

AI-35921

Precinct #3 26. A.

CC REGULAR

Meeting Date: 12/28/2012

Department: COMM. PCT. #3

Information

CAPTION

Discussion and Approval of LPA Standard Utility Agreement FM 681 Sharyland Water Supply Corporation Water Line Adjustment, Removal, and/or Replacement.

BACKGROUND

Fiscal Impact

FISCAL YEAR: 2 ACCT. #: 2-1315-431-00-123-071-0-841

FUNDS AVAILABLE Y/N?: Y MATCHING FUNDS Y/N?:

BUDGETARY IMPACT:

available balance as of 12/21/12.

FISCAL YEAR: 2 ACCT. #: 2-1315-431-00-123-070-0-841

FUNDS AVAILABLE Y/N?: Y MATCHING FUNDS Y/N?:

BUDGETARY IMPACT:

available balance as of 12/21/12.

Attachments

FM 681 packet

Legal Backup

Form Review

Inbox	Reviewed By	Date
Budget & Management	Obdett Calzada	12/19/2012 02:52 PM
Roland Garcia	Rolando Garcia	12/21/2012 09:56 AM
Purchasing Department	Angela Garcia	12/23/2012 10:01 PM
Budget & Management	Obdett Calzada	12/19/2012 02:52 PM
Roland Garcia	Rolando Garcia	12/21/2012 09:56 AM
Auditor's Office		12/23/2012 10:01 PM
Form Started By: Norma Ceballos		Started On: 12/19/2012 02:37 PM
Final Approval Date: 12/23/2012		

Zimbra**rolando.garcia@co.hidalgo.tx.us**

FW: Posting of Agenda Item

From : Norma Ceballos <norma.ceballos@co.hidalgo.tx.us>
Subject : FW: Posting of Agenda Item
To : rolando garcia <rolando.garcia@co.hidalgo.tx.us>

Fri, Dec 21, 2012 09:39 AM
📎 2 attachments

From: Stephen L. Crain [mailto:scrain@atlashall.com]
Sent: Wednesday, December 19, 2012 1:58 PM
To: 'Monica Badillo'; 'Angelica Salinas'
Cc: 'Norma Ceballos'
Subject: FW: Posting of Agenda Item

Norma,

This was sent to Monica and I copied Angela as well. Should you any questions, please call our office.

Thanks,
Marynel Trevino, Secretary for

Stephen L. Crain
ATLAS, HALL & RODRIGUEZ, LLP
818 Pecan Blvd. (78501)
P. O. Box 3725
McAllen, Texas 78502
Direct Dial Number (956) 632-8221
Main Number (956) 682-5501
Fax Number (956) 686-6109
E-mail Address scrain@atlashall.com

From: Stephen L. Crain [mailto:scrain@atlashall.com]
Sent: Monday, December 10, 2012 11:21 AM
To: 'Monica Badillo'
Cc: ' (angela.garcia@co.hidalgo.tx.us)'
Subject: Posting of Agenda Item

Good morning Ladies,

As per Mr. Crain please post the attached agreement on the next CC meeting see the language below;

“Discussion and Approval of LPA Standard Utility Agreement FM 681 Sharyland Water Supply Corporation Water Line Adjustment, Removal, and/or Replacement”.

Thanks,
Marynel Trevino, Secretary for

Stephen L. Crain
ATLAS, HALL & RODRIGUEZ, LLP
818 Pecan Blvd. (78501)
P. O. Box 3725
McAllen, Texas 78502
Direct Dial Number (956) 632-8221
Main Number (956) 682-5501
Fax Number (956) 686-6109
E-mail Address scrain@atlashall.com



Atlas Hall
Rodriguez

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Atlas Hall
Rodriguez

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COUNTY COMMISSIONER PRECINCT 3
County of Hidalgo

November 27, 2012

Joe M. Flores
County Commissioner Pct. No. 3
Atlas & Hall, LLP
Attn: Stephen L. Crain
Attorney-at-Law
818 Pecan Blvd.
McAllen, Texas 78501

RE: FM 681/2221
Compensable Utility Agreement

Dear Mr. Crain:

As we have discussed, the Texas Department of Transportation (TxDOT) has stopped utilizing the 3-Party (State-County-Utility) Agreement and is now stating that a 2-Party (County-Utility) agreement needs to be executed on projects where the County is acting as the ROW agent for TxDOT. Since TxDOT informed us of this change the Precinct #3 staff, along with L&G Engineering, has been coordinating with TxDOT to get their concurrence on the language of said 2-Party agreement. Hidalgo County has received correspondence (see attached) from TxDOT, concurring with the language of the attached 2-Party agreement as well as the overall compensable utility adjustment process.

