

STATE OF TEXAS           §

COUNTY OF TRAVIS       §

**ADVANCE FUNDING AGREEMENT  
For A TRANSPORTATION ENHANCEMENT (TE) PROJECT**

**This Advance Funding Agreement for a Transportation Enhancement project (the Agreement)** is made by and between the State of Texas, acting by and 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.”

**WITNESSETH**

**WHEREAS**, the Local Government prepared and submitted to the State a nomination form for consideration under the Statewide Transportation Enhancement Program for the project which is briefly described as a bike facility, hereinafter called the Project; and

**WHEREAS**, federal law establishes federally funded programs for transportation improvements to implement its public purposes; and

**WHEREAS**, Title 23 U.S.C. Section 134 requires that Metropolitan Planning Organizations and the States’ Transportation Agencies to develop transportation plans and programs for urbanized areas of the State; and

**WHEREAS**, the Texas Transportation Code, Sections 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**, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds; and

**WHEREAS**, the Texas Transportation Commission passed Minute Order 112342 awarding funding for projects in the 2009 Program Call of the Statewide Transportation Enhancement Program, including the Project; and

**WHEREAS**, the rules and procedures for the selection and administration of the Statewide Transportation Enhancement Program are established in 43 TAC Sections 11.200 et seq.; and

**WHEREAS**, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated \_\_\_\_\_, which is attached hereto and made a part hereof as Attachment A;

**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 until terminated as provided in Article 2.

### **2. Termination of this Agreement**

This agreement may be terminated by any of the following conditions:

- by mutual written consent and agreement of all parties.
  - by any party with 90 days written notice.
  - by either party, upon the failure of the other party to fulfill the obligations as set forth in this Agreement. Any cost incurred due to such breach of contract shall be paid by the breaching party.
- A.** The termination of this Agreement shall extinguish all rights, duties, obligations and liabilities of the State under this Agreement. If the potential termination of the Agreement is due to the failure of the Local Government to fulfill its contractual obligations, the State will notify the Local Government that possible breach of contract has occurred. The Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.
- B.** If the Local Government withdraws from the Project after this Agreement is executed, it shall be responsible for all direct and indirect Project costs as identified by the State's cost accounting system.
- C.** A Project may be eliminated from the program as outlined below. If the Project is eliminated for any of these reasons, this Agreement will be appropriately terminated. A Project may be eliminated from the program, and this Agreement terminated, if:
- i.** The Local Government fails to satisfy any requirements of the program rules cited as 43 TAC §11.200 et seq.
  - ii.** The implementation of the Project would involve significant deviation from the activities as proposed in the nomination form.
  - iii.** The Local Government withdraws from participation in the Project.
  - iv.** The Project is not implemented within a reasonable time, as determined by the State in consultation with the Local Government. In absence of information suggesting that a shorter or longer period is appropriate, four (4) years or less from the date the project was approved for TE funding by Minute Order will presumed to be a reasonable time. This project must, therefore be awarded to contract before July, 29, 2014.
  - v.** The State determines that federal funding may be lost due to the Project not being implemented and completed.
  - vi.** 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.
  - vii.** As scheduled by the District, the Local Government fails to attend bi-annual progress meetings.

### **3. Amendments**

This Agreement may be amended due to changes in the work or amount of funding required to complete the Project or other material, or for required changes in the responsibilities of the parties.

Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

#### **4. Scope of Work and Use of Project**

The scope of work for the Project, which is at the locations shown in Attachment B, Project Location Map, as described in the nomination form and as approved by the Texas Transportation Commission, consists of the construction of a bicycle infrastructure citywide to bridge gaps in the existing surface transportation system by installing bicycle lanes within the right-of-way.

Bicycle Lanes will be installed at the following locations:

- Braker Lane from US 183 to Jollyville Road
- Braker Lane from MOPAC to US 183
- Brodie Lane from 1000 ft south of Bridge to William Cannon Drive
- Brodie Lane from Alexandria Drive to Slaughter Lane
- Burleson Road from Oltorf Street to US 290
- Burnet Road from Burnet Lane to US 183
- Hancock Drive from Bull Creek Road to MOPAC
- Manor Road from Anchor Lane to 51<sup>st</sup> Street
- Spicewood Spring Road from Heart Lane to Forest Mesa Drive
- St. John Avenue from Lamar Boulevard to Berkman Drive
- Steck Avenue from MOPAC to Bent Tree Road

Any project changes proposed must be submitted in writing by the Local Government to the appropriate District, requesting prior approval through the Design Division. Changes may also require an amendment to the contract and the approval of FHWA, the Administration, or the TTC. Any changes undertaken without written approval and contract amendment may jeopardize not only the federal funding for the changes, but the federal funding of the entire project.

