



**AIR-20-049**  
**AGENDA REQUEST**  
**BUSINESS OF THE CITY COUNCIL**  
**CITY OF PEARLAND, TEXAS**

**AGENDA OF:** Regular Meeting - Mar 02 2020  
**DATE SUBMITTED:** 17 Feb 2020      **DEPT. OF ORIGIN:** Capital Projects/Engineering  
**PREPARED BY:** Cara Davis

**SUBJECT:** **Consideration and Possible Action - Resolution No. R2020-46** - A Resolution of the City Council of the City of Pearland, Texas, terminating prior Advanced Funding Agreements, and authorizing a new Advanced Funding Agreement with the Texas Department of Transportation ("TxDOT"), for the Smith Ranch Road Widening Project (Hughes Ranch Road to north of Broadway/FM 518), in the amount of \$5,173,341.00.

**ATTACHMENTS:** [Approved 0912-31-293 - Amendment to Terminate - Smith Ranch Rd - CoPearland rev](#)  
[Approved 0912-31-293 - Replacement AFA - Smith Ranch Rd - CoPearland](#)  
[46-AFA Termination Smith RanchRoad.46](#)

**FUNDING:**

<input type="checkbox"/> Grant	<input checked="" type="checkbox"/> Developer/Other	<input type="checkbox"/> Cash
<input checked="" type="checkbox"/> G.O. Bonds To Be Sold	<input checked="" type="checkbox"/> G.O. Bonds - Sold	<input type="checkbox"/> Rev. Bonds to Be Sold
<input type="checkbox"/> Rev. Bonds - Sold	<input type="checkbox"/> C.O.'s To Be Sold	<input type="checkbox"/> C.O.'s - Sold

**EXPENDITURE REQUIRED:** 0  
**AMOUNT BUDGETED:** 8,290,591  
**AMOUNT AVAILABLE:** 7,102,236.68  
**PROJECT NO:** TR1501

**EXECUTIVE SUMMARY**

**BACKGROUND**

The Smith Ranch Road Widening project encompasses the expansion of approximately 3,250 LF of two-lane asphalt roadway to a four-lane concrete curb and gutter divided roadway with raised medians, including storm sewers, sidewalks, and landscaping. The project extends from 2,040 LF north of FM 518 to Hughes Ranch Road. Additionally, approximately 7,000 LF of fiber will be installed from FM 518 to the Westside Event Center. Expansion of Smith Ranch Rd provides improved north/south access outside of the 288 Corridor and will form an integral component for access to the 288 Toll Lanes via the T-Ramp intersection at Smith Ranch Road and Hughes Ranch Road, as well as improved access to the Westside Event Center and the McHard Road corridor.

Smith Ranch was selected in July 2013 by the Houston Galveston Area Council (H-GAC) to receive funding from Federal and State transportation funds through the Transportation Improvement Program (TIP). Allocation was based on 80% of approved construction costs from the Federal Surface Transportation Program – Metropolitan Mobility (STP-MM); and 80% of approved costs for design engineering, right-of-way, environmental, utilities, and associated indirect costs from the Texas Mobility Fund (TMF). The remaining 20% would be the City's responsibility. The original Advanced Funding Agreement (AFA) was approved by Council in January 2015 but was amended in June 2015 to revise the Federal and State proportions within the budget while the City's portion remained the same.

Dannenbaum Engineering Corporation (Dannenbaum) was selected as the design engineering firm and was issued Notice to Proceed in November 2016. Upon completing the Environmental Clearance requirements and requesting approval to proceed with the right-of-way acquisition phase of the project it was discovered that the State funding allocated to right-of-way was no longer allowed per new regulations. City staff worked with TxDOT and HGAC to procure an Federal Highway Administration (FHWA) approved Statewide Transportation Improvement Program (STIP) revision which allowed the funding source to be replaced in the AFA that is the subject of this request.

### **SCOPE OF CONTRACT/AGREEMENT**

The revised AFA before Council contains updated language and formatting which does not reflect a material change in the terms and conditions of the agreement. The new or updated articles reflect changes to Civil Rights Compliance language and Non-Discrimination statues that have been revised for the federal funding allocated to this project since the initial approval in 2015. The changes to the AFA updated the source of project funding for Right of Way acquisition. Funding sources were changed from State STP-MM funds to Federal Surface Transportation Block Grant (STBG) funding for right of way line items. The City's funding allocation and 20% participation remains unchanged from the previous agreement. This revised AFA will replace the previous agreement in total requiring the previous AFA to be terminated by Council.

