

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

AGENDA DATE: November 22, 2022
PUBLIC HEARING DATE: N/A
CONTACT PERSON(S) NAME AND PHONE NUMBER: Yvette Hernandez, (915) 212-1860
DISTRICT(S) AFFECTED: Citywide
STRATEGIC GOAL: No.7: Enhance and Sustain El Paso's Infrastructure Network
SUBGOAL: N/A

SUBJECT:

That the City Manager, or designee, is 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 ("Department"), for the design, construction, and installation of Intelligent Transportation Systems (ITS) at the Bridge of the Americas (BOTA) and Zaragoza International Ports of Entry ("Project"). The Project has an estimated total project cost of \$18,000,000.00. The Department will pay \$17,904,000.00 from the Texas Mobility Fund ("TMF") to the Local Government for a portion of the Project. The Department's direct cost is an estimated amount of \$96,000.00, which is the balance between the payment from the TMF and the total project cost. 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.

BACKGROUND / DISCUSSION:

The scope of work for this Project consists of the design, construction, and installation of Intelligent Transportation Systems (ITS) at the Bridge of the Americas (BOTA) and Zaragoza International Ports of Entry. BOTA and the Zaragoza International Ports of entry are off of the TxDOT System.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

Texas Mobility Fund

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES ___ NO

PRIMARY DEPARTMENT: Capital Improvement Department

SECONDARY DEPARTMENT:

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

DEPARTMENT HEAD:

Yvette Hernandez

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

RESOLUTION

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

THAT the City Manager, or designee, is 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 (“Department”), for the design, construction, and installation of Intelligent Transportation Systems (ITS) at the Bridge of the Americas (BOTA) and Zaragoza International Ports of Entry (“Project”). The Project has an estimated total project cost of \$18,000,000.00. The Department will pay \$17,904,000.00 from the Texas Mobility Fund (“TMF”) to the Local Government for a portion of the Project. The Department’s direct cost is an estimated amount of \$96,000.00, which is the balance between the payment from the TMF and the total project cost. 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 _____ day of _____, 2022.

THE CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Roberta Brito
Assistant City Attorney



Yvette Hernandez, City Engineer
Capital Improvement Department

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
For a Texas Mobility Fund Grant
To The City of El Paso, Texas
For A Public Transportation Project Off-System**

THIS ADVANCE FUNDING AGREEMENT (Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the "Department," and the City of El Paso, Texas, acting by and through its duly authorized officers, called the "Local Government," (individually the "Party" and collectively the "Parties" to this Agreement).

WITNESSETH

WHEREAS, Article III, Section 49-k of the Texas Constitution (Constitutional Provision) created the Texas Mobility Fund (TMF) in the State Treasury and provides that the TMF shall be administered by the Texas Transportation Commission as a revolving fund to provide a method of financing the construction, reconstruction, acquisition, and expansion of state highways and to provide participation by the Texas Transportation Commission in the payment of a portion of the costs of constructing and providing publicly-owned toll roads and other public transportation projects, in accordance with the procedures, standards and limitations established by law; and

WHEREAS, the 86th Texas Legislature required that, from any available source of revenue, an amount not to exceed \$32,000,000 shall be allocated to provide funding for the design, construction, acquisition, and installation of an intelligent transportation system and the design and construction of infrastructure projects at the international port of entry at the Bridge of Americas and the international port of entry at the Ysleta Bridge, also known as the Zaragoza Bridge, in El Paso, on right of way or other property that is part of our outside the state highway system, to increase security measures and expedite border crossings and trade, as held under the General Appropriations Act (HB 1, 86th Texas Legislature, 2019, Rider 44, page. VII-30); and

WHEREAS, by Minute Order 116052 dated 07/29/2021, attached hereto as Attachment A; Minute Order for TMF Funds, the Texas Transportation Commission approved state participation in the form of a grant in an amount not to exceed \$18,000,000 from the Texas Mobility Fund (the "TMF funds") to pay a portion of the costs of the project as described in this Agreement, Article 2, Scope of Work (Project), and authorized the Executive Director of the Department or his designee to take all actions necessary to effect the purposes of the minute order; and

WHEREAS, the governing body of the Local Government passed a Resolution on **{Enter Date of Resolution}**, attached to and made a part of this Agreement as Attachment B, Resolution or Ordinance, authorizing the Local Government's authorized representative to enter into this Agreement; and

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

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

AGREEMENT

1. Period of the Agreement

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 and all excess funds are disbursed, unless earlier terminated as provided in this Agreement.

