

County Hidalgo  
District Pharr District 21  
ROW CSJ # 1064-01-038  
CCSJ # 1064-01-027  
Federal Project #: \_\_\_\_\_  
CFDA Title: Highway Planning & Construction  
CFDA # 20.205  
Federal Highway Administration  
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

**AGREEMENT FOR RIGHT OF WAY PROCUREMENT AND TO CONTRIBUTE RIGHT OF WAY FUNDS AT A (FIXED PRICE)**

**THIS AGREEMENT** is made by and between the State of Texas, acting through the Texas Department of Transportation, (the “**State**”), and County of Hidalgo, Texas, acting through its duly authorized officials (the “**Local Government**”).

**WITNESSETH**

**WHEREAS**, Texas Transportation Code §§ 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**, Texas Transportation Code, §§ 201.209 authorizes the State and a Local Government to enter into agreements in accordance with Texas Government Code, Chapter 791; and

**WHEREAS**, the State has deemed it necessary to make certain highway improvements on Highway No. FM 676 from SH 107(Conway). To Taylor Rd., and this section of highway improvements will necessitate the acquisition of certain right of way and the relocating and adjusting of utilities (the “**Project**”); and

**WHEREAS**, the Local Government and the State have agreed to enter into a special agreement that combines both right of way procurement by the Local Government for a part of the project and the contribution of right of way funds at a fixed price by the Local Government for the other part of the project, therefore there shall be articles applicable to both types of relations and articles applicable specifically to each kind; and

**WHEREAS**, 43 Texas Administrative Code §15.55 and the State’s “Project Development Process Manual” define the Local Government’s financial participation in acquiring the right of way for the proper improvement of the State Highway System with regards to Part I of this Agreement; and

**WHEREAS**, the Local Government assumes responsibility for acquisition of all necessary right of way for this highway project with regards to Part I of this Agreement, with the State to reimburse such applicable costs according to the financial participation ratio referenced above; and

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**WHEREAS**, the Local Government requests that the State assume responsibility for acquisition of all necessary right of way for this highway project with regards to Part II of this Agreement; and

**WHEREAS**, the Local Government desires to enter into a fixed price joint participation agreement pursuant to 43 TAC §15.52 to contribute to the State funding participation as defined in 43 TAC §15.55 for the cost of acquiring the right of way and relocating or adjusting utilities for the proper improvement of the State Highway System with regards to Part II of this Agreement; and

**WHEREAS**, the Local Government requests that the State assume responsibility for all adjustment of utilities for this highway project under a fixed price joint participation agreement.

**WHEREAS**, the right of way procurement part of this agreement shall be Part I of this Agreement and the contribution of funds at a fixed price shall be Part II; and

**WHEREAS**, the Governing Body of the Local Government has approved entering into this agreement by resolution or ordinance dated \_\_\_\_\_, 20\_\_, which is attached to and made a part of this agreement as Attachment A. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement. Attachment B1 is a list of parcels that shall be governed by Part I of this Agreement and Attachment B2 is a list of parcels that shall be governed by Part II of such Agreement.

**NOW THEREFORE**, the State and the Local Government do agree as follows:

## **AGREEMENT**

### **Articles Applicable to both Part I and Part II**

#### **1. Agreement Period**

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. Termination**

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

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C. The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this agreement.

**3. Amendments**

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

**4. 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, to the following addresses:

<b>Local Government:</b>	<b>State:</b>
<u>The Honorable Richard F. Cortez</u>	Director of Right of Way Division
<u>Judge, Hidalgo County</u>	Texas Department of Transportation
<u>100 E. Cano Second Floor</u>	125 E. 11 <sup>th</sup> Street
<u>Edinburg, TX 78539</u>	Austin, Texas 78701

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

**5. 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.

**6. 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, that 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.

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## **7. 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.

