

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY  
CONSTRUCTION & MAINTENANCE BY A LOCAL GOVERNMENT (ON-SYSTEM)**

**THIS AGREEMENT** is made by and between the State of Texas, acting by and through the Texas Department of Transportation called the "State", and the City of San Antonio, acting by and through its duly authorized officials, called the "Local Government."

**WITNESSETH**

**WHEREAS**, Texas Transportation Code, §201.103 and §222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

**WHEREAS**, Transportation Code, §201.209 allows the State to enter into an interlocal agreement with a Local Government; and,

**WHEREAS**, Texas Transportation Code §221.002 provides that the Governing Body of a Municipality may enter into an agreement with the Texas Transportation Commission for the improvement by the Local Government of the state highway system, including maintenance;

**WHEREAS**, the Local Government desires to construct and maintain hike & bike trail improvements in the right of way of Loop 1604, a roadway on the state highway system; and

**WHEREAS**, the Governing Body of the Local Government has approved entering into this agreement for construction and maintenance of the Project that is identified in the location map shown as Exhibit A;

**WHEREAS**, the State has determined that such improvements is in the best interest of the citizens of the State;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

## AGREEMENT

### 1. Period of the Agreement

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. This agreement shall remain in effect unless terminated as provided below.

### 2. Scope of Work

The Local Government will fund, design, construct and maintain hike & bike trail improvements as shown on the construction plans entitled "Leon Creek Greenway North, Valero Trail Head to IH 10 (0.63 mi.), C.O.S.A. – 26 - 00613 ", hereinafter referred to as Exhibit B.

### 3. Termination of this Agreement

This agreement shall remain in effect unless:

- A. The agreement is terminated in writing with the mutual consent of the parties;
- B. The agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or
- C. The State determines that the performance of the Project is not in the best interest of the State.

### 4. Amendments

Amendments to this agreement due to changes in the character of the work, terms of the agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

### 5. Remedies

The State will notify the Local Government, in writing, if the State determines that the Local Government is not maintaining the Project in accordance with this agreement. The Local Government will have thirty (30) days to cure. If the non-compliance is not cured within thirty (30) days, the State will perform the maintenance and the Local Government will be responsible for that cost. This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

### 6. Compliance with Texas Accessibility Standards and ADA

The Local Government shall ensure that maintenance is in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

**7. Notice**

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following addresses:

<b>Local Government:</b>	<b>State:</b>
City of San Antonio  Parks & Recreation Department  5800 Old Hwy 90  San Antonio, Texas 78227	Director of Contract Services  Texas Department of Transportation  125 E. 11 <sup>th</sup> Street  Austin, Texas 78701

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

**8. Legal Construction**

This document does not convey any real property interests. In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

**9. Responsibilities of the Parties**

The parties agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents. The parties expressly agree that this Project is not a joint venture or enterprise. However, if a court should find that the parties are engaged in a joint venture or enterprise, then the Local Government agrees to pay any liability adjudicated against the State for acts and deeds of the Local Government, its employees or agents during the performance of this Project, including attorney fees which may be incurred in litigation or otherwise resisting said claim or liabilities.

**10. Compliance with Laws**

The parties shall comply with all Federal, State, and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

**11. Sole Agreement**

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the agreement's subject matter.

**12. State Auditor**

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

**13. Insurance**

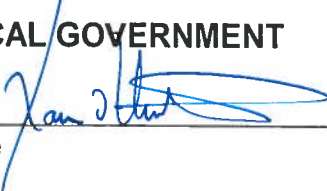
If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

