

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

**DEPARTMENT:** Engineering and Construction Management

**AGENDA DATE:** March 11, 2014

**CONTACT PERSON NAME AND PHONE NUMBER:** Irene D. Ramirez, P.E., Interim City Engineer

**DISTRICT(S) AFFECTED:** 2, 3 and 8

**SUBJECT:**

That the City Manager be authorized to sign a Local Transportation Project 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 construction or reconstruction of railroad crossings in the Five Points and Medical Center of the Americas Quiet Zone areas, to include gates, approaches, signals, and pedestrian crossings, for a total project amount of \$2,183,600.00 with a contribution by the City of \$183,656.00.

**BACKGROUND / DISCUSSION:**

The scope of work for this LPAFA is described as the construction or reconstruction of the 5 Points and MCA railroad crossings to include gates, approaches, signals, and pedestrian crossing.

**PRIOR COUNCIL ACTION:**

None.

**AMOUNT AND SOURCE OF FUNDING:**

\$183,656; TXDOT Matches account

**BOARD / COMMISSION ACTION:**

N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

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(If Department Head Summary Form is initiated by Purchasing, client department should sign also)  
Information copy to appropriate Deputy City Manager

**RESOLUTION**

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

That the City Manager be authorized to sign a Local Transportation Project 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 construction or reconstruction of railroad crossings in the Five Points and Medical Center of the Americas Quiet Zone areas, to include gates, approaches, signals, and pedestrian crossings, for a total project amount of \$2,183,600.00 with a contribution by the City of \$183,656.00.

**ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.**

THE CITY OF EL PASO

ATTEST:

\_\_\_\_\_  
Oscar Leeser,  
Mayor

\_\_\_\_\_  
Richarda D. Momsen,  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

\_\_\_\_\_  
Irene D. Ramirez, P.E.  
Interim City Engineer

STATE OF TEXAS §

COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENT  
For A  
Congestion, Mitigation & Air Quality Improvement (CMAQ)  
(Off-State System)**

**THIS Local Project Advance Funding Agreement (LPAFA)** 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."

**WITNESSETH**

**WHEREAS**, a Master Agreement between the Local Government and the State has been adopted and states the general terms and conditions for transportation projects developed through this LPAFA; and,

**WHEREAS**, the Texas Transportation Commission passed Minute Order Number 113791 that provides for the development of, and funding for, the Project described herein; and,

**WHEREAS**, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated \_\_\_\_\_, 20\_\_, which is attached to and made a part of this agreement as Attachment A for the development of the Project. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement.

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

**AGREEMENT**

**1. Period of the Agreement**

The period of this LPAFA is as stated in the Master Agreement, without exception.

**2. Termination of this LPAFA**

Termination of this LPAFA shall be under the conditions as stated in the Master Agreement. This LPAFA may be terminated by the State if the Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds.

**3. Amendments**

Amendments to this LPAFA shall be made as described in the Master Agreement, without exception.

**4. Scope of Work**

The scope of work for this LPAFA is described as construction or reconstruction of railroad crossings to include gates, approaches, signals, and pedestrian crossing.

**5. Right of Way and Real Property**

Right of way and real property shall be the responsibility of the Local Government as stated in the Master Agreement, without exception.

**6. Utilities**

Adjustment of utilities will be provided by the Local Government as required and as stated in the Master Agreement, without exception.

**7. Environmental Assessment and Mitigation**

Environmental assessment and mitigation will be carried out as stated in the Master Agreement. Additionally, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

**8. Compliance with Texas Accessibility Standards and ADA**

Compliance with Texas Accessibility Standards and the Americans with Disabilities Act (ADA) will be as stated in the Master Agreement, without exception.

**9. Architectural and Engineering Services**

Architectural and engineering services will be provided by the Local Government as stated in the Master Agreement. The Local Government is responsible for performance of any required architectural or preliminary engineering work. 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* design standards. The State may review and comment on the work as required to accomplish the public purposes of the Local Government. The Local Government will cooperate fully with the State in accomplishing these local public purposes to the degree permitted by State and Federal law.

**10. Construction Responsibilities**

Construction responsibilities will be carried out by the Local Government as stated in the Master Agreement.

**11. Project Maintenance**

Project maintenance will be undertaken as provided for in the Master Agreement, without exception.

**12. Local Project Sources and Uses of Funds**

**A.** A Project Budget Estimate is provided in Attachment C. 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. After federal funds have been obligated, the State will send to the Local

Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for one hundred percent (100%) of the cost of any work performed under its direction or control before the Federal spending authority is formally obligated.

