

CSJ # 0914-05-172
District # 14 - Austin
Code Chart 64 # 50246
Project: BR ()
CR 351 at Donohoe Creek
NBI Structure # 142460AA0290002
CDFA # 20.205



STATE OF TEXAS §

COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT
ADVANCE FUNDING AGREEMENT
For Bridge Replacement or Rehabilitation
Off the State System**

THIS Local Project Advance Funding Agreement (the LPAFA) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the County of Williamson, acting by and through its duly authorized officials, hereinafter called the "Local Government."

WITNESSETH

WHEREAS, a Master Agreement between the Local Government and the State has been adopted and states the general terms and conditions for transportation projects developed through this LPAFA; and,

WHEREAS, Title 23, United States Code Section 144 authorizes federal funds to assist the States in the replacement or rehabilitation of deficient bridges located on public highways, roads and streets, including those under the jurisdiction of local governments; and

WHEREAS, the Local Government owns a bridge or bridges located on a public road or street located at Donohoe Creek on CR 351 and said bridge(s) is included in the currently approved program of work for Off-State System Federal-Aid Bridge Replacement and Rehabilitation as authorized by Texas Transportation Commission Minute Order number 112237, dated April 29, 2010; and

WHEREAS, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance which is attached hereto and made a part hereof as Attachment A and which provides for development of the specific programmed replacement or rehabilitation project (the Project) identified in the location map shown as Attachment B.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

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AGREEMENT

1. The period of this LPAFA is as stated in the Master Agreement, without exception.
2. Termination of this LPAFA shall be under the conditions as stated in the Master Agreement, without exception.
3. Amendments to this LPAFA shall be made as described in the Master Agreement, without exception.
4. Remedies for defaults under this LPAFA shall be made as described in the Master Agreement, without exception.
5. **Scope of Work**
The scope of work for this LPAFA is the replacement or rehabilitation of the bridge(s) identified in the recitals of this LPAFA. This replacement or rehabilitation shall be accomplished in the manner described in the plans, specifications and estimates developed in accordance with this LPAFA and which are incorporated herein by reference.
6. **Right of Way and Real Property**
The Local Government is responsible for the provision and acquisition of all necessary right of way and will not be reimbursed with federal or state funds for the required right of way. The Local Government authorizes the State, its consultant, contractor, or other designated representative to enter the site(s) of said bridge(s) and adjacent right of way or relocation right of way to perform surveys, inspections, construction and other activities necessary to replace or rehabilitate said bridge and approaches.
7. **Adjustment of Utilities**
The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work." The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

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8. Environmental Assessment and Mitigation

Development of the Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- a. The Local Government is responsible for the identification and assessment of any environmental problems associated with the development of the Project governed by this Agreement.
- b. The Local Government is responsible for the cost of any environmental problem's mitigation and remediation.
- c. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment.
- d. The Local Government is responsible for the preparation of the NEPA documents required for the environmental clearance of this project. Coordination shall be through the TxDOT Austin District Environmental Coordinator at (512) 832-7168.
- e. The Local Government shall provide the State with written documentation from appropriate regulatory agencies that identified environmental clearance has been obtained, prior to the State advertising for receipt of bids.

The State will not begin construction of the Project until identified environmental problems have been remediated, unless provided for otherwise.

9. Compliance with Texas Accessibility Standards and ADA will be as stated in the Master Agreement, without exception.

10. Architectural and Engineering Services will be Provided by the Local Government

- a. The Local Government is 100% responsible for performance of any required architectural or preliminary engineering work. The Local Government shall prepare or cause to be prepared the engineering plans, specifications, and estimates (PS&E) necessary for the development of the Project. The PS&E shall be prepared in accordance with all applicable laws, policies and regulations, deemed necessary by the State.
- b. The engineering plans shall be developed in accordance with the Texas Department of Transportation *Roadway Design Manual*, the current edition of the *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* and the Texas Accessibility Standards. A project development schedule of design activities shall be supplied to the TxDOT Georgetown Area Engineer office upon initiation of the Project.
- c. The Local Government shall submit a copy of the redlined plans provided by the State with all applicable plan submittals to indicate that QC/QA was undertaken.
- d. The Local Government shall submit the completed PS&E to the State for review and approval five months in advance of the State's date for receipt of bids.

