

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

DEPARTMENT: Department of Transportation

AGENDA DATE: February 14, 2012

CONTACT PERSON NAME AND PHONE NUMBER: Daryl Cole, 621-6480
George Acosta, 599-6202

DISTRICT(S) AFFECTED: 3,5,7,8

SUBJECT:

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 this Agreement is described as the construction of bicycle paths with signage and striping on various streets within the City of El Paso.

BACKGROUND / DISCUSSION:

The locations include along Knights Dr. from Midway to Yarbrough; Yarbrough from Loop 375 to Montwood and from Pebble Hills to Montana; Delta from Boone to North Loop; Boone from Delta to Paisano; Hunter from Viscount to North Loop; Trowbridge from North Loop to I-10; Trawood from Yarbrough to Montwood; Montwood from Trawood to Sunfire; and Viscount from I-10 to Bellrose.

PRIOR COUNCIL ACTION:

City Council approved this project and the funding match during the February 7, 2012 City Council meeting.

AMOUNT AND SOURCE OF FUNDING:

Funding match of \$352,911 is coming from Certificates of Obligation, PCP06ST022A. Total project cost is \$1,765,554.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:


Daryl Cole, Director of Department of Transportation

Information copy to appropriate Jane Shang, Deputy City Manager

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 this Agreement is described as the construction of bicycle paths with signage and striping on various city streets within the City of El Paso.

ADOPTED this ____ day of February, 2012.

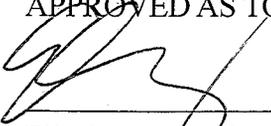
THE CITY OF EL PASO

John Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Elizabeth M. Ruhmann
Assistant City Attorney

APPROVED AS TO CONTENT:



Daryl W. Cole, Director
Department of Transportation

STATE OF TEXAS §

COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT
ADVANCE FUNDING AGREEMENT
For a Transportation Enhancement (TE) Project**

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, called the "State", and the City of El Paso, acting by and through its duly authorized officials 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 Local Government prepared and submitted to the State a nomination form for consideration under the Transportation Enhancement Program for the project which is briefly described as the construction of bicycle paths with signage and striping on various city streets within the City of El Paso called the Project; and

WHEREAS, the Texas Transportation Commission (the Commission) passed Minute Order Number 112342 dated July 29, 2010 awarding funding for projects in the 2009 Program Call of the Transportation Enhancement Program, including the Project; and

WHEREAS, the rules and procedures for the selection and administration of the Transportation Enhancement Program are established in 43 TAC Sections 11.200 et seq.; and

WHEREAS, the governing body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated _____, which is attached to and made a part of this LPAFA as Attachment A;

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. Period of the Agreement

The period of this LPAFA is as stated in the Master Agreement, without exception.

2. Termination of this LPAFA

The termination of this LPAFA shall extinguish all rights, duties, obligations, and liabilities of the State under this LPAFA. This LPAFA shall be terminated under the conditions as stated in the Master Agreement or for the conditions, and in the manner, described in this LPAFA.

- A.** If the potential termination of the LPAFA is due to the failure of the Local Government to fulfill its contractual obligations, the State will notify the Local Government that possible breach of contract has occurred. The Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.
- B.** If the Local Government withdraws from the Project after the LPAFA is executed, it shall be responsible for all direct and indirect Project costs as identified by the State's cost accounting system.
- C.** A Project may be eliminated from the program as outlined below. If the Project is eliminated for any of these reasons, this LPAFA will be appropriately terminated. A project may be eliminated from the program if:
 - 1. The Local Government fails to satisfy any requirements of the program rules cited as 43 TAC §11.200 et seq.
 - 2. The implementation of the Project would involve significant deviation from the activities as proposed in the nomination form.
 - 3. The Local Government withdraws from participation in the Project.
 - 4. The Project is not implemented within a reasonable time, as determined by the State in consultation with the Local Government. In absence of information suggesting that a shorter or longer period is appropriate, four years or less from the date the project was approved for TE funding by Minute Order, will be presumed to be a reasonable time. The project must therefore, be awarded to contract before July 28, 2014.
 - 5. The State determines that federal funding may be lost due to the Project not being implemented and completed.
 - 6. Funds are not appropriated, in which case this LPAFA shall be terminated immediately with no liability to either party. Payment under this LPAFA beyond the current fiscal biennium is subject to availability of appropriated funds.
 - 7. The Local Government fails to attend bi-annual progress meetings as scheduled by the State.