## **8. 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.

## **9. 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 subject matter of this agreement.

## **10. 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.

## **11. Inspection of Books and Records**

The Local Government shall maintain all books, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the State and, if federally funded, the Federal Highway Administration (FHWA) 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 agreement or until any impending litigation, or claims are resolved. Additionally, the State and 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.

## **12. State Auditor**

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under

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

### **13. 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.

### **14. Civil Rights Compliance**

The parties to this agreement shall comply with the regulations of the U.S. Department of Transportation as they relate to nondiscrimination (49 CFR Part 21 and 23 CFR Part 200), 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).

### **15. Applicability of Federal Provisions**

Articles 16 through 21 only apply if Federal funding is used in the acquisition of right of way or the adjustment of utilities.

### **16. Office of Management and Budget (OMB) 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.

### **17. Disadvantaged Business Enterprise (DBE) Program Requirements**

- A.** The parties shall comply with the DBE 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://txdot.gov/business/business\\_outreach/mou.htm](http://txdot.gov/business/business_outreach/mou.htm).
- 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)-

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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 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC 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.*

## 18. Debarment Certification

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 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this 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.

## 19. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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- B.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C.** The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC §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 failure.

## **20. 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 System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
  - 2.** Obtain and provide to the State a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: <https://www.bpn.gov/ccr/default.aspx>;
  - 3.** 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
  - 4.** 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.

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## 21. 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 \$750,000 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://txdot.gov/inside-txdot/office/audit/contact.html>
- C. If expenditures are less than \$750,000 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 \$750,000 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.

## 24. Signatory Warranty

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

### Part I.

#### I-1. General

- A. The Local Government agrees to proceed with acquisition of right of way and the State agrees to reimburse the Local Government for its share of the cost of the right of way, providing the acquisition and reimbursement are accomplished according to the provisions outlined in this agreement.
- B. The State and the Local Government agree that acquisition of this right of way shall be in accordance with the *Texas Department of Transportation Right of Way Manual* and all applicable federal and state laws governing the acquisition of real property.
- C. It is understood that the terms of this agreement shall apply to new right of way, authorized and requested by the State, which is needed and not yet dedicated, in use, or previously acquired in the name of the State or Local Government for highway, street, or road purposes. This agreement shall also apply, with regard to any existing right of way, to outstanding property interests not previously acquired and to eligible utility adjustments not previously made, as authorized and requested by the State.
- D. It is further understood that if unusual circumstances develop in the right of way acquisition and they are not clearly covered by the terms of this agreement, those unusual circumstances or problems will be resolved by mutual agreement between the State and the Local Government.

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**I-2. Local Project Sources and Uses of Funds**

**A.** The total estimated cost of the Project for Part I is shown in Attachment C-1, Project Budget Estimate for Part I, which is attached to and made a part of this agreement. The expected cash contributions from the Federal or State government, the Local Governments, or other parties are shown in Attachment C-1. The State will pay for only those project costs that have been approved by the Texas Transportation Commission. If Federal funding is included, the State and the Federal Government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.

**B.** 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 federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures 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.

**C.** The Project cost estimate in Attachment C-1 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 and (2) costs of utility work.

**D.** The State will be responsible for securing the Federal and State share of the funding required for the development of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.

**E.** The Local Government will be responsible for all non-federal or non-state participation costs associated with the Project, 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.

**F.** In the event any existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive, including, but not limited to, outdoor advertising or storm water drainage facility requirements, is more restrictive than State or federal regulations, or any other locally proposed change, including, but not limited to, plats or re-plats, results in any increased costs to the State, then the Local

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Government will pay one hundred percent (100%) of all those increased costs, even if the applicable county qualifies as an Economically Disadvantaged County (EDC). The amount of the increased costs associated with the existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive will be determined by the State at its sole discretion.

**G.** If the Local government is an EDC and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.

**H.** 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.

**I.** The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.

**I-3. Location Surveys and Preparation of Right of Way Data**

The State, without cost to the Local Government, will perform the necessary preliminary engineering and title investigation in order to supply to the Local Government the data and instruments necessary to obtain acceptable title to the desired right of way.

