

AN ORDINANCE 2011-03-31-0249

AUTHORIZING AN ADVANCED FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION TO ADMINISTER FEDERAL FUNDS FROM THE TRANSPORTATION ENHANCEMENT PROGRAM TO ASSIST IN FUNDING THE SHARE THE ROAD ADVERTISING CAMPAIGN: “SAME ROAD, SAME RULES, SAME RIGHTS” AND ACCEPTING FUNDS IN AN AMOUNT UP TO \$276,000.00.

* * * * *

WHEREAS, Ordinance No. 2009-12-10-1024 authorized the submission of a grant application to the Texas Department of Transportation (TxDOT) for federal funds associated with the Transportation Enhancement Program for several projects including the Share the Road Advertising Campaign: “Same Road, Same Rules, Same Rights” which provides for a three-year public safety information campaign designed to educate the general public about rules of the road for both motor vehicle operators and “vulnerable users,” specifically bicyclists and pedestrians in San Antonio, at an estimated cost of \$300,000.00; and

WHEREAS, on July 30, 2010 the City was awarded up to \$276,000.00 in federal funding from the Transportation Enhancement Program for the Share the Road Advertising Campaign; projects funded through the Transportation Enhancement Program are eligible for reimbursement of up to 80% of allowable costs; the City will receive \$240,000.00 to fund the campaign which will be added to the \$60,000.00 local match for a total project cost of \$300,000.00; the City is required to fund 20% of the \$45,000.00 total direct state cost, which is an additional \$9,000.00; total costs to the City will be \$69,000.00 to be expensed over three years; and the City’s local match will be made available through Advanced Transportation District funds; and

WHEREAS, this Ordinance authorizes the acceptance of up to \$276,000.00 in Transportation Enhancement Program funds from TxDOT, authorizes the City Manager or her designee to enter into an Advance Funding Agreement with TxDOT, and authorizes a local cash match of \$69,000.00, over a three-year period, included in the Advanced Transportation District Fund Capital Budget; **NOW THEREFORE**,

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

SECTION 1. The City Manager, or her designee, or the Director of the Office of Environmental Policy or his designee, is hereby authorized to enter into an Advanced Funding Agreement in an amount up to \$276,000.000 from the Texas Department of Transportation (TxDOT) and a required local cash match of \$69,000.00 from the Advanced Transportation District Fund. This agreement becomes effective when signed by the last party who’s signing makes the Agreement fully executed and shall remain in effect until the close of ordinary business on July 29, 2014. A copy of the Agreement, in substantially final form, is attached and incorporated herein for all purposes as **Attachment I**. The execution authority granted by this Ordinance shall expire 60 days from the effective date.

SECTION 2. Fund 2305980001 entitled "TxDOT - Public Safety Campaign" and internal order 155000000077 are hereby designated for use in the accounting for the fiscal transaction in the acceptance of this grant. A formal and final budget which will include general ledger numbers will be submitted by the department upon approval of the Ordinance.

SECTION 3. Upon award, the City will contribute a cash match of \$29,000.00 for the first year. The remaining two years will be contingent upon Council approval of the 2012 and 2013 adopted budgets. The first year cash match will be transferred from Fund No. 11001000, Internal Order 390000000986, GL Account No. 6102100 entitled "Interfund Transfer Out" to Fund No. 2305980001, Internal Order 155000000077, GL Account No. 6101100 entitled "Interfund Transfer In".

SECTION 4. Payment not to exceed the budgeted amount up to \$300,000.00 is authorized to KGB Texas Marketing/Public Relations Inc. dba KGB Texas Public Relations/Advertising and should be encumbered with a purchase order.

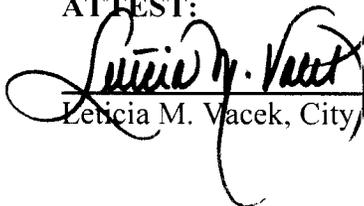
SECTION 5. The financial fiscal allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

PASSED and APPROVED this 31st day of March, 2011.


M A Y O R
Julián Castro

ATTEST:

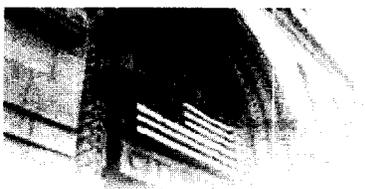


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



for Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 37A

Name:	37A, 37B						
Date:	03/31/2011						
Time:	02:47:13 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an Advance Funding Agreement with the Texas Department of Transportation (TxDOT) to administer federal funds from the Transportation Enhancement Program to assist in funding the Share the Road Advertising Campaign: "Same Road, Same Rules, Same Rights" and accepting funds in an amount up to \$276,000.00.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x			x	
Philip A. Cortez	District 4	x					
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

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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 San Antonio, 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 "Same Road, Same Rules, Same rights" Public Safety Campaign, 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 (the Commission) passed Minute Order 12342 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 terminate on December 31, 2014.

