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AGENDA ITEM REQUEST FORM

Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

AGENDA ITEM

Discussion and possible action to approve a resolution in support of the IH 35/Yarrington Road Bridge Advance Funding Agreement and authorize the County Judge to execute said Agreement with the Texas Department of Transportation.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-ROADS	July 23, 2013	

LINE ITEM NUMBER

AUDITOR USE ONLY

AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A

AUDITOR REVIEW: N/A

REQUESTED BY	SPONSOR	CO-SPONSOR
	INGALSBE	N/A

SUMMARY

Hays County executed the 3rd Amendment to the Pass-Through Finance Agreement with the Texas Department of Transportation which added the IH 35/Yarrington Road Bridge project to the County's Pass-Through Finance Program. The Advance Funding Agreement outlines the construction and funding responsibilities between TxDOT and Hays County.

FILED: **07 23 13**
HAYS COUNTY COMMISSIONERS' COURT
Resolution # 59107 VOL V PG 191



Texas Department Of Transportation

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

July 17, 2013

Hays County
CSJ: 0016-02-135
IH 35 at Yarrington

The Honorable Albert H. Cobb, Jr.
County Judge
Hays County
111 E. San Antonio, Suite 300
San Marcos, Texas 78666

Dear Judge Cobb:

Attached for partial execution is **revised** Advance Funding Agreement (AFA) required under the Pass-Through Agreement for Payment of Pass-Through Tolls by the Department executed December 20, 2006 and amendment No. 3 to include improvements on IH 35 at Yarrington Road. The budget page on the AFA was revised to include the latest estimated construction cost.

Please return two signed and dated documents to my attention for further execution. A fully executed agreement will be returned for your records.

If you have any questions, please contact me at (512) 832-7216. Your assistance is appreciated.

Sincerely,

Marisabel Z. Ramthun, P.E.
Project Delivery Section
Austin District

Attachments

STATE OF TEXAS §
COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT
ADVANCE FUNDING AGREEMENT
For A
Pass-Through Agreement for Payment
Of Pass-Through Tolls by the Department Segment Project**

THIS Local Project Advance Funding Agreement (LPAFA) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the "State", and the Hays County, acting by and through its duly authorized officials, 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, the Texas Transportation Commission passed Minute Order Number 113319 that provides for the development of, and funding for, the Project described herein; and,

WHEREAS, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated _____, 20__, which is attached to and made a part of this agreement as Attachment A for the development of the Project. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement.

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

AGREEMENT

1. Period of the Agreement

The period of this LPAFA is as stated in the Master Agreement, without exception.

2. Termination of this LPAFA

Termination of this LPAFA shall be under the conditions as stated in the Master Agreement. This LPAFA may be terminated by the State if the Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds.

3. Amendments

Amendments to this LPAFA shall be made as described in the Master Agreement, without exception.

4. Scope of Work

The scope of work for this LPAFA is described as the construction of bridge and approaches on IH 35 at Yarrington Rd as shown on Attachment "B".

5. Right of Way and Real Property

Right of way and real property shall be the responsibility of the Local Government as stated in the Master Agreement, without exception.

6. Utilities

Adjustment of utilities will be provided by the Local Government as required and as stated in the Master Agreement, without exception.

7. Environmental Assessment and Mitigation

Environmental assessment and mitigation will be carried out as stated in the Master Agreement. Additionally, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

8. Compliance with Texas Accessibility Standards and ADA

Compliance with Texas Accessibility Standards and the Americans with Disabilities Act (ADA) will be as stated in the Master Agreement, without exception.

9. Architectural and Engineering Services

Architectural and engineering services will be provided by the Local Government. The Local Government is responsible for performance of any required architectural or preliminary engineering work. For projects on the state highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the state highway system, the design shall, at a minimum, conform to applicable *American Association of State Highway and Transportation Officials* design standards. The Local Government may review and comment on the work as required to accomplish the public purposes of the Local Government. The State will cooperate fully with the Local Government in accomplishing these local public purposes to the degree permitted by State and Federal law.

10. Construction Responsibilities

Construction responsibilities will be carried out by the State as stated in the Master Agreement.

11. Project Maintenance

Project maintenance will be undertaken as provided for in the Master Agreement, without exception.

12. Local Project Sources and Uses of Funds

A. A Project Budget Estimate is provided in Attachment C. 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 one hundred percent (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 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. A Source of Funds estimate based on the Transportation Improvement Program (TIP) is also provided in Attachment C. Attachment C shows the percentage and estimated dollar amount to be contributed to the project by federal, state, and local sources. The parties agree that the LPAFA may be amended from time to time as required to meet the funding commitments based on revisions to the TIP, Federal Project Authorization and Agreement (FPAA), or other federal document.
- D. The Local Government is responsible for all non-federal and non-state funding, including any project cost overruns, unless otherwise provided for in this agreement or through amendment of this agreement.
- E. 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 costs.
- F. In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will 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 by the State to the Project. If, after final Project accounting, excess funds remain in the escrow account, 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.
- H. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other

locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

- I. 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. Any 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.
- J. 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.
- K. 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.

13. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

14. Incorporation of Master Agreement Provisions

This LPAFA incorporates all of the governing provisions of the Master Agreement in effect on the date of final execution of this LPAFA, unless an exception has been made in this agreement.

15. Insurance

If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the

State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

16. 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 and further certifies that it will not do business with any party that is 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.

17. Cost Principles and Office of Management and Budget (OMB) Audit Requirements

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.

18. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Local Government:	State:
County Judge Hays County 111 East San Antonio, #300 San Marcos, Texas 78666	Director of Contract Services Office Texas Department of Transportation 125 E. 11 th Street Austin, Texas 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. 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 notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

19. Civil Rights Compliance

The Local Government shall comply with the regulations of the U.S. Department of Transportation as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200), 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).

20. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

21. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>
- B. The Local Government agrees that it shall:
 1. Obtain and provide to the State a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than

\$25,000 in Federal Funding. The CCR number may be obtained by visiting the CCR website whose address is: <https://www.sam.gov/portal/public/SAM/>;

2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the Federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform/>; and
3. Report the total compensation and names of its top five (5) executives to the State if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

22. 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 OMB Circular A-133.
- B. If threshold expenditures of \$500,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://www.txdot.gov/inside-txdot/office/audit/contact.html>.
- C. If expenditures are less than \$500,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$500,000 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.

23. 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

Janice Mullenix
Director of Contract Services
Texas Department of Transportation

Date

CSJ #0016-02-135 & 3545-02-005
District # 14 -AUS
Code Chart 64 #50106
Project: IH 35 at Yarrington
Federal Highway Administration
CFDA # 20.205
Not Research and Development

**ATTACHMENT A
RESOLUTION OR ORDINANCE**

CSJ #0016-02-135 & 3545-02-005
District # 14 -AUS
Code Chart 64 #50106
Project: IH 35 at Yarrington
Federal Highway Administration
CFDA # 20.205
Not Research and Development

ATTACHMENT B PROJECT LOCATION MAP



ATTACHMENT C
PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS

The Local Government will be responsible for 100% of the costs. The Local Government shall provide one-half (1/2) of its funding share sixty days prior to receipt of construction bids. Upon award of the construction contract the Local Government shall remit the balance of its funding share in twelve equal consecutive monthly payments, by the 5th of each month beginning with the month after the receipt of bids.

CSJ: 0016-02-135						
Description	Total Estimated Cost	State Participation		Local Participation		
		%	Cost	%	Cost	
Environmental (By Local)	\$16,600	0%	\$0	100%	\$16,600	
Professional Engineering (By Local)	\$853,400	0%	\$0	100%	\$853,400	
Subtotal:	\$870,000		\$0		\$870,000	
Construction (By State)	\$12,720,469	0%	\$0	100%	\$12,720,469	
Joint Bid Utilities	\$192,478	0%	\$0	100%	\$192,478	
Subtotal:	\$12,912,947		\$0		\$12,912,947	
Preliminary Engineering Direct State Costs \$301,600	Environmental 25%	\$75,400	100%	\$75,400	0%	\$0
	Engineering 50%	\$150,800	100%	\$150,800	0%	\$0
	Utility 15%	\$45,240	100%	\$45,240	0%	\$0
	ROW 10%	\$30,160	100%	\$30,160	0%	\$0
Construction Direct Costs	\$774,777	100%	\$774,777	0%	\$0	
Indirect State Costs (5.1%)	\$658,560	100%	\$658,560	0%	\$0	
Total: 0016-02-135	\$15,517,884		\$1,734,937		\$13,782,947	
CSJ: 3545-02-005						
Construction (By State)	\$805,847	0%	\$0	100%	\$805,847	
Joint Bid Utilities	\$305,436	0%	\$0	100%	\$305,436	
Subtotal:	\$1,111,283		\$0		\$1,111,283	
Preliminary Engineering Direct State Costs \$23,644	Environmental 25%	\$5911	100%	\$5911	0%	\$0
	Engineering 50%	\$11,822	100%	\$11,822	0%	\$0
	Utility 15%	\$3546	100%	\$3546	0%	\$0
	ROW 10%	\$2365	100%	\$2365	0%	\$0
Construction Direct Costs	\$66,677	100%	\$66,677	0%	\$0	
Indirect State Costs (5.1%)	\$56,675	100%	\$56,675	0%	\$0	
Total: 3545-02-005	\$1,258,279		\$146,996		\$1,111,283	
Total: 0016-02-135 & 3545-02-005	\$16,776,163		\$1,881,933		\$14,894,230	

CSJ #0016-02-135 & 3545-02-005
District # 14 -AUS
Code Chart 64 #50106
Project: IH 35 at Yarrington
Federal Highway Administration
CFDA # 20.205
Not Research and Development

Payment by the Local Government to the State before construction: **\$7,012,115**

Estimated total payment by the Local Government to the State **\$14,024,230**

This is an estimate. The final total payment by the Local Government participation will be based on actual costs.