

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

DEPARTMENT: Engineering

AGENDA DATE: May 8, 2007

CONTACT PERSON/PHONE: Teresa Quezada, Capital Improvement Program Administrator (541-4771)

DISTRICT(S) AFFECTED: 3 & 7

SUBJECT:

That Council approve a resolution authorizing the City Manager to execute an agreement with the State of Texas acting through the Texas Department of Transportation for the replacement or rehabilitation of the Carolina Bridge.

BACKGROUND / DISCUSSION:

The Carolina Bridge is a city-owned bridged requiring rehabilitation. Through the State's Off-State System Federal-Aid Bridge Replacement and Rehabilitation program, the state is authorized to assist local entities in the rehabilitation and replacement of their bridges. Carolina Bridge qualifies for this program. The City will be responsible for 10% of the project development costs including design and construction costs as well as 100% of utility relocation and right-of-way costs necessary for the rehabilitation or replacement of the bridge. The state will provide design and project management services. The estimated design and construction costs for improvements to the bridge are approximately \$5.5 million. As the plans are developed, utility relocation and right-of-way costs can be determined. This action authorizes the City Manager to execute the agreement so work on the bridge can begin. Staff recommends approval of the action.

PRIOR COUNCIL ACTION:

Council approved, as part of the 2006 Capital Program, \$6 million for TXDOT matches. This is one of the projects programmed for use of these funds.

AMOUNT AND SOURCE OF FUNDING:

\$600,000

Project: PPW0007130
2006 Capital Budget Certificates of Obligation

BOARD / COMMISSION ACTION:

N/A

***** 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:** _____

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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 replacement or rehabilitation of the Carolina Bridge.

ADOPTED this the _____ day of _____, 2007.

THE CITY OF EL PASO

John Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Patricia D. Adauto

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

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CSJ # 0924-06-154
District # 24 (El Paso)
Code Chart 64 # 13400
Project: Carolina Bridge
NBI Structure # 240720B11560002

STATE OF TEXAS §

COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT
ADVANCE FUNDING AGREEMENT
For Bridge Replacement or Rehabilitation
Off the State System**

THIS Local Project Advance Funding Agreement (the 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, Title 23, United States Code Section 144 authorizes federal funds to assist the States in the replacement or rehabilitation of deficient bridges located on public highways, roads and streets, including those under the jurisdiction of local governments; and

WHEREAS, the Local Government owns a bridge or bridges located on a public road or street located on Carolina Street and said bridge(s) is included in the currently approved program of work for Off-State System Federal-Aid Bridge Replacement and Rehabilitation as authorized by Texas Transportation Commission Minute Order number 110479, dated March ; and

WHEREAS, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance which is attached hereto and made a part hereof as Attachment A and which provides for development of the specific programmed replacement or rehabilitation project (the Project) 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 Master Agreement, without exception.
2. Termination of this LPAFA shall be under the conditions as stated in the Master Agreement, without exception.

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3. Amendments to this LPAFA shall be made as described in the Master Agreement, without exception.
4. Remedies for defaults under this LPAFA shall be made as described in the Master Agreement, without exception.
5. **Scope of Work**
The scope of work for this LPAFA is the replacement or rehabilitation of the bridge(s) identified in the recitals of this LPAFA. This replacement or rehabilitation shall be accomplished in the manner described in the plans, specifications and estimates developed in accordance with this LPAFA and which are incorporated herein by reference.
6. **Right of Way and Real Property**
The Local Government is responsible for the provision and acquisition of all necessary right of way and will not be reimbursed with federal or state funds for the required right of way. The Local Government authorizes the State, its consultant, contractor, or other designated representative to enter the site(s) of said bridge(s) and adjacent right of way or relocation right of way to perform surveys, inspections, construction and other activities necessary to replace or rehabilitate said bridge and approaches.
7. **Adjustment of Utilities**
The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.
8. **Environmental Assessment and Mitigation**
Development of the Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.
 - a. The State is responsible for the identification and assessment of any environmental problems associated with the development of the Project governed by this Agreement.
 - b. Cost participation in environmental assessment and remediation work shall be paid by the parties in the same ratio as construction costs and will be included in the construction costs identified in Attachment D, "Estimate of Direct Costs."
 - c. The State is responsible for providing any public meetings or public hearings required for development of the environmental assessment. The Local Government does not need to provide certifications to the State concerning this matter.

