



## MEMORANDUM

01/10/2011

**TO:** Karl Hale  
Corpus Christi District

**FROM:** Joey Matesic *JM*  
Contract Services

**SUBJECT:** AFA for installation, maintenance and operations of decorative  
lighting on the Harbor Bridge, US 181  
**CSJ: 0101-08-105**  
**CS Log: 2011-426**

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**Attached are:**

**Two fully executed original counterparts for the referenced project.**

**If you have any questions, please contact me at 512.374.5129.**

**Thank You**

STATE OF TEXAS §  
COUNTY OF TRAVIS §

**ORIGINAL**

**MASTER AGREEMENT  
GOVERNING  
LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENTS**

**THIS MASTER AGREEMENT (MAFA) is made by and between the State of Texas, acting by and through the Texas Department of Transportation hereinafter called the "State", and the City of Corpus Christi acting by and through its duly authorized officials, hereinafter called the "Local Government."**

**WITNESSETH**

**WHEREAS, the Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) codified under Title 23 U.S.C. Section 101 et seq., authorize transportation programs to meet the challenges of protecting and enhancing communities and the natural environment and advancing the nation's economic growth and competitiveness; and**

**WHEREAS, ISTEA and TEA-21 establish federally funded programs for transportation improvements to implement its public purposes; and**

**WHEREAS, Title 23 U.S.C. Section 134 requires that Metropolitan Planning Organizations and the States' Transportation Agencies to develop transportation plans and programs for urbanized areas of the State; and**

**WHEREAS, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and**

**WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds; and**

**WHEREAS, the governing terms of this Master Agreement will provide for efficient and effective contract administration of the types of Local Project Advance Funding Agreements (LPAFA) listed in Attachment A; and,**

**WHEREAS, the Texas Government Code, Section 441.189 allows any state record to be created or stored electronically in accordance with standards and procedures adopted as administrative rules of the Texas State Library and Archives Commission; and**

**WHEREAS**, the Governing Body of the Local Government has approved entering into this Master Agreement by resolution or ordinance dated \_\_\_\_\_, attached hereto and made a part of this Master Agreement as Attachment B.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

### **AGREEMENT**

#### **1. Period of the Agreements**

This Master Agreement and the Local Project Advance Funding Agreements (LPAFAs) subject to this Master Agreement become effective when signed by the last party whose signing makes the respective agreements fully executed. This Master Agreement shall remain in effect until terminated as provided in Article 2.

#### **2. Termination of this Master Agreement**

This agreement may be terminated by any of the following conditions:

- a. by mutual written consent and agreement of all parties.
- b. by any party with 90 days written notice. If this Master Agreement is terminated under this clause, all existing, fully executed LPAFAs made under this Master Agreement shall automatically incorporate all the provisions of this Master Agreement.
- c. by either party, upon the failure of the other party to fulfill the obligations as set forth in this Master Agreement.

#### **3. Termination of the Local Project Advance Funding Agreement (LPAFA)**

An LPAFA 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, or;
- b. because of a breach of this Master Agreement or a breach of the Local Project Advance Funding Agreement. Any cost incurred due to a breach of contract shall be paid by the breaching party.
- c. After the PS&B the local government may elect not to provide the funding and the project does not proceed because of insufficient funds; the local government agrees to reimburse the State for its reasonable actual costs incurred during the project.
- d. Conditions for termination as specified in the LPAFA are fulfilled.

#### **4. Amendments**

- a. **Amendment of this Master Agreement by Notice with Mutual Consent:** The State may notify the Local Government of changes in this Master Agreement resulting from

changes in federal or state laws or rules or regulations and these changes in the Master Agreement shall be incorporated into this agreement unless the State is notified by the Local Government within 60 days. From time to time, the State may issue numbered restatements of this MAFA to wholly reflect its amendments.

- b. This Master Agreement may be amended due to changes in the agreement or the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.
- c. The notice of amendment and the amendment to this Master Agreement may be in an electronic form to the extent permitted by law and after a prior written consent of the parties to this agreement is made.
- d. Amendments to the LPAFAs due to changes in the character of the work or terms of the agreement, or responsibilities of the parties relating to a specific project governed under this Master Agreement may be enacted through a mutually agreed upon, written amendment to the LPAFA.

#### 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. Utilities

If the required right of way encroaches upon existing utilities and the proposed project requires their adjustment, removal or relocation, the Local Government will be responsible for determining the scope of utility work and notify the appropriate utility company to schedule adjustments, unless specified otherwise in a specific LPAFA under other provisions of this MAFA.

The Local Government shall be responsible for the adjustment, removal or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies and procedures. This includes, but is not limited to: 43 TAC §15.55 relating to Construction Cost Participation; 43 TAC §21.21 relating to State Participation in Relocation, Adjustment, and/or Removal of Utilities; and, 43 TAC§ 21.31 et seq. relating to Utility Accommodation. The Local Government will be responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the project, unless this work is provided by the owners of the utility facilities:

- a. per agreement;
- b. per all applicable statutes or rules, or;
- c. as specified otherwise in a LPAFA.

Prior to letting a construction contract for a local project, a utility certification must be made available to the State upon request stating that all utilities needing to be adjusted for completion of the construction activity have been adjusted.

## **7. Environmental Assessment and Mitigation**

Development of a local 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, unless provided for otherwise in the specific project agreement.
- b. The Local Government is responsible for the cost of any environmental problem's mitigation and remediation, unless provided for otherwise in the specific project agreement.
- c. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment, unless provided for otherwise in the specific project agreement.
- d. The Local Government shall provide the State with written certification from appropriate regulatory agency(ies) that identified environmental problems have been remediated, unless provided for otherwise in the specific project agreement.

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

All parties to this agreement shall ensure that the plans for and the construction of all projects subject to this Master Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

## **9. Architectural and Engineering Services**

Any party to this contract may have responsibility for effecting the performance of architectural and engineering services. Or, the parties may agree to be individually responsible for portions of this work. The LPAFA shall define the party responsible for performance of this work.

The engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*, and the special specifications and special provisions related thereto, unless specifically stated otherwise in the LPAFA and approved by the State.

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

Professional services contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by disadvantaged business enterprises (DBEs), ADA, and environmental matters.

#### **10. Construction Responsibilities**

- a. Unless specifically provided for otherwise in the LPAPA, the State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- b. All contract letting and award procedures must be approved by the State prior to letting and award of the construction contract, whether the construction contract is awarded by the State or by the Local Government.
- c. All contract change order review and approval procedures must be approved by the State prior to start of construction.
- d. Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
- e. For federally funded contracts, the parties to this agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Part B.

#### **11. Project Maintenance**

The Local Government shall be responsible for maintenance of locally owned roads after completion of the work and the State shall be responsible for maintenance of state highway system after completion of the work if the work was on the state highway system, unless otherwise provided for in the LPAPA or other prior existing maintenance agreement with the Local Government.

#### **12. Local Project Sources and Uses of Funds**

- a. The total estimated cost of the Project will be clearly stated in the local project agreement. The expected cash contributions from the federal, state, Local Governments or other parties will be clearly stated. The State will pay for only those project costs that have been approved by the Texas Transportation Commission.
- b. A project cost estimate showing the estimated contributions in kind or in cash for each major area of the local project will be provided in the LPAPA. This project cost estimate will show how necessary resources for completing the project will be provided by major cost categories. These categories include but are not limited to: (1) costs of real

- property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- c. The State will be responsible for securing the Federal and State share of the funding required for the development and construction of the local project. Federal share of the project will be reimbursed to the local government on a cost basis.
  - d. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, including any overruns in excess of the approved local project budget, unless otherwise provided for in the LPFAFA.
  - e. Following execution of the LPFAFA, but prior to the performance of any review work by the State, the Local Government will remit a check or warrant made payable to the "Texas Department of Transportation" in the amount specified in the LPFAFA. The Local Government will pay at a minimum its funding share for the estimated cost of preliminary engineering for the project, unless otherwise provided for in the LPFAFA.
  - f. 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, unless otherwise provided for in the LPFAFA.
  - g. In the event the State determines that additional funding is required by the Local Government at any time during the Project, the State will notify the Local Government in writing. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification, unless otherwise provided for in the LPFAFA.
  - h. Upon completion of the Project, the State will perform an audit of the local project costs. Any funds due to the Local Government, the State, or the Federal government will be promptly paid by the owing party.
  - i. The State will not pay interest on any funds provided by the Local Government.
  - j. If a waiver has been granted, the State will not charge the Local Government for the indirect costs the State incurs on the local project, unless this agreement is terminated at the request of the Local Government prior to completion of the project.
  - k. If the local project has been approved for a "fixed price" or an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the LPFAFA will clearly state the amount of the fixed price or the incremental payment schedule.
  - l. The Texas Comptroller of Public Accounts has determined that certain counties qualify as Economically Disadvantaged Counties in comparison to other counties in the state as below average per capita property value, and below average per capita income, and above average unemployment, for certain years. The LPFAFA will reflect adjustments to the standard financing arrangement based on this designation.
  - m. The State will not execute the contract for the construction of a local project until the required funding has been made available by the Local Government in accordance with the LPFAFA.

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

The Local Government is responsible for the provision and acquisition of any needed right of way or real property, unless the State agrees to participate in the provision of right of way under the procedures described herein as parts A and B of this provision.

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. If the Local Government is the owner of any part of a project site under an LPAPA, 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 under the LPAPA.

