

THE STATE OF TEXAS §

THE COUNTY OF BRAZOS §

INTERAGENCY COOPERATION CONTRACT

THIS CONTRACT is entered into by and between the agencies shown below as Contracting Parties under the authority granted and in compliance with the provisions of Chapter 771 of the Government Code.

I. CONTRACTING PARTIES:

The Receiving Agency City of College Station
The Performing Agency Texas Transportation Institute
The Texas A&M University System - VID # 37277277275000

II. STATEMENT OF SERVICES TO BE PERFORMED: The Performing Agency will undertake and carry out services described in Attachment A, Scope of Services.

Development of a Regional Transportation Operations Concept for Brazos Valley P2005350

III. CONTRACT PAYMENT: The total amount of this contract shall not exceed \$6,250 and shall conform to the provisions of Attachment B, Budget. Payments shall be billed monthly.

IV. TERM OF CONTRACT: Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party. This contract begins when fully executed by both parties and terminates December 31, 2005.

V. THE AGREEING PARTIES certify that:

- 1. The services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of State Government.
2. The proposed arrangements serve the interest of efficient and economical administration of the State Government.
3. The services or resources agreed upon are not required by Article XVI, Section 21 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

VI. LEGAL AUTHORITY:

The Receiving Agency further certifies that it is a Home-Rule Municipal Corporation organized under the laws of the State of Texas and is authorized to enter into this Agreement pursuant to Article II, Section 5 of its City Charter.

The Performing Agency further certifies that it has the authority to perform the services by authority granted in Chapter 85, Texas Education Code.

This contract incorporates the provisions of Attachment A, Scope of Services, Attachment B, Budget, and Attachment C, General Terms and Conditions.

THE UNDERSIGNED PARTIES bind themselves to the faithful performance of this contract.

THE RECEIVING AGENCY
CITY OF COLLEGE STATION

THE PERFORMING AGENCY
Texas Transportation Institute

BY: Ron Silvia
Mayor, City of College Station

BY: [Signature]
AUTHORIZED SIGNATURE

ATTEST: Connie Hooks
City Secretary

for H. H. Richardson, P.E., Director
TYPED OR PRINTED NAME AND TITLE

APPROVED: Thomas E. Brymer
City Manager

DATE: 6/29/05

[Signature]
City Attorney

DATE:
Jeff Kersten
Finance and Strategic Planning Director

DEVELOPMENT OF A CONCEPT FOR REGIONAL TRANSPORTATION OPERATIONS FOR THE BRAZOS VALLEY

Introduction/ Background

Within the Brazos Valley the Texas Department of Transportation (TxDOT), Brazos County, the City of College Station, the City of Bryan, and Texas A&M University all share a common goal for operating and maintaining the transportation systems: to provide the safest, most efficient transportation system possible with the resources available. As a result, each agency has developed programs and deployed infrastructure that support the services that they provide. These agencies also have a long history of collaborating and working cooperatively to manage traffic regionally for construction projects, special events, or emergencies. However, as the community continues to grow, as systems and programs become more complex to develop and sustain, and as funding becomes more difficult to secure, there may be a need for these agencies to take a regional perspective, not only in coordinating activities associated with these special events and situations, but also in the day-to-day operations of the transportation system as whole.

Locally, a unique opportunity may exist to leverage the investment that has already been made in the transportation infrastructure and the collaboration between the various agencies. This cooperative effort would improve transportation operations and safety in the region, and also showcase the successful marriage between research and the community in the Brazos Valley.

As part of Texas Transportation Institute's Intelligent Transportation Systems (ITS) research program, the Institute has constructed a state-of-the-art laboratory – TransLink[®] Research Center Laboratory – that models the functions and capabilities of a full-fledged traffic operations center. This laboratory facility contains the latest communications and computing systems and can support regional coordination and operations. In excess of \$5 million has been expended in developing the TransLink Laboratory. In addition, the laboratory is supported by a substantial number of highly trained traffic operations professional staff.