**I-4. Determination of Right of Way Values**

The Local Government agrees to make a determination of property values for each right of way parcel by methods acceptable to the State and to submit to the State a tabulation of those values, signed by the appropriate Local Government representative. The tabulation shall list the parcel numbers, ownership, acreage, and recommended compensation. Compensation shall be shown in the component parts of land taken, itemization of improvements taken, 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 arriving at all determined values. This work will be performed by the Local Government at its expense without cost participation by the State. The State will review the data submitted and may base its reimbursement on the values that are determined by this review. The State, however, reserves the right to perform at its own expense any additional investigation, including supplemental appraisal work by State employees or by employment of fee appraisers, deemed necessary for determination of values to constitute the basis for State reimbursement. The parties may waive the requirement that the Local Government submit to the State property value determinations for any part of the required right of way by a writing signed by both parties. In instances of a waiver, the State, in its discretion, will make a determination of values to constitute the basis for State reimbursement.

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**I-5. Negotiations**

The State will notify the Local Government as soon as possible as to the State's determination of value. Negotiation and settlement with the property owner will be the responsibility of the Local Government without participation by the State; however, the Local Government will notify the State immediately prior to closing the transaction so that a current title investigation may be made to determine if there has been any change in the title. The Local Government will deliver properly executed instruments of conveyance that, together with any curative instruments found to be necessary as a result of the State's title investigation, will properly vest good and indefeasible title in the State for each right of way parcel involved. The Local Government will also deliver to the State an owner's policy of title insurance for each parcel, except as otherwise specifically approved by the State. Upon payment to the property owner of the agreed purchase price, the Local Government is authorized and directed to secure for the State possession of each parcel in accordance with all applicable Federal and State laws governing relocation assistance, notices to vacate, and forcible detainer. The costs incidental to negotiation, recording the right of way instruments, and securing possession of the parcels will be the responsibility of the Local Government. The cost of title insurance, closing services, and all costs of relocation assistance as authorized by applicable Federal and State laws will be the responsibility of the State.

**I-6. Administrative Settlements**

After the offer has been delivered to the property owner, and prior to the Special Commissioners' Hearing, the property owner may deliver one written counteroffer ("Administrative Settlement Proposal") to the Local Government. The Local Government will evaluate the Administrative Settlement Proposal and make a recommendation of approval or disapproval to the State. The State will consider the Administrative Settlement Proposal and the Local Government's recommendation and make a final determination of approval or disapproval in accordance with current State procedures. The State's approval of the Administrative Settlement Proposal is only for purposes of closing the purchase of the property prior to the Special Commissioners' Hearing. If a closing of the purchase does not occur prior to the hearing, the State's approval is automatically, without further action, withdrawn, and the State will participate only in the original approved value. In the event the State does not approve the Administrative Settlement Proposal, and the Local Government elects to purchase the property at a value greater than the original approved value, the State's participation in the purchase price will apply only to the original approved value, and the Local Government will pay one hundred percent (100%) of the costs that exceed the original approved value, even if the applicable county qualifies as an EDC.

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### **I-7. Condemnation**

Condemnation proceedings will be initiated at a time selected by the Local Government and will be the Local Government's responsibility at its own expense except as follows. The Local Government will obtain from the State without cost current title information and engineering data at the time condemnation is to be initiated. Except as set forth elsewhere in this agreement, the Local Government will concurrently file condemnation proceedings and a notice of lis pendens for each case in the name of the State, and in each case the judgment of the court will decree title and possession to the property condemned to the State. The Local Government may, as set forth in Article I-9 (Excess Takings) and where it is determined to be necessary, enter condemnation proceedings in its own name. Property acquired in the Local Government's name for the State must comply with requirements set forth in the engineering data and title investigation previously furnished to the Local Government by the State when the Local Government conveys the property to the State.

