

RESOLUTION NO. 20-2011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE THE MASTER AGREEMENT GOVERNING MAJOR CAPITAL IMPROVEMENT PROGRAM WITH DALLAS COUNTY FOR THE PURPOSE OF TRANSPORTATION IMPROVEMENTS ON ROADS INSIDE DALLAS COUNTY THAT ARE ON THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS REGIONAL THOROUGHFARE PLAN.

WHEREAS, the master agreement between the City of Mesquite ("City") and Dallas County, approved by the Dallas County Commissioners Court on June 5, 2001, approving participation in Transportation Major Capital Improvement Projects within the cities inside Dallas County, is due to expire on June 5, 2011; and

WHEREAS, no project specific agreement or other project initiating actions may be taken without a master agreement in place; and

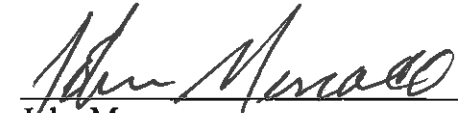
WHEREAS, the City has agreed to participate in the Dallas County Transportation Major Capital Improvement Projects for roadways within the City in the amount of 50 percent of the total project cost; and

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

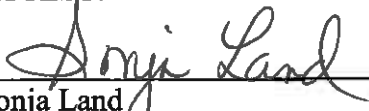
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the Mayor is hereby authorized to execute the Master Agreement Governing Major Capital Improvement Program, attached hereto as Exhibit "1," between the City of Mesquite and Dallas County providing for the construction of transportation improvements on roadways inside Dallas County within the City of Mesquite that are on the North Central Texas Council of Governments Regional Thoroughfare Plan.


DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 16th day of May, 2011.

  
\_\_\_\_\_  
John Monaco  
Mayor

ATTEST:

  
\_\_\_\_\_  
Sonja Land  
City Secretary

APPROVED:

  
\_\_\_\_\_  
B.J. Smith  
City Attorney

**EXHIBIT "1"  
TO THE  
RESOLUTION**

**MASTER AGREEMENT GOVERNING  
MAJOR CAPITAL IMPROVEMENT PROGRAM**

**THIS MASTER AGREEMENT** is made by and between the City/Town of Mesquite, Texas, hereinafter called "City" or "Town", and Dallas County, hereinafter called "County", acting by and through its duly authorized officials, which desire to enter into an Interlocal Agreement, hereinafter called Master Agreement, for the purpose of Transportation Improvements on roads inside Dallas County that are on the North Central Texas Council of Government's Regional Thoroughfare Plan.

**WITNESSETH**

**WHEREAS**, pursuant to Court Order 2001-1075, dated June 5, 2001, County Commissioners Court approved participation in Transportation Major Capital Improvement Program within the cities inside Dallas County; and

**WHEREAS**, the approved project lists may be modified, updated or approved by the Commissioners Court on a periodic, as-needed basis; and

**WHEREAS**, Chapter 791 of the Texas Government Code, as amended, provides authorization for local governments to enter into interlocal agreements; and

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

**ARTICLE I. DEFINITIONS**

The following definitions are incorporated into this agreement for all purposes.

- A. **AMENDMENT** shall mean a written document executed by all parties detailing changes, additions or deletions in the Master Agreement.
- B. **AMENITY** shall mean Project features not included in the Standard Basic Project Design including but not limited to street pavers, colored concrete, planters, irrigation, decorative lighting, special signage, or any other feature above and beyond the Standard Basic Project Design or any increase in capacity in excess of County determined requirements based on anticipated future traffic flow.
- C. **CITY/TOWN** shall mean the City/Town of Mesquite, Dallas County, Texas.
- D. **CONTEXT SENSITIVE SOLUTIONS (CSS)** is a collaborative, interdisciplinary approach that involves all stakeholders to develop a transportation facility that fits its physical setting and preserves scenic, aesthetic, historic and environmental resources, while maintaining safety and mobility. CSS is an approach that considers the total context within which a transportation improvement project will exist. CSS principles include the employment of early,

continuous and meaningful involvement of the public and all stakeholders throughout the project development process. It is the intent of Dallas County Public Works Department to use the essential elements of CSS in all approaches to deliver the project. Some projects will dictate very intense use of CSS, while others will only use a few of the elements, but the County will always consider CSS.