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.

If the local government purchases right of way for a local government street, title will be acquired in the name of the local government in accordance with applicable laws unless specifically stated otherwise in the LPAPA and approved by the State.

If the State participates in the purchase of right of way for the state, it will be under the processes established in the following paragraphs A or B, and the selected option shall be specified in the LPAPA.

**A. Purchase By the State for the State**

The State will assume responsibility for acquisition of all necessary right of way for the highway project. The Local Government will voluntarily contribute to the State funds equal to ten (10) percent of the cost of the right of way for the proper development and construction of the state highway system and shall transmit to the State a warrant or check payable to the Texas Department of Transportation when notified by the State of the estimated cost of the right of way. If the amount is found insufficient to pay the Local Government's obligation, then the Local Government, upon request of the State, will supplement this amount in such amount as requested by the State. Upon completion of the highway project and in the event the total amount paid by the Local Government is more than ten (10) percent of the actual cost of the right of way, any excess amount will be returned to the Local Government. Cost of the right of way by the State shall mean the total value of compensation paid to owners, including but not limited to utility owners, for their property interests either through negotiations or eminent domain proceedings.



## **B. Purchase by the Local Government for the State**

**Purchase:** Right of way purchases shall be a joint effort of the State and the Local Government. Acquisition of right of way shall be in accordance with the terms of this agreement and in accordance with applicable Federal and State laws governing the acquisition policies for acquiring real property. The State agrees to reimburse the Local Government for its share of the cost of such right of way providing acquisition when it has been authorized to proceed by the State.

**Location Surveys and Preparation of Right of Way Data:** The State, without cost to the Local Government, will do 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.

**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 Local Government and to submit to the State's District Office a tabulation of the values so determined, signed by the appropriate Local Government representative. Such 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 arriving at all determined values. Such 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 which are determined by this review. The State, however, reserves the right to perform at its own expense any additional investigation deemed necessary, including supplemental appraisal work by State employees or by employment of fee appraisers, all as may be necessary for determination of values to constitute the basis for State reimbursement. If at any stage of the project development it is determined by mutual-agreement between the State and Local Government that the requirement for the Local Government to submit to the State property value determinations for any part of the required right of way should be waived, the Local Government will make appropriate written notice to the State of such waiver, such notice to be acknowledged in writing by the State. In instances of such waiver, the State by its due processes and at its own expense will make a determination of values to constitute the basis for State reimbursement.

**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 which together with any curative instruments found to be necessary as a result of the State's title investigation will be properly vest title in the State for each right of way parcel involved. The costs incidental to negotiation and the costs of recording the right of way instruments will be the responsibility of the Local Government. The cost of title investigation will be the responsibility of the State.

**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 hereinafter indicated. The Local Government will obtain from the State without cost current title information and engineering data at the time condemnation are to be indicated. Except as hereinafter set forth 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 so filed the judgment of the court will decree title to the property condemned to the State. The Local Government may, as set forth herein under "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 at such time as the Local Government conveys said property to the State. **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 thereto will be paid by the Local Government. Such costs and fees, with the exception of recording fees, will be eligible for ninety (90) percent State reimbursement under the established reimbursement procedure provided such costs and fees 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, for 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 (90) percent State reimbursement under established procedure provided prior approval for such appraiser has been obtained from the State. The fee paid 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.

**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 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 such approved value does not exceed actual payment made by the Local Government. When acquired by condemnation, the State's participation will be in the proportionate part of the final judgment amount computed on the basis of the relationship of the State's approved value to the State's predetermined value for the whole property.

**Improvements:** 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 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 which is to be moved by either the Local Government or the owner. In the event improvements, which are, in whole or part, a part of the right of way taking are not retained by the owner; title is to be secured in the name of the State.

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 which 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 through the General Services Commission will be credited to the cost of the right of way procured and shared with the Local Government.

**Relocation of Utilities on Acquired State Right of Way:** If the required right of way encroaches upon 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. 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. 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 (90) percent of the eligible items of cost as paid to the utility owner. The "lump sum" procedure requires that the State establishes the eligibility of the utility work and enters into a three-party agreement, with the owners of the utility facilities and the Local Government, which sets forth the exact lump sum amount of reimbursement, based on a prior appraisal. The utility will be reimbursed by the Local Government after proper certification by the utility that the work has been done, said reimbursement to be the basis of the prior lump sum agreement. The State will reimburse the Local Government in an amount equal to ninety (90) percent of the firm commitment as paid to the utility owner. The foregoing is subject to the provision that the individual lump sum 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 the attention of the State for determination of proper handling based upon the circumstances involved. Such utility firm commitment 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.

**Fencing Requirements:** The Local Government may either pay the property owner for existing right of way fences based on the value such 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 such right of way fences and such damages will be included in the recommended value and the approved value, or the Local Government may do the fencing on the property owner's remaining property.

Where 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.

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. The foregoing 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 upon the circumstances involved.

**Reimbursement:** The State will reimburse the Local Government for right of way acquired after the date of this agreement in amount not to exceed ninety (90) 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 (90) percent of the State's predetermined value of each parcel, or the net cost thereof, whichever is the lesser amount.

If condemnation is necessary and title is taken as set forth herein under the section entitled "Condemnation," the participation by the State shall be based on the final judgment, conditioned upon the State having been notified in writing prior to the filing of such suit and upon prompt notice being given as to all action taken therein. 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. If a lump sum fencing or utility adjustment agreement has been executed, the State will reimburse the Local Government in the amount of ninety (90) percent of the predetermined lump sum cost of the right of way fencing or utility adjustment.

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 such fencing or adjustments. The Local Government's request for reimbursement will be supported by a breakdown of the labor, materials and equipment used.

**General:** 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.

It is further understood that if unusual circumstances develop in the right of way acquisition which are not clearly covered by the terms of this agreement, such unusual circumstances or problems will be resolved by mutual agreement between the State and the Local Government.

#### 14. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid 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:

State: Billy D. Parks, P.E.  
Texas Department of Transportation  
P.O. Box 9907  
Corpus Christi, Texas 78469-9907

Local Government: Angel Escobar, P.E.  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

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

shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

**15. Legal Construction**

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

**16. Responsibilities of the Parties**

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**17. Ownership of Documents**

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government.

**18. Compliance with Laws**

The parties shall comply with all Federal, State, and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

**19. Sole Agreement**

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the agreement's subject matter.

**20. Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the Project.

**21. Procurement and Property Management Standards**

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

**22. Inspection of Books and Records**

The parties to the agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

**23. Office of Management and Budget (OMB) Audit Requirements**

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular No. A-128 through August 31, 2000 and stipulated in OMB Circular A-133 after August 31, 2000.

**24. Civil Rights Compliance**

The Local Government shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

**25. Disadvantaged Business Enterprise Program Requirements**

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

**26. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." 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 in accordance with Title 49 CFR Part 29 (Debarment and Suspension).

## **27. Lobbying Certification**

In executing this Master Agreement, the signatories certify to the best of his or her knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the federal Standard Form-L.L.L., "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

By executing an LPAPA under this Master Agreement, the parties reaffirm this lobbying certification with respect to the individual projects and reaffirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

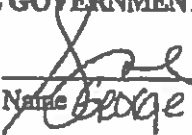
## **28. Signatory Warranty**

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



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

**THE LOCAL GOVERNMENT**

By:   
Name: George R. Noe  
Title: Deputy City Manager  
Date: 8-31-01

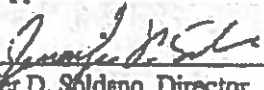
Approved as to form:  
James R. Bray Jr  
City Attorney


By:   
Lisa Aguilar  
Assistant City Attorney

**THE STATE OF TEXAS**

ATTEST:   
ARMANDO CHAPA  
CITY SECRETARY

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By:   
Jennifer D. Soldano, Director  
Contract Services Office  
Date: 9/25/01

Res. 024478  
BY COUNCIL ..... 6/19/01  
dc  
SECRETARY 

**ATTACHMENT A**

**TYPES OF LPAFA FUNDING CATEGORIES UNDER THE MAFA**

Federal Categories	Prefix	Federal Categories	Prefix
<b>Interstate</b>		<b>Demonstration Projects</b>	
Interstate	I	Hi Priority Corridor on NHS	DPR
Interstate Maintenance	IM	Rural Access Projects	DPR
Interstate 4R Discretionary	IDR	Innovative Projects	DPI
Interstate Constr. Discretionary	ID	Priority Intermodal Projects	DFM
		Congestion Corridor	IVE/ITS
<b>Bridges</b>		High Priority Projects	HP
Bridge Repair/Rehab On-System	BR/BH		
		<b>Other</b>	
National Highway System	NE		
<b>Surface Transportation Program</b>		Forest Highways	FH
Urban Mobility/Rehab	STP-UM		
<i>Areas &lt; 200,000</i>		<b>STATE CATEGORIES</b>	
Enhancement	STP-TE		
Metro Mobility/Rehab	STP-MM	Preventive Maintenance	CFM
<i>Urban Mobility/Rehab</i>		Farm-to-Market/Farm-to-Market Rehab	A/MAR
Urban & Rural Rehabilitation	STP-R	District Discretionary	CD
Rural Mobility Rehab	STP-RM	State Funded Rehab	C
Rail-Hwy Crossing Protective Devices	STP-RXP	Park Road	C
Rail-Hwy Crossing Hazard Elimination	STP-RXH	State Funded Mobility	C
Railroad grade Separations	STP-RGS	FASS/PASS Metro Match	C
Safety-Hazard Elimination	STP-HES	Traffic Signals, Signing & Pavement Markings	C
		Miscellaneous	C
Congestion Mitigation & Air Quality	CM	Railroad Replanking	CRX
		State Funded Landscape	C/CL
<b>Donor State Bonus*</b>			CLM
Any Area	DB	State Urban Street	CUS
<i>Areas &gt;200,000</i>	DBM		
<i>Areas &lt;200,000</i>	DBU	Others per LPAFA exception	
<b>Minimum Guarantee</b>	MG	Off-System Bridges Program	BROX
*ISTEA Funding Categories -- Not Re-established in TEA 21			

