

**CITY OF EL PASO, TEXAS
AGENDA SUMMARY FORM**



DEPARTMENT / COUNCIL OFFICE: CID Grant Funded Program & Fire Department

AGENDA DATE: 6/9/26

PUBLIC HEARING DATE: N/A

CONTACT PERSON NAME: Joaquin Rodriguez

PHONE NUMBER: 915-212-0065

2nd CONTACT PERSON NAME: Margaret Schroeder

PHONE NUMBER: 915-212-0065

DISTRICT(S) AFFECTED: 3, 7

AGENDA ITEM:

A resolution that the City Council hereby accepts the State Infrastructure Bank loan agreement in its substantially final form in order to secure receipt of funds in the amount of Four Hundred Fifty-Eight Thousand Dollars (\$458,000.00), to be fully repaid over no more than twenty five (25) years, for SIB loan number S2026-005-07 Playa Drain Shared Use Path, to finance the City's local match and actual cost of construction, environmental, utility relocation, engineering, and right of way acquisition of the Project, that the City Council hereby authorizes the City Manager to execute the State Infrastructure Bank loan agreement, together with all required documentation, to effectuate the City's intent to



ISSUE STATEMENT:

This action asks City Council to approve a resolution that authorizes the City Manager to execute a loan agreement for \$458,000 with the State Infrastructure Bank Transportation Loan Program to finance the City's local match and local contribution for the Playa Drain Shared Use Path Knights to Midway.

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BACKGROUND:

In April, 2025 Council approved the use of SIB loans to fund the city's match and local contribution for federally funded transportation projects. The next step is to execute loan agreements for those projects previously approved by Council. The loan for the Playa Drain Shared Use Path Knights to Midway will be used to cover the local match and local contribution for this federally funded infrastructure investment.

COUNCIL OPTIONS:

Approve the Resolution - the loan agreement will be executed
Deny the resolution - the loan agreement will not be executed

COMMITTEE REVIEW AND/OR RECOMMENDATION:

N/A

COMMUNITY AND STAKEHOLDER OUTREACH (if applicable, as an attachment) – please include:

April 10, 2025 - Financial Oversight and Audit Committee

RELATED CITY POLICIES:

NA

PRIOR COUNCIL ACTION:

April 29, 2025 - Council approved a resolution to authorize the City Manager to execute loan applications for eligible FY 25-28 transportation projects

LEGAL REVIEW:

☐

Legal counsel reviewed as a part of Council packet

☒

Legal counsel reviewed in advance of packet as an individual item

AMOUNT AND SOURCE OF FUNDING:

\$458,000 -TxDOT State Infrastructure Bank (SIB) - Transportation Loan Program

REPORTING OF CONTRIBUTION OR DONATION TO CITY COUNCIL:

N/A

NAME	AMOUNT (\$)

ATTACHMENTS:

N/A

FOR MORE INFORMATION:

Joaquin Rodriguez

915-268-5148

RodriguezJ2@elpasotexas.gov

SIGNATURE:

Joaquin
Rodriguez

Digitally signed by Joaquin
Rodriguez
Date: 2026.05.22 07:43:53 -06'00'

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

RESOLUTION

WHEREAS, the State Infrastructure Bank, operated by the Texas Department of Transportation, is a revolving loan fund; and

WHEREAS, the City of El Paso (the “City”) is developing a project for Playa Drain Shared Use Path, identified as CSJ #s 0924-06-728 (“Project”); and

WHEREAS, the City deems it proper and in the best interest of the City to execute a loan agreement from the State Infrastructure Bank in the amount of Four Hundred Fifty-Eight Thousand Dollars (\$458,000.00) to be used for the development of the Project, including the City’s local match and the actual cost of construction, environmental, utility relocation, engineering, and right of way acquisition of the Project; and

WHEREAS, the City is qualified to apply for and obtain financial assistance from the State Infrastructure Bank for this purpose; and

WHEREAS, on April 29, 2025 the City Council approved a Resolution authorizing the submission of a loan application to the State Infrastructure Bank.

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

Section 1. That the City Council hereby accepts the State Infrastructure Bank loan agreement in its substantially final form in order to secure receipt of funds in the amount of Four Hundred Fifty-Eight Thousand Dollars (\$458,000.00), to be fully repaid over no more than twenty-five (25) years, for SIB loan number S2026-005-07 Playa Drain Shared Use Path, to finance the City’s local match and actual cost of construction, environmental, utility relocation, engineering, and right of way acquisition of the Project.

Section 2. That the City Council hereby authorizes the City Manager to execute the State Infrastructure Bank loan agreement, together with all required documentation, to effectuate the City’s intent to borrow such funds.

Section 3. That the City Council further authorizes the City Manager to take or perform any actions required for implementation of this Resolution to receive funding from the State Infrastructure Bank and authorizes the City Manager, or designee, to effectuate any budget transfers and execute any contracts and/or related documents necessary to ensure that the funds are properly expended.

(Signatures begin on the following page)

APPROVED this ____ day of _____, 2026.

CITY OF EL PASO

Renard U. Johnson
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Joaquin Rodriguez, Director
CID Grant Funded Programs

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

REVISED

9:31 am, Jun 22, 2026

STATE INFRASTRUCTURE BANK LOAN AGREEMENT

This State Infrastructure Bank Loan Agreement (Agreement) is made by and between the Texas Transportation Commission (Commission) acting by and through the Texas Department of Transportation (Department), an agency of the State of Texas (State), and City of El Paso (Borrower), a political subdivision of the State of Texas, located in El Paso County, Texas.

W I T N E S S E T H

WHEREAS, the Secretary of Transportation of the United States Department of Transportation is authorized by the National Highway System Designation Act (Section 350 of Public Law 104-59) to enter into cooperative agreements with certain states, including Texas, to establish a state infrastructure bank 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, the Texas Legislature established the State Infrastructure Bank (SIB) as an account in the State Highway Fund to be administered by the Texas Transportation Commission (Transportation Code, Chapter 222, Subchapter D); and

WHEREAS, the Texas Transportation Commission has adopted rules to implement the SIB program, including eligibility criteria for financial assistance (Title 43, Texas Administrative Code (TAC), Part 1, Chapter 6); and

WHEREAS, the Borrower is developing a project in El Paso County, Texas for the Playa Drain Shared Use Paths, identified as CSJ # 0924-06-728 (Project). The Borrower is providing a local match and the actual cost of construction, environmental, engineering, utility relocation, and right of way acquisition necessary for the Project pursuant to the Advance Funding Agreement For Congestion Mitigation Air Quality (CMAQ) Off-System, dated June 5, 2024; attached hereto as **Exhibit E**; and

WHEREAS, the Borrower is a public entity in Texas and is authorized by law to construct, maintain, or finance the Borrower's local match and actual cost of the Project and may borrow money from the SIB under Texas Transportation Code §222.0745 for that purpose; and

WHEREAS, in accordance with 43 TAC §6.23, the Borrower submitted an application to the Department seeking to borrow Fourteen Million Eight Hundred Twenty-Two Thousand Dollars (\$14,822,000) from the SIB to pay for the development of five (5) metropolitan planning organization projects, including to pay for the Borrower's local match and the actual

cost of construction, environmental, engineering, utility relocation, and right of way acquisition of the Project; and

WHEREAS, in accordance with 43 TAC §6.32(c)(2): (1) the Project is consistent with the metropolitan transportation plan developed by a metropolitan planning organization, if applicable; (2) the Project will improve the efficiency of the State's transportation systems; (3) the Project will expand the availability of funding for transportation Projects or reduce direct State costs; and (4) the application shows that the Project and the applicant are likely to have sufficient revenues to assure repayment of the financial assistance; and