- E. **COUNTY** shall mean County of Dallas, State of Texas.
- F. **DIRECT PROJECT and PROGRAM COSTS** shall mean those costs that can be identified specifically with a particular project or program cost objective. These costs generally include compensation of employees for the time devoted and identified specifically to the performance of the project or program, cost of materials acquired, consumed or expended specifically for the purpose of the project or program; equipment changes; damage claims and other approved capital expenditures; change orders; travel expenses incurred specifically to carry out the project including, but not limited to, design, right-of-way, road or street drainage, utility relocation and adjustment and construction. Direct Cost does not include either City/Town or County general overhead.
- G. **EFFECTIVE DATE** shall mean the date of the signature of the last person necessary for this **Master Agreement** to become effective.
- H. **EXTRA TERRITORIAL JURISDICTION- (ETJ)** shall mean the unincorporated area outside the incorporated boundaries of the municipality as determined in Chapter 42 of the Texas Local Government Code, as amended.
- I. **FIVE PHASE PROJECT DELIVERY SYSTEM** shall mean the process for delivering a project from conception to completion as detailed in Exhibit A, attached hereto and as well as any additions or supplements thereto. The five phases of the project delivery system are planning, design, right of way, utility clearance, and construction.
- J. **FUNDING AGREEMENT** shall mean the agreement between the County and a City/Town to establish a preliminary proposed budget for a project. As design is completed and the engineering estimate is refined, the funding agreement shall be incorporated into the Project Specific Agreement.
- K. **INDIRECT COSTS** shall mean those costs that benefit more than one project and cannot be readily identified with a particular final project or program cost objective. Their precise benefits to a specific project are often difficult or impossible to trace.
- L. **IN-HOUSE PROJECT DELIVERY COSTS** shall mean all costs associated with the development of the Major Capital Improvement Program (MCIP) "Call for Projects", selection of projects, scoping of projects, project design, property acquisition and construction of projects. Cost Accounting shall include but is not limited to employee time reimbursement, materials, equipment and other expenditures necessary for the management and continuation of the MCIP.
- M. **INTERLOCAL AGREEMENTS** shall mean contracts or agreements entered into between City/Town and County in accordance with Texas Government Code Chapter 791.
- N. **LEAD AGENCY** shall mean that entity responsible for project management, including, but not limited to planning, design, right-of-way acquisition, approved utility relocation or adjustment and construction unless otherwise designated.
- O. **MASTER AGREEMENT** shall mean this document including all incorporated documents, attachments, and exhibits.