2. Scope of Work

- A. The scope of work of the Project is as follows: The scope of work for this Project consists of the design, construction, and installation of Intelligent Transportation Systems (ITS) at the Bridge of the Americas (BOTA) and Zaragoza International Ports of Entry. BOTA and the Zaragoza International Ports of entry are off of the TxDOT System.
- B. A map showing the Project appears in Attachment C, Location Map Showing Project, which is attached to and made a part of this Agreement.

3. Local Government Project Sources and Uses of Funds

- A. The maximum amount of the Department's participation in the Project is \$17,904,000 as shown in Attachment D, Project Budget (Attachment D), which is attached to and made a part of this Agreement. The Department will pay money in an amount not to exceed \$17,904,000 to the Local Government from the TMF to be used for construction (by the Local Government) of the Project, called the "Eligible Project Costs". The Department will pay for only those Eligible Project Costs that have been approved by the Texas Transportation Commission. The Local Government shall not make or implement any changes to the Project scope without the written approval of the Department. The Local Government is responsible for all other Project costs, including 100% of the cost of any work performed under its direction or control before the Department spending authority is formally obligated.
- B. If requested by the Department, the Local Government shall reimburse the Department for any TMF funds paid under this Agreement that are used for costs that are not Eligible Project Costs in a manner determined by the Department. If all of the TMF funds are not used for the payment of Eligible Project Costs within 10 years of execution of this Agreement or if the Department determines that the Local Government will not be able to use the TMF funds for the Project, the Local Government shall perform an audit of the TMF funds that were spent on Eligible Project Costs, subject to approval by the Department, and at the Department's option shall use any excess TMF funds paid under this Agreement for additional Eligible Project Costs or use them for other legally authorized purposes as approved by the Department.
- C. The Department will be responsible only for the Department's share of the funding required for the development and construction of the Project as specified in this Agreement, such amount being the maximum liability of the Department under this Agreement.

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

- D. The Local Government will be responsible for all non-federal or non-Department participation costs associated with the Project, otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement, including any costs of completing the Project that exceeds the amount provided by the Department under this Agreement.
- E. Upon completion of the Project, the Local Government will perform an audit of the TMF funds that were spent on Eligible Project Costs, subject to approval by the Department, and may, at the Department's option, use any excess TMF funds not paid under this Agreement for additional Eligible Project Costs or use them for other legally authorized purposes as approved by the Department.
- F. The State Auditor may conduct an audit or investigation of any entity receiving funds from the Department directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.
- G. 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 may be terminated immediately by the Department with no liability to either Party.
- H. Since the Department's payment is a reimbursement to the Local Government on a cost basis as shown in Attachment D, the Local Government is authorized to submit requests for reimbursement in accordance with Section 4 below.
- I. The Local Government shall provide the Department any information needed to timely deliver the funds to the Local Government's depository bank, which must be approved by the Department, in a separate account that is dedicated to the payment of Project costs.
- J. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the Department, the Local Government must complete training. 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." The Local Government shall provide the certificate of qualification to the Department. 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 Department in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

4. Disbursement of TMF Funds

- A. The Department will, 60 days after execution of this agreement, deliver the funds as shown in Attachment D, Project Budget, to the Local Government.
- B. **Omitted**
- C. **Omitted**
- D. **Omitted**
- E. **Omitted**
- F. **Omitted**

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

- G. To the extent funds disbursed hereunder are utilized to procure tangible work product consistent with the authorized purposes under this Agreement, the Department shall have the right to review such work product.

5. Non-Performance, Stop Work Orders, and Termination of this Agreement

This Agreement shall remain in effect until the Project is completed or all TMF funds are used in accordance with this Agreement, unless:

- A. The Agreement is terminated in writing by the Parties; or
- B. The Agreement is terminated by the Department because of non-performance or a breach by the Local Government, subject to the following provisions:
- (1) **NON-PERFORMANCE.** The Department shall provide notice to the Local Government of the occurrence of any circumstances deemed by the Department to be non-performance by the Local Government under this Agreement. Within thirty (30) days of receipt of the Department's notice, the Local Government shall remedy the non-performance and notify the Department of the remedy effected, or shall provide written notification to the Department of the actions it has taken to address the non-performance. The Parties agree that any of the following occurrences constitutes non-performance by the Local Government under this Agreement:
 - (a) the Local Government fails to complete the Project in accordance with this Agreement, other than because of the failure of the Department to deliver the TMF funds as provided herein, because of force majeure, or because of any other reason allowed in this Agreement;
 - (b) the Local Government expends TMF funds on anything other than Eligible Project Costs without reimbursing the Department in accordance with this Agreement; and
 - (c) the Local Government fails to use the TMF funds in accordance with this Agreement.
 - (2) **STOP WORK ORDERS.**
 - (a) **Stop Work Order.** The Department may issue a written Stop Work Order (SWO) to the Local Government at any time for any violation of this Agreement, including non-performance. The SWO shall provide the Local Government with notice of the facts underlying the determination to issue the SWO. The SWO may require an immediate cessation of work or the cessation of work at a definite future date. The SWO shall provide the Local Government with a definite limited time to cure the conditions underlying the SWO.
 - (b) **Local Government's Response.** The Local Government shall provide a written response to the SWO and shall provide the Department with a detailed plan to address and cure the conditions supporting the SWO. The Local Government shall provide the response within three (3) business days from its receipt of the SWO.
 - (c) **Department's Reply.** The department may accept, reject or amend the Local Government's request for opportunity to cure the conditions supporting the SWO and shall provide notice of such action to the Local Government within three business days of receipt of the response. The Department may issue an amended SWO that allows resumption of work contingent upon the Local Government's execution of the plan to

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

cure. The amended SWO may modify the Local Government's plan to cure only in a manner consistent with the terms and conditions of this Agreement.

- (d) Local Government's Option. The Local Government shall notify the Department within three (3) business days whether it accepts the amended SWO. If the Local Government does not accept the amended SWO, the Department may terminate this Agreement. Upon successful completion of the plan to cure the conditions underlying the SWO, the Local Government shall continue work to complete all obligations under this Agreement.

(3) **TERMINATION.**

- (a) Subject to the notice and opportunity to cure provisions herein, the Department may terminate this Agreement at any time for non-performance. Termination shall be effective thirty (30) days after the Local Government's receipt of written notice of termination. Upon receipt of such notice, the Local Government shall immediately discontinue all work in connection with the performance of this Agreement and shall promptly cancel all existing orders or other financial commitments chargeable to funding provided pursuant to this Agreement as directed by the Department.
- (b) Within thirty days of the notice of termination, the Local Government shall submit a statement showing in detail the work performed, any payments received by the Local Government, and any payments made by or due from the Local Government to any contractor pursuant to the terms of this Agreement prior to the date of termination, all in the form of a final audit.
- (c) The Local Government elects not to proceed with the Project, after the completion of preliminary engineering, specifications, and estimates (PS&E), because of insufficient funds, in which case the Local Government agrees to use all unused TMF funds paid under this Agreement that are not expended on Eligible Project Costs as directed by the Department, which may include for additional Eligible Project Costs, for other legally authorized purposes as approved by the Department, or returned to the Department, at the Department's option.

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 and shall be cumulative.

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

8. Utilities

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state and federal laws, regulations, rules, policies, and procedures.

9. Environmental Assessment and Mitigation

- A. The Local Government is responsible for the identification and assessment of any environmental problems associated with the development of the Project subject to this Agreement.
- B. The Local Government is responsible for the cost of any environmental problem's mitigation and remediation.
- C. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment. Public hearings will not be held prior to the approval of project schematic.
- D. The Local Government is responsible for the preparation of documents required for the environmental clearance of the Project.
- E. Before the advertisement for bids, the Local Government shall provide to the Department 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 Local Government has responsibility for the Project, including the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the industry standards applicable to the Project, including the Local Government's applicable Design Criteria, Specifications, Standard Drawing, and Directive Drawing standards. For highway projects not on the state highway system, the design shall, at a minimum, conform to applicable *American Association of State Highway and Transportation Officials* design standards. In procuring professional services, the Parties to this Agreement must comply with Texas Government Code 2254, Subchapter A.

12. Construction Responsibilities

- A. The Local Government is responsible for administration of any construction contracts for the Project and shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project in compliance with applicable law. Administration of a 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.
- B. Projects must be authorized by the Department before the Local Government awards the construction contract to the contractor.

