

RESOLUTION NO. 23-R-103

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS, AUTHORIZING THE CITY MANAGER TO SIGN AN ADVANCED FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR LOCAL GOVERNMENT CONTRIBUTIONS TO A TRANSPORTATION IMPROVEMENT PROJECT TO PROVIDE FOR SCHERTZ PARKWAY BRIDGE SIGNAGE

WHEREAS, the Texas Department of Transportation (TxDOT) is undertaking the IH 35 NEX project to expand capacity on IH 35 within the city of Schertz; and

WHEREAS, the City of Schertz, Texas and the Schertz Economic Development Corporation desires to increase the visibility of the City on local signage at highly visible locations; and

WHEREAS, the Board of Directors of the Schertz Economic Development Corporation took action at its regular meeting on August the 24th, 2023 approving SEDC Resolution 2023-06 to authorize the funding of the signage at a cost not to exceed ONE HUNDRED AND FORTY FIVE THOUSAND DOLLARS (\$145,000); and

WHEREAS, City Staff has recommended that the City enter into the Advanced Funding Agreement with the Texas Department of Transportation for the Schertz Economic Development project.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council of the City of Schertz, Texas authorizes the Schertz City Manager to enter into the Advanced Funding Agreement for the Transportation Improvement Project to provide for Schertz Parkway Bridge Signage. attached hereto as Exhibit "A".

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgement and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provisions of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of the Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provisions.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effective from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this ____ day of _____ 2023.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

(city seal)

ATTACHMENT A

| | |
|---|---|
| CSJ# | 0016-06-047 & 0016-07-113 |
| District# SAT(15) AFA ID Z00008566 | |
| Code Chart 64 # | 38440 |
| Project Name | 135 NEX City of Schertz Branding |

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY
LOCAL GOVERNMENT CONTRIBUTIONS
TO TRANSPORTATION IMPROVEMENT PROJECTS
WITH NO REQUIRED MATCH
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 the City of Schertz, acting by and through its duly authorized officials, called the "Local Government". The State and Local Government shall be collectively referred to as "the parties" hereinafter.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, Transportation Code, Chapters 201 and 221, 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, the Texas Transportation Commission passed Minute Order Number **115291, 115550, 115814** authorizing the State to undertake and complete a highway improvement generally described as expand from 8 lane to 14 lane expressway; add 6 new express lanes including 2 HOV special use lanes.

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 135 NEX City of Schertz Branding; 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, to be by them respectively kept and performed as set forth in this Agreement, it is agreed as follows:

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| District# [SAT(15) [AFA ID / Z00008566 | |
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| Project Name | 135 NEX City of Schertz Branding |

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 full force and effect until the Project has been completed and accepted by all parties or unless terminated as provided below.

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 (Attachment A) 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 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 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" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to 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.

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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, 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

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 cost to the department for a highway improvement project, 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. 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.

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11. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the State highway system after completion of the work if the work was on the State highway system, unless otherwise provided for in Attachment A or existing maintenance agreements with the Local Government.

12. 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.

13. 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: |
|--|---|
| City of Schertz ATTN: City Manager 1400 Schertz Parkway Schertz, TX 78154 | Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th Street Austin, TX 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.

14. 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.

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15. 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.

16. Amendments

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

17. State Auditor

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.

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.

THE STATE OF TEXAS

Signature

Kenneth Stewart

Typed or Printed Name

Director of Contract Services
Texas Department of Transportation

Typed or Printed Title

Date

THE LOCAL GOVERNMENT

Signature

Steve Williams

Typed or Printed Name

City Manager
City of Schertz

Typed or Printed Title

Date

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ATTACHMENT A PAYMENT PROVISION AND WORK RESPONSIBILITIES

The Local Government shall provide \$145,000 to the State on or before 30 days after execution of this agreement for work consisting of constructing raised concrete lettering on the outside face of the bridge rail of the turn around bridges at Schertz Parkway. The State will be responsible for overruns.