This facility could serve as a central location for sharing, analyzing and distributing traffic- and transportation-related information and, if desired, serve as a command center for coordinating local traffic operations and responses in the community. What is needed at this juncture is a feasibility study to identify what is possible, what is appropriate, what costs and benefits are involved, and what are alternative strategies for regional collaboration.

Purpose of Study

The purpose of this study is twofold:

1. To develop a regional concept for transportation operations for the Brazos Valley.
2. To fully explore whether it is desirable to utilize the Texas Transportation Institute's (TTI) TransLink[®] Laboratory in some manner for managing transportation operations in the area and to examine alternative arrangements for staffing the center.

Work Plan

The following work plan is proposed to accomplish these objectives:

Task 1. Conduct Inventory of Existing and Planned Agency Systems, Activities, and Responsibilities

The first task will be to conduct a complete and accurate inventory of all the transportation management systems, activities, and resources that agencies use to manage traffic operations in the Brazos Valley. Planned improvements will also be documented. This inventory will not only include hardware and field equipment, but will also identify which agencies are responsible for the various traffic management functions and the current level of connectivity within the region.

Task 2. Develop a Concept for Providing Regional Transportation Operations in the Brazos Valley

TTI will host a workshop that will involve representatives from the Texas Department of Transportation (TxDOT), Texas A&M University (TAMU), Brazos County, the Brazos Valley Metropolitan Planning Organization (BVMPO), the transit district, the City of College Station, the City of Bryan, and others to develop a concept for operating and managing traffic operations regionally in Brazos Valley. Part of this workshop will be to identify which activities and functions might benefit from regional coordination, the role of each agency in performing those functions, and the objectives that define the desired state of operations for the regional system in the future. TTI will use the results of the workshop to develop a concept of operations document that defines how the local agencies envision achieving these objectives in the context of a regional transportation operations system.

As part of this workshop, TTI, in conjunction with the local agencies, will assess the role that TTI's TransLink[®] Laboratory could potentially serve within the context of a regional operations concept. This potential role could include (1) continuing to function solely as a research and development laboratory not affiliated with local operations, (2) serving as a regional collector, analyzer, and distributor of local transportation operations data, and/or (3) serving as a regional operations center responsible for developing and implementing regional control decisions. As part of this assessment, the agencies will identify and assess the pros and cons associated with using TTI's TransLink[®] Laboratory in these different modes.

The result of this work shop will be: 1) a preliminary recommendation of the role for TransLink in regional traffic operations; and 2) a listing of the types of traffic operations strategies (e.g., improved signal timing) that might be realized through a regional traffic operations center.

Task 3. Identify the Physical Improvements Needed to Implement the Regional Operations Concept

Once the goals and operational objectives have been identified, TTI will work with the other partner agencies to identify the physical improvements that need to be made throughout the region. These include the facilities, equipment, systems, and services that need to be put in place to implement the vision. Examples of the types of physical improvements that will be identified include the following:

- The communications technologies and equipment needed to share and distribute data between agencies.
- The type and placement of roadside technologies that are needed to collect travel condition information and disseminate information to travelers in the region.
- The equipment and devices needed to implement the desired operational controls.
- The hardware and software required to monitor and manage traffic at a regional level.

These improvements will be related to the operational strategies that can be put in place once the improvements are provided. The costs (both capital and operating) associated with implementing these improvements will also be estimated.

Task 4. Estimate the Benefits Associated with Implementing Enhanced Traffic Operations Strategies in the Area

A comprehensive estimate will be provided showing the benefits resulting from implementing various traffic management strategies. These benefits will be key in making formal decisions as to which actions should be taken.

Task 5. Identify the Agreements and Procedures Needed to Implement the Regional Operations Concept

TTI will also work with the partner agencies to identify and establish the framework for developing the relationships, agreements, and procedures that need to be implemented to achieve the desired vision. Examples of the types of issues and topics to be addressed in this task include the following:

- Standard rules and procedures for operating the systems.
- Regional standards and protocols for data sharing, interfacing, and interoperability.
- Institutional agreements and arrangements for procurement, ownership, and control of envisioned systems.
- Agreements for ongoing maintenance and operations to achieve expected benefits.

