

RESOLUTION NO. 2000-10-01

A RESOLUTION OF THE CITY OF WESTON, TEXAS, COLLIN COUNTY, TEXAS, TO EXECUTE AND APPROVE THE MASTER ADVANCED FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION.

WHEREAS, the elements of contracts between TxDOT and municipalities vary from project to project including the project specifications and the funding arrangements; and

WHEREAS, in order to streamline the contract process, TxDOT has designed: (1) a Master Advanced Funding Agreement (MAFA) and (2) a Local Project Advance Funding Agreement (LPAFA); and

WHEREAS, the MAFA contains what may become statewide contract standards which are currently generally agreeable to all cities and counties; and

WHEREAS, this MAFA will need to be approved only one time by the local municipality; and

WHEREAS, the LPAFA contains provisions related only to the local project needs; and

WHEREAS, the LPAFA is short and simple to understand and complete for routine projects; and

WHEREAS, exceptions to the MAFA or LPAFA may be addressed by specific amendments; and

WHEREAS, the governing terms of this MAFA will provide for efficient and effective contract administration of the LPAFAs;

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTON, TEXAS:

THAT the City Council authorizes the execution and the approval of the Master Advanced Funding Agreement (MAFA) with TxDOT.

ADOPTED by the City Council of the City of Weston, Texas on this the 10<sup>th</sup> day of October, 2000.

APPROVED BY:

Patti Harrington  
Patti Harrington, Mayor

ATTEST;

Michele Smith  
Michele Smith, City Secretary

STATE OF TEXAS §  
COUNTY OF TRAVIS §

**MASTER AGREEMENT  
GOVERNING  
LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENTS**

**THIS MASTER AGREEMENT** is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the Local Governments as identified on the signature pages and by each Attachment B (attached resolutions), acting by and through its duly authorized officials, hereinafter called the "Local Governments."

**WITNESSETH**

**WHEREAS**, the Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) codified under Title 23 U.S.C. Section 101 et seq., authorize transportation programs to meet the challenges of protecting and enhancing communities and the natural environment and advancing the nation's economic growth and competitiveness; and

**WHEREAS**, ISTEA and TEA-21 establish federally funded programs for transportation improvements to implement its public purposes; and

**WHEREAS**, Title 23 U.S.C. Section 134 requires that Metropolitan Planning Organizations and the States' Transportation Agencies to develop transportation plans and programs for urbanized areas of the State; and

**WHEREAS**, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with Local Governments; and

**WHEREAS**, federal and state laws require Local Governments to meet certain contract standards relating to the management and administration of State and federal funds; and

**WHEREAS**, the governing terms of this Master Agreement will provide for efficient and effective contract administration of the types of Local Project Advance Funding Agreements (LPAFA) listed in Attachment A; and,

**WHEREAS**, the Texas Government Code, Section 441.189 allows any state record to be created or stored electronically in accordance with standards and procedures adopted as administrative rules of the Texas State Library and Archives Commission; and

**WHEREAS**, the Governing Bodies of the Local Governments have approved entering into this Master Agreement by resolution or ordinance attached hereto and made a part of this Master Agreement as Attachment B.

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

## AGREEMENT

### **1. Period of the Agreements**

This Master Agreement and the Local Project Advance Funding Agreements (LPAFAs) subject to this Master Agreement become effective when signed by the last party whose signing makes the respective agreements fully executed. This Master Agreement shall remain in effect until terminated as provided in Article 2.

### **2. Termination of this Master Agreement**

This agreement may be terminated by any of the following conditions:

- a. by mutual written consent and agreement of all parties.
- b. by any party with 90 days written notice. If this Master Agreement is terminated under this clause, all existing, fully executed LPAFAs made under this Master Agreement shall automatically incorporate all the provisions of this Master Agreement.
- c. by either party, upon the failure of the other party to fulfill the obligations as set forth in this Master Agreement.

### **3. Termination of the Local Project Advance Funding Agreement (LPAFA)**

An LPAFA 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, or;
- b. because of a breach of this Master Agreement or a breach of the Local Project Advance Funding Agreement. Any cost incurred due to a breach of contract shall be paid by the breaching party.
- c. After the PS&E the Local Governments may elect not to provide the funding and the project does not proceed because of insufficient funds; the Local Governments agree to reimburse the State for its reasonable actual costs incurred during the project.
- d. conditions for termination as specified in the LPAFA are fulfilled.