- B.** If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- C.** A Source of Funds estimate based on the Transportation Improvement Program (TIP) is also provided in Attachment C. Attachment C shows the percentage and estimated dollar amount to be contributed to the project by federal, state, and local sources. The parties agree that the LPAFA may be amended from time to time as required to meet the funding commitments based on revisions to the TIP, Federal Project Authorization and Agreement (FPAA), or other federal document.
- D.** The Local Government is responsible for all non-federal and non-state funding, including any project cost overruns, unless otherwise provided for in this agreement or through amendment of this agreement.
- E.** Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering 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 costs.
- F.** In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- G.** 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 Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied by the State to the Project. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement with approval by appropriate personnel of the Local Government.
- H.** If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other

locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

- I. The state auditor may conduct an audit or investigation of any entity receiving funds from the State 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. Any 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.
- J. Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.
- K. 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.

### **13. Document and Information Exchange**

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

### **14. Incorporation of Master Agreement Provisions**

This LPAFA incorporates all of the governing provisions of the Master Agreement in effect on the date of final execution of this LPAFA, unless an exception has been made in this agreement.

### **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. Debarment Certification**

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 is 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 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 contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

**17. Cost Principles and Office of Management and Budget (OMB) Audit Requirements**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

**18. 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:

<b>Local Government:</b>	<b>State:</b>
ATTN: <u>City Engineer</u> <u>City of El Paso</u> <u>P.O. Box 1890</u> <u>El Paso, TX 79950-1890</u>	Director of Contract Services Office Texas Department of Transportation 125 E. 11 <sup>th</sup> Street Austin, Texas 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.

**19. Civil Rights Compliance**

The Local Government shall comply with the regulations of the U.S. Department of Transportation as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

## 20. Disadvantaged Business Enterprise (DBE) Program Requirements

- 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 set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and 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](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.*

## 21. Federal Funding Accountability and Transparency Act Requirements

- 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 Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than \$25,000 in Federal Funding. The CCR number may be obtained by visiting the CCR 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 the Federal government to track the distribution of federal money. The DUNS number 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 (5) 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.

## **22. Single Audit Report**

- A.** The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- B.** If threshold expenditures of \$500,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://www.txdot.gov/inside-txdot/office/audit/contact.html>.
- C.** If expenditures are less than \$500,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$500,000 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.

## **23. Signatory Warranty**

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

CSJ # 0924-06-475  
District # 24-ELP  
Code Chart 64 # 13400  
Project: Railroad Crossings  
Improvements MCA Quiet Zones  
Federal Highway Administration  
CFDA # 20.205  
Not Research and Development

**THIS AGREEMENT IS EXECUTED** by the State and the Local Government in duplicate.

**THE LOCAL GOVERNMENT**

By: \_\_\_\_\_  
Joyce Wilson, City Manager

\_\_\_\_\_  
Date

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Irene D. Ramirez  
Interim City Engineer

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Cynthia S. Osborn  
Assistant City Attorney

