

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

DEPARTMENT: Strategic Partnerships
AGENDA DATE: June 6, 2023
CONTACT PERSON/PHONE: S. Ian Voglewede, Strategic Partnerships Officer, (915) 299-9409
Omar Martinez, Grants and Strategic Initiatives Manager, (915) 479-0341
DISTRICT(S) AFFECTED: All Districts

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

SUBJECT:

Discussion and action in requesting City Council support for the staff recommended project that has been selected to submit for the USDOT FHWA Charging and Fueling Infrastructure (CFI) Discretionary Gant Program.

BACKGROUND / DISCUSSION:

The City of El Paso will design, construct, and operate an Electric Vehicle (EV) Charging Infrastructure Program for the El Paso region. The project will help meet projected EV charging infrastructure demand, incentivize increased utilization of electric vehicles in a region that meets distress criteria under the Justice40 Initiative and where most communities are considered Historically Disadvantaged Communities (HDC), and contribute to measurable reductions of Ozone (O3) and particulate matter (PM) air pollution in the El Paso region, which exceed current National Ambient Air Quality Standards (NAAQS).

COUNCIL REPRESENTATIVE BRIEFING:

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

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

PRIOR COUNCIL ACTION:

AMOUNT AND SOURCE OF FUNDING:

Grant Funding - \$15,000,000
El Paso Electric - \$3,750,000

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: Ian Voglewede

RESOLUTION

WHEREAS, the City of El Paso, the County of El Paso, and El Paso Electric Company (“EPEC”) are seeking to advance their clean energy initiatives, ensure equity and inclusion in the region's energy transition, as well as modernize and increase the resiliency of energy infrastructure located within their region; and

WHEREAS, the City of El Paso, the County of El Paso, and EPEC recognize that improved availability of regional electric vehicle charging infrastructure assists the region with advancing those initiatives; and

WHEREAS, EPEC is a local utility company in the City of El Paso that has expertise in the areas of renewable energy operations and energy services, electricity transmission and distribution operations, EV charging infrastructure and distributed energy resources grid management, smart grid applications, and billing and metering; and

WHEREAS, the City of El Paso, the County of El Paso, and EPEC intend to collaborate and work together on (i) developing an EV Charging Infrastructure network for the El Paso region, and (ii) submit an application to the U.S. Department of Transportation (“USDOT”) Federal Highway Administration (“FHWA”) Charging and Fueling Infrastructure Discretionary Grant (“CFIDG”) Program (“Grant”) to fund the development of this infrastructure (“Purpose”); and

WHEREAS, the City of El Paso, the County of El Paso, and wish to enter into a non-binding Memorandum of Understanding (“MOU”) to accompany their Grant Program application.

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

1. That the City Manager, or designee, is authorized to apply for and submit the Grant application to the USDOT pursuant to the Purpose.
2. That the City Manager, or designee, is authorized to execute the MOU, in substantially the same form as attached as Exhibit A.
3. That the City Manager, or designee, is authorized to execute any related documents required to effectuate the Grant application and administer the grant agreements, if any.

(Signatures Begin on Following Page)

APPROVED this _____ day _____ 2023.

THE CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Donald C. Davie

Donald C. Davie
Assistant City Attorney

APPROVED AS TO CONTENT:

Stephen Voglewede

Ian Voglewede
Strategic Partnership Officer

Exhibit A
Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

Among The City of El Paso, the County of El Paso and El Paso Electric Company

This Memorandum of Understanding (this “Agreement” or “MOU”) is entered into as of the _____ day of _____ 2023 (the “Effective Date”), by and between the City of El Paso, the County of El Paso, and El Paso Electric Company (“*EPEC*”). These organizations shall collectively be referred to as the “*Parties*” and individually referred to as a “*Party*.”

Recitals

WHEREAS, the City of El Paso, the County of El Paso, and EPEC are seeking to advance their clean energy initiatives, ensure equity and inclusion in the region's energy transition, as well as modernize and increase the resiliency of energy infrastructure located within their region; and

WHEREAS, the City of El Paso, the County of El Paso, and EPEC recognize that improved availability of regional electric vehicle (“EV”) charging infrastructure assists the region with advancing those initiatives; and

WHEREAS, EPEC is a local utility company in the City of El Paso that has expertise in the areas of renewable energy operations and energy services, electricity transmission and distribution operations, EV charging infrastructure and distributed energy resources grid management, smart grid applications, and billing and metering; and

WHEREAS, the City of El Paso, the County of El Paso, and EPEC intend to collaborate and work together on (i) developing an EV Charging Infrastructure network for the El Paso region, and (ii) submitting an application to the U.S. Department of Transportation (“USDOT”) Federal Highway Administration (“FHWA”) Charging and Fueling Infrastructure Discretionary Grant (“CFIDG”) Program to fund the development of this infrastructure (collectively, i and ii of this Recital shall be referred to herein after as the “Purpose”).

