

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 09-57

**Advance Funding Agreement for
Highway Emergency Response Operators (HERO) Program**

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 43 Tex. Admin. Code § 26.01, *et seq.* (the "RMA Rules"); and

WHEREAS, the Board of Directors of the CTRMA has been constituted in accordance with the Transportation Code and the RMA Rules; and

WHEREAS, as part of the American Recovery and Reinvestment Act of 2009, \$29.1 million of transportation funds (the "ARRA Funds") were sub allocated to the Capital Area Metropolitan Planning Organization ("CAMPO") region for distribution to projects selected by the CAMPO Transportation Policy Board; and

WHEREAS, CAMPO worked with local jurisdictions and transportation providers to identify projects that would be eligible to receive the ARRA Funds, including the Highway Emergency Response Operators Service Patrol Program ("HERO"); and

WHEREAS, the primary purpose of the local HERO program is to minimize traffic congestion and improve highway safety by clearing damaged or disabled vehicles from roadway lanes or shoulders and providing traffic control and scene protection at roadway incidents; and

WHEREAS, on June 8, 2009, the CAMPO Transportation Policy Board authorized the use of up to \$1,400,000 of the ARRA Funds over a period of two years to fund the HERO program along the IH-35 corridor from Round Rock to Buda, a length of approximately 34 miles; and

WHEREAS, CAMPO's action provides that the CTRMA is to administer the HERO program and the related ARRA Funds, and such administration will require the execution of a Non-Construction Advance Funding Agreement with the Texas Department of Transportation substantially in the form attached hereto as Attachment "A" (the "Funding Agreement") regarding the funding of the HERO program with ARRA Funds.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors hereby authorizes the Executive Director to negotiate finalize the terms of the Funding Agreement with the Texas Department of Transportation; and

BE IT FURTHER RESOLVED, that the Executive Director is authorized to execute the Funding Agreement in accordance with the provisions of this Resolution and in substantially the form attached hereto as Attachment "A".

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 26th day of August, 2009.

Submitted and reviewed by:

Approved:



Tom Nielson
General Counsel for the Central
Texas Regional Mobility Authority



Ray A. Wilkerson
Chairman, Board of Directors
Resolution Number 09-57
Date Passed 8/26/09

STATE OF TEXAS §
COUNTY OF TRAVIS §

 ORIGINAL

**LOCAL TRANSPORTATION PROJECT
NON-CONSTRUCTION ADVANCE FUNDING AGREEMENT
For an
American Recovery and Reinvestment Act of 2009
Project**

THIS AGREEMENT (Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation (State), and the Central Texas Regional Mobility Authority (CTRMA) (Local Entity).

BACKGROUND

Federal law establishes federally funded programs for transportation improvements to implement its public purposes, including the American Recovery and Reinvestment Act of 2009 (ARRA) program. Federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds. The Texas Transportation Commission passed Minute Order 110685 which provides for development of and funding for the Project identified in this Agreement. The Governing Body of the Local Entity has approved entering into this Agreement by resolution or ordinance dated _____, which is attached and is made part of the Agreement as Attachment A.

THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree to the following.

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 the Project as detailed in Attachment B, which is attached and made part of this Agreement.

3. Local Project Sources and Uses of Funds

A. The total estimated cost of the Project is shown in Attachment C, which is attached and made part of this Agreement. 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 Entity for any work performed

CSJ #0914-00-305
District # 14
Code Chart 64 #60432
HERO Project
CFDA # 20.205

before the issuance of a formal Letter of Authority by the Federal Highway Administration. The Local Entity is 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 the Local Entity will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Entity 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 Entity shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Entity or an employee of a firm that has been contracted by the Local Entity to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Entity has not designated a qualified individual to oversee the Project.

- B. The State will be responsible for securing the Federal and State share of the funding required for the Project. If the Local Entity is due funds for expenses incurred, these funds will be reimbursed to the Local Entity on a cost basis. The Local Entity will be responsible for all non-federal and non-State participation costs associated with the Project, including any overruns in excess of the approved local Project budget. If the State determines that additional funding by the Local Entity is required at any time during the Project, the State will notify the Local Entity in writing. The Local Entity shall make payment to the State within thirty (30) days from receipt of the State's written notification. The State will not pay interest on any funds provided by the Local Entity.
- C. The Local Entity shall request payment by submitting the original of an itemized invoice in a form acceptable to the State. The Local Entity may submit an invoice no more frequently than monthly and no later than ninety days after incurring a cost. Each invoice shall itemize charges and shall attach documentation showing the name, hourly rate, and number of hours worked for all labor charges, the basis for allocation of any indirect costs, and copies of invoices for any direct costs over \$1,000.
- D. Whenever funds are paid by the Local Entity to the State under this Agreement, the Local Entity 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. These funds may only be applied to the Project. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Entity, the State, or the Federal government will be promptly paid by the owing party. After final Project accounting, if excess funds remain in the escrow account, those funds may be applied by the State to the Local Entity's contractual obligations to the State under another advance funding agreement.
- E. If the Project has been approved for a fixed price or incremental payments under 43 TAC §15.52, Attachment C will clearly state the amount of the fixed price or the incremental payment schedule. If the Local Entity is an Economically

