



Texas Department of Transportation

600 W. Interstate 2 | Pharr, Texas 78577-1231 | (956) 702-6100 | www.txdot.gov

May 7, 2015

RECEIVED

MAY 08 2015

COUNTY JUDGE

The Honorable Ramon Garcia
Hidalgo County Judge
P.O. Box 1356
Edinburg, Texas 78540

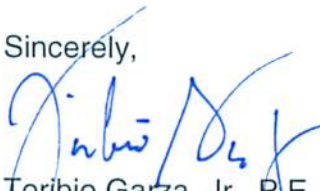
**RE: Advance Funding Agreement (AFA) – Amendment #1
South McColl Road from Orangewood to Dicker Road
CSJ#0921-02-171**

Dear Judge Garcia:

Enclosed please find two originals of Amendment#1 to the Advance Funding Agreement (AFA). Per the County's request we have transferred \$323,409 in funds originally allocated for preliminary engineering (PE) to construction. The Attachment C "Project Budget" has been revised to reflect project's low bid of \$4,309,680, the actual expenditures to date for PE direct state costs and the approved 92% Economically Disadvantaged County Program reduction.

Please sign and return both originals to the attention of Mr. Homero Bazan, Jr., our Director of Transportation Planning and Development, at the above address for further processing. Please contact Mr. Bazan or me at 702-6100 if you have any questions regarding this submission.

Sincerely,



Toribio Garza, Jr., P.E.
Pharr District Engineer

Enclosure

cc: Pedro R. Alvarez, P.E., Deputy District Engineer
Homero Bazan, Jr., P.E., Director of Transportation Planning and Development
Rene Garza, P.E., Pharr Area Engineer
Griselda Saldivar, P.E., Project Manager
Project File

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
AMENDMENT # 1**

THIS AMENDMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, called the State, and **County of Hidalgo**, acting by and through its duly authorized officials, called the Local Government.

WITNESSETH

WHEREAS, the State and the Local Government executed a contract on the 28th day of June, 2011 to effectuate their agreement to construct 2 lane roadway with 4 lane transitions on South McColl from Orangewood to Dicker Road; and,

WHEREAS, it has become necessary to amend that contract;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, the State and the Local Government do agree as follows:

A G R E E M E N T

1. Description of Amended Items

13. Right of Way and Real Property is deleted in its entirety and replaced with:

13. Right of Way and Real Property

- A.** Right of way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to the State before funds may be expended for the improvement of the right of way or real property.
- B.** If the Local Government is the owner of any part of the Project site under this agreement, the Local Government shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work.
- C.** All parties to this agreement will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.

- D. The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
- E. In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this agreement and the obligation of federal spending authority.
- F. The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- G. The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.
- H. Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this agreement. Reimbursement will be in an amount not to exceed eighty percent (80%) of The State's predetermined value of each parcel, or the net cost of the parcel, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.
- I. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government

must be executed prior to execution of this agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. The separate agreement must be approved by The State prior to its execution. A copy of the executed agreement shall be provided to The State.

14. Notices is deleted in its entirety and replaced with:

14. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Local Government:	State:
County of Hidalgo Attn: County Judge PO Box 1356 Edinburg, Texas 78540	Director of Contract Services Office Texas Department of Transportation 125 E. 11 th Street Austin, Texas 78701

All notices shall be deemed given on the date delivered in person or 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 notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

Article 24. Disadvantaged Business Enterprise (DBE) Program is deleted in its entirety and replaced with:

24. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas

Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address

http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.

- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

Article 25. Debarment Certifications is is deleted in its entirety and replaced with:

25. 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." By executing this agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. 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.

Article 28. Federal Funding Accountability and Transparency Act Requirements is deleted in its entirety and replaced with:

28. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows Federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
 3. Report the total compensation and names of its top five (5) executives to the State if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

Article 29. Single Audit Report is deleted in its entirety and replaced with:

29. Single Audit Report

- A. 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.
- B. If threshold expenditures are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://www.txdot.gov/inside-txdot/office/audit/contact.html>. The expenditure threshold for fiscal years beginning prior to December 31, 2014 is \$500,000; the expenditure threshold for fiscal years beginning on or after December 31, 2014 is \$750,000.
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

CSJ # 0921-02-171
District # 21 – Pharr
Code Chart 64 # 50109
Project: **South McColl from
Orangewood to Dicker Road**
Federal Highway Administration
CFDA # 20.205
Not Research and Development

Attachment C “Project Budget and Description” is deleted in its entirety and replaced with Attachment C-1 “Project Budget”, which is attached to this amendment.

