

City of Houston, Texas Ordinance No. 2020-811

**AN ORDINANCE APPROVING AND AUTHORIZING AN ADVANCED FUNDING AGREEMENT BETWEEN THE CITY OF HOUSTON AND TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT) FOR THE REPLACEMENT OR REHABILITATION OFF THE STATE SYSTEM OF BACA STREET BRIDGE AT HCFCD DITCH; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.**

\* \* \* \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

Section 1. The City Council hereby approves and authorizes this contract, agreement or other undertaking as described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 23rd day of September, 2020.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is SEP 29 2020.

*Atty. General*

City Secretary

| AYE     | NO      |                        |
|---------|---------|------------------------|
| ✓       |         | <b>MAYOR TURNER</b>    |
| ....    | ....    | <b>COUNCIL MEMBERS</b> |
| ✓       |         | PECK                   |
| ✓       |         | DAVIS                  |
| ✓       |         | KAMIN                  |
| ✓       |         | EVANS-SHABAZZ          |
| ✓       |         | MARTIN                 |
| ✓       |         | THOMAS                 |
| ✓       |         | TRAVIS                 |
| ✓       |         | CISNEROS               |
| ✓       |         | GALLEGOS               |
| ✓       |         | POLLARD                |
| ✓       |         | MARTHA CASTEX-TATUM    |
| ✓       |         | KNOX                   |
| ✓       |         | ROBINSON               |
| ✓       |         | KUBOSH                 |
| ✓       |         | PLUMMER                |
| ✓       |         | ALCORN                 |
| CAPTION | ADOPTED |                        |

Prepared by Legal Dept. (*Marina Banks*)  
 (MNB/sjl 09/14/2020) Assistant City Attorney  
 (Requested by Carol Ellinger Haddock, P.E., Director, Houston Public Works)  
 (L.D. File No. 0752000010001)

Rev. 5/18

CSJ # 0912-72-405  
District # 12  
Code Chart 64 # 19750  
Project: Baca Street at HCFCD Ditch  
NBI Structure # 12-102-0-B05017-110  
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  
For Bridge Replacement or Rehabilitation  
Off the State System**

**THIS Advance Funding Agreement (the Agreement)** is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the "State", and the City of Houston, acting by and through its duly authorized officials, called the "Local Government."

**WITNESSETH**

**WHEREAS**, Title 23 United States Code Section 144 authorizes federal funds to assist the states in the replacement or rehabilitation of deficient bridges located on public highways, roads, and streets, including those under the jurisdiction of local governments; and

**WHEREAS**, the Texas Transportation Code Sections 201.103 and 222.052 establish that the State shall plan and make policies for the construction of a comprehensive system of state highways and public roads in cooperation with local governments; and

**WHEREAS**, the Local Government owns one or more bridges on a public road or street located at Baca Street at HCFCD Ditch, and these bridges are included in the currently approved off-state system federal-aid Highway Bridge Replacement and Rehabilitation Program (HBRRP) as authorized by Texas Transportation Commission Minute Order Number 115550, dated August 29, 2019; and

**WHEREAS**, the Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance, which is attached to and made a part of this agreement as Attachment A for the development of the specific programmed replacement or rehabilitation project, called the "Project". The Project is identified in the location map shown as Attachment B, which is attached to and made a part of this agreement.

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

## **AGREEMENT**

### **1. Period of this Agreement**

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided in Article 2.

### **2. 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 cost incurred because of the breach shall be paid by the breaching party;
- C.** The Local Government elects not to develop the project and the project does not proceed, in which case the Local Government agrees to reimburse the State for one-hundred percent (100%) of its reasonable actual direct and indirect costs incurred for the project; or
- D.** The project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may at its discretion terminate the agreement.

### **3. Amendments**

Amendments to this Agreement may be made due to changes in the character of the work, the terms of the Agreement, or the responsibilities of the parties. Amendments shall be enacted through a mutually agreed upon written amendment executed by all parties to this Agreement.

