

11,878

RESOLUTION

FILED FOR RECORD  
at 1:00 o'clock P M  
MAR 17 2011  
JENNIFER ANDENZWEIG  
County Clerk, Hunt County, Tex.  
By J. J. J. J.

The State of Texas  
County of Hunt

**WHEREAS**, the federal off-system bridge program is administered by the Texas Department of Transportation (the State) to replace or rehabilitate structurally deficient and functionally obsolete (collectively referred to as deficient) bridges located on public roads and streets off the designated state highway system; and

**WHEREAS**, **Hunt County**, hereinafter referred to as the Local Government owns a bridge located at **Turkey Creek**, on **HCR 4720 (300-001)**, National Bridge Inventory (NBI) Structure Number **01-117-0-AA0300-001**; and

**WHEREAS**, **Hunt County**, hereinafter referred to as the Local Government owns a bridge located at **Caney Creek Branch**, on **HCR 3201 (503-001)**, National Bridge Inventory (NBI) Structure Number **01-117-0-AA0503-001**; and

**WHEREAS**, **Hunt County**, hereinafter referred to as the Local Government owns a bridge located at **Middle Fork of Turkey Creek**, on **HCR 3205 (504-001)**, National Bridge Inventory (NBI) Structure Number **01-117-0-AA0504-001**; and

**WHEREAS**, **Hunt County**, hereinafter referred to as the Local Government owns a bridge located at **Turkey Creek Tributary**, on **HCR 3203 (505-001)**, National Bridge Inventory (NBI) Structure Number **01-117-0-AA0505-001**; and

**WHEREAS**, **Hunt County**, hereinafter referred to as the Local Government owns a bridge located at **Caney Creek**, on **HCR 3116 (521-003)**, National Bridge Inventory (NBI) Structure Number **01-117-0-AA0521-003**; and

**WHEREAS**, **Hunt County**, hereinafter referred to as the Local Government owns a bridge located at **Little Creek**, on **HCR 3511 (5097-001)**, National Bridge Inventory (NBI) Structure Number **01-117-0-AA5097-001**; and

**WHEREAS**, a project to remedy the bridge(s) is included in the currently approved program of projects as authorized by Texas Transportation Commission Minute Order Number **112237** dated **April 2010**, Control-Section-Job (CSJ) Number **0901-22-083, 0901-22-084, 0901-22-085, 0901-22-086, 0901-22-088 and 0901-22-101** respectively; and

**WHEREAS**, the usual fund participation ratio for projects on such program is 80 percent federal, 10 percent state and 10 percent Local Government; and

**WHEREAS, Hunt County** has been given an Economically Disadvantage Status by the Texas Transportation Commission with the funding participation ratio set at **80 percent federal, 15.5 percent state and 4.5 percent Local Government**, and;

**WHEREAS**, Texas Administrative Code, Title 43, Section 15.55(d) (43 TAC Section 15.55(d)) provides that under specified conditions the 10 percent Local Government match fund participation requirement may be waived with agreement by the Local Government to perform, or cause to be performed, an equivalent dollar amount of structural improvement work on other deficient bridges or deficient mainlane cross-drainage structures within its jurisdiction, such a project of structural improvement work being referred to as an “equivalent-match project”; and

**WHEREAS**, the estimated local match fund participation requirement on the approved federal off-system bridge project(s) is **\$45,000** (dollars), hereinafter referred to as the “participation-waived” project, such participation requirement the Local Government proposes be waived and in return perform or cause to be performed equivalent-match project structural improvement work.

**THEREFORE, BE IT RESOLVED** that the Local Government perform, or cause to be performed, the following equivalent-match project(s) in return for waiver of the local match fund participation requirement on the approved federal off-system bridge program (participation-waived) project not yet awarded:

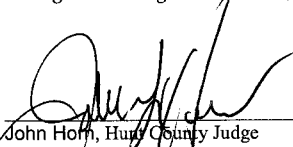
LOCATION (and NBI structure identification number, if applicable)	ON SCHOOL BUS ROUTE?	DESCRIPTION OF STRUCTURAL IMPROVEMENT WORK	ESTIMATED COST
<b>HCR 4617 near SH 11 intersection</b>	<b>Yes</b>	<b>Replace Steel Bridge (non-bridge class) with concrete bridge</b>	<b>\$ 45,000</b>

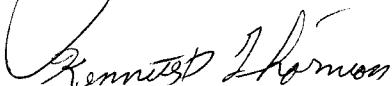
**BE IT FURTHER RESOLVED** that in receiving this waiver the Local Government acknowledges its obligation to conform with all conditions of 43 TAC Section 15.55(d); such conditions that include but are not restricted to the following:

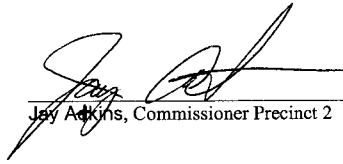
1. The Local Government must be currently in compliance with load posting and closure regulations as defined in National Bridge Inspection Standards under US Code of Federal Regulations, Title 23, Section 650.303.
2. The equivalent-match project work increases the load capacity of the existing bridge or other mainlane cross-drainage structure, or upgrades the structure to its original load capacity with a minimum upgrade to safely carry school bus loading if located on a school bus route.
3. In performing, or causing to be performed, the equivalent-match project(s), the Local Government assumes all responsibilities for engineering and construction, and complying with all applicable state and federal environmental regulations and permitting requirements for the structures being improved.
4. The work on the proposed equivalent-match project(s) will not begin until the local match fund participation waiver approval process has been completed.


5. The Local Government will be allowed three years after the contract award of the participation-waived project to complete the structural improvement work on the equivalent-match project(s).
6. Should this waiver request be approved, an appropriate written agreement or amendment to a previously executed agreement will be executed between the State and Local Government.

THEREFORE, IN OFFICIAL RECOGNITION WHEREOF; we the undersigned do hereby affix our signatures. Signed this 14 day of March, 2011.

  
\_\_\_\_\_  
John Hoff, Hurst County Judge

  
\_\_\_\_\_  
Kenneth Thornton, Commissioner, Precinct 1

  
\_\_\_\_\_  
Jay Adkins, Commissioner Precinct 2

  
\_\_\_\_\_  
Larry Middlebrooks, Commissioner, Precinct 3

  
\_\_\_\_\_  
Jim Latham, Commissioner, Precinct 4



11,878

# Texas Department of Transportation

1365 N. MAIN • PARIS TEXAS 75460 • (903) 737-9300

April 12, 2011

FILED FOR RECORD  
at 1:10 o'clock  
APR 27 2011  
By County Clerk  
JENNIFER LINDENBERG  
Greenville, Tex.  
Court  
14, MARCH 2011

Hunt County Courthouse  
Judge John Horn  
P.O. Box 1097  
Greenville, Texas 75403

Re: Advanced Funding Agreement (AFA)

Honorable Judge Horn:

Enclosed is a signed original Advanced Funding Agreement for the following project:

<u>CSJ</u>	<u>Local Designation</u>	<u>NBI Structure Number</u>
0901-22-083	CR 4720 at Turkey Creek	01-117-0-AA0300-001
0901-22-084	CR 3201 at Caney Creek	01-117-0-AA0503-001
0901-22-085	CR 3205 at Middle Fork of Turkey Creek	01-117-0-AA0504-001
0901-22-086	CR 3203 at Turkey Creek Tributary	01-117-0-AA0505-001
0901-22-088	CR 3116 at Caney Creek	01-117-0-AA0521-003
0901-22-101	CR 3511 at Little Creek	01-117-0-AA5097-001

Please retain for your files. If you have any questions concerning these agreements, please call me at (903) 737-9373.

Sincerely,

Penny Sansom  
Consultant Contract Coordinator

cc: TP&D – Kathy Dyer, P. E.  
GAO – Craig Miser, P. E.

AFA.ltr2.doc

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CSJ # 0901-22-083  
District # 01  
Code Chart 64 # 50117  
Project: Replace Off-System Bridge  
NBI Structure # 01-117-0-AA0300-001  
CFDA # 20.205

FILED FOR RECORD  
at 1:00 o'clock  
APR 27 2011  
By County Clerk, Hunt County, Texas  
JENNIFER LINDERBERG  
COUNTY CLERK

STATE OF TEXAS §  
COUNTY OF TRAVIS §

**ORIGINAL**

**ADVANCE FUNDING AGREEMENT  
For Bridge Replacement or Rehabilitation  
Off the State System**

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

**WITNESSETH**

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

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

**WHEREAS**, the Local Government owns a bridge or bridges located on a public road or street located at **Turkey Creek on Hunt County Road 4720** and said bridge(s) is included in the currently approved off-state system federal-aid Highway Bridge Replacement and Rehabilitation Program (HBRRP) as authorized by Texas Transportation Commission Minute Order number 112237, dated **April 2010**; and

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

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

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District # 01  
Code Chart 64 # 50117  
Project: **Replace Off-System Bridge**  
NBI Structure # 01-117-0-AA0300-001  
CFDA # 20.205

## AGREEMENT

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

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

### 2. **Conditions for Termination of this Agreement**

- a. The Agreement is terminated in writing with the mutual consent of the parties; or
- b. Breach of this Agreement, in which case any cost incurred shall be paid by the breaching party; or
- c. If the Local Government elects not to develop the project and the project does not proceed, in which case the Local Government agrees to reimburse the State for 100 percent of its reasonable actual direct and indirect costs incurred for the project.

### 3. **Amendments**

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

### 4. **Remedies**

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

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

The scope of work for this Agreement is the replacement or rehabilitation of the bridge(s) identified in the recitals of this Agreement. This replacement or rehabilitation shall be

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

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

The Local Government is responsible for the provision and acquisition of all necessary right of way and will not be reimbursed with federal or state funds for the required right of way.

The Local Government authorizes the State, its consultant, contractor, or other designated representative to enter the site(s) of said bridge(s) and adjacent right of way or relocation right of way to perform surveys, inspections, construction and other activities necessary to replace or rehabilitate said bridge and approaches.

#### **7. Adjustment of Utilities**

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

#### **8. Environmental Assessment and Mitigation**

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

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

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

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

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

**10. Architectural and Engineering Services will be Provided by the State**

The State is responsible for performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required to accomplish the public purposes of the Local Government. The State will cooperate fully with the Local Government in accomplishing these local public purposes to the degree permitted by state and federal law. The Local Government review shall not unduly delay the development of the Project.

**11. Construction Responsibilities**

- a. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- b. Upon completion of the Project, the State will issue a "Notification of Completion" acknowledging the Project's construction completion.

**12. Project Maintenance**

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



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

- a. A Project Cost Estimate is provided in Attachment D, "Estimate of Direct Costs".
- b. Attachment D provides a source of funds estimate as well as the estimated direct preliminary engineering, construction engineering, and construction costs for the Project in total and by the Local Government.
- c. The required Local Government participation is based solely upon the State's estimate of the eligible work at the time this Agreement is executed and will not be adjusted during construction except as needed to include any Project cost item or portion of a cost item ineligible for state or federal participation. In addition to its share of estimated direct engineering and construction costs, the Local Government is responsible for the direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the federal HBRRP. The Local Government is also responsible for any cost resulting from changes made at the request of the Local Government.
- d. After execution of this Agreement, but thirty (30) days prior to the performance of any work by the State, the Local Government will the State in the amount specified in Attachment D for the Local Government's contribution for preliminary engineering. The Local Government will pay at a minimum its funding share for this estimated cost of preliminary engineering.
- e. Forty-five (45) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs and any other costs owing.
- f. If at the completion or termination of the Project the State determines that additional funding is required by the Local Government, the State shall notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- g. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to the State Project.
- h. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.
- i. The State will not pay interest on any funds provided by the Local Government.
- j. The Local Government funding participation responsibilities include Project direct costs only, except when the Project is terminated before completion at the request

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of the Local Government as addressed in the Termination provision of this Agreement.

- k. The amounts shown on Attachment D are estimates only. If actual costs exceed the estimates, this shall be considered a fixed price agreement, and no additional funding shall be required of the Local Government except to the extent that the additional costs result from changes made at the request of the Local Government or to the extent that the additional costs are not eligible for federal participation under the Federal Highway Bridge Replacement and Rehabilitation Program. If actual costs are less than the estimates, Local Government participation shall be recalculated based on actual costs. If the recalculation results in a reduction in participation by the Local Government, the State shall pay the difference to the Local Government upon completion of the Project.
- l. Under the provisions of Texas Transportation Code Section 222.053 certain counties qualify as Economically Disadvantaged Counties (EDC) in comparison to other counties in the state as below average per capita property value, and below average per capita income, and above average unemployment, for certain years. If applicable, in consideration of such EDC status that may be applicable for the Project, the required local match fund participation has been adjusted to 4.5 percent.
- m. The State will not execute the contract for the construction of a Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- n. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

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

- a. Applicability. If a request for waiver has been received and approved by the State's District Engineer, then the required ten percent matching fund participation or percent as adjusted for EDC consideration, as shown in Attachment D, "Estimate of Direct Costs", but excluding ineligible costs under the bridge program, is waived. This waiver is based on the commitment of the Local Government to spend an equivalent amount of funds for structural or safety improvement on "other" bridge structures and other

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conditions as specified in 43 TAC Section 15.55(d). If a waiver has been granted, the Project shall be defined to be a Participation-Waived Project (PWP) and the work on the “other” bridge structures that will be improved by the Local Government shall be defined to be the Equivalent-Match Project(s) (EMP). Attachment C to this Agreement shows a list of EMP(s) under this Agreement.

- b. Project Cost Estimate for PWP. Attachment D to this Agreement shows the estimated direct preliminary engineering, construction engineering and construction costs for the PWP in total and local match fund participation being waived, or partially waived.
- c. Credit Against EMP Work. Any local match fund participation that has already been paid, or which the Local Government is agreeable to paying to the State, will be credited against EMP work to be performed by the Local Government. If applicable, this credit(s) will be reflected in Attachment D to this Agreement.
- d. Responsibilities of the Local Government on EMP(s).
  - (1) The Local Government shall be responsible for all engineering and construction, and related costs thereto, and complying with all applicable state and federal environmental regulations and permitting requirements.
  - (2) The structural or safety improvement work on the EMP(s) shall be performed subsequent to the final execution of this Agreement but within three (3) calendar years after the earliest contract award of the related PWP(s).
  - (3) Written documentation, suitable for audit, of the structural or safety improvement work completed on the EMP(s) shall be kept on file by the Local Government for four (4) years after completion of work or claims, lawsuits, or audits related thereto, whichever is longer. A notice of completion of work on the EMP(s) shall be delivered to the State’s District Engineer no later than thirty (30) calendar days after work is completed on the EMP(s).
  - (4) Failure by the Local Government to adequately complete the EMP(s) within the stated three-year period shall result in the Local Government being excluded from receiving such waivers for a minimum of five (5) years.
- e. Funding of Ineligible or Additional Work Not Waived. Regardless of any waiver of eligible program costs, the Local Government shall pay the State 100 percent of the cost of any PWP item or portion of a cost item that is not eligible for federal or state participation, and 100 percent of the costs resulting from additional work on the PWP performed solely at the request of the Local Government. If the ineligible or additional work is preliminary engineering, the payment shall be made at least thirty (30) days prior to the beginning of preliminary engineering work on the PWP.

If the ineligible or additional work is for construction or construction engineering, the payment shall be made at least forty-five (45) days prior to the date set for receipt of bids for construction of the PWP.

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**15. 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, addressed to such party at the following addresses:

State: **TxDOT**  
**Attn: Bridge Engineer**  
**1365 N. Main Street**  
**Paris, Texas 75460**

Local Government: **Hunt County**  
**Attn: County Judge**  
**P. O. Box 1097**  
**Greenville, Texas 75403**

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.

**16. Legal Construction**

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

**17. Responsibilities of the Parties**

The parties to this Agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

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**18. Ownership of Documents**

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use.

All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

**19. Compliance with Laws**

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

**20. Sole Agreement**

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

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

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

**22. Procurement and Property Management Standards**

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

**23. Inspection of Books and Records**

The parties to the Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall

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make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, 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.

In accordance with Section 902 of the American Recovery and Reinvestment Act of 2009 (ARRA), should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

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

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

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

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

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

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

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Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the LG (Local Government). It is the responsibility of the LG to obtain this form from the prime Contractor and any subcontractors and, the LG shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The LG shall ensure that this form is submitted by the LG to the State according to the policies and at the direction of the State.

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

**24. Office of Management and Budget (OMB) Audit Requirements**

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

**25. Civil Rights Compliance**

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

**26. Disadvantaged Business Enterprise Program Requirements**

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

**27. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal

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CFDA # 20.205

Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

## 28. **Lobbying Certification**

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

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

By executing this Agreement, the parties affirm this lobbying certification with respect to the Project and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to



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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.

**29. Successors and Assigns**

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

**30. Local Government Restrictions**

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

**31. Signatory Warranty**

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

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

**THE LOCAL GOVERNMENT**

By: \_\_\_\_\_

Signature

**John Horn**

Printed Name of Signatory

Title: \_\_\_\_\_

**Hunt County Judge**

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

**3-14-2011**

**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: \_\_\_\_\_

David P. Hohmann, PE  
Director, Bridge Division

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

**3/30/11**

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Project: **Replace Off-System Bridge**  
NBI Structure # 01-117-0-AA0300-001  
CFDA # 20.205

**ATTACHMENT A**

**RESOLUTION OR ORDINANCE OF LOCAL GOVERNMENT**

11,878

RESOLUTION

FILED FOR RECORD  
at 1:00 o'clock P M  
MAR 17 2011  
JENNIFER LINDENZWEIG  
County Clerk, Hunt County, Tex.  
By J. Lindenzweig

The State of Texas  
County of Hunt

WHEREAS, the federal off-system bridge program is administered by the Texas Department of Transportation (the State) to replace or rehabilitate structurally deficient and functionally obsolete (collectively referred to as deficient) bridges located on public roads and streets off the designated state highway system; and

WHEREAS, **Hunt County**, hereinafter referred to as the Local Government owns a bridge located at Turkey Creek, on HCR 4720 (300-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0300-001; and

WHEREAS, **Hunt County**, hereinafter referred to as the Local Government owns a bridge located at Caney Creek Branch, on HCR 3201 (503-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0503-001; and

WHEREAS, **Hunt County**, hereinafter referred to as the Local Government owns a bridge located at Middle Fork of Turkey Creek, on HCR 3205 (504-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0504-001; and

WHEREAS, **Hunt County**, hereinafter referred to as the Local Government owns a bridge located at Turkey Creek Tributary, on HCR 3203 (505-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0505-001; and

WHEREAS, **Hunt County**, hereinafter referred to as the Local Government owns a bridge located at Caney Creek, on HCR 3116 (521-003), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0521-003; and

WHEREAS, **Hunt County**, hereinafter referred to as the Local Government owns a bridge located at Little Creek, on HCR 3511 (5097-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA5097-001; and

WHEREAS, a project to remedy the bridge(s) is included in the currently approved program of projects as authorized by Texas Transportation Commission Minute Order Number 112237 dated April 2010, Control-Section-Job (CSJ) Number 0901-22-083, 0901-22-084, 0901-22-085, 0901-22-086, 0901-22-088 and 0901-22-101 respectively; and

WHEREAS, the usual fund participation ratio for projects on such program is 80 percent federal, 10 percent state and 10 percent Local Government; and

**WHEREAS, Hunt County** has been given an Economically Disadvantage Status by the Texas Transportation Commission with the funding participation ratio set at 80 percent federal, 15.5 percent state and 4.5 percent Local Government, and;

**WHEREAS, Texas Administrative Code, Title 43, Section 15.55(d) (43 TAC Section 15.55(d))** provides that under specified conditions the 10 percent Local Government match fund participation requirement may be waived with agreement by the Local Government to perform, or cause to be performed, an equivalent dollar amount of structural improvement work on other deficient bridges or deficient mainlane cross-drainage structures within its jurisdiction, such a project of structural improvement work being referred to as an “equivalent-match project”; and

**WHEREAS, the estimated local match fund participation requirement on the approved federal off-system bridge project(s) is \$45,000 (dollars),** hereinafter referred to as the “participation-waived” project, such participation requirement the Local Government proposes be waived and in return perform or cause to be performed equivalent-match project structural improvement work.

