

RESOLUTION NO. 10-2002

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE AN ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR PROVIDING THE CONSTRUCTION OF VARIOUS ROADWAY IMPROVEMENTS FOR INTERSTATE 635 FROM U.S. HIGHWAY 80 TO NORTH OF TOWN EAST BOULEVARD.

WHEREAS, the City of Mesquite wishes to improve traffic flow along Interstate 635 between U.S. Highway 80 and north of Town East Boulevard; and

WHEREAS, the City of Mesquite has requested that the Texas Department of Transportation allow the City to participate in said improvements by funding the engineering design and construction costs associated with the Interstate 635 improvements between U.S. Highway 80 and north of Town East Boulevard; and

WHEREAS, the project includes reconstructing the Town East Boulevard bridge and realigning Town East Boulevard under the bridge, relocating four (4) entrance/exit ramps, adding two (2) ramps, adding a northbound and southbound auxiliary lane to Interstate 635, replacing the Towne Centre Drive bridge and relocation of existing utilities; and

WHEREAS, the Texas Department of Transportation has determined that such participation is in the best interest of the citizens of the State.

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

SECTION 1. That the terms and conditions of the Interlocal Agreement attached hereto as Exhibit A, titled "ADVANCE FUNDING AGREEMENT BETWEEN THE STATE OF TEXAS AND THE CITY OF MESQUITE" are hereby approved after being reviewed by the City Council of the City of Mesquite and found to be acceptable and in the best interest of the City of Mesquite and its citizens.

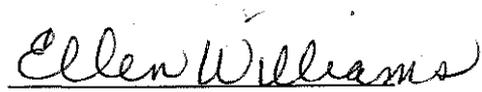
SECTION 2. That the City Council of the City of Mesquite authorizes Mike Anderson, Mayor, to execute an Interlocal Agreement with the State of Texas through the Texas Department of Transportation for participation in the engineering design, utility relocation and construction of improvements on Interstate 635 between U.S. Highway 80 and north of Town East Boulevard.

SECTION 3. 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 4th day of March, 2002.

  
\_\_\_\_\_  
Mike Anderson  
Mayor

ATTEST:

  
\_\_\_\_\_  
Ellen Williams  
City Secretary

APPROVED:

  
\_\_\_\_\_  
B. J. Smith  
City Attorney

APPROVED BY CITY COUNCIL

Project Number \_\_\_\_\_

County Dallas

DATE 3/4/02

Location: I.H. 635

From: North of Town East

CITY SEC. \_\_\_\_\_

To: U.S. 80

**ADVANCE FUNDING AGREEMENT FOR STANDARD TRANSPORTATION IMPROVEMENT PROJECTS (ON-SYSTEM)**

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

**THIS AGREEMENT IS MADE BY AND BETWEEN** the State of Texas, acting through the Texas Department of Transportation, hereinafter called the State, and City of Mesquite, acting by and through Mike Anderson, Mayor, hereinafter called the Local Government.

**WITNESSETH**

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

**WHEREAS**, Commission Minute Order Number 108680 + 104810 authorizes the State to undertake and complete a highway improvement generally described as part of the Unified Transportation Program (UTP); and,

**WHEREAS**, the Local Government has requested that the State allow the Local Government to participate in said improvement by funding that portion of the improvement described as the Mesquite Section located along I.H. 635 North of Town East Blvd. to U.S. 80, hereinafter called the "Project"; and,

**WHEREAS**, the State has determined that such participation is in the best interest of the citizens of the State;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, the State and the Local Government do agree as follows:

**AGREEMENT**

**Article 1. Time Period Covered**

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and the Local Government will consider it to be in full force and effect until the Project described herein has been completed and accepted by all parties or unless terminated, as hereinafter provided.

**Article 2. Project Funding and Work Responsibilities**

The State will authorize the performance of only those Project items of work which the Local Government has requested and has agreed to pay for as described in Attachment A, Payment Provision and Work Responsibilities which is attached to and made a part of this contract.

In addition to identifying those items of work paid for by payments to the State, Attachment A, *Payment Provision and Work Responsibilities*, also specifies those Project items of work that are the responsibility of the Local Government and will be carried out and completed by the Local Government, at no cost to the State.

### **Article 3. Right of Access**

If the Local Government is the owner of any part of the Project site, the Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work. The Local Government will provide for all necessary right-of-way and utility adjustments needed for performance of the work on sites not owned or to be acquired by the State.

