

STATE OF TEXAS §

COUNTY OF TRAVIS §

**FUNDING AGREEMENT
FOR BORDER COLONIA ACCESS PROGRAM**

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 Hidalgo County acting by and through its duly authorized officials, hereinafter called the "County".

WITNESSETH

WHEREAS, Government Code, Chapter 1403, required the Texas Public Finance Authority, in accordance with requests from the Office of the Governor, to issue general obligation bonds and notes in an aggregate amount not to exceed \$175 million, and as directed by the State, to distribute the proceeds to counties as financial assistance for colonia access roadway projects to serve border colonias;

WHEREAS, General Appropriations Act, Texas Department of Transportation, Rider 52, 77th Legislature, 2002-2003, requires the State to establish a transportation program to improve access to colonias with the general obligation bond revenues;

WHEREAS, state law requires counties to meet certain contract standards relating to the management and administration of State funds;

WHEREAS, on July 31, 2008, the Texas Transportation Commission passed Minute Order 111442, authorizing the State to finance the construction of access roads in the County hereinafter referred to as the "Project;" and,

WHEREAS, the Governing Body of the County has approved entering into this Agreement by resolution or ordinance which is attached hereto and made a part hereof as Attachment "A;" and

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 County will construct colonia access roads and place the roads on the County system. Roads to be constructed are identified in the County's awarded Project Applications, which are attached and made part hereof as Attachment "B", and

in any subsequent State-approved changes to the Project Applications allowed under the Border Colonia Access Program established by the State.

- 3. Schedule.** Upon final execution of this agreement, the County shall submit a project schedule. This schedule shall include a monthly project development timeline including estimated monthly expenditures. If the County does not let the construction contract within two (2) years of the execution of this Agreement or complete the Project within three (3) years from the execution of this Agreement, this Agreement will be terminated in accordance with the provisions of Article 9, Termination.
- 4. Project Sources, Uses of Funds and Reimbursement**
 - a.** The State has authorized the total estimated cost of the Project as shown in Attachment "C" to this Agreement. The expected cash contributions from the State, the County, or other parties are shown in Attachment "C". The State will reimburse for only eligible Project costs that have been approved by the Texas Transportation Commission. The County must be in compliance with the requirements of this contract to receive reimbursement of Project costs.
 - b.** The County shall submit monthly billing statements accompanied by certification of work completion. The State will verify the work completion and reimburse the County.
 - c.** For a Project funded with the County allocation based on colonia population, the State will reimburse Project costs until the County maximum allocation has been reached as shown in Attachment "C". Any Project costs above the County maximum allocation will be the responsibility of the County. Total maximum allowable costs for all combined County Projects shall not exceed **\$12,691,299.46**.
 - d.** For a Project specifically selected by statewide competition, the total State reimbursements for each selected Project shall not exceed the amount authorized by the Texas Transportation Commission for that Project.
- 5. Project Responsibilities.** The County is responsible for all aspects of the Project unless otherwise indicated in this Agreement.
 - a. Utilities.** The County will complete any water and wastewater services that are expected to be placed in or across an approved road Project right of way, and all other Utilities shall be adjusted or relocated prior to constructing the Project or as approved in advance by the State. The County may install casings for future utility accommodation.
 - b. Preliminary Engineering.**
 - i.** The County will be responsible for the preparation of all the engineering contract documents required for the construction of the Project. The County will let the construction project.
 - ii.** The County shall prepare the preliminary engineering, specifications and estimates (PS&E) to be let by the County on 11"x17" chronar plans sheets in accordance with the latest AASHTO standards or the County's standards as approved by the State.
 - iii.** State approval is required of the County's procurement process before solicitation for an engineer is begun.
 - iv.** If the County contracts with an engineer for the PS&E, the County shall designate the State as a concurring agency for all plan development required in the County's contract with the engineer.

