



Travis County Commissioners Court Agenda Request

Meeting Date: August 6, 2013

Prepared By: Tony Valdez, P.E. **Phone #:** (512) 8547567

Division Director/Manager: Steve Sun, P.E.

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

Sponsoring Court Member: Commissioner Daugherty, Precinct Three

AGENDA LANGUAGE: Consider and take appropriate action regarding entering into an Advance Funding Agreement with TxDOT for intersection improvements at SH 71 and proposed Bee Creek Road in Precinct Three.

BACKGROUND/SUMMARY OF REQUEST:

Bee Creek Road is to be reconstructed from a 2-lane road to a 4-lane arterial from SH 71 to Highland Blvd. TxDOT requires construction of new turn lanes and signal improvements on SH 71 to allow for proper tie-in of the new 4-lane Bee Creek Road.

STAFF RECOMMENDATIONS:

Staff recommends approval of this Advance Funding Agreement as required by TxDOT for construction of the proposed Bee Creek Road.

ISSUES AND OPPORTUNITIES:

This Advance Funding Agreement will allow a cooperative opportunity between each party to construct the needed intersection improvements for proper tie-in of Bee Creek Road to SH 71. Completion of the roadway projects will provide safety and capacity improvements on Bee Creek Road from SH 71 to Highland Blvd. It will also support the planned new LTISD school located in the middle section of the proposed Bee Creek Road improvements.

FISCAL IMPACT AND SOURCE OF FUNDING:

Funds for this intersection improvements are available from the 2011 Bond Funds for Bee Creek Road Improvements. TNR requested for TxDOT's cost participation for this intersection improvements. TxDOT responded that no fund is available for these improvements.

Funds Reservation: 0300000641

WBS Element: RDCN.149.000008

Fund: 4074

Fund Center: 1490190000

GL: 522040

ATTACHMENTS/EXHIBITS:

TxDOT Advance Funding Agreement

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	(512) 854-4239
Steven M. Manilla	County Executive	TNR	(512) 854-9429
Tom Nuckols, Chris Gilmore, Julie Joe		County Attorney's Office	
Cyd Grimes		Purchasing Office	
Steve Sun		TNR	

CC:

Donna Williams-Jones		TNR	
Isabelle Lopez		TNR	
Tony Valdez		TNR	

: :
3101 - Public Works/CIP -

STATE OF TEXAS §

COUNTY OF TRAVIS §

**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, called the "State", and Travis County, acting by and through its duly authorized officials, called the "Local Government."

WITNESSETH

WHEREAS, Transportation Code, Chapters 201, 221, 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 113444 authorizes the State to undertake and complete a highway improvement generally described as adding right turn lane and upgrading traffic signal on SH 71 at Bee Creek Rd.; 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 adding right turn lane and upgrading traffic signal on SH 71 at Bee Creek Rd , 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

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 in this agreement has been completed and accepted by all parties or unless terminated, as provided for by this agreement.

2. Project Funding and Work Responsibilities

A. 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.

- B.** 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 costs.
- C.** 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.
- D.** 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 by the State to the Project. 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.

3. Right of Access

If the Local Government is the owner of any part of the Project site, the Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

4. Adjustments Outside the Project Site

The Local Government will provide for all necessary right of way and utility adjustments needed for performance of the work on sites not owned or to be acquired by the State.

5. Responsibilities of the Parties

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

6. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the local government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

7. Interest

The State will not pay interest on funds provided by the Local Government. Funds provided by the Local Government will be deposited into, and retained in, the State Treasury.

8. Inspection and Conduct of Work

Unless otherwise specifically stated in Attachment A, Payment Provision and Work Responsibilities, to this contract, the State will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State. Unless otherwise specifically stated in Attachment A to this contract, all work will be performed in accordance with the Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges adopted by the State and incorporated in this agreement by reference, or special specifications approved by the State.

9. Increased Costs

- A.** In the event it is determined that the funding provided by the Local Government will be insufficient to cover the State's cost for performance of the Local Government's requested work, the Local Government will pay to the State the additional funds necessary to cover the anticipated additional cost. The State shall send the Local Government a written notification stating the amount of additional funding needed and stating the reasons for the needed additional funds. The Local Government shall pay the funds to the State within thirty (30) days of the written notification, unless otherwise agreed to by all parties to this agreement. If the Local Government cannot pay the additional funds, this contract shall be mutually terminated in accordance with Article 11 – 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.
- B.** If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

10. Maintenance

Upon completion of the Project, the State will assume responsibility for the maintenance of the completed Project unless otherwise specified in Attachment A to this agreement.

11. Termination

- A.** This agreement may be terminated in the following manner:
 - 1. By mutual written agreement and consent of both parties;

2. By either party upon the failure of the other party to fulfill the obligations set forth in this agreement; or
 3. By the State if it determines that the performance of the Project is not in the best interest of the State.
- B.** 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.
- C.** Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.

12. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

Local Government:	State:
County Judge	Director of Contract Services Office
P.O. Box 1748	Texas Department of Transportation
Austin, Texas 78767-1748	125 E. 11 th Street
	Austin, Texas 78701

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided in 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 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.

13. Sole Agreement

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

14. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

15. Amendments

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

16. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

17. Insurance

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

18. Signatory Warranty

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

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

District Engineer

Date

**ATTACHMENT A
 PAYMENT PROVISION AND WORK RESPONSIBILITIES**

Description	Total Estimated Cost	State Participation		Local Participation		
		%	Cost	%	Cost	
Preliminary Engineering (By Local Government)	\$43,800	0%	\$0	100%	\$43,800	
Construction of signal and turn lanes (by Local Government)	\$526,000	0%	\$0	100%	\$526,000	
Subtotal	\$569,800		\$0		\$569,800	
Direct State Costs = \$4,380	Preliminary Engineering (40%)	\$1752	100%	\$1752	0%	\$0
	Environmental (40%)	\$1752	100%	\$1752	0%	\$0
	Utilities (20%)	\$876	100%	\$876	0%	\$0
Construction Direct State Costs	\$10,520	100%	10,520	0%	\$0	
Indirect State Costs (5.1%)	\$29,060	100%	\$29,060	0%	\$0	
TOTAL	\$613,760		\$43,960		\$569,800	

Initial payment by the Local Government to the State: \$0
 Payment by the Local Government to the State before construction: \$0
 Estimated total payment by the Local Government to the State \$0

This is an estimate. The final amount of Local Government participation will be based on actual costs.

Work Responsibilities

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 Local Government 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 Local Government is responsible for the preparation of the NEPA documents required for the environmental clearance of this Project. Preparation and coordination of the environmental documentation shall be through the TxDOT Austin District Environmental Coordinator at (512) 832-7168.

Architectural and Engineering Services

The Local Government 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.

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 begins.

Construction Responsibilities

- A. The Local Government 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

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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 Local Government will use its approved contract letting and award procedures to let and award the construction contract.
- C.** Upon completion of the Project, the party constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.