#### **5. Right of Way and Real Property Acquisition**

Right-of-way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to the State before funds may be expended for the improvement of the right of way or real property. If the Local Government is the owner of any part of the project site under this Agreement, the Local Government shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work.

All parties to this agreement will comply with and assume the costs for compliance with all the requirements of 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., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.

- A.** The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land

needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.

- B.** In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this agreement and the State's issuance of a letter of funding authority.
- C.** The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- D.** The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.
- E.** Condemnation shall not be used to acquire real property for this enhancement Project.
- F.** Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this agreement. Reimbursement will be in an amount not to exceed eighty percent (80%) of the State's predetermined value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.
- G.** If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this Agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of time commensurate with the federal investment. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. This agreement must be approved by the State prior to its execution. A copy of the executed agreement shall be provided to the State.

- H. The Local Government agrees to execute individually or produce a legal document as necessary to provide for the project's continued use from the date of completion, and agrees to cause the same to be recorded in the land records of the appropriate jurisdiction.
- I. Local governments receiving federal funds must retain an inventory of funded items and monitor projects in accordance with 23 CFR 710 and 49 CFR 18, and with the procedures provided in the Local Government Project Procedures manual.  
The Local Government agrees to monitor the project to ensure: (1) continued use of the property for approved activities, and (2) for the repayment of the Federal funds, as appropriate:
  - i. The Local Government agrees to the review of their project accounts and site visits by the State during the development of the project at any time;
  - ii. Upon project completion, the State will continue to perform spot visits to confirm the project's continued use and upkeep.

## **6. Utilities**

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State 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 with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

## **7. Environmental Assessment and Mitigation**

Development of the Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- A. The Local Government is responsible for the identification and assessment of any environmental problems associated with the development of the Project.
- B. The Local Government is responsible for the cost of any environmental problem's mitigation and remediation. Preparation and coordination of the environmental documentation shall be through the TxDOT Austin District Environmental Coordinator at (512) 832-7168.
- C. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment.
- D. The Local Government shall provide the State with written documentation from appropriate regulatory agency(ies) that identified environmental clearances have been obtained prior to advertisement for bids.

These costs will not be reimbursed or credited towards the Local Government's financial share of the Project unless specified in the nominating form and approved by the State.

Forty five (45) days prior to any construction contract let date, the Local Government shall provide a certification to the State that all real property has been acquired, all environmental problems have been remediated, and all conflicting utilities have been adjusted.

## **8. Compliance with Texas Accessibility Standards and ADA**

All parties to this agreement shall ensure that the plans for and the construction of the project subject to this Agreement are 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).

## **9. Architectural and Engineering Services.**

Architectural and engineering services will be provided by Local Government. In procuring professional services, the parties to this agreement must comply with federal requirements cited in 23 CFR Part 172 if the project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional services contracts for federally funded projects must conform to federal requirements.

**A.** The architectural contract documents shall be developed in accordance with the standards of the American Institute of Architects, the U.S. Secretary of the Interior's *Standards for Historic Preservation Projects, Standards and Guidelines for Archeology and Historic Preservation, the National Register Bulletin Number 36: Guidelines for Evaluating and Registering Historical Archeological Sites* and in consultation with the State Historic Preservation Officer, as applicable. The engineering plans shall be developed in accordance with the State's applicable *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the two AASHTO publications, "A Policy on Geometric Design of Highways and Streets" and "Guide for the Development of Bicycle Facilities," as applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*. The use of other systems of specifications shall be approved by the State in writing in advance.

**B.** When architectural and/or engineering services are provided by or through the Local Government, then the following Items 1 & 2 apply:

1. The Local Government shall submit any plans it has completed to the State for review and approval. The Local Government may also submit the plans to the State for review anytime prior to completion. The Local Government shall make the necessary revisions determined by the State. The Local Government will not let the construction contract until all required plans have received State approval.

2. The Local Government shall submit to the State all documentation relating to authorized costs incurred for providing architectural and engineering services. Reasonable, allowable, and allocable costs incurred by the Local Government, after the Local Government has obtained written authorization from the State to incur costs, will be eligible for reimbursement at an amount not to exceed eighty percent (80%) of the eligible authorized costs.

