

Texas Department of Transportation

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

February 2, 2017

The Honorable Joseph Palacios
Hidalgo County Commissioner, Precinct No. 4
1051 N. Doolittle Rd.
Edinburg, Texas 78542

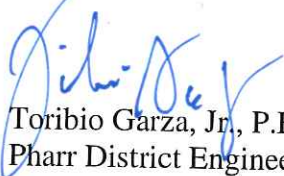
**RE: Advance Funding Agreement (AFA) - Amendment #2
10th Street Extension, From SH 107 to FM 1925
CSJ: 0921-02-300**

Dear Commissioner Palacios:

Enclosed please find two originals of Amendment #2 to the subject Advance Funding Agreement. This amendment increases the construction funds from \$8,825,000 to \$10,075,000, a total increase of \$1,250,000.

Please sign and return both originals of Amendment #2 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 District Engineer
Homero Bazan, Jr., P.E., Director of Transportation Planning and Development
Rene Garza, P.E., Pharr Area Engineer
Eduardo Saenz, 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 # 2**

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, the State and the Local Government executed Amendment #1 on the 12th day of April, 2016 to transfer total of \$1,250,000 in Category 7 funds from construction to Right of Way (ROW) to cover the increase in cost of ROW acquisition and to add new federal provisions; 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

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.

- 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 Special Approval has been granted 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.
- 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 Special Approval has been granted 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 23. Civil Rights Compliance is added to the contract as follows:

23. Civil Rights Compliance

- A. Compliance with Regulations: The 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 part of this agreement.

- B. Nondiscrimination:** The 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. The 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.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the 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 the Local Government of the Local Government's obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports:** The 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 facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance:** In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this contract, the State will impose such contract sanctions as it or the 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.
- F. Incorporation of Provisions:** The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the 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 the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

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 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.
- 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 Compliance Division 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.

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:

- A. 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.
- B. 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).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. 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.
- E. The Age Discrimination Act of 1975, as amended, (49 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. 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).
- G. 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).

- H. 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.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. 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.
- K. 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).
- L. 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.).

Article 30. Signatory Warranty is deleted in its entirety and replaced with:

31. Signatory Warranty

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

Attachment C-1 “Project Budget” is deleted in its entirety and replaced with Attachment C-2 “Project Budget”, which is attached to this amendment. The Category 7 funds for Right of Way, construction, construction engineering and contingencies are increased from \$11,533,250 to \$12,783,250, a total increase of \$1,250,000. The Hidalgo County Metropolitan Planning Organization (HCMPO) has approved this increase of funds through an administrative Transportation Improvement Program (TIP) revision.

The total funding received for this project in Category 7, Metropolitan Mobility and Rehabilitation (7MM) and Category 12, Surface Transportation Program Metropolitan Mobility Category 7 Reconciliation funds is \$13,183,250.

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

CSJ # 0921-02-300
District # 21 – Pharr
Code Chart 64 # 50109
Project: 10th Street Extension
from SH 107 to FM 1925
Federal Highway Administration
CFDA Title: Highway Planning and Construction
CFDA No.: 20.205
Not Research and Development

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 # 0921-02-300
 District # 21 – Pharr
 Code Chart 64 # 50109
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ATTACHMENT C-2 PROJECT BUDGET

This project has received a total of \$13,183,250 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		\$ 9,675,000	80%	\$ 7,740,000	0%	16.6%	\$ 1,606,050	20%	3.4%	\$ 328,950
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		\$ 13,475,925		\$ 10,385,800			\$ 1,823,053			\$ 1,267,072
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		\$14,452,375		\$ 10,546,600			\$ 2,481,069			\$ 1,424,706

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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:	\$ 6,834
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.