

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

DEPARTMENT: Engineering and Construction Management

AGENDA DATE: December 11, 2012

CONTACT PERSON NAME AND PHONE NUMBER: Irene D. Ramirez, P.E. Interim City Engineer

DISTRICT(S) AFFECTED: 1

SUBJECT:

That the City Manager be authorized to sign a Construction and Maintenance Agreement between the City of El Paso and State of Texas, acting by and through the Texas Department of Transportation, granting authority to the City of El Paso for the design and construction of a median opening, left turn lanes and drainage improvements within the right of way of State Highway 20 at Montecillo Drive. There is no cost to the City.

BACKGROUND / DISCUSSION:

The design and construction of the median opening, left turn lanes and drainage improvements within the right of way of State Highway 20 will be done by EPT Mesa Development, LP. The City of El Paso will enter into a Developer Participation Agreement with developer for that work. The Construction and Maintenance Agreement is necessary since improvements will be done within the State's right of way. There is no cost to the City.

PRIOR COUNCIL ACTION:

None

AMOUNT AND SOURCE OF FUNDING:

No cost to the City.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)
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 a Construction and Maintenance Agreement between the City of El Paso and the State of Texas, acting by and through the Texas Department of Transportation, granting authority to the City of El Paso for the design and construction of a median opening, left turn lanes and drainage improvements within the right-of-way of State Highway 20 at Montecillo Drive.

ADOPTED this ____ day of _____, 2012.

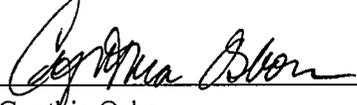
THE CITY OF EL PASO

John Cook
Mayor

ATTEST:

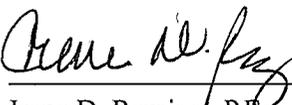
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



Irene D. Ramirez, P.E.
Interim City Engineer

CONSTRUCTION AND MAINTENANCE AGREEMENT BETWEEN
THE STATE OF TEXAS
AND
THE CITY OF EL PASO, TEXAS
FOR
THE CONSTRUCTION OF IMPROVEMENTS WITHIN THE RIGHT-OF-WAY
OF SH-20 (Mesa St.) @ Montecillo Drive
IN THE CITY OF EL PASO, TEXAS

State of Texas

County of Travis

THIS AGREEMENT, made on the dates hereinafter shown, by and between the State of Texas, hereinafter called the "State" represented by the Executive Director of the Texas Department of Transportation, acting for and in behalf of the Texas Transportation Commission, and the City of El Paso, Texas, hereinafter called the "City", acting by and through the City Manager, hereunto duly authorized.

WITNESSETH

WHEREAS, the State owns, operates, and maintains a system of highways for public use and benefit, including SH-20 in the City of El Paso, El Paso County, Texas; and

WHEREAS, the City desires and has requested authority to construct median opening, left turn lanes, and drainage improvements within the right-of-way of SH-20 @ Montecillo Drive at the location shown on construction plans, entitled "Montecillo- Unit 3, City of El Paso, El Paso County, Texas", hereinafter referred to as the "Facility", attached hereto as Exhibit "A" and made a part of this Agreement.

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:

Construction Responsibilities

The following conditions shall apply until construction of the Facility is completed and accepted by the State in accordance with paragraph no. 1 under Maintenance Responsibilities.

