

CSJ #0914-04-240  
District # 14 - Austin  
Code Chart 64 #02100  
Slaughter Lane RM 1826 to 1-35

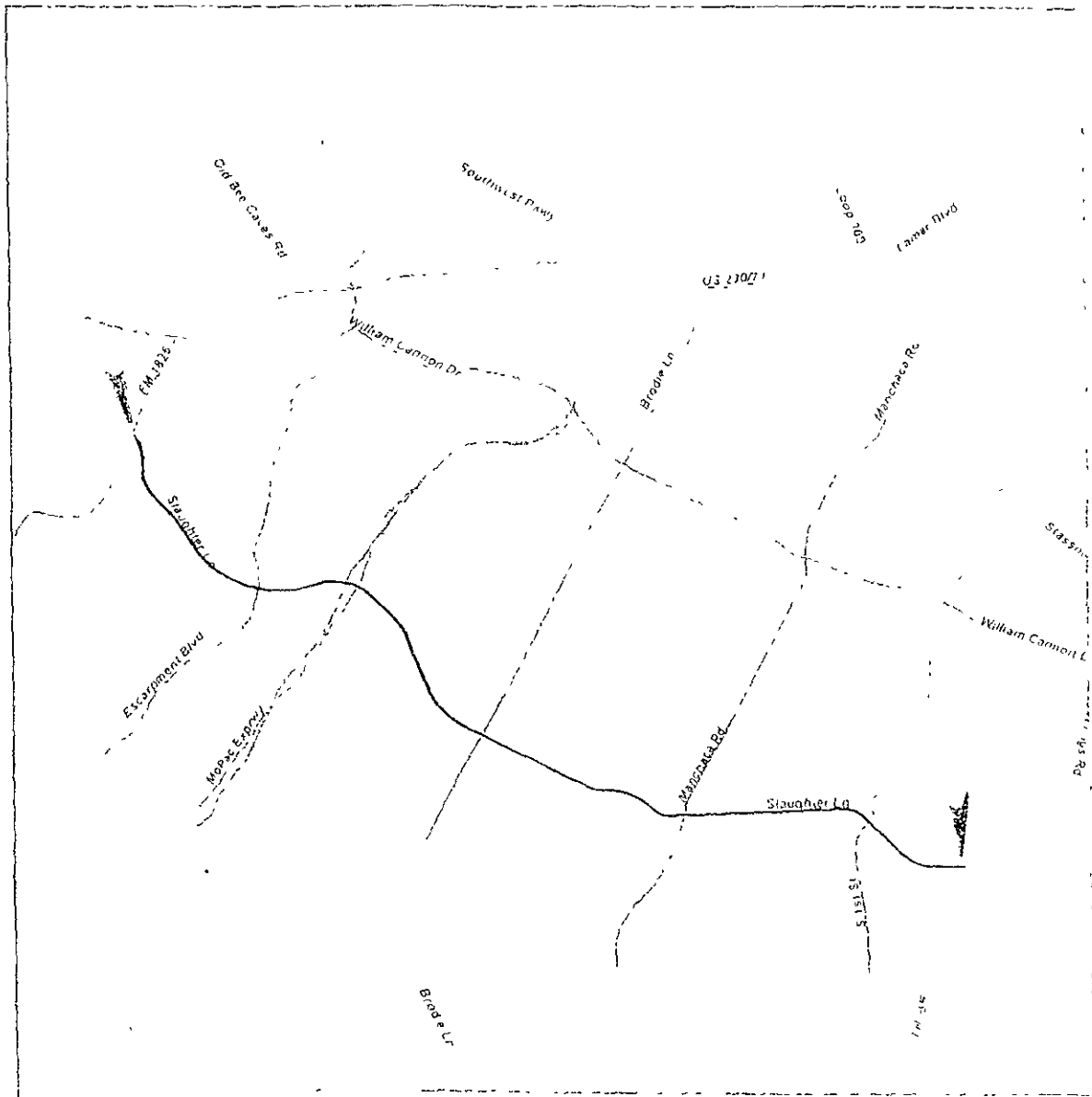
## **ATTACHMENT A**

### **Resolution or Ordinance**

CSJ #0914-04-240  
District # 14 - Austin  
Code Chart 64 #02100  
Slaughter Lane RM 1826 to I-35