WHEREAS, in accordance with 43 TAC §6.32(d), if 43 TAC Chapter 2 applies to the project, as provided under 43 TAC §2.3, construction of the project, other than construction activities described in Title 23, United States Code, §101(a)(4)(A), may not begin before an environmental review under Chapter 2 is completed; and

WHEREAS, the Borrower passed a Resolution on April 29, 2025, authorizing the SIB loan application in the amount of up to Thirty-Nine Million One Hundred Twenty Thousand (\$39,120,000) for various projects including the Project. The above-referenced resolution is attached hereto as **Exhibit A**; and

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

WHEREAS, the Texas Transportation Commission, in Minute Order No. 117114 dated January 29, 2026, attached hereto as **Exhibit B**, granted final approval of the application from the Borrower to borrow up to Fourteen Million Eight Hundred Twenty-Two Thousand Dollars (\$14,822,000) from the SIB for the development of five (5) metropolitan planning organization projects identified as Railroad Drive Reconstruction, Sun Valley Street Improvements, Playa Drain Shared Used Path, Sunland Park Shared Use Path, and Traffic Management Center Updates, and authorized the Executive Director of the Department or his designee to enter into a financial assistance agreement with the Borrower to finance the Borrower's local match and the actual cost of construction, environmental, engineering, utility relocation, and right of way acquisition of the Project; and

WHEREAS, the Borrower and the Department intend to enter into five (5) separate SIB loan agreements for each of the identified projects not to exceed Fourteen Million Eight Hundred Twenty-Two Thousand Dollars (14,822,00); and

WHEREAS, the initial amounts of the SIB loan agreements will be Four Million Sixty-Seven Thousand Dollars (\$4,067,000) for SIB loan number S2026-006-08 Railroad Drive Reconstruction, Four Hundred Eighty-Four Thousand Dollars (\$484,000) for SIB loan number S2026-007-09 Sun Valley Street Improvements, Four Hundred Fifty-Eight Thousand Dollars (\$458,000) for SIB loan number S2026-005-07 Playa Drain Shared Used Path, Three Million Eight Hundred Thirteen Thousand Dollars (\$3,813,000) for SIB loan number S2026-008-10 Sunland Park Shared Use Path, and Six Million Dollars (\$6,000,000) for SIB loan number S2026-001-05 Traffic Management Center Updates; and

WHEREAS, the Borrower also passed Resolution No. on , authorizing the Borrower's City Manager to enter into this Agreement for a loan in the amount of (\$), attached hereto as **Exhibit C**; and

WHEREAS, the Borrower has submitted a certificate warranting that the proposed security is eligible to be used to repay the loan and that the financial assistance will not violate any of the borrowing or bond commitments the borrower may have in place; and

WHEREAS, the Department has determined that the money in the SIB to be used to make the loan is "secondary funds" and "financial assistance from other than general obligation bond proceeds," as those terms are used in 43 TAC Chapter 6; and

WHEREAS, the Borrower will repay the loan with funds other than federal funds.

NOW, THEREFORE, the Department and the Borrower agree as follows:

A G R E E M E N T

Article 1. Financial Assistance.

A. SIB Loan. The Department, on behalf of the Commission, will make a loan to the Borrower in the amount of Four Hundred Fifty-Eight Thousand Dollars (\$458,000) from the SIB (SIB Loan) to finance the Borrower's local match and the actual cost of construction, environmental, engineering, utility relocation, and right of way acquisition of the Project.

B. Conditions to Loan Disbursement. Prior to funds being disbursed pursuant to Article 1(C) and in accordance with 43 TAC Chapter 6, an environmental review of the Project, in compliance with the Department's environmental rules in 43 TAC Chapter 2, must be conducted as part of the Department's environmental assessment of the Project.

C. SIB Loan Disbursement. On each Disbursement Date as shown on **Exhibit D**, the Department will transfer the amounts shown in Exhibit D for a total of Four Hundred Fifty-Eight Thousand Dollars (\$458,000) from the SIB (SIB Loan Proceeds) to the Borrower for deposit with the Borrower's depository bank Wells Fargo Bank N.A., located in El Paso, Texas, into an account established by the Borrower with its depository bank or investment pool as prescribed by state law (Project Account). The Borrower shall use the SIB Loan Proceeds for payment of the Borrower's local match and the actual cost of construction, environmental, engineering, utility relocation, and right of way acquisition of the Project. The Borrower shall not use the SIB Loan Proceeds for any purpose other than that described in this Agreement.

The investment of any SIB Loan Proceeds shall be handled in a manner that complies with the Public Funds Investment Act, Texas Government Code, Chapter 2256. The SIB Loan Proceeds shall be adequately collateralized in a manner that complies with the Public Funds Collateral Act, Texas Government Code, Chapter 2257. The depository bank shall not commingle funds in the Project Account with any other funds held by the depository bank or the investment pool. If, during the course of this Agreement, the Borrower wishes to change

its depository bank or investment fund, the Borrower shall obtain the Department's approval prior to the transfer of any remaining SIB Loan Proceeds or any other funds into an equivalent account in the new depository bank or investment fund, subject to the same security and fund segregation requirements described in this Agreement.

Interest earned on the SIB Loan Proceeds can only be used to pay for eligible costs of the Project or to prepay the loan under Article 1, Section I.

D. Security Provisions.

(1) Pledge of Tax Revenues.

The Borrower hereby covenants and agrees to secure and repay the SIB Loan and accrued interest hereon pursuant to the terms of this Agreement from the Borrower's ad valorem tax revenues, and that the Department has a contractual right to and pledge of such revenues to guarantee repayment. The Borrower hereby agrees that during each year while the SIB Loan is outstanding and unpaid, the Borrower shall compute and ascertain a rate and amount of ad valorem tax that will be sufficient to raise and produce the funds required to pay the interest on the SIB Loan as such interest comes due, and to provide and maintain a sinking fund adequate to pay the principal of the SIB Loan as such principal matures (but never less than 2% of the original principal amount of the SIB Loan as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of the Borrower, with full allowance being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax is hereby levied, and is hereby ordered to be levied, against all taxable property within the Borrower's jurisdiction for each year while any of the SIB Loan is outstanding and unpaid; and said tax shall be assessed and collected each such year and deposited to the credit of the Interest and Sinking Fund (defined below). Said ad valorem taxes sufficient to provide for the payment of the interest on and principal of the SIB Loan, as such interest comes due and such principal matures, are hereby pledged to such payment, within the limits prescribed by law. The amount of taxes to be levied annually for the payment of principal of and interest on the SIB Loan shall be determined and accomplished in the following manner:

(a) The Borrower's annual budget, beginning the year in which this Agreement becomes effective, shall reflect (i) the amount of principal and interest on the SIB Loan to become due in the next succeeding Fiscal Year of the Borrower, and (ii) the amount of ad valorem tax revenues or other lawfully available funds estimated and budgeted to be available for the payment of the principal of and interest on the SIB Loan during the next succeeding Fiscal Year of the Borrower.

(b) The amount required to be provided each Fiscal Year throughout the duration of this Agreement shall be the amount, if any, by which the principal and interest to be paid on the SIB Loan in the next succeeding Fiscal Year of the Borrower exceeds the sum of (i) the amount of Pledged Revenues shown to be on deposit in the Interest and Sinking Fund (after giving effect to any payments required to be made during the remainder of the then current Fiscal Year) at the time the annual budget is prepared, and (ii) the Pledged

Revenues or other lawfully available funds shown to be budgeted and available (subject to the requirements of any prior lien obligations) for payment of said debt service requirements.

