

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: **Engineering**

AGENDA DATE: **April 6, 2010**

CONTACT PERSON NAME AND PHONE NUMBER: **R. Alan Shubert, P.E., (915) 541-4423**

DISTRICT(S) AFFECTED: **8**

SUBJECT:

Resolution authorizing the City Manager to sign a Local Project Advance Funding Agreement (LPAFA) between the City of El Paso ("City") and the State of Texas, acting by and through the Texas Department of Transportation ("State"). The scope of work for this Agreement is described as the preparation of a land use plan consisting of both a physical and policy plan to guide the development of the abandoned ASARCO site.

BACKGROUND / DISCUSSION:

The Texas Department of Transportation (TXDOT) is funding 50% of the cost for the land use plan for the abandoned ASARCO site for a total of \$148,214. The ASARCO site is located to the west of the Franklin Mountains along I-10 from south of the Buena Vista Community paralleling the Rio Grande along Paisano Drive to approximately one mile west of Yandell Drive. This effort will result in a redevelopment and infill reuse plan for the property is a component of the City's overall Comprehensive Plan update to be completed with the City's selected consultant, Dover Kohl. This item allows for TXDOT to participate in this effort, allocates their share of the project cost and sets the City's responsibilities in preparing the land use plan.

PRIOR COUNCIL ACTION:

None

AMOUNT AND SOURCE OF FUNDING:

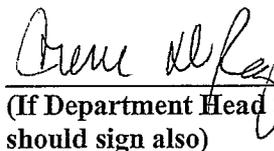
\$148,214 from TXDOT funding

BOARD / COMMISSION ACTION:

Enter appropriate comments or 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

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 (LPAFA) between the City of El Paso ("City") and the State of Texas, acting by and through the Texas Department of Transportation ("State"). The scope of work for this Agreement is described as the preparation of a land use plan consisting of both a physical and policy plan to guide the development of the abandoned ASARCO site.

ADOPTED this _____ day of _____ 2010.

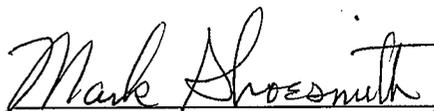
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

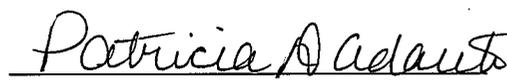
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Mark Shoemith
Assistant City Attorney

APPROVED AS TO CONTENT:



Patricia D. Adauto, Deputy City
Manager for Development and
Infrastructure Services

STATE OF TEXAS §

COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT
NON-CONSTRUCTION ADVANCE FUNDING AGREEMENT
for a
Metropolitan Area Corridor Project
On-System**

THIS Local Project Advance Funding Agreement for Non-Construction (LPAFA-NonCST) is made by and between the State of Texas, acting by and through the Texas Department of Transportation (State), and City of El Paso (Local Government).

BACKGROUND

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-NonCST.

Federal law establishes federally funded programs for transportation improvements to implement its public purposes, including the Metropolitan Area Corridor Project. 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 110753, which provides for development of and funding for the Project identified in this LPAFA-NonCST. The Governing Body of the Local Government has approved entering into this LPAFA-NonCST by resolution or ordinance dated _____, which is attached and is made part of the LPAFA-NonCST as Attachment A.

THEREFORE, in consideration of the mutual promises contained in this LPAFA-NonCST, 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 close of ordinary business on March 30, 2011.

2. Scope of Work

The scope of work is the Project as detailed in Attachment B, which is attached and made part of this LPAFA-NonCST.

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 LPAFA-NonCST. 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.

- b. 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. 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. The State will not pay interest on any funds provided by the Local Government.
- c. The Local Government shall request payment by submitting the original of an itemized invoice in a form acceptable to the State. The Local Government 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 Government to the State under this LPAFA-NonCST, 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.
- 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 government is an Economically

- f. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the LPAFA-NonCST or indirectly through a subcontract under the LPAFA-NonCST. Acceptance of funds directly under the LPAFA-NonCST or indirectly through a subcontract under this LPAFA-NonCST 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. 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.
- h. 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.

- i. 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.
- 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. 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 Government:	State:
City Manager	Director of Contract Services
City of El Paso	Texas Department of Transportation
Two Civic Center Plaza	125 E. 11th
El Paso, Texas 79901	Austin, Texas 78701

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.

5. Termination

Termination of this LPAFA-NonCST shall be under the conditions as stated in the Master Agreement, without exception.

6. Amendments

Amendments to this LPAFA-NonCST shall be made as described in the Master Agreement, without exception.

7. 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 project 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.

8. Incorporation of Master Agreement Provisions

This LPAFA Non-CST incorporates all of the governing provisions of the Master Funding Agreement in effect on the date of final execution of this LPAFA Non-CST, unless an exception has been made in this agreement.

9. 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.

10. Signatory Warranty

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

THEREFORE, the parties have executed this LPAFA-NonCST in duplicate originals.