**THEREFORE, BE IT RESOLVED** that the Local Government perform, or cause to be performed, the following equivalent-match project(s) in return for waiver of the local match fund participation requirement on the approved federal off-system bridge program (participation-waived) project not yet awarded:

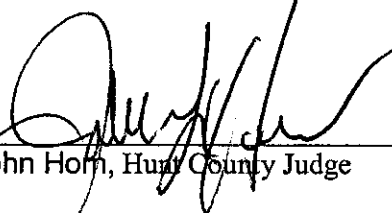
LOCATION (and NBI structure identification number, if applicable)	ON SCHOOL BUS ROUTE?	DESCRIPTION OF STRUCTURAL IMPROVEMENT WORK	ESTIMATED COST
<b>HCR 4617 near SH 11 intersection</b>	<b>Yes</b>	<b>Replace Steel Bridge (non-bridge class) with concrete bridge</b>	<b>\$ 45,000</b>

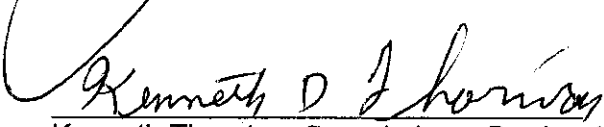
**BE IT FURTHER RESOLVED** that in receiving this waiver the Local Government acknowledges its obligation to conform with all conditions of 43 TAC Section 15.55(d); such conditions that include but are not restricted to the following:

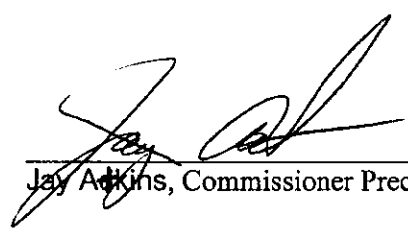
1. The Local Government must be currently in compliance with load posting and closure regulations as defined in National Bridge Inspection Standards under US Code of Federal Regulations, Title 23, Section 650.303.
2. The equivalent-match project work increases the load capacity of the existing bridge or other mainlane cross-drainage structure, or upgrades the structure to its original load capacity with a minimum upgrade to safely carry school bus loading if located on a school bus route.
3. In performing, or causing to be performed, the equivalent-match project(s), the Local Government assumes all responsibilities for engineering and construction, and complying with all applicable state and federal environmental regulations and permitting requirements for the structures being improved.
4. The work on the proposed equivalent-match project(s) will not begin until the local match fund participation waiver approval process has been completed.

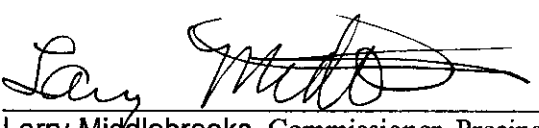
5. The Local Government will be allowed three years after the contract award of the participation-waived project to complete the structural improvement work on the equivalent-match project(s).
6. Should this waiver request be approved, an appropriate written agreement or amendment to a previously executed agreement will be executed between the State and Local Government.


**THEREFORE, IN OFFICIAL RECOGNITION WHEREOF;** we the undersigned do hereby affix our signatures. Signed this 14 day of March, 2011.

  
\_\_\_\_\_  
John Horn, Hunt County Judge

  
\_\_\_\_\_  
Kenneth Thornton, Commissioner, Precinct 1

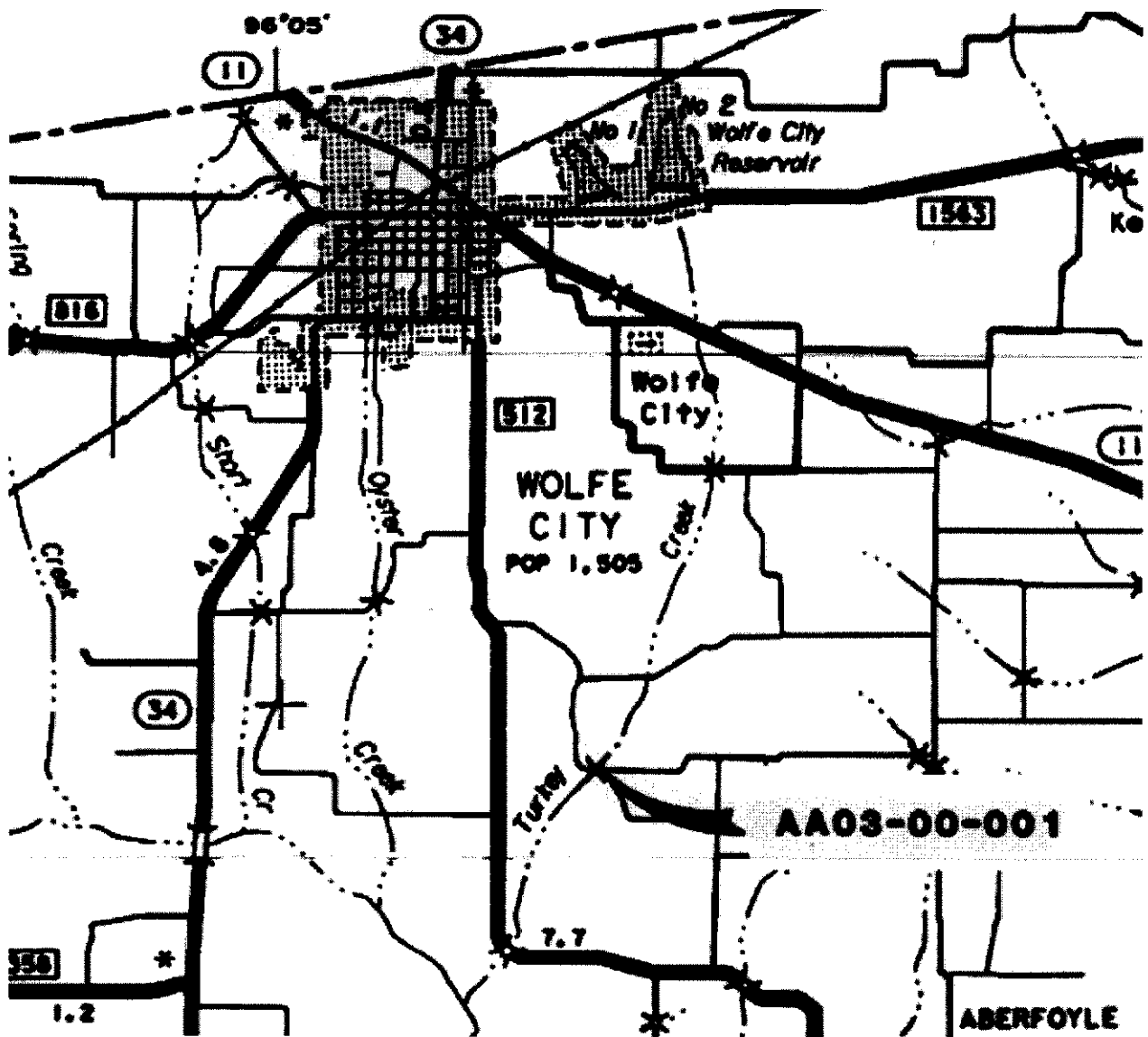
  
\_\_\_\_\_  
Jay Adkins, Commissioner Precinct 2

  
\_\_\_\_\_  
Larry Middlebrooks, Commissioner, Precinct 3

  
\_\_\_\_\_  
Jim Latham, Commissioner, Precinct 4

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**ATTACHMENT B**  
**PROJECT LOCATION MAP**



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**ATTACHMENT C** (See Note \*\*)

LIST OF DISTRICT ENGINEER APPROVED  
 EQUIVALENT-MATCH PROJECT(S) (EMP)

Location (and structure identification number, if applicable)	On School Bus Route? (Yes/No)	Historic Bridge? (Yes/No)	Description of Structural or Safety Improvement Work	Estimated Cost
CR 4617	Y	N	<b>Replace Steel Grate Bridge</b>	\$ 45,000
<b>Total</b>				<b>\$45,000</b>
EMP work credited to this PWP (See Note *)				<b>\$6,588</b>
Balance of EMP work available to associated PWP(s)				<b>\$35,136</b>
Associated PWP(s) Control-Section-Job (CSJ)			Amount to be Credited to Associated PWP (s)	
0901-22-083			<b>\$6,588</b>	
0901-22-084			<b>\$7,137</b>	
0901-22-085			<b>\$7,686</b>	
0901-22-086			<b>\$6,588</b>	
0901-22-088			<b>\$6,588</b>	
0901-22-101			<b>\$7,137</b>	
<b>Total</b>			<b>\$41,724</b>	

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

Note\*\*: This attachment not applicable for non-Participation-Waived Projects (PWP)



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## ATTACHMENT D

### ESTIMATE OF DIRECT COSTS

		<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE)	(1)	<u>\$20,400</u>	
Ten (10) Percent or EDC Adjusted Percent of PE for Local Government Participation <i>(Adjusted to 4.5% for EDC FY 11)</i>			(3) <u>\$918</u>
Construction		<u>\$120,000</u>	
Engineering and Contingency (E&C)		<u>\$6,000</u>	
The Sum of Construction and E&C	(2)	<u>\$126,000</u>	
Ten (10) Percent or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation <i>(Adjusted to 4.5% for EDC FY 11)</i>			(4) <u>\$5,670</u>
Amount of Advance Funds Paid by Local Government *			(5) <u>\$0.00</u>
Amount of Advance Funds to be Paid by Local Government *			(6) <u>\$0.00</u>
Balance of Local Government Participation which is to be Waived where the Project is a PWP			(3+4-5-6) <u>\$6,588</u>
Total Project Direct Cost	(1+2)	<u>\$146,400</u>	

\* Credited Against Local Government Participation Amount

If this Project is to be a PWP, Amount of EMP Work Being Credited to this PWP as Shown on Attachment C. **\$6,588**

11,878

CSJ # 0901-22-084  
District # 01  
Code Chart 64 # 50117  
Project: Replace Off-System Bridge  
NBI Structure # 01-117-0-AA0503-001  
CFDA # 20.205

FILED FOR RECORD M  
at 1:00 o'clock  
APR 27 2011  
JENNIFER UNDERWEIG  
By County Clerk, Hunt County, Texas

STATE OF TEXAS §  
COUNTY OF TRAVIS §

**ORIGINAL**

**ADVANCE FUNDING AGREEMENT  
For Bridge Replacement or Rehabilitation  
Off the State System**

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

**WITNESSETH**

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

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

**WHEREAS**, the Local Government owns a bridge or bridges located on a public road or street located at **Caney Creek Branch on Hunt County Road 3201** and said bridge(s) is included in the currently approved off-state system federal-aid Highway Bridge Replacement and Rehabilitation Program (HBRRP) as authorized by Texas Transportation Commission Minute Order number 112237, dated **April 2010**; and

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

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

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## AGREEMENT

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

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

### 2. **Conditions for Termination of this Agreement**

- a. The Agreement is terminated in writing with the mutual consent of the parties; or
- b. Breach of this Agreement, in which case any cost incurred shall be paid by the breaching party; or
- c. If the Local Government elects not to develop the project and the project does not proceed, in which case the Local Government agrees to reimburse the State for 100 percent of its reasonable actual direct and indirect costs incurred for the project.

### 3. **Amendments**

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

### 4. **Remedies**

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

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

The scope of work for this Agreement is the replacement or rehabilitation of the bridge(s) identified in the recitals of this Agreement. This replacement or rehabilitation shall be

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

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

The Local Government is responsible for the provision and acquisition of all necessary right of way and will not be reimbursed with federal or state funds for the required right of way.

The Local Government authorizes the State, its consultant, contractor, or other designated representative to enter the site(s) of said bridge(s) and adjacent right of way or relocation right of way to perform surveys, inspections, construction and other activities necessary to replace or rehabilitate said bridge and approaches.

**7. Adjustment of Utilities**

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

**8. Environmental Assessment and Mitigation**

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

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

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

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

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

**10. Architectural and Engineering Services will be Provided by the State**

The State is responsible for performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required to accomplish the public purposes of the Local Government. The State will cooperate fully with the Local Government in accomplishing these local public purposes to the degree permitted by state and federal law. The Local Government review shall not unduly delay the development of the Project.

**11. Construction Responsibilities**

- a. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- b. Upon completion of the Project, the State will issue a "Notification of Completion" acknowledging the Project's construction completion.

**12. Project Maintenance**

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

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

- a. A Project Cost Estimate is provided in Attachment D, "Estimate of Direct Costs".
- b. Attachment D provides a source of funds estimate as well as the estimated direct preliminary engineering, construction engineering, and construction costs for the Project in total and by the Local Government.
- c. The required Local Government participation is based solely upon the State's estimate of the eligible work at the time this Agreement is executed and will not be adjusted during construction except as needed to include any Project cost item or portion of a cost item ineligible for state or federal participation. In addition to its share of estimated direct engineering and construction costs, the Local Government is responsible for the direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the federal HBRRP. The Local Government is also responsible for any cost resulting from changes made at the request of the Local Government.
- d. After execution of this Agreement, but thirty (30) days prior to the performance of any work by the State, the Local Government will the State in the amount specified in Attachment D for the Local Government's contribution for preliminary engineering. The Local Government will pay at a minimum its funding share for this estimated cost of preliminary engineering.
- e. Forty-five (45) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs and any other costs owing.
- f. If at the completion or termination of the Project the State determines that additional funding is required by the Local Government, the State shall notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- g. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to the State Project.
- h. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.
- i. The State will not pay interest on any funds provided by the Local Government.
- j. The Local Government funding participation responsibilities include Project direct costs only, except when the Project is terminated before completion at the request

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of the Local Government as addressed in the Termination provision of this Agreement.

- k. The amounts shown on Attachment D are estimates only. If actual costs exceed the estimates, this shall be considered a fixed price agreement, and no additional funding shall be required of the Local Government except to the extent that the additional costs result from changes made at the request of the Local Government or to the extent that the additional costs are not eligible for federal participation under the Federal Highway Bridge Replacement and Rehabilitation Program. If actual costs are less than the estimates, Local Government participation shall be recalculated based on actual costs. If the recalculation results in a reduction in participation by the Local Government, the State shall pay the difference to the Local Government upon completion of the Project.
  - l. Under the provisions of Texas Transportation Code Section 222.053 certain counties qualify as Economically Disadvantaged Counties (EDC) in comparison to other counties in the state as below average per capita property value, and below average per capita income, and above average unemployment, for certain years. If applicable, in consideration of such EDC status that may be applicable for the Project, the required local match fund participation has been adjusted to **4.5** percent.
  - m. The State will not execute the contract for the construction of a Project until the required funding has been made available by the Local Government in accordance with this Agreement.
  - n. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
14. **Performance by Local Government of Equivalent-Match Projects (EMPs) in Return for Waiver of Local Match Participation Funding on Participation-Waived Projects (PWFs)**
- a. **Applicability.** If a request for waiver has been received and approved by the State's District Engineer, then the required ten percent matching fund participation or percent as adjusted for EDC consideration, as shown in Attachment D, "Estimate of Direct Costs", but excluding ineligible costs under the bridge program, is waived. This waiver is based on the commitment of the Local Government to spend an equivalent amount of funds for structural or safety improvement on "other" bridge structures and other

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conditions as specified in 43 TAC Section 15.55(d). If a waiver has been granted, the Project shall be defined to be a Participation-Waived Project (PWP) and the work on the “other” bridge structures that will be improved by the Local Government shall be defined to be the Equivalent-Match Project(s) (EMP). Attachment C to this Agreement shows a list of EMP(s) under this Agreement.

- b. Project Cost Estimate for PWP. Attachment D to this Agreement shows the estimated direct preliminary engineering, construction engineering and construction costs for the PWP in total and local match fund participation being waived, or partially waived.
- c. Credit Against EMP Work. Any local match fund participation that has already been paid, or which the Local Government is agreeable to paying to the State, will be credited against EMP work to be performed by the Local Government. If applicable, this credit(s) will be reflected in Attachment D to this Agreement.
- d. Responsibilities of the Local Government on EMP(s).
  - (1) The Local Government shall be responsible for all engineering and construction, and related costs thereto, and complying with all applicable state and federal environmental regulations and permitting requirements.
  - (2) The structural or safety improvement work on the EMP(s) shall be performed subsequent to the final execution of this Agreement but within three (3) calendar years after the earliest contract award of the related PWP(s).
  - (3) Written documentation, suitable for audit, of the structural or safety improvement work completed on the EMP(s) shall be kept on file by the Local Government for four (4) years after completion of work or claims, lawsuits, or audits related thereto, whichever is longer. A notice of completion of work on the EMP(s) shall be delivered to the State’s District Engineer no later than thirty (30) calendar days after work is completed on the EMP(s).
  - (4) Failure by the Local Government to adequately complete the EMP(s) within the stated three-year period shall result in the Local Government being excluded from receiving such waivers for a minimum of five (5) years.
- e. Funding of Ineligible or Additional Work Not Waived. Regardless of any waiver of eligible program costs, the Local Government shall pay the State 100 percent of the cost of any PWP item or portion of a cost item that is not eligible for federal or state participation, and 100 percent of the costs resulting from additional work on the PWP performed solely at the request of the Local Government. If the ineligible or additional work is preliminary engineering, the payment shall be made at least thirty (30) days prior to the beginning of preliminary engineering work on the PWP.

If the ineligible or additional work is for construction or construction engineering, the payment shall be made at least forty-five (45) days prior to the date set for receipt of bids for construction of the PWP.



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**15. 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, addressed to such party at the following addresses:

State: **TxDOT**  
**Attn: Bridge Engineer**  
**1365 N. Main Street**  
**Paris, Texas 75460**

Local Government: **Hunt County**  
**Attn: County Judge**  
**P. O. Box 1097**  
**Greenville, Texas 75403**

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.

**16. Legal Construction**

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

**17. Responsibilities of the Parties**

The parties to this Agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

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Project: **Replace Off-System Bridge**  
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**18. Ownership of Documents**

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use.

All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

**19. Compliance with Laws**

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

**20. Sole Agreement**

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

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

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

**22. Procurement and Property Management Standards**

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

**23. Inspection of Books and Records**

The parties to the Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall

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make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, 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.

In accordance with Section 902 of the American Recovery and Reinvestment Act of 2009 (ARRA), should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

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

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

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

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

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

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

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Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the LG (Local Government). It is the responsibility of the LG to obtain this form from the prime Contractor and any subcontractors and, the LG shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The LG shall ensure that this form is submitted by the LG to the State according to the policies and at the direction of the State.

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

**24. Office of Management and Budget (OMB) Audit Requirements**

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

**25. Civil Rights Compliance**

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

**26. Disadvantaged Business Enterprise Program Requirements**

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

**27. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal

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Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

**28. Lobbying Certification**

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

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

By executing this Agreement, the parties affirm this lobbying certification with respect to the Project and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to

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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.

