

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
For A
100% Locally Funded Project
Off-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 Fort Bend County, acting by and through its duly authorized officials, called the "Local Government."

WITNESSETH

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 State and Local Government do not anticipate that federal funds will be used for the Project governed by this Agreement; and

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance dated _____, 20__, 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 Project consists of the construction of the tie-in of Cane Island Parkway Intersection to FM 1463 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 State government, the Local Government, or other parties are shown in Attachment "C". The State will pay for only those Project costs that have been approved by the Texas Transportation Commission.
- B.** If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. 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 and 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.** The 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 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-state participation costs associated with the Project, otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. Where Special Approval has been granted by the State, the Local Government shall only in that instance be responsible for overruns in excess of the amount to be paid by the Local Government.
- 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.** 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." The check or warrant shall be deposited by the State and managed by the State. The funds may only be applied by the State to the Project.
- H.** Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government or the State will be promptly paid by the owing party. NOT APPLICABLE
- I.** The State will not pay interest on any funds provided by the Local Government. NOT APPLICABLE
- J.** If a waiver has been granted to a service project, 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 specified percentage or a "periodic payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the specified percentage or the periodic payment schedule.
- L.** If the Local government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- M.** If Special Approval has been granted by the State so that the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State's written notification of those amounts.
- N.** The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement 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 from the State under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party. NOT APPLICABLE
- 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. NOT APPLICABLE

- 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. NOT APPLICABLE

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; NOT APPLICABLE or
- D.** The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against state 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 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 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 applicable environmental laws.

- 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 an 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 documents required for the environmental clearance of this Project.
- E. Before the advertisement for bids, the Local Government shall provide to the State 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. Procurement Standards

For projects being managed by the Local Government and on the State highway system or that include state funding, the Local Government must obtain approval from the State for its proposed procurement procedure for the selection of a professional services provider, a contractor for a construction or maintenance project or a materials provider.

11. Architectural and Engineering Services

The Local Government has responsibility for the performance of architectural and engineering services. The engineering plans for construction within State right-of-way 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 Texas Government Code 2254, Subchapter A.

12. 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 orders that may become necessary subsequent to the award of the construction contract. .

- 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.

13. 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.

14. 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.

15. 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:

Local Government:	State:
County Judge Fort Bend County 401 Jackson Street Richmond, Texas 77469 With copy to County Engineer Fort Bend County Engineering Dept. 301 Jackson Street Richmond, Texas 77469	Director of Contract Services Texas Department of Transportation 125 E. 11th Street 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.

16. 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.

17. 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.

18. 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. (Apply to work in the existing right-of-way).

19. 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.

20. 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.

21. 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 and the Local Government, or their duly authorized representatives for review and inspection at its office during the Agreement period and for four (4) years from the date of completion of work defined under this Agreement or until any impending litigation, or claims are resolved. Additionally, the State and the Local Government 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.

22. Audit

Pursuant to Texas Government Code § 2262.154, 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.

23. 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.

24. Historically Underutilized Business (HUB) and Small Business Enterprise (SBE) Requirements

For projects with state funds and no federal funds, the Local Government will be required to follow the provisions of Texas Transportation Code §201.702 and 43 TAC §§9.354-9.355 (HUB) and §§9.314-9.315 (SBE). The Local Government must incorporate project goals approved by TxDOT into project documents before advertising for receipt of bids. Contractors must select HUBs and SBEs from TxDOT-approved or maintained sources. The Local Government will provide monthly updates of HUB/SBE (as appropriate) participation and report final accomplishments to TxDOT for credit to overall program goals.

For projects with no state or federal funds that are not on the state or federal highway systems, the Local Government should follow its own local or specific ordinances and procedures. Local Governments are encouraged to use HUBs and SBEs from TxDOT-approved or maintained sources. The Local Government must also report final HUB accomplishments to TxDOT for credit to overall program goals.

25. Debarment Certifications

The State has requirements similar to the Federal Assistance Programs under Executive Order 12549 prohibiting contracts with debarred contractors. Texas Administrative Code, Title 43, Chapter 9, Subchapter G provides for contractor sanctions.

26. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, the Local Government, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A.** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B.** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- C.** Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D.** Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E.** The Age Discrimination Act of 1975, as amended, (49 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F.** Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G.** The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not).
- H.** Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I.** The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J.** Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K.** Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L.** Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

