

21

AGENDA ITEM REQUEST FORM

Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

AGENDA ITEM

Discussion and possible action to authorize the County Judge to execute an Agreement between Hays County and Enterprise Texas Pipeline LLC (EPOLLC) related to utility improvements on CR266 in Precinct 1.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-MISCELLANEOUS	April 2, 2013	

LINE ITEM NUMBER

AUDITOR USE ONLY

AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A

AUDITOR REVIEW: N/A

REQUESTED BY	SPONSOR	CO-SPONSOR
BORCHERDING	INGALSBE	N/A

SUMMARY

The improvements relate to EPOLLC performing certain facility modifications to high pressure natural gas pipelines on the south side of where said pipelines cross Hays County Road 266. Legal Counsel anticipates bringing options to court related to Section 1 of the Agreement which controls when and how payments for the improvements shall be made.

FILED: April 2, 2013
HAYS COUNTY COMMISSIONERS' COURT
Resolution # 28911 VOL V PG 127

OPTION #1 – ADVANCE PAYMENT

1. Attached hereto as Attachment A are plans, specifications and the estimated cost for EPOLLC to perform the Work contemplated by this agreement. Prior to commencement of the Work, COUNTY will pay to EPOLLC the estimated costs for the Work as such estimate is set forth on Attachment A. Weather permitting, EPOLLC, upon receipt of the estimated costs for the Work, shall promptly commence and complete the Work with due diligence. COUNTY and EPOLLC agree that all conduct under this agreement, including but not limited to the adjustment, removal and relocation of the facility, the development and reimbursement of costs, any environmental requirements, and retention of records will be in accordance with applicable federal and state laws, rules and regulations. EPOLLC agrees to supply, upon request by the COUNTY, reasonable proof of compliance with the aforementioned laws, rules and regulations prior to the commencement of construction.

~~NO~~

The cost of the Work is estimated to be Eight-Hundred-and-Ten Thousand Dollars (\$810,000) as set forth on the attached Cost Estimate marked "Attachment A". Final actual costs may be more or less than such estimate, which shall not be construed as a limitation of costs for such Work. After the Work is completed EPOLLC shall furnish COUNTY with reasonable proof of the actual cost of the Work and if the Work is more than the estimate, then within thirty days from the COUNTY'S receipt of documentation showing the actual cost of the Work, the COUNTY shall pay the actual amount incurred by EPOLLC in performing the Work over and above the estimated amount previously paid, and if the work is less than the estimate, then within the same time period EPOLLC shall refund to the COUNTY the amount that EPOLLC received from the COUNTY in excess of the actual cost to perform the Work.

✓ **OPTION #2 – 50/50 SPLIT**

1. Attached hereto as Attachment A are plans, specifications and the estimated cost for EPOLLC to perform the Work contemplated by this agreement. Prior to commencement of the Work, COUNTY will pay to EPOLLC fifty percent (50%) of the estimated costs for the Work as such estimate is set forth on Attachment A (hereinafter "the Initial Payment"). Weather permitting, EPOLLC, upon receipt of the Initial Payment for the Work, shall promptly commence and complete the Work with due diligence. COUNTY and EPOLLC agree that all conduct under this agreement, including but not limited to the adjustment, removal and relocation of the facility, the development and reimbursement of costs, any environmental requirements, and retention of records will be in accordance with applicable federal and state laws, rules and regulations. EPOLLC agrees to supply, upon request by the COUNTY, reasonable proof of compliance with the aforementioned laws, rules and regulations prior to the commencement of construction.

6. The cost of the Work is estimated to be Eight-Hundred-and-Ten Thousand Dollars (\$810,000) as set forth on the attached Cost Estimate marked "Attachment A". Final actual costs may be more or less than such estimate, which shall not be construed as a limitation of costs for such Work. After the Work is substantially completed EPOLLC shall furnish COUNTY with reasonable proof of the actual cost of the Work. Within thirty days from the COUNTY'S receipt of documentation showing the actual cost of the Work, the COUNTY shall pay ninety percent (90%) of the amount invoiced by EPOLLC, which shall include the fifty percent (50%) of estimated costs described in Section 1, above. If, after audit, it is determined that the actual cost of the Work is less than the ninety percent (90%) payment, then EPOLLC shall refund the COUNTY the difference between the actual cost of Work and the ninety percent (90%) payment within thirty days of receiving notice of that determination. If, after audit, it is determined that the actual cost of the Work is more than the ninety percent (90%) payment, then the COUNTY shall pay EPOLLC the difference between the ninety percent (90%) payment and the actual cost of Work within thirty days of making that determination.