CSJ #0914-00-305
District # 14
Code Chart 64 #60432
HERO Project
CFDA # 20.205

Disadvantaged County and if the State has approved adjustments to the standard financing arrangement, Attachment C will reflect those adjustments.

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

4. Termination

This Agreement may be terminated:

- a. by mutual consent of the parties;
- b. by one party because of a material breach by the other party, in which case the breaching party shall pay any costs incurred because of the breach; or
- c. by the State if the Local Entity elects not to provide its share of funding, in which case the Local Entity shall pay for the State's reasonable actual costs during the Project.

5. Amendments

Amendments to this Agreement shall be in writing and shall be executed by both parties.

6. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any default. All legal remedies may be pursued by either party and shall be cumulative.

7. Notices

All notices to either party by the other 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 Entity:	State:
Executive Director Central Texas Regional Mobility Authority 301 Congress Avenue, Suite 650 Austin, Texas 78701	District Engineer Texas Department of Transportation 7901 N. I-35 Austin, Texas 78753

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

8. Legal Construction

If any provision in this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement. In that case, this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

9. Responsibilities of the Parties

Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is responsible for its own acts and deeds and for those of its agents, servants, or employees.

10. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on further use. All documents produced or approved or otherwise created by the Local Entity 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 Entity.

11. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. After receiving a written request from the State, the Local Entity shall furnish the State with satisfactory proof of its compliance with this Article.

12. Sole Agreement

This Agreement supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

13. Cost Principles

To be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87.

14. Procurement and Property Management Standards

The parties shall comply with the procurement standards established in 49 CFR §18.36, the property management standard established in 49 CFR §18.32, and the supply standard established in 49 CFR § 18.33.

15. Inspection of Books and Records

The parties shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make those materials available to the State and the Local Entity. If the Agreement involves federal funds, the same materials shall be made available to the Federal Highway Administration (FHWA), the U.S. Office of the Inspector General, and their authorized representatives for review and inspection. Records shall be maintained for four (4) years from the termination of this Agreement or until any related litigation or claims are resolved, whichever is later. Additionally, the State, the Local Entity, the FHWA, and their duly

CSJ #0914-00-305
District # 14
Code Chart 64 #60432
HERO Project
CFDA # 20.205

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 the Local Entity is performing any work, either directly or through a contractor, it must comply with the following provisions. If a Local Entity 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 of the 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 LE (Local Entity). It is the responsibility of the LE to obtain this form from the prime Contractor and any subcontractors and, the LE shall verify the accuracy, completeness, and reasonableness

CSJ #0914-00-305
District # 14
Code Chart 64 #60432
HERO Project
CFDA # 20.205

of the data contained in the form. The LE shall ensure that this form is submitted by the LE 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 LE 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.

16. Office of Management and Budget (OMB) Audit Requirements

The parties shall comply with the requirements of the Single Audit Act of 1984, 31 USC §7501 et seq., and with the coverage stipulated in OMB Circular A-133.

Whenever funds from the American Recovery and Reinvestment Act of 2009 (ARRA) are distributed to a Local Entity, the Local Entity 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.

17. Civil Rights Compliance

The Local Entity 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 with Executive Order 11246, as amended by Executive Order 11375 and supplemented in 41 CFR Part 60.

18. Disadvantaged Business Enterprise Program Requirements

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

19. 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, the [Contractor, Local Entity, Engineer, or whatever] certifies that it is 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.

20. Lobbying Certification

In executing this Agreement, the signatories certify to the best of their 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

CSJ #0914-00-305
District # 14
Code Chart 64 #60432
HERO Project
CFDA # 20.205

- 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 Entity 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.

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.

CSJ #0914-00-305
District # 14
Code Chart 64 #60432
HERO Project
CFDA # 20.205

21. Signatory Warranty

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

THEREFORE, the parties have executed this Agreement in duplicate originals.

THE LOCAL ENTITY

Name

Printed Name and Title

Date

THE STATE OF TEXAS

Janice Mullenix,
Director of Contract Services
Texas Department of Transportation

Date

CSJ #0914-00-305
District # 14
Code Chart 64 #60432
HERO Project
CFDA # 20.205

ATTACHMENT A

Resolution or Ordinance

ATTACHMENT B SCOPE OF WORK

The scope of work is the implementation of a new HERO Program along IH-35, with the intent of establishing public-private partnerships to encourage long-term program sustainability.