### **I-8. Court Costs, Costs of Special Commissioners' Hearings and Appraisal Expense**

Court costs and costs of Special Commissioners' Hearings assessed against the State or Local Government in condemnation proceedings conducted on behalf of the State and fees incident to those hearings will be paid by the Local Government. Those costs and fees, with the exception of recording fees, will be eligible for ninety percent (90%), or the applicable EDC-adjusted percent, State reimbursement under the established reimbursement procedure, provided that they are eligible for payment by the State under existing law. Where the Local Government uses the State's appraisers employed on a fee basis in Special Commissioners' Hearings or subsequent appeals, the cost of the appraiser for updating the report, preparing new reports, preparing for court testimony, and appearing in court to testify in support of the appraisal will be paid direct by the Local Government, but will be eligible for ninety percent (90%), or the applicable EDC-adjusted percent, State reimbursement under established procedure provided prior approval for the appraiser has been obtained from the State. The fee paid to the appraiser by the Local Government shall be in accordance with the fee schedule set forth in the appraiser's contract for appraisal services with the State.

### **I-9. Excess Takings**

In the event the Local Government desires to acquire land in excess of that requested by the State for right of way purposes, the State's cost participation will be limited to the property needed for its purposes. If the Local Government elects to acquire the entire property, including the excess taking, by a single instrument of conveyance or in one eminent domain proceeding, the property involved will be acquired in the name of the Local Government and that portion requested by the State for right of way will be separately conveyed to the State by the Local Government. When the property is acquired by negotiation, the State's participation will be based on the State's approved value of that part of the property requested for right of way purposes, provided that the approved value does not exceed the actual payment made by the Local Government. When the property is acquired by condemnation, the State's participation will be in the proportionate part of the final judgment amount

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computed on the basis of the relationship of the State's approved value to the State's predetermined value for the whole property.

**I-10. Improvements**

- A. Property owners will be afforded an opportunity in the negotiations to retain any or all of their improvements in the right of way taking. In anticipation of the owner's desiring to retain improvements, the State's approved value will include the amounts by which the upper limit of State participation will be reduced for the retention. It is further agreed that the upper limit for the State's participation in the Local Government's cost for an improved parcel will be reduced as shown in the State's approved value where the owner retains an improvement that is to be moved by either the Local Government or the owner. If improvements are, in whole or part, a part of the right of way taking and are not retained by the owner, title is to be secured in the name of the State.
- B. The State will participate in the acquisition of a structure severed by the right of way line if the part of the house, building, or similar structure that lies outside the right of way cannot be reconstructed adequately or there is nothing but salvage left, provided that the State's value is established on this basis and provided that title to the entire structure is taken in the name of the State. The State shall dispose of all improvements acquired. The net revenue derived by the State from the disposition of any improvements sold will be credited to the cost of the right of way procured and shared with the Local Government.

**I-11. Relocation of Utilities**

If the required right of way encroaches on an existing utility located on its own right of way and the proposed highway construction requires the adjustment, removal, or relocation of the utility facility, the State will establish the necessity for the utility work. If applicable, State participation in the cost of making the necessary change, less any resulting increase in the value to the utility and less any salvage value obtainable, may be obtained by either the "actual cost" or "lump sum" procedures. If applicable, reimbursement under "actual cost" will be made subsequent to the Local Government's certification that the work has been completed and will be made in an amount equal to ninety percent (90%), or the applicable EDC-adjusted percent, of the eligible items of cost as paid to the utility owner after the completion of an audit. The "lump sum" procedure requires that the State establish the eligibility of the utility work and enter into a three-party agreement with the owners of the utility facilities and the Local Government. This agreement must set forth the exact lump sum amount of reimbursement. If applicable, the utility will be reimbursed by the Local Government after proper certification by the utility that the work has been done, and the reimbursement will be based on the prior lump sum agreement. If applicable, the State will reimburse the Local Government in an amount equal to ninety percent (90%), or the applicable EDC-adjusted percent, of the firm commitment as paid to the utility owner. Reimbursement is subject to the provision that the individual lump sum agreement approved value shall not exceed \$20,000, except as specifically approved by the State. In those cases where a single operation is estimated to exceed \$20,000, the transaction will be brought to

