

**Commissioners Court - June 15, 2010
ADDENDUM TO NOTICE OF MEETING OF THE
COMMISSIONERS COURT OF HAYS COUNTY, TEXAS**



This notice is posted pursuant to the Texas Open Meetings Act. (VERNONS TEXAS CODES ANN. GOV. CODE CH. 551). The Hays County Commissioners' Court has scheduled a meeting for **9:00 A.M., on the 15th Day of June, 2010** at the Hays County Courthouse, San Marcos, Texas. The following subject is being added to the agenda:

29. Discussion and possible action to instruct staff to request that the City of San Marcos cease construction activities on FM 110/McCarty Lane until they come into compliance with the agreed upon terms of the Interlocal and First Amendment Agreement between the City of San Marcos, Texas and Hays County for the completion of the McCarty Lane and FM 110 (San Marcos Loop) Roadway Improvement Projects dated April 29, 2008 and first amendment dated on or about January 12, 2010.

Posted at 5:00 P.M. on the 11TH day of June, 2010.

COMMISSIONERS' COURT H A Y S COUNTY, TEXAS

CLERK OF THE COURT

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids of services such as interpreters for persons who are deaf or hearing impaired; readers; or large print are requested to contact the Hays County Judge's Office at (512) 393-2205 two (2) work days prior to the meeting so that appropriate arrangements can be made.

Braille is not available.

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than 2:00 p.m. on WEDNESDAY.

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and possible action to instruct staff to request that the City of San Marcos cease construction activities on FM 110/McCarty Lane until they come into compliance with the agreed upon terms of the Interlocal and First Amendment Agreement between the City of San Marcos, Texas and Hays County for the completion of the McCarty Lane and FM 110 (San Marcos Loop) Roadway Improvement Projects dated April 29, 2008 and first amendment dated on or about January 12, 2010.

CHECK ONE: CONSENT X ACTION EXECUTIVE SESSION
 WORKSHOP PROCLAMATION PRESENTATION

PREFERRED MEETING DATE REQUESTED: June 15, 2010

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: SUMTER

SUMMARY:

After recent discussions and receipt of letters dated June 9th and May 13th, 2010 (attached) from Carlos Lopez, Austin District Engineer and a personal visit to McCarty/FM110 on Friday, June 11th to see if the City of San Marcos had complied with the county's request via Commissioner Ingalsbe to cease work on McCarty/FM110, which they had not, I felt it necessary to put this item on the agenda.

It is clear, in the May 13th and June 9th letter that the reimbursement from TxDOT of \$15,804,000.00 for McCarty/FM110 is at risk because of recent past and current actions being undertaken by the City of San Marcos. How much of that reimbursement the County may lose is unclear at this point.

However, it is possible, if the City of San Marcos ceases construction immediately, responds with Hays County to the May 13th letter, and receives a favorable written response from the Federal Highway Administration (FHWA), the County may be able to salvage a portion or all of its potential loss of reimbursement from the state. Although, it may be possible that limited construction of utilities can continue without impacting the reimbursement, it remains unclear and unanswered by the FHWA.

The Interlocal and First Amended Agreement with the City of San Marcos and Hays County for the construction of their segment of McCarty/FM110, Section 5.6 of the Agreement reads 'The terms and conditions of the construction contract for the City Segment shall comply with all TxDOT requirements for federally funded highway projects, as applicable.'

According to the letters above, the segment of road the City of San Marcos is constructing does not meet TxDOT's requirement for federally funded highway projects because the environmental process was not in compliance with the National Environmental Policy Act process and a Letter of Authority was not issued. Therefore the requirement of Section 5.6 of the Interlocal and First Amended Agreement between the City of San Marcos and Hays County to build a federally qualified road is not compliant.

It is imperative that the County strictly adhere to the Pass-Through Agreement with TxDOT in order to receive all of the reimbursement funds as represented to the citizens of Hays County. Our Interlocal and First Amended Agreement with the City of San Marcos does just that and should be enforced to continue to meet our obligations to our citizens.



Texas Department of Transportation

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

June 9, 2010

CSJ 3545-01-001

FM 110: From IH 35 South of San Marcos
To IH 35 North of San Marcos

Hays County

The Honorable Elizabeth "Liz" Sumter
County Judge
Hays County
111 E. San Antonio Street, Ste. 300
San Marcos, Texas 78666

Dear Judge Sumter:

Hays County has a Pass-Through Agreement for Payment of Pass-Through Tolls by the Department that contains a project on FM 110 from I-35/McCarty Road to SH 123. Recently the City of San Marcos received bids for improvements to McCarty Road, a section of which is located within the proposed FM 110 corridor and within the limits covered by the Pass-Through Agreement, from I-35 east to the new high school.

As a result of bids being received prior to receiving an environmental finding from the Federal Highway Administration (FHWA) for FM 110, a conversation with FHWA and our Environmental Affairs Division was held on May 5, 2010 to discuss the events and courses of action to continue the Pass-Through Project.

It was determined during that conversation that in order to determine what action should be taken at this point, the County, in conjunction with the City of San Marcos, should prepare a letter that addresses the following items:

- How the section of McCarty Lane under construction was funded – through Federal, State, City, or County funds, or a combination of funds.
- A description of what type of work has taken place along McCarty Lane. Please provide the limits of the project currently under construction and include aerial maps showing the limits of the construction, and photographs.
- State whether or not the current construction is to Texas Department of Transportation (TxDOT) standards.

