



## Item 11

# Travis County Commissioners Court Agenda Request

**Meeting Date:** March 5, 2013

**Prepared By:** Steve Manilla **Phone #:** 854-9429

**Division Director/Manager:**

**Department Head/Title:** Steven M. Manilla, P.E., County Executive-TNR

**Sponsoring Court Member:** Commissioner Daugherty, Precinct Three

### **AGENDA LANGUAGE:**

Consider and take appropriate action on the following requests:

A) Termination of 2011 Advance Funding Agreement for Voluntary Local Government Contributions to Transportation Improvement Projects with No Required Match On-System for improvements at intersection of SH71 and US290W

; and

B) Approval of new Advance Funding Agreement for Voluntary Local Government Contributions to Transportation Improvement Projects with No Required Match On-System for improvements at intersection of SH71 and US290W

In Precinct 3 .

### **BACKGROUND/SUMMARY OF REQUEST:**

In late 2011 the Court approved an "Advance Funding Agreement for Voluntary Local Government Contributions to Transportation Improvement Projects with no Required Match On System". The improvements include constructing a modified Continuous Flow Intersection at US290W at SH71. The improvements are intended to reduce traffic congestion at this intersection resulting in an improved level of service. The improvements are temporary in that the effectiveness of them will decrease as traffic volumes increase, however they will help to relieve congestion until the long term improvements at this intersection are completed or are well underway. The funding partners include the County at \$1.5M, the City of Austin at \$4.0M, and TxDOT providing design and construction management services.

TxDOT has advised that it has become necessary to amend the contract to include federal funding participation towards the construction cost. With approval of amendment No. 1 the contract will be terminated. Part (B) of this request is the replacement contract for the original terminated contract. The responsibilities of the County will not change. The funding will still be fixed at \$1.5 mil. The only revisions made were to change from TxDOT's "voluntary" type of contract to one with all of the federal provisions since the State will now have a stake in funding the construction of the project. TNR has already delivered its cost share to TxDOT where it will be held until the new AFA is approved by both parties.

**STAFF RECOMMENDATIONS:**

The proposed amendment does not change Travis County's responsibilities or fund amount. Staff recommends approval of (A) to terminate the existing AFA, (B) to approve a resolution to enter into a new AFA, and (C) to approve a new AFA.

**ISSUES AND OPPORTUNITIES:**

The intersection of SH71 with US290W is one of the most congested intersections in the county. TxDOT is currently working to develop and implement long term solutions which TxDOT anticipates occurring around 2020 if funding is available. As an interim measure to relieve congestion TxDOT will be making several improvements including converting the SH71/US290W intersection to a Continuous Flow Intersection. The effectiveness of these improvements will degrade as traffic volumes increase but they are anticipated to relieve congestion and improve level of service for seven to ten years.

**FISCAL IMPACT AND SOURCE OF FUNDING:**

The Court approved the use of \$1.5M in 2000 bond funds for this project when the original AFA was presented for approval in late 2011. The \$1.5 million has been transferred to TX DoT on Travis County check 1023509.

**EXHIBITS/ATTACHMENTS:**

- Original AFA
- Amendment #1 to original AFA
- New AFA.

**REQUIRED AUTHORIZATIONS:**

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429

**CC:**


: :  
0101 - Administrative Svs-

**RESOLUTION TO ENTER INTO ADVANCE FUNDING AGREEMENT  
WITH TEXAS DEPARTMENT OF TRANSPORTATION  
TO CONSTRUCT A MODIFIED CONTINUOUS FLOW INTERSECTION  
AT US 290 AND SH 71**

**WHEREAS**, pursuant to Texas Transportation Code Section 222.052, Travis County is authorized to contribute funds to be spent by the Texas Transportation Commission (the "Commission") in the development and construction of the public roads and state highway system within the County, and the Commission may accept such a contribution;

**WHEREAS**, Travis County and the State of Texas, by and through the Texas Department of Transportation ("TxDOT"), entered into an Advance Funding Agreement for Voluntary Local Government Contributions to Transportation Improvement Projects with No Required Match On-System on December 29, 2011 under which Travis County would contribute a fixed participation amount of \$1,500,000.00 for construction of modified continuous flow intersections at US 290 at SH 71 (the "2011 Agreement");

**WHEREAS**, pursuant to the 2011 Agreement, Travis County has tendered a payment of \$1,500,000.00 to TxDOT;

**WHEREAS**, on April 26, 2012, the Commission passed Minute Order 113074 authorizing the State of Texas, acting by and through TxDOT, to undertake a highway improvement project for the construction of modified continuous flow intersections on US 290 at SH 71 (the "Project");

