



Texas Department of Transportation

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

December 20, 2013

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

**RE: Advance Funding Agreement – Amendment #1
SH 364 From SH 495 to FM 1924
CSJ# 2966-01-009**

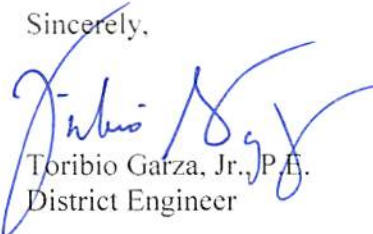
Dear Judge Garcia:

Enclosed please find two originals of Amendment #1 to the subject Advance Funding Agreement. This amendment increases the total Category 7 Metropolitan Mobility and Rehabilitation funds from \$9,052,410 to \$11,184,244 for the construction of SH 364 (La Homa Rd) from SH 495 to FM 1924.

Please sign and return both originals to the attention of Mr. Homero Bazan, Jr., our Director of Transportation Planning and Development, at the above address for further processing.

If you have any questions please contact Mr. Bazan or me at 702-6100.

Sincerely,



Toribio Garza, Jr., P.E.
District Engineer

Enclosure

cc: Pedro R. Alvarez, P.E., Deputy District Engineer
Homero Bazan, Jr., P.E., Director of Transportation Planning and Development
Valente Olivarez, P.E., Pharr Area Engineer
Monica Perez, P.E., Project Manager
Project File

THE TEXAS PLAN

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STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
AMENDMENT # 1**

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

WITNESSETH

WHEREAS, the State and the Local Government executed a contract on the 26th day of June, 2012 to effectuate their agreement for the upgrade to SH 364 to a four lane divided urban highway from SH 495 to FM 1924 in the County of Hidalgo; and,

WHEREAS, it has become necessary to amend that contract;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, the State and the Local Government do agree as follows:

AGREEMENT

1. Description of Amended Items

Article 24. Disadvantaged Business Enterprise (DBE) Program Requirements is deleted in its entirety and replaced with:

24. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address

http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.

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

Article 28. Federal Funding Accountability and Transparency Act Requirements is deleted in its entirety and replaced with:

28. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
1. Obtain and provide to the State a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR website whose address is: <https://www.sam.gov/portal/public/SAM/>;
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows Federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and

3. Report the total compensation and names of its top five (5) executives to the State if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

Article 29. **Single Audit Report** is deleted in its entirety and replaced with:

29. Single Audit Report

- A. 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.
- B. If threshold expenditures of \$500,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://www.txdot.gov/inside-txdot/office/audit/contact.html>.
- C. If expenditures are less than \$500,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

Attachment C "Project Budget" is deleted in its entirety and replaced with Attachment C-1 "Project Budget", which is attached to this amendment.

All other provisions of the original contract are unchanged and remain in full force and effect.

2. Signatory Warranty

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

CSJ # 2966-01-009
District # 21 – Pharr
Code Chart 64 # 50109
Project: SH 364 from SH 495 to
FM 1924
Federal Highway Administration
CFDA # 20.205
Not Research and Development

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

THE LOCAL GOVERNMENT

Signature

Typed or Printed Name

Title

Date

THE STATE OF TEXAS

Janice Mullenix
Director of Contract Services
Texas Department of Transportation

Date

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ATTACHMENT C - 1 PROJECT BUDGET

This project has received a total of \$11,184,244 in Category 7, Metropolitan Mobility and Rehabilitation (7MM) funds for Right of Way/utilities, construction and construction engineering. Construction and Construction Direct State Costs will be allocated based on 80% Federal funding and 20% State. ROW/utilities costs will be allocated based on 80% Federal funding and 20% Local Government funding. The Local Government is responsible for 100% of all preliminary engineering and 100% of all right of way/utilities costs exceeding the approved Federal funding amount. It is agreed that the Local Government will not seek reimbursement from the State until ROW funds for this project become available. Upon funds being available, the State will process reimbursement request in accordance with the agreement. This project is considered off-system until the State awards the construction contract, as per Commission Minute Order #108423. The following is an estimated breakdown of the project costs and funding participation:

Description		Total Estimated Cost	Federal Participation		State Participation		Local Participation	
			%	Cost	%	Cost	%	Cost
Preliminary Engineering by LG (funded 100% by LG)		\$ 379,750	0%	\$ 0	0%	\$ 0	100%	\$ 379,750
Right of Way & Compensable Utilities (by LG) Cat 7		\$ 2,930,494	80%	\$ 2,344,395	0%	\$ 0	20%	\$ 586,099
Construction (by State) Cat7		\$ 7,750,000	80%	\$ 6,200,000	20%	\$ 1,550,000	0%	\$ 0
Subtotal		\$ 11,060,244		\$ 8,544,395		\$ 1,550,000		\$ 965,849
Preliminary Engineering Direct State Costs \$63,681	Environmental (30%)	\$ 19,104	0%	\$ 0	100%	\$ 19,104	0%	\$ 0
	Right of Way (10%)	\$ 6,368	0%	\$ 0	100%	\$ 6,368	0%	\$ 0
	Preliminary Engineering (50%)	\$ 31,841	0%	\$ 0	100%	\$ 31,841	0%	\$ 0
	Utility (10%)	\$ 6,368	0%	\$ 0	100%	\$ 6,368	0%	\$ 0
Construction Direct State Costs (Contingencies) Cat 7		\$ 503,750	80%	\$ 403,000	20%	\$ 100,750		
Indirect State Costs (7.27%)		\$ 480,500	0%	\$ 0	100%	\$ 480,500	0%	\$ 0
Subtotal		\$ 1,047,931		\$ 403,000		\$ 644,931		\$ 0
TOTAL		\$ 12,108,175		\$ 8,947,395		\$ 2,194,931		\$ 965,849

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Initial payment by the Local Government to the State: \$0

Payment by the Local Government to the State before construction: \$0

Estimated total payment by the Local Government to the State \$0

This is an estimate. The final amount of Local Government participation will be based on actual costs.