



**PUBLIC NOTICE**  
**City Council Meeting**  
**June 6, 2013, at 7:00 PM**  
**City Hall - 665 Country Club Road**

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Notice is hereby given that a Regular Meeting of the City Council of the City of Lucas will be held on Thursday, June 6, 2013, at 7 PM at the Lucas City Hall, 665 Country Club Road, Lucas, Texas, at which time the following agenda will be discussed.

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## **Supplemental Agenda**

<b>Regular Agenda</b>
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- 1) Discuss and Consider the approval of an Advanced Funding Agreement between the City of Lucas and TxDot for the improvement of the Country Club and W. Lucas Road intersection. **[Jenkins]**

<b>Certification</b>
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*I hereby certify that the above notice of meeting was posted on the bulletin board at Lucas City Hall by 5:00 p.m. on or before Friday, May 31, 2013, as required in accordance with Government Code §551.041.*

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Kathy Wingo, TRMC, MMC  
City Secretary

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**This building is wheelchair accessible. Any requests for sign interpretive services or other special requests for assistance of the hearing impaired must be made 48 hours in advance of the meeting. To make such arrangements, please call 972-727-8999 or email [secretary@lucastexas.us](mailto:secretary@lucastexas.us).**

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**CSJ #:** 1392-01-039  
**District #:** 18-Dallas  
**Code Chart 64 #:** 25670  
**Project:** FM 1378  
**Limits:** At West Lucas Road  
**Funding Category:** 3-RTR SH 121 Subaccount  
**County:** Collin

**STATE OF TEXAS           §**

**COUNTY OF TRAVIS       §**

**ADVANCE FUNDING AGREEMENT  
FOR A PROJECT USING FUNDS HELD IN THE  
STATE HIGHWAY 121 SUBACCOUNT  
Highway Improvements**

**(On State System)**

**THIS AGREEMENT** (the Agreement) is between the State of Texas, acting by and through the Texas Department of Transportation (the State), and the City of Lucas (Local Government), collectively, the “Parties.”

**WITNESSETH**

**WHEREAS**, the State has received money from the North Texas Tollway Authority for the right to develop, finance, design, construct, operate, and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County (“SH 121 payments”); and

**WHEREAS**, pursuant to Transportation Codes, §228.006 and 228.012 the State has created a separate subaccount to hold the SH 121 payments (SH 121 Subaccount); and

**WHEREAS**, in Minute Order 110727, dated October 26, 2006, the Texas Transportation Commission (the “Commission”) approved a memorandum of understanding (MOU) with the Regional Transportation Council (RTC), which is the transportation policy council of the North Central Texas Council of Governments (NCTCOG) and a federally designated MPO, concerning in part the administration, sharing, and use of surplus toll revenue in the region; under the MOU the RTC shall select projects to be financed using surplus revenue from a toll project, subject to Commission concurrence; and

**WHEREAS**, the Local Government has requested money from the SH 121 Subaccount for: construction of an Eastbound to Northbound left turn lane to include traffic signal modifications on FM 1378 at West Lucas Road in the City of Lucas (CSJ 1392-01-039) (Project); the RTC has selected the Project to be funded from the SH 121 Subaccount; and the Commission concurred in the selection and authorized the expenditure of money in Minute Order 113073, dated January 31, 2013;

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**WHEREAS**, the Local Government is a political subdivision and governmental entity by statutory definition; and

**WHEREAS**, Government Code, Chapter 791, and Transportation Code, §201.209 authorize the State to contract with municipalities and political subdivisions to perform governmental functions and services; and

**WHEREAS**, NCTCOG and the RTC should have authority to assist the Local Government's implementation of financial reporting and environmental review related to a transportation project funded by the State using money from the SH 121 Subaccount.

**NOW, THEREFORE**, the Parties agree as follows:

## **AGREEMENT**

### **Article 1. Time Period Covered**

This Agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and the Local Government will consider it to be in full force and effect until the Project described herein has been completed and accepted by all parties or unless terminated, as hereinafter provided.

