

CITY OF EL PASO, TEXAS

DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: Engineering

AGENDA DATE: February 9, 2010

CONTACT PERSON NAME AND PHONE NUMBER: R. Alan Schubert, P.E., City Engineer (X4423)

DISTRICT(S) AFFECTED: 8

SUBJECT:

Resolution that the City Manager be authorized to sign the Advance Funding Agreement between the City of El Paso and the State of Texas, acting through the Texas Department of Transportation for the construction of canopies with lighting on two border crossings, Santa Fe Street Bridge and Stanton Street Bridge, landscaping, bus stop improvements, and fountain and gazebo construction at Lion's Placita park. The Agreement is required under the American Recovery and Reinvestment act of 2009 provisions relating to construction funding, inspection of books and records, reporting requirements and Office of Management and Budget audit requirements.

BACKGROUND / DISCUSSION:

The Texas Department of Transportation has requested that since ARRA funding is being utilized on the project a new agreement is required. The previous agreement and its amendment will be replaced in its entirety.

PRIOR COUNCIL ACTION:

Council had previously approved the original agreement on January 15, 1998 as well as a first amendment on November 18, 2002 and a second amendment on December 1, 2009.

AMOUNT AND SOURCE OF FUNDING:

No additional funding is required under this action since Council had previously dedicated TxDOT match funding from 2006 Certificates of Obligation as the City's portion of the project funding. The funding allocation remains the same.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

WHEREAS, On December 1, 2009, the City Council approved by resolution Amendment 2 to the Advance Funding Agreement of January 15, 1998 (Amendment 2) between the City of El Paso and the State of Texas, by and through the Texas Department of Transportation (TxDOT), for the construction of canopies with lighting on two border crossings, Santa Fe Street Bridge and Stanton Street Bridge, landscaping, bus stop improvements, and fountain and gazebo construction at Lions Placita Park, and

WHEREAS, TxDOT has requested that the Advance Funding Agreement of January 15, 1998, including the amendments thereto, be revoked and replaced with the Local Project Advance Funding Agreement approved hereafter.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Local Project Advance Funding Agreement between the City of El Paso and the State of Texas, acting by and through the Texas Department of Transportation for the construction of canopies with lighting on two border crossings, Santa Fe Street Bridge and Stanton Street Bridge, landscaping, bus stop improvements, and fountain and gazebo construction at Lions Placita Park. The Agreement is required under the American Recovery and Reinvestment act of 2009 provisions relating to construction funding, inspection of books and records, reporting requirements and Office of Management and Budget audit requirements.

ADOPTED this the _____ day of _____, 2010.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

Mark Shoosmith

Mark Shoosmith
Assistant City Attorney

Patricia D. Aduato

Patricia D. Aduato
Deputy City Manager for
Development & Infrastructure
Services

STATE OF TEXAS §
COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT
ADVANCE FUNDING AGREEMENT
For an ARRA Project
Off-System**

THIS Local Project Advance Funding Agreement (LPAFA) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the City of El Paso, acting by and through its duly authorized officials, hereinafter called the "Local Government."

WITNESSETH

WHEREAS, a Master Agreement between the Local Government and the State has been adopted and states the general terms and conditions for transportation projects developed through this LPAFA; and,

WHEREAS, the Texas Transportation Commission passed Minute Order 111808 that provides for the development of, and funding for, the project described herein; and,

WHEREAS, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated _____, which is attached hereto and made a part hereof as Attachment A for development of the specific project which is identified in the location map shown as Attachment B; and,

WHEREAS, the State and the Local Government executed an agreement for a Surface Transportation Program-Transportation Enhancement Project on January 15, 1998, and amended on November 18, 2002, for the construction of canopies with lighting on two border crossings (Santa Fe Street Bridge and Stanton Street Bridge), landscaping, bus stop improvements, and fountain and gazebo construction at Lion's Placita Park; and,

WHEREAS, the January 15, 1998 agreement between the parties will be revoked upon execution of the within agreement;

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. The period of this LPAFA is as stated in the Master Agreement, without exception.
2. Termination of this LPAFA shall be under the conditions as stated in the Master Agreement, without exception.
3. Amendments to this LPAFA shall be made as described in the Master Agreement, without exception.