1. The State grants to the City permission to construct the Facility within the highway right-of-way as shown on Exhibit "A". It is understood and agreed that the State does not purport, hereby, to grant any right, claim, title or easement in, across or upon said properties other than that described above.
2. The City at no cost to the State, shall prepare or have prepared, complete construction drawings, plans and specifications for the proposed roadway sections, drainage facilities, appurtenances, and incidental items thereto. No construction work shall be performed on highway right-of-way until these plans and specifications have been approved in writing by the State. After such approval has been given no changes or alterations shall be made without the written approval of the State.
3. The plans and specifications shall be submitted to the District Engineer, Texas Department of Transportation, El Paso, Texas for approval. Any changes or alterations which become necessary during the course of the work shall also be submitted to the District Engineer for approval.
4. The City, its contractors, or agents, shall submit a traffic control plan, to be included in **Exhibit "A"**, providing for detours, barricades, warning signs, flares, flashing light signals, and flagmen as required and in accordance with the Texas Manual on Uniform Traffic Control Devices to direct and protect vehicular and pedestrian traffic while construction work, including related activities, is in progress. Details and descriptions of these traffic handling measures shall be included in the plans and specifications when submitted for approval. If, during construction, it becomes necessary or desirable to modify the traffic control measures as specified, prior approval must be obtained from the State's District Engineer in El Paso. The City shall notify the State at least 48 hours prior to beginning any work on the Facility.
5. The City shall construct, or have constructed, at its entire cost and expense, the proposed roadway sections, drainage facilities and incidental items referred to in paragraph 1 and 2 above. The State shall have the right to inspect the work on highway right-of-way at any time during the progress of the work, and to make final inspection upon completion. Construction operations will be conducted in a manner acceptable to the District Engineer or his authorized representative. The City, its contractors or agents, shall correct any deficiencies revealed by the State's inspection of the work or of the traffic control and protection measures, where such deficiencies could have an adverse effect on public use of the highway or the safety and convenience of the traveling public.
6. Upon completion of the work authorized herein, the City shall submit copies of the as-built plans and specifications, including any changes or alterations, showing the roadway sections and drainage facilities in their completed state, to the State's District Engineer in El Paso for the permanent records of the State.
7. The City or the City's contractors agree to pay all damages accruing to the State, by reason of injuries to the right-of-way, roadbed, pavement, bridges, signs, and other highway facilities owned by the State, when such damages are caused by the City's construction, operation, maintenance or rehabilitation of the Facility. To the extent allowed by law, the City also agrees to indemnify and save harmless the State from any and all claims, demands, actions or causes of action, due to damage to property or injury to or death of persons arising from or connected with work on the Facility including, but not limited to all court costs, attorney fees and other expenses incurred in connection with suits for such damage and shall, if so requested in writing, assist or relieve the State from defending any such suits brought against it. In addition, the City shall require its contractor(s) and subcontractor(s) to secure a policy of insurance in the maximum statutory limits for tort liability, naming the State as an additional insured under its terms.

Adequate insurance, as a minimum shall mean the City's contractors shall furnish the State with the Texas Department of Transportation's Certificate of Insurance, attached hereto as Exhibit "B", covering the below listed insurance coverages:

- A. Worker's Compensation Insurance Amount -- Statutory
- B. Commercial General Liability Insurance:
Amounts -- Bodily Injury/Property Damage
\$600,000 combined single limit each occurrence
and in the aggregate
- C. Texas Business Automobile Liability Insurance:
Amounts -- Bodily Injury \$250,000 each person
\$500,000 each occurrence
Property Damage \$100,000 each occurrence

The State shall be included as an "Additional Insured" by Endorsement to policies issued for coverages listed in B and C above. A "Waiver of Subrogation Endorsement" in favor of the State shall be a part of each policy for coverages listed in A, B and C above. A certified copy of these endorsements shall be submitted to the State with the evidence of coverage. The City and/or its contractor shall be responsible for any deductions stated in the policy.

- 8. In the event the State determines that the City's construction of the Facility materially interferes with or adversely affects the general highway use, the State will consult with the City, and such modifications or remedial actions required by the State for the continued construction of the Facility will be accomplished, and shall be done at the sole expense of the City.
- 9. The City, at its own expense, will:
 - A. Comply with all federal, state, municipal, and other laws, codes, ordinances, rules, and regulations applicable to the facility whether same are in existence on the execution date of this agreement or become effective during the term of this agreement;
 - B. Comply with such regulations as the State may promulgate regarding sanitation, cleanliness, and other health and/or environmental matters, including, without limitation, removal of graffiti, garbage, trash, and other waste; and
 - C. Install, remove, and alter such equipment and appurtenances in, and make such alterations to, the Facility as may be necessary so as to comply with the foregoing (A) and (B); and
 - D. Use the highest degree of care and all proper safeguards to prevent pollution of air, soil, and water in, on and around the Facility.

