

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

DEPARTMENT: Capital Improvement

AGENDA DATE: January 05, 2021

CONTACT PERSON/PHONE: Yvette Hernandez, P.E., CID Director of Grant Funded Programs, 212-1860
Sam Rodriguez, P.E., City Engineer, 212-0065

DISTRICT(S) AFFECTED: 6

STRATEGIC GOAL: No. 7: Enhance and Sustain El Paso's Infrastructure Network

SUBJECT:

That the City Manager be authorized to sign an Advance Funding Agreement by and between the City of El Paso and the State of Texas, acting by and through the Texas Department of Transportation, for the Ysleta Middle School SRTS project, for the design and construction of a hike and bike trail along Playa Lateral between Elvin Way and Jesuit Drive along with school zone flashers, ADA ramps, and school zone signs, which has an estimated total project cost of \$1,030,245.00 of which the estimated local government participation amount is \$0.00.

BACKGROUND / DISCUSSION:

This project was one of 12 projects selected statewide out of 397 applications for TxDOT's 2019 call for projects for Safe Routes to Schools funding.

The Ysleta Middle School SRTS project consists of installation of school zone flashers along Independence Drive, ADA ramps at multiple locations, and school zone signs will be upgraded to meet MUTCD standards at Ysleta Middle School. Bicycle lanes will be installed at Elvin Way between Alameda Avenue and Victor Lane. There will also be a hike & bike trail along Playa Lateral between Elvin Way and Jesuit Drive. No City match required.

COUNCIL REPRESENTATIVE BRIEFING:

Was a briefing provided? Yes or Not Applicable (Routine)
If yes, select the applicable districts.

- District 1
- District 2
- District 3
- District 4
- District 5
- District 6
- District 7
- District 8
- All Districts

PRIOR COUNCIL ACTION:

07/27/2019- Council supported resolution of support of the City's application for Safe Routes to School funding

AMOUNT AND SOURCE OF FUNDING:

FHWA Safe Routes to Schools

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

Gvette Hernandez

RESOLUTION

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

THAT the City Manager be authorized to sign an Advance Funding Agreement by and between the City of El Paso and the State of Texas, acting by and through the Texas Department of Transportation, for the Ysleta Middle School SRTS project, for the design and construction of a hike and bike trail along Playa Lateral between Elvin Way and Jesuit Drive along with school zone flashers, ADA ramps, and school zone signs, which has an estimated total project cost of \$1,030,245.00 of which the estimated local government participation amount is \$0.00.

APPROVED this _____ day of _____, 2021.

THE CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Yvette Hernandez, P.E.
Director of Grant Funded Programs

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| TxDOT: | | Federal Highway Administration: | |
| CSJ # | 0924-06-618 | CFDA No. | 20.205 |
| District # | 24 - ELP | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 13400 – City of El Paso | | |
| Project Name | Ysleta Middle School SRTS | <i>AFA Not Used For Research & Development</i> | |

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
FOR A SAFE ROUTES TO SCHOOL PROJECT**

THIS AGREEMENT (Agreement) 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.” The State and Local Government shall be collectively referred to as “the parties” hereinafter.

WITNESSETH

WHEREAS, the Local Government prepared and submitted to the State an application for consideration under the 2019 Transportation Alternatives Set-Aside (TASA)/Safe Routes to School (SRTS) Call for Projects for the project, which is briefly described as **Ysleta Middle School Safe Routes to School (SRTS) 2022** (Project); and

WHEREAS, federal law establishes federally funded programs for transportation improvements, including safe routes to school programs, to implement its public purposes; and

WHEREAS, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

WHEREAS, Title 23 U.S.C. §134 requires that Metropolitan Planning Organizations and the States’ Transportation Agencies develop transportation plans and programs for urbanized areas of the State; and

WHEREAS, the Texas Transportation Code, §201.614 directs the State to establish the Safe Routes to School Program to enhance safety in and around school areas through a construction program designed to improve the bicycle and the pedestrian safety of school age children; and

WHEREAS, Texas Administrative Code Title 43, Part 1, Chapter 25, Subchapter I, §§25.500 – 25.505 directs the State to implement the Safe Routes to School Program to enhance safety in and around school areas through a comprehensive program designed to improve the bicycle and pedestrian safety of school age children; encourage a healthy and active lifestyle from an early age; enable and

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encourage children, including those with disabilities, to walk and bicycle to school; and to facilitate projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools; and

WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of state and federal funds; and