**29. Successors and Assigns**

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

**30. Local Government Restrictions**

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

**31. Signatory Warranty**

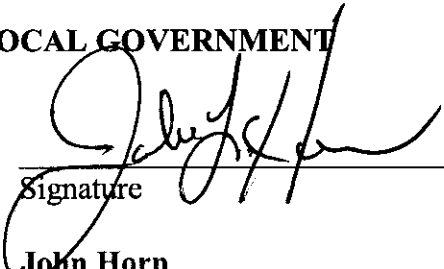
The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

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

**THE LOCAL GOVERNMENT**

By:

  
Signature

**John Horn**

Printed Name of Signatory

Title: Hunt County Judge

Date:

3-14-2011

**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:

  
David P. Hohmann, PE  
Director, Bridge Division

Date:

3/30/11

CSJ # 0901-22-084  
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CFDA # 20.205

## **ATTACHMENT A**

### **RESOLUTION OR ORDINANCE OF LOCAL GOVERNMENT**



11,878

RESOLUTION

FILED FOR RECORD  
at 1:00 o'clock P M  
MAR 17 2011  
JENNIFER LINDENZWEIG  
County Clerk, Hunt County, Tex.  
By J. Lindenzweig

The State of Texas  
County of Hunt

WHEREAS, the federal off-system bridge program is administered by the Texas Department of Transportation (the State) to replace or rehabilitate structurally deficient and functionally obsolete (collectively referred to as deficient) bridges located on public roads and streets off the designated state highway system; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Turkey Creek, on HCR 4720 (300-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0300-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Caney Creek Branch, on HCR 3201 (503-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0503-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Middle Fork of Turkey Creek, on HCR 3205 (504-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0504-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Turkey Creek Tributary, on HCR 3203 (505-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0505-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Caney Creek, on HCR 3116 (521-003), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0521-003; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Little Creek, on HCR 3511 (5097-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA5097-001; and

WHEREAS, a project to remedy the bridge(s) is included in the currently approved program of projects as authorized by Texas Transportation Commission Minute Order Number 112237 dated April 2010, Control-Section-Job (CSJ) Number 0901-22-083, 0901-22-084, 0901-22-085, 0901-22-086, 0901-22-088 and 0901-22-101 respectively; and

WHEREAS, the usual fund participation ratio for projects on such program is 80 percent federal, 10 percent state and 10 percent Local Government; and

**WHEREAS, Hunt County** has been given an Economically Disadvantage Status by the Texas Transportation Commission with the funding participation ratio set at 80 percent federal, 15.5 percent state and 4.5 percent Local Government, and;

**WHEREAS,** Texas Administrative Code, Title 43, Section 15.55(d) (43 TAC Section 15.55(d)) provides that under specified conditions the 10 percent Local Government match fund participation requirement may be waived with agreement by the Local Government to perform, or cause to be performed, an equivalent dollar amount of structural improvement work on other deficient bridges or deficient mainlane cross-drainage structures within its jurisdiction, such a project of structural improvement work being referred to as an “equivalent-match project”; and

**WHEREAS,** the estimated local match fund participation requirement on the approved federal off-system bridge project(s) is **\$45,000** (dollars), hereinafter referred to as the “participation-waived” project, such participation requirement the Local Government proposes be waived and in return perform or cause to be performed equivalent-match project structural improvement work.

**THEREFORE, BE IT RESOLVED** that the Local Government perform, or cause to be performed, the following equivalent-match project(s) in return for waiver of the local match fund participation requirement on the approved federal off-system bridge program (participation-waived) project not yet awarded:

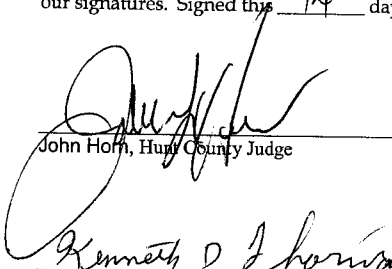
LOCATION (and NBI structure identification number, if applicable)	ON SCHOOL BUS ROUTE?	DESCRIPTION OF STRUCTURAL IMPROVEMENT WORK	ESTIMATED COST
<b>HCR 4617 near SH 11 intersection</b>	<b>Yes</b>	<b>Replace Steel Bridge (non-bridge class) with concrete bridge</b>	<b>\$ 45,000</b>

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

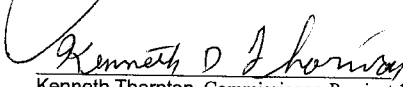
1. The Local Government must be currently in compliance with load posting and closure regulations as defined in National Bridge Inspection Standards under US Code of Federal Regulations, Title 23, Section 650.303.
2. The equivalent-match project work increases the load capacity of the existing bridge or other mainlane cross-drainage structure, or upgrades the structure to its original load capacity with a minimum upgrade to safely carry school bus loading if located on a school bus route.
3. In performing, or causing to be performed, the equivalent-match project(s), the Local Government assumes all responsibilities for engineering and construction, and complying with all applicable state and federal environmental regulations and permitting requirements for the structures being improved.
4. The work on the proposed equivalent-match project(s) will not begin until the local match fund participation waiver approval process has been completed.

5. The Local Government will be allowed three years after the contract award of the participation-waived project to complete the structural improvement work on the equivalent-match project(s).
6. Should this waiver request be approved, an appropriate written agreement or amendment to a previously executed agreement will be executed between the State and Local Government.

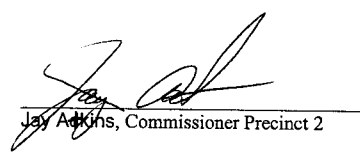
THEREFORE, IN OFFICIAL RECOGNITION WHEREOF; we the undersigned do hereby affix our signatures. Signed this 14 day of March, 2011.



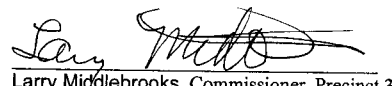
John Horn, Hunt County Judge



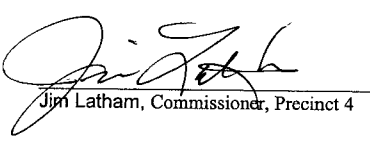
Kenneth Thornton, Commissioner, Precinct 1



Jay Adkins, Commissioner Precinct 2



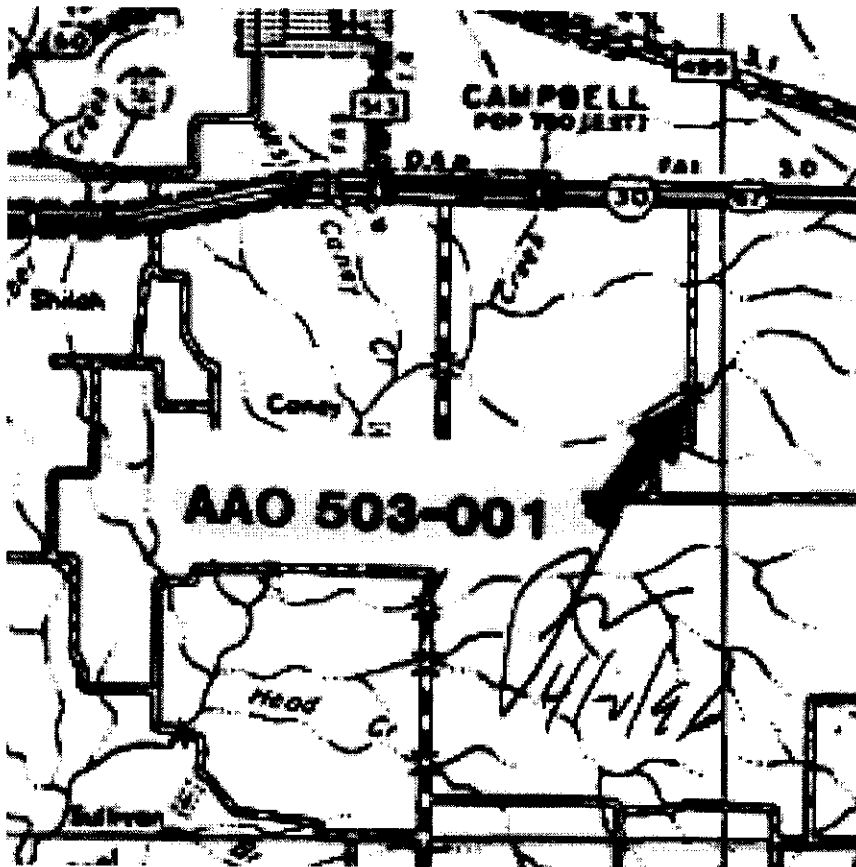
Larry Middlebrooks, Commissioner, Precinct 3



Jim Latham, Commissioner, Precinct 4

CSJ # 0901-22-084  
District # 01  
Code Chart 64 # 50117  
Project: **Replace Off-System Bridge**  
NBI Structure # 01-117-0-AA0503-001  
CFDA # 20.205

**ATTACHMENT B**  
PROJECT LOCATION MAP



CSJ # 0901-22-084  
 District # 01  
 Code Chart 64 # 50117  
 Project: **Replace Off-System Bridge**  
 NBI Structure # 01-117-0-AA0503-001  
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**ATTACHMENT C** (See Note \*\*)

LIST OF DISTRICT ENGINEER APPROVED  
EQUIVALENT-MATCH PROJECT(S) (EMP)

Location (and structure identification number, if applicable)	On School Bus Route? (Yes/No)	Historic Bridge? (Yes/No)	Description of Structural or Safety Improvement Work	Estimated Cost
CR 4617	Y	N	<b>Replace Steel Grate Bridge</b>	\$ 45,000
Total				\$45,000
EMP work credited to this PWP (See Note *)				\$7,137
Balance of EMP work available to associated PWP(s)				\$34,587
Associated PWP(s) Control-Section-Job (CSJ)			Amount to be Credited to Associated PWP (s)	
0901-22-083			\$6,588	
0901-22-084			\$7,137	
0901-22-085			\$7,686	
0901-22-086			\$6,588	
0901-22-088			\$6,588	
0901-22-101			\$7,137	
<b>Total</b>			<b>\$41,724</b>	

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

Note\*\*: This attachment not applicable for non-Participation-Waived Projects (PWP)

CSJ # 0901-22-084  
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## ATTACHMENT D

### ESTIMATE OF DIRECT COSTS

		<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE)	(1)	<u>\$22,100</u>	
Ten (10) Percent or EDC Adjusted Percent of PE for Local Government Participation <i>(Adjusted to 4.5% for EDC FY 11)</i>			(3) <u>\$995</u>
Construction		<u>\$130,000</u>	
Engineering and Contingency (E&C)		<u>\$6,500</u>	
The Sum of Construction and E&C	(2)	<u>\$136,500</u>	
Ten (10) Percent or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation <i>(Adjusted to 4.5% for EDC FY 11)</i>			(4) <u>\$6,143</u>
Amount of Advance Funds Paid by Local Government *			(5) <u>\$0.00</u>
Amount of Advance Funds to be Paid by Local Government *			(6) <u>\$0.00</u>
Balance of Local Government Participation which is to be Waived where the Project is a PWP			(3+4-5-6) <u>\$7,137</u>
Total Project Direct Cost	(1+2)	<u>\$158,600</u>	

\* Credited Against Local Government Participation Amount

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

\$7,137

11,878

CSJ # 0901-22-085  
District # 01  
Code Chart 64 # 50117  
Project: Replace Off-System Bridge  
NBI Structure # 01-117-0-AA0504-001  
CFDA # 20.205

FILED FOR RECORD  
at 1:00 o'clock  
APR 27 2011  
By County Clerk JENNIFER ANDREWS  
JENNIFER ANDREWS  
County Clerk

STATE OF TEXAS §  
COUNTY OF TRAVIS §

**ORIGINAL**

**ADVANCE FUNDING AGREEMENT**  
**For Bridge Replacement or Rehabilitation**  
**Off the State System**

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

**WITNESSETH**

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

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

**WHEREAS**, the Local Government owns a bridge or bridges located on a public road or street located at **Middle Fork of Turkey Creek on Hunt County Road 3205** and said bridge(s) is included in the currently approved off-state system federal-aid Highway Bridge Replacement and Rehabilitation Program (HBRRP) as authorized by Texas Transportation Commission Minute Order number 112237, dated **April 2010**; and

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

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

CSJ # 0901-22-085  
District # 01  
Code Chart 64 # 50117  
Project: Replace Off-System Bridge  
NBI Structure # 01-117-0-AA0504-001  
CFDA # 20.205

## AGREEMENT

### 1. Period of this Agreement

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

### 2. Conditions for Termination of this Agreement

- a. The Agreement is terminated in writing with the mutual consent of the parties; or
- b. Breach of this Agreement, in which case any cost incurred shall be paid by the breaching party; or
- c. If the Local Government elects not to develop the project and the project does not proceed, in which case the Local Government agrees to reimburse the State for 100 percent of its reasonable actual direct and indirect costs incurred for the project.

### 3. Amendments

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

### 4. Remedies

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

### 5. Scope of Work

The scope of work for this Agreement is the replacement or rehabilitation of the bridge(s) identified in the recitals of this Agreement. This replacement or rehabilitation shall be



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

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

The Local Government is responsible for the provision and acquisition of all necessary right of way and will not be reimbursed with federal or state funds for the required right of way.

The Local Government authorizes the State, its consultant, contractor, or other designated representative to enter the site(s) of said bridge(s) and adjacent right of way or relocation right of way to perform surveys, inspections, construction and other activities necessary to replace or rehabilitate said bridge and approaches.

## 7. **Adjustment of Utilities**

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

## 8. **Environmental Assessment and Mitigation**

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

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

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

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

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

**10. Architectural and Engineering Services will be Provided by the State**

The State is responsible for performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required to accomplish the public purposes of the Local Government. The State will cooperate fully with the Local Government in accomplishing these local public purposes to the degree permitted by state and federal law. The Local Government review shall not unduly delay the development of the Project.

**11. Construction Responsibilities**

- a. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- b. Upon completion of the Project, the State will issue a "Notification of Completion" acknowledging the Project's construction completion.

**12. Project Maintenance**

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

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Project: **Replace Off-System Bridge**  
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### 13. Local Project Sources and Uses of Funds

- a. A Project Cost Estimate is provided in Attachment D, "Estimate of Direct Costs".
- b. Attachment D provides a source of funds estimate as well as the estimated direct preliminary engineering, construction engineering, and construction costs for the Project in total and by the Local Government.
- c. The required Local Government participation is based solely upon the State's estimate of the eligible work at the time this Agreement is executed and will not be adjusted during construction except as needed to include any Project cost item or portion of a cost item ineligible for state or federal participation. In addition to its share of estimated direct engineering and construction costs, the Local Government is responsible for the direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the federal HBRRP. The Local Government is also responsible for any cost resulting from changes made at the request of the Local Government.
- d. After execution of this Agreement, but thirty (30) days prior to the performance of any work by the State, the Local Government will the State in the amount specified in Attachment D for the Local Government's contribution for preliminary engineering. The Local Government will pay at a minimum its funding share for this estimated cost of preliminary engineering.
- e. Forty-five (45) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs and any other costs owing.
- f. If at the completion or termination of the Project the State determines that additional funding is required by the Local Government, the State shall notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- g. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to the State Project.
- h. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.
- i. The State will not pay interest on any funds provided by the Local Government.
- j. The Local Government funding participation responsibilities include Project direct costs only, except when the Project is terminated before completion at the request

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of the Local Government as addressed in the Termination provision of this Agreement.

- k. The amounts shown on Attachment D are estimates only. If actual costs exceed the estimates, this shall be considered a fixed price agreement, and no additional funding shall be required of the Local Government except to the extent that the additional costs result from changes made at the request of the Local Government or to the extent that the additional costs are not eligible for federal participation under the Federal Highway Bridge Replacement and Rehabilitation Program. If actual costs are less than the estimates, Local Government participation shall be recalculated based on actual costs. If the recalculation results in a reduction in participation by the Local Government, the State shall pay the difference to the Local Government upon completion of the Project.
  - l. Under the provisions of Texas Transportation Code Section 222.053 certain counties qualify as Economically Disadvantaged Counties (EDC) in comparison to other counties in the state as below average per capita property value, and below average per capita income, and above average unemployment, for certain years. If applicable, in consideration of such EDC status that may be applicable for the Project, the required local match fund participation has been adjusted to **4.5** percent.
  - m. The State will not execute the contract for the construction of a Project until the required funding has been made available by the Local Government in accordance with this Agreement.
  - n. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
14. **Performance by Local Government of Equivalent-Match Projects (EMPs) in Return for Waiver of Local Match Participation Funding on Participation-Waived Projects (PWP's)**
- a. **Applicability.** If a request for waiver has been received and approved by the State's District Engineer, then the required ten percent matching fund participation or percent as adjusted for EDC consideration, as shown in Attachment D, "Estimate of Direct Costs", but excluding ineligible costs under the bridge program, is waived. This waiver is based on the commitment of the Local Government to spend an equivalent amount of funds for structural or safety improvement on "other" bridge structures and other

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conditions as specified in 43 TAC Section 15.55(d). If a waiver has been granted, the Project shall be defined to be a Participation-Waived Project (PWP) and the work on the “other” bridge structures that will be improved by the Local Government shall be defined to be the Equivalent-Match Project(s) (EMP). Attachment C to this Agreement shows a list of EMP(s) under this Agreement.

- b. Project Cost Estimate for PWP. Attachment D to this Agreement shows the estimated direct preliminary engineering, construction engineering and construction costs for the PWP in total and local match fund participation being waived, or partially waived.
- c. Credit Against EMP Work. Any local match fund participation that has already been paid, or which the Local Government is agreeable to paying to the State, will be credited against EMP work to be performed by the Local Government. If applicable, this credit(s) will be reflected in Attachment D to this Agreement.
- d. Responsibilities of the Local Government on EMP(s).
  - (1) The Local Government shall be responsible for all engineering and construction, and related costs thereto, and complying with all applicable state and federal environmental regulations and permitting requirements.
  - (2) The structural or safety improvement work on the EMP(s) shall be performed subsequent to the final execution of this Agreement but within three (3) calendar years after the earliest contract award of the related PWP(s).
  - (3) Written documentation, suitable for audit, of the structural or safety improvement work completed on the EMP(s) shall be kept on file by the Local Government for four (4) years after completion of work or claims, lawsuits, or audits related thereto, whichever is longer. A notice of completion of work on the EMP(s) shall be delivered to the State’s District Engineer no later than thirty (30) calendar days after work is completed on the EMP(s).
  - (4) Failure by the Local Government to adequately complete the EMP(s) within the stated three-year period shall result in the Local Government being excluded from receiving such waivers for a minimum of five (5) years.
- e. Funding of Ineligible or Additional Work Not Waived. Regardless of any waiver of eligible program costs, the Local Government shall pay the State 100 percent of the cost of any PWP item or portion of a cost item that is not eligible for federal or state participation, and 100 percent of the costs resulting from additional work on the PWP performed solely at the request of the Local Government. If the ineligible or additional work is preliminary engineering, the payment shall be made at least thirty (30) days prior to the beginning of preliminary engineering work on the PWP.

If the ineligible or additional work is for construction or construction engineering, the payment shall be made at least forty-five (45) days prior to the date set for receipt of bids for construction of the PWP.

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15. **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, addressed to such party at the following addresses:

State: **TxDOT**  
**Attn: Bridge Engineer**  
**1365 N. Main Street**  
**Paris, Texas 75460**

Local Government: **Hunt County**  
**Attn: County Judge**  
**P. O. Box 1097**  
**Greenville, Texas 75403**

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.

16. **Legal Construction**

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

17. **Responsibilities of the Parties**

The parties to this Agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

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**18. Ownership of Documents**

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use.

All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

**19. Compliance with Laws**

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

**20. Sole Agreement**

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

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

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

**22. Procurement and Property Management Standards**

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

**23. Inspection of Books and Records**

The parties to the Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall

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make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, 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.

In accordance with Section 902 of the American Recovery and Reinvestment Act of 2009 (ARRA), should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

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

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

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

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

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

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



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Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the LG (Local Government). It is the responsibility of the LG to obtain this form from the prime Contractor and any subcontractors and, the LG shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The LG shall ensure that this form is submitted by the LG to the State according to the policies and at the direction of the State.

