

RESOLUTION NO. 6-1990

RESOLUTION AUTHORIZING EXECUTION OF MINUTE ORDER #89800 FROM THE STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION FOR THE E. S. 11TH STREET/JUDGE ELY BOULEVARD BEAUTIFICATION PROJECT.

THE STATE OF TEXAS

COUNTY OF TRAVIS

THIS AGREEMENT, is made by and between the State of Texas, acting by and through the State Department of Highways and Public Transportation, hereinafter called the "State", and the City of Abilene acting by and through its duly authorized officials, as evidenced by Resolution/Ordinance No. 6-1990, dated March 8, 1990, hereinafter called the "City".

W I T N E S S E T H

WHEREAS, the State owns and maintains a system of highways, including State Highway 36, in Taylor County, Texas, for public use and benefit; and

WHEREAS, the City has requested State participation in a Landscape Cost Sharing Program project along State Highway 36, within the City of Abilene, hereinafter called the "Project", and as shown on the attached EXHIBIT A; and

WHEREAS, the City has committed to cooperating with the State by providing a total contribution of \$16,152.00 toward the completion of the Project, which sum includes a cash contribution of \$8,452.00, and a non-cash contribution of \$7,700.00, which represents the agreed, fair-market, non-cash value furnishing labor and equipment to maintain for 24 consecutive months, landscape items to be installed by the State through a construction contract administered by the State; and

WHEREAS, State Highway and Public Transportation Commission Minute Order 89800, dated January 30, 1990, attached hereto and labeled EXHIBIT B, authorizes the State to cooperate with the City in the development of the Project by providing State funds which will be combined with the cash contribution available through the City, and utilized to install landscape items in accordance with the project Design Plan through a construction contract administered by the State;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto be by them respectively kept and performed as hereinafter set forth, the State and the City do mutually agree as follows:

A G R E E M E N T

ARTICLE Term of Agreement.

This agreement becomes effective when finally executed by the State and shall terminate upon satisfactory completion of the work as called for by the Project Design Plan and as stipulated within this Agreement, unless otherwise terminated as provided hereinafter.

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ARTICLE 2. Project Design Plan.

The State will furnish the Project Design Plan. The Project Design Plan shall be incorporated into the Agreement by reference.

ARTICLE 3. Project Funding.

The total cost of the Project is \$32,304.00 and shall be funded jointly by the State and the City. State funds in an amount estimated not to exceed \$16,152.00 will be combined with the cash contribution of \$8,452.00 provided by the City and utilized to provide for the installation of landscape items through a construction contract administered by the State in accordance with the Project Design Plan. The City's share of the project is \$16,152.00, and includes a cash contribution of \$8,452.00, and a non-cash contribution of \$7,700.00 which sum represents the agreed, fair-market, non-cash value for providing labor, equipment and materials for Project maintenance and establishment activities for a period of 24 consecutive months following the completion of the construction contract administered by the State.

ARTICLE 4. Responsibility of the Parties.

A. The City agrees to:

1. Indemnify and save harmless the State, its agents and employees, from all suits, actions or claims and from all liability and damages for any and all injuries or damages sustained by any person, or by any abutting, adjoining or other property in consequence of any neglect in the performance, or failure of performance of the City, its agents and employees under this Agreement, to the extent allowed by State Law.
2. Indemnify, defend and hold the State harmless from any and all claims and lawsuits by third parties arising from or incident to the performance, or failure of performance, of the City, its officers, employees or agents under this Agreement, to the extent allowed by State Law. The City shall defend all suits brought upon all such claims and lawsuits and pay all costs and expenses incidental thereto, but the State shall have the right, at it's option and expense, to participate in the defense of any suit, without relieving the City of any obligation hereunder.
3. Provide a check, payable to the State Department of Highways and Public Transportation in the full amount of \$8,452.00.
4. Provide all labor, equipment and incidentals necessary to provide for the maintenance of all plant material, and irrigation system installed by the State.

5. Perform, to the satisfaction of the State, Project maintenance and establishment activities for a period of 24 consecutive months following the completion of all installation activities. Maintenance shall include, but shall not be limited to the following activities:

- (a) Pruning, fertilizing and disease control as may be reasonably required to insure the continued viability and establishment of the plant material.
- (b) Maintenance of planting beds and basins necessary to maintain watering rings and to insure plant basins and beds are free of vegetative growth which would reasonably affect the growth of the plants.
- (c) Replacement of plant material as may be reasonably required to insure the Project functions as intended during the term of the Agreement.
- (d) Monitoring, repair and adjustment of the irrigation system to insure the system functions as intended, including all replacement parts which may be required during the term of the Agreement.

B. The State agrees to:

- 1. Obligate State funds in the amount of \$16,152.00 which will be combined with the cash contribution available from the city and utilized to provide for the installation of the landscape construction items in accordance with the Project Design Plan.
- 2. Schedule the landscape development Project for the first available statewide construction letting.
- 3. Administer the landscape development contract along State Highway 36 during construction.

