

CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: Engineering

AGENDA DATE: February 10, 2009

CONTACT PERSON/PHONE: R. Alan Shubert, P.E. (541-4423)

DISTRICT(S) AFFECTED: District 1

SUBJECT:

This resolution authorizes the City Manager to sign the agreement between the City of El Paso and Hunt Investment, Inc. [on behalf of Hunt El Paso Investment, LTD] and FSW Investment Management, LLC [on behalf of FSW Investments, L.P.] (landowners) wherein the landowners dedicate property for the right of way required for the extension of Paseo del Norte from Interstate 10 to Resler and agree to pay all costs and expenses required for the project required of the City of El Paso under the Local Transportation Advance Funding Agreement (LPAFA) with the State of Texas Department of Transportation for the construction of Paseo Del Norte Drive Extension from Interstate 10 to Resler.

BACKGROUND / DISCUSSION:

A federal allocation of \$6,414,000 for the construction of a four-lane divided roadway at Paseo del Norte is available through TEA-21, the previous highway authorization bill. The funds are distributed to TXDOT and managed as other federally-funded projects. The property owners are willing to dedicate the necessary right-of-way and to pay other costs as may be necessary for the local match required for this funding. The value of the right-of-way, estimated at \$483,000, is part of the local contribution. The City will consider the referenced LPAFA for the construction of Paseo del Norte from I-10 to Resler as a separate item.

PRIOR COUNCIL ACTION:

None

AMOUNT AND SOURCE OF FUNDING:

No City funds will be expended.

BOARD / COMMISSION ACTION:

N/A

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Engineering, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____

DATE: _____

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RESOLUTION

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

That the City Manager be authorized to sign the Agreement between the **CITY OF EL PASO** and **HUNT INVESTMENT, INC.**, [On behalf of **Hunt El Paso Investment, LTD**] and **FSW INVESTMENT MANAGEMENT, LLC** [on behalf of **FSW INVESTMENTS, L. P.**] (landowners) wherein the landowners dedicate property for the right of way required for the extension of Paseo del Norte from Interstate 10 to Resler and agree to pay all costs and expenses required for the project required of the City of El Paso under the Local Transportation Project Advance Funding Agreement (LPAFA) with the State of Texas Department of Transportation for the construction of Paseo Del Norte Drive Extension from Interstate 10 to Resler.

ADOPTED THIS _____ DAY OF _____, 2009.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

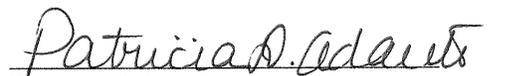
Richarda Duffy Momsen
City Clerk

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APPROVED AS TO FORM:


Mark Shoemith
Assistant City Attorney

APPROVED AS TO CONTENT:


Patricia A. Adauto
Deputy City Manager for Development
And Infrastructure Services

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AGREEMENT

THIS AGREEMENT is made and entered into on the date last entered below, by and between the **CITY OF EL PASO, TEXAS**, a municipal corporation, of the County of El Paso in the State of Texas (hereinafter "City"), and the following "Landowners": **HUNT EL PASO INVESTMENT, LTD.**, a Texas limited partnership (hereinafter "Hunt"); and **FSW INVESTMENTS, L.P** (hereinafter "FSW").

WHEREAS, in October 1998, the Federal Government allocated Six Million Four Hundred Fourteen Thousand Dollars (\$6,414,000.00) through TEA – 21 High Priority Project No. 1065 for the construction of a 4-lane divided highway on Artcraft Road from I-10 to Loop 375 (Transmountain Road) in El Paso, Texas; and

WHEREAS, that portion of Artcraft Road was also known as proposed State Highway 178 and has since been reclassified from a State Highway to a City Street and is now known as proposed Paseo del Norte Road; and

WHEREAS, the proposed project presently consists of the construction of Paseo del Norte Road from Interstate 10 to Resler (the "Project"); and

WHEREAS, Hunt and FSW are the owners of record of the land between Northwestern and Resler through which the extension of Paseo del Norte Road would be constructed; and

WHEREAS, the area in the vicinity of the proposed Paseo del Norte Road has seen unprecedented growth in the past few years; and