**WHEREAS**, TxDOT has informed Travis County that the Project will now include federal funding participation and that TxDOT wishes to terminate the 2011 Agreement and replace it with a new contract entitled "Advance Funding Agreement for a Local Government Contributions Rehabilitation Project On-System" to add federal funding participation to the Project (the "2013 Agreement");

**WHEREAS**, just as in the 2011 Agreement, the 2013 Agreement provides that Travis County would contribute a fixed participation amount of \$1,500,000.00, pursuant to 43 TEX. ADMIN. CODE sec. 15.52, for construction of the Project;

**WHEREAS**, the Travis County Commissioners Court finds that the construction of modified continuous flow intersections on US 290 at SH 71 would facilitate the movement of people, goods, and services in Travis County and would benefit the residents of Travis County;

**WHEREAS**, it is the understanding of the Travis County Commissioners Court that the \$1,500,000.00 previously paid by Travis County pursuant to the 2011 Agreement will be used by TxDOT to fulfill the County's obligation under the 2013 Agreement to contribute a fixed participation amount of \$1,500,000.00 for construction of the Project.

**NOW, THEREFORE**, subject to the understanding of the Travis County Commissioners Court that the \$1,500,000.00 that Travis County has previously submitted to TxDOT satisfies the County's obligation under the 2013 Agreement to contribute a fixed participation amount of \$1,500,000.00 for construction of the Project, the Travis County Commissioners Court hereby authorizes the Travis County Judge to execute the 2013 Agreement on behalf of Travis County.

BE IT SO ORDERED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

By: \_\_\_\_\_  
Samuel T. Biscoe, County Judge

\_\_\_\_\_  
Ron Davis, Commissioner  
Precinct 1

\_\_\_\_\_  
Sarah Eckhardt, Commissioner  
Precinct 2

\_\_\_\_\_  
Gerald Daugherty, Commissioner  
Precinct 3

\_\_\_\_\_  
Margaret Gómez, Commissioner  
Precinct 4



CODE: 9125

## Texas Department of Transportation

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

January 25, 2013

RECEIVED

JAN 30 2013

TNR

Travis County  
CSJ: 0113-08-076  
US 290 at SH 71

Steve Manilla, P.E.  
Executive Manager  
Travis County  
P.O. Box 1748  
Austin, Texas 78767-1748

Dear Mr. Manilla:

Enclosed are two copies of Amendment No. 1 to the Advance funding agreement executed on December 29, 2011 for the above referenced project. The project consists of constructing a modified continuous flow intersection at US 290 and SH 71 in Austin. It has become necessary to amend the contract to include federal funding participation towards the construction cost. With this amendment No. 1 the contract will be terminated. A new funding agreement with revised funding participations and provisions will be sent to the county.

Please return the two signed and dated documents to my attention for further execution. A fully executed agreement will be returned for your records.

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

Sincerely,

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

### Attachments

cc: Donald Nyland, P.E.  
Christine Connor, P.E.  
Marisabel Z. Ramthun, P.E.

#### THE TEXAS PLAN

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STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT  
AMENDMENT #1**

**THIS AMENDMENT** is made by and between the State of Texas, acting through the Texas Department of Transportation, called the State, and Travis County, acting by and through duly authorized officials, called the Local Government.

**W I T N E S S E T H**

**WHEREAS**, the State and the Local Government executed a contract on the 29<sup>th</sup> of December of 2011 to effectuate their agreement to provide a modified continuous flow intersection at US 290 and SH 71 in Austin; and,

**WHEREAS**, the City of Austin and Travis County were fully funding the project and the State will now participate which will require additional contract provisions; and,

**WHEREAS**, it has become necessary to amend that contract;

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties, the State and the Local Government do agree as follows:

**A G R E E M E N T**

**1. Description of Amended Items**

Terminate the contract due to changes in funding participation to include federal funds.

In accordance with Article 11 of the original contract, the contract will terminate effective when signed by the last party who's signing makes this amendment fully executed and after a new advanced funding agreement reflecting revised funding participations and provisions is fully executed.

**2. Signatory Warranty**

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

CSJ #0113-08-076  
District # 14 - AUS  
Code Chart 64 #50227  
US 290 AT SH 71  
Federal Highway Administration  
CFDA # 20.205  
Not Research and Development

**THIS AGREEMENT IS EXECUTED** by the State and the Local Government in duplicate.

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**THE STATE OF TEXAS**

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

\_\_\_\_\_  
Date




# Texas Department of Transportation

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

February 8, 2013

Travis County  
CSJ: 0113-08-076  
US 290 at SH 71

Steve Manilla, P.E.  
Executive Manager  
Travis County  
P.O. Box 1748  
Austin, Texas 78767-1748

Dear Mr. Manilla: 

Enclosed are two copies of an Advance Funding Agreement for the Project referenced above. The project consists of constructing a modified continuous flow intersection at US 290 and SH 71 in Austin with plan, environmental clearance preparation, and construction contract administration to be provided by the State. This agreement replaces the previous agreement executed on December 29, 2011 for which an amendment to terminate was sent to you on January 25, 2013. This agreement adds State funding participation towards the construction cost of the project.