### **4. 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.

### **5. Scope of Work**

The scope of work for this Agreement is the replacement or rehabilitation of the bridges identified in the recitals of this Agreement. This replacement or rehabilitation

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shall be accomplished in the manner described in the plans, specifications, and estimates developed in accordance with this Agreement and which are incorporated in this agreement by reference.

**6. Right of Way and Real Property**

- A. The Local Government is responsible for the provision and acquisition of all necessary right of way and will not be reimbursed with federal or state funds for the required right of way.
- B. The Local Government authorizes the State, its consultant, contractor, or other designated representative to enter the sites of these bridges and adjacent right of way or relocation right of way to perform surveys, inspections, construction, and other activities necessary to replace or rehabilitate these bridges and approaches.

**7. Adjustment of Utilities**

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

**8. Environmental Assessment and Mitigation**

Development of the 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 State is responsible for the identification and assessment of any environmental problems associated with the development of the Project governed by this Agreement.
- B. Cost participation in environmental assessment and remediation work shall be paid by the parties in the same ratio as construction costs and will be included in the construction costs identified in Attachment D, Estimate of Direct Costs.
- C. The State is responsible for providing any public meetings or public hearings required for development of the environmental assessment.

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D. The State will not begin construction of the Project until identified environmental problems have been remediated, unless provided for otherwise.

**9. Compliance with Texas Accessibility Standards and ADA**

All parties to this Agreement shall ensure that the plans for and the construction of the Project subject to this 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).

**10. Architectural and Engineering Services**

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. The Local Government review shall not unduly delay the development of the Project.

**11. Construction Responsibilities**

A. 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 that 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. Upon completion of the Project, the State will issue a "Notification of Completion" acknowledging the Project's construction completion.

**12. Project Maintenance**

After the Project has been completed, the Local Government shall accept full ownership, and operate and maintain the facilities authorized by this Agreement for the benefit of and at no charge of toll to the public. This covenant shall survive the completion of construction under this Agreement.

**13. Local Project Sources and Uses of Funds**

A. A Project Cost Estimate is provided in Attachment D, Estimate of Direct Costs.

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- B.** Attachment D provides a source of funds estimate as well as the estimated direct preliminary engineering, construction engineering, and construction costs for the Project in total and by the Local Government.
- C.** The required Local Government participation is based solely upon the State's estimate of the eligible work at the time this Agreement is executed and will not be adjusted during construction except as needed to include any Project cost item or portion of a cost item ineligible for state or federal participation. In addition to its share of estimated direct engineering and construction costs, the Local Government is responsible for the direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the federal HRRP. The Local Government is also responsible for any cost resulting from changes made at the request of the Local Government. The State and the Federal Government will not reimburse the Local Government for any work performed before federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information.
- D.** If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- E.** After execution of this Agreement, but thirty (30) days prior to the performance of any work by the State, the Local Government shall remit to the State the amount specified in Attachment D for the Local Government's contribution for preliminary engineering. The Local Government will pay, at a minimum, its funding share for this estimated cost of preliminary engineering.
- F.** Forty-five (45) 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 other costs owed.
- G.** If, at the completion or termination of the Project, the State determines that additional funding is required by the Local Government, the State shall notify the

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- Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- H. 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". The check or warrant shall be deposited by the State and managed by the State. The funds may only be applied to the State Project.
  - I. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.
  - J. The State will not pay interest on any funds provided by the Local Government.
  - K. The Local Government funding participation responsibilities include Project direct costs only, except when the Project is terminated before completion at the request of the Local Government as addressed in the Termination provision of this Agreement.
  - L. The amounts shown on Attachment D are estimates only. If actual costs exceed the estimates, this shall be considered a fixed price agreement, and no additional funding shall be required of the Local Government except to the extent that the additional costs result from changes made at the request of the Local Government or to the extent that the additional costs are not eligible for federal participation under the federal HBRRP. If actual costs are less than the estimates, Local Government participation shall be recalculated based on actual costs. If the recalculation results in a reduction in participation by the Local Government, the State shall pay the difference to the Local Government upon completion of the Project.
  - M. Under the provisions of Texas Transportation Code Section 222.053 certain counties qualify as Economically Disadvantaged Counties (EDC) in comparison to other counties in the state as below average per capita property value, below average per capita income, and above average unemployment, for certain years. If applicable, in consideration of such EDC status that may be applicable for the Project, the required local match fund participation has been adjusted to N/A percent (N/A %).
  - N. The State will not execute the contract for the construction of a Project until the required funding has been made available by the Local Government in accordance with this Agreement.
  - O. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit

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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.