WORK RESPONSIBILITIES:

1. Construction Responsibilities

The State will be responsible for the construction as stated below:

TxDOT will be constructing raised concrete lettering on the outside face of the bridge rail of the turn around bridges at Schertz Parkway. The lettering will read "**SCHERTZ PARKWAY**". The lettering will be displayed above the IH 35 Northbound Main Lane direction on the north to south turnaround bridge and one set above the IH 35 Southbound Main Lane direction on the south to north turnaround bridge. Once the lettering is completed and painted, the City of Schertz will be responsible for maintaining the lettering. This will include restoration of the lettering and traffic control needed to perform the restoration, including lane closures on the IH 35 main lanes, IH 35 elevated lanes, and on Schertz Parkway. Restoration will include repairing damaged concrete on the lettering itself, repairing any concrete damage or spalling to the rail immediately above or below the lettering, refreshment of the lettering, refreshment of the paint on the rail immediately above, below, and within the lettering area. Horizontally, this translates to one foot on each side of the lettering.

2. Right of Way and Real Property

The State will be responsible for the acquisition of Right of Way and Real Property.

3. Utilities

The State will be responsible for the adjustment, removal, or relocation of utility facilities.

4. Architectural and Engineering Services

The State will be responsible for the performance of architectural and engineering services.

5. Environmental Assessment and Mitigation

The State will be responsible for the Environmental Assessment and Mitigation

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6. Maintenance

The LG will be responsible for maintaining the lettering. This will include restoration of the lettering and traffic control needed to perform the restoration, including lane closures on the IH 35 main lanes, IH 35 elevated lanes, and on Schertz Parkway. Restoration will include repairing damaged concrete on the lettering itself, repairing any concrete damage or spalling to the rail immediately above or below the lettering, refreshment of the lettering, refreshment of the paint on the rail immediately above, below, and within the lettering area. Horizontally, this translates to one foot on each side of the lettering.

Certificate Of Completion

Envelope Id: 59F33DE700A949ED9A39AA5F8A3D333C
Subject: Please DocuSign AFAID 200008566 with City of Schertz
Source Envelope:

Status: Sent

Document Pages: 9
Certificate Pages: 5
AutoNav: Enabled
Envelope Stamping: Enabled

Signatures: 0
Initials: 0

Envelope Originator:
Bryan Watson
125 E. 11th Street
Austin, TX 78701

Time Zone: (UTC-06:00) Central Time (US & Canada)

Bryan.Watson@txdot.gov
IP Address: 209.112.106.2

Record Tracking

Status: Original
9/25/2023 1:46:56 PM
Security Appliance Status: Connected
Storage Appliance Status: Connected

Holder: Bryan Watson
Bryan.Watson@txdot.gov
Pool: StateLocal
Pool: Texas Department of Transportation

Location: OocuSign
Location: DocuSign

Signer Events

Steve Williams
steve.williams@schertz.com
Security Level: Email, Account Authentication (Optional)

Electronic Record and Signature Disclosure:
Accepted: 9/25/2023 4:53:38 PM
ID: 8c3e0a09-df36-42fd-bfc9-3a392eae20ff

Kenneth Stewart
kenneth.stewart@txdot.gov
Security Level: Email, Account Authentication (Optional)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Signature

Timestamp

Sent: 9/25/2023 1:48:59 PM
Viewed: 9/25/2023 4:53:38 PM

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Barbara Gault
Barbara.Gault@txdot.gov
Texas Department of Transportation
Security Level: Email, Account Authentication (Optional)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

COPIED

Sent: 9/25/2023 1:48:59 PM

Witness Events

Signature

Timestamp

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

Envelope Summary Events

Envelope Sent

Status

Hashed/Encrypted

Timestamps

9/25/2023 1:48:59 PM

Payment Events

Status

Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Texas Department of Transportation (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Texas Department of Transportation:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: kevin.setoda@txdot.gov

To advise Texas Department of Transportation of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at kevin.setoda@txdot.gov and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from Texas Department of Transportation

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to kevin.setoda@txdot.gov and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Texas Department of Transportation

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to kevin.setoda@txdot.gov and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

equi ed hardware a s o ftw a r e _____

Operating Systems: iWindows2000? or WindowsXP? _____ **J**

SENDERS): Internet Explorer 6.0? or above _____

Browsers (for SIGNERS) **E** Internet Explorer 6.0?. Mozilla Firefox 1.0. Netscape 7.2 (or above) _____

Email: **A** ce to a valid emai account _____ **J**

Screen Resolution: 800 x 600 minimum _____

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| Enabled Security Settings: | <ul style="list-style-type: none"> • Allow per session cookies----- |
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| | <ul style="list-style-type: none">• Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection |
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** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Texas Department of Transportation as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Texas Department of Transportation during the course of my relationship with you.