**14. Signatory Warranty**

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

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

**THE LOCAL GOVERNMENT**

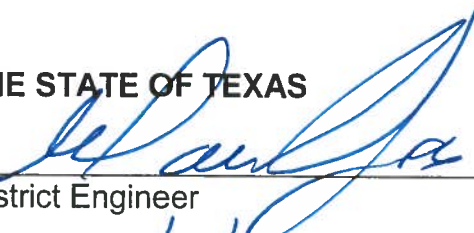
  
\_\_\_\_\_  
Signature

Xavier D. Urrutia  
\_\_\_\_\_  
Typed or Printed Name

Director, Parks and Recreation  
\_\_\_\_\_  
Title

February 20, 2015  
\_\_\_\_\_  
Date

**THE STATE OF TEXAS**

  
\_\_\_\_\_  
District Engineer

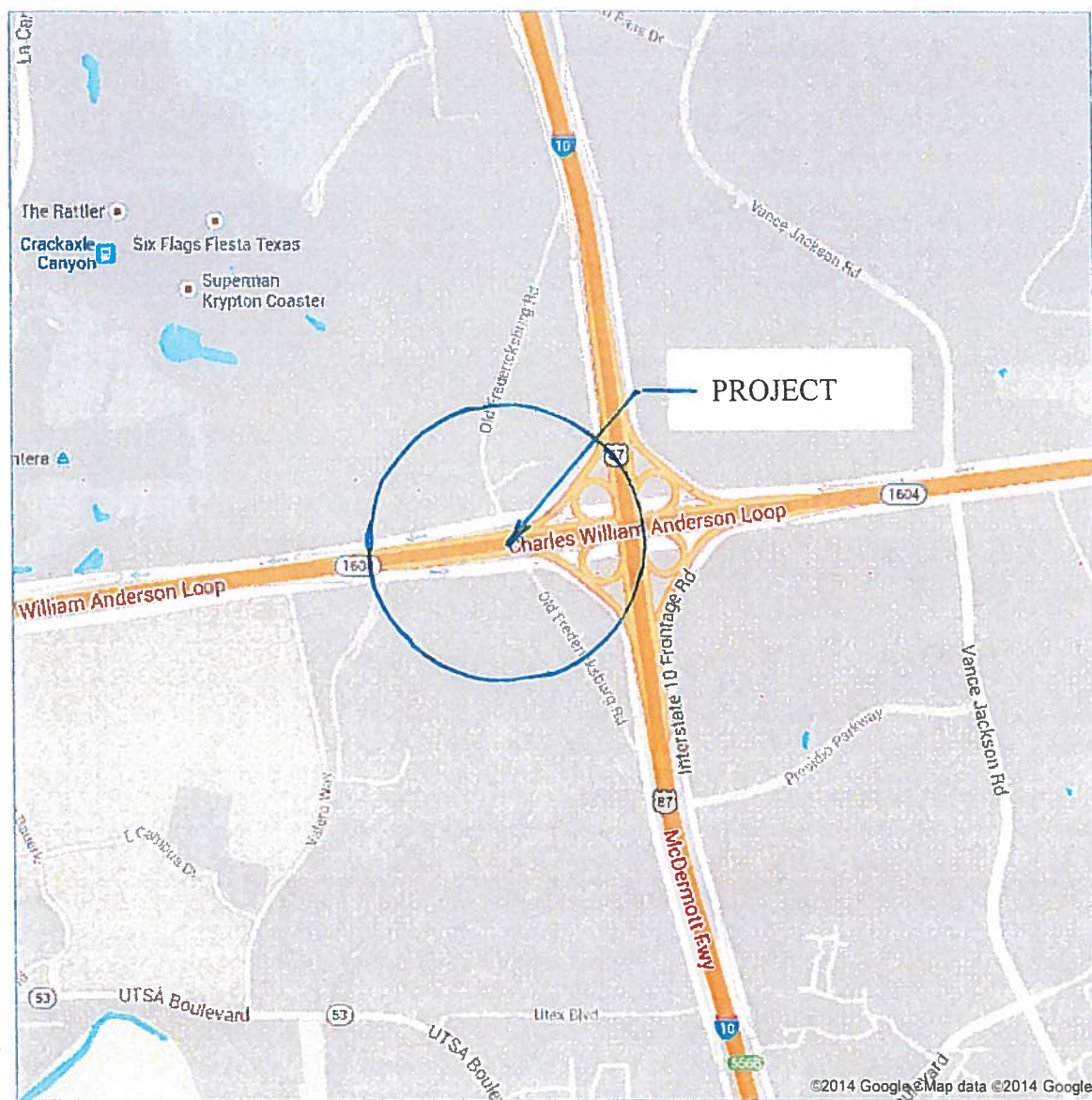
3/19/15  
\_\_\_\_\_  
Date

- Exhibits:
- A- Location Map Showing Project
  - B- Construction Plans
  - C- Certificate of Insurance (Form 1560)

## Attachment A LOCATION MAP SHOWING PROJECT



Address San Antonio, TX





# CERTIFICATE OF INSURANCE

Agents should complete the form providing all requested information then either fax or mail this form directly to the address listed on page two of this form. Copies of endorsements listed below are not required as attachments to this certificate.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not confer any rights or obligations other than the rights and obligations conveyed by the policies referenced on this certificate. The terms of the policies referenced in this certificate control over the terms of the certificate.

Insured: \_\_\_\_\_

Street/Mailing Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone Number: (      ) - \_\_\_\_\_

### WORKERS' COMPENSATION INSURANCE COVERAGE:

Endorsed with a Waiver of Subrogation in favor of TxDOT.

