

STATE OF TEXAS § INTERLOCAL AGREEMENT FOR FUNDING
§ PEDESTRIAN IMPROVEMENTS ON
§ ZARZAMORA STREET.
COUNTY OF BEXAR § (FREDRICKSBURG RD. TO LOOP 13)
§

THIS INTERLOCAL AGREEMENT FOR FUNDING PEDESTRIAN IMPROVEMENTS ALONG ZARZAMORA STREET (Fredricksburg Road to Loop 13) (hereinafter “Agreement”) is made and entered into by and between CITY OF SAN ANTONIO, TEXAS, a Texas Home Rule Municipality (hereinafter, “COSA” or “City”), VIA METROPOLITAN TRANSIT, a metropolitan rapid transit authority created under Article 118x of the Texas Revised Civil Statutes, Annotated, as amended by S.B. 971, 74th Legislature and now codified as Chapter 451, Texas Transportation Code (hereafter referred to as “VIA”). The City and VIA may sometimes be referred to herein individually as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, this Agreement is entered into by the Parties pursuant to the authority granted by the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791 and is intended to further the purpose of the Interlocal Cooperation Act by cooperation to implement public transportation improvements; and

WHEREAS, the San Antonio City Council, through Ordinance 2016-12-15-0998, authorized the submission of an application to the Alamo Area Metropolitan Planning Organization (AAMPO) for funding consideration under the Transportation Alternatives Program (TAP) for pedestrian safety improvements along Zarzamora Street to support VIA’s implementation of PRIMO rapid transit. Council authorized City to determine matching funds for the AAMPO application, including 2017 Bond Funds; and

WHEREAS, the Parties agree that improvement of the sidewalks along Zarzamora Street from Fredricksburg Road to Loop 13 (SW Military Dr.) is necessary for the safety, health, and wellness of the San Antonio and other Bexar County residents and including and further support of VIA Metropolitan Transit's implementation of PRIMO rapid transit along this corridor, VIA having made many direct improvements to transit stations and surrounding pedestrian facilities; and

WHEREAS, the Zarzamora Pedestrian Improvements project from Fredericksburg Road to Loop 13 will include constructing and replacing sidewalks along Zarzamora Street to enhance pedestrian safety and connectivity. Additional improvements in this project include traffic signal upgrades, signage, and striping throughout the 7-mile corridor. The City will design and construct the improvements leveraging funding from TxDOT, as described in the Advance Funding

Agreement and Project Submittal form attached as **Exhibit A**; and

WHEREAS, the parties intend to seek funding for the Project from the Texas Department of Transportation (TxDOT) Transportation Alternatives Set-aside (TASA) Program. Under the TASA program TxDOT administers Federal Funds for locally sponsored bicycle and pedestrian infrastructure projects in communities across the state. In large urbanized areas with populations over 200,000, TASA funds are also distributed directly to Metropolitan Planning Organizations (MPO) to administer according to their needs; and

WHEREAS, in accordance with program guidelines and the Advance Funding Agreement with TxDOT, the Project will receive federal funding in an amount not to exceed 80 percent of the actual cost of the work; and

WHEREAS, the Parties understand that project funding requires a local funding match for the remaining 20% of the Project cost; and

WHEREAS, the Parties estimate the total cost of the Project is \$5,000,000.00, as set forth in Advance Funding Agreement and Project Submittal form attached as **Exhibit A**. The parties agree that the twenty percent (20%) local match for federal funding for this project totals \$900,000.00. The parties agree that COSA will be responsible for the \$900,000.00 local match, and VIA will contribute \$500,000 to the Project costs to COSA in support of the Project; and

WHEREAS, COSA and VIA desire to enter into this Agreement in order to establish the obligations of the Parties with regard to the funding of the Project;

NOW, THEREFORE, in consideration of the mutual covenants and agreement stated herein, the Parties agree as follows:

ARTICLE 1. – PURPOSE AND LEGAL AUTHORITY

- 1.1 Each of the foregoing recitals are incorporated into and made a part of this Agreement.
- 1.2 The purpose of this Agreement is to establish the terms and conditions under which VIA agrees to provide funding to COSA in an amount of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) as a contribution for costs incurred as part of the construction of the Project.
- 1.3 The Parties certify that the services provided in this Agreement are services that are properly within the legal authority of the Contracting Parties in accordance with the Interlocal Cooperation Act, Texas Government Code, Chapter 791, et. seq.