3. Amendments

Amendments of this LPAFA shall be made as described in the Master Agreement, without exception.

4. Scope of Work, Use of Project, and Project Location

The scope of work for the Project, which is shown in Attachment B, the Project Location Map, described in the nomination form and as approved by the Texas Transportation Commission, consists of: the construction of an asphaltic bicycle paths including designation with signage and striping along Knights Drive, from Midway to Yarbrough; Yarbrough from Loop 375 to Montwood and from Pebble Hills to Montana; Delta from Boone to North Loop; Boone from Delta to Paisano; Hunter from Viscount to North Loop; Trowbridge from North Loop to I-10; Trawood from Yarbrough to Montwood; Montwood from Trawood to Sunfire; and Viscount from I-10 to Bellrose, within the City of El Paso.

Any project changes proposed must be submitted in writing by the Local Government to the State. Changes may also require an amendment to the LPAFA and the approval of the Federal Highway Administration (FHWA), the State, or the Commission. Any changes undertaken without written approval and agreement amendment may jeopardize not only the federal funding for the changes, but the federal funding of the entire Project.

5. Right of Way and Real Property Acquisition

Right of way and real property acquisition shall be the responsibility of the Local Government, as stated in the Master Agreement unless otherwise provided below:

- A.** Right of way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to the State before funds may be expended for the improvement of the right of way or real property. If the Local Government is the owner of any part of the Project site under this LPAFA, the Local Government shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work.
- B.** The Local Government will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.
- C.** The Local Government shall assume all costs and perform all work necessary to obtain needed evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
- D.** In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local

Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this LPAFA and before federal spending authority is approved.

- E. The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- F. The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage, and recommended compensation. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of the documentation and reports used in calculating each parcel's value. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and will base its reimbursement for parcel acquisitions on these in determining the fair market value.
- G. Condemnation shall not be used to acquire real property for this enhancement Project.
- H. Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this LPAFA. Reimbursement will be in an amount not to exceed eighty percent (80%) of the State's predetermined value of each parcel, or the net cost of each parcel, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers for expenses incurred in order to assure good title. Any costs associated with the relocation of displaced persons and personal property, as well as incidental expenses incurred in acquiring property to implement a TE project, will be the responsibility of the Local Government and current property owner at no cost to the State.
- I. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this LPAFA. The separate agreement must establish that the Project will be dedicated for public use for a period of time commensurate with the federal investment, but not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. The separate agreement must be approved by the State prior to its execution. A copy of the executed separate agreement shall be provided to the State.
- J. The Local Government agrees to execute individually or produce a legal document as necessary to provide for the Project's continued use from the date of completion, and agrees to cause the same to be recorded in the land records of the appropriate jurisdiction.

K. Local governments receiving federal funds must retain an inventory of funded items and monitor projects in accordance with 23 CFR 710 and 49 CFR 18, and with the procedures provided in the State's Local Government Project Procedures manual.

The Local Government agrees to monitor the Project to ensure: (1) continued use of the property for approved activities, and (2) the repayment of the federal funds, as appropriate.

1. The Local Government agrees to the review of their Project accounts and site visits by the State during the development of the Project at any time;
2. Upon Project completion, the State will continue to perform periodic visits to confirm the Project's continued use and upkeep.

L. Forty five (45) days prior to any construction contract let date, the Local Government shall provide a certification to the State that all real property has been acquired.

6. 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, unless specified in the in the Transportation Enhancement Nomination form and approved by the State. 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 begins.

7. Environmental Assessment and Mitigation

A. Environmental assessment and mitigation will be carried out as stated in the Master Agreement, unless otherwise specified in the Transportation Enhancement Nomination form and approved by the State. These costs will not be reimbursed or credited towards the Local Government's financial share of the Project unless specified in the nominating form and approved by the State.

B. Forty five (45) days prior to any construction contract let date; the Local Government shall provide a certification to the State that all environmental problems have been remediated. Additionally, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

8. Architectural and Engineering Services

Architectural and engineering services will be provided by the Local Government. Compliance with Texas Accessibility Standards and the Americans with Disabilities Act (ADA) will be as stated in the Master Agreement.

