

STATE OF TEXAS §
COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
AMENDMENT #1**

 **ORIGINAL**

THIS AMENDMENT IS MADE BY AND BETWEEN the State of Texas, acting through the Texas Department of Transportation, hereinafter called the State, and the City of Austin, acting by and through its duly authorized officials, hereinafter called the Local Government.

W I T N E S S E T H

WHEREAS, the State and the Local Government executed a contract on the 23rd of March, 2004, to effectuate their agreement to construct bicycle and pedestrian improvements on LP 360 from Jollyville Road to Arboretum Boulevard; 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 hereto, the State and the Local Government do agree as follows:

A G R E E M E N T

Article 1. Description of Amended Items

Article 11, Construction Responsibilities, paragraphs a, b and c is voided and replaced in its entirety with:

- a. The Local Government shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and recommend 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, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- b. The Local Government shall use its approved contract letting and award procedures to let and recommend award of the construction contract.
- c. Prior to their execution, the State will review and approve contract change orders.

Article 12, Project Maintenance, is voided and replaced in its entirety with:

The State shall be responsible for maintenance of the state highway system after completion of the work if the work was on the state highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

The Local Government shall be responsible for maintenance and operation of the sidewalk and multi-use trail of the Project after completion of the work. Such responsibility shall not be transferred, assigned or conveyed to a third party without the advanced written approval of the State. Further, such responsibility shall include picking up trash, mowing and otherwise keeping the facility in a clean and sanitary condition, and surveillance by police patrol to eliminate the possible creation of a nuisance or hazard to the public. Hazardous or unreasonably objectionable smoke, fumes, vapor or odors shall not be permitted to rise above the grade line of the highway, nor shall the facility subject the highway to hazardous or unreasonably objectionable dripping, droppings or discharge of any kind, including rain or snow.

Article 4, Termination of this Agreement is revised to include:

- d. If in the sole judgment of the State it is found at any future time that traffic conditions have so changed that the existence or use of the Project is impeding maintenance, damaging the highway facility, impairing safety or that the Project is not being properly operated, that it constitutes a nuisance, is abandoned, or if for any other reason it is the State's judgment that such Project is not in the public interest, this agreement under which the facility was constructed may be (1)

modified if corrective measures acceptable to both parties can be applied to eliminate the objectionable features of the facility; or (2) terminated and the use of the area as proposed herein discontinued.

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

Article 2. Signatory Warranty

The signatories to this amendment warrant that each has the authority to enter into this agreement on behalf of the organization they represent.

IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT have executed duplicate counterparts to effectuate this agreement.

THE LOCAL GOVERNMENT

City of Austin
Name of Local Government

By: _____
Signature

Printed Name

Title

Date

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____
Name

Title

Date