

RESOLUTION NO. 62-2003

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, REQUESTING FINANCIAL ASSISTANCE FROM THE TEXAS DEPARTMENT OF TRANSPORTATION FOR AIRPORT IMPROVEMENTS TO THE MESQUITE METRO AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL CONTRACTS AND AGREEMENTS AS NECESSARY; AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City of Mesquite (City) intends to make and maintain certain repairs to the Mesquite Metro Airport; and

WHEREAS, the general description of the project is described as an annual Routine Airport Maintenance Program (RAMP); and

WHEREAS, the City is currently eligible for funding under RAMP; and

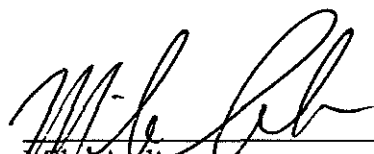
WHEREAS, the City has available and will provide at least 50 percent of the project costs with local funds.

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

SECTION 1: That the City of Mesquite (City) requests State financial assistance through the Texas Department of Transportation (TxDOT) for funding under the Routine Airport Maintenance Program (RAMP), and the City Manager is hereby authorized to execute on behalf of the City at the appropriate time all contracts and agreements with TxDOT and such other parties as shall be necessary and appropriate for the implementation of maintenance to the Mesquite Metro Airport.

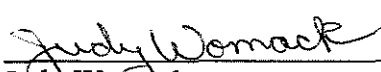
SECTION 2: That this resolution shall take effect immediately from and after its passage.


DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 3rd day of November, 2003.

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

ATTEST:

APPROVED:

  
\_\_\_\_\_  
Judy Womack  
City Secretary

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

TEXAS DEPARTMENT OF TRANSPORTATION  
GRANT FOR ROUTINE AIRPORT MAINTENANCE PROGRAM

(State Assisted Airport Routine Maintenance)

TxDOT Project No.: AM 2004MSQTE

TxDOT CSJ No.: M418MSQTE

**Part I - Identification of the Project**

TO: The City of Mesquite, Texas

FROM: The State of Texas, acting through the Texas Department of Transportation

This Grant is made between the Texas Department of Transportation, (hereinafter referred to as the "State"), on behalf of the State of Texas, and the City of Mesquite, Texas, (hereinafter referred to as the "Sponsor").

This Grant Agreement is entered into between the State and Sponsor shown above, under the authority granted and in compliance with the provisions of the Transportation Code, Chapter 21.

The project is for **airport maintenance** at the Mesquite Metro Airport.

**Part II - Offer of Financial Assistance**

1. For the purposes of this Grant, the annual routine maintenance project cost, Amount A, is estimated as found on Attachment A, Scope of Services, attached hereto and made a part of this grant agreement.

State financial assistance granted will be used solely and exclusively for airport maintenance and other incidental items as approved by the State. Actual work to be performed under this agreement is found on Attachment A, Scope of Services. State financial assistance, Amount B, will be for fifty percent (50%) of the eligible project costs for this project or \$30,000.00, which ever is less, per fiscal year and subject to availability of state appropriations.

The Sponsor may request the State to provide mowing services, services to be provided at the discretion of the State. However, mowing services will not be eligible for state financial assistance. Sponsor will be responsible for 100% of costs of any mowing services.

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Scope of Services, Attachment A, of this Grant, may be amended, subject to availability of state funds, to include additional approved airport maintenance work. Scope amendments require submittal of an Amended Scope of Services, Attachment A.

Services will not be accomplished by the State until receipt of Sponsor's share of project costs.

**Only work items as described in Attachment A, Scope of Services of this Grant are reimbursable under this grant.**

Work shall be accomplished by August 31, 2004, unless otherwise approved by the State.

2. The State shall determine fair and eligible project costs for work scope. Sponsor's share of estimated project costs, Amount C, shall be as found on Attachment A and any amendments.

It is mutually understood and agreed that if, during the term of this agreement, the State determines that there is an overrun in the estimated annual routine maintenance costs, the State may increase the grant to cover the amount of the overrun within the above stated percentages and subject to the maximum amount of state funding .

The State will not authorize expenditures in excess of the dollar amounts identified in this Agreement and any amendments, without the consent of the Sponsor.

3. Sponsor, by accepting this Grant certifies and, upon request, shall furnish proof to the State that it has sufficient funds to meet its share of the costs. The Sponsor grants to the State the right to audit any books and records of the Sponsor to verify expended funds.

Upon execution of this Agreement and written demand by the State, the Sponsor's financial obligation (Amount C) shall be due in cash and payable in full to the State. State may request the Sponsor's financial obligation in partial payments. Should the Sponsor fail to pay their obligation, either in whole or in part, within 30 days of written demand, the State may exercise its rights under Paragraph V-3. Likewise, should the State be unwilling or unable to pay its obligation in a timely manner, the failure to pay shall be considered a breach and the Sponsor may exercise any rights and remedies it has at law or equity.