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the attention of the State for determination of proper handling based upon the circumstances involved. The firm commitment to the utility will be an appropriate item of right of way. The adjustment, removal, or relocation of any utility line on publicly owned right of way by sufferance or permit will not be eligible for State reimbursement. The term "utility" under this agreement shall include publicly, privately, and cooperatively owned utilities.

**I-12. Fencing Requirements**

- A.** The Local Government may handle fencing through one of the following methods.
  - 1. The Local Government may pay the property owner for existing right of way fences based on the value those fences contribute to the part taken and damages for an unfenced condition resulting from the right of way taking, in which case the estimated value of those right of way fences and damages will be included in the recommended value and the approved value; or
  - 2. The Local Government may perform the fencing on the property owner's remaining property.
- B.** When the Local Government performs right of way fencing as a part of the total right of way consideration, neither the value of existing right of way fences nor damages for an unfenced condition will be included in the recommended value or the approved value. State participation in the Local Government's cost of constructing right of way fencing on the property owner's remainder may be based on either the actual cost of the fencing or on a predetermined lump sum amount. The State will be given credit for any salvaged fencing material and will not participate in any overhead costs of the Local Government.
- C.** If State participation is to be requested on the lump sum basis, the State and the Local Government will reach an agreement prior to the actual accomplishment of the work as to the necessity, eligibility, and a firm commitment as to the cost of the entire fencing work to be performed. This is subject to the provision that the lump sum approved cost shall not exceed \$20,000, except as specifically approved by the State. In the event the cost of the fencing is estimated to exceed \$20,000, the transaction will be brought to the attention of the State for determination of proper handling based on the circumstances involved.

**I-13. Basis for Reimbursement Calculation**

- A.** The State will reimburse the Local Government for right of way acquired after the date of this agreement in an amount not to exceed ninety percent (90%), or the applicable EDC-adjusted percent, of the cost of the right of way acquired in accordance with the terms and provisions of this agreement. The State's reimbursement will be in the amount of ninety percent (90%), or the applicable EDC-adjusted percent, of the State's predetermined value of each parcel, or the net cost of each parcel, whichever is less. All requests by the Local Government for reimbursement shall comply with the then current reimbursement submission requirements set forth in the *Texas Department of Transportation Right of Way Manual*.

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- B. If condemnation is necessary and title is taken under Article I-7 (Condemnation), the participation by the State shall be based on the final judgment, conditioned on the State having been notified in writing prior to the filing of the suit and on prompt notice being given as to all action taken under the suit. The State shall have the right to become a party to the suit at any time for all purposes, including the right of appeal at any stage of the proceedings. All other items of cost shall be borne by the State and the Local Government as provided in other sections of this agreement.
- C. If a lump sum fencing or utility adjustment agreement has been executed, the State will reimburse the Local Government in the amount of ninety percent (90%), or the applicable EDC-adjusted percent, of the predetermined lump sum cost of the right of way fencing or utility adjustment.
- D. If the Local Government prefers not to execute a lump sum agreement for either fencing or utility adjustments, the State will reimburse on the actual cost of that fencing or those adjustments. The Local Government's request for reimbursement will be supported by a breakdown of the labor, materials, and equipment used.

