

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

DEPARTMENT: El Paso Department of Transportation

AGENDA DATE: Consent: March 29, 2011

CONTACT PERSON NAME AND PHONE NUMBER: Daryl W. Cole, Director (915) 621-6750, coledw@elpasotexas.gov

DISTRICT(S) AFFECTED: 1

SUBJECT:

That the Mayor be authorized to sign an Agreement to Contribute Funds with the Texas Department of Transportation (TXDOT) for the acquisition of right-of-way adjustment and adjustment of utilities for a highway project on Highway No. Loop 375 from 0.038 miles west of Interstate Highway 10 to 0.479 miles east of the Franklin Mountains State Park. The City's contribution is estimated to be \$91,200.00, which is 4.8 percent of the estimated total of the cost of the right-of-way. The City's contribution may be satisfied by the donation of 12.080 acres of land to TXDOT. TXDOT has appraised the 12.080 acres at a value of \$184,177.00 (District 1).

BACKGROUND / DISCUSSION:

This agreement is a companion item to the Ordinance authorizing the City Manager of the City of El Paso to sign a Special Warranty Deed for the conveyance of land to the State of Texas for the Loop 375 Highway project. The agreement sets the City's contribution, as adjusted by the Economically Disadvantaged Counties adjustment, to 4.8% of the estimated cost of right-of-way and utility relocations. The required amount, \$91,200.00, is offset by the value of the 12.080 acre parcels of land donated to the project. The land, Parts 1 and 2 of Parcel 14 is valued at \$184,177.00.

The Loop 375 widening project is one of the projects in the 2008 Comprehensive Mobility Plan.

PRIOR COUNCIL ACTION:

March 1, 2011: Council considered the introduction to the Ordinance
Council briefed on the Traffic Impact Analysis for Loop 375 widening
Council briefed on the Environmental Documentation for Loop 375 widening project

March 8, 2011: Council postponed discussion and action on the Ordinance until March 29, 2011
Council postponed action on the resolution authorizing the Agreement to Contribute Funds

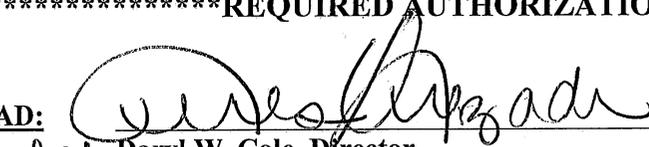
AMOUNT AND SOURCE OF FUNDING:

No funding is required for this action. Land donation authorized by ordinance serves as the match for the agreement.

BOARD / COMMISSION ACTION:

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

DEPARTMENT HEAD:


for Daryl W. Cole, Director
Department of Transportation

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign an Agreement to Contribute Funds with the Texas Department of Transportation (TxDOT) for the acquisition of right of way and adjustment of utilities for a highway project on Highway No. Loop 375 from 0.038 miles West of Interstate Highway 10 to 0.479 miles east of Franklin Mountains State Park. The City's contribution is estimated to be \$91,200.00, which is 4.8 percent of the estimated total of the cost of the right of way. The City's contribution may be satisfied by the donation of 12.080 acres of land to TxDOT. TxDOT has appraised the 12.080 acres at a value of \$184,177.00.

ADOPTED THIS _____ DAY OF _____, 2011.

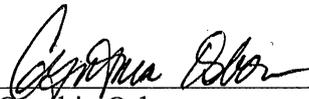
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

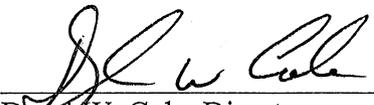
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



Daryl W. Cole, Director
El Paso department of Transportation

CITY CLERK DEPT.
2011 FEB 28 PM 3:11



MODIFIED
AGREEMENT TO CONTRIBUTE FUNDS - LOCAL GOVERNMENT
(Contributed Property In Lieu Of Monetary Payment)

County: El Paso
District: El Paso

Federal Project No:
Highway: Loop 375

ROW CSJ No: 2552-01-045

This Agreement by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the **State**, and City of El Paso, Texas, acting by and through its duly authorized officials pursuant to an Ordinance or Order dated the _____ day of _____, 2010, hereinafter called the **Local Government**, shall be effective on the date of approval and execution by and on behalf of the **State**.