### **4. Amendments**

- a. Amendment of this Master Agreement by Notice with Mutual Consent: The State may notify the Local Governments of changes in this Master Agreement resulting from changes in federal or state laws or rules or regulations and these changes in the Master Agreement shall be incorporated into this agreement unless the State is notified by the Local Governments within 60 days. From time to time, the State may issue numbered restatements of this MAFA to wholly reflect its amendments.

- b. This Master Agreement may be amended due to changes in the agreement or the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.
- c. The notice of amendment and the amendment to this Master Agreement may be in an electronic form to the extent permitted by law and after a prior written consent of the parties to this agreement is made.
- d. Amendments to the LPAFAs due to changes in the character of the work or terms of the agreement, or responsibilities of the parties relating to a specific project governed under this Master Agreement may be enacted through a mutually agreed upon, written amendment to the LPAFA.

## **5. Remedies**

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

## **6. Utilities**

If the required right of way encroaches upon existing utilities and the proposed project requires their adjustment, removal or relocation, the Local Governments will be responsible for determining the scope of utility work and notify the appropriate utility company to schedule adjustments, unless specified otherwise in a specific LPAFA under other provisions of this MAFA.

The Local Governments shall be responsible for the adjustment, removal or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies and procedures. This includes, but is not limited to: 43 TAC §15.55 relating to Construction Cost Participation; 43 TAC §21.21 relating to State Participation in Relocation, Adjustment, and/or Removal of Utilities; and, 43 TAC§ 21.31 et seq. relating to Utility Accommodation. The Local Governments will be responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the project, unless this work is provided by the owners of the utility facilities:

- a. per agreement;
- b. per all applicable statutes or rules, or;
- c. as specified otherwise in a LPAFA.

Prior to letting a construction contract for a local project, a utility certification must be made available to the State upon request stating that all utilities needing to be adjusted for completion of the construction activity have been adjusted.

## **7. Environmental Assessment and Mitigation**

Development of a local transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- a. The Local Governments are responsible for the identification and assessment of any environmental problems associated with the development of a local project governed by this agreement, unless provided for otherwise in the specific project agreement.
- b. The Local Governments are responsible for the cost of any environmental problem's mitigation and remediation, unless provided for otherwise in the specific project agreement.
- c. The Local Governments are responsible for providing any public meetings or public hearings required for development of the environmental assessment, unless provided for otherwise in the specific project agreement.
- d. The Local Governments shall provide the State with written certification from appropriate regulatory agency(ies) that identified environmental problems have been remediated, unless provided for otherwise in the specific project agreement.

## **8. Compliance with Texas Accessibility Standards and ADA**

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

## **9. Architectural and Engineering Services**

Any party to this contract may have responsibility for effecting the performance of architectural and engineering services. Or, the parties may agree to be individually responsible for portions of this work. The LPAFA shall define the party responsible for performance of this work.

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 thereto, unless specifically stated otherwise in the LPAFA and approved by the State.

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 services 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.

## **10. Construction Responsibilities**

- a. Unless specifically provided for otherwise in the LPAFA, the State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change

orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.

- b. All contract letting and award procedures must be approved by the State prior to letting and award of the construction contract, whether the construction contract is awarded by the State or by the Local Governments.
- c. All contract change order review and approval procedures must be approved by the State prior to start of construction.
- d. Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
- e. For federally funded contracts, the parties to this agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Part B.

## **11. Project Maintenance**

The Local Governments shall be responsible for maintenance of locally owned roads after completion of the work and the State shall be responsible for maintenance of state highway system after completion of the work if the work was on the state highway system, unless otherwise provided for in the LPAFA or other prior existing maintenance agreement with the Local Governments.

## **12. Local Project Sources and Uses of Funds**

- a. The total estimated cost of the Project will be clearly stated in the local project agreement. The expected cash contributions from the federal, state, Local Governments or other parties will be clearly stated. The State will pay for only those project costs that have been approved by the Texas Transportation Commission.
- b. A project cost estimate showing the estimated contributions in kind or in cash for each major area of the local project will be provided in the LPAFA. This project cost estimate will show how necessary resources for completing the project will be provided by major cost categories. These categories 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.
- c. 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. Federal share of the project will be reimbursed to the Local Governments on a cost basis.
- d. The Local Governments will be responsible for all non-federal or non-State participation costs associated with the Project, including any overruns in excess of the approved local project budget, unless otherwise provided for in the LPAFA.