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

- C. The Local Government will use its approved contract letting and award procedures to let and award the construction contract.
- D. Upon completion of the Project, the Party constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion that is acceptable to the Department. The Notice of Completion shall certify that the Project has been completed and all necessary inspections have been conducted.
- E. The Department may require reports on the progress of the Project. If requested in writing, the Local Government shall submit to the Department, for each succeeding thirty (30) day period (hereinafter a "month" or "reporting period") following the execution of this Agreement and until the completion of the Project, a report of the work performed during the preceding month, which shall contain, at a minimum, the following:
 - (1) a brief description of the progress of work since the last report, including each activity performed and the percentage of total completion of each and every activity;
 - (2) a description of any problems encountered during the reporting period that may affect the construction of the Project, or that may inhibit the completion of, or cause a change in, any objectives or costs of the Project;
 - (3) a description of actions, if any, the contractor(s) or the Local Government intends or proposes to take to correct all problems identified in subparagraph (2) above; and
 - (4) any perceived or anticipated changes in the schedule, objectives, or costs for the Project.

13. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned facilities and equipment after completion of the work.

14. Right of Way and Real Property

- 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 Department 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 Department 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 will 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 Department 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

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

of title or rights shall be acceptable to the Department, 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 Department's authorization, the Local Government will provide all documentation to the Department regarding fair market value of the acquired property. The Department 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 Department will not reimburse the Local Government for any real property acquired before execution of this Agreement, if applicable.
- 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 Department 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 Department and to submit to the Department a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values.
- H. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this Agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than ten (10) years after completion. The separate agreement must define the responsibilities of the Parties to the use of the real property and operation and maintenance of the Project after completion. The separate agreement must be approved by the Department prior to its execution. A copy of the executed agreement shall be provided by the Department.

15. 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:

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

Local Government	Department
City of El Paso, Texas Attn: CID Director of Grant Funded Programs P.O. Box 1890 El Paso, Texas 79950-1890	Texas Department of Transportation 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.

16. 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.

17. Responsibilities of the Parties

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

18. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the Local Government shall remain the property of the Local Government. All data prepared under this Agreement shall be made available to the Department 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 Department in the form of photocopy reproduction on a monthly basis as required by the Department. The originals shall remain the property of the Local Government. At the request of the Department, the Local Government shall submit any information required by the Department in the format directed by the Department.

19. Compliance with Laws

The Parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including without limitation workers' compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination laws and regulations, licensing laws, regulations, and the Texas Uniform Grant Management Standards. When required, the Local Government shall furnish the Department with satisfactory proof of this compliance.

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

20. 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.

21. Inspection of Books and Records

- A. Duty to Maintain Records. The Parties to this agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to Project costs incurred under this Agreement in accordance with Generally Accepted Accounting Principles. The Local Government shall also require its contractors to maintain financial accounting records consistent with Generally Acceptable Accounting Principles and with state laws applicable to government accounting. All accounting and other financial documentation shall be accurate, current, and shall reflect recordation of the transactions at or about the time the transactions occurred.
- B. Duty to Retain Records. The Local Government shall retain all financial records and supporting documents and any other documents pertinent to the Project in accordance with the requirements of applicable state law relating to retention and access to records. The Department requires the Local Government to retain all records related to this Agreement for a period of four (4) years after submission of the audit upon completion of the Project and any litigation or claims regarding the Project or this Agreement are resolved.
- C. Access to Records. The Local Government shall make Project materials available to the Department for review and inspection at its office during the contract period and for four (4) years after submission of the audit upon completion of the Project and any litigation or claims regarding the Project or this Agreement are resolved. Additionally, the Department and the Local Government shall have access to all the records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions. The Local Government understands and agrees that all documents relating to this Agreement are subject to the Public Information Act, Tex. Gov't Code, Chapter 552, and that such documents may not be withheld from public disclosure, except in accordance with law and with the rulings of the Texas Attorney General. The Local Government shall promptly respond to a request by the Department for copies of any of the Local Government's records related to this Agreement.

22. Insurance

If this Agreement authorizes the Local Government or its contractor to perform any work on Department right of way, before beginning work the entity performing the work shall provide the Department with a fully executed copy of the Department'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 Department right of way. This coverage shall be maintained until all work on the Department right of way is complete. If coverage is not maintained, all work on Department right of way shall cease immediately, and the Department may recover damages and all costs of completing the work.

23. Investment and Collateralization of Funds

The Local Government shall deposit the TMF funds in a state depository bank designated by the Texas Office of the Comptroller and approved by the Department, and the funds shall be handled in a manner that complies with the Public Funds Investment Act, Texas Government

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

Code, Chapter 2256; and shall be adequately collateralized in a manner sufficient to protect the Department's interest in the Project that complies with the Public Funds Collateral Act, Texas Government Code, Chapter 2257.