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

**24. Office of Management and Budget (OMB) Audit Requirements**

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

**25. Civil Rights Compliance**

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

**26. Disadvantaged Business Enterprise Program Requirements**

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

**27. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal

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Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

## 28. **Lobbying Certification**

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

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

By executing this Agreement, the parties affirm this lobbying certification with respect to the Project and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to

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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.

**29. Successors and Assigns**

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

**30. Local Government Restrictions**

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

**31. Signatory Warranty**

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

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CFDA # 20.205

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

**THE LOCAL GOVERNMENT**

By:

  
Signature

**John Horn**

Printed Name of Signatory

Title: **Hunt County Judge**

Date:

3-14-2011

**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:

  
David P. Hohmann, PE  
Director, Bridge Division

Date:

3/30/11

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CFDA # 20.205

**ATTACHMENT A**

**RESOLUTION OR ORDINANCE OF LOCAL GOVERNMENT**

11,878

RESOLUTION

FILED FOR RECORD  
at 1:00 o'clock P M

MAR 17 2011

JENNIFER LINDENZWEIG  
County Clerk, Hunt County, Tex.  
By *J. Lindenzweig*

The State of Texas  
County of Hunt

WHEREAS, the federal off-system bridge program is administered by the Texas Department of Transportation (the State) to replace or rehabilitate structurally deficient and functionally obsolete (collectively referred to as deficient) bridges located on public roads and streets off the designated state highway system; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Turkey Creek, on HCR 4720 (300-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0300-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Caney Creek Branch, on HCR 3201 (503-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0503-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Middle Fork of Turkey Creek, on HCR 3205 (504-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0504-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Turkey Creek Tributary, on HCR 3203 (505-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0505-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Caney Creek, on HCR 3116 (521-003), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0521-003; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Little Creek, on HCR 3511 (5097-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA5097-001; and

WHEREAS, a project to remedy the bridge(s) is included in the currently approved program of projects as authorized by Texas Transportation Commission Minute Order Number 112237 dated April 2010, Control-Section-Job (CSJ) Number 0901-22-083, 0901-22-084, 0901-22-085, 0901-22-086, 0901-22-088 and 0901-22-101 respectively; and

WHEREAS, the usual fund participation ratio for projects on such program is 80 percent federal, 10 percent state and 10 percent Local Government; and

**WHEREAS, Hunt County** has been given an Economically Disadvantage Status by the Texas Transportation Commission with the funding participation ratio set at 80 percent federal, 15.5 percent state and 4.5 percent Local Government, and;

**WHEREAS,** Texas Administrative Code, Title 43, Section 15.55(d) (43 TAC Section 15.55(d)) provides that under specified conditions the 10 percent Local Government match fund participation requirement may be waived with agreement by the Local Government to perform, or cause to be performed, an equivalent dollar amount of structural improvement work on other deficient bridges or deficient mainlane cross-drainage structures within its jurisdiction, such a project of structural improvement work being referred to as an “equivalent-match project”; and

**WHEREAS,** the estimated local match fund participation requirement on the approved federal off-system bridge project(s) is **\$45,000** (dollars), hereinafter referred to as the “participation-waived” project, such participation requirement the Local Government proposes be waived and in return perform or cause to be performed equivalent-match project structural improvement work.

**THEREFORE, BE IT RESOLVED** that the Local Government perform, or cause to be performed, the following equivalent-match project(s) in return for waiver of the local match fund participation requirement on the approved federal off-system bridge program (participation-waived) project not yet awarded:

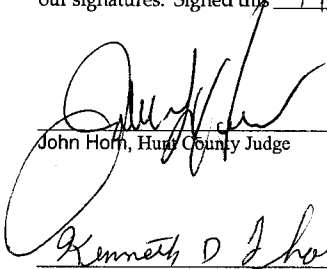
LOCATION (and NBI structure identification number, if applicable)	ON SCHOOL BUS ROUTE?	DESCRIPTION OF STRUCTURAL IMPROVEMENT WORK	ESTIMATED COST
<b>HCR 4617 near SH 11 intersection</b>	<b>Yes</b>	<b>Replace Steel Bridge (non-bridge class) with concrete bridge</b>	<b>\$ 45,000</b>

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

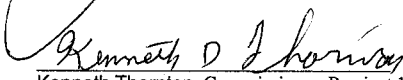
1. The Local Government must be currently in compliance with load posting and closure regulations as defined in National Bridge Inspection Standards under US Code of Federal Regulations, Title 23, Section 650.303.
2. The equivalent-match project work increases the load capacity of the existing bridge or other mainlane cross-drainage structure, or upgrades the structure to its original load capacity with a minimum upgrade to safely carry school bus loading if located on a school bus route.
3. In performing, or causing to be performed, the equivalent-match project(s), the Local Government assumes all responsibilities for engineering and construction, and complying with all applicable state and federal environmental regulations and permitting requirements for the structures being improved.
4. The work on the proposed equivalent-match project(s) will not begin until the local match fund participation waiver approval process has been completed.

5. The Local Government will be allowed three years after the contract award of the participation-waived project to complete the structural improvement work on the equivalent-match project(s).
6. Should this waiver request be approved, an appropriate written agreement or amendment to a previously executed agreement will be executed between the State and Local Government.

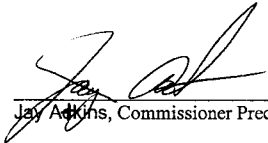
THEREFORE, IN OFFICIAL RECOGNITION WHEREOF; we the undersigned do hereby affix our signatures. Signed this 14 day of March, 2011.



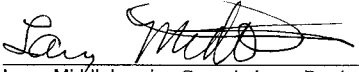
John Horn, Hurst County Judge



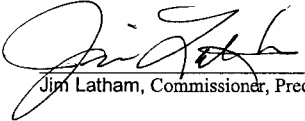
Kenneth Thornton, Commissioner, Precinct 1



Jay Adkins, Commissioner Precinct 2



Larry Middlebrooks, Commissioner, Precinct 3

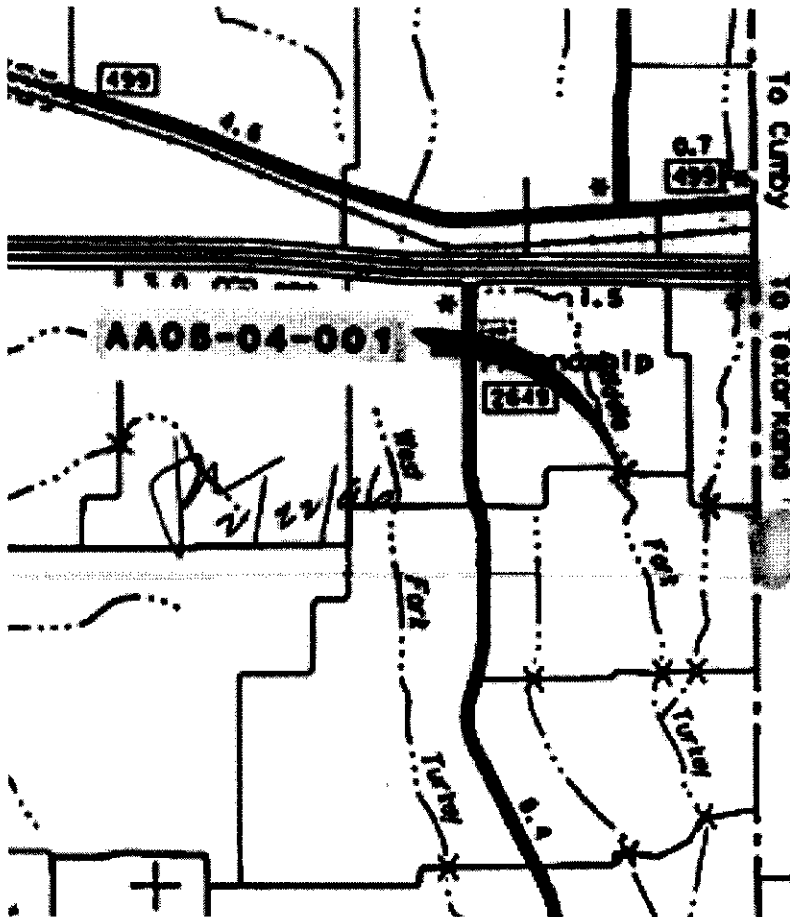


Jim Latham, Commissioner, Precinct 4



CSJ # 0901-22-085  
District # 01  
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Project: Replace Off-System Bridge  
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**ATTACHMENT B**  
PROJECT LOCATION MAP



CSJ # 0901-22-085  
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 NBI Structure # 01-117-0-AA0504-001  
 CFDA # 20.205

**ATTACHMENT C** (See Note \*\*)

LIST OF DISTRICT ENGINEER APPROVED  
EQUIVALENT-MATCH PROJECT(S) (EMP)

Location (and structure identification number, if applicable)	On School Bus Route? (Yes/No)	Historic Bridge? (Yes/No)	Description of Structural or Safety Improvement Work	Estimated Cost
CR 4617	Y	N	<b>Replace Steel Grate Bridge</b>	\$ 45,000
<b>Total</b>				<b>\$45,000</b>
EMP work credited to this PWP (See Note *)				<b>\$7,686</b>
Balance of EMP work available to associated PWP(s)				<b>\$34,038</b>
Associated PWP(s) Control-Section-Job (CSJ)			Amount to be Credited to Associated PWP (s)	
0901-22-083			<b>\$6,588</b>	
0901-22-084			<b>\$7,137</b>	
0901-22-085			<b>\$7,686</b>	
0901-22-086			<b>\$6,588</b>	
0901-22-088			<b>\$6,588</b>	
0901-22-101			<b>\$7,137</b>	
<b>Total</b>			<b>\$41,724</b>	

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

Note \*\*: This attachment not applicable for non-Participation-Waived Projects (PWP)

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## ATTACHMENT D

### ESTIMATE OF DIRECT COSTS

		<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE)	(1)	\$23,800	
Ten (10) Percent or EDC Adjusted Percent of PE for Local Government Participation <i>(Adjusted to 4.5% for EDC FY 11)</i>			(3) \$1,071
Construction		\$140,000	
Engineering and Contingency (E&C)		\$7,000	
The Sum of Construction and E&C	(2)	\$147,000	
Ten (10) Percent or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation <i>(Adjusted to 4.5% for EDC FY 11)</i>			(4) \$6,615
Amount of Advance Funds Paid by Local Government *			(5) \$0.00
Amount of Advance Funds to be Paid by Local Government *			(6) \$0.00
Balance of Local Government Participation which is to be Waived where the Project is a PWP			(3+4-5-6) \$7,686
Total Project Direct Cost	(1+2)	\$170,800	

\* Credited Against Local Government Participation Amount

If this Project is to be a PWP, Amount of EMP Work Being Credited to this PWP as Shown on Attachment C.	<b>\$7,686</b>
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11,878

CSJ # 0901-22-086  
District # 01  
Code Chart 64 # 50117  
Project: Replace Off-System  
NBI Structure # 01-117-0-AA0505-001  
CFDA # 20.205

FILED FOR RECORD  
at 1:00 o'clock  
APR 27 2011  
JENNIFER LINDENZWEIG  
County Clerk, Hunt County, Tex.

STATE OF TEXAS §  
COUNTY OF TRAVIS §

ORIGINAL

**ADVANCE FUNDING AGREEMENT  
For Bridge Replacement or Rehabilitation  
Off the State System**

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

**WITNESSETH**

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

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

**WHEREAS**, the Local Government owns a bridge or bridges located on a public road or street located at **Turkey Creek Tributary on Hunt County Road 3203** and said bridge(s) is included in the currently approved off-state system federal-aid Highway Bridge Replacement and Rehabilitation Program (HBRRP) as authorized by Texas Transportation Commission Minute Order number 112237, dated **April 2010**; and

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

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

CSJ # 0901-22-086  
District # 01  
Code Chart 64 # 50117  
Project: Replace Off-System Bridge  
NBI Structure # 01-117-0-AA0505-001  
CFDA # 20.205

## AGREEMENT

### 1. Period of this Agreement

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

### 2. Conditions for Termination of this Agreement

- a. The Agreement is terminated in writing with the mutual consent of the parties; or
- b. Breach of this Agreement, in which case any cost incurred shall be paid by the breaching party; or
- c. If the Local Government elects not to develop the project and the project does not proceed, in which case the Local Government agrees to reimburse the State for 100 percent of its reasonable actual direct and indirect costs incurred for the project.

### 3. Amendments

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

### 4. Remedies

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

### 5. Scope of Work

The scope of work for this Agreement is the replacement or rehabilitation of the bridge(s) identified in the recitals of this Agreement. This replacement or rehabilitation shall be

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

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

The Local Government is responsible for the provision and acquisition of all necessary right of way and will not be reimbursed with federal or state funds for the required right of way.

The Local Government authorizes the State, its consultant, contractor, or other designated representative to enter the site(s) of said bridge(s) and adjacent right of way or relocation right of way to perform surveys, inspections, construction and other activities necessary to replace or rehabilitate said bridge and approaches.

**7. Adjustment of Utilities**

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

**8. Environmental Assessment and Mitigation**

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

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

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

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

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

**10. Architectural and Engineering Services will be Provided by the State**

The State is responsible for performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required to accomplish the public purposes of the Local Government. The State will cooperate fully with the Local Government in accomplishing these local public purposes to the degree permitted by state and federal law. The Local Government review shall not unduly delay the development of the Project.

**11. Construction Responsibilities**

- a. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- b. Upon completion of the Project, the State will issue a "Notification of Completion" acknowledging the Project's construction completion.

**12. Project Maintenance**

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

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

- a. A Project Cost Estimate is provided in Attachment D, "Estimate of Direct Costs".
- b. Attachment D provides a source of funds estimate as well as the estimated direct preliminary engineering, construction engineering, and construction costs for the Project in total and by the Local Government.
- c. The required Local Government participation is based solely upon the State's estimate of the eligible work at the time this Agreement is executed and will not be adjusted during construction except as needed to include any Project cost item or portion of a cost item ineligible for state or federal participation. In addition to its share of estimated direct engineering and construction costs, the Local Government is responsible for the direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the federal HBRRP. The Local Government is also responsible for any cost resulting from changes made at the request of the Local Government.
- d. After execution of this Agreement, but thirty (30) days prior to the performance of any work by the State, the Local Government will the State in the amount specified in Attachment D for the Local Government's contribution for preliminary engineering. The Local Government will pay at a minimum its funding share for this estimated cost of preliminary engineering.
- e. Forty-five (45) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs and any other costs owing.
- f. If at the completion or termination of the Project the State determines that additional funding is required by the Local Government, the State shall notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- g. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to the State Project.
- h. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.
- i. The State will not pay interest on any funds provided by the Local Government.
- j. The Local Government funding participation responsibilities include Project direct costs only, except when the Project is terminated before completion at the request



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of the Local Government as addressed in the Termination provision of this Agreement.

- k. The amounts shown on Attachment D are estimates only. If actual costs exceed the estimates, this shall be considered a fixed price agreement, and no additional funding shall be required of the Local Government except to the extent that the additional costs result from changes made at the request of the Local Government or to the extent that the additional costs are not eligible for federal participation under the Federal Highway Bridge Replacement and Rehabilitation Program. If actual costs are less than the estimates, Local Government participation shall be recalculated based on actual costs. If the recalculation results in a reduction in participation by the Local Government, the State shall pay the difference to the Local Government upon completion of the Project.
- l. Under the provisions of Texas Transportation Code Section 222.053 certain counties qualify as Economically Disadvantaged Counties (EDC) in comparison to other counties in the state as below average per capita property value, and below average per capita income, and above average unemployment, for certain years. If applicable, in consideration of such EDC status that may be applicable for the Project, the required local match fund participation has been adjusted to 4.5 percent.
- m. The State will not execute the contract for the construction of a Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- n. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

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

- a. **Applicability.** If a request for waiver has been received and approved by the State's District Engineer, then the required ten percent matching fund participation or percent as adjusted for EDC consideration, as shown in Attachment D, "Estimate of Direct Costs", but excluding ineligible costs under the bridge program, is waived. This waiver is based on the commitment of the Local Government to spend an equivalent amount of funds for structural or safety improvement on "other" bridge structures and other

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conditions as specified in 43 TAC Section 15.55(d). If a waiver has been granted, the Project shall be defined to be a Participation-Waived Project (PWP) and the work on the “other” bridge structures that will be improved by the Local Government shall be defined to be the Equivalent-Match Project(s) (EMP). Attachment C to this Agreement shows a list of EMP(s) under this Agreement.

- b. Project Cost Estimate for PWP. Attachment D to this Agreement shows the estimated direct preliminary engineering, construction engineering and construction costs for the PWP in total and local match fund participation being waived, or partially waived.
- c. Credit Against EMP Work. Any local match fund participation that has already been paid, or which the Local Government is agreeable to paying to the State, will be credited against EMP work to be performed by the Local Government. If applicable, this credit(s) will be reflected in Attachment D to this Agreement.
- d. Responsibilities of the Local Government on EMP(s).
  - (1) The Local Government shall be responsible for all engineering and construction, and related costs thereto, and complying with all applicable state and federal environmental regulations and permitting requirements.
  - (2) The structural or safety improvement work on the EMP(s) shall be performed subsequent to the final execution of this Agreement but within three (3) calendar years after the earliest contract award of the related PWP(s).
  - (3) Written documentation, suitable for audit, of the structural or safety improvement work completed on the EMP(s) shall be kept on file by the Local Government for four (4) years after completion of work or claims, lawsuits, or audits related thereto, whichever is longer. A notice of completion of work on the EMP(s) shall be delivered to the State’s District Engineer no later than thirty (30) calendar days after work is completed on the EMP(s).
  - (4) Failure by the Local Government to adequately complete the EMP(s) within the stated three-year period shall result in the Local Government being excluded from receiving such waivers for a minimum of five (5) years.
- e. Funding of Ineligible or Additional Work Not Waived. Regardless of any waiver of eligible program costs, the Local Government shall pay the State 100 percent of the cost of any PWP item or portion of a cost item that is not eligible for federal or state participation, and 100 percent of the costs resulting from additional work on the PWP performed solely at the request of the Local Government. If the ineligible or additional work is preliminary engineering, the payment shall be made at least thirty (30) days prior to the beginning of preliminary engineering work on the PWP.

If the ineligible or additional work is for construction or construction engineering, the payment shall be made at least forty-five (45) days prior to the date set for receipt of bids for construction of the PWP.

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**15. 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, addressed to such party at the following addresses:

State: **TxDOT**  
**Attn: Bridge Engineer**  
**1365 N. Main Street**  
**Paris, Texas 75460**

Local Government: **Hunt County**  
**Attn: County Judge**  
**P. O. Box 1097**  
**Greenville, Texas 75403**

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.

**16. Legal Construction**

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

**17. Responsibilities of the Parties**

The parties to this Agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

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**18. Ownership of Documents**

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use.

All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

**19. Compliance with Laws**

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

**20. Sole Agreement**

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

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

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

**22. Procurement and Property Management Standards**

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

**23. Inspection of Books and Records**

The parties to the Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall

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make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, 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.

In accordance with Section 902 of the American Recovery and Reinvestment Act of 2009 (ARRA), should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

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

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

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

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

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

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

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Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the LG (Local Government). It is the responsibility of the LG to obtain this form from the prime Contractor and any subcontractors and, the LG shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The LG shall ensure that this form is submitted by the LG to the State according to the policies and at the direction of the State.

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

**24. Office of Management and Budget (OMB) Audit Requirements**

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

**25. Civil Rights Compliance**

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

**26. Disadvantaged Business Enterprise Program Requirements**

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

**27. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal

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Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

## 28. **Lobbying Certification**

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

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

By executing this Agreement, the parties affirm this lobbying certification with respect to the Project and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to

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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.