- e. Following execution of the LPAFA, but prior to the performance of any review work by the State, the Local Governments will remit a check or warrant made payable to the "Texas Department of Transportation " in the amount specified in the LPAFA. The Local Governments will pay at a minimum its funding share for the estimated cost of preliminary engineering for the project, unless otherwise provided for in the LPAFA.
- f. Sixty (60) days prior to the date set for receipt of the construction bids, the Local Governments shall remit its remaining financial share for the State's estimated construction oversight and construction costs, unless otherwise provided for in the LPAFA.
- g. In the event the State determines that additional funding is required by the Local Governments at any time during the Project, the State will notify the Local Governments in writing. The Local Governments will make payment to the State within thirty (30) days from receipt of the State's written notification, unless otherwise provided for in the LPAFA.
- h. Upon completion of the Project, the State will perform an audit of the local project costs. Any funds due to the Local Governments, the State, or the Federal government will be promptly paid by the owing party.
- i. The State will not pay interest on any funds provided by the Local Governments.
- j. If a waiver has been granted, the State will not charge the Local Governments for the indirect costs the State incurs on the local project, unless this agreement is terminated at the request of the Local Governments prior to completion of the project.
- k. If the local project has been approved for a "fixed price" or an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the LPAFA will clearly state the amount of the fixed price or the incremental payment schedule.
- l. The Texas Comptroller of Public Accounts has determined that certain counties qualify as Economically Disadvantaged Counties in comparison to other counties in the state as below average per capita property value, and below average per capita income, and above average unemployment, for certain years. The LPAFA will reflect adjustments to the standard financing arrangement based on this designation.
- m. The State will not execute the contract for the construction of a local project until the required funding has been made available by the Local Governments in accordance with the LPAFA.

### **13. Right of Way and Real Property**

The Local Governments are responsible for the provision and acquisition of any needed right of way or real property, unless the State agrees to participate in the provision of right of way under the procedures described herein as parts A and B of this provision.

Title to right of way and other related real property must be acceptable to the State before funds may be expended for the improvement of the right of way or real property.

If the Local Governments are the owners of any part of a project site under an LPAFA, the Local Governments shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work under the LPAFA.

All parties to this agreement will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property

Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Governments, and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.

If the Local Governments purchase right of way for a Local Governments street, title will be acquired in the name of the Local Governments in accordance with applicable laws unless specifically stated otherwise in the LPAFA and approved by the State.

If the State participates in the purchase of right of way for the state, it will be under the processes established in the following paragraphs A or B, and the selected option shall be specified in the LPAFA.

#### **A. Purchase By the State for the State**

The State will assume responsibility for acquisition of all necessary right of way for the highway project. The Local Governments will voluntarily contribute to the State funds equal to ten (10) percent of the cost of the right of way for the proper development and construction of the state highway system and shall transmit to the State a warrant or check payable to the Texas Department of Transportation when notified by the State of the estimated cost of the right of way. If the amount is found insufficient to pay the Local Governments' obligation, then the Local Governments, upon request of the State, will supplement this amount in such amount as requested by the State. Upon completion of the highway project and in the event the total amount paid by the Local Governments are more than ten (10) percent of the actual cost of the right of way, any excess amount will be returned to the Local Governments. Cost of the right of way by the State shall mean the total value of compensation paid to owners, including but not limited to utility owners, for their property interests either through negotiations or eminent domain proceedings.

#### **B. Purchase by the Local Governments for the State**

*Purchase:* Right of way purchases shall be a joint effort of the State and the Local Governments. Acquisition of right of way shall be in accordance with the terms of this agreement and in accordance with applicable Federal and State laws governing the acquisition policies for acquiring real property. The State agrees to reimburse the Local Governments for its share of the cost of such right of way providing acquisition when it has been authorized to proceed by the State.

*Location Surveys and Preparation of Right of Way Data:* The State, without cost to the Local Governments, will do the necessary preliminary engineering and title investigation in order to supply to the Local Governments the data and instruments necessary to obtain acceptable title to the desired right of way.



