

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE MESQUITE INDEPENDENT SCHOOL DISTRICT TO CONSTRUCT APPROXIMATELY 183 FEET OF EIGHT-FOOT BY FOUR-FOOT STORM SEWER WITH THE McWHORTER ELEMENTARY SCHOOL RECONSTRUCTION PROJECT; AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS, the Mesquite Independent School District (MISD) competitively bid and awarded a contract to renovate and expand McWhorter Elementary School; and

WHEREAS, the City has worked with MISD to coordinate the installation of approximately 183 feet of eight-foot by four-foot storm sewer along the south side of the McWhorter Elementary School; and

WHEREAS, MISD has agreed to include the construction of the City's storm sewer line with the McWhorter Elementary School Reconstruction Project; and

WHEREAS, the construction of the City's storm sewer should eliminate erosion to the creek near the McWhorter Elementary School; and

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

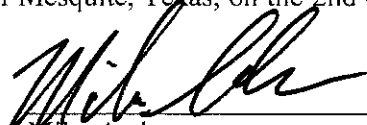
WHEREAS, an Interlocal Agreement between the City of Mesquite and MISD will allow for the construction of approximately 183 feet of eight-foot by four-foot storm sewer during the McWhorter Elementary School Reconstruction Project in an amount not to exceed \$103,752.00.

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 Interlocal Agreement attached hereto as Exhibit "A" between the City of Mesquite and Mesquite Independent School District (MISD) providing for the construction of approximately 183 feet of eight-foot by four-foot storm sewer with the McWhorter Elementary School Reconstruction Project in an amount not to exceed \$103,752.00.

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



DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 2nd day of June, 2003.



Mike Anderson  
Mayor

ATTEST:

APPROVED:

  
\_\_\_\_\_  
Judy Wornack  
City Secretary  
\_\_\_\_\_  
B. J. Smith  
City Attorney

STATE OF TEXAS            )

COUNTY OF DALLAS        )

INTERLOCAL AGREEMENT  
BETWEEN CITY OF MESQUITE AND MESQUITE INDEPENDENT SCHOOL DISTRICT  
FOR  
PARTICIPATION IN DRAINAGE IMPROVEMENTS  
AT McWHORTER ELEMENTARY SCHOOL / PARK

WHEREAS, the City of Mesquite, Texas, hereinafter called "City" and the Mesquite Independent School District, hereinafter called "District" desire to enter into an interlocal agreement for the purpose of constructing drainage improvements in McWhorter Elementary School / Park site, hereafter called " Project"; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791.001 et seq. of the Texas Government Code, provides authorization for local governments to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, funding for the installation of drainage improvements (approximately 183 linear feet of 8 feet by 4 feet concrete box culvert) is to be constructed by the District and reimbursed by the City;

NOW, THEREFORE, THIS AGREEMENT is hereby made and entered into by City and District for the mutual considerations stated herein:

WITNESSETH:

## I.

## DESCRIPTION OF PROJECT

The Project shall consist of all work necessary to install drainage improvements (approximately 183 linear feet of 8 feet by 4 foot concrete box culvert) in the McWhorter Elementary Park site.

## II.

## PROJECT MANAGEMENT

District hereby agrees to assume all responsibilities for project management and administration including but not limited to: construction contract administration, installation and materials testing except as otherwise provided for herein. City hereby agrees to designate District as agent to act on behalf of City while performing project management and administration responsibilities.

## III.

## PROJECT COSTS

City shall reimburse District the total cost for the project in an amount not to exceed \$103,752.00. The total project costs shall include the construction contract amount plus material costs, but shall not include project management and administration expense that

will be borne by the District. The amount of reimbursement will be contingent upon the project cost for the drainage project. City shall designate a single contact person that will communicate with the District.

## V.

## BIDDING OF PROJECT AND AWARD OF CONTRACT

District hereby agrees to prepare all the contract documents, to provide for advertisement for bids, to award and execute a contract for the installation of the drainage improvements and to perform all responsibilities for project management and administration, installation, and materials testing necessary to complete the installations. City hereby authorizes District to act as its agent in awarding and executing a contract between the successful bidder and City on behalf of both City and District.