### **Article 2. Project Funding**

The State will pay money to the Local Government from the SH 121 Subaccount in the amounts specified in Attachment A, Payment Provision and Work Responsibilities. Except as provided in the next succeeding sentence, the payments will begin no later than upon the later of the following: (1) fifteen days after the Legislative Budget Board and the Governor each approve the expenditure, in accordance with Rider 18 of the Texas Department of Transportation bill pattern in House Bill 1, 82<sup>nd</sup> Legislature; and (2) thirty days after execution of this Agreement. If Attachment A shows that the RTC has allocated payments to the Local Government for a certain expenditure (e.g. construction) for the Project in a certain fiscal year, then the State will make the payment from the SH 121 Subaccount to the Local Government for such expenditure no later than 30 days after the beginning of the designated Fiscal Year. A Fiscal Year begins on September 1 (for example, the 2012 Fiscal Year began September 1, 2011).

### **Article 3. Separate Account; Interest**

All funds paid to the Local Government shall be deposited into a separate account, and interest earned on the funds shall be kept in the account. Interest earned may be used only for the purposes specified in Attachment A, Payment Provision and Work Responsibilities, and only after obtaining the written approval of the RTC. The Local Government's use of interest earned will not count towards the 20 percent local match

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requirement set forth in this Agreement.

#### **Article 4. Shortfalls in Funding**

The Local Government shall apply all funds to the scope of work of the Project described in Attachment A, Payment Provisions and Work Responsibilities, and to none other. All cost overruns are the responsibility of the Local Government. However, should the funds be insufficient to complete the work contemplated by the Project, the Local Government may make further request to the RTC and the State for additional funds from the SH 121 Subaccount. Funds may be increased only through an amendment of this Agreement. If the SH 121 Subaccount does not contain sufficient funds to cover the balance necessary to complete the Project, or if the RTC or the Commission decline the request for any other reason, then the Local Government shall be responsible for any shortfall.

#### **Article 5. Return of Project Funding**

The Local Government shall reimburse the State for any funds paid under this Agreement that are not expended in accordance with the requirements of this Agreement. Upon completion of the Project, the Local Government will issue a signed "Notification of Completion" document to the State acknowledging the Project's completion. If at project end, or upon termination of this Agreement, excess SH 121 Subaccount funds exist, including interest earned, such funds shall be returned to the State within 30 days. Except for funds the Local Government has already expended in accordance with the Agreement, the Local Government shall return to the State the funds paid under this Agreement together with any interest earned on the funds if the Project is not completed within 10 years of execution of the Agreement.

#### **Article 6. Local Match**

The Local Government shall be responsible for the required 20 percent local match as described in Attachment A, Payment Provisions and Work Responsibilities. The costs incurred by the Local Government prior to the execution of this Agreement will count towards the 20 percent local match requirement provided such costs are for RTC-approved phases. At the end of each Fiscal Year the Local Government's cumulative expenditures of local match funds must be no less than 20 percent of the cumulative SH 121 Funds received by the Local Government up to that date under the Agreement, and must be for the uses approved for payments of SH 121 Funds up to that date as specified in Attachment A, Payment Provision and Work Responsibilities

#### **Article 7. Procurement and Contracting Process**

For any work the Local Government is performing, the State may review the Local Government's procurement of professional services for engineering, surveying, and right of way acquisition, letting of construction contracts, and conduct of construction management and inspection. The Local Government shall certify compliance with state law and regulations, and with local laws, regulations, rules, policies, and procedures. The State shall maintain a copy of the certification in the project files.

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### **Article 8. Design Standards and Construction Specifications**

The Local Government shall implement the Project using the State's established design standards, construction specifications, procurement processes, and construction management and inspection procedures.

