



**CITY OF WHARTON  
FINANCE COMMITTEE MEETING**

**Monday, July 27, 2020  
5:30 PM**


***CITY HALL***

**NOTICE OF  
CITY OF WHARTON  
FINANCE COMMITTEE MEETING**

Notice is hereby given that a Finance Committee Meeting will be held on Monday, July 27, 2020 at 5:30 PM at the Wharton City Hall, 120 East Caney Street, Wharton, Texas, at which time the following subjects will be discussed to-wit:

**SEE ATTACHED AGENDA**

Dated this 23rd day of July 2020.

By:   
Andres Garza, Jr., City Manager

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Finance Committee Meeting is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board, at City Hall of said City or Town in Wharton, Texas, a place convenient and readily accessible to the general public at all times, and said Notice was posted on July 23, 2020, at 4:30 p.m. and remained so posted continuously for at least 72 hours preceding the scheduled time of said Meeting.

Pursuant to V.T.C.A. Gov. Code Section 551.001 et seq., the City of Wharton City Council of Wharton, Texas will hold a meeting by Teleconference on Monday, July 27, 2020 at 5:30 p.m. at City Hall, 120 E. Caney St., Wharton, Texas 77488.

Join the meeting:

<https://zoom.us/j/92924569111?pwd=ejhjOWVKMtMC9aNGtla210Mk5pYXVuQT09>

To dial in by phone:

+1 346 248 7799 US (Houston)

833 548 0282 US Toll-free

Meeting ID: 929 2456 9111


Password: 357217

If you wish to provide comments during the Public Comments portion of the meeting, submit an email before 3:00 p.m. Monday, July 27, 2020 to [pfavors@cityofwharton.com](mailto:pfavors@cityofwharton.com) and provide your name, address, telephone number and the agenda item on which you wish to speak.

City Staff will send an email providing instructions for commenting during public participation via videoconference directly to those registered to comment. The same rules apply to telephone comments as to in-person comments. They must be no more than 3 minutes in length.

Dated this 23rd day of July 2020.

**CITY OF WHARTON**

By:   
Paula Favors  
City Secretary



**A G E N D A**  
**CITY OF WHARTON**  
**Finance Committee Meeting**  
**Monday, July 27, 2020**  
**City Hall - 5:30 PM**

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**Call to Order.**

**Roll Call.**

**Public Comments.**

**Review & Consider:**

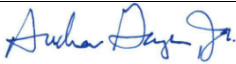
1. Minutes from the meeting held July 13, 2020.
2. Resolution: A resolution of the Wharton City Council approving a one-year extension for the City of Wharton Bank Depository Services and authorizing the Mayor of the City of Wharton to execute all documents relating to said contract.
3. FM 1301 Extension Advance Funding Agreement and Memorandum of Understanding:
  - A. Resolution: A resolution of the Wharton City Council authorizing the new Advanced Funding Agreement (CJ:1412-03-038) to a Category 11 Project (construct new location roadway) on system, generally described as Constructing the Extension of FM 1301 from SH 60 to US 59 in Wharton; between the City of Wharton and the Texas Department of Transportation and authorizing the Mayor of the City of Wharton to execute the agreement.
  - B. Resolution: A resolution of the Wharton City Council approving a Memorandum of Understanding with the Texas Department of Transportation for (CJ:1412-03-038) to a Category 11 Project (construct new location roadway) on system,

generally described as Constructing the Extension of FM 1301 from SH 60 to US 59 in Wharton; between the City of Wharton and the Texas Department of Transportation and authorizing the Mayor of the City of Wharton to execute the agreement.

**Adjournment.**

City of Wharton  
120 E. Caney Street  
Wharton, TX 77488

## FINANCE COMMITTEE

Meeting Date:	7/27/2020	Agenda Item:	Minutes from the meeting held July 13, 2020.
Attached are a copy of the draft minutes from the meeting held July 13, 2020.			
City Manager: Andres Garza, Jr.		Date: Thursday, July 23, 2020	
Approval: 			
Mayor: Tim Barker			

**MINUTES  
OF  
CITY OF WHARTON  
FINANCE COMMITTEE MEETING  
120 EAST CANEY STREET  
WHARTON, TEXAS 77488  
Monday, July 13, 2020 –5:30 p.m.**

City Manager Andres Garza, Jr. declared a meeting of the City Council Finance Committee duly open for the transaction of business at 5:39 p.m.

Committee Members present were: Councilmember Russell Machann and Councilmember Alice Heard.

Committee Member absent was: Mayor Tim Barker

City Council Member present was: Councilmember Don Mueller, Councilmember Terry Freese and Councilmember Clifford Jackson.

Staff members present were: City Manager Andres Garza, Jr., Assistant to the City Manager Brandi Jimenez, Finance Director Joan Anzel, City Secretary Paula Favors, EMS Director John Kowalik, Emergency Management Coordinator Steve Johnson and Community Development Director Gwyn Teves.