**29. Successors and Assigns**

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

**30. Local Government Restrictions**

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

**31. Signatory Warranty**

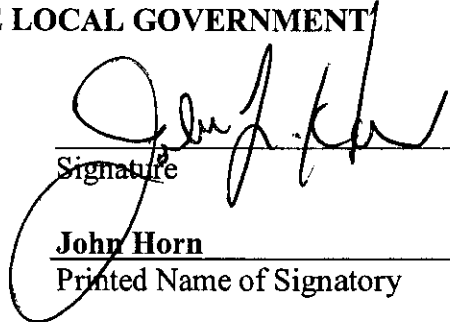
The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.



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

**THE LOCAL GOVERNMENT**

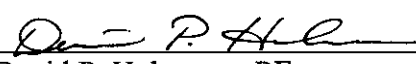
By:   
Signature  
John Horn  
Printed Name of Signatory

Title: Hunt County Judge

Date: 3-14-2011

**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:   
David P. Hohmann, PE  
Director, Bridge Division

Date: 3/30/11

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## **ATTACHMENT A**

### **RESOLUTION OR ORDINANCE OF LOCAL GOVERNMENT**

11,878

RESOLUTION

FILED FOR RECORD  
at 1:00 o'clock P M  
MAR 17 2011  
JENNIFER LINDENZWEIG  
County Clerk, Hunt County, Tex.  
By J. Lindenzweig

The State of Texas  
County of Hunt

WHEREAS, the federal off-system bridge program is administered by the Texas Department of Transportation (the State) to replace or rehabilitate structurally deficient and functionally obsolete (collectively referred to as deficient) bridges located on public roads and streets off the designated state highway system; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Turkey Creek, on HCR 4720 (300-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0300-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Caney Creek Branch, on HCR 3201 (503-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0503-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Middle Fork of Turkey Creek, on HCR 3205 (504-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0504-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Turkey Creek Tributary, on HCR 3203 (505-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0505-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Caney Creek, on HCR 3116 (521-003), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0521-003; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Little Creek, on HCR 3511 (5097-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA5097-001; and

WHEREAS, a project to remedy the bridge(s) is included in the currently approved program of projects as authorized by Texas Transportation Commission Minute Order Number 112237 dated April 2010, Control-Section-Job (CSJ) Number 0901-22-083, 0901-22-084, 0901-22-085, 0901-22-086, 0901-22-088 and 0901-22-101 respectively; and

WHEREAS, the usual fund participation ratio for projects on such program is 80 percent federal, 10 percent state and 10 percent Local Government; and

**WHEREAS, Hunt County** has been given an Economically Disadvantage Status by the Texas Transportation Commission with the funding participation ratio set at 80 percent federal, 15.5 percent state and 4.5 percent Local Government, and;

**WHEREAS,** Texas Administrative Code, Title 43, Section 15.55(d) (43 TAC Section 15.55(d)) provides that under specified conditions the 10 percent Local Government match fund participation requirement may be waived with agreement by the Local Government to perform, or cause to be performed, an equivalent dollar amount of structural improvement work on other deficient bridges or deficient mainlane cross-drainage structures within its jurisdiction, such a project of structural improvement work being referred to as an “equivalent-match project”; and

**WHEREAS,** the estimated local match fund participation requirement on the approved federal off-system bridge project(s) is **\$45,000** (dollars), hereinafter referred to as the “participation-waived” project, such participation requirement the Local Government proposes be waived and in return perform or cause to be performed equivalent-match project structural improvement work.

**THEREFORE, BE IT RESOLVED** that the Local Government perform, or cause to be performed, the following equivalent-match project(s) in return for waiver of the local match fund participation requirement on the approved federal off-system bridge program (participation-waived) project not yet awarded:

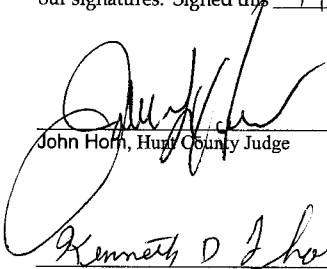
LOCATION (and NBI structure identification number, if applicable)	ON SCHOOL BUS ROUTE?	DESCRIPTION OF STRUCTURAL IMPROVEMENT WORK	ESTIMATED COST
<b>HCR 4617 near SH 11 intersection</b>	<b>Yes</b>	<b>Replace Steel Bridge (non-bridge class) with concrete bridge</b>	<b>\$ 45,000</b>

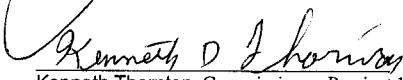
**BE IT FURTHER RESOLVED** that in receiving this waiver the Local Government acknowledges its obligation to conform with all conditions of 43 TAC Section 15.55(d); such conditions that include but are not restricted to the following:

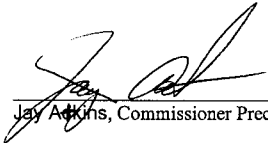
1. The Local Government must be currently in compliance with load posting and closure regulations as defined in National Bridge Inspection Standards under US Code of Federal Regulations, Title 23, Section 650.303.
2. The equivalent-match project work increases the load capacity of the existing bridge or other mainlane cross-drainage structure, or upgrades the structure to its original load capacity with a minimum upgrade to safely carry school bus loading if located on a school bus route.
3. In performing, or causing to be performed, the equivalent-match project(s), the Local Government assumes all responsibilities for engineering and construction, and complying with all applicable state and federal environmental regulations and permitting requirements for the structures being improved.
4. The work on the proposed equivalent-match project(s) will not begin until the local match fund participation waiver approval process has been completed.

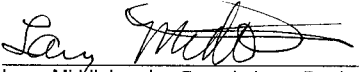
5. The Local Government will be allowed three years after the contract award of the participation-waived project to complete the structural improvement work on the equivalent-match project(s).
6. Should this waiver request be approved, an appropriate written agreement or amendment to a previously executed agreement will be executed between the State and Local Government.

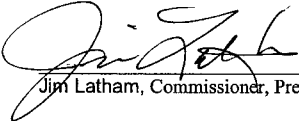
THEREFORE, IN OFFICIAL RECOGNITION WHEREOF; we the undersigned do hereby affix our signatures. Signed this 14 day of March, 2011.

  
\_\_\_\_\_  
John Horn, Hunt County Judge

  
\_\_\_\_\_  
Kenneth Thornton, Commissioner, Precinct 1

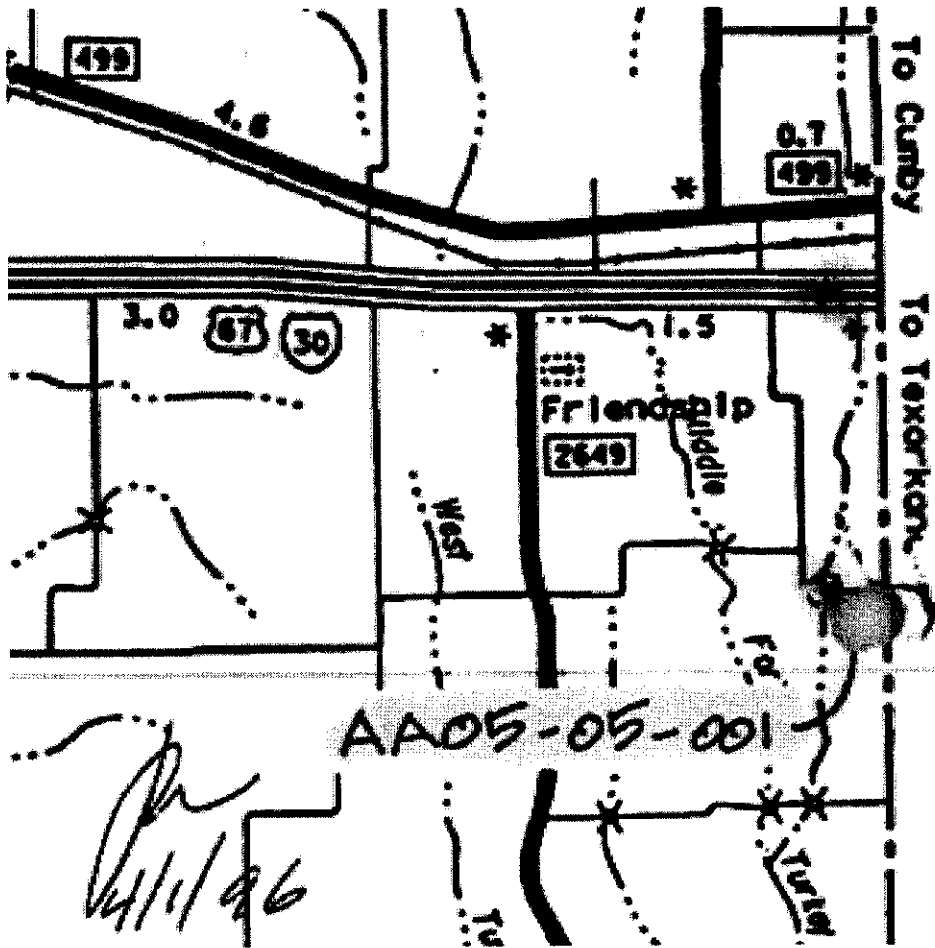
  
\_\_\_\_\_  
Jay Atkins, Commissioner Precinct 2

  
\_\_\_\_\_  
Larry Middlebrooks, Commissioner, Precinct 3

  
\_\_\_\_\_  
Jim Latham, Commissioner, Precinct 4

CSJ # 0901-22-086  
District # 01  
Code Chart 64 # 50117  
Project: Replace Off-System Bridge  
NBI Structure # 01-117-0-AA0505-001  
CFDA # 20.205

**ATTACHMENT B**  
PROJECT LOCATION MAP



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 Code Chart 64 # 50117  
 Project: **Replace Off-System Bridge**  
 NBI Structure # 01-117-0-AA0505-001  
 CFDA # 20.205

**ATTACHMENT C (See Note \*\*)**

LIST OF DISTRICT ENGINEER APPROVED  
 EQUIVALENT-MATCH PROJECT(S) (EMP)

Location (and structure identification number, if applicable)	On School Bus Route? (Yes/No)	Historic Bridge? (Yes/No)	Description of Structural or Safety Improvement Work	Estimated Cost
CR 4617	Y	N	<b>Replace Steel Grate Bridge</b>	\$ 45,000
<b>Total</b>				<b>\$45,000</b>
EMP work credited to this PWP (See Note *)				<b>\$6,588</b>
Balance of EMP work available to associated PWP(s)				<b>\$35,136</b>
Associated PWP(s) Control-Section-Job (CSJ)			Amount to be Credited to Associated PWP (s)	
0901-22-083			<b>\$6,588</b>	
0901-22-084			<b>\$7,137</b>	
0901-22-085			<b>\$7,686</b>	
0901-22-086			<b>\$6,588</b>	
0901-22-088			<b>\$6,588</b>	
0901-22-101			<b>\$7,137</b>	
<b>Total</b>			<b>\$41,724</b>	

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

Note \*\*: This attachment not applicable for non-Participation-Waived Projects (PWP)

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## ATTACHMENT D

### ESTIMATE OF DIRECT COSTS

	<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE)	(1) <u>\$20,400</u>	
Ten (10) Percent or EDC Adjusted Percent of PE for Local Government Participation <i>(Adjusted to 4.5% for EDC FY 11)</i>		(3) <u>\$918</u>
Construction	<u>\$120,000</u>	
Engineering and Contingency (E&C)	<u>\$6,000</u>	
The Sum of Construction and E&C	(2) <u>\$126,000</u>	
Ten (10) Percent or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation <i>(Adjusted to 4.5% for EDC FY 11)</i>		(4) <u>\$5,670</u>
Amount of Advance Funds Paid by Local Government *		(5) <u>\$0.00</u>
Amount of Advance Funds to be Paid by Local Government *		(6) <u>\$0.00</u>
Balance of Local Government Participation which is to be Waived where the Project is a PWP		(3+4-5-6) <u>\$6,588</u>
Total Project Direct Cost	(1+2) <u>\$146,400</u>	

\* Credited Against Local Government Participation Amount

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

**\$6,588**



11,878

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Project: Replace Off-System  
NBI Structure # 01-117-0-AA0521-003  
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FILED FOR RECORD  
at 1:00 o'clock  
APR 27 2011

JENNIFER UNDERZWEIG  
By County Clerk  
HUNT COUNTY TEXAS  
J. G. GALT

**ORIGINAL**

STATE OF TEXAS §  
COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT  
For Bridge Replacement or Rehabilitation  
Off the State System**

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

**WITNESSETH**

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

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

**WHEREAS**, the Local Government owns a bridge or bridges located on a public road or street located at **Caney Creek on Hunt County Road 3116** and said bridge(s) is included in the currently approved off-state system federal-aid Highway Bridge Replacement and Rehabilitation Program (HBRRP) as authorized by Texas Transportation Commission Minute Order number **112237**, dated **April 2010**; and

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

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

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## AGREEMENT

### 1. Period of this Agreement

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

### 2. Conditions for Termination of this Agreement

- a. The Agreement is terminated in writing with the mutual consent of the parties; or
- b. Breach of this Agreement, in which case any cost incurred shall be paid by the breaching party; or
- c. If the Local Government elects not to develop the project and the project does not proceed, in which case the Local Government agrees to reimburse the State for 100 percent of its reasonable actual direct and indirect costs incurred for the project.

### 3. Amendments

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

### 4. Remedies

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

### 5. Scope of Work

The scope of work for this Agreement is the replacement or rehabilitation of the bridge(s) identified in the recitals of this Agreement. This replacement or rehabilitation shall be

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

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

The Local Government is responsible for the provision and acquisition of all necessary right of way and will not be reimbursed with federal or state funds for the required right of way.

The Local Government authorizes the State, its consultant, contractor, or other designated representative to enter the site(s) of said bridge(s) and adjacent right of way or relocation right of way to perform surveys, inspections, construction and other activities necessary to replace or rehabilitate said bridge and approaches.

**7. Adjustment of Utilities**

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

**8. Environmental Assessment and Mitigation**

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

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

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

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

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

**10. Architectural and Engineering Services will be Provided by the State**

The State is responsible for performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required to accomplish the public purposes of the Local Government. The State will cooperate fully with the Local Government in accomplishing these local public purposes to the degree permitted by state and federal law. The Local Government review shall not unduly delay the development of the Project.

**11. Construction Responsibilities**

- a. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- b. Upon completion of the Project, the State will issue a "Notification of Completion" acknowledging the Project's construction completion.

**12. Project Maintenance**

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

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

- a. A Project Cost Estimate is provided in Attachment D, "Estimate of Direct Costs".
- b. Attachment D provides a source of funds estimate as well as the estimated direct preliminary engineering, construction engineering, and construction costs for the Project in total and by the Local Government.
- c. The required Local Government participation is based solely upon the State's estimate of the eligible work at the time this Agreement is executed and will not be adjusted during construction except as needed to include any Project cost item or portion of a cost item ineligible for state or federal participation. In addition to its share of estimated direct engineering and construction costs, the Local Government is responsible for the direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the federal HBRRP. The Local Government is also responsible for any cost resulting from changes made at the request of the Local Government.
- d. After execution of this Agreement, but thirty (30) days prior to the performance of any work by the State, the Local Government will the State in the amount specified in Attachment D for the Local Government's contribution for preliminary engineering. The Local Government will pay at a minimum its funding share for this estimated cost of preliminary engineering.
- e. Forty-five (45) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs and any other costs owing.
- f. If at the completion or termination of the Project the State determines that additional funding is required by the Local Government, the State shall notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- g. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to the State Project.
- h. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.
- i. The State will not pay interest on any funds provided by the Local Government.
- j. The Local Government funding participation responsibilities include Project direct costs only, except when the Project is terminated before completion at the request

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of the Local Government as addressed in the Termination provision of this Agreement.

- k. The amounts shown on Attachment D are estimates only. If actual costs exceed the estimates, this shall be considered a fixed price agreement, and no additional funding shall be required of the Local Government except to the extent that the additional costs result from changes made at the request of the Local Government or to the extent that the additional costs are not eligible for federal participation under the Federal Highway Bridge Replacement and Rehabilitation Program. If actual costs are less than the estimates, Local Government participation shall be recalculated based on actual costs. If the recalculation results in a reduction in participation by the Local Government, the State shall pay the difference to the Local Government upon completion of the Project.
  - l. Under the provisions of Texas Transportation Code Section 222.053 certain counties qualify as Economically Disadvantaged Counties (EDC) in comparison to other counties in the state as below average per capita property value, and below average per capita income, and above average unemployment, for certain years. If applicable, in consideration of such EDC status that may be applicable for the Project, the required local match fund participation has been adjusted to 4.5 percent.
  - m. The State will not execute the contract for the construction of a Project until the required funding has been made available by the Local Government in accordance with this Agreement.
  - n. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
14. **Performance by Local Government of Equivalent-Match Projects (EMPs) in Return for Waiver of Local Match Participation Funding on Participation-Waived Projects (PWP's)**
- a. **Applicability.** If a request for waiver has been received and approved by the State's District Engineer, then the required ten percent matching fund participation or percent as adjusted for EDC consideration, as shown in Attachment D, "Estimate of Direct Costs", but excluding ineligible costs under the bridge program, is waived. This waiver is based on the commitment of the Local Government to spend an equivalent amount of funds for structural or safety improvement on "other" bridge structures and other

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conditions as specified in 43 TAC Section 15.55(d). If a waiver has been granted, the Project shall be defined to be a Participation-Waived Project (PWP) and the work on the "other" bridge structures that will be improved by the Local Government shall be defined to be the Equivalent-Match Project(s) (EMP). Attachment C to this Agreement shows a list of EMP(s) under this Agreement.

- b. Project Cost Estimate for PWP. Attachment D to this Agreement shows the estimated direct preliminary engineering, construction engineering and construction costs for the PWP in total and local match fund participation being waived, or partially waived.
- c. Credit Against EMP Work. Any local match fund participation that has already been paid, or which the Local Government is agreeable to paying to the State, will be credited against EMP work to be performed by the Local Government. If applicable, this credit(s) will be reflected in Attachment D to this Agreement.
- d. Responsibilities of the Local Government on EMP(s).
  - (1) The Local Government shall be responsible for all engineering and construction, and related costs thereto, and complying with all applicable state and federal environmental regulations and permitting requirements.
  - (2) The structural or safety improvement work on the EMP(s) shall be performed subsequent to the final execution of this Agreement but within three (3) calendar years after the earliest contract award of the related PWP(s).
  - (3) Written documentation, suitable for audit, of the structural or safety improvement work completed on the EMP(s) shall be kept on file by the Local Government for four (4) years after completion of work or claims, lawsuits, or audits related thereto, whichever is longer. A notice of completion of work on the EMP(s) shall be delivered to the State's District Engineer no later than thirty (30) calendar days after work is completed on the EMP(s).
  - (4) Failure by the Local Government to adequately complete the EMP(s) within the stated three-year period shall result in the Local Government being excluded from receiving such waivers for a minimum of five (5) years.
- e. Funding of Ineligible or Additional Work Not Waived. Regardless of any waiver of eligible program costs, the Local Government shall pay the State 100 percent of the cost of any PWP item or portion of a cost item that is not eligible for federal or state participation, and 100 percent of the costs resulting from additional work on the PWP performed solely at the request of the Local Government. If the ineligible or additional work is preliminary engineering, the payment shall be made at least thirty (30) days prior to the beginning of preliminary engineering work on the PWP.

If the ineligible or additional work is for construction or construction engineering, the payment shall be made at least forty-five (45) days prior to the date set for receipt of bids for construction of the PWP.

