



COMMISSIONERS COURT CONTRACT FORM

CONTRACT SUMMARY

Approve and authorize the County Judge to sign the Local Transportation Project Non-Construction Advance Funding Agreement and attached Resolution for a Congestion Mitigation/Air Quality Project with the Texas Department of Transportation in the amount of \$549,000 to support the County's Vamonos Vanpool program for a period beginning with the execution of the document and ending on August 31, 2017.

ADDITIONAL BACKGROUND: Approval of this item provides continuation funding for this program. The County initiated its Vamonos Vanpool program in 2008. The program is funded by federal Congestion Mitigation/Air Quality (CMAQ) funds that flow through the Texas Department of Transportation to the County. The intent of the program is to reduce air pollution by reducing the number of vehicles on the roadways. The program pays for a portion of the lease payment for Vanpool participants. It also includes a "Guaranteed Ride Home" service to alleviate concerns about being stuck at work during an emergency. The County contracts with VPSI, Incorporated to manage the day to day activities of the program. At present, the County has 67 vans in operation serving 605 individuals. The program goal is to reduce the number of daily passenger miles by 28,000 miles.

FISCAL IMPACT: The County receives a minimum of \$540,765 in funding for its program with no program match.

PRIOR COURT ACTION: Commissioners Court approved the prior Funding Agreement on October 23, 2006, KK-06-0349.

BASIC CONTRACT DETAILS

CONTRACT NO.: 2013-0188

CONTRACT TITLE: 2013 Vanpool Program / CSJ No. 094-03-376 / Local Transportation Project [Congestion Mitigation-Air Quality Project[CMAQ] /Non-Construction Funding Agmt & Resolution

SECOND PARTY: State of Texas, Department of Transportation

CONTRACT TYPE: Grant Award/Agreement

TERM AND BUDGET DETAILS

TERM:

EXTENSION OPTIONS (If Applicable):

EFFECTIVE DATE:

EXPIRATION DATE (If Applicable): August 31, 2017

EXTENSION DEADLINE DATE (If Applicable):

AMOUNT: \$576,999.00

APPROVALS

COUNTY ATTORNEY APPROVAL

The attached document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

COUNTY ATTORNEY: Rebecca Quinn

LEGAL REVIEW: Approved as to Form as Submitted

LEGAL REVIEW NOTES (If Applicable):

DATE: April 10, 2013

DIRECTOR/DEPARTMENT HEAD APPROVAL

The undersigned hereby certifies that he/she has read the contract, understands and approves the contract terms and conditions and further certifies that the contract conforms to the bid specifications, if any, and acknowledges that he/she is responsible for administering all terms and conditions.

DIRECTOR/DEPARTMENT HEAD/DESIGNEE: Rosemary Neill

DEPARTMENT CONTACT: Geyer, Bob

DEPARTMENT: Family and Community Services

DATE: April 16, 2013

STATE OF TEXAS §
COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT
NON-CONSTRUCTION ADVANCE FUNDING AGREEMENT
for a
CONGESTION MITIGATION / AIR QUALITY PROJECT**

THIS Local Project Advance Funding Agreement for Non-Construction (LPAFA) is made by and between the State of Texas, acting by and through the Texas Department of Transportation (State), and El Paso County (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. Federal law establishes federally funded programs for transportation improvements to implement its public purposes, including the FY 2013 El Paso County Vanpool Program. Federal and state laws require local governments to meet certain contract standards relating to the management and administration of federal and state funds. The Texas Transportation Commission passed Minute Order Number 113074, which provides for development of and funding for the Project identified in this LPAFA. The Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated _____, 20__, which is attached to and made part of this LPAFA as Attachment A.

NOW THEREFORE, the State and the Local Government agree as follows:

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 August 31, 2017.

2. Scope of Work

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

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. 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 federal spending authority is formally obligated by the Federal Highway Administration (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for one hundred percent (100%) of the cost of any work performed under its direction or control before the Federal spending authority is formally obligated.

- B. 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 federal spending authority is obligated. 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.
- C. 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.
- D. 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.
- E. The State will not pay interest on any funds provided by the Local Government.
- F. The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
- G. Whenever funds are paid by the Local Government to the State under this LPAFA, 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 with approval by appropriate personnel of the Local Government.

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- H. 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 Disadvantaged County and if the State has approved adjustments to the standard financing arrangement, Attachment C will reflect those adjustments.
- I. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this 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.
- 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 shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Local Government:	State:
County Judge 500 E San Antonio Ave County Courthouse El Paso, TX 79901-2419	Director of Contract Services Office Texas Department of Transportation 125 E. 11 th Street Austin, Texas 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. 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 that request shall be carried out by the other party.

5. Termination

Termination of this LPAFA shall be under the conditions as stated in the Master Agreement. This LPAFA may be terminated by the State if the Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds.

6. Amendments

Amendments to this LPAFA 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 which the activity will be completed 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.

