

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0922-33-166</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>22-LRD</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>50240</b>		
<b>Project Name</b>	<b>Hachar Road Extension</b>	<b><i>AFA Not Used For Research &amp; Development</i></b>	

STATE OF TEXAS           §

COUNTY OF TRAVIS       §

**ADVANCE FUNDING AGREEMENT  
For  
Category 10 -Coordinated Border Infrastructure (CBI) Project  
Off-System**

**AMENDMENT #1**

**THIS AMENDMENT** is made by and between the State of Texas, acting through the Texas Department of Transportation, called the “State”, and **Webb 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 April 20, 2016 to effectuate their agreement to develop Preliminary Engineering including Schematic and Environmental for Hachar Road Extension from 0.1 Mile East of Beltway Parkway to IH-35; and,

**WHEREAS**, it has become necessary to amend this contract to include additional environmental services needed, to be performed by the State,

**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:

**AGREEMENT**

The parties agree that the Agreement is amended as follows:

1. Article 2, Scope of Work, is deleted in its entirety and replaced with the following:  
The scope of work under this agreement consists of the development of Schematic and Environmental document for Hachar Road Extension from 0.1 mile east of Beltway Parkway to IH-35 West Frontage Road.

The Local Government remains responsible for completing the Schematic document and submitting Environmental documents completed as of the date of execution of this agreement to the State. The State will be responsible for preparing the required archeological studies and finalizing the Environmental Assessment.

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2. Attachment A, Advance Funding Agreement for a Category 10 – Coordinated Border Infrastructure (CBI) Project Off-System, Resolution or Ordinance, is deleted in its entirety and replaced with **Attachment A-1, Advance Funding Agreement for a Category 10 – Coordinated Border Infrastructure (CBI) Project Off-System, Resolution or Ordinance**, which is attached to and made part of this Amendment.
  
3. Attachment C, Advance Funding Agreement for a Category 10 – Coordinated Border Infrastructure (CBI) Project Off-System, Project Budget, is deleted in its entirety and replaced with **Attachment C-1, Advance Funding Agreement for a Category 10 – Coordinated Border Infrastructure (CBI) Project Off-System, Project Budget**, which is attached to and made part of this Amendment. The total estimated cost of the Project is increased by \$25,000, from \$334,260 to \$359,260. The increase in the Project cost is due to increased direct state costs.
  
4. The Agreement is amended by adding **Attachment D-1, Advance Funding Agreement for a Category 10 – Coordinated Border Infrastructure (CBI) Project Off-System, Replaced Articles of Agreement**, which is attached to and made part of this Amendment.

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

**Signatory Warranty**

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

Each party is signing this Agreement on the date stated under that party’s signature.

**THE STATE OF TEXAS**

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
Signature

Kenneth Stewart  
\_\_\_\_\_  
Typed or Printed Name

Director of Contract Services  
\_\_\_\_\_  
Typed or Printed Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Title

\_\_\_\_\_  
Date

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**ATTACHMENT A-1  
RESOLUTION, ORDINANCE, OR COMMISSIONERS COURT ORDER**

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**ATTACHMENT C-1  
PROJECT BUDGET**

**CSJ 0922-33-166**

For the Schematic and Environmental phase performed by the Local Government, costs will be allocated based on 80% Federal funding and 20% Local Government funding until the federal funding reaches the maximum obligated amount. The Local Government will then be responsible for 100% of the costs, including overruns.

For the Environmental phase performed by the State; the State will be responsible for 100% of the costs, including overruns.

Direct State Costs contribution from the local government is a fixed cost. No additional funds shall be collected from the Local Government for this cost.

Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
Schematic and Environmental Documents (by LG)	\$ 198,056	80%	\$ 158,445	0%	\$ 0	20%	\$ 39,611
Environmental (by State)	\$ 101,944	0%	\$ 0		\$ 101,944		\$ 0
<b>Subtotal</b>	<b>\$ 300,000</b>		<b>\$ 158,445</b>		<b>\$ 101,944</b>		<b>\$ 39,611</b>
Direct State Costs	\$ 40,000	0%	\$ 0	50%	\$ 20,000	50%	\$ 20,000
Indirect State Costs (6.42%)	\$ 19,260	0%	\$ 0	100%	\$ 19,260	0%	\$ 0
<b>TOTAL</b>	<b>\$ 359,260</b>		<b>\$ 158,445</b>		<b>\$ 141,204</b>		<b>\$ 59,611</b>

As of February 28, 2021, the local government has submitted payments in the amount of \$15,000.