27. 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

Robert E. Hebert
Fort Bend County Judge

Date

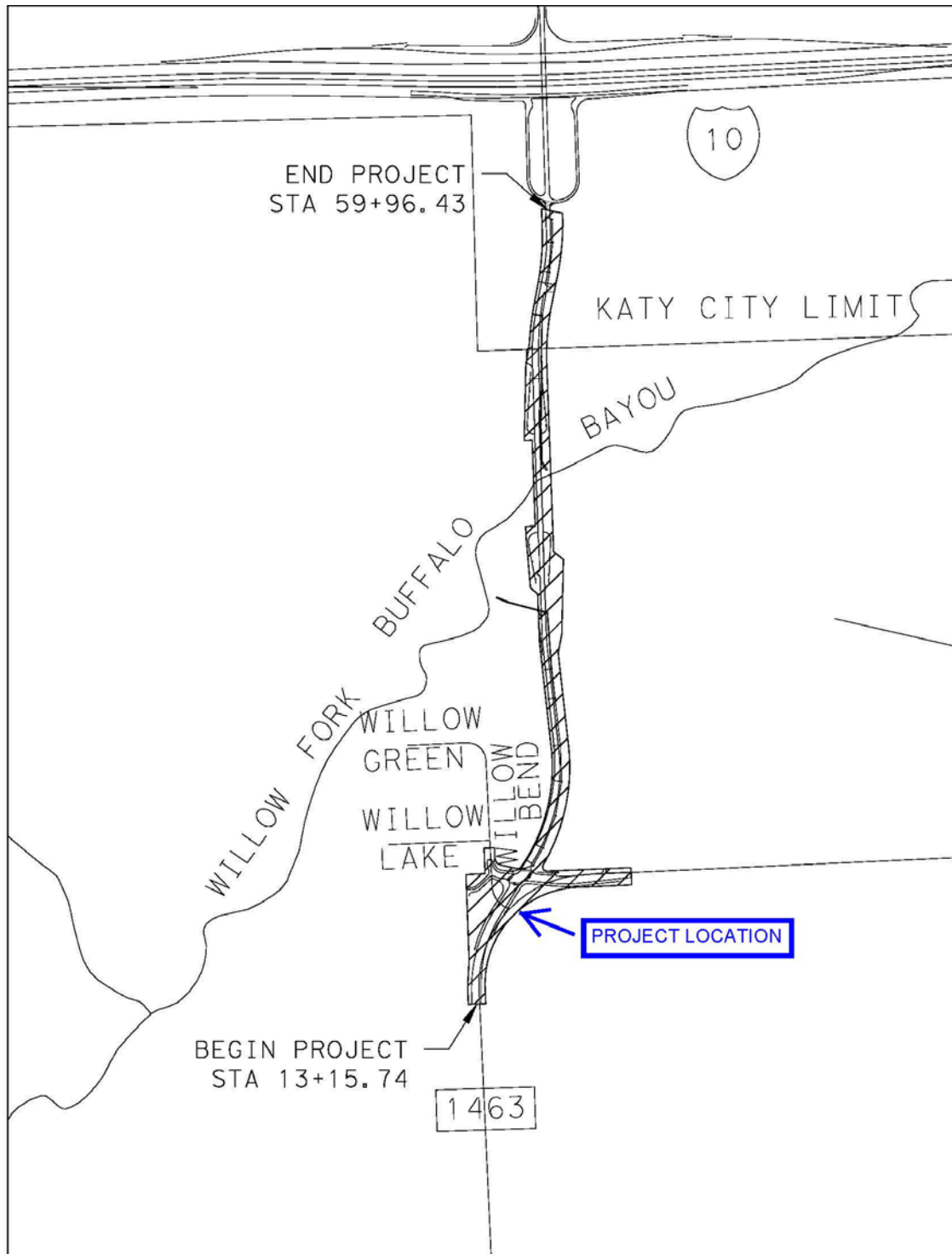
THE STATE OF TEXAS

Kenneth Stewart
Director of Contract Services
Texas Department of Transportation

Date

**ATTACHMENT A
RESOLUTION OR ORDINANCE**

ATTACHMENT B
LOCATION MAP SHOWING PROJECT



ATTACHMENT C PROJECT BUDGET

The Local Government will be responsible for 100% of the Engineering and Construction costs, including any overruns.

Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
Engineering (by Local Government)	\$147,000	0%	\$0	0%	\$0	100%	\$147,000
Construction (by Local Government)	\$3,000,000	0%	\$0	0%	\$0	100%	\$3,000,000
Subtotal	\$3,147,000		\$0		\$0		\$3,147,000
Environmental Direct State Costs	\$100	0%	\$0	100%	\$100	0%	\$0
Right of Way Direct State Costs	\$100	0%	\$0	100%	\$100	0%	\$0
Engineering Direct State Costs	\$5,000	0%	\$0	100%	\$5,000	0%	\$0
Utility Direct State Costs	\$100	0%	\$0	100%	\$100	0%	\$0
Construction Direct State Costs	\$5,000	0%	\$0	100%	\$5,000	0%	\$0
Indirect State Costs	\$657	0%	\$0	100%	\$657	0%	\$0
TOTAL	\$3,157,957		\$0		\$10,957		\$3,147,000

Initial payment by the Local Government to the State: \$0.00

Payment by the Local Government to the State before construction: \$0.00

Estimated total payment by the Local Government to the State \$0.00. This is an estimate. The final amount of Local Government participation will be based on actual costs.