### **Article 4. Responsibilities of the Parties**

The Local Government acknowledges that while it is not an agent, servant, nor employee of the State, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work on the Project.

### **Article 5. Document and Information Exchange**

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the local entity creates the documents with its own forces or by hiring a consultant or professional provider.

### **Article 6. Interest**

The State will not pay interest on funds provided by the Local Government. Funds provided by the Local Government will be deposited into, and retained in, the State Treasury.

### **Article 7. Inspection and Conduct of Work**

Unless otherwise specifically stated in Attachment A, *Payment Provision and Work Responsibilities*, to this contract, the State will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State. Unless otherwise specifically stated in Attachment A to this contract, all work will be performed in accordance with the *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* adopted by the State and incorporated herein by reference, or special specifications approved by the State.

**Article 8. Increased Costs**

In the event it is determined that the funding provided by the Local Government will be insufficient to cover the State's cost for performance of the Local Government's requested work, the Local Government will pay to the State the additional funds necessary to cover the anticipated additional cost. The State shall send the Local Government a written notification stating the amount of additional funding needed and stating the reasons for the needed additional funds. The Local Government shall pay the funds to the State within 30 days of the written notification, unless otherwise agreed to by all parties to this agreement. If the Local Government cannot pay the additional funds, this contract shall be mutually terminated in accord with Article 10 - Termination. If this is a fixed price agreement as specified in Attachment A, Payment Provision and Work Responsibilities, this provision shall only apply in the event changed site conditions are discovered or as mutually agreed upon by the State and the Local Government.

If any existing or future local ordinances, including, but not limited to, outdoor advertising billboards or storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or any other locally proposed changes, including, but not limited to plats or replats, result in increased costs, then, any increased costs associated with the ordinances or changes will be paid by the local entity. The cost of providing such right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including expenses related to relocation, removal, or adjustment of eligible utilities.

**Article 9. Maintenance**

Upon completion of the Project, the State will assume responsibility for the maintenance of the completed Project unless otherwise specified in Attachment A to this agreement.

**Article 10. Termination**

This agreement may be terminated in the following manner:

- ◆ by mutual written agreement and consent of both parties;
- ◆ by either party upon the failure of the other party to fulfill the obligations set forth herein;
- ◆ by the State if it determines that the performance of the Project is not in the best interest of the State.

If the contract is terminated in accordance with the above provisions, the Local Government will be responsible for the payment of Project costs incurred by the State on behalf of the Local Government up to the time of termination.

- A. In the event the State determines that additional funding is required by the Local Government at any time during the development of the Project, the State will notify the Local Government in writing. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
- B. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.
- C. In the event the Project is not completed, the State may seek reimbursement from the Local Government of the expended funds. The Local Government will remit the required funds to the State within sixty (60) days from receipt of the State's notification.

- D. The State will not pay interest on any funds provided by the Local Government.
- E. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.

## 11. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

State: Paul E. Williams, P.E.  
Area Engineer  
Northeast Dallas County  
4777 East Hwy. 80  
Mesquite, Texas 75150-6643  
(214) 320-6240  
FAX: (214) 320-6655

Local Government: Timothy M. Timulty, P.E.  
Director of Public Service  
City of Mesquite  
BOX 851037  
Texas 75185-0137  
(972) 216-6217  
FAX: (972) 216-8100

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

## Article 12. Sole Agreement

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

## Article 13. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

## Article 14. Amendments

By mutual written consent of the parties, this contract may be amended prior to its expiration.

## Article 15. Signatory Warranty

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party they represent.

IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT have executed duplicate counterparts to effectuate this agreement.

**THE STATE OF TEXAS**

Executed for the Executive Director 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 Jay Nelson Date 3/25/02  
Jay R. Nelson, P.E. - Dallas District Engineer

**THE LOCAL GOVERNMENT**

Name of the Local Government City of Mesquite

By Mike Anderson Date 3/18/2002

Typed or Printed Name and Title Mike Anderson  
Mayor

**ATTEST:**

City Secretary: Ellen Williams Date 3/18/02

Approved as to form:

Ellen Williams  
Assistant City Attorney

## ATTACHMENT "A"

## Payment Provisions and Work Responsibilities

Description of the Estimated Cost of the Items of Work

The Project includes the entire Mesquite Section from North of Town East Blvd. to U.S. 80. Due to scheduling, funding and logical sequencing the project will need to be broken into two phases. **Phase 1** will be for Towne Centre Drive and associated ramp and roadway improvements; and **Phase 2** will be for Town East Blvd and associated ramp and roadway improvements. This will necessitate the preparation of two sets of plans, specifications and estimates (PS&E), arrangement of two funding payment schedules and the administration of two construction projects.

