



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

**AGENDA ITEM NO.: 28
AGENDA DATE: Thu 12/15/2005
PAGE: 1 of 2**

SUBJECT: Approve a resolution authorizing execution of an Interlocal Agreement with the Texas Department of Transportation to provide funds received from the Domain Shopping Center, L.P., for construction of an auxiliary acceleration/deceleration lane on the Loop 1 frontage road.

AMOUNT & SOURCE OF FUNDING: \$602,148.89 has been provided by The Domain Shopping Center, L.P., to be deposited into an escrow account for this project.

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Public Works
DEPARTMENT:

**DIRECTOR'S
AUTHORIZATION:** Sondra Creighton

FOR MORE INFORMATION CONTACT: Richard Kroger 974-7219; Laura Bohl 974-7064

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

The Domain Shopping Center, L.P., desires that an auxiliary acceleration/deceleration lane be constructed on the Loop 1 southbound to northbound frontage road from the U-turn at MoPac railroad to the existing northernmost entry driveway to the Domain campus located at 11400 Burnet Road to provide for turning movements into and out of the proposed development.

Because the proposed improvements are in the State of Texas (State) right-of-way, it is necessary that the State implement the construction project. The State is prohibited from directly entering into contracts with private entities for construction in State right-of-way. In order to construct the improvements it is thus necessary for the City of Austin to enter into an agreement with the developer to receive their funds for the project and to enter into an agreement with the State to provide funds received from the developer for the project.

The State will bid this project. The agreement with the State is nominally for the \$428,087 total of the engineer's construction estimate, as well as construction engineering, inspection, administration, and indirect costs based upon the engineer's estimate. However, because the City will be billed based upon the actual bid price, and a recent project required that we return to Council because the bid was nearly 50% over estimate, authorization to remit to the State funds from the developer up to the \$602,148.89 total initially received for construction, State fees, and construction contingency is sought. Any funds not expended for the project, including interest on funds in escrow, will be returned to the Domain Shopping Center, L.P., after completion of the project, less City administrative and indirect costs not to exceed \$17,406.17.



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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 108812 authorizes the State to undertake and complete a highway improvement generally described as frontage road improvements; 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 construction of auxiliary lanes on LP 1 frontage road at the Domain development between Duval and the UPRR, 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.

Article 4. Adjustments Outside the Project Site

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.

Article 5. 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 6. 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/J©(.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 7. 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 8. 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 current *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 9. 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 thirty (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, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if 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 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 but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

Article 10. 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 11. 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.

12. 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 13. 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 14. 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 15. Amendments

By mutual written consent of the parties, this contract may be amended prior to its expiration.

Article 16. 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. 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.

Article 17. 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 18. 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

The Local Government will pay for the cost of the roadway improvements on LP 1 northbound frontage road at the Domain Development between Duval and the UPRR. The Local Government's participation is 100% of the cost of the Project. The Local Government's estimated cost of this work is \$428,087.00 for construction items, construction engineering and inspection, administration costs and indirect costs. (Estimated bid items are attached.) The State has estimated the project to be as follows:

Description	Total Estimate Cost	State Participation		Local Participation	
		%	Cost	%	Cost
Construction of auxiliary lanes on frontage road between Duval and UPRR	\$348,123	0%	\$0.00	100%	\$348,123
Subtotal	\$348,123		\$0.00		\$348,123
Construction Engineering and Inspection (16%)	\$55,700	0%	\$0.00	100%	\$55,700
Administration Costs (3%)	\$10,444	0%	\$0.00	100%	\$10,444
Indirect State Costs (3.97%)	\$13,820	0%	\$0.00	100%	\$13,820
TOTAL	\$428,087		\$0.00		\$428,087

Construction Engineering & Inspection and Administration Costs will be based on actual charges.

Local Government's Participation (100%) = \$428,087.00

It is understood that the proposed improvements will be done by the State and 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 \$24,264.00 made payable to the "Texas Department of Transportation" for Administration Costs and Indirect Costs to be used solely for the cost of improvements as requested by the Local Government and to activate the project. 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. The balance of the Estimate will be due prior to the State's Advertisement of the Letting.

Work Responsibilities

1. Environmental Requirements

- A. The Local Government shall prepare the appropriate environmental documentation and secure environmental clearance for the Project. Preparation and coordination of the environmental documentation shall be through the TxDOT Austin District Environmental Coordinator at (512) 832-7168.

- B. To the extent required to complete the Project, the Local Government will be responsible for the mitigation and remediation of any environmental problems associated with the development of the Project. All costs associated with the remediation of the environmental problems will be the responsibility of the Local Government.
- C. The Local Government shall provide to the State written certification from the appropriate regulatory agency(s) that all environmental problems have been remedied, prior to the State advertising for bids.

