

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

**DEPARTMENT:**     Engineering

**AGENDA DATE:**   May 10, 2005

**CONTACT PERSON/PHONE:**   Bashar Abugalyon, P.E., Ext. 4157

**DISTRICT(S) AFFECTED:** 6

**SUBJECT:**

That the City Manager be authorized to sign an Acceptance of Responsibility Agreement by and between the CITY OF EL PASO and CONTRACT FREIGHTER, INC. for repairs to a concrete swale and erosion within the City's concrete lined drainage channel located within the Americas Ten Subdivision, El Paso, El Paso, El Paso County, Texas.

**BACKGROUND / DISCUSSION:**

CONTRACT FREIGHTER, INC., to repair concrete channel walls and erosion within the City's concrete lined drainage channel.

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**PRIOR COUNCIL ACTION:**

No prior item has been submitted to City Council.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

N/A

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

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

ENGINEERING DEPARTMENT

Development Division

DATE: April 26, 2005  
TO: Mayor & City Council  
FROM: Bashar Abugalyon, P.E., Development Division Chief Engineer  
SUBJECT: Resolution for CFI to do Improvements to City Concrete Channel-  
Acceptance of Responsibility

The above referenced request is scheduled for City Council Regular Agenda on May 10, 2005. The purpose of this memorandum is to provide you with general information concerning this request.

That the City Manager be authorized to sign an Acceptance of Responsibility Agreement by and between the **CITY OF EL PASO** and **CONTRACT FREIGHTER, INC.** for repairs to a concrete swale and erosion within the City's concrete lined drainage channel located within the Americas Ten Subdivision, El Paso, El Paso, El Paso County, Texas.

If I can be of any further assistance regarding this matter, please don't hesitate to contact me at extension 4157.

**RESOLUTION**

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

That the City Manager be authorized to sign an Acceptance of Responsibility Agreement by and between the **CITY OF EL PASO** and **CONTRACT FREIGHTER, INC.** for repairs to a concrete swale and erosion within the City's concrete lined drainage channel located within the Americas Ten Subdivision, El Paso, El Paso County, Texas.

**ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.**

THE CITY OF EL PASO

ATTEST:

\_\_\_\_\_  
Joe Wardy, Mayor

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Theresa Cullen-Garney  
Deputy City Attorney

\_\_\_\_\_  
Rick Conner, P. E.  
City Engineer

STATE OF TEXAS

ACCEPTANCE OF RESPONSIBILITY

COUNTY OF EL PASO

WHEREAS, the City of El Paso, Texas, hereinafter "City", is the owner of a drainage concrete lined channel within the Americas Ten Subdivision, El Paso, El Paso County, Texas; and

WHEREAS, Contract Freighters, Inc., hereinafter referred to as "CFI", has a facility at 12460 Rojas Drive, adjacent to the City's concrete lined channel; and

WHEREAS, in good faith CFI desires to make immediate repairs to the City's concrete lined channel,

NOW THEREFORE, WITNESSETH AS FOLLOWS:

1. **PROJECT.** The Project contemplates that the CFI will enter the City's property to repair a concrete swale and erosion within the City's concrete lined channel, as shown on the attached drawing and description which is incorporated herein as Attachment "A", and made a part hereof for all purposes. And hereinafter referred to as the "Premises". If the Project, as initially identified, goes beyond a repair and CFI is required to do more improvements, CFI shall be required to work with the City and provide proof of compliance with TPDES regulations and the City of El Paso Municipal Code, Chapter 15.20. In addition, if for any reason, as a result of the identified repair, there is a release of any pollutant or damaging chemical by CFI which may impact the City's MS4 or City's environment and/ or if the EPA or TCEQ should look to the City for any remedying of a violation or a fine, CFI shall be responsible for cost of remediation, any City incurred cost and cleanup as per the City's approval and authorization.
2. **TERM.** Permission shall become effective as of MAY 11, 2005, and shall continue until the repair work is completed to the City's satisfaction or right to cancel in accordance with Paragraph 8, Termination of Permission.
3. **IMPROVEMENTS.** Other than repairs to the City's concrete structure, no other improvements will be allowed. CFI shall submit to the City Engineer and the City Engineer, the plans and specifications for any grading, improvements, additions, alterations or changes, and no work thereon shall be commenced until such approval has been given. It shall be the sole responsibility of CFI to keep, maintain, and repair the identified section of the Premises and all improvements placed thereon by CFI at its sole cost and expense.
4. **DRIVEWAYS.** CFI shall assume the responsibility of providing access to the Premises. CFI shall submit to the City Engineer the plans and specifications for the proposed access. Said plans and specification will show the location of all repairs.