All other provisions of the original contract are unchanged and remain in full force and effect.

2. Signatory Warranty

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

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

THE LOCAL GOVERNMENT

Signature

Typed or Printed Name

Title

Date

THE STATE OF TEXAS

Kenneth Stewart
Director of Contract Services
Texas Department of Transportation

Date

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**ATTACHMENT C - 1
 PROJECT BUDGET**

This project has received a total of \$4,994,216 in SAFETEA-LU (Category 10) and Transportation Community and System Preservation Program (Category 12) funds. Considering the approved 92% Economically Disadvantaged County Program reduction, on Category 10 and Category 12 funds, to the required local match for construction and construction direct state costs, the Federal share is 80%, State's share is 18.4% and the Local Government's share is 1.6% until the federal funding reaches the maximum obligated amount. The Local Government will be responsible for 100% of all cost overruns exceeding the approved funding amount. The following is an estimated breakdown of the project costs and funding participation:

Description	Total Estimated Cost	Federal Participation		State Participation			Local Government Participation EDC @ %			
		%	Cost	% Before EDC Adj.	% After EDC Adj.	Cost After EDC Adj.	% Before EDC Adj.	% After EDC Adj.	Cost After EDC Adj.	
Preliminary Engineering (by LG)	\$ 709,712	0%	\$ 0	0%	0%	\$ 0	100%	100%	\$ 709,712	
Right of Way (by LG) Cat 10	\$ 591,000	80%	\$ 472,800	0%	0%	\$ 0	20%	20%	\$ 118,200	
Construction (by State) Cat. 10	\$ 1,966,216	80%	\$ 1,572,973	0%	18.4%	\$ 361,784	20%	1.6%	\$ 31,459	
Cat. 12	\$ 2,000,000	80%	\$ 1,600,000	0%	18.4%	\$ 368,000	20%	1.6%	\$ 32,000	
Local	\$ 343,464	0%	\$ 0	0%	0%	\$ 0	0%	100%	\$ 343,464	
SUBTOTAL	\$ 5,610,392		\$ 3,645,773			\$ 729,784			\$ 1,234,835	
Direct State Costs for Prelim. Engineering \$92,300	Environmental (30%)	\$ 27,690	0%	\$ 0	0%	0%	\$ 0	00%	100%	\$ 27,690
	Right of Way (10%)	\$ 9,230	0%	\$ 0	0%	0%	\$ 0	00%	100%	\$ 9,230
	Preliminary Engineering (50%)	\$ 46,150	0%	\$ 0	0%	0%	\$ 0	00%	100%	\$ 46,150
	Utility (10%)	\$ 9,230	0%	\$ 0	0%	0%	\$ 0	00%	100%	\$ 9,230
Construction Direct State Cost (State review and oversight)	\$ 437,000	80%	\$ 349,600	0%	18.4%	\$ 80,408	20%	1.6%	\$ 6,992	
Indirect State Costs (6.20%)	\$ 316,244	0%	\$ 0	100%	100%	\$ 316,244	0%	0%	\$ 0	
SUBTOTAL	\$ 845,544		\$ 349,600			\$ 396,652			\$ 99,292	
TOTAL	\$ 6,455,936		\$3,995,373			\$ 1,126,436			\$ 1,334,127	

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District # 21 – Pharr
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Initial payment by the Local Government to the State:	\$ 92,300
Payment by the Local Government to the State before construction:	<u>\$ 413,915</u>
Estimated total payment by the Local Government to the State	\$ 506,215
Less Payments Collected:	<u>\$ 528,759</u>
Estimated Overpayment:	\$ (22,544)

This is an estimate. The final amount of Local Government participation will be based on actual costs