**ATTACHMENT B**

**RESOLUTION**

**STATE OF TEXAS       §  
                                  §  
COUNTY OF NUECES   §**

**KNOW ALL MEN BY THESE PRESENTS:**

*WHEREAS*, the Port of Corpus Christi Authority of Nueces County Texas ("Authority") has applied for state and federal funding for various transportation related projects such as the Joe Fulton International Trade Corridor and the Water Taxi to be located near the Congressman Solomon P. Ortiz International Center; and

*WHEREAS*, the state and federal funding has been approved for several of these projects; and

*WHEREAS*, Authority desires to enter into a Master Agreement Governing Local Transportation Project Advance Funding Agreements and Amendment to Master Agreement Governing Local Transportation Project Advance Funding Agreements with the State of Texas, acting by and through the Texas Department of Transportation ("TxDot") for the administration and management of the planning, design and construction phases of its transportation related projects; and

*NOW THEREFORE, BE IT RESOLVED THAT* the Port Commission of the Port of Corpus Christi Authority unanimously approves the Master Agreement Governing Local Transportation Project Advance Funding Agreements and Amendment to Master Agreement Governing Local Transportation Project Advance Funding Agreements; and the Executive Director, John P. LaRue, of the Port of Corpus Christi Authority is authorized to execute these agreements.

*PASSED* by the Port Commission in an open meeting on January 8, 2002.

RESOLUTION

AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE A MASTER AGREEMENT GOVERNING LOCAL TRANSPORTATION PROJECT ADVANCE FUNDING AGREEMENTS WITH THE TEXAS DEPARTMENT OF TRANSPORTATION

NOW, THEREFORE, BE IT RESOLVED BY THE CORPUS CHRISTI CITY COUNCIL:

SECTION 1. That the City Manager, or designee, is authorized to execute a Master Agreement Governing Local Transportation Project Advance Funding Agreements with the Texas Department of Transportation. A copy of the Agreement is attached as an exhibit to this Resolution.

ATTEST:

CITY OF CORPUS CHRISTI

  
Armando Chapa, City Secretary

  
Samuel L. Neal, Jr., Mayor

Legal form approved June 14, 2001; James R. Bray, Jr., City Attorney

By:   
Lisa Aguilar  
Assistant City Attorney

021478

Corpus Christi, Texas

19<sup>th</sup> day of June, 2011

The above resolution was passed by the following vote:

Samuel L. Neal, Jr.

Aye

Brent Chesney

Aye

Javier D. Colmenero

Aye

Henry Garrett

Aye

Bill Kelly

Aye

Rex A. Kinnison

Aye

John Longoria

Aye

Jesse Noyola

Aye

Mark Scott

Aye

024478

**ORIGINAL**

**AMENDMENT TO MASTER AGREEMENT  
GOVERNING LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENTS**

**AMENDMENT NO. 1**

This is an amendment to the Master Agreement Governing Local Transportation Project Advance Funding Agreements ("MAFA") entered into on the same date as this amendment by and between the State of Texas, acting by and through the Texas Department of Transportation (hereinafter called "State"), and Port of Corpus Christi Authority of Nueces County, Texas (hereinafter called "Local Government").

1. The MAFA is hereby amended to add Article 29, which is in its entirety as follows:

**Article 29. Definitions**

- A. **MASTER AGREEMENT GOVERNING LOCAL TRANSPORTATION PROJECT ADVANCE FUNDING AGREEMENTS.** This agreement entered into by and between State and Local Government which is also referred to herein as "MAFA", "Master Agreement", "this agreement", and "this contract".
  - B. **LOCAL PROJECT ADVANCE FUNDING AGREEMENTS.** A written agreement entered into by and between State and Local Government pursuant to this MAFA which defines the scope and development of a local project to be undertaken, and which defines the various separate or different duties and responsibilities State and Local Government have with respect to the local project, and which is also referred to herein as "LPAPA", "specific project agreement", and "local project agreement".
  - C. **PROJECT.** The project that is of the category stated in Attachment A and defined as to its scope and development in the LPAPA, and which is also referred to herein as "Project", "project", "local project", "construction activity", "the work", and "highway project".
  - D. **PS&E.** Construction plans, specifications and cost estimates are also referred to herein as "PS&E".
2. The first sentence in Article 8 is hereby amended to read in its entirety as follows:

"Each party hereto is separately responsible to cause the plans for and the construction of all projects subject to this Master Agreement to be in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation under the Architectural Barriers Act, Article 9102, Texas Civil Statutes."

3. The first paragraph of Article 9 is hereby amended to read in its entirety as follows:  
  
"The LPAFA will define each party's separate responsibility for effecting the performance of architectural and engineering services."
4. The last sentence of Article 12. a. is hereby amended to read in its entirety as follows:  
  
"The State will pay for only those project costs that have been approved by the Texas Transportation Commission, which approval will be reflected by the State's execution of the LPAFA."
5. The first sentence of the third paragraph of Article 13 is hereby amended in its entirety as follows:  
  
"Each party to this agreement will comply with, and separately be responsible for the costs of 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.

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

**THE LOCAL GOVERNMENT**

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**

By: \_\_\_\_\_ *J.P. LaRue*  
John P. LaRue  
Executive Director



Date: \_\_\_\_\_ *1-8-02*

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: \_\_\_\_\_ *J.D. Soldano*  
Jennifer D. Soldano  
Director  
Contract Services Office

Date: \_\_\_\_\_ *3/12/02*



**ORIGINAL**

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

**MASTER AGREEMENT  
GOVERNING  
LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENTS**

**THIS MASTER AGREEMENT (MAFA) is made by and between the State of Texas, acting by and through the Texas Department of Transportation hereinafter called the "State", and the Port of Corpus Christi Authority of Nueces County, acting by and through its duly authorized officials, hereinafter called the "Local Government."**

**WITNESSETH**

**WHEREAS, the Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) codified under Title 23 U.S.C. Section 101 et seq., authorize transportation programs to meet the challenges of protecting and enhancing communities and the natural environment and advancing the nation's economic growth and competitiveness; and**

**WHEREAS, ISTEA and TEA-21 establish federally funded programs for transportation improvements to implement its public purposes; and**

**WHEREAS, Title 23 U.S.C. Section 134 requires that Metropolitan Planning Organizations and the States' Transportation Agencies to develop transportation plans and programs for urbanized areas of the State; and**

**WHEREAS, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and**

**WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds; and**

**WHEREAS, the governing terms of this Master Agreement will provide for efficient and effective contract administration of the types of Local Project Advance Funding Agreements (LPFA) listed in Attachment A; and,**

**WHEREAS, the Texas Government Code, Section 441.189 allows any state record to be created or stored electronically in accordance with standards and procedures adopted as administrative rules of the Texas State Library and Archives Commission; and**

WHEREAS, the Governing Body of the Local Government has approved entering into this Master Agreement by resolution or ordinance dated January 8, 2002, attached hereto and made a part of this Master Agreement as Attachment B.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

### AGREEMENT

#### **Period of the Agreements**

This Master Agreement and the Local Project Advance Funding Agreements (LPAFAs) subject to this Master Agreement become effective when signed by the last party whose signing makes the respective agreements fully executed. This Master Agreement shall remain in effect until terminated as provided in Article 2.

#### **Termination of this Master Agreement**

This agreement may be terminated by any of the following conditions:

by mutual written consent and agreement of all parties.

by any party with 90 days written notice. If this Master Agreement is terminated under this clause, all existing, fully executed LPAFAs made under this Master Agreement shall automatically incorporate all the provisions of this Master Agreement.

by either party, upon the failure of the other party to fulfill the obligations as set forth in this Master Agreement.

#### **Termination of the Local Project Advance Funding Agreement (LPAFA)**

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

the agreement is terminated in writing with the mutual consent of the parties, or;

because of a breach of this Master Agreement or a breach of the Local Project Advance Funding Agreement. Any cost incurred due to a breach of contract shall be paid by the breaching party.

After the PS&E the local government may elect not to provide the funding and the project does not proceed because of insufficient funds; the local government agrees to reimburse the State for its reasonable actual costs incurred during the project.

Conditions for termination as specified in the LPAFA are fulfilled.

#### **Amendments**

**Amendment of this Master Agreement by Notice with Mutual Consent:** The State may notify the Local Government of changes in this Master Agreement resulting from changes in federal or state laws or rules or regulations and these changes in the Master Agreement shall be incorporated into this agreement unless the State is notified by the Local Government within 60 days. From time to time, the State may issue numbered restatements of this MAFA to wholly reflect its amendments.