The State shall reimburse or credit the Sponsor, at the financial closure of the project, any excess funds provided by the Sponsor which exceed Sponsor's share (Amount C).

4. The Sponsor specifically agrees that it shall pay any project costs which exceed the amount of financial participation agreed to by the State. It is further agreed that the Sponsor will reimburse the State for any payment or payments made by the State which are in excess of the percentage of financial assistance (Amount B) as stated in Paragraph II-1.

5. Scope of Services may be accomplished by State contracts or through local contracts of the Sponsor as determined appropriate by the State. All locally contracted work must be approved by the State for scope and reasonable cost. Reimbursement requests for locally contracted work shall be submitted on forms provided by the State and shall include copies of the invoices for materials or services. Payment shall be made for no more than 50% of allowable charges.

The State will not participate in funding for force account work conducted by the Sponsor.

6. This Grant shall terminate upon completion of the scope of services.

### **Part III - Sponsor Responsibilities**

1. In accepting this Grant, if applicable, the Sponsor guarantees that:
  - a. it will, in the operation of the facility, comply with all applicable state and federal laws, rules, regulations, procedures, covenants and assurances required by the State in connection with this Grant; and
  - b. the Airport or navigational facility which is the subject of this Grant shall be controlled by the Sponsor for a period of at least 20 years; and
  - c. consistent with safety and security requirements, it shall make the airport or air navigational facility available to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes and shall provide adequate public access during the period of this Grant; and
  - d. it shall not grant or permit anyone to exercise an exclusive right for the conduct of aeronautical activity on or about an airport landing area. Aeronautical activities include, but are not limited to scheduled airline flights, charter flights, flight instruction, aircraft sales, rental and repair, sale of aviation petroleum products and aerial applications. The landing area consists of runways or landing strips, taxiways, parking aprons, roads, airport lighting and navigational aids; and
  - e. it shall not enter into any agreement nor permit any aircraft to gain direct ground access to the sponsor's airport from private property adjacent to or in the immediate area of the airport. Further, Sponsor shall not allow aircraft direct ground access to private property. Sponsor shall be subject to this prohibition, commonly known as a "through-the-fence operation," unless an exception is granted in writing by the State due to extreme circumstances; and
  - f. it shall not permit non-aeronautical use of airport facilities without prior approval

of the State; and

- g. the Sponsor shall submit to the State annual statements of airport revenues and expenses when requested; and
  - h. all fees collected for the use of the airport shall be reasonable and nondiscriminatory. The proceeds from such fees shall be used solely for the development, operation and maintenance of the airport or navigational facility; and
  - i. an Airport Fund shall be established by resolution, order or ordinance in the treasury of the Sponsor, or evidence of the prior creation of an existing airport fund or a properly executed copy of the resolution, order, or ordinance creating such a fund, shall be submitted to the State. The fund may be an account as part of another fund, but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund as a whole. All fees, charges, rents, and money from any source derived from airport operations must be deposited in the Airport Fund and shall not be diverted to the general revenue fund or any other revenue fund of the Sponsor. All expenditures from the Airport Fund shall be solely for airport purposes. Sponsor shall be ineligible for a subsequent grant or loan by the State unless, prior to such subsequent approval of a grant or loan, Sponsor has complied with the requirements of this subparagraph; and
  - j. the Sponsor shall operate runway lighting at least at low intensity from sunset to sunrise; and
  - k. insofar as it is reasonable and within its power, Sponsor shall adopt and enforce zoning regulations to restrict the height of structures and use of land adjacent to or in the immediate vicinity of the airport to heights and activities compatible with normal airport operations as provided in Tex. Loc. Govt. Code Ann. Sections 241.001 et seq. (Vernon and Vernon Supp.). Sponsor shall also acquire and retain avigation easements or other property interests in or rights to use of land or airspace, unless sponsor can show that acquisition and retention of such interest will be impractical or will result in undue hardship to Sponsor. Sponsor shall be ineligible for a subsequent grant or loan by the State unless Sponsor has, prior to subsequent approval of a grant or loan, adopted and passed an airport hazard zoning ordinance or order approved by the State.
2. The Sponsor, to the extent of its legal authority to do so, shall save harmless the State, the State's agents, employees or contractors from all claims and liability due to activities of the Sponsor, the Sponsor's agents or employees performed under this agreement. The Sponsor, to the extent of its legal authority to do so, shall also save harmless the State, the State's agents, employees or contractors from any and all expenses, including attorney

fees which might be incurred by the State in litigation or otherwise resisting claim or liabilities which might be imposed on the State as the result of those activities by the Sponsor, the Sponsor's agents or employees.