A. The architectural contract documents shall be developed in accordance with the standards of the American Institute of Architects, the U.S. Secretary of the Interior's *Standards for Historic Preservation Projects, Standards and Guidelines for Archeology and Historic*

Preservation, the National Register Bulletin Number 36: Guidelines for Evaluating and Registering Historical Archeological Sites and in consultation with the State Historic Preservation Officer, as applicable. The engineering plans shall be developed in accordance with the State's applicable *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the two American Association of State Highway Transportation Officials' (AASHTO) publications, "A Policy on Geometric Design of Highways and Streets" and "Guide for the Development of Bicycle Facilities," as applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*. The use of other systems of specifications shall be approved by the State in writing in advance.

- B.** When architectural and engineering services are provided by or through the Local Government, then the following Items 1 and 2 apply.
1. The Local Government shall submit any plans it has completed to the State for review and approval. The Local Government may also submit the plans to the State for review anytime prior to completion. The Local Government shall make the necessary revisions determined by the State. The Local Government will not let the construction contract until all required plans have received State approval.
 2. The Local Government shall be responsible and agree to pay for all costs incurred for providing architectural and engineering services. Reasonable, allowable, and allocable costs incurred by the Local Government, after the Local Government has obtained written authorization from the State to incur costs, will be eligible for reimbursement at an amount not to exceed n/a percent n/a of the eligible authorized costs.
- C.** When architectural and engineering services are provided by or through the State, then the following applies:
The State is responsible for the delivery and performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required to accomplish the Project purposes. The State will cooperate fully with the Local Government in accomplishing these Project purposes to the degree permitted by state and federal law.

9. Construction Responsibilities

- A.** The Local Government shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- B.** All contract letting and award procedures must be approved by the State prior to letting and award of the construction contract, whether the construction contract is awarded by the State or by the Local Government.
- C.** All contract change order review and approval procedures must be approved by the State prior to start of construction.

- D. Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
- E. For federally funded contracts, the parties to this LPAFA will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Part 635, Subpart B.
- F. Any field changes, supplemental agreements, or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by the State and the Local Government prior to authorizing the contractor to perform the work. Prior to completion of the Project, the party responsible for construction will notify the other party to this LPAFA of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

10. Project Maintenance

- A. Upon completion of the Project the Local Government will be responsible for maintaining the completed facility for public use. The property shall be maintained and operated for the purpose for which it was approved and funded for a period of time commensurate with the federal investment. Should the Local Government at any time after Project completion decide it can no longer maintain and operate the Project for its intended purpose, the Local Government shall return the federal funds in accordance with CFR federal recapture requirements. Should the Local Government consider conveying the property, the State and FHWA must be notified prior to the sale, transfer, or disposal of any property that received federal funds. Written concurrence of approval for the transaction detailing any required recapture, must be obtained from FHWA prior to the transaction. Advance notice from the Local Government of their intended action must be submitted to the State for an FHWA review a minimum of sixty (60) days prior to any action being taken by the Local Government. The Local Government shall be held responsible for reimbursement of all federal funds used or a portion of those funds based on a pro-rata amount, considering the original percentage of federal funds provided and the time elapsed from the Project completion date. This same percentage of reimbursement also applies to any amount of profit that may be derived from the conveyance of the property, as applicable.
- B. Any manufacturer warranties extended to the Local Government as a result of the Project shall remain in the name of the Local Government. The State shall not be responsible for honoring any warranties under this LPAFA.
- C. Should the Local Government derive any income from the development and operation of the Project, a portion of the proceeds sufficient for the maintenance and upkeep of the property, shall be set aside for future maintenance. A project income report shall be submitted to the State on a quarterly basis. Monies set aside according to this provision shall be expended using accounting procedures established under OMB-133 and with the property management standards established in Title 49 CFR §18.32.
- D. Should any historic properties be included in or affected by this federally funded Project, the historic integrity of the property and any contributing features must continue to be

preserved regardless of any approved changes that may occur throughout the life of the Project.

