

APPENDIX E: SECTION 4(f) MITIGATION

County: Dallas
ROW CSJ No.: 2964-01-027
ROW Account No.: 8018-2-25
State Highway 161

COPY

ENVIRONMENTAL MITIGATION AGREEMENT

Fee In Lieu/Functional Replacement

AGREEMENT BY AND BETWEEN

The State of Texas

And

The City of Grand Prairie, Texas

County: Dallas
ROW CSJ No.: 2964-01-027
State Highway 161

ENVIRONMENTAL MITIGATION AGREEMENT
Fee In Lieu/Functional Replacement

THIS AGREEMENT IS MADE BY AND BETWEEN the State of Texas, acting by and through the Texas Department of Transportation hereinafter call the State, the City of Grand Prairie, a political subdivision of the State of Texas, hereinafter called the City, and the Federal Highway Administration, United States Department of Transportation, hereinafter called FHWA.

WITNESSETH

WHEREAS, Transportation Code, Chapters 201, 203 and 221 authorize the State to lay out, construct, maintain and operate a system of streets, roads, and highways that comprise the State Highway System; and,

WHEREAS, Transportation Code, Chapter 203 authorizes the State to acquire real property that is necessary or convenient to the improvement of a state highway; and,

WHEREAS, Transportation Code, Chapter 201, Section 201.6061 authorizes the State to pay a fee to an appropriate public agency in lieu of acquiring or agreeing to manage property for the mitigation of an adverse environmental impact that is a direct result of a state highway improvement project; and,

WHEREAS, the State has deemed it necessary to make certain highway improvements on State Highway 161, from Interstate Highway 20 to State Highway 183, hereinafter called the Hwy 161 Project, which section of highway improvements will necessitate the acquisition of certain right of way; and,

WHEREAS, in connection with the Hwy 161 Project, the State has deemed it necessary to acquire a portion of that certain parcel of land owned by the City and in use as a public park, hereinafter called the C.P. Waggoner Park, which portion of needed property is described on Exhibit "A" attached hereto and hereinafter called the Acquired Property; and,

WHEREAS, the State has obtained a Supplemental Final Environmental Impact Statement dated October 11, 1996, adopted herein by reference and hereinafter called the SFEIS, which includes a Section 4 (f) Evaluation and identifies the Acquired Property as being part of a significant publicly owned public park and in order to minimize an adverse environmental impact, provides that such impact can be mitigated by replacing the Acquired Property with approximately 62 acres of land to be utilized as new public

parkland, hereinafter called the Replacement Property and more particularly described in Exhibit "B" attached hereto; and,

WHEREAS, a federal court order issued in Case Number 3: 83-CV-0585-H, Association Concerned About Tomorrow, Inc. ("ACT") and Harry Englert v. Rodney E. Slater, Et al, United States District Court for the Northern District of Texas, Dallas Division, in 1998, adopted the mitigation measures described in the SFEIS, which judgment was affirmed by the United States Court of Appeals For The Fifth Circuit on February 9, 2000; and,

WHEREAS, FHWA has approved the SFEIS and such mitigation measures and the State has obtained a Record of Decision number FHWA-TX-EIS-93-01-FS dated April 7, 1997;

AGREEMENT

NOW THEREFORE, the State, the City and FHWA, for and in consideration of the mutual covenants and agreements set forth below, agree as follows:

Article I. Sale to State of Acquired Property

The City will convey fee simple title of the Acquired Property by Special Warranty Deed to the State within 360 days after execution of this Agreement. Title to the Acquired Property will be subject to only the items as reflected on Exhibit "C" attached hereto. Until the Deed is delivered to the State, title and possession of the Acquired Property remains with the City and the City shall bear all risk of loss and liability therefor. The State, at its option, may obtain title insurance for the Acquired Property at the State's sole expense. The City agrees that the State, its employees, agents, consultants and contractors may enter upon the Acquired Property prior to conveyance to the State, at any time following execution of this Agreement, for the purposes of preparing field surveys and conducting inspections.

Article II. Purchase of Replacement Property and Development for Park Purposes

A. Fee in Lieu/Functional Replacement. In consideration of the City's conveyance of the Acquired Property to the State and in lieu of the State acquiring property in its name or agreeing to manage property for the mitigation of the adverse environmental impact of the Hwy 161 Project, the State agrees to reimburse to the City the actual costs of acquiring the Replacement Property in accordance with the terms of this Agreement, plus the costs which are actually incurred in construction of the park improvements as hereinafter described. The City agrees that upon completion of the hereinafter described improvements and payment in full by the State, it will have received all required compensation for the State's acquisition of the Acquired Property and mitigation of the adverse environmental impact.

B. Purchase of Replacement Property. Upon execution of this Agreement, the City will proceed with acquisition of the Replacement Property. The City and FHWA agree that the Replacement Property, as improved in compliance with paragraph C below, is adequate to replace the acquired park land and is sufficient to mitigate the environmental harm caused by the State's acquisition of the Acquired Property for the Hwy 161 Project. The City further agrees that the Replacement Property will be permanently utilized only for public park and recreational purposes and will be maintained at the City's expense. The Replacement Property shall be acquired by the City as follows:

1. The City will utilize the survey of the Replacement Property prepared by the State and conduct a title investigation in order to prepare the data and instruments necessary to acquire acceptable title to the Replacement Property. The City agrees to employ State certified appraisers to make a determination of property values for each parcel by methods acceptable to the State and thereafter submit to the State a tabulation of values so determined, hereinafter called Approved Values. Such tabulations shall list the ownership, acreage and recommended compensation. This tabulation shall be accompanied by appraisal reports on the State's Real Estate Appraisal Report forms used in arriving at all Approved Values.