### **Article 9. Right of Way**

Except for right of way owned by the State or to be acquired by the State according to the plans of the Project as approved by the State, the Local Government shall acquire all necessary right of way needed for the Project. Right of way acquisition is an eligible cost for reimbursement, provided that cost is an RTC-approved phase, as shown in Attachment A.

### **Article 10. 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 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. The RTC-approved costs for utilities as shown in Attachment A, if any, shall be used to adjust, remove, or relocate utility facilities.

### **Article 11. Compliance with Laws; Environmental Review and Public Involvement**

The State will provide Environmental Review according to, but not limited to, 43 T.A.C. Section 2.3(b)(1)(A). When required, the Local Government shall furnish the State with satisfactory proof of compliance. Each Party shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative bodies or tribunals affecting the performance of this Agreement as applicable to it.

### **Article 12. Compliance with Texas Accessibility Standards and ADA**

The Local Government shall ensure that the plans for and the construction of the Project 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).

### **Article 13. Work Outside the Project Site**

The Local Government shall provide both the necessary right of way and any other property interests needed for the Project.

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#### **Article 14. 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.

#### **Article 15. Audit**

Within 120 days of completion of the Project, the Local Government shall perform an audit of the costs of the Project. Any funds due to the State will be promptly paid by the Local Government.

#### **Article 16. Maintenance**

The State shall be responsible for maintenance of the Project, unless otherwise provided for in a prior existing maintenance agreement with the Local Government.

#### **Article 17. Responsibilities of the Parties**

- A.** 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.
- B.** To the extent permitted by law, the Local Government agrees to indemnify and save harmless the State, its agents and employees from all suits, actions or claims and from all liability and damages resulting from any and all injuries or damages sustained by any person or property in consequence of any neglect, error, or omission in the performance of the design, construction, maintenance or operation of the Project by the Local Government, its contractor(s), subcontractor(s), agents and employees, and from any claims or amounts arising or recovered under the "Workers' Compensation laws"; the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as from time to time may be amended.
- C.** The Parties expressly agree that the Project is not a joint venture or enterprise. However, if a court should find that the Parties are engaged in a joint venture or enterprise, then the Local Government, to the extent provided by law, agrees to pay any liability adjudicated against the State for acts and deeds of the Local Government, its employees or agents during the performance of the Project.
- D.** To the extent provided by law, the Local Government shall also indemnify and save harmless the State from any and all expense, including, but not limited to, attorney's fees which may be incurred by the State in litigation or otherwise

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resisting said claim or liabilities which may be imposed on the State as a result of such activities by the Local Government, its agents, or employees.

- E. The Local Government, by contract, shall require its contractor(s) and subcontractor(s), prior to doing any work on the Project, to: (1) secure an insurance policy in the maximum statutory limits for tort liability, naming the State as an additional insured under its terms; and (2) indemnify and hold harmless the Local Government and the State from all claims, liability, and damages resulting from the contractor's performance under the contract.

**Article 18. Notices**

All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

<b>Local Government:</b>	<b>State:</b>
City of Lucas Attn: City Manager 665 Country Club Road Lucas, Texas 75002	Texas Department of Transportation Attn: Director of Contract Services Office 125 East 11 <sup>th</sup> Street Austin, Texas 78701

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

**Article 19. Right of Access**

If the Local Government is the owner or otherwise controls access to any part of site of the Project, the Local Government shall permit the State or its authorized representative access to the site to perform any activities authorized in this Agreement.

**Article 20. Project 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 by the Local Government 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 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.