Task 6. Identify the Resource Requirements to Implement and Operate the Regional Operations Concept

Along with the member partners, TTI will also examine the time, money, staff, equipment, and facility resources needed to actualize and sustain the concept of regional operations. Specific issues that will be addressed in this task include the following:

- How can resources be allocated to allow maintenance, upgrade and expansion of the system over time?
- What resources are needed to sustain and meet performance expectations?
- What are the staffing needs and alternatives to adequately operate the system?

TTI and the partner agencies will identify the avenues to pursue for providing a sustained funding stream to achieve the regional operational objectives. Examples of the types of funding mechanisms that will be examined include but are not limited to the following:

- Contributing agency budgeting resources and funds for a project that is under their control, yet also key to the regional operations initiative.
- Applying for state funds through the metropolitan planning process.
- Applying for federal monies by participating in initiatives and deployments.
- Securing federal earmark for regional transportation mobility improvements.

Task 7. Document Findings and Recommendations

TTI will prepare a final report documenting the findings of the study. TTI will work with staff representatives from the local agencies to develop recommendations and findings that are consistent with local desires and objectives. The final document will contain the following:

- A concept for regional operations of the transportation systems for the Brazos Valley.
- A plan and schedule for the development and deployment of infrastructure necessary to achieve this regional concept.
- Alternatives for staffing and operating the systems.
- A plan for securing funding for sustaining cooperative and collaborative operations and maintenance of the systems.

The final report will provide decision makers with data needed to make decisions as to how/whether to proceed with this concept. The costs and benefits of the alternative strategies will be provided as part of this study. Alternative roles for TransLink will be defined.

Participating agencies will be given an opportunity to review and comment on the report before it is submitted for consideration by the MPO Policy Board.

In addition to the final report, TTI will provide the MPO Policy Board with periodic updates of the status and preliminary findings throughout the duration of the project.

Project Guidance

TTI would like to establish both a policy and technical level advisory group to assist with the conduct of this study. The MPO Board might serve as the policy level oversight body. Each of the involved funding agencies might appoint someone to represent that agency on a technical advisory panel.

Schedule

A summary of the proposed schedule and major milestone delivery dates is provided.

Funding

TTI anticipates that a total of \$50,000 is needed to complete this study. TTI, on behalf of TAMU, is willing to contribute \$25,000 to conduct this study. The state agency and local agencies (TxDOT, City of Bryan, City of College Station and Brazos County) are being asked to provide the remainder of the funding for completing this study amounting to \$6,250 from each agency.

Figure 1. Schedule for Completing Development of a Concept for Regional Transportation Operations for the Brazos Valley

Task	Month 1				Month 2				Month 3				Month 4			
	Wk 1	Wk 2	Wk 3	Wk 4	Wk 1	Wk 2	Wk 3	Wk 4	Wk 1	Wk 2	Wk 3	Wk 4	Wk 1	Wk 2	Wk 3	Wk 4
Task 1. Conduct Inventory of Existing Agency Systems, Activities, and Responsibilities	■	■														
Task 2. Develop Concept for Providing Regional Transportation Operations			■	■												
Task 3. Identify Physical Improvements					■	■										
Task 4. Estimate Benefits									■	■						
Task 5. Identify Agreements and Procedures										■	■	■				
Task 6. Identify Resource Requirements													■	■		
Task 7. Document Finding															■	■

ATTACHMENT B
Interagency Cooperation Contract
Estimated Budget

TEXAS TRANSPORTATION INSTITUTE
 Estimated Budget for 9/1/05 to 12/31/2005
 Development of a Regional Transportation Operation Concept for Brazos Valley