Agreement

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

1. MOU Subject to Definitive Agreement. This MOU is for discussion purposes only, and is not intended to constitute a legally binding or enforceable agreement or commitment on either Party, expect for Section 3 which shall be binding on the Parties in accordance with its terms.

2. Nonbinding Understandings. This Section 2 sets forth the nonbinding understandings of the Parties with respect to the Purpose. These terms are based upon information currently

available. They do not reflect all of the material terms of the proposed transaction but provide a basis for negotiating the Definitive Agreement (as defined below).

a. Anticipated Activities.

- (i) EV Charging Infrastructure Planning. The City of El Paso, the County of El Paso, and EPEC (the "Project Team") intend to work together to collaboratively develop an EV Charging Infrastructure network for the El Paso region. The Project Team will develop a project list and schedule outlining an execution plan and roles/responsibilities (the "Project Plan"), coordinate to create a prioritized list of EV Charging Infrastructure locations based on priority transportation corridors, existing charging infrastructure gaps, economic feasibility and equity considerations, and identify risks and a mitigation plan closely coordinated with EPEC. Under this effort, the Project Team anticipates that it will conduct the following:
 - 1) Develop a Project Plan document outlining an execution plan and roles/responsibilities;
 - 2) Coordinate to create a prioritized list of EV Charging Infrastructure locations based on priority transportation corridors, existing charging infrastructure gaps and specifically filtered to focus on equity; and
 - 3) Identify risks and a mitigation plan that is closely coordinated with EPEC.

- (ii) CFIDG Application. The Project Team intends to develop a grant application for the USDOT FHWA CFIDG Program. Under this effort, the Project Team anticipates that it will conduct the following:
 - 1) Develop preliminary budgetary cost estimates for the CFIDG application;
 - 2) Write and review grant application language proposing to strategically deploy EV Charging Infrastructure located on public roads, other publicly-accessible locations, and locations meeting the federal definition of equity under Justice40 Initiative, as defined in the Grant application documents;
 - 3) Submit the CFIDG application with the City of El Paso as the fiscal agent, contract administrator, and owner of the Electric Vehicle Charging Infrastructure at city-owned and privately owned facilities, including paying the utility bill for the EV charging stations at city-owned facilities, as described in Section 2.a.(iii) of this document;
 - 4) Submit the CFIDG application with EPEC and/or its subcontractors providing for the required 20% non-federal cost share, as described in Section 2.a.(iv) of this document; and
 - 5) Submit the CFIDG application with EPEC as the identified subcontractor for the acquisition, construction, installation, maintenance, and operation of EV Charging Infrastructure, as described

in Section 2.a.(v) of this document. EPEC has the authority to hire subcontractors of its choosing to perform the foregoing activities.

(iii) Contract Administration for CFIDG Application. The following Contract Administration Agreement shall be submitted for the CFIDG Application:

- 1) The City of El Paso serves as fiscal agent and contract administrator for the CFIDG Application as required under 23 U.S.C. § 151(f)(3);
- 2) The City of El Paso shall own the EV Charging Infrastructure at city-owned and privately-owned facilities (subject to such privately owned facilities entering into a site-host agreement with the City of El Paso), and the County of El Paso shall own EV charging infrastructure at County-owned facilities resulting from an award from USDOT FHWA as required under 23 U.S.C. § 151(f)(8)(C)(ii); and
- 3) The City of El Paso, the County of El Paso, and EPEC shall jointly develop and evaluate an annual EV Charging Infrastructure Condition Assessment report.

(iv) Cost-Share Agreement for CFIDG Application. The following Cost-Share Agreement shall be submitted for the CFIDG Application and shall govern cost allocation subsequent to the award of the CFIDG :

- 1) The duration of the Cost-Share Agreement is five years from the date of funding authorization or as required by a contract between the City of El Paso and USDOT FHWA;
- 2) The City of El Paso agrees that EPEC is the preferred eligible entity to participate with the City of El Paso for the USDOT FHWA CFIDG Program in accordance with 23 U.S.C. § 151(f)(1);
- 3) EPEC and/or its subcontractors shall provide the 20% non-federal cost-share required by the CFIDG Program in accordance with 23 U.S.C. § 151(f)(10)(B);
- 4) The City of El Paso is submitting a CFIDG Application requesting \$15,000,000 from the federal government, equivalent to 80% of total project costs, with a required non-federal cost-share of \$3,750,000, equivalent to 20% of total project costs; and
- 5) The Cost-Share Agreement for the CFIDG Application is contingent upon receiving award funds from the USDOT FHWA.
- 6) The revenue structure shall be in the following order: i. reimbursement to EPEC the nonfederal funding equivalent to 20% of the project costs in full but not to exceed \$3,750,000; and ii. remaining revenues collected during the term of the Cost-Share Agreement shall be distributed to the City of El Paso or the County of El Paso (in proportion to revenue generated from charging stations located at such entities facilities or facilities in which such entity entered into a host agreement) and EPEC a subject to the revenue sharing agreement contemplated in Section (v) (3) below.