Staff member absent was: None.

Visitors: Ms. Natalie Frels-The County Gin, Mr. Larry Janak-IDCUS and Mr. Rolando Escamilla-IDCUS.

Public Comments. There were no public comments.

The first item on the agenda was to review and consider minutes from the meeting held June 22, 2020. Councilmember Russell Machann made a motion to approve the minutes as presented. Councilmember Alice Heard seconded the motion. All voted in favor.

The second item on the agenda was to review and consider Update on COVID-19 and Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The City Staff update the Committee on COVID-19 and the CARES Act. After some discussion, no action was taken.

The third item on the agenda was to review and consider a Resolution: A resolution of the Wharton City Council approving the Interlocal Agreement with the Texas Municipal League Health Benefits Pool (TML Health Benefits Pool) for medical, long-term disability, life, accidental death & dismemberment, for flexible spending account and health reimbursement account plans for city employees for the October 1, 2020 to September 30, 2021 Fiscal Year and authorizing the Mayor of the City of Wharton to execute all documents related to said agreements. City Secretary Paula Favors presented to the Committee the TML-Health Benefits Pool for the 2020-2021 health insurance plan and the contribution of the previous year's amount of \$1250 to a Health Reimbursement Agreement (HRA) to offset the deductible or other medical expenses for City Staff. She stated that the City Staff looked into ways to assist employees with their medical expenses. She stated that the HRA would allow employees some flexibility to help

assist them with future medical expenses. After some discussion, Councilmember Alice Heard made a motion to recommend to the City Council the approval of the Interlocal Agreement with the Texas Municipal League Health Benefits Pool (TML Health Benefits Pool) for medical, long-term disability, life, accidental death & dismemberment, for flexible spending account and health reimbursement account plans for city employees for the October 1, 2020 to September 30, 2021 Fiscal Year. Councilmember Russell Machann seconded the motion. All voted in favor.

The fourth item on the agenda was to review and consider a Resolution: A resolution of the Wharton City Council awarding a contract for the Civic Center/EMS Roof Project and authorizing the Mayor of the City of Wharton to execute all documents related to said contract. Finance Director Joan Andel stated to the Committee that the City staff had obtained bids for the Civic Center/EMS Roof Project. She stated that all of the vendors were a member of the TIPS Cooperative Program and had been provided the same scope of work. She stated that the funds to pay for the project had been allocated in the 2019 Bond Funds. She stated that bids were received from Jaco and Prime. After some discussion, Councilmember Russell Machann made a motion to recommend to the City Council to award the contract for the Civic Center/EMS Roof Project to Jaco. Councilmember Alice Heard seconded the motion. All voted in favor.

The fifth item on the agenda was to review and consider a Resolution: A resolution of the Wharton City Council amending the agreement with IDC Inc. for engineering services for the FM 102 Relocation or FM 1301 to Hwy. 59 Expansion and Overpass Project and authorizing the Mayor of the City of Wharton to execute the agreement. Community Development Director Gwyn Teves stated to the Committee that on April 25, 2011, the Wharton City Council entered into an agreement with IDC Inc. for engineering services for the FM 102 Relocation or FM 1301 to Hwy. 59 Expansion and Overpass Project. She stated that the City staff had been working with TxDOT, SMC Consulting, Inc. and IDCUS on moving forward with the project. She stated that the project required additional services be provided by IDCUS. She presented the Committee with the amendment and additional cost information to continue with the services and contract for these services. After some discussion, Councilmember Russell Machann made a motion to recommend to the City Council the approval of the amendment to the agreement with IDC Inc. for engineering services for the FM 102 Relocation or FM 1301 to Hwy. 59 Expansion and Overpass Project. Councilmember Alice Heard seconded the motion. All voted in favor.

The sixth item on the agenda was adjournment. Councilmember Alice Heard moved to adjourn. Councilmember Russell Machann seconded the motion. All voted in favor.

The meeting adjourned at 6:30 p.m.

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Andres Garza, Jr., City Manager

City of Wharton  
120 E. Caney Street  
Wharton, TX 77488


## FINANCE COMMITTEE

Meeting Date:	7/27/2020	Agenda Item:	Resolution: A resolution of the Wharton City Council approving a one-year extension for the City of Wharton Bank Depository Services and authorizing the Mayor of the City of Wharton to execute all documents relating to said contract.
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On August 22, 2016, the City Council approved a bank depository contract with Prosperity Bank for a three-year period beginning October 1, 2016 and ending September 30, 2019 with an additional one-year extension not to exceed two additional years.

Attached is a memo from Finance Director Joan Andel regarding a letter from Prosperity Bank requesting the City to extend the agreement for an additional year.

Finance Director Joan Andel will be present to answer any questions.