4. Place the cash contribution provided by the City into escrow.
Article 5. Overruns/Underruns. *OK*
4/14/90 *HAK*
4/14/90

The total amount of cash available to provide for the installation of the highway landscaping Project through a construction contract administered by the State is \$24,604.00, and includes a cash contribution of \$8,452.00 from the City. Based upon the amount of cash available to perform the construction contract, the State's pro-rata (cash) share of the Project is 65.65% and the City's pro-rata (cash) share of the Project is 34.35%.

1. If, upon receiving bids for the installation of the highway landscape Project, the lowest bid exceeds \$24,604.00, the State will promptly notify the City. If in the opinion of the State and the City, but at the final opinion of the State, it is determined that it is in the best interest of the project to provide the additional funds required to satisfy the overrun, the State and the City will share in the cost of the overrun on a pro-rata (cash) basis. The State will provide 65.65% of the overrun, and the City will provide 34.35% of the overrun.
2. If, after receiving bids for required material, the cumulative total fo the lowest bid or bids does not exceed \$24,604.00, the State will recommend award of the bid or bids. Unless, in the sole option of the State it is determined that furnishing additional material with the remaining funds is in the best interest of the State, the State will not purchase material in excess of that requested by the City in the City's proposal, and as shown on the Project Design Plan, as would be necessary to insure that the amount of State funds obligated for this Project is fully expended.
3. If, upon completion of the construction contract administered by the State, and after project closeout has been completed by the State, it is determined that the available funds were not fully utilized, the State will return the pro-rata (cash) share of the unused funds.

ARTICLE 6. Disputes.

Should disputes arise as to the party's obligations under this Agreement, the State's decision shall be final and binding.

ARTICLE 7. Amendments.

Changes in time frame, character, cost, or obligations herein shall be enacted by written amendment. All amendments to this Agreement must be executed by both parties within the contract period specified in Article 1.

ARTICLE 8. Successors and Assigns.

The State and the City shall not assign or otherwise transfer its rights and obligations under this Agreement except with prior written consent of the other party, and any prohibited assignment or transfer shall be null and void.

ARTICLE 9. Remedies.

Violation or breach of contract terms by the City shall be grounds for termination of the agreement, and any increased cost arising from the City's default, breach of contract, or violation of terms shall be paid by the City. This Agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

ARTICLE 10. Insurance.

At the time of execution (signature) of the Agreement by the City, the City shall attach required Insurance documents to each Agreement counterpart.

If the City is a self-insured entity, the City shall extend the protection of it's self-insurance to the State for any and all damages and injuries arising from the City's performance under the Agreement, by naming the State as an "additional insured" under existing self-insurance policies. The City shall label such documentation EXHIBIT C.

If the City is not a self-insured entity, the City shall furnish the State with a completed Certificate of Insurance (SDHPT Form 20.102), and shall label such documentation EXHIBIT C.

The City shall maintain insurance during the term of the Agreement.

ARTICLE 11. Gratuities.

State Department of Highways and Public Transportation Commission policy mandates that employees of the Department shall not accept any benefits, gifts or favors from any person doing business or who reasonably speaking may do business with the State under this contract. The only exceptions allowed are ordinary business lunches and items that have received advanced written approval of the State Department of Highways and Public Transportation Engineer-Director. Any person doing business with or who may reasonably speaking do business with the State under this contract may not make any offer of benefits, gifts or favors to Departmental employees, except as mentioned hereabove. Failure on the part of the City to adhere to this policy may result in the termination of this contract.

ARTICLE 12. Termination.

This Agreement may be terminated by any of the following conditions:

- A. By mutual agreement and consent of both parties.
- B. By either party upon thirty days written notice to the other party.
- C. By either party, upon the failure of the other party to fulfill it's obligations as set forth in this Agreement.
- D. By satisfactory completion of all services and obligations described herein.

Should the City terminate this Agreement, as prescribed hereabove, the City shall, at the option of the State, reimburse any reasonable costs incurred by the State.

REMAINDER OF PAGE LEFT BLANK

IN TESTIMONY WHEREOF, the State and the City have executed duplicate counterparts to effectuate this Agreement.

THE CITY OF ABILENE

THE STATE OF TEXAS

By: *Dale E Ferguson*
DALE E. FERGUSON, MAYOR
Typed Name and Title

Date: 3/8/90

ATTEST:

Jim Moore
CITY SECRETARY

Certified as being executed for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the State Highway and Public Transportation Commission.

