

RELOCATION AGREEMENT

This Relocation Agreement is entered into on this _____ day of _____, 2004, by and between the City of College Station, Texas, a Home Rule Municipal Corporation (hereinafter referred to as "CITY") and Wellborn Special Utility District (hereinafter referred to as "DISTRICT"), a political subdivision of the state created under . TEX WATER CODE, SECTION 65.001 ET SEQ.

WHEREAS, DISTRICT has underground waterlines within private easements and within public road rights-of-way along the route of Greens Prairie Road and in locations that are to become new routes for both Greens Prairie Road and Arrington Road as realigned; and

WHEREAS, as part of the Texas Department of Transportation Highway 40 extension project, CITY is constructing a realignment of Greens Prairie Road into realigned Arrington Road which will meet Highway 40 on grade; and

WHEREAS, DISTRICT is required to remove and relocate, at its expense, facilities located within CITY's right-of-way for which DISTRICT does not own easements; and

WHEREAS, CITY and DISTRICT have agreed that where DISTRICT owns an easement that crosses the right-of-way for Greens Prairie Road DISTRICT will, subject to reimbursement by CITY as provided herein, lower and encase said waterline under the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the recitations hereinabove and the warranties and promises set forth hereinbelow, the parties agree as follows:

1. DISTRICT will contract for and provide all engineering plans and specifications, cause the preparation of contract bid documents and contracts, conduct such bidding process as required by law for DISTRICT, award a contract to the lowest responsible bidder, administer such contract with its own inspectors and engineers, and enforce the successful completion of such contract according to the plans and specifications approved by CITY and in a good and workmanlike manner. The area of the Project is depicted in Exhibit A attached hereto.
2. A copy of all such documents shall be furnished to CITY and CITY must approve the plans and estimates within seven (7) working days. The plans and specifications are incorporated herein by reference as if set out in full. Upon approval of the project and signing of the contract, the contract will be awarded and completion will be required within forty-five (45) days from the date of the notice to proceed.
3. DISTRICT shall provide detailed accounting of the actual cost and expenses incurred for construction and engineering upon performance under this Agreement and submit same in an invoice to CITY for reimbursement.

4. Upon receipt of invoices pursuant to Section 3 herein, CITY shall pay to DISTRICT the actual costs of construction (based upon the lowest responsible bid) and engineering costs not later than thirty (30) days of final completion of the project. The estimated construction contract is \$115,000 and the estimated engineering cost is \$15,000. The term "Extra Work" shall mean and include work that is not covered or contemplated by the Contract Documents but that may be required by District as a result of unforeseen construction barrier or obstacles. All applications for changes orders due to extra work shall be approved by the City in writing prior to the work being done by District. The original contract price may not be increased by more than twenty-five percent (25%). Written change orders that do not exceed twenty-five percent (25%) of the original contract amount may be made or approved by the City Manager or his delegate if the change order is less than Twenty-five Thousand Dollars (\$25,000.00). Changes in excess of Twenty-five Thousand Dollars (\$25,000.00) must be approved by the City Council prior to commencement of the work. Any requests by the District for a change to the Contract Amount shall be made prior to the beginning of the work covered by the proposed change or the right to payment for Extra Work shall be waived. No course of conduct or dealings between the parties, nor implied acceptance of alterations or additions to the Work or changes to the Contract schedule shall be the basis for any claim for an increase in compensation or change in time. Any cost incurred by District in connection with any Extra Work shall be included in District's requested change order and District's failure to include any such cost shall act to Waive and Release any claim for such non included cost.
5. If requested by DISTRICT in writing, in advance of the Project commencement, CITY will make progress payments to DISTRICT during construction as follows:
 - 5.1 **Payment Applications.** DISTRICT shall submit applications for payment as provided for herein. Applications for payment will be processed by City's Representative. Before the Application for Payment, DISTRICT shall submit to the CITY a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the CITY may require. This schedule, unless objected to by the CITY, shall be used as a basis for reviewing the DISTRICT's Applications for Payment. Upon completion of the project, the DISTRICT shall submit to City's Representative, for approval or modification, a statement showing as completely as practicable the total value of the actual work performed by the DISTRICT.
 - 5.2 If the actual amount of construction and/or engineering is less than the estimates, then payment shall be for the actual amount of the Project.
6. CITY will reimburse DISTRICT for the actual cost of engineering services for construction of the water facilities not to exceed \$15,000.00.
7. **Amendment.** No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.

8. **Sole Agreement and Authority.** This Agreement constitutes the sole and only agreement of DISTRICT and CITY and supercedes any prior understanding or oral or written agreements between the parties respecting the subject matter of this Agreement. Each of the parties signing this Agreement represents that they each have the delegated authority and/or approval of the respective governing body to execute the Agreement.

9. **Severability.** The provisions of this Agreement are severable and if, for any reason, any one or more of the provisions contained herein shall be held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal or unenforceable provision had never been contained in the Agreement.

10. **Notice.** All notices, payments and communications (“notices”) required or allowed by this Agreement shall be in writing and be given by depositing the notice in the U.S. mail, postage prepaid and registered or certified with return receipt requested, and addressed to the party to be notified. Notice deposited in the mail in the previously described manner shall be conclusively deemed to be effective from and after the expiration of three (3) days after the notice is deposited in the mail. For purposes of notice, the addresses of and the designated representative for receipt of notice for each of the parties shall be shown above the signatures of the individuals who signed this Agreement on behalf of CITY and DISTRICT. Either party may change its address by giving written notice of the change to the other party at least fifteen (15) days before the change becomes effective.

11. **Venue and Performance.** This agreement is fully performable in Brazos County, Texas and venue shall lie in a court of competent jurisdiction in Brazos County, Texas.

12. **Multiple Counterparts.** DISTRICT and CITY, acting under authority of their respective governing bodies, shall authorize the execution of this Agreement in several counterparts, each of which shall be an original.

WELLBORN SPECIAL UTILITY DISTRICT

CITY OF COLLEGE STATION

By: _____

By: _____

Printed Name: _____

RON SILVIA, Mayor

Title: _____

Date: _____

Date: _____

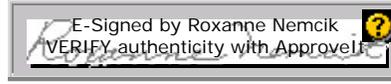
ATTEST: _____

CONNIE HOOKS, City Secretary

Date: _____

APPROVED:

THOMAS E. BRYMER, City Manager
Date: _____



City Attorney
Date: _____

JEFF KERSTEN, Finance & Strategic
Planning Director
Date: _____

STATE OF TEXAS)
)
COUNTY OF BRAZOS) ACKNOWLEDGMENT

This instrument was acknowledged before me on the _____ day of _____, 2004, by _____ in his/her capacity as _____ of **Wellborn Special Utility District**, a Water Special Utility District, on behalf of said district.

Notary Public in and for the State of Texas

STATE OF TEXAS)
)
COUNTY OF BRAZOS) ACKNOWLEDGMENT

This instrument was acknowledged before me on the _____ day of _____, 2004, by RON SILVIA, in his capacity as Mayor of the **City of College Station**, a Texas home-rule municipality, on behalf of said municipality.

Notary Public in and for the State of Texas