

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

DEPARTMENT: Engineering Department

AGENDA DATE: August 24, 2010

CONTACT PERSON/PHONE: R. Alan Shubert, P.E. - ext. 4423

DISTRICT AFFECTED: 3

SUBJECT:

MOTION

The City Manager is hereby authorized to renegotiate with the Texas Department of Transportation the Local Advance Funding Agreement (TxDOT number: CSJ #0924-06-268) approved by the City Council Resolution dated April 25, 2006 for the re-alignment of El Paso Drive at the intersection of SH 20 (Alameda Avenue).

BACKGROUND / DISCUSSION:

This agreement between the City of El Paso and TXDOT allows for the City's participation in the construction project realigning the El Paso/Alameda intersection. Property acquisition is required to re-align the intersection to a T-intersection. These funds include the cost of property acquisition. The City will be responsible for the acquisition. TXDOT is the project manager and will carry out this project in conjunction with their Alameda improvement project in the vicinity of the Texas Tech Research Towers. The agreement was signed June 16, 2006. Amendment #1 replaced Attachment C-1, project budget estimate and source of funds reflecting an increase to the budget for property acquisition.

PRIOR COUNCIL ACTION:

Council previously authorized this project when use of existing bond and certificate of obligation balances were approved in September 2005.

Adoption of the Local Advance Funding Agreement for re-alignment of El Paso Drive at the Intersection of SH 20 (Alameda Avenue) was approved by City Council April 25, 2006 and amendment number 1 to that agreement was approved by City Council July 6, 2010.

AMOUNT AND SOURCE OF FUNDING:

Funding source is FY03 Certificates of Obligation - \$79,000.

BOARD / COMMISSION ACTION:

N/A

CITY CLERK DEPT.
10 AUG 19 AM 10:47

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

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

DEPARTMENT HEAD: _____


(Example: if RCA is initiated by Purchasing, client department should sign also Information copy to appropriate Deputy City Manager)

APPROVED FOR AGENDA: _____

CITY MANAGER: _____ **DATE:** _____

CSJ # 0924-06-268
District # 24
Code Chart 64 # 13400
Project: El Paso Drive Intersection

STATE OF TEXAS §
COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT
ADVANCE FUNDING AGREEMENT
For a STP – Metro Mobility Project
(Off 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 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 109862 that provides for the development of, and funding for, the project describe herein; and,

WHEREAS, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated April 25, 2006, 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.

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 re-alignment of El Paso Drive at the intersection of SH 20 (Alameda Ave.)
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.

CITY CLERK DEPT.
10 AUG 19 AM 10:48

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 State, as stated in the Master Agreement, without exception. 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.
10. Construction Responsibilities will be carried out by the State, 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. Any work done prior to federal authorization will not be eligible for reimbursement. It is the Local Government's responsibility to verify with the State that the Federal Letter of Authority has been issued for the work covered by this Agreement.
 - 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.
 - 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

CITY CLERK DEPT.
10 AUG 19 AM 10:48

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 Local Government 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.
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.
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. Signatory Warranty. The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

CITY CLERK DEPT.
10 AUG 19 AM 10:48

CSJ # 0924-06-268
District # 24
Code Chart 64 # 13400
Project: El Paso Drive Intersection

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

THE LOCAL GOVERNMENT

By: *Joyce Wilson*
Joyce Wilson, City Manager

ATTEST:
Richard Duffy Momsen
Richard Duffy Momsen, City Clerk

Date: 4-25-06

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:

[Signature]
City Attorney
Assistant City

THE STATE OF TEXAS

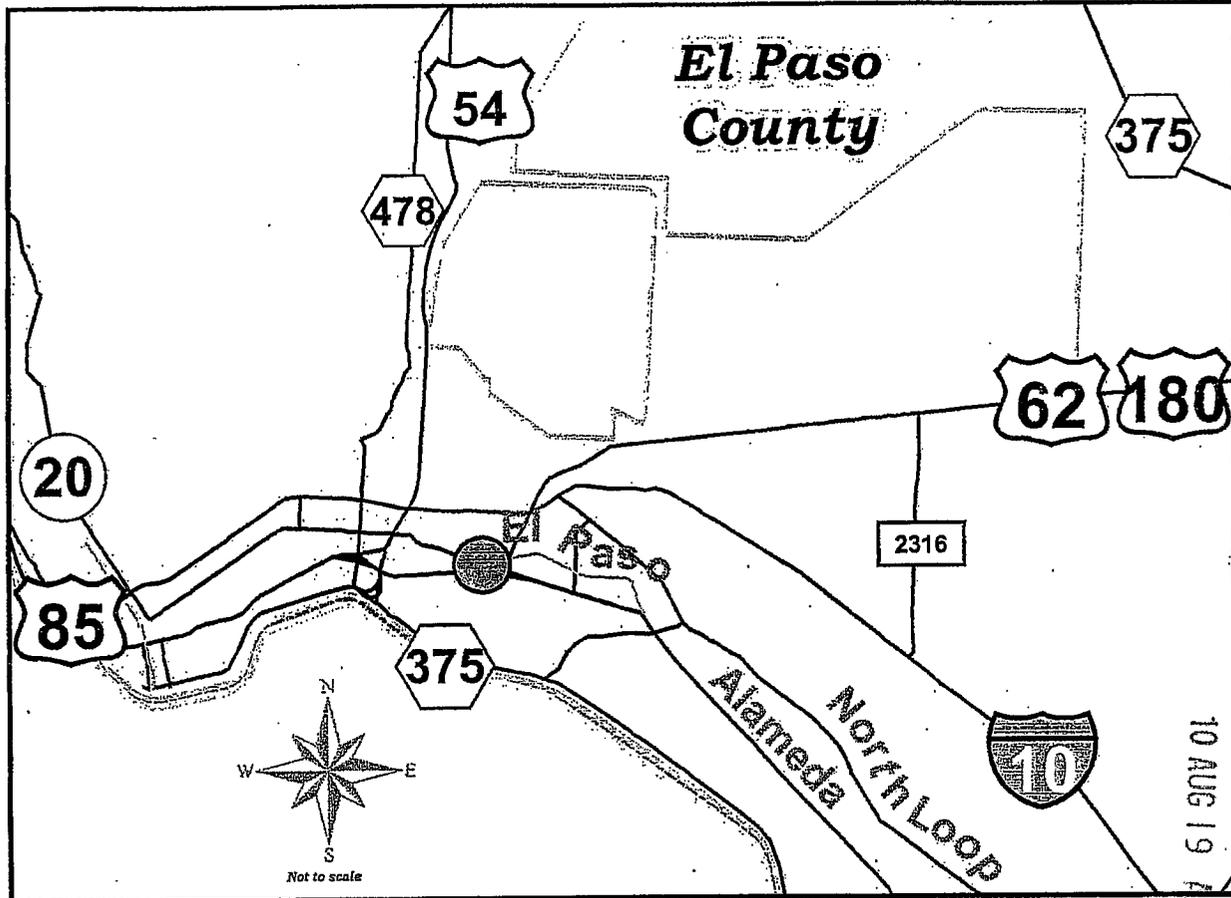
Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: *Janice Mullerix*
Janice Mullerix
Director of Contract Services Section
Office of General Counsel
Texas Department of Transportation