8. Incorporation of Master Agreement Provisions

This LPAFA incorporates all of the governing provisions of the Master Agreement in effect on the date of final execution of this LPAFA, 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 and further certifies that it will not do business with any party that is 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. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

11. Civil Rights Compliance

The Local Government shall comply with the regulations of the U.S. Department of Transportation as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

12. Disadvantaged Business Enterprise (DBE) Program Requirements

A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.

- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this LPAFA. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this LPAFA. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

13. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
 - 1. Obtain and provide to the State a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: <https://www.sam.gov/portal/public/SAM/>;
 - 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the

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distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and

3. Report the total compensation and names of its top five (5) executives to the State if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

14. Single Audit Report

- A. 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.
- B. If threshold expenditures of \$500,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://www.txdot.gov/inside-txdot/office/audit/contact.html>.
- C. If expenditures are less than \$500,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

15. Signatory Warranty

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

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THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

Signature

Typed or Printed Name

Title

Date

THE STATE OF TEXAS

Janice Mullenix
Director of Contract Services
Texas Department of Transportation

Date

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ATTACHMENT A
RESOLUTION OR ORDINANCE

RESOLUTION

The State of Texas}
County of El Paso }

WHEREAS, the El Paso County Vanpool Program currently operates 67 vans providing 605 residents of El Paso County with efficient transportation to and from work, and

WHEREAS, the El Paso Metropolitan Planning Organization approved \$549,000 in Congestion Mitigation Air Quality funds to continue the operation of the County Vanpool Program, and

WHEREAS, the goal of the El Paso County Vanpool Program is to reduce emissions through the formation of vanpools to reduce the number of vehicles on the roadways which will result in subsequent improvement to the County's Air Quality.

NOW, THEREFORE, BE IT RESOLVED by the El Paso County Judge and Commissioners Court that they approve of the continuation of the operation of the current El Paso County Vanpool Program and the resulting Contract with the Texas Department of Transportation for the funding of the Project.

Signed this 22nd day of April 2013.

Commissioner Carlos Leon, Pct. 1

Commissioner Sergio Lewis, Pct. 2

Commissioner Vincent Perez, Pct. 3

Commissioner Daniel Haggerty, Pct. 4

Veronica Escobar
County Judge, El Paso County, Texas

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ATTACHMENT B SCOPE OF WORK

ATTACHMENT B – SCOPE OF WORK

Project Facts:

The Vanpool Program project is included in the FY 2013-2016 Transportation Improvement Plan (TIP) adopted by the Transportation Policy Board on May 4, 2012. The project is eligible to all residents living within El Paso County which includes all cities, towns, villages and unincorporated areas throughout the El Paso County and is funded through Category 5 – Congestion Mitigation Air Quality funds with a 100 percent federal share. The total approved project budget in the TIP is \$549,000. The MPO ID number is T054X and El Paso County is the sponsor of the project.

Program Goal:

The goal of the Vanpool Program is to reduce emissions through the formation of vanpools to reduce the number of vehicles on the roadways which will result in subsequent improvement to the county's air quality. The goal of the program is to reduce the daily Vehicle Miles Traveled (VMT) by 28,000 miles.

Scope of Work:

This project is the continuation of the El Paso County Vanpool Program, which includes the operation of vans with seating capacity of either 7 or 14 passengers. Federally-funded financial incentives in the form of partial lease payments are provided to vanpool participants to encourage participation. Vanpool participants are those who have just signed up for participation in the Vanpool Program or have been actively using the Vanpool Program for less than three years. A "Guaranteed Ride Home" service is provided to alleviate vanpoolers' fear of being "stuck at work" in the event of an emergency.

The Local Government, or its vendor, will be responsible for marketing, outreach, and public relations activities in order to achieve the VMT reduction goal identified in this Agreement.

The Local Government is responsible for all program administration, operation, business development, and support services for the Vanpool Program.

Deliverables:

- Detailed monthly progress reports documenting progress toward the 28,000 VMT reduction goal identified in this contract. The progress report will also include program administration activities, operational activities and problems encountered business development activities, guaranteed rides home provided, and any support services provided. A monthly progress report is required regardless of whether an invoice is submitted;
- Monthly invoices.

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ATTACHMENT C - PROJECT BUDGET

Costs will be allocated based on 100% Federal funding and 0% Local Government funding until the federal funding reaches the maximum obligated amount \$540,765. The Local Government will then be responsible for 100% of the costs.

Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
Regional Vanpool Program	\$540,765	100%	\$540,765	0%	\$0	0%	\$0
Direct State Costs	\$8,235	100%	\$8,235	0%	\$0	0%	\$0
Indirect State Costs (5.10%)	\$27,999	0%	\$0	100%	\$27,999	0%	\$0
TOTAL	\$576,999	100%	\$549000	100%	\$27,999	0%	\$0

Payment by the Local Government to the State \$0

This is an estimate. The final amount of Local Government participation will be based on actual costs.