

**THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED
ORDINANCE OR RESOLUTION ADOPTED BY CITY COUNCIL.**

ORDINANCE

**AUTHORIZING THE CITY MANAGER OR THE DIRECTOR OF THE
PUBLIC WORKS DEPARTMENT TO EXECUTE LOCAL ON-SYSTEM
AGREEMENTS BETWEEN THE CITY OF SAN ANTONIO AND THE
TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) WITHOUT
FURTHER CITY COUNCIL ACTION.**

* * * * *

WHEREAS, Texas Department of Transportation (TxDOT) Local On-system Agreements (LOSAs) allow the City to construct City funded and executed projects within the state highway system right of way, which system is managed by TxDOT; and

WHEREAS, the TxDOT LOSA is a standard template agreement that varies only as to the project description and project budget; and

WHEREAS, all required engineering, consulting, environmental and construction contracts associated with each project to be constructed within the TxDOT ROW are procured, awarded and funds appropriated in accordance with federal, state and local laws and policies, to include City Council approval; and

WHEREAS, City will then be responsible for project completion in a timely manner with no additional State or Federal funding and without decreasing the scope and/or terms of the work of the Project; and

WHEREAS, before issuing a LOSA to City for execution, TxDOT has to approve the project plan, determine whether environmental work is required, and approve the project budget for the portion of the work to be done within the TxDOT ROW; and

WHEREAS, after TxDOT issues a LOSA to City for execution, the LOSA must go through the request for council action process for Council approval, which process can delay the project construction; and

WHEREAS, so long as the LOSA is in substantially the same form as the template attached hereto as Exhibit I, and the fixed price amount of payment by City to TxDOT for state costs is set at \$0, this ordinance authorizes the City Manager or the Director of the Public Works Department, or such agency as may supersede the Public Works Department, to execute TxDOT LOSAs without further City Council action; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

KRH
08/20/20
Item No. _____

SECTION 1. The City Manager and the Director of the Public Works Department are hereby authorized to approve and execute Texas Department of Transportation (TxDOT) Local On-system Agreements (LOSAs) without further City Council action in substantially the same form as the template attached here to as **Attachment I**, so long as the LOSA sets the fixed price amount of payment by City to TxDOT for state costs at \$0.

SECTION 2. This Ordinance shall be effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective on the en days after passage.

PASSED and APPROVED this _____ day of August, 2020.

M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

Tina Flores
Acting City Clerk

Andrew Segovia, City Attorney

ATTACHMENT I

DRAFT

CSJ #	
District #	
Code Chart 64 #	
Project Name	

STATE OF TEXAS §

COUNTY OF TRAVIS §

**AGREEMENT
For A
LOCAL ON-SYSTEM IMPROVEMENT PROJECT**

THIS AGREEMENT (Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation called the "State", and the **{Enter Name of Local Government}**, acting by and through its duly authorized officials, called the "Local Government." The State and Local Government shall be collectively referred to as "the parties" hereinafter.

WITNESSETH

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision; and

WHEREAS, the Texas Transportation Commission passed Minute Order Number **{Enter MO#}**, authorizing the State to accept Local Government funded projects performed on the state highway system. The project covered by this Agreement includes only work within the state right of way as described in the Agreement, Article 2, Scope of Work (Project); and,

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated **{Enter Date of Resolution}**, which is attached to and made a part of this Agreement as Attachment A, Resolution, Ordinance, or Commissioners Court Order (Attachment A) for the improvement covered by this Agreement. A map showing the Project location appears in Attachment B, Project Location Map (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 set forth in this Agreement, 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 until the completed Project is accepted by the State or unless terminated as provided below.

CSJ #	
District #	
Code Chart 64 #	
Project Name	

2. Scope of Work

The Project consists of {Enter Scope of Work}

{Delete Guidance: In addition to the description of work, the SOW should include the highway name, number, or designation and the start and end points (i.e., mile marker, landmark, etc.). Example of Scope of Work: 1) The Project consists of the design and construction of a left turn lane and installation of a flashing traffic caution signal on US 281 at the intersection of Kennedy Avenue and Joann Lane in Marble Falls, TX as shown on Attachment B.}

