 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.

20.2 Removed and replaced with: 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 Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division at [singleaudits@txdot.gov](mailto:singleaudits@txdot.gov). If expenditures are less than the threshold during Local Government's fiscal year, Local Government must submit a statement to TxDOT's Compliance Division as follows:

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

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.

Article 22 has been added: ***Pertinent Non-Discrimination Authorities***

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).

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).

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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.).

Signatory Warranty is now Article 23: Signatory Warranty

Attachment B has been removed in its entirety and replaced with B-1

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

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### 3 Signatory Warranty

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

**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 B-1 PROJECT LOCATION MAP