4. Scope of Work.
The scope of work for this LPAFA is described as the construction of canopies with lighting on two border crossings (Santa Fe Street Bridge and Stanton Street Bridge), landscaping, bus stop improvements, and fountain and gazebo construction at Lion's Placita Park.
5. Right of Way and Real Property shall be the responsibility of the Local Government, as stated in the Master Agreement, without exception.
6. Adjustment of utilities will be provided by the Local Government as required and as stated in the Master Agreement without exception.
7. Environmental Assessment and Mitigation will be carried out as stated in the Master Agreement, without exception.
8. Compliance with Texas Accessibility Standards and ADA will be as stated in the Master Agreement, without exception.
9. Architectural and Engineering Services will be provided by the Local Government, as stated in the Master Agreement, without exception. The Local Government is responsible for performance of any required architectural or preliminary engineering work. The State may review and comment on the work as required to accomplish the public purposes of the State. The Local Government will cooperate fully with the State in accomplishing these local public purposes to the degree permitted by State and Federal law.
10. Construction Responsibilities will be carried out by the Local Government, as stated in the Master Agreement, without exception.
11. Project Maintenance will be undertaken as provided for in the Master Agreement, without exception.
12. Local Project Sources and Uses of Funds
 - a. Project Cost Estimate: A Project Cost Estimate is provided in Attachment C. 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.

- b. A Source of Funds estimate is also provided in Attachment C. Attachment C shows the percentage and absolute dollar amount to be contributed to the project by federal, state, and local sources.
- c. The Local Government is responsible for all non-federal and non-state funding, including all project cost overruns, unless provided for through amendment of this agreement.
- d. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering for the project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs.

The State will reimburse the Local Government for properly supported costs incurred under the terms and conditions of the agreement. The reimbursement of costs will only include those applicable federal participating funds. The Local Government shall submit the State's form 132, billing statement, or other type of invoice approved by the State. All billing statements or invoices shall be properly documented, as summarizing the costs by description of work performed and other incidental costs. The State will make payment to the Local Government within thirty (30) days from receipt of the Local Government's request for payment, provided that the request is properly prepared, executed and documented. Unsupported charges or charges after final acceptance by the State will not be considered eligible for reimbursement. If applicable or necessary the State will prepare a final audit upon completion of the services authorized herein or at any time an audit is deemed to be in the best interest of the State. After execution of this LPAFA, but prior to the performance of any work by the State, the Local Government will remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund" in the amount specified in Attachment C as the local contribution for Administrative Costs. The Local Government will pay at a minimum its funding share for this estimated cost of Administrative Costs as stated in the Local Project Sources and Uses of Funds provision of the Master Agreement.

- e. In the event that 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.
- f. 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. Funds in the escrow account may only be applied by the State to the Project. If, after final Project accounting, 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.
- g. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the local government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain

proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

- h. 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.
- i. 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.
- j. 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 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 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.

- k. Whenever funds from the American Recovery and Reinvestment Act of 2009 (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.
 - k. 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.
13. Document and Information Exchange. The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.
14. Incorporation of Master Agreement Provisions. This LPAFA incorporates all of the governing provisions of the Master Advance Funding Agreement (MAFA) in effect on the date of final execution of this LPAFA, unless such MAFA provision is specifically excepted herein.
15. 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.

16. Debarment Certification. 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. 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.
17. Signatory Warranty. The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

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

THE LOCAL GOVERNMENT

By: _____
Joyce Wilson, City Manager

Date: _____

APPROVED AS TO CONTENT:

Patricia D. Adatao
Patricia D. Adatao
Deputy City Manager
for Development & Infrastructure Services

APPROVED AS TO FORM:

Mark Shoosmith
Mark Shoosmith
Assistant City Attorney

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.