## **Part II.**

### **II-1 Local Project Sources and Uses of Funds**

- A. The total estimated cost of the Project for Part II is shown in Attachment C-2, Project Budget Estimate and Payment Schedule For Part II, which is attached to and made a part of this agreement. The expected cash contributions from the Federal or State government, the Local Government, or other parties is shown in Attachment C-2. The Local Government shall pay to the State the amount shown in Attachment C-2 as its required contribution of the total cost of the Project and shall transmit to the State with the return of this agreement, duly executed by the Local Government, a warrant or check for the amount and according to the payment schedule shown in Attachment C-2.
- B. The Local Government's fixed price contribution set forth in Attachment C-2 is not subject to adjustment unless:
  - 1. site conditions change;
  - 2. work requested by the Local Government is ineligible for federal participation; or
  - 3. the adjustment is mutually agreed on by the State and the Local Government.
- C. 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 federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of*

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*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.

- D. Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a warrant or check made payable to the "Texas Department of Transportation Trust Fund." The warrant or check 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 this highway project.
- E. Notwithstanding that this is a fixed price agreement, the Local Government agrees that in the event any existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive, including, but not limited to, outdoor advertising or storm water drainage facility requirements, is more restrictive than State or federal regulations, or any other locally proposed change, including, but not limited to, plats or re-plats, results in any increased costs to the State, then the Local Government will pay one hundred percent (100%) of all those increased costs, even if the applicable county qualifies as an Economically Disadvantaged County (EDC). The amount of the increased costs associated with the existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive will be determined by the State at its sole discretion.
- F. If the Local Government is an EDC and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.
- G. If the Project has been approved for an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C-2 will clearly state the incremental payment schedule.

## **II-2 Real Property in Lieu of Monetary Payment**

- A. Contributions of real property may be credited to the Local Government's funding obligation for the cost of right of way to be acquired for this project. Credit for all real property, other than property which is already dedicated or in use as a public road, contributed by the Local Government to the State shall be based on the property's fair market value established as of the effective date of this agreement. The fair market value shall not include increases or decreases in value caused by the project and should include the value of the land and improvements being conveyed, excluding any damages to the remainder. The amount of any credit for real property contributed for this project is clearly shown in Attachment C-2.
- B. The Local Government will provide to the State all documentation to support the determined fair market value of the donated property. This documentation shall include an appraisal of the property by a licensed appraiser approved by the State. The cost of appraisal will be the responsibility of the State. The State will review the submitted

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documentation and make a final determination of value; provided however, the State may perform any additional investigation deemed necessary, including supplemental appraisal work by State employees or employment of fee appraisers.

- C.** Credit shall be given only for property transferred at no cost to the State after the effective date of this agreement and the issuance of spending authority, and only for property which is necessary to complete this project, has title acceptable to the State, and is not contaminated with hazardous materials. Credit shall be in lieu of monetary contributions required to be paid to the State for the Local Government's funding share of the right of way to be acquired for this project. The total credit cannot exceed the Local Government's matching share of the right of way obligation under this agreement, and credits cannot be reimbursed in cash to the Local Government, applied to project phases other than right of way, nor used for other projects.
- D.** In the event the Local Government's monetary contributions to the State for acquisition of right of way, when added to its real property credits, exceed the Local Government's matching share of the right of way obligation, there will be no refund to the Local Government of any portion of its contributed money.

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

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
Signature

The Honorable Judge Richard F. Cortez  
Typed or Printed Name

Hidalgo County Judge  
Title

\_\_\_\_\_  
Date

**THE STATE OF TEXAS**

\_\_\_\_\_  
Rose Wheeler  
Contracts & Finance Director  
Right of Way Division  
Texas Department of Transportation