Remaining payment due by the Local Government to the State: \$5,000.

Estimated total payment by the Local Government to the State \$20,000.

This is an estimate. The final amount of Local Government participation will be based on actual costs.

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## ATTACHMENT D-1 REPLACED ARTICLES OF AGREEMENT

Articles in the numerical order of the prime Agreement are deleted in their entirety from the Agreement and replaced:

<b>Number</b>	<b>Name of Article</b>
Article 3	Local Project Sources and Uses of Funds
Article 9	Compliance with Texas Accessibility Standards and ADA
Article 10	Architectural and Engineering Services
Article 20	Cost Principles
Article 21	Procurement and Property Management Standards
Article 22	Inspection of Books and Records
Article 23	Civil Rights Compliance
Article 24	Disadvantaged Business Enterprise (DBE) Program Requirements
Article 25	Debarment Certifications
Article 29	Single Audit Report
Article 30	Pertinent Non-Discrimination Authorities

The above Articles are replaced in the Agreement with the following:

### 3. Project Sources and Uses of Funds

The total estimated cost of the Project is shown in Attachment C-1, Project Budget, (Attachment C-1) which is attached to and made a part of this Agreement.

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed 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" and retains qualification in accordance with applicable TxDOT procedures. Upon request, 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 continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.
- B. The expected cash contributions from the federal government, the State, the Local Government, or other parties are shown in Attachment C-1. 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 (FHWA). 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.

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- 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.
- C. Attachment C-1 shows, by major cost categories, the cost estimates and the party responsible for performing the work for each category. 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, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. Where Special Approval has been granted by the State under 43 TAC §15.52, the Local Government shall only in that instance be responsible for overruns in excess of the amount specified in Attachment C-1 to be paid by the Local Government.
  - F. 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-1 will clearly state the specified percentage or the periodic payment schedule.
  - G. 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.
  - H. 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-1. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering performed or reviewed by the State 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.
  - I. 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.
  - J. 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" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.
  - K. The State will not pay interest on any funds provided by the Local Government.
  - L. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, 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.

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- M. 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.
- N. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, 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.
- O. Upon completion of the Project, where Special Approval has been granted by the State under 43 TAC 15.52, the State will perform a final accounting 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.
- P. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement 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.
- Q. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.

**9. Compliance with Accessibility Standards**

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

**11. Architectural and Engineering Services**

The local government has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable State's Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges and the special specifications and special provisions related to it. 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 (AASHTO) design standards.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the Project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental

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matters. If the Local Government is the responsible party, the Local Government shall submit its procurement selection process for prior approval by the State. All professional services contracts must be reviewed and approved by the State prior to execution by the Local Government.

**20. Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the cost principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

**21. Procurement and Property Management Standards**

The parties to this Agreement shall adhere to the procurement standards established in Title 49 CFR §18.36, to the property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government’s procurement procedures for purchases to be eligible for state or federal funds.

**22. Inspection of Books and Records**

The parties to this 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 FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement 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. Civil Rights Compliance**

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties 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 Agreement, 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 Agreement 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



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notified by the Local Government of the Local Government's obligations under this Agreement 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 FHWA, 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 Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - 1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
  - 2. cancelling, terminating, or suspending of the Agreement, 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.

**27. Disadvantaged Business Enterprise (DBE) Program Requirements**

If federal funds are used:

- 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 incorporate into its contracts with subproviders 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 submit its proposed scope of services and quantity estimates to the State to allow the State to establish a DBE goal for each Local Government contract with a subprovider. The Local Government 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

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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](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.

**28. Debarment Certifications**

If federal funds are used, 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 and its principals are 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, to include principals, 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 Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

**29. Single Audit Report**

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

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- 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 by email at [singleaudits@txdot.gov](mailto: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.

**30. Pertinent Non-Discrimination Authorities**

During the performance of this Agreement, each party, 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, (42 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

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0922-33-166</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>22-LRD</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>50240</b>		
<b>Project Name</b>	<b>Hachar Road Extension</b>	<b><i>AFA Not Used For Research &amp; Development</i></b>	

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.).