



# Texas Department of Transportation

PO BOX 1717 • PHARR TEXAS 78577-1717 • (956) 702-6100

March 18, 2010

The Honorable Rene Ramirez  
County Judge, Hidalgo County  
P O Box 1356  
Edinburg, TX 78540

**RE: Advance Funding Agreement, 0921-02-220, etc.  
Hidalgo County Flashing Beacons (31 locations)**

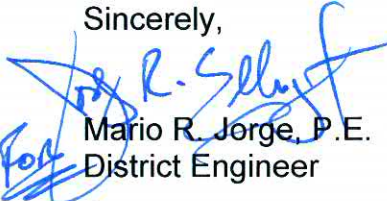
Dear Judge Ramirez:

We are pleased to inform you that this project is now scheduled for an April 2010 letting. Attached are two original copies of the Advance Funding Agreement (AFA) which needs to be executed as soon as possible to keep the scheduled letting. This AFA covers the thirty-one locations at which flashing beacons, safety lighting and other necessary appurtenances will be installed. The estimated cost of the project is \$1,174,230.00.

As shown on "Attachment C," Hidalgo County share of costs for the project is \$147,323.00 after considering the 88% Economically Disadvantaged County Program reduction. This amount includes preliminary engineering, direct state costs for preliminary review, construction and construction engineering and contingencies. The amount now due from Hidalgo County for direct state costs, construction and construction engineering and contingencies is \$12,473.00

**In order to maintain the scheduled April 2010 letting, it is critical that we receive both signed AFA and a check in the amount of \$12,473.00 no later than Friday, March 26, 2010.** If you have any questions contact me or Jody Ellington, our Director of Transportation Planning and Development, at 702-6100.

Sincerely,



Mario R. Jorge, P.E.  
District Engineer

RLB  
Attachments

cc: Hector "Tito" Palacios, Hidalgo County Commissioner, Precinct 2  
Jody Ellington, P.E., Director of Transportation Planning and Development  
Hector Gonzalez, P.E., Pharr Area Engineer  
Project File

THE TEXAS PLAN

REDUCE CONGESTION • ENHANCE SAFETY • EXPAND ECONOMIC OPPORTUNITY • IMPROVE AIR QUALITY  
INCREASE THE VALUE OF OUR TRANSPORTATION ASSETS

*An Equal Opportunity Employer*

STATE OF TEXAS       §  
COUNTY OF TRAVIS   §

**LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENT  
For  
High Risk Rural Roads Program  
and Highway Safety Improvement Projects**

**THIS 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 Hidalgo County, acting by and through its duly authorized officials, hereinafter called the “Local Government.”

**WITNESSETH**

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

**WHEREAS**, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; 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 passed Minute Order 111335, authorizing the State to undertake and complete a highway improvement generally described as installation of flashing beacons and safety lighting; and,

**WHEREAS**, the Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance dated \_\_\_\_\_ which is attached hereto and made a part hereof as Attachment “A” for construction of flashing beacons and safety lighting along with other necessary safety devices as described in the scope and more fully detailed in Attachment “B” hereinafter to referred to as the Project.

**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 # 0921-02-220 thru 250  
 District # 21  
 Code Chart 64 # 50109  
 Project: Safety Project  
 CFDA # 20.205

## AGREEMENT

### 1. 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.

### 2. Scope of Work

Installation of flashing beacons, safety lighting and other necessary appurtenances at 31 intersections, as described below.

