

RESOLUTION NO. 11-2001

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE A MASTER AGREEMENT WITH DALLAS COUNTY GOVERNING MAJOR CAPITAL IMPROVEMENT PROJECTS FOR THE PURPOSE OF TRANSPORTATION IMPROVEMENTS ON ROADS INSIDE DALLAS COUNTY THAT ARE ON THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS REGIONAL THOROUGHFARE PLAN.

WHEREAS, the Dallas County Commissioners Court approved participation in Transportation Major Capital Improvement Projects for the Program Years 2004, 2005 and a portion of 2006 within the cities inside Dallas County; and

WHEREAS, the City of Mesquite has agreed to participate in the Dallas County Transportation Major Capital Improvement Projects for the Program Years 2004, 2005 and a portion of 2006 for selected roadways within the City of Mesquite; and

WHEREAS, the City of Mesquite has agreed to participate in the program in the amount of fifty percent of the total project cost; and

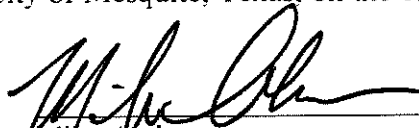
WHEREAS, the Interlocal Cooperation Act, V.T.C.A., Texas Government Code, Chapter 791, provides for any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act.

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


SECTION 1. That the Mayor is hereby authorized to execute the master agreement governing Transportation Major Capital Improvement Projects attached hereto as Exhibit A between the City of Mesquite and Dallas County providing for the design and construction of transportation improvements on roadways inside Dallas County within the City of Mesquite that are on the North Central Texas Council of Governments Regional Thoroughfare Plan and approved for participation for the Program Years 2004, 2005 and a portion of 2006.

SECTION 2. That this resolution shall take effect from and after its passage.


DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 19th day of March, 2001.


Mike Anderson
Mayor

ATTEST:


Ellen Williams
City Secretary

APPROVED:


B. J. Smith
City Attorney

STATE OF TEXAS §

COUNTY OF DALLAS §

**MASTER AGREEMENT GOVERNING
TRANSPORTATION
MAJOR CAPITAL IMPROVEMENT PROJECTS**

THIS MASTER AGREEMENT is made by and between the City of Mesquite, Texas, hereinafter called "CITY", and the County of Dallas, Texas, hereinafter called "COUNTY", acting by and through its duly authorized officials, desire to enter into an Interlocal Agreement, hereinafter called **MASTER AGREEMENT**, for the purpose of Transportation Improvements on roads inside Dallas County that are on the North Central Texas Council of Government's Regional Thoroughfare Plan.

WITNESSETH

WHEREAS, pursuant to Court Order 2000-2117, dated October 17, 2000, County Commissioners Court approved participation in Transportation Major Capital Improvement Projects for the Program Years 2004, 2005, and a portion of 2006 within the cities inside Dallas County; and

WHEREAS, the approved project lists may be modified, updated or approved by the Commissioners Court on a periodic, as-needed basis; and

WHEREAS, Chapter 791 of the Texas Government Code, as amended, provides authorization for local governments to enter into interlocal agreements; and

NOW THEREFORE, THIS AGREEMENT, is hereby made and entered into by CITY and COUNTY for the mutual consideration stated herein:

AGREEMENT

Article I. **DEFINITIONS**: The following definitions are incorporated into this agreement for all purposes.

- a) **AMENDMENT** shall mean a written document executed by all parties detailing changes, additions or deletions in the MASTER AGREEMENT.
- b) **CITY** shall mean the City of Mesquite, County of Dallas, State of Texas.
- c) **COUNTY** shall mean the County of Dallas, State of Texas.
- d) **DIRECT PROJECT & PROGRAM COSTS** shall mean those costs that can be identified specifically with a particular project or program cost objective. These costs generally include

compensation of employees for the time devoted and identified specifically to the performance of the project or program, cost of materials acquired, consumed or expended specifically for the purpose of the project or program; equipment changes; damage claims and other approved capital expenditures; change orders; damage claims; travel expenses incurred specifically to carry out the project including, but not limited to, design, right-of-way, road or street drainage, utility relocation and adjustment and construction. Direct Cost does not include either CITY or COUNTY general overhead.