3. The Sponsor's acceptance of this Offer and ratification and adoption of this Grant shall be evidenced by execution of this Grant by the Sponsor. The Grant shall comprise a contract, constituting the obligations and rights of the State of Texas and the Sponsor with respect to the accomplishment of the project and the operation and maintenance of the airport.

If it becomes unreasonable or impractical to complete the project, the State may void this agreement and release the Sponsor from any further obligation of project costs.

4. Upon entering into this Grant, Sponsor agrees to name an individual, as the Sponsor's Authorized Representative, who shall be the State's contact with regard to this project. The Representative shall receive all correspondence and documents associated with this grant and shall make or shall acquire approvals and disapprovals for this grant as required on behalf of the Sponsor, and coordinate schedule for work items as required.
5. By the acceptance of grant funds for the maintenance of eligible airport buildings, the Sponsor certifies that the buildings are owned by the City and/or County. The buildings may be leased but if the lease agreement specifies that the lessee is responsible for the upkeep and repairs of the building no state funds shall be used for that purpose.
6. Sponsor shall request reimbursement of eligible project costs on forms provided by the State. All reimbursement requests are required to include a copy of the invoices for the materials or services. The reimbursement request will be submitted no more than once a month.
7. The Sponsor's acceptance of this Agreement shall comprise a Grant Agreement, as provided by the Transportation Code, Chapter 21, constituting the contractual obligations and rights of the State of Texas and the Sponsor with respect to the accomplishment of the airport maintenance and compliance with the assurances and conditions as provided. Such Grant Agreement shall become effective upon the State's written Notice to Proceed issued following execution of this agreement.

#### PART IV - Nomination of the Agent

1. The Sponsor designates the State as the party to receive and disburse all funds used, or to be used, in payment of the costs of the project, or in reimbursement to either of the parties for costs incurred.
2. The State shall, for all purposes in connection with the project identified above, be the Agent of the Sponsor. The Sponsor grants the State a power of attorney to act as its agent to perform the following services:
  - a. accept, receive, and deposit with the State any and all project funds granted, allowed, and paid or made available by the Sponsor, the State of Texas, or any other entity;
  - b. enter into contracts as necessary for execution of scope of services;
  - c. if State enters into a contract as Agent: exercise supervision and direction of the project work as the State reasonably finds appropriate. Where there is an irreconcilable conflict or difference of opinion, judgment, order or direction between the State and the Sponsor or any service provider, the State shall issue a written order which shall prevail and be controlling;
  - d. receive, review, approve and pay invoices and payment requests for services and materials supplied in accordance with the State approved contracts;
  - e. obtain an audit as may be required by state regulations; the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.
  - f. reimburse sponsor for approved contract maintenance costs no more than once a month.

#### PART V - Recitals

1. This Grant is executed for the sole benefit of the contracting parties and is not intended or executed for the direct or incidental benefit of any third party.
2. It is the intent of this grant to not supplant local funds normally utilized for airport

maintenance, and that any state financial assistance offered under this grant be in addition to those local funds normally dedicated for airport maintenance.

3. This Grant is subject to the applicable provisions of the Transportation Code, Chapters 21 and 22, and the Airport Zoning Act, Tex. Loc. Govt. Code Ann. Sections 241.001 et seq. (Vernon and Vernon Supp.). Failure to comply with the terms of this Grant or with the rules and statutes shall be considered a breach of this contract and will allow the State to pursue the remedies for breach as stated below.
  - a. Of primary importance to the State is compliance with the terms and conditions of this Grant. If, however, after all reasonable attempts to require compliance have failed, the State finds that the Sponsor is unwilling and/or unable to comply with any of the terms of this Grant, the State, may pursue any of the following remedies: (1) require a refund of any financial assistance money expended pursuant to this Grant, (2) deny Sponsor's future requests for aid, (3) request the Attorney General to bring suit seeking reimbursement of any financial assistance money expended on the project pursuant to this Grant, provided however, these remedies shall not limit the State's authority to enforce its rules, regulations or orders as otherwise provided by law, (4) declare this Grant null and void, or (5) any other remedy available at law or in equity.
  - b. Venue for resolution by a court of competent jurisdiction of any dispute arising under the terms of this Grant, or for enforcement of any of the provisions of this Grant, is specifically set by Grant of the parties in Travis County, Texas.
4. The State reserves the right to amend or withdraw this Grant at any time prior to acceptance by the Sponsor. The acceptance period cannot be greater than 30 days after issuance unless extended by the State.
5. This Grant constitutes the full and total understanding of the parties concerning their rights and responsibilities in regard to this project and shall not be modified, amended, rescinded or revoked unless such modification, amendment, rescission or revocation is agreed to by both parties in writing and executed by both parties.
6. All commitments by the Sponsor and the State are subject to constitutional and statutory limitations and restrictions binding upon the Sponsor and the State (including Sections 5 and 7 of Article 11 of the Texas Constitution, if applicable) and to the availability of funds which lawfully may be applied.