## ATTACHMENT B

### Location Map Showing Project



TXDOT CSJ 0914-04-240  
Slaughter Lane RM 1826 to IH-35

## ATTACHMENT C

### Project Budget

The Local Government will participate in the cost of guardrail improvement and safety treatment of fixed objects on Slaughter Lane from RM 1826 to I-35, which is an off-system location. The Local Government's participation is 10% of the cost of this particular improvement and the other 90% will be paid for with federal funds. The Local Government's estimated participation of this additional work is \$14,751, including preliminary engineering, construction items, engineering and contingencies including construction inspection, and administration costs. The State has estimated the project to be as follows

Description	Total Estimate Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
CONSTRUCTION COSTS							
Guardrail improvement and safety treatment of fixed objects	\$112,600	90%	\$101,340	0%	\$0	10%	\$11,260
Preliminary Engineering (including plan review)(15%)	\$16,890	90%	\$15,201	0%	\$0	10%	\$1,689
Construction Engineering and Inspection (16%)	\$18,016	90%	\$16,214	0%	\$0	10%	\$1,802
Subtotal	\$147,506		\$132,755		\$0		\$14,751
Indirect State Costs (no local participation required except for service projects)	\$0		\$0		\$0		\$0
TOTAL	\$147,506		\$132,755		\$0		\$14,751

**Preliminary and Construction Engineering Costs will be based on actual charges.**

**Local Government's Participation (10%) = \$14,751**

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 an estimate only, final participation amounts will be based on actual charges to the project.



# Texas Department of Transportation

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

August 28, 2006

Travis County  
CSJ- 0914-04-239  
Yager Lane LP 275 to FM 734

David Gerard  
Transportation Engineering Division Manager  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-1088

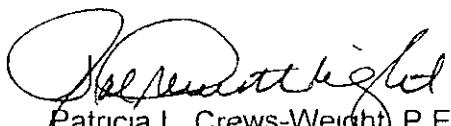
Dear Mr. Gerard:

Enclosed are two original Advance Funding Agreements for a Hazard Elimination/Safety Project Off-System for the above project. The Project consists of the construction of guardrail improvements and the safety treatment of fixed objects.

Please return two signed and dated documents for further processing by this office. An executed copy will be returned for your records. A minimum of \$1,249 made payable to the Texas Department of Transportation Trust Fund will be required prior to any preliminary engineering work done by the State. The amount of the latest engineers estimate including engineering and contingencies will be required prior to the State's advertisement for bids.

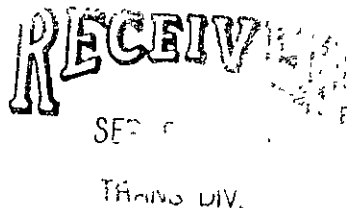
If you have any questions, please contact me at 832-7050. Your assistance is appreciated.

Sincerely,

  
Patricia L. Crews-Weight, P.E.  
Director of Design

Attachment

cc: Terry McCoy, PE  
Mike Walker  
Chris Hatla



STATE OF TEXAS §

COUNTY OF TRAVIS §

 **ORIGINAL**

**LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENT  
For A  
Hazard Elimination/Safety Project (Off-System)**

**THIS AGREEMENT (the 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**, federal law establishes federally funded programs for transportation improvements to implement its public purposes; and

**WHEREAS**, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments, and

**WHEREAS**, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

**WHEREAS**, the Texas Transportation Commission passed Minute Order 108812, authorizing the State to undertake and complete a highway improvement generally described as hazard elimination and,

**WHEREAS**, the Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance dated \_\_\_\_\_ which is attached hereto and made a part hereof as Attachment A for guardrail improvement and safety treatment of fixed objects at the location shown on the Map in Attachment B hereinafter referred to as the Project