ARTICLE 2 – PROJECT SCOPE

- 2.1 The Project will be delivered substantially in accordance with the Description of Project Scope, attached hereto and incorporated by reference herein as **Exhibit A**.

ARTICLE 3 – TERM

- 3.1 Except as otherwise provided herein, this Agreement shall commence upon the execution date of the last signatory party to the Agreement and subject to rights of termination set out in this Agreement, and shall continue until Project Completion (defined in 3.2) at which time this Agreement shall terminate (Termination Date).
- 3.2 Project completion shall occur when the construction of the Project is accepted by the City and retainage is released to the contractor.
- 3.3 If a Party desires to terminate this Agreement prior to the Termination Date the terminating Party must provide written notice of the terminating Party's intent not to renew to the non-terminating Party at least sixty (60) days prior to termination.
- 3.3 This Agreement is subject to appropriation of funds each fiscal year.

ARTICLE 4 – ROLES AND RESPONSIBILITIES

4.01 VIA agrees to and shall pay to the City the sum of \$500,000.00 to be used towards the cost of the Project. This sum will be paid in in one lump sum on or before the thirtieth (30th) day after this Agreement has been signed by both Parties. This shall constitute VIA's total contribution to the Project and under no circumstance shall VIA be responsible for any amounts in excess of the \$500,000.00 for the Project. VIA's contribution shall be used by City solely in connection with the Project.

4.02 City agrees to deliver to VIA the Project schedule, design plans and specifications upon approval of this Agreement.

4.03 The City will provide VIA progress reports on construction of the Project as deemed warranted by the City, but such reports shall be provided on not less than a quarterly basis once construction starts. City will maintain full documentation of any and all activities, records and expenditures related to this Agreement. Upon three days written notice, VIA may audit and make copies of any and all records related to, or developed under, this Agreement. Should VIA determine that progress is not proceeding satisfactorily, VIA will provide to City a written explanation of the

deficiencies observed and the Parties will cooperate in developing a remedial plan to complete the objectives within a reasonable timeframe.

4.04 The Parties agree to allocate sufficient funds for the salaries, supplies, equipment, capital expenditures and all other expenses necessary for the effective operation and administration of this Agreement. To the extent this Agreement extends beyond the current fiscal year, this Agreement shall terminate in the event sufficient funds are not appropriated by the Parties to meet their obligations herein in any subsequent fiscal year. It is agreed and understood that payment for the performance of governmental functions or services under this Agreement must only be made from current revenues available to the paying Party. If this Agreement is terminated under this paragraph, each Party agrees to give the other Party sixty (60) days written notice prior to termination.

4.05 The City shall be solely responsible for and agrees to undertake all of the activities and services required for the design, construction and construction management of the Project within the parameters set out under Exhibit A. Except for the Funding provided by VIA hereunder, City shall be responsible for all costs associated with the Project including but not limited to the \$900,000 matching funds and cost overruns. The transit infrastructure constructed under this Agreement by City is subject to and shall comply with VIA's standards as provided to City and shall be placed in accordance with the Americans with Disabilities Act ("ADA") requirements and all applicable Code requirements, including but not limited to the Building Code. All work performed under the Project and this Agreement shall be performed to industry standards.

4.06 VIA agrees to cooperate and work with the City's contractors and consultants and to implement any environmental mitigation requirements that require VIA involvement.

ARTICLE 5 – TERMINATION AND DEFAULT

5.1 a. This Agreement may be terminated in any of the following ways:

1. by mutual consent of the parties;
2. subject to Section 5.2 below, by either party upon the failure of the other party to fulfill the obligations set forth herein;
3. by either Party if it determines that the performance of the Project is not in that Party's best interest.

b. If this Agreement is terminated in accordance with this Article 5, each party will be responsible for the payment of its own Project costs up to the time of termination, except as otherwise stated in a judicial order entered by a court of competent jurisdiction.

5.2 In the event of a material breach of this Agreement, the non-breaching Party shall give the breaching Party written notice of such breach which shall detail the nature of the breach. The

Party receiving the notice of breach shall be given sixty (60) days to cure the breach. If the breach is not corrected to the satisfaction of the non-breaching Party by the end of the sixty (60) day period, the non-breaching Party may be given written notice of termination to the breaching Party and pursue any or all available remedies in law or equity.

5.3 In the event sufficient funds are not appropriated for this agreement, each Party has the right in any given fiscal year to terminate this contract without penalties of any sort.

