

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 by and 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 duly authorized officials, hereinafter called the "Local Government."

WITNESSETH

WHEREAS, Transportation Code, Chapter 201, 221. and 222 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 001111 authorizes the State to undertake and complete a highway improvement generally described as widening BS 6-R to 6 lanes with a raised median, curb and gutter; 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 adjustment of the water and sanitary sewer lines along BS 6-R (Texas Avenue) from FM 2347 (George Bush Drive) to FM 2818, 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.

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 needed right-of-way 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. 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:
City of College Station 2613 S. Texas Avenue College Station, TX 77840	Texas Department of Transportation 1300 N. Texas Avenue Bryan, TX 77803

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. State Auditor. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract 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.

Article 16. 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 _____
District Engineer

THE LOCAL GOVERNMENT

Name of the Local Government City of College Station

By _____ Date _____

Typed or Printed Name and Title Ron Silvia, Mayor

**ATTACHMENT A
 Payment Provision
 and Work Responsibilities**

Description of the Work Items

The parties agree that the existing water and sanitary sewer lines belonging to the Local Government shall be relocated and adjustments shall be made along Business State Highway 6. (Texas Avenue)

Actual Cost Agreement

The estimated total cost to relocate and/or adjust the existing water and sanitary sewer lines is \$2,390,319.68 as depicted in the table that follows. The Local Government shall be responsible for 100 percent of the Project's construction cost, as determined by the successful contractor's low bid, and a percentage of the State's cost for mobilization, calculated by dividing the cost of the Project by the total bid cost for the highway improvement project.

The Local Government shall, upon the contractor's begin-work date, start submitting payments to the State until 100 percent of the actual costs of the bid items associated with this Project have been paid to the State, including the mobilization costs. The Local Government shall remit on or before the last day of each month, 10 percent of the actual costs associated with the relocation and adjustment of the water and sanitary sewer lines. Any increases in the cost of the project shall be paid by the local Government as outlined in Article 8. Upon completion and final acceptance of the State's highway improvement project, a final accounting will be made to adjust the total payment from the Local Government to the State. Any money owed by the Local Government will be requested in accordance with Article 8. Any overpayment by the Local Government will be refunded to the Local Government by the State.

ITEM	DESCRIPTION	QUANTITY	UNITS	PRICE	AMOUNT
S.104	15" Sanitary Sewer	370.87	LF	\$75.00	\$27,815.25
S.104	12" Sanitary Sewer	2773.77	LF	\$60.00	\$166,426.20
S.104	8" Sanitary Sewer	1765.7	LF	\$55.00	\$97,113.50
WS.10	8" Sanitary Sewer by Pipe Burst	1445.14	LF	\$50.00	\$72,257.00
S.104	6" Sanitary Sewer	270	LF	\$27.00	\$7,290.00
S.104	4" Sanitary Sewer	80	LF	\$25.00	\$2,000.00
S.201	Sewer Manhole	12	EA	\$2,000.00	\$24,000.00
S.201	Square Sewer Manhole	16	EA	\$2,500.00	\$40,000.00
WS.5	30" Casing by Bore-Sanitary Sewer	241.59	LF	\$250.00	\$60,397.50
WS.5	24" Casing by Bore-Sanitary Sewer	527.12	LF	\$200.00	\$105,424.00
WS.5	16" Casing by Open Cut-Sanitary Sewer	564.56	LF	\$100.00	\$56,456.00
WS.8	Grout fill existing 15" Sanitary Sewer Line	345.13	LF	\$15.00	\$5,176.95
WS.8	Grout fill existing 6" Sanitary Sewer Line	429.59	LF	\$8.00	\$3,436.72
WS.8	Grout fill existing 8" Sanitary Sewer Line	4015.81	LF	\$8.00	\$32,126.48
S.201	Abandon Existing Manholes	20	EA	\$500.00	\$10,000.00
S.203	Sanitary Sewer Service Connection (4" or 6")	19	EA	\$725.00	\$13,775.00
Total Sanitary Sewer					
==>					<u>\$723,694.60</u>