- P. 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.

**14. Performance by Local Government of Equivalent-Match Projects (EMP) in Return for Waiver of Local Match Participation Funding on Participation-Waived Projects (PWP)**

- A. **Applicability.** If a request for waiver has been received and approved by the State's District Engineer, then the required ten percent matching fund participation or percent as adjusted for EDC consideration, as shown in Attachment D, Estimate of Direct Costs, but excluding ineligible costs under the bridge program, is waived. This waiver is based on the commitment of the Local Government to spend an equivalent amount of funds for structural or safety improvement on "other" bridge structures and other conditions as specified in 43 TAC Section 15.55(d). If a waiver has been granted, the Project shall be defined to be a PWP and the work on the "other" bridge structures that will be improved by the Local Government shall be defined to be the EMPs. Attachment C to this Agreement shows a list of EMPs under this Agreement.
- B. **Project Cost Estimate for PWP.** Attachment D to this Agreement shows the estimated direct preliminary engineering, construction engineering, and construction costs for the PWP in total and local match fund participation being waived or partially waived.
- C. **Credit Against EMP Work.** Any local match fund participation that has already been paid, or which the Local Government is agreeable to paying to the State, will be credited against EMP work to be performed by the Local Government. If applicable, this credit will be reflected in Attachment D to this Agreement.
- D. **Responsibilities of the Local Government on EMPs.**
1. The Local Government shall be responsible for all engineering and construction, related costs, and compliance with all applicable state and federal environmental regulations and permitting requirements.

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- 2. The structural or safety improvement work on the EMPs shall be performed subsequent to the final execution of this Agreement but within three (3) calendar years after the earliest contract award of the related PWP.
  - 3. Written documentation, suitable for audit, of the structural or safety improvement work completed on the EMPs shall be kept on file by the Local Government for four (4) years after completion of work or claims, lawsuits, or audits related to those items, whichever is longer. A notice of completion of work on the EMPs shall be delivered to the State's District Engineer no later than thirty (30) calendar days after work is completed on the EMPs.
  - 4. Failure by the Local Government to adequately complete the EMPs within the stated three-year period shall result in the Local Government being excluded from receiving such waivers for a minimum of five (5) years.
- E. Funding of Ineligible or Additional Work Not Waived. Regardless of any waiver of eligible program costs, the Local Government shall pay the State one-hundred percent (100%) of the cost of any PWP item or portion of a cost item that is not eligible for federal or state participation, and one-hundred percent (100%) of the costs resulting from additional work on the PWP performed solely at the request of the Local Government. If the ineligible or additional work is preliminary engineering, the payment shall be made at least thirty (30) days prior to the beginning of preliminary engineering work on the PWP. If the ineligible or additional work is for construction or construction engineering, the payment shall be made at least forty-five (45) days prior to the date set for receipt of bids for construction of the PWP.

**15. Notices**

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

State: Director, Bridge Division  
Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701

Local Government: Houston Public Works  
Attn: Director Carol Haddock, P.E.  
611 Walker St., 25<sup>th</sup> Floor  
Houston, Texas 77002

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the

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above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

**16. 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.

**17. Responsibilities of the Parties**

The parties to this Agreement agree that no 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.

**18. 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 Government 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 Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

**19. 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 Government shall furnish the State with satisfactory proof of this compliance.

**20. 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 subject matter of this Agreement.

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**21. Office of Management and Budget (OMB) Cost Principles**

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

**22. 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.

**23. 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 Government, 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 Government, 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.

**24. Civil Rights Compliance**

- A. Compliance with Regulations: The Local Government will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be

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notified by the Local Government of the Local Government's obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this contract, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  1. withholding of payments to the Local Government under the contract until the Local Government complies and/or
  2. cancelling, terminating, or suspending of the contract, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

## **25. Disadvantaged Business Enterprise (DBE) Program Requirements**

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall

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have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.

- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity and attachments found at web address [http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou\\_attachments.pdf](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.*

## 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." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred,

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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.

## 27. Lobbying Certification

In executing this Agreement, each signatory certifies to the best of that signatory's 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 Government 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 sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. 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. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:

CSJ # 0912-72-405  
District # 12  
Code Chart 64 # 19750  
Project: Baca Street at HCFCD Ditch  
NBI Structure # 12-102-0-B05017-110  
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1. Obtain and provide to the State, a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is:  
<https://sam.gov/SAM/pages/public/index.jsf>;
2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website  
<http://fedgov.dnb.com/webform>; and
3. Report the total compensation and names of its top five (5) executives to the State if:
  - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
  - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

**29. Successors and Assigns**

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement.

**30. Local Government Restrictions**

In the case that the Local Government has an existing, future, or proposed local ordinance, commissioners court order, rule, policy, or other directive that is more restrictive than the state or federal regulations that results in an increase cost to the State for the project, the local government is responsible for all increased costs associated with the ordinance, order, policy, directive, or change.

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**31. Single Audit Report**

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR 200.
- 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 at [singleaudits@txdot.gov](mailto:singleaudits@txdot.gov).
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows: "We did not meet the \$\_\_\_\_\_ expenditure threshold and therefore, are not required to have a single audit performed for FY\_\_\_\_\_."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

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### **32. Pertinent Non-Discrimination Authorities**

During the performance of this contract, the Local Government, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.

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- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

**33. 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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**THIS AGREEMENT IS EXECUTED** by the State and the Local Government in duplicate.

**THE LOCAL GOVERNMENT**

**ATTEST/SEAL:**

**CITY OF HOUSTON, TEXAS**

\_\_\_\_\_  
City Secretary

Signed by:  
\_\_\_\_\_  
Mayor

**APPROVED:**

DocuSigned by:  
*Carol Haddock* 9/2/2020  
\_\_\_\_\_  
A93C410B72B3453...  
Director, Houston Public Works

**COUNTERSIGNED BY:**  
\_\_\_\_\_  
City Controller

**APPROVED AS TO FORM:**

DocuSigned by:  
*Marina Banks* 9/4/2020  
\_\_\_\_\_  
FD1DDF43616E47F...  
Assistant City Attorney

**DATE COUNTERSIGNED:**  
\_\_\_\_\_

L.D. No. : 0752000010001

**THE STATE OF TEXAS**

\_\_\_\_\_  
Graham A. Bettis, P.E.  
Director, Bridge Division  
Texas Department of Transportation

CSJ # 0912-72-405  
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**ATTACHMENT A**  
**RESOLUTION OR ORDINANCE OF LOCAL GOVERNMENT**

City of Houston, Texas, Resolution No. 2020-32

**A RESOLUTION AMENDING RESOLUTION NO. 2018-0017, A RESOLUTION APPROVING THE CITY OF HOUSTON'S REQUEST FOR THE TEXAS DEPARTMENT OF TRANSPORTATION TO WAIVE THE LOCAL FUND PARTICIPATION REQUIREMENT FOR A PROJECT UNDER THE FEDERAL OFF-SYSTEM BRIDGE PROGRAM TO REPLACE EXISTING DEFICIENT 1 SPAN BRIDGE 'AT BACA STREET AT HCFCO; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE SUBJECT.**

\* \* \* \* \*

**WHEREAS**, the City Council of the City of Houston, Texas ("City") adopted Resolution No. 2018-0017 on March 7, 2018 supporting a waiver of the local match requirements in the Federal Off-System Bridge Program; and

**WHEREAS**, the Texas Administrative Code, Title 43, Section 15.55 provides that under specified conditions, the 10 percent local government match requirement may be waived if the local government performs an equivalent dollar amount of structural improvement work on another deficient bridge within its jurisdiction; and

**WHEREAS**, the City has identified the bridge located at 1135 Cimarron as an appropriate candidate for replacement under this program to receive the credit; and

**WHEREAS**, the City desires to amend the estimated amount to reflect \$56,265.00 as the local match participation requirement for the reconstruction of the Participation-Waived Federal Off-System Bridge Program;

**NOW, THEREFORE,**

\* \* \* \* \*

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

Section 1. That the findings of the City and its actions approving this Resolution taken at the Council meeting are hereby approved and adopted.

