

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

DEPARTMENT: Engineering

AGENDA DATE: November 10, 2009

CONTACT PERSON NAME AND PHONE NUMBER: R. Alan Shubert, P.E.

DISTRICT(S) AFFECTED: 4

SUBJECT:

The approval of a resolution authorizing the City Manager to execute, on behalf of the City of El Paso, a Multiple Use Agreement (MUA) between the City of El Paso and the State of Texas, acting by and through the Texas Department of Transportation. The scope of work for this agreement is the construction, operation and maintenance of a storm sewer within TxDOT right-of-way, at approximately the intersection of McCombs and Donald Drive.

BACKGROUND / DISCUSSION:

As part of the Northeast Channel 2, Phase II Improvements Project, the City will be replacing the underground concrete box culverts located under McCombs Street, approximately one hundred feet north of the intersection of McCombs and Donald Drive. The existing system has three 8' by 4' box concrete box culverts in place. The increased flow capacity that the channel is designed to accommodate requires the installation of five 10' by 6' concrete box culverts. The overall project includes the upgrading of Northeast channel 2 from US 54 to the connection at Northeast Channel No. 1.

PRIOR COUNCIL ACTION:

(No prior action)

AMOUNT AND SOURCE OF FUNDING:

There are no costs associated with the execution of this agreement if approved.

BOARD / COMMISSION ACTION:

Enter appropriate comments or 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 OF EL PASO:

THAT the City Manager be authorized to execute a Multiple Use Agreement between the City of El Paso and the Texas Department of Transportation allowing the City to construct, maintain and operate a storm sewer system in the right-of way on McCombs Street (F.M. 2529) near the intersection of McCombs Street and Donald Drive. The city is not required to pay the state any fees under this Multiple Use Agreement.

ADOPTED THIS ____ DAY OF _____, 2009.

City of El Paso

John F. Cook, Mayor

ATTEST:

Richarda Momsen
City Clerk

APPROVED AS TO FORM:

Mark Shoemith

Mark Shoemith
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert

R. Alan Shubert, P.E., City Engineer



MULTIPLE USE AGREEMENT

STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS AGREEMENT made by the State of Texas by and between the Texas Department of Transportation, hereinafter referred to as "State", party of the first part, and

City of El Paso, hereinafter called
City, party of the second part, is to
become effective when fully executed by both parties.

WITNESSETH

WHEREAS, on the _____ day of _____, 20____, the governing
body for the _____ City, entered
into Resolution/Ordinance No. _____ hereinafter identified by
reference, authorizing the _____ City's participation in
this agreement with the State; and

WHEREAS, the _____ City has requested the
State to permit the construction, maintenance and operation of a public
Storm Sewer System _____ on the highway
right of way, (General description of area)

shown graphically by the preliminary conceptual site plan in Exhibit "A" and being more specifically
described by metes and bounds of Exhibit "B", which are attached and made a part hereof; and

WHEREAS, the State has indicated its willingness to approve the establishment of such facilities
and other uses conditioned that the _____ City
will enter into agreements with the State for the purpose of determining the respective responsibilities of the
_____ City and the
State with reference thereto, and conditioned that such uses are in the public interest and will not damage
the highway facilities, impair safety, impede maintenance or in any way restrict the operation of the
highway facility, all as determined from engineering and traffic investigations conducted by the State.

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:

1. DESIGN AND CONSTRUCTION

City will prepare or provide for the construction plans for the facility, and will provide for the construction work as required by said plans at no cost to the State. Said plans shall include the design of the access control, necessary horizontal and vertical clearances for highway structures, adequate landscape treatment, adequate detail to ensure compliance with applicable structural design standards, sufficient traffic control provisions, and general layout. They shall also delineate and define the construction responsibilities of both parties hereto. Completed plans will be submitted to State for review and approval and when approved shall be attached to the agreement and made a part thereof in all respects. Construction shall not commence until plans have been approved by the State. Any future revisions or additions shall be made after prior written approval of the State.

2. INSPECTION

Ingress and egress shall be allowed at all times to such facility for Federal Highway Administration personnel and State Forces and equipment when highway maintenance operations are necessary, and for inspection purposes; and upon request, all parking or other activities for periods required for such operations will be prohibited.

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

3. PARKING REGULATIONS

Parking regulations shall be established limiting parking to single unit motor vehicles of size and capacity no greater than prescribed for 1½ ton trucks, such vehicles to conform in size and use to governing laws. Parking shall be permitted only in marked spaces.