CSJ	Limits From	Limits To	Description
092102220	INTERS OF TERRY RD at	MILE 17	INSTALL FLASHING BEACON & SAFETY LIGHTING AT INTERSECTION
092102221	INTERS OF TOWER RD at	CANTON RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102222	DOOLITTLE at	DAVIS	INSTALL FLASHING BEACON, SAFETY LIGHTING AT INTERSECTION
092102223	CESAR CHAVEZ at	MINNESOTA	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102224	MILE 6 WEST at	MILE 11 NORTH	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102225	CESAR CHAVEZ at	ELDORA	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102226	MILE 5 1/2 WEST at	LANTANA	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102227	MILE 4 NORTH at	MILE 1 1/2 E	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102228	CESAR CHAVEZ at	EARLING	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102229	DOOLITTLE at	RAMSEYER	INSTALL INTERSECTION FLASHING BEACON, SAFETY LIGHTING
092102230	MILE 2 WEST at	MILE 12 1/2 NORTH	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102231	INTERS OF HOEN at	MILE 17 1/2 NORTH	INSTALL FLASHING BEACON & SAFETY LIGHTING AT INTERSECTION
092102232	ABRAM at	5 MILE NORTH	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102233	MILE 17 NORTH at	TOWER	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102234	MILE 11 NORTH and	MILE 4 WEST	INSTALL ADVANCE WARNING SIGNALS AND SIGNS
092102235	INTERS OF TOWER RD and	ALBERTA RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102236	MILE 12 NORTH at	MILE 4 WEST	INSTALL ADVANCE WARNING SIGNALS AND SIGNS
092102237	INTERS OF MILE 10 NORTH and	VICTORIA RD.	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102238	HOEHN ST and	ROGER RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102239	INTERS OF CESAR CHAVEZ and	ALBERTA RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102240	INTERS OF TOWER RD and	TEXAS	INSTALL INTERSECTION FLASHING BEACON & LIGHTING
092102241	INTERS OF VAL VERDE RD and	MILE 20 NORTH	INSTALL INTERSECTION FLAHDGIN BEACON & SAFETY LIGHTING
092102242	INTERS OF LIPSEY and	SKINNER ST	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102243	INTERS OF TRENTON and	TWIN	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102244	INTER OF TOWER RD and	SIOUX	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING

092102245	INTERS OF TOWER RD and	CURRY	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102246	INTERS OF BRYAN RD and	8 MILE LINE	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102247	INTERS OF MILE 6 1/2 WEST and	QUINTERO ST.	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102248	INTERS OF CESAR CHAVEZ and	MILE 17 N	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102249	INTERS OF TRENTON and	LOPEZ	INSTALL INTERSECTION FLASHING BEACON
092102250	MILE 10 NORTH at	MILE 4 1/2 WEST	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING

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

- a. The total estimated cost of the Project is shown in the Project Budget - Attachment "C" which is attached hereto and made a part hereof. The expected cash contributions from the federal or State government, the Local Governments, or other parties is shown in Attachment "C". The State will pay for only those project costs that have been approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work performed before the issuance of a formal Letter of Authority by the Federal Highway Administration. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal Letter of Authority is formally issued.

If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before a letter of authority is issued. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

- b. This project cost estimate shows how necessary resources for completing the project will be provided by major cost categories. 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.
- c. 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.
- d. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, including any overruns in excess of the approved local project budget unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement.

- e. 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 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.
- f. In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will 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 by the Local Government, the State, or the Federal government will be promptly paid by the owing party. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.
- i. The State will not pay interest on any funds provided by the Local Government.
- j. If a waiver has been granted, the State will not charge the Local Government for the indirect costs the State incurs on the local project, unless this Agreement is terminated at the request of the Local Government prior to completion of the project.
- k. If the project has been approved for a "fixed price" or an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment "C" will clearly state the amount of the fixed price or the incremental payment schedule.
- l. If the Local government is an Economically Disadvantaged County and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- m. 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.
- n. Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.

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.

#### **4. Termination of this Agreement**

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

- a. the Agreement is terminated in writing with the mutual consent of the parties;
- b. the Agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or
- 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.

#### **5. Amendments**

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

#### **6. 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.

#### **7. 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 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.

- a. The Local Government is responsible for the identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- b. The Local Government is responsible for the cost of any environmental problem's mitigation and remediation.

