

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

DEPARTMENT: International Bridges Department / Engineering

AGENDA DATE: July 27, 2010

CONTACT PERSON NAME AND PHONE NUMBER: Said Larbi-Cherif & R. Alan Shubert, P.E., (915) 541-4423

DISTRICT(S) AFFECTED: 8

SUBJECT:

Resolution authorizing the Mayor and the City Manager to sign the State Infrastructure Bank (SIB) loan agreement between the City and the Texas Department of Transportation and authorizing the incurrence of the \$6,356,000 obligation associated with the loan. The resolution also articulates City Council representations and covenants as required by the agreement. The representations are that the City will comply with Section 148 of the Internal Revenue Code of 1986 relating to arbitrage and that the resolution was acted upon at a regular council meeting held in compliance with the Open Meetings Act. The City Council covenants involve compliance with the Internal Revenue Code and provision of financial, traffic and revenue reports relating to the project to TXDOT.

BACKGROUND / DISCUSSION:

This agreement finalizes the City's FY 2007 authorization for application for a low-interest loan from the Texas Department of Transportation through the construction of capital improvements to the Paso del Norte International Bridge. The loan amount is \$6,356,000; it is to be repaid over a period of ten (10) years at three and one-quarter percent (3.25%) interest per annum to be paid semiannually on February 1 and August 1 beginning February 1, 2011.

Improvements to the Santa Fe Bridge include the construction of canopies for Santa Fe Bridge pedestrian and rehabilitation of pedestrian corridor and the construction of a new Santa Fe Toll Collection Plaza. Project limits extend from Sixth Street southbound to approximately the southern limits of the Border Highway right-of-way. Northbound limits are between Border Highway's southern right-of-way, north to the federal facility. The canopy support system will extend to the international boundary on the bridge itself.

PRIOR COUNCIL ACTION:

August 22, 2006 – Council approves submittal of loan application.
June 8, 2010 – Council approves contract award for project construction

AMOUNT AND SOURCE OF FUNDING:

Loan amount of \$6,356,000 to be repaid with bridge tolls over the next ten years.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: _____



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

WHEREAS, Section 350 of the National Highway System Designation Act of 1995 (Public Law No. 104-59) authorizes states to establish a State Infrastructure Bank ("SIB") for the purpose of making loans and providing other financial assistance to public and private entities, so as to encourage public and private investment in transportation facilities, expand the availability of funding for transportation projects, and reduce State costs; and

WHEREAS, pursuant to this legislation, Transportation Code, Chapter 222, Subchapter D, created a SIB within the Texas Department of Transportation; and

WHEREAS, pursuant to that subchapter, the Texas Transportation Commission has adopted administrative rules implementing the subchapter and establishing eligibility criteria for an entity applying for financial assistance from the SIB, codified as Title 43, Texas Administrative Code (TAC), Part 1, Chapter 6; and

WHEREAS, in accordance with 43 TAC §6.23, the City has submitted an application to borrow six million three hundred fifty-six thousand dollars (\$6,356,000.00) from the SIB to be utilized to augment existing funding resources for capital improvements to the Paso Del Norte International Bridge, an international port of entry in El Paso; and

WHEREAS, the planned project includes improvements to the Paso Del Norte International Bridge. This project is included in the El Paso Urban Transportation Study and identified in the Metropolitan Transportation Plan, which demonstrates its high degree of public benefit. The bridge is classified as an Urban Principal Arterial. This project was listed in a previous Statewide Transportation Improvement Program (STIP) and LET in October 2005. The project is consistent with the Texas Transportation Plan; and

WHEREAS, in accordance with 43 TAC §6.32(d)(1), a study of the social, economical, a study of the social, economical, and environmental impact of the project, consistent with the National Environmental Policy Act (42 U.S.C. §4321 et seq.), and Title 23, U.S.C. §109(h); and in compliance with the requirements of the department's environmental rules as stated in Chapter 2, Subchapter

C of 43 TAC, was conducted as part of the department's environmental assessment of the project, resulting in a Categorical Exclusion; and

WHEREAS, in accordance with 43 TAC §6.32(e), the Texas Department of Transportation has reviewed, analyzed, and found the application to be in compliance with the requirements of 43 TAC, Chapter 6; and

WHEREAS, the City of El Paso City Council, passed the FY 2007 Budget Resolution dated August 22, 2006 authorizing the City to enter into a financial assistance agreement with the State for a loan in the amount of six million three hundred fifty-six thousand dollars (\$6,356,000.00) to pay for improvements to the Paso Del Norte International Bridge; and

WHEREAS, the Texas Transportation Commission passed Minute Order No. 112050, dated November 19, 2009. The State Resolution granted final approval of an application from the City to borrow six million three hundred fifty-six thousand dollars (\$6,356,000.00) from the SIB, which was approved by the El Paso City Council, and authorized the Executive Director of the Texas Department of Transportation to enter into a financial assistance agreement with the City to pay for the proposed improvements to the Paso Del Norte International Bridge, an international port of entry in El Paso; and

WHEREAS, the State Infrastructure Bank (SIB) Loan Agreement requires that the City Council pass a resolution authorizing the incurrence of the Obligation and granting the representations and covenants provided in the resolution below.

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

The Mayor and City Manager are authorized to sign the State Infrastructure Bank (SIB) Loan Agreement described heretofore;

The City Council authorizes the incurrence of the Obligation described above in the amount of six million three hundred fifty-six thousand dollars (\$6,356,000.00);

The City Council hereby makes the following representations:

1. The City will comply with the provisions of Section 148 of the Internal Revenue Code of 1986 (relating to arbitrage).

2. This resolution was acted upon at the regular city council meeting of July 27, 2010, a meeting held in compliance with the Open Meetings Act. The council members in attendance and voting at the meeting at which this resolution was passed are listed below.

