Project: STP ( )UM
Control: 0506-01-082
Location: FM 60 from SH 6 to FM 158
County: Brazos

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 Cities of Bryan and College Station, Texas Home-Rule Municipal Corporations, acting by and through their respective City Councils, hereinafter called the Local Governments.

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 a highway improvement generally described as a project to widen FM 60 (University Drive), a non-freeway facility; and,

WHEREAS, the Local Governments have requested that the State allow the Local Governments to participate in said improvement by funding and preparing that portion of the improvement described as the preliminary engineering phase, including a schematic design, environmental assessment, right-of-way documents, and plans, specifications and estimate (PS&E) for the project to widen FM 60 (University Drive), 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 Governments 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 Governments 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 the Local Governments have requested and have agreed to perform as described in Attachment A, Payment Provision and Work Responsibilities, which is attached to and made a part of this contract. Those Project items of work that are the responsibility of the Local Governments will be carried out and completed by the Local Governments 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 Governments are the owners of any part of the Project site, the Local Governments shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

Article 4. Responsibilities of the Parties
The Local Governments acknowledge that while they are not an agent, servant, nor employee of the State, each party 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 Governments agree 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 Governments will use the State's document template. The Local Governments 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
In the event payment of funds by the Local Governments become necessary, the State will not pay interest on these funds. Funds provided by the Local Governments 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 construction 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 construction contractor performing the construction 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
If the Local Governments cannot continue the Project for fiscal (budget) reason, this contract shall be mutually terminated in accordance with Article 10, Termination.

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 entities. 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 all 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.
- By the Local Governments if the cost to complete the Local Governments' portion of the preliminary engineering phase exceeds the amount budgeted for the Project by the Local Governments.

If the contract is terminated in accordance with the above provisions, the Local Governments will be responsible for payment of all Project costs related to that portion of the preliminary engineering phase that is the responsibility of the Local Governments as described in Attachment A to this contract.

A. If by mutual written consent of all parties it is determined that additional funding is required from the Local Governments during the development of the Project, the Local Governments 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 Governments, the State, or the Federal Government will be promptly paid by the owing party.

11. Notices

All notices to any party by the others 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: Mr. Lonny G. Traweek, P.E.
Bryan District Engineer
1300 North Texas Avenue
Bryan, Texas 77803-2760

Local Governments:

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

Mr. Hugh Walker
Assistant City Manager
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

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 be 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 Governments 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 Governments 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.

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IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENTS have executed triplicate 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 GOVERNMENTS

Name of the Local Government: City of Bryan

By_____ Date_____

Typed or Printed Name and Title: Jay Don Watson
Mayor, City of Bryan

Attest:

_____
Mary Lynne Stratta, City Secretary

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

Revised 07-02-02

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APPROVED:

THOMAS E. BRYMER, City Manager

CHARLES CRYAN
Director of Fiscal Services

City Attorney

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Attachment A
Payment Provision
and
Work Responsibilities

The Local Governments will carry out and complete its responsibilities, as described below, at no cost to the State. If the Local Governments choose to use a consultant engineer to develop preliminary engineering, environmental, right-of-way and construction documents for the Project, a representative of the State will have an active role in the selection and management of this consultant engineer.

PRELIMINARY ENGINEERING

The Local Governments, or their consultant engineer, is responsible for a portion of the Project's advance planning phase. This work will include, but is not limited to, preparing a preliminary design schematic of the proposed improvements in a format that is acceptable to the State; preparing an environmental assessment consistent with the state and federal guidelines; determining right-of-way requirements and needed utility adjustments; and assisting with the appropriate public involvement activities for the Project.

The State will provide guidance and timely reviews as necessary for the Local Governments, or their consultant engineer, to satisfactorily develop the schematic and environmental assessment. The State will review all documentation upon its completion, or at any time it is deemed necessary by the State. Should the State determine that the documentation, or any portion thereof, is unacceptable for reasons including, but not limited to, quality, accuracy, or construction and right-of-way costs, the Local Government shall, at their own cost, correct the documents to the satisfaction of the State.

The State is responsible for a portion of the Project's advance planning phase. This responsibility will include activities such as providing traffic projections, leading the public involvement activities, reviewing or processing the documents and efforts to secure approvals by the applicable state and federal agencies of the design schematic and environmental documents.

All work associated with the Preliminary Engineering (Advance Planning) phase that is the responsibility of the State as outlined above will be done by the State at no cost to the Local Governments.

RIGHT OF WAY AND UTILITY ADJUSTMENTS

The Local Governments, or their consultant, shall prepare the necessary right-of-way maps, property descriptions, parcel plats and any other data as needed to properly describe the right of way needed for the construction of the Project. These documents will be prepared in accordance with the applicable State manuals and guidelines. The right-of-way maps and property descriptions shall be submitted to the State for review and approval. Tracings of the right-of-way maps shall be furnished to the State for its permanent records.

The Local Governments, or their consultant, shall identify all utilities that are in conflict with the construction of the Project. They will prepare the drawings and exhibits for the owners of the utilities so that adjustment can be accomplished in a timely manner.

The State will be responsible for acquiring all highway rights of way, for all relocation assistance and for all utility adjustments. The Local Governments will participate in the cost of these activities as outlined in the Texas Administrative Code. The owner of each utility will be responsible for acquiring all easements and/or permits required for the relocation of their facility.

All work associated with the Right of Way and Utility Adjustment phase that is the responsibility of the State as outlined above will be done by the State at no cost to the Local Governments, except as required by the Texas Administrative Code.

PLANS, SPECIFICATIONS AND ESTIMATE (PS&E)

The Local Governments, or their consultant engineer, will prepare the construction documents. These documents are understood to include the plans, specifications, and estimate (PS&E) necessary to let the Project to contract. This PS&E shall be in accordance with the currently approved versions of the State's Roadway Design Manual, the PS&E Preparation Manual, the AASHTO Policy on Geometric Design of Highways and Streets, and the current version of the State's Standard Specifications for Construction of Highways, Streets and Bridges and any other reference or manual deemed appropriate by the State. The Local Governments, or their consultant engineer, will develop the construction documents in a format and content that are acceptable to the State. Should the State determine that the PS&E, or any portion thereof, is unacceptable for reasons including, but not limited to, quality, accuracy, or its impact to the construction and right-of-way cost of the Project, the Local Governments will, at their own costs, correct the documents to the satisfaction of the State.

The State will provide the pavement design(s) for the Project. The State will provide guidance and timely reviews as necessary for the Local Governments, or their consultant engineer, to satisfactorily develop the PS&E. The State will not let the Project to contract until a complete PS&E approved by the State exists.

All work associated with the Plans, Specifications and Estimate (PS&E) phase that is the responsibility of the State as outlined above will be done by the State at no cost to the Local Governments.

CONTRACT LETTING, CONSTRUCTION AND CONTRACT ADMINISTRATION

Upon the completion of the tasks listed above and dependent upon the availability of state and/or federal construction funds, the State will process the Project for letting, solicit bids, award the contract, administer the contract, construct the Project, provide all construction inspection and accept the final Project upon its completion. The State's maintenance responsibilities will be limited to those specified in the current municipal maintenance agreement and will be confined to the portion of the Project within the State's right of way.

The Local Governments, or their consultant engineer, will be responsible for reviewing all shop drawings required for the fabrication of structural items needed for the construction of the Project.