



AGENDA ITEM #5 SUMMARY

Approve an advance funding agreement with the Texas Department of Transportation for the HERO Program.

CENTRAL TEXAS Regional Mobility Authority

| | |
|---------------------------|--|
| Strategic Plan Relevance: | Regional Mobility |
| Department: | Operations |
| Associated Costs: | \$4,966,695 |
| Funding Source: | General Funds, reimbursed by TxDOT (STP-MM) funds. |
| Board Action Required: | Yes |

Description of Matter:

The Mobility Authority submitted an application to CAMPO to fund a 3-year extension of the HERO Program. CAMPO approved the application and selected the HERO Program as a project to be funded using STP-MM funds.

On April 26, 2012, the Texas Transportation Commission approved Minute Order 113074 that authorized an Advanced Funding Agreement with the Mobility Authority for implementation, oversight, and funding of the HERO Program. TxDOT has proposed the attached draft Advance Funding Agreement. The Executive Director recommends approval of the draft AFA for his signature on behalf of the Mobility Authority.

Reference documentation:

Draft Advance Funding Agreement with TxDOT
Draft Resolution

Contact for further information: Andrew Martin, General Counsel

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

RESOLUTION NO. 12-___

**APPROVE AN ADVANCE FUNDING AGREEMENT WITH THE TEXAS
DEPARTMENT OF TRANSPORTATION FOR THE HERO PROGRAM.**

WHEREAS, the Mobility Authority filed an application with the Capital Area Metropolitan Planning Organization (“CAMPO”) for funding to extend in time and scope the Highway Emergency Response Operators program for providing assistance to motorists traveling on certain highways in Central Texas; and

WHEREAS, CAMPO and the Texas Transportation Commission have approved the application, and the Texas Department of Transportation is authorized to provide up to \$4,66,695 in funding for the HERO Program under a proposed “Non-Construction Advance Funding Agreement for a Surface Transportation Program: Metropolitan Mobility,” a copy of which is attached and incorporated into this resolution as Attachment A (the “AFA”), subject to the Board’s approval and authorization to enter into the AFA; and

WHEREAS, the Board has determined it is in the best interests of the Mobility Authority and the traveling public to continue and expand the HERO Program using the funds to be made available under the AFA.

NOW THEREFORE, BE IT RESOLVED, that the Board hereby approves the AFA and authorizes the Executive Director to execute the AFA for HERO Program funding in the form or substantially the same form attached to this resolution as Attachment A.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 25th day of July, 2012.

Submitted and reviewed by:

Approved:

Andrew Martin
General Counsel for the Central
Texas Regional Mobility Authority

Ray A. Wilkerson
Chairman, Board of Directors
Resolution Number: 12-___
Date Passed: 7/25/2012

Attachment A

HERO Program Advance Funding Agreement

(on the following 11 pages)

STATE OF TEXAS §

COUNTY OF TRAVIS §

**NON-CONSTRUCTION
ADVANCE FUNDING AGREEMENT
for a
Surface Transportation Program:
Metropolitan Mobility**

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation (TxDOT), called the “State”, and Central Texas Regional Mobility Authority, acting by and through its duly authorized officials, called the “Local Government.”

BACKGROUND

Federal law establishes federally funded programs for transportation improvements to implement its public purposes, including the Highway Emergency Response Operators Program (HERO). 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 Number 113074, which provides for development of and funding for the Project identified in this agreement. The Governing Body of the Local Government has approved entering into this agreement by resolution or ordinance dated _____, 20__, which is attached to and made part of this agreement as Attachment A.

NOW THEREFORE, the State and the Local Government agree 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 close of ordinary business on March 30, 2016.

2. Scope of Work

The Scope of Work is the Project as detailed in Attachment B, which is attached to 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 – Project Budget Estimate, 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 Government for any work performed before federal spending authority is formally obligated to the Project by the Federal Highway Administration (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for one hundred percent (100%) of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.

- B.** If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before a federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- C.** The State will be responsible for securing the Federal and State share of the funding required for the Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- D.** The Local Government 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 Government is required at any time during the Project, the State will notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- E.** The State will not pay interest on any funds provided by the Local Government.
- F.** The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
- G.** Whenever funds are paid by the Local Government to the State under this agreement, the 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. 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 Government, 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 Government's contractual obligations to the State under another advance funding agreement with approval by appropriate personnel of the Local Government.

