

CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: Engineering

AGENDA DATE: April 14, 2009

CONTACT PERSON/PHONE: R. Alan Shubert, City Engineer (X4423)

DISTRICT(S) AFFECTED: 1 and 8

SUBJECT:

Resolution that the City Manager be authorized to sign a Local Project Advance Funding Agreement (LPAFA) between the City of El Paso and the State of Texas, acting by and through the Texas Department of Transportation. The scope of work for the Agreement is the design and construction of bus rapid transit service for Mesa Street.

BACKGROUND / DISCUSSION:

The City of El Paso, the Texas Department of Transportation and the Camino Real Regional Mobility Authority, and the Transportation Policy Board approved the 2008 Comprehensive Mobility Plan (CMP) in July and August of 2008. The 2008 CMP established a plan of transportation projects that included highway improvements, transit improvements and aesthetic improvements for the region. Each of the implementing agencies is responsible for the execution of various projects. The City of El Paso is responsible for the planning and construction of the Mesa Bus Rapid Transit (BRT) corridor funded through the plan at \$25 million, with \$23 million from state mobility funds identified as Category 2 funds and \$2 million from Congestion Mitigation/Air Quality (CMAQ) funds. This agreement establishes the State's responsibility to make the funds available and the City's responsibility as the project manager.

This project is scheduled for 2010 construction start. To advance the project, City Council authorized the issuance of Certificates of Obligation and a contract with Jacobs Engineering Group to begin the required federal analyses in December 2008. Upon execution of this agreement and issuance by the Federal Highway Administration (FHWA) of a federal letter of authority, all future costs incurred by the City on this project will be reimbursed by TXDOT. There is no cost-sharing for the City required through this agreement since the improvements are on a state highway.

PRIOR COUNCIL ACTION:

2008 CMP Approved – July 22, 2008
2009 C.O. Approved – December 2, 2008
Jacobs Contract for Transit Planning Services: Alternatives Analysis Development Approved – December 11, 2008

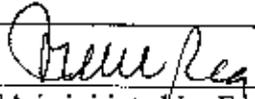
AMOUNT AND SOURCE OF FUNDING:

None is required.

BOARD / COMMISSION ACTION:

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:  _____

(Example: if RCA is initiated by Engineering, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____ **DATE:** _____

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 and the State of Texas, acting by and through the Texas Department of Transportation. The scope of work for the Agreement is the design and construction of bus rapid transit service for Mesa Street.

ADOPTED this the _____ day of _____, 2009.

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 & Infrastructure
Services

STATE OF TEXAS §

COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT
ADVANCE FUNDING AGREEMENT
For a Metropolitan Area Corridor and
Congestion Mitigation and Air Quality (CMAQ) Project
(On State 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 Governing Local Transportation Project Advance Funding Agreements (MAFA) between the Local Government and the State has been adopted, effective January 21, 2000, and states the general terms and conditions for transportation projects developed through this LPAFA; and,

WHEREAS, the Texas Transportation Commission passed Minute Order 110685 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 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.

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 MAFA, without exception.
2. Termination of this LPAFA shall be under the conditions as stated in the MAFA, without exception.
3. Amendments to this LPAFA shall be made as described in the MAFA, without exception.
4. Scope of Work
The scope of work and project limits for this LPAFA are described as construction of a Bus Rapid Transit (BRT) on SH 20 (Mesa St.) corridor from Doniphan Drive to Schuster Drive.
5. Right of Way and Real Property shall be acquired under one of the following procedures (check either a. or b.):
 - a. ___ Purchase by the State. Acquisition of right of way shall be the responsibility of the State, as stated in the MAFA, without exception, unless otherwise provided in Special Provisions and/or Attachment C. A warrant or check in the amount of the Local Government's estimated participation as reflected in Attachment C, shall be made payable to the Texas Department of Transportation and transmitted to the State prior to release of the Project by Right of Way

Division, or within thirty (30) days from receipt of the State's written notification, whichever is earlier.