### **BID AND AWARD**

N/A

### **SCHEDULE**

Smith Ranch Road Widening is awaiting approval of the revised AFA in order for TxDOT to release the Letter of Authority to begin right of way acquisition. The project is currently scheduled for letting in 2022. Right of Way acquisition is expected to require approximately fifteen months to complete.

### **POLICY/GOAL CONSIDERATION**

The Agreement is consistent with Council Strategic objectives including Fiscal Responsibility and Sustainable Infrastructure.

**CURRENT AND FUTURE CIP FUNDING/FINANCIAL IMPACTS/DEBT SERVICE**

<b>Funding Sources</b>	<b>Series</b>	<b>To Date</b>	<b>Future</b>	<b>Total Budget</b>
General Revenue - Cash				-
Certificates of Obligation				-
General Obligation Bonds	2015	114,700		114,700
General Obligation Bonds	2017	609,628		609,628
General Obligation Bonds	2018	716,000		716,000
General Obligation Bonds	TBS	2,340,881		2,340,881
Other Funding Sources (Old Alvin)		609,700		609,700
Other Funding Sources (Traffic Improv)		91		91
Other Funding Sources (TIP)		3,899,591		3,899,591
<b>Total Funding Sources</b>		<b>8,290,591</b>	<b>-</b>	<b>8,290,591</b>

<b>Expenditures</b>	<b>To Date</b>	<b>Future</b>	<b>Total</b>
PER			-
Land	697	1,200,000	1,200,697
Design	1,142,289		1,142,289
Construction	45,369	5,304,616	5,349,985
Construction Management/Inspection		400,000	400,000
Construction Materials Testing		75,000	75,000
FF&E			-
<b>Total Expenditures</b>	<b>1,188,354</b>	<b>6,979,616</b>	<b>8,167,970</b>

<b>Project Balance/Contingency</b>	<b>122,621</b>
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**O&M IMPACT INFORMATION**

<b>Year</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
<b>Operation and Maintenance Costs</b>	14,308	30,047	34,857	36,599	38,429

**Recommended Action**

Staff recommends Council terminate the existing AFA approved in Resolution R2015-9 and Amendment 1 approved administratively on June 24, 2015 and approve the Advance Funding Agreement for Smith Ranch Road Widening as attached replacing any prior agreements with TxDOT for the Smith Ranch Road Widening.

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT  
AMENDMENT #2**

**THIS AMENDMENT** is made by and between the State of Texas, acting through the Texas Department of Transportation, called the State, and the City of Pearland, acting by and through its duly authorized officials, called the Local Government.

**W I T N E S S E T H**

**WHEREAS**, the State and the Local Government executed a contract on June 24 of 2015 to effectuate their agreement to widen Smith Ranch Road to a four-lane divided section from Hughes Ranch Road to north of Broadway/FM 518 and,

**WHEREAS**, it has become necessary to amend that contract;

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties, the State and the Local Government do agree as follows:

**A G R E E M E N T**

**1. Description of Amended Items**

In accordance with Article 4 A. of the original contract, the contract is terminated effective upon the occurrence of both of the following events:

- a) Execution of this Amendment #2 by both parties; and
- b) Full execution by the State and the Local Government of a successor Advance Funding Agreement for the continuation of the Project.

The contract shall remain in full effect until terminated as provided above.

**2. Signatory Warranty**

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

CSJ # 0912-31-293  
District # 12 - Houston  
Code Chart 64 # 32150  
Project: Smith Ranch Road Widening  
Federal Highway Administration  
CFDA Title: Highway Planning and Construction  
CFDA No.: 20.205  
Not Research and Development

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

**THE STATE OF TEXAS**

**THE LOCAL GOVERNMENT**

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Kenneth Stewart  
Director of Contract Services  
Texas Department of Transportation

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Tom Reid, Mayor  
City of Pearland

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Date

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Date

TxDOT:		Federal Highway Administration:	
CSJ #	0912-31-293	CFDA No.	20.205
District #	12 – Houston	CFDA Title	Highway Planning and Construction
Code Chart 64 #	32150		
Project Name	Smith Ranch Road Widening	<i>AFA Not Used For Research &amp; Development</i>	

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT**  
**For**  
**A Texas Mobility Fund &**  
**A Surface Transportation Block Grant Program (STBG) Project**  
**Off-System**

**THIS AGREEMENT** (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 Pearland**, acting by and through its duly authorized officials, called the “Local Government”. The State and Local Government shall be collectively referred to as “the parties” hereinafter.

