

RESOLUTION NO. 07-2005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE AND APPROVE THE ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION PROVIDING FOR VOLUNTARY UTILITY RELOCATION CONTRIBUTIONS ON STATE HIGHWAY IMPROVEMENT PROJECTS FOR REPLACEMENT AND INCREASING THE SIZE OF TWO SANITARY SEWER LINES WITHIN THE LBJ FREEWAY (MESQUITE SECTION) PHASE TWO PROJECT.

WHEREAS, the City of Mesquite and the Texas Department of Transportation (TxDOT) are participating in the design and construction of roadway improvements on LBJ Freeway at Town East Boulevard (Phase Two Improvements); and

WHEREAS, TxDOT has agreed to reimburse the replacement of all city and franchise utilities required to avoid project improvements; and

WHEREAS, the City has requested that two existing sanitary sewer lines be increased in size during their replacement known as Betterment; and

WHEREAS, TxDOT requires the City to pay for all requested Betterment cost.

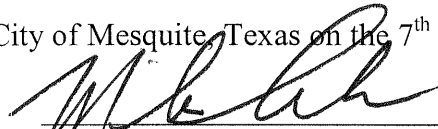
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the terms and conditions of the attached Exhibit "A" titled "ADVANCE FUNDING AGREEMENT FOR VOLUNTARY UTILITY RELOCATION CONTRIBUTIONS ON STATE HIGHWAY IMPROVEMENT PROJECTS" are hereby approved after being reviewed by the City Council and found to be acceptable and in the best interest of the City of Mesquite and its citizens.

SECTION 2. That the City Council authorizes the Mayor to execute and approve the Advance Funding Agreement for Voluntary Utility Relocation Contributions on State Highway Improvement Projects for increasing the size of two existing sanitary sewer lines crossing LBJ Freeway to 12-inch diameter pipe as detailed in Exhibit "A."

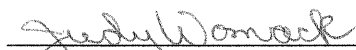
SECTION 3. That this resolution shall take effect immediately from and after its passage.

DULY RESOLVED by the City Council of the City of Mesquite, Texas on the 7th day of February, 2005.




Mike Anderson
Mayor

ATTEST:



Judy Womack
City Secretary

APPROVED:



B. J. Smith
City Attorney

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY UTILITY RELOCATION CONTRIBUTIONS
ON STATE HIGHWAY IMPROVEMENT PROJECTS**

THIS AGREEMENT IS MADE BY AND BETWEEN the State of Texas, acting through the Texas Department of Transportation ("State") and the City of Mesquite ("Utility"),

WITNESSETH

WHEREAS, Transportation Code, Chapters 201, 221, 227 and 361, authorize the State to lay out, construct, maintain, and operate a system of streets, roads and highways that comprise the State Highway System; and,

WHEREAS, Transportation Code, Chapter 203, Subchapter E, Transportation Code §227.015, Transportation Code, §361.234 authorize the State to regulate the placement of public utility facilities along a state highway; and,

WHEREAS, Texas Transportation Commission Minute Order Numbers 108680 & 107737 authorizes the State to undertake and complete a highway improvement generally described as: construction of an interchange ("Project"); and,

WHEREAS, Utility possesses facilities that are affected by the abovementioned highway improvement, and Utility and the State agree that it is more economical and/or efficient for such relocation to be effected by including said contract in the State's highway construction contract; and,

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them kept and performed as hereafter set forth, the State and Utility 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 Utility 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 are eligible for relocation reimbursements or for which Utility 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 to be paid for by payments to the State, Attachment A - Payment Provision and Work Responsibilities, also specifies those Project items of

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work that are the responsibility of Utility and will be carried out and completed by Utility, at no cost to the State.

Article 3. 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 or utility work is not in the best interest of the State.

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

Article 4. Right of Access

If Utility is the owner of any part of the Project site, Utility shall permit the State or its authorized representative access to the site to perform any activities required to execute the work. Utility 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 5. Responsibilities of the Parties and Indemnity

Utility acknowledges that it is not an agent, servant, employee of the State, nor is it engaged in a joint enterprise, and 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.

To the extent permitted by law, Utility agrees to indemnify and hold harmless the State, its agents and employees, from all suits, actions or claims and from all liability and damages for any and all injuries or damages sustained by any person or property in consequence with the performance of design, construction, maintenance or operation of the utility facility. Such indemnity includes but is not limited to any claims or amounts arising or recovered under the "Worker's Compensation Law", the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as time to time may be amended.

Article 6. Sole Agreement

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

Article 7. Successors and Assigns

The State and Utility 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 8. Amendments

By mutual written consent of the parties, the scope of work and payment provisions of this agreement may be amended prior to its expiration.

Article 9. 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 *Utility Accommodation Rules* as set forth in 43 *Texas Administrative Code* §21.31 et. seq. adopted by the State and incorporated herein by reference, or special specifications approved by the State.

Article 10. Maintenance

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

Article 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:

Utility:	State:
The City of Mesquite Attn: Director of Public Works 1515 N. Galloway Mesquite, TX 75149	Texas Department of Transportation Attn: District Engineer 4777 E. Highway 80 Mesquite, TX 75150

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 delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

Article 12. 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.

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IN WITNESS WHEREOF, THE STATE AND THE UTILITY 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 William Hale Date 10/3/05
William Hale, P.E.
Dallas District Engineer

FOR UTILITY

Name City of Mesquite
By Mike Anderson Date 2/14/05
Typed or Printed Name and Title Mike Anderson
Mayor

Attest:

By Judy Womack Date 2/14/05

ATTACHMENT A
Payment Provision
and Work Responsibilities

Description of the Work Items

The parties agree that the existing 18 inch water main and two 8 inch sanitary sewer lines shall be relocated and adjustments shall be made along IH 635. The waterline/sanitary sewer facilities shall be owned, operated, and maintained by Utility from and after completion and final acceptance by the State and Utility. The estimated total construction cost for the relocated and adjusted facilities is **\$1,807,534.30**. The parties agree that it is their intent to complete the relocation improvements within this estimate of cost.