For identification, accounting and participation purposes the Project will be broken into eleven (11) discrete parts, see attachment "B". The eleven (11) parts are listed below and are generally separated into their respective **Phase 1** and **Phase 2** components. These parts will become the basis for payment percentages to be applied to the project for the City and State shares of the construction costs.

**Phase 1 – Towne Centre Drive**

- **Part 1** - Replace the existing 4 lane Towne Centre Drive underpass with a new 6 lane structure to include a U-turn on the north side, reconstruct the Towne Centre Drive intersection approaches to match existing conditions and reconstruct the frontage road intersections. This includes an amount for urban design treatments on the bridge and surrounding area.
- **Part 2** - Relocate and reconstruct the southbound Town East Blvd. entrance ramp and the southbound auxiliary lane from the ramp to the U.S. 80 interchange.
- **Part 3** - Construct the new Towne Centre Drive southbound exit ramp.
- **Part 4** - Relocate and reconstruct the northbound Town East Blvd. exit ramp and the northbound auxiliary lane from the U.S. 80 interchange to the ramp.

**Phase 2 – Town East Blvd.**

- **Part 5** - Reconstruct the west half of the Town East Overpass, a southbound auxiliary lane over Town East Blvd. This includes an amount for urban design treatments on the bridge and surrounding area.
- **Part 6** - Reconstruct the east half of the Town East Overpass, a northbound auxiliary lane over Town East Blvd. and a new Town Centre Drive northbound entrance ramp. This includes an amount for urban design treatments on the bridge and surrounding area.
- **Part 7** - Reconstruct the Town East Blvd. frontage road cross street intersections and portion under the overpass.

- **Part 8** – Reconstruct the Town East Blvd. intersection approaches to the frontage road intersections.
- **Part 9** – Reconstruct and revise profile of the northbound frontage road approaching Town East Blvd.
- **Part 10** – Install traffic signals at North Mesquite Drive.
- **Part 11** – Replace I.H. 635 mainlane pavement including shoulders, median barrier, illumination and signing from south of Town East Blvd. to south of Towne Centre Drive.

The City and the State, as outlined in Attachment "C", will pay for or share in the construction cost of each of the project parts as identified. The estimated total construction cost for the Project is \$28,861,705. The City's estimated total share of the construction cost of the project is \$ 6,357,558. The State's estimated total share of the construction cost of the project is \$22,504,147.

The City will also pay, in addition to the construction costs, for the design engineering, preparation of the right-of-way maps, property deed research, right-of-way acquisition, and identified utility relocations in the cross street transition approaches for a total estimated cost to the City of \$ 9,299,397.

The State will also pay, in addition to the construction costs, for the reimbursable portion of the utility relocations within State owned right-of-way, all review costs, and all construction engineering and contingency costs for an estimated total cost to the State of \$9,184,467.

2 *is 7/23/02*  
*TS 8/6/02 B.R.M.A*  
 A. ACQUISITION OF RIGHT-OF-WAY

(1) The City shall assume all costs in providing the State fee simple title free and clear of all liens and encumbrances for all land used as right-of-way for the State Highway System. The City must comply with the requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601, et seq., and documentation to support such compliance must be maintained and must be made available to the State and its representatives for review and inspection. Title right-of-way shall exclude oil, gas and sulfur which can be removed from beneath the surface of the land without the right in the owners thereof for ingress or egress to or from the surface of the land for the purpose of exploring, developing, drilling or mining the same. The City shall secure and provide to the State the required easements or fee title to any other land, such as that required for drainage outfall channels, wetland mitigation, and detention ponds, in addition to normal right-of-way as may be indicated on the approved right-of-way map. The State will provide the City standard deed forms used by the State in acquiring highway right-of-way and such forms will be used by the City in conveying title to the State. Title to the acquired right-of-way shall be secured in the name of the State or should be conveyed to the State by the City if previously acquired in the name of the City. Any deletions, additions or modifications of the forms must be approved in writing by the State. *The City shall comply with all applicable FEDERAL AND STATE LAWS, RULES AND REGULATIONS. IN LIEU OF PROVIDING TITLE INSURANCE, THE CITY SHALL PROVIDE EVIDENCE SATISFACTORY TO THE STATE THAT TITLE TO THE STATE FOR EACH PARCEL IS GOOD AND INDEFEASIBLE AND SHALL ASSUME ALL COSTS ASSOCIATED WITH ANY CURATIVE MEASURES WHETHER PRIOR TO OR AFTER CONVEYANCE TO THE STATE.*