- c. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment. Public hearings will not be held prior to the approval of project schematic.
- d. The State is responsible for the preparation of the NEPA documents required for the environmental clearance of this project.
- e. The Local Government shall provide the State with written certification from appropriate regulatory agency(ies) that identified environmental problems have been remediated.

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

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 the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

## **10. Architectural and Engineering Services**

The Local Government 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 thereto.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases.

Professional services 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.

## **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. The State will use its approved contract letting and award procedures to let and award the construction contract.
- c. Prior to their execution, the Local Government will be given the opportunity to review contract change orders that will result in an increase in cost to the Local Government.
- d. Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.

- e. 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.

**12. Project Maintenance**

The Local Government shall be responsible for maintenance of locally owned roads after completion of the work and the State shall be responsible for maintenance of 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.

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

The State is responsible for the provision and acquisition of any needed right of way or real property.

**14. 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:

<b>Local Government:</b>	<b>State:</b>
Hidalgo County	Director of Contract Services
Hidalgo County Judge	Texas Department of Transportation
PO Box 1356	125 E. 11th
Edinburg, Tx. 78540	Austin, Texas 78701

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party.

Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

**15. 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.

**16. 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.

**17. 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.

**18. 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.

**19. 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.

**20. 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.

**21. 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.

**22. 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 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.

Whenever American Recovery and Reinvestment Act of 2009 (ARRA) funds are used and the Local Government is performing any work, either directly or through a contractor, it must comply with the following provisions. If a Local Government is receiving ARRA funds, but is not performing any work, the following provisions apply, if appropriate, and to the extent necessary to comply with ARRA regulations.

In accordance with Section 902 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.

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.

Furthermore, the ARRA mandates that the U.S. Comptroller General's Office shall have authority to examine the records of the contractor, subcontractor, or local agency relating to the project at any time.

### **23. 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 A-133.

Whenever funds from the American ARRA are distributed to a Local Government, the Local Government must complete its Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC), as required by OMB Circular A-133, and separately identify any ARRA expenditures for Federal Awards.

### **24. Civil Rights Compliance**

The Local Government shall comply with the regulations of the 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).

### **25. Disadvantaged Business Enterprise Program Requirements**

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

### **26. Debarment Certifications**

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

**27. Lobbying Certification**

In executing this Agreement, 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 individual projects 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 file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**28. 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.

**29. Signatory Warranty**

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

CSJ # 0921-02-220 thru 250

District # 21

Code Chart 64 # 50109

Project: Safety Project

CFDA # 20.205

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

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
Rene Ramirez

\_\_\_\_\_  
Hidalgo County Judge

\_\_\_\_\_  
Date

**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.

\_\_\_\_\_  
Janice Mullenix  
Director of Contract Services  
Texas Department of Transportation

\_\_\_\_\_  
Date

CSJ # 0921-02-220 thru 250  
District # 21  
Code Chart 64 # 50109  
Project: Safety Project  
CFDA # 20.205

## **ATTACHMENT A**

### **Resolution or Ordinance**

CSJ # 0921-02-220 thru 250  
 District # 21  
 Code Chart 64 # 50109  
 Project: Safety Project  
 CFDA # 20.205