Attachment B
P2005350

Principal Investigator: Kevin Balke

A. Direct Costs

1. Salaries and Wages*				
Professional Services	3.14 staff-mo	\$ 28,539		
Sub professional and Technical	0.00 staff-mo	\$ -		
Clerical Services**	0.60 staff-mo	\$ 1,370		
	TOTAL SALARIES AND WAGES			\$ 29,909
2. Fringe Benefits				
15.60% of Salaries and Wages (Non-Students)		\$4,666		
Health Insurance (Staff & Grads pre 9/1/04 @ \$380/person/month)		\$1,421		
	TOTAL FRINGE BENEFITS			\$6,087
3. Expendable Goods/Supplies				
Photographic Film, Supplies, and Processing		\$150		
	TOTAL SUPPLIES			\$150
4. Travel				
	(Out of State or Country travel may require special approval.)***			
	TOTAL TRAVEL			\$0
5a. Other Operating Expenses				
Reproduction		\$90		
	SUB-TOTAL OTHER OPERATING EXPENSES			\$90
5b. Other Operating Costs (NO INDIRECT)				
Computer Operations*****		\$1,082		
	SUB-TOTAL OTHER OPERATING EXPENSES (No Indirect)			<u>\$1,082</u>
	TOTAL OTHER OPERATING EXPENSES			\$1,172
6. Capital Equipment				
	TOTAL CAPITAL EQUIPMENT			\$0
7. Subcontract/Consultant				
	TOTAL SUBCONTRACT/CONSULTANT			<u>\$0</u>
	TOTAL DIRECT COSTS			\$ 37,318
B. Administrative Costs	45.5%	MODIFIED TOTAL DIRECT COST*****	\$36,236	\$16,487
Institutional Contribution*****	10.5%	MODIFIED TOTAL DIRECT COST*****	\$36,236	<u>(\$3,805)</u>
		TOTAL ADMINISTRATIVE COSTS		\$12,682
		NET COST		<u>\$ 50,000</u>
		TTI Available Funding		<u>(25,000)</u>
		Local Agency Funding		<u>\$ 25,000</u>

*All facilities and equipment necessary to accomplish the required work are available.
 The Texas A&M University System serves people of all ages, regardless of socioeconomic level, race, color, sex, religion, disability or national origin.*

- * Salary rates are estimated for budget purposes only. Reimbursement will be based on actual costs per employee in accordance with Performing Agency's payroll policy and salary rate.
- ** Clerical Staff are directly charged as the support required is significantly greater than the routine level of services provided by academic departments.
- *** The Performing Agency shall bill the Receiving Agency for actual travel expenses not to exceed the limits reimbursable under state law.
- ***** Includes computer use, leasing, maintenance, and network support services.
- ***** Excludes Capital Equipment, Computer Operations, Technical Support Services, and Contractual Services exceeding \$25,000.
- ***** Because of the many advantages to the Texas Transportation Institute of program continuity and stability, TTI will share in the cost of this project by contributing 10.5% of its federally approved administrative cost of 45.5% Modified Total Direct Cost.

ATTACHMENT C**Interagency Cooperation Contract
General Terms and Conditions****Article 1. Amendments**

This contract may only be amended by written agreement executed by both parties prior to the expiration of the contract.

Article 2. Disputes

The Performing Agency shall be responsible for the settlement of all contractual and administrative issues arising out of procurements entered in support of contract services.

Article 3. Records and Ownership

- A. The Performing Agency agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs at its office during the contract period and for four years from the date of final payment under the contract. These materials shall be made available for inspection and copying by the Receiving Agency, by the State Auditor's Office, and by their authorized representatives. If the contract is federally funded, these materials shall also be made available for inspection and copying by the U.S. Department of Transportation and by the Office of the Inspector General.
- B. After completion or termination of this contract, a copy of all documents prepared by the Performing Agency or furnished to the Performing Agency by the Receiving Agency shall be delivered to and become the property of the Receiving Agency. All sketches, photographs, calculations, and other data prepared under this contract shall be made available, on request, to the Receiving Agency without restriction or limitation of further use.