City Manager: Andres Garza, Jr.	Date: Thursday, July 23, 2020
Approval: 	
Mayor: Tim Barker	





# City of Wharton

120 E. Caney Street ° Wharton, TX  
77488

Phone (979) 532-2491° Fax (979) 532-  
0181

## MEMORANDUM

To: Mr. Andres Garza, Jr.  
City Manager

From: Joan Andel

Date: July 22, 2020

Re: Depository Contract

On August 22, 2016, the City Council approved a bank depository contract with Prosperity Bank for a three year period of October 1, 2016 thru September 30, 2019 with an additional one-year period not to exceed two additional years. Attached is a letter from Prosperity Bank renewing the agreement for an additional year through September 30, 2021.

I would like to place this item on the City Council agenda for July 27, 2020 for approval to exercise the contract extension for the additional year.

Please contact me should you have any questions.

Thank you.



# PROSPERITY BANK®

July 9, 2020

City of Wharton  
C/O Joan Andel  
120 E. Caney Street  
Wharton, TX 77488

Dear Ms. Andel:

The Depository Services Contract between the City of Wharton and Prosperity Bank has been renewed on a one-year basis. The previous renewal of the contract by and between the City and the Bank was as of October 1, 2019.

By signing this letter and returning it for our files, you agree to renewal of this contract for an additional one year- October 1, 2020 through September 30, 2021. All terms will remain the same except for the following:

**NOW Accounts-** Prosperity Bank NOW sheet rate with a floor of 0.50% and an APY of 0.50%

**Money Market Accounts-** Prosperity Bank Premier Money Market sheet rate with a floor of 0.60% and an APY of 0.60%

**Certificates of Deposit-** Prosperity Bank sheet rate

We appreciate our business relationship with the City of Wharton and look forward to working with you in the future. If you have any questions, please let me know. I may be reached at 979-793-2000 or by email [landon.mcclain@prosperitybankusa.com](mailto:landon.mcclain@prosperitybankusa.com).

Sincerely,

Landon G. McClain  
Banking Center President

**Agreed and accepted on behalf of the City of Wharton:**

_____	_____	_____
City of Wharton	Title	Date

**Agreed and accepted on behalf of Prosperity Bank:**

_____	_____	_____
Landon G. McClain	Title	Date



**CITY OF WHARTON  
RESOLUTION NO. 2020-XX**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A ONE YEAR EXTENSION FOR THE CITY OF WHARTON BANK DEPOSITORY SERVICES AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.**

**WHEREAS,** On August 22, 2016, the City of Wharton awarded a contract to Prosperity Bank for Depository Services for a three year period to include two one year extensions; and,

**WHEREAS,** The Wharton City Council wishes to approve the second one year extension with Prosperity Bank in accordance with the contract; and,

**WHEREAS,** The City of Wharton and Prosperity Bank wishes to be bound by the conditions as set forth in the agreement; and,

**WHEREAS,** The Wharton City Council wishes to authorize the Mayor the City of Wharton to execute all documents related to said extension.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS** as follows:

**Section I.** That the Wharton City Council hereby approves the second one year extension of Depository Services in accordance with the agreement between the City of Wharton and Prosperity Bank

**Section II.** That the Wharton City Council wishes to authorize the Mayor of the City of Wharton, Texas to execute all documents related to said contract.

**Section. III.** That Prosperity Bank and the City of Wharton are hereby bound by the conditions as set forth in the agreement.

**Section IV.** That this resolution shall become effective immediately upon its passage.

**Passed, Approved, and Adopted** this the 27th day of July, 2020.

**CITY OF WHARTON**

**By:** \_\_\_\_\_  
**DON MUELLER**  
Mayor Pro-Tem

**ATTEST:**

\_\_\_\_\_  
**PAULA FAVORS**  
City Secretary

City of Wharton  
 120 E. Caney Street  
 Wharton, TX 77488

## FINANCE COMMITTEE

Meeting Date:	7/27/2020	Agenda Item:	<p>FM 1301 Extension Advance Funding Agreement and Memorandum of Understanding:</p> <p>A. Resolution: A resolution of the Wharton City Council authorizing the new Advanced Funding Agreement (CJ:1412-03-038) to a Category 11 Project (construct new location roadway) on system, generally described as Constructing the Extension of FM 1301 from SH 60 to US 59 in Wharton; between the City of Wharton and the Texas Department of Transportation and authorizing the Mayor of the City of Wharton to execute the agreement.</p> <p>B. Resolution: A resolution of the Wharton City Council approving a Memorandum of Understanding with the Texas Department of Transportation for (CJ:1412-03-038) to a Category 11 Project (construct new location roadway) on system, generally described as Constructing the Extension of FM 1301 from SH 60 to US 59 in Wharton; between the City of Wharton and the Texas Department of Transportation and authorizing the Mayor of the City of Wharton to execute the agreement.</p>
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On July 11, 2011, the Wharton City Council entered into a Local Transportation Project Advance Funding Agreement to a Category 11 Project (Construct New Location Roadway) On System for the construction of the extension of FM 1301 from SH 60 to US 59 to in Wharton, Texas.