WHEREAS, the Texas Transportation Commission passed Minute Order Number 115662 awarding funding for projects in the 2019 TASA/SRTS Call for Projects, including the Project; and

WHEREAS, the rules and procedures for the selection and administration of the Safe Routes to School Program are established in 43 Texas Administrative Code (TAC) §§25.500 et seq.; and

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated **{Enter Date of Resolution}**, which is attached to and made a part of this Agreement as Attachment A, Resolution, Ordinance, or Commissioners Court Order (Attachment A). A map showing the Project location appears in Attachment B, Project Location Map, (Attachment B) which is attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this Agreement, it is agreed as follows:

AGREEMENT

1. Period of the Agreement and Period of Performance

- A. This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.
- B. Period of Performance.
 - 1. The Performance Period for each phase of work begins on the date specified in the Federal Project Authorization and Agreement (FPAA) for that phase of work. Local Government may not begin work until issued the State Letter of Authority (SLOA) for that phase of work.
 - 2. The Performance Period for each phase of work ends on the date specified in the FPAA for that phase of work.

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2. Termination of this Agreement

- A. This Agreement may be terminated by any of the following conditions:
1. By mutual written consent and agreement of all parties.
 2. By any party with ninety (90) days written notice.
 3. By either party, upon the failure of the other party to fulfill the obligations as set forth in this Agreement. Any cost incurred due to such breach of Agreement shall be paid by the breaching party.
- B. State, at its sole discretion, may terminate this Agreement if State does not receive project invoice from Local Government within 270 days of FPAA.
- C. The termination of this Agreement shall extinguish all rights, duties, obligations, and liabilities of the State under this Agreement. If the potential termination of the Agreement 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.
- D. If the Local Government withdraws from the Project after this Agreement is executed, it shall be responsible for all direct and indirect Project costs as identified by the State's cost accounting system and with 2 CFR Part 200 requirements.
- E. The Agreement may be terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government's proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination
- F. A Project may be eliminated from the program as outlined below. If the Project is eliminated for any of these reasons, this Agreement will be appropriately terminated. A Project may be eliminated from the program and this Agreement terminated, if:
1. The Local Government fails to satisfy any requirements of the program rules cited as 43 TAC §25.500 et seq.
 2. The implementation of the Project would involve significant deviation from the activities as proposed in the application and approved by the Texas Transportation Commission.
 3. The Local Government withdraws from participation in the Project.
 4. A construction contract has not been awarded or construction has not been initiated within 3 years from project award by the Texas Transportation Commission or by a letting date determined by the State and agreed to by the Local Government.
 5. The State determines that federal funding may be lost due to the Project not being implemented and completed.

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3. Amendments

This Agreement may be amended due to changes in the work, amount of funding required to complete the Project, or responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

4. Scope of Work

The scope of work for the Project, consists of installation of school zone flashers along Independence Drive, ADA ramps at multiple locations, and school zone signs will be upgraded to meet MUTCD standards at Ysleta Middle School. Bicycle lanes will be installed at Elvin Way between Alameda Avenue and Victor Lane. There will also be a hike & bike trail along Playa Lateral between Elvin Way and Jesuit Drive.

5. Right of Way and Real Property Acquisition

- 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 Agreement, 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. 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. Local Government shall assume all costs and perform all work necessary to obtain needed evidence of title or right of use to the real property required for development of Project. Evidence of title or right of use shall be acquired in the name of (1) State, if the real property is to be made part of the State Highway System, and (2) Local Government, otherwise. The evidence of title or rights shall be acceptable to State, and be free and clear of all encroachments. Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop Project according to the approved Project plans. Local Government shall be responsible for securing any additional real property required for completion of Project.
- 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.

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- 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. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any), and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values.
- G. Condemnation shall not be used to acquire real property for this Project.
- H. 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 Agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than ten (10) years after completion, if the amount of federal investment in the project is \$1 million or less, or 20 years, if the amount of federal investment is more than \$1 million. 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.

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. At the State’s discretion, State may reimburse Local Government for minor, incidental utility adjustments that are identified during the preliminary engineering phase if they are eligible for federal reimbursement. Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, Local Government shall provide, at State’s request, a certification stating that Local Government has completed the adjustment of all utilities that must be adjusted before construction begins. Additional utility work may be required due to unknown conditions discovered during construction. These costs may be eligible for SRTS participation if the following conditions are met: (1) the activity is required to complete Project; (2) the cost is incidental to Project; and (3) SRTS funding is available. Any change orders must be approved by State prior to incurring any cost for which reimbursement is sought.