## ATTACHMENT B

### List of Project Locations in Hidalgo County

#### Hid Co Flashing Beacon Prj

COUNTY = Hidalgo  
 Minute Order 111335

Local Government = Hidalgo County  
 EDC Reduction = 80%

CCSJ = 0921-02-220

Let Date = APR 2010

CSJ	HWY	Limits From	Limits To	Description	Estimate
092102220	CS	INTERSECTION OF TERRY RD @	MILE 17	INSTALL FLASHING BEACON & SAFETY LIGHTING AT INTERSECTION	\$ 93,697
092102221	CS	INTERSECTION OF TOWER RD_ &	CANTON RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,627
092102222	CS	DOOLITTLE @	DAVIS	INSTALL FLASHING BEACON, SAFETY LIGHTING AT INTERSECTION	\$ 26,609
092102223	CS	CESAR CHAVEZ @	MINNESOTA	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 28,965
092102224	CS	MILE 6 WEST AT	MILE 11 NORTH	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 25,786
092102225	CS	CESAR CHAVEZ AT	ELDORA	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 26,379
092102226	CS	MILE 5 1/2 WEST AT	LANTANA	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 23,375
092102227	CS	MILE 4 NORTH AT	MILE 1 1/2 E	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 24,037
092102228	CS	CESAR CHAVEZ @	EARLING	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 28,728
092102229	CS	DOOLITTLE @	RAMSEYER	INSTALL INTERSECTION FLASHING BEACON, SAFETY LIGHTING	\$ 28,865
092102230	CS	MILE 2 WEST @	MILE 12 1/2 NORTH	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 24,285
092102231	CS	INTERSECTION OF HOEN @	MILE 17 1/2 NORTH	INSTALL FLASHING BEACON & SAFETY LIGHTING AT INTERSECTION	\$ 26,356
092102232	CS	ABRAM @	5 MILE NOORTH	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 25,441
092102233	CS	MILE 17 NORTH AT	TOWER	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 26,420
092102234	CS	MILE 11 NORTH AND	MILE 4 WEST	INSTALL ADVANCE WARNING SIGNALS AND SIGNS	\$ 26,416
092102235	CS	INTERSECTION OF TOWER RD_ &	ALBERTA RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,569
092102236	CS	MILE 12 NORTH AT	MILE 4 WEST	INSTALL ADVANCE WARNING SIGNALS AND SIGNS	\$ 26,416
092102237	CS	INTERSECTION OF MILE 10 NORTH &	VICTORIA RD.	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,375
092102238	CS	HOEHN ST &	ROGER RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,374
092102239	CS	INTERSECTION OF CESAR CHAVEZ &	ALBERTA RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,430
092102240	CS	INTERSECTION OF TOWER RD &	TEXAS	INSTALL INTERSECTION FLASHING BEACON & LIGHTING	\$ 26,502
092102241	CS	INTERSECTION OF VAL VERDE RD &	MILE 20 NORTH	INSTALL INTERSECTION FLAHDGIN BEACON & SAFETY LIGHTING	\$ 26,431
092102242	CS	INTERSECTION OF LIPSEY &	SKINNER ST	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 23,417
092102243	CS	INTERSECTION OF TRENTON &	TWIN	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 23,194
092102244	CS	INTERSECTION OF TOWER RD &	SIOUX	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,313
092102245	CS	INTERSECTION OF TOWER RD &	CURRY	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,451
092102246	CS	INTERSECTION OF BRYAN RD AND	8 MILE LINE	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 23,802
092102247	CS	INSTERSECTION OF MILE 6 1/2 WEST &	QUINTERO ST.	INSTALL INSTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,112
092102248	CS	INSTERSECTION OF CESAR CHAVEZ &	MILE 17 N	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,375
092102249	CS	INTERSECTION OF TRENTON &	LOPEZ	INSTALL INTERSECTION FLASHING BEACON	\$ 48,330
092102250	CS	MILE 10 NORTH	AT MILE 4 1/2 WEST	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 28,819

CSJ # 0921-02-220 thru 250  
 District # 21  
 Code Chart 64 # 50109  
 Project: Safety Project  
 CFDA # 20.205

### ATTACHMENT C

The State will install flashing beacons and safety lighting at the locations identified in the scope of work. 100% of the cost of Preliminary Engineering is covered by the local government. Based on the funding Category 8 and the Economically Disadvantaged County Program reduction of 88% to the usual local government share of 10%, the Local Government's participation for direct cost, construction, construction engineering, and contingencies is 1.20% (\$12,473.00). The federal share is 90%. The State share is 8.80% for construction and construction engineering and contingencies. The State has estimated the project to be as follows:

Description	Total Estimate Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	% EDC Adj.	Cost	%EDC Adj	Cost
Preliminary Engineering	\$134,850	0%		0%		100%	\$134,850
Utility and ROW Costs	n/a		n/a		n/a		n/a
Direct State Costs (including plan Review, Environmental)	\$9,000	90%	\$8,100	8.80%	\$792	1.20%	\$108
Installation of Flashing Beacon, Safety Lighting , and appurtenances	\$899,895	90%	\$809,906	8.80%	\$79,190	1.20%	\$10,799
Construction Engineering and Contingencies (E & C) 14.50 %	\$130,485.00	90%	\$117,436	8.80%	\$11,483	1.20%	\$1,566
<b>TOTAL</b>	<b>\$1,174,230</b>		<b>\$935,442</b>		<b>\$91,465</b>		<b>\$147,323</b>

Direct costs will be based on actual charges.

Estimated Local Government's Participation = \$147,323.00

Upon execution of the agreement the local government must remit \$108.00  
 Prior to letting of the project an additional \$12,365.00 is due

This is an estimate only, final participation amounts will be based on actual costs.

STATE OF TEXAS       §  
COUNTY OF TRAVIS   §

**LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENT  
For  
High Risk Rural Roads Program  
and Highway Safety Improvement Projects**

**THIS 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 Hidalgo County, acting by and through its duly authorized officials, hereinafter called the “Local Government.”

**WITNESSETH**

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

**WHEREAS**, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; 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 passed Minute Order 111335, authorizing the State to undertake and complete a highway improvement generally described as installation of flashing beacons and safety lighting; and,

**WHEREAS**, the Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance dated \_\_\_\_\_ which is attached hereto and made a part hereof as Attachment “A” for construction of flashing beacons and safety lighting along with other necessary safety devices as described in the scope and more fully detailed in Attachment “B” hereinafter to referred to as the Project.

**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 # 0921-02-220 thru 250  
 District # 21  
 Code Chart 64 # 50109  
 Project: Safety Project  
 CFDA # 20.205

## AGREEMENT

### 1. 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.

### 2. Scope of Work

Installation of flashing beacons, safety lighting and other necessary appurtenances at 31 intersections, as described below.

CSJ	Limits From	Limits To	Description
092102220	INTERS OF TERRY RD at	MILE 17	INSTALL FLASHING BEACON & SAFETY LIGHTING AT INTERSECTION
092102221	INTERS OF TOWER RD at	CANTON RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102222	DOOLITTLE at	DAVIS	INSTALL FLASHING BEACON, SAFETY LIGHTING AT INTERSECTION
092102223	CESAR CHAVEZ at	MINNESOTA	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102224	MILE 6 WEST at	MILE 11 NORTH	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102225	CESAR CHAVEZ at	ELDORA	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102226	MILE 5 1/2 WEST at	LANTANA	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102227	MILE 4 NORTH at	MILE 1 1/2 E	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102228	CESAR CHAVEZ at	EARLING	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102229	DOOLITTLE at	RAMSEYER	INSTALL INTERSECTION FLASHING BEACON, SAFETY LIGHTING
092102230	MILE 2 WEST at	MILE 12 1/2 NORTH	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102231	INTERS OF HOEN at	MILE 17 1/2 NORTH	INSTALL FLASHING BEACON & SAFETY LIGHTING AT INTERSECTION
092102232	ABRAM at	5 MILE NORTH	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102233	MILE 17 NORTH at	TOWER	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102234	MILE 11 NORTH and	MILE 4 WEST	INSTALL ADVANCE WARNING SIGNALS AND SIGNS
092102235	INTERS OF TOWER RD and	ALBERTA RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102236	MILE 12 NORTH at	MILE 4 WEST	INSTALL ADVANCE WARNING SIGNALS AND SIGNS
092102237	INTERS OF MILE 10 NORTH and	VICTORIA RD.	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102238	HOEHN ST and	ROGER RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102239	INTERS OF CESAR CHAVEZ and	ALBERTA RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102240	INTERS OF TOWER RD and	TEXAS	INSTALL INTERSECTION FLASHING BEACON & LIGHTING
092102241	INTERS OF VAL VERDE RD and	MILE 20 NORTH	INSTALL INTERSECTION FLAHDGIN BEACON & SAFETY LIGHTING
092102242	INTERS OF LIPSEY and	SKINNER ST	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102243	INTERS OF TRENTON and	TWIN	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102244	INTER OF TOWER RD and	SIOUX	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING

092102245	INTERS OF TOWER RD and	CURRY	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102246	INTERS OF BRYAN RD and	8 MILE LINE	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING
092102247	INTERS OF MILE 6 1/2 WEST and	QUINTERO ST.	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102248	INTERS OF CESAR CHAVEZ and	MILE 17 N	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING
092102249	INTERS OF TRENTON and	LOPEZ	INSTALL INTERSECTION FLASHING BEACON
092102250	MILE 10 NORTH at	MILE 4 1/2 WEST	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING

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

- a. The total estimated cost of the Project is shown in the Project Budget - Attachment "C" which is attached hereto and made a part hereof. The expected cash contributions from the federal or State government, the Local Governments, or other parties is shown in Attachment "C". The State will pay for only those project costs that have been approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work performed before the issuance of a formal Letter of Authority by the Federal Highway Administration. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal Letter of Authority is formally issued.

If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before a letter of authority is issued. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

- b. This project cost estimate shows how necessary resources for completing the project will be provided by major cost categories. 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.
- c. 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.
- d. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, including any overruns in excess of the approved local project budget unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement.

- e. 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 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.
- f. In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will 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 by the Local Government, the State, or the Federal government will be promptly paid by the owing party. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.
- i. The State will not pay interest on any funds provided by the Local Government.
- j. If a waiver has been granted, the State will not charge the Local Government for the indirect costs the State incurs on the local project, unless this Agreement is terminated at the request of the Local Government prior to completion of the project.
- k. If the project has been approved for a "fixed price" or an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment "C" will clearly state the amount of the fixed price or the incremental payment schedule.
- l. If the Local government is an Economically Disadvantaged County and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- m. 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.
- n. Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.

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.

#### **4. Termination of this Agreement**

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

- a. the Agreement is terminated in writing with the mutual consent of the parties;
- b. the Agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or
- 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.

#### **5. Amendments**

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

#### **6. 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.

#### **7. 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 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.

- a. The Local Government is responsible for the identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- b. The Local Government is responsible for the cost of any environmental problem's mitigation and remediation.

- c. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment. Public hearings will not be held prior to the approval of project schematic.
- d. The State is responsible for the preparation of the NEPA documents required for the environmental clearance of this project.
- e. The Local Government shall provide the State with written certification from appropriate regulatory agency(ies) that identified environmental problems have been remediated.

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

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 the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

## **10. Architectural and Engineering Services**

The Local Government 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 thereto.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases.

Professional services 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.

## **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. The State will use its approved contract letting and award procedures to let and award the construction contract.
- c. Prior to their execution, the Local Government will be given the opportunity to review contract change orders that will result in an increase in cost to the Local Government.
- d. Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.

- e. 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.

**12. Project Maintenance**

The Local Government shall be responsible for maintenance of locally owned roads after completion of the work and the State shall be responsible for maintenance of 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.

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

The State is responsible for the provision and acquisition of any needed right of way or real property.

**14. 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:

<b>Local Government:</b>	<b>State:</b>
Hidalgo County	Director of Contract Services
Hidalgo County Judge	Texas Department of Transportation
PO Box 1356	125 E. 11th
Edinburg, Tx. 78540	Austin, Texas 78701

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party.

Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

**15. 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.

**16. 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.

**17. 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.

**18. 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.

**19. 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.

**20. 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.

**21. 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.

**22. 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 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.

Whenever American Recovery and Reinvestment Act of 2009 (ARRA) funds are used and the Local Government is performing any work, either directly or through a contractor, it must comply with the following provisions. If a Local Government is receiving ARRA funds, but is not performing any work, the following provisions apply, if appropriate, and to the extent necessary to comply with ARRA regulations.

In accordance with Section 902 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.

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.

Furthermore, the ARRA mandates that the U.S. Comptroller General's Office shall have authority to examine the records of the contractor, subcontractor, or local agency relating to the project at any time.

### **23. 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 A-133.

Whenever funds from the American ARRA are distributed to a Local Government, the Local Government must complete its Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC), as required by OMB Circular A-133, and separately identify any ARRA expenditures for Federal Awards.

### **24. Civil Rights Compliance**

The Local Government shall comply with the regulations of the 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).

### **25. Disadvantaged Business Enterprise Program Requirements**

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

### **26. Debarment Certifications**

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

**27. Lobbying Certification**

In executing this Agreement, 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 individual projects 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 file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**28. 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.

**29. Signatory Warranty**

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

CSJ # 0921-02-220 thru 250

District # 21

Code Chart 64 # 50109

Project: Safety Project

CFDA # 20.205

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

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
Rene Ramirez

\_\_\_\_\_  
Hidalgo County Judge

\_\_\_\_\_  
Date

**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.

\_\_\_\_\_  
Janice Mullenix  
Director of Contract Services  
Texas Department of Transportation

\_\_\_\_\_  
Date

CSJ # 0921-02-220 thru 250  
District # 21  
Code Chart 64 # 50109  
Project: Safety Project  
CFDA # 20.205

## **ATTACHMENT A**

### **Resolution or Ordinance**

CSJ # 0921-02-220 thru 250  
 District # 21  
 Code Chart 64 # 50109  
 Project: Safety Project  
 CFDA # 20.205