(c) The Borrower shall budget an amount of ad valorem tax revenue sufficient to pay the annual payment of the SIB Loan. Following the final approval of the annual budget of the Borrower, the governing body of the Borrower shall levy an ad valorem tax at a rate sufficient to produce taxes in the amount determined in paragraph (b) above, to be utilized for purposes of paying the principal of and interest on the SIB Loan in the next succeeding Fiscal Year of the Borrower.

(2) Perfection of Security Interest.

Chapter 1208, Texas Government Code, applies to the execution and delivery of the SIB Loan and the pledge of revenues granted by the Borrower herein, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the SIB Loan is outstanding and unpaid such that the pledge of revenues granted by the Borrower pursuant to the paragraph above is to be subject to the filing requirements of Chapter 9, Texas Business and Commerce Code, then in order to preserve to the Department the perfection of the security interest on the pledged revenues in Article I of this Agreement, the Borrower agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business and Commerce Code, and enable a filing to perfect the security interest in said pledge to occur.

E. Loan Repayment. The SIB Loan is to be repaid over a period of no more than Twenty Five (25) years, with a final maturity date of August 15, 2050, in accordance with the amortization schedule attached to this Agreement as **Exhibit D**. Principal due on the SIB Loan shall be due annually beginning on August 15, 2026, and on each August 15 thereafter including the final principal payment date as shown on **Exhibit D** attached hereto (each a Principal Payment Date), and in the amounts (each a Principal Payment) as shown on **Exhibit D** attached hereto.

The SIB Loan shall bear interest from the Deposit Date as shown on **Exhibit D** at the rate of 3.44% per annum (Loan Rate), such interest to be calculated on the basis of a 360-day year composed of twelve 30-day months (each an Interest Payment). Interest Payments will be due annually beginning on August 15, 2026, and on each August 15 thereafter in the years as shown on **Exhibit D** attached hereto (each an Interest Payment Date). The Principal Payment Dates and the Interest Payment Dates are collectively referred to as (Payment Dates). If a Payment Date is not on a business day, the Interest Payment and/or Principal Payment due shall be made on the next following business day.

F. Draw of Funds from Project Account. SIB Loan funds in the Project Account shall only be drawn upon by the Borrower and used for Project costs as described in this Agreement. All draws from the Project Account for such costs related to the Project shall be in accordance with a requisition prepared by or approved by the Borrower, and all such requisitions and Project costs shall be subject to the review and approval of the Department.

G. Interest and Sinking Fund. The Borrower shall establish at its depository bank a SIB Loan Interest and Sinking Fund. Interest Payments due on the SIB Loan and each Principal Payment due on the SIB Loan shall be deposited into this Interest and Sinking Fund by the Borrower prior to each Payment Date. On or before each Payment Date, the Borrower shall cause its depository bank to transfer from the SIB Loan Interest and Sinking Fund to the Department, the applicable Interest Payment and/or Principal Payment as set forth in this Agreement.

H. Advances. The repayment of all or any portion of the SIB Loan shall not entitle the Borrower to any subsequent advances from the Department, nor shall the Department have any obligation to advance to or for the benefit of the Borrower any amount in excess of the SIB Loan. All costs incurred by the Borrower for its portion of the Project in excess of the par amount of the SIB Loan shall be the responsibility of the Borrower.

I. Prepayment.

(1) Voluntary Prepayment. Principal due on the SIB Loan and interest accrued at the Loan Rate through and including the date of prepayment may be prepaid by the Borrower without penalty, in whole or in part, on any business day.

(2) Mandatory Prepayment. Should the Project or this Agreement be terminated for any reason or should any amounts of disbursed SIB Loan Proceeds not be applied to pay Project costs, the Borrower shall return any misapplied SIB Loan Proceeds or unexpended portion of the SIB Loan Proceeds to the Department as a prepayment.

(3) Application of Prepayments. Upon receipt of a prepayment from the Borrower of a portion (and not the whole) of the outstanding principal amount of the SIB Loan the Department shall apply such prepayment to the outstanding principal due on the SIB Loan;

(4) Upon either voluntary or mandatory prepayment, the remaining principal due on the SIB Loan will be re-amortized over the term of the SIB Loan and **Exhibit D** will be revised by the Department to reflect the remaining Principal Payments and the revised Interest Payments due; and

(5) Such revised **Exhibit D** shall be submitted to the Borrower to be attached to and become an integral part of this Agreement.

J. Late Payment. Payments not received by the applicable Payment Date will bear interest at the Loan Rate (with overdue interest as well as overdue principal bearing interest) until paid. Such additional interest shall be calculated by the Department on the basis of a 360-day year composed of twelve 30-day months. The parties may prepare a revised **Exhibit D** (amortization schedule) showing the increase in interest due resulting from late payment, default, or pursuant to other terms and conditions of this Agreement.

K. Payment with Federal Funds. The Borrower hereby covenants and agrees that federal funds will not be used to make payments due on the SIB Loan.

L.

Article 2. Use of SIB Loan for Project Costs

The Borrower is developing the Project. The Borrower is responsible to fund the local match and the actual cost of construction, environmental, engineering, utility relocation, and right of way acquisition of the Project. The Borrower may use the SIB Loan only for the actual costs incurred by the Borrower for such local match and the actual cost of construction, environmental, engineering, utility relocation, and right of way acquisition necessary for the construction of the Project as detailed in this Agreement.

Article 3. Project Responsibilities for Projects

A. The SIB Loan Proceeds are “secondary funds” and “financial assistance from other than general obligation bond proceeds,” as those terms are used in 43 TAC Chapter 6. However, if any federal funds will be used to pay for, or reimburse costs of, the Project, with respect to work on the Project, the Borrower and the Department are required to comply with the requirements of the United States Code, Title 23, for federal-aid highways. The Borrower and the Department must conduct all right-of-way or other land acquisitions, relocations, and utility adjustments in accordance with the United States Code, Title 42 – The Public Health and Welfare, Chapter 61 – Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs (the Uniform Act) and the regulations issued thereunder.

B. The Borrower is responsible for funding its portion of Project costs in compliance with all applicable federal, state, and local laws, regulations, policies, and ordinances. The Department has certain rights and responsibilities related to the Project, including ensuring that the completion of the Project is performed in compliance with all applicable laws, regulations, and policies.

C. For state highway improvement project, all plans and specifications for the Project shall be in compliance with the current editions of the design and construction manuals of the Department, and the Standard Specifications for the Construction and Maintenance of Highways, Streets, and Bridges (the “Standard Specifications”), as they may apply. For work on projects not on the state highway system, plans and specifications must be, at a minimum, in compliance with applicable American Association of State Highway and Transportation Officials (AASHTO) design standards.

D. All construction plans shall be signed and dated by a professional engineer licensed by the State of Texas.

E. The actions and decisions regarding the Project made by the Department shall not be contestable by the Borrower.

F. The Borrower shall provide the Department and the Federal Highway Administration, or their authorized representatives, with right of entry or access to all properties or locations necessary to perform the work for the Project, inspect the work, or otherwise aid in the prompt pursuit of the work. The Borrower shall also provide the Department, 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 Borrower which are pertinent to the Project or its

financing as described in this Agreement, in order to make audits, examinations, excerpts, and transcripts, or to complete the Project accounting described in this Agreement.