2. Termination of this Agreement

- A. This Agreement may be terminated by any of the following conditions:
1. By mutual written consent and agreement of all parties.
 2. By any party with 90 days written notice.
 3. 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.
- B. 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.
- C. 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.
- D. 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:
1. The Local Government fails to satisfy any requirements of the program rules cited as 43 TAC §11.200 et seq.
 2. The implementation of the Project would involve significant deviation from the activities as proposed in the nomination form.
 3. The Local Government withdraws from participation in the Project.
 4. 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 Transportation Enhancement funding by Minute Order will be presumed to be a reasonable time. This Project must, therefore be awarded to contract before _____, 201____.
 5. The State determines that federal funding may be lost due to the Project not being implemented and completed.
 6. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.
 7. As scheduled by the District, the Local Government fails to attend bi-annual progress meetings.

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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, Use of Project, and Project Location

The scope of work for the Project, which is as shown in Attachment B of the Project Location Map, described in the nomination form and as approved by the Texas Transportation Commission, consists of: a public safety and education program involvement campaign to educate the general public about the rules of the road for both motor vehicle operators and vulnerable users, specifically bicyclist and pedestrians in the San Antonio Area.

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 Agreement and the approval of Federal Highway Administration (FHWA), the State, or the Commission. Any changes undertaken without written approval and Agreement 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 – NOT APPLICABLE

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 all work necessary to obtain needed 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

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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 the documentation and reports used in calculating each parcel's value. 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 will base its reimbursement for parcel acquisitions on these in determining the fair market 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, for expenses incurred in order to assure good title. Any costs associated with the relocation of displaced persons and personal property as well as incidental expenses incurred in acquiring property to implement the Project will be the responsibility of the Local Government and current property owner, at no cost to the State.
- 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.

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- 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:
 - 1. 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;
 - 2. Upon Project completion, the State will continue to perform periodic visits to confirm the Project's continued use and upkeep.

6. Utilities – NOT APPLICABLE

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, unless specified in the Transportation Enhancement Nomination form and approved by the State. 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 begins.

7. Environmental Assessment and Mitigation – NOT APPLICABLE

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.
- 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 certification from appropriate regulatory agency (ies) that identified environmental problems have been remediated.

These costs will not be reimbursed or credited towards the Local Government's financial share of the Project unless specified in the nomination 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.

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8. Compliance with Texas Accessibility Standards and ADA – Non-Construction Project

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 – NOT APPLICABLE

Architectural and engineering services will be provided by the 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 American Association of State Highway and Transportation Officials' (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 _____ percent (____) of the eligible authorized costs.

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- 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 to accomplish 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- NOT APPLICABLE

- A. The State 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-NOT APPLICABLE

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

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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 shall be held responsible for reimbursement of all federal funds used or a portion thereof 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. Project Cost Estimate: A Project Cost Estimate and Payment Schedule 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 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 100% of the cost of any work performed under its direction or control before the federal Letter of Authority is formally issued.

If the Local Government will perform any work under this Agreement for which reimbursement

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will be provided by or through the State, the Local Government must complete training *in Local Government Procedures Qualification for the Texas Department of Transportation* 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. 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, if provided for in the original Transportation Enhancement Nomination's authorized budget. 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 eighty percent (80%) 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 twenty percent (20%) of the State's administrative and associated cost for review of the plans, specifications, and estimate. The Local Government must also advance to the State twenty percent (20%) of the Project's estimated preliminary engineering cost, if the State is administering the architectural or engineering contract. The estimated amount of this advance for this Project's preliminary engineering is \$ 9,000.00, including cash and allowable in-kind contributions, due within 30 days of contract execution.

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- 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 twenty percent (20%) of the authorized Project cost and one hundred percent (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 to 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 Agreement or indirectly through a contract or subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a contract or subcontract under this Agreement 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 Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.

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O. The Local Government is authorized to submit requests for reimbursement 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.

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.

13. Notices

All notices to either party by the other required under this Agreement shall be delivered personally or sent by United States Postal Service (USPS) via certified 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:
City of San Antonio	Director of Contract Services
Attn: Office of Environmental Policy	Texas Department of Transportation
P.O. Box 839966	125 E. 11th
San Antonio, Texas 78283-3966	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 USPS certified 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 format. 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, and, if federally funded, 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 Agreement period and for four (4) years from the date of completion of work defined under this Agreement 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.

