

RESOLUTION NO. 59-2006

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT NO. 4 TO THE ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION PROVIDING FOR 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 (the "City") wishes to improve traffic flow along Interstate 635 between U.S. Highway 80 and north of Town East Boulevard; and

WHEREAS, the City has requested that the Texas Department of Transportation ("TxDOT") 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 ("the Project"); and

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

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

WHEREAS, on March 4, 2002, pursuant to Resolution No. 10-2002, the City Council approved the Advance Funding Agreement with TxDOT; and

WHEREAS, Amendment No. 1 to the Master Advance Funding Agreement was approved by City Council on March 1, 2004; Amendment No. 2 was approved by City Council on June 7, 2004; and Amendment No. 3 was approved by City Council on December 6, 2004; and

WHEREAS, the City and TxDOT have agreed to provide necessary engineering services to include review of plan sheets for change orders, design of change orders, review of product submittals, analysis of critical path or other construction schedules, related engineering work and provide recommendations to TxDOT during the construction phase of the Project.

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

SECTION 1. That the terms and conditions of the amendment attached hereto as Exhibit "A," titled "ADVANCE FUNDING AGREEMENT AMENDMENT NO. 4," are hereby approved after being reviewed by the City Council and that the amendment is 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 the Advance Funding Agreement Amendment No. 4 with the State of Texas through the Texas Department of Transportation ("TxDOT") for use 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 5th day of September, 2006.



Mike Anderson
Mayor

ATTEST:

APPROVED:



Judy Wornack
City Secretary



B. J. Smith
City Attorney

District: 18
Code Chart 64 #: 27950
CSJ: 2374-02-098; 2374-02-110
Project Name: IH 635
Limits: North of Town East Blvd to US 80
Project #: NH 2002 (815); STP () MM

STATE OF TEXAS §
COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
AMENDMENT #4**

THIS AMENDMENT IS MADE BY AND BETWEEN the State of Texas, acting through the Texas Department of Transportation, hereinafter called the State, and the City of Mesquite, acting by and through its duly authorized officials, hereinafter called the "City."

WITNESSETH

WHEREAS, the State and the City executed a contract on July 23, 2002 to effectuate their agreement to provide highway improvements described as the Mesquite Section located along IH 635 North of Town East Boulevard to US 80 the City of Mesquite; and,

WHEREAS, it has become necessary to amend that contract;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, the State and the City do agree as follows:

AGREEMENT

Article 1. Description of Amended Items

Attachment A, Payment Provisions and Work Responsibilities is amended by adding under Phase 2 the following, "At the request of the State, the City will provide necessary engineering services to include reviewing plan sheets for change orders, design of change orders, review of product submittals, analysis of critical path or other construction schedules, related engineering work and provide recommendations to the Project during the construction phase of the Project. The maximum amount payable by the State, upon approval and acceptance of the requested work, to the City during the construction phase of the Project is \$300,000", as described in the revised Attachment A, hereto attached and made part thereof.

Attachment C, Estimated City and State Costs, is hereby amended to add \$300,000 for the cost to the State for requested City's engineering services during the construction phase of the Project, as described in the revised Attachment C, hereto attached and made part hereof.

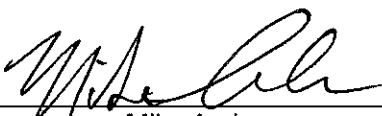
All other provisions of the original contract are unchanged and remain in full force and effect.

Article 2. Signatory Warranty

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

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

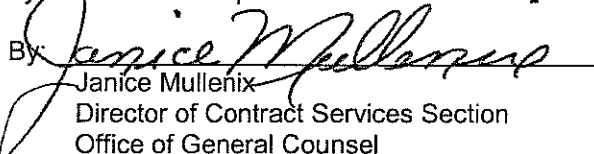
THE CITY – CITY OF MESQUITE

By 
Mike Anderson
Mayor

Date: 9.8.06

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 
Janice Mullenix
Director of Contract Services Section
Office of General Counsel
Texas Department of Transportation

Date: October 4, 2006

REVISED ATTACHMENT A

PAYMENT PROVISIONS AND WORK RESPONSIBILITIES

1. DESCRIPTION OF THE ESTIMATED COST OF THE ITEMS OF WORK

The Project includes the entire Mesquite Section from North of Town East Boulevard to US 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 Boulevard 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 Boulevard entrance ramp and the southbound auxiliary lane from the ramp to the US 80 interchange.
- **Part 3** – Construct the new Town Centre Drive southbound exit ramp.
- **Part 4** – Relocate and reconstruct the northbound Town East Boulevard exit ramp and the northbound auxiliary lane from the US 80 interchange to the ramp.

Phase 2 – Town East Boulevard

- **Part 5** – Reconstruct the west half of the Town East Overpass, a southbound auxiliary lane over Town East Boulevard. 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 Boulevard 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 Boulevard frontage road cross street intersections and portion under the overpass.

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- **Part 8** – Reconstruct the Town East Boulevard intersection approaches to the frontage road intersections.
- **Part 9** – Reconstruct and revise profile of the northbound frontage road approaching Town East Boulevard.
- **Part 10** – Install traffic signals at North Mesquite Drive
- **Part 11** – Replace IH 635 mainlane pavement including shoulders, median barrier, illumination and signing from south of Town East Boulevard 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 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 \$29,184,467.

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.

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- (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 the 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 (PS&E). The PS&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 PS&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, 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

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)

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Payment # 1 – Prior to thirty days before the **Phase 2** 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 2**. 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.

Payment # 2 – Prior to six (6) months after the **Phase 2** 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 2**. 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.

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.