Parking shall be prohibited when a security threat, as determined by TxDOT, exists.

4. PROHIBITION/SIGNS

Regulations shall be established prohibiting the parking of vehicles transporting flammable or explosive loads and prohibiting use of the area in any manner for peddling, advertising or other purposes not in keeping with the objective of a public facility. The erection of signs other than those required for proper use of the area will be prohibited. All signs shall be approved by the State prior to the actual erection.

5. RESPONSIBILITIES

Maintenance and operation of the facility shall be entirely the responsibility of the
City. Such responsibility shall not be transferred, assigned or conveyed to a third party without the advanced written approval of the State. Further, such responsibility shall include picking up trash, mowing and otherwise keeping the facility in a clean and sanitary condition, and surveillance by police patrol to eliminate the possible creation of a nuisance or hazard to the public. Hazardous or unreasonably objectionable smoke, fumes, vapor or odors shall not be permitted to rise above the grade line of the highway, nor shall the facility subject the highway to hazardous or unreasonably objectionable dripping, droppings or discharge of any kind, including rain or snow.

6. FEES

Any fees levied for use of the facilities in the area shall be nominal and no more than are sufficient to defray the cost of construction, maintenance and operations thereof, and shall be subject to State approval.

7. TERMINATION UPON NOTICE

This provision is expressly made subject to the rights herein granted to both parties to terminate this agreement upon notice, and upon the exercise of any such right by either party, all obligations herein to make improvements to said facility shall immediately cease and terminate.

8. MODIFICATION/TERMINATION OF AGREEMENT

If in the sole judgment of the State it is found at any future time that traffic conditions have so changed that the existence or use of the facility is impeding maintenance, damaging the highway facility, impairing safety or that the facility is not being properly operated, that it constitutes a nuisance, is abandoned, or if for any other reason it is the State's judgment that such facility is not in the public interest, this agreement under which the facility was constructed may be : (1) modified if corrective measures acceptable to both parties can be applied to eliminate the objectionable features of the facility; or (2) terminated and the use of the area as proposed herein discontinued.

9. PROHIBITION OF STORAGE OF FLAMMABLE MATERIALS

All structures located or constructed within the area covered by the agreement shall be fire resistant. The storage of flammable, explosive or hazardous materials is prohibited. Operations deemed to be a potential fire hazard shall be subject to regulation by the State.

10. RESTORATION OF AREA

The _____ City _____ shall provide written notification to the State that such facility will be discontinued for the purpose defined herein. The _____ City _____ shall, within thirty (30) days from the date of said notification, clear the area of all facilities that were its construction responsibility under this agreement and restore the area to a condition satisfactory to the State.

11. PREVIOUS AGREEMENTS

It is understood that this agreement in no way modifies or supersedes the terms and provisions of any existing agreements between the parties hereto.

12. INDEMNIFICATION

The _____ City _____ acknowledges that it is not an agent, servant or employee of the State, and that it is responsible for its own acts and deeds and for those of its agents or employees during the performance of contract work.

Neither party hereto intends to waive, relinquish, limit or condition its right to avoid any such liability by claiming its governmental immunity.

When notified by the State to do so, the other party hereto shall within thirty (30) days from receipt of the State's written notification pay the State for the full cost of repairing any damages to the highway facility which may result from its construction, maintenance or operation of the facility, and shall promptly reimburse the State for costs of construction and/or repair work made necessary by reason of such damages.

Nothing in this agreement shall be construed as creating any liability in favor of any third party against the State and the _____ City _____. Additionally, this agreement shall not ever be construed as relieving any third party from any liability against the State and the

_____ City _____, but the _____ City _____ shall become fully subrogated to the State and shall be entitled to maintain any action over and against the third party which may be liable for having caused the _____ City _____ to pay or disburse any sum of money hereunder.

13. INSURANCE

The City _____ shall provide necessary safeguards to protect the public on State maintained highways including adequate insurance for payment of any damages which might result during the construction, maintenance and operation of the facility occupying such airspace or thereafter, and to save the State harmless from damages, to the extent of said insurance coverage and insofar as it can legally do so. Prior to beginning work on the State's right of way, the _____ City _____'s construction contractor shall submit to the State a completed insurance form (TxDOT Form No. 1560) and shall maintain the required coverage during the construction of the facility.

