

**CITY OF EL PASO, TEXAS  
REQUEST FOR COUNCIL ACTION (RCA)**

**DEPARTMENT:** Environmental Services

**AGENDA DATE:** March 24, 2009

**CONTACT PERSON/PHONE:** Ellen A. Smyth, P.E., (915) 621-6719

**DISTRICT (S) AFFECTED:** District 8

**SUBJECT:**

Approve a resolution for the City Manager to sign a Multiple Use Agreement with Texas Department of Transportation

**BACKGROUND / DISCUSSION:**

The proposed agreement will permit the operation of a temporary storage facility for dumpsters for the use of the Downtown Management District.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

N/A

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

**LEGAL:** (if required) Josette Flores

**FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**RESOLUTION**

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

That the City Manager be authorized to sign a Multiple Use Agreement between the **CITY OF EL PASO** and the **STATE OF TEXAS BY AND BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION**, to permit the construction, maintenance and operation of a temporary storage facility on the southwest corner highway right of way at Gateway Boulevard East and Franklin Street.

**ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.**

CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Josette Flores  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Ellen A. Smyth, P.E., Director  
Environmental Services



MULTIPLE USE AGREEMENT

STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS AGREEMENT made by the State of Texas by and between the Texas Department of Transportation, hereinafter referred to as "State", party of the first part, and the City of El Paso, Texas, hereinafter called City of El Paso, party of the second part, is to become effective when fully executed by both parties.

WITNESSETH

WHEREAS, on the [ ] day of [ ], 20 [ ], the governing body for the City of El Paso, entered into Resolution/Ordinance No. [ ] hereinafter identified by reference, authorizing the City of El Paso's participation in this agreement with the State; and

WHEREAS, the City of El Paso has requested the State to permit the construction, maintenance and operation of a public temporary storage facility at the southwest corner of Gateway East and Franklin on the highway right of way, (General description of area)

shown graphically by the preliminary conceptual site plan in Exhibit "A" and being more specifically described by metes and bounds of Exhibit "B", which are attached and made a part hereof; and

WHEREAS, the State has indicated its willingness to approve the establishment of such facilities and other uses conditioned that the City of El Paso will enter into agreements with the State for the purpose of determining the respective responsibilities of the City of El Paso and the State with reference thereto, and conditioned that such uses are in the public interest and will not damage the highway facilities, impair safety, impede maintenance or in any way restrict the operation of the highway facility, all as determined from engineering and traffic investigations conducted by the State.

## **AGREEMENT**

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

### **1. DESIGN AND CONSTRUCTION**

The City of El Paso \_\_\_\_\_ will prepare or provide for the construction plans for the facility, and will provide for the construction work as required by said plans at no cost to the State. Said plans shall include the design of the access control, necessary horizontal and vertical clearances for highway structures, adequate landscape treatment, adequate detail to ensure compliance with applicable structural design standards, sufficient traffic control provisions, and general layout. They shall also delineate and define the construction responsibilities of both parties hereto. Completed plans will be submitted to State for review and approval and when approved shall be attached to the agreement and made a part thereof in all respects. Construction shall not commence until plans have been approved by the State. Any future revisions or additions shall be made after prior written approval of the State.

### **2. INSPECTION**

Ingress and egress shall be allowed at all times to such facility for Federal Highway Administration personnel and State Forces and equipment when highway maintenance operations are necessary, and for inspection purposes; and upon request, all parking or other activities for periods required for such operations will be prohibited.

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the 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.

### **3. PARKING REGULATIONS**

Parking regulations shall be established limiting parking to single unit motor vehicles of size and capacity no greater than prescribed for 1 $\frac{1}{2}$  ton trucks, such vehicles to conform in size and use to governing laws. Parking shall be permitted only in marked spaces.

Parking shall be prohibited when a security threat, as determined by TxDOT, exists.

#### 4. PROHIBITION/SIGNS

Regulations shall be established prohibiting the parking of vehicles transporting flammable or explosive loads and prohibiting use of the area in any manner for peddling, advertising or other purposes not in keeping with the objective of a public facility. The erection of signs other than those required for proper use of the area will be prohibited. All signs shall be approved by the State prior to the actual erection.

#### 5. RESPONSIBILITIES

Maintenance and operation of the facility shall be entirely the responsibility of the City of El Paso. Such responsibility shall not be transferred, assigned or conveyed to a third party without the advanced written approval of the State. Further, such responsibility shall include picking up trash, mowing and otherwise keeping the facility in a clean and sanitary condition, and surveillance by police patrol to eliminate the possible creation of a nuisance or hazard to the public. Hazardous or unreasonably objectionable smoke, fumes, vapor or odors shall not be permitted to rise above the grade line of the highway, nor shall the facility subject the highway to hazardous or unreasonably objectionable dripping, droppings or discharge of any kind, including rain or snow.