- P. **MEMORANDUM OF AGREEMENT (MOA)** shall mean a written document which incorporates the results of the Preliminary Design Charrette.
- Q. **MULTI-MODAL CONNECTIVITY IMPROVEMENTS** shall mean projects which comply with the concepts in the 2005 SAFETEA-LU Act, any amendments, or any future federal transportation acts which increase safety, accessibility, flexibility, efficiency, and enhance the integration and connectivity of the transportation system, across and between modes throughout the County for motorized and non-motorized users.
- R. **ORPHAN ROADS** shall mean all or part of a street or road right of way which are outside the incorporated limits of a municipality (or municipalities) and the incorporated area of the municipality (or municipalities) abuts or extends into the right of way. These roadway segments have, in effect, been "orphaned" by the abutting City/Town (or cities) that they serve in that they have been left unincorporated. Thus the County has primary responsibility for maintenance, operation, enforcement, police and/or emergency services within these unincorporated rights of way.
- S. **PARCEL OR PARCELS** shall mean those portions or part of land and improvements located either wholly or partially thereon, identified by County, City/Town or other Stakeholder as required for right-of-way requirements of the Project. Such right-of-way shall include the existing street, road, drainage or other City/Town or County real property ownership and all additional real property to be utilized for the Project.
- T. **PRELIMINARY CONCEPT CHARRETTE (PCC)** shall have the same meanings and purposes as the Preliminary Design Charrette, but be conducted very early in the design start, before substantial design is underway. The conditions for which a PCC is appropriate will be determined by the lead agency, but will usually be a greater uncertainty of what the road improvement will involve, the purposes, varying contexts (e.g. Transit Oriented Development, Recreational Oriented Development, Industrial Oriented Development, etc.). Use of CSS will usually mean that a PCC will be conducted, since its use fits perfectly into CSS concepts. Other conditions encountered may dictate the use of a PCC, such as poor soils, presence of unconsolidated solid waste dumps, innovative integration of master planning with project delivery, unusual ROW challenges, budgetary constraints (thus calling for significant Value Engineering efforts), etc. The results of properly using a PCC will be that early consensus will be achieved on a basic approach to the project design and construction, thus avoiding wasted design funding and loss of momentum for project delivery.
- U. **PRELIMINARY DESIGN CHARRETTE (PDC)** shall mean a meeting of decision making stakeholders and other members of the project team for the purpose of discussing feasible design alternatives, forging strong consensus among all stakeholders for the selected alternative, and entering into a MOA for the overall estimate, alignment and scope of the project. The PDC will be scheduled when the preliminary design is complete or near completion. This means horizontal and vertical alignment alternatives have been designed, ROW requirements are at least approximately known for each alternative, and the design is 40% to 60% complete. The result of a PDC that is conducted with all the stakeholders present is that the strong consensus achieved will help assure the project is able to overcome any challenges with design completion, ROW acquisition, utility design and relocation, and finally, road construction.
- V. **PROJECT MANAGER** shall mean the person appointed by the Lead Agency who is assigned the primary duty for assuring Project Team coordination and timely project delivery. There will be only one Project Manager assigned to a Project.

- W. **PROJECT TEAM** shall mean representatives from County, City/Town, and other Stakeholders as may be mutually agreed upon by County, City/Town and Stakeholders or otherwise with responsibility for delivering the completed Project.
- X. **PROJECT(S)** shall mean the proposed thoroughfare and multi-modal connectivity improvements approved by the Commissioners Court for inclusion in the Transportation MCIP and approved by the City/Town.
- Y. **PROJECT DURATION** shall mean the active life of the project. Project shall commence with the application for a project by the City/Town and acceptance by the Dallas County Commissioners Court. Project shall be considered complete when construction has been fully completed and the one year maintenance period has expired or the project has been terminated in accordance with Article IV of this Agreement.
- Z. **PROJECT SPECIFIC AGREEMENT or PROJECT SUPPLEMENTAL AGREEMENT (PSA)** shall mean an agreement subsequent to this document which is entered into to establish the contractual rights and responsibilities of the City/Town and County as it relates to a particular Project. A PSA supersedes the MOA or Funding Agreements.
- AA. **RIGHT OF WAY (ROW)** is a strip of land that is granted, through a ROW deed, an easement or other mechanism, for the Project. ROW shall mean that real property or property interest identified by County or City/Town, as necessary for the construction of the Project which shall include the existing street, road, drainage or other City/Town or County real property ownership and all additional real property to be utilized for the Project.
- BB. **SCOPING SHEETS** shall be attached to each PSA. These sheets will set forth the design criteria to be used for the project, including the alignment, appropriate specifications, typical section and other parameters of the project. As project goals and needs are more clearly defined the Scoping Sheets shall be updated and revised by the project manager to reflect current construction goals.
- CC. **STANDARD BASIC PROJECT DESIGN** shall mean the standard County-approved City/Town criteria for paving, bridges, drainage and appurtenances, traffic control items including pavement marking, warranted uniform signals, street light foundations, pull boxes, conduit, sidewalks, medians, storage/turn lanes, access, required structural retaining walls and standard driveways excluding road or street amenities, or such design criteria as may be mutually agreed upon in a project Scoping Sheets.
- DD. **TxDOT** shall mean the Texas Department of Transportation.
- EE. **UTILITIES** shall mean each City/Town utility, public utility, common carrier, governmental or quasi-governmental facility, fiber optic facility, or other facility located within the limits of the Project by virtue of Texas or Federal Law or agreement between the entity and the City/Town, County, or State of Texas.
- FF. **CITY/TOWN UTILITY** shall mean those owned or operated by City/Town which requires relocation or adjustment for the purpose of the construction of the Project as identified by Project plans.
- GG. **UTILITY IN PUBLIC RIGHT-OF-WAY** shall mean all UTILITIES located within the limits of any governmental entity.
- HH. **UTILITY IN PRIVATELY OWNED RIGHT-OF-WAY** shall mean all Utilities, excluding City/Town Utilities, whose facilities are located within a private easement.