**WITNESSETH**

**WHEREAS**, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

**WHEREAS**, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, 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 Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

**WHEREAS**, the Texas Transportation Commission passed Minute Order Number **114670 and 115291** authorizing the State to undertake and complete a highway improvement or other transportation project generally described as **the widening of Smith Ranch Road from Hughes Ranch Road to north of Broadway/FM 518**. The portion of the project work covered by this Agreement is identified in the Agreement, Article 3, Scope of Work (Project), and

**WHEREAS**, the State and the Local Government executed contract 0912-31-293 on March 10, 2015, amended on June 24, 2015, with respect to the Project (the Prior Agreement); pursuant to the Prior Agreement, a portion of the Project was completed; and the Prior Agreement was terminated on \_\_\_\_\_, 2020 , and

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<b>AFA Not Used For Research &amp; Development</b>	

**WHEREAS**, the parties wish to enter into this Agreement to provide for the continuation of the Project, and

**WHEREAS**, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated \_\_\_\_\_, which is attached to and made a part of this Agreement as Attachment A, Resolution, Ordinance, or Commissioners Court Order (Attachment A). A map showing the Project location appears in Attachment B, Location Map Showing Project (Attachment B), which is attached to and made a part of this Agreement.

**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 in this Agreement, it is agreed as follows:

### **AGREEMENT**

**1. Responsible Parties:**

For the Project covered by this Agreement, the parties shall be responsible for the following work as stated in the article of the Agreement referenced in the table below:

1	<b>Local Government</b>	Utilities	Article 8
2.	<b>Local Government</b>	Environmental Assessment and Mitigation	Article 9
3.	<b>Local Government</b>	Architectural and Engineering Services	Article 11
4.	<b>Local Government</b>	Construction Responsibilities	Article 12
5.	<b>Local Government</b>	Right of Way and Real Property	Article 14

**2. Period of the 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 the Project is completed or unless terminated as provided below.

**3. Scope of Work**

The scope of work for the Project consists of the widening of Smith Ranch Road to a four-lane divided section from Hughes Ranch Road to north of Broadway/FM 518 as shown on Attachment “B”.

**4. Project Sources and Uses of Funds**

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

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<b><i>AFA Not Used For Research &amp; Development</i></b>	

and receives a certificate for the course entitled “Local Government Project Procedures and Qualification for the Texas Department of Transportation” and retains qualification in accordance with applicable TxDOT procedures. Upon request, the Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

- B. The expected cash contributions from the federal government, the State, the Local Government, or other parties are shown in Attachment C. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission. For projects with federal funds, the State and the federal government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- C. Attachment C shows, by major cost categories, the cost estimates and the party responsible for performing the work for each category. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- D. The State will be responsible for securing the federal and State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- E. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment C and for overruns in excess of the amount specified in Attachment C to be paid by the Local Government.
- F. The budget in Attachment C will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.
- G. When the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State’s written notification of additional funds being due.
- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment C. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local



<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<b><i>AFA Not Used For Research &amp; Development</i></b>	

Government’s requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.

- I. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering performed or reviewed by the State for the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State’s estimated construction oversight and construction cost.
- J. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- K. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the “Texas Department of Transportation” or may use the State’s Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT’s Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.
- L. The State will not pay interest on any funds provided by the Local Government.
- M. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, the State will not charge the Local Government for the indirect costs the State incurs on the Project, unless this Agreement is terminated at the request of the Local Government prior to completion of the Project.
- N. If the Local Government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- O. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, the Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice, in a form and containing all items required by the State, no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
- P. Upon completion of the Project, the State will perform a final accounting of the Project costs for all items of work with specified percentage funding. Any funds due by the Local Government, the State, or the federal government for these work items will be promptly paid by the owing party.
- Q. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<b><i>AFA Not Used For Research &amp; Development</i></b>	

or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

- R. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.

**5. Termination of This Agreement**

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

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

**6. Amendments**

Amendments to this Agreement due to changes in the character of the work, terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

**7. 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.

**8. Utilities**

The party named in Article 1, Responsible Parties, under AGREEMENT 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

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<b>AFA Not Used For Research &amp; Development</b>	

State’s request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is commenced.

**9. Environmental Assessment and Mitigation**

Development of a 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. The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. The identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- B. The cost of any environmental problem’s mitigation and remediation.
- C. Providing any public meetings or public hearings required for the environmental assessment process. Public hearings will not be held prior to the approval of the Project schematic.
- D. The preparation of the NEPA documents required for the environmental clearance of this Project.

