



# Texas Department of Transportation

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

January 24, 2014

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

**RE: Advance Funding Agreement (AFA) – Amendment #1  
Mile 2 N From SH 364 to Moorefield Road  
CSJ# 0921-02-323**

Dear Judge Garcia:

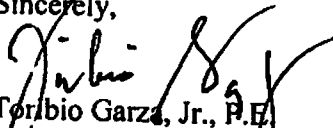
As you are aware, Amendment #1 to the Advance Funding Agreement was delivered to your office on December 27, 2013. This letter serves to clarify the amount due from the County for their estimated share of Preliminary Engineering Direct State Costs (PE DSC). Taking into account the deposit of \$16,103 received from the County on October 18, 2012 upon execution of the original AFA, below is the breakdown of the amount now owed by the County:

Amendment #1 - Amount due for PE DSC:	\$25,200
Less amount previously collected on 10/18/12 (Ck#14563):	- \$16,103
<b>Total amount now due from County:</b>	<b><u>\$ 9,097</u></b>

Please sign and return both originals of AFA Amendment #1 to the attention of Mr. Homero Bazan, Jr., our Director of Transportation Planning and Development, at the above address for further processing. Please also include a check for \$9,097.00 to cover the County's remaining estimated share of PE DSC associated with this project, made payable to the Texas Department of Transportation Trust Fund.

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

Sincerely,

  
Torbio Garza, Jr., P.E.  
Pharr 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  
Jesus A. Noriega, P.E., Project Manager  
Project File

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

An Equal Opportunity Employer



# 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  
Mile 2 N From SH 364 to Moorefield Road  
CSJ# 0921-02-323**

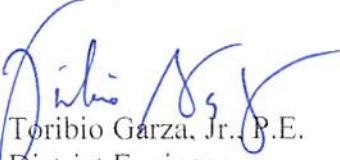
Dear Judge Garcia:

Enclosed please find two originals of Amendment #1 to the subject Advance Funding Agreement. This amendment adds Category 7 Metropolitan Mobility and Rehabilitation funds for Right of Way and construction costs for the construction of Mile 2 North from SH 364 to Moorefield Road.

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

Attachments

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  
Jesus A. Noriega, P.E., Project Manager  
Project File

**THE TEXAS PLAN**

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

*An Equal Opportunity Employer*

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 Hidalgo County, acting by and through its duly authorized officials, called the Local Government.

**W I T N E S S E T H**

**WHEREAS**, the State and the Local Government executed a contract on the 14<sup>th</sup> day of September, 2012 under CSJ: 0921-02-293 to effectuate their agreement to widen Mile 2 N to a 4 lane from SH 364 to Moorefield in Hidalgo County; 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:

**A G R E E M E N T**

**1. Description of Amended Items**

Project limits and CSJ # in the header of prime contract "CSJ#0921-02-293, Mile 2 N from SH 364 to Inspiration Road" are deleted in their entirety and replaced with "CSJ#0921-02-323, Mile 2 N from SH 364 to Moorefield Road" to reflect the revised 2013-2016 TIP information and governmental jurisdictional boundaries.

Article 13. Right of Way and Real Property is deleted in its entirety and replaced with:

**13. 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 II and Title III of the Uniform Relocation Assistance and Real Property

Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.

- D. The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
- E. In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this agreement and the obligation of federal spending authority.
- F. The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- G. The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.
- H. Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed **eighty percent (80%)** of the cost of the real property purchased in accordance with the terms and provisions of this agreement. Reimbursement will be in an amount not to exceed **eighty percent (80%)** of the State's predetermined value of each parcel, or the net cost of the parcel, whichever is less. In addition, reimbursement will be

made to the Local Government for necessary payments to appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.

- I. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. The separate agreement must be approved by the State prior to its execution. A copy of the executed agreement shall be provided to the State.

