

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

DEPARTMENT: Engineering Department

AGENDA DATE: December 4, 2007

CONTACT PERSON/PHONE: Irene Ramirez, Engineering Department 541-4431

DISTRICT(S) AFFECTED: 3

SUBJECT:

That the City Manager be authorized to sign an Agreement between the **CITY OF EL PASO** and **WESTERN REFINING COMPANY, L.P.** which will allow Western Refining to assist in funding the cost to expand the feasibility study for the extension of Airway Boulevard. The cost to the City will not exceed two hundred one thousand and three hundred and NO/100 dollars (\$201,300.00) and to authorize the City Manager to make any necessary budget transfers.

BACKGROUND / DISCUSSION:

This is an agreement between the City and Western Refining to expand the feasibility study for the extension of Airway Boulevard. Included in the study is the area from a proposed terminus at Trowbridge Drive to the Border Highway. The City believes due to safety concerns that it is to the best interest of the City to expand the feasibility study. Western Refining is requesting from the City that upon the completion of the construction of Airway Boulevard a portion of Trowbridge abutting their property to be closed to vehicular traffic. The closure will allow Western Refining to implement features to improve safety along their property. This agreement will address the responsibilities and duties of each of the parties concerning the funding of the additional work to be completed for the Airway Feasibility Study.

PRIOR COUNCIL ACTION:

City Council has not previously considered this item

AMOUNT AND SOURCE OF FUNDING:

Western Refining Company shall be responsible to fund \$201,300 of the study.

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: _____

RESOLUTION

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

That the City Manager be authorized to sign an Agreement between the **CITY OF EL PASO** and **WESTERN REFINING COMPANY, L.P.** which will allow Western Refining to assist in funding the cost to expand the feasibility study for the extension of Airway Boulevard. The cost to the City will not exceed two hundred one thousand and three hundred and NO/100 dollars (\$201,300.00) and to authorize the City Manager to make any necessary budget transfers.

ADOPTED this _____ day of _____, 2007

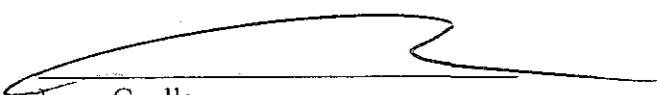
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E., C.B.O.
City Engineer

STATE OF TEXAS)
)
COUNTY OF EL PASO)

AGREEMENT

This Agreement is entered into this _____ day of _____, 2007, by the City of El Paso (the "City") and Western Refining Company, L.P. ("Western Refining").

WHEREAS, the City desires to expand the feasibility study for the extension of Airway Boulevard to include the area from a proposed terminus at Trowbridge Drive to the Border Highway; and,

WHEREAS, due to safety concerns, the City believes it is in the best interests of the City to expand the study; and

WHEREAS, Western Refining requests that upon the completion of the Airway Boulevard extension, a portion of Trowbridge abutting their property be closed to vehicular traffic to allow them to implement features to improve safety along their property; and

WHEREAS, the City and Western Refining desire to enter into an agreement which will address the responsibilities and duties of each of the parties concerning the funding of the additional work to be completed for the Airway Extension Feasibility Study;

NOW THEREFORE, be it known that the City and Western Refining hereby enter into this Agreement as follows:

A. Purpose:

The purpose of this Agreement is to specify the responsibilities of the parties as they relate to the funding of the additional work to be completed for the Airway Extension Feasibility Study.

B. Responsibilities of Parties:

1. City Responsibilities. The City will fund one half of the cost of the feasibility study in an amount not to exceed two hundred one thousand and three hundred and NO/100 dollars (\$201,300.00), unless further authorized by City Council.
2. Western Refining Responsibilities.
 - a. Fund one half of the cost of the feasibility study, in an amount not to exceed two hundred one thousand three hundred and NO/100 dollars (\$201,300.00), unless further authorized by Western Refining.
 - b. Funding shall be provided by Western Refining within thirty (30) days of City Council approval of this Agreement.

C. Termination of Agreement. Either Party may terminate this agreement for any reason by providing written notice to the other party thirty (30) calendar days in advance.

- D. Waiver. One or more waivers of any term or condition of this agreement by either party shall not be construed as a waiver of a subsequent breach of the same term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.
- E. Notice. Wherever any notice is required or permitted hereunder such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States Mail, postage prepaid, Certified Mail, Return Receipt Requested, addressed to:

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

Western Refining: Paul L. Foster
President & CEO
6500 Trowbridge
El Paso, TX 79905

or at such other addresses as they have therefore specified by written notice.

- F. Term. This Agreement shall commence on the date first written above and shall continue until completion and approval by the City and Western Refining of the feasibility study, unless terminated by either party in accordance with Paragraph D above.
- G. **INDEMNIFICATION. BY ACCEPTANCE OF THIS CONTRACT, WESTERN REFINING AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS GOVERNING OFFICIALS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES, FROM ANY AND ALL CLAIMS FOR INJURIES OR DAMAGES TO PERSONS OR PROPERTY (INCLUDING DEATH) ALLEGED TO HAVE BEEN RECEIVED OR SUFFERED AS A RESULT OF ANY NEGLIGENCE, ACT, OR OMISSION BY CITY GIVING RISE TO ANY LIABILITY OR DAMAGE RELATED TO THIS AGREEMENT.**
- H. Amendment of Agreement. This Agreement may not be modified or amended except upon mutual consent by all parties in writing signed by the parties. The City Manager is authorized to act on behalf of the city in the execution of any amendments to this Agreement, provided that such amendments do not increase the City's monetary contribution to project.
- I. Executory Authority Warranted. All signatories to this Agreement warrant their authority to execute this document.

- J. Entire Agreement. This contract constitutes and expresses the entire agreement between the parties and shall not be amended or modified, except by written instruction signed by all parties.
- K. Governing Law. For the purpose of determining the place of contract and the law governing the same, this contract is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas.
- L. Venue. Venue for all causes of action arising from or in connection with this contract shall be in El Paso County, Texas.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

CITY OF EL PASO:

Joyce A. Wilson, City Manager

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert, P.E.
City Engineer

**WESTERN REFINING COMPANY,
L.P.**

**BY: Western Refining GP. LLC
Its General Partner**

By

Print Name LOWRY BARFIELD
Senior Vice President - Legal