<b>Carrier Name:</b>			<b>Carrier Phone #:</b> (      ) -	
<b>Address:</b>			<b>City, State, Zip:</b>	
<b>Type of Insurance</b>	<b>Policy Number</b>	<b>Effective Date</b>	<b>Expiration Date</b>	<b>Limits of Liability:</b>
Workers' Compensation				Not Less Than: Statutory - Texas

### COMMERCIAL GENERAL LIABILITY INSURANCE:

<b>Carrier Name:</b>			<b>Carrier Phone #:</b> (      ) -	
<b>Address:</b>			<b>City, State, Zip:</b>	
<b>Type of Insurance:</b>	<b>Policy Number:</b>	<b>Effective Date:</b>	<b>Expiration Date:</b>	<b>Limits of Liability:</b>
Commercial General Liability Insurance				Not Less Than: \$ 600,000 each occurrence

### BUSINESS AUTOMOBILE POLICY:

<b>Carrier Name:</b>			<b>Carrier Phone #:</b> (      ) -	
<b>Address:</b>			<b>City, State, Zip:</b>	
<b>Type of Insurance:</b>	<b>Policy Number:</b>	<b>Effective Date:</b>	<b>Expiration Date:</b>	<b>Limits of Liability:</b>
Business Automobile Policy				Not Less Than: \$ 600,000 combined single limit

### UMBRELLA POLICY (if applicable):

<b>Carrier Name:</b>			<b>Carrier Phone #:</b> (      ) -	
<b>Address:</b>			<b>City, State, Zip:</b>	
<b>Type of Insurance:</b>	<b>Policy Number:</b>	<b>Effective Date:</b>	<b>Expiration Date:</b>	<b>Limits of Liability:</b>
Umbrella Policy				

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

THIS IS TO CERTIFY to the Texas Department of Transportation acting on behalf of the State of Texas that the insurance policies named are in full force and effect. If this form is sent by facsimile machine (fax), the sender adopts the document received by TxDOT as a duplicate original and adopts the signature produced by the receiving fax machine as the sender's original signature.

<b>Agency Name</b>	<b>Address</b>	<b>City, State, Zip Code</b>
_____	_____	_____

<b>Authorized Agent's Phone Number</b>	<b>Authorized Agent Original Signature</b>	<b>Date</b>
(      ) - _____	_____	_____

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

Fax completed form to: 512/416-2536

Exhibit C

**NOTES TO AGENTS:**

Agents must provide all requested information then either fax or mail this form directly to the address listed below.

Pre-printed limits are the minimum required; if higher limits are provided by the policy, enter the higher limit amount and strike-through or cross-out the pre-printed limit.

**To avoid work suspension**, an updated insurance form must reach the address listed below **one business day** prior to the expiration date. **Insurance must be in force in order to perform any work.**

**Binder numbers are not acceptable for policy numbers.**

The certificate of insurance, once on file with the department, is adequate for subsequent department contracts provided adequate coverage is still in effect. Do not refer to specific projects/contracts on this form.

List the contractor's legal company name, including the DBA (doing business as) name as the insured. If a staff leasing service is providing insurance to the contractor/client company, list the staff leasing service as the insured and show the contractor/client company in parenthesis.

The TxDOT certificate of insurance form is the only acceptable proof of insurance for department contracts.

List the contractor's legal company name, including the DBA (doing business as) name as the insured or list both the contractor and staff leasing service as insured when a staff leasing service is providing insurance.

Over-stamping and/or over-typing entries on the certificate of insurance are not acceptable if such entries change the provisions of the certificate in any manner.

This form may be reproduced.

**DO NOT COMPLETE THIS FORM UNLESS THE WORKERS' COMPENSATION POLICY IS ENDORSED WITH A WAIVER OF SUBROGATION IN FAVOR OF TXDOT.**

The **SIGNATURE** of the agent is required.

**CERTIFICATE OF INSURANCE REQUIREMENTS:**

**WORKERS' COMPENSATION INSURANCE:**

The contractor is required to have Workers' Compensation Insurance if the contractor has any employees including relatives.

The word **STATUTORY**, under limits of liability, means that the insurer would pay benefits allowed under the Texas Workers' Compensation Law.

**GROUP HEALTH** or **ACCIDENT INSURANCE** is not an acceptable substitute for Workers' Compensation.

**COMMERCIAL GENERAL LIABILITY INSURANCE:**

**MANUFACTURERS'** or **CONTRACTOR LIABILITY INSURANCE** is not an acceptable substitute for Comprehensive General Liability Insurance or Commercial General Liability Insurance.

**BUSINESS AUTOMOBILE POLICY:**

If coverages are specified separately, they must be at least these amounts:

Bodily Injury	\$500,000 each occurrence
	\$100,000 each occurrence
Property Damage	\$100,000 for aggregate

**PRIVATE AUTOMOBILE LIABILITY INSURANCE** is not an acceptable substitute for a Business Automobile Policy.

**MAIL ALL CERTIFICATES TO:**

Texas Department of Transportation  
CST – Contract Processing Unit (RA/200 – 1st Fl.)  
125 E. 11th Street  
Austin, TX 78701-2483  
512/416-2540 (Voice), 512/416-2536 (Fax)