- e) **EFFECTIVE DATE** shall mean the date of the signature of the last person necessary for this MASTER AGREEMENT to become effective.
- f) **INDIRECT COSTS** shall mean those costs which have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final project or program cost objective without effort disproportionate to the results achieved.
- g) **INTERLOCAL AGREEMENTS** shall mean contracts or agreements entered into between CITY and COUNTY in accordance with Texas Government Code Chapter 791 .
- h) **LEAD AGENCY** shall mean that entity responsible for project management, including, but not limited to planning, design, right-of-way acquisition, approved utility relocation or adjustment and construction.
- i) **MASTER AGREEMENT** shall mean this document including all incorporated documents, attachments, and exhibits.
- j) **MEMORANDUM OF AGREEMENT (MOA)** shall mean a written document which incorporates the results of the PREDESIGN CHARRETTE. Said MOA shall at a minimum identify the overall funding scheme, and basic scope of the PROJECT.
- k) **PARCEL OR PARCELS** shall mean those tracts of land and improvements located either wholly or partially thereon, identified by COUNTY, CITY or other STAKEHOLDER as required for right-of-way requirements of the PROJECT. Such Right-of-way shall include both the existing street, road, drainage or other CITY or COUNTY real property ownership and all additional real property to be utilized for the PROJECT.
- l) **PREDESIGN CHARRETTE** shall mean a meeting of decision making STAKEHOLDERS and other members of the PROJECT TEAM for the purpose of entering into a MEMORANDUM OF AGREEMENT for the overall funding, alignment and scope of the PROJECT.
- m) **PROJECT MANAGER** shall mean the person appointed by the Lead Agency who is assigned the primary duty for assuring Project Team coordination and timely project delivery. There will be only one PROJECT MANAGER assigned to a PROJECT.
- n) **PROJECT TEAM** shall mean representatives from COUNTY, CITY, and other STAKEHOLDERS as may be mutually agreed upon by COUNTY, CITY and STAKEHOLDER or otherwise with responsibility for delivering the completed PROJECT.
- o) **PROJECT(S)** shall mean the road improvements approved by the COUNTY for inclusion in the Transportation Major Capital Improvements Program approved by the Commissioners Court and approved by the CITY and/or other applicable STAKEHOLDERS.
- p) **ROAD or STREET AMENITY** shall mean PROJECT features not included in the STANDARD BASIC PROJECT DESIGN including but not limited to street pavers, colored concrete, planters, irrigation, decorative lighting, special signage, or any other feature above and beyond the

STANDARD BASIC PROJECT DESIGN or any increase in capacity in excess of COUNTY determined requirements based on anticipated future traffic flow.

- q) **RIGHT OF WAY (ROW)** shall mean that real property, (either existing, or required in fee and/ or easement) identified by COUNTY, CITY, or other project STAKEHOLDER as necessary for the construction of the PROJECT. Such Right-of-way shall include both the existing street, road, drainage or other CITY or COUNTY real property ownership and all additional real property to be utilized for the PROJECT.
- (r) **STANDARD BASIC PROJECT DESIGN** shall mean the standard COUNTY-approved CITY criteria for paving, bridges, drainage and appurtenances, traffic control items including pavement marking, warranted uniform signals, street light foundations, pull boxes, conduit, sidewalks, medians, storage/turn lanes, access, required structural retaining walls and standard driveways excluding ROAD OR STREET AMENITIES, or such design criteria as may be mutually agreed upon in a project specific SUPPLEMENTAL AGREEMENT.
- (s) **SUPPLEMENTAL AGREEMENT** shall mean an agreement subsequent to this document which is entered into to establish the contractual rights and responsibilities of the CITY and COUNTY as it relates to the PROJECT.
- (t) **STAKEHOLDER** shall mean any governmental or quasi-governmental entity making a financial contribution to the PROJECT.
- (u) **TxDOT** shall mean the Texas Department of Transportation.
- (v) **UTILITIES** shall mean each City Utility, public utility, common carrier, governmental or quasi-governmental facility, fiber optic facility, or other facility located within the limits of the Project by virtue of Texas or Federal Law or agreement between the entity and the CITY, COUNTY, or STATE OF TEXAS.
- (w) **CITY UTILITY** shall mean those owned or operated by CITY which require relocation or adjustment for the purpose of the construction of the PROJECT as identified by PROJECT plans.
- (x) **UTILITY IN PUBLIC RIGHT-OF-WAY** shall mean all UTILITIES located within the limits of the PROJECT by virtue of Texas or Federal Law or agreement between the entity and the CITY.
- (y) **UTILITY IN PRIVATELY OWNED RIGHT-OF-WAY** shall mean all UTILITIES, excluding CITY UTILITIES, whose facilities are located within the limits of the PROJECT by virtue of satisfactorily documented pre-existing real property ownership.
- (z) **UTILITY BETTERMENT** shall mean any increase in the capacity of any UTILITY'S Facility adjusted or relocated as a part of the PROJECT as compared to the existing Facility, or any upgrading of the UTILITY'S Facility above the standard practices, devices or materials, specified by the UTILITY and customarily used by CITY or UTILITY on projects solely financed by CITY or UTILITY. Provided, however, that any upgrading necessary to successfully accomplish the PROJECT shall not be considered a **Betterment**, and further, that any increase in the capacity of the Utility Facility resulting solely from the replacement of devices or materials no longer regularly manufactured, processed or installed shall not be considered a **Betterment**, provided that such replacement shall be only to the standard devices or materials currently used on other projects financed solely by CITY or UTILITY. This meaning shall apply to utilities that are part of the project as well as the standard basic street components (See "STANDARD BASIC PROJECT DESIGN").

