MEMORANDUM OF AGREEMENT BETWEEN

UNITED STATES SECTION
INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO
AND
CITY OF EL PASO, TEXAS

FOR THE

CONSTRUCTION, MAINTENANCE, AND OPERATION
OF THE FLOOD CONTROL SYSTEM
AT COUNTRY CLUB BRIDGE

TO PROVIDE FOR

THE UPPER RIO GRANDE FLOOD CONTROL PROJECT

This Memorandum of Agreement ("MOA") is made by and between the United States Section, International Boundary and Water Commission, United States and Mexico, an independent agency of the United States federal government, hereinafter referred to as the "USIBWC" and the City of El Paso of the State of Texas, hereinafter referred to as "City". Collectively, the USIBWC and the City are referred to hereinafter as the "PARTIES" to this MOA.

WHEREAS, the purpose of this agreement between the PARTIES is for the USIBWC to design, construct, maintain, and operate a public Floodgate System on its Upper Rio Grande Flood Control Project (URGFCP) west and east levees at the Country Club Bridge crossing the Rio Grande at Country Club Road the (“Property”).

and

WHEREAS, The City has indicated its willingness to approve the establishment of such facilities and other uses conditioned upon the agreement between the USIBWC and the City for the purpose of determination of their respective responsibilities, which are set-forth in this document; and

WHEREAS, The City has indicated its willingness to approve the establishment of such facilities and other uses because such uses are in the public interest; and

WHEREAS, The City attests that it has reviewed this design of the structure and has determined, based on that review, that the structure will not damage the highway facilities, impair safety, impede maintenance, or in any way restrict the operation of the highway structures, all as determined from engineering and traffic investigations conducted by the City; and

WHEREAS, the USIBWC is authorized to enter into this agreement pursuant to Title 22 U.S.C. § 277b and 277c *et seq.*, within the URGFCP, as authorized by the Act of the 74th Congress, SESS. 1 CH. 561 [H.R. 6453 approved August 19, 1935 (49 Stat. 660) and codified at 22 U.S.C. § 277, 277a, 277b, and 277c, and Acts amendatory thereof and supplementary thereto, and USIBWC shall provide without cost to the City, all engineering designs and plans, and shall construct for the Floodgate System on USIBWC's URGFCP levees at no cost to the City; and

WHEREAS, this MOA is intended to define each PARTY's duties and responsibilities with regard to the Floodgate System on USIBWC' s URGFCP levees.

NOW THEREFORE, THE USIBWC and the City hereby agree as follows:

ARTICLE I. USIBWC RESPONSIBILITIES

The USIBWC agrees to the following:

A. Construction. USIBWC has awarded the design of the Sunland Park-Canutillo Levee Segment between Borderland Bridge and the El Paso Electric Company Plant. The project was initially funded through the American Recovery and Reinvestment Act of 2009. USIBWC agrees to (1) provide the City the design and construction plans for the Floodgate System, (2) obtain the approval of the City prior to any construction, (3) and shall conduct the construction work as required by said plans at no cost to the City. The construction plans will become a part of this agreement and are attached as Attachment A.

B. Maintenance. Subject to the conditions in Article II herein, the USIBWC agrees to provide future maintenance, repair, and operation of the floodgate system which may be subcontracted through a service agreement or performed by USIBWC. The USIBWC will be responsible for keeping the Floodgate System operating in a clean and sanitary condition. The USIBWC Flood Emergency Operations Manual for the Upper Rio Grande Projects is attached as Attachment B.

1. Maintenance entails:
    a. Inspection of exterior of floodgate to include fixed posts attached to the bridge concrete railing and approach slab.
    b. Repair of any visible damage to the exterior of the floodgate discovered during inspection may include welding, concrete spall/crack repairs, replace of posts, replace missing bolts, and any other required repairs.

C. Coordination. USIBWC agrees to coordinate with the City in advance of any construction, maintenance, or repair for scheduling and traffic control arrangements.

D. Traffic Control. Notwithstanding anything to the contrary in this MOA, the USIBWC remains solely responsible for the traffic control arrangements, plans, implementation, and costs. USIBWC will perform adequate traffic control for all construction, maintenance, or repairs. The USIBWC will obtain approval of all traffic control activities from the City's Streets and Maintenance Department prior to the start of any construction, maintenance, or repairs.

ARTICLE II. CITY OF EL PASO RESPONSIBILITIES

A. During the construction period, the City agrees to approve the Traffic Control Plan prepared by USIBWC contractor(s) provided such plan compliesy with City and TxDOT standards and specifications. The erection of signs, other than those required for proper use of the area during installation of the floodgate system, will be prohibited. USIBWC will obtain approval of the city prior to placing or erecting any signs.

ARTICLE III. DURATION AND MODIFICATION OF MOA

This MOA shall take effect when signed by the PARTIES hereto and shall remain in effect for a period of twenty five (25) years unless terminated, in writing, by one or more of the PARTIES. This MOA may be modified at any time by written agreement of both PARTIES and does not restrict any PARTY from enforcing any laws within its authority or jurisdiction

ARTICLE IV. INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the

PARTIES, each PARTY shall immediately designate representatives to serve as the points of contact on all matters relating to this MOA. Each PARTY shall advise the other PARTY, in writing, of the names and telephone numbers of the representatives designated within ten (10) calendar days of the execution of this MOA.

ARTICLE V. PREVIOUS AGREEMENTS

It is understood that this agreement supersedes the terms and provisions of any existing agreements between the parties hereto.

