



MEMORANDUM

TO: Spencer Cronk, City Manager

FROM: Michael L Personett, Assistant Director, WPD *MLP*

DATE: February 12, 2019

SUBJECT: Memorandum of Understanding between TXDOT and the City of Austin re: Stormwater Management and Environmental Protection

Action Requested:

We are requesting your review and signature on these two original copies of this Memorandum of Understanding (MOU) between Texas Department of Transportation Austin District and the City regarding collaboration and potential future partnering on stormwater management and environmental protection on state highway systems projects within the City's jurisdiction. Once they are signed we will forward to Terry McCoy, Texas Austin District Engineer, for his signature.

Background:

City Council considered and acted to approve the MOU at the January 31, 2019 council meeting. This MOU memorializes a collaborative relationship that City staff have cultivated with both TXDOT and the Central Texas Regional Mobility Authority (CTRMA) over a period of several years. It embodies an approach which has been applied successfully on several TXDOT and CTRMA projects, including the State Highway 45 Southwest toll road, the MoPac South Intersections Project at Slaughter Lane and Lacrosse Boulevard, the U.S. Highway 183 North Project, and the Oak Hill Parkway Project. It is currently being applied on other projects that are in development, specifically Farmer Lane and Loop 360 intersection improvements. The overall benefit of this approach has been and will be superior outcomes with respect to stormwater management and environmental protection on State roadway projects. Please note that a very similar MOU between the CTRMA and the City will soon be brought forward for your review and approval.

Should you have any question, please do not hesitate to contact me at 512-974-2652, or mike.personett@austintexas.gov.

Approved: _____

Spencer Cronk, City Manager

cc: Rey Arellano, Assistant City Manager
Joseph G. Pantalione, P.E., Director, WPD
Robert Spillar, P.E., Director, ATD

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into by and between: the State of Texas, acting by and through the Texas Department of Transportation (the State), and the City of Austin (Local Government).

A. Purpose.

The State enters into this Memorandum of Understanding (MOU) with the Local Government (LG) for collaboration on stormwater management and environmental protection on Selected state system highway projects within the LG's city limits or extra territorial jurisdiction. Selected projects are defined as major highway projects that have environmental or stormwater sensitivity as deemed by the State and/or projects where the LG is a funding partner.

Through this MOU, the State implements its authority under Texas Transportation Code §201.103, which authorizes the State to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads.

Texas Transportation Code, §201.206, authorizes the State to accept, from any source, a donation or contribution in any form, including realty, money, materials, or services, for the purpose of carrying out its functions and duties.

A. Roles and Responsibilities of the LG:

1. The LG will establish a single point of contact to partner with the State on planning, review and potential cost-sharing on stormwater management and environmental protection elements on Selected state system highway projects in the LG's city limits.
2. The LG will work with the State to establish protocols for early and regular consultation on planning and implementation of Selected projects in the LG's city limits.
3. The LG will commit to prompt review of plans, technical reports, and other documents and submit one consolidated set of comments for all city departments. Project reviews by LG shall be no more than twenty working days unless both parties agree to otherwise.
4. The LG may recommend approaches to stormwater management that are consistent with LG regulations that may exceed State minimum requirements.
5. The LG may provide planning and preliminary design services to the State for consideration of environmental protection measures and stormwater management controls that exceed State minimum requirements.

6. The LG may provide funding and construction plans for stormwater management infrastructure that exceeds State minimum requirements.
7. The LG may provide funding and guidance for the purchase of environmentally sensitive land within the planning boundaries of project corridors or the LG may directly acquire environmentally sensitive land within the planning boundaries of project corridors depending on specific circumstances.
8. The LG will use a Comment Response Matrix on reviews for plans, technical reports, and other documents (the template will be agreed to by the LG and the State).

