



Texas Department of Transportation

P.O. DRAWER 15426 • AUSTIN, TEXAS 78761-5426 • (512) 832-7000

March 31, 2009

Williamson County
0914-05-141
CR 104 at Mankins Branch

Honorable Dan Gattis, Sr.
County Judge
710 Main Street, Suite 101
Georgetown, Texas 78626

Dear Judge Gattis:

Enclosed are two **revised** Advance Funding Agreements for the above referenced project. The project consists of the construction of a bridge replacement on CR 104 at Mankins Branch. Revisions were made to update the construction costs. The documents will replace the Agreements sent under cover letter dated February 23, 2009.

Please return the two executed documents to my attention for final processing. A fully executed agreement will be returned for your records.

Williamson County will locally let and administer the Project. Therefore, as stipulated in Article 13i of the Agreement, Williamson County will be responsible for 100% for any costs in excess of the authorized amount of \$1,029,600 in addition to the 10% of the costs up to the authorized amount.

If you have any questions, please contact me at (512) 832-7050.

Sincerely,


Patricia L. Crews-Weight, P.E.
Director of Design - AUS

Attachments

cc: John Wagner, P.E.

OK to
process
4/20/09
CR104 = P-158

CSJ #0914-05-141
District # 14 - Austin
Code Chart 64 #50246
Project: BR O OX
NBI Structure #142460AA0498001
CFDA #20.205

STATE OF TEXAS §
COUNTY OF TRAVIS §

 ORIGINAL

ADVANCE FUNDING AGREEMENT
For Bridge Replacement or Rehabilitation
Off the State System

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

WITNESSETH

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 Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall plan and make policies for the construction of a comprehensive system of state highways and public roads in cooperation with local governments; and

WHEREAS, the Local Government owns a bridge or bridges located on a public road or street located at CR 104 at Mankins Branch and said bridge(s) is included in the currently approved off-state system federal-aid Highway Bridge Replacement and Rehabilitation Program (HBRRP) as authorized by Texas Transportation Commission Minute Order number 110479, dated March, 2006; and

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement 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, hereinafter called 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:

AGREEMENT

1. Period of this Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided in Article 2.

2. Conditions for Termination of this Agreement

- a. The Agreement is terminated in writing with the mutual consent of the parties; or
- b. Breach of this Agreement, in which case any cost incurred shall be paid by the breaching party; or
- c. If the Local Government elects not to develop the project and the project does not proceed, in which case the Local Government agrees to reimburse the State for 100 percent of its reasonable actual direct and indirect costs incurred for the project.

3. Amendments

Amendments to this Agreement may be made due to changes in the character of the work, the terms of the Agreement, or the responsibilities of the parties. Amendments shall be enacted through a mutually agreed upon, written amendment executed by all parties to this Agreement.

4. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any Agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

5. Scope of Work

The scope of work for this Agreement is the replacement or rehabilitation of the bridge(s) identified in the recitals of this Agreement. This replacement or rehabilitation shall be accomplished in the manner described in the plans, specifications and estimates developed in accordance with this Agreement 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.

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. Cost participation in environmental assessment and remediation work shall be paid by the parties in the same ratio as construction costs and will be included in the construction costs identified in Attachment C, "Estimate of Direct Costs".
- c. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment

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

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9. Compliance with Texas Accessibility Standards and ADA

All parties to this Agreement shall ensure that the plans for and the construction of the Project subject to this Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

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

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. The Local Government shall submit the completed PS&E to the State for review and comment and make any required revision, if necessary, and within the State's PS&E Review and Processing Schedule. The Local Government will not bid the construction contract until the final PS&E have been approved by the State.

The engineering plans shall conform to the design criteria in the State's Roadway Design Manual, Bridge Design Manual, the current Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges and the Texas Accessibility Standards.

11. Construction Responsibilities

- a. The Local Government shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction. Upon State approval, a contract for the construction of the project in accordance with existing Local Government procedures and applicable laws will be issued by the Local Government.