Article 4. Project Accounting; Filing of Reports; Retention of Records

A. The Borrower shall account for: (i) all actual costs associated with the Borrower's local match and actual cost of the Project, and (ii) disbursements made to the Department, if any, associated with the Project using generally accepted accounting principles in the United States, as promulgated by the Governmental Accounting Standards Board or the Financial Accounting Standards Board, or pursuant to applicable federal or state laws or regulations. The Borrower shall maintain its books and records in accordance with generally accepted accounting principles in the United States, as promulgated by the Governmental Accounting Standards Board or the Financial Accounting Standards Board, or pursuant to applicable federal or State laws or regulations, and with all other applicable federal and state requirements. The Borrower will make its accounting records available at reasonable times to the Department for inspection during performance of the Borrower's work related to the Project and upon its completion.

B. On each Principal Payment Date (until the next Principal Payment Date occurring after the year in which all SIB Loan Proceeds are expended), in a format prescribed by the department, the Borrower shall provide to the Department (one copy to the Department's District Office and one copy to the Department's SIB Administration Office) an accounting of the SIB Loan Proceeds expended (Annual Expenditure Report).

C. The Borrower shall also, at the Borrower's cost, have a full audit of its books and records performed annually by an independent certified public accountant selected by the Borrower and reasonably acceptable to the Department. The audit must be conducted in accordance with generally accepted auditing standards promulgated by the Financial Accounting Standards Board, the Governmental Accounting Standards Board, or the standards of the Office of Management and Budget Circular A-133, Audits of States, Local Governments and Non-profit Organizations, as applicable, and with all other applicable federal and state requirements. The Borrower shall cause the auditor to provide a full copy of the audit report and any other management letters or auditor's comments directly to the Department within a reasonable period of time after an audit report and any related documents have been provided to the Borrower's governing body.

D. The State Auditor may conduct an audit or investigation of the Borrower with respect to the funds received from the Department directly under this Agreement or of the payments received by third parties from the Borrower using the SIB Loan Proceeds. Acceptance of funds directly under this Agreement or indirectly through payments using SIB Loan Proceeds 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.

E. The Borrower shall retain all original Project files, records, accounts, and supporting documents relating to the relocation of Borrower utilities needed for the Project until the later of the date that: (1) the Project is completed; (2) the SIB Loan has been paid in full; or (3)

the retention period required by State and federal law ends. The Borrower shall retain, or cause its auditor to retain, all work papers and reports relating to an audit performed pursuant to this Agreement until the fourth anniversary of the date of the audit report, unless the Department notifies the Borrower in writing of a later date for the end of the retention period. During the retention period, the Borrower shall make audit work papers available to the Department within 30 days of the date that the Department requests those papers.

F. All information submitted by the Borrower (annual financial/disclosure information and notices) to the Electronic Municipal Market Access ("EMMA") System of the Municipal Securities Rulemaking Board with respect to the Borrower's bonds and other similar obligations payable from the same revenues as the SIB Loan must be submitted to the Department, within 30 days of posting to EMMA. Such information may be submitted to the Department by hard copy or by notification to the Department of the Borrower's posting with EMMA, together with the applicable CUSIP number(s).

G. The Borrower shall submit to the Department within 30 days of the date of adoption the annual operating and capital budgets adopted by the Borrower each fiscal year under a trust agreement, indenture, bond resolution or ordinance, or equivalent document securing bonds or other obligations issued for a Project, and any amended or supplemental operating or capital budget, approved by the Borrower and certified as correct by its chief administrative officer or chief financial officer.

Article 5. Default

A. The Borrower shall be in default if it fails to repay the SIB Loan (the Principal Payments and the Interest Payments) or otherwise fails to comply with any term of this Agreement. The Department shall not be obligated to take further action nor resume its obligations under this Agreement until the Borrower is no longer in default. The Borrower shall reimburse the Department for all costs or other losses of funds resulting from any default or failure to perform by the Borrower.

B. The Borrower agrees that in the event of a default under this Agreement the Department may, by all legal and equitable means, require the Borrower and any appropriate official of the Borrower (acting solely in his/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. Venue for any legal proceedings shall be in Travis County, Texas.

Article 6. Borrower Solely Responsible

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

Article 7. Termination

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 this Agreement;
- B. If the Department is unable to advance the SIB Loan Proceeds to the Borrower, the Department shall terminate this Agreement and provide written notice thereof to the Borrower;
- C. If the Borrower is in default on a Principal Payment or Interest Payment required under this Agreement, the Department may declare this Agreement to be terminated, or may exercise any of the rights granted the Department in this Agreement; but the payment obligations of the Borrower shall survive any such termination and shall continue in effect until discharged and satisfied; and
- D. Upon repayment in full by the Borrower of the SIB Loan, and compliance by the Borrower with all other requirements of this Agreement, the Department shall execute and deliver to the Borrower a letter or other notice of payment, provided that, upon the execution and delivery of the written notice of payment by the Department, 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 8. Notices

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

Texas Transportation Commission: Texas Department of Transportation Attn: Project Finance and Toll Operations Division SIB Administration 125 East 11 th Street Austin, TX 78701-2483 TexasSIB@txdot.gov	Borrower: City of El Paso Attn: Deputy City Manager – CFO 300 N. Campbell El Paso, TX 79901 rodriguezj2@elpasotexas.gov
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All notices shall be deemed so delivered or deposited in the mail, unless otherwise provided herein. A party may change the above address by sending written notice of the change to the other party in the manner stated in this Article.

Article 9. 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. In particular, but not by way of limitation, should all or any part of the pledge of security in this Agreement for any reason be held invalid, illegal or unenforceable in any respect, Borrower's obligations under this Agreement shall be treated as current expenses of the Borrower subject to the annual appropriation of lawfully available funds by the governing body of the Borrower for the payment of such obligations.

Article 10. 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. Notwithstanding the foregoing, revisions to **Exhibit D** that occur as contemplated in this Agreement must be in writing, but are not required to be executed by either party. Any amendment relating to the amount of the SIB Loan Proceeds shall not exceed an aggregate of Fourteen Million Eight Hundred Twenty-Two Thousand Dollars (\$14,822,000) for SIB loan numbers S2026-006-08 Railroad Drive Reconstruction, S2026-007-09 Sun Valley Street Improvements, S2026-005-07 Playa Drain Shared Used Path, S2026-008-10 Sunland Park Shared Use Path, and S2026-001-05 Traffic Management Center Updates.

Article 11. Successors and Assigns

Except as provided in the next following sentence, this Agreement shall bind, and shall be for the sole and exclusive benefit of, the respective parties. 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 12. 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 Department and the Borrower.

Article 13. 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 14. 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 Department and the Borrower, as applicable, is fully authorized to bind that entity to the terms of this Agreement.

Article 15. Taxable Obligations

The SIB Loan is not a “state or local bond” within the meaning of section 103(a) and (c) of the Internal Revenue Code of 1986, as amended; therefore, the interest on the SIB Loan is not excludable from the gross income of the holders thereof for federal income tax purposes.

*****SIGNATURE PAGES FOLLOW*****

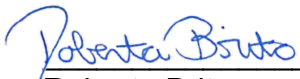
Each party is signing this Agreement on the date stated next to that party's signature.