B. Roles and Responsibilities of the State:

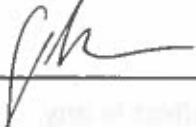
1. The State will establish a single point of contact to partner with the LG on planning, review and potential cost-sharing on stormwater management and environmental protection elements on Selected state system highway projects in the LG's city limits. The State will designate a single point of contact on a per project basis.
2. The State will work with the LG to establish protocols for early and regular consultation on planning and implementation of Selected projects in the LG's city limits.
3. The State will include the LG as a project partner such that the LG has the ability to review and comment on plans and technical reports, provide design deliverables, and arrange for funding on collaborative elements on Selected projects in the LG's city limits, according to the State's project schedule.
4. The State will consider approaches to stormwater management that exceed the States' minimum requirements and implement as feasible. The LG must provide the right-of-way (ROW) in cases where these approaches are not contained within the ROW needs identified by the State's minimum requirements.
5. The State may incorporate approaches to stormwater management that exceed the State's minimum requirements when those elements are funded by the LG. The State may use LG funds to purchase environmentally sensitive land within the planning boundaries of project corridors. An Advanced Funding Agreement (AFA) must be executed in order for the State to incorporate such approaches.
6. The State may use an Environmental Compliance Management Plan on Selected state system highway projects in the LG's city limits (the template for the Environmental Compliance Management Plan will be agreed to by the LG and the State).
7. The State will consider the LG's recommendations for avoiding, minimizing, or otherwise mitigating impacts to critical environmental features on Selected state system highway projects in the LG's city limits.

ADMINISTRATIVE PROVISIONS

- A. Nothing in this MOU is intended to or will be construed to limit or affect in any way the authority or legal responsibilities of the parties.
- B. Nothing in this MOU binds the parties to perform beyond their respective authorities.
- C. Nothing in this MOU may be construed to obligate the LG or the State to spend funds on any particular project, project element or purpose.
- D. Specific activities that involve the transfer of money, services, or property between or among the parties will require execution of separate agreements or contracts.
- E. Nothing in this MOU is intended to, or will, be construed to restrict the parties from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- F. This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State or the LG.
- G. All press releases and public statements issued by the Parties concerning or characterizing this MOU will be jointly reviewed and agreed to by delegated staff representing each of the undersigned signatories.
- H. All participants agree to resolve disputes expeditiously. If a dispute arises among the parties regarding the terms or the implementation of this MOU, the following steps will be taken: The Party that seeks resolution will provide a written statement of its dispute, along with any rationale or supporting documents, to the other party within 5 working days. The LG and the State will engage in discussions in an attempt to arrive at a consensus and resolve the dispute.

City of Austin

Texas Department of Transportation
Austin District



(Signature)
Spencer Cronk


(Printed Name)

City Manager

(Title)

2.21.19

(Date)



(Signature)
TERRY G. MCCOY

(Printed Name)

Aus District Engineer

(Title)

2-28-2019

(Date)

APPENDIX to MEMORANDUM OF UNDERSTANDING

Oak Hill Parkway Project-Specific Environmental Protection and Stormwater Management Elements

Prior to adoption of the Memorandum of Understanding (MOU) between the State of Texas and the City of Austin regarding collaboration on stormwater management and environmental protection on Selected State system highway projects, the Texas Department of Transportation (TxDOT) engaged the City of Austin (COA) to provide input to the technical specifications and project approach for the proposed Oak Hill Parkway Project design and construction documents.

This Appendix reflects the Oak Hill Parkway Project-specific areas of agreement that reflect the more global terms called out in the MOU.

1. City of Austin appointed staff from Watershed Protection Department to review and provide input to the bidding specifications related to stormwater, bridge hydraulics/floodplains and environmental protection for the proposed Design-Build contract.
2. TxDOT hosted five formal review meetings during a 6 week period for consultation with City of Austin staff on planning and implementation of the technical specifications.
3. City of Austin staff responded in a timely manner to all deadlines for submittals of comments.
4. City of Austin staff reviewed all stormwater management facilities for both flood detention and water quality. Staff was unable to find additional sites or facilities for cost-participation by the City to increase the amount or level of stormwater treatment.
5. TxDOT agreed to not only meet the TCEQ requirements for TSS load reduction, but also consider to decrease the net TSS pollutant loading over existing conditions. TxDOT agreed to meet these goals by maintaining a minimum water quality capture volume (1/2 inch plus) and pollution removal standards (sedimentation-filtration) consistent with COA standards to the maximum extent possible.
6. TxDOT agreed to maximize the volume of upstream flood detention ponds and to exceed the TxDOT design frequency (50-year storm) and will strive to meet COA design frequency (100-year storm). TxDOT used Atlas 14 precipitation data for hydrologic and hydraulic analysis and design. The upstream detention ponds should result in a decrease in flow from existing conditions, benefitting neighborhoods downstream.

