

RESOLUTION NO. 54-2006

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE EXECUTION OF A REVISED PROJECT SUPPLEMENTAL AGREEMENT TO THE MASTER AGREEMENT GOVERNING TRANSPORTATION MAJOR CAPITAL IMPROVEMENT PROJECTS WITH DALLAS COUNTY TO PARTICIPATE IN THE DESIGN AND RIGHT-OF-WAY ACQUISITION FOR ROADWAY IMPROVEMENTS IN CONJUNCTION WITH THE MESQUITE SECTION OF THE LBJ CORRIDOR PROJECT, PHASES 2 AND 2B.

WHEREAS, the City of Mesquite has requested and Dallas County has agreed to participate in the design and right-of-way acquisition for roadway improvements in conjunction with the Mesquite Section of the LBJ Corridor Project, Phases 2 and 2B (the "Project"); and

WHEREAS, the Interlocal Cooperation 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, the City of Mesquite (the "City") and Dallas County entered into a Master Interlocal Agreement on June 11, 2001, providing for the design and construction of transportation improvements on roadways inside Dallas County with the City that are on the North Central Texas Council of Governments' Regional Thoroughfare Plan and approved for participation for the Program Years 2004, 2005 and 2006; and


WHEREAS, the City and Dallas County entered into a Project Supplemental Agreement on January 17, 2006, acknowledging and approving the revised funding amounts and committing the City to participation in the project funding; and

WHEREAS, the agreement has been revised to include payment for the right-of-way acquisition along Town East Boulevard.

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

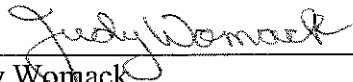
SECTION 1. That the Mayor is hereby authorized to execute the Revised Project Supplemental Agreement, attached hereto as Exhibit "A," to the Master Agreement Governing Transportation Major Capital Improvement Projects between the City of Mesquite and Dallas County for the design and right-of-way acquisition for roadway improvements in conjunction with the Mesquite Section of the LBJ Corridor Project, Phases 2 and 2B, in an amount not to exceed \$1,742,271.00.

DULY RESOLVED by the City Council of the City of Mesquite, Texas on the 21st day of August, 2006.




Mike Anderson
Mayor

ATTEST:



Judy Womack
City Secretary

APPROVED:



B. J. Smith
City Attorney

COURT ORDER

46

ORDER NO. 2007 - 547

DATE: MARCH 6, 2007

STATE OF TEXAS
COUNTY OF DALLAS

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BE IT REMEMBERED, at a regular meeting of the Commissioners Court of Dallas County, Texas, held on the 6th day of March, 2007, on motion made by Mike Cantrell, Dist. #2 and seconded by John Wiley Price, Dist. #3, the following order was adopted:

WHEREAS, Dallas County and the City of Mesquite entered into a Project Supplemental City/County Agreement (PSA) in connection with MCIP Project 21905, IH 635 Frontage Road/Ramps from US 80 to North of Town East Boulevard pursuant to Court Order 2006-415 dated February 28, 2006 which was supplemental to the Master Agreement authorized by Court Order 2001-1075 dated June 5, 2001; and

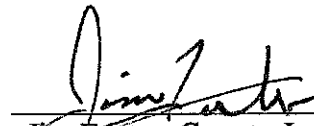
WHEREAS, City has requested that Court Order 2006-415 be amended to clarify County's participation in design engineering and right of way acquisition in addition to actual construction costs; and

WHEREAS, City also requests amendment to the PSA authorized by Court Order 2006-415, Article III. First Paragraph, and the paragraph on page 2 entitled Article III, C., 1, as more fully described in the attached Supplemental Project Specific Agreement to the PSA; and

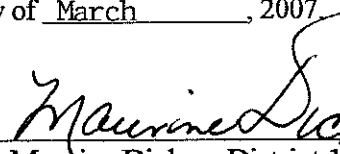
WHEREAS, the Director of Public Works has reviewed the Supplemental Project Specific Agreement to the PSA and verified County participation in right of way acquisition, etc., and recommends that Court Order 2006-415 be amended to clarify County's participation in the total project costs in an amount not to exceed \$1,742,271.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the County Judge is hereby authorized and directed to execute Amendment No. 1 to Court Order 2006-415 to clarify County participation in design engineering, right-of-way acquisition in addition to construction costs of MCIP Project 21905, IH 635 Frontage Roads/Ramps in an amount not to exceed \$1,742,271 less County in-house project delivery costs, said project expenditures to be paid from MCIP Fund 196, Project 8201 and as more fully described in the attached Amendment No. 1 to the Supplemental Project Specific Agreement to the MASTER AGREEMENT.