11. Local Project Sources and Uses of Funds

- A. A Project Budget Estimate is provided in Attachment C, showing the total estimated development cost of the Project. This estimate shows the itemized cost of real property, utilities, environmental assessments and remediation, architectural and engineering activities, construction, and any other substantial items of cost. To be eligible for reimbursement, costs must have been included in the itemized budget section of the nomination form approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work performed before federal spending authority is formally obligated to the Project by the Federal Highway Administration. 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 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated. Costs may be shifted between work categories after receiving written approval from the State.
- B. If the Local Government will perform any work under this LPAFA for which reimbursement will be provided by or through the State, the Local Government must complete training *in Local Government Procedures Qualification for the Texas Department of Transportation* 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. A Source of Funds estimate based on the budget provided in the project nomination form is included as Attachment C. Attachment C shows the percentage and estimated dollar amounts to be contributed to the Project by state and local sources, as well as the maximum amount in federal Transportation Enhancement Funds assigned by the Commission to the project. The parties agree that this agreement may be amended from time to time as required to meet the funding commitments based on revisions to the Transportation Improvement Program, FPAA, or other federal document.
- D. The Local Government will be responsible for all non-federal participation costs associated with the Project, including any overruns in excess of the Project cost estimate and any operating or maintenance expenses. Donations of real property, materials, and services required for the development of the Project may be eligible to count towards the local funding share of a project as in-kind contributions, if provided for in the original Transportation Enhancement Nomination's authorized budget. In order to be considered eligible, in-kind contributions must be provided from sources other than the Local Governmental nominating the project. The value of the allowable in-kind contributions of

real property, materials, or services will be based on verification of their fair market value at donation. In-kind contribution of services are limited to preparation of plans, specifications, and estimates. The maximum allowable in-kind contribution to a project is twenty percent (20%) of the eligible Project's cost; however in-kind contributions may not be used to match the cost of any direct or indirect TxDOT Administrative cost incurred. The estimate amount of in-kind contribution provided in the project's budget is \$ 0 for the items of N/A. If a remaining balance of the Local Government's required match is due after the in-kind contribution's value is applied, the remainder must be provided in cash. The Local Government may also provide other property, services, or materials to reduce the overall cost of a Project, but it will not be considered as an in-kind contribution.

- E. The State will be responsible for securing the federal share of funding required for the development and construction of the Project, in an amount not to exceed eighty percent (80%) of the actual cost of the work up to the amount of funds approved for the Project by the Texas Transportation Commission. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to Project selection by the Texas Transportation Commission and approval by the State to proceed are not eligible for reimbursement.
- F. Following execution of this LPAFA, but prior to the performance of any review work by the State, the Local Government will pay to the State the amount sufficient to cover the estimated cost for the State's review. The Local Government shall advance to the State twenty percent (20%) of the State's administrative and associated cost for review of the plans, specifications, and estimate. The Local Government must also advance to the State twenty percent (20%) of the Project's estimated preliminary engineering cost, if the State is administering the architectural or engineering contract. The estimated amount of this advance for this Project's preliminary engineering is \$ *4,603, including cash and allowable in-kind contributions. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government must advance to the State eighty percent (80%) of the State's administrative and associated costs for letting and construction. The Local Government shall also remit its remaining financial share for the Project's estimated construction and construction engineering costs if the State is letting the project. The amount to be advanced for this Project's Construction is estimated to be \$ 0, including cash and allowable in-kind contributions.
- G. 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 is responsible for twenty percent (20%) of the authorized Project cost and one hundred percent (100%) of any overruns above the federally authorized amount. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
- H. 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. Funds in the escrow account may only be applied by the State to the Project.
- I. 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. 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 with approval by appropriate personnel of the Local Government.

- J. In the event the Project is not completed, the State may seek reimbursement from the Local Government of the expended federal funds. The Local Government will remit the required funds to the State within sixty (60) days from receipt of the State's notification.
- K. 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 re-plats, 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.
- L. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this LPAFA or indirectly through a contract or subcontract under this LPAFA. Acceptance of funds directly under this LPAFA or indirectly through a contract or subcontract under this LPAFA 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.
- M. The State will not pay interest on any funds provided by the Local Government.
- N. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this LPAFA.
- O. 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.

12. Inspection of Books and Records

The parties to this LPAFA shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this LPAFA and shall make such materials available to the State, the Local Government, 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 agreement period and for four (4) years from the date of completion of work defined under this LPAFA or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this LPAFA for the purpose of making audits, examinations, excerpts, and transcriptions.

13. 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.

14. 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.

15. 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 format. 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 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.

16. Incorporation

The Master Agreement is incorporated into this LPAFA as if fully set forth in this LPAFA.

17. Insurance

If this LPAFA 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.

18. 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 LPAFA, 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 LPAFA shall require any party to a contract, subcontract, or purchase order awarded under this LPAFA to

certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

19. 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).