7. Environmental Assessment and Mitigation

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

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The **Local Government** is responsible for the following:

- A. The identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- B. Providing any public meetings or public hearings required for the environmental assessment process, including any public hearing requirements that may be necessary when adding a bike lane. Public hearings will not be held prior to the approval of the Project schematic.
- C. The preparation of the NEPA documents required for the environmental clearance of this Project.

The Local Government is responsible for the cost of any environmental problem’s mitigation and remediation.

If the Local Government is responsible for the environmental assessment and mitigation, 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. Certification

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, all environmental problems have been remediated, and all conflicting utilities have been adjusted.

9. Compliance with Texas Accessibility Standards and ADA

All parties to this Agreement shall ensure that the plans for and the construction of the Project subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

10. Architectural and Engineering Services

Architectural and engineering services will be provided by the **Local Government**. In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the Project is federally funded and with Government Code 2254, Subchapter A, in all cases. Professional services contracts for federally funded projects must conform to federal requirements.

- 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

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State Historic Preservation Officer, as applicable. The engineering plans shall be developed in accordance with State’s applicable Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges and the two American Association of State Highway and Transportation Officials’ (“AASHTO”) publications, “A Policy on Geometric Design of Highways and Streets” and “Guide for the Development of Bicycle Facilities,” as applicable. All design criteria for bicycle and pedestrian bridges must comply with TxDOT’s Bridge Design Manual and AASHTO’s Load and Resistance Factor Design (LRFD) Guide Specifications for the Design of Pedestrian Bridges (latest edition) 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 State in writing in advance.

- B. When architectural and engineering services are provided by or through Local Government, Local Government shall submit any plans it has completed to State for review and approval on an agreed upon schedule. Local Government may also submit the plans to State for review any time prior to completion. Local Government shall make the necessary revisions determined by State. Local Government will not let the construction contract until all required plans have received State approval.
- C. When architectural and engineering services are provided by or through State, then the State is responsible for the delivery and performance of any required architectural or preliminary engineering work. Local Government may review and comment on the work, including any proposed changes to the scope of work, as required to accomplish Project purposes. State will cooperate with Local Government in accomplishing these Project purposes to the degree permitted by state and federal law.
- D. The Local Government shall submit to the State all documentation relating to authorized costs incurred for providing 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 one hundred percent (100%) of the eligible authorized costs.

11. Construction Responsibilities

The **Local Government** is responsible for the following:

- A. 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. If the State is the responsible party, the State will use its approved contract letting and award procedures to let and award the construction contract.

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- C. If the Local Government is the responsible party, the Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting.
- D. If the Local Government is the responsible party, the State must concur with the low bidder selection before the Local Government can enter into a contract with the vendor.
- E. If the Local Government is the responsible party, the State must review and approve change orders.
- F. Upon completion of the Project, the party responsible for constructing the Project will issue and sign a “Notification of Completion” acknowledging the Project’s construction completion and submit certification(s) sealed by a professional engineer(s) licensed in the State of Texas.
- G. For federally funded contracts, the parties to this Agreement 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 635, Subpart B.
- H. 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 Agreement 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.

12. Project Maintenance

- A. Upon completion of Project, 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 or State rules, whichever is greater. Should Local Government at any time after Project completion decide it can no longer maintain and operate Project for its intended purpose, Local Government shall consult with State and the FHWA as to the disposal or alternate uses, consistent with Project’s original intent. State may require Local Government to return the federal funds in accordance with 2 CFR Part 200 federal recapture requirements. Should Local Government consider conveying the property, 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 Local Government of their intended action must be submitted to State for an FHWA review a minimum of 90 days prior to any action being taken by Local Government. 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 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.

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- B. Any manufacturer warranties extended to Local Government as a result of Project shall remain in the name of Local Government. State shall not be responsible for honoring any warranties under this Agreement.
- C. Should Local Government derive any income from the development and operation of 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 State on a quarterly basis. Monies set aside according to this provision shall be expended using accounting procedures and with the property management standards established in 2 CFR Part 200.
- 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 Project.

13. Project Sources and Uses of Funds

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- B. A Project budget estimate is provided in Attachment C, Project Estimate and Source of Funds, (Attachment C) showing the total estimated development cost of the Project. This estimate shows the itemized cost of real property, environmental assessments, 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 application approved by the Texas Transportation Commission.
- C. 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 (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for one hundred percent (100%) of the cost of any work performed under its direction or control before the Federal spending authority is formally obligated.
- D. The Project budget and source of funds estimate based on the budget provided in the application is included in Attachment C. Attachment C shows the percentage and

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estimated dollar amounts to be contributed to Project by state and local sources, as well as the maximum amount in federal SRTS funds assigned by the Commission. This Agreement may be amended from time to time as required to meet the funding commitments based on revisions to the SRTS, FPAA, or other federal documents.

