

RESOLUTION NO. 13-2007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE COUNTY OF DALLAS, TEXAS, FOR THE PURPOSE OF CONSTRUCTING A JOINT CITY/COUNTY PARKING LOT AT 300 WEST GRUBB DRIVE IN MESQUITE, TEXAS.

WHEREAS, the City of Mesquite ("City") and the County of Dallas, Texas ("Dallas County") desire to enter into an interlocal agreement for the purpose of constructing a joint City/County parking lot at 300 West Grubb Drive in Mesquite, Texas; and

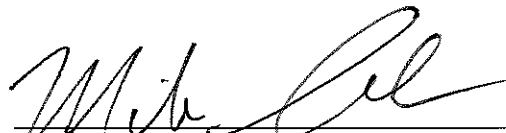
WHEREAS, the Interlocal Cooperation Act, V.T.C.A., Texas Government Code, Chapter 791, provides authorization for any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, Dallas County has requested a resolution from the City acknowledging and approving the interlocal agreement.

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

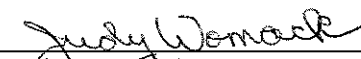
SECTION 1. That the Mayor is hereby authorized to execute an Interlocal Agreement between the City of Mesquite and the County of Dallas, Texas, attached hereto as Exhibit "A," for the purpose of constructing a joint City/County parking lot at 300 West Grubb Drive in Mesquite, Texas.

DULY RESOLVED by the City Council of the City of Mesquite, Texas on the 2nd day of April, 2007.



Mike Anderson
Mayor

ATTEST:



Judy Womack
City Secretary

APPROVED:



B. J. Smith
City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

**INTERLOCAL AGREEMENT
BETWEEN DALLAS COUNTY AND THE CITY OF MESQUITE**

WHEREAS, the City of Mesquite, Texas (hereinafter called "City"), and the County of Dallas, Texas (hereinafter called "County"), desire to enter into an interlocal agreement for the purpose of constructing a joint City/County parking lot at 300 West Grubb Drive.

WHEREAS, this Agreement entered into by the authority of the Interlocal Cooperation Act, V.T.C.A., Texas Government Code, Chapter 791, authorizing governmental units, such as cities and counties, to enter into agreements for the purpose of improving the efficiency and effectiveness of local governments.

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

WITNESSETH

The City of Mesquite, Texas (hereinafter called "City"), and the County of Dallas, Texas (hereinafter called "County"), jointly agree to provide funding for the project to construct a joint City/County parking lot at 300 West Grubb Drive (hereinafter called the "Project") as further described in Exhibit "A" attached hereto and incorporated herein for all purposes.

I. COUNTY'S CONTRIBUTION

County agrees to reimburse City for the costs of Project construction/maintenance in an amount currently projected to be \$45,000, which is 50 percent of the estimated total estimated Project cost of \$90,000. The County portion is 50 percent of the total Project cost and shall not exceed \$50,000 (hereinafter called the "Not to Exceed Amount"). All expenditures by the County for the performance of these governmental functions of improving this facility shall be made from current revenues available to the County. City agrees that County will not be responsible for any amount in excess of the Not to Exceed Amount. Payment of any expenditure or proposed expenditure for the Project by County that is in excess of the Not to Exceed Amount is at the sole determination of the County and is contingent upon Dallas County Commissioners Court prior approval.

Acceptance of City's invoices is contingent upon compliance with County's invoicing procedures. City's invoices to County shall provide complete information and documentation to substantiate City's charges. Invoice period cannot be for less than a 30-day period. County may withhold any disputed amounts, but shall pay all undisputed amounts. Following approval of invoices by County and by the County Auditor, County will pay City promptly, i.e., within 30 days of County's approval of invoice. City agrees that a temporary delay in making payments

due to County's accounting and disbursement procedures shall not place the County in default of this Agreement.

II. COUNTY'S OBLIGATIONS

County agrees to close the existing driveway from its property at 823 N. Galloway Avenue to N. Galloway Avenue or modify the driveway from a full-access to an entrance-only driveway at its own expense within 90 days of the completion of the new parking lot at 300 West Grubb Drive. County agrees to create additional parking at 823 N. Galloway Avenue or enforce parking restriction at 823 N. Galloway Avenue to preclude public or private vehicles from parking on unpaved surfaces and sidewalks. County agrees to maintain the new parking lot at 300 West Grubb Drive in good condition for the term of this agreement, to include pavement markings. County agrees that the City has right-of-first-refusal for its property at 823 N. Galloway Avenue should the County wish to sell this property.

III. CITY'S CONTRIBUTION

City agrees to contribute the additional funding, which is 50 percent of the estimated total Project cost up to \$50,000. All expenditures by the City for the performance of these governmental functions of this Project shall be made from current revenues available to the City.

IV. CITY'S OBLIGATIONS

City agrees to be responsible for, including but not limited to, the following: (1) undertaking the construction management of the Project; (2) informing the public of the proposed reconstruction of the Project; (3) locating all manholes, water valves and other utilities within the Project; (4) making or causing to be made all utility relocations or adjustments necessary for the Project at not cost to County; (5) acquiring at its own costs any right-of-way necessary to complete the Project; (6) remediation, at its own costs, of any hazardous or regulated material or any other environmental hazard in the Project location; (7) making all payments to any contractors City hires to work on the Project; (8) contracting through formal bidding procedures to acquire the services of contractors; and (9) furnishing materials, labor and equipment necessary to perform the Project construction.