The City Council covenants as follows:

1. The proceeds of the Obligation and the facilities financed with the proceeds of the Obligation will not be used in a manner that would cause the Obligation to be a "specified private activity bond" within the meaning of Sections 148(b) or 149(g) of the Internal Revenue Code of 1986.

2. The City will make any required rebate to the United States of arbitrage earnings.

3. The City will take no action that would cause the interest on the Obligation to be includable in gross income for Federal income tax purposes.

4. The City will not cause or permit the Obligation to be treated as "Federally Guaranteed" obligations within the meaning of Section 149(b) of the Internal Revenue Code.

5. The City will provide the State copies of any financial, continuing disclosure, traffic and revenue reports or other reports or filings made with the financial markets or the City relating to the project.

The City shall provide the State with a certified copy of this resolution.

ADOPTED THIS _____ DAY OF _____, 2010.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Mark Shoosmith
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E.,
City Engineer

I hereby certify that the following City Council Members were present and voted on this Resolution:

Ann Morgan Lilly,	District 1
Susannah M. Byrd,	District 2
Emma Acosta,	District 3
Carl L. Robinson,	District 4
Rachel Quintana,	District 5
Eddie Holguin, Jr.,	District 6
Steve Ortega,	District 7
Beto O'Rourke,	District 8

Richarda Duffy Momsen
City Clerk

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

**STATE INFRASTRUCTURE BANK (SIB)
LOAN AGREEMENT**

THIS AGREEMENT IS MADE BY and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State," and the City of El Paso, hereinafter called the "City", a political subdivision of the State of Texas, authorized by law to construct, maintain, or finance a highway improvement project, and acting herein by and through its City Council.

WITNESSETH

WHEREAS, Section 350 of the National Highway System Designation Act of 1995 (Public Law No. 104-59) authorizes states to establish a State Infrastructure Bank ("SIB") for the purpose of making loans and providing other financial assistance to public and private entities, so as to encourage public and private investment in transportation facilities, expand the availability of funding for transportation projects, and reduce State costs; and

WHEREAS, pursuant to this legislation, Transportation Code, Chapter 222, Subchapter D, created a SIB within the Texas Department of Transportation; and

WHEREAS, pursuant to that subchapter, the Texas Transportation Commission has adopted administrative rules implementing the subchapter and establishing eligibility criteria for an entity applying for financial assistance from the SIB, codified as Title 43, Texas Administrative Code (TAC), Part 1, Chapter 6; and

WHEREAS, in accordance with 43 TAC §6.23, the City has submitted an application to borrow six million three hundred fifty-six thousand dollars (\$6,356,000.00) from the SIB to be utilized to augment existing funding resources for capital improvements to the Paso Del Norte International Bridge, an international port of entry in El Paso; and

WHEREAS, the planned project includes improvements to the Paso Del Norte International Bridge. This project is included in the El Paso Urban Transportation Study and identified in the Metropolitan Transportation Plan, which demonstrates its high degree of public benefit. The bridge is classified as an Urban Principal Arterial. This project was listed in a previous Statewide Transportation Improvement Program (STIP) and LET in October 2005. The project is consistent with the Texas Transportation Plan; and

WHEREAS, in accordance with 43 TAC §6.32(d)(1), a study of the social, economical, and environmental impact of the project, consistent with the National Environmental Policy Act (42 U.S.C. §4321 et seq.), and Title 23, U.S.C. §109(h); and in compliance with the requirements of the department's environmental rules as stated in Chapter 2, Subchapter C of 43 TAC, was conducted as part of the department's environmental assessment of the project, resulting in a Categorical Exclusion; and

WHEREAS, in accordance with 43 TAC §6.32(e), the Texas Department of Transportation has reviewed, analyzed, and found the application to be in compliance with the requirements of 43 TAC, Chapter 6; and

WHEREAS, the City of El Paso City Council, passed a Resolution dated August 22, 2006, attached hereto and made a part of this financial assistance agreement as Exhibit A. The City Council Resolution authorizes the City to enter into a financial assistance agreement with the State for a loan in the amount of six million three hundred fifty-six thousand dollars (\$6,356,000.00) to pay for improvements to the Paso Del Norte International Bridge; and

WHEREAS, the Texas Transportation Commission passed Minute Order No. 112050, dated November 19, 2009, attached hereto and made a part of this financial assistance agreement as Exhibit B. The State Resolution granted final approval of an application from the City to borrow six million three hundred fifty-six thousand dollars (\$6,356,000.00) from the SIB, which was approved by the El Paso City Council, and authorized the Executive Director of the Texas Department of Transportation to enter into a financial assistance agreement with the City to pay for the proposed improvements to the Paso Del Norte International Bridge, an international port of entry in El Paso; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, to be kept and performed by all parties as hereinafter set forth, the State and the City do hereby mutually agree as follows:

AGREEMENT

Article 1. Financial Assistance

- A. The State will lend the City the amount of six million three hundred fifty-six thousand dollars (\$6,356,000.00) to be utilized to augment existing funding resources for capital improvements to the Paso Del Norte International Bridge, as described in Article 2 of this Agreement. After final execution of this Agreement and within thirty (30) days of a written notification by the City to the State to transfer the SIB funds, the State will transfer the amount of six million three hundred fifty-six thousand dollars (\$6,356,000.00) from the SIB to the City for deposit in the City's depository bank, Wells Fargo Bank, into a Project Account to fund the necessary project funding costs as described in this Agreement. The Project Account shall be secured by the City pursuant to its depository agreement. The depository bank shall not commingle funds in the Project Account with any other funds held by the bank. If, during the course of this Agreement, the City changes its depository bank, the City shall cause the transfer of any remaining loan proceeds into an equivalent account in the new depository bank, subject to the same security and fund segregation requirements prescribed in this paragraph. The date the loan proceeds are deposited into the Project Account is hereinafter referred to as the "Deposit Date."
- B. The City hereby covenants and agrees that the loan will be secured by International Bridge toll revenues to guarantee repayment of the financial assistance to the SIB, and that the State has a contractual right to and pledge of such revenue to guarantee repayment. The financial assistance is to be repaid over a period of ten (10) years at three and one-quarter percent (3.25%) interest per annum (the "Loan Rate"), accruing from the Deposit Date. Interest will be paid semiannually on each February 1 and August 1 (each an "Interest Payment Date"), beginning February 1, 2011.

