TO: Mayor and City Council
FROM: Thomas G. Wendorf, P.E., Director of Public Works
THROUGH: Terry M. Brechtel, City Manager
COPIES: Melissa Byrne Vossmer; Andrew Martin; Peter Zanoni; Milo D. Nitschke; File
SUBJECT: Loop 410 at Nacogdoches Drainage Improvements
DATE: September 23, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the City Manager or her designee to execute an Advance Funding Agreement and authorizes funds in the amount of $1,994,049.35, payable to the Texas Department of Transportation (TxDOT), for construction costs, authorizes funds in the amount of $299,107.40 for construction contingency, and authorizes funds in the amount of $160,520.97 for expense recovery for a total amount of $2,453,677.72 in connection with the IH 410 and US 281 Outfall Improvements Project, an authorized Certificates of Obligation funded project located in Council Districts 9 and 10.

This ordinance shall become effective immediately upon eight affirmative votes. Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

This project consists of drainage outfall improvements from IH 410, west of Nacogdoches, to Haskins in connection with the Texas Department of Transportation (TxDOT) construction of a four-level, direct-connection interchange at IH 410 and US 281. TxDOT is funding this highway improvement project and is managing the construction. The necessary drainage improvements for the interchange project include the construction of a channel that extends beyond the scope of the TxDOT road construction to connect with a fully improved drainage channel at Haskins. The state has estimated the City’s portion of the project costs in connection with the drainage improvements to be $1,994,049.35, as shown in the “Local Transportation Project Advance Funding Agreement” included herein as attachment 3. This ordinance also authorizes funds in the amount of $299,107.40 for construction contingency and $160,520.97 for expense recovery. This agreement will result in reduced construction costs for the City in connection with the drainage improvements as the project will be managed by TxDOT in conjunction with the TxDOT roadway construction. This project will begin March 2005 and will be completed in March 2007.
POLICY ANALYSIS

Approval of this ordinance will be a continuation of City Council policy to participate in the development and construction of Certificates of Obligation Funded projects and to cooperate with other governmental entities in the development of street and drainage improvements.

FISCAL IMPACT

This is a one-time capital improvement expenditure within budget and included in the FY 04-09 Capital Improvement Program Budget. Funds in the amount of $2,453,677.72 are available from Certificates of Obligation and are authorized payable as follows:

- $1,994,049.35 payable to TxDOT for construction services
- $ 299,107.40 payable for construction contingency
- $ 160,520.97 payable for expense recovery

COORDINATION

This request for ordinance has been coordinated with the Office of Management and Budget, the Finance Department and the Texas Department of Transportation.

SUPPLEMENTARY COMMENTS

The Discretionary Contracts Disclosure Form is not required for this agreement.

ATTACHMENTS

1. Project Map
2. Letter, Texas Department of Transportation received July 29, 2004
3. Advance Funding Agreement

Thomas G. Wendorf, P.E.
Director of Public Works

Melissa Byrne Vosmert
Assistant City Manager

Approved:

Terry M. Brechtel
City Manager
City of San Antonio
Attn: Mr. Bill Krause, P.E.
Capital Programs
P.O. Box 839966
San Antonio, Texas 78284-5126

Control: 0521-04-223
County: Bexar County
Project: IH 410/US 281 Outfall Improvements

Dear Mr. Krause:

Attached are two (2) copies of the Local Transportation Project Advance Funding Agreement for the referenced project. Please return both copies of this agreement, bearing original signatures, to the Consultant Contract Management Office, attention Melissa Jordan, at your earliest convenience. Please note that “Attachment A” and “Attachment B”, which are referenced on page 1, are not attached to these agreements, as stated. Please attach a copy, labeled “Attachment A”, of the resolution passed by the San Antonio City Council authorizing the City’s participation in this project, as well as a project location map labeled “Attachment B”, to each copy of the agreements before they are returned for full execution.

In accordance with the terms stipulated in the agreement, a check made payable to the Texas Department of Transportation for $1,994,049.35 must be returned with the partially executed agreements, if further action is to be taken. Once the funding and both copies of this agreement have been returned, the Department will fully execute the agreements, and an original will be returned to your office for permanent files.

Your prompt attention to this matter would be greatly appreciated. Thank you, in advance, for your assistance.

Sincerely,

[Signature]

Melissa Jordan
John A. Saldaña, P.E.
CCMO Manager

An Equal Opportunity Employer
LOCAL TRANSPORTATION PROJECT
ADVANCE FUNDING AGREEMENT
For A Drainage Improvement Project

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 San Antonio, acting by and through its duly authorized officials, hereinafter called the “Local Government.”

WITNESSETH

WHEREAS, the Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21) codified under Title 23 U.S.C. Section 101 et seq., authorize transportation programs to meet the challenges of protecting and enhancing communities and the natural environment and advancing the nation’s economic growth and competitiveness; and

WHEREAS, ISTEA and TEA-21 establish 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 Number 109460, authorizing the State to undertake and complete a highway improvement generally described as the construction of a four-level, direct-connection interchange at IH 410 and US 281; 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 the construction of outfall improvements in the vicinity of IH 410 and Nacogdoches Road, hereinafter called the “Project” and further described in the sketch attached hereto and labeled Attachment B.