Section 2. That Resolution No. 2018-0017 is hereby amended to include the following recitals:

**WHEREAS**, the Texas Department of Transportation ("TXDOT") administers the Federal Off-System Bridge Program (the "Program") to replace or rehabilitate structurally deficient and functionally obsolete bridges located on public roads and streets not located in the designated state highway system; and

**WHEREAS**, the City of Houston, hereinafter referred to as the Local Government, owns the bridge listed below; and

| Location of Bridge | Key Map No. | NB Structure No. | Control Section Job No. | Council District |
|--------------------|-------------|------------------|-------------------------|------------------|
| Baca at HCFC       | 496E        | 121020B05017-110 | 0912-72-405             | I                |

**WHEREAS**, the Texas Transportation Commission approved Minute Order No. 115550, dated August 29, 2019, for the reconstruction of the above-stated bridge under the Program ("Participation-Waived Project"); and

**WHEREAS**, under the Program, the usual fund participation ratio for projects is 80 percent federal, 10 percent state, and 10 percent local government; and

**WHEREAS**, the Texas Administrative Code, Title 43, Section 15.55(d) ("43 TAC Section 15.55(d)") provides that under specified conditions, the 10 percent local government fund participation requirement may be waived on a project if the local government performs an equivalent dollar amount of structural improvement work on another deficient bridge within its jurisdiction ("Equivalent-Match Project"); and

**WHEREAS**, the estimated amount of the local fund participation requirement on the Participation-Waived Project is **\$56,265.00**; and

**WHEREAS**, the Local Government will perform, or cause to be performed, an Equivalent-Match Project, and proposes, in return, for TXDOT to waive the local fund participation requirement on the Participation-Waived Project.

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

**Section 1.** That the City Council hereby acknowledges the preamble and recitals set forth above.

**Section 2.** That the Local Government will perform, or cause to be performed, the following Equivalent-Match Project, which has not been awarded, in return for TXDOT to waive the local fund participation requirement under the Program:

| LOCATION      | ON SCHOOL BUS ROUTE? | DESCRIPTION OF STRUCTURAL IMPROVEMENT WORK   | ESTIMATED COST |
|---------------|----------------------|--|----------------|
| 1135 Cimarron | Yes                  | Replace an existing deficient 1 span bridge with a single barrel concrete box culvert crossing | \$562,650.00   |

**Section 3.** That in receiving this waiver the Local Government acknowledges its obligation to conform with all conditions of 43 TAC Section 15.55(d); such conditions include but are not restricted to the following:

1. The Local Government must be currently in compliance with load posting and closure regulations as defined in National Bridge Inspection Standards under the U.S. Code of Federal Regulations, Title 23, Section 650.303.
2. The bridge on the proposed Equivalent-Match Project is a deficient bridge, or a bridge that is weight restricted for school buses.
3. The Equivalent-Match Project increases the load capacity of the existing bridge or other mainlane cross-drainage structure or upgrades the structure to its original load capacity with a minimum upgrade to safely carry school bus loading if located on a school bus route.
4. In performing, or causing to be performed, the Equivalent-Match Project, the Local Government assumes all responsibilities for engineering and construction, and for complying with all applicable State and federal environmental regulations and permitting requirements for the bridges on the Equivalent-Match Project.
5. The work on the proposed Equivalent-Match Project has not begun and will not begin until the approval process is complete for the local match fund participation waiver.
6. Local Government will be allowed three (3) years after the contract award of the Participation-Waived Project to complete the structural improvement work on the Equivalent-Match Project.
7. Should this waiver requirement be approved, the State of Texas and the Local Government shall execute an appropriate written agreement or amendment to a previously executed agreement.

