

STATE OF TEXAS       §

COUNTY OF TRAVIS    §

**LOCAL TRANSPORTATION PROJECT  
NON-CONSTRUCTION ADVANCE FUNDING AGREEMENT  
For An  
INTELLIGENT TRANSPORTATION SYSTEMS (ITS) DEPLOYMENT PROJECT**

**THIS AGREEMENT** (Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation (State), City of Austin (Local Government).

**BACKGROUND**

Federal law establishes federally funded programs for transportation improvements to implement its public purposes, including the *ITS Deployment Program*. Federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds. The Texas Transportation Commission passed Minute Order **108995**, which provides for development of and funding for the Project identified in this Agreement. The Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance dated **[INSERT DATE OF LOCAL GOVERNMENT RESOLUTION OR ORDINANCE]**, which is attached and is made part of the Agreement as Attachment A.

**THEREFORE**, in consideration of the mutual promises contained in this Agreement, the parties agree to the following.

**AGREEMENT**

**1. Period of the Agreement**

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the close of ordinary business on **March 31, 2013.**

**2. Scope of Work**

The scope of work is the Project as detailed in Attachment B, which is attached and made part of this Agreement.

**3. Local Project Sources and Uses of Funds**

- A. The total estimated cost of the Project is shown in Attachment C, which is attached and made part of this Agreement. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work performed before the issuance of a formal Letter of Authority by the Federal Highway Administration. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal Letter of Authority is formally issued.

If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, **the Local Government must complete training**

**before a letter of authority is issued.** Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

- B. The State will be responsible for securing the Federal and State share of the funding required for the Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis. The Local Government will be responsible for all non-federal and non-State participation costs associated with the Project, including any overruns in excess of the approved local Project budget. If the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification. The State will not pay interest on any funds provided by the Local Government.
- C. The Local Government shall request payment by submitting the original of an itemized invoice in a form acceptable to the State. The Local Government may submit an invoice no more frequently than monthly and no later than ninety days after incurring a cost. Each invoice shall itemize charges and shall attach documentation showing the name, hourly rate, and number of hours worked for all labor charges, the basis for allocation of any indirect costs, and copies of invoices for any direct costs over \$1,000.
- D. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. These funds may only be applied to the Project. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government, the State, or the Federal government will be promptly paid by the owing party. After final Project accounting, if excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.
- E. If the Project has been approved for a fixed price or incremental payments under 43 TAC §15.52, Attachment C will clearly state the amount of the fixed price or the incremental payment schedule. If the Local government is an Economically Disadvantaged County and if the State has approved adjustments to the standard financing arrangement, Attachment C will reflect those adjustments.
- F. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Agreement or indirectly through a subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a subcontract under this Agreement 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. An entity that is the subject of an audit or investigation must

provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

- G. 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.

#### **4. Termination**

This Agreement may be terminated:

- a. by mutual consent of the parties;
- b. by one party because of a material breach by the other party, in which case the breaching party shall pay any costs incurred because of the breach; or
- c. by the State if the Local Government elects not to provide its share of funding, in which case the Local Government shall pay for the State's reasonable actual costs during the Project.

#### **5. Amendments**

Amendments to this Agreement shall be in writing and shall be executed by both parties.

#### **6. Remedies**

This Agreement shall not be considered as specifying the exclusive remedy for any default. All legal remedies may be pursued by either party and shall be cumulative.

#### **7. Notices**

All notices to either party by the other under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following addresses:

<b>Local Government:</b>	<b>State:</b>
The City of Austin	Director of Contract Services
Director of Transportation	Texas Department of Transportation
PO Box 1088	125 E. 11th
Austin, Texas 78767-1088	Austin, Texas 78701

All notices shall be deemed given on the date delivered or deposited in the mail. 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 notices shall be delivered personally or by certified U.S. mail, and the request shall be carried out by the other party.

#### **8. Legal Construction**

If any provision in this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement. In that case, this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

**9. Responsibilities of the Parties**

Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is responsible for its own acts and deeds and for those of its agents, servants, or employees.

**10. Ownership of Documents**

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government.

**11. 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 State, the Local Government shall furnish the State with satisfactory proof of its compliance with this Article.

**12. Sole Agreement**

This Agreement supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

**13. Cost Principles**

To be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87.

**14. Procurement and Property Management Standards**

The parties shall comply with the procurement standards established in 49 CFR §18.36, the property management standard established in 49 CFR §18.32, and the supply standard established in 49 CFR § 18.33.

**15. Inspection of Books and Records**

The parties shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make those materials available to the State and the Local Government. If the Agreement involves federal funds, the same materials shall be made available to the Federal Highway Administration (FHWA), the U.S. Office of the Inspector General, and their authorized representatives for review and inspection. Records shall be maintained for four (4) years from the termination of this Agreement or until any related litigation or claims are resolved, whichever is later. Additionally, the State, the Local Government, the FHWA, and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

Whenever American Recovery and Reinvestment Act of 2009 (ARRA) funds are used and the Local Government is performing any work, either directly or through a contractor, it must comply with the following provisions. If a Local Government is receiving ARRA funds, but is not performing any work, the following provisions apply, if appropriate, and to the extent necessary to comply with ARRA regulations.