## VI.

## PAYMENTS TO CONTRACTOR

Upon installation and acceptance of the drainage improvements, the invoice for City's portion of work completed by the District shall be submitted to City. Not later than thirty

(30) days after receiving an invoice, City shall pay to District their costs of the project and any other costs as provided herein.

## VII.

### CHANGE ORDERS

District 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. The contact person designated by City as provided in Paragraph III above will be notified by telephone by District 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.

## VIII.

### INSPECTION OF THE PROJECT

City and District shall each be responsible for inspection of the Project as the work progresses; District will assign appropriate personnel to coordinate all inspection activity with City. Upon determination by City of satisfactory completion of the Project, the completed improvements shall be accepted by District and City as provided below in Paragraph IX.

IX.

ACCEPTANCE AND FINAL PAYMENT

City will participate with District in the final inspection and acceptance of the project improvements. Acceptance of the improvements by City shall be evidenced by a letter of approval from the appropriate representative of City. This letter of approval shall include an authorization for final payment to the District in the amount of all sums due the District. Final settlement between City and District shall be based upon cost responsibilities of each entity as set forth in Paragraphs III.

X.

OPERATION AND MAINTENANCE

After acceptance, the operation and maintenance of the improvements constructed herein shall be provided by City. Costs for replacement of such improvements shall be borne by City.

XI.

LIABILITY OF MESQUITE

City agrees to be responsible for any liability or damages City may suffer as a result of claims, demands, costs or judgements, including all reasonable attorneys fees, against City, including workers compensation claims, arising out of the performance of the

installation and services under this agreement, or arising from any accident, injury or damage, whatsoever, to any person or persons, or to the property of any person(s) or corporations(s) occurring during the performance of this agreement and caused by the sole negligence of City, its agents, officers and/or employees. City agrees that any liability or damages as stated above occurring during the performance of this agreement caused by the joint or comparative negligence of the employees, agents and officers of City and District shall be determined in accordance with the comparative responsibility laws of the State of Texas.

## XII.

### LIABILITY OF DISTRICT

District agrees to be responsible for any liability or damages District may suffer as a result of claims, demands, costs or judgements, including reasonable attorneys fees, against District, including workers compensation claims, arising out of the performance of the construction and services under this agreement, or arising from any accident, injury or damage, whatsoever, to any person or persons, or to the property of any person(s) or corporations(s) occurring during the performance of this agreement and caused by the sole negligence of District, its agents, officers, and/or employees. District agrees that any liability or damages as stated above occurring during the performance of this agreement caused by the joint or comparative negligence of the employees, agents and officers of City and District shall be determined in accordance with the comparative responsibility laws of the State of Texas.

## XIII.

## TERM OF AGREEMENT

It is agreed by City and District that no work will commence hereunder until this agreement has been fully executed by both parties hereto.

## XIV.

## ASSIGNMENT AND AMENDMENT

This agreement may not be assigned, embodies the entire agreement between the parties, and may not be amended except in writing.

## XV.

## APPLICABLE LAW AND VENUE


This agreement shall be expressly subject to the governmental immunity of City and District as provided for in the Texas Torts Claims Act, and all other applicable state and federal law. This agreement shall be governed by and construed in accordance with the laws and case decisions of the State of Texas. Exclusive venue for any legal action regarding this agreement filed by either City or District shall be in Dallas County, Texas.

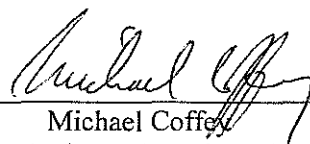


Executed this 4th day of June, 2003 by the City of Mesquite, pursuant to City Council Resolution No. 21-2003, and by the Mesquite Independent School District pursuant to Board Resolution adopted SEPTEMBER 8, 2003.

CITY OF MESQUITE


MESQUITE INDEPENDENT SCHOOL DISTRICT

By:   
Mike Anderson  
Mayor

By:   
Michael Coffey  
Assistant Superintendent  
Administration Services

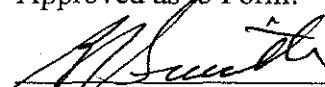
Attest:

Attest:

  
Judy Womack  
City Secretary



Approved as to Form:

  
B.J. Smith  
City Attorney