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RESOLUTION NO. 41-89

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE CITY OF GARLAND, TEXAS, AND DECLARING THE EFFECTIVE DATE THEREOF.

WHEREAS, there exists on the southwest side of Garland and on the northeast side of Mesquite, an intersection of two public streets known as Northwest Drive and LaPrada Drive, and

WHEREAS, it is the public interest of the citizens of the City of Mesquite and the City of Garland to expend public funds of each entity to construct a traffic signal at the intersection of Northwest Drive and LaPrada Drive, and

WHEREAS, the City of Mesquite City Council and the City of Garland City Council have each independently determined and found that this intersection is in need of such control, and that the public safety, health, and welfare require that they be made; and further that this attached agreement is in the best interest of the City of Mesquite and the City of Garland, and the citizens of each.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:


SECTION 1. James A. Prugel, City Manager of the City of Mesquite, is hereby authorized to execute an Agreement with the City of Garland, a copy of which is attached hereto as Exhibit "A".

SECTION 2. That this Resolution shall take effect immediately upon passage as the Charter in such cases provides.

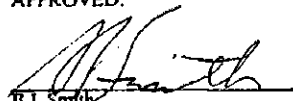
DULY RESOLVED by the City Council of the City of Mesquite, on the 4th day of December, 1989.


George A. Venner, Sr.
Mayor

ATTEST:


Lynn Prugel
City Secretary

APPROVED:


B.J. Smith
City Attorney

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EXHIBIT A

STATE OF TEXAS)

(KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DALLAS)

THIS AGREEMENT, entered into by and between the CITY OF GARLAND, TEXAS, a home-rule municipal corporation, acting herein through its duly authorized City Manager, pursuant to a duly enacted Resolution (hereinafter referred to as "Garland"); and the CITY OF MESQUITE, TEXAS, a home-rule municipal corporation, acting herein through its duly authorized City Manager, pursuant to a duly enacted Resolution (hereinafter referred to as "Mesquite"); WITNESSETH:

WHEREAS, there exists on the southwest side of Garland and on the northeast side of Mesquite, an intersection of two public streets known as Northwest Highway and LaPrada Drive, and

WHEREAS, Garland and Mesquite desire, under the terms and conditions hereinafter set forth, to expend public funds of each entity to construct a traffic signal at the intersection of Northwest Highway and LaPrada Drive, and

WHEREAS, Garland's City Council and Mesquite's City Council have each independently determined and found that this intersection is in need of such control, and that the public safety, health, and welfare require that they be made; and further that this agreement is in the best interest of the City of Garland and the City of Mesquite, and the citizens of each,

NOW, THEREFORE, for and in consideration of the covenants, obligations, and undertakings to be performed by each of the parties to this agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Garland and Mesquite do hereby agree as follows:

- I. PURPOSE. The purpose of this agreement is to
 - A. provide terms and conditions under which the installation and maintenance of a traffic signal will be made, and
 - B. provide for the sharing of costs for such consideration.

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- II. DESCRIPTION OF PROJECT. The construction of a cantilever mast arm traffic signal at Northwest Highway and LaPrada Drive. Details of the work scope of the project are to be contained in the drawings and specifications as prepared by the City of Garland.
- III. PROJECT MANAGER. Each party to this agreement hereby designates the City of Garland as agent to act as the Project Manager (hereinafter sometimes so called). The duties of the Project Manager shall commence upon execution of this agreement. The Project Manager shall cause a construction contract to be executed between the successful construction bidder ("Contractor") and Garland on behalf of both cities.

Upon execution of this agreement, Garland's duties as Project Manager shall include the following:

- A. Be responsible for and oversee the management and construction of the project in accordance with the construction contract, and this agreement.
- B. Serve as the cities' representative in dealing with the construction of the project in full accordance with the construction contract and the agreement.
- C. Keep accurate records of account showing all costs incurred in the project, payments made, and funds currently on hand contributed by the two cities.
- D. To receive, evaluate, and approve or make recommendations to the cities concerning change orders received from the Contractor.
- E. Review and approve or disapprove all requests for partial payment submitted by the Contractor; pay approved request; and distribute copies of same to Mesquite with request for reimbursement.
- F. Perform other normal business functions and otherwise operate and manage the design and construction of the project in accordance with the construction contract, and this agreement.
- G. Perform other obligations specified elsewhere in this agreement to be performed by the Project Manager.

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The Project Manager shall in good faith use its best efforts to oversee and manage the construction of the project, and to cause the project to be constructed in accordance with the construction contract, and this agreement. Notwithstanding any other provisions hereof, the Project Manager shall be liable only for bad faith or breach of an express provision of this agreement, but in other respects shall not be liable for mistakes of judgement.

- IV. RIGHT-OF-WAY. Garland and Mesquite will provide all right-of-way and easements necessary for this project on their respective sides of the intersection (common city limit boundary).
- V. DRAWINGS AND SPECIFICATIONS FOR INSTALLATION. The drawings, specifications, and construction cost estimate will be submitted to Mesquite for review and approval.
- VI. BID AND CONSTRUCTION DOCUMENTS AND SELECTION OF CONTRACTOR. The City of Garland will prepare all the construction documents and award the contract to the lowest and best bidder. Copies of all such documents will be submitted to the City of Mesquite for their review.
- VII. DEFINITION OF TOTAL PROJECT COST AND SHARING OF COSTS OF THE PROJECT. The term total project cost shall mean for the purposes of this agreement the construction contract amount plus material costs. Project management and design expense will be borne by Garland and are not included in the total project cost.