ARTICLE VI. BUDGET & PAYMENTS

A. Neither Party will acquire any accountable property from the other Party under this MOA.

B. This is a no-cost MOA. This MOA is neither a fiscal nor funds obligation document between the PARTIES. This MOA defines in general terms the basis on which the PARTIES will cooperate, and as such, does not constitute a financial obligation or serve as a basis for expenditures. Expenditures of funds, human resources, equipment, supplies, facilities, training, public information, and expertise will be provided by each PARTY to the extent that their participation is required and resources are available.

C. This agreement does not obligate the City, the USIBWC, or the United States to spend funds on any particular project or purpose even if funds are available.

D. This MOA in no way restricts the PARTIES from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

E. This MOA does not obligate the PARTIES to enter into any agreements, contracts, or other obligations.

F. Nothing in this MOA may be construed to financially obligate the City, the USIBWC, or the United States to any current or future expenditures of resources in advance of the availability of appropriations from Congress. The obligations in this MOA are subject to federal laws, including but not limited to the Anti-Deficiency Act, 13 U.S.C 1341.

G. Any activities proposed that would involve reimbursement or contribution of funds between the PARTIES of this MOA will be handled in accordance with applicable laws, regulation, and procedures including the Economy Act (31 U.S.C. § 1535). Such activities will be documented in separate agreements, with specific projects between the parties spelled out. The separate agreements will reference this MOA. This MOA does not establish authority for a noncompetitive award to any party of any contract or other agreement. Where appropriate and necessary, the PARTIES will enter into specific reimbursable agreements for work or services performed, or materials supplied by one PARTY on behalf of the other pursuant to the Economy Act, 31 U.S.C. § 1535.

ARTICLE VII. LIABILITY PROVISIONS

The USIBWC acknowledges that it is not an agent or employee of the City of El Paso, and that it is responsible for its own acts and deeds and for those of its agents or employees during the performance of contract work.

A. USIBWC Liability. The USIBWC does not assume any responsibility for any injury or damage to USIBWC, City, Contractor or third party property or equipment, or to any persons, unless such injury or damage is directly caused by or related to the performance of one of USIBWC's responsibilities under this MOA. To the extent allowed by law, The USIBWC and the City shall retain all applicable legal responsibility for their respective personnel or Contractors working pursuant to this MOA with respect to, *inter alia*, pay, personnel benefits, injuries, accidents, losses, damages, and civil liability. This MOA is not intended to change in any way the individual employee status or the liability or responsibility of any Party under federal or state law. Liability for injuries or damages shall be subject to the Texas Tort Claims Act for damages or injuries caused by the City of El Paso and the Federal Tort Claims Act for damages or injuries USIBWC.

B. Rights and Remedies. Notwithstanding the above, this MOA does not confer any liability on the City that is legally attributable to the USIBWC under the Federal Tort Claims Act nor does this confer liability on the USIBWC that is legally attributable to the City under the Texas Tort Claims Act or a similar municipal or local law. Provided further that nothing in this MOA is intended or will be construed to create any rights or remedies for any third party and no third party is intended to be a beneficiary of this MOA.

C. No Waiver of Immunity. Nothing in this contract shall be construed to waive immunity of any kind or nature by either Party.

ARTICLE VIII. USIBWC TECHNICAL LEAD AND MAINTENANCE CONTACT

The USIBWC technical lead and contact for the maintenance of the floodgate shall be the Chief of Operations and Maintenance who can be reached at 915-832-4133 or the Area Operations Manager of the Upper Rio Grande Flood Control Project who can be reached at 915-351-1030.

ARTICLE IX. CITY OF EL PASO POINT OF CONTACT FOR ALL MATTERS RELATING TO THIS MOA

The point of contact for the City of El Paso for all matters relating to this MOA shall be Sam Rodriguez, P.E., City Engineer, who can be reached at 915-212-1845 or Jerry DeMuro , Assistant Director of Design and Architecture, who can be reached at 915-212-1838.

FOR THE USIBWC

DATE: 12/3/2021

Carmella L. Speer
Digitally signed by Carmella L. Speer
Date: 2021.12.03 09:34:46 -07'00'

Carmella Speer
Contracting Officer
USIBWC

DATE: 12/3/2021

DORINDA MORGAN
Digitally signed by DORINDA MORGAN
Date: 2021.12.03 10:45:41 -07'00'

Dorinda Morgan
Acting Chief Administrative Officer
USIBWC

DATE: 12/3/2021

DANIEL AVILA
Digitally signed by DANIEL AVILA
Date: 2021.12.03 09:17:50 -07'00'

Daniel Avila
Principal Engineer Operations
USIBWC

FOR THE CITY OF EL PASO, TEXAS

DATE: 12/7/2021

for

Tomas Gonzalez
City Manager

Approved as to content:

DATE: 12/3/2021

Jerry DeMuro/for

Samuel Rodriguez
City Engineer

Approved as to form:

DATE:

12/1/2021

Omar De La Rosa
Assistant City Attorney

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager, or designee, is authorized to sign multiple Memorandum of Agreements between the City of El Paso and the United States Section, International Boundary and Water Commission, United States and Mexico, an independent agency of the United States federal government for the installation and operation of a floodgate systems for the Upper Rio Grande Flood Control Project west and east levees at Country Club Bridge crossing the Rio Grande at Country Club Road and the west and east levees at the Borderland Bridge crossing the Rio Grande at the Borderland Road. Further, the City Manager, or designee, is authorized to exercise all rights and perform all obligations under the agreement. Further, that the City Manager, or designee, is authorized to sign any amendments to the agreements.

ADOPTED this 14th **day of** December, **2021.**

THE CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Omar A. De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:

Jerry DeMuro/for
Sam Rodriguez
City Engineer