*Page 2 of 4*  
*OKS 7/23/02*

(2) All right-of-way acquired by the City for purposes of constructing the Project shall be free and clear of all hazardous materials and contaminants. All costs associated with the detection and remediation of the hazardous materials and contaminants shall be borne by the City. When required by the State, the City shall provide written documentation from appropriate regulatory agencies that all known hazardous materials and contaminants have been removed from the right-of-way.

**B. RIGHT-OF-WAY DESCRIPTION**

The City shall assume all costs in preparing right-of-way maps, property descriptions and other data as needed to properly describe the right-of-way which the City is to acquire and provide to the State.

**C. RELOCATION ASSISTANCE**

The State shall assume all costs of providing relocation assistance as may be determined to be eligible under the Relocation Assistance Program. The State will comply with Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 and et seq. Documentation to support such compliance must be maintained by the State.

**D. UTILITY RELOCATION**

The City and State will provide all necessary utility relocation/adjustments costs as estimated and indicated in Attachment "C".

**E. PRELIMINARY ENGINEERING AND PLAN PREPARATION**

(1) The City shall assume all costs in preparing or causing to be prepared the Project's preliminary engineering necessary for the development of the plans, specifications and estimates (P.S.& E.). The P.S.& E. shall be developed in accordance with the State's 1995 Standard Specifications for Construction of Highways, Streets and Bridges or its currently approved revisions.

(2) The State shall review all engineering documentation, including the P.S.& E. upon completion or at any time it is deemed necessary by the State. Should the State determine that the engineering plans or portions thereof are unacceptable, the City shall, at its own costs, correct the documents to the satisfaction of the State. The City shall prepare and submit all engineering documentation to the State for acceptance and approval.

**F. CONSTRUCTION**

The State will advertise for construction bids, issue bid proposals, receive and tabulate the bids and award a contract for the desired construction in accordance with applicable

laws and procedures. Field changes, supplemental agreements, or additional work orders which may become necessary subsequent to the award of the contract shall be subject to the approval of the State.

2. SCHEDULE OF PAYMENT

~~In an effort to accelerate the Phase 1 project the City of Mesquite has agreed to fully fund the balance of the Phase 1 project with their total construction responsibility amount for Phase 1 and Phase 2.~~ TB \$6102 for MA 2 MS 9/15/10

The project is principally funded from three sources of funding;

- 1. The City of Mesquite
- 2. TxDOT - Surface Transportation Program - Metropolitan Mobility (STP-MM)
- 3. TxDOT - Texas Transportation Commission - Strategic Priority (Category 12)

Payment # 1 - Prior to thirty days before the Phase 1 project is let, the City shall provide to the State seventy five (75%) of the City's commitment share of the estimated construction costs for Phase 1. This is estimated in the amount of \$4,768,168 which does not include any construction engineering or contingency money. Those costs are to be paid by the State. TB \$6102 for MA 2 MS 9/15/10