The letter I sent to TxDOT (attached, dated October 9, 2012) provided a plan for Hidalgo County to adjust compensable utilities on transportation projects in cooperation with TxDOT and public utility providers. This process needs to be adopted by Hidalgo County to ensure reimbursement of eligible costs by TxDOT on all current and future transportation projects.

Therefore, I am requesting that you review the language of the 2-Party agreement (approved by TxDOT) and if acceptable approve it "as to form" and place on the Commissioner's Court agenda for adoption. If you feel necessary, please receive comments from any other County Department you feel may need to review this agreement (Auditor's Office, ROW Department, etc...) as this will become the standard agreement utilized on all transportation projects receiving reimbursements from TxDOT.

Please give this the highest priority as we have three adjustments on hold for this project while we are trying to finalize this agreement. If you need any further clarifications, please contact my office or L&G Engineering at (956) 585-1909.

Sincerely,

Joe M. Flores, Commissioner
Hidalgo County Precinct No. 3

cc: Mario Jorge, P.E., TxDOT Pharr District Engineer
Jody Ellington, P.E., TxDOT Pharr Deputy District Engineer
Jacinto Garza, P.E., L&G Engineering
Raul E. Sesin, P.E., Hidalgo Co. Planning Admin.
Office: (956) 585-4509 • Fax: (956) 205-7009
724 N. Breyfogle • Mission, Texas 78574



Texas Department of Transportation

PO BOX 1717 • PHARR TEXAS 78577-1717 • (956) 702-6100

November 16, 2012

Joe M. Flores
Hidalgo County Commissioner Precinct No. 3
724 N. Breyfogle
Mission, TX 78574

RE: FM 681/FM 2221 Compensable Utility Process

- (1) **FM 681** - From FM 681 North @ FM 2221 to SH 107
Construction CSJ: 0669-01-043 & ROW CSJ: 0669-01-052
- (2) **FM 2221** – From 0.25 Miles West of Moorefield Road to FM 681
Construction CSJ: 0862-01-047 & ROW CSJ: 0862-01-048
- (3) **FM 2221** – From 0.25 Miles West of SH 364 to 0.25 Miles West of Moorefield Rd
Construction CSJ: 0862-01-037 & ROW CSJ: 0862-01-046

Dear Commissioner Flores,

This letter serves as our concurrence with the “LPA Standard Utility Agreement” and “LPA Compensable Utility Adjustment Process” submitted as Attachments A & C with your letter dated October 9, 2012.

Feel free to call me or our Deputy District Engineer, Jody R. Ellington, P.E., at 702-6100 if you have any questions or concerns

Sincerely,

Mario R. Jorge, P.E.
Pharr District Engineer

cc: Jody R. Ellington, P.E., Deputy District Engineer
Jacinto Garza, P.E., L & G Engineering
Griselda Saldivar, P.E., Project Manager



COUNTY COMMISSIONER PRECINCT 3 County of Hidalgo

October 9, 2012

Joe M. Flores
County Commissioner Pct. No. 3

Mr. Mario Jorge, P.E.
District Engineer
Texas Department of Transportation
PO Box 1717
Pharr, Texas 78577

RE: FM 681/2221
Compensable Utility Process & LPA Standard Utility Agreement (SUA)
From 0.25 Miles West of La Homa Rd to SH 107 (Conway)
RCSJ: 0862-01-046, 0669-01-052

Dear Mr. Jorge,

As you know, the executed ROW agreement between TxDOT and Hidalgo County for this project states that the County is responsible for the acquisition of all ROW as well as the adjustment of the compensable utilities. As part of that task, your office has indicated that we must now execute a 2-Party (County & Utility) SUA.

2-Party Standard Utility Agreement (SUA)

Since no standard agreements were available for the County/Utility use, L&G personnel developed the attached agreement (see Attachment A). Even though TxDOT is not a signatory to this agreement, your office was willing to provide comment on the language in the agreement and has concurred with its final content (see correspondence – Attachment B).

Requested Action Regarding the 2-Party SUA

I am requesting your formal concurrence of the 2-Party agreement (Attachment A) so that I may present this agreement to the County Attorney and Commissioner's Court for approval. Once approved, this SUA will become the standard agreement for all current and future compensable utilities.

Compensable Utility Adjustment Process

In addition, we provided your office with a step-by-step standard process for what we believe is necessary to adjust compensable utilities (see Attachment C). As with the SUA, your office provided us comments on the process and has concurred with its final content (see correspondence – Attachment B).


Requested Action Regarding the Compensable Utility Adjustment Process

I am requesting your formal concurrence of the adjustment process (see Attachment C) so that the County will have a clear and concise course of action to follow for all future projects we develop with compensable utility adjustments.

Office: (956) 585-4509 • Fax: (956) 205-7009
724 N. Breyfogle • Mission, Texas 78574

Thank you for your cooperation and willingness to assist us in this matter. Should you have any questions, please feel free to contact me at (956) 585-4509.