Please return the two signed and dated documents to my attention for further execution. A fully executed agreement will be returned for your records.

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

Sincerely,



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

## Attachments

cc: Donald Nyland, P.E.  
Christine Connor, P.E.  
Marisabel Z. Ramthun, P.E.

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STATE OF TEXAS §  
COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT  
For A  
Local Government Contributions  
Rehabilitation Project  
On-System**

**THIS AGREEMENT** is made by and between the State of Texas, acting by and through the Texas Department of Transportation called the "State", and Travis County, acting by and through its duly authorized officials, 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 Number 113074, authorizing the State to undertake and complete a highway improvement generally described as construction of modified continuous flow intersections on US 290 at SH 71 called the "Project"; and,

**WHEREAS**, the Governing Body of the Local Government has approved entering into this agreement by resolution or ordinance \_\_\_\_\_, which is attached to and made a part of this agreement as Attachment "A" for the improvement covered by this agreement. A map showing the Project location appears in Attachment "B," which is attached to and made a part of this agreement.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this agreement, 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

The scope of work is construction of modified continuous flow intersections on US 290 at SH 71 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 to and made a part of this agreement. 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. The State and the Federal Government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- B.** If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- C.** 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.
- D.** 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.
- E.** 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.

- F.** 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.
- G.** 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.
- H.** 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.
- I.** 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 with approval by appropriate personnel of the Local Government.
- J.** The State will not pay interest on any funds provided by the Local Government.
- K.** 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.
- L.** 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.
- M.** 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.
- N.** The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this 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.
- O.** Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.

- P. The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
- Q. 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;
- 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; or
- D. The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this agreement.

#### 5. Amendments

Amendments to this agreement due to changes in the character of the work, 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 State shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures.

#### 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 State 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.
- E. Before the advertisement for bids, the State shall provide written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

**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 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 to it. For projects on the state highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the state highway system, the design shall, at a minimum, conform to applicable *American Association of State Highway and Transportation Officials* design standards. 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 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 that 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, Subpart 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 State is responsible for the provision and acquisition of any needed right of way or real property.

**14. Notices**

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

<b>Local Government:</b>	<b>State:</b>
County Judge	Director of Contract Services Office
Travis County	Texas Department of Transportation
314 W, 11 <sup>th</sup> St.	125 E. 11 <sup>th</sup> Street
Austin, Texas 78767	Austin, Texas 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

**15. Legal Construction**

If 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. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

**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. Civil Rights Compliance**

The Local Government shall comply with the regulations of the United States Department of Transportation as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200),

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).

#### **24. Disadvantaged Business Enterprise (DBE) Program Requirements**

- A.** The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B.** The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C.** The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D.** The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address [http://txdot.gov/business/business\\_outreach/mou.htm](http://txdot.gov/business/business_outreach/mou.htm).
- E.** The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F.** Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

#### **25. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently



debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

## **26. Lobbying Certification**

In executing this agreement, each signatory certifies to the best of that signatory's 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 shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. 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.

## **27. 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.

## **28. Federal Funding Accountability and Transparency Act Requirements**

- A.** Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms:

<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and  
<http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.

**B. The Local Government agrees that it shall:**

1. Obtain and provide to the State , a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) id this award provides more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR website whose address is: <https://www.bpn.gov/ccr/default.aspx>;
2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows Federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
3. Report the total compensation and names of its top five (5) executives to the State if:
  - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
  - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

**29. Single Audit Report**

- A. 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.
- B. If threshold expenditures of \$500,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at [http://www.txdot.gov/contact\\_us/audit.htm](http://www.txdot.gov/contact_us/audit.htm).
- C. If expenditures are less than \$500,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY \_\_\_\_\_."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

**30. Signatory Warranty**

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

CSJ #0113-08-076  
District #14 - AUS  
Code Chart 64 # 50227  
US 290 at SH 71  
Federal Highway Administration  
CFDA # 20.205  
Not Research and Development