Principal shall be paid annually beginning February 1, 2011 (the "Initial Principal Payment Date") made on each succeeding year on the Initial Principal Payment Date (each "Principal Payment Date"), thereafter for ten (10) annual installments until the final Principal Payment Date of the tenth year after the Initial Principal Payment Date (such date being referred to as the "Maturity Date") (The Principal Payment Dates and the Interest Payment Dates are hereafter collectively referred to as "Payment Dates.")

- C. Funds from the Project Account shall only be drawn upon by the City to pay costs related to the project funding costs as described in this Agreement. All work performed in connection with the improvements to the bridge shall be in accordance with all applicable policies of the State. All draws from the Project Account for costs related to the proposed project shall be in accordance with a requisition prepared by and/or approved by the City, and all such requisitions, and project costs shall be subject to the review and approval of the State.
- D. The State will prepare and make a part of this financial assistance agreement as an attachment, Exhibit C, a principal and interest repayment schedule for the loan. Exhibit C is based upon the Deposit Date determined pursuant to Paragraph A of this Article, the Initial Payment Date, and the Payment Dates in each succeeding year as described in Article 1, Paragraph B. The principal and interest repayment schedule shall provide for payment of the loan amount of six million three hundred fifty-six thousand dollars (\$6,356,000.00) over a ten (10) year repayment period, and is subject to revision pursuant to the terms and conditions of this Agreement. The City shall make payments in accordance with the principal and interest repayment schedule attached herein as Exhibit C with the amount of each required semiannual payment on Exhibit C being a "Loan Payment."
- E. The City shall establish in its depository bank a SIB Loan Debt Service Account. Pledged revenue of the City as described in Article 1, Paragraph B shall be deposited into this account by the City prior to each Payment Date. The City shall make one or more deposits to the credit of the SIB Loan Debt Service Account during this six month period until the balance of such account equals the Loan Payment attached herein as Exhibit C. On or before the Initial Payment Date as established in this Agreement and on or before each succeeding Payment Date thereafter, through the Maturity Date, the City shall cause its depository bank to transfer to the State the applicable Loan Payment as set forth in the attached Exhibit C.
- F. The repayment of all or any portion of the Outstanding Balance of the loan shall not entitle the City to any subsequent advances from the State, nor shall the State have any obligation to advance to or for the benefit of the City any amount in excess of the loan proceeds. All costs in excess of the loan amount shall be the responsibility of the City.
- G. There shall be no penalty imposed by the State upon the City for any or partial early repayment of this SIB loan as outlined in the attached Exhibit C, provided, however, that early repayments may only be made on a Payment Date in principal denominations of \$5,000 or an integral multiple thereof.
- H. Payments not received by the applicable Payment Date will bear interest at the Loan Rate (overdue interest as well as overdue principal will bear interest) until paid.

Article 2. Project Description

The State will provide SIB financial assistance to the City to pay for capital improvements to the Paso Del Norte International Bridge, an international port of entry in El Paso, which will include construction of a new southbound pedestrian toll collection plaza, improvements to Lion's Placita, enhancements to the southbound pedestrian corridor, and canopy structures for both the southbound and northbound pedestrians on the bridge.

Article 3. Project Responsibilities

- A. The City is responsible for contracting for and funding all project costs as outlined in Article 1 of this Agreement, in compliance with all applicable federal, state, and local laws, regulations, policies, and ordinances. The State has certain review and approval rights and responsibilities related to the project as prescribed by this Agreement, including ensuring that the completion of the project is performed in compliance with all applicable laws, regulations, and policies.
- B. All plans and specifications for the project shall be in compliance with the current editions of the design and construction manuals of the Texas Department of Transportation, and the Standard Specifications for the Construction and Maintenance of Highways, Streets, and Bridges (the "Standard Specifications"), as they may apply. All construction plans shall be signed and dated by a professional engineer licensed by the State of Texas.
- C. The actions and decisions regarding the project made by the State shall not be contestable by the City.
- D. The City shall provide the State and the Federal Highway Administration, or their authorized representatives, with right of entry or access to all properties or locations necessary to perform activities required to execute the work, inspect the work, or aid otherwise in the prompt pursuit of the work. The City shall also provide the State, the Federal Highway Administration, the Comptroller General of the United States, and the Texas State Auditor's Office, or their authorized representatives, with right of access to any books, documents, papers, or other records of the City which are pertinent to the acquisition of the right-of-way or to its financing as described in this Agreement, in order to make audits, examinations, excerpts, and transcripts, or to complete the project accounting described in Article 4 of this Agreement.

Article 4. Project Accounting

The City shall account for all actual costs associated with the project using generally accepted state and federal accounting procedures. The City will make its accounting records available at reasonable times to the State for inspection during the project and upon its completion.