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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.

24. Civil Rights Compliance

The Local Government shall comply with the regulations of the U. S. Department of Transportation as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200), 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.

- A. Each financial assistance agreement signed by the Local Government and a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure non-discrimination in the award and administration of DOT-assisted contracts. The recipient'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 recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- B. 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 contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

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, and further certifies that it will not do business with any party 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 Agreement shall require any party to a contract, subcontract, or purchase order awarded under this Agreement 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 sub-recipients 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. Federal Funding and Accountability and Transparency Act Requirements

- A.** Any recipient or sub-recipient of funds under this agreement agrees to comply with the

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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://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>

- B. For sub-awards greater than \$25,000, the Local Government, as a recipient of federal funding, shall:
1. Obtain and provide to the State and the federal government, a Central Contracting Registry (CCR) number with the federal government (Federal Acquisition Regulation, Part 4, Sub-part 4.1100). The CCR number may be obtained by visiting the CCR web-site whose address is: <https://www.bpn.gov/ccr/default.aspx> ;
 2. Obtain and provide to the State and the federal government, a Data Universal Numbering System or 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 executives to the State and federal government if:
 - (i.) More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000 annually; and
 - (ii.) Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).

30. Single Audit Report

- A. The Local Government is required to comply with federal (OMB A-133) and / or state (State of Texas Single Audit Circular) requirements.
- B. If threshold expenditures of \$500,000 or more are met during the Local Government's fiscal year ending, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 East Eleventh Street, Austin, TX 78701 or via e-mail to Virgie.Rodriguez@TxDOT.gov
- C. If expenditures are less than \$500,000 during the Local Government's fiscal year ending, the Local Government must submit a statement to TxDOT's Audit Office as follows:

"We did not meet the \$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."

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31. 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: _____
(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: _____
Janice Mullenix
Director of Contract Services
Texas Department of Transportation

Date: _____

ATTACHMENT A
RESOLUTION OF LOCAL GOVERNMENT

ATTACHMENT B Detailed Scope of Work

Development of a three year public information campaign designed to educate the general public about the rules of the road for both motor vehicle operators and “vulnerable users”, specifically bicyclist and pedestrians in San Antonio area. The campaign will employ various media and social marketing techniques to reach the widest possible audience. The message will be portrayed in both English and Spanish. The campaign will use a consultant to identify the target audience, further define messages that are relevant to the target audience for use in ads, brochures, billboard designs and website. The local government will submit a monthly progress report consisting of recent activity and problems encountered and submit it with their invoice. If no activity occurred, the Local Government will submit a progress report indicating no activity. Periodic meetings will be held between the Local Government and the State to discuss project development and delivery. Meetings shall be scheduled as needed, allowing for additional sessions that may be added as required or requested by either party.

Over the next three years the program will expend funds within the following budget task.

Creative Development	10%	\$30,000
Public Relations & Social Media	10%	\$30,000
Strategy Planning & Account Management	10%	\$30,000
Traditional & New Media – Radio, Outdoor, Print, and Online Media+	70%	\$210,000
TOTAL	100%	\$300,000

The goals of this program are:

1. To improve the actual and perceived safety of bicyclists and pedestrians on shared-use roads,
2. To communicate to bicyclists and pedestrians that they are also subject to rules of the road,
3. To increase awareness of motor vehicle drivers of other users of the road,
4. To encourage the development community to consider the needs of all users of the roads when designing new and redevelopment projects.

Methodology:

1. Identify target audience,
2. Establish a clear and concise message that is consistent and sustainable over the course of the campaign,
3. Further define existing messages per target audience for use in ads, brochures, billboard design, websites, etc.,
4. Research and leverage initiatives and messages from other departments and agencies in order to maximize a consistent message through a variety of channels.

ATTACHMENT C
PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS
Non-Construction Standard AFA – for TE Projects
LG Performs Work and Hires Consultant

Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
Public Safety and Education Campaign (by LG)	\$300,000	80%	\$240,000	0%	\$0	20%	\$60,000
Direct State Costs (estimated at 15%)	\$45,000	80%	\$ 36,000	0%	\$0	20%	\$ 9,000
TOTAL	\$345,000	0%	\$276,000	0%	\$0	0%	\$69,000

Estimated Total Participation by Local Government is \$69,000. The Direct State Costs of \$9,000 are due to the State within 30 days of full execution of the agreement. This is an estimate. The final amount of Local Government participation will be based on actual costs. The percent of match required by the local government is 20% of the Authorized Project cost, and 100% of any overruns above the federal authorized amount. Maximum federal TE funds available for the project are \$ 276,000.00.