Article 4. Subcontracts

A subcontract may not be executed by the Performing Agency without prior written authorization by the Receiving Agency. Subcontracts in excess of \$25,000 shall contain all applicable terms and conditions of this contract. No subcontract will relieve the Performing Agency of its responsibility under this contract.

Article 5. Termination

This contract may be terminated by satisfactory completion of all services and obligations contained in this contract, by mutual written agreement, or by either party unilaterally after 30 days' written notice to the other party. The Receiving Agency shall compensate the Performing Agency only for those eligible expenses that are incurred during this contract and that are directly attributable to the completed portion of the work covered by this contract and only if the work has been completed in a manner satisfactory and acceptable to the Receiving Agency. The Performing Agency shall neither incur nor be reimbursed for any new obligations after the effective date of termination.

Article 6. Gratuities

Any person who is doing business with or who reasonably speaking may do business with the Receiving Agency under this contract may not make any offer of benefits, gifts, or favors to employees of the Receiving Agency. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Executive Director of the Texas Department of Transportation.

Article 7. No Assignment

Neither party shall assign, sublet, or transfer any interest in this agreement.

Article 8. Reference to Costs Principles and Circulars

Reimbursement with state or federal funds will be limited to costs determined to be reasonable and allowable under cost principles established in OMB Circular A-21, "Cost Principles for Educational Institutions," or OMB Circular A-87, "Cost Principles for State and Local Governments." The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

Article 9. Performing Agency Resources

All employees of the Performing Agency shall have adequate knowledge and experience to enable them to perform the duties assigned to them. The Performing Agency certifies that it currently has adequate qualified personnel in its employment to perform the work required under this contract or will be able to obtain adequate qualified personnel from sources other than the Receiving Agency. On receipt of written notice from the Receiving Agency detailing supporting factors and evidence, the Performing Agency shall remove from the project any employee of the Performing Agency who is incompetent or whose conduct becomes detrimental to the work. Unless otherwise specified, the Performing Agency shall furnish all equipment, materials, supplies, and other resources required to perform the work.

Article 10. Equal Employment Opportunity

The Performing Agency agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by Department of Labor regulations, 41 CFR Part 60. The Performing Agency agrees to consider minority universities for subcontracts when the opportunity exists. The Performing Agency warrants that it has developed and has on file appropriate affirmative action programs as required by applicable rules and regulations of the Secretary of Labor.

Article 11. Nondiscrimination

- A. The Performing Agency shall comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in federally-assisted programs, including 49 CFR, Part 21; 23 CFR, Subchapter C; and 41 CFR, Part 60-74 (the Regulations).
- B. The Performing Agency, with regard to the work performed during this agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment.
- C. In all solicitations either by competitive bidding or negotiation made by the Performing Agency for work to be performed under a subcontract, including procurements of materials and leases of equipment, but not including routine purchase orders, each potential subcontractor or supplier shall be notified by the Performing Agency of the Performing Agency's obligations under this agreement and the Regulations.
- D. The Performing Agency shall provide all information and reports required by the Regulations and directives issued under the Regulations and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the Texas Department of Transportation or the U.S. Department of Transportation to be pertinent to ascertain compliance with the Regulations or directives. If any information required of the Performing Agency is in the exclusive possession of another who fails or refuses to furnish this information, the Performing Agency shall so certify to the Texas Department of Transportation or the U.S. Department of Transportation, whichever is appropriate, and shall set forth what efforts the Performing Agency has made to obtain the requested information.

