

Texas Department of Transportation
BOOK 2 – TECHNICAL PROVISIONS
FOR
LOOP 375 - BORDER HIGHWAY WEST EXTENSION
PROJECT
Design-Build Project

ATTACHMENT 5-5
MEMORANDUM OF UNDERSTANDING IN REGARDS TO
THE IMPLEMENTATION AND ENFORCEMENT OF A TPDES
PERMIT

December 20, 2013

STATE OF TEXAS)
)
COUNTY OF EL PASO) MEMORANDUM OF UNDERSTANDING IN
REGARDS TO THE IMPLEMENTATION AND
ENFORCEMENT OF A TPDES PERMIT

This Agreement is entered into the 30 day of June, 2008, by and between the City of El Paso, a Texas home rule municipality, hereinafter referred to as the "City", and the State of Texas, acting by and through the Texas Department of Transportation – El Paso District, hereinafter referred to as the "State".

WHEREAS, the United States Environmental Protection Agency (EPA) promulgated regulations in 1990 requiring a National Pollutant Discharge Elimination System (NPDES) permit for storm water discharges from a municipal separate storm sewer system (MS4).

WHEREAS, the City and State were joint applicants for authorization under a NPDES permit for storm water discharges from the City and State MS4s.

WHEREAS, the City and State entered into a "Memorandum of Understanding in Regards to the Implementation and Enforcement of an NPDES Permit" (MOU) agreement, dated March 30th, 1993.

WHEREAS, the City and State were issued NPDES permit TXS000801 on November 29, 1996 as copermittees.

WHEREAS, the Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004527000 issued on May 8, 2006 by the Texas Commission on Environmental Quality (TCEQ) replaces the NPDES permit TXS000801 that authorized the City and State to discharge from the City and the State owned MS4s.

WHEREAS, this agreement replaces the MOU agreement dated March 30th, 1993, in its entirety.

NOW THEREFORE, BE IT RESOLVED:

1. This agreement becomes effective as of the above-mentioned date and will remain in effect for the duration of the above-mentioned TPDES permit and subsequent renewals.

2. As copermittees, the City and the State are individually responsible for:

- a. Compliance with permit conditions relating to discharges from portions of the Municipal Separate Storm Sewer System (MS4) for which they are the operator;
- b. Storm Water Management Program (SWMP) implementation on the portion of the MS4 for which they are the operator;
- c. Compliance with annual reporting requirements;
- d. Collection of representative wet weather monitoring data, according to such agreements established between copermittees;
- e. A plan of action to assume responsibility for implementation of the storm water management and monitoring programs on their portions of the MS4 should inter-jurisdictional agreements allocating responsibility between copermittees be dissolved or in default,

3. As copermittees, the City and the State are jointly responsible for permit compliance on portions of the MS4 where operational or SWMP implementation responsibilities over portions of the MS4 is shared or has been transferred from one copermittee to another in accordance with legally binding agreements.

4. The State will continue to:

- a. Comply with the applicable best management practices (BMPs) included in the SWMP as such BMPs apply to the State's storm water system.
- b. Comply with the TPDES permit as it relates to the State's storm water system.
- c. Monitor the State's storm water system for flow and quality of storm water.
- d. Notify the City of any suspicious activities or illicit discharges within its collection area.
- e. Cooperate with the City in providing any available data such as plans that pertain to any storm water runoff from any real property in which the State has an interest.
- f. Prior to any new construction on any real property in which the State has an interest or any modification of present facilities, the State will obtain written approval from the City for storm water discharges into the City MS4. The State shall ensure that no storm water discharge structures are constructed on City rights-of-way without prior written approval of the City. Before the City approves storm water discharges into its facilities, the State shall provide a technical demonstration to ensure that the facilities have the sufficient capacity to carry this additional storm water and that the proper measures have been taken to ensure the quality of the water.
- g. Coordinate and cooperate with the City where there is a mutual concern or overlap of responsibility as described in the SWMP.

