



**Interlocal Agreement
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 36
AGENDA DATE: Thu 05/12/2005
PAGE: 1 of 2**

SUBJECT: Approve negotiation and execution of an Advance Funding Agreement with the Texas Department of Transportation for the construction of Joe Tanner Lane Low Water Crossing Improvements as part of the US 290 West expansion, east of Williamson Creek to west of RM 1826, in the estimated amount of \$128,400 with a contingency in the amount of \$38,520 for a total funding in the amount of \$166,920.00 subject to a right of termination in the City.

AMOUNT & SOURCE OF FUNDING: Funding in the amount of \$166,920 is available in the 2003-2004 Amended Capital Budget of the Watershed Protection and Development Review Department.

FISCAL NOTE: A fiscal note is attached.

REQUESTING Watershed Protection and **DIRECTOR'S**
DEPARTMENT:Development Review **AUTHORIZATION:** Joe Pantalion

FOR MORE INFORMATION CONTACT: Arthur Romero, P.E. 974-3353; George Oswald, P.E. 974-3369

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

Texas Department of Transportation's (TxDOT) improvements of US-290-W, east of Williamson Creek to west of RM-1826 highway improvements will encompass the City's Joe Tanner Lane Low Water Crossing Improvements. The proposed low water crossing improvements consist of construction of eight additional 8' by 4' concrete box culverts to reduce the frequency of Joe Tanner Lane closure due to flooding by Williamson Creek. The City and TxDOT have agreed to include the construction of the low water crossing improvements work in the TxDOT construction contract in order to coordinate the joint construction of both projects. TxDOT requires funding of the improvements in advance of construction.

A preliminary engineering study was conducted by Alan Plummer and Associates with the goal of reducing the frequency of Joe Tanner Lane low water crossing flooding to the maximum extent achievable within TxDOT's US-290-W project construction limits. The proposed construction of eight additional 8' by 4' concrete box culverts was recommended by this study. This will significantly reduce the frequency of roadway closing due to high-water conditions. A construction cost estimate of \$128,400 was provided in the engineering report.

The TxDOT Advance Funding requires that the City be prepared to address project construction costs which may exceed the preliminary estimate of \$128,400. In the event that the City does not have sufficient funding for the Project, it may terminate the Agreement and pay TxDOT its cost incurred prior to termination. Final cost will be determined based on actual construction bid and construction change orders. Therefore, a 30% contingency is included in this authorization.



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Estimated Construction Cost	\$ 128,400.00	
Contingency		\$ 38,520.00
Total		\$ 166,920.00



Texas Department of Transportation

P.O. DRAWER 15426 • AUSTIN, TEXAS 78761-5426 • (512) 832-7000

April 8, 2005

County: Travis
CSJ: 0113-08-060, etc
Location: US 290 E of Williamson Creek to
W of RM 1826
Improvements at Joe Tanner Lane

Tom Forrest
Assistant, Public Works
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088


Dear Mr. Forrest:

Pursuant to a request by Arthur Romero of the City's Watershed and Protection Department, enclosed are two Advance Funding Agreements for hydraulic improvements on the above referenced project. These agreements are a result of a request by George Oswald, for additional box culverts at Joe Tanner Lane. Original Agreements were transmitted to your office by letter dated January 27, 2005 and again March 28, 2005.

Please return the two signed and dated documents to my attention for final processing. A fully executed agreement will be returned for your records. A check made payable to the Texas Department of Transportation, in the amount of \$128,400.00, is due immediately upon receipt of a fully executed agreement.

If you have any questions, please contact me at (512) 832-7050. Your assistance is appreciated.

Sincerely,


Patricia L. Crews-Weight, P.E.
District Design Engineer

Attachments

cc: George Oswald, P. E., COA

THE STATE OF TEXAS §
THE COUNTY OF TRAVIS §

 **ORIGINAL**

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY
LOCAL GOVERNMENT CONTRIBUTIONS
TO TRANSPORTATION IMPROVEMENT
PROJECTS WITH NO REQUIRED MATCH**

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 Austin, acting by and through its duly authorized officials, hereinafter called the "Local Government."

WITNESSETH

WHEREAS, Transportation Code, Chapters 201, 221, 227, and 361, authorize the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

WHEREAS, Government Code, Chapter 791, and Transportation Code, §201.209 and Chapter 221, authorize the State to contract with municipalities and political subdivisions; and,

WHEREAS, Commission Minute Order Number 109862 authorizes the State to undertake and complete a highway improvement generally described as construct 6-lane freeway facility with frontage roads; 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 additional hydraulic improvements, 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 necessary right-of-way and utility adjustments needed for performance of the work on sites not owned or to be acquired by the State.

If right-of-way is required, the State shall prepare right-of-way maps, property descriptions and other data needed, utilizing all applicable laws governing the acquisition policies for acquiring real property. Tracings of the maps shall be retained by the State for its records.

If the proposed construction requires the adjustment, removal or relocation of any utility facilities, the State and/or its consultant shall establish the necessary utility work and notify the appropriate utility company to design and schedule their adjustments. Removal or relocation of such utilities shall be in accordance with applicable laws, regulations, policies and procedures.

Article 4. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

Article 5. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. If requested by the State, the Local Government shall deliver to the State electronic versions of mapping files, design survey files, plan sheet files, design files and design cross-section files in Microstation/JDT(.dgn) format. This requirement applies whether the local government 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 government. 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

The Local Government shall be responsible for maintenance of locally owned roads after completion of the work and the State shall be responsible for maintenance of state highway system after completion of the work if the work was on the state highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

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 agreement 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.

- ◆ 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.

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:
Sondra Creighton, P.E. Director, Public Works City of Austin P.O. Box 1088 Austin, Texas 78767-1088	Robert B. Daigh, P.E. Austin District Engineer P.O. Drawer 15426 Austin, Texas 78761-5426

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 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. Insurance

If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

Article 17. 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 _____

By _____ Date _____

Typed or Printed Name and Title _____

ATTACHMENT A

Payment Provisions and Work Responsibilities

Payment Provisions

The Local Government will pay for the cost of eight extra concrete boxes to be placed under Joe Tanner Lane. The Local Government's participation is 100% of the cost of this particular improvement. The estimated cost of this item is \$128,400.00.

The Local Government will transmit to the State, with the return of this Agreement executed by the Local Government, a warrant or check in the amount of \$128,400.00, made payable to the "Texas Department of Transportation". It is further understood that the State will include only those items for the improvements as requested and required by the Local Government. This is a construction estimate only; final participation amounts will be based on actual charges to the project.

Work Responsibilities

Proposed improvements will be done by the State.

K AUSTIN

Leuthan Lane Reservoir

N

Oak Hill

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290

71

WEDGEWOOD

LEGEND PAKS

WESTERN