The City staff has been working with TxDOT on moving forward with the project. TxDOT is requiring a new AFA be executed with updated terms and language due to the expanse of time that has passed since the original agreement.

Of note are the following modifications in the new AFA:

- The City will have final approval on any change orders.
- The state will not be matching the funding with the original \$2.9 million in funds.
- The City must concur with the lowest bidder selection prior to a contract award.

- Total state funds to the project is estimated at \$2,286,800.

Attached is the new AFA and MOU for review.

Community Development Director Gwyn Teves will be present to answer any questions.

City Manager: Andres Garza, Jr.

Date: Thursday, July 23, 2020

Approval: 

Mayor: Tim Barker



# City of Wharton

120 E. Caney • Wharton, TX 77488  
Phone (979) 532-2491 • Fax (979) 532-0181

## MEMORANDUM

**DATE:** July 21, 2020  
**FROM:** Gwyneth Teves, Community Development Director  
**TO:** Honorable Mayor and City Council  
**SUBJECT:** FM 1301 Extension Advance Funding Agreement and Memorandum of Understanding

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On July 11, 2011, the Wharton City Council entered into a Local Transportation Project Advance Funding Agreement to a Category 11 Project (Construct New Location Roadway) On System for the construction of the extension of FM 1301 from SH 60 to US 59 to in Wharton, Texas.

The City staff has been working with TxDOT on moving forward with the project. TxDOT is requiring a new AFA be executed with updated terms and language due to the expanse of time that has passed since the original agreement.

Of note are the following modifications in the new AFA:

- The City will have final approval on any change orders.
- The state will not be matching the funding with the original \$2.9 million in funds.
- The City must concur with the lowest bidder selection prior to a contract award.
- Total state funds to the project is estimated at \$2,286,800.

Attached is the new AFA and MOU for review.

If you should have any questions, please contact me at 979-532-2491 ext. 238. Thank You.

**MEMORANDUM OF UNDERSTANDING  
EXTENSION OF FM 1301**

This Memorandum of Understanding (“**MOU**”) between the Texas Department of Transportation (“**TxDOT**”) and City of Wharton (“**City**”) (each a “**Party**” and collectively the “**Parties**”) establishes the Parties understanding of the expectations for each Party relating to the extension of FM 1301.

**WHEREAS**, the City desires to have FM 1301 in Wharton, Texas extended from US 59 to SH 60 (the “**Project**”).

**WHEREAS**, the City and TxDOT would like to address certain parameters and requirements of the Parties prior to commencing the Project.

**WHEREAS**, the City and TxDOT will formally set forth the requirements of each Party in agreements as set forth below to be executed prior to the commencement of any construction on the Project.

**WHEREAS**, the purpose of this MOU is to outline the understanding of the parties with regard to the Project.

**NOW THEREFORE**, City and TxDOT agree to collaborate on the Project as follows:

**RIGHT OF WAY ISSUES**

1. City and TxDOT will enter into an Agreement for Right of Way Procurement (100% Local Contribution), which will formally address the City’s responsibility to secure the required right of way for the Project in conformance with the details below.
2. City will acquire all needed right of way in fee simple title in the name of the State using TxDOT’s form ROW-N-14, attached hereto as Exhibit 1, or a substantially similar form approved by TxDOT prior to conveyance.
3. City will be responsible for removing all encroachments from the new right of way prior to TxDOT providing any approval to commence construction of the Project.

**CONSTRUCTION ISSUES**

4. City is responsible for the preparation of all construction plans for the Project.
5. TxDOT must approve the construction plans for the Project prior to the commencement of any construction activities.
6. City is responsible for all the construction cost for the FM 1301 extension from US 59 to SH 60.

7. TxDOT is responsible for all the construction cost of the new interchange at US 59 and the new FM 1301 intersection.
8. City is responsible for submitting the exhibits for the railroad agreement to TxDOT. TxDOT will review exhibits and handle the coordination with the railroad.
9. Prior to commencement of construction activities, City and TxDOT will enter into an Advanced Funding Agreement (“**AFA**”), which formally addresses the City’s responsibilities for constructing the Project.
10. Prior to commencement of construction activities on the Project, the FM 1301 extension must be added to the state highway system by the Texas Transportation Commission (“**Commission**”).

