

ACTION FORM BRYAN CITY COUNCIL

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| DATE OF COUNCIL MEETING: October 8, 2013 | | DATE SUBMITTED: September 23, 2013 | |
| DEPARTMENT OF ORIGIN: PW – Traffic Ops. | | SUBMITTED BY: Dale Picha | |
| MEETING TYPE: | CLASSIFICATION: | ORDINANCE: | STRATEGIC INITIATIVE: |
| <input type="checkbox"/> BCD | <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> 1ST READING | <input checked="" type="checkbox"/> PUBLIC SAFETY |
| <input type="checkbox"/> SPECIAL | <input checked="" type="checkbox"/> CONSENT | <input type="checkbox"/> 2ND READING | <input type="checkbox"/> SERVICE |
| <input checked="" type="checkbox"/> REGULAR | <input type="checkbox"/> STATUTORY | | <input type="checkbox"/> ECONOMIC DEVELOP. |
| <input type="checkbox"/> WORKSHOP | <input type="checkbox"/> REGULAR | | <input checked="" type="checkbox"/> INFRASTRUCTURE |
| | | | <input type="checkbox"/> QUALITY OF LIFE |
| <p>AGENDA ITEM DESCRIPTION: Consider executing an Interlocal Agreement (ILA) with Texas A&M University to share in the constructions costs for a new traffic signal at the intersections of Wellborn Road and Old College Road, and at Wellborn Road and F&B Road. As part of this same City Council meeting, a similar ILA with the City of College Station will also be considered for execution, as well as an agreement with Union Pacific Railroad to upgrade railroad signal equipment as part of this project. Construction costs for the traffic signal and the railroad signal equipment would be equally shared between City of Bryan, City of College Station, and Texas A&M University. This ILA specifies that Texas A&M University will reimburse the City of Bryan up to \$210,000, or one-third of the total costs to construct the new traffic signals and upgrade the railroad signal equipment.</p> | | | |
| <p>SUMMARY STATEMENT: The Cities of Bryan and College Station previously executed an interlocal agreement in 2011 to equally share in the design costs. The traffic signal design costs were \$42,000, and UPRR’s design costs were \$30,000 (for a total of a \$72,000). On July 9, 2013, the City opened bids on RFB #13-051, “Wellborn Road at Old College Road and F&B Road Traffic Signals.” Only two (2) competitive bids were received – the low bid was \$259,007.95, and the second bid was \$347,191.04.</p> <p>Since the bid opening, the low bidder (Analytical Technology Consultants, Inc., or ATCI) has been slow to respond to several requests to clarify some apparent problems with their bid, including providing references. Because these requests were never adequately addressed by the low bidder, staff consulted with the City of College Station and Texas A&M University to consider awarding the contract to the second bidder. Despite the difference in bid prices (over \$88,000), all agencies concurred that it would be more advantageous to proceed with awarding the contract to the second bidder rather than rejecting both bids and re-advertising the project.</p> <p>Based on the design costs mentioned above and the bids received on July 9, the table below summarizes all project costs, with the not-to-exceed amount for each agency of \$210,000 (as listed in this ILA).</p> <p>If the City Council decides to execute the ILAs with the City of College Station and Texas A&M University, and the agreement with Union Pacific Railroad, the next step will be to consider awarding the construction contract to the second bidder (Bayer Electric), which is also on this same agenda.</p> | | | |

Total Project Costs (Design and Construction) – Based on Bids Received

| Cost Item | Totals Per Agency | | | Total |
|---|----------------------|----------------------|----------------------|----------------------|
| | COB | CoCS | TAMU | |
| Design | | | | |
| Traffic Signals (Kimley-Horn) | \$ 21,000.00 | \$ 21,000.00 | - | \$ 42,000.00 |
| Railroad Equipment (UPRR) | \$ 15,000.00 | \$ 15,000.00 | - | \$ 30,000.00 |
| Sub-Total Design | \$ 36,000.00 | \$ 36,000.00 | - | \$ 72,000.00 |
| Construction | | | | |
| Traffic Signals (Bayer Electric) | \$115,730.35 | \$ 115,730.35 | \$ 115,730.35 | \$ 347,191.04 |
| Railroad Equipment (UPRR) | \$ 74,852.33 | \$ 74,852.33 | \$ 74,852.33 | \$ 224,557.00 |
| Sub-Total Construction | \$ 190,582.68 | \$ 190,582.68 | \$ 190,582.68 | \$ 571,748.04 |
| 10% for Change Orders | \$ 19,058.26 | \$ 19,058.27 | \$ 19,058.27 | \$ 57,174.80 |
| Total Construction (Not to Exceed) | \$ 210,000.00 | \$ 210,000.00 | \$ 210,000.00 | \$ 628,922.84 |
| Design and Construction | | | | |
| TOTAL | \$ 246,000.00 | \$ 246,000.00 | \$ 210,000.00 | \$ 702,000.00 |

STAFF ANALYSIS AND RECOMMENDATION: Staff recommends executing this Interlocal Agreement with Texas A&M University to equally share in the construction costs for this project. This ILA ensures reimbursement from Texas A&M University for an amount not-to-exceed \$210,000 (one-third the construction costs). This is an important safety project that benefits the citizens of Bryan and College Station and the staff/students at Texas A&M University. All three agencies can take advantage of an opportunity to partner together to deliver this project.

