

CSJ # 1392-01-034
District # 18-Dallas
Code Chart 64 # 50043
Project: FM 1378 (Country Club Rd
North) From South of FM 2786
(Stacy Rd) to North of Farmstead
Rd. in the Town of Fairview
CFDA #

STATE OF TEXAS §
COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT
ADVANCE FUNDING AGREEMENT
For an Alignment Study (Schematic Design and Environmental Assessment) Project
(On State System)**

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 Collin County, acting by and through its duly authorized officials, hereinafter called the "Local Government."

WITNESSETH

WHEREAS, a Master Agreement Governing Local Transportation Project Advance Funding Agreements (MAFA) between the Local Government and the State has been adopted, effective October 26, 2001, and states the general terms and conditions for transportation projects developed through this LPAFA; and,

WHEREAS, the Texas Transportation Commission passed Minute Order 111335 that provides for the development of, and funding for, the project described herein; and,

WHEREAS, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance 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 MAFA, without exception.
2. Termination of this LPAFA shall be under the conditions as stated in the MAFA, without exception.
3. Amendments to this LPAFA shall be made as described in the MAFA, without exception.
4. **Scope of Work**
The scope of work and project limits for this LPAFA are described as an alignment study, schematic design and environmental assessment with Public Hearing for the North Section, described as FM 1378 (Country Club Rd. North) From South of FM 2786 (Stacy Road) to North of Farmstead Road in the Town of Fairview. The State will be given the opportunity to concur with the selection process and will be given copies of any sub-contracts.

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5. Right of Way and Real Property shall be acquired under one of the following procedures (check either a. or b.): **Not Applicable**

a. **___ Purchase by the State.** Acquisition of right of way shall be the responsibility of the State, as stated in the MAFA, without exception, unless otherwise provided in Special Provisions and/or Attachment C. A warrant or check in the amount of the Local Government's estimated participation as reflected in Attachment C, shall be made payable to the Texas Department of Transportation and transmitted to the State prior to release of the Project by Right of Way Division, or within thirty (30) days from receipt of the State's written notification, whichever is earlier.

OR

b. **___ Purchase by the Local Government for the State.** Acquisition of right of way shall be the responsibility of the Local Government, as stated in the MAFA, without exception, unless otherwise provided in Special Provisions and/or Attachment C.

Donations of real property may be credited to the Local Government's funding obligation for cost of right of way to be acquired for this project. This section shall apply only to projects for which there is no federal financial assistance and for which the State is responsible for acquisition of the right of way. Credit for all real property, other than property which is already dedicated and/or in use as a public road, donated by the Local Government to the State shall be based on the property's fair market value established as of the effective date of this LPAFA. The fair market value shall not include increases or decreases in value caused by the project and should include the value of the land and improvements being conveyed, excluding any damages to the remainder. The Local Government will provide to the State all documentation to support the determined fair market value of the donated property. Such documentation shall include an appraisal of the property by a qualified appraiser, unless the Local Government determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at no more than \$10,000.00. The cost of appraisal will be the responsibility of the State. The State will review the submitted documentation and make a final determination of value; provided however, the State may perform any additional investigation deemed necessary, including supplemental appraisal work by State employees or employment of fee appraisers. Credit shall be given only for property transferred at no cost to the State after the effective date of this LPAFA and the State's issuance of a letter of funding authority, and only for property which is necessary to complete this project. Credit shall be in lieu of monetary contributions required to be paid to the State for the Local Government's funding share of the right of way to be acquired for this project. The total credit cannot exceed the Local Government's matching share of the right of way obligation under this LPAFA, and credits cannot be reimbursed in cash to the Local Government, applied to project phases other than right of way, nor used for other projects. In the event the Local Government's monetary contributions to the State for acquisition of right of

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way, when added to its donation credits, exceed the Local Government's matching share of the right of way obligation, there will be no refund to the Local Government of any portion of its contributed money.

Adjustment of eligible utilities and payment of costs associated with such adjustment shall be provided by ____ the State (or) ____ Local Government (check the applicable party) and shall be in accordance with provisions set forth in the MAFA. **Not Applicable**

Environmental Assessment and Mitigation will be carried out as stated in the Master Agreement, without exception.

9. Compliance with Texas Accessibility Standards and ADA will be as stated in the MAFA, without exception.
10. Architectural and Engineering Services will be provided by the Local Government, as stated in the MAFA , without exception. The Local Government is responsible for performance of any required architectural or preliminary engineering work. For projects on the state highway system, the design shall, at a minimum conform to applicable State manuals. The State may review and comment on the work as required to accomplish the public purposes of the Local Government. The Local Government will cooperate fully with the State in accomplishing these local public purposes to the degree permitted by State and Federal law.
11. Construction Responsibilities will be carried out by the State, as stated in the MAFA, without exception. **Not Applicable**
12. Project Maintenance will be undertaken as provided for in the MAFA, without exception.
13. Local Project Sources and Uses of Funds
 - a. Project Cost Estimate: A Project Cost Estimate is provided in Attachment C. The State and the Federal Government will not reimburse the Local Government for any work performed before the issuance of a formal Letter of Authority by the Federal Highway Administration. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal Letter of Authority is formally issued.