OR

- b. X **Purchase by the Local Government for the State.** Acquisition of right of way shall be the responsibility of the Local Government, as stated in the MAFA, without exception, unless otherwise provided in Special Provisions and/or Attachment C.
6. Donations of real property may be credited to the Local Government's funding obligation for cost of right of way to be acquired for this project. This section shall apply only to projects for which there is no federal financial assistance and for which the State is responsible for acquisition of the right of way. Credit for all real property, other than property which is already dedicated and/or in use as a public road, donated by the Local Government to the State shall be based on the property's fair market value established as of the effective date of this LPAFA. The fair market value shall not include increases or decreases in value caused by the project and should include the value of the land and improvements being conveyed, excluding any damages to the remainder. The Local Government will provide to the State all documentation to support the determined fair market value of the donated property. Such documentation shall include an appraisal of the property by a qualified appraiser, unless the Local Government determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at no more than \$10,000.00. The cost of appraisal will be the responsibility of the State. The State will review the submitted documentation and make a final determination of value; provided however, the State may perform any additional investigation deemed necessary, including supplemental appraisal work by State employees or employment of fee appraisers. Credit shall be given only for property transferred at no cost to the State after the effective date of this LPAFA and the State's issuance of a letter of funding authority, and only for property which is necessary to complete this project. Credit shall be in lieu of monetary contributions required to be paid to the State for the Local Government's funding share of the right of way to be acquired for this project. The total credit cannot exceed the Local Government's matching share of the right of way obligation under this LPAFA, and credits cannot be reimbursed in cash to the Local Government, applied to project phases other than right of way, nor used for other projects. In the event the Local Government's monetary contributions to the State for acquisition of right of way, when added to its donation credits, exceed the Local Government's matching share of the right of way obligation, there will be no refund to the Local Government of any portion of its contributed money.
7. Adjustment of eligible utilities and payment of costs associated with such adjustment shall be provided by ____ the State (or) X Local Government (check the applicable party) and shall be in accordance with provisions set forth in the MAFA.
8. Environmental Assessment and Mitigation will be carried out by the Local Government.
9. Compliance with Texas Accessibility Standards and ADA will be as stated in the MAFA, without exception.
10. Architectural and Engineering Services will be provided by the Local Government, as stated in the MAFA, 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. The engineering plans shall be developed in accordance with the applicable State's Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges, and the special specifications and special provisions related thereto, the latest edition and revisions of the State's Roadway Design Manual or the American Association of State Highway and Transportation Officials A Policy on Geometric Design of Highways and Streets.

11. Construction Responsibilities will be carried out by the Local Government, as stated in the MAFA, without exception.
12. Project Maintenance will be undertaken as provided for in the MAFA, without exception.
13. 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.
 - 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. All right of way Project cost overruns shall be shared in the same cost participation ratios as apply under this agreement to the applicable cost category. Other overruns are as stated in the MAFA.
 - d. The Local Government will do the necessary preliminary engineering. For purposes of this agreement, preliminary engineering includes design schematics, property descriptions, parcel plats and right of way maps.
 - e. 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 and State 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. Unless otherwise provided for in this agreement, payment is as stated in the MAFA. In the event the State determines that additional funding is required by the Local Government at any time during the development of the Project, the State will notify the Local Government in writing. The Local Government will 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.
14. 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.
15. Incorporation of Master Agreement Provisions. This LPAFA incorporates all relevant 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. Any conflict between the terms of the MAFA and this LPAFA shall be governed and controlled by this LPAFA.
16. 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.
17. Debarment Certification. The Local Government shall not contract with any person that: is suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal agency or that is debarred or suspended by the State.
18. Signatory Warranty. The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

19. Special Provisions. N/A

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:

APPROVED AS TO FORM:

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

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: _____

ATTACHMENT A

**RESOLUTION OF LOCAL GOVERNMENT
APPROVING THIS LPAFA**

ATTACHMENT B
PROJECT LOCATION MAP
City of El Paso, Texas



CSJ 0001-02-054
SH 20 (Mesa)
Bus Rapid Transit
(BRT) Project

**ATTACHMENT C
BUDGET ESTIMATE AND SOURCE OF FUNDS**

PART I

RIGHT OF WAY AND ELIGIBLE UTILITIES

Description	Total Estimate Cost	Federal Participation	State Participation			Local Participation		
			Funding Share ____%	EDC ADJ. ____% (+)	Actual Participation	Funding Share ____%	EDC ADJ. ____% (-)	Actual Participation
Land								
Utilities								
SUBTOTAL								

PART II

ENGINEERING AND CONSTRUCTION

Description	Total Estimate Cost	Federal Participation	State Participation			Local Participation		
			Funding Share 80%	EDC ADJ. ____% (+)	Actual Participation	Funding Share ____%	EDC ADJ. ____% (-)	Actual Participation
Preliminary Engineering	\$3,000,000	\$2,400,000	\$600,000		\$600,000			
Construction	\$20,000,000	\$16,000,000	\$4,000,000		\$4,000,000			
Engineering and Contingency	\$2,000,000	\$1,600,000	\$400,000		\$400,000			
SUBTOTAL	\$25,000,000	\$20,000,000	\$5,000,000		\$5,000,000			

PART III

PROJECT TOTALS

Description	Total Estimate Cost	Federal Participation	State Participation			Local Participation		
TOTAL	\$25,000,000	\$20,000,000	\$5,000,000		\$5,000,000			

Initial payment for Right of Way = \$0

Total participation required from the Local Government = \$0