**C.** When architectural and/or engineering services are provided by or through the State, then the following applies:

The State is responsible for the delivery and performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required accomplishing the project purposes. The State will cooperate fully with the Local Government in accomplishing these project purposes to the degree permitted by State and Federal law.

## **10. 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, 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.** All contract letting and award procedures must be approved by the State prior to letting and award of the construction contract, whether the construction contract is awarded by the State or by the Local Government.
- C.** All contract change order review and approval procedures must be approved by the State prior to start of construction.
- D.** Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.

For federally funded contracts, the parties to this agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Part 635, Subpart B.

Any field changes, supplemental agreements or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by the State and the Local Government prior to authorizing the contractor to perform the work. Prior to completion of the Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

#### **11. Project Maintenance.**

Upon completion of the Project, the Local Government will be responsible for maintaining the completed facility for public use. The property shall be maintained and operated for the purpose for which it was approved and funded for a period of time commensurate with the federal investment. Should the Local Government at any time after project completion decide it can no longer maintain and operate the project for its intended purpose, the Local Government shall return the federal funds in accordance with CFR federal recapture requirements. Should the Local Government consider conveying the property, - the State and FHWA must be notified prior to the sale, transfer, or disposal of any property that received federal funds. Written concurrence of approval for the transaction detailing any required recapture, must be obtained from FHWA prior to the transaction. Advance notice from the Local Government of their intended action must be submitted to the District and the Design Division for an FHWA review a minimum of sixty (60) days prior to any action being taken by the Local Government. The Local Government also agrees to reimburse the Federal Government. The Local Government shall be held responsible for reimbursement of all federal funds used or a portion of the reimbursement based on a pro-rata amount, considering the original percentage of federal funds provided and the time elapsed from the project completion date. This same percentage of reimbursement also applies to any amount of profit that may be derived from the conveyance of the property, as applicable.

Any manufacturer warranties extended to the Local Government as a result of the Project shall remain in the name of the Local Government. The State shall not be responsible for honoring any warranties under this agreement.

Should the Local Government derive any income from the development and operation of the project, a portion of the proceeds sufficient for the maintenance and upkeep of the property, shall be set aside for future maintenance. A project income report shall be submitted to the State on a quarterly basis. Monies set aside according to this provision shall be expended using accounting procedures established under OMB-133 and with the property management standards established in Title 49 CFR §18.32.

Should any historic properties be included in or affected by this federally funded project, the historic integrity of the property and any contributing features must continue to be preserved regardless of any approved changes that may occur throughout the life of the project.

## **12. Local Project Sources and Uses of Funds**

- A.** A Project Budget Estimate is provided in Attachment C, showing the total estimated development cost of the Project. This estimate shows the itemized cost of real property, utilities, environmental assessments and remediation, architectural and engineering activities, construction, and any other substantial items of cost. To be eligible for reimbursement, costs must have been included in the itemized budget section of the nomination form approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work performed before the appropriate formal Federal Project Authorization and Agreement (FPAA) is issued by the Federal Highway Administration. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the FPAA and State Letter of Authority are formally issued. 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 a letter of authority is issued. 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 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.
- B.** A Source of Funds estimate is also provided in Attachment C. Attachment C shows the percentage and absolute dollar amounts to be contributed to the Project by federal, state, and local sources.
- C.** The Local Government will be responsible for all non-federal participation costs associated with the Project, including any overruns in excess of the Project cost estimate and any operating or maintenance expenses. Donations of real property, cash, materials, and services required for the development of the Project may be eligible to count towards the local funding share of a project as in-kind contributions. In order to be considered eligible, in-kind contributions must be made by other public, non-profit, governmental or non-governmental organizations. In-kind contributions must be from a source other than the Local Government that nominated the project. The value of the donated contributions of real property, materials,



or services will be based on fair market value. In-kind contributions of services are limited to preparation of plans, specifications and estimates. In-kind contributions may be credited toward no more than twenty percent (20%) of the allowable Project's cost; however, they may not be used to match any direct or indirect TxDOT incurred cost. If a remaining balance of the Local Government's required match is due after the in-kind contribution's value is applied, the remainder must be provided in cash. The Local Government may provide additional property, services, and/or materials above the required local match, to reduce the overall cost of a Project, but it will not be considered an in-kind contribution.