- H. 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 government is an Economically Disadvantaged County and if the State has approved adjustments to the standard financing arrangement, Attachment C will reflect those adjustments.
- I. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under 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.
- J. 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;
- C. By the State if the Local Government elects not to provide its share of funding, in which case the Local Government shall pay for the State's reasonable actual costs during the Project; or
- D. If the project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds.

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 shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

| Local Government: | State: |
|--|--|
| Executive Director Central Texas Regional Mobility Authority 301 Congress Avenue, Suite 650 Austin, Texas 78701 | Director of Contract Services Texas Department of Transportation 125 E. 11 th Street Austin, Texas 78701 |

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

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 Government 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 subject matter of this agreement.

13. 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.

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.

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 Government. If the agreement involves federal funds, the same materials shall be made available to the 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 Government, 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.

16. Civil Rights Compliance

The Local Government shall comply with the regulations of the U.S. Department of Transportation (DOT) as they relate to non-discrimination, 49 CFR Part 21 and 23 Part 200, and with Executive Order 11246, as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

17. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps

under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

18. Debarment 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 Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

19. Lobbying Certification

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

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

agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 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.

20. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
1. Obtain and provide to the State a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: <https://www.bpn.gov/ccr/default.aspx>;
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and
 3. Report the total compensation and names of its top five (5) executives to the State if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

21. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- B. If threshold expenditures of \$500,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at http://www.txdot.gov/contact_us/audit.htm.
- C. If expenditures are less than \$500,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We

did not meet the \$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."

- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

22. Signatory Warranty

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

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

THE LOCAL GOVERNMENT

Signature

Typed or Printed Name

Title

Date

THE STATE OF TEXAS

Janice Mullenix
Director of Contract Services
Texas Department of Transportation

Date

CSJ #0914-00-358/0914-00-361
District # 14 AUS
Code Chart 64 #60432
Project: HERO Project
Federal Highway Administration
CFDA # 20.205
Not Research and Development

**ATTACHMENT A
RESOLUTION OR ORDINANCE**

ATTACHMENT B SCOPE OF WORK

The Local Government will provide the Highway Emergency Response Operator (HERO) Patrol Service Program. The HERO program provides emergency roadside assistance services to improve traffic operations, increase safety, and enhance mobility on the I-35 and US 183 corridors throughout Austin. Services provided by the Program include: staff, vehicles, and materials necessary for roadside assistance with vehicle breakdowns. The HERO program assists law enforcement agencies and/or other emergency and support response agencies with incident management following accidents; and facilitating roadway clean-up. The Program operates along the I-35 mainlanes and frontage roads between SH-130, north of Georgetown, and Yarrington Road, south of Kyle, along with coverage of US 183 from I-35, north to Lakeline Blvd. Service coverage is performed by six trucks from 6 a.m. to 8 p.m., Monday through Friday except for Local Government approved holidays, unless otherwise requested by the local government, under additional services.

The Local Government shall provide the following deliverables:

- Quarterly activity report that summarizes the daily logs prepared by each operator; motorist comment cards and request of service forms;
- Quarterly safety report reflecting safety assignments and/or on the job safety incidents involving operators; and
- Quarterly incident response report that includes information on incident response; roadway, and incident clearance times.

**ATTACHMENT C
 PROJECT BUDGET ESTIMATE**

Costs will be allocated based on 80% Federal funding and 20% State funding until the federal funding reaches the maximum obligated amount. The Local Government will then be responsible for 100% of the costs.

| Description | Total Estimated Cost | Federal Participation | | State Participation | | Local Participation | |
|-------------------------------|----------------------|-----------------------|--------------------|---------------------|--------------------|---------------------|------------|
| | | % | Cost | % | Cost | % | Cost |
| HERO For Obligation in 2013 | \$1,931,250 | 80% | \$1,545,500 | 20% | \$386,250 | 0% | \$0 |
| HERO For Obligation in 2014 | \$2,703,750 | 80% | \$2,163,000 | 20% | \$540,750 | 0% | \$0 |
| Direct State Costs 3% | \$ 139,050 | 0% | \$0 | 100% | \$139,050 | 0% | \$0 |
| Indirect State Costs 7.12% | \$ 192,645 | 0% | \$0 | 100% | \$ 192,645 | 0% | \$0 |
| TOTAL | \$4,966,695 | | \$3,708,500 | | \$1,258,695 | 0% | \$0 |

Payment by the Local Government to the State \$0

This is an estimate. The final amount of Local Government participation will be based on actual costs.