Article II. PERIOD OF THE AGREEMENT

This **MASTER AGREEMENT** becomes effective when signed by the last party whose signing makes the respective agreement fully executed (The "Effective Date"). This **MASTER AGREEMENT** shall be an annual agreement and shall automatically renew without further action by either party unless or until terminated as provided in Article IV (Termination) or the expiration of ten (10) years, whichever shall first occur.

Article III. AMENDMENTS

This Master Agreement may be amended with the mutual consent of the CITY and COUNTY. Any amendment must be in writing and approved by the parties' respective governing bodies.

Article IV. TERMINATION, DEFAULT, TIME OF THE ESSENCE AND FORCE**MAJEURE****I. TERMINATION**

- A. This **MASTER AGREEMENT** may be terminated by any of the following conditions:
- (1) By expiration of term of the agreement.
 - (2) By mutual written consent and agreement of COUNTY and CITY.
 - (3) By the either party, by notice in writing establishing the effective date of termination to the other party as consequence of the party being in default of the provisions of this Agreement or any **SUPPLEMENTAL AGREEMENT** or failure to timely provide funding, with proper allowances being made for circumstances beyond the control of the defaulting party.
 - (4) By either party with ninety days written notice.
- B. Should either party terminate this **MASTER AGREEMENT** as herein provided, all existing, fully executed **SUPPLEMENTAL AGREEMENT** made under this **MASTER AGREEMENT** shall not be terminated and shall automatically incorporate all the provisions of this **MASTER AGREEMENT**.
- C. In the event that any **SUPPLEMENTAL AGREEMENT** is terminated prior to completion of the **PROJECT**, no additional Costs shall be incurred other than Costs due and payable at the time of termination for services actually performed or that shall become due and payable due to such termination. The **LEAD AGENCY**, to the extent permitted, may terminate all project contracts, unless written notice is given by either party to the other of its intent to complete the **PROJECT**, and prepare a final accounting for the **PROJECT**.
- D. If the **PROJECT** is terminated by the **CITY** prior to the award of any construction contract and the **PROJECT** is located within the **CITY** limits, **CITY** shall pay to **COUNTY** the full amount expended by **COUNTY** on the project and **COUNTY** shall transfer to **CITY** its rights and all deliverables that it may be entitled to receive under the existing professional services or other project contracts or agreements. Such amount shall be included in the

final accounting for the PROJECT. Such amount shall be due and payable in full ninety (90) days subsequent to the termination, or thirty days subsequent to delivery of final accounting.