Service patrol programs—comprising highly trained personnel and specially equipped vehicles—operate on freeway or arterial roadways to mitigate congestion and safety impacts of minor traffic incidents and support clearance of major traffic incidents by assisting with traffic control at the scene, protecting emergency responders, and warning and guiding approaching motorists past the incident. Reported benefits relate to reduced secondary crashes; increased responder safety; reduced delay, fuel consumption, and emissions; and increased customer satisfaction.

Task 1 – Program Planning

The first task will be to determine the program characteristics that will maximize potential benefits while adhering to financial resources limits. Initial HERO Program development considerations include the following:

- general program operations, including administration, coverage area, days and hours of operations, staffing, human resource provisions (health insurance and benefits), liability insurance, extent of services provided, coordination with partner traffic incident management agencies, etc.;
- driver recruitment and training, including hiring procedures, background checks, nature and extent of required training, access to qualified trainers, etc.;
- vehicle specifications, procurement, and equipment, including selection of optimum vehicle types based on necessary capabilities, purchase/lease/donate procurement options, equipment and expendable material resource needs based on services provided, etc.; and
- performance monitoring, including appropriate data elements and sources required to support performance measure calculation; evaluation methods within the constraints of data availability and staff training; schedules for ongoing, periodic evaluation of the program; and reporting methods, formats, and frequency that ensure sufficient yet appropriate detail to support decision-making needs.

Deliverable: Comprehensive description of the proposed HERO Program's intended structure and operation.

Task 2 – Program Implementation

Once a plan is in place, specific implementation activities will be undertaken to transition the HERO Program from plan to operation. Such activities may include the following:

- coordinating with partner traffic incident management agencies—including the Austin Police Department, the Austin Fire Department, the private towing and recovery industry, the Texas Department of Transportation, and the Combined Transportation and Emergency

Communications Center (CTECC) and others—to incorporate the service patrol resource into procedures and communications;

- developing interlocal or interagency agreements to institutionalize and facilitate consistent operations among partner traffic incident management agencies as required;
- recruiting and hiring a pool of operators and arranging for appropriate training commensurate with the nature and extent of incident response functions performed;
- negotiating costs and procuring the vehicle fleet and arranging for installation of specialty equipment (heavy-duty push bumpers, dynamic message signs, flashing lights, etc.); and
- stocking the vehicles with expendable materials and supplies and arranging for storage of excess/inventory materials.

Deliverable: A pool of qualified operators, a ready-stocked and appropriately equipped vehicle fleet, and a communications and operations strategy among partner traffic incident management agencies, including any required supporting interlocal or interagency agreements.

Task 3 – Program Operation and Management

Once operational, day-to-day activities for the HERO Program may include the following:

- the routine provision of roadside assistance during minor incidents;
- the routine provision of traffic control and scene protection during major incidents;
- coordination with partner traffic incident management agencies;
- ongoing driver evaluation and training;
- ongoing vehicle maintenance (including the provision of liability insurance) and stocking; and
- general program administration.

Deliverable: A well functioning HERO Program providing routine roadside assistance to motorists and traffic incident management support for partner traffic incident management response personnel.

Task 4 – Program Refinement

After the program is in place and operational, the HERO Program will be reviewed and refined as necessary to further enhance operations and resulting program benefits. Input from HERO Program operators, partner traffic incident management agencies, and others will be solicited to identify existing operational strengths and weaknesses and potential program improvements. Improvements that are deemed feasible and within budget limitations will be considered for implementation.

Deliverable: Recommended modifications to the HERO Program that will further enhance operations and resulting benefits.

Task 5 – Program Marketing and Partnership Development

Throughout the HERO Program development process (Tasks 1 through 4), a concurrent activity will be focused on characterizing and marketing the benefits of the program and developing and

CSJ #0914-00-305
 District # 14
 Code Chart 64 #60432
 HERO Project
 CFDA # 20.205

**ATTACHMENT C
 PROJECT BUDGET**

The following are estimated Project costs and their allocation between the parties.

Description	Federal Participation		Local Participation		Total Project Cost	
	%	Cost	%	Cost	%	
Project	100	\$1,408,205	0	\$0	100	\$1,408,205
Direct State Costs	0	\$0	0	\$0	0	\$0
TOTAL	100	\$1,408,205	0	\$0	0	\$1,408,205

Local Entity's Participation = \$0

This is an estimate only. Final participation amounts, including State direct costs, will be based on actual charges to the Project.