#### **FM 102 FROM US 59 TO SH 60**

11. Upon completion of construction of the Project and making the Project open for public use, the current section of FM 102 from US 59 to SH 60 will be removed from the state highway system by the Commission.
12. TxDOT will request the Commission to recommend to the Governor to convey to the City those portions of right of way underlying FM 102 from US 59 to SH 60 where the State has recorded title for no cost so long as the property continues to be used for highway purposes pursuant to §202.021 (e)(2) of the Transportation Code.
13. Prior to FM 102 from US 59 to SH 60 being removed from the state highway system, the City, by an ordinance from the City of Wharton, shall accept jurisdiction, control and maintenance of the FM 102 from US 59 to SH 60, including the right of way, upon the removal of it from the state highway system.

#### **GENERAL**

14. This MOU is non-binding and sets forth the understanding of the Parties on the prerequisites required before commencement of the Project.
15. Any modifications to this MOU must be in writing and signed by authorized representatives of both Parties.

**SIGNATURE PAGE FOLLOWS**



**IN WITNESS WHEREOF**, the Parties of this MOU have caused this MOU to be executed by their duly authorized representatives to be effective as of date last signature date below.

**CITY OF WHARTON**

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

(Name)

(Title)

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

**TEXAS DEPARTMENT OF TRANSPORTATION**

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

(Name)

(Title)

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

TxDOT:		Federal Highway Administration:	
CSJ #	1412-03-038	CFDA No.	20.205
District #	13-Yoakum	CFDA Title	Highway Planning and Construction
Code Chart 64 #	45500		
Project Name	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>	

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT  
For - A  
Locally Funded  
(Construction of a New Location Roadway)  
On-System**

**THIS AGREEMENT** (Agreement) is made by and between the State of Texas, acting by and through the **Texas Department of Transportation** called the “State”, and the **City of Wharton**, acting by and through its duly authorized officials, called the “Local Government”. The State and Local Government shall be collectively referred to as “the parties” hereinafter.

**WITNESSETH**

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

**WHEREAS**, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

**WHEREAS**, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

**WHEREAS**, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

**WHEREAS**, the Texas Transportation Commission passed Minute Order Number **115291** authorizing the State to undertake and complete a highway improvement or other transportation project generally described as **constructing the extension of FM 1301 from SH 60 to US 59 in Wharton**. The portion of the project work covered by this Agreement is identified in the Agreement, Article 3, Scope of Work (Project), and

**WHEREAS**, the Texas Transportation Commission has not authorized funding for the construction of the highway improvement or other transportation project and the project is not currently listed and approved for construction in the Unified Transportation Program (UTP) or Statewide Transportation Improvement Program (STIP). This Agreement does not represent a commitment to future project

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	1412-03-038	<b>CFDA No.</b>	20.205
<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	45500		
<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>	

funding for any project elements, including construction, not specifically outlined in the Agreement. Costs not specifically identified as reimbursable under this Agreement will not be requested or reimbursed.

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

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

**AGREEMENT**

**1. Responsible Parties:**

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

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

**2. Period of the Agreement**

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

**3. Scope of Work**

The scope of work for the Project consists of the engineering and construction of the extension of FM 1301 from SH 60 to US 59, in the City of Wharton, as shown on Attachment "B".

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

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

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	1412-03-038	<b>CFDA No.</b>	20.205
<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	45500		
<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>	

before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled "Local Government Project Procedures and Qualification for the Texas Department of Transportation" and retains qualification in accordance with applicable TxDOT procedures. Upon request, the Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

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

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
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<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction
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<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>	

- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment C. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government’s requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.
- I. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government’s funding share for the estimated cost of preliminary engineering performed or reviewed by the State for the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State’s estimated construction oversight and construction cost.
- J. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- K. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the “Texas Department of Transportation” or may use the State’s Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT’s Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.
- L. The State will not pay interest on any funds provided by the Local Government.
- M. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, the State will not charge the Local Government for the indirect costs the State incurs on the Project, unless this Agreement is terminated at the request of the Local Government prior to completion of the Project.
- N. If the Local Government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- O. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, the Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice, in a form and containing all items required by the State, no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
- P. Upon completion of the Project, the State will perform a final accounting of the Project costs for all items of work with specified percentage funding. Any funds due by the Local Government, the State, or the federal government for these work items will be promptly paid by the owing party.
- Q. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	1412-03-038	<b>CFDA No.</b>	20.205
<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	45500		
<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>	

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

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

**5. Termination of This Agreement**

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

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

**6. Amendments**

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

**7. Remedies**

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

**8. Utilities**

The party named in Article 1, Responsible Parties, under AGREEMENT shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	1412-03-038	<b>CFDA No.</b>	20.205
<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	45500		
<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>	

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 commenced.

**9. Environmental Assessment and Mitigation**

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects. The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

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

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

**10. Compliance with Accessibility Standards**

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

**11. Architectural and Engineering Services**

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

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the Project is federally funded and with Texas

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	1412-03-038	<b>CFDA No.</b>	20.205
<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	45500		
<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>	

Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters. If the Local Government is the responsible party, the Local Government shall submit its procurement selection process for prior approval by the State. All professional services contracts must be reviewed and approved by the State prior to execution by the Local Government.