The State will not begin construction of the Project until identified environmental problems have been remediated, unless provided for otherwise.

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9. Compliance with Texas Accessibility Standards and ADA will be as stated in the Master Agreement, without exception.
10. Architectural and Engineering Services will be Provided by the State
The State is responsible for performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required to accomplish the public purposes of the Local Government. The State will cooperate fully with the Local Government in accomplishing these local public purposes to the degree permitted by state and federal law. The Local Government review shall not unduly delay the development of the Project.
11. Construction Responsibilities will be carried out by the State, as stated in the Master Agreement, without exception.
12. Project Maintenance will be undertaken as provided for in the Master Agreement, without exception.
13. Local Project Sources and Uses of Funds
 - a. A Project Cost Estimate is provided in Attachment D, "Estimate of Direct Costs."
 - b. A source of funds estimate is also provided in Attachment D. Attachment D shows the estimated direct preliminary engineering, construction engineering, and construction costs for the Project in total and by the Local Government.
 - c. The Local Government participation is based upon the State's estimate of the eligible work at the time this Agreement is executed and will not be adjusted during construction except as needed to include any Project cost item or portion of a cost item ineligible for state or federal participation. In addition to its share of estimated direct engineering and construction costs, the Local Government is responsible for the direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the Federal Highway Bridge Replacement and Rehabilitation Program. The Local Government is also responsible for any cost resulting from changes made at the request of the Local Government.
 - d. After execution of this Agreement, but thirty (30) days 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" in the amount specified in Attachment D as the local contribution for preliminary engineering. The Local Government will pay at a minimum its funding share for this estimated cost of preliminary engineering.
 - e. One hundred and twenty (120) 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 and any other costs owing.
 - f. If at the completion or termination of the Project the State determines that additional funding is required by the Local Government, the State shall 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.
 - g. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.

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- h. The State will not pay interest on any funds provided by the Local Government.
 - i. The Local Government funding participation responsibilities include Project direct costs only, except when the Project is terminated before completion at the request of the Local Government as addressed in the Termination provision of this Agreement.
 - j. If the Project has been approved for a “fixed price” or an “incremental payment” non-standard funding or payment arrangement under 43 TAC §15.52, this Agreement will clearly state the amount of the fixed price or the incremental payment schedule.
 - k. Under the provisions of Texas Transportation Code Section 222.053 certain counties qualify as Economically Disadvantaged Counties (EDC) in comparison to other counties in the state as below average per capita property value, and below average per capita income, and above average unemployment, for certain years. If applicable, in consideration of such EDC status that may be applicable for the Project, the required local match fund participation has been adjusted to _____ percent.
 - l. The State will not execute the contract for the construction of a Project until the required funding has been made available by the Local Government in accordance with this Agreement.
 - m. 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. Performance by Local Government of Equivalent-Match Projects (EMP) in Return for Waiver of Local Match Participation Funding on Participation-Waived Projects (PWP)
- a. Applicability. If a request for waiver has been received and approved by the State’s District Engineer, then the required ten percent matching fund participation or percent as adjusted for EDC consideration, as shown in Attachment D, “Estimate of Direct Costs”, but excluding ineligible costs under the bridge program, is waived. This waiver is based on the commitment of the Local Government to spend an equivalent amount of funds for structural or safety improvement on “other” bridge structures and other conditions as specified in 43 TAC Section 15.55(d). If a waiver has been granted, the Project shall be defined to be a Participation-Waived Project (PWP) and the work on the “other” bridge structures that will be improved by the Local Government shall be defined to be the Equivalent Match Project(s) (EMP). Attachment C to this Agreement shows a list of EMP(s) under this Agreement.
 - b. Project Cost Estimate for PWP. Attachment D to this Agreement shows the estimated direct preliminary engineering, construction engineering and construction costs for the PWP in total and local match fund participation being waived, or partially waived.
 - c. Credit Against EMP Work. Any local match fund participation that has already been paid, or which the Local Government is agreeable to paying to the State, will be credited against EMP work to be performed by the Local Government. If applicable, this credit(s) will be reflected in Attachment D to this Agreement.
 - d. Responsibilities of the Local Government on EMP(s)

