

Texas Department of Transportation

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

May 30, 2013

Honorable Ramon Garcia
Hidalgo County Judge
P.O. Box 1356
Edinburg, Texas 78540

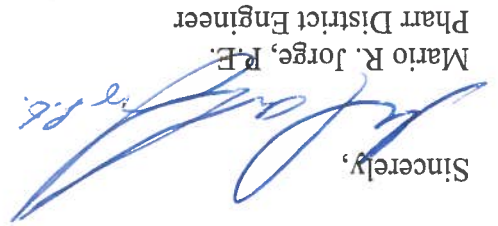
**RE: Advance Funding Agreement
Voluntary Local Government Contributions
FM 2220 from Mile 5 Road to FM 1924
CSJ: 2094-01-038**

Dear Judge Garcia:

Attached for your signature please find two originals of the Advance Funding Agreement for Voluntary Local Government Contributions. This agreement addresses the County's commitment to donate the project's environmental, right of way mapping and acquisition services for the widening of FM 2220 from Mile 5 Road to FM 1924.

Thank you for the County's proactive efforts and partnership approach in helping with the improvements to FM 2220. Please sign and return both signed originals to the attention of Mr. Homer Bazan, Jr., our Director of Transportation Planning and Development, at the above address for further processing. We will return one original once executed. If you have any questions you can contact Mr. Bazan or me at 702-6100.

Sincerely,



Mario R. Jorge, P.E.
Pharr District Engineer

Attachment

cc: Jody Ellington, P.E., Deputy District Engineer
Homero Bazan, Jr., P.E., Director of Transportation Planning and Development
Valente Olivarez, P.E., Pharr Area Engineer
Atidio Garza, P.E., Project Manager

THE TEXAS PLAN

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

An Equal Opportunity Employer

2. Project Funding and Work Responsibilities
 A. The State will authorize the performance of only those Project items of work which the Local Government has requested and has agreed to pay for as described in Attachment A, Payment Provision and Work Responsibilities which is attached to and made a part of this

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

AGREEMENT

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, the State and the Local Government do agree as follows:

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the State;

WHEREAS, the Local Government has requested that the State allow the Local Government to participate in said improvement by funding that portion of the improvement described as environmental, right of way mapping and right of way acquisition services for the widening of FM 2220 from Mile 5 Road to FM 1924, called the "Project"; and,

WHEREAS, the Local Government has requested that the State allow the Local Government to complete a highway improvement generally described as the widening of FM 2220 to 6 lanes; and, **WHEREAS**, Commission Minute Order Number 113250 authorizes the State to undertake and authorize the State to contract with municipalities and political subdivisions; and, **WHEREAS**, Government Code, Chapter 791, and Transportation Code, §201.209 and Chapter 221, authorize the State to operate a system of streets, roads, and highways that comprise the State Highway System; and,

WHEREAS, Transportation Code, Chapters 201, 221, and 361, authorize the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State

WITNESSETH

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the "State", and the Hidalgo County, acting by and through its duly authorized officials, called the "Local Government."

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY
 LOCAL GOVERNMENT CONTRIBUTIONS
 TO TRANSPORTATION IMPROVEMENT
 PROJECTS WITH NO REQUIRED MATCH**

STATE OF TEXAS §
COUNTY OF TRAVIS §

CSJ # 2094-01-038
 District # 21 - Pharr
 Code Chart 64 # 50109
 Project: FM 2220 from Mile 5
 To FM 1924

CSJ # 2094-01-038
District # 21 - Pharr
Code Chart 64 # 50109
Project: FM 2220 from Mile 5
To FM 1924

contract. In addition to identifying those items of work paid for by payments to the State, Attachment A, Payment Provision and Work Responsibilities, also specifies those Project items of work that are the responsibility of the Local Government and will be carried out and completed by the Local Government, at no cost to the State.

B. 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 costs.

C. 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.

D. 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 by the State to the Project. 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 with approval by appropriate personnel of the Local Government.

3. Right of Access

If the Local Government is the owner of any part of the Project site, the Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

4. Adjustments Outside the Project Site

The Local Government will provide for all necessary right of way and utility adjustments needed for performance of the work on sites not owned or to be acquired by the State.

5. 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.

6. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the local government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

7. Interest
The State will not pay interest on funds provided by the Local Government. Funds provided by the Local Government will be deposited into, and retained in, the State Treasury.

8. Inspection and Conduct of Work

Unless otherwise specifically stated in Attachment A, Payment Provision and Work Responsibilities, to this contract, the State will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State. Unless otherwise specifically stated in Attachment A to this contract, all work will be performed in accordance with the Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges adopted by the State and incorporated in this agreement by reference, or special specifications approved by the State.