2. Negotiation and settlement with the property owner(s) will be the responsibility of the City. The City, at its option, may obtain title insurance for the Replacement Property, and will deliver to the State copies of properly executed instruments(s) of conveyance in the name of the City together with final executed settlement Statement(s) reflecting the purchase price and closing costs. In the event the City negotiates with a land owner a settlement which exceeds the Approved Value, the City will submit for approval its recommendation of settlement to the State. In the event the State does not approve the settlement proposal and the City elects to purchase the property at a value greater than the original Approved Value, the State's reimbursement will apply only to the Approved Value and the City will pay 100% of the costs which exceed the original Approved Value.

3. If the City is unable to negotiate a purchase with any property owner(s) of the Replacement Property, the City will initiate and diligently prosecute condemnation proceedings in its own name for the needed property.

4. The State will reimburse to the City the actual costs of the Replacement Property acquired in accordance with the terms of this Agreement. The costs shall include (i) the actual final negotiated purchase price of the property (as approved by the State if it exceeds the Approved Value) or if condemnation is necessary, the amount of the final judgment, and (ii) the costs of the surveying, title investigation/title insurance, appraisals, standard closing costs (excluding prorated ad valorem taxes), court costs, costs of special commissioners' hearings, attorney's fees associated with condemnation proceedings, and recording fees.

5. The State will convey fee simple title of approximately 0.64 acres of the Replacement Property by Special Warranty Deed to the City. Such property, hereinafter called Parcel 12, was previously obtained by the State as part of its right of way acquisition and is more particularly described in Exhibit "D" attached hereto. Parcel 12 will be conveyed to the City as part of an exchange of the Acquired Property, subject to approval by the Texas Transportation Commission, the Attorney General's Office and the Governor of the State of Texas.

C. Development of Park Improvements. The City will, following acquisition, construct/develop the Replacement Property into a public park in accordance with the specific terms of the SFEIS to include a recreation trail with amenities, extensive revegetation and landscaping, fishing ponds and improvements to circulation roads and parking. The City will contract with a landscape architect of City's choice to develop construction plans for the improvements to include an estimation of the costs thereof. Such construction plans and cost estimations will be submitted to FHWA and the State for review and approval. The State, in its sole discretion, will determine to what extent, if any, the design and/or construction exceed specifications set forth in the SFEIS. All costs attributable to any such excess design and/or construction as determined by the State, hereinafter called Betterments, will be the sole responsibility of the City. After the City has received the State's written approval of the plans and cost estimations, and authorization for commencement of construction, the City will contract for construction/development of the park improvements. The State and FHWA, their employees and/or representatives, have the right to inspect work on the Replacement Property at any time during the progress of the construction, and to make a final inspection upon completion. The City will notify the State in writing of any and all change orders for the construction. The City agrees that the State will not be liable to the City for any expense due to destruction and/or reconstruction of the park improvements resulting from fire, flood, accident or other events not caused by the State or its employees, agents or contractors. The State will reimburse the City the actual costs of such construction/development completed in accordance with the terms of this Agreement. The costs to be reimbursed shall not include any Betterments.

Article III. Reimbursement Procedure

The State will reimburse the City in accordance with invoices submitted under the terms of this Agreement. Periodic reimbursements to the City shall be paid within 60 days after receipt of written requests together with paid invoices from the City. Unless the parties agree to the contrary, requests for reimbursement shall be made monthly. The final reimbursement shall be due and payable within 90 days after completion of the construction.

Article IV. Miscellaneous

A. No Joint Venture. The parties acknowledge that they are not an agent, servant, or employee of any other party, and that each party is responsible for its own acts and deeds and for its agents or employees in the performance of this Agreement. The parties

expressly agree that this project is not a joint venture or joint enterprise. However, if a court or other venue of adjudication should find that the parties are engaged in a joint venture or joint enterprise, then the parties agree to pay any liability adjudicated against the other party for acts and deeds of the responsible party, its employees or agents during the performance of this project. The parties also agree to pay any and all expenses including, but not limited to , attorney fees which may be incurred in litigation or otherwise resisting said claim or liabilities which may be imposed on one party as a result of such activities by the other party, its agents, or employees.

B. No Assignment. The City and the State shall not assign or otherwise transfer their respective rights and obligations under this Agreement.

C. Enforceability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

D. Sole Agreement. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter described herein.

E. Amendments. Any changes in the terms and/or responsibilities of the parties hereto must be enacted through a written amendment. No amendment to this Agreement shall be of any effect unless in writing and executed by the City, State and FHWA.

F. Effective Date. This Agreement becomes effective upon final execution by all parties.

G. Notices. Any notices required under this Agreement shall be mailed or hand delivered to the following respective addresses:

FHWA

Federal Highway Administration
300 E. 8th Street, Room 826
Austin, Texas 78701

ATTN: C. D. Reagan
Division Administrator

STATE

Texas Department of Transportation
4777 East Highway 80
Mesquite, Texas 75150-6643

ATTN: Jay R. Nelson, P.E.
District Engineer

CITY

City of Grand Prairie
317 W. College
P.O. Box 534045
Grand Prairie, TX 75053

ATTN: City Manager

IN WITNESS WHEREOF, the State, City and FHWA have caused this Agreement to be duly executed.

THE STATE OF TEXAS

Recommended by: Jay Nelson
Jay R. Nelson, P.E.
District Engineer

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: John P. Campbell
John P. Campbell, P.E.
Director, Right of Way Division

Date: 12/04/02

CITY OF GRAND PRAIRIE

By: Tom Cox
Printed Name: TC
Title: CEO

Date: 11-22-2002

Donald R. Still

FEDERAL HIGHWAY ADMINISTRATION

By: C. Reagan
Printed Name: Curtis D. REAGAN
Title: Division Administrator

Date: 12/16/02