(v) Future Operations of EV Charging Infrastructure for CFIDG Application. The following Future Operations of EV Charging Infrastructure Agreement shall be submitted for the CFIDG Application:

- 1) The City of El Paso shall subcontract to EPEC the acquisition, construction, installation, maintenance, and operation of EV Charging Infrastructure in accordance with 23 U.S.C. § 151(f)(8)(H);
- 2) The City of El Paso, the County of El Paso, and EPEC shall jointly develop and evaluate a project scope of work and annual revenue forecast analysis;
- 3) The City of El Paso, the County of El Paso, and EPEC shall enter into a revenue-sharing agreement under which EPEC or its subcontractors submits to the City of El Paso and the County of El Paso a portion of the revenue from the electric vehicle charging infrastructure in accordance with 23 U.S.C. § 151(f)(6)(E)(i), after the nonfederal funding equivalent to 20% of the project costs is collected in full.
- 4) Revenues received by the City of El Paso and the County of El Paso under the Cost-Sharing Agreement may only be used for future EV Charging Infrastructure projects in accordance with 23 U.S.C. § 151(f)(6)(E)(ii); and
- 5) Conditions outlined in the Future Operations of EV Charging Infrastructure agreement are contingent upon receiving Fiscal Year 2023 USDOT FHWA CFIDG funding.

- b. Definitive Agreements. Contingent upon receiving Fiscal Year 2023 USDOT FHWA CFIDG funding, the Parties anticipate that they would enter into one or more definitive agreements (hereinafter collectively referred to as the “*Definitive Agreements*”) to:
- (i) Expand the EV Charging Infrastructure network for the El Paso region;
 - (ii) Enter into a Contract Administration Agreement;
 - (iii) Enter into a Cost-Share Agreement; and
 - (iv) Enter into a Future Operations of EV Charging Infrastructure Agreement.

It being understood that no Party shall have any binding obligation to execute the Definitive Agreements.

3. Binding Provisions. This Section 3 shall constitute a legally binding and enforceable agreement between the Parties. In consideration of the expenses that the Parties will incur in pursuing the Purpose and drafting and negotiating the Definitive Agreement, the Parties agree as follows:

- a. Good Faith Negotiations. The Parties shall negotiate in good faith and use their reasonable efforts to bring about the execution and delivery of the Definitive Agreement at the earliest practicable time.

- b. Costs and Expenses. In preparation for the application for the CFIDG, each Party shall be responsible for all of its own costs and expenses associated with pursuing the Purpose, including without limitation (i) the performance of its obligations under this MOU, (ii) conducting its due diligence investigation, and (iii) drafting and negotiating the Definitive Agreement.
- c. Governing Law. This MOU shall be governed by, and construed and interpreted in accordance with, the laws of the State of Texas, U.S.A., without regard to the conflict of laws principles thereof. Any legal suit, action or proceeding arising out of or related to this MOU shall be instituted exclusively in the state or federal courts of Texas, as applicable, and the Parties irrevocably submit to the exclusive jurisdiction of such courts in any such suit, action, or proceeding, and waive any claim related to venue or lack of personal jurisdiction.
- d. Agreement Modification. Any modification to the terms of this Agreement shall be valid only if the change is made in a writing signed by authorized representatives of all of the Parties.
- e. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signed copy of this MOU delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this MOU, to the extent permitted by the applicable law.
- f. Entire Agreement. This MOU is the complete agreement of the Parties and supersedes all prior understandings regarding the Purpose.
- g. Publicity. Neither party will make any public announcement regarding this MOU, or any project that may be developed under this MOU, without first obtaining the prior written consent of the other party. Any proposed press releases or other promotional materials will need approval by EPEC, the City of El Paso, and the County of El Paso.
- h. No Assignment. Neither Party may assign any of its rights or obligations under this MOU without prior written consent of the other Party, which consent shall not be unreasonably withheld nor denied.
- i. Notice. Any notice or other communication required or permitted under this MOU shall be in writing at the addresses below:

El Paso Electric Company
100 N. Stanton,
79901 El Paso Tx
Attn. Angie Rodriguez
Email: angie.rodriguez@epelectric.com

City of El Paso
300 N. Campbell St.
El Paso, Texas 79901
Attn: Ian Voglewede
Email: VoglewedeSI@elpasotexas.gov

County of El Paso

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their duly authorized representatives, effective as of the Effective Date.

CITY OF EL PASO

By: _____

Printed Name: _____

Title: _____

Date: _____

EL PASO ELECTRIC COMPANY

By: _____

Printed Name: _____

Title: _____

Date: _____

COUNTY OF EL PASO

By: _____

Printed Name: _____

Title: _____

Date: _____