9. Increased Costs

A. In the event it is determined that the funding provided by the Local Government will be insufficient to cover the State's cost for performance of the Local Government's requested work, the Local Government will pay to the State the additional funds necessary to cover the anticipated additional cost. The State shall send the Local Government a written notification stating the amount of additional funding needed and stating the reasons for the needed additional funds. The Local Government shall pay the funds to the State within thirty (30) days of the written notification, unless otherwise agreed to by all parties to this agreement. If the Local Government cannot pay the additional funds, this contract shall be mutually terminated in accordance with Article 11 – Termination. If this is a fixed price agreement as specified in Attachment A, Payment Provision and Work Responsibilities, this provision shall only apply in the event changed site conditions are discovered or as mutually agreed upon by the State and the Local Government.

B. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

10. Maintenance

Upon completion of the Project, the State will assume responsibility for the maintenance of the completed Project unless otherwise specified in Attachment A to this agreement.

11. Termination

A. This agreement may be terminated in the following manner:
1. By mutual written agreement and consent of both parties;

CSJ # 2094-01-038
 District # 21 - Pharr
 Code Chart 64 # 50109
 Project: FM 2220 from Mile 5
 To FM 1924

2. By either party upon the failure of the other party to fulfill the obligations set forth in this agreement; or
3. By the State if it determines that the performance of the Project is not in the best interest of the State.
- B. If the agreement is terminated in accordance with the above provisions, the Local Government will be responsible for the payment of Project costs incurred by the State on behalf of the Local Government up to the time of termination.
- C. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.

12. Notices

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

Local Government:	State:
Judge Hidalgo County PO Box 1356 Edinburg, Texas 78540	Director of Contract Services Office Texas Department of Transportation 125 E. 11 th Street Austin, Texas 78701

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided in 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 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.

13. Sole Agreement

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

14. Successors and Assigns

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

15. Amendments

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

CSJ # 2094-01-038
District # 21 - Pharr
Code Chart 64 # 50109
Project: FM 2220 from Mile 5
To FM 1924

16. State Auditor
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.

17. 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.

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

Date

District Engineer

THE STATE OF TEXAS

Date

Title

Typed or Printed Name

Signature

THE LOCAL GOVERNMENT

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

CSJ # 2094-01-038
District # 21 - Pharr
Code Chart 64 # 50109
Project: FM 2220 from Mile 5
To FM 1924

CSJ # 2094-01-038
 District # 21 - Pharr
 Code Chart 64 # 50109
 Project: FM 2220 from Mile 5
 To FM 1924

ATTACHMENT A PAYMENT PROVISION AND WORK RESPONSIBILITIES

A. Scope of Work
 The Local Government will perform the environmental document, the right of way mapping and the right of way acquisition services for the widening of FM 2220 from Mile 5 Road to FM 1924.

B. Payment Provision
 The Local Government's participation will be limited to performing the environmental document, the right of way mapping and the right of way acquisition services. The State will be responsible for the cost of Environmental Phase Direct and Indirect State Costs. The State has estimated the Project cost to be as follows:

Description	Total Estimated Cost		Federal Participation		State Participation		Local Participation
	%	Cost	%	Cost	%	Cost	
Environmental (by LG)	0%	\$ 230,000	0%	\$ 0	0%	\$ 0	100% \$ 230,000
ROW Mapping & Acquisition Services (by LG)	0%	\$ 967,005	0%	\$ 0	0%	\$ 0	100% \$ 967,005
Subtotal		\$ 1,197,005		\$ 0		\$ 0	\$ 1,197,005
Environmental Direct State Costs (7%)	0%	\$ 83,790	0%	\$ 0	100%	\$ 83,790	0% \$ 0
Indirect State Costs (7.27%)	0%	\$ 87,022	0%	\$ 0	100%	\$ 87,022	0% \$ 0
Subtotal		\$ 170,812		\$ 0		\$ 170,812	\$ 0
TOTAL		\$ 1,367,817		\$ 0		\$ 170,812	\$ 1,197,005

C. Work Responsibilities

1. 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 problems' 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 Local Government is responsible for the preparation of the NEPA documents required for the environmental clearance of this Project.
- E. 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.

2. Right of Way and Real Property

- 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 11 and Title 11 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.

CSJ # 2094-01-038
 District # 21 - Pharr
 Code Chart 64 # 50109
 Project: FM 2220 from Mile 5
 To FM 1924

CSJ # 2094-01-038
District # 21 - Pharr
Code Chart 64 # 50109
Project: FM 2220 from Mile 5
To FM 1924

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

H. 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.