This Master Agreement may be amended due to changes in the agreement or the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

The notice of amendment and the amendment to this Master Agreement may be in an electronic form to the extent permitted by law and after a prior written consent of the parties to this agreement is made.

Amendments to the LPAFAs due to changes in the character of the work or terms of the agreement, or responsibilities of the parties relating to a specific project governed under this Master Agreement may be enacted through a mutually agreed upon, written amendment to the LPAFA.

#### **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.

#### **Utilities**

If the required right of way encroaches upon existing utilities and the proposed project requires their adjustment, removal or relocation, the Local Government will be responsible for determining the scope of utility work and notify the appropriate utility company to schedule adjustments, unless specified otherwise in a specific LPAFA under other provisions of this MAFA.

The Local Government shall be responsible for the adjustment, removal or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies and procedures. This includes, but is not limited to: 43 TAC §15.55 relating to Construction Cost Participation; 43 TAC §21.21 relating to State Participation in Relocation, Adjustment, and/or Removal of Utilities; and, 43 TAC§ 21.31 et seq. relating to Utility Accommodation. The Local Government will be responsible for all costs associated with additional adjustment, removal, or relocation

during the construction of the project, unless this work is provided by the owners of the utility facilities:

per agreement;

per all applicable statutes or rules, or;

as specified otherwise in a LPAPA.

Prior to letting a construction contract for a local project, a utility certification must be made available to the State upon request stating that all utilities needing to be adjusted for completion of the construction activity have been adjusted.

#### **Environmental Assessment and Mitigation**

Development of a local 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.

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, unless provided for otherwise in the specific project agreement.

The Local Government is responsible for the cost of any environmental problem's mitigation and remediation, unless provided for otherwise in the specific project agreement.

The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment, unless provided for otherwise in the specific project agreement.

The Local Government shall provide the State with written certification from appropriate regulatory agency(ies) that identified environmental problems have been remediated, unless provided for otherwise in the specific project agreement.

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

All parties to this agreement shall ensure that the plans for and the construction of all projects subject to this Master Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

### **Architectural and Engineering Services**

Any party to this contract may have responsibility for effecting the performance of architectural and engineering services. Or, the parties may agree to be individually responsible for portions of this work. The LPAFA shall define the party responsible for performance of this work.

The engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*, and the special specifications and special provisions related thereto, unless specifically stated otherwise in the LPAFA and approved by the State.

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

Professional services contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by disadvantaged business enterprises (DBEs), ADA, and environmental matters.

### **Construction Responsibilities**

Unless specifically provided for otherwise in the LPAFA, the State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.

All contract letting and award procedures must be approved by the State prior to letting and award of the construction contract, whether the construction contract is awarded by the State or by the Local Government.

All contract change order review and approval procedures must be approved by the State prior to start of construction.

Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.

For federally funded contracts, the parties to this agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Part B.

### **Project Maintenance**

The Local Government shall be responsible for maintenance of locally owned roads after completion of the work and the State shall be responsible for maintenance of state highway system after completion of the work if the work was on the state highway system, unless otherwise provided for in the LPAFA or other prior existing maintenance agreement with the Local Government.

### **Local Project Sources and Uses of Funds**

- a. The total estimated cost of the Project will be clearly stated in the local project agreement. The expected cash contributions from the federal, state, Local Governments or other parties will be clearly stated. The State will pay for only those project costs that have been approved by the Texas Transportation Commission.

A project cost estimate showing the estimated contributions in kind or in cash for each major area of the local project will be provided in the LPAFA. This project cost estimate will show how necessary resources for completing the project will be provided by major cost categories. These categories include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.

The State will be responsible for securing the Federal and State share of the funding required for the development and construction of the local project. Federal share of the project will be reimbursed to the local government on a cost basis.

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 the LPAFA.

Following execution of the LPAFA, but prior to the performance of any review work by the State, the Local Government will remit a check or warrant made payable to the "Texas Department of Transportation" in the amount specified in the LPAFA. The Local Government will pay at a minimum its funding share for the estimated cost of preliminary engineering for the project, unless otherwise provided for in the LPAFA.

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, unless otherwise provided for in the LPAFA.

In the event the State determines that additional funding is required by the Local Government at any time during the Project, the State will notify the Local Government in writing. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification, unless otherwise provided for in the LPAFA.

Upon completion of the Project, the State will perform an audit of the local project costs. Any funds due to the Local Government, the State, or the Federal government will be promptly paid by the owing party.

The State will not pay interest on any funds provided by the Local Government.

If a waiver has been granted, the State will not charge the Local Government for the indirect costs the State incurs on the local project, unless this agreement is terminated at the request of the Local Government prior to completion of the project.

If the local project has been approved for a "fixed price" or an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the LPAFA will clearly state the amount of the fixed price or the incremental payment schedule.

The Texas Comptroller of Public Accounts has determined that certain counties qualify as Economically Disadvantaged Counties in comparison to other counties in the state as below average per capita property value, and below average per capita income, and above average unemployment, for certain years. The LPAFA will reflect adjustments to the standard financing arrangement based on this designation.

The State will not execute the contract for the construction of a local project until the required funding has been made available by the Local Government in accordance with the LPAFA.

#### **Right of Way and Real Property**

The Local Government is responsible for the provision and acquisition of any needed right of way or real property, unless the State agrees to participate in the provision of right of way under the procedures described herein as parts A and B of this provision.

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.

If the Local Government is the owner of any part of a project site under an LPAFA, 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 under the LPAFA.

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.

If the local government purchases right of way for a local government street, title will be acquired in the name of the local government in accordance with applicable laws unless specifically stated otherwise in the LPAFA and approved by the State.

If the State participates in the purchase of right of way for the state, it will be under the processes established in the following paragraphs A or B, and the selected option shall be specified in the LPAFA.

#### **Purchase By the State for the State**

The State will assume responsibility for acquisition of all necessary right of way for the highway project. The Local Government will voluntarily contribute to the State funds equal to ten (10) percent of the cost of the right of way for the proper development and construction of the state highway system and shall transmit to the State a warrant or check payable to the Texas Department of Transportation when notified by the State of the estimated cost of the right of way. If the amount is found insufficient to pay the Local Government's obligation, then the Local Government, upon request of the State, will supplement this amount in such amount as requested by the State. Upon completion of the highway project and in the event the total amount paid by the Local Government is more than ten (10) percent of the actual cost of the right of way, any excess amount will be returned to the Local Government. Cost of the right of way by the State shall mean the total value of compensation paid to owners, including but not limited to utility owners, for their property interests either through negotiations or eminent domain proceedings.

#### **Purchase by the Local Government for the State**

**Purchase:** Right of way purchases shall be a joint effort of the State and the Local Government. Acquisition of right of way shall be in accordance with the terms of this agreement and in accordance with applicable Federal and State laws governing the acquisition policies for acquiring real property. The State agrees to reimburse the Local Government for its share of the cost of such right of way providing acquisition when it has been authorized to proceed by the State.

**Location Surveys and Preparation of Right of Way Data:** The State, without cost to the Local Government, will do 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.

**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 Local Government and to submit to the State's District Office a tabulation of the values so determined, signed by the appropriate Local Government representative. Such 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 arriving at all determined values. Such 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 which are determined by this review. The State, however, reserves the right to perform at its own expense any additional investigation deemed necessary, including supplemental appraisal work by State employees or by employment of fee appraisers, all as may be necessary for determination of values to constitute the basis for State reimbursement. If at any stage of the project development it is determined by mutual agreement between the State and Local Government that the requirement for the Local Government to submit to the State property value determinations for any part of the required right of way should be waived, the Local Government will make appropriate written notice to the State of such waiver, such notice to be acknowledged in writing by the State. In instances of such waiver, the State by its due processes and at its own expense will make a determination of values to constitute the basis for State reimbursement.

**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 which together with any curative instruments found to be necessary as a result of the State's title investigation will properly vest title in the State for each right of way parcel involved. The costs incidental to negotiation and the costs of recording the right of way instruments will be the responsibility of the Local Government. The cost of title investigation will be the responsibility of the State.

**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 hereinafter indicated. The Local Government will obtain from the State without cost current title information and engineering data at the time condemnation are to be indicated. Except as hereinafter set forth 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 so filed the judgment of the court will decree title to the property condemned to the State. The Local Government may, as set forth herein under "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 at such time as the Local Government conveys said property to the State. 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 thereto will be paid by the Local Government. Such costs and fees, with the exception of recording fees, will be eligible for ninety (90) percent State reimbursement under the established reimbursement procedure provided such costs and fees 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, for 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 (90) percent State reimbursement under established procedure provided prior approval for such appraiser has been obtained from the State. The fee paid 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.

**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 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 such approved value does not exceed actual payment made by the Local Government. When acquired by condemnation, the State's participation will be in the proportionate part of the final judgment amount computed on the basis of the relationship of the State's approved value to the State's predetermined value for the whole property.

**Improvements:** 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 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 which is to be moved by either the Local Government or the owner. In the event improvements, which are, in whole or part, a part of the right of way taking are not retained by the owner, title is to be secured in the name of the State.

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 which 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 through the General Services Commission will be credited to the cost of the right of way procured and shared with the Local Government.

**Relocation of Utilities on Acquired State Right of Way:** If the required right of way encroaches upon 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. 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.