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- (1) The Local Government shall be responsible for all engineering and construction, and related costs thereto, and complying with all applicable state and federal environmental regulations and permitting requirements.
 - (2) The structural or safety improvement work on the EMP(s) shall be performed subsequent to the final execution of this Agreement but within three (3) calendar years after the earliest contract award of the related PWP.
 - (3) Written documentation, suitable for audit, of the structural or safety improvement work completed on the EMP(s) shall be kept on file by the Local Government for four (4) years after completion of work or claims, lawsuits, or audits related thereto, whichever is longer. A notice of completion of work on the EMP(s) shall be delivered to the State's District Engineer no later than thirty (30) calendar days after work is completed on the EMP(s).
 - (4) Failure by the Local Government to adequately complete the EMP(s) within the stated three-year period shall result in the Local Government being excluded from receiving such waivers for a minimum of five (5) years.
- e. Funding of Ineligible or Additional Work Not Waived. Regardless of any waiver of eligible program costs, the Local Government shall pay the State 100 percent of the cost of any PWP item or portion of a cost item that is not eligible for federal or state participation, and 100 percent of the costs resulting from additional work on the PWP performed solely at the request of the Local Government. If the ineligible or additional work is preliminary engineering, the payment shall be made at least thirty (30) days prior to the beginning of preliminary engineering work on the PWP. If the ineligible or additional work is for construction or construction engineering, the payment shall be made at least one hundred twenty (120) days prior to the date set for receipt of bids for construction of the PWP.

15. Notices

All notices to either party by the other required 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:

State: Texas Department of Transportation
13301 Gateway Boulevard West
El Paso, TX 79928-5410

Local Government: Deputy City Manager
Development & Infrastructure Services
The City of El Paso
Two Civic Center Plaza
El Paso, TX 79901-1196

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All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. 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 such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

16. Lobbying Certification. The parties to this LPAFA reaffirm that no federal funds were used to lobby for Project funds, but that if any lobbying occurred, it has been reported to the State, pursuant to the requirements of the Master Agreement.
17. Incorporation. The Master Agreement is incorporated into this agreement as if fully set forth herein.
18. Local Government Restrictions. In the case that the local government has an existing, future or proposed local ordinance commissioners court order, rule policy, or other directive that is more restrictive than the state or federal regulations that results in an increase cost to the State for the project, the local government is responsible for all increased costs associated with the ordinance, order, policy, directive, or change.
19. 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

ATTEST:

By: _____
City Manager

City Clerk

Date: _____

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

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

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: _____
William R. Cox, PE
Director, Bridge Division

Date: _____

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CSJ # 0924-06-154
District # 24 (El Paso)
Code Chart 64 # 13400
Project: Carolina Bridge

