

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 the Fort Bend County, acting by and through its duly authorized officials, 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 112696 authorizes the State to undertake and complete a highway improvement generally described as road repair and rehabilitation; 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 intersection improvements at FM 1463 at Cinco Trace Boulevard, 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

2 originals returned to Paulette at Engineering
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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.
- E. 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.

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 |
| Fort Bend County | Texas Department of Transportation |
| 1124 Blume Road | 125 E. 11 th Street |
| Rosenberg, Texas 77471-1449 | 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

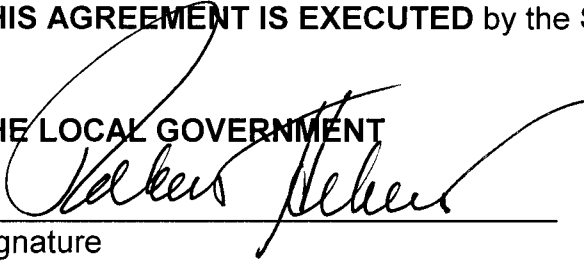
If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage 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

Robert Hebert

Typed or Printed Name

County Judge

Title

September 6, 2011

Date

THE STATE OF TEXAS

Regional Director

Date

ATTACHMENT A
PAYMENT PROVISION AND WORK RESPONSIBILITIES

1. Description of the Cost of the Items of Work

A. Preliminary Engineering and Plan Preparation

The Local Government shall provide the architectural and engineering services. The architectural and engineering services shall include, but not be limited to, preparing the environmental assessment, right of way mapping, property descriptions, and schematic layout; performing field surveys; preparing a drainage study; and conducting public meetings/hearings.

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 latest edition and revisions of the State's *Highway Design Division Operations and Procedures Manual* or the American Association of State Highway and Transportation Officials *A Policy on Geometric Design of Highways and Streets*, Federal regulations for conformity with the Clean Air Act air quality requirements, the EPA-National Pollutant Discharge Elimination System requirements, the *Texas Manual on Uniform Traffic Control Devices*, and the *American Association of State Highway and Transportation Officials Guide For The Development of Bicycle Facilities*. In addition, all engineering work shall be prepared using the English system of measurements. Documents prepared for the purpose of public involvement shall be in the English unit system.

The Local Government shall forward to the State a copy of the completed engineering and design plans for both phases of the Project for review.

The State will perform a 50 percent, 90 percent and final review of the engineering plans, specifications and estimate work being developed by the Local Government's consultant. The State will also review all geotechnical, surveying, schematic, bridge layout, design, environmental, hydraulic reports and data submitted by the Local Government, process environmental documents, process any necessary railroad agreements and oversee any necessary public involvement.

If the Local Government has submitted work in accordance with the terms of this contract but the State requests changes to the completed work or parts thereof which involve changes to the original scope of services or character of work under the contract, the Local Government shall make such revisions as requested and as directed by the State.

The Local Government shall be responsible for the accuracy of work and shall promptly make necessary revisions or corrections resulting from its errors, omissions, or negligent acts.

The Local Government's responsibility for all questions arising from design errors and/or omissions will be determined by the State. The Local Government will not be relieved of the responsibility for subsequent correction of any such errors or omissions.

The responsible Engineer shall sign, seal and date all appropriate engineering submissions to the State in accordance with the Texas Engineering Practice Act and the rules of the Texas Board of Professional Engineers.

The State will review all preliminary engineering, process environmental documents, and oversee any necessary public involvement. The State will review and approve the scope of work for the consultant preparing the preliminary engineering for the Local Government.

B. 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.

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.

C. CONSTRUCTION

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. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.

All contract letting and award procedures must be approved by the State prior to letting and award of the construction contract, whether the construction contract is awarded by the State or by the Local Government.

All contract change order review and approval procedures must be approved by the State prior to start of construction.

Upon completion of the Project, the party constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion. 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 Part 635, Subpart B.

Any field changes, supplemental agreements, or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by the State and the Local Government prior to authorizing the contractor to perform the work. Prior to completion of the

Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

The Local Government shall be responsible for the improvement of the intersection at Cinco Trace Boulevard; the Local Government will let and manage construction of the project. The Local Government's participation is one hundred percent (100%) of the cost of this particular improvement, to the extent permitted by law. The Local Government's estimated cost of this additional work is \$950,906.07 including construction items, and engineering and contingencies. The State has estimated the project to be as follows:

| Description | Local Participation | |
|----------------------------------|---------------------|---------------------|
| | % | Cost |
| CONSTRUCTION COSTS | | |
| Preliminary Construction Cost | 100% | \$727,620.05 |
| Subtotal | | \$727,620.05 |
| Contingency (20%) | 100% | \$145,524.01 |
| Construction Management by TxDOT | 100% | \$5,000.00 |
| Mobilization (10%) | 100% | \$72,762.01 |
| TOTAL | | \$950,906.07 |

Direct State Cost will be based on actual charges.

Local Government's Participation (100%) = \$950,906.07

It is further understood that the State will include only those items for the improvements as requested and required by the Local Government. This is an estimate only; final participation amounts will be based on actual charges to the project.