Date: June 16, 2006

CSJ # 0924-06-268
District # 24
Code Chart 64 # 13400
Project: El Paso Drive Intersection

ATTACHMENT B
PROJECT LOCATION MAP
City of El Paso, Texas



CITY CLERK DEPT
10 AUG 19 AM 10:49



CSJ 0924-06-268
El Paso Drive Intersection

CSJ # 0924-06-268
 District # 24
 Code Chart 64 # 13400
 Project: El Paso Drive Intersection

ATTACHMENT C
PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS

Description	Total Estimate Cost	Federal Participation	State Participation	Local Participation		
				Prior to EDC (20%)	EDC Adjustment 50% (-)	Actual Participation
		80%	EDC Adjustment 50% (+)			
Land (no cash contribution)	\$200,000	\$160,000		\$40,000		\$40,000
Utilities (no cash contribution)						
Environmental (no cash contribution)						
Preliminary Engineering	\$30,000	\$24,000	\$3,000	\$6,000	\$3,000	\$3,000
Construction	\$300,000	\$240,000	\$30,000	\$60,000	\$30,000	\$30,000
SUBTOTAL	\$530,000	\$424,000	\$33,000	\$106,000	\$33,000	\$73,000
Direct State Costs (including plan review, inspection and oversight)	\$30,000	\$24,000	0	\$6,000	0	\$6,000
Indirect State Costs (no local participation required except for service projects)	\$20,670	\$16,536	\$4,134	0	0	0
TOTAL	\$580,670	\$464,536	\$37,134	\$112,000	\$33,000	\$79,000
First Payment due prior to PS&E by State	N/A					\$3,000
Second payment due 60 days prior to the project letting	N/A					\$76,000

Total participation required from the local government = \$79,000

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
AMENDMENT # 1**

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 El Paso, acting by and through its duly authorized officials, hereinafter called the Local Government.

WITNESSETH

WHEREAS, the State and the Local Government executed a contract on June 16, 2006 to effectuate their agreement to perform the realignment of El Paso Drive at the intersection of SH 20 (Alameda Avenue); and,

WHEREAS, it has become necessary to amend that contract to account for additional allocation for right-of-way that was awarded to the project;

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

Attachment C, Project Budget Estimate and Source of Funds, of the original agreement is deleted in its entirety and replaced with the attached Attachment C-1, Project Budget Estimate and Source of Funds;

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.

CITY CLERK DEPT.
10 AUG 19 AM 10:48

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

THE LOCAL GOVERNMENT

By: _____
Joyce Wilson, City Manager

Date: _____

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

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

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: _____

CITY CLERK DEPT.
10 AUG 19 AM 10:48

**ATTACHMENT C-1
 PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS**

Description	Total Estimate Cost	Federal Participation	State Participation	Local Participation		
				Prior to EDC (20%)	EDC Adjustment 50% (-)	Actual Participation
		80%	EDC Adjustment 50% (+)			
Land (no cash contribution)	\$449,999	\$359,999		\$90,000		\$90,000
Utilities (no cash contribution)						
Environmental (no cash contribution)						
Preliminary Engineering	\$30,000	\$24,000	\$3,000	\$6,000	\$3,000	\$3,000
Construction	\$300,000	\$240,000	\$30,000	\$60,000	\$30,000	\$30,000
SUBTOTAL	\$779,999	\$623,000	\$33,000	\$156,000	\$33,000	\$123,000
Direct State Costs (including plan review, inspection and oversight)	\$30,000	\$24,000		\$6,000	\$	\$6,000
Indirect State Costs (no local participation required except for service projects)	\$20,670	\$16,536	\$4,134			
TOTAL	\$830,669	\$664,535	\$37,134	\$162,000	\$33,000	\$129,000
<i>First payment due prior to PS&E by State</i>	\$3,000					\$3,000
<i>Second payment due 60 days prior to the project letting</i>	\$126,000					\$126,000

Total participation required from the local government = \$129,000

CITY CLERK DEPT.
 10 AUG 19 AM 10:48