CSJ # 0915-12-579
District # San Antonio (9)
Code Chart 64 # 37450
Project: Citywide Bike & Ped Improvements
Federal Highway Administration
CFDA Title: Highway Planning and Construction
CFDA No.: 20.205
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

LOCAL TRANSPORTATION PROJECT ADVANCE FUNDING AGREEMENT For A STP-MM Bicycle and Pedestrian Project (Off System)

THIS Local Project Advance Funding Agreement (LPAFA) 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, a Master Agreement between the Local Government and the State has been adopted and states the general terms and conditions for transportation projects developed through this LPAFA; and,

WHEREAS, the Texas Transportation Commission passed Minute Order Number 115291 that provides for the development of, and funding for, the Project described herein; and,

WHEREAS, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated _____, 20__, which is attached to and made a part of this agreement as Attachment A for the development of the Project. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement.

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

AGREEMENT

1. **Period of the Agreement**
   The period of this LPAFA is as stated in the Master Agreement, without exception.

2. **Termination of this LPAFA**
   Termination of this LPAFA shall be under the conditions as stated in the Master Agreement. This LPAFA may be terminated by the State if the Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds.

3. **Amendments**
   Amendments to this LPAFA shall be made as described in the Master Agreement, without exception.

4. **Scope of Work**
   The scope of work for this LPAFA is described as planning, preliminary engineering, environmental, plans, specifications & estimates (PS&E) to construct sidewalks along Fredericksburg Road from the Balcones Heights Blvd to IH 10. Work will include sidewalks, curb,

ramps, minor drainage, asphalt paving, striping and signage. Pedestrian rail may be required as well as retaining walls.

5. **Right of Way and Real Property**
   Right of way and real property shall be the responsibility of the Local Government as stated in the Master Agreement, without exception.

6. **Utilities**
   Adjustment of utilities will be provided by the Local Government as required and as stated in the Master Agreement, without exception.

7. **Environmental Assessment and Mitigation**
   Environmental assessment and mitigation will be carried out by the Local Government. Additionally, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

8. **Compliance with Accessibility Standards**
   All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

9. **Architectural and Engineering Services**
   Architectural and engineering services will be provided by the Local Government. The Local Government is responsible for performance of any required architectural or preliminary engineering work. For projects on the state highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the state highway system, the design shall, at a minimum, conform to applicable *American Association of State Highway and Transportation Officials* design standards. The State may review and comment on the work as required to accomplish the public purposes of the Local Government. The State may require the Local Government, or their representatives, to attend PS&E and construction meetings as necessary to accomplish the goals stated above. The State will cooperate fully with the Local Government in accomplishing these local public purposes to the degree permitted by State and Federal law.

10. **Construction Responsibilities**
    Construction responsibilities will be carried out by the Local Government as stated in the Master Agreement.

11. **Project Maintenance**
    Project maintenance will be undertaken as provided for in the Master Agreement, without exception.

12. Local Project Sources and Uses of Funds

A. A Project Budget Estimate is provided in Attachment C. The State and the Federal Government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for one hundred percent (100%) of the cost of any work performed under its direction or control before the Federal spending authority is formally obligated.

B. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures and Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

C. A Source of Funds estimate based on the Transportation Improvement Program (TIP) is also provided in Attachment C. Attachment C shows the percentage and estimated dollar amount to be contributed to the project by federal, state, and local sources. The parties agree that the LPAFA may be amended from time to time as required to meet the funding commitments based on revisions to the TIP, Federal Project Authorization and Agreement (FPAA), or other federal document.

D. The Local Government is responsible for all non-federal and non-state funding, unless otherwise provided for in this agreement or through amendment of this agreement. Where Special Approval has been granted by the State, the Local Government shall only in that instance be responsible for overruns in excess of the amount to be paid by the Local Government.

E. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering for the project. The Local Government shall remit its financial share for the State's estimated construction oversite and construction costs thirty (30) days following the execution of this contract.

F. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project. The check or warrant shall be deposited by the State and managed by the State. Funds may only be applied by the State to the Project. If after final Project accounting any excess funds remain, those funds may be applied by the State to the Local Government's

contractual obligations to the State under another advance funding agreement with approval by appropriate personnel of the Local Government.

G. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

H. When Special Approval has been granted by the State so that the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification of those amounts.

I. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this 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. Any 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.

J. Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.

K. The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.

13. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

14. Incorporation of Master Agreement Provisions

This LPAFA incorporates all of the governing provisions of the Master Agreement in effect on the date of final execution of this LPAFA, unless an exception has been made in this agreement.

15. 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.

16. Debarment Certification

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, “Debarment and Suspension.” By executing this Agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

17. Cost Principles and Office of Management and Budget (OMB) Audit Requirements

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

18. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Local Government:	State:
City of San Antonio Attn: City Manager PO Box 839966 San Antonio, TX 78283	**Legal Documents:** Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11th Street Austin, TX 78701 **Billing and Inquiries:** Texas Department of Transportation ATTN: Director of Transportation Planning & Development 4615 NW Loop 410 San Antonio, TX 78229-5126

All notices shall be deemed given on the date delivered in person or 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 notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

19. Civil Rights Compliance

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.

20. Disadvantaged Business Enterprise (DBE) Program Requirements

A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.

B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.

C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.

D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.

E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate*.

21. Federal Funding Accountability and Transparency Act Requirements

A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf and http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf

B. The Local Government agrees that it shall:

1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than $25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: https://www.sam.gov/portal/public/SAM/
2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the Federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website http://fedgov.dnb.com/webform; and
3. Report the total compensation and names of its top five (5) executives to the State if:
   i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than $25,000,000; and
   ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

22. Single Audit Report

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. For each year the project remains open for federal funding expenditures, the 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 the project has been formally closed out and no charges have been incurred within the current fiscal year.

23. Pertinent Non-Discrimination Authorities

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, (42 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).
- **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.).