WHEREAS, the proposed extension of Paseo del Norte Road is expected to increase mobility and improve the flow of traffic in the northwest area of El Paso; and

WHEREAS, the City would like to utilize the federally allocated funds as soon as possible, for the extension of Paseo del Norte Road from Northwestern to Resler; and

WHEREAS, in order to take advantage of the federal funding, the City must enter into a Local Advance Funding Project Agreement ("LPAFA") with the State of Texas, acting by and through the Texas Department of Transportation (TxDot); and

WHEREAS, TxDot will be responsible for the design and construction of the Project; and

WHEREAS, TxDot further requires that the Project be developed in accordance with TxDot's policy and procedure, and

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WHEREAS, a portion of the proposed extension of Paseo del Norte Road may pass through land owned by the Landowners; and

WHEREAS, before the City may enter into a LPAFA with TxDot for the Project, the City must enter into an agreement with the Landowners regarding the acquisition of right-of-way and the Local Share of the costs of Project development services; and

WHEREAS, the Landowners are willing to dedicate the required right-of-way, fund 10% of the preliminary engineering costs and fund any remaining amount needed for the City to meet its required Local Share of the total cost of the Project.

NOW, THEREFORE, the Landowners and City agree as follows:

- 1. Dedication of Right of Way.** Landowners agree to dedicate, in accordance with TxDot policies and with applicable federal and state laws governing the acquisition policies for acquiring real property, any portion of the right-of-way required for the proposed extension of Paseo del Norte Road.

It is understood by the Landowners that this dedication is necessary to proceed with the development of the Project and the inclusion of the Project in the El Paso Urban Area Transportation Improvement Program ("TIP").

Landowners agree to dedicate to the City, the required right-of-way as determined by TxDot. Except as a credit against the Local Share of total Project costs, Landowners will dedicate the right-of-way to the City with no expectation of compensation by the City.

Notwithstanding anything herein to the contrary, however, the dedication of the right-of-way by the parties hereto is subject to and contingent upon actual funding by the federal government for the construction of the extension of Paseo del Norte Road, pursuant to TEA-21, High Priority project # 1065.

- 2. Route Location.** It is understood and agreed by the parties hereto that the right-of-way route for the proposed extension of Paseo del Norte Road has not been finalized and that TxDot will make the final determination regarding the location of the right of way in accordance with federal and state requirements.

Responsibilities of Landowners. It is understood by the Parties, that in addition to the dedication of the required right-of-way, Landowners agree to pay 10% of the costs for preliminary engineering upon request from the City of El Paso before TXDOT begins preliminary design and environmental documentation work on the Project.

- 3.** The required Local Share of the total cost of the Project is twenty percent (20%), which is anticipated to be lowered to approximately nine percent (9%) of the total cost of the Project because of the economically disadvantaged adjustment (herein, the "Local Share"). There are some items that might be included in the total costs of the Project that TxDot deems ineligible for reimbursement. These

items will not be included in the total cost of the Project and therefore will not be considered when calculating the Local Share. Such Project items that TxDot deems ineligible for reimbursement shall be paid entirely by Landowners in addition to the 10% of preliminary engineering and the Local Share. Examples of items that TxDot might deem ineligible for reimbursement include, but are not limited to the following: utility relocation and increased costs due to local ordinances that are more restrictive than state or federal regulations.

4. (a) Landowners agree to obtain a certified value for the dedicated right-of-way (the "Certified Value"). Should the Certified Value not meet or exceed the Local Share required for the total Project, Landowners agree to pay the City the difference. The 10% match for preliminary engineering, paid in accordance with paragraph 4(b) below, will be credited toward this difference. Landowners agree that there will be no cost to the City for the development of the Project, and that TXDOT will determine the total Project cost, which will determine the amount of the Local Share that Landowners shall pay.

