

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 the **Hidalgo County**, acting by and through its duly authorized officials, called the Local Government.

WITNESSETH

WHEREAS, the State and the Local Government executed a contract on 9th day of January, 2015 to effectuate their agreement to construct four lane roadway on the 10th Street Extension from SH 107 to FM 1925; 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:

AGREEMENT

1. Description of Amended Items

Article 3. Local Project Sources and Uses of Funds is deleted in its entirety and replaced with:

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 to and made a part of this agreement. The expected cash contributions from the Federal or State government, the Local Government, or other parties are shown in Attachment “C”. The State will pay for only those project costs that have been approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.

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- B. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures and Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- C. The 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.
- D. 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.
- E. The Local Government will be responsible for all non-federal or non-state participation costs associated with the Project, otherwise provided for in this agreement or approved otherwise in an amendment to this agreement. Where a Special Approval has been signed by the State, the Local Government shall only in that instance be responsible for overruns in excess of the amount to be paid by the Local Government.
- F. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering for the Project. 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 cost.
- G. Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation." The check or warrant shall be deposited by the State and managed by the State. The funds may only be applied by the State to the Project.
- H. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government, the State, or the Federal government will be promptly paid by the owing party. If after final Project accounting any excess funds remain, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement with approval by appropriate personnel of the Local Government.
- I. The State will not pay interest on any funds provided by the Local Government.

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- 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 specified percentage or a “periodic payment” non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the specified percentage or the periodic payment schedule.
- L. If the Local government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.
- M. When a Special Approval has been signed by the State so that the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State’s written notification of those amounts.
- N. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this 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. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- O. Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.
- P. The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
- Q. 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.

Article 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 Judge	Director of Contract Services
County of Hidalgo	Texas Department of Transportation
PO Box 1356	125 E. 11 th Street
Edinburg, Texas 78740	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 20. Cost Principles is deleted in its entirety and replaced with:

20. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

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 2 CFR 200.
- 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

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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.

Attachment C “Project Budget” is deleted in its entirety and replaced with Attachment C-1 “Project Budget”, which is attached to this amendment. A total of \$1,250,000 in Category 7 funds are being transferred from the construction cost estimate to the Right of Way (ROW) cost estimate to cover an increase in cost of ROW acquisition for this project. The Hidalgo County Metropolitan Planning Organization (HCMPO) has approved this transfer of funds through an administrative Transportation Improvement Program (TIP) revision.

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.

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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 \$11,933,250 in Category 7, Metropolitan Mobility and Rehabilitation (7MM) and Category 12, Surface Transportation Program Metropolitan Mobility Category 7 Reconciliation funds. Category 7 used for Right Of Way/utilities, the federal participation is 80% and the local government participation is 20%. For Category 7 used for construction, construction engineering and contingencies and Category 12 used for construction considering an 83% Economically Disadvantaged County Program reduction to the project's construction cost, the federal participation is 80%, the state participation is 16.6% and the local government participation is 3.4%. 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 Participation			
		%	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)	\$ 493,675	0%	\$ 0	0%	0%	\$ 0	100%	100%	\$ 493,675	
Right of Way/Utilities – Off System (by LG) Cat 7	\$ 2,000,000	80%	\$ 1,600,000	0%	0%	\$ 0	20%	20%	\$ 400,000	
Construction (by LG) Cat 7	\$ 8,425,000	80%	\$ 6,740,000	0%	16.6%	\$ 1,398,550	20%	3.4%	\$ 286,450	
Cat 12	\$ 400,000	80%	\$ 320,000	0%	16.6%	\$ 66,400	20%	3.4%	\$ 13,600	
Contingencies & Construction Engineering (by LG) Cat 7	\$ 907,250	80%	\$ 725,800	0%	16.6%	\$ 150,603	20%	3.4%	\$ 30,847	
Subtotal	\$ 12,225,925		\$ 9,385,800			\$ 1,615,553			\$ 1,224,572	
Direct State Costs for Prelim. Engineering \$74,000	Environm. Direct State Costs (30%)	\$ 22,200	0%	\$ 0	0%	0%	\$ 0	100%	100%	\$ 22,200
	Right of Way Direct State Costs (10%)	\$ 7,400	0%	\$ 0	0%	0%	\$ 0	100%	100%	\$ 7,400
	Engineer. Direct State Costs (50%)	\$ 37,000	0%	\$ 0	0%	0%	\$ 0	100%	100%	\$ 37,000
	Utility Direct State Costs (10%)	\$ 7,400	0%	\$ 0	0%	0%	\$ 0	100%	100%	\$ 7,400
ROW Direct State Costs (Division review and oversight)	\$ 76,800	0%	\$ 0	0%	0%	\$ 0	100%	100%	\$ 76,800	
Construction Direct State Costs (State review and oversight of Construction Engineering) Cat 7	\$ 201,000	80%	\$ 160,800	0%	16.6%	\$ 33,366	20%	3.4%	\$ 6,834	
Indirect State Costs (6.2%)	\$ 624,650	0%	\$ 0	100%	100%	\$ 624,650	0%	0%	\$ 0	
Subtotal	\$ 976,450		\$ 160,800			\$ 658,016			\$ 157,634	
TOTAL	\$ 13,202,375		\$ 9,546,600			\$ 2,273,569			\$ 1,382,206	

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Initial payment by the Local Government to the State:	\$150,800
Payment by the Local Government to the State before construction:	<u>\$ 6,834</u>
Estimated total payment by the Local Government to the State:	\$157,634

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