- A. Commencing with the Initial Principal Payment Date and annually on each succeeding Principal Payment Date, the City shall provide to the State (one copy to the TxDOT District Office and one copy to the TxDOT Finance Division) an accounting of the SIB loan proceeds expended ("Annual Expenditure Report"). The City will provide the Annual Expenditure Report on each Principal Payment Date until all loan proceeds have been expended or as requested by TxDOT.
- B. At the completion of the project, the State shall use generally accepted accounting procedures to determine the actual cost of the project. Excess funds will be applied to reduce the loan balance at the time of the final accounting, and the State shall provide

the City with a revised principal and interest repayment schedule. If additional funds are needed, the City is responsible for providing such additional funds.

- C. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Article 5. Conditions to Loan Disbursement; Additional Documentation

- A. Except as provided in this Article, no funds will be disbursed under this Agreement until the State has received two originals, or certified copies if so indicated, of each document described in this Article.
- B. A bond counsel opinion, from a recognized bond counsel in a form satisfactory to the State, that includes the opinions that: 1. the payment obligation pursuant to this Agreement (the "Obligation") is a valid, binding and enforceable Obligation in accordance with its terms and that interest on the Obligation is excludable from gross income or is exempt from Federal income taxation, and 2. the Obligation is not a "specified private activity bond." Bond counsel may rely on covenants and representations of the City in rendering this opinion.
- C. A certified copy of the resolution authorizing the incurrence of the Obligation, certifying compliance with the Open Meetings Act, the meeting date, and council members in attendance and voting at such meeting, which includes the following:
1. a covenant that the proceeds of the Obligation and the facilities financed with the proceeds of the Obligation will not be used in a manner that would cause the Obligation to be a "specified private activity bond" within the meaning of Sections 148(b) or 149(g) of the Internal Revenue Code of 1986;
 2. a representation that the City will comply with the provisions of Section 148 of the Internal Revenue Code of 1986 (relating to arbitrage);
 3. a covenant that the City will make any required rebate to the United States of arbitrage earnings;
 4. a covenant that the City will take no action that would cause the interest on the Obligation to be includable in gross income for Federal income tax purposes;
 5. a covenant that the City will not cause or permit the Obligation to be treated as "Federally Guaranteed" obligations within the meaning of Section 149(b) of the Internal Revenue Code;
 6. a covenant that the City will provide the State copies of any financial, continuing disclosure, traffic and revenue reports or other reports or filings made with the financial markets or the City relating to the project .

- D. A No Arbitrage Certificate or similar Federal Tax Certificate setting forth the City's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligation;
- E. Documentation demonstrating that the information reporting requirements of Section 149(e) of the Internal Revenue Code of 1986 will be satisfied. (As this requirement is currently satisfied by filing IRS Form 8038 with the Internal Revenue Service, a completed copy of IRS Form 8038 with evidence of filing is sufficient, unless the City is advised of a change in the reporting requirements by its bond counsel or by the State);
- F. Certification that the City, or an obligated person for whom financial or operating data is presented either individually or in combination with other issuers of the City's Obligation or obligated persons, will, if and at such time as is required by federal law, comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the State were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the State and the beneficial owner of the City's Obligation, if the State sells or otherwise transfers such Obligation, and the beneficial owners of the State's bonds if the City is an obligated person with respect to such bonds under SEC rule 15c2-12;
- G. A general certificate of the City in form and substance as agreed to by the State containing information and certifications typically provided to the Attorney General of the State of Texas in connection with the issuance of bonds or other obligations in the State;
- H. A certification that, upon 90 days written notice from the State that the State intends to issue bonds or other obligations payable from the State Infrastructure Bank, the City shall cooperate with the State, and make all reasonable efforts as requested by the State, for the purpose of obtaining the approving opinion of the Attorney General of the State of Texas with respect to this Agreement.

Article 6. Project Termination

Should the project described in this Agreement be terminated for any reason, the City shall return any unexpended portion of the loan amount to the State, which shall recalculate the principal and interest repayment schedule attached herein as Exhibit C. The City is responsible for repaying expended amounts and the interest thereon as if the project had been completed.

Article 7. Defaults

- A. The City shall be in default if it fails to repay the loan as set forth in Article 1 above or otherwise fails to comply with the terms of this Agreement, provided, however, failure to successfully obtain an approving opinion from the Attorney General as described in Article 5, Paragraph H, shall not constitute a default or failure to perform hereunder, so long as the City has used its best reasonable efforts in cooperation with the State to obtain such an approving opinion or to refinance the loan.
- B. If the City fails to remit to the State the payments the City owes pursuant to this Agreement, the State shall not be obligated to take further action nor resume its obligations under this Agreement until such payments are no longer in default. The

City shall also be responsible for reimbursing the State for all costs or other losses of funds resulting from any default or failure to perform by the City.

- C. The City agrees that in the event of a default under this Agreement the State may, by all legal and equitable means, require the City and any appropriate official of the City (acting solely in his or her official capacity) to remedy any default under, and carry out the provisions of, this Agreement, including specifically the use and filing of mandamus proceedings in any court of competent jurisdiction in Travis County, Texas.

Article 8. Indemnification

The City agrees that it is solely responsible for all losses, costs, expenses, penalties, claims, and liabilities due to activities of the City and its agents, employees, officers, or contractors performed under this Agreement, and which result from an error, omission, or negligent act of the City or any agent, employee, official, or contractor of the City. Notwithstanding anything in this Agreement to the contrary, this provision shall survive any termination of this Agreement.

