

AGENDA ITEM 14

Consider authorizing County Judge to execute Interlocal Agreement with TTA regarding change order for SH 45 / McNeil Road intersection.

Paul Petrich and Charlie Crossfield addressed the Court regarding the intersection at SH 45 and McNeil Road.

Moved: **Commissioner Boatright**

Seconded: **Commissioner Hays**

Motion: To authorize County Judge to execute Interlocal Agreement with TTA regarding change order for SH 45 / McNeil Road intersection.

Vote: **4 - 0**

< Attachment >

01-27-04P02:29 RCVD

County: Williamson

CSJ: 0683-06-016

Project Number: MG 2002 (247)

Project: S.H. 45

Limits: SH 45/Loop 1 Interchange

**THIRD PARTY ADVANCE FUNDING AGREEMENT FOR CHANGE ORDER # 23
STANDARD TRANSPORTATION IMPROVEMENT PROJECTS (ON-SYSTEM)**

THE STATE OF TEXAS §

THE COUNTY OF WILLIAMSON §

THIS AGREEMENT IS MADE BY AND BETWEEN the State of Texas, hereinafter called the "State", and Williamson County, acting by and through its duly authorized officials, hereinafter called the "Outside Entity".

WITNESSETH

WHEREAS, the Texas Transportation Code authorizes the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

WHEREAS, Commission Minute Order Number ~~XXXXXX~~ ¹⁰⁹⁰⁷⁰ authorizes the State to undertake and complete a highway improvement generally described as the construction of State Highway 45, SH 45/Loop1 interchange.

WHEREAS, the Outside Entity has requested that the State allow the Outside Entity to participate in said highway improvement by funding the construction of certain improvements and appurtenances along existing McNeil Road (see attached change order document), all located in the Jacob M. Harrell Survey, Abstract No. 284, Williamson County, Texas, being a part of a 324.32 acre tract of land, designated as the North Tract, in a deed to A.H. Robinson et al recorded in Volume 394, Page 155 of the Deed Records of Williamson County, Texas. The construction of such improvements and appurtenances is hereinafter called the "Project."

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 Outside Entity do agree as follows:

County: Williamson
CSJ: 0683-06-016
Project Number: MG 2002 (247)
Project: S.H. 45
Limits: SH 45/Loop 1 Interchange

AGREEMENT

Article 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 Outside Entity will consider it to be in full force and effect until the above described improvements herein have been completely constructed or unless this agreement is terminated, as hereinafter provided.

Article 2. Project Funding and Work Responsibilities

The State will authorize the performance of only those Project items of work which the Outside Entity has requested and has agreed to pay for as described in 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, Payment Provision and Work Responsibilities, also specifies those Project items of work that are the responsibility of the Outside Entity and will be carried out and completed by the Outside Entity, at no cost to the State.

Texas Government Code, Chapter 2106 requires the State to recover indirect costs associated with this agreement as calculated based on prevailing rates specified in the State's Indirect Cost Recovery Program.

Article 3. Termination

This agreement may be terminated in the following manner:

- ◆ by mutual written agreement and consent of both parties;
- ◆ by either party upon the failure of the other party to fulfill the obligations set forth herein;
- ◆ by the State if it determines that the performance of the Project is not in the best interest of the State.

If the contract is terminated in accordance with the above provisions, the Outside Entity will be responsible for the payment of Project costs incurred by the State on behalf of the Outside Entity up to the time of termination.

Article 4. Right of Access

If the Outside Entity is the owner of any part of the Project site, the Outside Entity shall permit the State or its authorized representative access to the site to perform any activities required to execute the work. The Outside Entity will provide for all necessary right-of-way and utility adjustments needed for performance of the work on sites not owned by the State.

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Article 5. Responsibilities of the Parties

The Outside Entity acknowledges that while it is not an agent, servant, nor employee of the State, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work on the Project.

Article 6. Sole Agreement

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

Article 7. Successors and Assigns

The State and the Outside Entity 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.

Article 8. Amendments

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

Article 9. Interest

The State will not pay interest on funds provided by the Outside Entity. Funds provided by the Outside Entity will be deposited into, and retained in, the State's Bank of America trustee account.

Article 10. 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 herein by reference, or special specifications approved by the State.

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Article 11. Increased Costs

In the event it is determined that the funding provided by the Outside Entity will be insufficient to cover the State's cost for performance of the Outside Entity's requested work, the Outside Entity will pay to the State the additional funds necessary to cover the anticipated additional cost. The State shall send the Outside Entity a written notification stating the amount of additional funding needed and stating the reasons for the needed additional funds. The Outside Entity shall pay the funds to the State within 30 days of the written notification, unless otherwise agreed to by all parties to this agreement. If the Outside Entity cannot pay the additional funds, this contract shall be mutually terminated in accord with Article 3 - 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 Outside Entity.

Article 12. Maintenance

Upon completion of the Project, the Outside Entity will assume responsibility for the maintenance of the improvements referenced in Article 2.

Article 13. Signatory Warranty


The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party they represent.

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IN WITNESS WHEREOF, THE STATE AND THE OUTSIDE ENTITY have executed duplicate counterparts to effectuate this agreement.

THE STATE OF TEXAS

Executed 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.

By  Date 1/8/04
Robert B. Daigh, P.E.
District Engineer: Austin District, Texas Department of Transportation

THE OUTSIDE ENTITY

~~Williamson County~~

By  Date 12-9-03
Name: Honorable John C. Doerfler
Title: County Judge

For the purpose of this agreement, the addresses of record for each party shall be:

For the Outside Entity:
Williamson County
710 Main Street
Georgetown, Texas 78626

For the State:
Austin District, Texas Department
of Transportation
7901 North IH 35
Austin, Texas 78761-5426

County: Williamson
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Attachment A

1. Payment Provision:

The Outside Entity shall be responsible for 100 % of the cost of the Project. The estimated cost of the Project is \$379,304.42. Upon execution of this Agreement, the Outside Entity shall deliver to the State a warrant or check in the amount of \$379,304.42, payable to the Texas Department of Transportation. If it is found that said amount is insufficient to pay for the cost of the Project, then the Outside Entity, upon request by the State, shall forthwith supplement this amount with funds as requested by the State. Upon completion of the Project, if the total amount paid by Outside Entity exceeds the actual cost of the Project, any excess amount shall be returned to the Outside Entity by the State.

2. Work Responsibilities

A. State Responsibilities:

The state shall be responsible for the performance of all the work specified in Article 2 of the agreement and as more particularly described in the attached change order document. The State shall also be responsible for the administration of any contract for work performed to complete the Project, including any and all supplemental change orders or additional work orders necessary to complete the Project. Upon completion of the Project, the State will perform an audit of the Project cost. Any funds due to the Outside Entity will be promptly paid by the State.