

**INTERLOCAL AGREEMENT REGARDING
EXPANSION OF WILLIAMS DRIVE**

THE STATE OF TEXAS	§	
	§	KNOW ALL BY THESE PRESENTS:
COUNTY OF WILLIAMSON	§	

THIS INTERLOCAL AGREEMENT EXPANSION OF RM 2338 (WILLIAMS DRIVE) (“**Agreement**”) is entered into between Williamson County, a political subdivision of the State of Texas (the “**County**”) and the City of Georgetown, a political subdivision of the State of Texas (the “**City**”). In this Agreement, the City and the County are sometimes individually referred to as “**a Party**” and collectively referred to as “**the Parties**”.

WHEREAS, the Texas Department of Transportation (“**TxDOT**”) has released its jurisdiction over that portion of RM 2338 (Williams Drive), from the west rights-of-way line of the Southbound Frontage Road of IH-35 to FM 3405 in Williamson County, Texas, to the County hereinafter called “Williams Drive”; and

WHEREAS, the County and City mutually desire to conduct certain roadway improvements to widen and expand a portion of Williams Drive, and the County has agreed to undertake the roadway project in cooperation of the City; and

WHEREAS, the project includes the expansion and widening of Williams Drive from DB Wood Drive to FM 3405 and maintenance of Williams Drive from the Southbound Frontage Road of IH-35 to FM 3405, (the “**Project**”), and

WHEREAS, the County and City jointly applied for federal funds to assist with the Project, and federal funds have been awarded to the Project per that certain Advance Funding Agreement No.CSJ-2211-01-016 (Dist #14; Code Chart 64 #16000; RM 2338 W or FM 3405 to Cedar Breaks Road) by and between the Texas Department of Transportation and City.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

I. DEFINITIONS

When used in this Agreement, capitalized terms not otherwise defined shall have the meanings set forth below:

1.01 “*Agreement*” means this Interlocal Agreement Regarding Expansion of Williams Drive.

1.02 “*AFA Agreement*” means that certain Advance Funding Agreement No.CSJ-2211-01-016 (Dist #14; Code Chart 64 #16000; RM 2338 W or FM 3405 to Cedar Breaks Road) by and between the Texas Department of Transportation and City, a copy o which is attached hereto as **Exhibit D**.

1.03 “*AFA Amount*” means EIGHT MILLION EIGHT HUNDRED TWENTY EIGHT THOUSAND NINE HUNDRED DOLLARS AND NO CENTS (\$8,828,900).

1.04 “*Bid Documents*” means the plans and specifications, together with all contract documents and bid instructions, relating to construction of the Project.

1.05 “*City*” means Georgetown, Texas.

1.06 “*City Portion*” means that portion of the Project from D.B. Wood Road to Jim Hogg Road, which comprises approximately sixty-five percent (65%) of the Project.

1.07 “*City’s Reimbursement Amount*” means sixty-five percent (65%) of all sums spent by the County for the Project, including relocation of utilities, less: (a) all costs associated with the Chisholm Trail Exceptions, as defined herein; and (b) sixty five percent (65%) of the AFA Amount. This amount represents the City Portion of the Project.

1.08 “*Effective Date*” means the last date of execution of this Agreement by the Parties; provided that all of the Parties must execute this Agreement for it to be effective.

1.09 “*Exclusive Assignment*” means the assignment to be granted by the County and City within public right-of-way in the Project Area, in which no other parallel subsurface utility improvements may be located, and in which any future relocation of the Chisholm Trail SUD waterline improvements caused by a conflict with any roadway improvements shall be undertaken at the County’s expense, as more particularly described in this Agreement.

1.10 “*Exclusive Assignment Area*” means that certain 5-foot wide corridor within the Project Area and public right of way for Williams Drive in which Chisholm Trail SUD distribution line improvements will be located, as more particularly identified in **Exhibit “A”**. The parties acknowledge and agree that the Exclusive Assignment Area may vary within the northern right-of-way of the Project in order to avoid construction and other utility conflicts.

1.11 “*Final Acceptance*” shall mean the written approval of a duly authorized representative of the City accepting the Project as finally complete, including the final payment to the Project Contractor for the Project.

1.12 “*Project*” means, collectively, the Roadway Improvements and the related utility relocations, all as set forth in this Agreement.

1.13 “*Project Area*” means the area in which the Project will be undertaken, as said Project Area is more particularly identified in **Exhibit “B”** attached hereto.

1.14 “*Roadway Improvements*” means the construction of the improvements to Williams Drive/RM 2238 to be undertaken by the County within the Project Area, including all utility relocations.

1.15 “Party” or “Parties” means the City and/or the County, individually or collectively, as applicable.

1.16 “Project Costs” shall mean hard construction costs for road and related facilities, including utility relocation and all other reasonable and necessary costs related to the construction of the Project. The total estimated Project Cost is approximately \$17 million, as shown on the attached Exhibit E.

1.17 “Project Contractor” means the contractor(s) that enter into a contract with the County for construction of the Project.