Article 9. Termination

Including the provisions established herein, this Agreement may be terminated upon the occurrence of any of the following conditions:

- A. If both parties to this Agreement agree in writing to such termination; provided, however, that any such termination is specifically subject to the requirements of Article 5 of this Agreement;
- B. If the State is unable to advance the proceeds of the loan to the City within the period prescribed in Article 1 of this Agreement, the City may terminate this Agreement by written notice to the State;
- C. If the City is in default on a loan payment required under this Agreement, the State may declare the Agreement to be terminated, or may exercise any of the rights granted the State in Article 6 of this Agreement;
- D. Upon repayment in full by the City of this SIB loan, and compliance by the City with all other requirements of this Agreement, the State shall execute and deliver to the City a certificate of payment, provided that, upon the execution and delivery of the certificate of payment by the State, this Agreement shall automatically terminate except with respect to any obligation of a party related to any losses, costs, expenses, penalties, claims, and liabilities due to the activities of a party, or any agent, employee, official, or contractor of a party, which obligations shall survive such termination.

Article 10. Notices

All notices to either party by the other party required under this Agreement will be delivered personally or sent by U.S. Mail, postage prepaid, addressed to such party at the following respective addresses:

State:

Texas Department of Transportation
Attn: Chief Financial Officer
125 East 11th Street
Austin TX 78701-2483

City:

City of El Paso
Office of the Mayor
2 Civic Center Plaza,
10th Floor of City Hall
El Paso, Texas TX 79901

All notices shall be deemed so delivered or deposited in the mail, unless otherwise provided herein. A party hereto may change the above address by sending written notice of such change to the other party in the manner stated in Article 9.

Article 11. Legal Construction

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Article 12. Written Amendments

Any changes in the character, agreement, terms, or responsibilities of the parties must be enacted through a written amendment. No amendment to this Agreement shall be of any effect unless in writing and executed by both parties.

Article 13. Successors and Assigns

This Agreement shall bind, and shall be for the sole and exclusive benefit of, the respective parties and their legal successors, including, without limitation, any successor agency of a party. Other than as provided in the preceding sentence, each party is prohibited from assigning any of the rights or obligations conferred by this Agreement to any third party without the advance written approval of the other party. Any attempted assignment or other transfer of the rights or obligations of this Agreement without the consent of the other party shall be void and may be grounds for termination of this Agreement.

Article 14. Relationship of the Parties

Nothing in this Agreement shall be deemed or construed by the parties, or any third party, as creating the relationship of principal and agent between the State and the City.

Article 15. Interpretation

No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.

Article 16. Signatory Authority

Each party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder, and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery, or performance of this Agreement. Each signatory

on behalf of the State and the City, as applicable is fully authorized to bind that entity to the terms of this Agreement.

IN WITNESS WHEREOF, the State and the City have executed triplicate counterparts of this agreement,

THE CITY OF EL PASO

By: _____
John F. Cook, Mayor

Joyce A. Wilson, City Manager

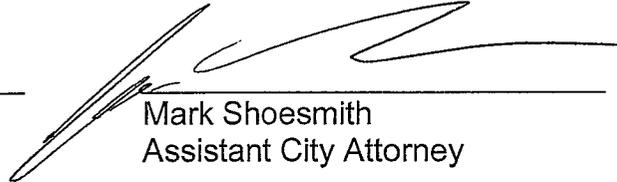
Date: _____

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:



Said Larbi-Cherif
Director, International Bridges



Mark Shoemith
Assistant City Attorney

THE STATE OF TEXAS

Executed 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: _____
James M. Bass
Chief Financial Officer
Texas Department of Transportation

Date _____

City of El Paso
Fiscal Year 2007 Budget Resolution

WHEREAS, on August 11, 2006, the City Clerk published notice in the City of El Paso's official newspaper The El Paso Times of a public hearing regarding the City of El Paso Fiscal Year 2007 Budget Resolution in accordance with the Charter of the City of El Paso and Section 102.0065(a) of the Texas Local Government Code; and

WHEREAS, a public hearing was held on August 22, 2006, by the City Council regarding the City of El Paso's Proposed Budget at which all citizens had the opportunity to participate.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. That the Proposed Budget, as amended, for the City of El Paso, filed by the City Manager with the City Clerk on June 30, 2006, is hereby approved and adopted by the City Council as the Annual Budget for the Fiscal Year 2007, which begins on September 1, 2006 and ends on August 31, 2007.
2. That any balance in the General Fund on August 31, 2006 shall first be allocated to restore the reserve for claims in an amount equal to One Million Dollars (\$1,000,000). The City Manager is hereby authorized to appropriate the reserve amount as part of City Attorney's appropriation for external legal counsel and claims.
3. That the budget for confiscated funds shall be provided by the Chief of Police and submitted to the Office of Management and Budget (OMB) Director by November 15, 2006, with a financial report showing all appropriations for Fiscal Year 2007 for all confiscated or condemned monies in a format approved by the City Manager or his/her designee.
4. That the City shall not enter into any agreement requiring the expenditure of monies if such agreement shall extend beyond the current fiscal year without the approval of the City Council or the City Manager. In such cases where the City Manager approves the expenditure, he/she is hereby authorized to obligate and/or encumber City funding to pay the City's expenses, which shall also constitute the approval of City Council for the expenditure of monies extending beyond the current Fiscal Year, as may be required by Texas law.
5. That Department Heads are hereby authorized to make budget transfers not to exceed Twenty-Five Thousand Dollars (\$25,000.00); provided that

each transfer is within the same fund and department. Budget transfers exceeding Twenty-Five Thousand Dollars (\$25,000.00) that are within the same fund and department may be approved by the City Manager or his/her designee. A budget transfer for personal services appropriations or for impacting revenue accounts requires the approval of the City Manager or his/her designee.