THE LOCAL GOVERNMENT

By: _____
Joyce Wilson, City Manager

Date: _____

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:

Mark Shoemith
Mark Shoemith
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: _____

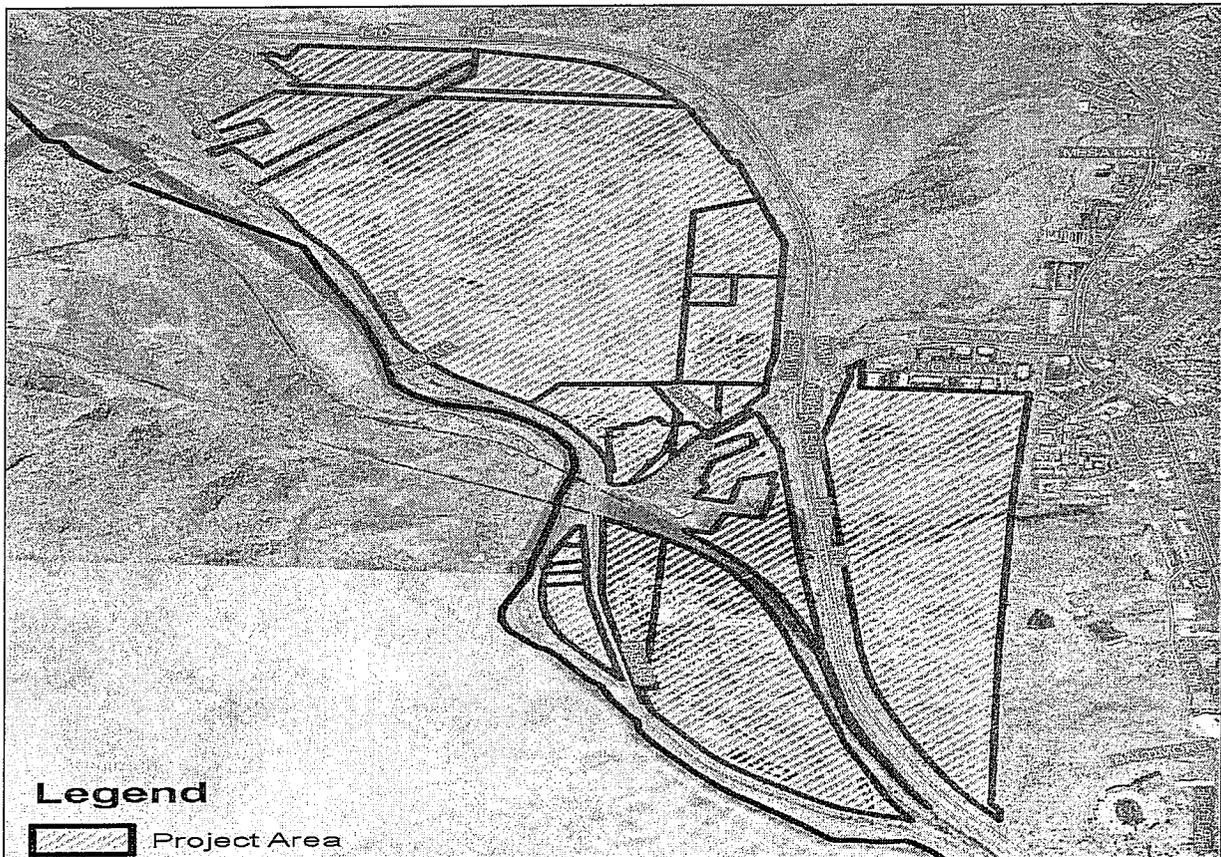
CSJ #2552-04-027
District # 24-El Paso
Code Chart 64 # 13400
Project: ASARCO Master Plan
CFDA #20.205

ATTACHMENT A

Resolution or Ordinance

ATTACHMENT B SCOPE OF WORK AND PROJECT LOCATION

The scope of work for this LPAFA is described as the preparation of a land use plan consisting of both a physical and policy plan to guide the development of the abandoned ASARCO site. The ASARCO property is located on the west of the Franklin Mountains along I-10 from south of the Buena Vista Community paralleling the Rio Grande along US 85 (Paisano Drive) to approximately one mile west of Yandell Drive (see map). The City of El Paso along with its consultant team will prepare a redevelopment and infill reuse plan for the property. The scope includes items such as; the development of a public involvement plan, urban design analysis, transportation analysis, infrastructure analysis and a determination of market potential and economic analysis. The plan will provide items such as; a future land use map, an illustrative plan for the property which will provide a build-out of the site, including building footprints and urban design features such as streets, sidewalks and landscaping, a transportation memorandum and an economic analysis memorandum to be included into the final project report.



ATTACHMENT C PROJECT BUDGET

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

Description	Total Estimate Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
CONSTRUCTION COSTS							
Project Cost	\$296,428.00	0%	\$0.00	50%	\$148,214.00	50%	\$148,214.00
Subtotal	\$296,428.00		\$0.00		\$148,214.00		\$148,214.00
Direct State Costs (including plan review, inspection and oversight)	\$32,607.08	0%	\$0.00	100%	\$32,607.08	0%	\$0.00
TOTAL	\$329,035.08		\$0.00		\$180,821.08		\$148,214.00

Local Government's Participation = \$148,214.00

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