- E. Once the construction contract has been let, with the approval of the other party, the **SUPPLEMENTAL AGREEMENT** for that PROJECT cannot be terminated until completion of the construction.
- F. In the event that a PROJECT is terminated either party may, upon written notice, take over the project and prosecute the work to completion by contract or otherwise at their sole cost and expense. In the event that the party completing the work is not the LEAD AGENCY, it is agreed that the PROJECT MANAGER will furnish to the completing party a listing of current records pertaining to any outstanding obligations or other records or information required by any project contract, including any Work Order, or requested in writing by completing party in either printed or electronic format or both. The LEAD AGENCY agrees to cooperate with the completing party. The LEAD AGENCY will use its best efforts to transfer to the completing party all contracts. Obligations under such contracts shall become the sole obligation of the completing party upon transfer. Completing party agrees to timely pay all future obligations under such contract as they become due and payable. **Completing party hereby releases the LEAD AGENCY from any and all liability under such assigned contracts subsequent to date of transfer, effective upon the transfer date.** LEAD AGENCY shall exercise its best efforts to insure a transition of services without interruption
- G. Either party shall have the right to retain copies of all data, information, engineering, studies, or other items produced to the date of termination.
- H. Provisions B through G will survive the termination of this **MASTER AGREEMENT** and any **SUPPLEMENTAL AGREEMENT** and shall be a continuing obligation until the transition of services, all payments made and the PROJECTS are complete. All items listed or required in this provision shall be furnished by LEAD AGENCY to completing party without additional cost or expense to completing party.

2. FORCE MAJURE:

Neither COUNTY nor CITY shall be deemed in violation of this Contract if it is prevented from performing any of its obligations hereunder by reason of, for or through strikes, stoppage of labor, riot, fire, flood, invasion, insurrection, accident, order of court, judge or civil authority, an act of God, or any cause reasonably beyond the party's control and not attributable to its neglect. In the event of such an occurrence the time for performance of such obligations or duty shall be suspended until such time that such inability to perform, shall be removed. The party claiming the suspension shall give notice of such impediment or delay in performance to the other party within ten (10) days of the knowledge of such occurrence. Each party shall make all reasonable efforts to mitigate the effects of any suspension.

Article V. INDEMNIFICATION

COUNTY and CITY agree that both COUNTY and CITY shall each be responsible for their own negligent acts or omissions or other tortious conduct in the course of performance of this **MASTER AGREEMENT**, without waiving any sovereign or governmental immunity available to either COUNTY or CITY under Texas law and without waiving any available

defenses under Texas law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities.

Article VI. NOTIFICATION

A. When notice is permitted or required by this **MASTER AGREEMENT**, it shall be in writing and shall be presumed delivered when delivered in person or three (3) days subsequent to the date placed, postage prepaid, in the U. S. Mail, Certified or Registered, Return Receipt Requested and addressed to the parties at the following address.

B. All notices and correspondence to County by City shall be mailed or delivered by hand as follows:

Dallas County Public Works
 Donald R. Holzwarth, P.E., Director
 411 Elm Street, Suite 400
 Dallas, Texas 75202-3389

C. All notices and correspondence from County to City shall be mailed or delivered by hand as follows: [Title of Appropriate City Official]

City, Texas

D. Either party hereto may from time to time designate another and different address for receipt of notice by giving written notice of such change of address to the other party.

Article VII. CITY COVENANTS AND AGREES AS FOLLOWS:

A. To execute the necessary agreements for the implementation of design and construction of the **PROJECTS** mutually agreed upon and incorporated herein by **SUPPLEMENTAL AGREEMENT**.

B. Provide City Council Resolution adopting approved preferred alignment, proposed estimated budget, and commitment to meet **PROJECT** funding for each milestone as specified herein or in a **SUPPLEMENTAL AGREEMENT**.

C. To share the funding of each **PROJECT** with **COUNTY** on an equal share basis (50%/50%), or as otherwise agreed upon cost sharing arrangement as specified in a **SUPPLEMENTAL AGREEMENT** with the following exclusions:

CITY shall bear the entire cost of:

1. CITY owned utilities relocation or adjustment such as water and sanitary sewer facilities, except utility adjustments directly attributable to storm sewer improvement conflicts;

2. ROAD or STREET AMENITIES including but not limited to street pavers, colored concrete, planters, decorative lighting, special signage, or any other feature over the STANDARD BASIC PROJECT DESIGN;
3. UTILITY BETTERMENTS;
4. CITY PROJECT TEAM participation or project management (if the CITY has LEAD AGENCY Responsibility) Direct Costs which are not supported by a detailed hourly accounting system;
5. CITY Indirect Costs.

