

County: Wise
CSJ: 0902-20-933
Project: CR 4680 at Branch of Walker Crk.
Road/Street: _____
NBI Structure No. AA03 62 002
Local Designation No. _____

**CONSTRUCTION AND MAINTENANCE
AGREEMENT**

**FOR BRIDGE REPLACEMENT OR REHABILITATION
OFF THE STATE SYSTEM**

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

THIS AGREEMENT IS MADE by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the **STATE**, and Wise County, a political subdivision of this state, or a special district that has the authority to finance a highway improvement project, hereinafter called the **LOCAL GOVERNMENT**, acting by and through its Commissioner's Court.

W I T N E S S E T H

WHEREAS, Title 23, United States Code, authorizes federal funds to assist local governments in the replacement or rehabilitation of functionally or structurally deficient bridges located on a public road or street within its jurisdiction; and,

WHEREAS, the State, acting by and through the Texas Transportation Commission, has approved a program of work for Off-State-System Federal-Aid Bridge Replacement and Rehabilitation; and,

WHEREAS, the Local Government owns a bridge located on a public road or street located at CR 4680 at Branch of Walker Creek; and,

WHEREAS, said bridge is included in the currently approved program of projects as authorized by Commission Minute Order Number 107615 dated September 24, 1998, and the State and the Local Government mutually agree to effectuate the project;

A G R E E M E N T

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, the State and the Local Government do agree as follows.

Article 1. Contract Period

This agreement becomes effective upon the date of execution by the party whose signing constitutes final and full execution and shall terminate when the work has been completed or as provided in Article 10. "Termination".

Article 2. Right of Entry

The Local Government hereby authorizes the State, its consultant, contractor, or other designated representative to enter the site of said bridge and adjacent right of way or relocation right of way to perform surveys, inspections, construction and other activities necessary to replace or rehabilitate said bridge and approaches.

Article 3. Utility Adjustments and Right of Way

The Local Government shall provide or cause to be provided, at no cost to the State or Federal government, the necessary adjustment of any and all utilities and services, whether publicly or privately held, as may be necessary to permit the work authorized herein. The adjustment, removal, or relocation of such utilities shall be accomplished pursuant to the Local Government's usual and customary policies and procedures regarding utilities, provided, however, that these activities shall be coordinated with and carried out in a manner that does not conflict with the requirements of the State.

The Local Government further agrees to acquire, to the extent permitted by law, at no cost to the State or Federal Government, any additional right of way, if required. If for any reason the Local Government determines it is unable to acquire the required right of way, all pertinent provisions of this agreement shall remain applicable, including Article 10. "Termination" and Article 4. F. "Costs at Termination".

Article 4. Project Funding

Subject to Article 3. and other provisions as follows, the general funding formula for these projects involves funding by the Federal Government (80% of the cost), the State (10%), and the Local Government (10%). The State assumes no liability for any costs except as authorized herein. All payment obligations of the Local government shall be subject to the requirements of governing Texas law and, if applicable, Article 11, Section 5 of the Texas Constitution.

The Local Government agrees to pay the State (1) 10% of the direct costs for preliminary engineering incurred by the State, (2) 10% of the direct cost of construction, construction engineering and contingency, and (3) 100% of the direct cost of any project cost item or portion of a cost item that is not eligible for federal or state participation.

A. Preliminary Engineering Costs - The State will document its costs incurred for preliminary engineering and shall notify the Local Government of its share of these costs when submitting notice pursuant to Article 4(D) and/or 4(E) below.

B. Construction Costs - The direct construction cost includes the amount of the contract awarded to a contractor based upon the low bid, any supplements made thereto during the duration of the project, and construction engineering and contingencies.

C. Payments - Thirty calendar days after signing this agreement and thirty calendar days before beginning the preliminary engineering work, the State shall notify the Local Government of payment due in an amount equal to 10% of the estimated direct cost of project preliminary engineering. Forty-five calendar days prior to the State's scheduled date for the contract letting, the Local Government agrees to pay to the State an amount equal to the remainder of the Local Government's agreed upon participation in the project.

The Local Government shall promptly and faithfully provide payment of the required funds. The department will not pay interest on the funds provided by the Local Government. Funds provided by the Local Government will be deposited into, and retained in, the state treasury.

D. Interim and Final Accounting - If during the course, at termination or at the completion of the project it is found that the amount received is insufficient to pay the Local Government's agreed upon participation, the State shall immediately notify the Local Government who shall promptly transmit the required amount to the State.

At the completion of the project, the State shall use generally accepted accounting procedures to determine the actual direct cost of the project. Excess funds paid by the Local Government will be returned. Accounting records will be available at reasonable times at the office of the State for inspection by the Local Government. The State will provide not more than four copies of any records requested by the Local Government.