2. Engineering Services

- A. The Local Government shall prepare or cause to be prepared the engineering plans, specifications, and estimates (PS&E) necessary for the development of the Project. The PS&E shall be prepared in accordance with all applicable laws, policies and regulations, deemed necessary by the State.
- B. The engineering plans shall be developed in accordance with the Texas Department of Transportation *Roadway Design Manual*, the current edition of the *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* and the Texas Accessibility Standards.
- C. The Local Government shall submit the completed PS&E to the State for review and approval twenty weeks prior to the State's anticipated bid opening date. Should the State determine that revisions are required to the documents, the Local Government shall make the necessary revisions, in accordance with the required dates as outlined in the State's current PS&E Review and Processing Schedule.

RESOLUTION NO. _____

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
AUSTIN:**

The City Manager is authorized to execute an interlocal agreement with the Texas Department of Transportation to provide funds received by the City from The Domain Shopping Center, L.P., to the Texas Department of Transportation for construction of an auxiliary acceleration/deceleration lane on the Loop 1 frontage road.

ADOPTED: _____, 2005
ATTEST: _____

Shirley A. Brown
City Clerk

**Estimated Construction Costs
LP 1 at the Domain Development**

ITEM NO.	DES CODE	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
100	2002	PREP ROW	STA	21.2	\$644.54	\$13,664.25
104	2022	REMOV CONC (CURB & GUTTER)	LF	2077	\$4.34	\$9,014.18
110	2001	EXCAVATION (ROADWAY)	CY	3739	\$8.36	\$31,258.04
132	2003	EMBANKMENT (FINAL)(ORD COMP)(TY B)	CY	606	\$7.30	\$4,423.80
160	2003	FURNISHING AND PLACING TOPSOIL (CL 2)4"	SY	3576	\$1.71	\$6,114.96
162	2002	BLOCK SODDING	SY	903	\$5.65	\$5,101.95
164	2001	CELL FBR MLCH SEED (PERM)(RURAL)(SANDY)	SY	3576	\$0.10	\$357.60
168	2001	VEGETATIVE WATERING	MG	100	\$17.68	\$1,768.00
247	2060	FL BS (CMP IN PLC)(TY e GR 4)(FNAL POS)	CY	1150	\$40.00	\$46,000.00
310	2005	PRIME COAT (MC-30 OR AE-P)	GAL	690	\$2.08	\$1,435.20
340	2004	D-GR HMA (METH)(TY-A) PG64-22	TON	610	\$75.00	\$45,750.00
340	2050	D-GR HMA (METH)(TY-C) PG70-22	TON	305	\$70.00	\$21,350.00
500	2001	MOBILIZATION	LS	1	\$20,000.00	\$20,000.00
502	2001	BARRICADES, SIGNS AND TRAF HNDLG	MO	3	\$3,000.00	\$9,000.00
529	2004	CONC CURB & GUTTER (TY II)	LF	2473	\$14.00	\$34,622.00
530	2010	DRIVEWAYS (CONC)	SY	547	\$52.56	\$28,750.32
644	2001	INS SM RD SN SUP & AM TY 10BWG(1)SA(P)	EA	9	\$344.61	\$3,101.49
658	2318	INST OM ASSM (OM-22)(FLX)SRF	EA	1	\$50.00	\$50.00
666	2003	REFL PAV MRK TY I (W) 4" (BRKN)(100 MIL)	LF	842	\$0.34	\$286.28
666	2012	REFL PAV MRK TY I (W)4"(SLD)(100MIL)	LF	335	\$0.29	\$97.15
666	2030	REFL PAV MRK TY I (W)(8") (DOT)100MIL)	LF	504	\$0.90	\$453.60
666	2036	REFL PAV MRK TY I (W)(8") (SLD)(100 MIL)	LF	1404	\$0.66	\$926.64
666	2048	REFL PAV MRK TY I (W)(24") (SLD)(100 MIL)	EA	528	\$4.75	\$2,508.00
666	2054	REFL PAV MRK TY I (W)(ARROW)(100 MIL)	EA	6	\$80.09	\$480.54
666	2096	REFL PAV MRK TY I (W)(WORD)(100 MIL)	EA	6	\$137.55	\$825.30
666	2142	REFL PAV MRK TY I I(W) 4" (BRKN)	LF	842	\$0.28	\$235.76
666	2145	REFL PAV MRK TY I I(W)4"(SLD)	LF	335	\$0.16	\$53.60
666	2151	REFL PAV MRK TY II (W)(8") (DOT)	LF	504	\$0.35	\$176.40
666	2153	REFL PAV MRK TY II (W)(8") (SLD)	LF	1404	\$0.46	\$645.84
666	2157	REFL PAV MRK TY II (W)(24") (SLD)	LF	528	\$2.10	\$1,108.80
666	2160	REFL PAV MRK TY II (W)(ARROW)	EA	6	\$29.70	\$178.20
666	2173	REFL PAV MRK TY II(W)(WORD)	EA	6	\$39.46	\$236.76
672	2017	REFL PAV MRK TY II-C-R	EA	42	\$3.05	\$128.10
SUBTOTAL						\$290,102.76
CONTINGENCY (20%)						\$58,020.55
TOTAL ESTIMATED BID ITEMS						\$348,123.31