When mutual written agreement has been reached as to PROJECT limits by COUNTY and CITY at the Predesign Charrette, City agrees to acquire right-of-way required for designated projects by voluntary dedication, the subdivision platting process and/or other legal means, to the maximum extent possible, and to ensure through the building permitting process that setback requirements are imposed to limit encroachment upon the required right of way. CITY agrees to fund ROW not acquired but reasonably expected to be. CITY also agrees to fund the removal of improvements that are encroachments within existing or proposed right of way areas.

In the event of any proposed use of the PROJECT right-of-way that will conflict with the proposed PROJECT and CITY is unable to obtain such right-of-way as described above, CITY shall notify COUNTY of such conflict. COUNTY and CITY shall determine if the acquisition of the conflicting parcel would be in the best interest of the PROJECT. In the event that agreement is reached and the parcel is acquired such cost shall be included in the pro rated cost of the project in the agreed upon proportions.

CITY hereby grants the COUNTY authority to enter into eminent domain proceedings within the city limits on each specific right of way alignment as approved by the CITY and COUNTY.

- D. To require all Utilities located within or using the present public right of way on all designated transportation projects within CITY's municipal limits to adjust and/or relocate said Utilities as required by the proposed improvement of the designated transportation Project. CITY Utilities shall be relocated or adjusted at no cost to COUNTY except as may be specifically set forth in this **MASTER AGREEMENT**.
- E. To be cooperative on issues relating to billboards, advertising signs, non-conforming uses, zoning and similar restrictions and to exercise its best efforts to provide variances when possible to minimize cost and delay of PROJECT. Additional PROJECT cost caused or contributed to by CITY ordinance, zoning, non-conforming use determination or other requirement shall be paid in full by CITY, to the extent provided by law.
- F. To require the adjustment and/or relocation of UTILITIES to be accomplished and finalized, as expeditiously as possible after approval of final plans to prevent PROJECT schedule delays. Notwithstanding anything contained herein to the contrary, all UTILITIES shall be adjusted or relocated and the right-of-way clear for construction not later than thirty (30) days prior to the award of the construction contract. CITY will notify the COUNTY and other STAKEHOLDERS when utility conflicts would impact progress of the project completion. COUNTY and CITY agree to work in partnership and with all STAKEHOLDERS to solve the problem to include helping to engage elected officials in

the problem resolution with the goal to prevent delays in the commencement or prosecution of construction on the PROJECT.

- G. Where new storm drainage facilities are in conflict with CITY owned water and sanitary sewer systems, and the storm sewer design cannot be modified, after submission of an acceptable schedule of work and cost estimate by the CITY to the COUNTY and COUNTY approval, the actual costs of the necessary adjustment of CITY water and sewer utilities shall be pro rated at the overall percentage agreed to by CITY and COUNTY for cost sharing. CITY shall be responsible for funding one hundred percent (100%) of any BETTERMENTS. Except as provided herein, all costs for adjustment and/or relocation of utilities in the public right of way shall be the responsibility of the Utility Owner or of the CITY UTILITY. Any PROJECT delay or other damages caused by CITY UTILITY'S failure to timely relocate or adjust the facility shall be at the entire cost of CITY.
- H. To provide for continuing surveillance and control of right of way to prevent the construction, placement, storage or encroachment of any signs, personal property or other appurtenances in the right of way. In the event that the aforementioned features are allowed by CITY to encroach on necessary ROW during the duration of the project, CITY shall bear the entire cost of removal or relocation of said encroachment.
- I. To provide to COUNTY for COUNTY'S or COUNTY'S designee use, at no cost, adequate copies of all construction standards, codes, (specifically including zoning and development codes), plats, specifications, guidelines, standards or any other pertinent information as determined by COUNTY to be required for the completion of the PROJECT. Additionally, CITY shall furnish COUNTY, at no cost, such documents as necessary to keep all items previously furnished to County current.
- J. Actively participate and provide authorized representation with decision making power at PREDESIGN CHARRETTE, preconstruction meeting, partnering meetings and project team meetings which are necessary to project development/completion and fiduciary relationships.
- K. To provide timely review of interim submittals. "Timely review" will be agreed upon during the PREDESIGN CHARRETTE as a part of the PROJECT schedule. City further agrees that if no review notes are submitted by CITY in writing to COUNTY on a timely basis, plans are approved as submitted
- L. To pay all additional project cost for any CITY requested discretionary change, including, but not limited to STREET AMENITIES AND UTILITY BETTERMENTS, in or addition to the design or construction of the project subsequent to the City opportunity to review the sixty five percent (65%) design plans.
- M. Provide at CITY's cost for the continuing maintenance of all PROJECT ROW, such as mowing, drainage, trash removal, etc., during the period between acquisition and construction.