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 (90) percent of the eligible items of cost as paid to the utility owner. The "lump sum" procedure requires that the State establishes the eligibility of the utility work and enters into a three-party agreement, with the owners of the utility facilities and the Local Government, which sets forth the exact lump sum amount of reimbursement, based on a prior appraisal. The utility will be reimbursed by the Local Government after proper certification by the utility that the work has been done, said reimbursement to be the basis of the prior lump sum agreement. The State will reimburse the Local Government in an amount equal to ninety (90) percent of the firm commitment as paid to the utility owner. The foregoing is subject to the provision that the individual lump sum 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 the attention of the State for determination of proper handling based upon the circumstances involved. Such utility firm commitment 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.

**Fencing Requirements:** The Local Government may either pay the property owner for existing right of way fences based on the value such 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 such right of way fences and such damages will be included in the recommended value and the approved value, or the Local Government may do the fencing on the property owner's remaining property.

Where 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.

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. The foregoing 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 upon the circumstances involved.

**Reimbursement:** The State will reimburse the Local Government for right of way acquired after the date of this agreement in amount not to exceed ninety (90) 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 (90) percent of the State's predetermined value of each parcel, or the net cost thereof, whichever is the lesser amount.

If condemnation is necessary and title is taken as set forth herein under the section entitled "Condemnation," the participation by the State shall be based on the final judgment, conditioned upon the State having been notified in writing prior to the filing of such suit and upon prompt notice being given as to all action taken therein. 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. If a lump sum fencing or utility adjustment agreement has been executed, the State will reimburse the Local Government in the amount of ninety (90) percent of the predetermined lump sum cost of the right of way fencing or utility adjustment.

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 such fencing or adjustments. The Local Government's request for reimbursement will be supported by a breakdown of the labor, materials and equipment used.

**General:** 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.

It is further understood that if unusual circumstances develop in the right of way acquisition which are not clearly covered by the terms of this agreement, such unusual circumstances or problems will be resolved by mutual agreement between the State and the Local Government.

#### 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:

State: Texas Department of Transportation  
P. O. Box 9907  
Corpus Christi, Texas 78469-9907  
Attention: David B. Casteel, P.E.  
District Engineer  
Corpus Christi District

Local Government: Port of Corpus Christi Authority  
222 Power Street  
Corpus Christi, Texas 78401  
Attention: Frank C. Brogan, P.E., R.P.L.S.  
Director of Engineering Services

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

#### **Legal Construction**

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

#### **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.

#### **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.

#### **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.

#### **Sole Agreement**

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the agreement's subject matter.

### **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.

### **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.

### **Inspection of Books and Records**

The parties to the agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

### **Office of Management and Budget (OMB) Audit Requirements**

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular No. A-128 through August 31, 2000 and stipulated in OMB Circular A-133 after August 31, 2000.

### **Civil Rights Compliance**

The Local Government shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

### **Disadvantaged Business Enterprise Program Requirements**

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

### **Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." 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 in accordance with Title 49 CFR Part 29 (Debarment and Suspension).

### **Lobbying Certification**

In executing this Master Agreement, the signatories certify to the best of his or her knowledge and belief, that:

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.

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.

The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

By executing an LPAFA under this Master Agreement, the parties reaffirm this lobbying certification with respect to the individual projects and reaffirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### **Signatory Warranty**

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

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

**THE LOCAL GOVERNMENT**

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**

By: \_\_\_\_\_  
John P. LaRue  
Executive Director



Date: \_\_\_\_\_  
1-8-02

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: \_\_\_\_\_  
Jennifer D. Soldano  
Director  
Contract Services Office

Date: \_\_\_\_\_  
3/12/02



**ATTACHMENT A**

**TYPES OF LPAFA FUNDING CATEGORIES UNDER THE MAFA**

Federal Categories	Prefix	Federal Categories	Prefix
<b>Interstate</b>		<b>Demonstration Projects</b>	
Interstate	I	Hi Priority Corridor on NHS	DPR
Interstate Maintenance	IM	Rural Access Projects	DPR
Interstate 4R Discretionary	IDR	Innovative Projects	DPI
Interstate Constr. Discretionary	ID	Priority Intermodal Projects	DPM
		Congestion Corridor	IVH/ITS
<b>Bridges</b>		High Priority Projects	HP
Bridge Repair/Rehab On-System	BR/BH		
		<b>Other</b>	
National Highway System	NH		
<b>Surface Transportation Program</b>		Forest Highways	FH
Urban Mobility/Rehab Areas < 200,000	STP-UM		
Enhancement	STP-TE	<b>STATE CATEGORIES</b>	
Metro Mobility/Rehab Urban Mobility/Rehab	STP-MM	Preventive Maintenance	CPM
Urban & Rural Rehabilitation	STP-R	Farm-to-Market/Farm-to-Market Rehab	A/AR
Rural Mobility Rehab	STP-RM	District Discretionary	CD
Rail-Hwy Crossing Protective Devices	STP-RXP	State Funded Rehab	C
Rail-Hwy Crossing Hazard Elimination	STP-RXH	Park Road	C
Railroad grade Separations	STP-RGS	State Funded Mobility	C
Safety-Hazard Elimination	STP-HBS	PASS/PASS Metro Match	C
		Traffic Signals, Signing & Pavement Markings	C
		Miscellaneous	C
Congestion Mitigation & Air Quality	CM	Railroad Replanking	CRX
		State Funded Landscape	C/CL
<b>Donor State Bonus*</b>			CLM
Any Area	DB	State Urban Street	CUS
Areas >200,000	DBM		
Areas <200,000	DBU	Others per LPAFA exception	
<b>Minimum Guarantee</b>	MG	Off-System Bridges Program	BROX
*ISTEA Funding Categories – Not Re-established in TEA 21			

RESOLUTION

AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE AMENDMENT NO. 1 TO THE MASTER AGREEMENT GOVERNING LOCAL TRANSPORTATION PROJECT ADVANCE FUNDING AGREEMENTS WITH THE TEXAS DEPARTMENT OF TRANSPORTATION


NOW, THEREFORE, BE IT RESOLVED BY THE CORPUS CHRISTI CITY COUNCIL:

SECTION 1. That the City Manager, or designee, is authorized to execute Amendment No. 1 to the Master Agreement Governing Local Transportation Project Advance Funding Agreements with the Texas Department of Transportation. A copy of the Amendment is attached as an exhibit to this Resolution.

ATTEST:

CITY OF CORPUS CHRISTI

  
Armando Chapa, City Secretary

  
Samuel L. Neal, Jr., Mayor

Legal form approved August 22, 2001; James R. Bray, Jr., City Attorney

By:   
Lisa Aguilar  
Assistant City Attorney

024355

Corpus Christi, Texas

20<sup>th</sup> day of August, 2001

The above resolution was passed by the following vote:

Samuel L. Neal, Jr.	<u>Aye.</u>
Brent Chesney	<u>Aye</u>
Javier D. Colmenero	<u>Aye.</u>
Henry Garrett	<u>Aye</u>
Bill Kelly	<u>Aye</u>
Rex A. Kinnison	<u>Aye</u>
John Longoria	<u>Absent</u>
Jesse Noyola	<u>Aye</u>
Mark Scott	<u>Absent</u>

024555

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

**AMENDMENT TO MASTER ADVANCE FUNDING AGREEMENT**

THIS AGREEMENT, is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the City of Corpus Christi, hereinafter called the "Local Government."

**WITNESSETH**

WHEREAS, the State and the Local Government executed a Master Advance Funding Contract on the 28<sup>th</sup> day of August, 2001, that specifies the provisions for advance funding agreements; and

WHEREAS, it has become necessary and desirable to amend the contract:

**AGREEMENT**

NOW, THEREFORE, premises considered, the State and the Local Government do agree that the Master Advanced Funding Contract is amended as hereinafter stated. All portions of the Master Funding Contract not amended herein remain in full force and effect. Such amendments are as follows:

I. Article 10a is replaced to read:

**10. Construction Responsibilities**

- a. Unless specifically provided for otherwise in the LPAFA, the State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the sole responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.

II. Article 11, "Project Maintenance" revise the entire sentence to read:

**11. Project Maintenance**

The Local Government shall bear sole responsibility for maintenance of locally owned roads after completion of the work and the State shall bear sole responsibility for maintenance of the state highway system after completion of the work if the work was



\* 0 1 0 1 0 6 1 0 5 \*

CSJ\_NBR



\* C C A \*

CSJ\_CTGRY



\* A F A \*

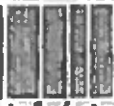
CCA\_SUB\_CTGRY



\* 0 9 8 0 0 \*

City:

CORPUS CHRISTI PRTP\_NBR



\* 1 6 \*

DD

CSJ #: 0101-08-105  
 District #: 18 – Corpus Christi  
 Code Chart 84 #: 82138, 09800  
 Project BR 2002 (454)  
 Federal Highway Administration  
 CFDA # 20.206

## ATTACHMENT C-1

### BUDGET ESTIMATE, SOURCE OF FUNDS AND WORK RESPONSIBILITIES

The installation of the Harbor Bridge decorative lighting will be provided by the State and funded through Category 11 District Discretionary Funds in the amount of \$1,211,000.00. The Local Governments' contribution for Construction Costs will be \$800,000.00. The Local Governments, at no cost to the State, will be responsible for all utility, maintenance and operation of the Harbor Bridge decorative lighting once installed. The cost for the design work, including furnishing plans will be the responsibility of the Port, and the City then will reimburse the Port for half of the cost of the work. Maintenance and Operation shall include the maintenance and replacement of drivers, LED modules, fixtures, conductors, cable, conduit, electrical service, materials, equipment, labor, tools and incidentals to properly provide a functional Decorative Lighting System.