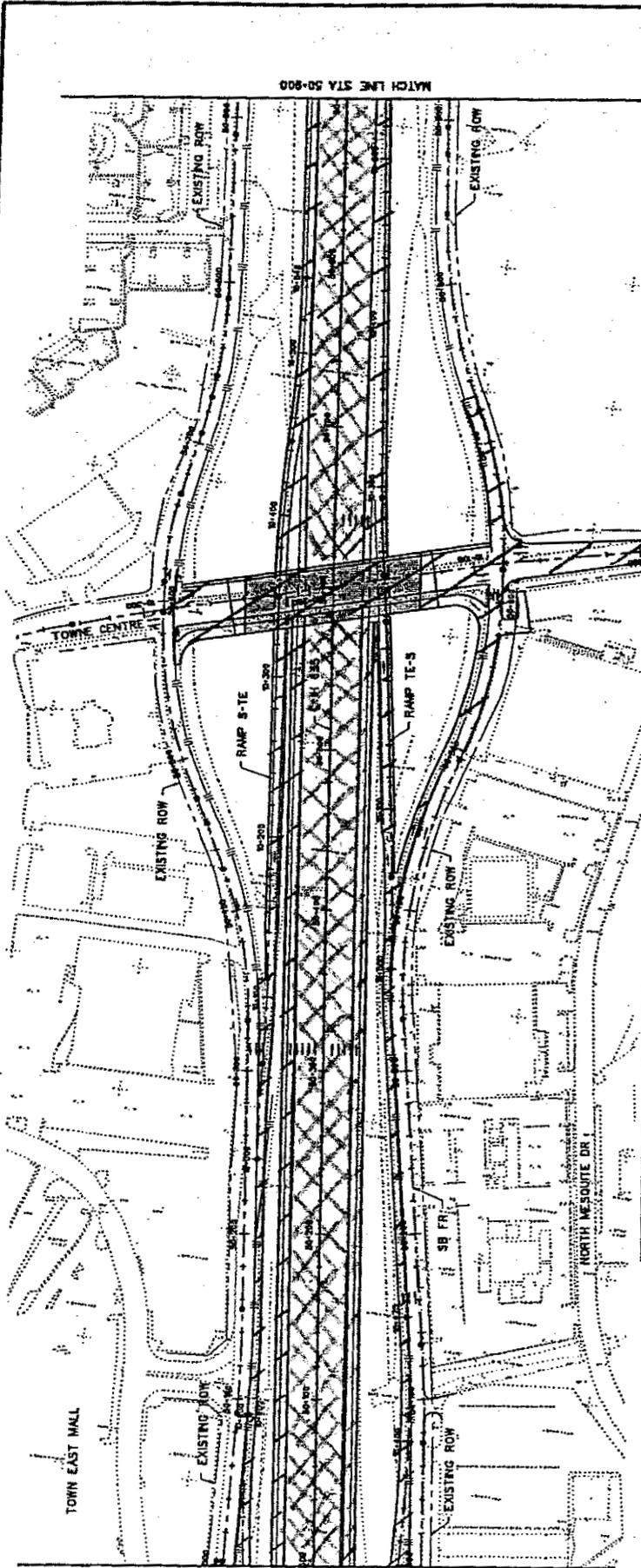
Payment # 2 - Prior to six (6) months after the Phase 1 project is let, the City shall provide to the State twenty five (25%) of the City's commitment share of the estimated construction costs for Phase 1. This is estimated in the amount of \$1,589,389 which does not include any construction engineering or contingency money. Those costs are to be paid by the State. TB \$6102 for MA 2 MS 9/15/10

3. Actual Cost Agreement

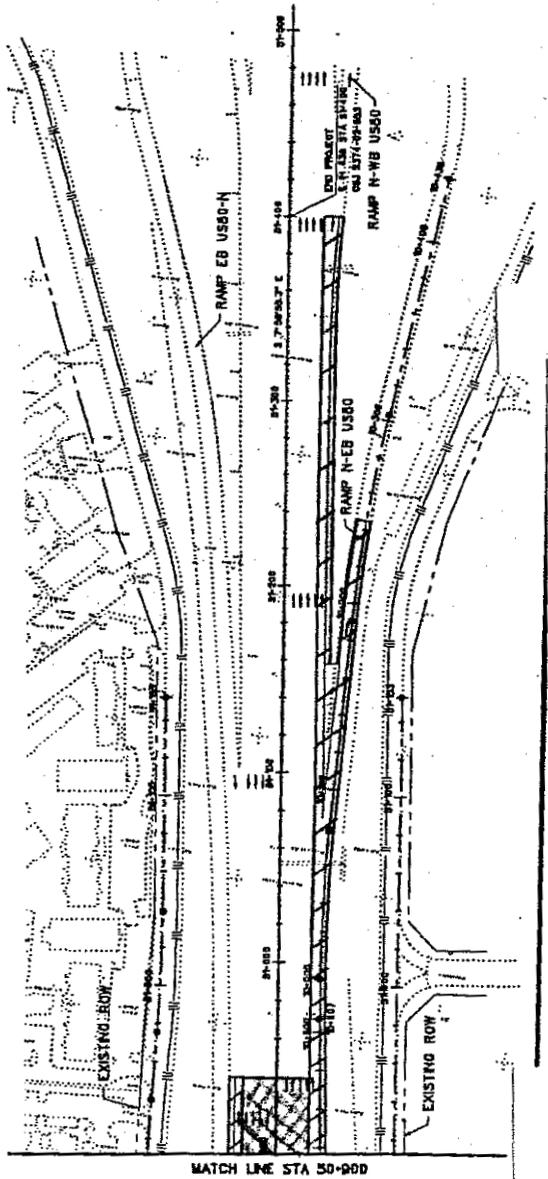
The City and State shall be responsible for the costs associated with right-of-way acquisition, right-of-way map and deed preparation, relocation assistance, utility relocations, plan preparation, and construction as outlined in Attachment "C".