Sincerely,



Joe M. Flores
Commissioner, Hid Co. Pct. #3

CC: Jacinto Garza, P.E., L&G Engineering

STATE OF TEXAS §

COUNTY OF HIDALGO §

LPA STANDARD UTILITY AGREEMENT

FM 681 SHARYLAND WATER SUPPLY CORPORATION WATER LINE ADJUSTMENT, REMOVAL, AND/OR REPLACEMENT

This agreement is made by and between the County Of Hidalgo, Texas hereinafter referred to as "County" and the Sharyland Water Supply Corporation, hereinafter referred to as "Utility", acting by and through its duly authorized representative, shall be effective on the date of approval and execution by and on behalf of the County.

WHEREAS, the State of Texas has deemed it necessary to make certain highway improvements as designated by the State and approved by the Federal Highway Administration located on the highway as indicated above;

WHEREAS; the County is a county in the State of Texas;

WHEREAS, the proposed highway improvements will necessitate the adjustment, removal, and/or relocation of certain facilities of the Utility as indicated in the following statement of work: Replacement and relocation of existing 4", 8" & 12" water lines with a single 16" water line and a single 12" water line to accommodate the proposed roadway widening being performed by the Texas Department of Transportation and more specifically shown in the Utility's plans, specifications and estimated costs, which are attached hereto in Attachment "A";

WHEREAS, the County, in receipt of evidence it deems sufficient, acknowledges the Utility's interest in certain lands and/or facilities that entitle it to reimbursement for the adjustment, removal, and relocation of certain facilities located upon lands as indicated in Attachment "A";

NOW, THEREFORE, for and in consideration of the premises and mutual promises, covenants and agreements hereinafter set forth, and intending to be legally bound, the County and the Utility agree as follows:

1. The County will pay the Utility all eligible actual costs which are incurred in the adjustment, removal, and/or relocation of the Utility's facilities.
2. The Utility agrees that all conduct under this agreement, including but not limited to the adjustment, removal, and/or relocation of the facility, the development of reimbursement of costs, any environmental requirements, and retention of records will be in accordance with 23 CFR 645, Subparts A & B and all other applicable federal and state laws, rules and regulations. The Utility agrees to

supply, upon request by the County, proof of compliance with the aforementioned laws, rules and regulations prior to commencement of construction.

3. The Utility agrees to develop relocation or adjustment costs by accumulating actual direct and related indirect costs in accordance with a work order accounting procedure prescribed by the County, or may, with the County's written approval, accumulate actual direct and related indirect costs in accordance with an established accounting procedure developed by the Utility. The bill for the work hereunder will be submitted to the County not later than ninety (90) days after completion of the work.
4. Upon execution of this agreement by both parties hereto, the County will, by written notice, authorize the Utility to proceed with the necessary adjustment, removal, and/or relocation. The Utility agrees to proceed in a diligent manner and will take all prudent actions to avoid delay or interference with the highway construction.
5. The Utility will endeavor to perform this work at its earliest window of opportunity.
6. The County will, upon satisfactory completion of the relocation or adjustment, upon receipt of a proper certification by the Utility that the work has been completed in accordance with the approved plans and specifications, upon receipt and verification of the bill prepared in an approved form and manner, and upon pre-approval by TxDOT, make payment to the Utility.
7. This agreement in its entirety consists of the following:
 - a. LPA Standard Utility Agreement;
 - b. Plans of Adjustment (color coded), Specifications, and Estimated Costs (Attachment "A")(2 Originals);
 - c. Statement Covering Contract Work – TxDOT ROW-U-48 (Attachment "B")(2 Originals);
 - d. Schedule (Start & End Dates)
 - e. Proof of Property Interest – TxDOT ROW-U-1A (Attachment "C")(2 Originals and 1 copy of recorded instrument);
 - f. Eligibility Ratio(Attachment "D")(2 Originals),
 - g. Cost Comparison (if Betterment) (Attachment "D")(2 Originals),
 - h. Betterment Statement (Attachment "D")(2 Originals),
 - i. Quit Claim Deed – TxDOT ROW-U-30 (Attachment "E")(2 Originals), if applicable,
 - j. Joint Use Agreement (Attachment "F")(2 Originals), if applicable.

All attachments are included herein as if fully set forth. In the event it is determined that a substantial change from the statement of work contained in this agreement is required, reimbursement therefore shall be limited to costs

covered by a modification of this agreement or a written change or extra work order approved by the County.