**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, it is agreed as follows:

**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 Project is completed or unless terminated as provided below.

## **2. Scope of Work**

Guardrail improvement and safety treatment of fixed objects as shown on Attachment B

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

- a The total estimated cost of the Project is shown in the Project Budget - Attachment C which is attached hereto and made a part hereof. The expected cash contributions from the federal or State government, the Local Governments, or other parties is shown in Attachment C. The State will pay for only those project costs that have been approved by the Texas Transportation Commission. Any work done prior to federal authorization will not be eligible for reimbursement. It is the Local Government's responsibility to verify with the State that the Federal Letter of Authority has been issued for the work covered by this Agreement.
- b This project cost estimate shows how necessary resources for completing the project will be provided by major cost categories. These categories may include but are not limited to (1) costs of real property; (2) costs of utility work, (3) costs of environmental assessment and remediation, (4) cost of preliminary engineering and design, (5) cost of construction and construction management; and (6) any other local project costs.
- c The State will be responsible for securing the Federal and State share of the funding required for the development and construction of the local project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- d The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, including any overruns in excess of the approved local project budget unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement.
- e Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering for the project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction cost.
- f In the event that 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.
- g 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. Funds in the escrow account may only be applied to the State Project.
- h 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.  
If, after final Project accounting, 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.

- i. The State will not pay interest on any funds provided by the Local Government
- j. If a waiver has been granted, the State will not charge the Local Government for the indirect costs the State incurs on the local project, unless this Agreement is terminated at the request of the Local Government prior to completion of the project
- k. If the project has been approved for a "fixed price" or an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the amount of the fixed price or the incremental payment schedule
- l. If the Local government is an Economically Disadvantaged County and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments
- m. 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.

The State will not execute the contract for the construction of the project until the required funding has been made available by the Local Government in accordance with this Agreement

#### **4. Termination of this Agreement**

This Agreement shall remain in effect until the project is completed and accepted by all parties, unless:

- a. the Agreement is terminated in writing with the mutual consent of the parties,
- b. the Agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or
- c. the Local Government elects not to provide funding after the completion of preliminary engineering, specifications and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project

#### **5. Amendments**

Amendments to this Agreement due to changes in the character of the work or terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment

#### **6. Remedies**

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative

#### **7. Utilities**

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and

procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

**8. Environmental Assessment and Mitigation**

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects

- a. The State is responsible for the identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement
- b. The Local Government is responsible for the cost of any environmental problem's mitigation and remediation
- c. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment. Public hearings will not be held prior to the approval of project schematic.
- d. The State is responsible for the preparation of the NEPA documents required for the environmental clearance of this project.

**9. Compliance with Texas Accessibility Standards and ADA**

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA)

**10. Architectural and Engineering Services**

The State has responsibility for the performance of architectural and engineering services

The design shall conform to the criteria in the State's *Roadway Design Manual*, and the engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*, and the special specifications and special provisions related thereto

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases

Professional services contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters.



**11. Construction Responsibilities**

- a The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- b The State will use its approved contract letting and award procedures to let and award the construction contract.
- c Prior to their execution, the Local Government will be given the opportunity to review contract change orders that will result in an increase in cost to the Local Government.
- d Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
- e For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Part B.

**12. Project 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.

**13. Right of Way and Real Property**

The Local Government is responsible for the provision and acquisition of any needed right of way or real property.

**14. 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, 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.

**15. Legal Construction**

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision

**16. 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

**17. 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 their 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.

**18. Compliance with Laws**

The parties shall comply with all Federal, State, and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

**19. Sole Agreement**

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

**20. Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the Project.

**21. Procurement and Property Management Standards**

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

**22. Inspection of Books and Records**

The parties to this Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, and 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

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

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.

**24. 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 Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

**25. Disadvantaged Business Enterprise Program Requirements**

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

**26. 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."

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 in accordance with Title 49 CFR Part 29 (Debarment and Suspension)

**27. Lobbying Certification**

In executing this Agreement, the signatories certify to the best of his or her 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.