OPTION #3 – 100% REIMBURSEMENT

1. Weather permitting, EPOLLC, upon execution of this Reimbursement Agreement, shall promptly commence and complete the Work with due diligence. COUNTY and EPOLLC agree that all conduct under this agreement, including but not limited to the adjustment, removal and relocation of the facility, the development and reimbursement of costs, any environmental requirements, and retention of records will be in accordance with applicable federal and state laws, rules and regulations. EPOLLC agrees to supply, upon request by the COUNTY, reasonable proof of compliance with the aforementioned laws, rules and regulations prior to the commencement of construction.

Attached hereto as Attachment A are plans, specifications and the estimated cost for EPOLLC to perform the Work contemplated by this agreement. COUNTY will, upon substantial completion of the relocation or adjustment and upon receipt of an invoice prepared in an approved form and manner, representing the work performed up to substantial completion, make payment in the amount of ninety percent (90%) of the eligible costs as shown in the invoice prior to audit and, after such audit, shall make an additional final payment totaling the reimbursement amount found eligible for COUNTY reimbursement.

6. The cost of the Work is estimated to be Eight-Hundred-and-Ten Thousand Dollars (\$810,000) as set forth on the attached Cost Estimate marked "Attachment A". Final actual costs may be more or less than such estimate, which shall not be construed as a limitation of costs for such Work. After the Work is substantially completed EPOLLC shall furnish COUNTY with reasonable proof of the actual cost of the Work. Within thirty days from the COUNTY'S receipt of documentation showing the actual cost of the Work, the COUNTY shall pay ninety percent (90%) of the amount invoiced by EPOLLC, as described in Section 1, above. If, after audit, it is determined that the actual cost of the Work is less than the ninety percent (90%) payment, then EPOLLC shall refund the COUNTY the difference between the actual cost of Work and the ninety percent (90%) payment within thirty days of receiving notice of that determination. If, after audit, it is determined that the actual cost of the Work is more than the ninety percent (90%) payment, then the COUNTY shall pay EPOLLC the difference between the ninety percent (90%) payment and the actual cost of Work within thirty days of making that determination.

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is made and entered into and effective this _____ day of _____, 2013, by and between ENTERPRISE TEXAS PIPELINE LLC, a Texas limited liability company, (hereinafter referred to as "EPOLLC" whose mailing address is P.O. Box 4324, Houston, Texas 77210-4324, and HAYS COUNTY, a political subdivision of the State of Texas, (hereinafter referred to as "COUNTY").

WITNESSETH:

WHEREAS, EPOLLC is the owner of a pipeline(s) with related appurtenances (hereinafter called the "Pipelines") and is the successor-in-interest to (1) a 50-foot wide pipeline easement and right of way granted to United Gas Pipe Line Company on, over and across parts of the Naylor Morton property out of the Thomas Bell Survey, A-47 and the A. Maria Esnaurizar Eleven League Grant, Hays County, Texas, recorded in Volume 182, Pages 191-192 inclusive, and filed for record and recorded in the Deed Records of Hays County, Texas dated July 7, 1960 and (2) a 50-foot wide pipeline easement and right of way granted to Lo-Vaca Gathering Company on, over and across parts of the Naylor Morton property out of the Thomas Bell Survey, A-47 and the A. Maria Esnaurizar Eleven League Grant, Hays County, Texas, recorded in Volume 230, Pages 100 to 101 in the Deed Records of Hays County, Texas dated April 24, 1969 (hereinafter collectively called the "Easement Strips") and those certain ratification of right of way agreements from Naylor Morton to United Gas Pipe Line Company and Lo-Vaca Gathering Company (hereinafter collectively called the "Right of Way Agreements") and

WHEREAS, COUNTY has been duly organized and is existing under and by virtue of the laws of the State of Texas and is authorized and empowered thereunder to contract and pay for the installation of improvements, including, but not limited to the paving and drainage construction and improvements more particularly described as follows: Hays County, Texas CR 266 Paving and Drainage Improvements from Francis Harris Lane to Centerpoint Road Project

WHEREAS, COUNTY desires to perform paving and drainage construction and improvements (hereinafter referred to as "the Project") across the Easement Strips in such and manner as will conflict and interfere with EPOLLC's rights under the Right of Way Agreements;

WHEREAS, as a result of the Project, COUNTY has requested EPOLLC to perform certain facility modification work herein referred to as the "Work" and described as follows: Extend the existing road casing approximately 120 feet along EPOLLC's New Braunfels to Austin Lone Star 30-inch O.D. and New

Braunfels to Kyle Station Loop 24-inch O.D. high pressure natural gas pipelines on the south side of where said pipelines cross Hays County Road 266, as depicted and more fully described on Attachment "A" hereto;

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, EPOLLC agrees to perform the Work and permit the Project in accordance with the Work described herein subject to the following terms and provisions:

1. Attached hereto as Attachment A are plans, specifications and the estimated cost for EPOLLC to perform the Work contemplated by this agreement. Prior to commencement of the Work, COUNTY will pay to EPOLLC the estimated costs for the Work as such estimate is set forth on Attachment A. Weather permitting, EPOLLC, upon receipt of the estimated costs for the Work, shall promptly commence and complete the Work with due diligence. COUNTY and EPOLLC agree that all conduct under this agreement, including but not limited to the adjustment, removal and relocation of the facility, the development and reimbursement of costs, any environmental requirements, and retention of records will be in accordance with applicable federal and state laws, rules and regulations. EPOLLC agrees to supply, upon request by the COUNTY, reasonable proof of compliance with the aforementioned laws, rules and regulations prior to the commencement of construction. ~~COUNTY will, upon satisfactory completion of the relocation or adjustment and upon receipt of final billing prepared in an approved form and manner, make payment in the amount of 90 percent (90%) of the eligible costs as shown in the final billing prior to audit and after such audit shall make an additional final payment totaling the reimbursement amount found eligible for COUNTY reimbursement.~~
2. Unless an item below is stricken and initialed by COUNTY AND EPOLLC, this agreement in its entirety consists of the following:
 - 2.1. ~~Plans, Specifications, and Estimated Costs (Attachment "A");~~
 - 1.4-2.2. ~~EPOLLC's Schedule of Work and Estimated Date of Completion (Attachment "B");~~
 - 2.3. The Parties agree that the description of the work contained in Attachment "A" is a complete representation of the Work requested of EPOLLC to accommodate the Project.
- 3.4. COUNTY may, at its own expense and sole risk, inspect the Work by EPOLLC hereunder, to assure itself that the Work is being performed in compliance with the Plan and Specifications.
- 4.5. COUNTY recognizes that EPOLLC may use one or more contractors to perform the Work.
- 5.6. The cost of the Work is estimated to be ~~Eight-Hundred-and-Ten Thousand Dollars (\$ 810,000)~~ as set forth on the attached Cost Estimate marked "Attachment A". Final actual costs may be more or less than such estimate, which shall not be construed as a limitation of costs for such Work. After the Work is completed EPOLLC shall furnish COUNTY with reasonable proof of the actual cost of the Work and if the Work is more than the estimate, then within thirty days from the COUNTY'S receipt of

Comment [RWK1]: IF NOT PREPAID – ADD AFUDC 2.25 TO 2.5% OF PROJECT COST

documentation showing the actual cost of the Work, the COUNTY shall pay the actual amount incurred by EPOLLC in performing the Work over and above the estimated amount previously paid, and if the work is less than the estimate, then within the same time period EPOLLC shall refund to the COUNTY the amount that EPOLLC received from the COUNTY in excess of the actual cost to perform the Work.

6-7. COUNTY shall perform all operations and construction activity above or adjacent to the Facilities in a workmanlike and safe manner and in conformance with all applicable industry and governmental standards. No construction activity by COUNTY shall be performed over, across, or adjacent to the Facilities until the Work of EPOLLC has been completed.

7-8. Exclusive of Saturday, Sunday and legal holidays, notice shall be given to EPOLLC by COUNTY, at least 48 hours in advance of commencement of any construction activity on or adjacent to the Facilities, excepting only cases of emergency.

8-9. EPOLLC shall provide notice to Texas One-Call.

9-10. It is expressly understood by the parties hereto that EPOLLC is not abandoning any right, title or interest it may have in the above described land or under the Right of Way Agreements.

10-11. This Agreement supersedes every antecedent or concurrent oral and/or written declaration and/or understanding pertaining to the Work or construction activity by and between EPOLLC and COUNTY.

11-12. The terms of this Agreement shall constitute covenants running with the land and be binding on and inure to the benefit of the parties hereto and their successors and assigns.

12-13. 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 or amendment of this agreement or a written change or extra work order approved by the COUNTY and EPOLLC.

13-14. This agreement is subject to cancellation by 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 COUNTY, but once work under this agreement has been authorized by COUNTY and commenced by EPOLLC the COUNTY shall be bound by its obligations hereunder and liable for its failure to discharge such obligations.

14-15. The State and/or County Auditor may conduct an audit or investigation of any entity receiving funds from the COUNTY directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

15-16. EPOLLC by execution of this agreement does not waive any of the rights which EPOLLC may have within the limits of the law.

46. It is expressly understood that the EPOLLC conducts the adjustment, removal, or relocation at its own risk, and that COUNTY makes no warranties or representations regarding the existence or location of utilities currently within its right of way. Likewise, the COUNTY shall conduct all of its activities within the Easement Strips at its own risk, and EPOLLC makes no warranties or representations as to the condition of the Easement Strips or the pipelines located therein.

[Remainder of Page Intentionally Blank - Signatures on Following Page.]

IN WITNESS WHEREOF, we have hereunto set our hands on the day and year below.

ENTERPRISE TEXAS PIPELINE LLC

By: _____
Carl D. Richardson
Agent and Attorney-in-Fact

Date: _____

HAYS COUNTY, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