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11. Construction Responsibilities will be carried out by the State, as stated in the Master Agreement, without exception.
12. Project Maintenance will be undertaken as provided for in the Master Agreement, without exception.
13. Local Project Sources and Uses of Funds
 - a. A Project Cost Estimate is provided in Attachment D, "Estimate of Direct Costs."
 - b. A source of funds estimate is also provided in Attachment D. Attachment D shows the estimated direct preliminary engineering, construction engineering, and construction costs for the Project in total and by the Local Government.
 - c. The Local Government participation is based upon the State's estimate of the eligible work at the time this Agreement is executed and will not be adjusted during construction except as needed to include any Project cost item or portion of a cost item ineligible for state or federal participation. In addition to its share of estimated direct engineering and construction costs, the Local Government is responsible for the direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the Federal Highway Bridge Replacement and Rehabilitation Program. The Local Government is also responsible for any cost resulting from changes made at the request of the Local Government.
 - d. After execution of this Agreement, but thirty (30) days prior to the performance of any work by the State, the Local Government will remit a check to the State in the amount specified in Attachment D as the local contribution for State direct costs of preliminary engineering.
 - e. Forty-five (45) 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 costs and any other costs owing.
 - f. If at the completion or termination of the Project the State determines that additional funding is required by the Local Government, the State shall notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
 - 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 Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to the State Project.
 - h. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.
 - i. The State will not pay interest on any funds provided by the Local Government.
 - j. The Local Government funding participation responsibilities include Project direct costs only, except when the Project is terminated before completion at the request of the Local Government as addressed in the Termination provision of this Agreement.

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- k. The amounts shown on Attachment D are estimates only. If actual costs exceed the estimates, this shall be considered a fixed price agreement, and no additional funding shall be required of the Local Government except to the extent that the additional costs result from changes made at the request of the Local Government or to the extent that the additional costs are not eligible for federal participation under the Federal Highway Bridge Replacement and Rehabilitation Program. If actual costs are less than the estimates, Local Government participation shall be recalculated based on actual costs. If the recalculation results in a reduction in participation by the Local Government, the State shall pay the difference to the Local Government upon completion of the Project.
 - l. Under the provisions of Texas Transportation Code Section 222.053 certain counties qualify as Economically Disadvantaged Counties (EDC) in comparison to other counties in the state as below average per capita property value, and below average per capita income, and above average unemployment, for certain years. If applicable, in consideration of such EDC status that may be applicable for the Project, the required local match fund participation has been adjusted to N/A percent.
 - m. The State will not execute the contract for the construction of a Project until the required funding has been made available by the Local Government in accordance with this Agreement.
 - n. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the 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.
14. Performance by Local Government of Equivalent-Match Projects (EMP) in Return for Waiver of Local Match Participation Funding on Participation-Waived Projects (PWP)
- a. Applicability. If a request for waiver has been received and approved by the State's District Engineer, then the required ten percent matching fund participation or percent as adjusted for EDC consideration, as shown in Attachment D, "Estimate of Direct Costs", but excluding ineligible costs under the bridge program, is waived. This waiver is based on the commitment of the Local Government to spend an equivalent amount of funds for structural or safety improvement on "other" bridge structures and other conditions as specified in 43 TAC Section 15.55(d). If a waiver has been granted, the Project shall be defined to be a Participation-Waived Project (PWP) and the work on the "other" bridge structures that will be improved by the Local Government shall be defined to be the Equivalent Match Project(s) (EMP). Attachment C to this Agreement shows a list of EMP(s) under this Agreement.
 - b. Project Cost Estimate for PWP. Attachment D to this Agreement shows the estimated direct preliminary engineering, construction engineering and construction costs for the PWP in total and local match fund participation being waived, or partially waived.