(b) Landowners acknowledge that the current estimate for preliminary engineering is \$175,000 and that the minimum local share of the preliminary engineering is 10% of the final amount of preliminary engineering cost, as determined by TXDOT. Landowners shall pay to the City the 10% share of the final amount for preliminary engineering. This payment of 10% of the preliminary engineering shall be made regardless of whether the Certified Value exceeds the Local Share for the total Project costs. Payment of the 10% costs of the preliminary engineering shall be made by landowners to City by cash transfer at the time the City is required to pay TXDOT the 10% of the preliminary engineering costs. The Certified Value of the dedicated right-of-way may not be credited toward the local 10% match for preliminary engineering costs, but the 10% match for preliminary engineering costs (along with the certified value of the dedicated right-of-way) will be credited toward the total Local Share for the final Project costs. In the event TXDOT adjusts the amount of the preliminary engineering costs, Landowners shall pay to the City any corresponding increase in such costs. In the event TXDOT reduces the dollar amount for the preliminary engineering, the City will pay the Landowners the corresponding amount of decrease, but in no event shall any such refund reduce the Landowners' cumulative contribution to the Project below the required Local Share of the final Project costs. Final Project costs include all expenditures related to the Project including, but not limited to, TXDOT-approved construction change orders. In the event the required 10% share for final preliminary engineering costs and the Certified Value, when combined, exceed the Local Share of the final total Project costs, Landowners shall not be entitled to any refund or credit, of any nature, from the City.

(c) Attached for illustrative purposes only, is Exhibit "A", the TxDot Project budget estimate. City and landowners acknowledge that Exhibit A is subject to change

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and the numbers used are only preliminary estimates of costs and contribution values. The parties expect these numbers to change.

5. Miscellaneous.

- (a) **No Agency.** Except as otherwise specifically provided, nothing herein contained shall be construed to constitute any of the parties hereto the agent of any other party, or to limit in any manner the ability of any party hereto in carrying on its own respective business or activities.
- (b) **Interpretation of Agreement.** If any term of this Agreement, or the application hereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such terms to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- (c) **Controlling Law.** This Agreement shall be construed in accordance with the laws of the State of Texas.
- (d) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns.
- (e) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original.
- (f) **Pronouns.** Pronouns of any gender as used herein shall include the other gender or neuter, and either the singular or plural shall include the other.
- (g) **Notices.** Whenever any party hereto desires to give or serve any notice, demand, request or other communication with respect to this Agreement, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by (a) personal service, or (b) made by certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

City of El Paso
Deputy City Manager
for Development & Infrastructure
2 Civic Center Plaza
El Paso, Texas 79901

Hunt El Paso Investment, Ltd.
Gary Sapp
4401 N. Mesa
El Paso, TX 79902-1150

FSW Investments, L.P
Brent Harris, President
123 Mills Avenue, Suite 200
El Paso Texas 79901

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- (h) **Third Party Beneficiaries.** This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a party beneficiary, or otherwise.
- (i) **Attorney's Fees.** Should any party hereto employ attorneys to enforce any of the provisions hereof, the party losing in any final judgment agrees to pay the prevailing party all reasonable costs, charges and expenses, including attorney's fees, expended or incurred in connection therewith.
- (j) **Entire Agreement.** This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter hereof. This Agreement may be amended or supplemented only by an instrument in writing executed by all parties hereto.
- (k) **Assignment.** Any of the Landowners may assign their rights hereunder only in connection with their sale of all or a portion of their property abutting the State Highway 178 Extension, provided, however, that no such assignment shall relieve any of the Landowners of their obligations hereunder.

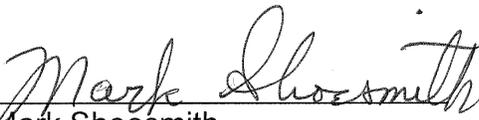
- (1) **Effective Date.** The Effective Date of this Agreement shall be the last date entered below.
- (m) **Design and Development.** The City will make reasonable efforts to include the Landowners in meetings and discussions between the City and TxDot that relate to the design and development of the Project.

EXECUTED this _____ day of _____ 2009.

CITY OF EL PASO.