**THE STATE OF TEXAS**

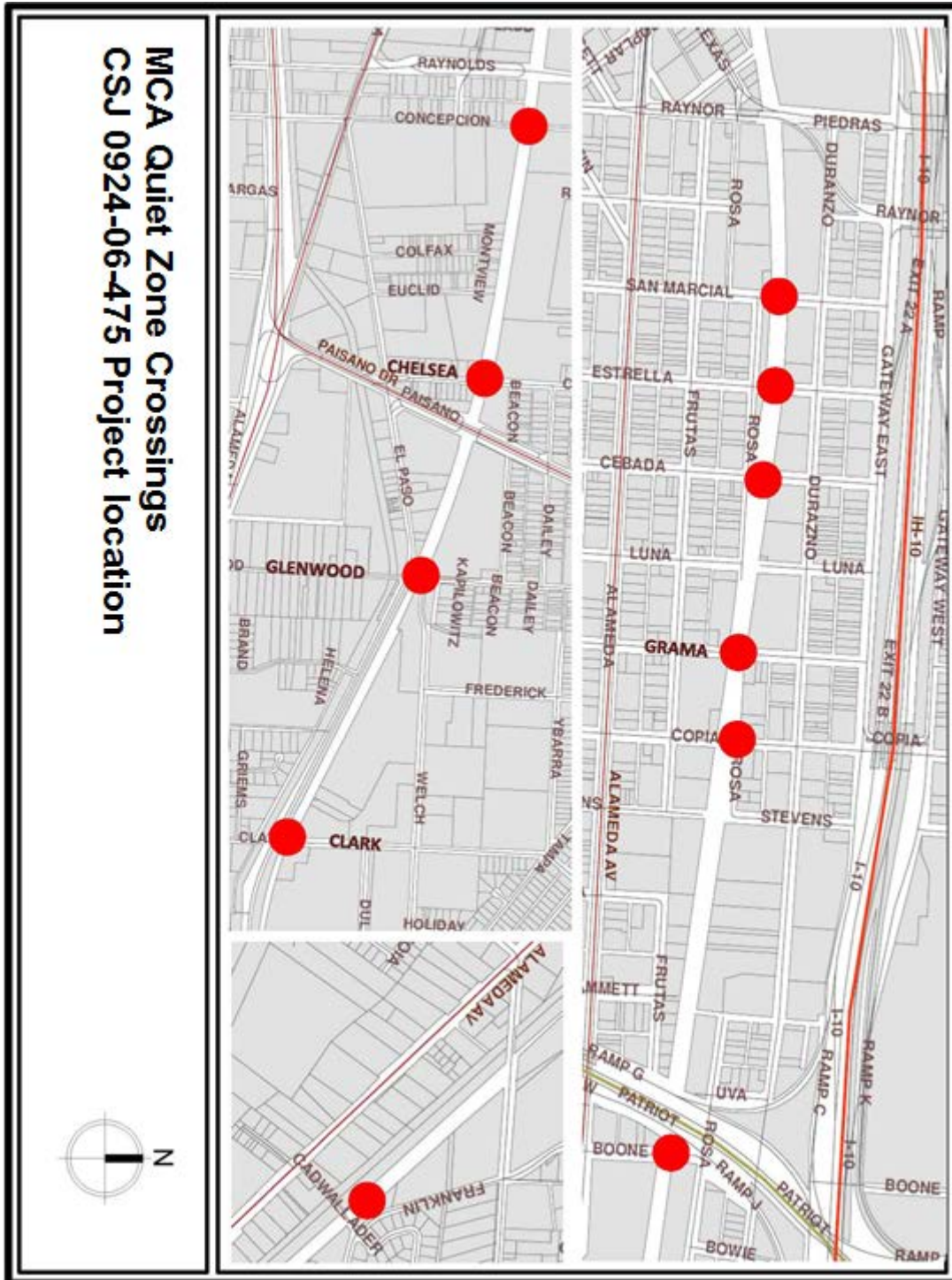
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Janice Mullenix  
Director of Contract Services  
Texas Department of Transportation