If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before a letter of authority is issued. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

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- 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. All right of way Project cost overruns shall be shared in the same cost participation ratios as apply under this agreement to the applicable cost category. Other overruns are as stated in the MAFA.
- d. The Local Government, without cost to the State, will do the necessary preliminary engineering and title investigation, in order to supply to the State the data and instruments necessary to obtain acceptable title to the desired right of way. For purposes of this agreement, preliminary engineering includes design schematics, property descriptions, parcel plats and right of way maps.
- e. Unless otherwise provided for in this agreement, payment is as stated in the MAFA. 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.
- f. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied by the State to the Project. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.
- g. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the local government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.
- h. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. 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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- i. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- j. Whenever American Recovery and Reinvestment Act of 2009 (ARRA) funds are used and the Local Government is performing any work, either directly or through a contractor, it must comply with the following provisions. If a Local Government is receiving ARRA funds, but is not performing any work, the following provisions apply, if appropriate, and to the extent necessary to comply with ARRA regulations.

In accordance with Section 902 of the ARRA, should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and
interview any officer or employee of the contractor or any of its subcontractors, or any State or local agency administering the contract regarding such contracts.

Nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of the Comptroller General.

In accordance with Section 1515(a) of the ARRA, with respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to and involve transactions relating to the contract, subcontract, grant, or subgrant; and
to interview any officer or employee of the contractor, grantee or subgrantee, or agency regarding such transactions.

Section 1515(b) further provides that nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of an inspector general.

The ARRA requires that the Contractor report monthly employment information for its firm as well as that of all of its subcontractors. The Contractor, similarly, shall include this reporting requirement in all of its subcontracts. Failing to include the requirement in agreements with subcontractors can serve as grounds for contract termination.

Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the LG (Local Government). It is the

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responsibility of the LG to obtain this form from the prime Contractor and any subcontractors and, the LG shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The LG shall ensure that this form is submitted by the LG to the State according to the policies and at the direction of the State.

In order to meet any other FHWA and ARRA reporting requirements, the LG shall provide to the State all information requested by the State, including data or information in possession of contractors and subcontractors for completing other necessary reporting forms, and the information shall be submitted in the manner required and according to all due dates as set by the State.

Furthermore, the ARRA mandates that the U.S. Comptroller General's Office shall have authority to examine the records of the contractor, subcontractor, or local agency relating to the project at any time.

- j. Whenever funds from the American Recovery and Reinvestment Act of 2009 (ARRA) are distributed to a Local Government, the Local Government must complete its Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC), as required by OMB Circular A-133, and separately identify any ARRA expenditures for Federal Awards.
 - k. Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.
14. Document and Information Exchange. The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.
15. Incorporation of Master Agreement Provisions. This LPAFA incorporates all relevant 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. Any conflict between the terms of the MAFA and this LPAFA shall be governed and controlled by this LPAFA.
16. Insurance. If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all

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

17. Debarment Certification. The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. 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.

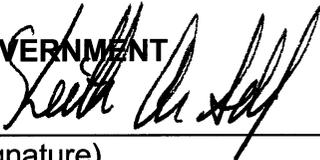
18. Signatory Warranty. The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

19. Special Provisions. The Local Government will be responsible for all Survey work.

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

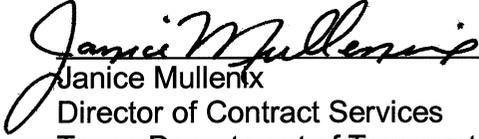
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THE LOCAL GOVERNMENT

By: 
(Signature)
Title: County Judge
Date: 12/13/10

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: 
Janice Mullenix
Director of Contract Services
Texas Department of Transportation
Date: January 3, 2011