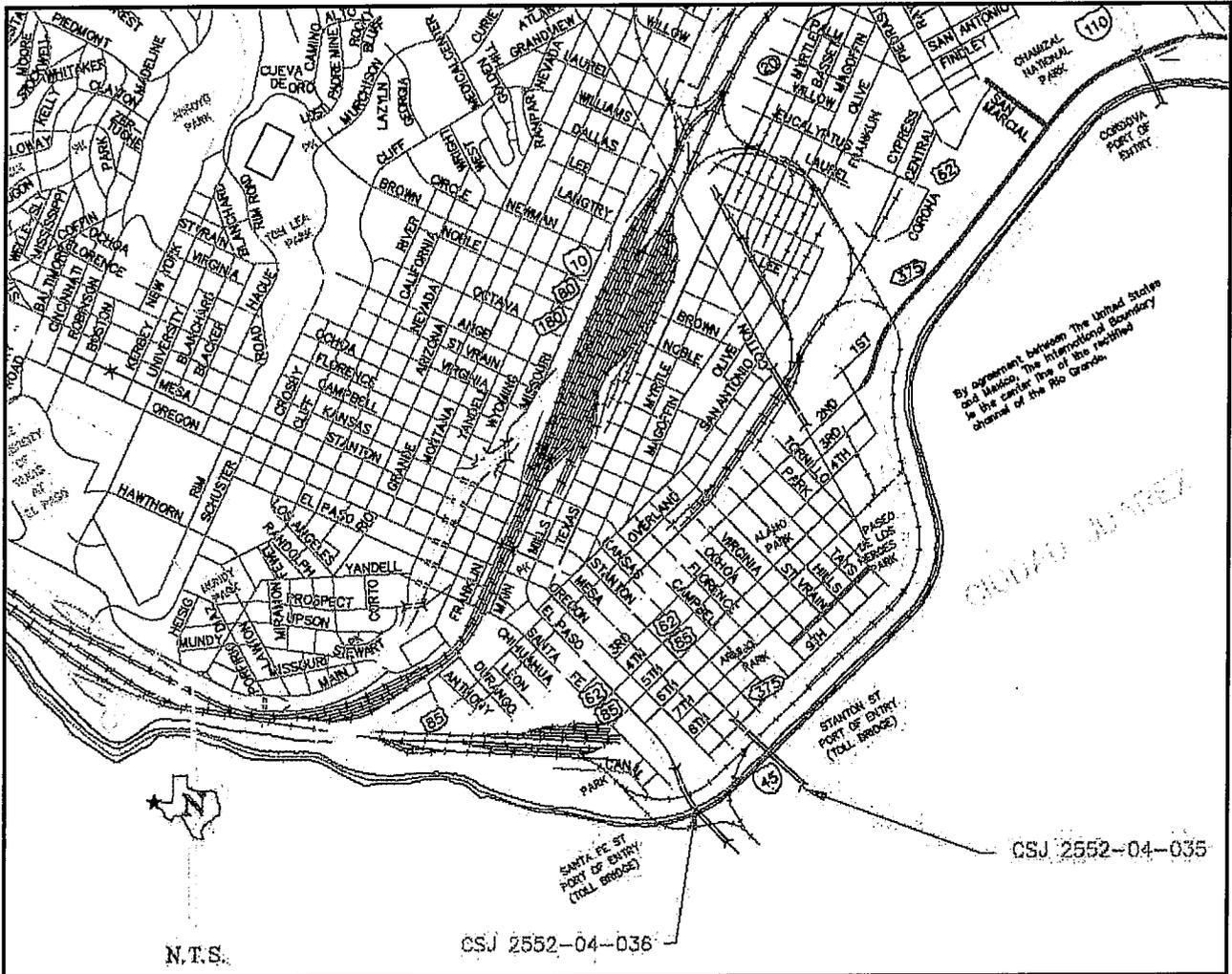
By: _____
Janice Mullenix
Director of Contract Services
Texas Department of Transportation

Date: _____

CSJ # 2552-04-035, 2552-04-036
District # 24-El Paso
Code Chart 64 # 13400
Project: Stanton Street Bridge Canopies
Enhancement Project/Lion's Placita Enhancements
CFDA # 20.205

ATTACHMENT A
RESOLUTION OF LOCAL GOVERNMENT
APPROVING THIS LPAFA

ATTACHMENT B PROJECT LOCATION MAP



ATTACHMENT C
PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS

Description	Total Estimate Cost	Federal Participation (ARRA) 80%	State Participation EDC Adjustment	Local Participation		
				Prior to EDC (20%)	EDC Adjustment (-)	Actual Participation
Land (no cash contribution)						
Utilities (no cash contribution)						
Environmental (no cash contribution)						
Preliminary Engineering	0	\$0.00	0	0	0	0
Construction	2,039,339.00	1,717,143.00	0	322,196.00	0	322,196.00
SUBTOTAL	0	0	0	0	0	0
Direct State Costs (including plan review, inspection and oversight)	107,090.00	0	0	107,090.00	0	107,090.00
Indirect State Costs (no local participation required except for service projects)	0	0	0	0	0	0
TOTAL	2,146,429.00	1,717,143.00	0	429,286.00	0	429,286.00
<i>Full Payment is due within 30 days of execution of this agreement</i>	<i>N/A</i>					429,286.00

Total participation required from the local government = \$429,286.00