

CSJ # 0086-14-058
District # 22 AFA ID: Z00004005
Code Chart 64 # 50240-Webb County
Project: State Loop 20 Phase II
Federal Highway Administration
CFDA Title: Highway Planning and
Construction
CFDA No.: 20.205
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
AMENDMENT # 3**

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.

W I T N E S S E T H

WHEREAS, the State and the Local Government executed a contract on the 26th day of March 2013 to effectuate their agreement to provide Preliminary Engineering including the Schematic, Environmental Studies and documentation, Surveying and Mapping, Utility investigation, and PS&E for State Loop 20 from East of International to US59; and,

WHEREAS, the State and the Local Government executed Amendment #1 on the 10th day of August 2015 to revise Project Budget with a decrease of funds that were transferred to another project; and,

WHEREAS, the State and the Local Government executed Amendment #2 on the 3rd day of February 2017 to increase Project Budget by \$4,871,324 and to update Article 3 and Article 14 of the original agreement; and,

WHEREAS, it has become necessary to amend that contract to decrease total project budget and eliminate the Plans, Specifications and Estimate Phase of the project from this agreement; and,

WHEREAS, it has become necessary to amend that contract to incorporate recent changes in federal and state provisions and requirements;

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:

A G R E E M E N T

1. Description of Amended Items

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- a. Attachment C-2, Project Budget is deleted in its entirety and replaced with Attachment C-3, Project Budget which is attached to and made part of this amendment. The total project estimate decreased by \$ 5,258,298.00 from \$ 8,245,820.00 to \$ 2,987,522.00.
- b. Article 3. Project Sources and Uses of Funds is deleted in its entirety and replaced with the following:

3. Project Sources and Uses of Funds

The total estimated cost of the Project is shown in Attachment C-3, Project Budget, (Attachment C-3) 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-3. 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. 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-3 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-3 to be paid by the Local Government.

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- 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-3 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-3. 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.
- 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.

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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.

c. Article 4. Termination of this Agreement is deleted in its entirety and replaced with the following:

4. Termination of This Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The Agreement is terminated by one party because of a breach, in which case any costs incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D. The Agreement is terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government's proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination; or
- E. The Project is inactive for thirty-six (36) consecutive months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this Agreement.

d. Article 9. Compliance with Accessibility Standards is deleted in its entirety and replaced with the following:

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).

e. Article 10. Architectural and Engineering Services is deleted in its entirety and replaced with the following:

10. 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.

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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 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.

- f. Article 12. Project Maintenance is deleted in its entirety and replaced with the following:

12. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the State highway system after completion of the work if the work was on the State highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

- g. Article 21. Procurement and Property Management Standards is deleted in its entirety and replaced with the following:

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.

- h. Article 22. Inspection of Books and Records is deleted in its entirety and replaced with the following:

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.

- i. Article 24. Disadvantaged Business Enterprise (DBE) Program Requirements is deleted in its entirety and replaced with the following:

24. Disadvantaged Business Enterprise (DBE) Program Requirements

If federal funds are used:

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- 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 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.
- j. Article 25. Debarment Certifications is deleted in its entirety and replaced with the following:

25. 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

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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.

k. Article 29. Single Audit Report is deleted in its entirety and replaced with the following:

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.
- 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.
- 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.

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

2. Signatory Warranty

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

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Each party is signing this amendment on the date stated under that party's signature.

THE LOCAL GOVERNMENT

Signature

Typed or Printed Name

Title

Date

THE STATE OF TEXAS

Kenneth Stewart
Director of Contract Services
Texas Department of Transportation

Date

ATTEST:

Margie Ramirez Ibarra
Webb County Clerk

Approved as to Form:

Nathan R. Bratton
General Counsel

Webb County Civil Legal Division
*The General Counsel, Civil Legal Division's office, may only advise or approve contracts or legal documents on behalf of its client. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

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ATTACHMENT C-3 PROJECT BUDGET

Costs will be allocated based on 80% Federal Funding and 20% State funding until the Federal and State funding reach the maximum obligated amount. **The Local Government will then be responsible for 100% of the cost.** The State and the Local Government have estimated the project cost to be as follows:

| Description | Total Estimate Cost | Federal Participation | | State Participation | | Local Participation | |
|---|---------------------|-----------------------|------------------|---------------------|----------------|---------------------|------------|
| | | | | | | | |
| Preliminary Engineering (by LG) (CBI) | \$ 2,282,732 | 80% | \$ 1,826,185 | 20% | \$ 456,547 | 0% | \$0 |
| Plans, Specifications, and Estimate (by LG) (CAT 7) | \$ 0 | 0% | \$ 0 | 0% | \$ 0 | 0% | \$0 |
| Engineering Direct State Cost | \$ 300,000 | 80% | \$ 240,000 | 20% | \$ 60,000 | 0% | \$0 |
| Indirect State Cost (5.27%) | \$ 404,790 | 0% | 0 | 100% | \$ 404,790 | 0% | \$0 |
| Total | \$2,987,522 | | 2,066,185 | | 921,337 | | \$0 |

Initial payment by the Local Government to the State: \$0

Payment by the Local Government to the State before construction: \$0

Estimated total payment by the Local Government to the State \$0

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