Engineering (PE)	\$98,000	\$0	\$0	\$48,000	\$48,000
Construction	\$2,011,000	\$0	\$1,211,000	\$560,000	\$250,000
Utility, Maintenance and Operation	\$0	\$0	\$0	\$0	\$0
Direct State Cost (4%)	\$84,280	\$0	\$84,280	\$0	\$0

The Local Governments are responsible for all utility, maintenance and operation costs after the completion of the project.

Direct State Costs will be based on actual charges. It is understood that the above costs are estimates only. Final participation amounts will be based on actual charges to the project.

on the state highway system, unless otherwise provided for in the LPAFA or other prior existing maintenance agreement with the Local Government.

IN WITNESS WHEREOF, the parties to this amendment have signed duplicate counterparts.

**CITY OF CORPUS CHRISTI, TEXAS**

By: [Signature]  
Name and Title George K. Ndc  
Deputy City Manager  
Date: 8.30.01

Approved as to form:  
James R. Bray, Jr.  
City Attorney

By: [Signature]  
John P. Burke, Jr.  
Assistant City Attorney 08/24/01

THE STATE OF TEXAS ATTEST: [Signature]  
ARMANDO CHAPA  
CITY SECRETARY

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: [Signature]  
Jennifer D. Soldano, Director  
Contract Services Office  
Date: 9/25/01

Res. 024555  
AUTHORIAL  
BY COUNCIL 8/28/01  
SECRETARY ac my

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, hereinafter called the State, and the City of Corpus Christi (City), and the Port of Corpus Christi (Port), each acting by and through its duly authorized officials, hereinafter jointly called the "Local Governments."

**WITNESSETH**

**WHEREAS**, the State and the Local Government executed a contract on the 10<sup>th</sup> day of January, 2011, to effectuate their agreement to install, operate and maintain decorative lighting on the Harbor Bridge, US 181, on-system project; and,

**WHEREAS**, the Local Governments are now contributing \$800,000 for Construction Costs; 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 hereto, the State and the Local Government do agree as follows:

**AGREEMENT**

**Article 1. Description of Amended Items**

Articles 3.d., 7 and 12 of the executed Advance Funding Agreement are voided and replaced with the following:

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

- d. Each of the Local Governments will be responsible for all non-federal or non-State participation costs associated with this Project as noted in Attachment C-1, including any overrun in excess of the approved local project budget unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement.

**7. Utilities**

Each of the Local Governments shall be equally responsible, fifty percent (50%), for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Governments failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Governments will not be reimbursed with federal or state funds for the cost of required utility work. The Local Governments must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Governments shall provide, at the State's request, a certification stating that the Local Governments has completed the adjustment of all utilities that must be adjusted before construction is completed.

The Local Governments are responsible for all costs incurred due to utilities after the completion of the project.

**12. Project Maintenance**

The Local Governments shall be equally responsible, fifty percent (50%), for maintenance of the decorative lighting on the Harbor Bridge, which is an on-state system location after completion of the work.

The Local Governments are responsible for all costs incurred due to maintenance and operation after the completion of the project.



CSJ #: 0101-08-106  
District #: 18 - Corpus Christi  
Code Chart #4 #: 82138, 09800  
Project: BR 2002 (454)  
Federal Highway Administration  
CFDA # 20.205

Attachment "C" of the executed Advance Funding Agreement is being deleted in its entirety and replaced with Attachment C-1, contained herein.

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

**Article 2. Signatory Warranty**

The signatories to this amendment warrant that each has the authority to enter into this agreement on behalf of the organization represented.

IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT have executed duplicate counterparts to effectuate this agreement.

**THE LOCAL GOVERNMENT**

The City of Corpus Christi  
Name of Local Government  
By: Margie C. Rose  
Signature  
Margie C. Rose  
Printed Name  
Interim City Manager  
Title  
4/27/11  
Date

**THE LOCAL GOVERNMENT**

The Port of Corpus Christi  
Name of Local Government  
By: [Signature]  
Signature  
John P. LaRue  
Printed Name  
Executive Director  
Title  
APR 12 2011  
Date

Approved as to form: 4/28/11  
Luis Aguilar  
Luis Aguilar  
Assistant City Attorney  
For City Attorney

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: [Signature]  
Signature  
Jessica Mullenix  
Director of Contract Services  
May 10, 2011  
Date


Res. 029032 AUTHORIZED  
BY COUNCIL 04/19/11  
A.C.  
SECRETARY III.



## MEMORANDUM

05/10/2011

**TO:** Lizette J. Colbert, P.E.  
South Region Support Center

**FROM:** Joey Matesic   
Contract Services

**SUBJECT:** AFA amendment #1 for a transportation project  
CSJ: 0101-06-105  
CS Log: 2011-989

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Attached are:

**Two fully executed original counterparts for the referenced project.**

If you have any questions, please contact me at 512.374.5129.

Thank You

CSJ #0101-06-105  
District # 16-Corpus Christi  
Code Chart 64 # 62136, 09800  
Project: BR 2002 (454)  
Federal Highway Administration  
CFDA # 20.205

STATE OF TEXAS §

COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENT  
For A  
Category II District Discretionary Funding  
On-System Project**

**THIS AGREEMENT (the Agreement)** is made by and between the State of Texas, acting by and through the Texas Department of Transportation hereinafter called the "State", and the City of Corpus Christi (City), and the Port of Corpus Christi (Port), each acting by and through its duly authorized officials, hereinafter jointly called the "Local Governments."

**WITNESSETH**

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

**WHEREAS**, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with Local Governments; and

**WHEREAS**, federal and state laws require Local Governments to meet certain contract standards relating to the management and administration of State and federal funds; and

**WHEREAS**, the Texas Transportation Commission passed Minute Order 111335, authorizing the State to undertake and complete a highway improvement generally described as the installation, operation and maintenance of decorative lighting on the Harbor Bridge, US 181, on-system project and,

**WHEREAS**, The Local Governments will be solely responsible for the operation and maintenance of the decorative lighting and,

**WHEREAS**, the Governing Body of each Local Government has approved entering into this Agreement by resolution, dated 9 Nov 2010 for the Port and dated 7 Dec 2010 for the City, respectively, which are attached hereto and made a part hereof as Attachment "A" for construction, maintenance and operation of decorative lighting of Harbor Bridge at the location shown on the Map in Attachment "B", attached hereto and made a part hereof, hereinafter referred to as the Project.

CSJ #0101-06-105  
District # 16-Corpus Christi  
Code Chart 64 # 62136, 09800  
Project: BR 2002 (454)  
Federal Highway Administration  
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**NOW, THEREFORE,** In consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, It is agreed as follows:

### **AGREEMENT**

**1. Period of the Agreement**

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

**2. Scope of Work**

The scope of work is described as the installation, maintenance and operations of decorative lighting on the Harbor Bridge, US 181.

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

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

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

- b. This project cost estimate shows how necessary resources for completing the project will be provided by major cost categories. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- c. The State will be responsible for securing the Federal and State share of the funding required for the development and construction of the local project. If the Local

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Government(s) is due funds for expenses incurred, these funds will be reimbursed to the Local Government(s) on a cost basis.

- d. Each of the Local Governments will be equally responsible, fifty percent (50%) per Local Government, for all non-federal or non-State participation costs associated with the Project, including any overruns in excess of the approved local project budget unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement.
- e. Prior to the performance of any engineering review work by the State, each of the Local Governments will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal each Local Government's funding share for the estimated cost of preliminary engineering for the project. At least sixty (60) days prior to the date set for receipt of the construction bids, each the Local Governments shall remit their remaining financial share for the State's estimated construction oversight and construction cost.
- f. In the event that the State determines that additional funding by the Local Governments is required at any time during the Project, the State will notify each Local Government in writing. Each Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- g. Whenever funds are paid by the Local Governments to the State under this Agreement, each Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to the State Project.
- h. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by either of the Local Governments, the State, or the Federal government will be promptly paid by the owing party. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.
- i. The State will not pay interest on any funds provided by the Local Governments.
- j. If a waiver has been granted, the State will not charge the Local Governments for the indirect costs the State incurs on the local project, unless this Agreement is terminated at the request of the Local Governments prior to completion of the project.
- k. If the project has been approved for a "fixed price" or an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment "C" will clearly state the amount of the fixed price or the incremental payment schedule.
- l. If either of the Local Governments are an Economically Disadvantaged County and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- m. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or

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investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

- n. Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.

The State will not execute the contract for the construction of the project until the required funding has been made available by the Local Governments in accordance with this Agreement.

**4. Termination of this Agreement**

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

- a. the Agreement is terminated in writing with the mutual consent of the parties;
- b. the Agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or
- c. the Local Governments elect not to provide funding after the completion of preliminary engineering, specifications and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Governments agree to reimburse the State for its reasonable actual costs incurred during the Project.

**5. Amendments**

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

**6. Remedies**

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

**7. Utilities**

Each of the Local Governments shall be equally responsible, fifty percent (50%) per Local Government, for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Governments failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Governments will not be reimbursed with federal or state funds for the cost of required utility work. The Local Governments must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Governments shall provide, at the State's request, a certification stating that the Local Governments has completed the adjustment of all utilities that must be adjusted before construction is completed.