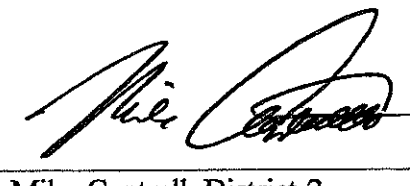
DONE IN OPEN COURT, this the 6th day of March, 2007.




Jim Foster, County Judge



Maurine Dickey, District 1



Mike Cantrell, District 2




John Wiley Price, District 3

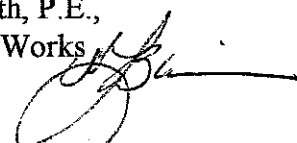
ABSENT

Kenneth A. Mayfield, District 4

Recommended for Approval:



Donald R. Holzwarth, P.E.,
Director of Public Works



STATE OF TEXAS §
COUNTY OF DALLAS §

AMENDMENT NO. I TO THE

PROJECT SUPPLEMENTAL CITY/COUNTY AGREEMENT (PSA)

**TO THE MASTER CAPITAL IMPROVEMENT PROJECT INTERLOCAL AGREEMENT
BETWEEN CITY OF MESQUITE AND COUNTY OF DALLAS**

FOR IH 635 FRONTAGE ROADS/RAMPS MCIP PROJECT 21905

THIS AMENDMENT NO. I TO THE SUPPLEMENTAL AGREEMENT to the MASTER AGREEMENT GOVERNING TRANSPORTATION MAJOR CAPITAL IMPROVEMENT PROJECTS (“MASTER AGREEMENT”) and PROJECT SUPPLEMENTAL CITY/COUNTY AGREEMENT (PSA) 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, for the purpose of Transportation Improvements on IH 635 Frontage Roads/Ramps from US 80 to North of Town East Boulevard, hereinafter called “PROJECT.”

Article I. INCORPORATED DOCUMENTS

This AMENDMENT NO. 1 TO THE SUPPLEMENTAL AGREEMENT incorporates the MASTER AGREEMENT authorized by Court Order No. 2001-1075 dated June 11, 2001; the PROJECT SUPPLEMENTAL CITY/COUNTY AGREEMENT (PSA) TO THE MASTER CAPITAL IMPROVEMENT PROJECT INTERLOCAL AGREEMENT BETWEEN CITY OF MESQUITE AND COUNTY OF DALLAS FOR IH 635 FRONTAGE ROADS/RAMPS, PROJECT 21905 and as amended by Court Order 2006-415 dated February 28, 2006, as if each was reproduced herein word for word. In the event of any conflict among the Master Agreement and the Project Supplemental Agreement and this AMENDMENT NO. I; this AMENDMENT shall control.

Article II. EFFECTIVE DATE

THIS SUPPLEMENTAL AGREEMENT BECOMES EFFECTIVE when signed by the last party whose signing makes the respective agreement fully executed (THE “EFFECTIVE DATE”).

Article III. AMENDMENT NO. 1

Said PSA dated July 7, 2005, is hereby amended with respect to the items cited below and no other portion of either agreement is changed or voided thereby.

A. Article III. THE CITY and COUNTY COVENANT AND AGREE AS FOLLOWS:

A. First paragraph shall be amended to read as follows:

“CITY will be the LEAD AGENCY for the PROJECT. This AGREEMENT, is specifically conditioned upon the CITY providing supplemental funding and the timely payment of the Total Local Government funding contribution to the Texas Department of Transportation. CITY will acquire the right of way necessary for the project. The following are amendments to the MASTER AGREEMENT:“

B. The following paragraphs are to be inserted subsequent to A (above).

1. To acquire all right of way necessary for the project at City cost and to independently provide any additional funding. City’s capital funds for this project have been designated and the COUNTY funds are currently available in FY 2005. All actual project expenditures are eligible for reimbursement by COUNTY participation including design engineering, right of way acquisition, construction costs and County’s In-House Project delivery costs which are verifiable by good accounting practices.

