

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

**DEPARTMENT:** Engineering Department

**AGENDA DATE:** December 19, 2006

**CONTACT PERSON/PHONE:** Rick Conner, 541-4423

**DISTRICT(S) AFFECTED:** N/A

**SUBJECT:**

That the City terminate the contract between the City and Bain Construction for a project known as Rocky Bluff Drainage Improvements Re-Bid, Contract No. 2005-186 under the provisions of Section 6.9, Right of Owner to Terminate Contract.

**BACKGROUND / DISCUSSION:**

On June 28, 2005, the City awarded Bid Solicitation No. 2005-186 Rocky Bluff Drainage Improvements Re-Bid to Bain Construction. The City and Bain Construction encountered existing high voltage electrical lines in the path of the proposed improvements. The Contractor could not perform the improvements until the electrical lines were relocated. To relocate lines a utility easement had to be granted by the City and El Paso Electric Company had to mobilize and relocate their lines. This process delayed the Contractor. When work was ready to resume the Contractor approached the City for additional compensation to cover increases in material cost. The request for additional compensation exceeded the limit of 25% of the original contract price set by City Council on the motion dated June 28, 2005. The City and Bain Construction mutually agreed that this contract be terminated. Bain Construction agreed with the contract termination as long as they are reimbursed for actual services provided. The City and Bain Construction have agreed on the actual services and associated fee.

**PRIOR COUNCIL ACTION:**

On June 28, 2005 City Council awarded the construction contract for Bid Solicitation No.2005-186 Rocky Bluff Drainage Improvements Re-Bid to Bain Construction.

**AMOUNT AND SOURCE OF FUNDING:**

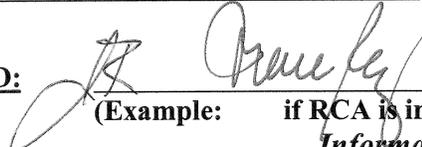
This item will be funded on a per project basis. The item has not been budgeted and no funding information is available. This item does not require a budget transfer.

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

06 DEC 11 PM 1:58  
CITY CLERK DEPT. DATE: \_\_\_\_\_

**RESOLUTION**

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

That the City terminate the contract between the City and Bain Construction for a project known as Rocky Bluff Drainage Improvements Re-Bid, Contract No. 2005-186 under the provisions of Section 6.9, Right of Owner to Terminate Contract.

**ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006.**

THE CITY OF EL PASO

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

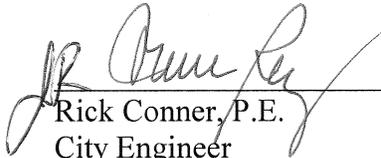
ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

APPROVED AS TO CONTENT:

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



October 24, 2006

Mr. Samuel Rodriguez  
City of El Paso, Engineering  
2 Civic Center Plaza, 4<sup>th</sup> Floor  
El Paso TX, 79901-1196

RE: Rocky Bluff Drainage Improvements – Contract No. 2005-186

Dear Mr. Rodriguez:

In accordance with our meeting on October 24, 2006, Bain Construction agrees to terminate the above referenced contract with the City of El Paso, with no further expense to the City of El Paso, upon reimbursement of the following expenses incurred during the period of 5/25/05 – 10/24/06:

Bond/ Insurance:	\$ 2,038.00
Storm Water Pollution Prevention Plan:	\$ 100.00
Surveying:	\$ 1,000.00
Water Meter (meter install and monthly fees):	\$ 1,302.95
Temporary Fence:	\$ 1,117.70
Labor and Coordination	\$ 2,992.61
Travel Expenses (meetings in field)	\$ <u>300.00</u>
Total:	\$ 8,851.26

Please do not hesitate to call if you have any questions or desire to discuss this issue further. I can be reached by telephone at (Office) 852-8620 or (Mobile) 525-3399. Thank you for your consideration and express attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott C. Bain', is written over a horizontal line.

Scott C. Bain  
CEO



## ENGINEERING DEPARTMENT

*Excellence through Teamwork*

memorandum

**TO :** Javier Reyes, Engineering Division Manager, Program Mgmt.

**FROM :** Sam Rodriguez, Engineering Division Manager, Construction *SR*

**SUBJECT :** Rocky Bluff Drainage Improvements project

**DATE :** December 5, 2006

---

We have come to an agreement on the compensation amount for the services provided by Bain Construction for the Rocky Bluff Project. The amount agreed to is \$8,851.26 of which \$74.31 was paid as sales tax (City contracts are exempt from sales tax). That amount that we need pay the contractor is \$8,776.95. They have agreed to terminate the contract upon payment of the services. Please proceed to terminate the contract for convenience. Please let me know if there are additional questions or concerns.

JOHN COOK  
MAYOR



CITY COUNCIL  
ANN MORGAN LILLY, DISTRICT 1  
SUSANNAH M. BYRD, DISTRICT 2  
J. ALEXANDRO LOZANO, DISTRICT 3  
MELINA CASTRO, DISTRICT 4  
PRESI ORTEGA, JR., DISTRICT 5  
EDDIE HOLGUIN JR., DISTRICT 6  
STEVE ORTEGA, DISTRICT 7  
BETO O'ROURKE, DISTRICT 8

JOYCE WILSON  
CITY MANAGER

## ENGINEERING DEPARTMENT

June 21, 2006

Mr. Scott Bain  
General Manager-Bain Construction  
14169 Blair Court  
Horizon City, Texas 79928

Re: Rocky Bluff Drainage Improvements

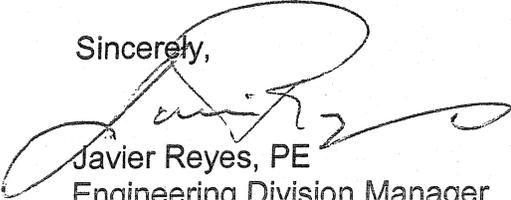
Dear Mr. Bain,

This is in response to your letter dated May 25, 2006. Your request for an adjustment to your contract for unanticipated delays has been reviewed. There are two factors that affect us considering your request:

- Your request exceeds the twenty five percent (25%) allowed for change orders. It will not be possible to process this change order. In such a case the City of El Paso will have to consider a friendly termination of your contract based on extenuating circumstances. Furthermore, a change order close to the 25% amount will not allow for potential change order work due to unforeseen conditions.
- We are requesting you to provide a minimum of three quotes from material suppliers indicating increases in cost. You must provide letters from your subcontractors and or suppliers indicating they will not honor their original quotes and include the new increases in materials and labor costs.

Please be informed that we are willing to compensate you for services that have been rendered, accepted, and approved by us. We would expect full written backup information justifying your request. Your utmost attention is appreciated. Please provide this information no later than June 30, 2006. If you have any questions please don't hesitate to call me at 541-4630.

Sincerely,



Javier Reyes, PE  
Engineering Division Manager

cc: Roberto Shadrick, Chief Construction Inspector  
Lupe Cuellar, City Attorney  
File