In the event that the cost of the Project shall exceed the Not to Exceed Amount, City agrees to either reduce the scope of construction or seek additional funding to complete the Project. The City may, but shall not be required by this agreement, to complete the project at a cost to the City of more than \$50,000. At the termination of the Project, City will provide County with a final cost accounting of the Project.

City agrees that County shall have the right to enter upon the Project area during the Project's construction period. City agrees to furnish such police personnel as required by City for traffic control or other public safety matters at no cost to County.

City agrees to grant the County exclusive right to use all but four parking spaces at the newly constructed parking lot at 300 West Grubb Drive during County business hours for the term of this agreement.

V. TERM

The term of this Agreement shall be from the date of execution of this Agreement up to ten years after completion of the new parking lot at 300 West Grubb Drive.

VI. COUNTY AUDIT

County, its Auditor or its designated representative(s) shall have the unrestricted right to audit any and all accounting or other records regarding any funds paid or claimed under this Agreement including but not limited to all books, records, reports, tickets, deposits, expenditures, 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. City contracts and agrees that all records shall be kept and maintained for a period of time not less than four 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.

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 30 days of the date of an invoice for such cost being deposited in the U. S. Mail, Certified Mail, Return Receipt Requested.

The audit provisions of this Agreement shall survive the termination of this Agreement until all claims brought by Dallas County, Texas, are fully paid or reduced to judgment not subject to appeal.

VII. LIABILITY

County, not waiving any rights or its sovereign immunity, agrees to the extent allowed by the Texas Torts Claim Act to be responsible for any liability or damages the County may suffer as a result of claims, demands, costs or judgments, including all reasonable attorney's fees, against the County including workers compensation claims, arising out of the performance of the County employees 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 corporation(s) occurring during the performance of this Agreement and caused by the sole negligence of the County, its agents, officers and/or employees.

City, not waiving any rights or its sovereign immunity, agrees to the extent allowed by the Texas Torts Claim Act to be responsible for any liability or damages the City may suffer as a result of claims, demands, costs or judgments, including all reasonable attorney's fees, against the City including workers compensation claims, arising out of the performance of the City employees 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 corporation(s) occurring during the performance of this Agreement and caused by the sole negligence of the City, its agents, officers and/or employees.

City and County agree that any liability or damages as stated above occurring during the performance of this Agreement caused by the joint or comparative negligence of their employees, agents and officers shall be determined in accordance with the comparative responsibility laws of the State of Texas.

VIII. MISCELLANEOUS

- A. Fiscal Funding.** Notwithstanding anything to the contrary herein, this Agreement is expressly contingent upon the availability of County funding for each item and obligation contained herein. City shall have no right of action against the County as regard this Agreement, specifically including any funding by County of the Project in the event that the County is unable to fulfill its obligations under this Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure of County to budget or authorize funding for this Agreement during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the County, at its sole discretion, may provide funds from a separate source or terminate this Agreement by written notice to City at the earliest possible time prior to the end of its fiscal year.
- B. Immunity and Venue.** This Agreement is expressly made subject to County's Sovereign Immunity, Title 5 of the Texas Civil Remedies Code and all applicable State of Texas and Federal laws. This Agreement and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the State of Texas and venue shall lie exclusively in Dallas County, Texas.
- C. Not an Agent.** County and City agree and acknowledge that each entity is not an agent of the other entity and that each entity is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of work covered under this Agreement.
- D. No Third Party Beneficiaries.** The terms and provisions of this Agreement are for the benefit of the parties hereto and not for the benefit of any third party. It is the express intention of County and City that any entity other than County or City receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only. This Agreement is intended only to set forth the contractual right and responsibilities of the Agreement parties.
- E. Assignment.** City may not under any circumstances assign its interest in, or rights or obligations under, this Agreement without prior written consent of the County.
- F. Entire Agreement.** This Agreement and any attachments contain the entire agreement between the parties respecting the subject matter of this Agreement and supersede all

prior and contemporaneous understandings and agreements, whether oral or in writing, between the parties respecting the subject matter of this Agreement.

- G. Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or enforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- H. Waiver of Covenants or Conditions.** The waiver by one party of the performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other covenant or condition under this Agreement.
- I. Amendment.** This Agreement may be amended at any time by the written agreement of the County and City. All amendments, changes, revisions and discharges of this Agreement in whole or in part, and from time to time, shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties thereto.
- J. Notice.** All notices, requests, demands and other communication under this Agreement shall be in writing and shall be deemed to have been duly given, delivered in person, or three days after mailing (certified mail postage prepaid, return receipt requested) to the respective parties as follows:

COUNTY:

Director of Public Works
Dallas County Administration Building
411 Elm Street, 4th Floor
Dallas, Texas 75202-3389
Phone: 214-653-7151
Fax: 214-653-6445

CITY:

City Manager
City of Mesquite
1515 North Galloway Avenue
Mesquite, Texas 75149
Phone: 972-216-6404
Fax: 972-216-8100

The City of Mesquite, State of Texas, has executed this Agreement pursuant to duly authorized City Council Resolution No. _____-2007, Minutes _____ dated the _____ day of _____, 2007.

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

Executed this the _____ day of _____, 2007.

CITY OF MESQUITE:

COUNTY OF DALLAS:

Mike Anderson
Mayor

Jim Foster
County Judge

ATTEST:

APPROVED AS FOR FORM:

Judy Womack
City Secretary

Bob Schell, Chief
Assistant District Attorney/Civil Division

APPROVED AS TO FORM:

City Attorney or his Designee

EXHIBIT "A"

Project Description