14. USE OF RIGHT OF WAY

It is understood that the State by execution of this agreement does not impair or relinquish the State's right to use such land for highway purposes when it is required for the construction or re-construction of the traffic facility for which it was acquired, nor shall use of the land under such agreement ever be construed as abandonment by the State of such land acquired for highway purposes, and the State does not purport to grant any interest in the land described herein but merely consents to such use to the extent its authority and title permits.

15. ADDITIONAL CONSENT REQUIRED

The State asserts only that it has sufficient title for highway purposes. The _____ City _____ shall be responsible for obtaining such additional consent, permits or agreement as may be necessary due to this agreement. This includes, but is not limited to, appropriate permits and clearances for environmental, ADA and public utilities.

16. FHWA ADDITIONAL REQUIREMENTS

If the Facility is located on the Federal-Aid Highway System, "ATTACHMENT A", which states additional requirements as set forth in the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710, shall be attached to and become a part of this agreement.

17. CIVIL RIGHTS ASSURANCES

The _____ City _____, for itself, its personal representatives, successors and interests and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no persons, on the grounds of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facility; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the

City _____ shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That if in the event of any breach of the above non-discrimination covenants, the State shall have the right to terminate the agreement and reenter and repossess said land and the facilities thereon, and hold the same as if said agreement had never been made or issued.

18. AMENDMENTS

Any changes in the time frame, character or responsibilities of the parties hereto shall be enacted by a written amendment executed by both parties hereto.

19. LEGAL CONSTRUCTION

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this agreement.

20. NOTICES

All notices required under this agreement shall be mailed or hand delivered to the following respective addresses:

STATE (Mailing Address)	(Name of other party) (Mailing Address)
Texas Department of Transportation	City of El Paso
Maintenance Division	Engineering Department
125 East 11th Street	2 Civic Center Plaza
Austin, Texas 78701-2483	El Paso, Texas 79901

21. WARRANTS

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

List of Attached Exhibits:

Exhibit A - General Layout
Exhibit B - Metes and Bounds Description
Exhibit C - Approved Construction Plans
Exhibit D - Certificate of Insurance (TxDOT Form 1560)
Exhibit E - Attachment A (FHWA Additional Requirements)

IN WITNESS WHEREOF, the parties have hereunto affixed their signature, the

_____ on the _____ day of _____,
20____, and the State on the _____ day of _____, 20____.

STATE OF TEXAS

Executed and approved for the Texas

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

By: _____
Title

Printed Name

Date

By: _____
Director, Maintenance Division

Printed Name

Date

APPROVAL RECOMMENDED:

District Engineer

Printed Name

Date

Supplemental Signature page to page 7 of 8

Multiple Use Agreement for Construction, maintenance and operation of a public storm sewer system on the highway right of way on McCombs Street (F.M. 2529).

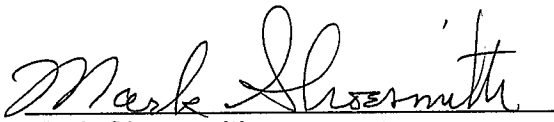
State of Texas, Texas Department of Transportation and the City of El Paso

City of El Paso

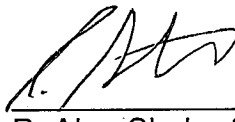
Joyce Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Mark Shoesmith
Assistant City Attorney



R. Alan Shubert, P.E., City Engineer

IN WITNESS WHEREOF, the parties have hereunto affixed their signature, the

_____ on the _____ day of _____,
20_____, and the State on the _____ day of _____, 20_____.

RECOMMENDED BY:

(Name of other party)

By: _____
Executive Director
Texas Department of Transportation

By: _____
Title

Printed Name

Printed Name

Date

Date

Executed for the State of Texas by the State's Chief
Executive Officer in accordance with Texas
Constitution, Article IV, § 10.

By: _____
Governor of Texas

Printed Name

Date

ATTACHMENT A

Inasmuch as this project is on the Federal-Aid highway system, the following additional requirements as applicable with the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710.

1. Any significant revision in the design or construction of the facility shall receive prior approval by the Texas Department of Transportation subject to concurrency by the FHWA.
2. Any change in the authorized use of airspace shall receive prior approval by the Texas Department of Transportation subject to concurrence by the FHWA.
3. The airspace shall not be transferred, assigned or conveyed to another party without prior Texas Department of Transportation approval subject to concurrence by the FHWA.
4. This agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.