II. STATEMENT OF INTENT; PROJECT DESIGN

2.01 General. The purpose of this Agreement is to 1) provide for the widening of Williams Drive and the assumption of operation and maintenance of portions of Williams Drive from TxDOT by the County and the City; and 2) to provide for the reimbursement by the City to the County for the City Portion of the Project.

2.02 Project Design. TxDOT has completed the design of the Project. All right-of-way has been acquired by TxDOT. The Parties acknowledge that the Project shall be constructed pursuant to TxDOT design standards. The Parties, however, retain the right to upgrade road designs to enhance medians, including street lighting, sidewalks, urban drainage and other related design elements agreed to by the Parties. The proposed TxDOT design of the Project is a five lane major arterial with shoulders pursuant to plans prepared by KBR Engineering dated October 21, 2008.

III. PROJECT COMMITTEE

3.01 Composition of Project Committee. There is hereby created a Project Committee to be composed of not less than two representatives appointed by each Party. The following persons are hereby designated as the initial members of the Project Committee: the Director of System Engineering and the Transportation Engineer on behalf of the City, and Joe England and Richard Ridings on behalf of the County. Each Party can substitute its representatives at any time.

3.02 Responsibility of Project Committee. The Project Committee shall represent the individual and collective interests of the Parties with respect to the following matters:

- (i) The re-design of the Project, if necessary;
- (ii) The review and approval of the Bid Documents;
- (iii) The review of the bid tabulation and qualification of prospective contractors;
- (iv) The periodic review of the status of construction of the Project;

- (v) The review and recommendation of approval of change orders relating to the construction of the Project;
- (vi) The review and recommendation of approval of invoices for payment related to the Project;
- (vii) The confirmation of final completion of construction of the Project; and
- (viii) Any other pertinent matters relating to the construction or operation of the Project.

The Project Committee shall meet at regular intervals to review the matters over which it has authority. The Project Committee shall be diligent, prompt and timely in reviewing and acting on matters submitted to it.

IV. CONSTRUCTION OF PROJECT

4.01 Compliance with AFA Agreement. County represents and warrants to the City that it has received a copy of the AFA Agreement attached hereto as **Exhibit D**. County further represents and warrants that it will comply with the terms of the AFA Agreement as if it were the “Local Government,” and that it shall not take any action or fail to take any action that would cause the AFA Amount not to be received in full.

4.02 General. The Parties mutually acknowledge and agree that the County shall construct the Project, including the relocation of utilities.

4.03 Bid Award.

(a) All construction contracts for the Project have been competitively bid and shall be awarded by the County in the manner provided by State laws and in accordance with this Section.

(a) The bid tabulation and related information for the construction of the Project shall be submitted to the Project Committee for review and consideration. The County shall consider the advice and recommendations of the Project Committee, but the decision as to the acceptance of any bid shall be within the sole discretion of the County, *provided that*, the County shall not accept the bid of a contractor, or allow the contractor to use a subcontractor, that is not on the current TxDOT Bid List.

(b) The County shall furnish the bid tabulation and recommendation of award to the City not less than 10 days prior to awarding a contract for construction of the Project. The County shall also specify the date on which the County shall determine the award of the contract.

4.04 Construction of Project Improvements.

(a) **General.** The County shall be responsible for constructing, or causing to be constructed, the Project, including, without limitation, the relocation of utilities, and acquiring all related easements, equipment, materials and supplies.

(a) **Chisholm Trail SUD Waterline Relocation Costs.**

(i) The County and Chisholm Trail SUD have entered into that certain Interlocal Agreement regarding the relocation of existing waterlines abutting Williams Dive (Chisholm Trail Agreement), a copy of which is attached hereto as **Exhibit "C."** The Chisholm Trail Agreement dictates certain obligations of the County which shall be assumed by the City after the City assumes operation and maintenance of its portion of Williams Drive. The City specifically agrees to honor the Exclusive Assignment within the Exclusive Assignment Area, as described herein, and more fully described in **Exhibit "B"** of the Chisholm Trail Agreement.

(ii) All of the terms and conditions of the Chisholm Trail Agreement shall be fully performed by the County prior to the City's assumption of maintenance and operation of the City Portion.

(b) **Inspection.**

(i) The County shall retain a full-time construction inspector to inspect construction of the Project. The County shall notify the Project Committee of any construction defects relating to the Project coming to its attention as soon as practicable and in no event later than five (5) working days after obtaining knowledge of the defect. The City may elect to have its employees or staff inspect or observe construction of the Project from time to time.

(ii) The City's representatives shall have a reasonable right to access and inspect the Project as construction progresses, and the County shall not interfere with such access or inspection by the City or its designated representative(s).

(c) **Change Orders.** During construction, any change orders related to the Project shall be subject to review and comment by the Project Committee and the City. The City shall review any change orders and provide written comments specifically identifying any concerns with the changes within 10 working days of receipt. If the City fails to either approve the submittal or provide written comments specifically identifying the required changes within 14 working days, the change order in question will be deemed approved. If the City disapproves a change order, the Parties shall confer and attempt to resolve the dispute. If the dispute remains unresolved, the County reserves the right to approve the change order.