**8. Environmental Assessment and Mitigation**

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

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

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

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

**10. Architectural and Engineering Services**

The Local Government, known as the Port, has responsibility for the performance of architectural and engineering services.

*"The engineering plans shall be developed in accordance with the applicable State's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and the special specification and special provisions related thereto."*

For projects on the state highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the state highway system, the design shall, at a minimum conform to applicable *American Association of State Highway and Transportation Officials* design standards.

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

Professional services contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters.

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**11. Construction Responsibilities**

- e. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- b. The State will use its approved contract letting and award procedures to let and award the construction contract.
- c. Prior to their execution, each of the Local Governments will be given the opportunity to review contract change orders that will result in an increase in cost to the Local Governments.
- d. Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
- e. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

**12. Project Maintenance**

The Local Governments shall be equally responsible, fifty percent (50%) per Local Government, for maintenance of the decorative lighting on the Harbor Bridge, which is an on-state system location after completion of the work.

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

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

**14. Notices**

All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following addresses:

Local Governments:	State:
City Manager	Director of Contract Services
City of Corpus Christi	Texas Department of Transportation
P.O. Box 9277	125 E. 11th
Corpus Christi, Texas 78469-9277	Austin, Texas 78701



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<b>Local Governments:</b>  Executive Director  Port of Corpus Christi  P.O. Box 1541  Corpus Christi, TX 78403	
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All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Any of the parties may change the above address by sending written notice of the change to each of the parties. Any of the parties 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 parties.

**15. Legal Construction**

If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

**16. Responsibilities of the Parties**

The State and the Local Governments agree none of the parties are an agent, servant, or employee of the other parties and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**17. Ownership of Documents**

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by either of the Local Governments 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 Governments. At the request of the State, the Local Governments shall submit any information required by the State in the format directed by the State.

**18. Compliance with Laws**

The parties shall comply with all Federal, State, and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Governments shall furnish the State with satisfactory proof of this compliance.

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**19. Sole Agreement**

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

**20. Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the Project.

**21. Procurement and Property Management Standards**

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

**22. Inspection of Books and Records**

The parties to this Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Governments, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Governments, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

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

In accordance with Section 902 ARRA, should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

- a. examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and
- b. interview any officer or employee of the contractor or any of its subcontractors, or any State or local agency administering the contract regarding such contracts.

Nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of the Comptroller General.

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In accordance with Section 1515(a) of the ARRA, with respect to each contract or grant awarded using covered funds, any representative of an appropriate Inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

- a. to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to and involve transactions relating to the contract, subcontract, grant, or subgrant; and
- b. to interview any officer or employee of the contractor, grantee or subgrantee, or agency regarding such transactions.

Section 1515(b) further provides that nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of an Inspector general.

The ARRA requires that the Contractor report monthly employment information for its firm as well as that of all of its subcontractors. The Contractor, similarly, shall include this reporting requirement in all of its subcontracts. Failing to include the requirement in agreements with subcontractors can serve as grounds for contract termination.

Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the LG (Local Governments). It is the responsibility of the LG to obtain this form from the prime Contractor and any subcontractors and, the LG shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The LG shall ensure that this form is submitted by the LG to the State according to the policies and at the direction of the State.

In order to meet any other FHWA and ARRA reporting requirements, the LG shall provide to the State all information requested by the State, including data or information in possession of contractors and subcontractors for completing other necessary reporting forms, and the information shall be submitted in the manner required and according to all due dates as set by the State.

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

**23. Office of Management and Budget (OMB) Audit Requirements**

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

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

**24. Civil Rights Compliance**

The Local Governments shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

**25. Disadvantaged Business Enterprise Program Requirements**

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 28.

**26. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, neither of the Local Governments certify that they are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

**27. Lobbying Certification**

In executing this Agreement, the signatories certify to the best of his or her knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatories for the Local Governments shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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By executing this Agreement, the parties affirm this lobbying certification with respect to the individual projects and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**28. Insurance**

If this agreement authorizes either of the Local Governments 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 1580 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

**29. Signatory Warranty**

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

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

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The City of Corpus Christi

Angel R. Escobar  
Name

Angel R. Escobar  
Printed Name

City Manager  
Title

12/17/10  
Date

Res. 028874 AUTHORIZED  
BY CONTROL 12/07/10  
AC  
SECRETARY

The Port of Corpus Christi

John P. LaRue  
Name

John P. LaRue  
Printed Name

Executive Director  
Title

DEC 14 2010  
Date

ATTEST: Armando Chapa  
ARMANDO CHAPA  
CITY SECRETARY

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

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

January 10, 2011  
Date

**RESOLUTION**

**APPROVING A LOCAL TRANSPORTATION PROJECT ADVANCE FUNDING AGREEMENT FOR A CATEGORY 11 DISTRICT DISCRETIONARY FUNDING ON-SYSTEM PROJECT INVOLVING THE CONSTRUCTION OF DECORATIVE LIGHTING OF THE HARBOR BRIDGE.**

**WHEREAS**, the City of Corpus Christi (City) is interested in participating in the decorative lighting project for the Harbor Bridge on State Highway 181 over the Corpus Christi Ship Channel; and

**WHEREAS**, state funding has been approved for this project; and

**WHEREAS**, City previously entered into a Master Agreement Governing Local Transportation Project Advance Funding Agreement and Amendment to the Master Agreement Governing Local Transportation Project Advance Funding Agreement with the State of Texas, acting by and through the Texas Department of Transportation (TxDot) for the administration and management of the planning, design and construction phases of its transportation related projects; and

**WHEREAS**, City wishes to enter into a Local Transportation Project Advance Funding Agreement, a copy of which is attached hereto, with the State of Texas, Acting by and through TxDot for the oversight of the City's portion of the administration and management of the planning, design, construction and maintenance phases of Harbor Bridge lighting project.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:**

**SECTION 1.** That the City hereby approves the Local Transportation Project Advance Funding Agreement for the Harbor Bridge lighting project; and

028874

SECTION 2. That the City Manager, or designee, is authorized to execute said agreement which is attached hereto as an Exhibit.

ATTEST:

THE CITY OF CORPUS CHRISTI



Armando Chapa  
City Secretary



Joe Adame  
Mayor

APPROVED: 1<sup>th</sup> <sup>December</sup> day of ~~November~~, 2010.



Carlos Valdez  
City Attorney



Corpus Christi, Texas

7th of December, 2010

The above resolution was passed by the following vote:

Joe Adame	<u>Aye</u>
Chris N. Adler	<u>Aye</u>
Larry R. Elizondo, Sr.	<u>Absent</u>
Kevin Kleschnick	<u>Aye</u>
Priacilla Leal	<u>Aye</u>
John E. Marez	<u>Aye</u>
Nelda Martínez	<u>Aye</u>
Mark Scott	<u>Aye</u>
Linda Strong	<u>Aye</u>

028874

Resolution Vote Sheet

CSJ: 0101-01-105

Project Name: Harbor Bridge Lighting

**ATTACHMENT A  
Resolution of Local Government  
(Port of Corpus Christi Authority)  
Approving this LPAFA**

STATE OF TEXAS       §

**KNOW ALL MEN BY THESE PRESENTS:**

COUNTY OF NUECES   §

*WHEREAS*, the Port of Corpus Christi Authority of Nueces County, Texas ("Authority"), has agreed to participate in the lighting project for the Harbor Bridge located on State Highway 181 over the Corpus Christi Ship Channel; and

*WHEREAS*, state funding has been approved for this project; and

*WHEREAS*, Authority previously entered into a Master Agreement Governing Local Transportation Project Advance Funding Agreements and Amendment to the Master Agreement Governing Local Transportation Project Advance Funding Agreements with the State of Texas, acting by and through the Texas Department of Transportation ("TxDOT") for the administration and management of the planning, design, and construction phases of its transportation-related projects on January 8, 2002; and

*WHEREAS*, Authority wishes to enter into a Local Project Advance Funding Agreement, a copy of which is attached hereto, with the State of Texas, acting by and through TxDOT for the oversight of the Authority's portion of administration and management of the planning, design, and construction phases of the Harbor Bridge lighting project.

*NOW, THEREFORE, BE IT RESOLVED THAT* the Port Commission of the Port of Corpus Christi Authority of Nueces County, Texas, hereby approves the Local Project Advance Funding Agreement for the Harbor Bridge lighting project; and Executive Director John P. LaRue of the Port of Corpus Christi Authority is hereby authorized to execute same.

*PASSED* by the Port Commission in an open meeting on November 9, 2010.