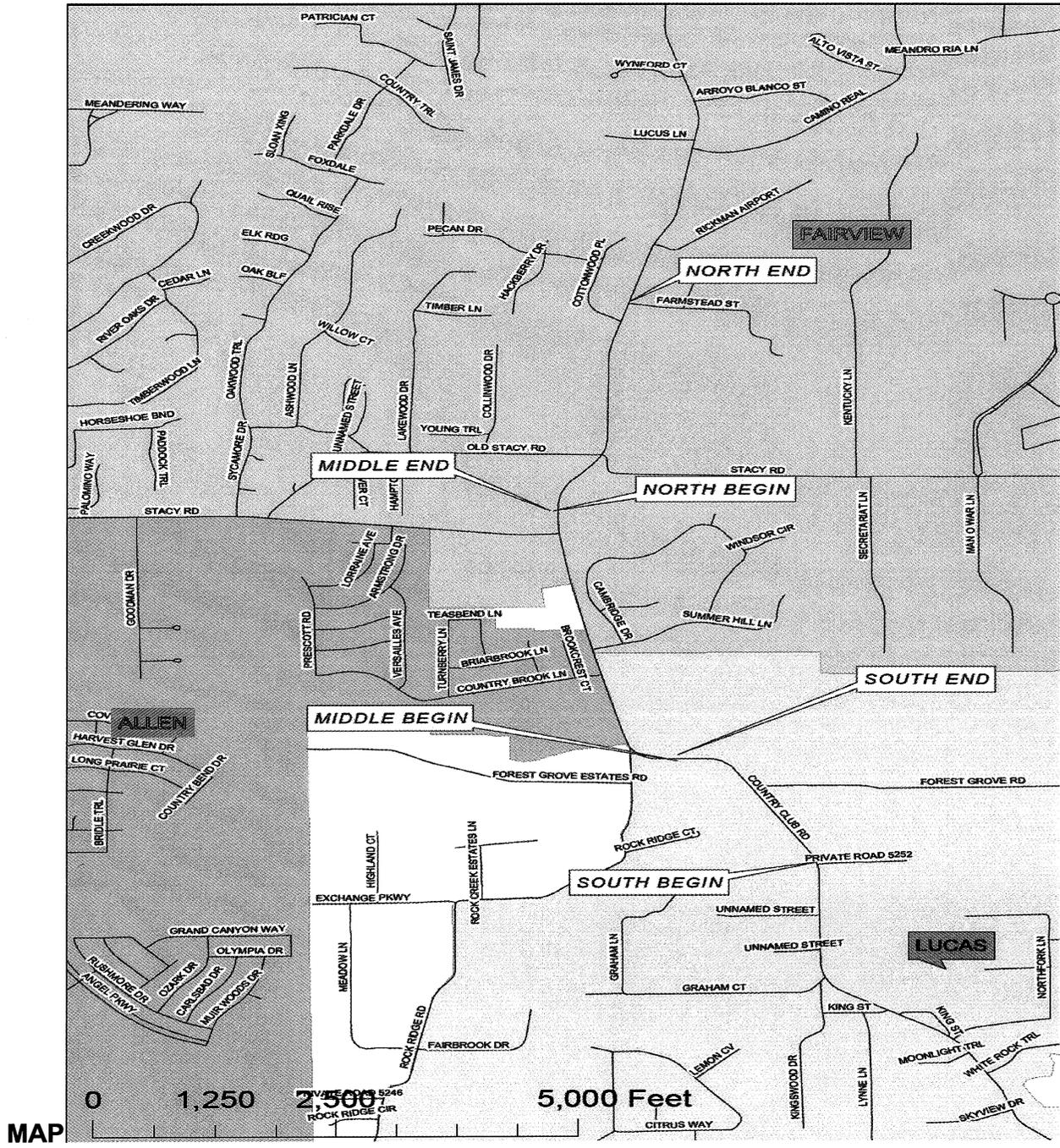
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ATTACHMENT A

**RESOLUTION OF LOCAL GOVERNMENT
APPROVING THIS LPAFA**

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**ATTACHMENT B
 PROJECT LOCATION**



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**ATTACHMENT C
 BUDGET ESTIMATE AND SOURCE OF FUNDS
 PART I
 PE AND ENVIRONMENTAL**

Description	Total Estimate Cost	Federal Participation	State Participation			Local Participation			
			Funding Share ___%	Funding Share ___%	(+) EDC ADJ. ___%	Actual Participation	Funding Share ___%	EDC ADJ. ___% (-)	Actual Participation
Preliminary Engineering and Environmental	\$127,500	0	0	0	0	0	100%		\$127,500
Direct State Costs @ 5% (including plan review, inspection and oversight)	\$6,375	0	100%	0	\$6,375	0%			\$0
SUBTOTAL	\$133,875	0	100%	0	\$6,375	100%	0		\$127,500

**PART II
 PROJECT TOTALS**

Description	Total Estimate Cost	Federal Participation	State Participation			Local Participation			
			Funding Share ___%	Funding Share ___%	(+) EDC ADJ. ___%	Actual Participation	Funding Share ___%	EDC ADJ. ___% (-)	Actual Participation
TOTAL	\$133,875	0	100%	0	\$6,375	100%	0		\$127,500

Total participation required from the Local Government = \$127,500.00

This is an estimate only, final participation amounts, including direct state costs, will be based on actual charges to the project.