 Joyce Wilson
 City Manager

APPROVED AS TO FORM:


 Mark Shoemith
 Assistant City Attorney

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APPROVED AS TO CONTENT:

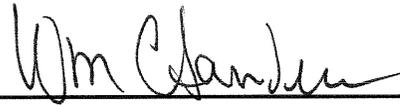


Patricia D. Adauto
Deputy City Manager for Development &
Infrastructure Services



R. Alan Shubert, P.E.
City Engineer

Hunt El Paso Investment, Ltd., a
Texas limited partnership
By: Hunt Investment Inc., a Texas
corporation, its General Partner



By: William C. Sanders, President

FSW Investments, L.P., a Texas
limited partnership
By: FSW Investment Management,
LLC, a Texas limited liability company
its General Partner



By: Brent Harris, President

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ACKNOWLEDGEMENTS

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

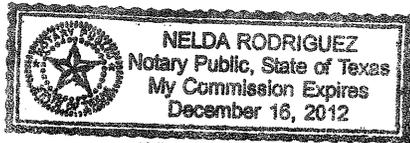
This instrument was acknowledged before me on this _____ day of _____
2009, by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso, Texas**.

Notary Public, State of Texas
My commission expires:

THE STATE OF TEXAS §
 §
COUNTY OF EI PASO §

This instrument was acknowledged before me on this 5th day of
February 2009 by William C. Sanders as President of Hunt Investment, Inc.

Nelda Rodriguez
Notary Public, State of Texas
My commission expires:

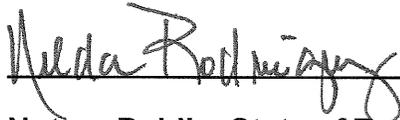


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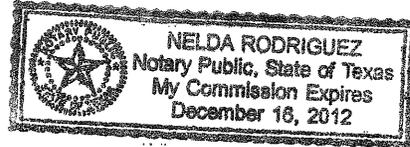
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THE STATE OF TEXAS §
 §
COUNTY OF EI PASO §

This instrument was acknowledged before me on this 5th day of February 2009 by Brent Harris President of FSW Investment Management, LLC.



Notary Public, State of Texas
My commission expires:



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CSJ# 0924-06-343
 District # ELP (24)
 Code Chart 64 #13400
 Project: Paseo Del Norte

**EXHIBIT A
 PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS**

Description	Total Estimate Cost	Federal Participation	State Participation	Local Participation		
				80% Match	20% Match	55% EDC Adjustment
Land (no cash contribution)	\$483,000	\$386,400		\$96,600		\$96,600
Utilities (no cash contribution)	NA					
Environmental (no cash contribution)	NA					
Preliminary Engineering	\$175,000	\$140,000	\$19,250	\$35,000	\$19,250	\$15,750
Construction	\$3,556,000	\$2,844,800	\$391,160	\$711,200	\$391,160	\$320,040
SUBTOTAL	\$4,214,000	\$3,371,200	\$410,410	\$842,800	\$410,410	\$432,390
Direct State Costs (including plan review, inspection and oversight)	\$462,000	\$369,600	\$50,810	\$92,400	\$50,810	\$41,590
Indirect State Costs (no local participation required except for service)	\$273,000	\$218,400	\$54,600			
TOTAL	\$4,949,000	\$3,959,200	\$515,820	\$935,200	\$461,220	\$473,980
Right of Way Donation						(\$483,000)
TOTAL BALANCE						(\$9,020)
<i>First Payment due prior to PS&E by State</i>	NA					\$15,750
<i>Second payment due 60 days prior to the project letting</i>	NA					\$0.00