**12. Construction Responsibilities**

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

- A. Advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- B. If the State is the responsible party, the State will use its approved contract letting and award procedures to let and award the construction contract.
- C. If the Local Government is the responsible party, the Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting.
- D. If the Local Government is the responsible party, the State must concur with the low bidder selection before the Local Government can enter into a contract with the vendor.
- E. If the Local Government is the responsible party, the State must review and approve change orders.
- F. Upon completion of the Project, the party responsible for constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion and submit certification(s) sealed by a professional engineer(s) licensed in the State of Texas.
- G. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

**13. Project Maintenance**

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



<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	1412-03-038	<b>CFDA No.</b>	20.205
<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	45500		
<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>	

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

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

The Local Government shall be responsible for the following:

- A. Right of way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to the State before funds may be expended for the improvement of the right of way or real property.
- B. If the Local Government is the owner of any part of the Project site under this Agreement, the Local Government shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work.
- C. All parties to this Agreement will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.
- D. The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
- E. In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this Agreement and the obligation of federal spending authority.
- F. The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- G. The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	1412-03-038	<b>CFDA No.</b>	20.205
<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	45500		
<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>	

recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.

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

**15. Insurance**

If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

**16. Notices**

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

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	1412-03-038	<b>CFDA No.</b>	20.205
<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	45500		
<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>	

<b>Local Government:</b>	<b>State:</b>
City of Wharton ATTN: Mayor 120 East Caney Street Wharton, Texas 77488	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 <sup>th</sup> Street Austin, TX 78701

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

**17. Legal Construction**

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

**18. Responsibilities of the Parties**

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party, and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**19. Ownership of Documents**

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data and information prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State, in the format directed by the State, on a monthly basis or as required by the State. The originals shall remain the property of the Local Government.

**20. Compliance with Laws**

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

**21. Sole Agreement**

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

TxDOT:		Federal Highway Administration:	
CSJ #	1412-03-038	CFDA No.	20.205
District #	13-Yoakum	CFDA Title	Highway Planning and Construction
Code Chart 64 #	45500		
Project Name	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>	

**22. Cost Principles**

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

**23. Procurement and Property Management Standards**

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

**24. Inspection of Books and Records**

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

**25. Civil Rights Compliance**

The parties to this Agreement are responsible for the following:

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

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	1412-03-038	<b>CFDA No.</b>	20.205
<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	45500		
<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>	

Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

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

**26. Pertinent Non-Discrimination Authorities**

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

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>		<i>Item-3.</i>
<b>CSJ #</b>	1412-03-038	<b>CFDA No.</b>	20.205	
<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction	
<b>Code Chart 64 #</b>	45500			
<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>		

- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

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

If federal funds are used:

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

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	1412-03-038	<b>CFDA No.</b>	20.205
<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	45500		
<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>	

Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address [http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou\\_attachments.pdf](http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf).

- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.*

**28. Debarment Certifications**

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

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

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	1412-03-038	<b>CFDA No.</b>	20.205
<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	45500		
<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>	

**29. Lobbying Certification**

If federal funds are used, in executing this Agreement, each signatory certifies to the best of that signatory’s knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

If federal funds are used, the following requirements apply:

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This Agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
  - 1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
  - 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
  - 3. Report the total compensation and names of its top five executives to the State if:



<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	1412-03-038	<b>CFDA No.</b>	20.205
<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	45500		
<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>	

- i. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000; and
- ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

**31. Single Audit Report**

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division by email at [singleaudits@txdot.gov](mailto:singleaudits@txdot.gov).
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows: "We did not meet the \$\_\_\_\_\_ expenditure threshold and therefore, are not required to have a single audit performed for FY \_\_\_\_\_."
- D. For each year the Project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the Agreement, unless otherwise amended or the Project has been formally closed out and no charges have been incurred within the current fiscal year.

**32. Signatory Warranty**

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

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

**THE STATE OF TEXAS**

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
Signature

Kenneth Stewart  
\_\_\_\_\_  
Typed or Printed Name

Director of Contract Services  
\_\_\_\_\_  
Typed or Printed Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Title

\_\_\_\_\_  
Date

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>		<i>Item-3.</i>
<b>CSJ #</b>	1412-03-038	<b>CFDA No.</b>	20.205	
<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction	
<b>Code Chart 64 #</b>	45500			
<b>Project Name</b>	The extention of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>		