**28. 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.

**29. Signatory Warranty**

The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

**IN TESTIMONY HEREOF**, the parties hereto have caused these presents to be executed in duplicate counterparts.

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

**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

\_\_\_\_\_  
Janice Mullenix  
Director of Contract Services Section  
Office of General Counsel  
Texas Department of Transportation

\_\_\_\_\_  
Date

CSJ #0914-04-239  
District # 14 - Austin  
Code Chart 64 #02100  
Yager Lane LP 275 to FM 734

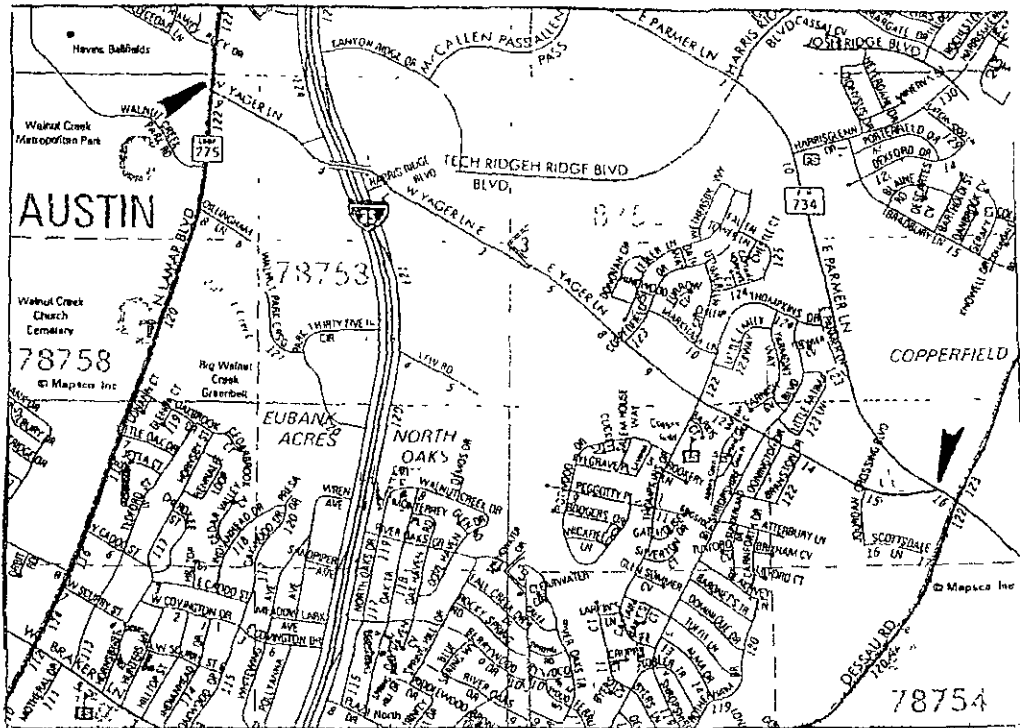
## **ATTACHMENT A**

### **Resolution or Ordinance**

CSJ #0914-04-239  
District # 14 - Austin  
Code Chart 64 #02100  
Yager Lane: LP 275 to FM 734

## ATTACHMENT B

### Location Map Showing Project



TXDOT CSJ: 0914-04-239  
Yager Lane, Loop 275 (Lamar Blvd.) to FM 734 (Parmer Lane)

## ATTACHMENT C

### Project Budget

The Local Government will participate in the cost of guardrail improvement and safety treatment of fixed objects on Yager Lane from LP 275 to FM 734, which is an off-system location. The Local Government's participation is 10% of the cost of this particular improvement and the other 90% will be paid for with federal funds. The Local Government's estimated participation of this additional work is \$10,912, including preliminary engineering, construction items, engineering and contingencies including construction inspection, and administration costs. The State has estimated the project to be as follows:

Description	Total Estimate Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
CONSTRUCTION COSTS							
Guardrail improvement and safety treatment of fixed objects	\$83,300	90%	\$74,970	0%	\$0	10%	\$8,330
Preliminary Engineering (including plan review)(15%)	\$12,495	90%	\$11,246	0%	\$0	10%	\$1,249
Construction Engineering and Inspection (16%)	\$13,328	90%	\$11,995	0%	\$0	10%	\$1,333
Subtotal	\$109,123		\$98,211		\$0		\$10,912
Indirect State Costs (no local participation required except for service projects)	\$0		\$0		\$0		\$0
TOTAL	\$109,123		\$98,211		\$0		\$10,912

Preliminary and Construction Engineering Costs will be based on actual charges.

