

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, RATIFYING THE EXECUTION OF THE STANDARD UTILITY AGREEMENT BY THE CITY MANAGER WITH THE TEXAS DEPARTMENT OF TRANSPORTATION PROVIDING FOR THE ENGINEERING DESIGN AND CONSTRUCTION OF UTILITY RELOCATIONS FOR FRANCHISE AND CITY-OWNED FACILITIES 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; 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 northbound and southbound auxiliary lanes to Interstate 635, replacing the Towne Centre Drive bridge and relocating existing utilities; and

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

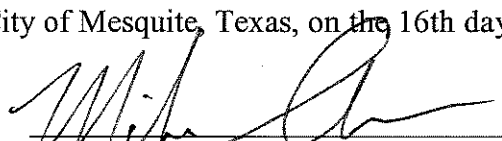
WHEREAS, on March 4, 2002, pursuant to Resolution No. 10-2002, the City Council approved the Advance Funding Agreement with TxDOT; and

WHEREAS, TxDOT has requested that the City provide additional engineering design for the utility relocations of all franchise and City-owned facilities within the project limits.

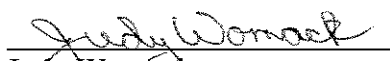
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the execution of the Standard Utility Agreement by the City Manager with the State of Texas through the Texas Department of Transportation ("TxDOT") for participation in the additional engineering design requested by TxDOT for the utility relocation of all franchise and City-owned facilities within the project limits on Interstate 635 between U.S. Highway 80 and north of Town East Boulevard as detailed in Exhibit "A" is hereby ratified.


DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 16th day of July, 2007.

  
Mike Anderson  
Mayor

ATTEST:

  
Judy Womack  
City Secretary

APPROVED:

  
B. J. Smith  
City Attorney



## STANDARD UTILITY AGREEMENT

U-Number: **U10232**  
County: Dallas  
Highway: IH 635  
From: North of Town East Blvd.  
To: US 80

District: Dallas  
Federal Project No.: NH 2004 (230)  
ROW CSJ: 2374-02-112  
Highway Project Letting Date: October 2005

This Agreement by and between the State of Texas, acting by and through the Texas Transportation Commission, ("**State**"), and City of Mesquite, ("**Utility**"), acting by and through its duly authorized representative, shall be effective on the date of approval and execution by and on behalf of the **State**.

**WHEREAS**, the **State** has deemed it necessary to make certain highway improvements as designated by the **State** and approved by the Federal Highway Administration within the limits of the highway as indicated above;

**WHEREAS**, the proposed highway improvements will necessitate the adjustment, removal, and/or relocation of certain facilities of **Utility** as indicated in the following statement of work: Replace existing 18" water line along Town East Blvd. from approx. Sta. 13+50 to approx. Sta. 26+80, existing 8" sanitary sewer line along Town East Blvd. from approx. Sta. 14+50 to approx. Sta. 26+80, and 8" sanitary sewer line crossing IH 635 at Sta. 1050+00, as shown on attached exhibit. Replacements shall include pipe, valves, fittings, services connections, laterals, manholes, fire hydrants and related appurtenances; and more specifically shown in **Utility's** plans, specifications and estimated costs, which are attached hereto as Attachment "A".

**WHEREAS**, the **State** will participate in the costs of the adjustment, removal, and/or relocation of certain facilities to the extent as may be eligible for State and/or Federal participation.

**WHEREAS**, the **State**, upon receipt of evidence it deems sufficient, acknowledges **Utility's** interest in certain lands and/or facilities that entitle it to reimbursement for the adjustment, removal, and relocation of certain of its facilities located upon the lands as indicated in the statement of work above.

### **NOW, THEREFORE, BE IT AGREED:**

The **State** will pay to **Utility** the costs incurred in adjustment, removal, and/or relocation of **Utility's** facilities up to the amount said costs may be eligible for **State** participation.

The **State** and **Utility** agree that all conduct under this agreement, including but not limited to the adjustment, removal and relocation of the facility, the development and reimbursement of costs, any environmental requirements, and retention of records will be in accordance with 23 CFR 645, Subparts A & B and all other applicable federal and state laws, rules and regulations. **Utility** agrees to supply, upon request by the **State**, proof of compliance with the aforementioned laws, rules and regulations prior to the commencement of construction.

The **Utility** agrees to develop relocation or adjustment costs by accumulating actual direct and related indirect costs in accordance with a work order accounting procedure prescribed by **State**, or may, with the **State's** approval, accumulate actual direct and related indirect costs in accordance with an established accounting procedure developed by **Utility**. Bills for work hereunder will be submitted to **State** not later than 90 days after completion of the work.

When requested, the **State** will make intermediate payments at not less than monthly intervals to **Utility** when properly billed and such payments will not exceed 80 percent (80%) of the eligible cost as shown in each such billing. In addition, the **State** will make a payment, before audit, which will bring the total percentage paid to the **Utility** up to the 90% eligible cost. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.