- N. Subsequent to the completion of a PROJECT, that the CITY will be responsible for all future maintenance, operation and control of the PROJECT, without cost or contribution from the COUNTY.
- O. Bear the entire cost of design, construction and administration for landscaping, streetscaping, streetlighting, as such items are not included in the **STANDARD BASIC PROJECT DESIGN** and other ROAD OR STREET AMENITIES specified or requested by CITY in excess of **STANDARD BASIC PROJECT DESIGN** .
- P. It is the intent of this MASTER AGREEMENT that the COUNTY will be the LEAD AGENCY. In the event that the CITY and COUNTY agree in writing that CITY will manage and administer one or more PROJECTS, CITY and COUNTY will enter into a **SUPPLEMENTAL AGREEMENT** as to that project(s). In such instance, CITY agrees to assume all LEAD AGENCY responsibilities except as may be set forth in the **SUPPLEMENTAL AGREEMENT** as determined by mutual consent.

Article VIII. UTILITY IMPACTS.

- A. In cases where a UTILITY IS LOCATED IN A PRIVATELY OWNED RIGHT-OF-WAY, and it is necessary to relocate the facility or make adjustments by reason of the widening or improvement of the designated project, the COUNTY (or CITY if acting as the LEAD AGENCY) will, after submission by utility company of right of way documentation and cost estimates acceptable to the CITY, COUNTY and other STAKEHOLDERS, assign the actual costs for the relocation and/or adjustment of said utility to the PROJECT.
- B. In cases where a UTILITY IN PUBLIC RIGHT-OF-WAY, excluding CITY UTILITIES, occupies any portion of the PROJECT RIGHT-OF-WAY by Texas or Federal Law or by agreement with the CITY that allows or permits the CITY to cause the relocation of the utility for the construction of the project, the CITY shall timely require and enforce the relocation or adjustment requirement at no cost to the project. In the event that the CITY has no legal or contractual right to cause the relocation, the relocation or adjustment shall be relocated or adjusted and all cost shall be a Project Cost. CITY shall take all steps necessary to insure that such relocation or adjustment shall not conflict with or delay the PROJECT schedule.

Article IX. COUNTY AGREES AS FOLLOWS:

- A. To provide as a PROJECT Cost preliminary engineering which will define project details, e.g., location, scope of work and specific right of way alignment for each improvement. Such preliminary engineering shall be submitted to the CITY for approval, prior to proceeding with the final design and any right of way acquisition.
- B. To provide as a PROJECT Cost for the construction of transportation improvements based upon design criteria conforming to **STANDARD BASIC PROJECT DESIGN** in conformity with applicable CITY ordinances and standards, to the extent of

Commissioners Court approved program funding. Scope of work shall include the agreed upon design standards as the basis for improvement criteria. Deviations from mutually agreed upon application of CITY standards and/or design criteria shall require prior approval of CITY. Where CITY standards do not exist, TxDOT standards as of the EFFECTIVE DATE of this MASTER AGREEMENT shall be utilized unless otherwise mutually agreed by SUPPLEMENTAL AGREEMENT.

