



Texas Department of Transportation

1300 N. TEXAS AVE. • BRYAN, TEXAS 77803-2760 • (979) 778-2165

October 3, 2002

CSJ: 0917-29-088
Hwy: Various
County: Brazos
Limits: At Various Locations Adjacent
To The TAMU Campus

Mr. Mark L. Smith
Director of Public Works
City of College Station
P.O. Box 9960
College Station, TX 77842

Dear Mr. Smith:

The Texas Department of Transportation (TxDOT) has scheduled a March 2003 letting date for the sidewalk construction project adjacent to the TAMU campus in the City of College Station. Attached are three originals of the revised proposed Advanced Funding Agreement for Voluntary Transportation Projects (On-System) between the City of College Station and TxDOT for the adjustment and replacement of ground boxes on this project.

This agreement includes funding for items that have been requested by the City to be incorporated into this project and provides for the City to supply the ground boxes. In accordance with the provisions listed in the enclosed AFA, a check or warrant in the amount of \$4,662.00 made payable to the Texas Department of Transportation will be due in my office by February 13, 2003.

If the enclosed agreement is acceptable, please have Mayor Ron Silvia execute all three originals and return them to this office for final execution by the State. Upon final execution, one original of this agreement will be returned to you for your files.

Please contact Ms. Susan Icke at 778-6233 if you have any questions or need additional information about this project or agreement. Thank you for your cooperation.

Sincerely,

Catherine Hejl, P.E.
Bryan Area Engineer

SI/bja
Enclosures

bc: Staff, Mike Imhoff, Design File, Reading File

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY
TRANSPORTATION IMPROVEMENT PROJECTS (ON-SYSTEM)**

THIS AGREEMENT IS MADE BY AND BETWEEN the State of Texas, acting through the Texas Department of Transportation, hereinafter called the State, and the City of College Station, a Home-Rule Municipal Government, acting by and through its Mayor and City Council, hereinafter called the Local Government.

WITNESSETH

WHEREAS, Transportation Code, Chapter 201 and Transportation Code, Chapter 221 authorizes the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

WHEREAS, Commission Minute Order Number 101588 authorizes the State to undertake and complete a highway improvement generally described as miscellaneous work consisting of the construction of sidewalks; and,

WHEREAS, the Local Government has requested that the State allow the Local Government to participate in said improvement by funding that portion of the improvement described as Adjusting and Replacing Ground Boxes, hereinafter called the "Project"; and,

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the State;

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, the State and the Local Government do agree as follows:

AGREEMENT

Article 1. Time Period Covered

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and the Local Government will consider it to be in full force and effect until the Project described herein has been completed and accepted by all parties or unless terminated, as hereinafter provided.

Article 2. Project Funding and Work Responsibilities

The State will authorize the performance of only those Project items of work which the Local Government has requested and has agreed to pay for as described in Attachment A, Payment Provision and Work Responsibilities which is attached to and made a part of this contract.

In addition to identifying those items of work paid for by payments to the State, Attachment A, Payment Provision and Work Responsibilities, also specifies those Project items of work that are the responsibility of the Local Government and will be carried out and completed by the Local Government, at no cost to the State.

Texas Government Code, Chapter 2106 requires the State to recover indirect costs associated with this agreement as calculated based on prevailing rates specified in the State's Indirect Cost Recovery Program.

Article 3. Right of Access

If the Local Government is the owner of any part of the Project site, the Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work. The Local Government will provide for all necessary right-of-way and utility adjustments needed for performance of the work on sites not owned or to be acquired by the State.

Article 4. Responsibilities of the Parties

The Local Government acknowledges that while it is not an agent, servant, nor employee of the State, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work on the Project.

Article 5. 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 entity creates the documents with its own forces or by hiring a consultant or professional provider.

Article 6. Interest

The State will not pay interest on funds provided by the Local Government. Funds provided by the Local Government will be deposited into, and retained in, the State Treasury.

Article 7. Inspection and Conduct of Work

Unless otherwise specifically stated in Attachment A, Payment Provision and Work Responsibilities, to this contract, the State will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State. Unless otherwise specifically stated in Attachment A to this contract, all work will be performed in accordance with the *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* adopted by the State and incorporated herein by reference, or special specifications approved by the State.

Article 8. Increased Costs

In the event it is determined that the funding provided by the Local Government will be insufficient to cover the State's cost for performance of the Local Government's requested work, the Local Government will pay to the State the additional funds necessary to cover the anticipated additional cost. The State shall send the Local Government a written notification stating the amount of additional funding needed and stating the reasons for the needed additional funds. The Local Government shall pay the funds to the State within 30 days of the written notification, unless otherwise agreed to by all parties to this agreement. If the Local Government cannot pay the additional funds, this contract shall be mutually terminated in accord with Article 10 - Termination. If this is a fixed price agreement as specified in Attachment A, Payment Provision and Work Responsibilities, this provision shall only apply in the event changed site conditions are discovered or as mutually agreed upon by the State and the Local Government.