24. 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

_____
Typed or Printed Name

_____
Title

_____
Date

THE STATE OF TEXAS

_____
Kenneth Stewart
Director of Contract Services
Texas Department of Transportation

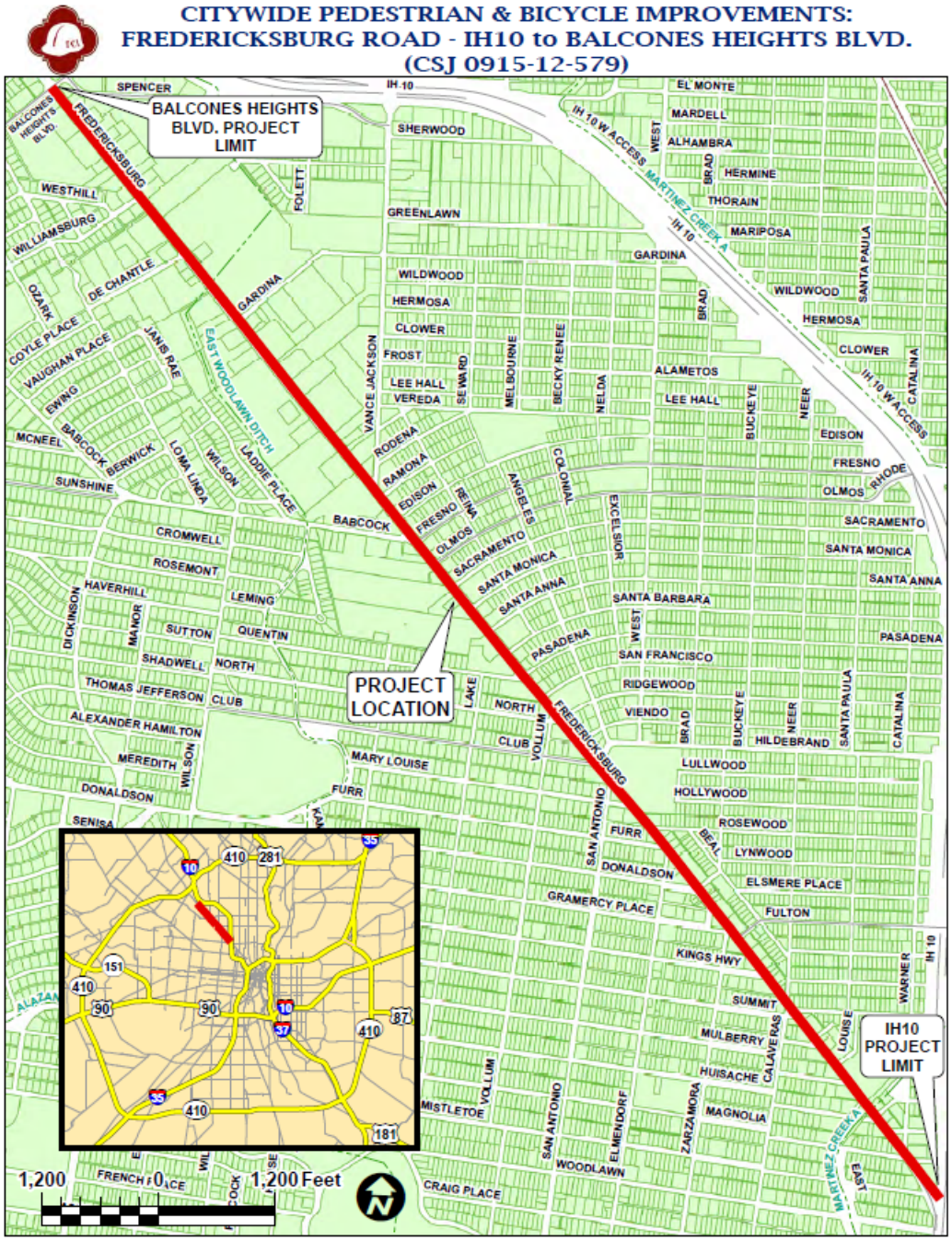
_____
Date

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ATTACHMENT A
RESOLUTION OR ORDINANCE

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ATTACHMENT B
PROJECT LOCATION MAP



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Attachment C
PROJECT BUDGET

For those costs, as shown in table below, that are to be allocated based on 80% Federal funding and 20% Local Government funding, when 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	%	Cost	%	Cost
Engineering (by Local Government)	$98,000	0%	$0	0%	$0	100%	$98,000
Utilities (by Local Government)	$18,000	0%	$0	0%	$0	100%	$18,000
Right of Way (by Local Government)	$18,000	0%	$0	0%	$0	100%	$18,000
Construction (by Local Government) (Federal max per MPO policy)	$2,200,000	80%	$1,760,000	0%	$0	20%	$440,000
Construction Engineering (by Local Government) (Federal max per MPO policy)	$220,000	80%	$176,000	0%	$0	20%	$44,000
Subtotal	**$2,554,000**	**$1,936,000**		**$0**		**$618,000**	
Environmental Direct State Costs (20%)	$2,156	0%	$0	0%	$0	100%	$2,156
Right of Way Direct State Costs (20%)	$2,156	0%	$0	0%	$0	100%	$2,156
Engineering Direct State Costs (40%)	$4,312	0%	$0	0%	$0	100%	$4,312
Utility Direct State Costs (20%)	$2,156	0%	$0	0%	$0	100%	$2,156
Construction Direct State Costs (0.56%)	$13,552	0%	$0	0%	$0	100%	$13,552
Indirect State Costs (5.33%)	$136,128	0%	$0	100%	$136,128	0%	$0
Subtotal	**$160,460**	**$0**		**$136,128**		**$24,332**	
TOTAL	**$2,714,460**	**$1,936,000**		**$136,128**		**$642,332**	

Initial payment by the Local Government to the State: **$24,332**
The initial payment is the estimated total payment by the Local Government to the State, and it is due 30 days following the execution of the contract.
This is an estimate. The final amount of Local Government participation will be based on actual costs.