#### 6. FEES

Any fees levied for use of the facilities in the area shall be nominal and no more than are sufficient to defray the cost of construction, maintenance and operations thereof, and shall be subject to State approval.

#### 7. TERMINATION UPON NOTICE

This provision is expressly made subject to the rights herein granted to both parties to terminate this agreement upon notice, and upon the exercise of any such right by either party, all obligations herein to make improvements to said facility shall immediately cease and terminate.

#### 8. MODIFICATION/TERMINATION OF AGREEMENT

If in the sole judgment of the State it is found at any future time that traffic conditions have so changed that the existence or use of the facility is impeding maintenance, damaging the highway facility, impairing safety or that the facility is not being properly operated, that it constitutes a nuisance, is abandoned, or if for any other reason it is the State's judgment that such facility is not in the public interest, this agreement under which the facility was constructed may be: (1) modified if corrective measures acceptable to both parties can be applied to eliminate the objectionable features of the facility; or (2) terminated and the use of the area as proposed herein discontinued.

**9. PROHIBITION OF STORAGE OF FLAMMABLE MATERIALS**

All structures located or constructed within the area covered by the agreement shall be fire resistant. The storage of flammable, explosive or hazardous materials is prohibited. Operations deemed to be a potential fire hazard shall be subject to regulation by the State.

**10. RESTORATION OF AREA**

The City of El Paso \_\_\_\_\_ shall provide written notification to the State that such facility will be discontinued for the purpose defined herein. The City of El Paso \_\_\_\_\_ shall, within thirty (30) days from the date of said notification, clear the area of all facilities that were its construction responsibility under this agreement and restore the area to a condition satisfactory to the State.

**11. PREVIOUS AGREEMENTS**

It is understood that this agreement in no way modifies or supersedes the terms and provisions of any existing agreements between the parties hereto.

**12. INDEMNIFICATION**

The City of El Paso \_\_\_\_\_ acknowledges that it is not an agent, servant or employee of the State, and that it is responsible for its own acts and deeds and for those of its agents or employees during the performance of contract work.

Neither party hereto intends to waive, relinquish, limit or condition its right to avoid any such liability by claiming its governmental immunity.

When notified by the State to do so, the other party hereto shall within thirty (30) days from receipt of the State's written notification pay the State for the full cost of repairing any damages to the highway facility which may result from its construction, maintenance or operation of the facility, and shall promptly reimburse the State for costs of construction and/or repair work made necessary by reason of such damages.

Nothing in this agreement shall be construed as creating any liability in favor of any third party against the State and the City of El Paso \_\_\_\_\_. Additionally, this agreement shall not ever be construed as relieving any third party from any liability against the State and the City of El Paso \_\_\_\_\_, but the City of El Paso \_\_\_\_\_ shall become fully subrogated to the State and shall be entitled to maintain any action over and against the third party which may be liable for having caused the City of El Paso \_\_\_\_\_ to pay or disburse any sum of money hereunder.

### 13. INSURANCE

\_\_\_\_\_ shall provide necessary safeguards to protect the public on State maintained highways including adequate insurance for payment of any damages which might result during the construction, maintenance and operation of the facility occupying such airspace or thereafter, and to save the State harmless from damages, to the extent of said insurance coverage and insofar as it can legally do so. Prior to beginning work on the State's right of way, the \_\_\_\_\_'s construction contractor shall submit to the State a completed insurance form (TxDOT Form No. 1560) and shall maintain the required coverage during the construction of the facility.

### 14. USE OF RIGHT OF WAY

It is understood that the State by execution of this agreement does not impair or relinquish the State's right to use such land for highway purposes when it is required for the construction or re-construction of the traffic facility for which it was acquired, nor shall use of the land under such agreement ever be construed as abandonment by the State of such land acquired for highway purposes, and the State does not purport to grant any interest in the land described herein but merely consents to such use to the extent its authority and title permits.

### 15. ADDITIONAL CONSENT REQUIRED

The State asserts only that it has sufficient title for highway purposes. The City of El Paso \_\_\_\_\_ shall be responsible for obtaining such additional consent, permits or agreement as may be necessary due to this agreement. This includes, but is not limited to, appropriate permits and clearances for environmental, ADA and public utilities.

### 16. FHWA ADDITIONAL REQUIREMENTS

If the Facility is located on the Federal-Aid Highway System, "ATTACHMENT A", which states additional requirements as set forth in the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710, shall be attached to and become a part of this agreement.

### 17. CIVIL RIGHTS ASSURANCES

The \_\_\_\_\_, for itself, its personal representatives, successors and interests and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no persons, on the grounds of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facility; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the

\_\_\_\_\_ shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That if in the event of any breach of the above non-discrimination covenants, the State shall have the right to terminate the agreement and reenter and repossess said land and the facilities thereon, and hold the same as if said agreement had never been made or issued.