2. COUNTY participation for the subject PROJECT is not to exceed **One Million Seven Hundred Forty-two Thousand Two Hundred Seventy-one and no hundredths Dollars (\$1,742,271.00)**, \$1,000,000.00 of the COUNTY’s NOT TO EXCEED AMOUNT shall be COUNTY’s contribution for right of way acquisition. COUNTY and CITY agree that all other costs, expenses, fees and expenditures necessary for the timely delivery of the Right of Way for the project, including, but not limited to, relocation cost, determination of and remediation of hazardous or regulated materials, CITY requested items, if any, and clearance of improvements or other items required for acceptance of the project right of way for the construction of the project shall be paid by the CITY without contribution or cost to COUNTY.

C. To contribute to the parcel acquisition and utility relocation and/or adjustment under the terms and conditions as follows:

- a) COUNTY agrees to reimburse CITY for actual direct cost of :
 - (1) just compensation paid for right of way parcel acquisition or award of Special Commissioners in eminent domain proceedings,
 - (2) the eligible utility relocation and/or adjustment cost, less all betterments, salvage value, and any and all other credits or offsets,

- (3) the cost of expert witnesses, title policy and closing costs,
- (4) the Special Commissioners fees, and litigation costs excluding attorneys fees, and
- (5) the amount eminent domain judgments exceed the award of Special Commissioners. COUNTY is to receive credit for all reductions in the amount of judgments less than the award of Special Commissioners in eminent domain proceedings.

b) COUNTY and CITY agree that such contribution shall not be utilized for and no contribution will be considered or paid for :

- (1) residential or commercial relocation associated with right of way acquisition,
- (2) damages caused by CITY requirements not found in the Federal Uniform Acquisition and Relocation Act of 1971 as amended,
- (3) the remediation of any hazardous or regulated materials and any associated cost or expense thereof,
- (4) Right of way clearance,
- (5) betterments ,
- (6) enhancements,
- (7) any other cost or expense not specifically agreed herein to be an obligation of COUNTY, and
- (8) any cost, expense or liability that exceeds the not to exceed amount as shown in Section D hereinabove.

D. CITY and COUNTY agree that the following are conditions precedent to COUNTY contribution for parcels acquired:

- (a) CITY may invoice for the direct cost of parcel acquisition not more than once each thirty (30) day period.
- (b) CITY shall attach to each invoice for each parcel acquired by Eminent Domain a copy of the project requirements, including property description; a copy of the recorded deed showing the volume and page of recordation, and a copy of the closing statement signed by both CITY and Seller.
- (c) CITY shall attach to each invoice for each parcel acquired by Eminent Domain a copy of the project requirements, including property description; a copy of the Award of Special Commissioners signed by

the Judge of the Court in which such proceedings occur, a copy of a certificate from the Clerk of the Court showing that such sum as may have been awarded by the Special Commissioners has been deposited into the registry of the Court for the benefit of the owners; and any additional requirements have been completed to show that the City is entitled to possession of the property.

(d) CITY shall attach to each invoice for each parcel acquired by negotiation or eminent domain, the following:

i) A copy of the Title Insurance policy showing no liens or encumbrances or a certification from the CITY stating that all lien(s) and encumbrance (s) have been removed from the property, and that all taxes are paid.

ii) Certification that either there are no hazardous or regulated materials on the property or TCEAQ or other regulatory authority closure documentation showing that such has been remediated and that remediation is complete.

iii) Certification of appraisals and title policy costs.

iv) Certification of appraisal(s) and title policy costs;

v) Certification that the amount paid is the Just Compensation of the Utility Compensation of the parcel.