- E. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment C and for overruns in excess of the amount specified in Attachment C to be paid by the Local Government. Project overruns will be evaluated by the State on a case by case basis to determine if the project will continue and how the added costs will be covered. The Local Government is responsible for any overruns not approved by the State and any operating or maintenance expenses.
- F. 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 one hundred percent (100%) of the actual cost of the work up to the amount of construction funds approved for the Project by the Texas Transportation Commission and one hundred percent (100%) of the cost to develop plans, specifications and estimates and environmental documentation, and any approved overruns. 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.
- G. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment C. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government’s requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.
- H. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government’s funding share for the estimated cost of preliminary engineering performed or reviewed by the State for the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State’s estimated construction oversight and construction cost.
- I. 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 will make payment to the State within thirty (30) days from receipt of the State’s written notification.
- J. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the “Texas Department of Transportation” or may use the State’s Automated Clearing House

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(ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.

- K. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government, the State, or the Federal Government will be promptly paid by the owing party.
- L. 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.
- M. The State will not pay interest on any funds provided by the Local Government.
- N. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, the State will not charge the Local Government for the indirect costs the State incurs on the Project, unless this Agreement is terminated at the request of the Local Government prior to completion of the Project.
- O. If the Local Government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- P. 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 Agreement.
- Q. 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.
- R. 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.
- S. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.
- T. 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.

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| Code Chart 64 # | 13400 – City of El Paso | | |
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14. Insurance

If this Agreement 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.

15. Notices, Invoices, Payments, and Project Inquiries

All notices to either party under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following addresses:

| Local Government: | State: |
|--|---|
| City of El Paso ATTN: CID Director of Grant Funding Program 218 N. Campbell El Paso, TX 79901 | Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th Street Austin, TX 78701 |

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided for in this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

Invoicing, payment, and project inquiries must be sent to the following address, which the State may change by sending written notice of the change to the Local Government.

Texas Department of Transportation
ATTN: Contract Section/ATP
13301 Gateway Blvd., West
El Paso, Texas 79928

All invoicing, payment, and project inquiries must include the following information:

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 Local Government: City of El Paso
 CSJ No.: 0924-06-618
 Project Name: Ysleta Middle School SRTS
 Highway or Roadway: Various

16. 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 provisions and this Agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

17. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

18. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State as required by the State. The originals shall remain the property of the Local Government.

19. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month 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.

20. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in

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any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

21. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement’s subject matter.

22. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the cost principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

23. Procurement and Property Management Standards

The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government’s procurement procedures for purchases to be eligible for state or federal funds.

24. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the 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 seven (7) years from the date of final reimbursement by FHWA under this Agreement 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 Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

25. Civil Rights Compliance

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national

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origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government’s obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
 2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

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26. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).

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- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

27. Disadvantaged Business Enterprise (DBE) Program Requirements

If federal funds are used:

- 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 incorporate into its contracts with subproviders 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 submit its proposed scope of services and quantity estimates to the State to allow the State to establish a DBE goal for each Local Government contract with a subprovider. The Local Government shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State’s DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation’s Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State’s DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. 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*

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termination of this Agreement or such other remedy as the recipient deems appropriate.

28. Debarment Certifications

If federal funds are used, the parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, “Debarment and Suspension.” By executing this Agreement, the Local Government certifies that it and its principals are 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, to include principals, 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 Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

29. Lobbying Certification

If federal funds are used, in executing this Agreement, each signatory certifies to the best of that signatory’s knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person

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who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

30. 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, shall:
 - 1. Obtain and provide to the State and the Federal government, a Central Contracting (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 website 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 Federal government to track the distribution of federal money. The DUNS 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 (SEC).

31. Single Audit Report

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division by email at singleaudits@txdot.gov.
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as

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follows: "We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY _____."

- D. For each year the Project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the Agreement, unless otherwise amended or the Project has been formally closed out and no charges have been incurred within the current fiscal year.

32. Remedies:

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

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33. Signatory Warranty

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

Each party is signing this Agreement on the date stated under that party's signature.