*Determination of Right of Way Values:* The Local Governments agree to make a determination of property values for each right of way parcel by methods acceptable to the Local Governments and to submit to the State's District Office a tabulation of the values so determined, signed by the appropriate Local Governments representative. Such tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any), and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in arriving at all determined values. Such work will be performed by the Local Governments at its expense without cost participation by the State. The State will review the data submitted and may base its reimbursement on the values which are determined by this review. The State, however, reserves the right to perform at its own expense any additional investigation deemed necessary, including supplemental appraisal work by State employees or by employment of fee appraisers, all as may be necessary for determination of values to constitute the basis for State reimbursement. If at any stage of the project development it is determined by mutual-agreement between the State and Local Governments that the requirement for the Local Governments to submit to the State property value determinations for any part of the required right of way should be waived, the Local Governments will make appropriate written notice to the State of such waiver, such notice to be acknowledged in writing by the State. In instances of such waiver, the State by its due processes and at its own expense will make a determination of values to constitute the basis for State reimbursement.

*Negotiations:* The State will notify the Local Governments as soon as possible as to the State's determination of value. Negotiation and settlement with the property owner will be the responsibility of the Local Governments without participation by the State; however, the Local Governments will notify the State immediately prior to closing the transaction so that a current title investigation may be made to determine if there has been any change in the title. The Local Governments will deliver properly executed instruments of conveyance which together with any curative instruments found to be necessary as a result of the State's title investigation will be properly vest title in the State for each right of way parcel involved. The costs incidental to negotiation and the costs of recording the right of way instruments will be the responsibility of the Local Governments. The cost of title investigation will be the responsibility of the State.

*Condemnation:* Condemnation proceedings will be initiated at a time selected by the Local Governments and will be the Local Governments' responsibility at its own expense except as hereinafter indicated. The Local Governments will obtain from the State without cost current title information and engineering data at the time condemnation are to be indicated. Except as hereinafter set forth the Local Governments will concurrently file condemnation proceedings and a notice of lis pendens for each case in the name of the State, and in each case so filed the judgment of the court will decree title to the property condemned to the State. The Local Governments may, as set forth herein under "Excess Takings" and where it is determined to be necessary, enter condemnation proceedings in its own name. Property acquired in the Local Governments' name for the State must comply with requirements set forth in the engineering data and title investigation previously furnished to the Local Governments by the State at such time as the Local Governments conveys said property to the State. Court Costs, Costs of Special Commissioners' Hearings and Appraisal Expense: Court costs and costs of Special

Commissioners' hearings assessed against the State or Local Governments in condemnation proceedings conducted on behalf of the State and fees incident thereto will be paid by the Local Governments. Such costs and fees, with the exception of recording fees, will be eligible for ninety (90) percent State reimbursement under the established reimbursement procedure provided such costs and fees are eligible for payment by the State under existing law. Where the Local Governments uses the State's appraisers employed on a fee basis in Special Commissioners' hearings or subsequent appeals, the cost of the appraiser for updating the report, for preparing new reports, preparing for court testimony and appearing in court to testify in support of the appraisal will be paid direct by the Local Governments, but will be eligible for ninety (90) percent State reimbursement under established procedure provided prior approval for such appraiser has been obtained from the State. The fee paid the appraiser by the Local Governments shall be in accordance with the fee schedule set forth in the appraiser's contract for appraisal services with the State.

*Excess Takings:* In the event the Local Governments desires to acquire land in excess of that requested by the State for right of way purposes, the State's cost participation will be limited to the property needed for its purposes. If the Local Governments elects to acquire the entire property, including the excess taking, by a single instrument of conveyance or in one eminent domain proceeding, the property involved will be acquired in the name of the Local Governments and that portion requested by the State for right of way will be separately conveyed to the State by the Local Governments. When acquired by negotiation, the State's participation will be based on the State's approved value of that part of the property requested for right of way purposes, provided that such approved value does not exceed actual payment made by the Local Governments. When acquired by condemnation, the State's participation will be in the proportionate part of the final judgment amount computed on the basis of the relationship of the State's approved value to the State's predetermined value for the whole property.

*Improvements:* Property owners will be afforded an opportunity in the negotiations to retain any or all of their improvements in the right of way taking. In anticipation of the owner desiring to retain improvements, the State's approved value will include the amounts by which the upper limit of State participation will be reduced for the retention. It is further agreed that the upper limit for the State's participation in the Local Governments' cost for an improved parcel will be reduced as shown in the State's approved value where the owner retains an improvement which is to be moved by either the Local Governments or the owner. In the event improvements, which are, in whole or part, a part of the right of way taking are not retained by the owner; title is to be secured in the name of the State.