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](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*

CSJ # 0921-02-323  
District # 21 – Pharr  
Code Chart 64 # 28500  
Project: Mile 2 N from SH 364  
to Moorefield Road  
Federal Highway Administration  
CFDA # 20.205  
Not Research and Development

*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

CSJ # 0921-02-323  
District # 21 – Pharr  
Code Chart 64 # 28500  
Project: Mile 2 N from SH 364  
to Moorefield Road  
Federal Highway Administration  
CFDA # 20.205  
Not Research and Development

<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 and Description" 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 # 0921-02-323  
District # 21 – Pharr  
Code Chart 64 # 28500  
Project: Mile 2 N from SH 364  
to Moorefield Road  
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

CSJ # 0921-02-323  
 District # 21 – Pharr  
 Code Chart 64 # 28500  
 Project: Mile 2 N from SH 364  
 to Moorefield Road  
 Federal Highway Administration  
 CFDA # 20.205  
 Not Research and Development

### ATTACHMENT C - 1 PROJECT BUDGET

This project has received a total of \$2,353,526 in Category 7, Metropolitan Mobility and Rehabilitation (7MM) funds. With the approved 92% Economically Disadvantaged County Program reduction to the required local match for construction and construction engineering and contingencies costs, the federal share is 80%, state's share is 18.4% and the local Government's share is 1.6%. The ROW costs are 80% Federal and 20% Local Government. The Local Government will be responsible for 100% of the preliminary engineering, preliminary engineering direct state costs and all project costs exceeding the approved funding. The following is an estimated breakdown of the project costs and funding participation:

Description	Total Estimated Cost	Federal Participation		State Participation			Local Government Participation EDC @ %		
		%	Cost	% Before EDC Adj.	% After EDC Adj.	Cost After EDC Adj.	% Before EDC Adj.	% After EDC Adj.	Cost After EDC Adj.
Preliminary Engineering (by LG)	\$ 96,462	0%	\$ 0	0%	0%	\$ 0	100%	100%	\$ 96,462
Right of Way/Utilities (by LG) Cat 7	\$ 228,905	80%	\$ 183,124	0%	0%	\$ 0	20%	20%	\$ 45,781
100% Local	\$ 251,095	0%	\$ 0	0%	0%	\$ 0	100%	100%	\$ 251,095
Construction (by LG) Cat 7	\$1,898,230	80%	\$ 1,518,584	20%	18.4%	\$ 349,274	20%	1.6%	\$ 30,372
100% Local	\$ 70,386	0%	\$ 0	0%	0%	\$ 0	100%	100%	\$ 70,386
<b>SUBTOTAL</b>	<b>\$2,545,078</b>		<b>\$ 1,701,708</b>			<b>\$ 349,274</b>			<b>\$ 494,096</b>
Direct State Costs for State Review and Oversight (\$25,200)	Environmental (30%)	\$ 7,560	\$0	0%	0%	\$0	100%	100%	\$ 7,560
	Right of Way (10%)	\$ 2,520	\$0	0%	0%	\$0	100%	100%	\$ 2,520
	Preliminary Engineering (50%)	\$ 12,600	\$0	0%	0%	\$0	100%	100%	\$ 12,600
	Utility (10%)	\$ 2,520	\$0	0%	0%	\$0	100%	100%	\$ 2,520
District State Costs for Construction (CE & Contingencies)	\$ 226,391	80%	\$ 181,113	0%	18.4%	\$ 41,656	20%	1.6%	\$ 3,622
Indirect State Costs (6.20%)	\$ 157,044	0%	\$0	100%	100%	\$ 157,044	0%	0%	\$0
<b>SUBTOTAL</b>	<b>\$ 408,635</b>		<b>\$ 181,113</b>			<b>\$ 198,700</b>			<b>\$ 28,822</b>
<b>TOTAL</b>	<b>\$ 2,953,713</b>		<b>\$1,882,821</b>			<b>\$ 547,974</b>			<b>\$ 522,918</b>

CSJ # 0921-02-323  
District # 21 – Pharr  
Code Chart 64 # 28500  
Project: Mile 2 N from SH 364  
to Moorefield Road  
Federal Highway Administration  
CFDA # 20.205  
Not Research and Development

Initial payment by the Local Government to the State: \$ 25,200  
Payment by the Local Government to the State before construction: \$ 3,622  
Estimated total payment by the Local Government to the State: \$ 28,822

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