



Texas Department of Transportation

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

February 2, 2017

The Honorable Eduardo "Eddie" Cantu
Hidalgo County Commissioner, Precinct No. 2
300 W. Hall Acres, Suite G
Pharr, Texas 78577

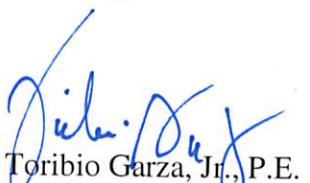
**RE: Advance Funding Agreement (AFA) - Amendment #1
Regional Linear Park
From S. San Antonio Ave to Ridge Road
CSJ: 0921-02-365**

Dear Commissioner Cantu:

Enclosed please find two originals of Amendment #1 to the subject Advance Funding Agreement. This amendment increases the construction funds from \$1,450,000 to \$2,250,000, a total increase of \$800,000.

Please sign and return both originals of Amendment #1 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 (956)702-6100 if you have any questions regarding this submission.

Sincerely,



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

Attachment

cc: Honorable Ramon Garcia, Hidalgo County Judge
Hector Gonzalez, P.E., Deputy Pharr District Engineer
Homero Bazan, Jr., P.E., Director of Transportation Planning and Development
Rene Garza, P.E., Pharr Area Engineer
Joseph Leal, P.E., Project Manager
Andrew Canon, HCMPO Transportation Director
Jacinto Garza, P.E., L&G Engineering

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 12th day of September 2016 to effectuate their agreement for the construction of the Hidalgo County Regional Hike and Bicycle Trail (Linear Park) 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

**23. Civil Rights Compliance is deleted in its entirety and replaced with:
23. Civil Rights Compliance**

23.1. Compliance with Regulations: Local Government will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

23.2. Nondiscrimination: Local Government, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

- 23.3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by Local Government of Local Government's obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- 23.4. Information and Reports:** Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations and instructions. Where any information required of Local Government is in the exclusive possession of another who fails or refuses to furnish this information, Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- 23.5. Sanctions for Noncompliance:** In the event of Local Government's noncompliance with the Nondiscrimination provisions of this contract, State will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
- a. withholding of payments to the Local Government under the contract until the Local Government complies and/or
 - b. cancelling, terminating, or suspending of the contract, in whole or in part.
- 23.6. Incorporation of Provisions:** Local Government will include the provisions of paragraphs 23.1 through 23.6 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Local Government will take action with respect to any subcontract or procurement as State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Local Government becomes involved in, or is threatened with, litigation with a subcontractor, or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of State. In addition, Local Government may request United States to enter into such litigation to protect the interests of United States.

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

29. Single Audit Report

- 29.1.** 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 Part 200.
- 29.2.** If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division at singleaudits@txdot.gov. If expenditures are less than the threshold during Local Government's fiscal year, Local Government must submit a statement to TxDOT's Compliance Division as follows:
- We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY _____.*
- 29.3.** For each year Project remains open for federal funding expenditures, 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 Project has been formally closed out and no charges have been incurred within the current fiscal year.

Article 30. Pertinent Non-Discrimination Authorities is added to the contract as follows:

30. Pertinent Non-Discrimination Authorities

During the performance of this contract, the Local Government, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- 30.1.** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- 30.2.** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- 30.3.** Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- 30.4.** Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- 30.5.** The Age Discrimination Act of 1975, as amended, (49 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).

- 30.6.** Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- 30.7.** The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not).
- 30.8.** Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- 30.9.** The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- 30.10.** Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- 30.11.** Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- 30.12.** Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

Attachment C “Project Estimate and Source of Funds” is deleted in its entirety and replaced with Attachment C-1 “Project Estimate and Source of Funds”, which is attached to this amendment.

The construction funds are increased from \$1,450,000 to \$2,250,000, a total increase of \$800,000. These funds are needed to update the construction cost estimate.

CSJ: 0921-02-365
District #: 21 - Pharr
Code Chart 64#: 50109
Project: Hidalgo County Regional Hike & Bicycle
Trail (Linear Park)
Federal Highway Administration
CFDA Title: Highway Planning and Construction
CFDA # 20.205
Not Research and Development

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

CSJ: 0921-02-365
 District #: 21 - Pharr
 Code Chart 64#: 50109
 Project: Hidalgo County Regional Hike & Bicycle
 Trail (Linear Park)
 Federal Highway Administration
 CFDA Title: Highway Planning and Construction
 CFDA # 20.205
 Not Research and Development

**ATTACHMENT C - 1
 PROJECT ESTIMATE AND SOURCE OF FUNDS
 LG Performs PE Work or Hires Consultant and Lets Project to Construction**

Work Performed by Local Government ("LG")							
Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation <small>Includes additional percentage for TDC apportionment where applicable</small>		State Participation		Local Government (LG) Participation <small>Includes any EDC reduction where applicable</small>	
		%	Cost	%	Cost	%	Cost
Preliminary Engineering	\$140,162	0%	\$0	0%	\$0	100%	\$140,162
Environmental Cost	\$51,026	0%	\$0	0%	\$0	100%	\$51,026
Right of Way	\$0	0%	\$0	0%	\$0	0%	\$0
Utilities	\$0	0%	\$0	0%	\$0	0%	\$0
Construction	\$2,250,000	80%	\$1,800,000	19%	\$427,500	1%	\$22,500
Work by LG Subtotal	\$2,441,188		\$1,800,000		\$427,500		\$213,688

CSJ: 0921-02-365
 District #: 21 - Pharr
 Code Chart 64#: 50109
 Project: Hidalgo County Regional Hike & Bicycle
 Trail (Linear Park)
 Federal Highway Administration
 CFDA Title: Highway Planning and Construction
 CFDA # 20.205
 Not Research and Development

Direct and Indirect State Costs Incurred for Review, Inspection, Administration & Oversight

Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation		State Participation		Local Government (LG) Participation	
		Includes additional percentage for TDC apportionment where applicable				Includes any EDC reduction where applicable	
		%	Cost	%	Cost	%	Cost
Preliminary Engineering ¹	\$21,024	0%	\$0	0%	\$0	100%	\$21,024
Environmental Cost ¹	\$7,654	0%	\$0	0%	\$0	100%	\$7,654
Right of Way ¹	\$0	0%	\$0	0%	\$0	0%	\$0
Utilities ¹	\$0	0%	\$0	0%	\$0	0%	\$0
Construction ²	\$87,000	0%	\$0	0%	\$0	100%	\$87,000
Direct State Costs Subtotal	\$115,678		\$0		\$0		\$115,678
Indirect State Cost	\$91,350	0%	\$0	100%	\$91,350	0%	\$0
TOTAL PARTICIPATION	\$2,648,216		\$1,800,000		\$518,850		\$329,366

The estimated total participation by Local Government is \$329,366, plus 100% of overruns.

Total estimated payment by Local Government to State is \$115,678.

¹Local Government's first payment of \$28,678 is due to State within 30 days from execution of this contract.

²Local Government's second payment of \$87,000 is due to State within 60 days prior to the Construction contract being advertised for bids.

³If ROW is to be acquired by State, Local Government's share of property cost will be due prior to acquisition.

The eligible percent of required local match is stated in the nomination and must be 20% or greater, unless In-Kind, EDC adjustments or TDCs are applied.

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

Maximum federal TAP funds available for Project are \$1,800,000.