

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

DEPARTMENT: Department of Transportation

AGENDA DATE: Consent Agenda 11/30/2010

CONTACT PERSON NAME AND PHONE NUMBER: Terry Quezada (915)621-6750

DISTRICT(S) AFFECTED: District 4

SUBJECT:

Resolution authorizing the Mayor to sign an "Agreement to Contribute Funds - Local Government" between the City of El Paso ("City") and the State of Texas acting by and through the Texas Department of Transportation ("State"). The Scope of work for this Agreement is described as the acquisition of right of way and adjustment of utilities for a highway project on Highway No. Loop 375 from U.S. 54 (Patriot Freeway) to BU 54 (Dyer Street). The City's Share is 4.8% of the total costs of the property acquisition. The initial estimate of the City's Share is \$75,331.00.

BACKGROUND / DISCUSSION:

This project is the construction of main lanes on Transmountain (Loop 375) from Patriot Freeway (US 54) to Dyer (BU 54), one of the projects approved by Council as part of the 2008 Comprehensive Mobility Plan. This agreement provides the City's contribution of \$75,331 towards the right-of-way acquisition and utility relocation associated with the project. TXDOT will be responsible for acquiring the right-of-way. Total costs for the right-of-way are estimated at \$1,569,400. The City's match has been reduced to 4.8% from the usual 10% due to the Economically Disadvantaged County (EDC) Adjustment. Funds for TXDOT matches were approved by Council as part of the 2010 Transportation Funding plan in March 2010.

PRIOR COUNCIL ACTION:

2008 Comprehensive Mobility Plan approved August 19, 2008
2010 Transportation Funding Plan approved March 30, 2010

AMOUNT AND SOURCE OF FUNDING:

\$75,331 – 2010 Transportation Fund Plan – Certificates of Obligation

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

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 – Local Government" between the City of El Paso ("City") and the State of Texas, acting by and through the Texas Department of Transportation ("State"). The scope of work for this Agreement is described as the acquisition of right of way and adjustment of utilities for a highway project on Highway No. Loop 375 from U.S. 54 (Patriot Freeway) to BU 54 (Dyer Street). The City's share is 4.8% of the total costs of the property acquisition. The initial estimate of the City's share is \$75,331.00.

ADOPTED this _____ day of _____, 2010.

THE CITY OF EL PASO

John Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Mark Shoosmith
Assistant City Attorney

APPROVED AS TO CONTENT:



Daryl W. Cole, Director
El Paso Department of
Transportation



AGREEMENT TO CONTRIBUTE FUNDS – LOCAL GOVERNMENT
(Economically Disadvantaged County)

County: El Paso
District: El Paso

Federal Project No:
Highway: Loop 375

ROW CSJ No: 2552-01-040

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: U.S. 54 (Patriot Freeway)

To: BU 54 (Dyer Street); 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 43TAC, §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; and

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** and shall transmit to the **State** with the return of this agreement, duly executed by the **Local Government**, a warrant or check in the amount of Seventy Five Thousand Three Hundred and Thirty One Dollars (\$ 75,331), which represents Four and Eight Tenths percent (4.8%) of One Million Five Hundred Sixty Nine Thousand and Four Hundred Dollars (\$ 1,569,400), the estimated total cost of the right of way. If however, it is found that this 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.

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 cost 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.

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

EXECUTION RECOMMENDED:

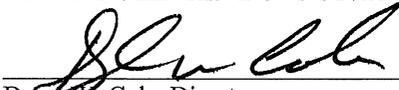
By: _____
John Cook, Mayor

District Engineer, El Paso District

Date: _____

APPROVED AS TO CONTENT:

THE STATE OF TEXAS



David W. Cole, Director
El Paso Department of Transportation

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.

APPROVED AS TO FORM:



Mark Shoemith
Assistant City Attorney

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

Date: _____

TEXAS TRANSPORTATION COMMISSION

VARIOUS Counties

MINUTE ORDER

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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.

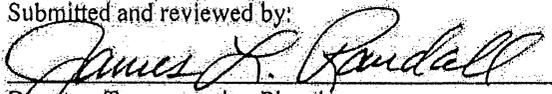
Transportation Code, §222.053 directs the Texas Transportation Commission (commission), when evaluating a proposal for a highway project in a political subdivision that consists of all or a portion of an economically disadvantaged county, to adjust the minimum local matching funds requirement after evaluating 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.

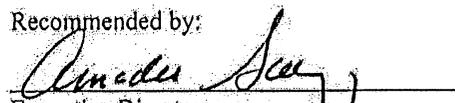
The Comptroller of Public Accounts has provided the data needed to determine the counties eligible for the Economically Disadvantaged Counties Program for 2010. The counties' efforts and ability to provide a local match has been considered using the criteria set forth in 43 TAC §15.55. Exhibit A lists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

Submitted and reviewed by:


Director, Transportation Planning
and Programming Division

Recommended by:


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%.