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- c. Credit Against EMP Work. Any local match fund participation that has already been paid, or which the Local Government is agreeable to paying to the State, will be credited against EMP work to be performed by the Local Government. If applicable, this credit(s) will be reflected in Attachment D to this Agreement.
- d. Responsibilities of the Local Government on EMP(s)
 - (1) The Local Government shall be responsible for all engineering and construction, and related costs thereto, and complying with all applicable state and federal environmental regulations and permitting requirements.
 - (2) The structural or safety improvement work on the EMP(s) shall be performed subsequent to the final execution of this Agreement but within three (3) calendar years after the earliest contract award of the related PWP.
 - (3) Written documentation, suitable for audit, of the structural or safety improvement work completed on the EMP(s) shall be kept on file by the Local Government for four (4) years after completion of work or claims, lawsuits, or audits related thereto, whichever is longer. A notice of completion of work on the EMP(s) shall be delivered to the State's District Engineer no later than thirty (30) calendar days after work is completed on the EMP(s). At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.
 - (4) Failure by the Local Government to adequately complete the EMP(s) within the stated three-year period shall result in the Local Government being excluded from receiving such waivers for a minimum of five (5) years.
- e. Funding of Ineligible or Additional Work Not Waived. Regardless of any waiver of eligible program costs, the Local Government shall pay the State 100 percent of the cost of any PWP item or portion of a cost item that is not eligible for federal or state participation, and 100 percent of the costs resulting from additional work on the PWP performed solely at the request of the Local Government. If the ineligible or additional work is preliminary engineering, the payment shall be made at least thirty (30) days prior to the beginning of preliminary engineering work on the PWP. If the ineligible or additional work is for construction or construction engineering, the payment shall be made at least forty-five (45) days prior to the date set for receipt of bids for construction of the PWP.

15. Notices

All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following addresses:

State:	Texas Department of Transportation Attn: District Engineer 7901 N. IH 35 Austin, TX 78753
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Local Government: **Williamson County**
Attn: County Judge
710 S. Main Street - Suite 101
Georgetown, TX 78626

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. 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 such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

16. Lobbying Certification. The parties to this LPAFA reaffirm that no federal funds were used to lobby for Project funds, but that if any lobbying occurred, it has been reported to the State, pursuant to the requirements of the Master Agreement.
17. Incorporation. The Master Agreement is incorporated into this agreement as if fully set forth herein.
18. Local Government Restrictions. In the case that the local government has an existing, future or proposed local ordinance commissioners court order, rule policy, or other directive that is more restrictive than the state or federal regulations that results in an increase cost to the State for the project, the local government is responsible for all increased costs associated with the ordinance, order, policy, directive, or change.
19. Debarment Certification. 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 is not 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.

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20. Signatory Warranty. The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE LOCAL GOVERNMENT

By: _____
Signature

Printed Name of Signatory

Title: Williamson County Judge

Date: _____

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____
David P. Hohmann, PE
Director, Bridge Division