5. IMPROPER USE. CFI shall not permit on the Premises any activity, which violates any federal or state law or regulation or any City ordinance. CFI shall use its best efforts to prevent disorder and conduct amounting to a nuisance. The Premises shall not be used for any purpose except as contemplated by this Acceptance of Permission.
  
6. INDEMNITY AND LIABILITY INSURANCE.
  - A. CFI shall promptly, before utilizing the Premises subject to this Request, provide public liability insurance for personal injuries/death growing out of any one accident or other cause in a minimum amount of \$250,000 per person and \$500,000 for two or more persons; and in addition, shall provide property damage liability insurance in a minimum sum of \$100,000 for property damage growing out of any one accident or other cause, or in an amount equal to or greater than the statutory limits of liability as set out in the Texas Tort Claims Act, or any amendments thereto, or in an amount normally carried by CFI, whichever amount is greater. Such insurance shall be provided by CFI throughout the term of this Acceptance of Permission.
  
  - B. CFI shall maintain said insurance with a solvent insurance company authorized to do business in Texas. All policies shall name the City as additional insured. CFI shall file a copy of the policy or certificate of insurance with the City Engineer and the City Clerk. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without thirty (30) days prior written notice to the City and CFI agrees to provide such notice to City.
  
  - C. CFI will indemnify and save the City harmless from all claims for damages to persons or property arising directly or indirectly out of the condition of the Premises, the use or occupancy thereof by CFI, or any activity conducted thereon by CFI or with its permission; provided, however, that CFI shall not be liable for any claims or damages caused by the negligence of the City.
  
7. CANCELLATION BY CITY. Should at any time the City, for any reason, decide that CFI is not complying with the terms of this Acceptance of Responsibility to repair the Premises, the City will terminate this permission upon written notice to CFI, and at no cost to the City, take possession of the Premises. All rights of CFI in the Premises shall then be terminated, and CFI shall be entitled to no reimbursement or compensation. Any waiver by the City of any breach of any of CFI's obligations shall not be deemed a continuing waiver and shall not prevent the City from exercising any remedy it may have for any succeeding breach of this same or another obligation of CFI.

Upon the City's acceptance of the identified repair work, all equipment, materials, and other items CFI has placed within the Premises shall be removed by CFI without cost to the City, and the Premises shall be restored by CFI to a condition satisfactory to the City Engineer. Upon failure to remove any of said equipment, materials or other items within five (5) days of expiration or termination, said equipment, material and other items shall become the property of the City and CFI shall pay the City for all expenses related to the removal of the equipment, material and other items and any related repair or restoration of the Premises.

8. TERMINATION OF PERMISSION. All rights of CFI hereunder shall cease, and CFI shall quietly and peaceably deliver to the City possession of the Premises upon the expiration of the term or cancellation of the Acceptance of Permission.
  
9. LIENS AND ENCUMBRANCES. CFI shall not give or permit any liens or encumbrances on the Premises, and upon termination of the permission granted hereunder, shall peacefully surrender the Premises to the City free of all such liens or encumbrances. CFI shall defend and indemnify the City against any liability and loss of any type arising from any such lien or encumbrance on the Premises, together with reasonable attorney's fees, costs and expenses incurred by the City negotiating, settling, defending or otherwise protecting against such liens or encumbrances.
  