3. Local Project Sources and Uses of Funds

- A. The total estimated cost of the Project is shown in Attachment C, Local On-System Improvement Project Budget (Attachment C), which is attached to and made a part of this Agreement. The estimated funds from the Local Government are shown in Attachment C. The State will pay for no Project costs performed by or managed by Local Government under this Agreement.
- B. Attachment C shows how necessary resources for completing the Project will be provided by major cost categories. These categories may include but are not limited to: (1) costs of real property (right of way); (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other Project costs.
- C. The Local Government shall be solely responsible for all of its costs associated with the Project provided for in this Agreement. The Local Government shall be responsible for cost overruns for the Project in excess of the estimated amount to be paid by the Local Government on Attachment C. The Local Government shall also be responsible for direct and indirect costs incurred by the State related to performance of this project if so indicated on Attachment C. If the State determines that the on-system improvements are of significant operational benefit to the State, the State may waive its direct or indirect costs. The State's waiver of its direct or indirect costs shall be indicated on Attachment C by showing the State as responsible for these costs. When the Local Government is responsible for the State's direct or indirect costs, the amount indicated on Attachment C is a fixed fee and not subject to adjustment except through the execution of an amendment to this Agreement.
- D. Prior to the performance of any engineering review work by the State, the Local Government shall pay to the State the amount of direct and indirect State costs specified in Attachment C.
- E. 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 Financial Management Division. The funds shall be deposited and managed by the State and are not refundable.
- F. The Local Government will begin construction on the Project within {Choose an item} after execution of the Agreement.
- G. The Local Government will complete construction and receive the State's acceptance of the project within {Choose an item} after the date the State authorizes in writing for the Local Government to commence construction of the Project.

CSJ #	
District #	
Code Chart 64 #	
Project Name	

H. If the Local Government chooses not to or fails to complete the work once construction on the Project commences, the State may terminate this Agreement in accordance with paragraph 4.C. below. The State may address unfinished construction work as it determines necessary to protect the interests of the State, which includes returning the Project area to its original condition or completing the work using State forces or contractors. The Local Government shall pay all costs incurred by the State under this provision.

4. Termination of this Agreement

This Agreement shall remain in effect until the Project is completed and accepted by the State, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The State terminates the Agreement in writing due to the Local Government's failure to comply with paragraphs 3.F or 3.G; or
- C. 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.

5. 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. Amendments may not include the addition of State or Federal funds. If any funds other than Local Government funds are proposed, this Agreement must be terminated and a new agreement with appropriate terms and clauses executed in its place.

6. Remedies

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.

7. Architectural and Engineering Services

The Local Government has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable *State's Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. The Project design shall, at a minimum conform to applicable State manuals.

The State shall review the plans, specifications, and estimates provided by the Local Government upon completion or at any time deemed necessary by the State. Should the State determine that the complete plans, specifications, and estimates for the Project are not acceptable, the Local Government shall correct the design documents to the State's satisfaction. Should additional specifications or data be required by the State, the Local Government shall redesign the plans and specifications to the State's satisfaction. The costs for additional work on the plans, specifications, and estimates shall be borne by the Local Government.

CSJ #	
District #	
Code Chart 64 #	
Project Name	

8. Environmental Assessment and Mitigation

Development of a transportation project must comply with applicable environmental laws. The Local Government is responsible for:

- A. The identification and assessment of any environmental problems associated with the development of the Project governed by this Agreement.
- B. The cost of any environmental problem's mitigation and remediation.
- C. Providing any public meetings or public hearings required for development of all required environmental documents and obtaining all required permits and approvals.
- D. The preparation of documents required for the environmental clearance of the Project.

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 and approvals have been obtained.

9. Right of Way and Real Property

The Local Government shall acquire all required right of way and necessary right of entry for performance of the Project in accordance with applicable requirements of the Texas Department of Transportation Right of Way Manual, State law, and Federal law governing the acquisition of real property including but not limited to Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C.A. Section 4601 et seq. Right of way acquired for improvements to the state highway system shall be acquired in the name of the State. Local Government shall provide right of entry to State personnel and its authorized representatives to areas off the state highway system throughout the duration of the Project for the State to perform inspection and oversight of the Project.

10. Utilities

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities for the Project in accordance with applicable State and Federal laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures.

11. Compliance with Texas Accessibility Standards and ADA

Local Government shall ensure that the plans for and the construction of the Project 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).

12. Construction Responsibilities

- A. The Local Government shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the

CSJ #	
District #	
Code Chart 64 #	
Project Name	

award of the construction contract. Project plans and specifications for improvements on the state highway system must be approved by the State prior to advertising for construction. Upon selection of a contractor and prior to commencing construction within the state highway system right of way, the Local Government shall request and obtain written authorization to commence construction of the Project from the State. The Local Government will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the construction is accomplished in accordance with the approved plans and specifications. All construction change orders impacting the proposed improvements, traffic control, environmental mitigation, or drainage on the state highway system require written pre-approval by the State prior to execution by the Local Government.