The State will participate in the acquisition of a structure severed by the right of way line if the part of the house, building or similar structure which lies outside the right of way cannot be reconstructed adequately or there is nothing but salvage left, provided that the State's value is established on this basis and provided that title to the entire structure is taken in the name of the State. The State shall dispose of all improvements acquired. The net revenue derived by the State from the disposition of any improvements sold through the General Services Commission will be credited to the cost of the right of way procured and shared with the Local Governments.

*Relocation of Utilities on Acquired State Right of Way:* If the required right of way encroaches upon an existing utility located on its own right of way and the proposed highway construction requires the adjustment, removal or relocation of the utility facility, the State will establish the necessity for the utility work. State participation in the cost of making the necessary change, less any resulting increase in the value to the utility and less any salvage value obtainable, may be obtained by either the "actual cost" or "lump sum" procedures. Reimbursement under "actual cost" will be made subsequent to the Local Governments' certification that the work has been completed and will be made in an amount equal to ninety (90) percent of the eligible items of cost as paid to the utility owner. The "lump sum" procedure requires that the State establishes the eligibility of the utility work and enters into a three-party agreement, with the owners of the utility facilities and the Local Governments, which sets forth the exact lump sum amount of reimbursement, based on a prior appraisal. The utility will be reimbursed by the Local Governments after proper certification by the utility that the work has been done, said reimbursement to be the basis of the prior lump sum agreement. The State will reimburse the Local Governments in an amount equal to ninety (90) percent of the firm commitment as paid to the utility owner. The foregoing is subject to the provision that the individual lump sum approved value shall not exceed \$20,000, except as specifically approved by the State. In those cases where a single operation is estimated to exceed \$20,000 the transaction will be brought to the attention of the State for determination of proper handling based upon the circumstances involved. Such utility firm commitment will be an appropriate item of right of way. The adjustment, removal or relocation of any utility line on publicly owned right of way by sufferance or permit will not be eligible for State reimbursement. The term "utility" under this agreement shall include publicly, privately and cooperatively owned utilities.

*Fencing Requirements:* The Local Governments may either pay the property owner for existing right of way fences based on the value such fences contribute to the part taken and damages for an unfenced condition resulting from the right of way taking, in which case the estimated value of such right of way fences and such damages will be included in the recommended value and the approved value, or the Local Governments may do the fencing on the property owner's remaining property.

Where the Local Governments perform right of way fencing as a part of the total right of way consideration, neither the value of existing right of way fences nor damages for an unfenced condition will be included in the recommended value or the approved value. State participation in the Local Governments' cost of constructing right of way fencing on the property owner's remainder may be based on either the actual cost of the fencing or on a predetermined lump sum amount. The State will be given credit for any salvaged fencing material and will not participate in any overhead costs of the Local Governments.

If State participation is to be requested on the lump sum basis, the State and the Local Governments will reach an agreement prior to the actual accomplishment of the work as to the necessity, eligibility and a firm commitment as to the cost of the entire fencing work to be performed. The foregoing is subject to the provision that the lump sum approved cost shall not exceed \$20,000, except as specifically approved by the State. In the event the cost of the fencing is estimated to exceed \$20,000, the transaction will be brought to the attention of the State for determination of proper handling based upon the circumstances involved.

*Reimbursement:* The State will reimburse the Local Governments for right of way acquired after the date of this agreement in amount not to exceed ninety (90) percent of the cost of the right of way acquired in accordance with the terms and provisions of this agreement. The State's reimbursement will be in the amount of ninety (90) percent of the State's predetermined value of each parcel, or the net cost thereof, whichever is the lesser amount.

If condemnation is necessary and title is taken as set forth herein under the section entitled "Condemnation," the participation by the State shall be based on the final judgment, conditioned upon the State having been notified in writing prior to the filing of such suit and upon prompt notice being given as to all action taken therein. The State shall have the right to become a party to the suit at any time for all purposes, including the right of appeal at any stage of the proceedings. All other items of cost shall be borne by the State and the Local Governments as provided in other sections of this agreement. If a lump sum fencing or utility adjustment agreement has been executed, the State will reimburse the Local Governments in the amount of ninety (90) percent of the predetermined lump sum cost of the right of way fencing or utility adjustment.