- h. Take the appropriate actions against illicit storm water discharges, to ensure compliance with the TPDES permit. These actions may include:
 - i. Letter of Notice.
 - ii. Notifying the TCEQ.
 - iii. Notifying the City if discharge also reaches the City MS4 or may potentially discharge into the City MS4.
 - iv. Legal enforcement steps which may include:
 - 1. Civil Liability
 - 2. Criminal Charges
 - 3. Injunctive relief
 - v. Notifying the City in writing of any enforcement actions.
 - vi. Preparing and submitting enforcement reports to TCEQ, as required.
 - i. Prohibit any non-storm water connections to the State's storm water system without prior approval of the City.
 - j. Provide proportionate share funding for any additional costs of preparing, modifying, revising and submitting permit documents and the execution of the SWMP.
5. If the State fails to correct any condition which is the State's responsibility as stated in this agreement or as represented in the TPDES permit, within 30 days after receipt of written notice from the City, the State agrees to pay for the cost of maintenance or other actions taken by the City within 30 days of receipt of billing, should the City

have to complete maintenance or take the action which is the State's responsibility as stated in this agreement or as represented in the TPDES permit.

6. The State and the City agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

7. The State agrees to abide by all applicable laws and regulations pertaining to pollution control and environmental protection, including but not limited to the terms and conditions of the TPDES permit, as listed or as amended in the future.

8. Jurisdiction and supervision of the State's real property interests, including but not limited to its rights-of-way, and the City's storm water system are not surrendered or subordinated by this agreement.

9. This agreement may be terminated by any of the following conditions:

- a. By mutual consent of the parties with the approval of TCEQ,
- b. By either party, upon the failure of the other party to fulfill its responsibilities and obligations as set forth in this agreement.

10. Termination of this agreement shall extinguish all rights, duties, obligations, and liabilities of the City and State under this agreement.

11. If termination is due to the failure of the State to fulfill its contractual or TPDES permit obligations, the City will notify the State that possible breach of contract has occurred. Within not less than 30 days from the City's written notification, the State must address the situation as outlined by the City. In the event the State does not address the situation to the satisfaction of the City or TCEQ, the City may terminate this

agreement or suspend performance thereunder and the parties shall conclude their activities relating to this agreement.

12. If termination is due to the failure of the City to fulfill its contractual or TPDES permit obligations, the State shall notify the City that possible breach of contract has occurred. Within not less than 30 days from the State's written notification, the City must address the situation as outlined by the State. In the event the City does not address the situation to the satisfaction of the State or TCEQ, the State may terminate this agreement or suspend performance thereunder and the parties shall conclude their activities relating to this agreement.

13. Changes to the time frame, character, cost, or obligations authorized hereunder shall be enacted by written amendment before additional work may be performed or additional costs incurred. Any amendment to this agreement must be executed in writing by both parties within the contract period specified in Paragraph 1.

14. The City and State shall comply with all applicable laws and regulations, orders, and final decrees of any court of final jurisdiction in any manner affecting the performance of this agreement. Venue shall be in the courts of Travis County, Texas.

15. In case one or more of the provisions contained in this agreement shall for any reason be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceable provision thereof in this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

16. This agreement contains the entire agreement between the parties hereto.

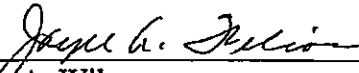
17. This agreement constitutes the sole and only agreement of the parties hereto and supersedes the Memorandum of Understanding in Regards to the

Implementation and Enforcement of an NPDES Permit dated March 30, 1993, any amendments to that document, and any other prior understanding or oral agreements between the City and the State respecting the subject matter herein.

WITNESS the following signature and seals:

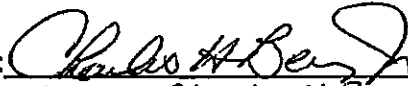
(signatures to follow on next page)

CITY OF EL PASO




Joyce A. Wilson
City Manager

STATE OF TEXAS, acting by and
through the TEXAS DEPARTMENT OF
TRANSPORTATION

By: 

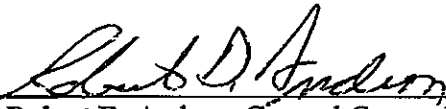
Printed Name: Charles H. Berry, Jr.
District Engineer

APPROVED AS TO CONTENT:



Edmund G. Archuleta, P.E., President/CEO
El Paso Water Utilities Public Service Board

APPROVED AS TO FORM:



Robert D. Andron, General Counsel
El Paso Water Utilities Public Service Board