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### **Article 21. Inspection of Books and Records**

The Local Government shall keep a complete and accurate record to document the performance of the work on the Project and to expedite any audit that might be conducted. The Local Government shall maintain records sufficient to document that funds provided under the Agreement were expended only for eligible costs that were incurred in accordance with all applicable state and local laws, rules, policies, and procedures, and in accordance with all applicable provisions of this Agreement. The Local Government 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 for review and inspection during the contract period and for four (4) years from the date of completion of work defined under this Agreement or until any pending litigation or claims are resolved, whichever is later. Additionally, the State shall have access to all governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

### **Article 22. NCTCOG**

Acceptance of funds directly under the Agreement or indirectly through a subcontract under the Agreement acts as acceptance of the authority of NCTCOG and RTC to assist the Local Government's implementation of financial reporting concerning the Project. The Local Government shall provide to NCTCOG on a monthly basis a report of expenses, including the Local Government's expenditure of local match funds. The report shall list separately the expenditures by project phase, including but not limited to engineering, environmental review, right of way acquisition, and construction. The report shall also describe interest earned on money from the SH 121 Subaccount, including the interest rate, interest earned during the month, and cumulative interest earned. The report shall further describe the status of developing the Project.

### **Article 23. State Auditor**

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the Agreement or indirectly through a subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

### **Article 24. Amendments**

By mutual written consent of the Parties, this contract may be amended prior to its expiration.



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#### **Article 25. Termination**

The Agreement may be terminated in the following manner:

- by mutual written agreement and consent of both parties;
- by either party upon the failure of the other party to fulfill the obligations set forth herein, after a 45 day period to cure after receiving written notice of non-compliance;
- by the State if the Local Government does not let the construction contract for the Project one year after the State first provides 121 Funds for construction as shown in Attachment A, Payment Provision and Work Responsibilities;
- by the State if the Local Government does not complete the Project within ten years after the effective date of the Agreement;
- by the State if it determines that the performance of the Project is not in the best interest of the State.

#### **Article 26. Work by Debarred Person**

The Local Government shall not contract with any person that is suspended, debarred, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal agency or that is debarred or suspended by the State.

#### **Article 27. Sole Agreement**

The 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.

#### **Article 28. 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. The Local Government may assign its interests under the Agreement only with the written approval of the State.

#### **Article 29. Remedies**

The Agreement shall not be considered as specifying an exclusive remedy for a breach of the Agreement. All remedies existing at law or in equity are available to either Party and are cumulative.

#### **Article 30. Legal Construction**

If a provision of the Agreement shall be held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision, and the Agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

#### **Article 31. Signatory Warranty**

The signatories to this agreement warrant that each has the authority to enter into this

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agreement on behalf of the party they represent.

**IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT** have executed duplicate counterparts to effectuate this Agreement.

**THE STATE OF TEXAS**

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

By \_\_\_\_\_

Janice Mullenix  
Director, Contract Services

Date \_\_\_\_\_

**THE LOCAL GOVERNMENT – CITY OF LUCAS**

By \_\_\_\_\_

Jeff Jenkins  
City Manager

Date \_\_\_\_\_

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ATTACHMENT A

**Payment Provision and Work Responsibilities**

For CSJ 1392-01-039, the State will pay \$440,000 from the SH 121 Subaccount for: construction of an Eastbound to Northbound left turn lane to include traffic signal modifications on FM 1378 at West Lucas Road in the City of Lucas.

The State, at no cost to the Local Government, will review and inspect the Project's engineering documents/plans, right of way, utility adjustment activities and construction inspection.

In accordance with the allocation of funds approved by the RTC, and concurred with by the Texas Transportation Commission, the State will make the payments for the following work in the following Fiscal Years:

PROJECT COSTS						
Description	Fiscal Year	Total Estimate Cost	Regional Toll Revenue (RTR) SH 121 Subaccount Funds Participation		Local Government Participation	
PE	2013	\$50,000	80%	\$40,000	20%	\$10,000
ROW	2013	\$50,000	80%	\$40,000	20%	\$10,000
Construction	2014	\$450,000	80%	\$360,000	20%	\$90,000
<b>TOTAL</b>		\$550,000		\$440,000		\$110,000

The Local Government shall contribute a required local match of \$110,000.

Upon completion of the Project, the Local Government will issue a signed "Notification of Completion" document to the State. The notice shall certify that the Project has been completed, all necessary inspections have been conducted, and the Project is open to traffic.