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- Please provide an explanation of why the City/County moved forward with construction of a segment along McCarty Lane which is within the limits of the proposed FM 110 project (i.e. immediate need to improve route to the new San Marcos High School, etc.).
- A discussion as to whether or not the FM 110 project limits should be revised and what the new limits should be.
- A description of the public involvement activities that have occurred for the City/County improvements along McCarty Lane.
- The status of any agreements and what effect the construction of improvements along McCarty within the FM 110 alignment would have on these agreements, on funding, and on NEPA compliance.
- A description of any controversy to date.
- A statement that the work along McCarty Lane is consistent with the City/County transportation plans.
- Include documentation of any coordination conducted with resource agencies for the section of McCarty Lane under construction.

Future action items may include the following (to be determined by FHWA and TxDOT pending responses to the above):

- The Environmental Assessment (EA) for FM 110 may (or may not) need to be revised to remove the section along McCarty Lane that is under construction depending on the information that is included in the letter from the City/County describing the actions taken on this project. FHWA will make this decision, in consultation with TxDOT.
- TxDOT will need to address the issue of segmentation – the revised limits (if any) of the project must have logical termini and independent utility, which must be approved by FHWA.
- Additional public involvement may be needed, for FM 110, most likely a public meeting; however, concurrence from FHWA will be needed in order to determine the appropriate level of public involvement. TxDOT would be responsible for holding this additional public involvement if the FM 110 project limits are revised.
- FHWA will make a determination regarding funding and federal participation.

All of these issues must be resolved prior to FHWA's finding for the FM 110 project. Please let me know if you have any questions or if we can be of assistance in gathering the above-mentioned information in order to resolve these issues.

Sincerely,

Handwritten signature of Carlos A. Lopez, P.E. in blue ink.

Carlos A. Lopez, P.E.
Austin District Engineer

cc: Donald E. Nyland, P.E., South Travis Area Engineer, TxDOT
Joseph Carrizales, P.E., Advanced Project Development Engineer, TxDOT
Patricia L. Crews-Weight, P.E., Austin District Design Engineer, TxDOT
Mike Walker, Austin District Environmental Coordinator, TxDOT
Will Conley, County Commissioner, Precinct 3, Hays County
Jeff Barton, County Commissioner, Precinct 2, Hays County
Debbie Ingalsbe, County Commissioner, Precinct 1, Hays County
Karen Ford, County Commissioner, Precinct 4, Hays County
Susan Narvaiz, Mayor, City of San Marcos
Laurie Moyer, Assistant City Manager, City of San Marcos



Texas Department of Transportation

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May 13, 2010

Hays County
CSJ 3545-02-003
FM 110

The Honorable Elizabeth Sumter
County Judge
Hays County
111 East San Antonio Street, Suite #300
San Marcos, Texas 78666

Dear Judge Sumter:

I wanted to follow up on our May 4, 2010 telephone conversation regarding the FM 110 project with a general summary of events.

As we understand the situation, as a result of a new high school, the City of San Marcos received bids March 4, 2010, on the section of FM 110 from approximately 850 feet east of I-35 east approximately one mile. Construction began April 19, 2010. Although the city completed environmental due diligence on what they deemed was a project on their city street, FM 110 is on the state highway system. As such, the receipt of bids for the city segment does not conform with the terms of the Hays County Pass Through Finance (PTF) Agreement executed December 20, 2006, and amended May 21, 2008, since the environmental process was not in compliance with the National Environmental Policy Act process and a Letter of Authority was not issued.

The ramifications of having the city construct the segment to the high school was iterated to the city, county and the county's representatives several times over the last two years. Copies of the various correspondence and meeting notes are available upon request.

Federal Highway Administration personnel are reviewing the sequence of events and are looking at various options on how to handle the current environmental documentation for FM 110. We will keep you informed of any direction we receive from them. It is likely that revisions to the environmental clearance process for FM 110 may be necessary.

In addition, these changes in scope will require the renegotiation of the repayment terms of the existing PTF agreement. An amendment revising the repayment schedule will be forthcoming.

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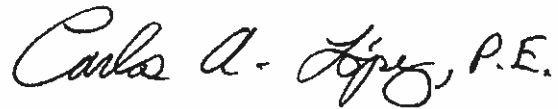
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May 13, 2010

As the county's partner in delivering the FM 110 project, we will assist the county in getting the remaining segment back on track as quickly as possible.

If you have any questions, please feel free to contact me at (512) 832-7022 or Ms. Patricia Crews-Weight at (512) 832-7050.

Sincerely,



Carlos A. Lopez, P.E.
Austin District Engineer

cc: Donald E. Nyland, P.E., South Travis Area Engineer, TxDOT
Patricia L. Crews-Weight, P.E., District Design Engineer, TxDOT
Amadeo Saenz, Jr., PE, Executive Director, TxDOT
John Barton, P.E., Assistant Executive Director for Engineering Operations, TxDOT
Debbie Gonzales-Ingalsbe, County Commissioner Precinct 1, Hays County
Jeff Barton, County Commissioner Precinct 2, Hays County
Will Conley, County Commissioner Precinct 3, Hays County
Karen Ford, County Commissioner Precinct 4, Hays County
Susan Narvaiz, Mayor, City of San Marcos
Mike Weaver, Prime Strategies, Inc.