WHEREAS, the **State** and the **Local Government** hereby agree to enter into a contractual agreement to acquire right of way and adjust utilities for a highway project on Highway No. Loop 375 with the following project limits:

From: 0.038 MI West of IH 10 at Loop 375

To: 0.479 MI East of Franklin Mountains State Park; and

WHEREAS, the **Local Government** requests that the **State** assume responsibility for acquisition of all necessary right of way and adjustment of utilities for said highway project; and

WHEREAS, the **Local Government** desires to voluntarily contribute to the **State** funding participation as defined in 43 TAC, §15.55 for the cost of acquiring said right of way and relocating or adjusting utilities for the proper improvement of the State Highway System;

WHEREAS, the **Local Government** requested and has been granted an Economically Disadvantaged County Adjustment from the Texas Transportation Commission on October 29, 2009 by virtue of Minute Order No. 112018 attached hereto and incorporated into this agreement, approving a Fifty Two percent (52 %) adjustment to the required Ten percent (10%) local participation for this project, thereby resulting in a **Local Government** net contribution amount of Four and Eight Tenths percent (4.8%) participation;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual benefits to be derived therefrom, the **Local Government** shall contribute to the **State** an amount equal to Four and Eight Tenths percent (4.8 %) of the cost of the right of way to be acquired by the **State**. The **Local Government** shall prior to release of the project by Right of Way Division, or within thirty (30) days from receipt of the **State's** written notification, whichever is earlier, transmit to the **State** a warrant or check in the amount of Ninty One Thousand Two Hundred Dollars (\$ 91,200.00), which represents Four and Eight Tenths percent (4.8 %) of One Million Nine Hundred Thousand Dollars (\$ 1,900,000), the estimated total cost of the right of way. This monetary payment is subject to reduction based on the value of the **Local Government's** real property contributions, if any, as described below. If however, it is found that the estimated amount is insufficient to pay the **Local Government's** obligation, then the **Local Government** will within thirty (30) days after receipt of a written request from the **State** for additional funds, transmit to the **State** such supplemental amount as is requested. The cost of providing such right of way acquired by the **State** shall mean the total value of compensation paid, either through negotiations or eminent domain proceedings, to the owners for their property interests, plus costs related to the relocation, removal or adjustment of eligible utilities.

Whenever funds are paid by the **Local Government** to the **State** under this agreement, the **Local Government** shall remit a warrant or check made payable to the "Texas Department of Transportation Trust Fund." The warrant or check 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 to this highway project. Upon completion of the highway project and in the event the total amount as paid by the **Local Government** is more than Four and Eight Tenths percent (4.8 %) of the actual cost of the right of way, any excess amount will be returned to the **Local Government** by the **State**, or upon written request of the **Local Government**, the excess amount may be applied to other **State** highway projects in which the **Local Government** is participating, either alternative being subject to donation limitations as described below.

In the event any existing, future, or proposed **Local Government** ordinance, commissioners court order, rule, policy, or other directive, including but not limited to outdoor advertising or storm water drainage facility requirements, is more restrictive than **State** or federal regulations, or any other locally proposed change, including, but not limited to plats or re-plats, results in any increased costs to the **State**, then the **Local Government** will pay one hundred percent (100%) of all such increased costs, even if the applicable county qualifies as an economically disadvantaged county. The amount of the increased costs associated with the existing, future, or proposed **Local Government** ordinance, commissioners court order, rule, policy, or other directive will be determined by the **State** at its sole discretion.

Contributions of real property may be credited to the **Local Government's** funding obligation for cost of right of way to be acquired for this project. Credit for all real property, other than property which is already dedicated and/or in use as a public road, contributed by the **Local Government** to the **State** shall be based on the property's fair market value established as of the effective date of this agreement. The fair market value shall not include increases or decreases in value caused by the project and should include the value of the land and improvements being conveyed, excluding any damages to the remainder. The **Local Government** will provide to the **State** all documentation to support the determined fair market value of the contributed property. Such documentation shall include an appraisal of the property by a licensed appraiser approved by the Texas Department of Transportation, Right of Way Division. The cost of appraisal will be the responsibility of the **State**. The **State** will review the submitted documentation and make a final determination of value; provided however, the **State** may perform any additional investigation deemed necessary, including supplemental appraisal work by **State** employees or employment of fee appraisers. Credit shall be given only for property transferred at no cost to the **State** after the effective date of this agreement and the **State's** issuance of a letter of funding authority, and only for property which is necessary to complete this project, has title acceptable to the **State**, and is not contaminated with hazardous materials. Credit shall be in lieu of monetary contributions required to be paid to the **State** for the **Local Government's** funding share of the right of way to be acquired for this project. The total credit cannot exceed the **Local Government's** matching share of the right of way obligation under this agreement, and credits cannot be reimbursed in cash to the **Local Government**, applied to project phases other than right of way, nor used for other projects. In the event the **Local Government's** monetary contributions to the **State** for acquisition of right of way, when added to its donation credits, exceed the **Local Government's** matching share of the right of way obligation, there will be no refund to the **Local Government** of any portion of its contributed money.