CITY OF EL PASO

By: _____
Dionne Mack
City Manager
City of El Paso

Date: _____

Approved As To Form:



Roberta Brito
Senior Assistant City Attorney

TEXAS DEPARTMENT OF TRANSPORTATION

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: _____
Benjamin H. Asher
Project Finance and Toll Operations Division Director
Texas Department of Transportation

Date: _____

EXECUTION PAGE: SIB #S2026-005-07-01

EXHIBIT A

BORROWER'S RESOLUTION(S) AUTHORIZING LOAN APPLICATION

RECEIVED

By City Clerk's Office at 2:22 pm, Apr 16, 2025

RESOLUTION

WHEREAS, the State Infrastructure Bank, operated by the Texas Department of Transportation, is a revolving loan fund; and

WHEREAS, the estimated cost of the City of El Paso's portion of eligible transportation projects for FY 2025 through FY 2028 is \$39,120,000.00; and

WHEREAS, the City Council for the City of El Paso deems it proper and in the best interest of the City of El Paso ("City") to apply for loans from the State Infrastructure Bank in an amount not to exceed \$39,120,000.00 to be used towards the cost of the City of El Paso's portion of eligible transportation projects, including, but not limited to, roadway construction, right of way acquisition, utility relocation, local match and contingency costs; and

WHEREAS, the City is qualified to apply for and obtain financial assistance from the State Infrastructure Bank for this purpose.

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

THAT the City Council finds it is in the best interest of the City of El Paso to apply for loans from the State Infrastructure Bank in an amount not to exceed \$39,120,000.00 to be used towards the cost of the City's portion of eligible transportation projects for FY 2025 through FY 2028, including, but not limited to, roadway construction, right of way acquisition, utility relocation, and local match costs.

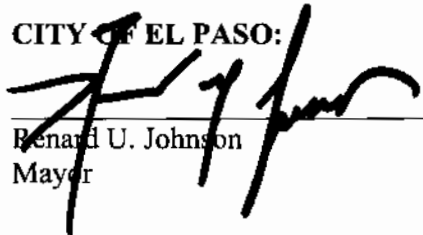
THAT the City Council hereby authorizes the City Manager, or designee, to execute loan applications for eligible transportation projects from FY 2025 through FY 2028 from the State Infrastructure Bank and to submit the applications, together with all required documentation, to the Texas Department of Transportation for consideration.

THAT the list of applications to be submitted is attached hereto as Exhibit A and made a part hereof for all purposes.

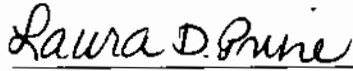
(Signatures begin on the following page)

APPROVED this 29th day of April, 2025.

CITY OF EL PASO:

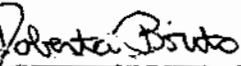

Bernard U. Johnson
Mayor

ATTEST:



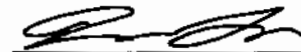
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Joaquin Rodriguez
CID Grant Funded Programs Director

EXHIBIT A

Project Name	Year of Expenditure
FY 24	
Sean Haggerty Connection	FY 25
FY 25-28	
TMC Upgrades	FY 26
CBD IV	FY 26
Railroad Dr Reconstruction	FY 26
Playa Drain SUP	FY 26
SS4A	FY 26
Buffalo Soldier Reconstruction	FY 27
Sun Valley Dr Improvements	FY 27
Sunland Park SUP	FY 27
Grouped Projects (Active Transportation less than \$1M)	
Downtown Bicycle Infrastructure	FY 25
McRae SUP Ph1 & Ph2	FY 25
Connected Bike Lanes TASA	FY 25
Border Traveler and Cargo ITS	FY 28
Video Surveillance & Count Stns Ph II	FY 28
Brown St Shared Use Path	FY 28
Shadow Mountain Dr SUP	FY 28

EXHIBIT B

TEXAS TRANSPORTATION COMMISSION MINUTE ORDER

TEXAS TRANSPORTATION COMMISSIONVarious Counties**MINUTE ORDER**

Page 1 of 2

Various Districts

The applicants listed in exhibit A have each submitted an application for financial assistance in the form of a loan from the State Infrastructure Bank (SIB) under Transportation Code, Chapter 222, Subchapter D, and Title 43 Texas Administrative Code (TAC), Chapter 6 (SIB Rules). Each application satisfies all requirements of the rules, including passage of a resolution authorizing submission of the application to the Texas Department of Transportation (department).

The intended use of the financial assistance conforms to the purposes of the SIB. Each applicant intends to use the financial assistance to pay for eligible project costs to perform work on various projects in various counties in Texas, as detailed in exhibit A.

The present and projected financial condition of the SIB is sufficient to cover the requested financial assistance for the projects.

In accordance with the SIB Rules, the executive director has negotiated all the terms of an agreement with each applicant as necessary to protect the public's safety and to prudently provide for the protection of public funds while furthering the purposes of the SIB, as contained in exhibit A.

The SIB Rules provide for both preliminary and final approval by the Texas Transportation Commission (commission) of any SIB loan in the principal amount of more than \$10 million or in which the department does not have primary responsibility, unless the commission waives the preliminary approval requirement for that application. The commission has considered the financial condition of the bank, complexity and size of the project, the type of infrastructure or asset involved, the type and complexity of the financial assistance requested, the financial status of the applicant, the financial feasibility of the project, and the need to expedite the financing of the project and has determined to waive the preliminary approval requirement for the city of El Paso, city of Granbury and RCH Water Supply Corporation SIB loan applications, as listed in exhibit A.

The executive director or his designee implemented actions authorized and required by the SIB Rules for final approval. The executive director recommends that the commission grant final approval of the applications listed in exhibit A for financial assistance from the SIB up to the amount listed for each project.

In accordance with the SIB Rules, the commission finds that:

1. the projects listed in exhibit A are consistent with the metropolitan transportation plan developed by the applicable metropolitan planning organization, if appropriate;

TEXAS TRANSPORTATION COMMISSIONVarious Counties**MINUTE ORDER**

Page 2 of 2

Various Districts

2. the projects listed in exhibit A will improve the efficiency of the state's transportation systems;

3. the projects listed in exhibit A will expand the availability of funding for transportation projects or reduce direct state costs;

4. the applications submitted show that the applicants listed in exhibit A are likely to have sufficient revenues to assure repayment of the financial assistance; and

5. providing financial assistance to each applicant listed in exhibit A will protect the public's safety and prudently provide for the protection of public funds, while furthering the purposes of the SIB.

IT IS THEREFORE DETERMINED AND ORDERED by the commission that each application listed in exhibit A submitted for financial assistance in the form of a loan from the SIB meets the applicable requirements of the SIB Rules and, in accordance with those provisions, the commission grants final approval of the applications for SIB loans under the terms contained within exhibit A up to the amount listed for each project to pay for the eligible project costs necessary for the projects.

IT IS FURTHER ORDERED by the commission that the executive director or his designee is directed and authorized to enter into financial assistance agreements for each of the attached SIB loan requests, which comply with the SIB Rules and which contains the terms attached hereto as exhibit A.

Submitted and reviewed by:

Recommended by:

Signed by:

Benjamin H. Asher

E40135FC36E4474...

Director, Project Finance & Toll Operations Division

DocuSigned by:

Mark Williams

0E1B35AE191749E...

