

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

DEPARTMENT: Engineering

AGENDA DATE: December 1, 2009

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

DISTRICT(S) AFFECTED: 8

SUBJECT:

Resolution that the City Manager be authorized to sign Amendment #2 to the Advance Funding Agreement of January 15, 1998 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 and improvements to Lion's Placita. The amendment 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 City had previously entered into an agreement for funding of the canopies and improvements to Lion's Placita, a Transportation Enhancement programmed project in 1998. The first amendment transferred project management responsibilities to the City rather than the Texas Department of Transportation. This amendment changes the funding to American Recovery and Reinvestment Act of 2009 (Stimulus funding) and includes the more stringent funding provisions required under this funding into the agreement.

PRIOR COUNCIL ACTION:

Agreement Approval on January 15, 1998 and amendment approval.

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:

***** 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 Amendment #2 to the Advance Funding Agreement of January 15, 1998 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, improvements to Lions Placita Park. The amendment 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 _____, 2009.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Mark Shoesmith

Assistant City Attorney

APPROVED AS TO CONTENT:



Patricia D. Adauto

Deputy City Manager for
Development & Infrastructure
Services

STATE OF TEXAS §
COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
AMENDMENT # 2**

THIS AMENDMENT IS MADE BY AND BETWEEN the State of Texas, acting through the Texas Department of Transportation, hereinafter called the State, and City of El Paso, hereinafter called the Sponsor.

WITNESSETH

WHEREAS, the State and the Sponsor executed a contract on January 15, 1998 to effectuate their agreement for 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 State and the Sponsor executed Amendment #1 to the Agreement on the 18th Day of November 2002, changing the work or the funding described in the contract; and,

WHEREAS, the Texas Transportation Commission passed Minute Order 111808 that provides for funding of the project under the American Recovery and Reinvestment Act of 2009; and

WHEREAS, it has become necessary to amend that contract to include required American Recovery and Reinvestment act of 2009 (ARRA) provisions relating to Construction Funding, Inspection of Books and Records, Reporting Requirements, and Office of Management and Budget (OMB) Audit Requirements

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, the State and the Sponsor do agree as follows:

AGREEMENT

Article 1. Description of Amended Items

The agreement is hereby amended by adding the following Item to Article 7 "Construction Funding" thereto:

- G.** If the Sponsor will perform any work under this contract for which reimbursement will be provided by or through the State, the Sponsor 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 Sponsor shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Sponsor or an employee of a firm that has been contracted by the Sponsor to perform oversight of the Project. The State in its discretion may deny reimbursement if the Sponsor has not designated a qualified individual to oversee the Project.

The Agreement is hereby amended by adding the following Articles 16, 17 and 18 thereto:

Article 16. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Sponsor, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved.

Whenever ARRA funds are used and the Sponsor is performing any work, either directly or through a contractor, it must comply with the following provisions. If a Sponsor 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.

Additionally, the State, the Sponsor, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

In accordance with Section 902 of the American Recovery and Reinvestment Act of 2009 (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 Government 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 Government 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 Government 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.

Article 17. Reporting Requirements

The Act (The American Reinvestment and Recovery Act or 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 Sponsor. It is the responsibility of the Sponsor to obtain this form from the prime Contractor and any subcontractors and, the Sponsor shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The Sponsor shall ensure that this form is submitted by the Sponsor 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 Sponsor 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.

Article 18. Office of Management and Budget (OMB) Audit Requirements

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.

Whenever funds from the American Recovery and Reinvestment Act of 2009 (ARRA) are distributed to a Sponsor, the Sponsor 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.

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.

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

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: _____