24. Historically Underutilized Business (HUB) and Small Business Enterprise (SBE) Requirements

For projects with state funds and no federal funds, the Local Government will be required to follow the provisions of Texas Transportation Code §201.702 and 43 TAC §§9.354-9.355 (HUB) and §§9.314-9.315 (SBE). The Local Government must incorporate project goals approved by TxDOT into project documents before advertising for receipt of bids. Contractors must select HUBs and SBEs from TxDOT-approved or maintained sources. The Local Government will provide monthly updates of HUB/SBE (as appropriate) participation and report final accomplishments to TxDOT for credit to overall program goals.

For projects with no state or federal funds that are not on the state or federal highway systems, the Local Government should follow its own local or specific ordinances and procedures. Local Governments are encouraged to use HUBs and SBEs from TxDOT-approved or maintained sources. The Local Government must also report final HUB accomplishments to TxDOT for credit to overall program goals.

25. Debarment Certifications

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.

26. Pertinent Non-Discrimination Authorities

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

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (49 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

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

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. Force Majeure

Unless otherwise provided, neither the Local Government nor the Department nor any agency of the State of Texas, shall be liable to the other for any delay in, or failure of performance of a requirement contained in this Agreement caused by *force majeure*, meaning a failure or delay in a Party's performance under this Agreement that is caused by acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either Party and that by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such Party is unable to overcome. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non- performing Party exercises all reasonable due diligence to perform. Each Party must inform the other in writing with proof of receipt within five (5) business days of the existence of such *force majeure* or otherwise waive this right as a defense.

28. Survival of Terms and Conditions

- A. Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement that:
 - (1) the Parties have expressly agreed shall survive any such termination or expiration, if any; or
 - (2) by their nature, would be intended to be applicable following any such termination or expiration.
- B. The Parties expressly agree that the following terms and conditions survive the termination of the Agreement, regardless of the reason for the termination.
 - (1) Section 3.B. and 3.F., regarding the use of the TMF funds.

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

(2) Section 6. Remedies.

29. Non-Assignability

The terms and conditions of the financial assistance provided by this Agreement may not be assigned, transferred, or subcontracted in any manner without the express written consent of the Department.

30. Entire Agreement and Amendment

This Agreement constitutes the entire agreement between the Department and the Local Government and no prior or contemporaneous oral or written promises or representations shall be binding on either Party. No modification of any provision of this Agreement shall be effective except by written amendment executed by an authorized representative of each Party.

31. Required Notice

The Local Government shall promptly notify the Department of any adverse change in the activities, prospects, or conditions (financial or otherwise) of the Local Government relating to the Project, or its ability to observe and perform its duties, covenants, obligations, and agreements under this Agreement.

32. No Waiver

The failure of any Party to insist upon the strict performance of any of the terms, provisions, or conditions of this Agreement shall not be construed as a waiver or relinquishment for the future of the strict performance of any such term, provision, or condition or any other term, provision, or condition.

33. No Debt Created

Each Party agrees and understands that, by this Agreement, the State of Texas, acting through the Department, is not lending its credit or in any manner creating a debt on behalf of the State of Texas.

34. Law

The validity, operation, and performance of this Agreement shall be governed and controlled by the laws of the State of Texas and applicable federal regulations, and the terms and conditions of this Agreement shall be construed and interpreted in accordance with the laws of this state. The Parties understand and agree that this Agreement is for the provision of financial assistance for the Project and as such all or part of the performance of the terms and obligations of the Agreement will be performed in El Paso County. Notwithstanding the location of the Project, the Parties understand and agree that any proceeding brought for any breach of this Agreement involving the Department shall be in Travis County, Texas. This section does not waive the sovereign immunity of the State of Texas or the Department.

35. Information Resources & Security Compliance

The Local Government and their subproviders must comply with Attachment D, Information Resources and Security Requirements, which is attached to and made part of this agreement. Additionally, by executing this agreement, the Local Government certifies that it has provided the required evidence of compliance to TxDOT.

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

36. Signatory Warranty

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

THIS AGREEMENT IS EXECUTED by the Department and the Local Government.