- D. The State will be responsible for securing the federal share of funding required for the development and construction of the Project, in an amount not to exceed fifty percent (50%) of the actual cost of the work up to the amount of funds approved for the Project by the Texas Transportation Commission. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to Project selection by the Texas Transportation Commission and approval by the State to proceed are not eligible for reimbursement.
- E. Following execution of this Agreement, but prior to the performance of any review work by the State, the Local Government will pay an amount sufficient to cover the estimated cost for the State's review. The Local Government shall advance to the State 50% of the State's Administrative and associated cost for review of the plans, specifications, and estimate. The estimated amount of this advance for this Project's preliminary engineering is \$49,522.50, including cash and allowable in-kind contributions. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government must advance to the State 50% of TxDOT Administrative and associated costs for letting and construction. The Local Government shall also remit its remaining financial share for the project's estimated construction and construction engineering costs, if the State is letting the project. The amount to be advanced for this Project's Construction is estimated to be \$24,761.50, including cash and allowable in-kind contributions.
- F. In the event the State determines that additional funding is required by the Local Government at any time during the Project, the State will notify the Local Government in writing. The Local Government is responsible for 50% of the authorized project cost and 100% of any overruns above the federally authorized amount. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
- G. Whenever funds are paid by the Local Government to the State under this agreement, the Local Government will remit a warrant made payable to the "Texas Department of Transportation Trust Fund." The warrant will be deposited by the State in an escrow account to be managed by the State. Until the final project accounting, funds in the escrow account may only be applied by the State to the Project.
- H. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government, the State, or the Federal Government will be promptly paid by the owing party. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.
- I. In the event the Project is not completed, the State may seek reimbursement from the Local Government of the expended federal funds. The Local Government will remit the required funds to the State within sixty (60) days from receipt of the State's notification.
- J. The State will not pay interest on any funds provided by the Local Government.
- K. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.

- L.** 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 re-plats, 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 through negotiations, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.
- M.** 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.
- N.** 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.
- O.** When the Local Government administers any portion of the project and seeks reimbursement from the State, such request must be submitted within sixty (60) days from the date the cost is incurred or reimbursement may be jeopardized.

### 13. Notices

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 or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

Local Government:	State:
Director, Public Works City of Austin 505 Barton Springs Road, Ste 1300 Austin, Texas 78704	Director of Contract Services Texas Department of Transportation 125 E. 11th Austin, Texas 78701

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. 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 delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

### 14. Legal Construction

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.

### 15. 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.

**16. Ownership of Documents**

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government.

**17. 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.

**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. Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the Project.

**21. Procurement and Property Management Standards**

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

**22. 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 under this Agreement and shall make such materials available to the State, the Local Government, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are

resolved. Additionally, the State, the Local Government, and the FHWA 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.

Whenever American Recovery and Reinvestment Act of 2009 (ARRA) funds are used and the Local Government is performing any work, either directly or through a contractor, it must comply with the following provisions. If a Local Government is receiving ARRA funds, but is not performing any work, the following provisions apply, if appropriate, and to the extent necessary, to comply with ARRA regulations.

In accordance with Section 902 of the ARRA Act of 2009, should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

- a. examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and
- b. interview any officer or employee of the contractor or any of its subcontractors, or any State or local agency administering the contract regarding such contracts.

Nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of the Comptroller General.

In accordance with Section 1515(a) of the ARRA, with respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

- a. to examine any records of the contractor or grantee, any of its subcontractors or sub-grantees, or any State or local agency administering such contract that pertain to and involve transactions relating to the contract, subcontract, grant, or sub-grant; and
- b. to interview any officer or employee of the contractor, grantee or sub-grantee, or agency regarding such transactions.

Section 1515(b) further provides that nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of an inspector general.

The ARRA requires that the Contractor report monthly employment information for its firm as well as that of all of its subcontractors. The Contractor, similarly, shall include this reporting requirement in all of its subcontracts. Failing to include the requirement in agreements with subcontractors can serve as grounds for contract termination.

Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the LG (Local Government). It is the responsibility of the LG to obtain this form from the prime Contractor and any subcontractors and, the LG shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The LG shall ensure that this form is submitted by the LG to the State according to the policies and at the direction of the State.