- II. **UTILITY BETTERMENT** shall mean any increase in the capacity of any Utility's Facility adjusted or relocated as a part of the PROJECT as compared to the existing Facility, or any upgrading of the Utility's Facility above the standard practices, devices or materials, specified by the Utility and customarily used by City/Town or Utility on projects solely financed by City/Town or Utility. Provided, however, that any adjustments necessary to successfully accomplish the Project shall not be considered a Betterment, and further, that any increase in the capacity of the Utility Facility resulting solely from the replacement of devices or materials no longer regularly manufactured, processed or installed shall not be considered a Betterment, provided that such replacement shall be only to the standard devices or materials currently used on other projects financed solely by City/Town or Utility. This meaning shall apply to utilities that are part of the project as well as the standard basic street components (See "STANDARD BASIC PROJECT DESIGN").

## **ARTICLE II. PERIOD OF THE AGREEMENT**

This Master Agreement becomes effective when signed by the last party whose signing makes the respective agreement fully executed (The "Effective Date"). This Master Agreement shall expire ten years from the Effective Date unless terminated in accordance with Article IV.

## **ARTICLE III. AMENDMENTS**

This Master Agreement may be amended with the mutual consent of the City/Town and County. Any amendment must be in writing and approved by the parties' respective governing bodies through either a Court Order from Commissioners Court or a City/Town Council Resolution.

## **ARTICLE IV. TERMINATION, DEFAULT, TIME OF THE ESSENCE AND FORCE MAJEURE**

### **A. TERMINATION**

- a. This Master Agreement may be terminated by any of the following conditions:
  1. By expiration of term of the agreement.
  2. By either party, by notice in writing establishing the effective date of termination to the other party as consequence of the party being in default of the provisions of this Agreement or any supplemental agreement or failure to timely provide funding, with proper allowances being made for circumstances beyond the control of the defaulting party.
  3. By either party with ninety days written notice to the other party.
- b. Should either party terminate this Master Agreement as herein provided, all existing, fully executed supplemental agreements made under this Master Agreement shall not be terminated and shall automatically incorporate all the provisions of this Master Agreement.
- c. In the event that any supplemental agreement is terminated prior to completion of the Project, no additional Costs shall be incurred other than Costs due and payable at the time of termination for services actually performed or that shall become due and payable due to such termination. The Lead Agency, to the extent permitted, may terminate all project contracts,

unless written notice is given by either party to the other of its intent to complete the Project, and prepare a final accounting for the Project.