- E. In the event of the Performing Agency's noncompliance with the nondiscrimination provision of this agreement, the Texas Department of Transportation shall impose such sanctions as it or the U.S. Department of Transportation may determine to be appropriate.
- F. The Performing Agency shall include the provisions of paragraphs A through E in every subcontract, including procurements of materials and leases of equipment, except routine purchase orders, unless exempt by the Regulations or directives. The Performing Agency shall take such lawful action with respect to any subcontract or procurement as the Texas Department of Transportation may direct as a means of enforcing these provisions, including sanctions for noncompliance. In the event the Performing Agency becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of directions given by the Receiving Agency, the Performing Agency may request the Texas Department of Transportation to enter into the litigation to protect the interests of the State. In addition, the Performing Agency may request the United States to enter into litigation to protect the interests of the United States.

Article 12. Conflict of Interest

The Performing Agency shall not assign an employee to a project if the employee:

1. owns an interest in or is an officer or employee of a business entity that has or may have a contract with the state relating to the project;
2. has a direct or indirect financial interest in the outcome of the project;
3. has performed services regarding the subject matter of the project for an entity that has a direct or indirect financial interest in the outcome of the project or that has or may have a contract with the Receiving Agency; or
4. is a current part-time or full-time employee of the Receiving Agency.

Article 13. Additional Work

- A. If the Performing Agency is of the opinion that any assigned work is beyond the scope of this contract and constitutes additional work, it shall promptly notify the Receiving Agency in writing. The written notice shall present the relevant facts and show how the work constitutes additional work.
- B. If the Receiving Agency in its sole discretion finds that the work does constitute additional work, the Receiving Agency shall so advise the Performing Agency and a written amendment will be executed. The Performing Agency shall not perform any proposed additional work or incur any additional costs before the execution of an amendment.
- C. The Receiving Agency shall not be responsible for actions by the Performing Agency or for any costs incurred by the Performing Agency relating to additional work that is performed before an amendment is executed or that is outside the scope of the contract, as amended.

Article 14. Nonconforming Work

If the Performing Agency submits work that does not comply with the terms of this contract, the Receiving Agency shall instruct the Performing Agency to make any revisions that are necessary to bring the work into compliance with the contract. No additional compensation shall be paid for this work.

Article 15. Authority of 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. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. After receiving a written request from the Receiving Agency, the Performing Agency shall furnish the Receiving Agency with satisfactory proof of its compliance with this Article.

Article 17. Invalidity

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

Article 18. Written Notice

Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein.

Texas Transportation Institute
3135 TAMU _____
College Station, Texas 77843-3135
Attn: Kevin Balke _____

City of College Station
P. O. Box 9960
College Station, Texas 77842-9960
Attn: City Manager

Article 19. Entire Agreement

It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

Article 20. Dispute

The dispute resolution process provided for in Title 10 Chapter 2260 of the Texas Government Code shall be used, as further described herein, by the Performing Agency and the Receiving Agency to attempt to resolve any claim for breach of contract made by the Receiving Agency:

A Receiving Agency's claim for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Texas Government Code. To initiate the process, the Receiving Agency shall submit written notice, as required by subchapter B, to Mr. Don Bugh, Executive Associate Director, Texas Transportation Institute. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives

of the Performing Agency and the Receiving Agency otherwise entitled to notice under the parties= contract. Compliance by the Receiving Agency with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

The contested case process provided in Chapter 2260, subchapter C, of the Texas Government Code is the Receiving Agency's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the Performing Agency if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.

Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by either party nor any other conduct of any representative of either party relating to the contract shall be considered a waiver of sovereign immunity to suit.

Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Performing Agency, in whole or in part.

The designated individual responsible on behalf of the Performing Agency for examining any claim or counterclaim and conducting any negotiations related thereto as required under '2260.052 of H.B. 826 of the 76th Texas Legislature shall be Mr. Don Bugh, Executive Associate Director, Texas Transportation Institute, MS 3135, Texas A&M University, College Station, Texas 77843-3135.

Article 21. Place of Performance

Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

Article 22. Authority to Enter Contract

Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective organizations.

Article 23. Waiver

Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of each party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

Article 24. Agreement Read

The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

Article 25. Assignment

This Agreement and the rights and obligations contained herein may not be assigned by either party without the prior written approval of the other party.

Article 26. Multiple Originals

It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.