Local Government's Participation (10%) = \$10,912

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 an estimate only, final participation amounts will be based on actual charges to the project.





# Texas Department of Transportation

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

August 29, 2006

Travis County  
CSJ 0914-04-235  
Pleasant Valley Rd Cesar Chavez to Riverside

David Gerard  
Transportation Engineering Division Manager  
City of Austin  
P O Box 1088  
Austin, Texas 78767-1088

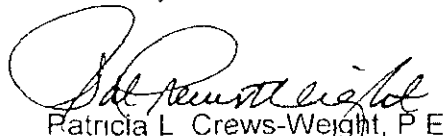
Dear Mr Gerard

Enclosed are two original Advance Funding Agreements for a Hazard Elimination/Safety Project Off-System for the above project. The Project consists of the construction of guardrail improvements and the safety treatment of fixed objects.

Please return two signed and dated documents for further processing by this office. An executed copy will be returned for your records. A minimum of \$1,417 made payable to the Texas Department of Transportation Trust Fund will be required prior to any preliminary engineering work done by the State. The amount of the latest engineers estimate including engineering and contingencies will be required prior to the State's advertisement for bids.

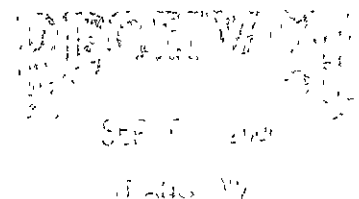
If you have any questions, please contact me at 832-7050. Your assistance is appreciated.

Sincerely,

  
Patricia L. Crews-Weight, P.E.  
Director of Design

Attachment

cc Terry McCoy, PE  
Mike Walker  
Chris Hatla



STATE OF TEXAS       §

COUNTY OF TRAVIS    §

 **ORIGINAL**

**LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENT**

**For A  
Hazard Elimination/Safety Project (Off-System)**

**THIS AGREEMENT (the 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**, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

**WHEREAS**, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

**WHEREAS**, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

**WHEREAS**, the Texas Transportation Commission passed Minute Order 108812, authorizing the State to undertake and complete a highway improvement generally described as hazard elimination and,

**WHEREAS**, the Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance dated \_\_\_\_\_ which is attached hereto and made a part hereof as Attachment A for guardrail improvement and safety treatment of fixed objects at the location shown on the Map in Attachment B hereinafter referred to as the Project

**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, it is agreed as follows

**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 Project is completed or unless terminated as provided below

## 2. Scope of Work

Guardrail improvement and safety treatment of fixed objects as shown on Attachment B

## 3. Local Project Sources and Uses of Funds

- a The total estimated cost of the Project is shown in the Project Budget - Attachment C which is attached hereto and made a part hereof. The expected cash contributions from the federal or State government, the Local Governments, or other parties is shown in Attachment C. The State will pay for only those project costs that have been approved by the Texas Transportation Commission. Any work done prior to federal authorization will not be eligible for reimbursement. It is the Local Government's responsibility to verify with the State that the Federal Letter of Authority has been issued for the work covered by this Agreement.
- b This project cost estimate shows how necessary resources for completing the project will be provided by major cost categories. These categories may include but are not limited to: (1) costs of real property, (2) costs of utility work, (3) costs of environmental assessment and remediation, (4) cost of preliminary engineering and design, (5) cost of construction and construction management, and (6) any other local project costs.
- c The State will be responsible for securing the Federal and State share of the funding required for the development and construction of the local project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- d The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, including any overruns in excess of the approved local project budget unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement.
- e Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering for the project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction cost.
- f In the event that 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.
- g 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. Funds in the escrow account may only be applied to the State Project.
- h 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.  
If, after final Project accounting, 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.