By: *Henry A Thomason Jr*

Henry A. Thomason, Jr.
Deputy Director, Field Operations

Date: 4/4/90

APPROVED:

Claudia Clinton
CITY ATTORNEY

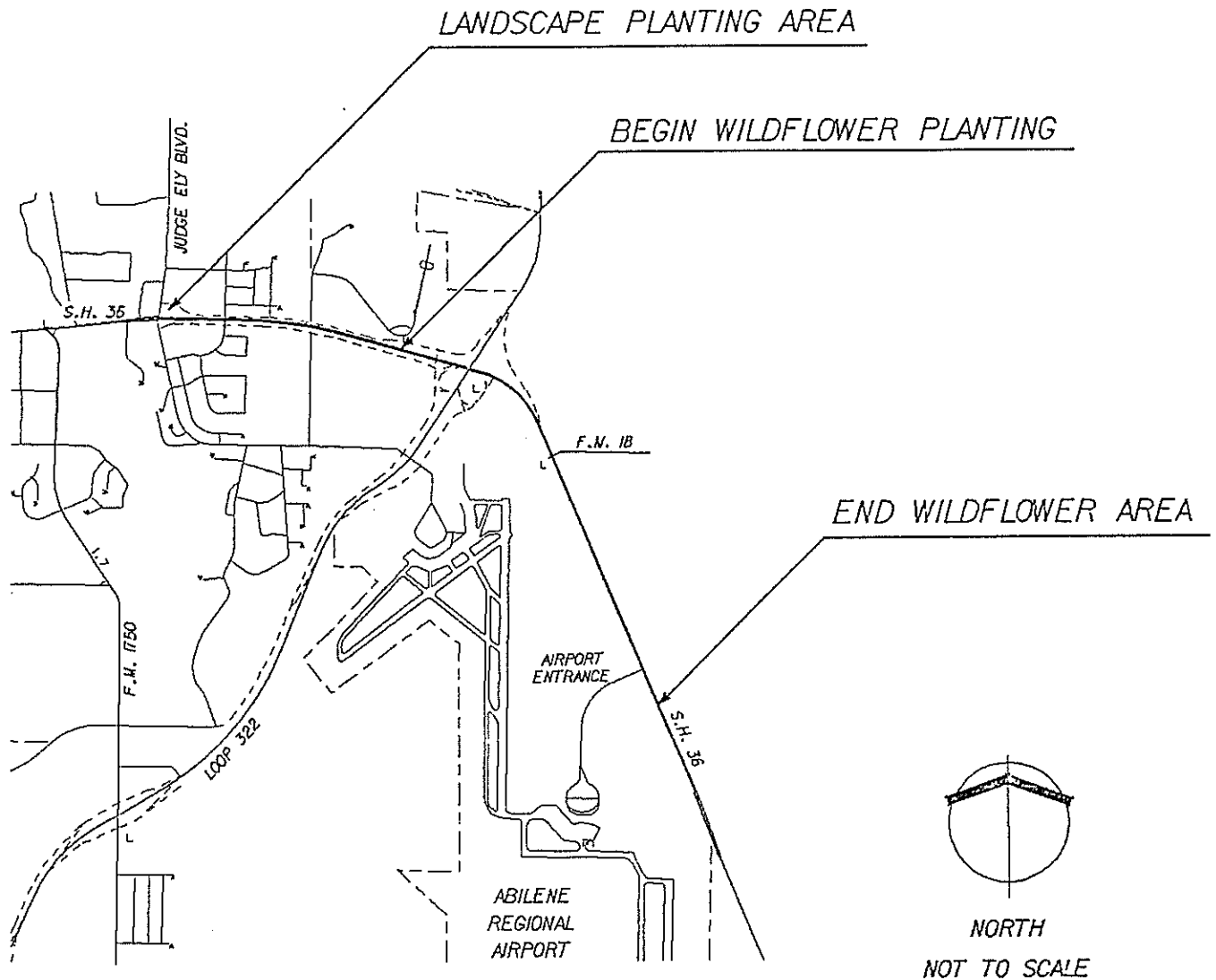


EXHIBIT "A"

LOCATION OF PROJECT:
 AT VARIOUS LOCATIONS IN EAST ABILENE
 ALONG STATE HWY. 36 IN TAYLOR CO.

STATE DEPARTMENT OF HIGHWAYS
AND PUBLIC TRANSPORTATION

TAYLOR _____ County

MINUTE ORDER

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District No. ABILENE (8)

WHEREAS, in TAYLOR COUNTY, on selected portions of STATE HIGHWAY 36 within the City of Abilene, the City of Abilene desires to perform a Landscape Cost Sharing Program project, and has committed a total contribution of \$16,152.00 toward the completion of the project, which sum includes a cash contribution of \$8,452.00, and a non-cash contribution of \$7,700.00 which represents the agreed, fair-market, non-cash value of providing labor and equipment to maintain, for 24 consecutive months, plant material, topsoil, irrigation system, and wildflowers installed by the State Department of Highways and Public Transportation (the Department) contract; and

WHEREAS, the Department desires to cooperate in this endeavor by obligating State funds in the amount of \$16,152.00 which will be combined with the cash contribution from the City of Abilene and utilized to install by department contract, plant material, topsoil, irrigation system, and wildflower seed;

NOW, THEREFORE, IT IS ORDERED that the Engineer-Director will accept this offer with gratitude and enter into any necessary agreements with the City of Abilene for the completion of the work, financing the State costs with funds authorized by the LANDSCAPE COST SHARING PROGRAM, under Commission Minute Order 88295, at a State cost estimated not to exceed \$16,152.00.

EXHIBIT B

Submitted by:

Examined and recommended by:

(Title) Chief Engineer, Maintenance
and Operations Division

Approved

Deputy Director

Engineer-Director

Minute Number 89800

Date Passed JAN 30 90

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