EXHIBIT E



BROCK & BUSTILLOS INC.
CONSULTING CIVIL ENGINEERS LAND SURVEYORS

ROMAN BUSTILLOS, P.E.
President

RANDY P. BROCK, P.E.
Executive Vice President

SERGIO J. ADAME, P.E.
Vice President - Engineering

OSCAR V. PEREZ
Vice President - Operations

ISAAC CAMACHO, R.P.L.S.
Survey Manager
TBPE Reg. No. F-737

METES AND BOUNDS DESCRIPTION **"DRAINAGE CHANNEL EASEMENT"**

A 0.2492 acre parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of the McCombs Street (F.M. 2529) right-of-way in Section 28, Block 81, Township 1 and a portion of the McCombs Street (F.M. 2529) right-of-way in Section 31, Block 80, Township 1, Texas and Pacific Railway Company Surveys, El Paso County and being more particularly described by metes and bounds as follows.

COMMENCING for reference at a ½ inch rebar found for the corner common to Sections 28 and 29, Block 81, Township 1, Texas and Pacific Railway Surveys and Sections 31 and 42, Block 80, Township 1, Texas and Pacific Railway Surveys, whence a Brass Cap found for the corner common to Sections 21 and 28, Block 81, Township 1, Texas and Pacific Railway Surveys and Sections 30 and 31, Block 80, Township 1, Texas and Pacific Railway Surveys bears North 01°07'30" West, a distance of (5,305.56 feet record) 5,306.19 feet (measured); **THENCE**, leaving the corner common to said Sections 28, 29, 31 and 42 and following the line common to said Sections 31 and 42, North 90°00'00" East, a distance of 75.00 feet to a point on the east right-of-way line of McCombs Street; **THENCE**, leaving the line common to said Sections 31 and 42 and following the east right-of-way line of McCombs Street, North 01°07'30" West, a distance of 68.20 feet to a ½ inch rebar with survey cap stamped "TX5337" set for the southeast corner and the **POINT OF BEGINNING** of the parcel herein described;

THENCE, leaving the east right-of-way line of McCombs Street, South 88°52'30" West, a distance of 140.94 feet to a ½ inch rebar with survey cap stamped "TX5337" set for an angle point;

THENCE, North 88°15'12" West, a distance of 59.16 feet to a ½ inch rebar with survey cap stamped "TX5337" set on the west right-of-way line of McCombs Street for the southwest corner of the parcel herein described, identical to the northeast corner of Tract 2, section 28, Block 81, Township 1, Texas and Pacific Railway Company Surveys;

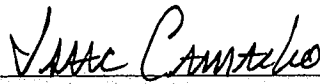
THENCE, following the west right-of-way line of McCombs Street, North 01°07'30" West, a distance of 50.00 feet to a ½ inch rebar with survey cap stamped "TX5337" set for the northwest corner of the parcel herein described, identical to the southeast corner of Tract 5, Section 28, Block 81, Township 1, Texas and Pacific Railway Company Surveys;

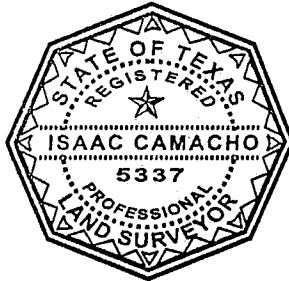
THENCE, leaving the west right-of-way line of McCombs Street, North 86°54'18" East, a distance of 59.12 feet to a ½ inch rebar with survey cap stamped "TX5337" set for an angle point;

THENCE, North 88°52'30" East, a distance of 140.94 feet to a ½ inch rebar with survey cap stamped "TX5337" set on the east right-of-way line of McCombs Street for the northeast corner of the parcel herein described;

THENCE, following the east right-of-way line of McCombs Street, South 01°07'30" East, a distance of 55.00 feet to the **POINT OF BEGINNING**.

Said Parcel contains 0.2492 acres (10,854.0 square feet), more or less, and being subject to all easements of record.


Isaac Camacho
TX. R.P.L.S. No. 5337
Date: July 15, 2009
File 58797-012B McCombs.Doc



IPANY SURVEYS



TRACT 5
CITY OF EL PASO

DRAINAGE CHANNEL
CITY OF EL PASO

EL PASO ELECTRIC
COMPANY R.O.W.
TRACT 2
SECTION 28, BLOCK 81
TOWNSHIP 1,
TEXAS & PACIFIC
RAILWAY COMPANY
SURVEYS

DONALD DRIVE
(60' R.O.W.)