THE LOCAL GOVERNMENT

THE CITY OF EL PASO

By: _____
Tomás González, City Manager

Date

APPROVED AS TO CONTENT:



Yvette Hernandez, P.E.
Director of Grant Funding Programs

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

THE STATE OF TEXAS

Signature

Kenneth Stewart

Typed or Printed Name

Director of Contract Services

Typed or Printed Title

Date

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ATTACHMENT A
RESOLUTION, ORDINANCE OR COMMISSIONERS COURT ORDER

| | | | |
|------------------------|----------------------------------|--|--|
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**ATTACHMENT B
PROJECT LOCATION MAP**



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|-------|-------------|---------------|---------------------------|
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ATTACHMENT C
PROJECT ESTIMATE AND SOURCE OF FUNDS
 LG Performs PE Work or Hires Consultant / LG Lets Project for Construction

| Work Performed by Local Government ("LG") | | | | | | | |
|---|-----------------------------|-----------------------|------------------|---------------------|------------|--------------------------------|------------|
| Description of Project Costs to be Incurred | Total Project Cost Estimate | Federal Participation | | State Participation | | Local Government Participation | |
| | | % | Cost | % | Cost | % | Cost |
| Planning/Maps/Education/Non-CST | \$0 | 0% | \$0 | 0% | \$0 | 0% | \$0 |
| Preliminary Engineering & Environmental Documentation | \$229,261 | 100% | \$229,261 | 0% | \$0 | 0% | \$0 |
| Right of Way | \$0 | 0% | \$0 | 0% | \$0 | 0% | \$0 |
| Utilities | \$0 | 0% | \$0 | 0% | \$0 | 0% | \$0 |
| Construction Cost (Federal Funds) | \$670,167 | 100% | \$670,167 | 0% | \$0 | 0% | \$0 |
| Construction Cost (Local Funds) | \$0 | 0% | \$0 | 0% | \$0 | 0% | \$0 |
| Work by LG Subtotal | \$899,428 | | \$899,428 | | \$0 | | \$0 |
| Work Performed by the State (Local Participation paid up front by LG to TxDOT) | | | | | | | |
| Preliminary Engineering ¹ & Environmental Documentation | \$0 | 0% | \$0 | 0% | \$0 | 0% | \$0 |
| Right of Way ³ | \$0 | 0% | \$0 | 0% | \$0 | 0% | \$0 |
| Utilities ² | \$0 | 0% | \$0 | 0% | \$0 | 0% | \$0 |
| Construction Cost (Federal Funds) | \$0 | 0% | \$0 | 0% | \$0 | 0% | \$0 |
| Construction Cost (Local Funds) | \$0 | 0% | \$0 | 0% | \$0 | 0% | \$0 |
| Work by State Subtotal | \$0 | | \$0 | | \$0 | | \$0 |

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| Direct and Indirect State Costs Incurred for Review, Inspection, Administration & Oversight | | | | | | | |
|---|-----------------------------|-----------------------|------------------|---------------------|-----------------|-------------------------------------|------------|
| Description of Project Costs to be Incurred | Total Project Cost Estimate | Federal Participation | | State Participation | | Local Government (LG) Participation | |
| | | % | Cost | % | Cost | % | Cost |
| Preliminary Engineering ¹ | \$25,131 | 100% | \$25,131 | 0% | \$0 | 0% | \$0 |
| Environmental Cost ¹ | \$20,105 | 100% | \$20,105 | 0% | \$0 | 0% | \$0 |
| Right of Way ¹ | \$5,026 | 100% | \$5,026 | 0% | \$0 | 0% | \$0 |
| Utilities ¹ | \$5,026 | 100% | \$5,026 | 0% | \$0 | 0% | \$0 |
| Construction ² | \$45,237 | 100% | \$45,237 | 0% | \$0 | 0% | \$0 |
| Direct State Costs Subtotal | \$100,525 | 100% | \$100,525 | 0% | \$0 | 0% | \$0 |
| Indirect State Cost | \$30,292 | | \$0 | 100% | \$30,292 | | \$0 |
| TOTAL PARTICIPATION | \$1,030,245 | | \$999,953 | | \$30,292 | | \$0 |

- The estimated total participation by Local Government is \$0, plus 100% of overruns.
- Total estimated payment by Local Government to State is \$0.
- ¹Local Government's first payment of \$0 is due to State within 30 days from execution of this contract.
- ²Local Government's second payment of \$0 is due to State within 60 days prior to the Construction contract being advertised for bids.
- ³If ROW is to be acquired by State, Local Government's share of property cost will be due prior to acquisition.
- This is an estimate; the final amount of Local Government participation will be based on actual costs.
- Maximum federal SRTS funds available for Project are \$999,953.