THE LOCAL GOVERNMENT

THE CITY OF EL PASO

By: _____
 Samuel Rodriguez, Chief Operations
 Officer for Tomás González, City Manager

 Date

APPROVED AS TO CONTENT:



 Yvette Hernandez, P.E.
 City Engineer

APPROVED AS TO FORM:



 Roberta Brito
 Assistant City Attorney

STATE OF TEXAS
 Texas Department of Transportation

 Signature

Kenneth Stewart

 Typed or Printed Name

Director of Contract Services

 Typed or Printed Title

 Date

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

ATTACHMENT A MINUTE ORDER FOR TMF FUNDS

TEXAS TRANSPORTATION COMMISSION

El Paso County

MINUTE ORDER

Page 1 of 1

El Paso District

In 2019, under the General Appropriations Act (HB 1, 86th Texas Legislature 2019), Rider 44, page VII-30, the Texas Legislature required that, from any available source of revenue, an amount not to exceed \$32,000,000 shall be allocated to provide funding for the design, construction, acquisition, and installation of an intelligent transportation system, and the design and construction of infrastructure projects at the international ports of entry at the Bridge of the Americas (BOTA) and at the Ysleta Bridge, also known as the Zaragoza Bridge, in El Paso, on right of way or other property that is part of or outside the state highway system, to increase security measures and expedite border crossings and trade (generally described as the Intelligent Transportation Systems Infrastructure project).

The City of El Paso (City) submitted a request to the Texas Department of Transportation (department) for state participation in the form of a grant of funds in the amount of up to \$18,000,000 to pay a portion of the costs of the Intelligent Transportation Systems Infrastructure project.

Article III, Section 49-k of the Texas constitution (constitutional provision) created the Texas Mobility Fund (fund) in the state treasury and provides that the fund shall be administered by the Texas Transportation Commission (commission) as a revolving fund to provide a method of financing the construction, reconstruction, acquisition, and expansion of state highways and to provide participation by the state in the payment of a portion of the costs of constructing and providing publicly-owned toll roads and other public transportation projects, in accordance with the procedures, standards and limitations established by law.

The Texas Legislature implemented the authority granted by this constitutional provision in Transportation Code, Chapter 201, Subchapter M (enabling act). Transportation Code §201.943 provides that the commission, by order, may issue obligations, including Texas Mobility Fund General Obligation Bonds, secured by and payable from a pledge of and lien on all or part of the money in the fund.

IT IS THEREFORE ORDERED by the commission that the Intelligent Transportation Systems Infrastructure project meets the eligibility requirements for state participation under the constitutional provision, and the commission approves the state participation in the form of a grant in the amount of up to \$18,000,000 to the City from any available source of revenue, including money in the fund other than the proceeds of obligations issued under the enabling act, to be used for the Intelligent Transportation Systems Infrastructure project, and authorizes and directs the executive director of the department to take all actions necessary to effect the purposes of this minute order.

Submitted and reviewed by:

DocuSigned by:

 0087C096A803400
 Director, Transportation Planning and
 Programming Division

Recommended by:

DocuSigned by:

 1E19754E108140C
 Executive Director

116052 July 29 2021

Minute Number	Date Passed
------------------	----------------

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

**ATTACHMENT B
LOCAL GOVERNMENT ORDINANCE OR RESOLUTION**

CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

ATTACHMENT C LOCATION MAP SHOWING PROJECT



CSJ #:	0924-06-619
District #:	24 EL PASO
Code Chart 64 #:	13400
Project Name:	ITS Infrastructure at Zaragoza and BOTA International Ports of Entry

ATTACHMENT D PROJECT BUDGET

The Department will pay \$17,904,000 from the Texas Mobility Fund to the Local Government for engineering, environmental and construction of the Project. Costs will be allocated based on State funding and Local Government funding until the State 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	%	Cost	%	Cost
Engineering (by Local Government)	\$2,500,000	0%	\$0	0%	\$0	100%	\$2,500,000
Environmental (by Local Government)	\$150,000	0%	\$0	0%	\$0	100%	\$150,000
Construction (by Local Government)	\$15,254,000	0%	\$0	0%	\$0	100%	\$15,254,000
Subtotal	\$17,904,000		\$0		\$0		\$17,904,000
Environmental Direct State Costs	\$1,000	0%	\$0	0%	\$0	100%	\$1,000
Right of Way Direct State Costs	\$500	0%	\$0	0%	\$0	100%	\$500
Engineering Direct State Costs	\$1,000	0%	\$0	0%	\$0	100%	\$1,000
Utility Direct State Costs	\$500	0%	\$0	0%	\$0	100%	\$500
Construction Direct State Costs	\$2,600	0%	\$0	0%	\$0	100%	\$2,600
Indirect State Costs	\$90,400	0%	\$0	0%	\$0	100%	\$90,400
TOTAL	\$18,000,000		\$0		\$0		\$18,000,000