The City will not permit any unlawful use of the Facility, and will not commit or permit anyone else to commit an act which might, in the exclusive judgement of the State, appreciably damage the State's goodwill or reputation, or tend to injure or depreciate the value of the highway right of way and/or any improvements located thereon. The City shall furnish to the State, within a reasonable time of receipt by the City, copies of any and all notices and/or correspondence received by the City from any governmental entity or other entity or person indicating violation or possible violation of any laws or other regulations in regard to the construction of the Facility.

The City, at its sole cost and expense, shall take any and all corrective action deemed necessary or desirable by the State, and as required by any applicable federal, state, municipal, and other laws, codes, ordinances, rules, and regulations to cleanup, remove and abate any and all soil contamination,

groundwater contamination or any other contamination of the highway right of way caused directly or indirectly by any release or discharge of any hazardous, toxic, or otherwise harmful substances in, on, under and around the Facility by the City and/or the City's employees, agents, representatives, contractors, permittees, invitees or any other persons occupying the Facility or any portion thereof by, through or under the City.

10. In the event that the State determines, for reasons other than those specified in paragraph 8, that it is necessary to repair, construct, reconstruct and/or make any changes in the highway facility prior to acceptance of the Facility, such alterations to the Facility shall be at no expense to the State.

Maintenance Responsibilities

1. Upon satisfactory completion of construction of the Facility, the State will issue a letter of acceptance to the City, and the maintenance responsibilities shall be in accordance with the current Municipal Maintenance Agreement.

General

1. This Agreement shall bind, and shall be for the sole and exclusive benefit of the respective parties and their legal successors.
2. The City shall not assign, sublet or transfer its interest in this Agreement without the prior written consent of the State.
3. No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.
4. No member, officer or employee of the State of Texas, El Paso County or the City of El Paso, or of a local public body during his tenure shall have any interest, direct or indirect, in this Agreement or the benefits/proceeds thereof.
5. The City and the State, by execution of this Agreement, do not waive or relinquish any right which they may have under the law or constitution, State or Federal.
6. In the event either party hereto fails to comply with the terms as set out herein, the other party hereto may take such action as it deems appropriate to compel compliance. Should the City fail to comply with the obligations agreed to in this Agreement, the State will notify that breach of contract has occurred. Within not less than thirty (30) days from the State's written notification, the City must remedy the breach as outlined by the State. In the event the City does not remedy the breach, the State may take over the work on the drainage project and prosecute the work until completion. In such case, the City shall be liable to the State for the cost of completing the work and any additional cost occasioned by the State.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be executed in duplicate on the dates below stated.

THE CITY OF El Paso

THE STATE OF TEXAS

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

By: _____
Signature
Joyce Wilson, City Manager

Date: _____

By: Cynthia S. Osborn
Signature
Cynthia S. Osborn, Assistant City Attorney
Approved as to Form

Date: December 2, 2012

By: Irene D. Ramirez
Signature
Irene D. Ramirez, Interim City Engineer
Approved as to Content

Date: 12/4/12

ATTEST:

By: _____
Signature
Robert Bielek, D.P.A., P.E.
El Paso District Engineer

Date: _____

RECOMMENDED FOR EXECUTION:

Signature
Ken Barnett, P.E.
Director of Construction

Date: _____

List of Exhibits:

- A. Construction plans, including traffic control plans, entitled "Montecillo- Unit 3, City of El Paso, El Paso County, Texas".
- B. Contractor's Certificate of Insurance.

Mesa Median Revision	
Cost Estimate	
Work	Cost
Earthwork and demolition	\$10,000
New Curb	\$7,500
HMAC Paving	\$32,320
Barricades - Traffic	\$2,500
TOTAL	\$52,320

Cost Estimate Provided By:
Tony G. Conde


11-27-12