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**15. 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, addressed to such party at the following addresses:

State: **TxDOT**  
**Attn: Bridge Engineer**  
**1365 N. Main Street**  
**Paris, Texas 75460**

Local Government: **Hunt County**  
**Attn: County Judge**  
**P. O. Box 1097**  
**Greenville, Texas 75403**

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.

**16. Legal Construction**

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

**17. Responsibilities of the Parties**

The parties to this Agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.



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**18. Ownership of Documents**

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use.

All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

**19. Compliance with Laws**

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

**20. Sole Agreement**

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

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

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

**22. Procurement and Property Management Standards**

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

**23. Inspection of Books and Records**

The parties to the Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall

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make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, 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.

In accordance with Section 902 of the American Recovery and Reinvestment Act of 2009 (ARRA), should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

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

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

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

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

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

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

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Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the LG (Local Government). It is the responsibility of the LG to obtain this form from the prime Contractor and any subcontractors and, the LG shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The LG shall ensure that this form is submitted by the LG to the State according to the policies and at the direction of the State.

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

**24. Office of Management and Budget (OMB) Audit Requirements**

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

**25. Civil Rights Compliance**

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

**26. Disadvantaged Business Enterprise Program Requirements**

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

**27. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal

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Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

## 28. **Lobbying Certification**

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

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

By executing this Agreement, the parties affirm this lobbying certification with respect to the Project and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to

CSJ # 0901-22-088  
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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.

**29. Successors and Assigns**

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

**30. Local Government Restrictions**

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

**31. Signatory Warranty**

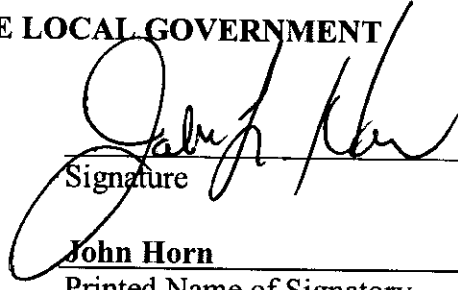
The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

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

**THE LOCAL GOVERNMENT**

By:

  
\_\_\_\_\_  
Signature

**John Horn**  
\_\_\_\_\_  
Printed Name of Signatory

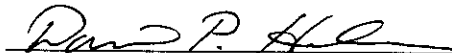
Title: **Hunt County Judge**  
\_\_\_\_\_

Date: 3-14-2011

**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:

  
\_\_\_\_\_  
David P. Hohmann, PE  
Director, Bridge Division

Date: 3/30/11

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CFDA # 20.205

**ATTACHMENT A**

RESOLUTION OR ORDINANCE OF LOCAL GOVERNMENT

11,878

RESOLUTION

FILED FOR RECORD  
at 1:00 o'clock P M  
MAR 17 2011  
JENNIFER LINDENZIWEIG  
County Clerk, Hunt County, Tex.  
By J. Lindenziweig

The State of Texas  
County of Hunt

WHEREAS, the federal off-system bridge program is administered by the Texas Department of Transportation (the State) to replace or rehabilitate structurally deficient and functionally obsolete (collectively referred to as deficient) bridges located on public roads and streets off the designated state highway system; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Turkey Creek, on HCR 4720 (300-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0300-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Caney Creek Branch, on HCR 3201 (503-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0503-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Middle Fork of Turkey Creek, on HCR 3205 (504-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0504-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Turkey Creek Tributary, on HCR 3203 (505-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0505-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Caney Creek, on HCR 3116 (521-003), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0521-003; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Little Creek, on HCR 3511 (5097-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA5097-001; and

WHEREAS, a project to remedy the bridge(s) is included in the currently approved program of projects as authorized by Texas Transportation Commission Minute Order Number 112237 dated April 2010, Control-Section-Job (CSJ) Number 0901-22-083, 0901-22-084, 0901-22-085, 0901-22-086, 0901-22-088 and 0901-22-101 respectively; and

WHEREAS, the usual fund participation ratio for projects on such program is 80 percent federal, 10 percent state and 10 percent Local Government; and



**WHEREAS, Hunt County** has been given an Economically Disadvantage Status by the Texas Transportation Commission with the funding participation ratio set at 80 percent federal, 15.5 percent state and 4.5 percent Local Government, and;

**WHEREAS,** Texas Administrative Code, Title 43, Section 15.55(d) (43 TAC Section 15.55(d)) provides that under specified conditions the 10 percent Local Government match fund participation requirement may be waived with agreement by the Local Government to perform, or cause to be performed, an equivalent dollar amount of structural improvement work on other deficient bridges or deficient mainlane cross-drainage structures within its jurisdiction, such a project of structural improvement work being referred to as an “equivalent-match project”; and

**WHEREAS,** the estimated local match fund participation requirement on the approved federal off-system bridge project(s) is **\$45,000** (dollars), hereinafter referred to as the “participation-waived” project, such participation requirement the Local Government proposes be waived and in return perform or cause to be performed equivalent-match project structural improvement work.

**THEREFORE, BE IT RESOLVED** that the Local Government perform, or cause to be performed, the following equivalent-match project(s) in return for waiver of the local match fund participation requirement on the approved federal off-system bridge program (participation-waived) project not yet awarded:

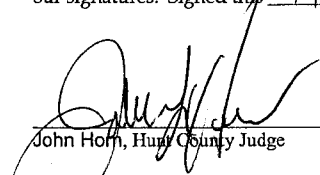
LOCATION (and NBI structure identification number, if applicable)	ON SCHOOL BUS ROUTE?	DESCRIPTION OF STRUCTURAL IMPROVEMENT WORK	ESTIMATED COST
<b>HCR 4617 near SH 11 intersection</b>	<b>Yes</b>	<b>Replace Steel Bridge (non-bridge class) with concrete bridge</b>	<b>\$ 45,000</b>

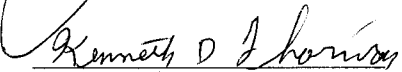
**BE IT FURTHER RESOLVED** that in receiving this waiver the Local Government acknowledges its obligation to conform with all conditions of 43 TAC Section 15.55(d); such conditions that include but are not restricted to the following:

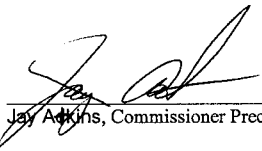
1. The Local Government must be currently in compliance with load posting and closure regulations as defined in National Bridge Inspection Standards under US Code of Federal Regulations, Title 23, Section 650.303.
2. The equivalent-match project work increases the load capacity of the existing bridge or other mainlane cross-drainage structure, or upgrades the structure to its original load capacity with a minimum upgrade to safely carry school bus loading if located on a school bus route.
3. In performing, or causing to be performed, the equivalent-match project(s), the Local Government assumes all responsibilities for engineering and construction, and complying with all applicable state and federal environmental regulations and permitting requirements for the structures being improved.
4. The work on the proposed equivalent-match project(s) will not begin until the local match fund participation waiver approval process has been completed.

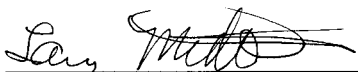
5. The Local Government will be allowed three years after the contract award of the participation-waived project to complete the structural improvement work on the equivalent-match project(s).
6. Should this waiver request be approved, an appropriate written agreement or amendment to a previously executed agreement will be executed between the State and Local Government.


THEREFORE, IN OFFICIAL RECOGNITION WHEREOF, we the undersigned do hereby affix our signatures. Signed this 14 day of March, 2011.

  
\_\_\_\_\_  
John Hoff, Hunt County Judge

  
\_\_\_\_\_  
Kenneth Thornton, Commissioner, Precinct 1

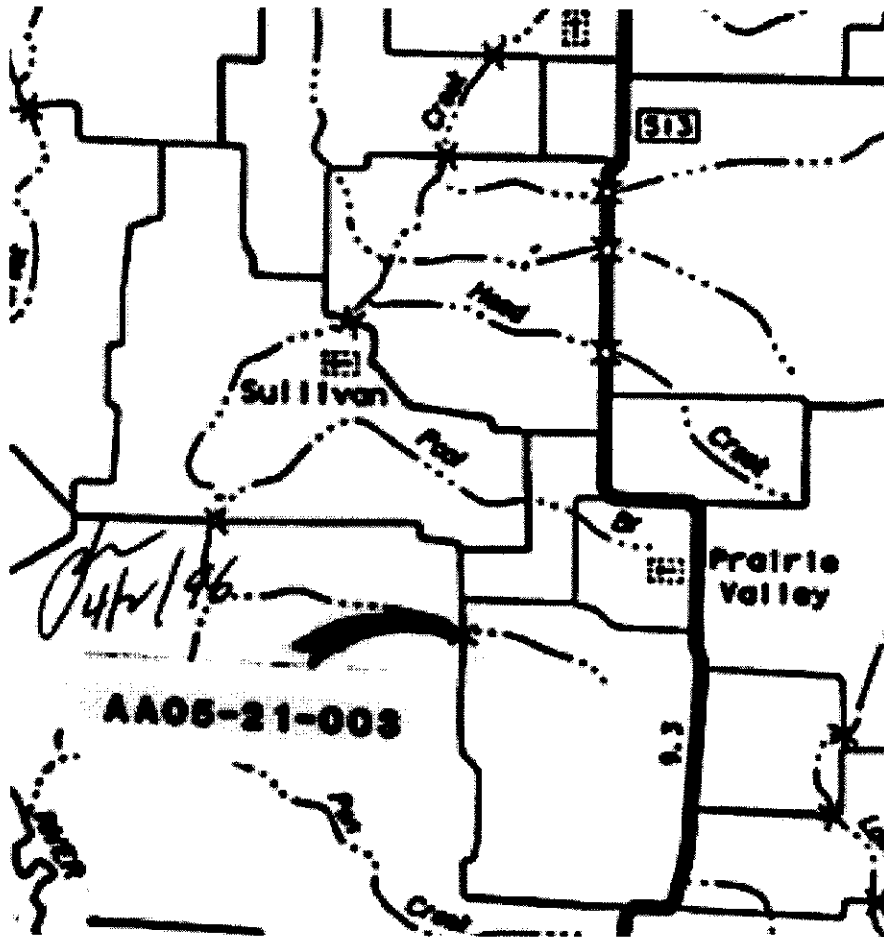
  
\_\_\_\_\_  
Jay Atkins, Commissioner Precinct 2

  
\_\_\_\_\_  
Larry Middlebrooks, Commissioner, Precinct 3

  
\_\_\_\_\_  
Jim Latham, Commissioner, Precinct 4

CSJ # 0901-22-088  
District # 01  
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**ATTACHMENT B**  
PROJECT LOCATION MAP



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**ATTACHMENT C** (See Note \*\*)

LIST OF DISTRICT ENGINEER APPROVED  
EQUIVALENT-MATCH PROJECT(S) (EMP)

Location (and structure identification number, if applicable)	On School Bus Route? (Yes/No)	Historic Bridge? (Yes/No)	Description of Structural or Safety Improvement Work	Estimated Cost
CR 4617	Y	N	<b>Replace Steel Grate Bridge</b>	\$ 45,000
<b>Total</b>				<b>\$45,000</b>
EMP work credited to this PWP (See Note *)				\$6,588
Balance of EMP work available to associated PWP(s)				\$35,136
Associated PWP(s) Control-Section-Job (CSJ)			Amount to be Credited to Associated PWP (s)	
0901-22-083			\$6,588	
0901-22-084			\$7,137	
0901-22-085			\$7,686	
0901-22-086			\$6,588	
0901-22-088			\$6,588	
0901-22-101			\$7,137	
<b>Total</b>			<b>\$41,724</b>	

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

Note\*\*: This attachment not applicable for non-Participation-Waived Projects (PWP)

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**ATTACHMENT D**

**ESTIMATE OF DIRECT COSTS**

	<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE)	(1) <u>\$20,400</u>	
Ten (10) Percent or EDC Adjusted Percent of PE for Local Government Participation <i>(Adjusted to 4.5% for EDC FY 11)</i>		(3) <u>\$918</u>
Construction	<u>\$120,000</u>	
Engineering and Contingency (E&C)	<u>\$6,000</u>	
The Sum of Construction and E&C	(2) <u>\$126,000</u>	
Ten (10) Percent or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation <i>(Adjusted to 4.5% for EDC FY 11)</i>		(4) <u>\$5,670</u>
Amount of Advance Funds Paid by Local Government *		(5) <u>\$0.00</u>
Amount of Advance Funds to be Paid by Local Government *		(6) <u>\$0.00</u>
Balance of Local Government Participation which is to be Waived where the Project is a PWP		(3+4-5-6) <u>\$6,588</u>
Total Project Direct Cost	(1+2) <u>\$146,400</u>	

\* Credited Against Local Government Participation Amount

If this Project is to be a PWP, Amount of EMP Work Being Credited to this PWP as Shown on Attachment C.	<b><u>\$6,588</u></b>
---	-----------------------

11,878

CSJ # 0901-22-101  
District # 01  
Code Chart 64 # 50117  
Project: Replace Off-System  
NBI Structure # 01-117-0-AA5097-001  
CFDA # 20.205

FILED FOR RECORD  
at 1:00 o'clock

APR 27 2011

JENNIFER LINDENZWEIG  
By County Clerk, Hunt County, Tex.  
J. C. [Signature]

STATE OF TEXAS §  
COUNTY OF TRAVIS §

**ORIGINAL**

**ADVANCE FUNDING AGREEMENT**  
**For Bridge Replacement or Rehabilitation**  
**Off the State System**

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

**WITNESSETH**

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

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

**WHEREAS**, the Local Government owns a bridge or bridges located on a public road or street located at **Little Creek on Hunt County Road 3511** and said bridge(s) is included in the currently approved off-state system federal-aid Highway Bridge Replacement and Rehabilitation Program (HBRRP) as authorized by Texas Transportation Commission Minute Order number **112237**, dated **April 2010**; and

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

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

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Project: Replace Off-System Bridge  
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## AGREEMENT

### 1. Period of this Agreement

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

### 2. Conditions for Termination of this Agreement

- a. The Agreement is terminated in writing with the mutual consent of the parties; or
- b. Breach of this Agreement, in which case any cost incurred shall be paid by the breaching party; or
- c. If the Local Government elects not to develop the project and the project does not proceed, in which case the Local Government agrees to reimburse the State for 100 percent of its reasonable actual direct and indirect costs incurred for the project.

### 3. Amendments

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

### 4. Remedies

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

### 5. Scope of Work

The scope of work for this Agreement is the replacement or rehabilitation of the bridge(s) identified in the recitals of this Agreement. This replacement or rehabilitation shall be

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

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

The Local Government is responsible for the provision and acquisition of all necessary right of way and will not be reimbursed with federal or state funds for the required right of way.

The Local Government authorizes the State, its consultant, contractor, or other designated representative to enter the site(s) of said bridge(s) and adjacent right of way or relocation right of way to perform surveys, inspections, construction and other activities necessary to replace or rehabilitate said bridge and approaches.

## 7. **Adjustment of Utilities**

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

## 8. **Environmental Assessment and Mitigation**

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

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



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

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

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

**10. Architectural and Engineering Services will be Provided by the State**

The State is responsible for performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required to accomplish the public purposes of the Local Government. The State will cooperate fully with the Local Government in accomplishing these local public purposes to the degree permitted by state and federal law. The Local Government review shall not unduly delay the development of the Project.

**11. Construction Responsibilities**

- a. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- b. Upon completion of the Project, the State will issue a "Notification of Completion" acknowledging the Project's construction completion.

**12. Project Maintenance**

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

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

- a. A Project Cost Estimate is provided in Attachment D, "Estimate of Direct Costs".
- b. Attachment D provides a source of funds estimate as well as the estimated direct preliminary engineering, construction engineering, and construction costs for the Project in total and by the Local Government.
- c. The required Local Government participation is based solely upon the State's estimate of the eligible work at the time this Agreement is executed and will not be adjusted during construction except as needed to include any Project cost item or portion of a cost item ineligible for state or federal participation. In addition to its share of estimated direct engineering and construction costs, the Local Government is responsible for the direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the federal HBRRP. The Local Government is also responsible for any cost resulting from changes made at the request of the Local Government.
- d. After execution of this Agreement, but thirty (30) days prior to the performance of any work by the State, the Local Government will the State in the amount specified in Attachment D for the Local Government's contribution for preliminary engineering. The Local Government will pay at a minimum its funding share for this estimated cost of preliminary engineering.
- e. Forty-five (45) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs and any other costs owing.
- f. If at the completion or termination of the Project the State determines that additional funding is required by the Local Government, the State shall notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- g. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to the State Project.
- h. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.
- i. The State will not pay interest on any funds provided by the Local Government.
- j. The Local Government funding participation responsibilities include Project direct costs only, except when the Project is terminated before completion at the request

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of the Local Government as addressed in the Termination provision of this Agreement.

- k. The amounts shown on Attachment D are estimates only. If actual costs exceed the estimates, this shall be considered a fixed price agreement, and no additional funding shall be required of the Local Government except to the extent that the additional costs result from changes made at the request of the Local Government or to the extent that the additional costs are not eligible for federal participation under the Federal Highway Bridge Replacement and Rehabilitation Program. If actual costs are less than the estimates, Local Government participation shall be recalculated based on actual costs. If the recalculation results in a reduction in participation by the Local Government, the State shall pay the difference to the Local Government upon completion of the Project.
  - l. Under the provisions of Texas Transportation Code Section 222.053 certain counties qualify as Economically Disadvantaged Counties (EDC) in comparison to other counties in the state as below average per capita property value, and below average per capita income, and above average unemployment, for certain years. If applicable, in consideration of such EDC status that may be applicable for the Project, the required local match fund participation has been adjusted to 4.5 percent.
  - m. The State will not execute the contract for the construction of a Project until the required funding has been made available by the Local Government in accordance with this Agreement.
  - n. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
14. **Performance by Local Government of Equivalent-Match Projects (EMPs) in Return for Waiver of Local Match Participation Funding on Participation-Waived Projects (PWPs)**
- a. **Applicability.** If a request for waiver has been received and approved by the State's District Engineer, then the required ten percent matching fund participation or percent as adjusted for EDC consideration, as shown in Attachment D, "Estimate of Direct Costs", but excluding ineligible costs under the bridge program, is waived. This waiver is based on the commitment of the Local Government to spend an equivalent amount of funds for structural or safety improvement on "other" bridge structures and other

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conditions as specified in 43 TAC Section 15.55(d). If a waiver has been granted, the Project shall be defined to be a Participation-Waived Project (PWP) and the work on the "other" bridge structures that will be improved by the Local Government shall be defined to be the Equivalent-Match Project(s) (EMP). Attachment C to this Agreement shows a list of EMP(s) under this Agreement.

- b. Project Cost Estimate for PWP. Attachment D to this Agreement shows the estimated direct preliminary engineering, construction engineering and construction costs for the PWP in total and local match fund participation being waived, or partially waived.
- c. Credit Against EMP Work. Any local match fund participation that has already been paid, or which the Local Government is agreeable to paying to the State, will be credited against EMP work to be performed by the Local Government. If applicable, this credit(s) will be reflected in Attachment D to this Agreement.
- d. Responsibilities of the Local Government on EMP(s).
  - (1) The Local Government shall be responsible for all engineering and construction, and related costs thereto, and complying with all applicable state and federal environmental regulations and permitting requirements.
  - (2) The structural or safety improvement work on the EMP(s) shall be performed subsequent to the final execution of this Agreement but within three (3) calendar years after the earliest contract award of the related PWP(s).
  - (3) Written documentation, suitable for audit, of the structural or safety improvement work completed on the EMP(s) shall be kept on file by the Local Government for four (4) years after completion of work or claims, lawsuits, or audits related thereto, whichever is longer. A notice of completion of work on the EMP(s) shall be delivered to the State's District Engineer no later than thirty (30) calendar days after work is completed on the EMP(s).
  - (4) Failure by the Local Government to adequately complete the EMP(s) within the stated three-year period shall result in the Local Government being excluded from receiving such waivers for a minimum of five (5) years.
- e. Funding of Ineligible or Additional Work Not Waived. Regardless of any waiver of eligible program costs, the Local Government shall pay the State 100 percent of the cost of any PWP item or portion of a cost item that is not eligible for federal or state participation, and 100 percent of the costs resulting from additional work on the PWP performed solely at the request of the Local Government. If the ineligible or additional work is preliminary engineering, the payment shall be made at least thirty (30) days prior to the beginning of preliminary engineering work on the PWP.