6. That the City Manager or his/her designee is hereby authorized to make budget transfers not exceeding Twenty-Five Thousand Dollars (\$25,000) between departments and funds. Budget transfers exceeding Twenty-Five Thousand Dollars (\$25,000.00) between departments or between funds shall require City Council approval.
7. That a budget transfer must be approved prior to the occurrence of the expenditure, except for emergency expenditures when approved by the City Manager or his/her designee and ratified by the City Council.
8. That the City Manager is hereby authorized to establish the budget for any capital projects that are approved by the City Council.
9. That any budget transfer submitted to City Council shall be accompanied by an explanation from the department, approval by OMB, and a recommendation from the City Manager or his/her designee. The department's explanation must be sufficiently clear and provide sufficient detail for the members of City Council to determine the need for the transfer.
10. That the City Manager or his/her designee is hereby authorized to establish budgets and staffing table changes for grants and similar awards when the applications for such grants and awards have been previously approved by the City Council or the City Manager. All grant applications requiring City Council approval shall be prepared in accordance with established procedures. The agenda item shall clearly state the type and amount of the required City match and the funding source of the grant match.
11. That the City Manager or his/her designee is hereby authorized to make such budget transfers and staffing table changes as are needed to close completed grants and capital project accounts.
12. That the City Manager or his/her designee is hereby authorized to appropriate funds associated with donations made to the City under the amount of Twenty-five Thousand Dollars (\$25,000.00).

13. That the City Manager is hereby authorized to submit an application to the State Infrastructure Bank for a loan from available state transportation funds in an amount not to exceed Twelve Million Four Hundred Sixty Three Thousand Dollars (\$12,463,000.00) for a project known as Improvements to El Paso International Bridges. Further, the City Manager is hereby authorized to execute any and all necessary documents and/or agreements resulting from approval of the application.
14. That restricted fund(s) shall be expended only for those purposes for which each restricted fund was established.
15. That all monies in all funds, except for grant funds, budgeted for the City's contribution to the Employee's Health Benefit Program, Worker's Compensation, and Unemployment Funds be appropriately deposited into the respective fund by the City Chief Financial Officer before the closing of the Fiscal Year, and in accordance with procedures established by the City Manager or his/her designee.
16. That the amounts of the annual competency and/or merit increases for employees subject to Civil Service for fiscal year 2007 are set as follows:
 - (i) Employee's annual competency increase is that amount that will place the employee in the rate within their pay grade that most closely approximates a two percent (2%) increase;
 - (ii) The amount of merit increase for eligible employees is that amount that will place the employee in the rate within their pay grade that most closely approximates a two percent (2%) increase; and
 - (iii) On September 3, 2006, Employees in the GS and PM classifications that have ten (10) years or more of service, but are below the mid-point in their respective classifications, will receive a one time increase that will place the employee in the rate within their pay grade that most closely approximates a one percent (1.0%) increase.
17. That the current annual amount of longevity pay due non-uniformed employees who qualify will be added to their base pay; provided, however, that in the event that such additional pay will result in a salary that exceeds the maximum of an employee's salary range, any amount that would exceed the salary range shall be paid to the employee annually, in a lump sum. Subject to the above proviso concerning the maximum of an employee's salary range, an amount that most closely approximates a one percent (1%) increase will be added to the base pay of each employee, other than employees covered under collective bargaining agreements, on the anniversary date of every five (5) years of service accrued by an

employee.

18. That all merit increases and annual competency increases and increases based on five (5) year increments of service, are subject to the availability of funds, and shall be expended as determined or authorized by the City Manager or his/her designee, except for such increases that are otherwise determined and provided for in an employment contact.
19. That the City Manager is hereby authorized to annually adopt a Tuition Assistance Policy, which provides for tuition assistance to qualified employees in accordance with the amount of funding established for such a program. Such Policy may be amended as deemed necessary by the City Manager.
20. That the adopted budget includes sufficient funds for all City employees, other than temporary employees and employees covered under collective bargaining agreements, on or about September 3, 2006, and for adoption of a revised salary schedule to increase pay ranges as recommended by the Human Resources Department. In the event that under such revised salary schedules the present salary of a temporary employee falls below the minimum of the salary range for his/her job classification, his/her salary shall be adjusted to that rate of pay that equals the minimum of the salary range of the re-classification.
21. That the services paid from the postage/copy center and fleet services sub funds shall be financed and accounted for utilizing an internal service fund basis with sufficient charges from departments to cover all direct costs.
22. That the hotel occupancy taxes collected by the City shall be used by the Greater El Paso Convention & Performing Arts Center and the Department of Museums and Cultural Affairs to fund their respective operations and in accordance with El Paso City Code and State law. The functions of the Plaza Theater and McKelligon Canyon shall be included with the functions of the Greater El Paso Convention and Performing Arts Center. Expenditures from said fund shall be made in accordance with their respective adopted budgets.
23. That any travel expenditure for a City Council member that exceeds the FY 2007 City Council member's budget, including discretionary funds for the City Council Member's district, must be approved by the City Council and a funding source shall be identified by the City Council.
24. That City Council members must notify the Director of OMB of any expenditure from budgeted City Council Special Projects or Discretionary

Accounts, so that City staff can maintain a current balance of the individual City Council Member's year-to-date expenditure for said accounts.