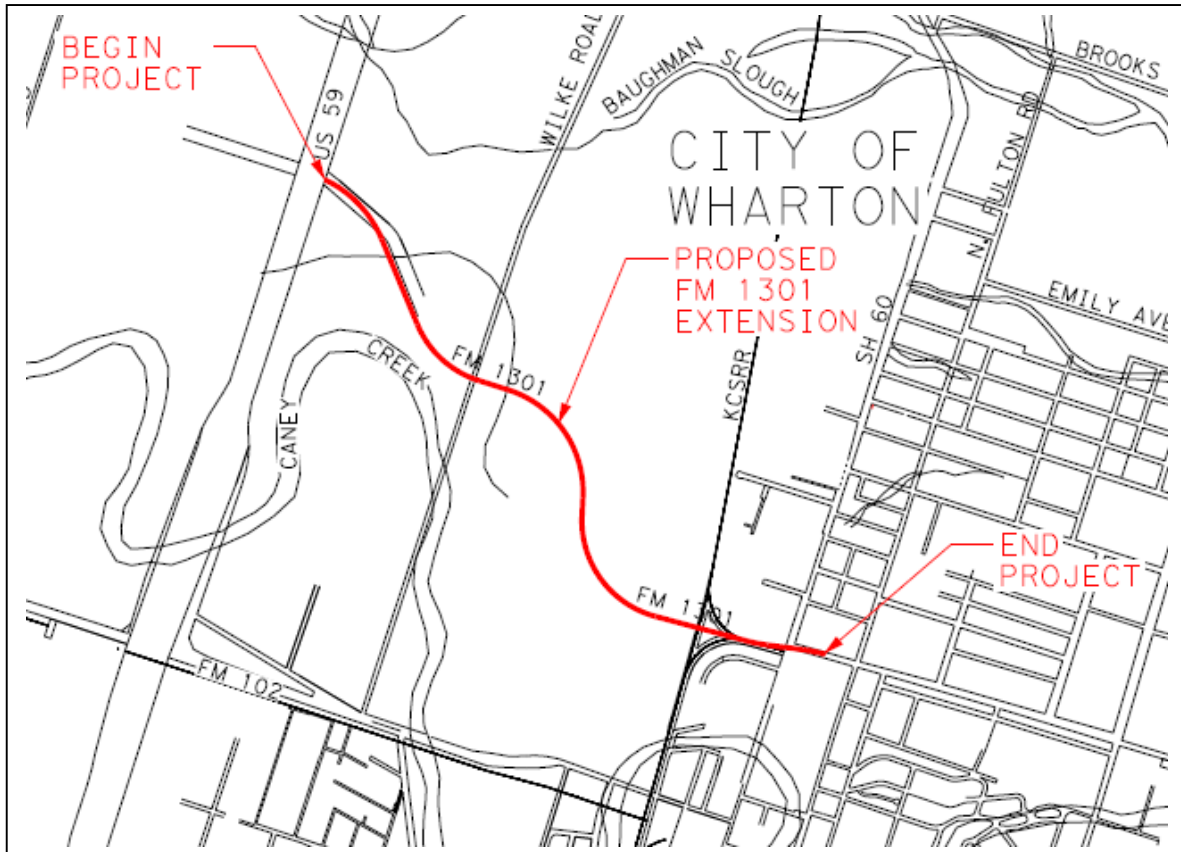
**ATTACHMENT A**  
**RESOLUTION, ORDINANCE, OR COMMISSIONERS COURT ORDER**

<b>TxDOT:</b>	
<b>CSJ #</b>	1412-03-038
<b>District #</b>	13- Yoakum
<b>Code Chart 64 #</b>	45500
<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton

<b>Federal Highway Administration:</b>	
<b>CFDA No.</b>	20.205
<b>CFDA Title</b>	Highway Planning and Construction
<i>AFA Not Used For Research &amp; Development</i>	

Item-3.

## ATTACHMENT B LOCATION MAP SHOWING PROJECT



<b>TxDOT:</b>		<b>Federal Highway Administration:</b>		<i>Item-3.</i>
<b>CSJ #</b>	1412-03-038	<b>CFDA No.</b>	20.205	
<b>District #</b>	13-Yoakum	<b>CFDA Title</b>	Highway Planning and Construction	
<b>Code Chart 64 #</b>	45500			
<b>Project Name</b>	The extension of FM 1301 from SH 60 to US 59 in Wharton	<i>AFA Not Used For Research &amp; Development</i>		

### ATTACHMENT C PROJECT BUDGET

Costs will be allocated based on 100% Local Government funding. Direct State Costs are allocated based on 100% State funding. The Local Government will then be responsible for 100% of the project cost overruns.

Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
Engineering (by Local Government)	\$880,000	0%	\$0	0%	\$0	100%	\$880,000
Environmental (by Local Government)	\$250,000	0%	\$0	0%	\$0	100%	\$250,000
Construction (by State)	\$14,000,000	0%	\$0	0%	\$0	100%	\$14,000,000
<b>Subtotal</b>	<b>\$15,130,000</b>		<b>\$0</b>		<b>\$0</b>		<b>\$15,130,000</b>
Environmental Direct State Costs	\$8,800	0%	\$0	100%	\$8,800	0%	\$0
Right of Way Direct State Costs	\$8,800	0%	\$0	100%	\$8,800	0%	\$0
Engineering Direct State Costs	\$17,600	0%	\$0	100%	\$17,600	0%	\$0
Utility Direct State Costs	\$8,800	0%	\$0	100%	\$8,800	0%	\$0
Construction Direct State Costs	\$1,610,000	0%	\$0	100%	\$1,610,000	0%	\$0
Indirect State Costs 4.52%	\$632,800	0%	\$0	100%	\$632,800	0%	\$0
<b>TOTAL</b>	<b>\$17,416,800</b>		<b>\$0</b>		<b>\$2,286,800</b>		<b>\$15,130,000</b>

Initial payment by the Local Government to the State: \$0.00

Payment by the Local Government to the State before construction: \$14,000,000.00

Estimated total payment by the Local Government to the State \$0.00. This is an estimate. The final amount of Local Government participation will be based on actual costs.

**CITY OF WHARTON  
RESOLUTION NO. 2020-XX**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR (CSJ:1412-03-038) TO A CATEGORY 11 PROJECT (CONSTRUCT NEW LOCATION ROADWAY) ON SYSTEM, GENERALLY DESCRIBED AS CONSTRUCTING THE EXTENSION OF FM 1301 FROM SH 60 TO US 59 IN WHARTON; AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS.**

**WHEREAS,** On July 27, 2011 the Wharton City Council entered into a Local Transportation Project Advance Funding Agreement to a Category 11 Project (Construct New Location Roadway) On System for the construction of the extension of FM 1301 from SH 60 to US 59 to in Wharton, Texas; and,

**WHEREAS,** The City of Wharton and the Texas Department of Transportation has partnered together and developed a memorandum of understanding for said project; and,

**WHEREAS,** The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute said memorandum of understanding.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS** as follows:

**Section I.** The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute a Memorandum of Understanding with The Texas Department of Transportation.

**Section II.** The City of Wharton and The Texas Department of Transportation. are hereby bound by the conditions as set forth in the memorandum of understanding.

**Section III.** That this resolution shall become effective immediately upon its passage.

**Passed, Approved, and Adopted** this 27<sup>th</sup> day of July 2020.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**Don Mueller**  
Mayor Pro-Tem

**ATTEST:**

\_\_\_\_\_  
**Paula Favors**  
City Secretary

**CITY OF WHARTON  
RESOLUTION NO. 2020 - XX**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING THE NEW ADVANCED FUNDING AGREEMENT (CSJ:1412-03-038) TO A CATEGORY 11 PROJECT (CONSTRUCT NEW LOCATION ROADWAY) ON SYSTEM, GENERALLY DESCRIBED AS CONSTRUCTING THE EXTENSION OF FM 1301 FROM SH 60 TO US 59 IN WHARTON; BETWEEN THE CITY OF WHARTON AND THE TEXAS DEPARTMENT OF TRANSPORTATION AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.**

**WHEREAS,** On July 27, 2011 the Wharton City Council entered into a Local Transportation Project Advance Funding Agreement to a Category 11 Project (Construct New Location Roadway) On System for the construction of the extension of FM 1301 from SH 60 to US 59 to in Wharton, Texas; and,

**WHEREAS,** The Wharton City Council has determined that it is in the best interest of the citizens of Wharton and those traveling through the community to conduct the construction of the extension of FM 1301 from SH 60 to US 59 to in Wharton, Texas; and,

**WHEREAS,** The City of Wharton and the Texas Department of Transportation has partnered together and developed an agreement to conduct said project; and,

**WHEREAS,** The City of Wharton and the Texas Department of Transportation wishes to enter into the Local Transportation Project Advance Funding Agreement to a Category 11 Project (Construct New Location Roadway) On System for the construction of the extension of FM 1301 from SH 60 to US 59 to in Wharton, Texas; and,

**WHEREAS,** The City of Wharton and the Texas Department of Transportation wishes to be bound by the conditions set forth in said agreement; and,

**WHEREAS,** The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute said agreement.

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

**Section I.** The Wharton City Council hereby approves the Local Transportation Project Advance Funding Agreement to a Category 11 Project (Construct New Location Roadway) On System for the construction of the extension of FM 1301 from SH 60 to US 59 to in Wharton, Texas.

**Section II.** The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute the Local Transportation Project Advance Funding Agreement to a Category 11 Project (Construct New Location Roadway) On System for the construction of the extension of FM 1301 from SH 60 to US 59 to in Wharton, Texas.

**Section III.** That this resolution shall become effective immediately upon its passage.

**PASSED, APPROVED AND ADOPTED** this 27<sup>th</sup> day of July 2020.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**DON MUELLER**  
Mayor Pro-Tem

**ATTEST:**

\_\_\_\_\_  
**PAULA FAVORS**  
City Secretary