4. AMENDED ITEMS:

AMENDMENT NO. 1, executed on April 20, 2004, is added to read " At the State's request, the following preliminary engineering work items to the Project: (1) ramp diverge and merge design improvements to allow transition from the improved auxiliary lane additions within the projects to the first set of existing IH 30 and US 80 direct connection ramps; (2) the development of the additional temporary bridge width over Town East Boulevard and the traffic control changes to implement the seven (7) lane scheme; and extend review and production time for a project letting of October/November of 2004 to incorporate utilities into the Project and secure the remaining State funding of the Project."

Attachment C is amended to increase by \$130,000 the State's portion of the cost for the State requested additional preliminary engineering work items as outlined in the revised Attachment C, hereto attached and made part hereof.

AMENDMENT NO. 2, executed on July 14, 2004, is added to read, " Phase 1 is hereby amended to modify the irrigation system at the request of the City. The City, at no cost to the State, will fully fund the total modification of the irrigation system at an estimated cost of \$30,735.05 which includes construction and construction engineering and contingency."

AMENDMENT NO. 3, executed on January 7, 2005, is added to read " At the State's request, additional preliminary engineering and PS&E work for the extension of the Project limits from IH 635 Sta. 1043+93.55 to Sta. 1022+00 at a cost to the City of \$742,271 which is identified as Phase 2B in the revised Attachment B, Location Map; and to construct an added Southbound Frontage Road along IH 635 between IH 30 and Town East Boulevard, a ramp from Westbound IH 30 to Southbound IH 635 Direct Connector to the Southbound IH 635 Frontage Road, and a ramp from the Southbound IH 635 mainlanes to the Southbound IH 635 Frontage Road at a cost to the State of \$9,857,600 identified as Phase 2B in the revised Attachment C, Estimated City and State Costs.

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Attachment C, Estimated City and State costs is hereby amended to increase by \$742,271 for the cost to the State for the City's preliminary engineering and PS&E work for Phase 2B and by \$9,857,600 for the added State's cost for the construction of Phase 2B. The City's cost of \$742,271 for the preliminary engineering and PS&E work for Phase 2B as requested by the State, will be reallocated by the State towards reducing the City's construction cost by \$742,271 as described in the revised Attachment C, hereto attached and made part hereof.

AMENDMENT NO. 4 – is added to read “ At the request of the State, the City will provide necessary engineering services to include reviewing plan sheets for change orders, design of change orders, review of product submittals, analysis of critical path or other construction schedules, related engineering work and provide recommendations to the Project during the construction phase of the Project. The maximum amount payable by the State, upon approval and acceptance of the requested work, to the City during the construction phase of the Project is \$300,000” as described in the revised Attachment A, hereto attached and made part hereof.

Attachment C, Estimated City and State Costs, is hereby amended to increase by \$300,000 the State's cost for State requested City's engineering services during the construction phase of the Project as described in the revised Attachment C, hereto attached and made part hereof.

Revised ATTACHMENT C
 Estimated City and State Costs
Amendment #4 -

Items of Work	Description	City		State/FHWA		Total Cost
		Share	Cost	Share	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			\$ 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			\$ 22,729
C	Relocation Assistance (None Anticipated)					
	Phase 1	0%	0	0%	0	0
	Phase 2	100%	0	0%	0	0
	C - Subtotal		0		0	0
D	Utility Adjustments					
	Phase 1	100%	\$ 400,000	0%	0	\$ 400,000
	Phase 2	100%	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 and Phase 2	100%	\$ 1,461,830	0%	0	\$ 1,461,830
	Requested State Items (Amend. #1)	0%	0	100%	\$ 130,000	\$ 130,000
	Phase 2B (Amend. #3)	0%	\$ 742,271	0%	0	\$ 742,271
	E - Subtotal		\$ 2,204,101		\$ 130,000	\$ 2,334,101
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
	Phase 2B (Amend. #3) Added State Resp.	0%	0	100%	\$ 9,857,600	\$ 9,857,600
	Construction Responsibility - Subtotal		\$ 6,357,558		\$ 32,361,747	\$ 38,719,305
	Phase 1 (Construction Commitment)	0%	0	100%	\$ 10,873,031	\$ 10,873,031
	Phase 2 (Construction Commitment)	23%	\$ 6,357,558	77%	\$ 21,488,716	\$ 27,846,274
	Phase 2B (Amend. #3) +/- 2B Reallocation	0%	\$ (742,271)	100%	\$ 742,271	0
	Construction Commitment - Subtotal		\$ 5,615,287		\$ 33,104,018	\$ 38,719,305
	Construction Cost - Total		\$ 5,615,287		\$ 33,104,018	\$ 38,719,305
	Construction E&C, 7% of Const. Resp. (STPMM-4C State Cat.)	7%	\$ 445,029	7%	\$ 2,265,322.0	\$ 2,710,351
	Share of E&C (On System State pays 100%)	0%	0	100%	\$ 2,710,351	\$ 2,710,351
	Construction Total		\$ 5,615,287		\$ 35,814,369	\$ 41,429,656
Total - Items of Work - A, B, C, D, E, F			\$ 9,299,397		\$ 40,604,369	\$ 49,903,766
	Payment #1 - 75% of Phase 2 City Commitment	30 days before letting	\$ 4,211,465			
	Payment #2 - 25% of Phase 2 City Commitment	6 Months after letting	\$ 1,403,822			
G	Amend. #4 - Requested State Services - Construction Phase		0		\$ 300,000	\$ 300,000
Revised Total - Items of Work - A, B, C, D, E, F, G			\$ 9,299,397		\$ 40,904,369	\$ 50,203,766