In order to meet any other FHWA and ARRA reporting requirements, the LG shall provide to the State all information requested by the State, including data or information in possession of contractors and subcontractors for completing other necessary reporting forms, and the information shall be submitted in the manner required and according to all due dates as set by the State.

Furthermore, the ARRA mandates that the U.S. Comptroller General's Office shall have authority to examine the records of the contractor, subcontractor, or local agency relating to the project at any time.

**23. Office of Management and Budget (OMB) Audit Requirements**

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 OMB Circular A-133.

Whenever funds from the ARRA Act of 2009 are distributed to a Local Government, the Local Government must complete its Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC), as required by OMB Circular A-133, and separately identify any ARRA expenditures for Federal Awards.

**24. Civil Rights Compliance**

The Local Government shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

**25. Disadvantaged Business Enterprise Program Requirements**

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

**26. Debarment Certifications**

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 is not 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.

**27. Lobbying Certification**

In executing this Agreement, the signatories certify to the best of his or her knowledge and belief, that:

**A.** No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

**B.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**C.** The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. Submission of this certification is a prerequisite imposed by Title 31 U.S.C. §1352 for making or entering into this transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **28. Insurance**

Should this agreement authorize 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.

For projects including buildings, the Local Government agrees to insure the building according to Department specifications and further agrees to name the Federal Government as a "Loss Payee" should the building be destroyed.

**29. Signatory Warranty.**

The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

**IN TESTIMONY HEREOF**, the parties hereto have caused these presents to be executed in duplicate counterparts.

**THE LOCAL GOVERNMENT**

By: \_\_\_\_\_  
Howard Lazarus  
Director, Public Works  
City of Austin

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: \_\_\_\_\_  
Janice Mullenix  
Director of Contract Services  
Texas Department of Transportation

Date: \_\_\_\_\_

CSJ #0914-04-265  
District #14  
Code Chart 64 #02100  
Austin – TE – Citywide Bicycle  
Infrastructure Improvements  
CFDA # 20.205

**ATTACHMENT A**

**RESOLUTION OF LOCAL GOVERNMENT**





**ATTACHMENT C**  
**PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS**

Construction of pedestrian bridge	Total Estimated Cost or Value	Federal Participation (80% or <) Max TE \$569,509		State Participation		Local Participation (20% or greater)	
		%	Cost	%	Cost	%	Cost
PE – includes design, planning, PS&E, clearances & administration	\$0	0%	\$0	0%	\$0	0%	\$0
Environmental Cost	\$0	0%	\$0	0%	\$0	0%	\$0
ROW – Acquisition and/or associated costs	\$0	0%	\$0	0%	\$0	0%	\$0
Construction - includes work bid items and E&C	\$990,450	50%	\$495,225	0%	\$0	50%	\$495,225
Add value of applicable In-kind donation to Total Estimate Cost column	\$0 (20% maximum)						
Subtotal	\$990,450		\$495,225		\$0		\$495,225
Subtract In-kind Contribution Credit - in Local Participation's column	\$0		\$0		\$0		\$0
Misc. Cost – Non Reimbursable	\$0		\$0		\$0	100%	\$0
							\$0
TxDOT Administrative cost incurred:							Local cash subtotal
PE-Engineering Phase -Direct State Costs-reviews, clearances, admin., etc (10% of project cost)	\$99,045	50%	\$49,522.50	0%	\$0	50%	\$49,522.50
Construction Phase – Direct State Costs-oversight, inspection, site visits, etc. (5% of project cost)	\$49,523	50%	\$24,761.50	0%	\$0	50%	\$24,761.50
Subtotal	\$148,568		\$74,284	0%	\$0		\$74,284
TOTAL	\$1,139,018		\$569,509	0%	\$0		\$569,509

The Estimated Total Participation by the Local Government is \$569,509, plus 100% of overruns. Payment of the Local Government's share of the State's Direct State Costs for PE and associated cost to be incurred is \$49,522.50, due within 30 days from execution of

CSJ #0914-04-265

District #14

Code Chart 64 #02100

Austin – TE – Citywide Bicycle Infrastructure Improvements

CFDA # 20.205

the AFA. Payment of the Local Government's share of the State's Direct State Costs for the Construction Phase and associated cost to be incurred is \$24,761.50, due 60 days prior to the construction contract being advertised for bids. This is an estimate. The eligible percent of the required local match is 50% as stated in the nomination. The final amount of Local Government participation will be based on actual costs and values. The maximum federal TE funds available for the Project are \$569,509.