If the Local Government is responsible for the environmental assessment and mitigation, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

**10. Compliance with Accessibility Standards**

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

**11. Architectural and Engineering Services**

The party named in Article 1, Responsible Parties, under AGREEMENT has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable State’s *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. For projects on the State highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the State highway system, the design shall, at a minimum, conform to applicable American Association of State Highway and Transportation Officials (AASHTO) design standards.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the Project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters. If the Local Government is the responsible party, the Local Government shall submit its procurement selection process for prior approval by the State. All professional services

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<b><i>AFA Not Used For Research &amp; Development</i></b>	

contracts must be reviewed and approved by the State prior to execution by the Local Government.

**12. Construction Responsibilities**

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. 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. If the State is the responsible party, the State will use its approved contract letting and award procedures to let and award the construction contract.
- C. If the Local Government is the responsible party, the Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting.
- D. If the Local Government is the responsible party, the State must concur with the low bidder selection before the Local Government can enter into a contract with the vendor.
- E. If the Local Government is the responsible party, the State must review and approve change orders.
- F. Upon completion of the Project, the party responsible for constructing the Project will issue and sign a “Notification of Completion” acknowledging the Project’s construction completion and submit certification(s) sealed by a professional engineer(s) licensed in the State of Texas.
- G. 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, Subpart B.

**13. Project Maintenance**

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

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

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the provision and acquisition of any needed right of way or real property.

The Local Government shall be responsible for the following:

- A. Right of way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<b><i>AFA Not Used For Research &amp; Development</i></b>	

the State before funds may be expended for the improvement of the right of way or real property.

- B. If the Local Government is the owner of any part of the Project site under this Agreement, the Local Government shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work.
- C. 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 Government 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.
- D. The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
- E. In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this Agreement and the obligation of federal spending authority.
- F. The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- G. The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The 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 calculating all determined values. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values.

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<b>AFA Not Used For Research &amp; Development</b>	

The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.

- H. Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed eighty percent (80%) of the State's predetermined value of each parcel, or the net cost of the parcel, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.
- I. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this Agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. The separate agreement must be approved by the State prior to its execution. A copy of the executed agreement shall be provided to the State.

**15. 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 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.

**16. 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:

<b>Local Government:</b>	<b>State:</b>
City of Pearland ATTN: City Manager 3519 Liberty Drive Pearland, Texas 77581	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 <sup>th</sup> Street Austin, TX 78701

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 above address by sending written notice of the change to the other party. Either party may request in writing that

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<b><i>AFA Not Used For Research &amp; Development</i></b>	

notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

**17. Legal Construction**

If 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.

**18. Responsibilities of the Parties**

The State and the Local Government 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.

**19. 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 and information 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 format directed by the State, on a monthly basis or as required by the State. The originals shall remain the property of the Local Government. .

**20. Compliance with Laws**

The parties to this Agreement 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.

**21. 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.

**22. 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.

**23. Procurement and Property Management Standards**

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

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<b>AFA Not Used For Research &amp; Development</b>	

**24. Inspection of Books and Records**

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

**25. Civil Rights Compliance**

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government’s obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such



<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<b>AFA Not Used For Research &amp; Development</b>	

contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
  2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

## 26. Pertinent Non-Discrimination Authorities

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

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<b><i>AFA Not Used For Research &amp; Development</i></b>	

- 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.
- 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.).

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

If federal funds are used:

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State’s federally approved DBE program.
- C. The Local Government shall incorporate into its contracts with subproviders an appropriate DBE goal consistent with the State’s DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall submit its proposed scope of services and quantity estimates to the State to allow the State to establish a DBE goal for each Local Government contract with a subprovider. The Local Government shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State’s DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation’s Federally-Approved 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

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<b>AFA Not Used For Research &amp; Development</b>	

the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.*

**28. Debarment Certifications**

If federal funds are used, the parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, “Debarment and Suspension.” By executing this Agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

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

**29. Lobbying Certification**

If federal funds are used, 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

TxDOT:		Federal Highway Administration:	
CSJ #	0912-31-293	CFDA No.	20.205
District #	12 – Houston	CFDA Title	Highway Planning and Construction
Code Chart 64 #	32150		
Project Name	Smith Ranch Road Widening	<i>AFA Not Used For Research &amp; Development</i>	

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 shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, 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.

### 30. Federal Funding Accountability and Transparency Act Requirements

If federal funds are used, the following requirements apply:

- 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:
1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
  2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows federal government to track the distribution of federal money. The DUNS 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 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.

### 31. Single Audit Report

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division by email at [singleaudits@txdot.gov](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 \_\_\_\_\_."