E. Costs at Termination - If after full execution of this agreement the project is terminated at the request of the Local Government, the Local Government shall be responsible for all (100%) expenses incurred for the project, including all direct and indirect costs. The indirect costs shall be calculated based on prevailing rates as

determined through the Texas Department of Transportation's Indirect Cost Recovery Program.

F. Estimate of Project Direct Cost - An estimate of the direct cost of the project that may be very tentative and made prior to the usual preliminary engineering phase of a project is provided in Exhibit A of this agreement. Neither the estimate provided in Exhibit A or any other estimate of cost provided by the State, shall limit the Local Government's obligations set out in provisions of this agreement.

Article 5. Project Administration and Accomplishment of Work

The State shall use its own forces to provide or shall contract for the following:

- A. Prepare the construction plans, specifications and estimates (PS&E). At the beginning of the construction stage, the construction plans shall be attached hereto, labeled Exhibit B, Project Plans, and made a part hereof.
- B. Coordinate with the Local Government during plan preparation and have the Local Government indicate approval of the project plans by signing the title sheet.
- C. Advertise for bids and award the contract.
- D. Supervise the work as required by the construction plans and specifications
- E. Final inspection and acceptance of the completed project.

Article 6. Review of Plans by the Local Government

The Local Government shall provide prompt review of the construction plans when requested by the State. No review shall unduly delay the progress of the project.

Article 7. Local Government Acknowledgment

The Local Government acknowledges that it is not an agent, servant, or employee of the State and further acknowledges full and complete responsibility for its own acts and deeds and for those of its agents or employees during the performance of the work authorized in this contract.

Article 8. Maintenance

After the project has been completed, the Local Government shall accept full ownership and operate and maintain the facility authorized by the agreement for the benefit of and at no

charge of toll to the public. This covenant shall survive the completion of construction and termination of this agreement.

Article 9. Sole Agreement

This agreement constitutes the sole agreement between the State and the Local Government concerning this project. Any prior agreement, either written or oral, respecting this project is hereby superseded.

Article 10. Termination

This agreement may be terminated before the project is completed by mutual written consent of both parties with financial responsibilities carried out as assigned in Article 4, Project Funding.

Article 11. Notices

All notices to either party under this agreement shall be delivered personally one to the other or sent by mail or courier, postage pre-paid, to the addresses shown on the signature page of this agreement.

Article 12. Ownership of Documents

Upon completion of the project, all documents prepared by the State shall remain the State's property. The Local Government shall have unlimited and unrestricted use of the documents.

Article 13. 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.

Article 14. Legal Construction

In the event that one or more of the provisions of this agreement shall for any reason be held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision herein, and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Article 15. Signatory Warranty

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

IN WITNESS WHEREOF, THE PARTIES HERETO have executed duplicate counterparts to effectuate these agreements.

THE LOCAL GOVERNMENT WISE COUNTY
(Name)

BY L. B. McDonald DATE 10/26/99
(Signature)

L.B. McDONALD, WISE COUNTY JUDGE

Typed Name and Title of Signatory CERTIFIED COMMISSIONERS COURT MINUTES

Under authority of Resolution/Ordinance Number _____ Dated 10/11/99

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission under authority of Minute Order 100002 for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved by the Texas Transportation Commission.

By Robert L. Wilson DATE 11/8/99
for Robert L. Wilson, P.E., Director, Design Division

For the purposes of this agreement, notices shall be deemed delivered when addressed and mailed to the following:

The Local Government:

The Honorable L.B. McDonald
Wise County Judge
County Courthouse
P.O. Box 393
Decatur, Texas 76234

Texas Department of Transportation District Office:

Mr. Steven E. Simmons, P.E.
District Engineer
Texas Department of Transportation
P.O. Box 6868
Fort Worth, Texas 76115-0868

County: Wise
 CSJ: 0902-20-933
 Project: CR 4680 at Branch of Walker Crk
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 NBI Structure No. AA03 62 002
 Local Designation No. _____
 Date of Agreement Execution by Local
 Government: _____

**EXHIBIT A TO
 CONSTRUCTION AND MAINTENANCE
 AGREEMENT
 FOR BRIDGE REPLACEMENT OR REHABILITATION
 OFF THE STATE SYSTEM - TENTATIVE ESTIMATE OF COSTS**

	<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE) ◆	\$ 15,933	
Ten (10) Percent Local Government Participation in the Sum of PE (1st payment)		\$ 1,593
Construction	\$ 113,810	
Engineering and Contingency (E&C)	\$ 12,519	
Construction Plus E&C ◆	\$ 126,329	
Ten (10) Percent Local Government Participation in the Sum of Construction, E&C (2nd payment)		\$ 12,633
Total Local Government Participation		\$ 14,226
Total Project Cost ◆◆	\$142,262	