- B. Upon completion of the Project, the Local Government will issue and sign a "Notification of Completion" acknowledging the Project's construction completion. A copy will be provided to the State prior to State's final acceptance of the improvements.
- C. Prior to the State's acceptance of the improvements on the state highway system, Local Government shall furnish to the State written certification from a Texas Registered Professional Engineer that the Project was constructed in substantial compliance with the Project's plans, specifications, and quality assurance requirements.

13. Project Maintenance

After Local Government completion of the work and acceptance by the State, the State will be responsible for maintenance of the improvements within the state highway system right of way outside the boundaries of an incorporated city. This obligation may be fulfilled through other agreements signed by the State.

14. 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
Position Local Government Name Street Address City, State Zip	Director of Contract Services Texas Department of Transportation 125 E. 11 th Street Austin, Texas 78701

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.

CSJ #	
District #	
Code Chart 64 #	
Project Name	

15. Legal Construction

If 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.

16. Responsibilities of the Parties

The State and the Local Government 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.

17. Ownership of Documents

Upon completion or termination of this Agreement, copies of all documents and data prepared under this Agreement by the Local Government for improvements within the state highway system right of way shall be provided to the State prior to State acceptance of the Project without restriction or limitation on their further use. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any Project information required by the State in the format directed by the State.

18. 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.

19. 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.

20. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred and engineering inspection and testing services performed under this Agreement and shall make such materials available to the State and the Local Government or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of completion of work defined under this Agreement or until any impending litigation or claims are resolved. Additionally, the State and the Local Government and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

21. Insurance

Before beginning work on the state highway system, the Local Government and its contractor 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

KRH
08/20/20
Item No. _____

CSJ #	
District #	
Code Chart 64 #	
Project Name	

on the Certificate of Insurance for all persons and entities working on state right of way. Self-insurance documentation acceptable to the State may be substituted for all or part of the coverage's required for the Local Government. 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.

22. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, the Local Government, for itself, its assignees, and successors in interest agree to comply with all applicable Federal and State nondiscrimination statutes and authorities.

23. Signatory Warranty

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

Each party is signing this agreement on the date stated under that party's signature .

THE STATE OF TEXAS

THE LOCAL GOVERNMENT

Signature

Kenneth Stewart

Typed or Printed Name

Director of Contract Services

Typed or Printed Title

Date

Signature

Typed or Printed Name

Typed or Printed Title

Date

KRH
08/20/20
Item No. _____

CSJ #	
District #	
Code Chart 64 #	
Project Name	

ATTACHMENT A
RESOLUTION, ORDINANCE, OR COMMISSIONERS COURT ORDER

{Insert Local Government Resolution, Ordinance, or Commissioners Court Order}

KRH
08/20/20
Item No. _____

CSJ #	
District #	
Code Chart 64 #	
Project Name	

**ATTACHMENT B
PROJECT LOCATION MAP**

{Insert Map}

KRH
08/20/20
Item No. _____

CSJ #	
District #	
Code Chart 64 #	
Project Name	

ATTACHMENT C
LOCAL ON-SYSTEM IMPROVEMENT PROJECT BUDGET
(Locally Funded and Performed Project)

The Local Government is responsible for 100% of the costs allocated to it as described below, including overruns.

Description	Estimated Costs	Subtotals
PROJECT PHASES: Work performed by the Local Government or its Consultant or Contractor		
Environmental	\$	
Right of Way	\$	
Engineering	\$	
Utility Work	\$	
Construction	\$	
Subtotal for Project Phases		\$
DIRECT STATE COSTS:	Paid By: <input type="checkbox"/> Local Government <input type="checkbox"/> State	
Environmental	\$	
Right of Way	\$	
Engineering	\$	
Utility Work	\$	
Construction	\$	
Subtotal for Direct State Costs		\$
INDIRECT STATE COSTS:	Paid By: <input type="checkbox"/> Local Government <input type="checkbox"/> State	
Subtotal for Indirect State Costs		\$
TOTAL ESTIMATED COST OF PROJECT		\$

\$0	Fixed price amount of payment by the Local Government to the State for the State's direct and indirect costs as stated in Article 3, C and D of the Agreement.
------------	--