- v. State approval of the scope of services and negotiated fee is required before a contract with an engineer may be entered into.
- vi. The scope includes any document, PS&E, construction inspection, and materials testing.
- vii. Any changes to the scope services and/or negotiated fees in the engineering contract must be approved by the State.
- viii. The County shall submit the completed PS&E to the State for review and approval. The County shall not let the construction contract until the State has approved the PS&E documents.

c. Bidding

- i. The County shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award a contract for construction of the Project in accordance with existing procedures and applicable laws. Once the bid tabulations have been received, the County shall obtain approval from the State prior to awarding the contract to the successful bidder. The County must submit a right of way certification stating that right of way acquisition is complete or no right of way is needed before the State will approve the bid.
- ii. If the County chooses to perform any work with in-house labor (force account), the State must approve the purchasing and procurement process and general classifications of workers. The State must also approve the labor rates for temporary personnel.

d. Construction

- i. The State will be responsible for auditing and construction oversight.
- ii. Construction inspection, processing of any change orders, supplemental agreements, or additional work orders which may become necessary subsequent to the award of the construction contract shall be the responsibility of the County and subject to concurrence by the State.
- iii. The County or its engineer will supervise and inspect all work performed by the construction contractor and will provide such engineering, inspection, and testing services as may be required to ensure that the construction of the Project is accomplished in accordance with the approved PS&E.

6. Final Inspection. The County shall request by letter within fifteen (15) days of physical completion of the work that the local State office perform its final inspection and acceptance. A copy of the letter of physical completion sent to the contractor shall accompany this request.

7. Right of Way and Real Property Acquisition. The County is responsible for the right of way and real property acquisition and relocation assistance. The County will comply 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 4601et seq.

8. Suspension. If the State determines that the County has not been complying with Title 43, Texas Administrative Code, Chapter 15, Subchapter I, the State may prohibit the County from continuing with the Project until the County complies.

- 9. Termination of this Agreement.** This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless the:
- a. Agreement is terminated in writing with the mutual consent of the parties;
 - b. Agreement is terminated because the County has breached the contract; or
 - c. Project is not let within two (2) years of the execution of this agreement or the Project is not completed within (3) three years of the execution of this Agreement.

If the Agreement is terminated, then the County must reimburse the State for all Project costs.

10. Environmental Assessment and Mitigation

- a. The County must comply with all applicable federal, state, and local environmental laws and regulations and permitting requirements.
- b. The County is responsible for coordination and environmental clearance.
- c. The County is responsible for identification and assessment of any environmental problems associated with the Project, and for the cost of any environmental problem's mitigation and remediation.
- d. The County is responsible for providing any public meetings or public hearings required for development of the environmental assessment.
- e. The County shall provide the State with written certification from appropriate regulatory agency(ies) that identified environmental problems have been remediated.

11. Compliance with Texas Accessibility Standards and ADA. The County shall ensure that the plans for and the construction of the Project 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).

12. Project Maintenance. The County shall be responsible for maintenance of the roads after completion of the work.

13. Historically Underutilized Business (HUB) Program Requirements. The parties shall comply with the Texas Procurement and Building Commission's Historically Underutilized Business (HUB) Program requirements.

14. Grant Management Standards. The County must comply with the Uniform Grant Management Standards promulgated by the Office of the Governor under 1 TAC §§5.141-5.167.

15. Certification. Upon Project completion, the County must submit a written certification that it has complied with the requirements of Title 43, Texas Administrative Code, Chapter 15, Subchapter I, including a certification that the Project has been constructed in accordance with those requirements.

16. 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 must be enacted through a mutually agreed upon, written amendment.

17. 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.

18. 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:

State: District Engineer
600 West U. S. Expressway
Pharr, Tx 78577

County: Hidalgo County Judge
P.O. box 1356
Edinburg, Texas 78540

All notices shall be deemed given on the date so delivered or so deposited in the regular 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.

19. 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.