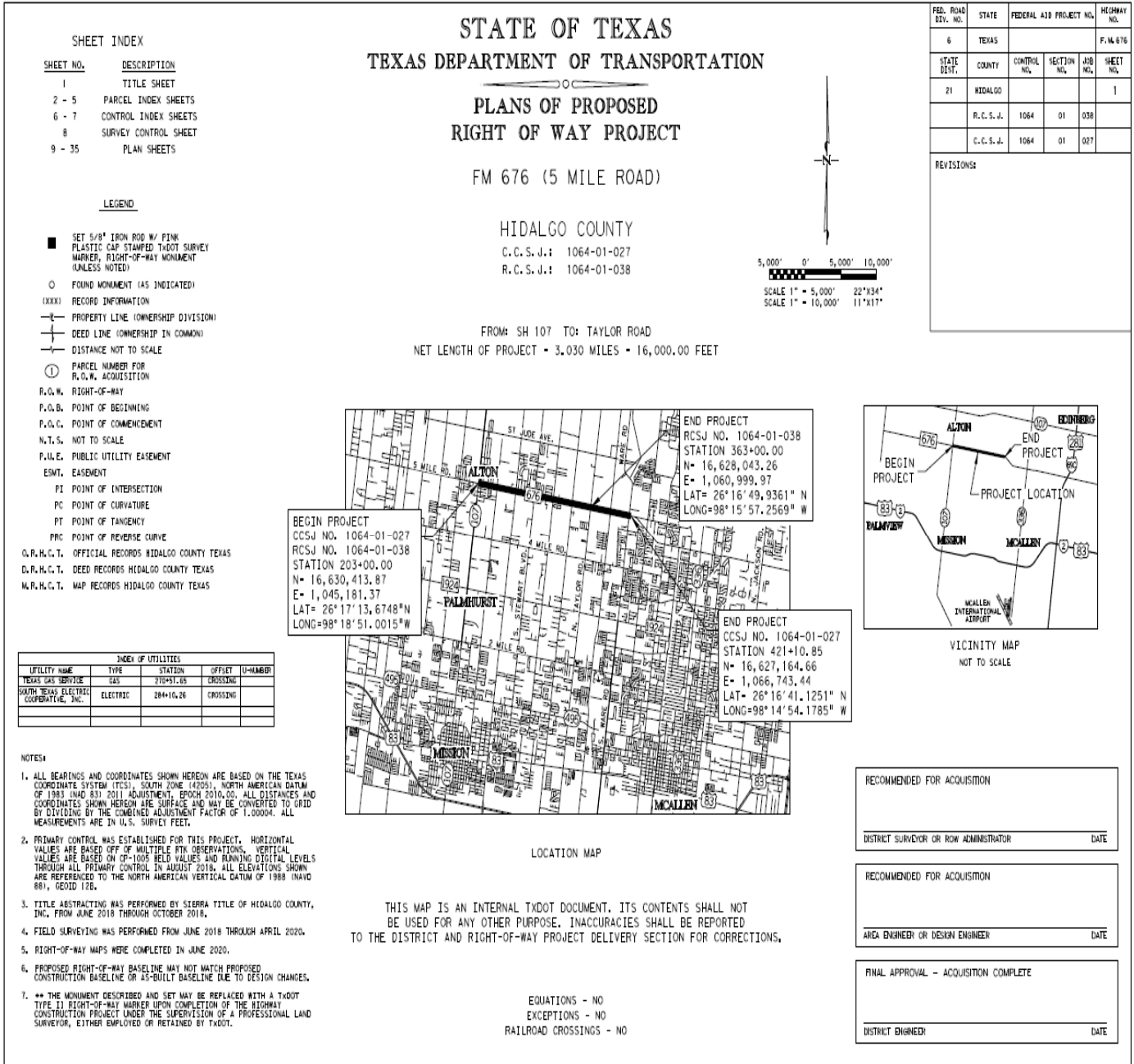
\_\_\_\_\_  
Date

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**ATTACHMENT A  
RESOLUTION OR ORDINANCE**

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## ATTACHMENT B LOCATION MAP SHOWING PROJECT



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**ATTACHMENT B-1**  
**LIST OF PARCELS GOVERNED BY PART I OF THIS AGREEMENT**

Parcels: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30, 32, 33, 34, 36, 37, 41, 42, 43, 44, 46, 47, 49, 51, 52, 53, 54, 58, 59, 60, 61, 62, 64, 65, 67, 68, 71, 72, 73, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, 85, 86, 87, 88, 91, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 115, 116, 117, 119, 120, 121, 123, 124, 126, 127, 128, 129, 130, 131, 132, 134, 136, 138, 139, 141, 142, 143, 144, 145, 146, 147, 149, 150, 151, 152, 153, 155, 157, 158, 160, 161, 163, 164, 166, 167, 168, 169, and 170.