(d) **Insurance.** The County shall require that all workers involved with the installation and construction of the Project are covered by workers' compensation insurance as required by the laws of the State of Texas. The County shall also require that the contractors procure and maintain comprehensive general liability insurance insuring against the risk of bodily injury, property damage, and personal injury liability occurring from, or arising out of,

construction of the Project, with such insurance in the amount of a combined single limit of liability of at least \$1,000,000 and a general aggregate limit of at least \$5,000,000. Such insurance coverage shall be maintained in force at least until the completion, inspection and acceptance of the Project.

4.05 Payment of Project Costs.

(a) All construction contracts and other agreements relating to the construction of the Project will contain provisions to the effect that the Project Contractor will look solely to the County for payment of all sums coming due thereunder.

(a) The County shall pay all other construction costs relating to the Project, including the costs of construction of the waterlines relocated for the Chisholm Trail S.U.D. Neither the County nor the City shall be responsible for the costs of installing the "Betterment Line" as defined in the Chisholm Trail Agreement. In addition to the other reimbursements listed herein, the City shall be responsible for the reimbursement to the County of costs related to the relocation of the Chisholm Trail waterlines as dictated in the Chisholm Trail Agreement, with the exception of the following: the Chisholm Trail water line on the north side of Williams Drive from Penny Lane running east to its terminus (Chisholm Trail Exceptions).

(b) The County shall ensure that each invoice for payment from the Project Contractor shall segregate costs and services related to the Chisholm Trail Exceptions from costs and services related to the remainder of the Project.

4.06 Acceptance.

(a) Upon completion of construction of the Project, the County shall obtain the written approval of a duly authorized representative of the City prior to Final Acceptance and final payment to the Project Contractor.

(a) Within 30 days after completion of construction and prior to final payment to the engineers for the Project, the County will cause the Project engineers to provide to the City a concurrence letter from the Project engineers certifying that the construction of the Project has been completed in accordance with the approved plans, specifications and change orders, inclusive of Record Drawings and rights-of-way documentation for the Project.

4.07 Warranties. The County agrees to cause the Project Contractor to repair all defects in materials, equipment or workmanship appearing within one year from the date of Final Acceptance of the Project and to assign any and all warranties, inclusive of the Project Contractor's bond obligations, to the City after the City assumes operation and maintenance of the City Portion.

V. NEGOTIATION AND MEDIATION OF DISPUTES

5.01 Agreement Regarding Remedies. The Parties agree that their respective obligations under this Agreement are unique and the failure by any Party to perform its obligations under this Agreement would not be capable of being appropriately remedied by award of damages to any other affected Party to this Agreement and in any event, such

damages would be difficult, if not impossible, to determine because of the unique nature of the Parties' obligations to each other hereunder. Further, the Parties agree that the remedy of termination of this Agreement by any Party is inappropriate and not in the public interest. Therefore, the Parties agree that they shall be entitled, and limited, to the remedies of specific performance, mandamus and injunction in the event of any breach of any obligation by any Party under this Agreement. The Parties hereby waive any requirement that they be required to provide any bond or other surety in order to obtain any of the agreed upon remedies. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County or City, their past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County and City do not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

5.02 Agreement to Mediate. If any dispute cannot be resolved through good faith negotiation, then the Parties shall endeavor to resolve the dispute by mediation as provided herein.

5.03 Presentation of Written Claim Regarding Disputes Not Resolved by Negotiation. In the event that a dispute is not resolved as a result of such negotiations, either party may at any time give formal written notice to the other of a "claim." A "claim" as used herein means a demand or assertion by one of the Parties (the "claimant") seeking, as a matter or right, adjustment or interpretation of contract terms, the payment of money, an extension of time for performance or other relief with respect to the terms of this Agreement or any other dispute or matter in question among the Parties arising out of or related to this Agreement. Such notice shall be in writing. After such notice is given, the dispute resolution procedure provided for below shall immediately enter into effect.

5.04 Performance during Mediation. The claimant shall continue with performance under this Agreement pending mediation of the dispute.

5.05 Appointment of Mediator. Promptly following the making of a written claim by any Party, the Parties will consult with one another to agree on the appointment of a mediator acceptable to all Parties. The mediator shall have experience in matters of the kind giving rise to the claim. If within five (5) business days the Parties are unable to agree on the appointment of a mediator, then any Party may request the appointment of a mediator by the Center for Public Policy Dispute Resolution at the University of Texas at Austin School of Law. The Parties shall endeavor to secure such appointment from a District Judge of Williamson County. The Parties agree to utilize the mediator appointed by the Judge unless they ultimately reach agreement on an alternative selection.

VI. COUNTY PROJECT PAYMENT AND CITY REIMBURSEMENT

6.01 County Obligations. As stated herein, the County is obligated to provide full funding for all costs associated with the Project, including all utility relocations, and shall be solely responsible for all payments to the Project Contactor.