20. Responsibilities of the Parties.

- a. The State and the County 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.
- b. To the extent permitted by law, the County agrees to indemnify and save harmless the State, its agents and employees from all suits, actions or claims and from all liability and damages resulting from any and all injuries or damages sustained by any person or property in consequence of any neglect, error, or omission in the performance of the design, construction, maintenance or operation of the Project by the County, its contractor(s), subcontractor(s), agents and employees, and from any claims or amounts arising or recovered under the "Workers' Compensation laws"; the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as from time to time may be amended.
- c. The parties expressly agree that this project is not a joint venture or enterprise. However, if a court should find that the parties are engaged in a joint venture or

enterprise, then the County, to the extent provide by law, agrees to pay any liability adjudicated against the State for acts and deeds of the County, its employees or agents during the performance of this Project.

- d. To the extent provided by law, the County shall also indemnify and save harmless the State from any and all expense, including, but not limited to, attorney fees which may be incurred by the State in litigation or otherwise resisting said claim or liabilities which may be imposed on the State as a result of such activities by the County, its agents, or employees.
- e. In addition, the County, by contract, shall require its: (1) contractor(s) and subcontractor(s) to secure a policy of insurance in the maximum statutory limits for tort liability, naming the State as an additional insured under its terms; and (2) contractors to indemnify and hold harmless the County and the State from all claims, liability, and damages resulting from the contractor's performance under the contract.

21. 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 County 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 County. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

22. 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 County shall furnish the State with satisfactory proof of this compliance.

23. 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.

24. Retention of Records and Inspection. The County shall keep a complete and accurate record to document the performance of the work and to expedite any audit that might be conducted. The County shall maintain all books, documents, papers, accounting records and other documentation relating to costs. Records shall include but not be limited to diaries, materials received (invoices), documentation that reimbursed invoices were paid within five (5) days of reimbursement by the State, documentation that equipment used for testing was calibrated and that personnel using the equipment and performing any roadway-related testing were qualified, test reports, manufacturer's certificates, warranties, change orders, and time extensions. The County shall make such materials available to the State, the County, or their duly authorized representatives for verification, 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.

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

26. State Auditor. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

27. Debarment Certification. The Local Government shall not contract with any person who is: suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal agency or who is debarred or suspended by the State.

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

THE COUNTY

Name

Juan D. "J.D." Salinas, Hidalgo County Judge

Date

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.

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

Date

Attachment A
Resolution or Ordinance

RESOLUTION

**A RESOLUTION BY THE COUNTY OF HIDALGO
ENTERING INTO A FUNDING AGREEMENT WITH THE
TEXAS DEPARTMENT OF TRANSPORTATION TO
RECEIVE FUNDING FROM A PROGRAM KNOWN AS
THE BORDER COLONIA ACCESS PROGRAM.**

**WHEREAS, THE COMMISSIONERS COURT OF THE
COUNTY OF HIDALGO** is aware that there are limited funds available to enhance and construct public roadway infrastructure and provide necessary services in colonias; and

WHEREAS, the opportunity exists to receive TXDOT funding to improve and construct public infrastructure roadway improvements; and

WHEREAS, the Commissioners Court finds that these funds would enhance accessibility and delivery of services to the community; and

WHEREAS, the County of Hidalgo commissioners Court accepts and enters into an agreement with the Texas Department of Transportation;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY
COMMISSIONERS COURT OF THE COUNTY OF HIDALGO,
TEXAS** that an agreement in the amount of \$12,691,299.46 be entered into with the Texas Department of Transportation for the County's Population Allocation and Competitive portions of the Border Colonia Access Funding.