ATTACHMENT A

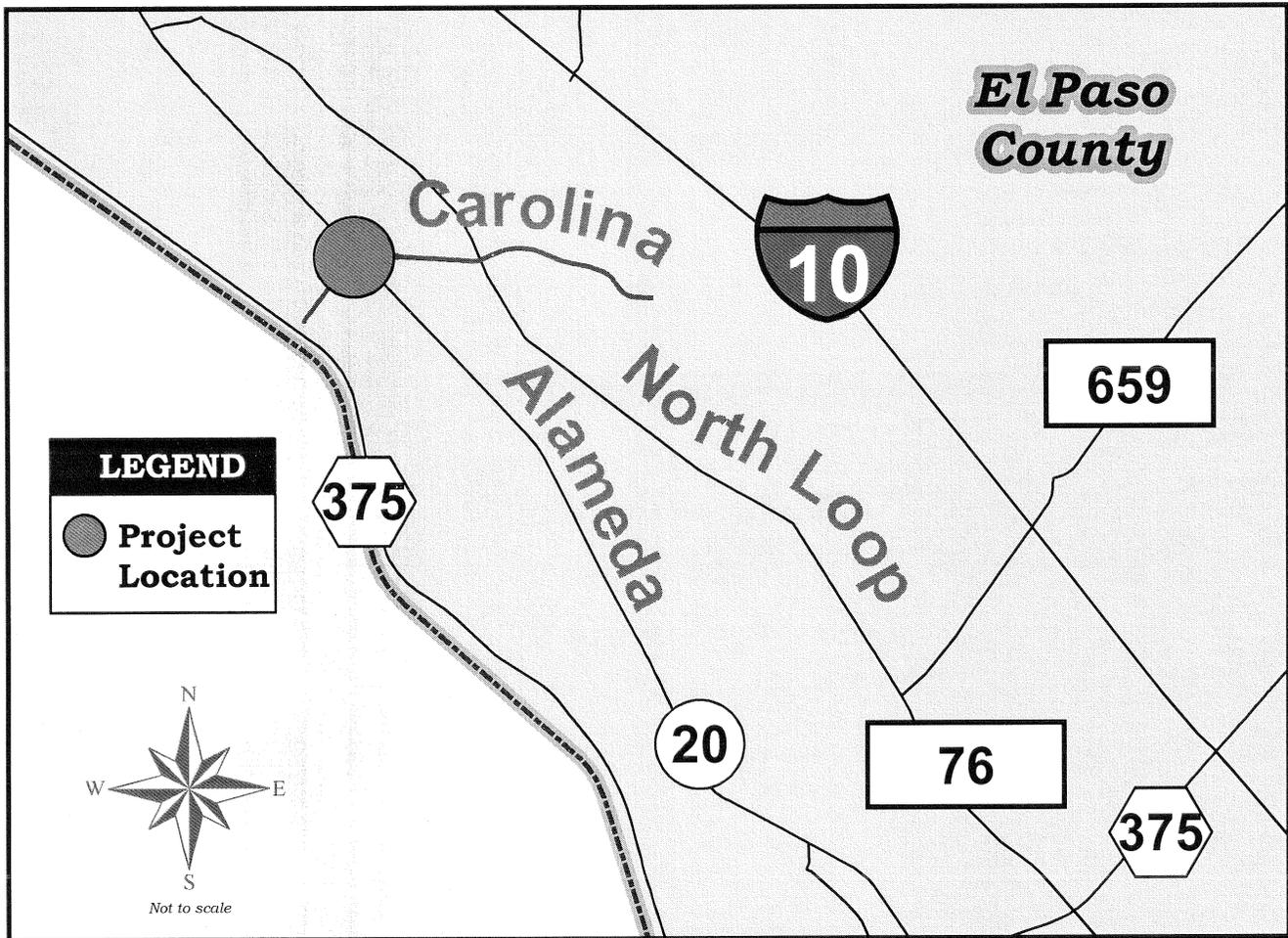
RESOLUTION OR ORDINANCE OF LOCAL GOVERNMENT

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CSJ # 0924-06-154
District # 24 (El Paso)
Code Chart 64 # 13400
Project: Carolina Bridge

ATTACHMENT B
PROJECT LOCATION MAP
City of El Paso, Texas



CSJ 0924-06-154
Carolina Bridge

ATTACHMENT D
ESTIMATE OF DIRECT COSTS

	<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE) **	(1) \$ 458,500.00	
Ten (10) Percent or EDC Adjusted Percent of PE for Local Government Participation		(3) \$ 45,850.00
Construction	\$4,585,000.00	
Engineering and Contingency (E&C)	\$ 504,350.00	
The Sum of Construction and E&C	(2) \$5,089,350.00	
Ten (10) Percent or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation		(4) \$ 508,935.00
Amount of Advance Funds Paid by Local Government *		(5) _____
Amount of Advance Funds to be Paid by Local Government *		(6) _____
Balance of Local Government Participation which is to be Waived where the Project is a PWP		(3+4-5-6) \$ 554,785.00
Total Project Direct Cost	(1+2) \$5,547,850.00	

* Credited Against Local Government Participation Amount
 ** Includes Environmental Assessment and Remediation Costs

If this Project is to be a PWP, Amount of EMP Work Being Credited to this PWP as Shown on Attachment C.

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