6.02 City Obligations. Except for the Chisholm Trail Exceptions, as stated herein, the City shall be obligated to reimburse the County for that portion of the Project Cost for the City's Portion of the Project, but no more than the City's Reimbursement Amount, with approved Change Orders, in accordance with the terms and conditions of this Agreement, and provided that County is not in default hereof. Irrespective of the reimbursements listed in Section 6.03, below, the City agrees to reimburse to the County 100% of any AFA funds received from TxDOT within thirty (30) days of receipt of said AFA funds. The County shall be solely responsible for invoicing all AFA reimbursements through the City to TxDOT.

6.03 Terms of City's Reimbursement to County. The County shall deliver copies of all invoices for the Project and evidence of the County's payment thereof to the City. Based on such documentation, the City shall be obligated to pay to the County the City's Reimbursement Amount as follows: the City shall pay to the County the following sums on the following schedule:

- (i) \$1.5 Million on September 30, 2009; and
- (ii) \$1.5 Million on September 30, 2010; and
- (iii) Final installment on September 30, 2011 (this last installment may be more or less than \$ 2.1 Million depending on the actual costs of the Project).

6.04 County Operation and Maintenance Responsibilities. Williams Drive is a Williamson County owned and maintained highway. The County has assumed operation and maintenance of Williams Drive (roadway, traffic signals, drainage, etc.) from the western right-of-way of the IH-35 South Bound Frontage Road to FM 3405 until Final Acceptance of the Project by the City and the County.

6.05 City Operation and Maintenance Responsibilities. The City shall assume operation and maintenance of Williams Drive from the western right-of-way of the IH-35 Southbound Frontage Road to D.B. Wood Drive by October 31, 2009. The City shall assume operation and maintenance of Williams Drive from D.B. Wood Drive to Jim Hogg Road from the County upon Final Acceptance of the Project.

VII. MISCELLANEOUS PROVISIONS

7.01 Authority. This Agreement is made in part under the authority conferred in Chapter 791, Texas Government Code.

7.02 Severability. The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement will not be affected and this Agreement will be construed as if the invalid portion had never been contained herein.

7.03 Assignment. Except as otherwise provided herein, the assignment of this Agreement by any Party is prohibited without the prior written consent of the other Party.

7.04 Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

7.05 Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter.

7.06 Amendments. Any amendment of this Agreement must be in writing and will be effective if signed by the authorized representatives of the Parties.

7.07 Applicable Law; Venue. This Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be in Williamson County, Texas.

7.08 Notices. Any notices given under this Agreement will be effective if (i) forwarded to a Party by hand-delivery; (ii) transmitted to a Party by confirmed telecopy; or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

CITY:
City Manager
City of Georgetown
113 E. 8th St.
Georgetown, Texas 78626
Telephone: (512) 930 - 3723
Facsimile: (512) 930 - 3622

COUNTY:
County Judge
Williamson County, Texas
710 Main Street, Ste. 101
Georgetown, TX 78626
Phone: (512) 943-1550
Fax: (512) 943-1662

7.09 Exhibits. The following exhibits are attached to this Agreement and incorporated herein by reference:

- Exhibit A - Exclusive Assignment Area
- Exhibit B - Project Area
- Exhibit C - "Interlocal Agreement Regarding Payment of Costs," by and between Williamson County, Texas, and Chisholm Trail Special Utility District.
- Exhibit D - Advance Funding Agreement No. CSJ-2211-01-016 (Dist #14; Code Chart 64 #16000; RM 2338 W or FM 3405 to Cedar Breaks Road) by and between the Texas Department of Transportation and City of Georgetown
- Exhibit E - Estimate of Project Costs as of January 6, 2009.


7.10 Counterparts; Effect of Partial Execution. This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

7.11 Authority. Each Party represents and warrants that it has the full right, power and authority to execute this Agreement.

ATTEST:


City Secretary

CITY OF GEORGETOWN, TEXAS:


By: 
Printed Name: George G. Garver
Title: Mayor

Date: 1/15/09

ATTEST:


County Clerk

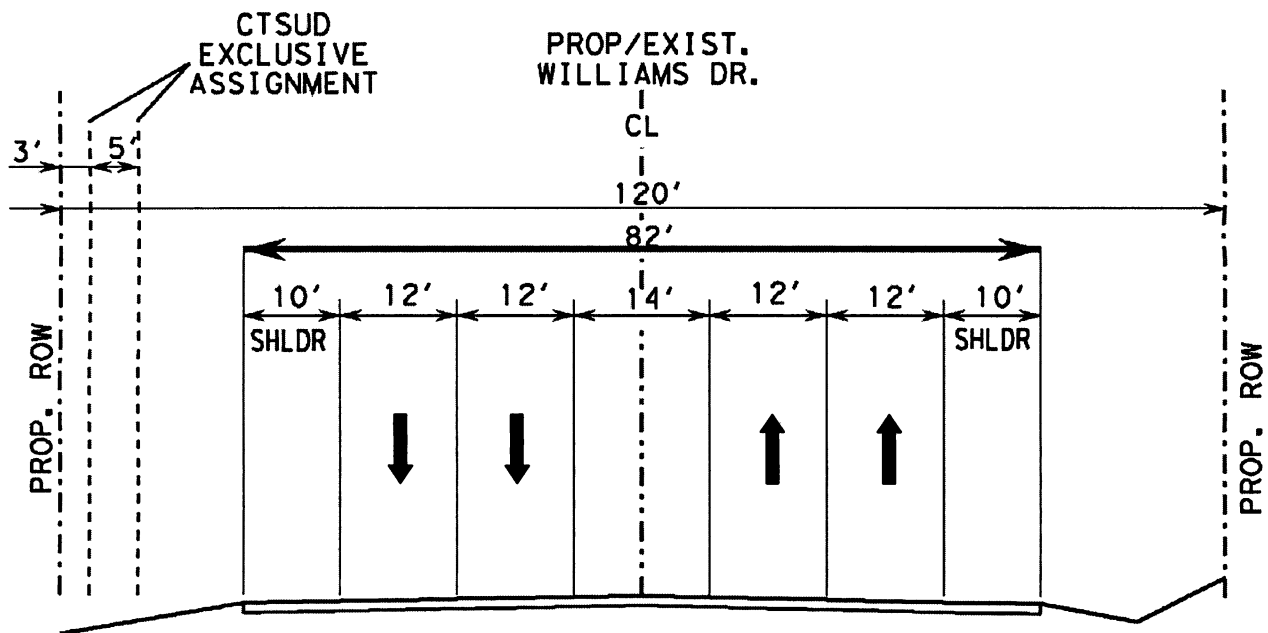
WILLIAMSON COUNTY:

By: 
Printed Name: Dan A. Gattis
Title: County Judge

Date: 1-21-09

EXCLUSIVE ASSIGNMENT AREA

The Exclusive Assignment Area shall be 5 feet in width and located within the right-of-way of RM 2338, and specifically shall be located between 3 and 8 feet from the outer boundary of the proposed right-of-way line beginning at Engineering Station 474+50 and extending to Engineering Station 612+50, as such engineering stations are identified on the plans for the Project.



STA. 474+50 TO STA 612+50

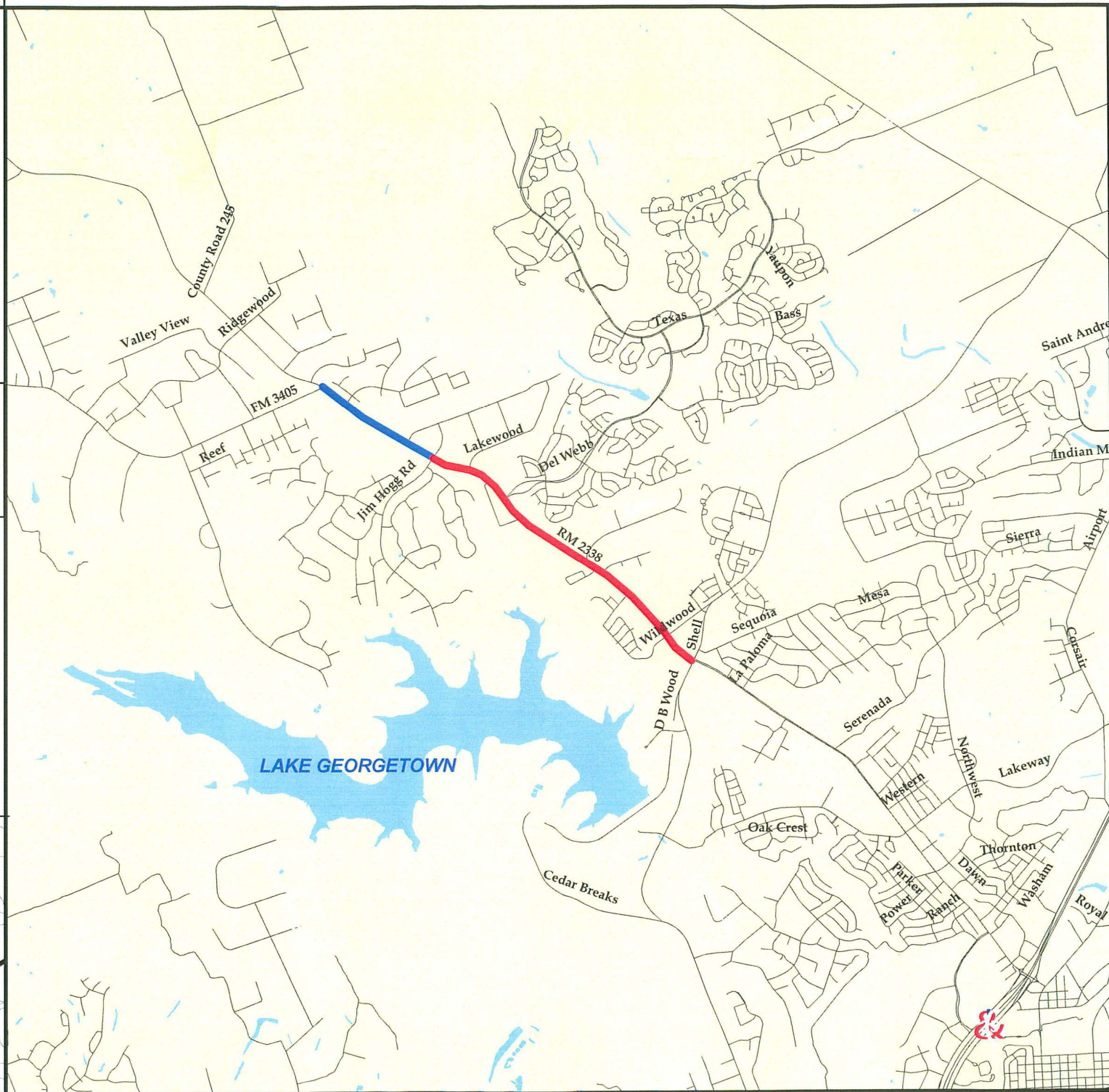
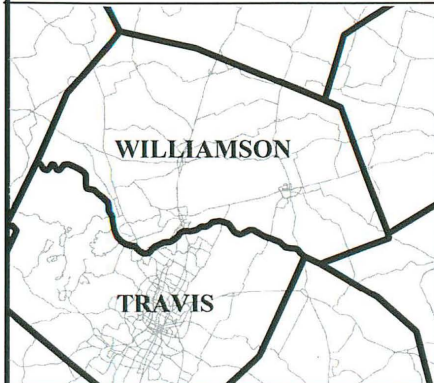
0 4,000 8,000 Feet

