

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 the City of Austin, acting by and through its duly authorized officials, hereinafter called the Local Government.

W I T N E S S E T H

WHEREAS, the State and the Local Government executed a contract on the 23rd of March, 2004, and amended the 16th of February, 2010, to effectuate their agreement to construct bicycle and pedestrian improvements on LP 360 from Jollyville Road to Arboretum Boulevard; and,

WHEREAS, the Local Government originally began development of this project with Surface Transportation Program (STP) federal funding and has since accepted American Recovery and Reinvestment Act of 2009 federal dollars to fund construction bid item costs.

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:

A G R E E M E N T

Article 1. Description of Amended Items

I. Article 3, Local Project Sources and Uses of Funds, Subsection a. of the original Agreement is deleted in its entirety and replaced with:

- a. The total estimated cost of the Project is shown in the Project Budget - Attachment C-1 which is attached hereto and made a part hereof. The expected cash contributions from the federal or State government, the Local Governments, or other parties is shown in Attachment C-1. 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 the issuance of a formal Letter of Authority by the Federal Highway Administration. The Local Government 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 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.

II. Article 22, Inspection of Books and Records, of the original Agreement is supplemented with the following:

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.

III. Article 23, Office of Management and Budget (OMB) Audit Requirements of the original Agreement is supplemented with 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.

IV. Add an Article 28 to the original agreement. Article 28 reads as follows:

Insurance

If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

V. Attachment C of the original contract is deleted in its entirety and replaced with Attachment C-1 contained herein.

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

Article 2. Signatory Warranty

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

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

THE LOCAL GOVERNMENT

City of Austin
Name of Local Government

By: _____
Signature

Howard S. Lazarus, P.E.
Printed Name

Acting Assistant City Manager
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: _____
Janice M. Mullenix

Director of Contract Services
Title

Date

ATTACHMENT C-1

The Local Government will participate in the cost of a bicycle/pedestrian crossing on Loop 360 from Jollyville Road to Arboretum Boulevard. The American Recovery and Reinvestment Act of 2009 funding (ARRA) will be applied first to the construction bid items cost of the project to the maximum participation amount of \$325,000. The balance of the construction costs, design costs and project management costs will be funded under the Surface Transportation Program (STP) with 80% of the eligible costs to be federally funded and 20% of the eligible costs to be funded by the Local Government. The maximum federal STP participation amount is \$334,750. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, including any overruns in excess of the approved federal maximum participation amount. The State has estimated the project to be as follows:

Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
Engineering (STP MM)	\$192,020	80%	\$153,616	0%	\$0	20%	\$38,404
Construction (ARRA Only)	\$325,000	100%	\$325,000	0%	\$0	0%	\$0
Construction (STP-MM)	\$226,418	80%	\$181,134	0%	\$0	20%	\$45,284
Subtotal	\$743,438		\$659,750		\$0		\$83,688
Engineering Phase Direct State Costs	\$4,123	0%	\$0	0%	\$0	100%	\$4,123
Construction Phase Direct State Costs	\$4,123	0%	\$0	0%	\$0	100%	\$4,123
Indirect State Costs	\$0	0%	\$0	0%	\$0	0%	\$0
TOTAL	\$751,684	0%	\$659,750	0%	\$0	0%	\$91,934

Estimated Total Participation by Local Government = \$91,934

Direct State Costs in the amount of \$8,247 have been received.

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