- d. If the Project is terminated by the City/Town prior to the award of any construction contract and the Project is located within the City/Town limits, City/Town shall pay to County the full amount expended by County on the project and County shall transfer to City/Town its rights and all deliverables that it may be entitled to receive under the existing professional services or other project contracts or agreements. Such amount shall be included in the final accounting for the Project. Such amount shall be due and payable in full ninety (90) days subsequent to the termination, or thirty days subsequent to delivery of final accounting.
- e. Once the construction contract has been awarded by the governing body of the Lead Agency, the PSA for that Project cannot be terminated until completion of the construction.
- f. In the event that a Project is terminated prior to the award of the construction contract, either party may, upon written notice, take over the project and prosecute the work to completion by contract or otherwise at its sole cost and expense. In the event that the party completing the work is not the Lead Agency, it is agreed that the Project Manager will furnish to the Completing Party a listing of current records pertaining to any outstanding obligations or other records or information required by any project contract, including any Work Order, or requested in writing by Completing Party in either printed or electronic format or both. The Lead Agency agrees to cooperate with the Completing Party. The Lead Agency will use its best efforts to transfer to the Completing Party all contracts. Obligations under such contracts shall become the sole obligation of the Completing Party upon transfer. Completing party agrees to timely pay all future obligations under such contract as they become due and payable. Completing Party hereby releases the Lead Agency from any and all liability under such assigned contracts subsequent to date of transfer, effective upon the transfer date. Lead Agency shall exercise its best efforts to insure a transition of services without interruption.

Either party shall have the right to retain copies of all data, information, engineering, studies, or other items produced to the date of termination.

- g. Provisions b through g of this section shall survive the termination of this Master Agreement and any PSA and shall be a continuing obligation until the transition of services, all payments made and the Projects are complete. All items listed or required in this provision shall be furnished by Lead Agency to Completing Party without additional cost or expense to completing party.

#### B. FORCE MAJEURE:

Neither County nor City/Town shall be deemed in violation of this Contract if it is prevented from performing any of its obligations hereunder by reason of, for or through strikes, stoppage of labor, riot, fire, flood, invasion, insurrection, accident, order of court, judge or civil authority, an act of God, or any cause reasonably beyond the party's control and not attributable to its neglect. In the event of such an occurrence the time for performance of such obligations or duty shall be suspended until such time that such inability to perform, shall be removed. The party claiming the suspension shall give notice of such impediment or delay in performance to the other party within ten (10) days of the knowledge of such occurrence. Each party shall make all reasonable efforts to mitigate the effects of any suspension. The provisions of this Article IV section B shall survive the termination of this Master Agreement.



## **ARTICLE V. LIABILITY FOR ACT AND OMISSIONS**

County and City/Town agree that both County and City/Town shall each be responsible for their own negligent acts or omissions or other tortuous conduct in the course of performance of this Master Agreement without waiving any sovereign or governmental immunity available to either County or City/Town under Texas law and without waiving any available defenses under Texas law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities. The provisions of this Article V shall survive the termination of this Master Agreement.

## **ARTICLE VI. LEAD AGENCY**

- A. Lead Agency shall be that entity which is responsible for the project from conception through to completion of construction. City/Town and County may choose for County to manage project through design and construction and for City/Town to acquire ROW.
- B. In the event that the City/Town is Lead Agency the City/Town shall:
  - a. Provide project management and leadership from project selection to construction completion following the 5 Phase Project Delivery System as detailed in Exhibit A, attached hereto and as well as any additions or supplements thereto;
  - b. Lead Agency shall be responsible for hosting the Preliminary Concept Charrettes and or Preliminary Design Charrettes and Neighborhood Public Workshops;
  - c. Acquire ROW necessary for project;
  - d. Enter into or obtain whatever agreements or permits necessary for project completion;
  - e. Provide County with opportunity for significant input in plan development and periodic progress reviews; and
  - f. Provide records for periodic auditing for either financial accounting or engineering accounting or both.
- C. For City/Town-led projects in which the City/Town is considering to specify transportation infrastructure elements exceeding the Standard Basic Project Design criteria, County funding will only be eligible to the Standard Basic Project Design criteria unless the City/Town and County have arrived at mutual agreement through involvement of County during the initial design phases including the Design Partnering Kick-off Meeting and as necessary the Preliminary Concept Charrette and Preliminary Design Charrette meetings.