If the ineligible or additional work is for construction or construction engineering, the payment shall be made at least forty-five (45) days prior to the date set for receipt of bids for construction of the PWP.

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**15. 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, addressed to such party at the following addresses:

State: **TxDOT**  
**Attn: Bridge Engineer**  
**1365 N. Main Street**  
**Paris, Texas 75460**

Local Government: **Hunt County**  
**Attn: County Judge**  
**P. O. Box 1097**  
**Greenville, Texas 75403**

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.

**16. Legal Construction**

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

**17. Responsibilities of the Parties**

The parties to this Agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

CSJ # 0901-22-101  
District # 01  
Code Chart 64 # 50117  
Project: **Replace Off-System Bridge**  
NBI Structure # 01-117-0-AA5097-001  
CFDA # 20.205

**18. Ownership of Documents**

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use.

All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

**19. Compliance with Laws**

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

**20. Sole Agreement**

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

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

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

**22. Procurement and Property Management Standards**

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

**23. Inspection of Books and Records**

The parties to the Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall

CSJ # 0901-22-101  
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make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, 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.

In accordance with Section 902 of the American Recovery and Reinvestment Act of 2009 (ARRA), should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

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

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

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

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

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

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

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Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the LG (Local Government). It is the responsibility of the LG to obtain this form from the prime Contractor and any subcontractors and, the LG shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The LG shall ensure that this form is submitted by the LG to the State according to the policies and at the direction of the State.

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

**24. Office of Management and Budget (OMB) Audit Requirements**

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

**25. Civil Rights Compliance**

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

**26. Disadvantaged Business Enterprise Program Requirements**

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

**27. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal



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Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

**28. Lobbying Certification**

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

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

By executing this Agreement, the parties affirm this lobbying certification with respect to the Project and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to

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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.

**29. Successors and Assigns**

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

**30. Local Government Restrictions**

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

**31. Signatory Warranty**

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

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District # 01  
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NBI Structure # 01-117-0-AA5097-001  
CFDA # 20.205

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

**THE LOCAL GOVERNMENT**

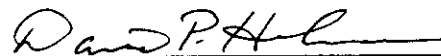
By:   
Signature  
**John Horn**  
Printed Name of Signatory

Title: Hunt County Judge

Date: 3-14-2011

**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:   
David P. Hohmann, PE  
Director, Bridge Division

Date: 3/30/11

CSJ # 0901-22-101  
District # 01  
Code Chart 64 # 50117  
Project: **Replace Off-System Bridge**  
NBI Structure # 01-117-0-AA5097-001  
CFDA # 20.205

## **ATTACHMENT A**

### RESOLUTION OR ORDINANCE OF LOCAL GOVERNMENT

11,878

RESOLUTION

FILED FOR RECORD  
at 1:00 o'clock P M

MAR 17 2011

JENNIFER LINDENZWEIG  
County Clerk, Hunt County, Tex.  
By J. Lindenzweig

The State of Texas  
County of Hunt

WHEREAS, the federal off-system bridge program is administered by the Texas Department of Transportation (the State) to replace or rehabilitate structurally deficient and functionally obsolete (collectively referred to as deficient) bridges located on public roads and streets off the designated state highway system; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Turkey Creek, on HCR 4720 (300-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0300-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Caney Creek Branch, on HCR 3201 (503-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0503-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Middle Fork of Turkey Creek, on HCR 3205 (504-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0504-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Turkey Creek Tributary, on HCR 3203 (505-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0505-001; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Caney Creek, on HCR 3116 (521-003), National Bridge Inventory (NBI) Structure Number 01-117-0-AA0521-003; and

WHEREAS, Hunt County, hereinafter referred to as the Local Government owns a bridge located at Little Creek, on HCR 3511 (5097-001), National Bridge Inventory (NBI) Structure Number 01-117-0-AA5097-001; and

WHEREAS, a project to remedy the bridge(s) is included in the currently approved program of projects as authorized by Texas Transportation Commission Minute Order Number 112237 dated April 2010, Control-Section-Job (CSJ) Number 0901-22-083, 0901-22-084, 0901-22-085, 0901-22-086, 0901-22-088 and 0901-22-101 respectively; and

WHEREAS, the usual fund participation ratio for projects on such program is 80 percent federal, 10 percent state and 10 percent Local Government; and

**WHEREAS, Hunt County** has been given an Economically Disadvantage Status by the Texas Transportation Commission with the funding participation ratio set at 80 percent federal, 15.5 percent state and 4.5 percent Local Government, and;

**WHEREAS,** Texas Administrative Code, Title 43, Section 15.55(d) (43 TAC Section 15.55(d)) provides that under specified conditions the 10 percent Local Government match fund participation requirement may be waived with agreement by the Local Government to perform, or cause to be performed, an equivalent dollar amount of structural improvement work on other deficient bridges or deficient mainlane cross-drainage structures within its jurisdiction, such a project of structural improvement work being referred to as an “equivalent-match project”; and

**WHEREAS,** the estimated local match fund participation requirement on the approved federal off-system bridge project(s) is **\$45,000** (dollars), hereinafter referred to as the “participation-waived” project, such participation requirement the Local Government proposes be waived and in return perform or cause to be performed equivalent-match project structural improvement work.

**THEREFORE, BE IT RESOLVED** that the Local Government perform, or cause to be performed, the following equivalent-match project(s) in return for waiver of the local match fund participation requirement on the approved federal off-system bridge program (participation-waived) project not yet awarded:

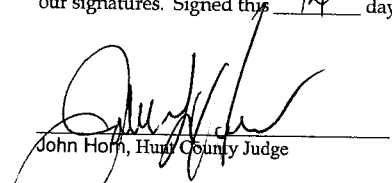
LOCATION (and NBI structure identification number, if applicable)	ON SCHOOL BUS ROUTE?	DESCRIPTION OF STRUCTURAL IMPROVEMENT WORK	ESTIMATED COST
<b>HCR 4617 near SH 11 intersection</b>	<b>Yes</b>	<b>Replace Steel Bridge (non-bridge class) with concrete bridge</b>	<b>\$ 45,000</b>

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

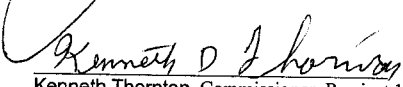
1. The Local Government must be currently in compliance with load posting and closure regulations as defined in National Bridge Inspection Standards under US Code of Federal Regulations, Title 23, Section 650.303.
2. The equivalent-match project work increases the load capacity of the existing bridge or other mainlane cross-drainage structure, or upgrades the structure to its original load capacity with a minimum upgrade to safely carry school bus loading if located on a school bus route.
3. In performing, or causing to be performed, the equivalent-match project(s), the Local Government assumes all responsibilities for engineering and construction, and complying with all applicable state and federal environmental regulations and permitting requirements for the structures being improved.
4. The work on the proposed equivalent-match project(s) will not begin until the local match fund participation waiver approval process has been completed.

5. The Local Government will be allowed three years after the contract award of the participation-waived project to complete the structural improvement work on the equivalent-match project(s).
6. Should this waiver request be approved, an appropriate written agreement or amendment to a previously executed agreement will be executed between the State and Local Government.

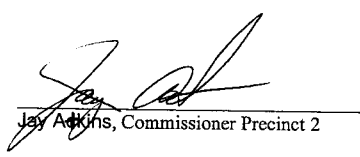
THEREFORE, IN OFFICIAL RECOGNITION WHEREOF, we the undersigned do hereby affix our signatures. Signed this 14 day of March, 2011.



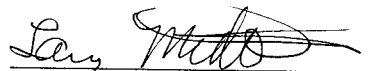
John Hoff, Hunt County Judge



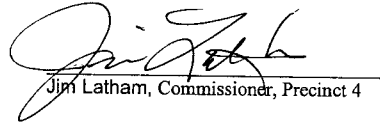
Kenneth Thornton, Commissioner, Precinct 1



Jay Adkins, Commissioner Precinct 2



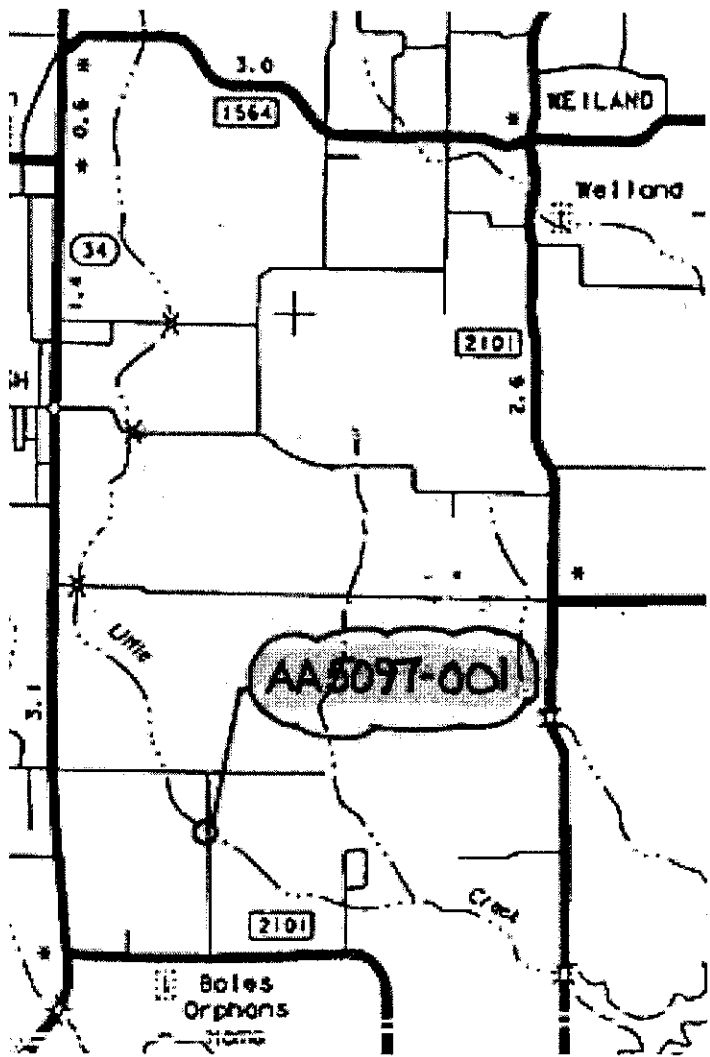
Larry Middlebrooks, Commissioner, Precinct 3



Jim Latham, Commissioner, Precinct 4

CSJ # 0901-22-101  
District # 01  
Code Chart 64 # 50117  
Project: **Replace Off-System Bridge**  
NBI Structure # 01-117-0-AA5097-001  
CFDA # 20.205

**ATTACHMENT B**  
PROJECT LOCATION MAP





CSJ # 0901-22-101  
 District # 01  
 Code Chart 64 # 50117  
 Project: **Replace Off-System Bridge**  
 NBI Structure # 01-117-0-AA5097-001  
 CFDA # 20.205

**ATTACHMENT C** (See Note \*\*)

LIST OF DISTRICT ENGINEER APPROVED  
EQUIVALENT-MATCH PROJECT(S) (EMP)

Location (and structure identification number, if applicable)	On School Bus Route? (Yes/No)	Historic Bridge? (Yes/No)	Description of Structural or Safety Improvement Work	Estimated Cost
CR 4617	Y	N	<b>Replace Steel Grate Bridge</b>	\$ 45,000
<b>Total</b>				<b>\$45,000</b>
EMP work credited to this PWP (See Note *)				<b>\$7,137</b>
Balance of EMP work available to associated PWP(s)				<b>\$34,587</b>
Associated PWP(s) Control-Section-Job (CSJ)			Amount to be Credited to Associated PWP (s)	
0901-22-083			<b>\$6,588</b>	
0901-22-084			<b>\$7,137</b>	
0901-22-085			<b>\$7,686</b>	
0901-22-086			<b>\$6,588</b>	
0901-22-088			<b>\$6,588</b>	
0901-22-101			<b>\$7,137</b>	
<b>Total</b>			<b>\$41,724</b>	

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

Note \*\*: This attachment not applicable for non-Participation-Waived Projects (PWP)

CSJ # 0901-22-101  
 District # 01  
 Code Chart 64 # 50117  
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**ATTACHMENT D**

ESTIMATE OF DIRECT COSTS

	<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE)	(1) <u>\$22,100</u>	
Ten (10) Percent or EDC Adjusted Percent of PE for Local Government Participation <i>(Adjusted to 4.5% for EDC FY 11)</i>		(3) <u>\$995</u>
Construction	<u>\$130,000</u>	
Engineering and Contingency (E&C)	<u>\$6,500</u>	
The Sum of Construction and E&C	(2) <u>\$136,500</u>	
Ten (10) Percent or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation <i>(Adjusted to 4.5% for EDC FY 11)</i>		(4) <u>\$6,143</u>
Amount of Advance Funds Paid by Local Government *		(5) <u>\$0.00</u>
Amount of Advance Funds to be Paid by Local Government *		(6) <u>\$0.00</u>
Balance of Local Government Participation which is to be Waived where the Project is a PWP		(3+4-5-6) <u>\$7,137</u>
Total Project Direct Cost	(1+2) <u>\$158,600</u>	

\* Credited Against Local Government Participation Amount

If this Project is to be a PWP, Amount of EMP Work Being Credited to this PWP as Shown on Attachment C.	<b><u>\$7,137</u></b>
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RESOLUTION # 11,891

FILED FOR RECORD  
at 2:00 o'clock  
MAR 17 2011  
By County Clerk J. Lewis

**A RESOLUTION OF THE HUNT COUNTY COMMISSIONERS COURT  
APPROVING THE SUBMISSION OF GRANT APPLICATION TO THE OFFICE  
OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION BY THE HUNT  
COUNTY SHERIFF'S OFFICE FOR THE VIDEO RECORDING EQUIPMENT  
FOR SUCCESSFUL PROSECUTION PROGRAM**

*WHEREAS*, the Hunt County Commissioners Court finds it in the best interest of the citizens of Hunt County that the Video Recording Equipment for Successful Prosecution be operated for FY 2012; and,

*WHEREAS*, the Hunt County Commissioners Court agrees to provide applicable funds for the said project are required by the Office of the Governor, Criminal Justice Division, grant application; and,

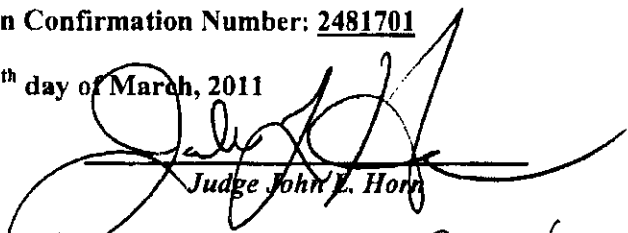
*WHEREAS*, the Hunt County Commissioners Court agrees that in the event of loss or misuse of the Criminal Justice Division funds, the Hunt County Commissioners Court assures that the funds will be returned to the Criminal Justice Division in full; and,

*WHEREAS*, the Hunt County Commissioners Court designates Randy Meeks, Sheriff as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter, or terminate the grant on behalf of the applicant agency.

**NOW, THEREFORE, BE IT RESOLVED** that the Hunt County Commissioners Court approves the submission of the grant application for the Video Recording Equipment for Successful Prosecution Program to the Office of the Governor, Criminal Justice Division.

Grant Application Confirmation Number: 2481701

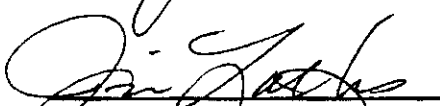
Approved this 14<sup>th</sup> day of March, 2011

  
Judge John L. Horn

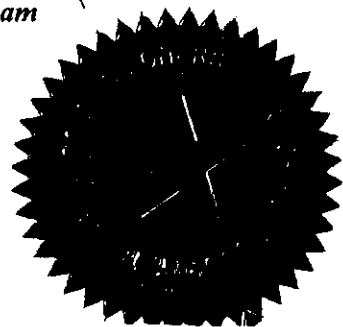
  
Commissioner Thornton

  
Commissioner Middlebrooks

  
Commissioner Atkins

  
Commissioner Latham

Attest: Gram Lewis, Deputy, County Clerk



RESOLUTION # 11,891

FILED FOR RECORD  
at 9:10 o'clock  
MAR 17 2011  
JENNIFER UNDERWOOD  
By County Clerk - Hunt County  
Lewis

**A RESOLUTION OF THE HUNT COUNTY COMMISSIONERS COURT  
APPROVING THE SUBMISSION OF GRANT APPLICATION TO THE OFFICE  
OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION BY THE HUNT  
COUNTY SHERIFF'S OFFICE FOR THE SAFE SCHOOLS DELINQUENCY  
PREVENTION PROJECT**

**WHEREAS**, the Hunt County Commissioners Court finds it in the best interest of the citizens of Hunt County that the Safe Schools Delinquency Prevention Project be operated for FY 2012; and,

**WHEREAS**, the Hunt County Commissioners Court agrees to provide applicable funds for the said project are required by the Office of the Governor, Criminal Justice Division, grant application; and,

**WHEREAS**, the Hunt County Commissioners Court agrees that in the event of loss or misuse of the Criminal Justice Division funds, the Hunt County Commissioners Court assures that the funds will be returned to the Criminal Justice Division in full; and,

**WHEREAS**, the Hunt County Commissioners Court designates Randy Meeks, Sheriff as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter, or terminate the grant on behalf of the applicant agency.

**NOW, THEREFORE, BE IT RESOLVED** that the Hunt County Commissioners Court approves the submission of the grant application for the Safe Schools Delinquency Prevention Project to the Office of the Governor, Criminal Justice Division.

Grant Application Confirmation Number: 2469801

Approved this 14<sup>th</sup> day of March, 2011

*[Handwritten signature of Judge John E. Horn]*  
\_\_\_\_\_  
Judge John E. Horn

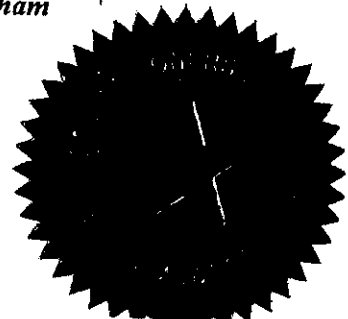
*[Handwritten signature of Kenneth D. Thornton]*  
\_\_\_\_\_  
Commissioner Thornton

*[Handwritten signature of Lee Middlebrooks]*  
\_\_\_\_\_  
Commissioner Middlebrooks

*[Handwritten signature of Jay Atkins]*  
\_\_\_\_\_  
Commissioner Atkins

*[Handwritten signature of Jim Latham]*  
\_\_\_\_\_  
Commissioner Latham

Attest: Jan Lewis, Deputy, County Clerk



# 11,893

## LETTER AGREEMENT

THIS AGREEMENT is by and between PCA Rehabilitation & Physical Therapy, ("Provider") a Texas corporation located at 4201 Wellington St., Greenville, TX, 75401, WorkSTEPS<sup>®</sup>, Inc., a Texas corporation located at University Business Park, 3019 Alvin Devane, Suite 150, Austin, Texas, 78741 ("WorkSTEPS"), and Hunt County Sheriff Department, a(n) Texas corporation, located at 2801 Stuart Street, Greenville, TX 75401-4889 ("COMPANY"), collectively ("THE PARTIES").

