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## LAW DEPARTMENT

### MEMORANDUM

**TO:** Mayor and Council Members  
Toby Hammett Futrell, City Manager

**FROM:** David Lloyd, Assistant City Attorney  
Lauraine Rizer, Manager, Real Estate Services

**DATE:** June 17, 2005

**SUBJECT:** June 23 Agenda Items- Ratification of Supplemental Agreements Amending  
Contracts with TxDOT for State Reimbursement of City Costs for Toll Road  
Projects

The recently approved HB 2702 amends state law regarding toll and turnpike projects, and among other things reduces the amount of the state's reimbursement of local expenditures for utility relocation. Staff and TxDOT have negotiated amendments to our agreements to provide for reimbursement for utility relocation at 100% on toll projects, as discussed in this memo.

#### History

The May 11<sup>th</sup> engrossed version of HB 2702 is the first indication of any proposed change to current law regarding allocation of the costs for utility relocations on a toll road or turnpike project. The bill was debated on the House floor on May 11<sup>th</sup>. On that day, 24 proposed amendments were added to the bill, including an amendment that changes the allocation of costs for utility relocations. On May 12<sup>th</sup> the bill had its third reading on the House floor and two additional amendments were added to the bill. One of those amendments requires the Texas Department of Transportation "to conduct a study to determine how to maximize the use of highway rights of way by public utilities."

On May 16<sup>th</sup> the bill was heard in the Senate Transportation and Homeland Security Committee. A senate committee substitute for HB 2702 was adopted by the committee. That version of the bill amended the House floor language and changed the allocation of costs for utility relocations.

On May 21<sup>st</sup>, the bill was debated on the Senate floor and 47 proposed amendments were added. On May 23<sup>rd</sup> the House refused to concur in the Senate amendments and the bill was then referred to a House/Senate Conference Committee.

The House/Senate Conference Committee version of the bill was adopted by both the House and the Senate on May 29<sup>th</sup> and finalized through corrections on May 30<sup>th</sup>, the last day of the legislative session.

During the private negotiations of the conference committee, another amendment was added to the bill which changed the allocation of costs for utility relocations. This amendment is now the new law.

The bill was signed by the Governor June 14, 2005, and became effective immediately. As filed, the bill was 77 pages long, and as finally passed, the bill was 163 pages long.

Prior to the Governor signing HB 2702 and the consequent change to the allocation of utility relocation costs, City staff negotiated amendments to three agreements with TxDOT regarding three segments of local highways which will be designated as toll road projects. Under these amendments, TxDOT will reimburse the City for 100 % of the cost of city utility relocations, and 100% of the cost of right of way acquisition incurred after January 9, 2005. (January 9, 2005 is the date of the revised TxDOT regulations which authorize TxDOT to pay 100% of the cost of right of way for toll road or turnpike projects.) City staff and TxDOT staff executed each of the three "Supplemental Agreements" amending the existing agreements prior to the effective date of the new law to provide for reimbursement to the City at the higher pre-HB 2702 levels. Because these Supplemental Agreements are amendments to interlocal agreements they require Council approval.

#### **Adopted Version of HB 2702**

The adoption of HB 2702 by the 79<sup>th</sup> Legislature changes state law regarding certain reimbursement of municipal expenditures for turnpike and toll road projects. Prior to the effective date of HB 2702, 100% of the cost of utility relocations which were required because of toll road or turnpike projects were paid for by the state. Under HB 2702, for the next two years, beginning September 1, 2005 until September, 1, 2007, the state will pay for 50% of the cost of utility relocation which is required because of a toll road or turnpike project. The local utility will be required to pay the remaining 50% of the cost of utility relocations.

HB 2702 did not change the law regarding the cost allocation of right of way acquisitions which are required for a toll road or turnpike project. The state pays 100% of the cost of right of way acquisition for a toll road or turnpike project. For non-toll road or turnpike projects, a municipality pays 10% of the cost of right of way acquisition and 100% of the cost of relocation of municipal utilities if the municipal utilities are located in the state's existing right of way. If the municipal utilities are located in a city-owned easement, the state pays 100% of the cost of relocation for non-toll or turnpike projects.

<b>For toll/turnpike projects</b>	<b>ROW Acquisition</b>	<b>Utility Relocation</b>
<b>Previous</b>	100% State	100% State
<b>Current (HB 2702) (effective June 14, 2005)</b>	100 % State	50% State 50% municipality

**\* Note: Currently for non toll or turnpike projects there is no change.**

#### **Impact of Negotiated Amendments with TxDot**

Based on figures provided by TxDOT, reimbursement to the City under the Supplemental Agreements as negotiated could result in an estimated reduction of city expenditures of up to \$5.7 million for right of way acquisition, and \$25,000,000 for utility relocation.

Staff recommends ratification of these Supplemental Agreements.

Xc: David Smith, City Attorney

Karen Kennard, First Assistant City Attorney  
John Hmcir, Governmental Relations Officer