**Section 4.** That this Resolution shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Resolution

within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND APPROVED this 17<sup>th</sup> day of June, 20 20

\_\_\_\_\_  
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Resolution is \_\_\_\_\_.

*[Signature]*  
City Secretary

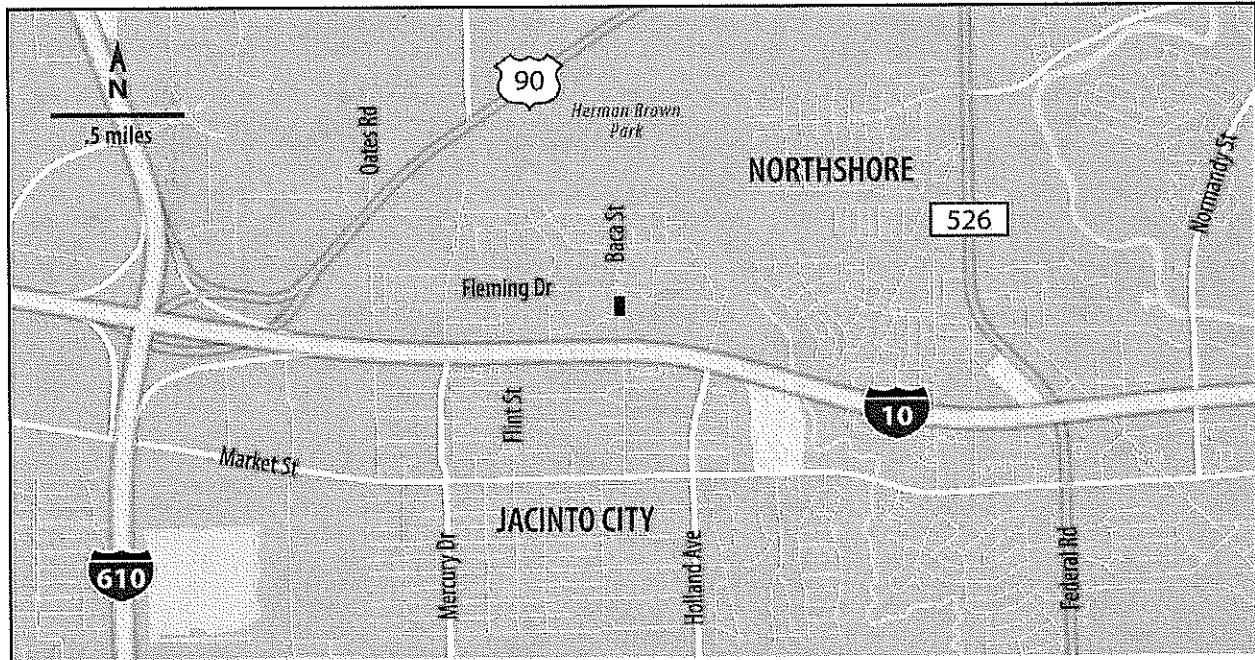
(Prepared by Legal Dept. ( *Marina Banks* )  
(MB/sjl 3/5/2020) Assistant City Attorney  
(Requested by: Carol Ellinger Haddock, P.E., Director, Houston Public Works)  
(L.D. File No.: \_\_\_\_\_)

CAPTION PUBLISHED IN DAILY COURT  
REVIEW DATE: JUN 23 2020

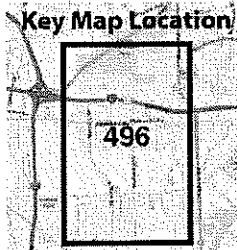
| AYE                            | NO      |                        |
|--------------------------------|---------|------------------------|
| ✓                              |         | <b>MAYOR TURNER</b>    |
| ....                           | ....    | <b>COUNCIL MEMBERS</b> |
| ✓                              |         | PECK                   |
| ✓                              |         | DAVIS                  |
|                                |         | KAMIN                  |
| ABSENT-ON<br>PERSONAL BUSINESS |         |                        |
| ✓                              |         | EVANS-SHABAZZ          |
| ✓                              |         | MARTIN                 |
| ✓                              |         | THOMAS                 |
| ✓                              |         | TRAVIS                 |
| ✓                              |         | CISNEROS               |
| ✓                              |         | GALLEGOS               |
| ✓                              |         | POLLARD                |
| ✓                              |         | MARTHA CASTEX-TATUM    |
| ✓                              |         | KNOX                   |
| ✓                              |         | ROBINSON               |
| ✓                              |         | KUBOSH                 |
| ✓                              |         | PLUMMER                |
| ✓                              |         | ALCORN                 |
| CAPTION                        | ADOPTED |                        |