Alternatively, **State** agrees to pay **Utility** an agreed lump sum of \$N/A as supported by the attached estimated costs. The **State** will, upon satisfactory completion of the adjustments, removals, and/or relocations and upon receipt of a final billing, make payment to **Utility** in the agreed amount.

Upon execution of this agreement by both parties hereto, the **State** will, by written notice, authorize the **Utility** to proceed with the necessary adjustment, removal, and/or relocation. **Utility** agrees to proceed in such a manner that will not result in avoidable delay or interference with the **State's** highway construction. Should **Utility** by its actions cause interference or delay resulting in the imposition of damages upon the **State** by a third party, **Utility** agrees to indemnify the **State** for said damages.

The **State** will, upon satisfactory completion of the relocation or adjustment and upon receipt of final billing prepared in an approved form and manner, make payment in the amount of 90 percent (90%) of the eligible costs as shown in the final billing prior to audit and after such audit shall make an additional final payment totaling the reimbursement amount found eligible for **State** reimbursement.

Unless an item below is stricken and initialed by the **State**, this agreement in its entirety consists of the following:

1. Standard Utility Agreement;
2. Plans, Specifications, and Estimated Costs (Attachment "A");
3. ~~Utility's Accounting Method (Attachment "B");~~ *SA*
4. ~~Utility's Schedule of Work and Estimated Date of Completion (Attachment "C");~~ *SA*
5. Statement Covering Contract Work – ROW-U-48 (Attachment "D");
6. ~~Eligibility Ratio (Attachment "F");~~ *SA*
7. ~~Betterment Calculation and Estimates (Attachment "G");~~ *SA*
8. ~~Proof of Property Interest – ROW-U-1A, ROW-U-1B, or ROW-U-1C (Attachment "H");~~ *SA*
9. Inclusion in Highway Construction Contract (if applicable) (Attachment "I"); and
10. Utility Joint Use Acknowledgment – ROW -U-JUA (Attachment "E").

All attachments are included herein as if fully set forth. In the event it is determined that a substantial change from the statement of work contained in this agreement is required, reimbursement therefore shall be limited to costs covered by a modification of this agreement or a written change or extra work order approved by the **State**.

The **Utility** agrees to provide "as-built" plans to the **State** within ninety (90) days of completion of the adjustment or relocation.

This agreement is subject to cancellation by the **State** at any time up to the date that work under this agreement has been authorized and that such cancellation will not create any liability on the part of the **State**.

The State Auditor may conduct an audit or investigation of any entity receiving funds from the **State** directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this 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.

The **Utility** by execution of this agreement does not waive any of the rights which **Utility** may have within the limits of the law.

It is expressly understood that the **Utility** conducts the adjustment, removal, or relocation at its own risk, and that the **Utility** agrees to indemnify and hold the **State** harmless for damage to existing facilities caused by the **Utility's** conduct.

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

UTILITY

Utility: City of Mesquite

By: TMT  
Ted Barron

Title: City Manager

Date: 7/21/2004

EXECUTION RECOMMENDED:

Q. Murray All  
ROW Administrator, Dallas District \*  
~~DISTRICT ENGINEER~~

<p style="text-align: center;"><b>THE STATE OF TEXAS</b></p> <p>Executed 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.</p> <p>By: <u>[Signature]</u></p> <p style="text-align: right;">**</p> <p>Date: <u>11/16/04</u></p>
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\* For locally-executed agreements, ROW Administrator recommends execution; otherwise District Engineer (or designee) .  
\*\* For locally-executed agreements, District Engineer (or designee) approves and executes; otherwise ROW Division Director.

**ATTACHMENT "I"**  
**(to be used only for Inclusion in Highway Construction Contract)**

In the best interest of both the **State** and the **Owner**, the **Owner** requests the **State** to include the plans and specifications for this work in the general contract for construction of Highway IH 635 in this area, so that the work can be coordinated with the other construction operations; and the construction contract is to be awarded by the **State** to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed.

Utility: City of Mesquite

By:   
Ted Barron

Title: City Manager

Date: 7/21/2004

Note:

**City of Mesquite (Owner)** shall, as a part of their Utility Agreement, be responsible for the Engineering and PS & E preparation of ALL utility adjustments required within the limits of the above-mentioned project.

The **City of Mesquite (Owner)**, Inspection Cost, will be paid by a "Force Account" setup with the associated ROWCSJ: 2374-02-112, as a part of the construction contract.

*The cost for constructing **Owner's** facilities under this agreement will be derived from the accumulated total of utility items as set forth in the general construction contract, plus the indirect costs of the items below:*

The **City of Mesquite (Owner)** shall bill direct to the Utility Section of the Dallas District Right of Way Department, charges for Contract Engineering and Overhead, plus the Review costs by the city as shown.

Contract Engineering Costs	\$439,758.00
Engineering Review, Overhead	<u>\$ 35,805.00</u>
Total	\$475,563.00

See attached "Cost Estimate" to provide the origin of costs listed above.