OPTIONS (In Suggested Order of Staff Preference):

1. Execute the Interlocal Agreement with Texas A&M University.
2. Do not execute the Interlocal Agreement with Texas A&M University and provide direction to staff.

ATTACHMENTS:

1. Interlocal Agreement with Texas A&M University

FUNDING SOURCE: City of Bryan's portion to be funded from the Transportation Fee (Fund 240)

APPROVALS: Jayson E. Barfknecht 09/26/13; Hugh R. Walker, 09/26/2013

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 09/30/2013

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 09/30/2013

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF BRYAN
AND TEXAS A&M UNIVERSITY
PUBLIC IMPROVEMENTS FOR TRAFFIC SIGNALS AND INTERSECTION
IMPROVEMENTS FOR WELLBORN AT F&B AND OLD COLLEGE ROADS**

This **Interlocal Cooperation Agreement** (“Agreement”) is by and between the City of Bryan, a Texas home-rule municipal corporation (hereinafter referred to as “**BRYAN**”) and Texas A&M University, a member of The Texas A&M University System, an agency of the state of Texas (hereafter referred to as “**TAMU**”), each acting herein under approved delegated authority from its governing body.

WHEREAS, Chapter 791 of the TEXAS GOVERNMENT CODE, also known as the INTERLOCAL COOPERATION ACT, authorizes all local governments to contract with each other or a state agency to perform functions or services that each party to the contract is authorized to perform individually; and

WHEREAS, the parties are seeking to enhance safety and improve the traffic flow through the Wellborn Road corridor at the intersections of F&B Road and Old College Road in **BRYAN**; and

WHEREAS, **BRYAN** plans to improve the intersection and signalization at the two intersections: Wellborn Road at F&B Road and Wellborn Road at Old College Road, including adding a new signal at both intersections to improve safety and operations, including communication, vehicle detection, and required traffic signal preemption for the railroad (hereinafter referred to as “the Project”); and

WHEREAS, **TAMU** and the City of College Station intend to enter into separate agreements with **BRYAN** to share in the cost of the construction of the intersection and signalization improvements; and

WHEREAS, **BRYAN**’s bid price for construction of the Project is \$347,191.04, plus \$224,557.00 for railroad signal modifications, for a total of \$571,748.04. A 10 percent contingency for Change Orders is added to this amount, for a total of \$628,922.84, which comes to a three-way split of \$210,000.00; and

NOW, THEREFORE, the parties herein enter into this Agreement between **BRYAN** and **TAMU** regarding the Project:

1. BRYAN AND TAMU agree to:

- (a) BRYAN** will bid and manage the construction of the Project at Wellborn / F&B and Wellborn / Old College Road intersections.
- (b) TAMU** will reimburse **BRYAN** for one-third of the actual construction costs of the Project, in an amount not to exceed \$210,000.00, within thirty (30) days of receipt of a correct invoice.

2. Invalidity

If any portion of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

3. Written Notice

Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. **BRYAN** and **TAMU** can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

BRYAN: City of Bryan
Attn: City Engineer
P.O. Box 1000
Bryan, Texas 77805-1000

TAMU: Texas A&M University
Attn: Director of Transportation Services
1250 TAMU
College Station, TX 77843-1250

4. Entire Agreement

It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of **BRYAN** or **TAMU**, either before or after the execution of this Agreement, shall affect or modify any terms or obligations hereunder.

5. Consent to Suit. Nothing in this Agreement will be construed as a waiver or relinquishment by any party of its right to claim such exemptions, privileges, and immunities as may be provided by law, nor as an ascent to assume additional liabilities to third parties.

6. Amendment

The terms and conditions of the Agreement may be modified at any time by the mutual consent of both parties, but only in writing, signed by an authorized signatory of both entities.

7. Governing Law and Venue

This Agreement has been made under and shall be governed by the laws of the State of Texas. Pursuant to Section 85.18 (b), *Texas Education Code*, venue for a state court suit filed against The Texas

A&M University System, any component of The Texas A&M University System, or any officer or employee of The Texas A&M University System is in the county in which the primary office of the chief executive officer of the system or component, as applicable, is located. At execution of this Agreement, such county is Brazos County, Texas. Venue for any suit brought against The Texas A&M University System in federal court must be in the Houston Division of the Southern District of Texas.

8. Place of Performance

Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

9. Authority to Enter Contract

Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entities.

10. Waiver

Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

11. Agreement Read

The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

12. Multiple Originals

It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

[Signatures to follow]

EXECUTED and EFFECTIVE on this the _____ day of _____, 2013.

CITY OF BRYAN

TEXAS A&M UNIVERSITY

Jason P. Bienski, Mayor

B. J. Crain,
Vice President for Finance & CFO

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED:

Janis K. Hampton, City Attorney