In accordance with Section 902 of the ARRA, should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

- a. examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and
- b. interview any officer or employee of the contractor or any of its subcontractors, or any State or local agency administering the contract regarding such contracts.

Nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of the Comptroller General.

In accordance with Section 1515(a) of the ARRA, with respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

- a. to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to and involve transactions relating to the contract, subcontract, grant, or subgrant; and
- b. to interview any officer or employee of the contractor, grantee or subgrantee, or agency regarding such transactions.

Section 1515(b) further provides that nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of an inspector general.

The ARRA requires that the Contractor report monthly employment information for its firm as well as that of all of its subcontractors. The Contractor, similarly, shall include this reporting requirement in all of its subcontracts. Failing to include the requirement in agreements with subcontractors can serve as grounds for contract termination.

Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the LG (Local Government). It is the responsibility of the LG to obtain this form from the prime Contractor and any subcontractors and, the LG shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The LG shall ensure that this form is submitted by the LG to the State according to the policies and at the direction of the State.

In order to meet any other FHWA and ARRA reporting requirements, the LG shall provide to the State all information requested by the State, including data or information in possession of contractors and subcontractors for completing other necessary reporting forms, and the information shall be submitted in the manner required and according to all due dates as set by the State.

Furthermore, the ARRA mandates that the U.S. Comptroller General's Office shall have authority to examine the records of the contractor, subcontractor, or local agency relating to the project at any time.

#### **16. Office of Management and Budget (OMB) Audit Requirements**

The parties shall comply with the requirements of the Single Audit Act of 1984, 31 USC §7501 et seq., and with the coverage stipulated in OMB Circular A-133.

Whenever funds from the American Recovery and Reinvestment Act of 2009 (ARRA) are distributed to a Local Government, the Local Government must complete its Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC), as required by OMB Circular A-133, and separately identify any ARRA expenditures for Federal Awards.

**17. Civil Rights Compliance**

The Local Government shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination, 49 CFR Chapter 21 and 23 CFR §710.405(B), and with Executive Order 11246, as amended by Executive Order 11375 and supplemented in 41 CFR Part 60.

**18. Disadvantaged Business Enterprise Program Requirements**

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26.

**19. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

**20. Lobbying Certification**

In executing this Agreement, the signatories certify to the best of their knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

By executing this Agreement, the parties affirm this lobbying certification with respect to the individual projects and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**21. Signatory Warranty**

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

**THEREFORE**, the parties have executed this Agreement in duplicate originals.

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**THE STATE OF TEXAS**

\_\_\_\_\_  
Janice Mullenix,  
Director of Contract Services  
Texas Department of Transportation

\_\_\_\_\_  
Date

# **ATTACHMENT A**

## **Resolution or Ordinance**

DRAFT



## **ATTACHMENT B SCOPE OF WORK**

The Local Government will hire a system integrator to furnish, install, implement, and integrate Advanced Transportation Management System (ATMS) software with Center to Center (C2C) communication capability, based on National Transportation Communications For ITS Protocol (NTCIP) to support the following tasks:

Development, implementation, and integration of a template for traffic adaptive/responsive mode of operation; and development and implementation of traffic responsive/adaptive signal timing plans for 25 signalized intersections along IH-35 service roads, retrieving and utilizing detector data from TxDOT detectors. This will integrate the TxDOT freeway management system with the Local Government's traffic signal system.

Development, implementation, and integration of a preemption and priority module to integrate operation of Bus Rapid Transit (BRT) or emergency vehicles within the proposed ATMS system. This task includes identification and recommendation of all required hardware needed for GPS-enable route preemption treatment.

The system integrator will also design and implement a web page for the Local Government's transportation department. The web page will be used to disseminate traffic information to the motoring public.

The system integrator shall provide training for both engineering and maintenance staffs during each aspect of implementation and system operations.

The system integrator will provide a summary report evaluating the benefits of the project.

TxDOT's role in this project is limited to oversight of the federal earmark project for the purpose of administering the federal funds and to ensure conformance to federal guidelines and standards are followed.

## ATTACHMENT C PROJECT BUDGET

A Federal ITS Deployment Program earmark and an equal match from the Local Government were approved by Minute Order #108995 (8/29/02) for total funding of \$831,942. The Local Government's participation is 50% of the cost of this project and federal participation is 50%. The project estimate is as follows:

Description	Total Estimated Cost	Federal Participation	Local Participation
Consultant Software Modification	\$249,583	\$174,708	\$74,875
Integrate State owned intersections on IH-35 with COA traffic signal system	\$166,388	\$116,472	\$49,917
Traffic Signal Preemption and Priority Operation, Bus Rapid Transit (BRT)	\$207,985		\$207,985
City Transportation Web Page	\$207,985	\$124,791	\$83,194
<b>TOTAL</b>	<b>\$831,942</b>	<b>\$415,971</b>	<b>\$415,971</b>

Final participation amounts will be based on actual charges to the project with Federal participation limited to \$415,971.