

AN ORDINANCE **2010-02-11-0118**

AUTHORIZING A CONSTRUCTION AND MAINTENANCE AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) WHICH WILL ALLOW THE CITY TO CONSTRUCT IMPROVEMENTS WITHIN TXDOT RIGHT-OF-WAY FOR THE WEST HAUSMAN ROAD PROJECT LOCATED IN COUNCIL DISTRICT 8.

* * * * *

WHEREAS, a Hausman Road Taskforce was created to address the congestion in the area of West Hausman Road and IH-10 West Frontage Road and to formulate a traffic relief plan; and

WHEREAS, the access road is owned, operated, and maintained by TxDOT and according to a traffic study, improvements will significantly reduce delays in the morning and evening peak hours on West Hausman Road; and

WHEREAS, TxDOT requires a Construction and Maintenance Agreement with the City when construction improvements are performed by the City within TxDOT right-of-way; and

WHEREAS, this Ordinance authorizes the City to enter into a Construction and Maintenance Agreement with TxDOT to provide the necessary improvements to allieviate traffic congestion at West Hausman Road and IH-10 West Frontage Road; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is hereby authorized to enter into a Construction and Maintenance Agreement with TxDOT. A copy of the Construction and Maintenance Agreement is attached hereto and incorporated herein as **Attachment I**.

SECTION 2. There is no fiscal impact associated with this project.

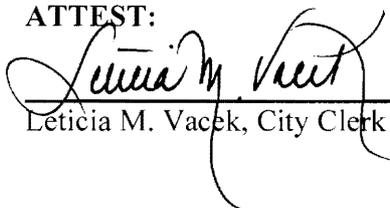
SECTION 3. This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 11th day of February, 2010.



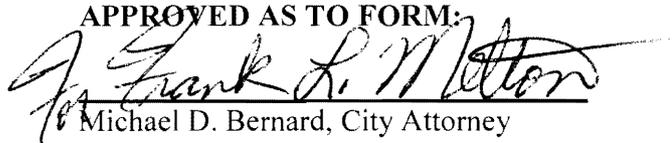
M A Y O R
Julián Castro

ATTEST:

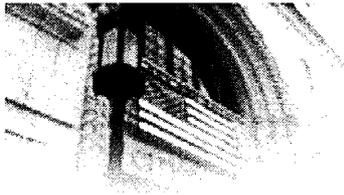


Leticia M. Vacek, City Clerk

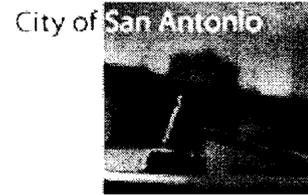
APPROVED AS TO FORM:



Michael D. Bernard, City Attorney



Request for
COUNCIL
 ACTION



Agenda Voting Results - 16

Name:	6, 7, 8, 11, 13A, 13B, 13C, 16, 17, 18A, 18B						
Date:	02/11/2010						
Time:	10:37:37 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a Construction and Maintenance Agreement with the Texas Department of Transportation (TxDOT) which will allow the City to construct improvements within TxDOT right-of-way for the West Hausman Road project located in Council District 8. [Sharon De La Garza, Assistant City Manager; Majed A. Al-Ghafry, Director, Public Works]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

CONSTRUCTION AND MAINTENANCE AGREEMENT BETWEEN
THE STATE OF TEXAS
AND
THE CITY OF SAN ANTONIO, TEXAS
FOR
THE CONSTRUCTION OF IMPROVEMENTS WITHIN THE RIGHT-OF-WAY
OF IH 10 @ HAUSMAN ROAD
IN THE CITY OF SAN ANTONIO, 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 San Antonio, Texas, hereinafter called the "City", acting by and through the Director of Public Works, hereunto duly authorized.

WITNESSETH

WHEREAS, the State owns, operates, and maintains a system of highways for public use and benefit, including IH 10 in the City of San Antonio, Bexar County, Texas; and

WHEREAS, the City desires and has requested authority to construct acceleration lane improvements within the right-of-way of IH 10 @ Hausman Road at the location shown on construction plans, entitled "State of Texas, Department of Transportation, City of San Antonio, Public Works Department, Acceleration Lane Addition, Limits: IH 10 Access Road/Hausman Road Intersection", 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, San Antonio, 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 San Antonio. 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 San Antonio 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 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 for maintenance by the State, the City shall be responsible for all costs necessary for alterations of the Facility.

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, Bexar County or the City of San Antonio, 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 triplicate on the dates below stated.

THE CITY OF SAN ANTONIO

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

Title

Date: _____

ATTEST:

By: _____
Signature
Mario G. Medina, P.E.

San Antonio District Engineer
Title

Date: _____

RECOMMENDED FOR EXECUTION:

Director of Maintenance

List of Exhibits:

- A. Construction plans, including traffic control plans, entitled "State of Texas, Department of Transportation, City of San Antonio, Public Works Department, Acceleration Lane Addition, Limits: IH 10 Access Road/Hausman Road Intersection".
- B. Contractor's Certificate of Insurance.