**18. AMENDMENTS**

Any changes in the time frame, character or responsibilities of the parties hereto shall be enacted by a written amendment executed by both parties hereto.

**19. LEGAL CONSTRUCTION**

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this agreement.

**20. NOTICES**

All notices required under this agreement shall be mailed or hand delivered to the following respective addresses:

STATE (Mailing Address)	(Name of other party) (Mailing Address)
Texas Department of Transportation Maintenance Division 125 East 11th Street Austin, Texas 78701-2483	_____ _____ _____

**21. WARRANTS**

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

List of Attached Exhibits:

- Exhibit A - General Layout
- Exhibit B - Metes and Bounds Description
- Exhibit C - Approved Construction Plans
- Exhibit D - Certificate of Insurance (TxDOT Form 1560)
- Exhibit E - Attachment A (FHWA Additional Requirements)

**IN WITNESS WHEREOF**, the parties have hereunto affixed their signature, the

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, and the State on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**STATE OF TEXAS**

Executed and approved for the Texas  
Transportation Commission for the purpose and  
effect of activating and/or carrying out the orders,  
and established policies or work programs  
heretofore approved and authorized by the Texas  
Transportation Commission.

\_\_\_\_\_  
City of El Paso, Texas  
(Name of other party)

By: \_\_\_\_\_  
City Manager  
Title

\_\_\_\_\_  
Joyce Wilson  
Printed Name

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Director, Maintenance Division

\_\_\_\_\_  
Leo Betancourt, P.E.  
Printed Name

\_\_\_\_\_  
Date

**APPROVAL RECOMMENDED:**

\_\_\_\_\_  
District Engineer

\_\_\_\_\_  
Charles S. Berry, P.E.  
Printed Name

\_\_\_\_\_  
Date



**IN WITNESS WHEREOF**, the parties have hereunto affixed their signature, the

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_,

20\_\_\_\_, and the State on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**RECOMMENDED BY:**

City of El Paso, Texas

\_\_\_\_\_  
(Name of other party)

By: \_\_\_\_\_

Executive Director  
Texas Department of Transportation

By: \_\_\_\_\_  
City Manager  
Title

Amador Seanz, P.E.

\_\_\_\_\_  
Printed Name

Joyce Wilson

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

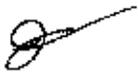
Executed for the State of Texas by the State's Chief  
Executive Officer in accordance with Texas  
Constitution, Article IV, § 10.

By: \_\_\_\_\_  
Governor of Texas

Rick Perry

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date



### ATTACHMENT A

Inasmuch as this project is on the Federal-Aid highway system, the following additional requirements as applicable with the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710.

1. Any significant revision in the design or construction of the facility shall receive prior approval by the Texas Department of Transportation subject to concurrency by the FHWA.
2. Any change in the authorized use of airspace shall receive prior approval by the Texas Department of Transportation subject to concurrence by the FHWA.
3. The airspace shall not be transferred, assigned or conveyed to another party without prior Texas Department of Transportation approval subject to concurrence by the FHWA.
4. This agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.

### EXHIBIT E

3

I-10

GATEWAY EAST

FRANKLIN

State of Texas

Dumpster Locations

Property Entrance/Exit

Texas & Pacific RR

**Legend**

- - - Proposed Fence
- Dumpsters
- Property Line

# Exhibit-A Site Layout



# **EXHIBIT "B"**

## DORADO ENGINEERING, INC.

2717 E. Yandell El Paso, Texas 79903 (915) 562-0002 Fax (915) 562-7743

### Texas Department of Transportation (TXDOT) Interstate 10 Right-of-Way Parcel No. 32

Metes and Bound Description of a parcel of land being a portion of Parcel No.32 of Interstate 10 Right-of-Way acquisition by the Texas Department of Transportation, out of The Texas and Pacific Railroad Right-of-Way, City of El Paso, County of El Paso, Texas and being more particularly described as follows;