W.104	24" Water Line	183.89	LF	\$125.00	\$22,986.25
W.104	18" Water Line	813.34	LF	\$100.00	\$81,334.00
W.104	16" Water Line	149.53	LF	\$70.00	\$10,467.10
W.105	12" Water Line	8173.48	LF	\$50.00	\$408,674.00
W.105	8" Water Line	221.57	LF	\$45.00	\$9,970.65
W.105	6" Water Line	227.1	LF	\$30.00	\$6,813.00
W.105	3" Water Line	9.41	LF	\$50.00	\$470.50
WS.5	36" Casing by Open Cut	8.1	LF	\$200.00	\$1,620.00
WS.5	30" Casing by Open Cut	60	LF	\$150.00	\$9,000.00
WS.5	30" Casing by Bore-Water Line	222.1	LF	\$250.00	\$55,525.00
WS.5	24" Casing by Bore-Water Line	632.56	LF	\$200.00	\$126,512.00
WS.5	24" RCP Casing by Open Cut	11	LF	\$100.00	\$1,100.00
WS.5	21" RCP Casing by Open Cut	16.29	LF	\$90.00	\$1,466.10
WS.5	16" Casing by Open Cut-Water Line	447.15	LF	\$100.00	\$44,715.00
WS.5	24" Casing by Open Cut	16.45	LF	\$200.00	\$3,290.00
WS.5	Uncased bore (12" & 8")	317.305	LF	\$150.00	\$47,595.75
W.104	24" x 11.25 M.J. Bend	1	EA	\$1,500.00	\$1,500.00
W.104	24" x 6" M.J. Tee	1	EA	\$2,000.00	\$2,000.00
W.104	24" x 24" M.J. Tee	1	EA	\$2,500.00	\$2,500.00
W.203	24" Butterfly M.J. Valve	1	EA	\$8,500.00	\$8,500.00
W.104	24" X 12" M.J. Reducer	1	EA	\$1,000.00	\$1,000.00
W.1	Connect to Ex. 24" Line	2	EA	\$4,000.00	\$8,000.00
W.104	18" x 18" M.J. Tee	2	EA	\$1,000.00	\$2,000.00
W.104	18"x 12" M.J. Tee	1	EA	\$1,000.00	\$1,000.00
W.104	18" x 12" M.J. Reducer	3	EA	\$600.00	\$1,800.00
W.104	18" x11.25 M.J. Bend	3	EA	\$600.00	\$1,800.00
W.104	18" x 8" M.J. Tee	1	EA	\$900.00	\$900.00
W.1	Connect to Ex. 18" Line	2	EA	\$3,250.00	\$6,500.00
W.104	18" x 22.5 M.J. Bend	2	EA	\$600.00	\$1,200.00
W.104	18" M.J. Butterfly Valve	3	EA	\$8,500.00	\$25,500.00
W.104	16" x 12" M.J. Reducer	2	EA	\$500.00	\$1,000.00
W.104	16" x 16" M.J. Tee	1	EA	\$700.00	\$700.00
W.1	Connect to Ex. 16" Line	1	EA	\$2,500.00	\$2,500.00
W.105	12" x 6" M.J. Tee	5	EA	\$400.00	\$2,000.00
W.105	12" x 45 M.J. Bend	12	EA	\$380.00	\$4,560.00
W.105	12" x 8" M.J. Tee	5	EA	\$500.00	\$2,500.00
W.105	12" x 12" M.J. Cross	2	EA	\$600.00	\$1,200.00
W.105	12" x 11.25 M.J. Bend	1	EA	\$400.00	\$400.00
W.105	12" x 12" M.J. Tee	1	EA	\$540.00	\$540.00
W.105	12" M.J. Cap	1	EA	\$150.00	\$150.00
W.105	12" x 22.5 M.J. Bend	2	EA	\$380.00	\$760.00
W.105	12" x 6" M.J. Reducer	1	EA	\$210.00	\$210.00
W.1	Connect to Existing 12" Line	4	EA	\$2,000.00	\$8,000.00
W.203	12" M.J. Gate Valve	27	EA	\$1,500.00	\$40,500.00
W.203	8" M.J. Gate Valve	6	EA	\$1,000.00	\$6,000.00
W.105	8" x 45 M.J. Bend	6	EA	\$300.00	\$1,800.00
W.105	8" x 90 M.J. Bend	2	EA	\$300.00	\$600.00
W.1	Connect to Existing 8" Line	6	EA	\$1,750.00	\$10,500.00
W.203	6" M.J. Gate Valve	6	EA	\$750.00	\$4,500.00
W.1	Connect to Existing 6" Line	7	EA	\$1,600.00	\$11,200.00
W.105	6" x 45 M.J. Bend	4	EA	\$225.00	\$900.00
W.1	Connect to Existing 3" Line	1	EA	\$1,500.00	\$1,500.00
W.205	Type 1 Fire Hydrant Assembly	12	EA	\$2,000.00	\$24,000.00

W.205	Type 2 Fire Hydrant Assembly	2	EA	\$2,000.00	\$4,000.00
W.205	Type 3 Fire Hydrant Assembly	14	EA	\$2,000.00	\$28,000.00
W.207	2" Water Meter	44	EA	\$1,300.00	\$57,200.00
W.201	2" Single Water Service	40	EA	\$1,000.00	\$40,000.00
W.201	2" Double Water Service	2	EA	\$1,500.00	\$3,000.00
W.207	3" Water Meter	1	EA	\$2,500.00	\$2,500.00
W.2	6" Blowoff Assembly	2	EA	\$5,000.00	\$10,000.00
W.2	1" Air Release	1	EA	\$1,500.00	\$1,500.00
WS.9	Dry Rip Rap Channel Lining	77	SY	\$120.00	\$9,240.00
W.207	Adjust Ex. Fire Hydrant Location	2	EA	\$1,000.00	\$2,000.00
WS.8	Grout fill existing 12" Water Line	1468.96	LF	\$17.00	\$24,972.32
WS.8	Grout fill existing 18" Water Line	864.8	LF	\$30.00	\$25,944.00
WS.8	Grout fill existing 8" Water Line	11399.04	LF	\$15.00	\$170,985.60
WS.8	Grout fill existing 6" Water Line	667.58	LF	\$15.00	\$10,013.70
WS.8	Grout fill existing 24" Water Line	172.66	LF	\$45.00	\$7,769.70
104-0521	Remove Conc (Curb or C&G)	168	LF	\$6.00	\$1,008.00
351-0501	Repair Exist Flex Pav Struct (8")	2	SY	\$80.00	\$160.00
402-0501	Trench Excav Protection	13630.15	LF	\$3.00	\$40,890.45
529-0502	Conc Curb and Gutter (TY 2)	168	LF	\$12.00	\$2,016.00