## ATTACHMENT B

### List of Project Locations in Hidalgo County

#### Hid Co Flashing Beacon Prj

COUNTY = Hidalgo  
 Minute Order 111335

Local Government = Hidalgo County  
 EDC Reduction = 80%

CCSJ = 0921-02-220

Let Date = APR 2010

CSJ	HWY	Limits From	Limits To	Description	Estimate
092102220	CS	INTERSECTION OF TERRY RD @	MILE 17	INSTALL FLASHING BEACON & SAFETY LIGHTING AT INTERSECTION	\$ 93,697
092102221	CS	INTERSECTION OF TOWER RD_ &	CANTON RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,627
092102222	CS	DOOLITTLE @	DAVIS	INSTALL FLASHING BEACON, SAFETY LIGHTING AT INTERSECTION	\$ 26,609
092102223	CS	CESAR CHAVEZ @	MINNESOTA	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 28,965
092102224	CS	MILE 6 WEST AT	MILE 11 NORTH	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 25,786
092102225	CS	CESAR CHAVEZ AT	ELDORA	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 26,379
092102226	CS	MILE 5 1/2 WEST AT	LANTANA	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 23,375
092102227	CS	MILE 4 NORTH AT	MILE 1 1/2 E	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 24,037
092102228	CS	CESAR CHAVEZ @	EARLING	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 28,728
092102229	CS	DOOLITTLE @	RAMSEYER	INSTALL INTERSECTION FLASHING BEACON, SAFETY LIGHTING	\$ 28,865
092102230	CS	MILE 2 WEST @	MILE 12 1/2 NORTH	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 24,285
092102231	CS	INTERSECTION OF HOEN @	MILE 17 1/2 NORTH	INSTALL FLASHING BEACON & SAFETY LIGHTING AT INTERSECTION	\$ 26,356
092102232	CS	ABRAM @	5 MILE NOORTH	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 25,441
092102233	CS	MILE 17 NORTH AT	TOWER	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 26,420
092102234	CS	MILE 11 NORTH AND	MILE 4 WEST	INSTALL ADVANCE WARNING SIGNALS AND SIGNS	\$ 26,416
092102235	CS	INTERSECTION OF TOWER RD_ &	ALBERTA RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,569
092102236	CS	MILE 12 NORTH AT	MILE 4 WEST	INSTALL ADVANCE WARNING SIGNALS AND SIGNS	\$ 26,416
092102237	CS	INTERSECTION OF MILE 10 NORTH &	VICTORIA RD.	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,375
092102238	CS	HOEHN ST &	ROGER RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,374
092102239	CS	INTERSECTION OF CESAR CHAVEZ &	ALBERTA RD	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,430
092102240	CS	INTERSECTION OF TOWER RD &	TEXAS	INSTALL INTERSECTION FLASHING BEACON & LIGHTING	\$ 26,502
092102241	CS	INTERSECTION OF VAL VERDE RD &	MILE 20 NORTH	INSTALL INTERSECTION FLAHGIN BEACON & SAFETY LIGHTING	\$ 26,431
092102242	CS	INTERSECTION OF LIPSEY &	SKINNER ST	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 23,417
092102243	CS	INTERSECTION OF TRENTON &	TWIN	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 23,194
092102244	CS	INTERSECTION OF TOWER RD &	SIOUX	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,313
092102245	CS	INTERSECTION OF TOWER RD &	CURRY	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,451
092102246	CS	INTERSECTION OF BRYAN RD AND	8 MILE LINE	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 23,802
092102247	CS	INSTERSECTION OF MILE 6 1/2 WEST &	QUINTERO ST.	INSTALL INSTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,112
092102248	CS	INSTERSECTION OF CESAR CHAVEZ &	MILE 17 N	INSTALL INTERSECTION FLASHING BEACON & SAFETY LIGHTING	\$ 26,375
092102249	CS	INTERSECTION OF TRENTON &	LOPEZ	INSTALL INTERSECTION FLASHING BEACON	\$ 48,330
092102250	CS	MILE 10 NORTH	AT MILE 4 1/2 WEST	INSTALL INTERSECTION FLASHING BEACON AND SAFETY LIGHTING	\$ 28,819

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### ATTACHMENT C

The State will install flashing beacons and safety lighting at the locations identified in the scope of work. 100% of the cost of Preliminary Engineering is covered by the local government. Based on the funding Category 8 and the Economically Disadvantaged County Program reduction of 88% to the usual local government share of 10%, the Local Government's participation for direct cost, construction, construction engineering, and contingencies is 1.20% (\$12,473.00). The federal share is 90%. The State share is 8.80% for construction and construction engineering and contingencies. The State has estimated the project to be as follows:

Description	Total Estimate Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	% EDC Adj.	Cost	%EDC Adj	Cost
Preliminary Engineering	\$134,850	0%		0%		100%	\$134,850
Utility and ROW Costs	n/a		n/a		n/a		n/a
Direct State Costs (including plan Review, Environmental)	\$9,000	90%	\$8,100	8.80%	\$792	1.20%	\$108
Installation of Flashing Beacon, Safety Lighting , and appurtenances	\$899,895	90%	\$809,906	8.80%	\$79,190	1.20%	\$10,799
Construction Engineering and Contingencies (E & C) 14.50 %	\$130,485.00	90%	\$117,436	8.80%	\$11,483	1.20%	\$1,566
<b>TOTAL</b>	<b>\$1,174,230</b>		<b>\$935,442</b>		<b>\$91,465</b>		<b>\$147,323</b>

Direct costs will be based on actual charges.

Estimated Local Government's Participation = \$147,323.00

Upon execution of the agreement the local government must remit \$108.00  
 Prior to letting of the project an additional \$12,365.00 is due

This is an estimate only, final participation amounts will be based on actual costs.