

CSJ #		0196-02-128	
District #	18-Dallas	AFA ID	Z00003788
Code Chart 64 #		24500	
Project Name		IH 35E at 1171 and Main Street	

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 Lewisville**, 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 **116073** authorizing the State to undertake and complete a highway improvement generally described as reconstruction improvements at I-35E/FM 1171 (W. Main Street) interchange in Denton County; and

**WHEREAS**, the Local Government has requested that the State allow the Local Government to participate in said improvement by funding that portion of the improvement described as the construction of form liner murals on MSE walls, downlighting on the MSE wall murals, decorative pavement for the crosswalks, pedestrian lighting on the bridge, banner poles, decorative treatments on the abutments and sidewalks at the I-35E/FM 1171 (W. Main Street) interchange in the City of Lewisville (Project); and

**WHEREAS**, the State has determined that such participation is in the best interest of the citizens of the state;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this Agreement, it is agreed as follows:

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## **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

Upon completion of the Project by the State, the Local Government will assume responsibility for the cost associated with the maintenance of the Project to include repair, replacement, repainting and/or other required or needed maintenance work for the aesthetic upgrades built as part of the IH35E at FM 1171 project. This includes all decorative form liner murals on MSE walls, downlighting on the MSE wall murals, decorative pavement for the crosswalks, pedestrian lighting on the bridge, banner poles, and decorative treatments on the abutments and sidewalks at FM 1171 and Main Street in the City of Lewisville. Upon written notification that the State has approved the completion of the Project, the Local Government shall maintain the Project in accordance with applicable State roadway maintenance manuals and standards.

#### 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 Lewisville Attn: City Manager 151 West Church Street Lewisville, Texas 75057	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 <sup>th</sup> 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.

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**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.

**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.

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**THIS AGREEMENT IS EXECUTED** by the State and the Local Government.

**THE STATE OF TEXAS**

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Kenneth Stewart  
Typed or Printed Name

\_\_\_\_\_  
Claire Powell  
Typed or Printed Name

\_\_\_\_\_  
Director of Contract Services  
Typed or Printed Title

\_\_\_\_\_  
City Manager  
Typed or Printed Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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## ATTACHMENT A PAYMENT PROVISION AND WORK RESPONSIBILITIES

The Local Government will fund the construction of form liner murals on MSE walls, downlighting on the MSE wall murals, decorative pavement for the crosswalks, pedestrian lighting on the bridge, banner poles, decorative treatments on the abutments and sidewalks at I35E/FM 1171 (W. Main Street) interchange in the City of Lewisville. The Local Government will be responsible for all construction costs and overruns.

Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation	
Construction (by State)	\$2,549,146.40	0%	\$0.00	0%	\$0.00	100%	\$2,549,146.40
Contingency Costs @ 15%	\$382,371.96	0%	\$0.00	0%	\$0.00	100%	\$382,371.96
Direct State Costs @ 5.82%	\$148,360.32	0%	\$0.00	0%	\$0.00	100%	\$148,360.32
<b>Subtotal</b>	<b>\$3,079,878.68</b>		<b>\$0.00</b>		<b>\$0.00</b>		<b>\$3,079,878.68</b>
Indirect State Costs 4.77%	\$121,594.28	0%	\$0.00	0%	\$0.00	0%	\$121,594.28
<b>TOTAL</b>	<b>\$3,201,472.96</b>		<b>\$0.00</b>		<b>\$0.00</b>		<b>\$3,201,472.96</b>

Total Estimated Local Government Participation = \$3,201,472.96

Total Estimated Payment by the Local Government to the State on full execution of this Agreement = \$3,201,472.96

This is an estimate. The final amount of the Local Government participation will be based on actual costs.