25. That the City Manager is hereby authorized to approve the installation of residential street lights and the expenditures for the power and maintenance related thereto, including street lights paid by the people requesting the installation or which are paid for by using district discretionary funds, pursuant to the resolution of the City Council dated September 20, 1994.
26. That all obligations for the payment of money by City departments and agencies, including grantees, shall be made in accordance with procedures established by the City Manager or his/her designee.
27. That no employee or elected official shall incur an obligation for capital, supplies, wages, or otherwise, unless an adequate appropriation has been made in the budget to meet the obligation and said obligation has been incurred in accordance with the accounting, legal, budgetary, purchasing, and Human Resources policies and procedures of the City.
28. That employee positions funded by the FY 2007 Budget, and those listed in the Authorized Staffing Table, shall constitute the authorized employee positions for each department. Requests for changes and additions shall be approved by the City Manager and Office of Management & Budget and shall show the impact on the FY 2007 Budget and the estimated impact on expenditures for fiscal year 2008.
29. That any non-vacant classified employee position which is identified for abolishment upon adoption of the FY 2007 Budget, shall be funded until the earlier of October 16, 2006 or sufficient time for the Human Resources Department to carry out the provisions of the City Charter related to lay-offs.
30. That the compensation of Municipal Judges and substitute Associate Municipal Judges shall continue at the same level as in fiscal year 2006, provided however, that the budget shall include funding within a salary reserve account for an increase in the salaries for the Municipal Judges beginning on January 1, 2007, provided however, that the Council shall make a separate determination regarding the granting of such increase before such increase would take effect; and provided further, that the City Manager may authorize additional compensation to be paid, in relation to the amount of increased duties and work performed, to substitute Associate Municipal Judges who perform regularly scheduled magistrate

functions.

31. That the City Manager is hereby authorized to transfer any amount in the Salary Reserve account or personal services appropriations between departments within the General Fund, whether it is non-uniformed or uniformed salary expense, as necessary prior to closing the fiscal year 2007.
32. That the cash balance of the Bridge Fund shall be transferred on a monthly basis to the General Fund, except for Seventy Five Thousand Dollars \$75,000 (\$25,000 Unreserved Balance and \$50,000 Reserve for Maintenance) and any required cash, which must be maintained pursuant any bridge revenue bond covenants.
33. That all appropriations in the General Fund associated with outstanding purchase orders shall lapse at the end of fiscal year 2007.
34. That within forty-five (45) days after the end of each fiscal quarter, the City Manager or his/her designee shall provide a quarterly report to City Council regarding the status and year-end projection of the budget.
35. That the City shall charge the maximum allowable interest rate and impose the maximum allowable penalty pursuant to State or Federal laws, on any amounts past due to the City. Any amounts that are one hundred twenty (120) days past due will be reported to the Credit Bureau, in accordance with State and Federal law, and will be turned over to the City Attorney or a collection agency for collection or the proper disposition.
36. That the annual parking meter revenue in account number 404020 (Parking Meter Revenue) shall be allocated on a monthly basis to a restricted account called Plaza Theater Sinking Fund in the Debt Service Fund, Fund number 20100, Department ID 99335008.
37. That monies that the City receives from licenses, fees, fines, and other charges for services shall be analyzed to determine if the City is recovering the cost of providing such services. Recommendations shall be made to the City Manager or his/her designee for any revisions to licenses, fees, fines, and other charges.
38. That any balance in the General Fund as of August 31, 2006 shall be allocated to a vehicle replacement fund in an amount not to exceed Three Million Dollars (\$3,000,000.00). The City Manager is hereby authorized to appropriate the reserve amount as part of the vehicle replacement fund for the purchase of new or replacement vehicles.

39. That any balance in the General Fund as of August 31, 2006 shall be allocated to a reserve for building repair in an amount equal to One Million Dollars (\$1,000,000). The City Manager is hereby authorized to appropriate the reserve amount as part of the General Services Department appropriation for contract service.
40. That the environmental fee for residential users is hereby established at One Dollar (\$1.00) per month and the fee for commercial user is hereby established at Five Dollars (\$5.00) per month commencing on September 1, 2006. The fee for commercial users shall be set as follows: (i) at Seven Dollars (\$7.00) per month commencing on September 1, 2007 and will be set forth in the fiscal year 2008 budget resolution; and (ii) at Ten Dollars (\$10.00) per month commencing on September 1, 2008 and will be set forth in the fiscal year 2009 budget resolution.
41. That the City Manager is hereby authorized to implement the reclassification of employees once approved by the City Council and is further authorized to establish pay levels as recommended by the Human Resources Director to include contracted positions.
42. That appropriation control for expenditures shall be at the Object Level.
43. That Schedule A amends revenues and appropriations to the City Manager's filed budget; Schedule B amends staffing tables to the City Manager's filed budget; Schedule C sets forth fees, and the methodology for calculating certain fees, that are to be charged by the City for goods and services it provides. Any revisions or additions to the fee schedule shall be approved by simple resolution of the City Council; and Schedule D contains the list of those incumbent employees transferring between the various departments of the City.
44. That the function of foreign trade zone in the Economic Development department shall be transferred to the Department of Aviation. Further, that this budget resolution shall constitute the approval of the transfer of the incumbents.
45. That the transfer of incumbents between various departments of the City, not otherwise addressed herein, shall be approved and authorized, as set forth in Schedule D.
46. That the City provide seed funding in an amount not to exceed One Hundred Thousand Dollars (\$100,000.00) to La Mujer Obrera for a

feasibility study regarding Plan Mayachen. Additional funding in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00) is contained within the budget and may be provided to La Mujer Obrera depending upon the results of said feasibility study and La Mujer Obrera's ability to secure Five Hundred Thousand Dollars (\$500,000.00) in matching funds.

47. That OMB shall immediately file, or cause to be filed a true copy of the FY 2007 Budget and a copy of this Resolution in the offices of the City Clerk and the County Clerk of El Paso.

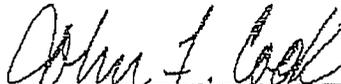
(Signature page to follow)

City of El Paso
FY 2007 Budget Resolution

Signature Page

PASSED AND APPROVED this 20th day of AUG, 2006.

