

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY
CONSTRUCTION & MAINTENANCE BY A LOCAL GOVERNMENT (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 Seguin, acting by and through its duly authorized officials, called the "Local Government."

WITNESSETH

WHEREAS, Texas Transportation Code, §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, Transportation Code, §201.209 allows the State to enter into an interlocal agreement with a Local Government; and,

WHEREAS, Texas Transportation Code §221.002 provides that the Governing Body of a Municipality may enter into an agreement with the Texas Transportation Commission for the improvement by the Local Government of the state highway system, including maintenance;

WHEREAS, the Local Government desires to construct and maintain drainage improvements in the right of way of US 90A, a roadway on the state highway system; and

WHEREAS, the Governing Body of the Local Government has approved entering into this agreement for construction and maintenance of the Project that is identified in the location map shown as Exhibit A;

WHEREAS, the State has determined that such improvements 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, 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 unless terminated as provided below.

2. Scope of Work

The Local Government will fund and maintain the Project in accordance with State standards. The Local Government will design, construct, and maintain drainage improvements as shown on the construction plans entitled "Seguin, Texas; RSMH- Phase I, Sheet 81, etc.- Milam Street Storm Sewer, and Sheet 102, 104, etc.- San Marcos and Court Street Culvert", hereinafter referred to as Exhibit B.

Phase II

58,59

3. Termination of this Agreement

This agreement shall remain in effect 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 State determines that the performance of the Project is not in the best interest of the State.

4. Amendments

Amendments to this agreement due to changes in the character of the work, terms of the agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

5. Remedies

The State will notify the Local Government, in writing, if the State determines that the Local Government is not maintaining the Project in accordance with this agreement. The Local Government will have thirty (30) days to cure. If the non-compliance is not cured within thirty (30) days, the State will perform the maintenance and the Local Government will be responsible for that cost. 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.

6. Compliance with Texas Accessibility Standards and ADA

The Local Government shall ensure that maintenance is 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).

7. Notice

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:
City Manager	Director of Contract Services
City of Seguin, Texas	Texas Department of Transportation
205 N. River Street (P.O. Box 591)	125 E. 11 th Street
Seguin, Texas 78155	Austin, Texas 78701

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

8. Legal Construction

This document does not convey any real property interests. In case 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.

9. Responsibilities of the Parties

The parties 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. The parties expressly agree that this Project is not a joint venture or enterprise. However, if a court should find that the parties are engaged in a joint venture or enterprise, then the Local Government agrees to pay any liability adjudicated against the State for acts and deeds of the Local Government, its employees or agents during the performance of this Project, including attorney fees which may be incurred in litigation or otherwise resisting said claim or liabilities.

10. 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.

11. 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.

12. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

13. 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.

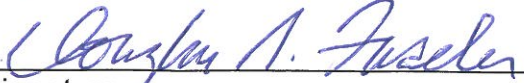
14. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

CSJ # N/A
District # San Antonio
Code Chart 64 # N/A
Project: US 90A Culvert ~~and Storm Sewer~~

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT


Signature

Douglas G. Faseler
Typed or Printed Name

City Manager
Title

November 6, 2013
Date

THE STATE OF TEXAS


District Engineer

12/4/13
Date

Exhibits:

- A- Location Map Showing Project
- B- Construction Plans
- C- Certificate of Insurance (Form 1560)