Actual Cost Agreement

Utility will be responsible for paying all costs associated with the planning, specification, and estimate (PS&E) development, and construction of the proposed utility work to the extent such is not reimbursed pursuant to state law. All the costs associated with construction of the waterline items for the Project shall be provided as defined under the Standard Utility Agreement, Utility Joint Use Agreement, and/or the Agreement to Contribute Funds executed between the State and Utility, which are attached to and made a part of this contract.

Schedule of Payments

Forty - Five (45) days prior to the date set for receipt of the Project construction bids, Utility shall remit its financial share for the Project's estimated utility construction costs. Utility must advance to the State one hundred percent (100%) of its share of the estimated Project utility construction costs. The amount to be advanced for the utility improvements is estimated to be **\$102,666.30**, including construction engineering and contingencies (10%). (See Attachment B - Estimated Utility Costs)

In the event the State determines that additional funding is required by Utility at any time during the construction administration of the utility improvements, the State will notify Utility in writing. Utility will make payment to the State within thirty (30) days from receipt of the State's written notification.

Upon completion of the Project and associated utility improvements, the State will perform an audit of the Project and utility improvement costs. In the event it is determined that the funding provided by Utility will be insufficient to cover the costs for the utility work outlined under this Agreement, the State will provide a written notice to Utility. Utility will make payment to the State within thirty (30) days from the receipt of the State's written notification. In the event the amount paid is more than the actual cost of Utility's share, as herein established, then the excess amount will be returned to Utility.

Work Responsibilities

The **Utility** shall provide the following services under this contract:

- Responsible for engaging the services of a Texas Registered professional Engineer to prepare drawings and technical specifications for waterline/sanitary sewer relocations and adjustments along IH 635. Utility will provide the plans and specifications to the State to include in the

current planning specifications and estimate package being prepared by representatives of TxDOT's Southeast Dallas County Area Office.

- Secure all necessary permitting as may be required for the installation of the water line.
- Arrange and coordinate with the contractor, through the State, materials and equipment testing, rejection of all work not conforming to minimum requirements of the construction contract documents, maintenance of the proposed waterline during construction, and the relocation of the waterline and connection of services to customers.
- Advise the State of work that Utility determines should be corrected or rejected.
- Arrange, observe, and inspect all acceptance testing and notify the State of the results of these activities.
- Provide inspection services for the construction, notify the State of defects and deficiencies in the work, and observe actions of the contractor to correct such defects and deficiencies.
- Assume all responsibility for the maintenance of the existing waterline during and upon completion of the construction contract.
- Ensure all TCEQ and all other regulatory rules, regulations and laws are strictly adhered to.
- Prepare and submit both a certificate of substantial completion and a list of observed items requiring completion or correction for the relocations and adjustments to the Project Engineer for his/her concurrence.
- Utility agrees that all construction activities performed by Utility's staff for the relocations and adjustments will be coordinated through the Project Engineer.

The **State** shall provide the following services under this contract:

- Combine the waterline/sanitary sewer relocation and adjustment plans with the plans being prepared for the Project.
- Review and approve the final construction plans prior to any construction-related activities. In order to ensure federal and/or state funding eligibility, projects must be authorized by the State prior to advertising for construction.
- Advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project.
- Negotiate and administer all field changes and change orders required for the Project. All change orders increasing construction costs for Utility's Project shall be submitted to Utility for review and approval together with an evaluation. Utility agrees to review and either approve or disapprove all change orders within five (5) business days after receipt of such order unless Utility Board's approval is necessary in which case Utility shall bring the item to Utility Board as soon as reasonably possible.
- Provide overall project management to supervise the day-to-day activities of the construction and monitor the activities of the contractor to promote the timely and efficient completion of the Project in accordance with the approved Plans and Specifications and construction schedule.
- Conduct field observations and coordinate with Utility's inspectors and the contractor to cure defects and deficiencies in the construction prior to final acceptance.
- Make timely payment to the contractor for work performed in connection with the Project.
- Ensure access and permit Utility's inspectors and other authorized representatives to inspect the waterline construction at all times.

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- Conduct and coordinate final inspection of the Project in the presence of Utility's Engineer and Inspector, transmit final list of items to be completed or repaired and observe contractor correction of same.
- Maintain job file.

ATTACHMENT B Estimated Utility Costs

Based on various calculations, Following are those amounts due and payable for Utility District's costs associated with this project.

Total Estimated Costs
\$1,807,534.30, including 10% E&C.

Less Betterment Amount Due from Utility
\$102,666.30

Amount of total utility relocation Costs
\$1,704,868.00

Estimated Amount Eligible for Reimbursement
(Calculated eligibility Ratio – 94.32%)
\$1,704,868.00

Amount of Utility Adjustment Due from Utility
\$102,666.30

Estimated amount to be included in Construction Agreement

A. Betterment	\$102,666.30
B. Utility Adjustment	<u>\$1,704,868.00</u>
GRAND TOTAL	<u>\$1,807,534.30</u>

Betterment Ratio Calculation

Estimated Betterment Costs

1. Two 8 inch sewers lines will be replaced with 12 inch sewer lines.

Betterment Calculation:		
Total Costs of Betterment (Estimated)	-	<u>\$102,666.30</u>
Total Costs of Project (Estimated)	-	<u>\$1,807,534.30</u>

Betterment Percentage for final cost determination: 5.68% of final cost of relocation