



**Interlocal Agreement
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 87
AGENDA DATE: Thu 06/23/2005
PAGE: 1 of 2**

SUBJECT: Approve a resolution ratifying the Second Supplemental Contractual Agreement for Right-of-Way Procurement (ROW CSJ NO.:011308039) with the Texas Department of Transportation, amending the provisions of the Contractual Agreement regarding reimbursement to the City of Austin of expenditures for right-of-way acquisition and utility relocation for the proposed tolled portion of U.S. 290 West from Joe Tanner to Scenic Brook Drive and including the State Highway 71 Intersection.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Public Works
DEPARTMENT:

**DIRECTOR'S
AUTHORIZATION:** Sondra Creighton

FOR MORE INFORMATION CONTACT: Lauraine Rizer, 974-7078; Laura Bohl, 974-7064

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

In August of 2004, City Council instructed City staff to renegotiate the terms of the Contractual Agreement for Right-of-Way Procurement, as amended, with the Texas Department of Transportation ("TxDOT") for right-of-way procurement and utility relocation on this proposed tolled or turnpike portion of this Project (the "Agreement"). City staff has negotiated the further agreement of TxDOT on terms and conditions that provide full funding by TxDOT for right-of-way procurement and utility relocation on this Project, as set forth in the attached Second Supplemental Contractual Agreement for Right-of-Way Procurement ("Supplemental Agreement").

This Supplemental Agreement is recommended for ratification because of recent legislation that amends state law in a way that affects the reimbursement of municipal costs for right of way procurement and utility relocation required for a toll or turnpike project.

In order to protect the City's ability to receive reimbursement for its expenses in the future under the law that existed as of the effective date of the Supplemental Agreement and prior to the effective date of the new legislation, staff negotiated and executed the attached Agreement and requests ratification by Council.

The Supplemental Agreement relieves the City of Austin of its obligation to contribute 10% right of way costs as of January 9, 2005. The City would be required to pay the remaining 10% contribution for those parcels acquired prior to January 9, 2005, which is approximately \$173,000.00. The City has not made a payment since the Council's request that the City staff renegotiate the agreement.



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The Supplemental Agreement also allows City of Austin to forgo the remainder of its 10% right-of-way contribution currently estimated at \$150,000.00. If the highway project were to be developed as a non-tolled roadway, the City would reimburse the State 10% of the cost of right of way. In such an event the City would also be required to pay 100% of the cost of its utility relocation from the right-of-way and 10% of all other utility relocation. The estimated reduction of City utility relocation expenditure is \$11,000,000.

**SEVENTH
SUPPLEMENTAL CONTRACTUAL AGREEMENT
FOR RIGHT OF WAY PROCUREMENT-CITY**

THE STATE OF TEXAS	§	County: Travis
	§	District: Austin
COUNTY OF TRAVIS	§	ROW CSJ NO.: 011308039
		Federal Project No.:
		Highway: U.S. 290

This supplemental contractual agreement by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the State, and the City of Austin, Texas, acting by and through its duly authorized official, hereinafter called the City, shall be effective on the date of approval and execution by and on behalf of the State.

WHEREAS, City's staff was given direction by Austin City Council to negotiate with the State regarding issues covered by this supplemental agreement; and

WHEREAS, the State and the City have previously entered into a contractual agreement on the date of June 27, 1986, and amended such agreement on June 29, 1989, October 6, 1989, June 21, 1990, January 30, 1991, June 10, 1992 and March 7, 1994 with regard to the procurement of right of way and utility relocation on the following indicated highway project limits:

From: R.M. 1826

To: Brodie Lane

and, which terms are incorporated herein for any and all purposes; and

WHEREAS, a portion of the project is being evaluated as a candidate turnpike or toll project and is identified as US 290 W from Joe Tanner to Scenic Brook Drive and including the SH 71 Intersection (the "turnpike or toll project"); and

WHEREAS, pursuant to Chapter 361, Transportation Code and Title 43, Texas Administrative Code, § 15.55(c), effective January 9, 2005, the cost to acquire right of way for a turnpike or toll project on the state highway system is funded entirely with State funds or turnpike or toll revenue bonds, with no local cost participation required, and Transportation Code, Section 361.234 provides that a utility shall make a relocation of a utility facility for a turnpike or toll project at the expense of the State; and

WHEREAS, the City has now requested that they be relieved of the obligation to contribute to the State an amount equal to ten percent (10%) of the cost to acquire the necessary right of way for the candidate turnpike or toll project, and has requested that in the event that the above project is designated a turnpike or toll project by the Texas Transportation Commission pursuant to Section 361.101, Transportation Code, that it be reimbursed for certain amounts previously contributed to the State for the candidate turnpike or toll project, which amounts are equal to ten percent (10%) of the cost to acquire the necessary right of way for the candidate turnpike or toll project; and

WHEREAS it is mutually desired by the City and the State to amend said previous contractual agreement in order to modify the terms and provisions for City participation in the cost of acquiring right of way for the turnpike or toll project and to modify terms and conditions for reimbursing the costs of relocating all utility facilities for said turnpike or toll project; and

NOW, THEREFORE, in consideration of the foregoing premises and the mutual benefits to be derived therefrom, the above described contractual agreement is hereby modified as follows:

1. The above recitals are incorporated in this Supplemental Agreement for all purposes.
2. On or after January 9, 2005, the State will hereby assume the obligation to pay, one hundred percent (100 %) of the cost of right of way acquired for the turnpike or toll project, and one hundred percent (100%) of utility relocation cost required by the turnpike or toll project. Upon a determination by the State that the candidate turnpike or toll project will be developed as a non-tolled project, the City shall reimburse the State in the amount of ten percent (10%) of the cost of such right of way and the relocation of utility facilities of other entities and shall reimburse the State all costs of relocating City owned utilities not eligible for reimbursement under Transportation Code Section 203.092.
3. For purposes of this Supplemental Agreement, eligible utility relocation costs are those that are necessary to relocate utilities that are in conflict with the design of the turnpike or toll project, as determined by the State.
4. The City and State shall continue to negotiate terms for reimbursement to the City for right of way and utility relocation costs incurred by the City prior to January 9, 2005; provided however, that the State is not obligated to reimburse the City for any costs other than as provided in this Supplemental Agreement.
5. All other provisions of the Contractual Agreement for Right of Way Procurement, as amended, remain the same.

CITY OF AUSTIN, TEXAS

By: Toby Hammett-Futrell
Toby Hammett-Futrell, City Manager

EXECUTION RECOMMENDED:

[Signature]
District Engineer, Austin District

ATTEST: Laurence [Signature]

THE STATE OF TEXAS

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

By: [Signature]

Title: Asst. Exec. Dir. Eng. Oper.

Date: 6/13/05

RESOLUTION NO.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Council ratifies, approves, and confirms the execution of the Seventh Supplemental Contractual Agreement for Right of Way Procurement, attached hereto as Exhibit A and made a part hereof, with the Texas Department of Transportation, further amending the provisions of the Contractual Agreement for Right of Way Procurement for ROW CSJ NO: 011308039, for the proposed tolled portion of U.S. 290 West from Joe Tanner to Scenic Brook Drive and including the S.H. 71 Intersection, regarding reimbursement to the City of expenditures for right of way acquisition and utility relocation for toll road or turnpike projects.

ADOPTED: _____, 2005 **ATTEST:** _____

Shirley A. Brown
City Clerk