\_\_\_\_\_  
Date

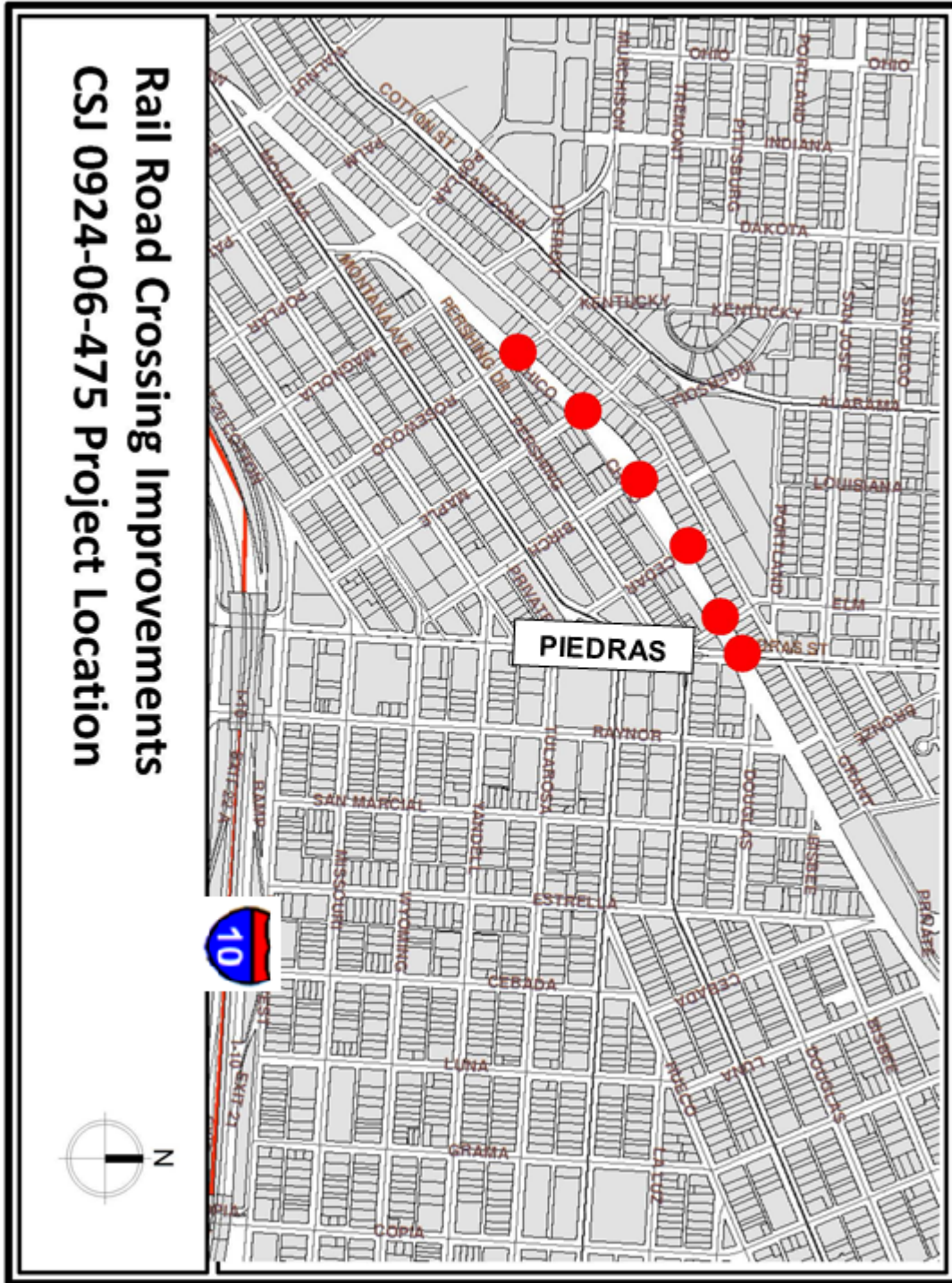
CSJ # 0924-06-475  
District # 24-ELP  
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**ATTACHMENT A**  
**RESOLUTION OR ORDINANCE**

### ATTACHMENT B PROJECT LOCATION MAP



CSJ # 0924-06-475  
District # 24-ELP  
Code Chart 64 # 13400  
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**ATTACHMENT C**  
**PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS**

Costs will be allocated based on 80% Federal funding and 20% 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.
Environmental (by Local Government)	\$0	0%	\$0	0%	0%	\$0	0%	0%	\$0
ROW (by Local Government)	\$0	0%	\$0	0%	0%	\$0	0%	0%	\$0
Utility (by Local Government)	\$0	0%	\$0	0%	0%	\$0	0%	0%	\$0
Engineering (by Local Government)	\$0	0%	\$0	0%	0%	\$0	0%	0%	\$0
Construction (by Local Government)	\$2,000,000	80%	\$1,600,000	0%	11.2%	\$224,000	20%	8.8%	\$176,000
Subtotal	\$2,000,000	80%	\$1,600,000	0%	11.2%	\$224,000	20%	8.8%	\$176,000
Environmental Direct State Costs	\$6,000	80%	\$4,800	0%	11.2%	\$672	20%	8.8%	\$528
Right of Way Direct State Costs	\$6,000	80%	\$4,800	0%	11.2%	\$672	20%	8.8%	\$528
Engineering Direct State Costs	\$12,000	80%	\$9,600	0%	11.2%	\$1,344	20%	8.8%	\$1,056
Utility Direct State Costs	\$3,000	80%	\$2,400	0%	11.2%	\$336	20%	8.8%	\$264
Construction Direct State Costs	\$60,000	80%	\$48,000	0%	11.2%	\$6,720	20%	8.8%	\$5,280
Indirect State Costs	\$96,600	80%	\$77,280	20%	0%	\$19,320	0%	0%	\$0
TOTAL	\$2,183,600		\$1,746,880			\$253,064			\$183,656

Initial payment by the Local Government to the State: \$2,376  
 Payment by the Local Government to the State before construction: \$5,280  
 Estimated total payment by the Local Government to the State \$7,656  
 This is an estimate. The final amount of Local Government participation will be based on actual costs.