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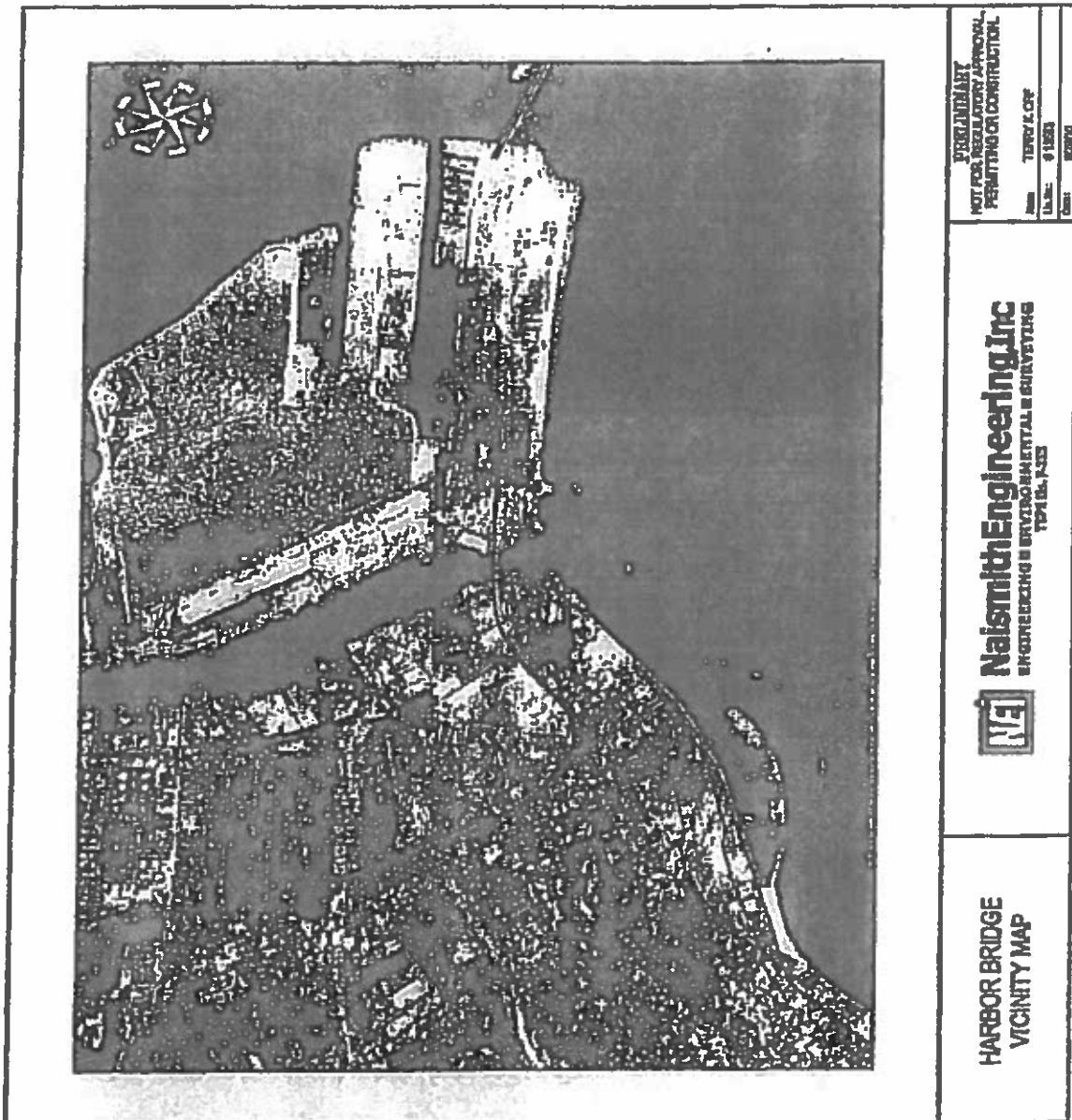
## **ATTACHMENT A**

**Resolution or Ordinance**

CSJ #0101-06-t05  
District # 16-Corpus Christi  
Code Chart 64 # 62136, 09800  
Project: BR 2002 (454)  
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### ATTACHMENT B

#### Location Map Showing Project



PRELIMINARY  
NOT FOR REGULATORY APPROVAL,  
PERMITTING OR CONSTRUCTION.

DATE	11/15/01
BY	TERRELL COP
SCALE	AS SHOWN
PROJECT	BR 2002 (454)

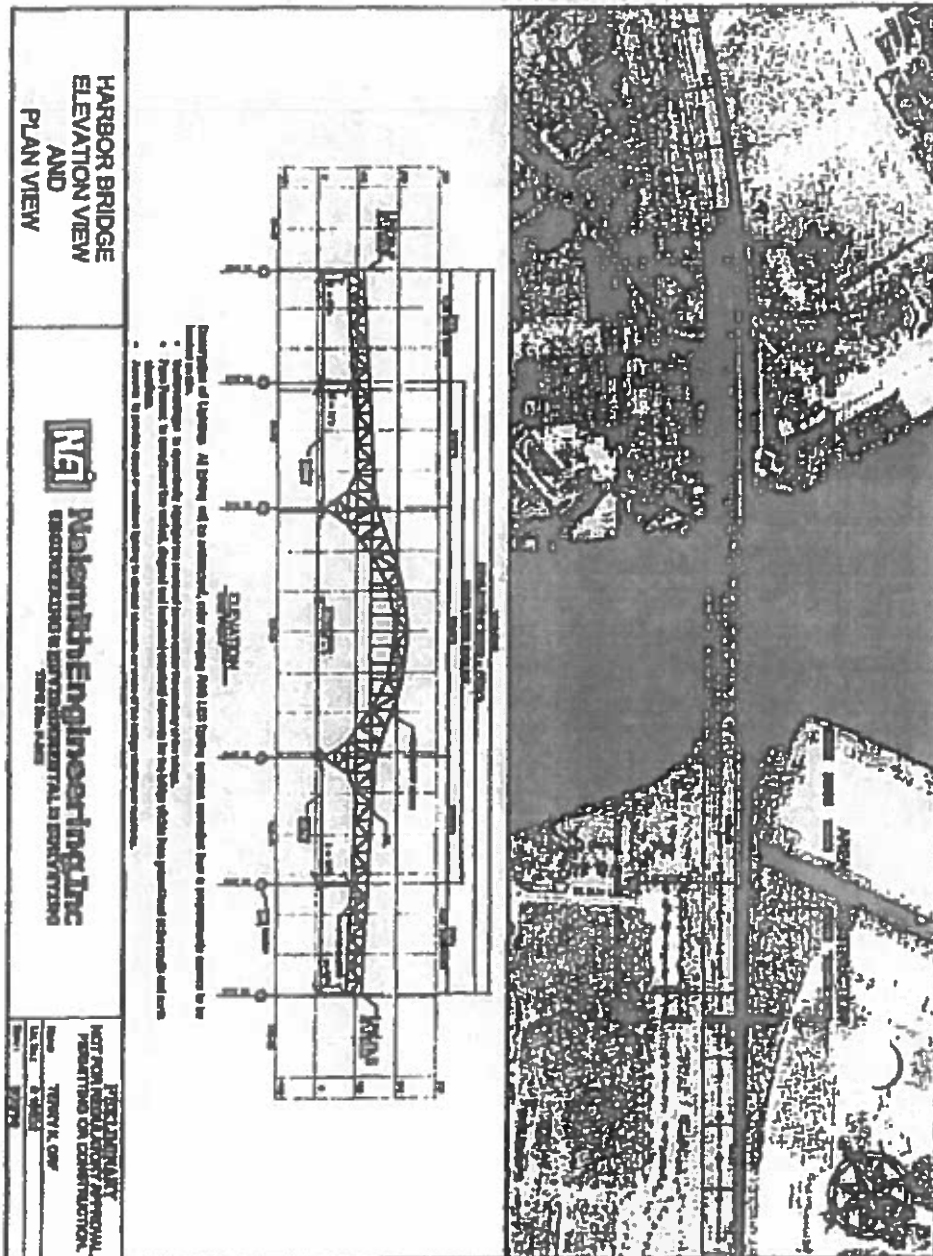
**Naismith Engineering, Inc.**  
ENGINEERING • ENVIRONMENTAL • SURVEYING  
1701 E. 14th St.  
Corpus Christi, TX 78401

HARBOR BRIDGE  
VICINITY MAP

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**ATTACHMENT B-1**

**Location Map Showing Project**



**HARBOR BRIDGE  
 ELEVATION VIEW  
 AND  
 PLAN VIEW**



**Malentz Engineering Inc.**  
 ENGINEERING AND SURVEYING FIRM  
 2000 N. 10th Street  
 Corpus Christi, Texas 78401

**Disclaimer of Liability:** All drawings and specifications, and drawings and specifications, are prepared by the engineer and are not to be construed as a contract. The engineer is not responsible for any errors or omissions in the drawings and specifications, or for any consequences arising therefrom, whether or not such errors or omissions are caused in whole or in part by the negligence of the engineer or any other person.

**NOT FOR CONSTRUCTION  
 PERMITTED ON CONSTRUCTION**  
 Date: 7/27/07  
 Drawn: TERRY R. OW  
 Title: 0-2002  
 Scale: 1/8" = 1'-0"

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**ATTACHMENT C**

**BUDGET ESTIMATE, SOURCE OF FUNDS AND WORK RESPONSIBILITIES**

The installation of the Harbor Bridge decorative lighting will be provided by the State and funded through Category 11 District Discretionary Funds in the amount of 1.2 million. The Local Governments, at no cost to the State, will be responsible for all maintenance and operation of the Harbor Bridge decorative lighting once installed. The cost for the design work, including furnishing plans will be the responsibility of the Port, and the City then will reimburse the Port for half of the cost of the work. Maintenance and Operation shall include the maintenance and replacement of drivers, LED modules, fixtures, conductors, cable, conduit, electrical service, materials, equipment, labor, tools and incidentals to properly provide a functional Decorative Lighting System

Engineering (PE)	86,000			48,000	48,000
Construction	1,200,000		1,200,000		
Maintenance and Operation	500,000			250,000	250,000
Direct State Cost (4%)	68,000		68,000		
Indirect State Cost					