PROJECT LOCATION MAP

RM 2338
From D.B. Wood Rd.
To FM 3405

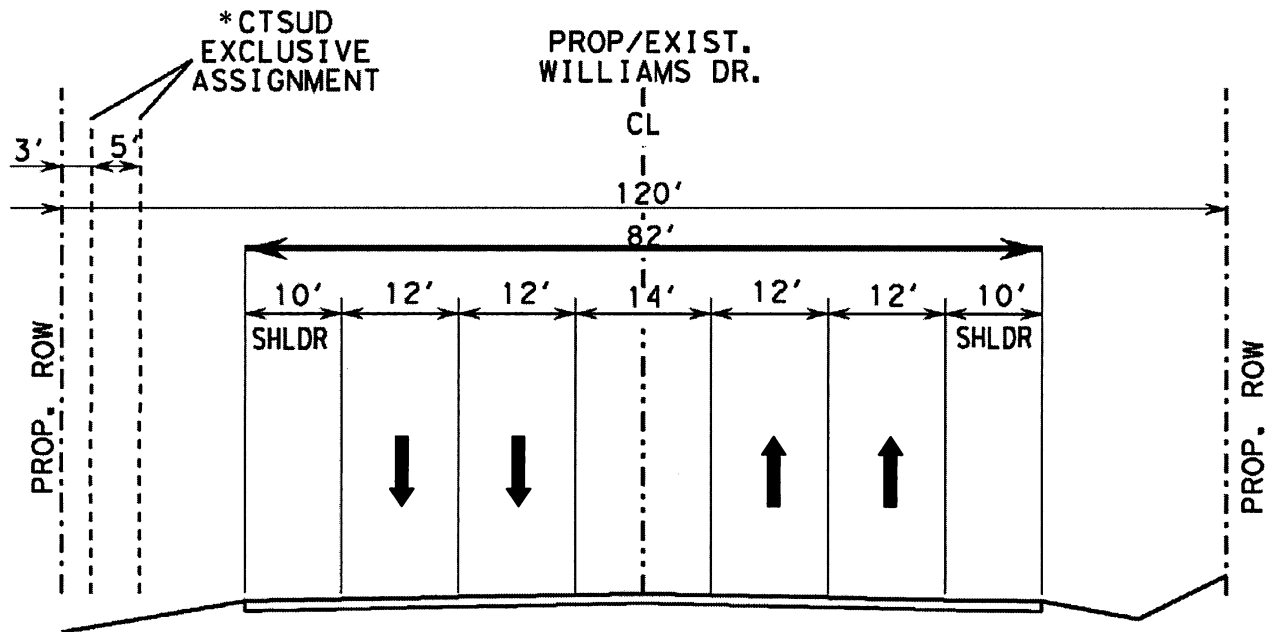
Legend

- Williamson County
- City of Georgetown



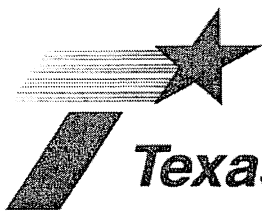
*EXCLUSIVE ASSIGNMENT AREA

The Exclusive Assignment Area shall be 5 feet in width and located within the right-of-way of RM 2338, and specifically shall be located between 3 and 8 feet from the outer boundary of the proposed right-of-way line beginning at Engineering Station 474+50 and extending to Engineering Station 612+50, as such engineering stations are identified on the plans for the Project.