McCOMBS
STREET
(200' ROW)

CONCRETE CURB
TOWNSHIP 1
BLOCK 81
BLOCK 80
TOWNSHIP 1

FOUND BRASS CAP

21 30
28 31

5305.56' (R)
5306.19' (M)
5184.46' (M)

55.00' (M)

10,854.0 sq. ft.
0.2492 acres

140.94'

75.00'

CONCRETE CURB

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LINE TABLE		
L1	N 01°07'30" W	50.00'

McCOMBS CENTER

1

2

URKOST L.P.

25' PSB EASEMENT

25' PSB EASEMENT

25' PSB EASEMENT

25' PSB EASEMENT

25' PSB EASEMENT

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SUPPLEMENTAL NOTES:

1. BASIS OF BEARING IS THE MONUMENTED CENTER LINE OF McCOMBS STREET (COMMON BOUNDARY LINE OF BLOCK 80 AND BLOCK 81, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, 150 FEET RIGHT-OF-WAY), AS PER PLATS OF SAID SECTIONS 28 AND 31.

2. SUBJECT AREA IS LOCATED IN ZONE "A-H" (AREAS OF 100 YEAR SHALLOW FLOODING WHERE DEPTHS ARE BETWEEN ONE (1) AND THREE (3) FEET; BASE FLOOD ELEVATIONS ARE SHOWN, BUT NO FLOOD HAZARD FACTORS ARE DETERMINED) AS DETAILED ON CITY OF EL PASO FLOOD INSURANCE RATE MAP PANEL NO. 480214 0020B, DATED OCTOBER 15, 1982.

REFERENCE DOCUMENTS:

1. PLAT OF SECTION 31, BLOCK 80, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY SURVEYS DATED, JANUARY 27, 1969, EL PASO COUNTY, TEXAS.
2. PLAT OF SECTION 28, BLOCK 81, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY SURVEYS DATED AUGUST 25, 1961, EL PASO COUNTY, TEXAS.

CERTIFICATION:

I HEREBY CERTIFY THAT THIS SURVEY PLAT AND THE ACTUAL SURVEY ON THE GROUND UPON WHICH IT IS BASED WERE PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION; THAT I AM RESPONSIBLE FOR THIS SURVEY; THAT THIS SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING IN TEXAS; AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Isaac Camacho 07/15/09
ISAAC CAMACHO, TX. RPLS NO. 5337

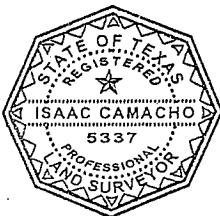
LEGEND

PROJECT BOUNDARY	---
SECTION/SURVEY LINE	---
SUBDIVISION LINE	---
TRACT/LOT LINE	---
CENTERLINE OF ROW	---
EASEMENT LINE	---
WATER LINE	---
OVERHEAD ELECTRIC LINE	---
SANITARY SEWER LINE	---
CHAINLINK FENCE	---
SANITARY SEWER MANHOLE	(S)
TELEPHONE MANHOLE	(T)
POWER/UTILITY POLE	(P)
SET 1/2" REBAR WITH CAP STAMPED "TX 5337"	(R)
LOT NUMBER	2
BLOCK NUMBER	1
SECTION CORNER	(S)
RECORD DISTANCE AND BEARING	(R)
MEASURED DISTANCE AND BEARING	(M)

DRAINAGE EASEMENT

DRAWN BY: F.I. CHECKED BY: I.C. DATE: 07-15-2009 SCALE: 1" = 50'

A PORTION OF CHANNEL 2 DRAINAGE R.O.W., SECTION 28, BLOCK 81 AND A PORTION OF CHANNEL 2 DRAINAGE R.O.W., SECTION 31, BLOCK 80, TOWNSHIP 1 TEXAS AND PACIFIC RAILWAY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS.



FILE NO: 05879-012B



BROCK & BUSTILLOS INC.

CONSULTING CIVIL ENGINEERS
LAND SURVEYORS

417 EXECUTIVE CENTER-EL PASO, TX 79902-PH (915) 542-4900
FAX (915) 542-2867-WWW.BROCKBUSTILLOS.COM