Part VI - Acceptances

Sponsor

The City of Mesquite, Texas, does ratify and adopt all statements, representations, warranties, covenants, agreements, and all terms and conditions of this Grant.

Executed this 3rd day of November, 2003.

City of Mesquite, Texas

Sponsor

Kristy Ewing

Witness Signature

[Handwritten Signature]

Sponsor Signature

Executive Secretary

Witness Title

City Manager

Sponsor Title

Certificate of Attorney

I, Lillian Guillen Graham, acting as attorney for City of Mesquite, Texas, do certify that I have fully examined the Grant and the proceedings taken by the Sponsor relating to the acceptance of the Grant, and find that the manner of acceptance and execution of the Grant by the Sponsor, is in accordance with the laws of the State of Texas.

Dated at Mesquite, Texas, this 3rd day of November, 2003.

Kristy Ewing

Witness Signature

Lillian Graham

Attorney's Signature

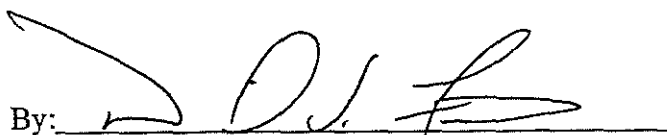
Executive Secretary

Witness Title

**Acceptance of the State**

Executed by 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 and grants heretofore approved and authorized by the Texas Transportation Commission.

STATE OF TEXAS  
TEXAS DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

David S. Fulton, Director  
Aviation Division  
Texas Department of Transportation

Date: 11/26/03

**Attachment A  
Scope of Services**

TxDOT CSJ No.:M418MSQTE

Eligible Scope Items:	Estimated Costs	State Share	Sponsor Share
	Amount A	Amount B	Amount C
PAVEMENTS	\$0.00	\$0.00	\$0.00
GENERAL MAINTENANCE	\$8,000.00	\$4,000.00	\$4,000.00
PAVEMENT MARKINGS	\$0.00	\$0.00	\$0.00
GRADING/DRAINAGE	\$0.00	\$0.00	\$0.00
MISCELLANEOUS -	\$41,160.00	\$20,580.00	\$20,580.00
MISCELLANEOUS - Nadin	\$2,340.00	\$1,170.00	\$1,170.00
MISCELLANEOUS -GCO	\$8,500.00	\$4,250.00	\$4,250.00
<b>Total</b>	\$60,000.00	\$30,000.00	\$30,000.00

Accepted by: City of Mesquite, Texas

  
 \_\_\_\_\_  
 Signature

Title: Ted Barron, City Manager

Date: November, 3 2003

Notes: (explanations of any specifications or variances as needed for above scope items) \_\_\_\_\_

GENERAL MAINTENANCE – City to contract for herbicide application

MISCELLANEOUS – City to contract for installation of GCO, fencing and hangar painting, NADIN fees

**Only work items as described in Attachment A, Scope of Services of this Grant are reimbursable under this grant.**

**CERTIFICATION OF AIRPORT FUND**

TxDOT CSJ No.: M418MSQTE

The City of Mesquite does certify that an Airport Fund has been established for the Sponsor, and that all fees, charges, rents, and money from any source derived from airport operations will be deposited for the benefit of the Airport Fund and will not be diverted for other general revenue fund expenditures or any other special fund of the Sponsor and that all expenditures from the Fund will be solely for airport purposes. The fund may be an account as part of another fund, but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund as a whole.

The City of Mesquite, Texas

(Sponsor)

By: 

Ted Barron

Title: City ManagerDate: November 3, 2003

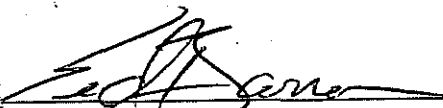
## DESIGNATION OF SPONSOR'S AUTHORIZED REPRESENTATIVE

TxDOT CSJ Number: M418MSQTE

The City of Mesquite designates, Cynthia S. Godfrey, Airport Director  
 (Name, Title)

as the Sponsor's authorized representative, who shall receive all correspondence and documents associated with this grant and who shall make or shall acquire approvals and disapprovals for this grant as required on behalf of the Sponsor.

City of Mesquite, Texas  
 (Sponsor)

By:   
 Ted Barron

Title: City Manager

Date: November 3, 2003

## DESIGNATED REPRESENTATIVE

Mailing Address: Mesquite Metro Airport

1130 Airport Blvd., Suite 100

Mesquite, TX 75181

Overnight Mailing Address: Mesquite Metro Airport

1130 Airport Blvd., Suite 100

Mesquite, TX 75181

Telephone/Fax Number: 972-222-8536

Fax: 972-222-6057

Email address (if available): cgodfrey@ci.mesquite.tx.us