Executive Director

117114 January 29, 2026

 Minute
Number

 Date
Passed

Exhibit A

State Infrastructure Bank Loan Terms

Applicant	Loan Amount (up to)	Pledged Collateral	Term to Maturity (up to)	Initial Repayment Deferral	Interest Rate	Project Description
City of El Paso (S2026-001-05)	\$14,822,000	Ad-valorem Tax Revenues	25 years	N/A	3.44%	Development of five (5) MPO projects identified as Railroad Drive Reconstruction, Sun Valley Street Improvements, Playa Drain and Sunland Park Shared Use Paths, and Traffic Management Center Updates in El Paso County, Texas.
City of Granbury (S2026-002-01)	\$16,800,000	Utility Revenues	20 years	N/A	3.99%	Utility relocation necessary for a non- tolled, on-system project to widen US 377 in Hood County, Texas
RCH Water Supply Corporation (S2025-006-01)	\$17,400,000	Contract Revenues and Utility Revenues	25 years	N/A	4.55%	Utility relocation necessary for a non- tolled, on-system project to widen SH 205 in Rockwall County, Texas

EXHIBIT C

BORROWER'S RESOLUTION AUTHORIZING LOAN AGREEMENT

EXHIBIT D
AMORTIZATION SCHEDULE

LOAN SCHEDULE REPORT

EXHIBIT D - AMORTIZATION SCHEDULE

Loan Schedule for El Paso S2026-005-07									
Term Number	Date	Loan Rate	Start Balance	Disbursement	Payment Due Amount	Principal Payment	Interest Payment	Interest Capitalized	End Balance
1	5/15/2026	3.44%	\$0.00	\$128,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$128,000.00
2	8/15/2026	3.44%	\$128,000.00	\$0.00	\$27,000.00	\$25,899.20	\$1,100.80	\$0.00	\$102,100.80
3	8/15/2027	3.44%	\$102,100.80	\$0.00	\$27,000.00	\$23,487.73	\$3,512.27	\$0.00	\$78,613.07
4	3/1/2028	3.44%	\$78,613.07	\$330,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$408,613.07
5	8/15/2028	3.44%	\$408,613.07	\$0.00	\$18,347.04	\$11,943.62	\$6,403.42	\$0.00	\$396,669.45
6	8/15/2029	3.44%	\$396,669.45	\$0.00	\$25,999.91	\$12,354.48	\$13,645.43	\$0.00	\$384,314.97
7	8/15/2030	3.44%	\$384,314.97	\$0.00	\$25,999.91	\$12,779.48	\$13,220.43	\$0.00	\$371,535.49
8	8/15/2031	3.44%	\$371,535.49	\$0.00	\$25,999.91	\$13,219.09	\$12,780.82	\$0.00	\$358,316.40
9	8/15/2032	3.44%	\$358,316.40	\$0.00	\$25,999.91	\$13,673.83	\$12,326.08	\$0.00	\$344,642.57
10	8/15/2033	3.44%	\$344,642.57	\$0.00	\$25,999.91	\$14,144.21	\$11,855.70	\$0.00	\$330,498.36
11	8/15/2034	3.44%	\$330,498.36	\$0.00	\$25,999.91	\$14,630.77	\$11,369.14	\$0.00	\$315,867.59
12	8/15/2035	3.44%	\$315,867.59	\$0.00	\$25,999.91	\$15,134.06	\$10,865.85	\$0.00	\$300,733.53
13	8/15/2036	3.44%	\$300,733.53	\$0.00	\$25,999.91	\$15,654.68	\$10,345.23	\$0.00	\$285,078.85
14	8/15/2037	3.44%	\$285,078.85	\$0.00	\$25,999.91	\$16,193.20	\$9,806.71	\$0.00	\$268,885.65
15	8/15/2038	3.44%	\$268,885.65	\$0.00	\$25,999.91	\$16,750.24	\$9,249.67	\$0.00	\$252,135.41
16	8/15/2039	3.44%	\$252,135.41	\$0.00	\$25,999.91	\$17,326.45	\$8,673.46	\$0.00	\$234,808.96
17	8/15/2040	3.44%	\$234,808.96	\$0.00	\$25,999.91	\$17,922.48	\$8,077.43	\$0.00	\$216,886.48
18	8/15/2041	3.44%	\$216,886.48	\$0.00	\$25,999.91	\$18,539.02	\$7,460.89	\$0.00	\$198,347.46
19	8/15/2042	3.44%	\$198,347.46	\$0.00	\$25,999.91	\$19,176.76	\$6,823.15	\$0.00	\$179,170.70
20	8/15/2043	3.44%	\$179,170.70	\$0.00	\$25,999.91	\$19,836.44	\$6,163.47	\$0.00	\$159,334.26
21	8/15/2044	3.44%	\$159,334.26	\$0.00	\$25,999.91	\$20,518.81	\$5,481.10	\$0.00	\$138,815.45
22	8/15/2045	3.44%	\$138,815.45	\$0.00	\$25,999.91	\$21,224.66	\$4,775.25	\$0.00	\$117,590.79



LOAN SCHEDULE REPORT

Loan Schedule for El Paso S2026-005-07

Term Number	Date	Loan Rate	Start Balance	Disbursement	Payment Due Amount	Principal Payment	Interest Payment	Interest Capitalized	End Balance
23	8/15/2046	3.44%	\$117,590.79	\$0.00	\$25,999.91	\$21,954.79	\$4,045.12	\$0.00	\$95,636.00
24	8/15/2047	3.44%	\$95,636.00	\$0.00	\$25,999.91	\$22,710.03	\$3,289.88	\$0.00	\$72,925.97
25	8/15/2048	3.44%	\$72,925.97	\$0.00	\$25,999.91	\$23,491.26	\$2,508.65	\$0.00	\$49,434.71
26	8/15/2049	3.44%	\$49,434.71	\$0.00	\$25,999.91	\$24,299.36	\$1,700.55	\$0.00	\$25,135.35
27	8/15/2050	3.44%	\$25,135.35	\$0.00	\$26,000.01	\$25,135.35	\$864.66	\$0.00	\$0.00



EXHIBIT E

ADVANCE FUNDING AGREEMENT
FOR SURFACE TRANSPORTATION PROGRAM (STP-MM RECONSTRUCTION
PROJECT) OFF-SYSTEM, DATED JUNE 5, 2024

TxDOT:				Federal Highway Administration:	
CCSJ #	0924-06-728	AFA ID	Z00009024	CFDA No.	20.205
AFA CSJs	0924-06-728			CFDA Title	Highway Planning and Construction
District #	24	Code Chart 64#	13400		
Project Name	Playa Drain Path (Yarbrough to Midway)			AFA Not Used For Research & Development	

STATE OF TEXAS §

COUNTY OF TRAVIS §

ADVANCE FUNDING AGREEMENT **For** **Congestion Mitigation Air Quality (CMAQ)** **Off-System**

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, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, 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 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, the Texas Transportation Commission passed Minute Order Number **116522** authorizing the State to undertake and complete a highway improvement or other transportation project generally described as **Bicycle and Pedestrian Improvements along Playa Drain**. The portion of the project work covered by this Agreement is identified in the Agreement, Article 3, Scope of Work (Project), and

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated **April 23, 2024**, which is attached to and made a part of this Agreement as Attachment C, Resolution, Ordinance, or Commissioners Court Order (Attachment C). A map showing the Project location appears in Attachment A, Location Map Showing Project (Attachment A), which is attached to and made a part of this Agreement.

TxDOT:				Federal Highway Administration:	
CCSJ #	0924-06-728	AFA ID	Z00009024	CFDA No.	20.205
AFA CSJs	0924-06-728			CFDA Title	Highway Planning and Construction
District #	24	Code Chart 64#	13400		
Project Name	Playa Drain Path (Yarbrough to Midway)			<i>AFA Not Used For Research & Development</i>	

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. Responsible Parties:

For the Project covered by this Agreement, the parties shall be responsible for the following work as stated in the article of the Agreement referenced in the table below:

1.	N/A	Utilities	Article 8
2.	Local Government	Environmental Assessment and Mitigation	Article 9
3.	Local Government	Architectural and Engineering Services	Article 11
4.	Local Government	Construction Responsibilities	Article 12
5.	N/A	Right of Way and Real Property	Article 14

2. Period of the Agreement

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.

3. Scope of Work

The scope of work for the Project consists of the design and construction of Bicycle and Pedestrian Improvement along the Playa Drain path, from Yarbrough Drive to Midway Drive.

4. Project Sources and Uses of Funds

The total estimated cost of the Project is shown in Attachment B, Project Budget (Attachment B) which is attached to and made a part of this Agreement.