**PASSED AND APPROVED, this by the County Commissioners Court
of Hidalgo.**

Juan D. Salinas III, County Judge

Arturo Guajardo Jr. County Clerk

Attachment B
Project Budget

Border Colonias 3rd Call

2008 Allocation Eligible Project Costs

| County | TWDB ID # | Colonia Name | Total Drainage Costs (\$) | Eligible Roadway Costs (\$) | Total Eligible Project Costs (\$) |
|---------|-----------|-------------------------------|---------------------------|-----------------------------|-----------------------------------|
| HIDALGO | M1080882 | La Flor Estates | 7,638.00 | 84,329.25 | 91,967.25 |
| HIDALGO | M1080790 | Village Grove #2 | | 42,407.91 | 42,407.91 |
| HIDALGO | M1080387 | La Suena | 126,020.00 | 231,579.36 | 357,599.36 |
| HIDALGO | M1080600 | Randolph Barnett #1 | 30,610.00 | 60,000.00 | 90,610.00 |
| HIDALGO | M1080606 | Regal Estates | 71,110.00 | 120,000.00 | 191,110.00 |
| HIDALGO | M1080406 | Las Brisas | 47,500.00 | 130,000.00 | 177,500.00 |
| HIDALGO | M1080883 | La Flor Gardens | 7,636.00 | 84,329.25 | 91,965.25 |
| HIDALGO | M1080891 | Los Encinos #2 | 104,425.00 | 113,480.03 | 217,905.03 |
| HIDALGO | M1080274 | Foster Subdivision | 16,108.00 | 95,000.00 | 111,108.00 |
| HIDALGO | M1080348 | Jardin Terrace Subdivision | 45,510.00 | 140,000.00 | 185,510.00 |
| HIDALGO | M1080461 | Mid-Valley Estates | 21,600.00 | 213,250.95 | 234,850.95 |
| HIDALGO | M1080687 | South Palm Gardens Estates #1 | | 58,759.11 | 58,759.11 |
| HIDALGO | M1080055 | Ariel Hinojosa Subdivision | 24,310.00 | 121,491.95 | 145,801.95 |
| HIDALGO | M1080886 | Laborsita | 5,124.00 | 54,900.48 | 60,024.48 |
| HIDALGO | M1080804 | Wes-Mer Subdivision | 10,800.00 | 78,876.17 | 89,676.17 |
| HIDALGO | M1080063 | Balli Estates | | 536,612.27 | 536,612.27 |
| HIDALGO | M1080401 | Lakeview Subdivision | 22,400.00 | 355,000.00 | 377,400.00 |
| HIDALGO | M1080185 | Colonia Whalen Road | 26,756.00 | 98,047.17 | 124,803.17 |
| HIDALGO | M1080855 | Ash County | 32,400.00 | 97,905.35 | 130,305.35 |
| HIDALGO | M1080300 | Hacienda De Los Vegas | 4,534.00 | 107,976.43 | 112,510.43 |
| HIDALGO | M1080310 | Havana Lomas #4 | 28,710.00 | 104,890.95 | 133,600.95 |
| HIDALGO | M1080111 | Blue Star Enterprises #2 | 84,050.00 | 203,163.72 | 287,213.72 |
| HIDALGO | M1080082 | Basham #18 | 43,060.00 | 124,147.05 | 167,207.05 |
| HIDALGO | M1080329 | Hoehn Drive Subdivision | 105,322.00 | 351,700.63 | 457,022.63 |
| HIDALGO | M1080454 | McColl Estates | 68,875.00 | 112,422.71 | 181,297.71 |
| HIDALGO | M1080319 | High Point Subdivision | | 121,186.80 | 121,186.80 |
| HIDALGO | M1080079 | Basham #14 | 58,580.00 | 188,671.09 | 247,251.09 |
| HIDALGO | M1080937 | Aldamas Subdivision 1 & 2 | 220,065.00 | 295,784.13 | 515,849.13 |
| HIDALGO | M1080380 | La Homa Grove Estates | 37,410.00 | 117,815.67 | 155,225.67 |
| HIDALGO | M1080932 | Indian Hills East | | 1,260,219.06 | 1,260,219.06 |