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**ATTACHMENT B-2**  
**LIST OF PARCELS GOVERNED UNDER PART II OF THIS AGREEMENT**

Parcels: 14, 16, 18, 20, 27, 35, 38, 39, 40, 45, 48, 50, 55, 56, 57, 63, 66, 69, 70, 79, 90, 92, 103, 114, 118, 133, 135, 137, 137X, 154, 165, 159, 165 and 171.

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## ATTACHMENT C-1 PROJECT BUDGET ESTIMATE AND PAYMENT SCHEDULE FOR PART I



County	Hidalgo
District	Pharr District
ROW CSJ #	1064-01-038
CCSJ #	1064-01-027

Federal Project #	N/A
CFDA Title: <u>Highway Planning and Construction</u>	
FHWA CFDA # 20.205	
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Standard Contractual Agreement  
 Local Government Performs Work  
 EDC Adjustment  
 Attachment C

Description	Total Estimated Cost	Participation				Total % (should be 100%)
		State		Local		
		%	Cost	%	Cost	
Right of Way Acquisition	\$2,241,885.76	98.3%	\$2,203,773.70	1.7%	\$38,112.06	100.0%
Reimbursable Utility Adjustments	\$477,699.00	98.3%	\$469,578.12	1.7%	\$8,120.88	100.0%
Joint Bid - Reimbursable Utility Adjustments						0.0%
<b>TOTAL</b>	<b>\$2,719,584.76</b>		<b>\$2,673,351.82</b>		<b>\$46,232.94</b>	

Local Government requested and has been granted an Economically Disadvantaged County Adjustment from the Texas Transportation Commission on September 28, 2017 by virtue of attached Minute Order No. 115071, and approved a 83 percent adjustment to the required 10 percent local participation for this project. Also, attached are completed Affidavit and EDC Program Information Sheet.

THIS IS AN ESTIMATE.  
 The final amount of Local Government participation will be based on actual costs.

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## ATTACHMENT C-2 PROJECT BUDGET ESTIMATE AND PAYMENT SCHEDULE FOR PART II



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District	Pharr District
ROW CSJ #	1064-01-038
CCSJ #	1064-01-027

Federal Project #	A00109269
CFDA Title:	<u>Highway Planning and Construction</u>
FHWA CFDA #	20.205
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Standard Agreement to Contribute  
 State Performs Work  
 Attachment C

Description	Total Estimated Cost	Participation				Total % (should be 100%)
		State		Local		
		%	Cost	%	Cost	
Right of Way Acquisition	\$3,161,064.00	98.3%	\$3,107,325.91	1.7%	\$53,738.09	100.0%
Reimbursable Utility Adjustments	\$3,780,000.00	98.3%	\$3,715,740.00	1.7%	\$64,260.00	100.0%
Joint Bid - Reimbursable Utility Adjustments						0.0%
<b>TOTAL</b>	<b>\$6,941,064.00</b>		<b>\$6,823,065.91</b>		<b>\$117,998.09</b>	

Local Government requested and has been granted an Economically Disadvantaged County Adjustment from the Texas Transportation Commission on September 28, 2017 by virtue of attached Minute Order No. 115071, and approved a 83 percent adjustment to the required 10 percent local participation for this project. Also, attached are the completed Affidavit and EDC Program Information Sheet.

Fixed Amount  
 Except as otherwise provided in the Agreement, the fixed amount of Local Government participation will be that amount provided above.