E. CITY agrees to prepare, at a cost not to exceed \$742,271 the Design Engineering required to adequately set forth the engineering requirements of the PROJECT as determined by mutual agreement of COUNTY and CITY. CITY is fully aware of the proposed design of the PROJECT and the future use of such area by county residents. CITY shall design the facility in accordance with the Standard Project Design to permit use of County's residents without restrictions and/or additional relocation, adjustment changes, or cost. CITY is solely responsible for the sufficiency, form, content and engineering requirements of the project, including and limited to the COUNTY approved design scope of services as agreed between the parties. CITY hereby agrees to correct, at its sole cost and expense, any defect or problem in the project requiring correction, replacement or repair that is the result of errors or omissions in the project design. CITY also agrees to be responsible for any other costs, expenses, or damages caused by its errors or omissions in the Rearrangement Design.

1 Professional Engineers will be selected in accordance with the Texas Professional Services requirements and shall include the requirement that all Project Design documents shall be signed and sealed by a Professional Engineer licensed by the State of Texas.

2 Such design documents shall be organized in a form that separates the items included in the Standard Basic Project and Road or Street Amenities which are the sole cost and expense of the CITY and not reimbursable by COUNTY. These design documents shall be suitable for inclusion in the City's Invitation for Bid, without change for the selection of the Construction Contractor.

3 CITY will provide to COUNTY all design documents for the project in final form, as described in paragraph E. above, at each review milestone for review and comment by COUNTY prior to inclusion in the IFB. COUNTY, shall have not less than fourteen (14) calendar days subsequent to the date of receipt of such documents, to review such documents to insure conformity with the scope of service. Review and comment by COUNTY will not act, nor be construed, to relieve or reduce CITY's responsibility for the sufficiency of any engineering requirements.

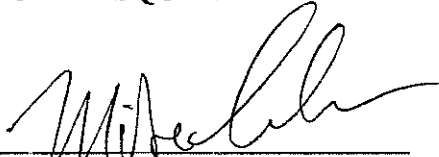
- F. In the event that cost of design and right of way acquisition shall be accomplished for less than the COUNTY not to exceed amount of One Million Seven Hundred Forty-two Thousand Two Hundred Seventy-one Dollars, (\$1,742,271), CITY may use the remainder of COUNTY contribution for construction of the project.
- G. Before final payment is made CITY and COUNTY shall be in agreement as to actual project costs.
- H. In order to certify compliance with the expenditure of the PROJECT funding for this AGREEMENT, the CITY agrees to furnish to the COUNTY, its Auditor, or its designated representative(s) the unrestricted right to audit any and all accounting and other records regarding any funds paid or claimed under this agreement, including, but not limited to all books, records, reports, tickets, deposits, expenditure, budget or any item therein, supporting data, computer records and programs, and all items of hardware, software or firmware, or any other item utilized by the CITY regarding this AGREEMENT (records). CITY contracts and agrees that all records shall be kept and maintained for a period of time not less than four (4) years from the date of the termination of this AGREEMENT. Such records shall be provided to the COUNTY in Dallas County, Texas and available for any audit at any time upon request.
- I. The results of any audit may be furnished to CITY for comment. In the event that any audit shall determine that moneys are owed to COUNTY such sums are deemed to be due and payable to Dallas County, Texas, within thirty (30) days of the date of an invoice for such cost being deposited in the US Mail, Certified Mail, Return Receipt Requested.

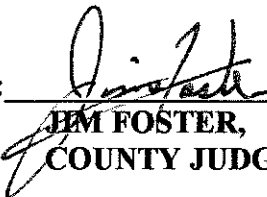
The City of Mesquite, State of Texas, has executed this Agreement pursuant to duly authorized City Council Resolution 54-2006, Minutes N/A dated the 21st day of August, 2006.

The County of Dallas, State of Texas, has executed this Agreement pursuant to Commissioners Court Order Number 2007-547 and passed on the 6th day of March, 2007.


CITY OF MESQUITE

COUNTY OF DALLAS

BY: 
MIKE ANDERSON
MAYOR

X BY: 
JIM FOSTER,
COUNTY JUDGE

APPROVED AS TO FORM:

BY: 
Bob Schell
Chief, Civil Section

Dallas County District Attorney's Office*By law, the District Attorneys' Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).