If the Local Governments prefer not to execute a lump sum agreement for either fencing or utility adjustments, the State will reimburse on the actual cost of such fencing or adjustments. The Local Governments' requests for reimbursement will be supported by a breakdown of the labor, materials and equipment used.

*General:* It is understood that the terms of this agreement shall apply to new right of way authorized and requested by the State which is needed and not yet dedicated, in use or previously acquired in the name of the State or Local Governments for highway, street or road purposes. This agreement shall also apply, with regard to any existing right of way, to outstanding property interests not previously acquired and to eligible utility adjustments not previously made, as authorized and requested by the State.

It is further understood that if unusual circumstances develop in the right of way acquisition which are not clearly covered by the terms of this agreement, such unusual circumstances or problems will be resolved by mutual agreement between the State and the Local Governments.

#### **14. Notices**

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses as noted below for the State and as noted on the signature page for the Local Governments:

State: Texas Department of Transportation  
Attention: District Engineer  
4777 E. Highway 80  
Mesquite, Texas 75150-6643

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

#### **15. Legal Construction**

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

#### **16. Responsibilities of the Parties**

The State and the Local Governments agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

#### **17. Ownership of Documents**

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Governments shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Governments.

#### **18. Compliance with Laws**

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

#### **19. Sole Agreement**

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

#### **20. Cost Principles**

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

## **21. Procurement and Property Management Standards**

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

## **22. Inspection of Books and Records**

The parties to the agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the State, the Local Governments, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Governments, 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. OMB Audit Requirements**

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular No. A-128 through August 31, 2000 and stipulated in OMB Circular A-133 after August 31, 2000.

## **24. Civil Rights Compliance**

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

## **25. Disadvantaged Business Enterprise Program Requirements**

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

## **26. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." 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 in accordance with Title 49 CFR Part 29 (Debarment and Suspension).

## **27. Lobbying Certification**

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

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

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

## **28. Signatory Warranty**

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

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

**THE LOCAL GOVERNMENT:**

By: *Patti Harrington*

Title: *Mayor*

Date: *10-10-00*

**ATTEST:**

*Michelle Smith*  
Clerk *City Secretary*

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Director of Public Works/Transportation

**NOTICE INFORMATION:**

Local Government: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

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**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: \_\_\_\_\_  
Jennifer D. Soldano, Director  
Contract Services Office

Date: \_\_\_\_\_



**ATTACHMENT A -- FUNDING CATEGORIES UNDER THE MAFA**

Federal Categories	Prefix	Federal Categories	Prefix
<b>Interstate</b>		<b>Demonstration Projects</b>	
Interstate Maintenance	I	Hi Priority Corridor on NHS	DPR
Interstate 4R Discretionary	IM	Rural Access Projects	DPR
Interstate Constr. Discretionary	IDR	Innovative Projects	DPI
	ID	Priority Intermodal Projects	DPM
		Congestion Corridor	IVH/ITS
<b>Bridges</b>		High Priority Projects	HP
Bridge Repair/Rehab On-System	BR/BH		
		<b>Other</b>	
National Highway System	NH		
<b>Surface Transportation Program</b>			
Urban Mobility/Rehab	STP-UM	Forest Highways	FH
<i>Areas &lt; 200,000</i>			
Enhancement	STP-TE	<b>STATE CATEGORIES</b>	
Metro Mobility/Rehab	STP-MM	Preventive Maintenance	CPM
<i>Urban Mobility/Rehab</i>		Farm-to-Market/Farm-to-Market Rehab	A/AR
Urban & Rural Rehabilitation	STP-R	District Discretionary	CD
Rural Mobility Rehab	STP-RM	State Funded Rehab	C
Rail-Hwy Crossing Protective Devices	STP-RXP	Park Road	C
Rail-Hwy Crossing Hazard Elimination	STP-RXH	State Funded Mobility	C
Railroad grade Separations	STP-RGS	PASS/PASS Metro Match	C
Safety-Hazard Elimination	STP-HES	Traffic Signals, Signing & Pavement Markings	C
		Miscellaneous	C
<b>Congestion Mitigation &amp; Air Quality</b>	CM	Railroad Replanking	CRX
		State Funded Landscape	C/CL
<b>Donor State Bonus*</b>			CLM
Any Area	DB		CUS
Areas >200,000	DBM		
Areas <200,000	DBU	Others per LPAFA exception	
<b>Minimum Guarantee</b>	MG	Off-System Bridges Program	BROX
*ISTEA Funding Categories - Not Re-established in TEA			
21			