Date: _____

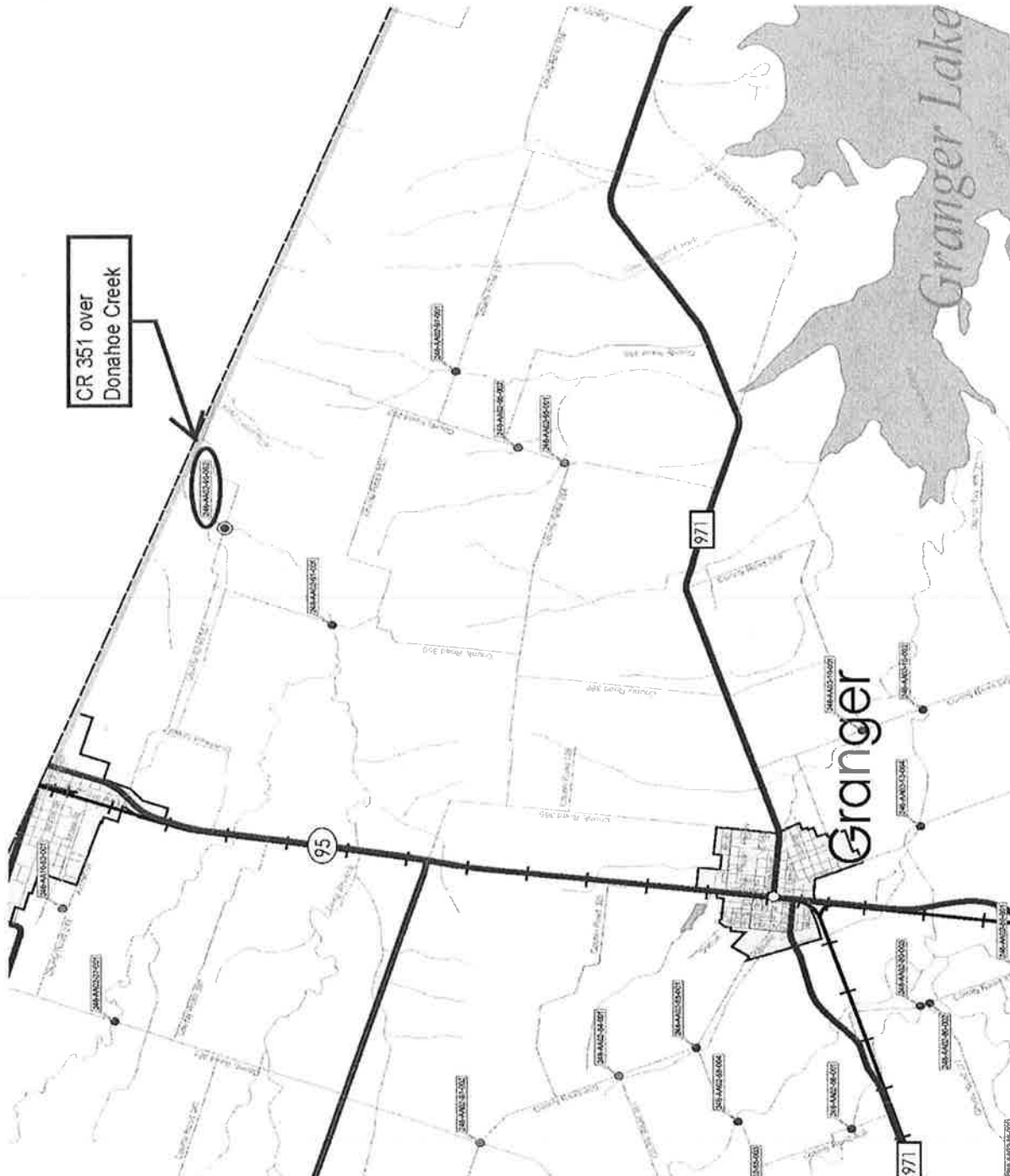
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ATTACHMENT A

RESOLUTION OR ORDINANCE OF LOCAL GOVERNMENT

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ATTACHMENT B
PROJECT LOCATION MAP



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ATTACHMENT C (See Note)**

**LIST OF DISTRICT ENGINEER APPROVED
EQUIVALENT MATCH PROJECT(S) (EMP)**

[illegible]

Note *: This total should typically equal the “Balance of Local Government Participation” that is waived as shown in Attachment D.

Note:** This attachment not applicable for non-Participation-Waived Projects (PWP)

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ATTACHMENT D

ESTIMATE OF DIRECT COSTS

	<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE) (State Oversight Only – 5%)	(1) \$35,000	
Ten (10) Percent or EDC Adjusted Percent of PE for Local Government Participation		(3) \$3,500
Construction	\$ 700,000	
Engineering and Contingency (E&C) (14.5%)	\$ 101,500	
The Sum of Construction and E&C	(2) \$ 801,500	
Ten (10) Percent or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation		(4) \$ 80,150
Amount of Advance Funds Paid by Local Government *		(5) \$0
Amount of Advance Funds to be Paid by Local Government *		(6) \$ 83,650
Balance of Local Government Participation which is to be Waived where the Project is a PWP		(3+4-5-6) \$0
Total Project Direct Cost	(1+2) \$ 836,500	

* Credited Against Local Government Participation Amount

If this Project is to be a PWP, Amount of EMP Work Being Credited to this PWP as Shown on Attachment C.