Upon completion and acceptance of the services established herein, the State will prepare a final audit of all costs for which it has incurred. Upon completion of the audit, any remaining funds due the City will be promptly returned.





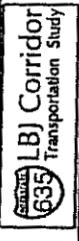
Environmental Assessment  
 Mesquite Section  
 Appendix A  
 Page A6 of A15



**LEGEND**

- PROPOSED
- EXISTING

CONVERSION FACTOR  
 1 FOOT = 0.3048 METER

**IH 635 PRELIMINARY PLAN VIEW**

**IH 30 TO US**

**CENTRA**

00050

**ATTACHMENT "C"**  
**Estimated City and State Costs**

**Phase 1 - Towne Centre Drive Bridge and Approaches, SB Exit to Towne Centre, Other Roadway Improvements**

**Phase 2 - IH 635 Bridge over Town East Blvd., Town East Blvd, NB Entrance From Towne Centre Drive, Other Roadway Improvements**

Items of Work	Description	City		State/FHWA		Total
		Share	Cost	Share	Cost	Cost
A	Acquisition of Right-Of-Way					
	Phase 1	0%	0	0%	0	0
	Phase 2 (Four Parcels at Town East Blvd.)	100%	1,057,280	0%	0	1,057,280
	A - Subtotal		1,057,280		0	1,057,280
B	Right-Of-Way Map & Deed Preparation					
	Phase 1	0%	0	0%	0	0
	Phase 2 (Four Parcels at Town East Blvd.)	100%	22,729	0%	0	22,729
	B - Subtotal		22,729		0	22,729
C	Relocation Assistance (None Anticipated)					
	Phase 1	0%	0	0%	0	0
	Phase 2	0%	0	0%	0	0
	C - Subtotal		0		0	0
D	Utility Adjustments					
	Phase 1	100%	400,000	0%	0	400,000
	Phase 2	0%	0	100%	4,660,000	4,660,000
	D - Subtotal		400,000		4,660,000	5,060,000
E	Preliminary Engineering and PS&E (Initial Contract)					
	Phase 1 & Phase 2	100%	1,461,830	0%	0	1,461,830
	E - Subtotal		1,461,830		0	1,461,830
F	Construction					
	Phase 1 (Construction Responsibility)	32%	3,479,370	68%	7,393,661	10,873,031
	Phase 2 (Construction Responsibility)	16%	2,878,188	84%	15,110,486	17,988,674
	Construction Responsibility - Subtotal		6,357,558		22,504,147	28,861,705
	Phase 1 (Construction Commitment)	58%	6,357,558	42%	4,515,473	10,873,031
	Phase 2 (Construction Commitment)	0%	0	100%	17,988,674	17,988,674
	Construction Commitment - Subtotal					28,861,705
	Construction Cost - Subtotal		6,357,558		22,504,147	28,861,705
	Construction E&C, 7% (STPMM-4C State Cat.)	7%	445,029	7%	1,575,290	2,020,319
	Share of E&C (On System State pays 100%)	0%	0	100%	2,020,319	2,020,319
	Construction Total		6,357,558		24,524,467	30,882,024
<b>A, B, C, D, E, F - Total</b>			<b>9,299,397</b>		<b>29,184,467</b>	<b>38,483,863</b>
	Payment # 1 - 75% of Phase 1 City Commitment	30 Day Prior	6,357,558	75%	4,768,168	
	Payment # 2 - 25% of Phase 1 City Commitment	6 Mo After	6,357,558	25%	1,589,389	
					6,357,558	