STATE OF TEXAS §  
COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENT  
For an Congestion Mitigation and Air Quality 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, hereinafter called the "State", and the City of XXXXXXXX, acting by and through its duly authorized officials, hereinafter 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 \_\_\_\_\_ that provides for the development of, and funding for, the project describe herein; and,

**WHEREAS**, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated \_\_\_\_\_, which is attached hereto and made a part hereof as Attachment A for development of the specific project which is identified in the location map shown as Attachment B.

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

**AGREEMENT**

1. **The period of this LPAFA is as stated in the Master Agreement, without exception.**
2. **Termination of this LPAFA shall be under the conditions as stated in the Master Agreement, without exception.**
3. **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 \_\_\_\_\_  
\_\_\_\_\_.
5. **Right of Way and Real Property shall be the responsibility of the Local Government, as stated in the Master Agreement, without exception.**

6. **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 will be carried out as stated in the Master Agreement, without exception.**
8. **Compliance with Texas Accessibility Standards and ADA will be as stated in the Master Agreement, without exception.**
9. **Architectural and Engineering Services will be provided by the State, as stated in the Master Agreement, without exception.** The State is responsible for performance of any required architectural or preliminary engineering work. 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 will be carried out by the State, as stated in the Master Agreement, without exception.**
11. **Project Maintenance will be undertaken as provided for in the Master Agreement, without exception.**
12. **Local Project Sources and Uses of Funds**
  - a. Project Cost Estimate: A Project Cost Estimate is provided in Attachment C.
  - b. A Source of Funds estimate is also provided in Attachment C. Attachment C shows the percentage and absolute dollar amount to be contributed to the project by federal, state, and local sources.
  - c. The Local Government is responsible for all non-federal and non-state funding, including all project cost overruns, unless provided for through amendment of this agreement.
  - d. After execution of this LPAFA, but prior to the performance of any work by the State, the Local Government will remit a check or warrant made payable to the "Texas Department of Transportation" in the amount specified in Attachment C as the local contribution for Preliminary Engineering. The Local Government will pay at a minimum its funding share for this estimated cost of preliminary engineering as stated in the Local Project Sources and Uses of Funds provision of the Master Agreement.
  - e. 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 and any others costs owing.
  - f. In the event the State determines that additional funding is required by the Local Government at any time during the development of the Project, the State will notify the Local Government in writing. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.

**13. Incorporation of Master Agreement Provisions**

This LPAFA incorporates all of the governing provisions of the Master Advance Funding Agreement (MAFA) in effect on the date of final execution of this LPAFA, unless such MAFA provision is specifically excepted herein.

**14. Signatory Warranty**

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

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

**THE LOCAL GOVERNMENT**

By: *Jatti Harrington*  
(Signature)  
Title: *Mayor*  
Date: *10-10-00*

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: \_\_\_\_\_  
Jennifer D. Soldano, Director  
Contract Services Office

Date: \_\_\_\_\_

**ATTACHMENT A  
RESOLUTION OF LOCAL GOVERNMENT  
APPROVING THIS LPAFA**

**ATTACHMENT B  
PROJECT LOCATION MAP**

**ATTACHMENT C**  
**PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS**

Description	Total Estimate Cost	Federal Participation	State Participation	Local Participation	
				20%	Actual Participation
Land (no cash contribution)		80%			
Utilities (no cash contribution)					
Environmental (no cash contribution)					
Preliminary Engineering	0	\$0.00	0	0	0
Construction	0	0	0	0	0
<b>SUBTOTAL</b>	0	0	0	0	0
Engineering & Contingencies (E&C) (Estimated @ xx% of Construction)	0	0	0	0	0
<b>TOTAL</b>	0	0	0	0	0
<i>First Payment due prior to PS&amp;E by State</i>	N/A				0
<i>Second payment due 60 days prior to the project letting</i>	N/A				0

**Total participation required from the City of XXXXXXXXXXXX = XXXXXXXXXXXX**