Border Colonias 3rd Call

2008 Allocation Eligible Project Costs

| County | TWDB ID # | Colonia Name | Total Drainage Costs (\$) | Eligible Roadway Costs (\$) | Total Eligible Project Costs (\$) |
|---------|-----------|-------------------------------|---------------------------|-----------------------------|-----------------------------------|
| HIDALGO | M1080940 | Sundown's Retirement Center | 100,895.00 | 108,870.74 | 209,765.74 |
| HIDALGO | M1080324 | Hilda Subdivision #2 | 62,020.00 | 120,000.00 | 182,020.00 |
| HIDALGO | M1080262 | Esperanza Estates | 87,255.00 | 115,087.81 | 202,342.81 |
| HIDALGO | M1080148 | Chapa North | 16,200.00 | 69,570.58 | 85,770.58 |
| HIDALGO | M1080752 | Trenton Terrace | 140,840.00 | 135,000.00 | 275,840.00 |
| HIDALGO | M1080657 | Seminary Village Subdivision | 36,400.00 | 135,000.00 | 171,400.00 |
| HIDALGO | M1080149 | Chapa South | 9,000.00 | 66,877.78 | 75,877.78 |
| HIDALGO | M1080234 | Dude Hill #1 | 28,335.00 | 60,000.00 | 88,335.00 |
| HIDALGO | M1080900 | Morningside South | 143,325.00 | 217,458.93 | 360,783.93 |
| HIDALGO | M1080596 | Rancho Escondido | 183,270.00 | 269,551.95 | 452,821.95 |
| HIDALGO | M1080154 | Citriana Village | 165,795.00 | 319,874.96 | 485,669.96 |
| HIDALGO | M1080688 | South Palm Gardens Estates #2 | | 48,602.00 | 48,602.00 |
| HIDALGO | M1080311 | Havana Lomas #5 | 25,150.00 | 65,000.00 | 90,150.00 |
| HIDALGO | M1080896 | McKee #1 | 36,100.00 | 86,774.07 | 122,874.07 |
| HIDALGO | M1080215 | De Anda Subdivision | 12,600.00 | 51,725.18 | 64,325.18 |
| HIDALGO | M1080413 | Las Milpas Subdivision | 72,685.00 | 117,072.59 | 189,757.59 |
| HIDALGO | M1080591 | Ramon Leal Subdivision | 15,570.00 | 70,547.90 | 86,117.90 |
| HIDALGO | M1080387 | La Mesa Subdivision | 60,500.00 | 149,480.86 | 209,980.86 |
| HIDALGO | M1080890 | Los Encinos #1 | 39,585.00 | 45,000.00 | 84,585.00 |
| HIDALGO | M1080587 | Ramirez Subdivision | 28,910.00 | 50,000.00 | 76,910.00 |
| HIDALGO | M1080588 | Ramirez Subdivision #2 | 20,560.00 | 50,000.00 | 70,560.00 |
| HIDALGO | M1080589 | Ramirez Subdivision #3 | 31,160.00 | 34,961.95 | 66,121.95 |
| HIDALGO | M1080844 | Colonia Esperanza #1 | 19,118.00 | 85,605.53 | 104,723.53 |
| HIDALGO | M1080536 | Palm Lake Estates #1 | 202,072.00 | 486,541.18 | 688,613.18 |

Border Colonias 3rd Call

2008 Competitive Eligible Project Costs

| County | TWDB ID # | Colonia Name | Total Drainage Costs (\$) | Eligible Roadway Costs (\$) | Total Eligible Project Costs (\$) |
|---------|-----------|----------------------|---------------------------|-----------------------------|-----------------------------------|
| HIDALGO | M1080536 | Palm Lake Estates #1 | 57,227.00 | 140,622.00 | 197,849.00 |
| HIDALGO | M1080470 | Monica Acres | 35,510.00 | 73,187.53 | 108,697.53 |
| HIDALGO | M1080465 | Miller Resub Lot A | 60,965.00 | 76,037.83 | 137,002.83 |
| HIDALGO | M1080220 | Delta West Subd. | 41,600.00 | 313,968.53 | 355,568.53 |
| HIDALGO | M1080228 | Diaz Subd. | 9,000.00 | 55,595.18 | 64,595.18 |
| HIDALGO | M1080460 | Mesquite Acres Subd. | 98,445.00 | 125,724.71 | 224,169.71 |
| HIDALGO | M1080780 | Vereda Tropical | 25,660.00 | 119,307.18 | 144,967.18 |

Attachment C
Project Applications