STA. 474+50 TO STA 612+50

* Williamson County and CTSUD acknowledge and agree that the Exclusive Assignment Area may vary within the northern right-of-way of the Project in order to avoid construction and other utility conflicts.



Texas Department of Transportation

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

October 8, 2008

Williamson County
2211-01-016
RM 2338: W of FM 3405 to Cedar Breaks Rd

Honorable George Garver
Mayor
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627

Attn: Bill Dryden


Dear Mayor Garver:

Enclosed are two original Advance Funding Agreements for the above referenced project. The project is the widening of RM 2338 from a 2-lane roadway to a 5-lane facility. These documents replace all previously submitted agreements for the project.

Please return the two signed and dated documents to my attention for final execution. A fully executed agreement will be returned for your records. Since RM 2338 has had maintenance and jurisdiction transferred to the City and Williamson County and the roadway has been removed from the State system, Direct Costs must be applied to the project. Therefore, a check for in the amount of \$500, made payable to the Texas Department of Transportation Trust Fund will be due upon execution of the agreement.

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

Sincerely,



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

Attachments

cc: John Wagner, P.E.

An Equal Opportunity Employer

EXHIBIT "D"

RECEIVED

OCT 13 2008

GEORGETOWN UTILITY
SYSTEMS

STATE OF TEXAS §
COUNTY OF TRAVIS §

 **ORIGINAL**

**LOCAL TRANSPORTATION PROJECT
ADVANCE FUNDING AGREEMENT
For A
STP Metropolitan Mobility Project
Off-System**

THIS AGREEMENT (the Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation hereinafter called the "State", and the City of Georgetown, acting by and through its duly authorized officials, hereinafter called the "Local Government."

WITNESSETH

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

WHEREAS, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds; and

WHEREAS, the Texas Transportation Commission passed Minute Order 110753, authorizing the State to undertake and complete a highway improvement generally described as widen roadway facility and,

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance dated _____ which is attached hereto and made a part hereof as Attachment A for construction of the widening of RM 2338 from 0.3 miles west of FM 3405 to 3.3 miles west of I-35 from a two-lane roadway to a four-lane facility with a continuous left turn lane at the location shown on the Map in Attachment B hereinafter referred to as the Project.

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, it is agreed as follows:

AGREEMENT

1. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

2. Scope of Work

The scope of work is the construction of RM 2338 0.3 miles west of FM 3405 to 3.3 miles west of I-35 from a two-lane roadway to a four-lane roadway with continuous left turn lane 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 hereto and made a part hereof. The expected cash contributions from the federal or State government, the Local Governments, or other parties is shown in Attachment C. The State will pay for only those project costs that have been approved by the Texas Transportation Commission. Any work done prior to federal authorization will not be eligible for reimbursement. It is the Local Government's responsibility to verify that the Federal Letter of Authority has been issued for the work covered by this Agreement.
- b. This project cost estimate shows how necessary resources for completing the project will be provided by major cost categories. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- c. The State will be responsible for securing the Federal and State share of the funding required for the development and construction of the local project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- d. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, including any overruns in excess of the approved local project budget unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement.
- e. 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.
- f. 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.
- 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 Trust Fund." The check or warrant shall be deposited

by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to the State Project.

- h. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government, the State, or the Federal government will be promptly paid by the owing party.
If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.
- i. The State will not pay interest on any funds provided by the Local Government.
- j. If a waiver has been granted, the State will not charge the Local Government for the indirect costs the State incurs on the local project, unless this Agreement is terminated at the request of the Local Government prior to completion of the project.
- k. If the project has been approved for a "fixed price" or an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the amount of the fixed price or the incremental payment schedule.
- l. If the Local government is an Economically Disadvantaged County and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- m. 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.

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; or
- 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.

5. Amendments

Amendments to this Agreement due to changes in the character of the work or 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 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 necessary for construction of the Project or provides the status of any outstanding utility adjustments necessary for completion of the Project.

8. Environmental Assessment and Mitigation

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- a. The State has completed the identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- b. The State has completed the public meeting process.
- c. The preparation of the NEPA documents required for the environmental clearance of this project have been completed.
- d. The Local Government shall be responsible for preparation and approval of the Water Pollution Abatement Plan.
- e. The State shall provide written documentation from appropriate regulatory agency(ies) that identified environmental clearances have been obtained prior to advertising for bids. The Local Government shall provide written documentation from TCEQ that WPAP approval has been secured prior to advertising for bids.
- f. The Local Government shall be responsible for coordination and approvals from applicable resource agencies for any environmental problems encountered during construction.

9. Compliance with Texas Accessibility Standards and ADA

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

10. Architectural and Engineering Services

The State has provided the architectural and engineering services for the project plans. The Local Government has responsibility for the performance of architectural and engineering services of the bidding documents and revisions to the project plans prior to the contract award. Any revisions to the project plans and associated contract documents necessary due to design changes, change orders, supplemental agreements,

amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract, shall be the responsibility of the local government.