CITY OF EL PASO



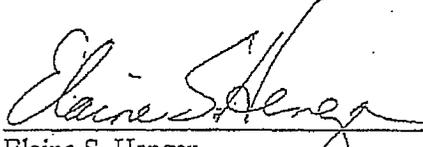
John F. Cook
Mayor

ATTEST:



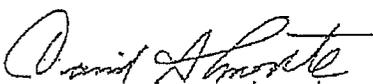
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Elaine S. Hengen
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



David Almonte, Director
Office of Management & Budget

TEXAS TRANSPORTATION COMMISSION

EL PASO County

MINUTE ORDER

Page 1 of 1

EL PASO District

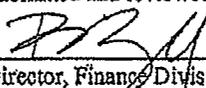
On September 24, 2009, by Minute Order 111964, the Texas Transportation Commission (commission) granted preliminary approval of an application for financial assistance from the City of El Paso to borrow \$6,356,000 from the State Infrastructure Bank (SIB) to pay for improvements to the Paso Del Norte International Bridge, an international port of entry in El Paso (project).

Pursuant to the commission's preliminary approval, the executive director implemented and completed negotiations and other actions authorized and required by commission rules. The executive director affirms that the necessary social, economic, and environmental impact studies have been completed, and that the Texas Department of Transportation has approved those studies. The executive director recommends that the commission grant final approval of the SIB application for financial assistance.

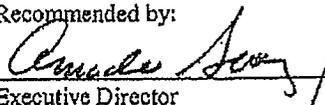
The commission determines that providing financial assistance will protect the public safety and prudently provide for the protection of public funds, while furthering the purposes of the SIB; and that the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

IT IS THEREFORE ORDERED that the application for SIB financial assistance submitted by the City of El Paso to borrow \$6,356,000 from the State Infrastructure Bank is granted final approval. The executive director is directed and authorized to enter into the financial assistance agreement as negotiated with the city. The loan will be repaid over a period of 10 years at 3.25 percent interest per annum.

Submitted and reviewed by:


 Director, Finance Division

Recommended by:


 Executive Director

112050 NOV 19 09

Minute	Date
Number	Passed



STATE INFRASTRUCTURE BANK

Loan Amortization Schedule

Exhibit C

Finance Division
125 E. 11th Street
Austin, TX 78701

Loan Terms	
Initial Loan Amount \$	6,356,000.00
Annual Interest Rate	3.25 %
Loan Period In Years	10
Number of Payments Per Year	2
Estimated Start Date of Loan	8/1/2010

Loan Summary	
Fiscal Year Loan Payment	\$754,654.70
Scheduled Number of Payments	19
Total Principal Paid	\$6,356,000.00
Total Interest Paid	\$1,121,690.29
Total Payments	\$7,477,690.29

Date	Repayment Period	Starting Loan Balance	Initial Loan Amount	Interest Rate	Interest Accrued	Principal Payment	Interest Payment	Total Payment	Ending Loan Balance	Calendar Year Payment	TxDOT Fiscal Year Payment
8/1/2010			\$ 6,356,000.00						6,356,000.00		
2/1/2011	1	6,356,000.00		3.25%	137,713.33	\$548,084.70	137,713.33	685,798.03	5,807,915.30		685,798.03
8/1/2011		5,807,915.30		3.25%	94,378.62		94,378.62	94,378.62	5,807,915.30	780,176.65	
2/1/2012	2	5,807,915.30		3.25%	94,378.62	\$565,897.45	94,378.62	660,276.07	5,242,017.86		754,654.70
8/1/2012		5,242,017.86		3.25%	85,182.79		85,182.79	85,182.79	5,242,017.86	745,458.86	
2/1/2013	3	5,242,017.86		3.25%	85,182.79	\$584,289.12	85,182.79	669,471.91	4,657,728.74		754,654.70
8/1/2013		4,657,728.74		3.25%	75,688.09		75,688.09	75,688.09	4,657,728.74	745,160.00	
2/1/2014	4	4,657,728.74		3.25%	75,688.09	\$603,278.51	75,688.09	678,966.60	4,054,450.23		754,654.70
8/1/2014		4,054,450.23		3.25%	65,884.82		65,884.82	65,884.82	4,054,450.23	744,851.42	
2/1/2015	5	4,054,450.23		3.25%	65,884.82	\$622,865.06	65,884.82	688,769.88	3,431,565.16		754,654.70
8/1/2015		3,431,565.16		3.25%	55,762.93		55,762.93	55,762.93	3,431,565.16	744,532.81	
2/1/2016	6	3,431,565.16		3.25%	55,762.93	\$643,128.83	55,762.93	698,891.76	2,788,436.34		754,654.70
8/1/2016		2,788,436.34		3.25%	45,312.09		45,312.09	45,312.09	2,788,436.34	744,203.85	
2/1/2017	7	2,788,436.34		3.25%	45,312.09	\$664,030.52	45,312.09	709,342.61	2,124,405.82		754,654.70
8/1/2017		2,124,405.82		3.25%	34,521.59		34,521.59	34,521.59	2,124,405.82	743,864.20	
2/1/2018	8	2,124,405.82		3.25%	34,521.59	\$685,611.51	34,521.59	720,133.10	1,438,794.31		754,654.70
8/1/2018		1,438,794.31		3.25%	23,380.41		23,380.41	23,380.41	1,438,794.31	743,513.51	
2/1/2019	9	1,438,794.31		3.25%	23,380.41	\$707,893.88	23,380.41	731,274.29	730,900.43		754,654.70
8/1/2019		730,900.43		3.25%	11,877.13		11,877.13	11,877.13	730,900.43	743,151.42	
2/1/2020	10	730,900.43		3.25%	11,877.13	\$730,900.43	11,877.13	742,777.56	-		754,654.70
8/1/2020		-		3.25%	-		-	-	-	742,777.56	
TOTALS					1,121,690.29	6,356,000.00	1,121,690.29	7,477,690.29		7,477,690.29	7,477,690.29