ARTICLE 6 – DESIGNATION OF REPRESENTATIVES

6.1 COSA hereby appoints the City of San Antonio Public Works Director, or designee, as its designated representative under this Agreement.

6.2 VIA hereby appoints the Jeffrey C. Arndt, or designee, as its designated representative under this Agreement.

ARTICLE 7 – NOTICES

7.1 All notices provided to be given under this Agreement shall be in writing and shall either be personally served against a written receipt therefore or given by certified mail or registered mail, return receipt requested, postage prepaid and addressed to the proper party at the address which appears below, or at such other address as the Parties hereto may hereafter designate in accordance herewith. All notices given by mail shall be deemed to have been given at the time of deposit in the United States mail and shall be effective from such date.

If to VIA: Abigail Kinnison, Director of Capital Programs
 VIA Metropolitan Authority
 123 N. Medina St.
 San Antonio, TX 78207

If to COSA: Razi Hosseini, Director
 City of San Antonio – Public Works
 P.O. Box 839966
 San Antonio, Texas 78283-3966

ARTICLE 8 – MISCELLANEOUS

8.1 **Prior Agreements Superseded.** This Agreement, including the exhibits, constitute the entire Agreement of the Parties regarding the subject matter of this Agreement and

supersede all previous agreements and understandings, whether written or oral, relating to such subject matter.

- 8.2 **Assignment or Transfer of Interest.** Neither Party is permitted to unilaterally assign its rights, privileges, and obligations under this Agreement, in whole, or in part, without the prior written consent of the other Party. Any attempt to assign without such approval shall be void.
- 8.3 **Legal Construction.** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalid, illegal, or unenforceable provision shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 8.4 **Compliance with laws and ordinances.** Both Parties shall comply with all federal, state, and local laws and ordinances in connection with the work and services performed under this Agreement.
- 8.5 **Choice of law and venue.** This Agreement shall be governed by and construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable and enforceable in Bexar County, Texas. Any legal actions regarding the Parties' obligation under this Agreement must be filed in Bexar County, Texas.
- 8.6 **Amendments.** No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and be duly executed by the Parties hereto.
- 8.7 **Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under this Agreement. It is the express intention of the Parties to this Agreement that any person or entity other than the Parties receiving services or benefits under this Agreement be deemed an incidental beneficiary only.
- 8.8 **Force Majeure.** Neither Party shall be responsible for delays or lack of performance by such entity or its officials, agents or employees which result from acts beyond that entity's reasonable control including acts of God, strikes or other labor disturbances, or delays by

federal or state officials in issuing necessary regulatory approvals and/or licenses. In the event of any delay or failure excused by this Section, the time of delivery or of performance shall be extended for a reasonable time period to compensate for delay.

- 8.9 **Insurance and Indemnity.** The Parties acknowledge that they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, § 101.001 et seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.
- 8.10 **No Waiver of Immunity.** Nothing in this Agreement shall be constructed to waive, modify or amend any legal defense available to the Parties or any past or present officer, elected official, agent, or employee of the participating political subdivisions including, but not limited to governmental immunity from suit as provided by law.
- 8.11 **No Joint Venture.** There is no intention on the part of VIA or City to create or otherwise form a joint enterprise or legal form of partnership under or pursuant to this Agreement. VIA and City are undertaking a governmental function or service. The purpose of this Agreement is to further the public good, not gain a profit.
- 8.12 **Authorized signatory.** The signer of this Agreement for either Party represents, warrants, assures and guarantees that he/she has full legal authority to execute this Agreement on behalf of that Party and to bind that Party to all of the terms, conditions, provisions and obligations herein contained.
- 8.13 **Multiple Counterparts.** This Agreement may be executed in separate identical counterparts by the Parties hereto and each counterpart, when so executed and delivered, will constitute an original instrument, and all such separate identical counterparts will constitute but one and the same instrument.

Signatures to Follow

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, ON THIS DATE: _____.

CITY OF SAN ANTONIO

VIA METROPOLITAN TRANSIT

By: _____
Erik Walsh, City Manager

By: Jeffrey C. Arndt
Jeffrey C. Arndt, President/CEO

Date: _____

Date: 4/12/2024

APPROVED AS TO FORM:

On behalf of ANDREW SEGOVIA
City Attorney

Bonnie Prosser Elder
BONNIE PROSSER ELDER
VIA General Counsel