From an existing monument located at the intersection of the monument lines of Mundy Street and Los Angeles Street; Thence South  $02^{\circ} 04' 47''$  East along the monument line of Los Angeles Street a distance of eighty and eleven hundredths (80.11) feet to the center line intersection of Los Angeles Street and Missouri Street, Thence South  $73^{\circ} 16' 40''$  East along the centerline of the Franklin Street Extension a distance two hundred thirteen and thirteen hundredths (213.13) feet for a point on a curve to the right; Thence along an arc of a curve to the right, said arc being centerline of Franklin Street Extension, a distance of one hundred twenty three and four hundredths (123.04) feet, said curve having a radius of one hundred twenty five and no hundredths (125.00) feet, a central angle  $56^{\circ} 23' 51''$ , a chord bearing of South  $45^{\circ} 04' 46''$  East, and chord distance of one hundred eighteen and thirteen hundredths (118.13) feet for a point on the centerline of Franklin Street Extension; Thence South  $16^{\circ} 52' 51''$  East along the centerline of Franklin Street extension a distance of one hundred eighty six and forty two hundredths (186.42) feet to a point for a curve to the left; Thence along an arc of a curve to the left, said arc being the centerline of Franklin Street Extension, a distance of sixteen and ninety six hundredths (16.96) feet, said curve having a radius of two hundred and no hundredths (200.00) feet, a central angle of  $04^{\circ} 51' 26''$ , a chord bearing of South  $19^{\circ} 18' 34''$  East, and a chord distance of sixteen and ninety five hundredths (16.95) feet for a corner on the intersection of the centerlines of Franklin Street Extension and the Porfirio Diaz Street Exit Ramp; Thence South  $73^{\circ} 07' 03''$  West along the centerline of the Porfirio Diaz Street Exit Ramp, a distance of one hundred eight and five hundredths (108.05) feet for a corner; Thence South  $16^{\circ} 16' 04''$  East across the Porfirio Diaz Street Exit Ramp, a distance of eleven and ninety hundredths (11.90) feet to a point on the Southerly curb line of the Porfirio Diaz Street Exit Ramp, said point being the Point of Beginning for this description;

Thence North  $73^{\circ} 27' 15''$  East along the Southerly curb line of the Porfirio Diaz Street Exit Ramp, a distance of forty four and eighty four hundredths (44.84) feet for a curve to the right;

Thence along an arc of a curve to the right, said arc being the curb return, into Franklin Street Extension, a distance of sixty three and ninety one hundredths (63.91) feet, said curve having a radius of forty four and fifty eight hundredths (44.58) feet, a central angle of  $82^{\circ} 07' 35''$ , a chord bearing of South  $68^{\circ} 16' 09''$  East and a chord distance of fifty eight and fifty seven hundredths (58.57) feet to a point for a curve to the left;

Thence continuing along an arc of a curve to the left, said arc being the Easterly curb line of Franklin Street Extension, a distance of two hundred six and ninety two hundredths (206.92) feet, said curve having a radius of two hundred thirty six and eleven hundredths (236.11) feet, a central angle of  $50^{\circ} 12' 47''$ , a chord bearing of South  $59^{\circ} 29' 32''$  East and a chord distance of two hundred and thirty six hundredths (200.36) feet to the Southeasterly corner of the parcel being described said corner lying on the Southerly curb line of Franklin Street Extension;

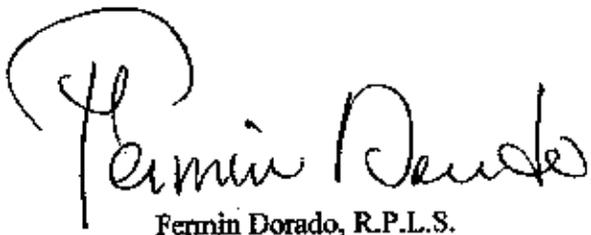
Thence North  $87^{\circ} 30' 26''$  West along the Southerly line of the parcel being described a distance of one hundred seventy six and seventeen hundredths (176.17) feet to a Texas Department of Transportation (TXDOT) Right-of-Way marker, said marker lying on the Northerly Right-of-Way line of Texas and Pacific Railroad;

Thence North  $87^{\circ} 04' 28''$  West along the Northerly Right-of-Way line of Texas and Pacific Railroad a distance of three hundred sixty eight and three hundredths (368.03) feet for a corner on a set TXDOT Right-of-Way marker;

Thence North  $56^{\circ} 09' 21''$  West along the Westerly line of the parcel being described a distance of sixty one and seventy nine hundredths (61.79) feet for a corner on the Southerly curb line of the Porfirio Diaz Street Exit Ramp, for a curb to the left;

Thence along an arc of a curve to the left, said arc being the Southerly curb line of the Porfirio Diaz Street Exit Ramp, a distance of three hundred twenty nine and seventy nine hundredths (329.79) feet, said curve having a radius of one thousand one hundred thirty six and eighty nine hundredths (1,136.89) feet, a central angle of  $16^{\circ} 37' 14''$ , a chord bearing of North  $81^{\circ} 17' 21''$  East with a chord distance of three hundred twenty eight and sixty four hundredths (328.64) feet to a point on the Southerly curb line of the Porfirio Diaz Street Exit Ramp, said point also being the Point of Beginning for this description.

Said parcel of land contains 32,537.00 square feet or 0.747 acres of land more or less.

  
Fermín Dorado, R.P.L.S.



February 16, 2009