C:\C&MIH10@HausmanRoad.doc
Revised November 3, 2009



CERTIFICATE OF INSURANCE

Form 1560 (Rev. 04/07) Previous editions of this form may not be used. Page 1 of 2

Prior to the beginning of work, the Contractor shall obtain the minimum insurance and endorsements specified. Only the TxDOT certificate of insurance form is acceptable as proof of insurance for department contracts. Agents should complete the form providing all requested information then either fax or mail this form directly to the address listed on page two of this form. Copies of endorsements listed below are not required as attachments to this certificate.

Insured: _____

Street/Mailing Address: _____

City/State/Zip: _____

Phone Number: () - _____

WORKERS' COMPENSATION INSURANCE COVERAGE:

Endorsed with a Waiver of Subrogation in favor of TxDOT.

Table with 5 columns: Carrier Name, Carrier Phone #, Address, City, State, Zip, and Limits of Liability. Includes a row for Workers' Compensation with 'Not Less Than: Statutory - Texas'.

COMMERCIAL GENERAL LIABILITY INSURANCE:

Endorsed with TxDOT as Additional Insured and with a Waiver of Subrogation in favor of TxDOT.

Table with 5 columns: Carrier Name, Carrier Phone #, Address, City, State, Zip, and Limits of Liability. Includes a row for Commercial General Liability Insurance with 'Not Less Than: \$ 600,000 combined single limit'.

BUSINESS AUTOMOBILE POLICY:

Endorsed with TxDOT as Additional Insured and with a Waiver of Subrogation in favor of TxDOT.

Table with 5 columns: Carrier Name, Carrier Phone #, Address, City, State, Zip, and Limits of Liability. Includes a row for Business Automobile Policy with 'Not Less Than: \$ 250,000 each person, \$ 500,000 each occurrence, \$ 100,000 each occurrence'.

UMBRELLA POLICY (if applicable):

Table with 5 columns: Carrier Name, Carrier Phone #, Address, City, State, Zip, and Limits of Liability. Includes a row for Umbrella Policy.

Agency Name Address City, State, Zip Code

() - Authorized Agent's Phone Number Authorized Agent Original Signature Date

This Certificate of Insurance neither affirmatively nor negatively amends, extends, or alters the coverage afforded by the above insurance policies issued by the named insurance company.

THIS IS TO CERTIFY to the Texas Department of Transportation acting on behalf of the State of Texas that the insurance policies named meet all the requirements stipulated and such policies are in full force and effect.

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you.

Fax completed form to: 512/416-2536

EXHIBIT "B"

NOTES TO AGENTS:

Agents must provide all requested information then either fax or mail this form directly to the address listed below.

Pre-printed limits are the minimum required; if higher limits are provided by the policy, enter the higher limit amount and strike-through or cross-out the pre-printed limit.

To avoid work suspension, an updated insurance form must reach the address listed below **one business day** prior to the expiration date. **Insurance must be in force in order to perform any work.**

Binder numbers are not acceptable for policy numbers.

The certificate of insurance, once on file with the department, is adequate for subsequent department contracts provided adequate coverage is still in effect. Do not refer to specific projects/contracts on this form.

The TxDOT certificate of insurance form is the only acceptable proof of insurance for department contracts.

List the contractor's legal company name, including the DBA (doing business as) name as the insured or list both the contractor and staff leasing service as insured when a staff leasing service is providing insurance.

Over-stamping and/or over-typing entries on the certificate of insurance are not acceptable if such entries change the provisions of the certificate in any manner.

This form may be reproduced.

The **SIGNATURE** of the agent is required.

CERTIFICATE OF INSURANCE REQUIREMENTS:

WORKERS' COMPENSATION INSURANCE:

The contractor is required to have Workers' Compensation Insurance if the contractor has any employees including relatives.

The word **STATUTORY**, under limits of liability, means that the insurer would pay benefits allowed under the Texas Workers' Compensation Law.

GROUP HEALTH or **ACCIDENT INSURANCE** is not an acceptable substitute for Workers' Compensation.

COMMERCIAL GENERAL LIABILITY INSURANCE:

If coverages are specified separately, they must be at least these amounts:

Bodily Injury	\$500,000 each occurrence
Property Damage	\$100,000 each occurrence
	\$100,000 for aggregate

MANUFACTURERS' or **CONTRACTOR LIABILITY INSURANCE** is not an acceptable substitute for Comprehensive General Liability Insurance or Commercial General Liability Insurance.

BUSINESS AUTOMOBILE POLICY:

The coverage amount for a Business Automobile Policy may be shown as a minimum of \$600,000 Combined Single Limit by a typed or printed entry and deletion of the specific amounts listed for Bodily Injury and Property Damage.

BASIC AUTOMOBILE LIABILITY INSURANCE is not an acceptable substitute for Comprehensive Automobile Liability Insurance or Texas Business Automobile Policy.

MAIL ALL CERTIFICATES TO:

Texas Department of Transportation
CST — Contract Processing Unit (RA/200 — 1st Fl.)
125 E. 11th Street
Austin, TX 78701-2483
512/416-2540 (Voice), 512/416-2536 (Fax)