WHEREAS, the Local Government will be responsible for 80% of the actual construction costs for the Project (including construction engineering and contingencies), excluding preliminary engineering and indirect costs; and

WHEREAS, the Local Government is responsible for acquiring necessary rights of way or easements required to implement the Project; and,

WHEREAS, the State is responsible for preparing the necessary instruments (plats and field notes); and
WHEREAS, the State is responsible for designing and incorporating the design of the Project into the construction documents for the IH 410/US 281 interchange; and,

WHEREAS, the State has determined that the Project compliments and coincides with the IH 410/US 281 design, and 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, 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
   Construction of outfall improvement in the vicinity of IH 410 and Nacogdoches Road 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.
   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 remit a check or warrant made payable to the "Texas Department of Transportation" in the amount specified in Attachment C. The Local Government will pay at a minimum its funding share for the estimated cost of preliminary engineering for the project.
   f. 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 costs.
   g. In the event the State determines that additional funding is required by the Local Government at any time during the Project, the State will notify the Local Government in writing. The Local Government will be responsible for providing the required additional funding.
Government will make payment to the State within thirty (30) days from receipt of the State’s written notification.

h. 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.

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 Texas Transportation Commission 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.

The State will not execute the contract for the construction of the project until the required funding has been made available by the Local Government in accordance with this Agreement.

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, or;

b. because of a breach of this Agreement. Any cost incurred due to a breach of contract shall be paid by the breaching party.

c. After the PS&E the Local Government may elect not to provide the funding and the Project does not proceed because of insufficient funds; 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
If the required right of way encroaches upon existing utilities and the proposed project requires their adjustment, removal or relocation, the Local Government will be responsible for determining the scope of utility work and notify the appropriate utility company to schedule adjustments.
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. This includes, but is not limited to: 43 TAC §15.55 relating to Construction Cost Participation; 43 TAC §21.21 relating to State Participation in Relocation, Adjustment, and/or Removal of Utilities; and, 43 TAC § 21.31 et seq. relating to Utility Accommodation. The Local Government will be responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the project, unless this work is provided by the owners of the utility facilities:

a. per agreement;
b. per applicable statutes or rules, or;
c. as specified otherwise in this Agreement.

Prior to letting a construction contract for the Project, a utility certification must be made available to the State upon request stating that all utilities needing to be adjusted for completion of the construction activity have been adjusted.

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 Local Government is responsible for the identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
b. The Local Government is responsible for the cost of any environmental problem’s mitigation and remediation.
c. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment. Public hearings will not be held prior to the approval of project schematic.
d. The Local Government is responsible for the preparation of the NEPA documents required for the environmental clearance of this project.
e. The Local Government shall provide the State with written certification from appropriate regulatory agency(ies) that identified environmental problems have been remediated.

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 responsibility for the performance of architectural and engineering services. 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 State shall advertise for construction bids, issue bid proposals, receives 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 State will use its approved contract letting and award procedures to let and award the construction contract.
c. Prior to their execution, the Local Government will be given the opportunity to review contract change orders that will result in an increase in cost to the Local Government.
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, Part 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 State 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:

<table>
<thead>
<tr>
<th>Local Government:</th>
<th>State:</th>
</tr>
</thead>
<tbody>
<tr>
<td>The City of San Antonio</td>
<td>Texas Department of Transportation</td>
</tr>
<tr>
<td>Attn: Bill Krause, Capital Programs</td>
<td>Attn: Melissa Jordan</td>
</tr>
<tr>
<td>P.O. 839966</td>
<td>P.O. Box 29928</td>
</tr>
<tr>
<td>San Antonio, Texas 78284-5126</td>
<td>San Antonio, Texas 78229-0928</td>
</tr>
</tbody>
</table>

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
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.

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.

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

26. Debarment Certifications
The parties are prohibited from making any award at any tier to any party that is debarred or
suspended or otherwise excluded from or ineligible for participation in Federal Assistance
Programs under Executive Order 12549, “Debarment and Suspension.” The parties to this
contract shall require any party to a subcontract or purchase order awarded under this contract to
certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of
the certification in accordance with Title 49 CFR Part 29 (Debarment and Suspension).

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. 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 Section
Office of General Counsel
Texas Department of Transportation

______________________________
Date
ATTACHMENT A

Resolution or Ordinance
ATTACHMENT B

Location Map Showing Project
The City will participate in the cost of constructing outfall improvements in the vicinity of IH 410 and Nacogdoches Road, which is an off-system location. Based on the funding Categories 1 and 10, the City's participation is 80% of the cost of this particular improvement and the other 20% will be paid for with federal and state funds. The City's estimated construction participation of this additional work is $1,994,049.35, including construction items, and engineering and contingencies. The State has estimated the project to be as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Total Estimate Cost</th>
<th>Federal Participation</th>
<th>State Participation</th>
<th>Local Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction of Outfall Improvements</td>
<td>$1,050,382.75</td>
<td>16%</td>
<td>4%</td>
<td>80%</td>
</tr>
<tr>
<td>Bridges</td>
<td>$1,132,245.70</td>
<td>16%</td>
<td>4%</td>
<td>80%</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$2,182,628.45</td>
<td>16%</td>
<td>4%</td>
<td>80%</td>
</tr>
<tr>
<td>Engineering &amp; Contingencies (E&amp;C)**</td>
<td>$309,933.24</td>
<td>16%</td>
<td>4%</td>
<td>80%</td>
</tr>
<tr>
<td>(Estimated @ 14.2% of construction)</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>E &amp; C Indirect Costs - (Estimated @ 8.87% of construction) (No local participation requirement)</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$2,492,561.69</td>
<td>$398,809.87</td>
<td>$99,702.47</td>
<td>$1,994,049.35</td>
</tr>
</tbody>
</table>

Engineering and contingencies charges will be based on actual charges.

City's Participation (80%) = $1,994,049.35

It is understood that the proposed improvements will be done by the State and the City will transmit to the State with the return of this Agreement, executed by the City, a check in the amount of $1,994,049.35 made payable to the "Texas Department of Transportation" to be used solely for the cost of improvements as requested by the City. It is further understood that the State will include only those items for the improvements as requested and required by the City. This is a construction estimate only; final participation amounts will be based on actual charges to the project.