



Texas Department of Transportation

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

November 30, 2010

The Honorable Ramon Garcia
County Judge, Hidalgo County
P O Box 1356
Edinburg, TX 78540

RECEIVED

DEC 07 2010

COUNTY JUDGE

**RE: Advance Funding Agreement Amendment #2
I Rd. - Owassa to US 281
CSJ 0921-02-132**

Dear Judge Garcia:

Enclosed please find two originals of Amendment #2 to the subject Advance Funding Agreement. This amendment is needed to address the Hidalgo County Metropolitan Planning Organization's capping of the American Recovery and Reinvestment Act (ARRA) funds allocated to this project at \$4,071,711.17 based on the actual low bid received.

Please sign and return both signed originals to the attention of Mr. Jody R. Ellington, our Director of Transportation Planning and Development, at the above address for further processing. If you have any questions contact me or Jody Ellington at 702-6100.

Sincerely,

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

Enclosure

cc: Jody R. Ellington, P.E., Director of Transportation Planning and Development
Hector Gonzalez, P.E., Pharr Area Engineer
Project File

THE TEXAS PLAN

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STATE OF TEXAS §
COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
AMENDMENT # 2**

THIS AMENDMENT IS MADE BY AND BETWEEN the State of Texas, acting through the Texas Department of Transportation, hereinafter called the State, and Hidalgo County, acting by and through its duly authorized officials, hereinafter called the Local Government.

WITNESSETH

WHEREAS, the State and the Local Government executed a contract on the 26th day of August 2004, to effectuate their agreement to reconstruct "I" Rd. from US 281 South to FM 3461 (Nolana Road); and,

WHEREAS, the State and the Local Government executed Amendment #1 on the 1st day of July 2009, to address revised project limits, updated costs, the Economically Disadvantaged County Program reduction to the Local Government's participation and the American Recovery and Reinvestment (ARRA) funds; and,

WHEREAS, the agreement is being revised to revise the amount of American Recovery and Reinvestment Act (ARRA) funding allocated to the project;

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

- 1) Article 3. Local Project Sources and Uses of Funds, of the original contract is being amended to add the following as the second paragraph of 3a:

If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before 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 Government Project Procedures Qualification for the Texas Department of Transportation. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

- 2) Article 3. Local Project Sources and Uses of Funds, of the original contract is amended to add the following as paragraph 3n:

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.

- 3) Article 22. Inspection of Books and Records, of the original contract is being amended to add the following as the second paragraph:

Whenever American Recovery and Reinvestment Act of 2009 (ARRA) funds are used and the Local Government is performing any work, either directly or through a contractor, it must comply with the following provisions. If a Local Government is 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.

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 Government). 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.

- 4) Article 23. Office of Management and Budget (OMB) Audit Requirements is being amended to add the following:

Whenever funds from the American ARRA are distributed to a Local Government, 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.

- 5) Attachment C-1, PROJECT BUDGET of Amendment #1 is being deleted and replaced with Attachment C-2, PROJECT BUDGET, contained herein.
- 6) 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 they represent.

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

THE LOCAL GOVERNMENT

Hidalgo County
Name of Local Government

By: _____
Signature

Ramon Garcia
Printed Name

Hidalgo County Judge
Title

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.

By: _____
Signature

Janice Mullenix
Director of Contract Services

Date

**ATTACHMENT C-2
PROJECT BUDGET**

The Hidalgo County Metropolitan Planning Organization (HCMPO) allocated Federal American Recovery and Reinvestment Act (ARRA) Funds in the amount of \$4,071,711.17 for this project. These funds are to be used exclusively for construction costs and are capped. Per HCMPO direction, use of these ARRA funds requires Local Government participation at a rate equal to that of the required Local Government participation for the funding being used for construction engineering and contingency costs as well as the funding being used for construction costs above that covered by the ARRA funds and associated Local Government participation. District Discretionary funds will be used to cover construction engineering and contingency costs as well as construction costs which exceed the capped ARRA funds and associated required Local Government participation. The Local Government will also be responsible for 100% of all preliminary engineering, right of way and utility adjustment costs.

The project costs will be split equally between the two Local Governments (50% for the City of Edinburg, and 50% for Hidalgo County) since the project segment lengths within each entity's jurisdiction are equal. Considering this, the usual 20% Local Government match, and taking into account approved Economically Disadvantaged County Program (EDCP) reductions of 90% for the City of Edinburg and 85% for Hidalgo County, Local Government participation for construction and construction engineering and contingencies is 1% for the City of Edinburg and 1.5% for Hidalgo County. For non ARRA funding, State participation to cover the Local Government's EDCP reductions will be 17.5%. There will be no State participation for the ARRA funding.

The following is an estimated breakdown of the project costs and funding participation. It is understood that the costs shown are estimates only, and Local Government participation will be based on actual charges to the project.

Description	Total Estimated Cost	Federal Participation		State Participation		Local Government Participation			
		%	Cost	%	Cost	City of Edinburg		Hidalgo County	
						%	Cost	%	Cost
Preliminary Engineering	\$ 443,160.00	0.00%	\$ -	0.00%	\$ -	50.00%	\$ 221,580.00	50.00%	\$ 221,580.00
ROW & Utility Adjustments	\$ -	0.00%	\$ -	0.00%	\$ -	50.00%	\$ -	50.00%	\$ -
Construction - ARRA Funds	\$4,176,114.02	#97.50%	\$4,071,711.17	@ 0%	\$ 0.00	1.00%	\$ 41,761.14	1.50%	\$ 62,641.71
Construction Engineering & Contingencies (E&C) (estimated at 12% of Construction Costs) - District Discretionary	\$ 501,133.68	80.00%	\$ 400,906.94	17.50%	\$ 87,698.39	1.00%	\$ 5,011.34	1.50%	\$ 7,517.01
Engineering Direct State Cost	\$50,963.40	80.00%	\$40,770.72	17.50%	\$8,918.60	1.00%	\$509.63	1.50%	\$764.45
Indirect State Cost	\$286,394.98	80.00%	229,115.98	20%	\$57,279.00				
PROJECT TOTAL	\$5,457,766.08		\$4,742,504.81		\$153,895.99		\$ 268,862.11		\$ 292,503.17

- 97.5% Participation for the first \$4,176,114.02 in construction costs incurred, and 80% thereafter.
 @ - 0% Participation for the first \$4,176,114.02 in construction costs incurred, and 17.5% thereafter.