

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

DEPARTMENT: Engineering & Construction Management

AGENDA DATE: May 8, 2012

PERSON/PHONE: R. Alan Shubert, City Engineer

DISTRICT AFFECTED: 1

SUBJECT:

To approve a Resolution that the City Manager be authorized to sign a *Temporary Right of Entry* granting permission to Bain Construction, Inc. to enter and perform work (excavation only) upon City property at 300 Farm Road, a WIC clinic. The right of entry is in support of work being done by Bain Construction, the installation of a water main for El Paso Water Utilities.

BACKGROUND / DISCUSSION:

Bain Construction, Inc. has requested access to property operated as the Canutillo WIC Clinic in order to excavate a temporary 12 ft. by 40 ft. boring access point for the installation of a water main on City right of way. The work is being overseen, tested and inspected by EPWU. Excavation will take place within the clinic driveway area but the new water main will be strictly within City right-of-way. The excavation is being performed to enable the crew to lower boring drill equipment (launch pit) into the ground and bore in the direction of the street. The contractor expects the work to take three days from start to finish and will be programmed as to not affect operation of the clinic, its clients or its employees. As routinely required, City property must be restored to its original, pre-excavation compaction and surface condition.

PRIOR COUNCIL ACTION:

No prior council action has been taken on this item.

AMOUNT AND SOURCE OF FUNDING:

(There are no costs associated with this action.)

BOARD / COMMISSION ACTION:

(N/A)

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

DEPARTMENT HEAD: _____



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 the Temporary Right of Entry by and between the City of El Paso and Bain Construction, Inc. ("Grantee"), allowing Grantee access to City property at the City's Canutillo WIC Clinic, for ten days, in support of work being done by Grantee pursuant to a contract by and between Grantee and the EPWU.

ADOPTED THIS _____ DAY OF _____ 2012.

CITY OF EL PASO:

John F. Cook,
Mayor

ATTEST:

Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT



R. Alan Shubert, P.E.
City Engineer

shall be fully responsible for the repair of such damage.

2. Except for the temporary rights expressly granted by execution of this instrument and reasonable access, and/or ingress and egress to the property, GRANTOR does not convey any other right, title, or interest in the City Property herein.
3. Unless extended by written instrument signed by GRANTOR, the rights granted herein shall expire ten days from the date signed by the City Manager, without regard to whether the referenced related work has begun or been completed. However, this Temporary Right of Entry may be extended or amended in writing, upon execution of both parties.
4. GRANTEE AGREES TO INDEMNIFY AND HOLD GRANTOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT, OR MANAGEMENT OF GRANTEE'S ACTIVITIES ON THE CITY PROPERTY, OR FROM ANY BREACH ON THE PART OF GRANTEE OF ANY TERMS OF THIS TEMPORARY RIGHT OF ENTRY, OR FROM ANY ACT OR NEGLIGENCE OF GRANTEE, ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, INVITEES, OR LICENSEES IN OR ABOUT THE CITY PROPERTY INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF GRANTOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST GRANTOR BY REASON OF ANY SUCH CLAIM, GRANTEE, UPON NOTICE FROM GRANTOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO GRANTOR.
5. GRANTEE understands and agrees that in the event any federal or state regulatory agency assesses a civil penalty against the GRANTOR for any violation of applicable regulations, and such civil penalty shall be imposed as a result of any act or failure to act on the part of the GRANTEE, its agents, contractors, subcontractors, employees, invitees, or licensees, GRANTEE will immediately reimburse the GRANTOR in the amount of the civil penalty assessed.
6. In completing the referenced work, GRANTEE anticipates the use of the contractors and subcontractors noted herein. In the event that additional contractors or subcontractors are deemed necessary by GRANTEE, GRANTEE shall provide written notice of the need for such additional contractor or subcontractor to GRANTOR.
7. GRANTEE and its contractors or subcontractors shall coordinate the specific location with the Engineering Department in advance, so as to minimize any potential interference with the performance of GRANTOR's use of the property (City's Canutillo WIC Clinic).

8. GRANTEE agrees that no work shall be performed on the City Property described in ATTACHMENT "A" on days that the City's Canutillo WIC Clinic is open to the public.
9. This instrument shall be governed, construed, and enforced in accordance with the laws of the State of Texas. Any controversy arising out of or connected with this Agreement or the underlying work shall be instituted and maintained in the courts of the State of Texas, County of El Paso.
10. Nothing in this Temporary Right of Entry shall be construed as creating the relationship of employer and employee or agent between any of the parties named herein.
11. GRANTOR, by granting this Temporary Right of Entry, does not warrant or represent that any permission for any real property interest, use in the City Property, or other right shall be granted to GRANTEE. This instrument merely grants a temporary right of entry for the sole purpose of excavating a temporary boring access hole to allow for the installation of a water main as referenced herein. The Parties expressly understand and agree that the granting of any related easement or other such rights shall require the execution of additional instruments and/or proper legal actions.
12. All notices to be given under this Temporary Right of Entry shall be delivered by hand or given by certified or registered mail, receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

GRANTOR: CITY OF EL PASO
Attn: City Engineer
2 Civic Center Plaza, 4th Floor
El Paso, Texas 79901

GRANTEE: Bain Construction, Inc.
14160 Blair Court
Horizon City, TX 79928

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown on the return receipt for delivery, rejection, or undeliverable. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other in the manner set forth in this paragraph.

13. GRANTEE shall not assign, sublet, sell, convey, or transfer all or any part of this Temporary Right of Entry in any way without the prior written consent of GRANTOR. Any attempt to transfer or assign without the prior written consent of GRANTOR shall be void and may result in the termination of this instrument.

EXECUTED THIS _____ DAY OF _____, 2012.

GRANTOR:
CITY OF EL PASO

Joyce A. Wilson,
City Manager

GRANTEE:
BAIN CONSTRUCTION, INC.

Scott C. Bain,
President

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert,
City Engineer

(ACKNOWLEDGMENTS TO FOLLOW ON NEXT PAGE)