20. Disadvantaged Business Enterprise 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://txdot.gov/business/business_outreach/mou.htm.
- 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.*

21. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient or sub-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://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.
- B. For sub-awards greater than \$25,000, the Local Government, as a recipient of federal funding, agrees that it shall:
1. Obtain and provide to the State and the federal government, a Central Contracting Registry (CCR) number with the federal government (Federal Acquisition Regulation, Part 4, Sub-part 4.1100). The CCR number may be obtained by visiting the CCR web-site whose address is: <https://www.bpn.gov/ccr/default.aspx> ;
 2. Obtain and provide to the State and the federal government, a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the 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 (D&B) on-line registration website <http://fedgov.dnb.com/webform> ; and
 3. Report the total compensation and names of its top executives to the State and federal government if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000 annually; and
 - ii. Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

22. 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/contact_us/audit.htm .
- 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 LPAFA, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

23. Signatory Warranty

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

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

THE LOCAL GOVERNMENT

By: _____
Joyce Wilson, City Manager, City of El Paso

Date: _____

APPROVED AS TO CONTENT:



Caryl Cole
Director, Department of Transportation

APPROVED AS TO FORM:



Elizabeth Ruhmann
Assistant City Attorney

THE STATE OF TEXAS

Janice Mullenix
Director of Contract Services
Texas Department of Transportation

Date

CSJ #0924-06-240 and 241
Fed.# STP 2011(264)TE
District # 24-El Paso
Code Chart 64 # 13400
Project: City of El Paso Bicycle Paths
Federal Highway Administration
CFDA # 20.205
Not Research and Development

**ATTACHMENT A
RESOLUTION OF LOCAL GOVERNMENT
APPROVING THIS LPAFA**

ATTACHMENT B PROJECT LOCATION MAP



ATTACHMENT C
PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS
Off System - TE Project Budget Estimate

LG Performs PE Work or Hires Consultant / Local Let Project to Construction Contract

	Total Estimated Cost or Value = Authorized Amount	Federal Participation (80% or <) Max TE \$ 1,411,643		State Participation = 0		Local Participation (20% or greater)	
		%	Cost	%	Cost	%	Cost
Locals will retain their local match for those services administered/contracted themselves.							
Direct Project PE Cost							
PE – includes design, planning, PS&E, clearances & administration by LG	\$0	0%	\$0	0%	\$0	0%	\$0
Environmental Cost - by LG	\$0	0%	\$0	0%	\$0	0%	\$0
ROW–Acquisition and associated costs by LG	\$0	0%	\$0	0%	\$0	0%	\$0
Subtotal thru PE by Local Gov't	\$0	0%	\$0	0%	\$0	0%	\$0
TxDOT Administrative cost incurred - PE:	Based on 10% of overall TxDOT ADM Cost estimated in Nomination's budget						*Due within 30 days
TxDOT - PE Phase – Direct State Cost reviews, clearances, admin., coordination, etc.	\$23,016	80%	\$18,413	0%	\$0	20%	*\$4,603
	Description of Project Cost and credit to be incurred:						
TxDOT Administrative cost incurred - CE:	Remaining % of TxDOT ADM Cost based on current Budget Estimate at letting						**Due 60 days prior
TxDOT - Construction Phase – Direct State Costs-oversight, inspection, site visits, etc.	\$207,143	80%	\$165,714	0%	\$0	20%	**\$41,429
Direct Project Construction COST	Locals retain their local participation below to apply to project cost directly						
Construction Contract – work bid items, letting fees, clearances, permits, etc. ,CE	\$1,408,884	80%	\$1,127,107	0%	\$0	20%	\$281,777
Other Associated Construction Cost	\$125,511	80%	\$100,409	0%	\$0	20%	\$25,102
Subtotal Construction	\$1,534,395	80%	\$1,227,516	0%	\$0	20%	\$306,879
TOTAL	\$1,764,554	80%	\$1,411,643	0%	\$0	20%	\$352,911

The Estimated total participation by the Local Government is \$352,911, plus 100% of any overages above the authorized federal funding amount. Project design plans and associated cost for PE will be paid for 100% by the LG. The first payment to the State of \$4,603 is due within 30 days from execution of the project agreement and is based upon 20% of TxDOT's Administrative cost during PE. Any ROW that is to be purchased by TxDOT for the project will need the Local's share of the property's value and acquisition cost paid to TxDOT prior to acquisition. The remainder of the Local's participating share will be due 60 days prior to advertising for construction bids. This is an estimate. The eligible percent of required local match is stated in the nomination and must be 20% or greater. The final amount of Local Government participation will be based on actual project cost and values. The Maximum federal TE funds available for the project are \$1,411,643.