- C. To actively participate and provide authorized representation at PREDESIGN CHARRETTE , preconstruction meeting, partnering meetings and project team meetings which are necessary to project development and completion and fiduciary relationships.
- D. To provide project management of each Project where County is LEAD AGENCY from commencement to completion of construction. CITY and COUNTY may further agree by mutual consent to redefine project management roles as beneficial to the PROJECT as defined in the MOA and SUPPLEMENTAL AGREEMENTS.
- E. Upon receipt of written request detailing the information requested, to provide information related to the PROJECT to CITY or CITY'S designee at no cost to the CITY.
- F. COUNTY agrees to provide timely review of interim submittals and hereby agrees that if no review notes are submitted by COUNTY (if CITY is filling the role as PROJECT MANAGER) in writing to CITY, plans are approved as submitted. "Timely review" will be agreed upon during the PREDESIGN CHARRETTE, as part of the project schedule.
- G. To submit final engineering plans for review and written approval by CITY at least thirty (30) days prior to advertising for construction.
- H. To provide for the acquisition, including acquisition by Eminent Domain, of the necessary additional right of way, on designated projects, in accordance with minimum standard requirements and utilizing existing public right of way to the maximum extent possible as a PROJECT cost.
- I. To require all contractors to secure all necessary permits required by CITY on said construction projects.
- J. To furnish record drawings of construction plans for the permanent records of CITY within twelve (12) months of completion and acceptance by CITY and COUNTY of the transportation improvement PROJECT.
- K. In and for Ten Dollars (\$10.00) and other good and valuable consideration, including the future obligation of maintenance, operation, control and acceptance of liability therefor to transfer, by Quit Claim Deed, all PROJECT related easements acquired by COUNTY to CITY.
- L. In the event COUNTY and CITY agree in writing that CITY will be the LEAD AGENCY for the agreed upon PROJECT, COUNTY will reimburse CITY for agreed costs as detailed in Article XI (FUNDING) in an amount not to exceed the PROJECT cost as approved by Dallas County Commissioners Court and incorporated in the SUPPLEMENTAL AGREEMENT. All COUNTY payments shall be in accordance with COUNTY Policies and Procedures or as may be mutually agreed between the parties and incorporated in a SUPPLEMENTAL AGREEMENT.

Article X. PREDESIGN CHARRETTE

- A. CITY and COUNTY, as specified in Articles VII and IX, respectively, will designate officials or representatives to participate in a Predesign Charrette to be conducted on a mutually agreeable date and location. At least part of this meeting will be conducted on the PROJECT site.
- B. Results from Predesign Charrette will identify the general project scope and the general preferred alignment of the project, and project administration and management roles, to include the PROJECT MANAGER. Additionally, key project team participants shall be identified at the Predesign Charrette .
- C. At the conclusion of the Predesign Charrette a **SUPPLEMENTAL AGREEMENT** shall be produced which outlines the identified roles and scope for the Project.

Article XI. FUNDING

- A. CITY and COUNTY mutually agree to proportionately fund the DIRECT PROJECT & PROGRAM costs as agreed by the parties in a SUPPLEMENTAL AGREEMENT. Unless otherwise specified in the SUPPLEMENTAL AGREEMENT, COUNTY shall bear fifty percent (50%) of the total DIRECT PROJECT & PROGRAM costs excluding the ROAD OR STREET AMENITIES, relocation or adjustment of CITY UTILITIES, UTILITY BETTERMENT, INDIRECT COST, DIRECT COST not supported by detailed hourly accounting system and other items as specified in this MASTER AGREEMENT or any SUPPLEMENTAL AGREEMENT. COUNTY shall not be responsible for any amount of funding in excess of the PROJECT not-to-exceed amount as shown in the PROJECT SUPPLEMENTAL AGREEMENT. Unless otherwise specified in the SUPPLEMENTAL AGREEMENT, CITY shall bear fifty percentage (50%) of all DIRECT PROJECT AND PROGRAM costs. In addition City agrees to fund all other City cost as provided herein, including, but not limited to, ROAD OR STREET AMENITIES, relocation or adjustment of CITY UTILITIES, UTILITY BETTERMENT, INDIRECT COST, DIRECT COST not supported by detailed hourly accounting system and other items as specified in this MASTER AGREEMENT or any SUPPLEMENTAL AGREEMENT.
- B. Unless otherwise stated in a SUPPLEMENTAL AGREEMENT, the milestones for each project shall be (1) preliminary and primary design (2) right-of-way acquisition and utility relocation or adjustment and (3) construction. The LEAD AGENCY shall prepare an estimated cost for each milestone. Upon approval of the cost by the other party, each party shall fund its share of the respective milestones by placing that amount of money in an escrow account or otherwise encumber the funds to insure that the LEAD AGENCY will have sufficient funding available from current revenue for the timely payment of PROJECT milestone costs. The LEAD AGENCY may bill the other party for periodic payments for the actual amount of work completed toward the completion of the milestone. Upon completion of the milestone, the non-management party will be furnished a notice that such work has been completed and the amount of funding that may be utilized to pay subsequent milestone Project cost. Notwithstanding any other term or condition contained herein or in any SUPPLEMENT AGREEMENT, neither party will be required to award any contract until written certification has been received that funding has been placed in escrow or encumbered for the payment of the non-awarding party's portion of the PROJECT cost.