- i The State will not pay interest on any funds provided by the Local Government.
- j If a waiver has been granted, the State will not charge the Local Government for the indirect costs the State incurs on the local project, unless this Agreement is terminated at the request of the Local Government prior to completion of the project
- k If the project has been approved for a "fixed price" or an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the amount of the fixed price or the incremental payment schedule
- l If the Local government is an Economically Disadvantaged County and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments
- m 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

The State will not execute the contract for the construction of the project until the required funding has been made available by the Local Government in accordance with this Agreement

#### **4. Termination of this Agreement**

This Agreement shall remain in effect until the project is completed and accepted by all parties, unless

- a the Agreement is terminated in writing with the mutual consent of the parties,
- b the Agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party, or
- c. the Local Government elects not to provide funding after the completion of preliminary engineering, specifications and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project

#### **5. Amendments**

Amendments to this Agreement due to changes in the character of the work or terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

#### **6. Remedies**

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative

#### **7. Utilities**

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and

procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

#### **8. Environmental Assessment and Mitigation**

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- a. The State is responsible for the identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- b. The Local Government is responsible for the cost of any environmental problem's mitigation and remediation.
- c. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment. Public hearings will not be held prior to the approval of project schematic.
- d. The State is responsible for the preparation of the NEPA documents required for the environmental clearance of this project.

#### **9. Compliance with Texas Accessibility Standards and ADA**

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

#### **10. Architectural and Engineering Services**

The State has responsibility for the performance of architectural and engineering services.

The design shall conform to the criteria in the State's *Roadway Design Manual*, and the engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*, and the special specifications and special provisions related thereto.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases.

Professional services contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters.

**11. Construction Responsibilities**

- a The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- b The State will use its approved contract letting and award procedures to let and award the construction contract.
- c Prior to their execution, the Local Government will be given the opportunity to review contract change orders that will result in an increase in cost to the Local Government.
- d Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
- e For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Part B.

**12. Project 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.

**13. Right of Way and Real Property**

The Local Government is responsible for the provision and acquisition of any needed right of way or real property.

**14. 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, 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.

**15. Legal Construction**

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision

**16. 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

**17. 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 their 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

**18. Compliance with Laws**

The parties shall comply with all Federal, State, and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance

**19. Sole Agreement**

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter

**20. Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the Project

**21. Procurement and Property Management Standards**

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32

**22. Inspection of Books and Records**

The parties to this Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, and 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

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

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

**24. 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 Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60)

**25. Disadvantaged Business Enterprise Program Requirements**

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

**26. 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 "

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 in accordance with Title 49 CFR Part 29 (Debarment and Suspension).

**27. Lobbying Certification**

In executing this Agreement, the signatories certify to the best of his or her 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

**28. 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.

**29 Signatory Warranty**

The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

**IN TESTIMONY HEREOF**, the parties hereto have caused these presents to be executed in duplicate counterparts

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

**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

\_\_\_\_\_  
Janice Mullenix  
Director of Contract Services Section  
Office of General Counsel  
Texas Department of Transportation