- 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. If federal funds are being used, the training must be completed 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 and Qualification for the Texas Department of Transportation" and retains qualification in accordance with applicable TxDOT procedures. Upon request, 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 continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

TxDOT:				Federal Highway Administration:	
CCSJ #	0924-06-728	AFA ID	Z00009024	CFDA No.	20.205
AFA CSJs	0924-06-728			CFDA Title	Highway Planning and Construction
District #	24	Code Chart 64#	13400		
Project Name	Playa Drain Path (Yarbrough to Midway)			AFA Not Used For Research & Development	

- B. The expected cash contributions from the federal government, the State, the Local Government, or other parties are shown in Attachment B. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission. For projects with federal funds, the State and the federal government will not reimburse the Local Government for any work performed before the 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 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- C. Attachment B shows, by major cost categories, the cost estimates and the party responsible for performing the work for each category. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- D. The State will be responsible for securing the federal and State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- 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 B and for overruns in excess of the amount specified in Attachment B to be paid by the Local Government.
- F. The budget in Attachment B will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.
- G. When the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State's written notification of additional funds being due.
- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment B. 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.
- I. 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 B. At a minimum, this amount shall equal the Local Government's funding share for the

TxDOT:				Federal Highway Administration:	
CCSJ #	0924-06-728	AFA ID	Z00009024	CFDA No.	20.205
AFA CSJs	0924-06-728			CFDA Title	Highway Planning and Construction
District #	24	Code Chart 64#	13400		
Project Name	Playa Drain Path (Yarbrough to Midway)			AFA Not Used For Research & Development	

- 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.
- J. 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.
- K. 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 (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.
- L. The State will not pay interest on any funds provided by the Local Government.
- M. 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.
- N. 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.
- O. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, 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.
- P. Upon completion of the Project, the State will perform a final accounting of the Project costs for all items of work with specified percentage funding. Any funds due by the Local Government, the State, or the federal government for these work items will be promptly paid by the owing party.
- Q. 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.
- R. 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.

TxDOT:				Federal Highway Administration:	
CCSJ #	0924-06-728	AFA ID	Z00009024	CFDA No.	20.205
AFA CSJs	0924-06-728			CFDA Title	Highway Planning and Construction
District #	24	Code Chart 64#	13400		
Project Name	Playa Drain Path (Yarbrough to Midway)			AFA Not Used For Research & Development	

5. Termination of This Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The Agreement is terminated by one party because of a breach, in which case any costs incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D. The Agreement is 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; or
- E. The Project is inactive for thirty-six (36) consecutive months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this Agreement.

6. Amendments

Amendments to this Agreement due to changes in the character of the work, terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

7. 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.

8. Utilities

The party named in Article 1, Responsible Parties, under AGREEMENT shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or State funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is commenced.

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9. 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. The party named in Article 1, Responsible Parties, under AGREEMENT 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. The cost of any environmental problem's mitigation and remediation.
- C. Providing any public meetings or public hearings required for the environmental assessment process. Public hearings will not be held prior to the approval of the Project schematic.
- D. The preparation of the NEPA documents required for the environmental clearance of this Project.

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.

10. Compliance with Accessibility Standards

All parties to this Agreement shall ensure that the plans for and the construction of all projects 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).

11. Architectural and Engineering Services

The party named in Article 1, Responsible Parties, under AGREEMENT has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. For projects on the State highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the State highway system, the design shall, at a minimum, conform to applicable American Association of State Highway and Transportation Officials (AASHTO) design standards.

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 Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters. If the Local Government is the responsible party, the Local Government shall submit its procurement selection process for prior approval by the

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State. All professional services contracts must be reviewed and approved by the State prior to execution by the Local Government.

12. Construction Responsibilities

The party named in Article 1, Responsible Parties, under AGREEMENT 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.
- 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.

13. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the State highway system after completion of the work if the work was on the State highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

14. Right of Way and Real Property

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the provision and acquisition of any needed right of way or real property.

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The Local Government shall be responsible for the following:

- 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.
- B. 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.
- C. All parties to this Agreement 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.
- D. The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
- E. In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this Agreement and the obligation of federal spending authority.
- F. 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.
- G. 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

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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. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.

- H. Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed eighty percent (80%) of the State's predetermined value of each parcel, or the net cost of the parcel, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.
- I. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this Agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. The separate agreement must be approved by the State prior to its execution. A copy of the executed agreement shall be provided to the State.

15. 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.

16. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

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Local Government:		State:	
The City of El Paso ATTN: CID Director of Grant Funded Programs PO Box 1890 El Paso, Texas 79950-1890		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 delivered in person or deposited in the mail, unless otherwise provided by 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 notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

17. Legal Construction

If 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.

18. 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.

19. 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 and information 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, in the format directed by the State, on a monthly basis or as required by the State. The originals shall remain the property of the Local Government.

20. Compliance with Laws

The parties to this Agreement 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 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.

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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 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

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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.

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).

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- 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).
- 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

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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 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

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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 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

If federal funds are used, the following requirements apply:

- A. Any 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://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
 1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award

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provides more than \$25,000 in federal funding. The SAM number may be obtained by visiting the SAM website whose address is:

<https://www.sam.gov/portal/public/SAM/>

2. Obtain and provide to the State 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 five executives to the State if:
 - i. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

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 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. Signatory Warranty

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

TxDOT:				Federal Highway Administration:	
CCSJ #	0924-06-728	AFA ID	Z00009024	CFDA No.	20.205
AFA CSJs	0924-06-728			CFDA Title	Highway Planning and Construction
District #	24	Code Chart 64#	13400		
Project Name	Playa Drain Path (Yarbrough to Midway)			AFA Not Used For Research & Development	

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

THE STATE OF TEXAS

DocuSigned by:
Kenneth Stewart
F1CDA80FDB8C4B6...
Signature
Kenneth Stewart

Typed or Printed Name
Director, Contract Services

Typed or Printed Title
6/5/2024

Date

THE LOCAL GOVERNMENT

THE CITY OF EL PASO

DocuSigned by:
By: Dionne Mack
Dionne Mack for Interim City Manager, Col. Cary Westin
6/5/2024

Date

APPROVED AS TO CONTENT:

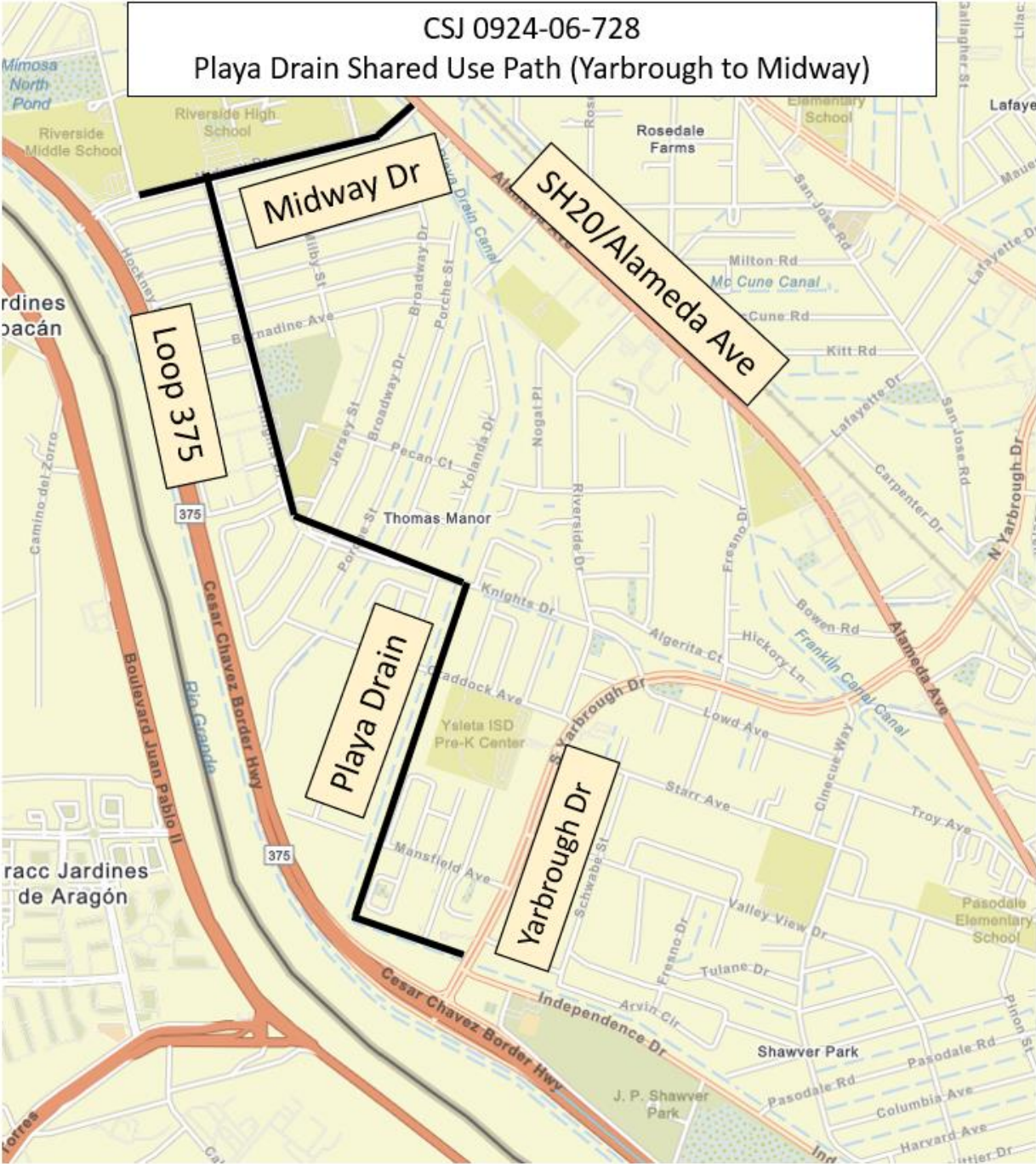
DocuSigned by:
Joaquin Rodriguez
9037ADB34155444
6/5/2024
Joaquin Rodriguez, AICP
CID Grant Funded Program Director

APPROVED AS TO FORM:

DocuSigned by:
Roberta Brito
FDDC7C3305474
6/5/2024
Roberta Brito
Senior Assistant City Attorney

TxDOT:				Federal Highway Administration:	
CCSJ #	0924-06-728	AFA ID	Z00009024	CFDA No.	20.205
AFA CSJs	0924-06-728			CFDA Title	Highway Planning and Construction
District #	24	Code Chart 64#	13400		
Project Name	Playa Drain Path (Yarbrough to Midway)			AFA Not Used For Research & Development	

ATTACHMENT A
LOCATION MAP SHOWING PROJECT



TxDOT:				Federal Highway Administration:	
CCSJ #	0924-06-728	AFA ID	Z00009024	CFDA No.	20.205
AFA CSJs	0924-06-728			CFDA Title	Highway Planning and Construction
District #	24	Code Chart 64#	13400		
Project Name	Playa Drain Path (Yarbrough to Midway)			AFA Not Used For Research & Development	

ATTACHMENT B PROJECT BUDGET

Cost will be allocated based on will be allocated based on 80% Federal funding , 12% State funding, and 8% Local Government funding until the federal funding reaches the maximum obligated amount. The Local Government will then be responsible for 100% of the costs.

Description	Total Estimated Cost	Federal Participation		State Participation			Local Participation		
		%	Cost	% Before EDC Adj.	% After EDC Adj.	Cost After EDC Adj.	% Before EDC Adj.	% After EDC Adj.	Cost After EDC Adj.
Engineering (by Local Government)	\$1,512,204.00	80%	\$1,209,763.20	0%	12%	\$181,464.48	20%	8%	\$120,976.32
Environmental (by Local Government)	\$85,000.00	80%	\$68,000.00	0%	12%	\$10,200.00	20%	8%	\$6,800.00
Construction (by Local Government)	\$4,107,096.00	80%	\$3,285,676.80	0%	12%	\$492,851.52	20%	8%	\$328,567.68
Subtotal	\$5,704,300.00		\$4,563,440.00			\$684,516.00			\$456,344.00
Environmental Direct State Costs	\$3,707.80	80%	\$2,966.24	0%	12%	\$444.94	20%	8%	\$296.62
Right of Way Direct State Costs	\$926.95	80%	\$741.56	0%	0%	\$0	20%	0%	\$185.39
Engineering Direct State Costs	\$4,634.75	80%	\$3,707.80	0%	12%	\$556.17	20%	8%	\$370.78
Utility Direct State Costs	\$926.95	80%	\$741.56	0%	0%	\$0	20%	0%	\$185.39
Construction Direct State Costs	\$8,342.55	80%	\$6,674.04	0%	12%	\$1,001.11	20%	8%	\$667.40
Indirect State Costs (4.60%)	\$170,559.00	0%	\$0	100%	0%	\$170,559.00	0%	0%	\$0
TOTAL	\$5,893,398.00		4,578,271.20			\$857,077.22	0%		\$458,049.58

Initial payment by the Local Government to the State: \$1,038.18
Payment by the Local Government to the State before construction: \$667.40
Total payment by the Local Government to the State: \$1,705.58
The final amount of Local Government participation will be based on actual costs.

TxDOT:				Federal Highway Administration:	
CCSJ #	0924-06-728	AFA ID	Z00009024	CFDA No.	20.205
AFA CSJs	0924-06-728			CFDA Title	Highway Planning and Construction
District #	24	Code Chart 64#	13400		
Project Name	Playa Drain Path (Yarborough to Midway)			AFA Not Used For Research & Development	

ATTACHMENT C
RESOLUTION, ORDINANCE, OR COMMISSIONERS COURT ORDER

RESOLUTION

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

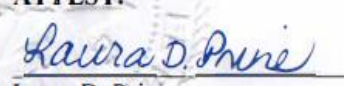
THAT the City Manager, or designee, be authorized to sign an Advance Funding Agreement by and between the City of El Paso and the State of Texas, acting by and through the Texas Department of Transportation, for the design and construction of the Congestion Mitigation Air Quality Program grant improvements generally described as Bicycle and Pedestrian Improvements along Playa Drain, from Yarborough Drive to Midway Drive, for a total estimated project cost of \$5,893,398.00 of which the estimated local government participation amount is estimated at \$458,049.58 plus any cost overruns. Further, that the City Manager, or designee, is authorized to sign all documents, agreement amendments, and perform all actions required to carry out the obligations of the City under this agreement.

APPROVED this 23 day of APRIL 2024.

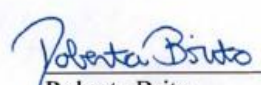
THE CITY OF EL PASO:


Oscar Leeser
Mayor

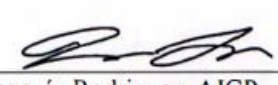
ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:


Roberta Brito
Senior Assistant City Attorney

APPROVED AS TO CONTENT:


Joaquín Rodríguez, AICP
Capital Improvement Department