

CSJ # 0915-12-550
District # 15- San Antonio
Code Chart 64 #37450
Project: On Harry Wurzbach
At Austin Highway
Federal Highway Administration
CFDA Title: Highway Planning and
Construction
CFDA No.: 20-205
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
AMENDMENT # 2**

THIS AMENDMENT is made by and between the State of Texas, acting 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, the Texas Transportation Commission passed Minute Order Number 114670 that provides for the development of, and funding for, the Project described herein; and,

WHEREAS, the State and the Local Government executed a contract on June 22 of 2015 to effectuate their agreement to Construct Entrance and Exit Ramps on Harry Wurzbach at Austin Highway in Bexar County; and,

WHEREAS, the State and the Local Government executed Amendment #1 to the contract on July 21 of 2015; and,

WHEREAS, it has become necessary to amend that contract to revise the funding participation;

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. Description of Amended Items

- A. Attachment C-1 Project Budget** is deleted in its entirety and replaced with – Attachment C-2 **Project Budget Estimate and Source of Funds** which is attached to this amendment. The budget increased due to additional funds allotted as part of the MPO FY 2017-2020 Transportation Improvement Program (TIP)

B. Article 19: Civil Rights Compliance has been deleted in its entirety and replaced with:

- A. **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 part of this agreement.
- B. **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.
- C. **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.
- D. **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 facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. 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 Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. **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.
- F. **Incorporation of Provisions:** The Local Government will include the provisions of paragraphs (A) through (F) 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 such 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 the 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.

- C. Article 22 Single Audit Report subparts A, B and C** have been deleted in its entirety and replaced with:
- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR 200.
 - B. 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.
 - C. If expenditures are less than the threshold during the Local Government's fiscal year, the 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 _____."

- D. Article 23: Pertinent Non-Discrimination Authorities** has been deleted in its entirety and replaced with:

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

- A. 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.
- B. 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).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. 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.
- E. The Age Discrimination Act of 1975, as amended, (49 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. 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).
- G. 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).

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- H. 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.
- I. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. 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.
- K. 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).
- L. 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.).

E. Article 24. Signatory Warranty is Added

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

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

THE LOCAL GOVERNMENT



Signature

Mike Flysbj

Typed or Printed Name

City Engineer

Title

8-29-17

Date

THE STATE OF TEXAS



Kenneth Stewart
Director of Contract Services
Texas Department of Transportation

07/06/17

Date

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**ATTACHMENT C - 2
 PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS
 EDC ADJUSTMENT**

Costs will be allocated based on 80% Federal funding, 11.4% Local government funding and 8.6% State funding until the federal funding reaches the maximum obligated amount. The Local government will then be responsible for 100% of the costs.

Description	Total Estimated Cost	Federal Participation		State Participation			Local Participation		
		%	Cost	% Before EDC Adj.	% After EDC Adj.	Cost After EDC Adj.	% Before EDC Adj.	% After EDC Adj.	Cost After EDC Adj.
Engineering (by Local)	\$261,090	0%	\$0	0%	0%	\$0	100%	100%	\$261,090
Environmental (by Local)	\$168,335	0%	\$0	0%	0%	\$0	100%	100%	\$168,335
Right of Way (by Local)	\$300,000	0%	\$0	0%	0%	\$0	100%	100%	\$300,000
Construction (by Local) (based on 10% of low bid amount per MPO policy)	\$18,894,700	80%	\$15,115,760	0%	8.6%	\$1,624,944	20%	11.4%	\$2,153,996
Construction Engineering (by Local) (based on 11% of low bid amount per MPO policy)	\$1,717,700	80%	\$1,374,160	0%	8.6%	\$147,722	20%	11.4%	\$195,818
Subtotal	\$21,341,825		\$16,489,920			\$1,772,666			\$3,079,239
Environmental Direct State Costs	\$9,447	0%	\$0	0%	0%	\$0	100%	100%	\$9,447
Right of Way Direct State Costs	\$9,447	0%	\$0	0%	0%	\$0	100%	100%	\$9,447
Engineering Direct State Costs	\$18,895	0%	\$0	0%	0%	\$0	100%	100%	\$18,895
Utility Direct State Costs	\$9,447	0%	\$0	0%	0%	\$0	100%	100%	\$9,447
Construction Direct State Costs	\$52,562	0%	\$0	0%	0%	\$0	100%	100%	\$52,561.62
Indirect State Costs	\$1,124,714	0%	\$0	100%	100%	\$1,124,714.18	0%	0%	\$0
Subtotal	\$1,224,513		\$0			\$1,124,714			\$99,798
TOTAL	\$22,566,338		\$16,489,920			\$2,897,381			\$3,179,037

Initial payment by the Local Government to the State: \$ 99,798
 Estimate total payment by the Local Government to the State: \$99,798
 This is an estimate. The final amount of Local Government participation will be based on actual costs.

RECEIVED
 JUL 10 2016
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