7. TxDOT's preliminary bridge designs for Old Bee Caves Road met or exceeded COA standards to prevent roadway overtopping of the 100-year flow event.
8. TxDOT accepted the City of Austin's request to include performance standards for construction phase erosion and sedimentation controls in a manner that is consistent with City of Austin Environmental Criteria Manual standard of on-site control of the 2-year storm.
9. TxDOT has included in the construction specifications and contract the requirement for a Comprehensive Environmental Protection Plan (CEPP) to demonstrate compliance with all environmental commitments made during Environmental Approval and other environmental requirements added as a result of the collaborative process.
10. TxDOT has agreed to allow City of Austin staff to provide observations and input about performance of environmental controls during the construction phase. Similar to the role of the Barton Springs Edwards Aquifer Conservation District during construction of SH45 SW, City staff can provide additional monitoring information and recommendations for adaptive management to the TxDOT environmental staff and the CEPP to ensure that Best Management Practices are achieving the environmental protection goals. City of Austin staff will be on-call 24/7 during construction to respond to requests for assistance.
11. TxDOT agreed to include language in the contract specifications that require the contractor to use karst void avoidance and mitigation procedures contained in TxDOT Standards, TCEQ Edwards Rules, and City of Austin Environmental Criteria Manual. Based on consultation from City Of Austin Watershed Protection Staff, TxDOT has agreed to require that the contractor utilizes standards of practice that are the most protective of site specific karst features..
12. TxDOT owns a drainage easement that contains Williamson Creek between William Cannon Drive and the US 290 bridge at Williamson Creek near Patton Ranch Road. TxDOT has agreed to extend the Riparian and Floodplain Vegetation Restoration specifications to the entire drainage easement. These specifications were amended to include City of Austin native vegetation specifications. This restored area exceeds the original extent of disturbed Riparian area that was to be restored to specification and will allow for additional water quality treatment of stormwater runoff from previously untreated adjacent commercial areas.
13. TxDOT has agreed to include tree protection measures recommended by the City of Austin Arborist to especially protect the large, historic oak trees in the

project limits. The technical specifications include requirements for tree avoidance and critical root zone protective and restorative measures.

APPENDIX 2 OF THE MEMORANDUM OF UNDERSTANDING

TXDOT 3417-02-030, FM734, Parmer Ln - City of Austin - Water Quality Betterment

Project-Specific Agreement

The Texas Department of Transportation (TXDOT) and the City of Austin (COA) have been working in good faith on the Parmer Lane Regional Mobility project with TXDOT providing opportunity for review and input on deliverables and agreeing to partner with COA on a Water Quality Stormwater Control Measure (WQ SCM) that is above and beyond what is required for their regulatory compliance (a betterment). This betterment is proposed to be located outside the TXDOT Right of Way on property owned by Avery Ranch Golf Course and will thus require the acquisition of COA drainage easement. The facility is estimated to remove approximately 6,450 pounds of pollution (TSS) from a 15-acre drainage area with 58% impervious cover (mostly roadway) that currently discharges untreated stormwater to South Brushy Creek. Below are the responsibilities that TXDOT and COA have agreed to on this partnership project:

Responsibilities:

1. COA will acquire and pay for easement and boundary survey for SCM
2. COA will acquire and pay for detailed topographic survey for SCM
3. COA will acquire and pay for geotechnical borings for SCM
4. COA will review the completed design and complete COA permitting for SCM
5. COA will pay for SCM design and construction via an AFA with TXDOT
6. COA will assist with COA permitting process
7. TXDOT will execute SCM design with their consultant (LAN)
8. TXDOT will utilize its contractor to build the permitted SCM design along with Parmer Lane improvements. The SCM will be constructed within COA drainage easement at Avery Ranch Golf Course.