WHEREAS: COMPANY is desirous of implementing a functional employment testing program as a part of its work injury and disability management program, to, among other reasons, effectuate a reduction of on-the-job injuries by trying to determine if an applicant or employee can safely perform the essential functions of the job.

WHEREAS: WorkSTEPS has developed functional employment testing protocols and procedures that COMPANY desires to utilize for its functional employment testing program, and

WHEREAS: WorkSTEPS desires to assist COMPANY in implementing the WorkSTEPS functional employment-testing program,

**THEREFORE THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:** Based on the functional employment test(s) and services that have been identified below the price for the test(s) and services shall be:

◆ Comprehensive Post Offer Functional Employment Test	\$ 150.00
◆ Fit For Duty	\$ 150.00
◆ Fit For Duty RTW	\$ 150.00
◆ Basic Carpal Tunnel	\$ N/A
◆ Upper Quadrant / Carpal Tunnel / Post-Offer Evaluation	\$ N/A
◆ Sincerity of Effort Test	\$ 150.00
◆ Disparate Impact Report	\$ N/A
◆ No Show Fee (24 hour cancellation required)	\$ 75.00
◆ Job Analysis (per hour)	\$ 150.00
◆ Return on Investment Study (annual)	\$ No Charge
◆ Policies and Procedures Development	\$ N/A
◆ HR / Risk / Safety Training (Continuing Education)	\$ N/A

Company agrees to pay WorkSTEPS within thirty (30) days of receipt of an invoice for completed tests.

Job Analyses is the foundation of the COMPANY'S functional employment testing program. A job analyses is a measurement of the physical demands and requirements of the essential functions of a specific job. Accurate and current job analyses are the COMPANY'S responsibility. Job Specific Authorization Forms that document essential function requirements must be executed by COMPANY'S representative and provided to WorkSTEPS before testing can begin. COMPANY managers should use professionals experienced in assisting with job analyses or other trained and certified ergonomic assessment specialists to assist in the preparation of job analyses and documentation of essential functions. The job analyses should be based on a close, careful examination of the specific job by an individual trained and competent in

making the physical measurements of the essential functions of the specific job. The job analyses provides specific job content validity to COMPANY's functional employment testing program, which seeks to simulate the specific physical demands necessary to perform essential job functions. Accurate and up-to-date job analyses help ensure that employment decisions are based on objective, sound, individual, and job specific information. Likewise, accurate and up-to-date job analyses helps ensure that no individual or group of individuals is discriminated against. COMPANY agrees to enter into an agreement in the form attached hereto as Exhibit "1" with the provider that will perform the job analysis.

The term of this Agreement shall be for a term of 1 year (s). The Agreement shall be automatically renewed each year for an additional 1 year term, unless terminated by either Party.

This Agreement may be terminated by either Party hereto. The termination shall be effective five (5) business days after receipt of notice thereof. Receipt shall be deemed effective upon actual delivery to the noticed Party. Upon termination, COMPANY shall be responsible to pay for any employment tests that have actually been performed prior to the termination.

All data and information generated by the WorkSTEPS Functional Employment Testing Program for Company shall be the property of WorkSTEPS and Company. WorkSTEPS shall use best efforts to keep such data or information in a legally compliant manner pursuant to all state or federal laws affecting such data or information. COMPANY may keep copies of data or information for use in its normal course of business, but COMPANY hereby agrees that should it have possession of any WorkSTEPS materials, forms, procedures, protocols, or information, that such shall be deemed proprietary and confidential and kept strictly confidential. COMPANY shall use best efforts to see that such is not utilized for any purpose that would reasonably be deemed in competition with WorkSTEPS.

WorkSTEPS shall keep all information or materials received by COMPANY strictly confidential, and shall not divulge any such information or materials without the express written consent of COMPANY.

Notwithstanding any prohibition contained within this Section, WorkSTEPS or COMPANY may release data or information as contemplated herein should a state or federal court of law require it. WorkSTEPS may also release data or information received from the testing of COMPANY's employees for any legitimate business purpose, provided that (i) any personal information is kept confidential, and (ii) that all state and federal laws regarding such data or information are strictly followed.

COMPANY acknowledges that it has been advised that WorkSTEPS believes the WorkSTEPS name, and its marks and proprietary software, protocols and testing process are federally trademarked and copyrighted. COMPANY agrees that WorkSTEPS proprietary software, protocols, processes, procedures, including modifications thereto, are, and shall be considered "proprietary" and "confidential information." WorkSTEPS confidential and proprietary information will be provided to COMPANY for the sole purpose of having the WorkSTEPS Provider provide functional employment testing services to the COMPANY. COMPANY acknowledges, agrees and confirms that COMPANY's disclosure or misappropriation of WorkSTEPS proprietary information could cause irreparable injury to WorkSTEPS, and COMPANY hereby expressly agrees that it will not use the confidential and proprietary information provided to COMPANY, except for the express purposes described in this Agreement.

"The Parties agree that any action to enforce this Agreement, to address alleged breach of the Agreement, or to seek any sort of injunctive relief may only properly be brought in a District Court in Hunt County, Texas."

For as long as this Agreement is in effect, COMPANY shall not acquire the same or similar functional testing services from anyone other than WorkSTEPS or its' duly licensed providers. COMPANY acknowledges and understands that the tests are to be performed by medical providers that are independent contractors that have been licensed by WorkSTEPS to perform the tests identified.

COMPANY acknowledges that WorkSTEPS has invested considerable time and financial resource in the training, education, and certification of the professional staff necessary to deliver the services set forth on Exhibit A to this Agreement. During the term of this Agreement, and for a period of one year after its termination, COMPANY agrees that it shall not actively or knowingly solicit or make an offer of employment to any of WorkSTEPS employees or WorkSTEPS licensed Providers associated with the delivery of these services to COMPANY.

Without limiting the generality of this Section, THE PARTIES agree that after the termination or expiration of this Agreement, such PARTIES will not use the proprietary, confidential information of the other PARTY to provide the same or similar services to any person (unless and until such information ceases to be proprietary and confidential through no fault of the PARTY seeking to use the same), however, nothing in this Section shall prohibit Company or its affiliates, after termination of this Agreement, from providing a service to COMPANY similar to the services provided by Provider hereunder as long as neither COMPANY nor its affiliates uses the proprietary, confidential information of WorkSTEPS in so doing.

COMPANY acknowledges and understands that this Agreement contemplates the functional employment testing of prospective employees and/or actual employees of COMPANY. That COMPANY, as employer of the individuals tested have a significant role, both before and after the test, including, but not limited to, selection of the essential functions of the applicable job, the writing of job descriptions, if any, in communicating with the individuals to be tested in a consistent manner, in making appropriate employment decisions based on test results and in properly processing and advising those individuals tested.

COMPANY agrees to follow state and federal employment laws, regulations and practices including, but not limited to, appropriate procedures related to employment testing as set forth in the Americans' With Disabilities Act and any and all applicable laws. COMPANY further acknowledges that Company, not the Provider, nor WorkSTEPS is responsible for making employment decisions concerning any post employment candidates' or current employees' suitability for employment or continued employment and for making decisions concerning reasonable accommodations.

This Agreement shall be governed by the laws of the State of Texas. Jurisdiction for any claim or action arising out of this Agreement shall be in an appropriate state or federal court of law in the State of Texas.

AGREED TO THIS \_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_.

WorkSTEPS®, Inc.

*[Signature]*

By, *President*

It's *Peter Gallahue*

Printed Signature

Hunt County Sherriff Department

\_\_\_\_\_

By, \_\_\_\_\_

It's \_\_\_\_\_

Printed Signature

PCA Rehabilitation and Physical Therapy

\_\_\_\_\_

By, \_\_\_\_\_

It's \_\_\_\_\_

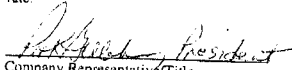
Printed Signature

**Exhibit "I"**  
**Contract for Services**  
**For**  
**Job Analysis Bid Proposal**

Hunt County Sheriff Department ("Company") understands that a job analysis must be completed in order to meet requirements for the Americans with Disabilities Act (ADA) so that PCA Physical Therapy and Rehabilitation ("Provider") may perform post-offer and post employment testing pursuant to WorkSTEPS employment testing protocols. While the ADA does not require that a formal job analysis be conducted to determine the essential functions of a specific job position, the ADA does require an employer to prove that any exclusionary criteria obtained from a medical examination used to withdraw an offer of employment or terminate employment are "job related and justified by business necessity." (EEOC ADA Technical Assistance Manual II at 19 and VI at 2). Thus, the Provider must conduct a job analysis of the positions for which employment tests are performed to ensure that the employment test is measuring the candidate's or employee's ability to perform essential job functions. It is imperative that the Company provides accurate information to the Provider regarding the essential job functions for specific job positions. The EEOC provides a discussion relating to the identification of essential job functions in its Technical Assistance Manual. (EEOC ADA Technical Assistance Manual II at 13-22). The Company acknowledges that the Company is responsible for familiarizing itself with this section of the ADA Technical Assistance Manual and providing the Provider accurate information concerning essential job functions.

A separate job analysis must be performed for each position for which the Company desires to utilize employment testing. The job analysis may include filming, weighing, and measuring tasks for the selected major job positions for the Company.

The Company understands that the evaluation usually takes between one (1) and four (4) hours to complete and is billed at \$150.00 per hour. The Company hereby authorizes Provider to provide said job analysis for each job position for which the Company will be requesting employment testing at the above referenced rate.

  
\_\_\_\_\_  
Company Representative/Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Provider Representative/Title

\_\_\_\_\_  
Date



## Exhibit A

### Overview of the Comprehensive WorkSTEPS Post Offer and Fit For Duty (RTW) Exam Process

#### Post Offer Testing to Include:

**Medical History** – The job candidate is asked to complete a comprehensive medical history administered by an occupational healthcare professional that has been trained and certified in the WorkSTEPS Program. This history includes information gathering on previous injuries and/or surgeries, previous physical therapy/chiropractor visits, etc. The employee also signs a statement that falsification of the information he/she has provided could result in the withdrawal of the conditional job offer.

**Musculoskeletal Examination** – A WorkSTEPS certified clinician completes this portion of the exam. The exam looks at all major joints and muscle groups. Thirty (30) baseline measurements are documented. The muscle groups are checked for strength as well as any atrophy. The shoulders, elbows, wrists, back, ankles, knees and hips are checked for signs of crepitus as well as ligament stability. In addition, the lumbar and the cervical spine is also checked. Flexion, extension, side bending and twisting are all measured. Visual inspection of the spine for signs of surgery is performed. Deep tendon reflexes of the biceps, triceps, patellar tendon and Achilles tendon are performed to further check for spinal cord problems. Shoulder range of motion is checked and measured as well for movement in the internal and external rotational planes. The rotator cuff is also thoroughly checked.

**Static Grip** - This portion of the tests measures grip strength and gathers baseline strength readings on the employee.

**Dynamic Lifting** - This portion of the test gathers baseline, full motion, and strength readings. The employee is asked to lift a NIOSH box from 4 different positions. These 4 positions are lifting the box from floor to knuckle height, 12 inches off the floor to knuckle height, knuckle height to shoulder and shoulder to overhead. With each of these lifts, the employee is asked to lift the box. After the lift, they are asked if they can safely handle more weight. The employee is asked at the beginning to try and lift their maximum safe lift. The employee is shown and instructed on the proper lifting techniques for each of these lifting positions.

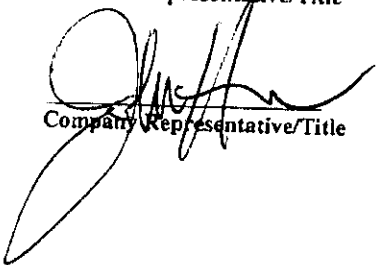
**Job Specific Tasks** - This portion tests assesses the job candidate's ability to perform the essential functions of the job he/she is applying for. The essential functions for a job description are created through job analysis that is performed by a qualified vendor of the employer's choosing (this can be the WorkSTEPS Provider who will be providing testing service but is not required). The employer is obligated to participate in the job analysis process by approving and verifying that the essential functions have been properly identified and are accurate.

**Fit For Duty Testing As Part Of A Return To Work ("RTW") Program To Include:**

WorkSTEPS will be conducting Fit-for-Duty (Post-Injury RTW) Tests on existing employees to include the following:

- Any reported injury, illness, or condition that gives the employer reasonable belief that the employee's ability to perform essential job functions will be impaired or create a direct threat to health and safety.
- This category may also include testing at the request of the employer because, although there has been no formal injury or medical condition reported, the employer has observed current performance problems or has received reliable reports of performance problems indicating that the employee may not be able to perform essential job functions, or may pose a direct threat to the health and safety of the employee or others.
- Even if the employee has fully "recovered" from injury or illness and no longer considers him or herself "injured", for documentation purposes the test should be identified as a "post-injury" fit for duty, or an injured worker, because that was the trigger for the test.
- When testing an employee post-injury or illness the provider will:
  - Use the WorkSTEPS Fit for Duty Physical Capacity Consent Form
  - Use the WorkSTEPS Post Injury Fit for Duty Medical History Interview
  - Not perform "routine" medical measures, including heart rate and blood pressure, that are not related to the injury or condition for which the employee is being seen, or that are not contributing to a job related functional deficit.
  - Not perform the standard "baseline" tests such as step test, Sorenson's or grip if they are not related to the injured area.
  - Perform only the dynamic lift postures that are considered qualifying criteria.
  - Perform any and all standard job specific tasks for the position, and expand to include any additional essential function tasks that could be impacted by their injury or condition.

\_\_\_\_\_  
Provider Representative/Title



\_\_\_\_\_  
Company Representative/Title

\_\_\_\_\_  
Date

3-14-2011  
\_\_\_\_\_  
Date

# 11,894

TO: John Horn                      DATE: March 8, 2011  
County Judge

FROM: Angie Strickler  
Emergency Preparedness Specialist

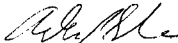
SUBJECT: Request for Signature on FY11 Cities Readiness Initiative Contract  
Extension

Judge Horn,

Please sign the contract amendment for the FY11 Cities Readiness Initiative (CRI) contract with NCTCOG and return one copy to: Angie Strickler, 616 Six Flags Dr. Arlington, TX 76005. The performance period for this contract has been shortened to August 1, 2010 – July 31, 2011. The original contract was signed in August 2010.

If you have any questions please feel free to contact me [astrickler@nctcog.org](mailto:astrickler@nctcog.org) or my supervisor Amanda Burnett [aburnett@nctcog.org](mailto:aburnett@nctcog.org) if you have any questions.

Sincerely,



Angie Strickler



North Central Texas Council of Governments • Emergency Preparedness Department

# 11,894

FILED FOR RECORD  
at 10:20 o'clock 7 M  
MAR 14 2011  
By JENNIFER LINDENZWEIG  
County Clerk, Hunt County, Tex.

**CONTRACT AMENDMENT ONE  
BETWEEN THE  
NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS AND  
HUNT COUNTY  
FOR CITIES READINESS INITIATIVE (CRI) PROJECT IMPLEMENTATION**

This Amendment ("Amendment 1") to the original Cities Readiness Initiative contract, signed on August 1, 2010, attached hereto is entered into between the NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS and HUNT COUNTY for the purposes of changing the terms of Article 13: Effective Date and Term of Contract. For good and valuable consideration, whether or not recited herein, the Parties hereby agree to restate Article 13 of the original contract in its entirety as follows:

Article 13: Effective Date and Term of Contract

13.1 The performance period of this contract is August 1, 2010 until **July 31, 2011**. It is enacted once signed by both parties.

Article 5: Financial

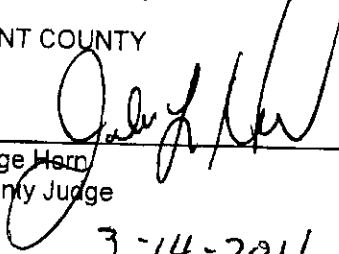
5.7 ~~In order to ensure funds will not be de-obligated to DSHS, NCTCOG reserves the option that if 25% of overall budget has not been expended by April 1, 2011, NCTCOG will release the amount between 0% and 25% not yet utilized, to be expended for a regional project. In addition, NCTCOG reserves the option that if 75% of overall budget has not been expended by April 1, 2012, NCTCOG will release the amount between 0% and 75% not yet utilized, to be expended for a regional project. Regional Project will be subject to approval by DSHS and local governments. Any special considerations shall be submitted by the Local Governments prior to the deadline for deliberation by NCTCOG.~~

5.8 Local Governments are required to provide matching funds not less than 10% of **each month's requested reimbursement**. Match can be met with In Kind and/or cash contributions and appropriate supporting documentation outlined by NCTCOG and must be submitted monthly with expense report.

The purpose of this Amendment is to revise the contract end date and other items effected by this change to align with the end of the federal project period per federal guidance as requested by the Texas Department of State Health Services.

IN WITNESS HEREOF, the parties hereto have executed this Contract in duplicate original at Arlington, Tarrant County, Texas, the 14 day of March, 2011.

HUNT COUNTY

  
\_\_\_\_\_  
Judge Horn  
County Judge

3-14-2011

Date

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

  
\_\_\_\_\_  
Mike Eastland  
Executive Director

3/14/11  
Date

FILED FOR RECORD  
at 10:30 o'clock 4 M

MAR 14 2011

JENNIFER LINDENBERG  
County Clerk, Tarrant County, Tex.  
By J. Adams

# CERTIFICATE of COURSE COMPLETION

## Open Meetings Act

I, Jay Atkins, certify that I have

completed a course of training on the Texas Open Meetings Act that satisfies the legal requirements of Government Code, Section 551.005.

Certificate is issued effective this 4th day of March, 2011.

11,894



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

*NOTICE TO CERTIFICATE HOLDER: You are responsible for the safekeeping of this document as evidence that you have completed this open government training course. The Office of the Attorney General does not maintain a record of course completion for you and is unable to issue duplicate certificates. Government Code Section 551.005(c) requires the governmental body with which you serve to maintain this Certificate of Course Completion and make it available for public inspection.*

Certificate No. 11-19271M

FILED FOR RECORD  
at 10:30 o'clock 7 M

MAR 14 2011

JENNIFER LINDENZWEIG  
County Clerk, Harris County, Texas  
By J. Owens

# CERTIFICATE of COURSE COMPLETION

## Public Information Act

I, Jay Atkins, certify that I have

completed a course of training on the Texas Public Information Act that satisfies the  
legal requirements of Government Code, Section 552.012.

Certificate is issued effective this 4th day of March, 2011.

# 11,894



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

*NOTICE TO CERTIFICATE HOLDER: You are responsible for the safekeeping of this document as evidence that you have completed this open government training course. The Office of the Attorney General does not maintain a record of course completion for you and is unable to issue duplicate certificates. Government Code Section 552.012(e) requires the governmental body with which you serve to maintain this Certificate of Course Completion and make it available for public inspection.*

Certificate No.: 11-14073P

FILED FOR RECORD  
at 10:30 o'clock A M

MAR 14 2011

JENNIFER LINDENZWEIG  
County Clerk, Harris County, Tex.  
By J. Williams

#11,894

# CERTIFICATE OF COMPLETION

This is to certify that

Jennifer Lindenzweig

has completed the course

Registry of the Court

February 25, 2011

HARRIS COUNTY  
EXTENSION



#11,894

FILED FOR RECORD  
at 10:30 o'clock 7 M

MAR 14 2011

JENNIFER LINDENZWEIG  
County Clerk, Hunt County, Tex.  
By J. Adams

# CERTIFICATE of COMPLETION

This is to certify that

Jennifer Lindenzweig

has completed the course

Fraudulent Filings

February 23, 2011