**THIS AGREEMENT IS EXECUTED** by the State and the Local Government in duplicate.

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**THE STATE OF TEXAS**

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

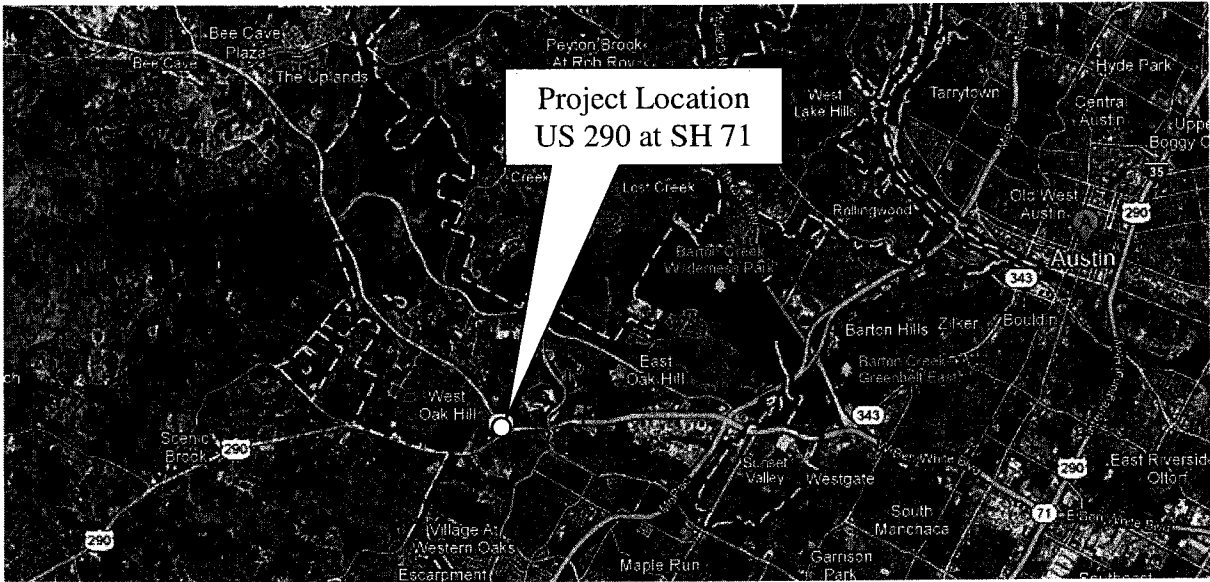
\_\_\_\_\_  
Date

CSJ #0113-08-076  
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**ATTACHMENT A**  
**RESOLUTION OR ORDINANCE**

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## ATTACHMENT B LOCATION MAP SHOWING PROJECT



**ATTACHMENT C  
 PROJECT BUDGET**

The Local Government will pay for the construction of modified continuous flow intersection on US 290 at SH 71 in Travis County, which is an on-system location. The Local Government's **fixed participation of \$1,500,000** will be applied toward the cost of construction bid items. The State estimates the Project to be as follows:

Description	Estimated Cost	Federal Participation		State Participation		Local Government Travis County		Local Government City of Austin	
		%	Cost	%	Cost	%	Cost	%	Cost
Construction (By State)	\$4,900,000	27.6%	\$1,352,000	6.9%	\$338,000	30.6%	\$1,500,000	34.9%	\$1,710,000
Construction Engineering (By State)	\$287,000	0%	\$0	100%	\$287,000	0%	\$0	0%	\$0
<b>Subtotal</b>	<b>\$5,187,000</b>		<b>\$1,352,000</b>		<b>\$625,000</b>		<b>\$1,500,000</b>		<b>\$1,710,000</b>
Direct State Cost = \$47,870	PE (40%)	\$19,148	\$0	100%	\$19,148	0%	\$0	0%	\$0
	Environmental (20%)	\$9,574	\$0	100%	\$9,574	0%	\$0	0%	\$0
	ROW (20%)	\$9,574	\$0	100%	\$9,574	0%	\$0	0%	\$0
	Utility (20%)	\$9,574	\$0	100%	\$9,574	0%	\$0	0%	\$0
Construction Direct State Costs	\$27,990	0%	\$0	100%	\$27,990	0%	\$0	0%	\$0
Indirect State Costs (5.1%)	\$268,406	0%	\$0	100%	\$268,406	0%	\$0	0%	\$0
<b>Subtotal</b>	<b>\$344,266</b>		<b>\$0</b>		<b>\$344,266</b>		<b>\$0</b>		<b>\$0</b>
<b>Total</b>	<b>\$5,531,266</b>		<b>\$1,352,000</b>		<b>\$969,266</b>		<b>\$1,500,000</b>		<b>\$1,710,000</b>

Local Government's Participation = **\$1,500,000.00**. This amount is fixed.

The Local Government shall remit **\$1,500,000.00** sixty (60) days prior to the letting of the Project.