



**RCA
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 12
AGENDA DATE: Thu 01/27/2005
PAGE: 1 of 1**

SUBJECT: Authorize execution of an agreement with TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT) for connecting Tech Ridge Boulevard, East of IH 35, with the proposed bridge structure designated as Yager Lane Bridge in an amount not to exceed \$597,418.

AMOUNT & SOURCE OF FUNDING: Funding is available from an escrow account collected from the developer, Quentin, Ltd., to pay for this work.

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: Tom Forrest, 974-2244; Laura Bohl, 974-7064

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

The Texas Department of Transportation (TxDOT) has a policy wherein a request by a private entity to construct improvements within state-maintained right-of-way must be sponsored by the local government through an Advanced Funding Agreement with TxDOT.

Quentin Ltd. proposes connecting Tech Ridge Boulevard, East of IH 35, with the proposed bridge structure designated as Yager Lane Bridge. Under this agreement, TxDOT will construct the improvements and the City will pay for the improvements using the funds provided by the developer and held in escrow by the City. The City will not be required to fund the improvements from funding other than that provided by the developer.

Quentin Ltd. has deposited funding in the amount of \$665,187 to cover all TxDOT engineering, contingency, administrative and contingency fees and the City's administrative and contingency fees. The City will hold the funds until requested by TxDOT.



Texas Department of Transportation

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

December 1, 2004

County: Travis
Highway: IH 35 @ Yager Lane
CSJ: 0015-13-259

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

RECEIVED

DEC. 08 2004

PROJ.MGMNT/ENG.SVCS.
DIVISION

Dear Mr. Forrest:

Enclosed are two revised original counterparts of an agreement for the above referenced project. This agreement replaces the agreement transmitted to you via memo dated October 4, 2004.

Please return the two signed documents to my attention for final execution. A fully executed agreement will be returned for your records. A check made payable to the Texas Department of Transportation, in the amount of \$597,418.00, 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: Joe Seago, P.E., N. Travis Area Office

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 109667 authorizes the State to undertake and complete a highway improvement generally described as replace bridge and approaches ; 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 connecting an existing roadway located at Tech Ridge, East of IH 35 with a proposed bridge structure designated as Yager Lane Bridge, 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 & Utilities

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 the proposed construction requires the adjustment, removal or relocation of any utility facilities, the Local Government and/or its consultant shall establish the necessary utility work and notify the appropriate utility company to design and schedule their adjustments. The Local Government shall be responsible for all costs associated with the adjustments not assumed by the utility company. Removal or relocation of such utilities shall be in accordance with applicable laws, regulations, policies and procedures. In the event additional utilities are required to be adjusted, removed or relocated during the construction of the Project, the Local Government will be responsible for all costs associated with the additional utility work within its jurisdiction.

Article 4. Responsibilities of the Parties

The Local Government acknowledges that while it is not an agent, servant, nor employee of the State, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work on the Project.

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. 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

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 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 PO 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 Provision
and Work Responsibilities**

Project Description

Connect existing Tech Ridge, East of IH 35, with the new Yager Lane Bridge structure alignment crossing over IH 35, in the City of Austin. The connection will end at the TxDOT right of way, east of the proposed northbound IH 35 Frontage Road.

Work Responsibilities

1. Environmental Requirements

- A. The State shall prepare or cause to be prepared the appropriate environmental documentation and secure environmental clearance for the Project.
- 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.

2. Engineering Services

The State shall prepare or cause to be prepared the engineering plans, specifications, and estimates (P.S. & E.) necessary for the development of the Project. The P.S. & E. shall be prepared in accordance with all applicable laws, policies and regulations, deemed necessary by TxDOT.

3. Construction Responsibilities

- A. The State shall advertise for construction bids, issue bid proposals, receive and tabulate bids and award/reject a contract for construction in accordance with applicable procedures and laws. Actual construction shall be performed by contract, awarded by the competitive bidding process.
- B. The State shall supervise and inspect all work performed by the contractor and provide the necessary engineering, inspection and testing services required to ensure that the construction of the Project is accomplished in accordance with the approved P.S. & E.

4. Maintenance Responsibilities

Upon completion of the Project, the State shall assume responsibility for the maintenance of the completed facility that is located on-system.

Payment Provisions

This is a fixed price agreement. The Local Government shall contribute \$597,418.00 towards the total project costs. Costs are estimated as shown:

Bid Items (from attached breakdown)	=	\$ 451,794
Preliminary Engineering Costs (10%)	=	<u>\$ 45,179</u>
Subtotal	=	\$ 496,973
Construction Inspection & Testing (10.5%)	=	<u>\$ 52,182</u>
Subtotal	=	\$ 549,155
TxDOT Administration Costs (3%)	=	<u>\$ 16,475</u>
Subtotal	=	\$ 565,630
Indirect Costs (current rate of 5.62%)		<u>\$ 31,788</u>
Total Cost	=	\$ 597,418

The Local Government shall submit a check, made payable to the Texas Department of Transportation, in the amount of \$597,418.00, within thirty (30) days of receiving an executed agreement.