\_\_\_\_\_  
Date

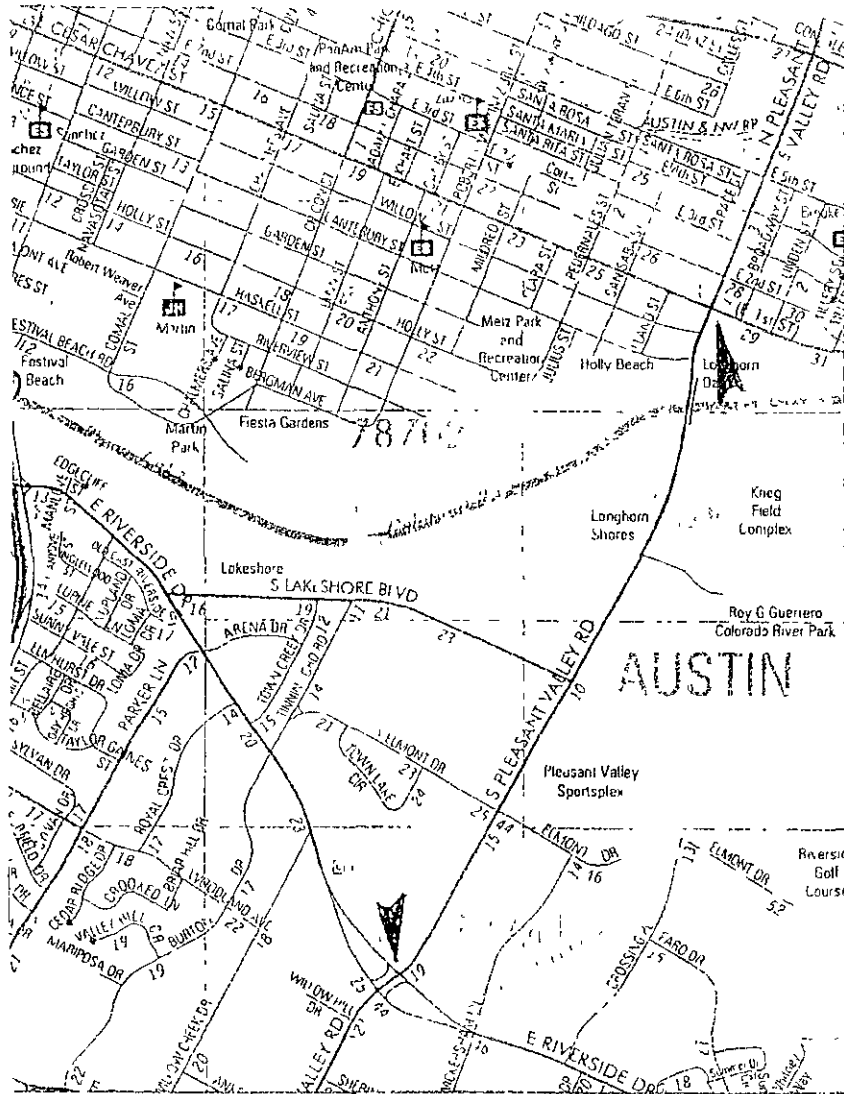
CSJ #0914-04-235  
District # 14 - Austin  
Code Chart 64 #02100  
Pleasant Valley Rd Cesar Chavez to Riverside

## **ATTACHMENT A**

### **Resolution or Ordinance**

## ATTACHMENT B

### Location Map Showing Project



TXDOT CSJ: 0914-04-235  
Pleasant Valley Rd: Cesar Chavez to Riverside

## ATTACHMENT C

### Project Budget

The Local Government will participate in the cost of guardrail improvement and safety treatment of fixed objects on Pleasant Valley Road from Cesar Chavez to Riverside Drive, which is an off-system location. The Local Government's participation is 10% of the cost of this particular improvement and the other 90% will be paid for with federal funds. The Local Government's estimated participation of this additional work is \$12,379, including preliminary engineering, construction items, engineering and contingencies including construction inspection, and administration costs. The State has estimated the project to be as follows:

Description	Total Estimate Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
CONSTRUCTION COSTS							
Guardrail improvement and safety treatment of fixed objects	\$94,500	90%	\$85,050	0%	\$0	10%	\$9,450
Preliminary Engineering (including plan review)(15%)	\$14,175	90%	\$12,758	0%	\$0	10%	\$1,417
Construction Engineering and Inspection (16%)	\$15,120	90%	\$13,608	0%	\$0	10%	\$1,512
Subtotal	\$123,795		\$111,416		\$0		\$12,379
Indirect State Costs (no local participation required except for service projects)	\$0		\$0		\$0		\$0
TOTAL	\$123,795		\$111,416		\$0		\$12,379

Preliminary and Construction Engineering Costs will be based on actual charges.

Local Government's Participation (10%) = \$12,379

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 an estimate only, final participation amounts will be based on actual charges to the project.