The **Local Government** shall maintain all books, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the **State** and, if federally funded, the Federal Highway Administration (FHWA) 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 agreement or until any impending litigation, or claims are resolved. Additionally, the **State** and 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. The **State** auditor may conduct an audit or investigation of any entity receiving funds from the **State** directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement 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.

THE LOCAL GOVERNMENT

By: _____
John Cook, Mayor

Date: _____

APPROVED AS TO CONTENT:

Daryl W. Cole, Director
For El Paso Department of Transportation

APPROVED AS TO FORM:

Cynthia Osborn
Assistant City Attorney

EXECUTION RECOMMENDED:

District Engineer, El Paso District

THE STATE OF TEXAS

Executed 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: _____
John P. Campbell, P.E.
Right of Way Division Director

Date: _____

TEXAS TRANSPORTATION COMMISSION

VARIOUS Counties

MINUTE ORDER

Page 1 of 1

VARIOUS Districts

Transportation Code, §222.053, defines an "economically disadvantaged county" as a county that has, in comparison to other counties in the state: (1) below average per capita taxable property value; (2) below average per capita income; and (3) above average unemployment.

Transportation Code, §222.053 directs the Texas Transportation Commission (commission), when evaluating a proposal for a highway project in a political subdivision that consists of all or a portion of an economically disadvantaged county, to adjust the minimum local matching funds requirement after evaluating the political subdivision's effort and ability to meet the requirement. The commission is also required to certify a county as an economically disadvantaged county on an annual basis as soon as possible after the comptroller reports on the economic indicators listed above.

43 TAC §15.55 establishes the criteria that the commission will consider in determining the adjustment to the local matching funds requirement and a local government's effort and ability to meet the requirement.

The Comptroller of Public Accounts has provided the data needed to determine the counties eligible for the Economically Disadvantaged Counties Program for 2010. The counties' efforts and ability to provide a local match has been considered using the criteria set forth in 43 TAC §15.55. Exhibit A lists the eligible counties and their respective recommended local match adjustments.

IT IS THEREFORE ORDERED that the 2010 list of counties eligible for the Economically Disadvantaged Counties Program, as shown in Exhibit A, is certified and the local match adjustment for each county is established.

CITY CLERK DEPT.
2011 FEB 28 PM 3:11

Submitted and reviewed by:

James L. Randall

Director, Transportation Planning
and Programming Division

Recommended by:

Amador Saenz

Executive Director

112018 OCT 29 09

Minute
Number

Date
Passed

EXHIBIT A

Economically Disadvantaged Counties FY 2010

FY 2010 Eligible Counties	Adjustment %
Anderson	69
Bailey	67
Bee	73
Bosque	42
Briscoe	40
Brooks	65
Caldwell	78
Cameron	71
Cass	58
Cherokee	62
Childress	95
Coke	62
Concho	73
Dawson	66
Delta	83
Dimmit	81
Donley	63
Duval	87
El Paso	52
Falls	89
Fannin	69
Frio	87
Grayson	53
Grimes	51
Hale	62
Hall	79
Henderson	51
Hidalgo	88
Hill	58
Houston	50
Hudspeth	58
Hunt	57
Jasper	62
Jones	74
Karnes	94

FY 2010 Eligible Counties	Adjustment %
Kaufman	53
Kinney	76
Lamar	52
La Salle	70
Madison	66
Marion	57
Matagorda	33
Maverick	81
Mitchell	70
Morris	29
Navarro	64
Newton	72
Presidio	93
Rains	67
Red River	77
Reeves	54
Runnels	73
Sabine	43
San Augustine	76
San Jacinto	55
San Patricio	25
San Saba	68
Starr	95
Swisher	73
Terry	52
Trinity	68
Tyler	56
Uvalde	64
Val Verde	60
Walker	75
Webb	67
Willacy	84
Wood	49
Zavala	95

Cities within an Economically Disadvantaged County may receive higher percentage adjustments beyond their respective county's adjustment under two conditions: if they have a local economic development sales tax and their population is less than 5000. An adjustment can not exceed 95% or be less than 15%.

CITY CLERK DEPT.
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