Mesquite shall be responsible for fifty percent (50%) of a standard signal installation. A standard signal installation shall mean the items commonly installed by both cities.

Each request for payment for work completed shall be submitted to the Project Manager, who shall initially verify and reconcile as necessary with the Contractor the types, quantities, and costs of materials, labor, and/or supplies consumed and/or incorporated into the project during the period since the previous partial payment. The Project Manager shall then certify such amount and pay the Contractor. The Project Manager shall furnish to Mesquite complete copies of the certified partial payment itemized according to bid items.

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Not later than thirty (30) days after receiving a copy of a certified final payment, Mesquite shall pay Garland, Mesquite's share as defined above.

VIII. INSPECTION OF THE PROJECT. The Project Manager shall be solely responsible for inspection of the Project as the work progresses. The Project Manager agrees to provide inspection to assure adequate supervision of the project. The inspectors provided by the Project Manager shall be responsible for conducting or causing to be conducted any and all tests, sampling, or other quality control of the project required by the construction contract or bid documents.

IV. CHANGE ORDERS. The Project Manager shall have the authority to approve change orders which do not substantially change the concept of the project and which do not cause the adjusted contract amount to vary more than five percent (5%) from the original contract amount, or when a change affects only one party and the change is agreed to by that party. Those listed in this agreement to whom notices will be sent will be notified by telephone in the event of such a change order.

Accumulative change orders causing more than a five percent (5%) variance must be approved by all parties.

X. COMPLETION OF THE PROJECT, ACCEPTANCE BY GARLAND AND MESQUITE, FINAL PAYMENT TO CONTRACTOR, AND FINAL SETTLEMENT BETWEEN CITIES. The Project Manager shall certify to Mesquite the satisfactory completion of the project by the Contractor. Upon determination by Mesquite of satisfactory completion of the project (as evidenced by his certified statement to that effect), which determination will not be unreasonably withheld or delayed, the completed improvements shall be accepted by Garland and Mesquite, to be evidenced by a Letter of Approval from the appropriate Department of each city.

An authorization for final payment to the Contractor shall be in the amount of all sums due the Contractor, less any sums retained for liquidated damages or deducted for any other reason.

Final settlement between the two cities shall be based upon cost responsibilities of each city as defined in Paragraph VII.

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XI. OPERATION AND MAINTENANCE. The operation and maintenance of this traffic signal shall be provided by Garland. Costs for replacement materials and equipment shall be borne, respectively, by Garland and Mesquite according to the following:

- A. The cities shall share on an equal basis (50% City of Garland - 50% City of Mesquite) costs of materials and equipment (labor costs excluded) for the replacement, through accident or attrition of traffic signal poles, mast arms, traffic signal controller and cabinet. The minor sundry components which together make up the controller unit are not included in the "major components" listed above. Replacement of major components because of attrition shall take place under the above terms only through prior joint agreement of Garland and Mesquite. In the event either Garland or Mesquite receives reimbursement from or on behalf of a third party for damage to this signal, such reimbursement shall be shared between Garland and Mesquite on the same basis as that provided in this subparagraph.
- B. Garland shall bear all (100%) labor, material and equipment costs for the balance of the traffic signal equipment comprising this traffic signal installation, including, but not limited to, pull (ground) boxes, conduit, switching, power, and detector cable, vehicle and pedestrian detectors, vehicle and pedestrian signal heads, controller cabinet and pole foundations, and A.C. power supply and power meter. Operations costs, including A.C. electrical power shall be borne by Garland.

Garland hereby assumes all responsibility for the control of traffic at this intersection and hereby agrees and binds itself to defend Mesquite from and/or against all suits, actions, or claims of any character, name, or description brought for or on account of any injuries or damages (including, but not restricted to death resulting from injuries) received or sustained by any person, persons, or property on account of or arising out of or in connection with Garland's installation, operation, or maintenance of traffic signal equipment at the location specified herein. Acts, omissions, misconduct, or fault of Garland's contractors, subcontractors, and their officers, agents, and employees shall be considered, for the purposes of this provisions, as those of Garland.

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XII. TERMS OF AGREEMENT. This agreement shall commence upon execution hereof by all parties and shall terminate upon occurrence of all of the following events:

- A. acceptance by both cities of the project,
- B. payment of all sums due to the Contractor under the construction contract,
- C. performance of all obligations of the cities is made or waived in writing by all other cities, and
- D. final financial settlement between the cities.

XIII. COMPLETE AGREEMENT. This agreement embodies the entire agreement between the parties, except those relating to the preparation of engineering documents and services, and supersedes all prior written and oral agreements between the parties and cannot be varied except by the written agreement of both parties.

The parties will execute such further documents, which are approved by their respective counsel, as may be necessary to carry out the purpose of this agreement.