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- b. All change orders or supplemental agreements deemed necessary by the Local Government, subsequent to the award of the contract shall be the responsibility of the Local Government and are subject to the approval of the State. The Local Government will be responsible for any contractor claims that are the result of any delays that may be incurred by the contractor. Change order work to be performed by the construction contractor shall only be authorized by the Local Government after approval is granted from the State. The work shall not begin until all applicable Local and State signatures have been affixed to the change order and/or supplemental agreements.
- c. Upon completion of the Project, the State will issue a "Notification of Completion" acknowledging the Project's construction completion.

12. Project Maintenance

After the Project has been completed, the Local Government shall accept full ownership, and operate and maintain the facilities authorized by this Agreement for the benefit of and at no charge of toll to the public. This covenant shall survive the completion of construction under this Agreement.

13. Local Project Sources and Uses of Funds

- a. A Project Cost Estimate is provided in Attachment C, "Estimate of Direct Costs".
- b. Attachment C provides a source of funds estimate as well as the estimated direct preliminary engineering, construction engineering, and construction costs for the Project in total and by the Local Government.
- c. The required Local Government participation is based solely 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 HBRRP.

The Local Government is also responsible for any cost resulting from changes made at the request of the Local Government.

- d. 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.
- e. 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.
- f. The State will not pay interest on any funds provided by the Local Government.

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- g. 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.
- h. 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.

- i. The total estimated cost of this project is \$1,029,600 and shall be funded jointly from Federal, State, and Local Government funds. Federal funds in an amount not to exceed \$823,680.00 will be utilized to authorize the performance for contracted items for the Project. The Local Government will be responsible for any costs in excess of the authorized amount of \$1,029,600. Contractor monthly progress payments will be handled solely by the Local Government. The Local Government will submit a monthly billing statement to the State for costs expended on the Project and the State will reimburse the Local Government 90% of the billed amount. Any costs over the authorized funds of \$1,029,600 will be the Local Government's responsibility at 100%.

14. 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:	Austin District Engineer P.O. Drawer 15426 Austin, Texas 78761-5426
Local Government:	Williamson County Judge 710 Main St., Suite 101 Georgetown, Texas 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.

15. Legal Construction

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

16. Responsibilities of the Parties

The parties to this Agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

17. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use.

All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

18. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

19. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting this Agreement's subject matter.

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20. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the Project.

21. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

22. Inspection of Books and Records

The parties to the Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

23. Office of Management and Budget (OMB) Audit Requirements

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 No. A-128 through August 31, 2000 and stipulated in OMB Circular A-133 after August 31, 2000.

24. Civil Rights Compliance

The parties to this Agreement shall comply with the regulations of the U.S. Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

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25. Disadvantaged Business Enterprise Program Requirements

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26.

26. 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 [Contractor, Local Government, Engineer, or whatever] 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.

27. Lobbying Certification

In executing this Agreement, the signatories certify to the best of his or her knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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By executing this Agreement, the parties affirm this lobbying certification with respect to the Project and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

28. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement.

29. 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.

30. Signatory Warranty

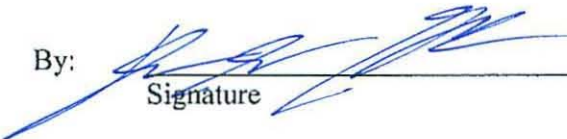
The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

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

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THE LOCAL GOVERNMENT

By:



Signature

Printed Name of Signatory

Title: _____

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: _____

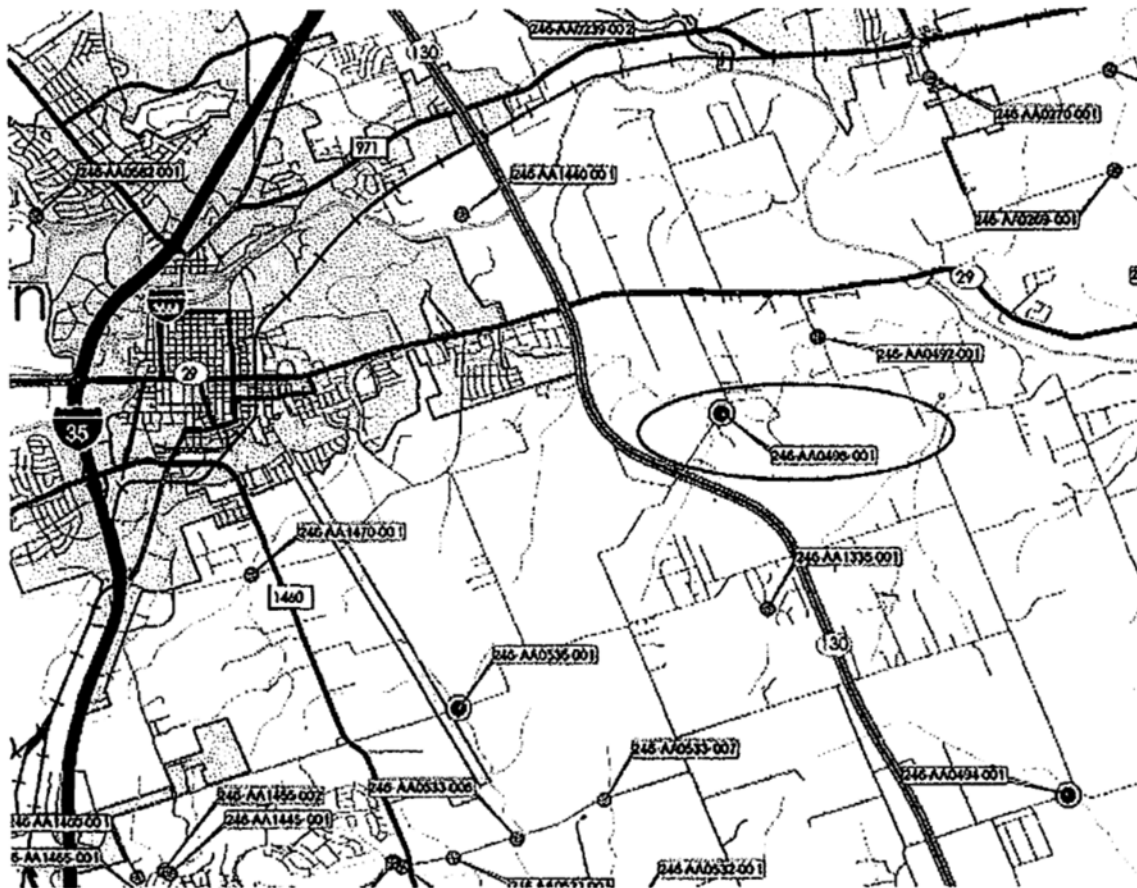
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ATTACHMENT A

RESOLUTION OR ORDINANCE OF LOCAL GOVERNMENT

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ATTACHMENT B
PROJECT LOCATION MAP



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ATTACHMENT C
ESTIMATE OF DIRECT COSTS

	<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE) (Review Costs = 5% of Construction Costs)	(1) \$ 44,000	
Ten (10) Percent or EDC Adjusted Percent of PE for Local Government Participation		(3) \$ 4,400
Construction	\$880,000	
Engineering and Contingency (E&C) (12%)	\$105,600	
The Sum of Construction and E&C	(2) \$985,600	
Ten (10) Percent or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation		(4) \$98,560
Amount of Advance Funds Paid by Local Government *		(5) \$0
Amount of Advance Funds to be Paid by Local Government *		(6) \$102,960
Total Project Direct Cost	(1+2) 1,029,600	

* Credited Against Local Government Participation Amount