8. The Utility agrees to provide "as-built" plans to the County within sixty (60) days of the completion of the work.
9. This agreement is subject to cancellation by the County at any time up to the date that work under this agreement has been authorized and that such cancellation will not create any liability on the part of the County.
10. The Utility by execution of this agreement does not waive any of the rights which the Utility may have within the limits of the law.
11. It is expressly understood that the Utility conducts the adjustment, removal, and/or relocation using its own methods, and that the Utility agrees to indemnify and hold the County harmless for damage to existing facilities caused by the Utility's negligent conduct.
12. The Utility affirms that it has the authority to enter into this agreement, and that it has obtained the approval, if necessary, from any bankruptcy court exercising jurisdiction over the Utility.
13. Notice: Except as maybe otherwise specifically provided in this Agreement, all notices, demands, requests or communication required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to Utility: Sharyland Water Supply Corp.
Attention: Shary Dahlberg, General Manager
4210 E. Main Ave.
Alton, Texas 78573

If to County: Hidalgo County, Texas
Attention: Ramon Garcia, Hidalgo County Judge
P. O. Box 758
Edinburg, Texas 78540-0758

With copy to: Joe Flores, Commissioner, Precinct No. 3
724 N. Breyfogle
Mission, Texas 78574

14. Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee, or, if mailed, at such time as it is deposited in the United States mail.
15. Additional Documents: The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this agreement.
16. Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.
17. Assignment: This Agreement shall not be assignable.
18. Headings. The headings and captions contained in this Agreement are solely for the convenience reference and shall not be deemed to affect the meaning or interpretation of any provision of paragraph hereof.
19. Gender and Number. All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and singular shall include the plural whenever and as often as may be appropriate.
20. Authority to Execute. The execution and performance of this Agreement by the Utility and County have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the Utility and County in accordance with its terms.
21. Governmental Purpose. Each party hereto is entering into the agreement for the purpose of providing for governmental services or functions and will pay for such services out of current revenues available to the paying party as herein provided.
22. Commitment or Current Revenues Only. In the event that during any term hereof; the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. §271.903.

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

WITNESS THE HANDS OF THE PARTIES effective as of the day and year first written above.

SHARYLAND WATER SUPPLY CORP.

By: _____
Shary Dahlberg, General Manager

COUNTY OF HIDALGO

By: _____
Ramon Garcia, County Judge

ATTEST:

County Clerk

APPROVED AS TO FORM:
ATLAS & HALL, LLP

By: _____
Stephen L. Crain

LPA 2-Party Agreement Compensable Utility Process (Actual Cost)

- **TxDOT & County execute a ROW Agreement**
 - If County is providing ROW acquisition services, this ROW Agreement states that County is responsible for all ROW Acquisition and coordination of the adjustment of compensable utilities
 - The ROW Agreement states any compensable utility adjustment over \$20k must be “Actual Cost”
- **County initiates coordination efforts with all effected utility companies to determine:**
 - If conflicts are present
 - Compensability (proof of property interest)
- **Utility company submits the “Determination of Upper Limits” to County containing:**
 - Plans of adjustment, specifications, & estimated costs
 - Statement covering contract work
 - Schedule (start & end dates)
 - Proof of property interest
 - Eligibility Ratio
 - Cost Comparison & Betterment Statement(if needed)
 - Quit Claim Deed of property interest, if applicable
 - Joint Use Agreement (JUA), if applicable
- **County submits the “Determination of Upper Limits” to TxDOT for approval**
- **Upon TxDOT approval of the “Determination of Upper Limits”, the 2-Party agreement is executed and the County provides the utility with a Notice To Proceed**
- **Utility performs the agreed upon work required for the adjustment**
 - If said work is within the State ROW
 - Utility must apply for a permit from the State
 - All work will be inspected by the State for compliance with the permit requirements
 - County must obtain as-built plans & a certification from the utility that all work was completed as per the plans & specifications
 - County is responsible for oversight of utility adjustment and maintaining documentation to support required certification that work was completed (TxDOT Form ROW-U-45)
 - If said work is outside of the State ROW
 - County must obtain as-built plans & a certification from the utility that all work was completed as per the plans & specifications
 - County is responsible for oversight of utility adjustment and maintaining documentation to support required certification that work was completed (TxDOT Form ROW-U-45)
- **Upon completion of work the Utility submits final billing to County for processing**
 - Documents must include as-built plans, material invoices, pay rates, overhead, etc...
 - County reviews and verifies billing
- **Before issuing any payment to Utility, County submits final billing to TxDOT for pre-approval**
- **Upon TxDOT pre-approval, County issues payment to Utility**
- **Upon payment to Utility, County requests reimbursement from TxDOT**
 - Reimbursement request contains all docs, including all support documentation and required forms, that were previously submitted for final billing pre-approval
 - County submits form ROW-U-45, which certifies work was completed and reimbursed to utility company

- **TxDOT reimburses the County (in an amount not to exceed 98.5% of eligible costs)**
 - 90% of eligible items cost upon review/approval of complete submittal
 - The remaining 10% of eligible items costs upon successful external audit completion