Total participation required from the local government = \$15,750

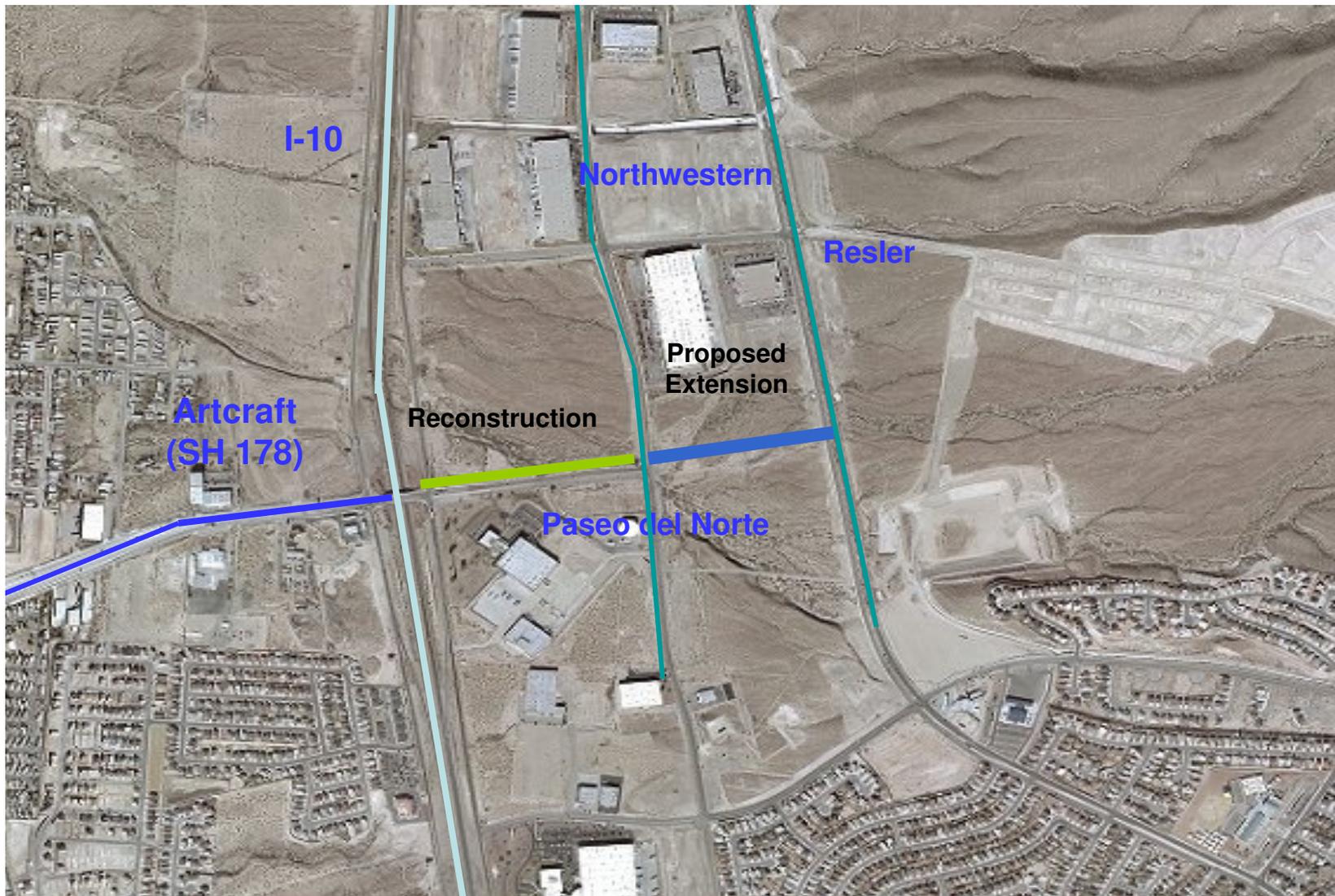


Paseo del Norte Extension

- Federal allocation of \$6.4 million
- Includes reconstruction of Paseo del Norte from I-10 to Northwestern
- Includes new roadway construction from Northwestern to Resler
- Estimated cost \$4.9 million
- Requires local match
 - 10% due to EDC adjustment
 - \$473,980
- Requires right-of-way (ROW)



Paseo del Norte Extension





Paseo del Norte Extension

Landowners' Agreement covers required local match

- **Dedication of required ROW**
- **Required preliminary engineering costs**
- **Additional costs required under the Local Advance Project Funding Agreement (LPAFA)**
- **City will coordinate project development with the 2 landowners**



Paseo del Norte Extension

LPAFA

- **Project Budget: \$4,949,000**
- **City is project sponsor**
 - **Local match is provided by Landowners' Agreement**
- **TXDOT is project manager responsible for:**
 - **Environmental Documentation**
 - **Design**
 - **Construction**
- **Project scope is reconstruction of Paseo del Norte from I-10 to Northwestern and new, 4-lane divided roadway from Northwestern to Resler**