Funding Agreement with TxDOT and Professional Services Agreement with KGB Texas

Agenda Item #37

March 31, 2011

1

Summary

- This ordinance authorizes the following actions:
- A.) An Ordinance authorizing the acceptance of \$276,000.00 in Transportation Enhancement Program funds from the Texas Department of Transportation (TxDOT) for the Share the Road Advertising Campaign, "Same Road, Same Rules, Same Rights," and authorizing the City Manager or her designee to enter into an Advance Funding Agreement with TxDOT.
- This ordinance further authorizes a local cash match of \$69,000.00 funded by the Advanced Transportation District Fund.

2

Summary

- B.) Authorizes a professional services agreement with KGB Texas Marketing/Public Relations Inc. dba KGB Texas Public Relations/Advertising in an amount up to \$300,000.00 for a term of three years to develop and launch the Share the Road Advertising Campaign, "Same Road, Same Rules, Same Rights."

3

Background

- A) On December 10, 2009, through Ordinance No. 2009-12-10-1024, City Council authorized the submission of a grant application to the Texas Department of Transportation (TxDOT) for federal funds associated with the Transportation Enhancement Program
- "Share the Road" advertising Campaign provides a three-year public safety information campaign to educate the public about rules of the road for both motor vehicle operators and "vulnerable users," at a cost of \$300,000.00.

4

Background

- The City will be receiving \$240,000.00 (80% of project cost) to fund the campaign
- In addition the City is required to fund 20% of the \$45,000.00 total direct State cost which is \$9,000.00 from Advanced Transportation District Funds
- Total costs to the City will be \$69,000.00 to be expensed over three years:

	<u>Local Match</u>	<u>Direct Cost</u>
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5

Background

- B) Ordinance No. 2010-04-29-0370, awarded a contract to KGB Texas Marketing/Public Relations Inc. dba KGB Texas Public Relations/Advertising in the amount of \$80,000.00 to develop and launch a Phase I "Bicycle Awareness and Safety Media Campaign".
- Ordinance No. 2010-06-17-0564 amended this contract and increased the amount by \$90,800.00 for a total contract amount of \$170,800.00, and extended the term to December 15, 2010.

6

Background

- B) The Phase I campaign has received over 4.7 million “impressions” as a result of radio, television and internet coverage.
- The Share the Road Advertising Campaign: “Same Road, Same Rules, Same Rights” will be an extension of the work that has already been completed.
- Award of the Phase II contract to KGB allows for continuity of the campaign and reduces the time associated with bringing another firm on board to handle the new campaign

7

Issue

- A) This Ordinance authorizes the execution of an Advance Funding Agreement with the Texas Department of Transportation (TxDOT) to administer federal funds from the Transportation Enhancement Program to assist in funding the Share the Road Advertising Campaign and accepting funds.
- B) This Ordinance authorizes the execution of a professional services agreement with KGB Texas Public Relations/Advertising in the amount of \$300,000.00, for a term of three years.

8

Alternatives

- A) City Council could choose not to approve the Advanced Funding Agreement with TxDOT.
- The City will lose the opportunity to receive reimbursement from TxDOT
 - City Council could choose not to accept the grant funds, and advertising campaign could be funded using ATD funds only

9

Alternatives

- B) City Council could choose not to approve the contract with KGB Texas Marketing/Public Relations Inc. dba KGB Texas Public Relations/Advertising.
- This project would then be submitted for solicitation through the City's RFQ process. However, this solicitation would prolong the start of the campaign development.

10

Fiscal Impact

- This Ordinance authorizes the following:
- A.) Authorizes the acceptance of \$240,000.00 in Transportation Enhancement Program funds from the Texas Department of Transportation (TxDOT) and authorizes the City Manager or her designee to enter into an Advance Funding Agreement with TxDOT.
- This ordinance authorizes a local cash match of \$69,000.00 over a three-year period included in the Advanced Transportation District Fund Capital Budget.

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Fiscal Impact

- B) Authorizes payment in an amount up to \$300,000.00, \$240,000.00 from TxDOT funds and \$60,000.00 from ATD Fund, to KGB Texas Marketing/Public Relations Inc. dba KGB Texas Public Relations/Advertising.

12

Recommendation

- Staff recommends approval of this ordinance allowing for the execution of an Advance Funding Agreement with TxDOT for the Share the Road Advertising Campaign: "Same Road, Same Rules, Same Rights" project and accepts funds.

13

Recommendation

- Staff also recommends approval of this ordinance allowing for the award of a professional services agreement with KGB Texas Marketing/Public Relations Inc. dba KGB Texas Public Relations/Advertising.

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