10. MISCELLANEOUS.
  - A. Maintenance of Premises: CFI shall be responsible for all maintenance of the Premises.
  
  - B. Right of Entry and Inspection: The City's authorized representative shall have the right to enter upon the Premises at all reasonable times for the purpose of inspecting, maintaining and repairing the Premises.
  
  - C. Laws and Ordinances: CFI shall comply with all statutes, laws, codes and ordinances as applicable to CFI's use or occupancy of the Premises, including but not limited to all state and federal storm water regulations. In addition, CFI shall obtain all required permits and inspections and pay the necessary permit fees.
  
  - D. Outside Lighting: Outside lighting will not be operated at such hours or with such intensity as to constitute a nuisance to the occupants on other property in the abutting neighborhoods. If this provision is violated, the City may require any such lighting to be extinguished, changed or removed at CFI's expense.
  
  - E. Garbage and Trash: CFI shall provide for the adequate and proper handling and disposal of all trash, garbage and other refuse caused by its use of the Premises. Piling of boxes, cartons, trash or similar items on the Premises shall not be permitted.
  
  - F. Signs: Permission does not permit any signage on the Premises.
  
  - G. Taxes: If applicable, CFI shall pay taxes on all improvements and personal property it uses in connection with its use of the Premises on the same basis as if the land were in private ownership, regardless of any other provisions hereof.
  
  - H. Cutting or Filling: No cuts or fills shall be done on the Premises, nor any grubbing, grading or movement of earth performed, unless such work has received the prior written approval of the City Engineer and a grading permit obtained, if required by the City's Grading Ordinance.

I. Legal Relationship: Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of licensor and Permission.

J. Noise: CFI shall not permit any radio, television, loud speaker, amplification, or noise on the Premises which would constitute a nuisance or would disturb or endanger surrounding property owners or unreasonably interfere with their use of their respective premises.

K. Hazardous Substance: No goods, merchandise or materials shall be kept, stored or sold in or on the Property which are explosive or hazardous and which are not in customary use in the permitted use herein authorized; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon. Nothing shall be done on the Premises other than as provided for in this Agreement, which will increase the rate of or suspend the insurance upon the Property. No fuel storage tanks will be permitted on the Premises.

L. Bankruptcy: Should any other entity or person other than CFI named herein secure possession of the Premises, or any part thereof, under writ of attachment or execution, or by reason of any receivership, or proceedings in bankruptcy, or other operation of law in any manner whatsoever, the City may, at its option, and without demand or notice of any kind whatsoever, reenter and take possession of the Premises and remove all persons and improvements therefrom and terminate this Permission.

M. Security Arrangements: CFI shall provide such security, as it deems necessary or appropriate for the protection of the improvements, and shall consult with the City regarding any additional security that may be deemed necessary or appropriate.

N. Alcoholic Beverages: CFI will not permit the possession of any alcoholic beverages on the Premises.

O. Notices: All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso  
ATTN: City Manager  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

and: CFI Contractors, Inc.  
Kevin W. Cross  
P.O. Box 2547  
Joplin, Missouri 64803

or to such other addresses as the parties may designate to each other in writing from time to time.

P. Law Governing: The laws of the State of Texas shall govern the validity, performances and enforcement of this Permission.

Q. Entire Agreement: This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

R. Severability: The invalidity or illegality of any provision hereof shall not affect the remaining provisions hereof.

S. Authorization to Enter Permission: The individual signing this Permission acknowledges that he is authorized to do so and said individual further warrants that he is authorized to commit and bind CFI to the terms and conditions of this Permission.

10. RESTRICTIONS AND RESERVATIONS: This Permission is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land.

**WITNESS THE FOLLOWING SIGNATURES AND SEAL:**

CITY OF EL PASO:

\_\_\_\_\_  
City Manager

CFI CONTRACTORS, INC:

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

Title: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Deputy City Attorney

\_\_\_\_\_  
Rick Conner, P.E.  
City Engineer