CSJ # 0912-72-405  
District # 12  
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Not Research and Development

### ATTACHMENT B PROJECT LOCATION MAP



**CSJ:** 0912-72-405  
**NBI:** 12-102-0-B05017-110  
**Location:** Baca Street at HCFCD Ditch  
**Description of Work:**  
Replace Bridge and Approaches  
**Entity:** City of Houston



CSJ # 0912-72-405  
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**ATTACHMENT C \*\*  
 LIST OF DISTRICT ENGINEER APPROVED  
 EQUIVALENT-MATCH PROJECTS**

| Location (and structure identification number, if applicable) | On School Bus Route? (Yes/No) | Historic Bridge? (Yes/No) | Description of Structural or Safety Improvement Work   | Estimated Cost      |
|---|-------------------------------|---------------------------|--|---------------------|
| 1135 Cimmaron   | Yes                           | No                        | Replace an existing deficient 1-span bridge with a single barrel concrete box culvert crossing | \$562,650.00        |
|   |                               |                           |  |                     |
|   |                               |                           |  |                     |
|   |                               |                           |  |                     |
|   |                               |                           |  |                     |
| <b>Total</b>  |                               |                           |  | <b>\$562,650.00</b> |
| <b>EMP work credited to this PWP*</b>                         |                               |                           |  | <b>\$562,650.00</b> |
| <b>Balance of EMP work available to associated PWPs</b>       |                               |                           |  | <b>\$0.00</b>       |
| <b>Associated PWPs CSJs</b>                                   |                               |                           | <b>Amount to be Credited to Associated PWPs</b>  |                     |
|   |                               |                           |  |                     |
|   |                               |                           |  |                     |
|   |                               |                           |  |                     |
|   |                               |                           |  |                     |
|   |                               |                           |  |                     |
|   |                               |                           |  |                     |

\*This total should typically equal the "Balance of Local Government Participation" that is waived as shown in Attachment D.

\*\*This attachment not applicable for non-PWPs.

CSJ # 0912-72-405  
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**ATTACHMENT D  
 ESTIMATE OF DIRECT COSTS**

|   | <u>Estimated Cost</u>  | <u>Local Government<br/>Participation</u> |
|---|------------------------|---|
| Preliminary Engineering (PE)  | <u>(1) \$46,500</u>    |   |
| Ten Percent (10%) or EDC Adjusted<br>Percent of PE for Local Government<br>Participation                              |                        | <u>(3) \$4,650</u>                        |
| Construction  | <u>\$465,000</u>       |   |
| Engineering and Contingency (E&C)   | <u>\$51,150</u>        |   |
| The Sum of Construction and E&C   | <u>(2) \$516,150</u>   |   |
| Ten Percent (10%) or EDC Adjusted<br>Percent of the Sum of Construction and<br>E&C for Local Government Participation |                        | <u>(4) \$51,615</u>                       |
| Amount of Advance Funds Paid by<br>Local Government *   |                        | <u>(5) \$0</u>                            |
| Amount of Advance Funds to be Paid by<br>Local Government *   |                        | <u>(6) \$0</u>                            |
| Balance of Local Government<br>Participation which is to be Waived<br>where the Project is a PWP                      |                        | <u>(3+4-5-6) \$56,265</u>                 |
| Total Project Direct Cost   | <u>(1+2) \$562,650</u> |   |

\*Credited Against Local Government Participation Amount

If this Project is to be a PWP, Amount of EMP Work Being Credited to this PWP as Shown  
 on Attachment C. \$562,650