- C. In the event that the cost of the PROJECT shall exceed the not-to-exceed amount, CITY and COUNTY agree to either reduce the scope of construction or seek additional funding to complete the PROJECT at the agreed upon cost share percentages. At the termination of the PROJECT, the LEAD AGENCY will do a final cost accounting of the PROJECT. In the event that the amount paid by either party exceeds its portion of the actual cost, the difference will be remitted to such party. In the event that additional funds are due, the LEAD AGENCY will bill the other party who agrees to pay such funds within thirty (30) days of receipt of such billing.
- D. If CITY elects to manage PROJECT, COUNTY will reimburse CITY based on invoices for actual costs expended in accordance with COUNTY invoicing policy.
- E. Upon execution of a SUPPLEMENTAL AGREEMENT, CITY shall escrow an amount adequate for initial project costs which COUNTY may use to pay for initial professional services required for scoping, preliminary, and primary design.

Article XII. NO THIRD-PARTY BENEFICIARY ENFORCEMENT.

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all right of action relating to such enforcement shall be strictly reserved to CITY and COUNTY and nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other person on this Agreement. It is the express intention of CITY and the COUNTY that any entity other than CITY or the COUNTY receiving services or benefits under this agreement shall be deemed an incidental beneficiary only. This Agreement is intended only to set forth the contractual right and responsibilities of the agreement parties.

Article XII. RIGHT OF ENTRY

The CITY agrees that COUNTY shall have the right to enter upon the PROJECT area for the time period necessary for the completion of the Project. CITY agrees to furnish such police or other CITY personnel as requested BY COUNTY for traffic control or other public safety matters at no cost to the PROJECT or COUNTY.

Article XIV. LIST OF PROJECTS

CITY agrees that it has been furnished with a list of the potential PROJECTS as approved by the Dallas County Commissioners Courts, subject to the agreement between the parties of a SUPPLEMENTAL AGREEMENT. CITY stipulates and agrees that the Commissioners Court Order approving the projects identifies the potential PROJECT location and describes the type of project in sufficient detail that the CITY is fully aware of the location and type of projects being considered.

Article XV. MISCELLANEOUS GENERAL PROVISIONS

- A. **Applicable Law.** This Agreement and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the State of Texas and exclusive venue shall be in Dallas County, Texas. Notwithstanding anything herein to the contrary, this Agreement is

expressly made subject to County's Sovereign Immunity, Title 5 of Texas Civil Practice and Remedies Code, and all applicable State of Texas and Federal laws.


- B. **Entire Agreement.** This Agreement, constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto as herein provided.
- C. **Severability.** If any provision of this Agreement shall be held invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.
- D. **Default/Waiver/Mitigation.** It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law.
- E. **Federal or State of Texas Funding.** In the event that any work or part thereof is funded by State of Texas or U. S. Government funding and any statute, rule, regulation, grant, contract provision or other State of Texas or U. S. Government law, rule, regulation or other provision imposes additional or greater requirement(s) than stated herein, City agrees to timely comply therewith without additional cost or expense to County.
- F. **Headings.** The titles which are used following the number of each paragraph are only for convenience in locating various provisions of this AGREEMENT and shall not be deemed to affect the interpretation or construction of such provision.
- G. **Number and Gender.** Words of any gender used in this AGREEMENT shall be held and construed to include any other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.
- H. **Counterparts.** This AGREEMENT may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

The City of Mesquite, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution No. 11-2001, Minutes _____ Dated the 19th day of March, 2001.

The County of Dallas, State of Texas, has executed this agreement pursuant to Commissioners Court Order Number _____ and passed on the ____ day of _____, 200 .

CITY OF Mesquite

COUNTY OF DALLAS

BY 
TITLE

BY _____
LEE JACKSON, COUNTY JUDGE

ATTEST 
CITY SECRETARY \ ~~ATTORNEY~~

APPROVED AS TO FORM:

John Dahill, Advisory Chief, Civil Section
Dallas County District Attorney