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<b><i>AFA Not Used For Research &amp; Development</i></b>	

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.

**32. Signatory Warranty**

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

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

**THE LOCAL GOVERNMENT**

**THE STATE OF TEXAS**

\_\_\_\_\_  
 Kenneth Stewart  
 Director of Contract Services  
 Texas Department of Transportation

\_\_\_\_\_  
 Tom Reid, Mayor  
 City of Pearland

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Date

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<i>AFA Not Used For Research &amp; Development</i>	

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

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<i>AFA Not Used For Research &amp; Development</i>	

## ATTACHMENT B LOCATION MAP SHOWING PROJECT



<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0912-31-293</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>12 – Houston</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>32150</b>		
<b>Project Name</b>	<b>Smith Ranch Road Widening</b>	<b>AFA Not Used For Research &amp; Development</b>	

## ATTACHMENT C PROJECT BUDGET

Costs will be allocated for STBG funding based on 80% Federal funding and 20% Local Government funding until the federal funding reaches the maximum obligated amount. Costs will be allocated for TMF funding based on 80% State funding and 20% Local Government Funding until the state funding reaches the maximum obligated amount. The Local Government will then be responsible for 100% of the costs.

Description	Fund Type	Total Estimated Cost	Federal Participation Cost		State Participation Cost		Local Participation Cost	
Engineering (by Local Government)	TMF	\$ 274,668	0%	\$ -	80%	\$ 219,734	20%	\$ 54,934
Right of Way (by Local Government)	STBG	\$ 810,803	80%	\$ 648,642	0%	\$ -	20%	\$ 162,161
Construction (by Local Government)	STBG	\$ 3,789,019	80%	\$ 3,031,215	0%	\$ -	20%	\$ 757,804
<b>Subtotal</b>		<b>\$ 4,874,490</b>		<b>\$ 3,679,857</b>		<b>\$ 219,734</b>		<b>\$ 974,899</b>
Environmental Direct State Costs	TMF	\$ 6,000	0%	\$ -	80%	\$ 4,800	20%	\$ 1,200
Right of Way Direct State Costs	STBG	\$ 6,000	80%	\$ 4,800	0%	\$ -	20%	\$ 1,200
Engineering Direct State Costs	TMF	\$ 42,000	0%	\$ -	80%	\$ 33,600	20%	\$ 8,400
Utility Direct State Costs	TMF	\$ 6,000	0%	\$ -	80%	\$ 4,800	20%	\$ 1,200
Construction Direct State Costs	STBG	\$ 50,000	80%	\$ 40,000	0%	\$ -	20%	\$ 10,000
Indirect State Costs		\$ 188,851	0%	\$ -	100%	\$ 188,851	0%	\$ -
<b>TOTAL</b>		<b>\$ 5,173,341</b>		<b>\$ 3,724,657</b>		<b>\$ 451,785</b>		<b>\$ 996,899</b>

Total STBG Funding: \$4,655,822 (Federal=\$3,724,657 Local=\$931,165)

Total TMF Funding: \$328,668 (State=\$262,934 Local=\$65,734)

Initial payment by the Local Government to the State: \$12,000

Payment by the Local Government to the State before construction: \$10,000

Estimated total payment by the Local Government to the State \$22,000

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



**RESOLUTION NO. R2020-46**

**A Resolution of the City Council of the City of Pearland, Texas, terminating prior Advanced Funding Agreements, and authorizing a new Advanced Funding Agreement with the Texas Department of Transportation (“TxDOT”), for the Smith Ranch Road Widening Project (Hughes Ranch Road to north of Broadway/FM 518), in the amount of \$5,173,341.00.**

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

**Section 1.** That all prior Advanced Funding Agreements associated with the Smith Ranch Road Widening Project, are hereby terminated.

**Section 2.** That certain new Advance Funding Agreement by and between the City of Pearland and TxDOT, a copy of which is attached hereto as Exhibit “A” and made a part hereof for all purposes, is hereby authorized and approved.

**Section 3.** That the City Manager or his designee is hereby authorized to execute and the City Secretary to attest an Advance Funding Agreement with TxDOT, for the Smith Ranch Road Widening Project.

PASSED, APPROVED and ADOPTED this the \_\_\_\_ day of \_\_\_\_\_,  
A.D., 2020.

\_\_\_\_\_  
TOM REID  
MAYOR

ATTEST:

\_\_\_\_\_  
CRYSTAL ROAN, TRMC, CMC  
CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
DARRIN M. COKER  
CITY ATTORNEY