The design shall conform to the standards in the State's *Roadway Design Manual* and 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 thereto.

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 services contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters.

11. Construction Responsibilities

- a. The 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, which 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. Prior to their execution, the State will review and approve contract change orders.
- d. Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
- e. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

12. Project Maintenance

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

13. Right of Way and Real Property

The Local Government is responsible for the provision and acquisition of any needed right of way or real property.

14. 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, addressed to such party at the following addresses:

Local Government:	State:
Mayor City of Georgetown P.O. Box 409 Georgetown, Texas 78627	District Engineer P.O. Box 15426 Austin, Texas 78761-5426

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

15. Legal Construction

If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

16. Responsibilities of the Parties

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

17. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

18. Compliance with Laws

The parties shall comply with all Federal, State, and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

19. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

20. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the Project.

21. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

22. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

23. Office of Management and Budget (OMB) Audit Requirements

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

24. Civil Rights Compliance

The Local Government shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

25. Disadvantaged Business Enterprise Program Requirements

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26.

26. Debarment Certifications

The Local Government shall not contract with any person that: is suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal agency or that is debarred or suspended by the State.

27. Lobbying Certification

In executing this Agreement, the signatories certify to the best of his or her knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

By executing this Agreement, the parties affirm this lobbying certification with respect to the individual projects and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

28. 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.

29. Signatory Warranty

The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE LOCAL GOVERNMENT

Name

Printed Name and Title

Date

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

Janice Mullenix
Director of Contract Services
Texas Department of Transportation

Date

CSJ #2211-01-016
District # 14
Code Chart 64 #16000
RM 2338 W of FM 3405 to Cedar Breaks Rd

ATTACHMENT A

Resolution or Ordinance

RM 2338 W of FM 3405 to Cedar Breaks Rd

Location Map Showing Project



ATTACHMENT C

Project Budget and Work Responsibilities

The Local Government will participate in the cost for the widening of RM 2338 from 0.3 miles west of FM 3405 to 3.3 miles west of I-35 from a two-lane rural roadway to a four-lane rural facility with a continuous left turn lane and shoulders, which is an off-system location. The Local Government's participation is 36.2% of the cost of this particular improvement and the other 63.8% will be paid for with federal funds. Reimbursement will be made on an 80% Federal/20% Local cost share to the maximum reimbursable amount of \$8,828,900 for construction items. The State has estimated the project to be as follows:

Description	Total Estimate Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
Construction to widen existing two-lane rural roadway to five-lane rural roadway with shoulders	\$13,828,900	63.8%	\$8,828,900		\$0	36.2%	\$5,000,000
Subtotal	\$13,828,900	63.8%	\$8,828,900	0%	\$0	36.2%	\$5,000,000
Direct State Costs (including plan review, secondary oversight and inspection)	\$500	0%	\$0	0%	\$0	0%	\$500
Indirect State Costs (no local participation required except for service projects)	\$0		\$0		\$0		\$0
TOTAL	\$13,829,400		\$8,828,900		\$0		\$5,000,500

Local Government's Participation = \$5,000,500

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.

Exhibit E

Williams Drive Project Estimated Costs

ROW

Sheets & Crossfield	\$	203,000.00	
CTSUD Easements	\$	153,300.00	
Subtotal ROW			\$ 356,300.00

Utilities

Verizon Facilities	\$	809,320.86	
Verizon Hut Relocation	\$	740,881.93	
Atmos	\$	1,252,585.99	
PEC	\$	686,629.14	
Cobb Fendley Utility Coordination	\$	259,302.50	
Subtotal Utilities			\$ 3,748,720.42

Engineering Costs

Roadway Engineering (KBR)	\$	242,879.76	
Reimbursable W/L Engr (Halff)	\$	194,117.00	
CTSUD Staff	\$	100,000.00	
Subtotal Engineering			\$ 536,996.76

Construction Costs

Construction Contract (JC Evans)	\$	10,323,350.91	
10% Construction Contingency	\$	1,032,335.09	
CEI (PBS&J)	\$	544,865.25	
Engineer's Assistance (KBR)	\$	42,272.90	
GEC (HNTB)	\$	200,000.00	
Subtotal Construction			\$ 12,142,824.15

TOTAL PROJECT	\$	16,784,841.33
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Costs to be Paid by CTSUD (not included in TOTAL PROJECT cost above)

CTSUD Betterment Construction	\$	1,193,042.00	
Betterment Engineering (Halff)	\$	83,193.00	
Additional Costs to be Paid by CTSUD			\$ 1,276,235.00

Costs to be Paid by Wilco (not included in TOTAL PROJECT cost above)

Sheets & Crossfield Betterment	\$	177,000.00	
CTSUD Betterment Easements	\$	96,700.00	
Additional Costs to be Paid by Wilco			\$ 273,700.00