Control: 0540 - 04 - 044
Highway: FM 2154
County: Brazos
Location: From FM 2818 to SH 40

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

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

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 Texas Home-Rule Municipal Government, acting by and through its 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 107561 authorizes the State to undertake and complete a highway improvement generally described as the Widening of a Non-Freeway Facility; 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 Illumination Assembly Foundations, Ground Boxes and Conduit, 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:

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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:

State: Lonny G. Traweek, P.E.
Bryan District Engineer
1300 North Texas Avenue
Bryan, Texas 77803-2760

Local Government: Mr. Tony Michalsky
Electrical Superintendent
P.O. Box 9960
College Station, Texas 77842

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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_____

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

Roxanne Quemak | 7/9/03

City Attorney | Date

Charles Cryan, Director of Fiscal Services | Date

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ATTACHMENT A
PAYMENT PROVISIONS AND WORK RESPONSIBILITIES

1. Description of the Cost of the Items of Work

A. The State will be responsible for the construction of the widening of FM 2154 at the location shown above and the incidental items as described in Control 0540-04-044.

B. The Local Government has requested that the State allow the Local Government to participate in the items of work listed in the summary table below. The total estimated cost of the Local Government's participation is $ 277,355.00, which includes construction engineering and contingencies.

SUMMARY OF CONSTRUCTION COSTS FOR OUTSIDE ENTITY

Item No.	Desc. Code	Description	Unit	Estimated Quantity	Price Per Unit	Local Government's Share
618	**0574**	CONDUIT (PVC) (SCHD 40) (2 ") (TRENCH)	LF	**34,300**	**$4.50**	$ 154,350.00
618	**0532**	CONDUIT (PVC) (SCHD 40) (2 ") (BORE)	LF	**1,060**	**$15.00**	$ 15,900.00
656	**0535**	FOUNDATION FOR ILLUMINATION ASSEMBLY	LF	**762**	**$100.00**	$ 76,200.00
624	**0501**	GROUND BOX TY A (122311) W / APRON	EA	**10**	**$455.00**	$ 4,550.00
					TOTAL ESTIMATED CONSTRUCTION COST	**$ 251,000.00**

ESTIMATED CONSTRUCTION COST	$ 251,000.00
CONSTRUCTION ENGINEERING AND CONTINGENCIES (10.5%)	$ 26,355.00
TOTAL ESTIMATED AMOUNT DUE FROM LOCAL GOVERNMENT	**$ 277,355.00**

2. Schedule of Payment

Thirty (30) days in advance of the letting date of the Project, the Local Government will remit a check or warrant made payable to the Texas Department of Transportation in the amount of $ 277,355.00 to be used by the State for the construction of the proposed work requested by the Local Government.

3. Maintenance

Upon completion of the Project, maintenance responsibility will be in accordance with the Municipal Maintenance Agreement or any other current agreement.