If any existing or future local ordinances, including, but not limited to, outdoor advertising billboards or storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or any other locally proposed changes, including, but not limited to plats or replats, result in increased costs, then, any increased costs associated with the ordinances or changes will be paid by the local entity. The cost of providing such right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including expenses related to relocation, removal, or adjustment of eligible utilities.

Article 9. Maintenance

Upon completion of the Project, the State will assume responsibility for the maintenance of the completed Project unless otherwise specified in Attachment A to this agreement.

Article 10. Termination

This agreement may be terminated in the following manner:

- ◆ by mutual written agreement and consent of both parties;
- ◆ by either party upon the failure of the other party to fulfill the obligations set forth herein;
- ◆ by the State if it determines that the performance of the Project is not in the best interest of the State.

If the contract is terminated in accordance with the above provisions, the Local Government will be responsible for the payment of Project costs incurred by the State on behalf of the Local Government up to the time of termination.

- A. In the event the State determines that additional funding is required by the Local Government at any time during the development of the Project, the State will notify the Local Government in writing. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
- B. 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.
- C. In the event the Project is not completed, the State may seek reimbursement from the Local Government of the expended funds. The Local Government will remit the required funds to the State within sixty (60) days from receipt of the State's notification.
- D. The State will not pay interest on any funds provided by the Local Government.
- E. 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.

11. 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: |
|---|---|
| Mr. Mark L. Smith Director of Public Works City of College Station P.O. Box 9960 College Station, Texas 77842 | Mr. Lonny G. Traweek, P.E. Bryan District Engineer 1300 North Texas Avenue Bryan, Texas 77803-2760 |

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.

Article 12. Sole Agreement

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

Article 13. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

Article 14. Amendments

By mutual written consent of the parties, this contract may be amended prior to its expiration.

Article 15. Signatory Warranty

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

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

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 _____ Date _____
Jennifer D. Soldano
Director, Contract Services Office

THE LOCAL GOVERNMENT

Name of the Local Government City of College Station

By _____ Date _____

Typed or Printed Name and Title Ron Silvia
Mayor, City of College Station

ATTEST:

Connie Hooks, City Secretary

Date

APPROVED:

Thomas E. Brymer, City Manager

Date

Carla A. Robinson

City Attorney

Date

Charles Cryan, Director of Fiscal Services

Date

STATE OF TEXAS)
)
COUNTY OF BRAZOS)

ACKNOWLEDGMENT

This instrument was acknowledged before me on the ____ day of _____, 2002, by _____ in his/her capacity as _____ of _____, a _____ corporation, on behalf of said corporation.

Notary Public in and for
the State of Texas

STATE OF TEXAS)
)
COUNTY OF BRAZOS)

ACKNOWLEDGMENT

This instrument was acknowledged before me on the ____ day of _____, 2002, by **Ron Silvia**, in his capacity as Mayor of the **City of College Station**, a Texas home-rule municipality, on behalf of said municipality.

Notary Public in and for
the State of Texas

**ATTACHMENT A
Payment Provision
and
Work Responsibilities**

Description of the Cost and the Items of Work:

1. The Local Government has requested that the State allow the Local Government to participate in adjusting and replacing ground boxes at various locations adjacent to the TAMU Campus in Brazos County, Texas.
2. The Local Government is responsible for supplying all replacement ground boxes.
3. A breakdown of the estimated cost to be incurred by the Local Government is shown below:

| | |
|--|-----------------------|
| Construction Cost (Item 624-522 "GROUND BOX (INSTALL)", 14 @ \$300/EA) | \$4,200.00 |
| Construction Engineering and Contingencies (11.0%) | <u>\$ 462.00</u> |
| Total Estimated Construction Costs | \$4,662.00 |
| Total Estimated Cost to Local Government | \$4,662.00 |

Schedule of Payments

1. The Local Government will make a check or warrant payable to the Texas Department of Transportation in the amount of **\$4,662.00** to be paid sixty (60) days prior to award of the Project to contract by the State. This amount is an estimate and may increase or decrease depending upon the final design and estimated construction cost of the Project. It includes the construction costs, construction engineering and contingencies and the State's estimated material costs.
2. If at any time during the time period covered by the Project it is determined the funding provided by the Local Government for Item 1 above is insufficient to cover the State's costs for the performance of the proposed work, the Local Government will pay to the State the additional funding necessary to cover the anticipated additional cost. The State shall send the Local Government a written notification stating the additional funding needed and stating the reasons for the additional funds. The Local Government shall pay the funds within thirty (30) days of the written notification. If the Local Government does not pay the additional funds, this agreement shall be mutually terminated in accordance with Article 3. Termination. If it is determined the Local Government has overpaid the funding necessary for the Project, the State shall refund the excess amount to the Local Government upon completion of the Project.