Yager Lane Estimated Construction Cost - Quentin Corp.

ITEM NO.	DES CODE	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
100	502	PREP ROW	STA	6	\$1,500	\$8,250
110	501	EXCAVATION (RDWY)	CY	6962	\$4.90	\$34,114
132	509	EMBANK (DENS CONT)(TY C)(CL 3)	CY	8084	\$8.00	\$64,672
160	506	FURN & PLAC TPSL (CL 2)(4")	SY	9349	\$0.81	\$7,573
164	517	BRDCST SEED (Warm)(Temp)	SY	3302	\$0.12	\$396
164	519	Brdcst Seed (Temp)(Cool)	SY	3302	\$0.12	\$396
164	541	Brdcst Seed (Perm)(Urban)(Clay)	SY	9349	\$0.20	\$1,870
166	509	Fertilizer (13-13-13)	TON	0.6	\$319.10	\$185
168	501	VEGETATIVE WATERING	MG	187	\$12	\$2,244
168	502	Vegetative Watering (Temp Erosn Contr)	MG	93.5	\$12	\$1,122
247	579	FL BS (COMP IN PLAC)(TY D GR 2 CL4)	CY	2210	\$22.00	\$48,620
316	520	ASPH (HFRS-2P)	GAL	2655	\$1.40	\$3,717
316	528	AGGR (TY PB GR 4)	CY	55	\$44.76	\$2,462
402	501	TRENCH EXCAV PROTECTION	LF	140	\$1.40	\$196
423	501	RETAINING WALL (MSE)	SF	2253	\$24.07	\$54,230
432	501	Riprap (Conc)(CL B)(5 in)	CY	112	\$245	\$27,440
450	514	RAIL (TY C501)	LF	273	\$67	\$18,291
464	503	RC PIPE (CL III)(18 IN)	LF	109	\$33	\$3,597
464	505	RC PIPE (CL III)(24 IN)	LF	183	\$45	\$8,235
464	526	RC Pipe (CL IV)(60 in)	LF	39	\$135	\$5,265
465	3712	INLET (COMPL)(CURB)(TY II)(5 FT)	EA	2	\$3,500	\$7,000
500	501	MOBILIZATION (10%)	LS		\$41,072	\$41,072
529	532	CONC CURB AND GUTTER (TY II)	LF	2074	\$8.25	\$17,113
531	536	Conc Sidewalk (5")	SY	614	\$24.00	\$14,736
538	505	ROW MARKERS (FURN & INSTALL)(TY II)	EA	2	\$155	\$310
618	511	CONDUIT (PVC)(SCHD 40)(2")	LF	112	\$4.25	\$476
624	507	GROUND BOX TY B	EA	1	\$500	\$500
644	614	SMALL RDSG SGN ASSM TY10 BWG(1)SA(P)	EA	3	\$309	\$927
666	501	REFL PAV MRK TY I (W)(4 IN)(SLD)	LF	60	\$0.40	\$24
666	502	REFL PAV MRK TY I (W)(4 IN)(BRK)	LF	540	\$0.45	\$243
666	506	REFL PAV MRK TY I (W)(8 IN)(SLD)	LF	1261	\$1.00	\$1,261
666	535	REFL PAV MRK TY II (W)(4 IN)(SLD)	LF	60	\$0.25	\$15
666	536	REFL PAV MRK TY II (W)(4 IN)(BRK)	LF	540	\$0.30	\$162
666	539	REFL PAV MRK TY II (W)(8 IN)(SLD)	LF	1261	\$0.60	\$757
672	510	RAIS PAV MRKR CL B (REFL)TY II-C-R	EA	26	\$3.50	\$91
678	501	Pav Surf Prep for Mrks (4")	LF	600	\$0.03	\$18
679	503	Pav Surf Prep for Mrks (8")	LF	1261	\$0.07	\$88
684	544	Traf Sig Cbl (TY C)(2 cond)(14 awg)	LF	112	\$0.70	\$78
688	511	Veh Det (sawcut)(14 awg XHHW)	LF	209	\$6.00	\$1,254
3146	564	HOT MIX (TY C)(SURF)(PG 64-22)	TON	597	\$35.	\$20,895
3146	735	HOT MIX (TY A)(BASE)(PH 64-22)	TON	1493	\$33	\$49,269
5012	501	Bkhoe Work (Erosn Cont) (CL 1)	HR	3	\$65	\$195
5012	503	Blading Work (Erosn Cont)(CL 1)	HR	3	\$68	\$204
5012	504	Bldr Work (Erosn Cont)(CL 1)	HR	3	\$55	\$165
5249	501	TEMP SEDMT CONT FENCE	LF	704	\$2	\$1,408
5249	502	TEMP SEDMT CONT FENCE (REMOV & REPLAC)	LF	204	\$1.50	\$306
5249	503	TEMP SEDMT CONT FENCE (REMOV)	LF	704	\$0.50	\$352
ESTIMATED PROJECT TOTAL						\$451,794.00