Total Water Line ==> \$1,462,959.12

Total Sanitary Sewer ==> \$723,694.60

Total Water Line ==> \$1,462,959.12

Work Item Total ==> \$2,186,653.72

COCS cost is 15.77% of project cost –
 Overall mobilization is estimated @ \$850,000
 Engineering (1%) and Contingencies (2%)

15.77% Mobilize==> \$134,045.00

3% of \$2320698.72==> \$69,620.96

Overall Total ==> \$2,390,319.68

Work Responsibilities

Under this agreement, the **Local Government** shall provide the following services:

- Responsible for engaging and managing the services of a Texas Registered Professional Engineer to prepare the construction drawings, technical specifications and estimate for water and sanitary sewer line relocations and adjustments required by the State's highway improvement project on Business State Highway 6. These construction drawings shall be sequenced using the highway improvement's traffic control plan. The Local Government will provide the plans, construction drawings, specifications and estimate to the State in order for the State to include this information in the plans, specifications, and estimate (PS&E) for the highway improvement project, which is currently being developed by TxDOT's Bryan Area Office. All information relative to this Project must be received by the State no later than Wednesday, November 26, 2003.
- Provide inspection services for the water and sanitary sewer line construction and notify the State's Project Engineer of any defects and/or deficiencies in the work or materials and observe the actions of the contractor to ensure that said defects and/or deficiencies are corrected to the satisfaction of both the Local Government and the State.

- Arrange, observe, and inspect all acceptance testing and notify the State of the results of these activities.
- Provide review and approval of shop or fabrication drawings for the Project within 10 business days of receipt from the State.
- Perform design for change orders for the Project.
- Review and approve or disapprove negotiated change orders within 5 business days after receipt of such orders unless City Council approval is necessary, in which case the Local Government shall bring the item to City Council as soon as reasonably possible. Any contractor claims that are determined by the State to be valid and payable, which are the result of delays caused by the Local Government's design, review and approval of change orders will be added to the Local Government's participation in the cost of the Project.
- Monitor the contractor's work to ensure that all TCEQ and all other regulatory rules, regulations and laws are strictly adhered to. Any violation noted by the Local Government shall immediately be brought to the attention of the State's Project Engineer so that corrective action can be initiated.
- Prepare and submit a list of observed items requiring completion or correction for the water and sanitary sewer line relocations and adjustments to the State's Project Engineer.
- The Local Government agrees that all construction activities, performed by the Local Government's staff, for the water and sanitary sewer lines relocations and adjustments will be coordinated through the State's Project Engineer and will be solely at the Local Government's expense.
- The water and sanitary sewer lines are currently owned, operated, and maintained by the Local Government and shall continue to be owned, operated and maintained by the Local Government during the construction of the Project and upon completion of the highway improvement project and final acceptance by the State and Local Government.

The **State** shall provide the following services under this contract:

- Incorporate the Local Government's construction drawings, specifications and estimate for the water and sanitary sewer line relocation and adjustments with the PS&E being prepared for the Business State Highway 6 highway improvement project.
- Review and approve the Local Government's final construction plans prior to any construction-related activities. In order to ensure federal and/or state funding eligibility, projects must be authorized by the State prior to advertising for construction.
- Advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project.
- Negotiate and administer all field changes and change orders required for the Project. All change orders increasing construction cost for the Local Government's Project shall be submitted to the Local Government for review and approval together with an evaluation.
- Provide overall project management to supervise the day-to-day activities of the construction and monitor the activities of the contractor to promote the timely and efficient completion of the highway improvement project in accordance with the contract between the State and the contractor, including the portion of the PS&E that covers the construction of the Project.
- Conduct field observations and coordinate with the Local Government's inspectors and the contractor to cure defects and deficiencies in the Project's construction prior to final acceptance.
- Make timely payment to the contractor, as provided in the State's governing specifications, for work performed in connection with the Project.

- Ensure access and permit the Local Government's inspectors and other authorized representatives to inspect the water and sanitary sewer line construction at all times.
- Conduct and coordinate the final inspection of the Project in the presence of the Local Government's Engineer and inspectors and transmit a final list of items to be completed, corrected or repaired to the contractor for this action. Conduct and coordinate any subsequent inspections to observe and confirm that all noted items have been satisfactorily completed, corrected and repaired.
- Maintain a job file, which will contain the records relative to the performance and payment for the Project. This file will be made available to the Local Government's representative for viewing at the Bryan Area Engineer's office.