## **ARTICLE VII. CITY/TOWN COVENANTS AND AGREES AS FOLLOWS:**

- A. To execute with reasonable promptness the necessary agreements for the implementation of design and construction of the Projects mutually agreed upon and incorporated herein by PSA.
- B. To provide City/Town Council Resolution adopting approved preferred alignment, proposed estimated budget, and commitment to meet Project funding for each milestone as specified herein or in the Funding Agreement and/or PSA.
- C. To provide City/Town Council Resolution adopting the subdivision regulation in the ETJ as defined in Article XVII below.

- D. City/Town agrees to share the funding of each Project with County on an equal share basis of 50%/50% or as otherwise agreed cost sharing arrangement as specified in a Funding Agreement and/or PSA with the following exclusions:
- a. City/Town shall bear the entire cost of:
    1. City/Town owned utilities relocation or adjustment such as water and sanitary sewer facilities, except utility adjustments directly attributable to storm sewer improvement conflicts;
    2. Amenities including but not limited to street pavers, colored concrete, planters, decorative lighting, special signage, or any other feature over the Standard Basic Project Design;
    3. Utility Betterments
    4. Direct costs of City/Town which is fulfilling the role of Lead Agency, shall be totally funded by City/Town unless supported by a detailed hourly accounting system equal to County's accounting system.
    5. City/Town Indirect Costs.
- E. When mutual written agreement has been reached as to Projects' concepts, design elements and limits by County and City/Town at the PDC, City/Town agrees to acquire ROW required for designated projects by voluntary dedication, the subdivision platting process and/or other legal means, to the maximum extent possible, and to ensure through the building permitting process that setback requirements are imposed to limit encroachment upon the required ROW. City/Town agrees to fund ROW not acquired, but reasonably expected to be acquired. City/Town also agrees to fund the removal of improvements that are encroachments within existing or proposed ROW areas.
- F. In the event of any proposed use of the Project ROW that will conflict with the proposed Project and City/Town is unable to obtain such ROW as described above, City/Town shall notify County of such conflict. County and City/Town shall determine if the acquisition of the conflicting parcel would be in the best interest of the Project. In the event that agreement is reached and the parcel is acquired such cost shall be included in the pro rated cost of the project in the agreed upon proportions.
- G. City/Town hereby grants the County authority to enter into eminent domain proceedings within the City/Town limits on each specific ROW alignment and/or project as approved by the City/Town and County.
- H. To require all Utilities located within or using the present public ROW on all designated transportation projects within City's/Town's municipal limits to adjust and/or relocate said Utilities as required by the proposed improvement of the designated transportation Project. City/Town Utilities shall be relocated or adjusted at no cost to County except as may be specifically set forth in this Master Agreement.
- I. City/Town agrees to be cooperative on issues relating to billboards, advertising signs, non-conforming uses, zoning and similar restrictions and to exercise its best efforts to provide variances when possible to minimize cost and delay of Project. Additional Project cost caused or contributed to by City/Town ordinance, zoning, non-conforming use determination or other requirement shall be paid in full by City/Town.
- J. City/Town shall require the adjustment and/or relocation of Utilities to be accomplished and finalized, as expeditiously as possible after approval of final plans to prevent Project schedule

delays. Notwithstanding anything contained herein to the contrary, all Utilities shall be adjusted or relocated and the ROW clear for construction not later than thirty (30) days prior to the award of the construction contract. City/Town will notify the County and other Stakeholders when utility conflicts would impact progress of the project completion. County and City/Town agree to work in partnership and with all Stakeholders to solve the problem; to include engaging elected officials in the problem resolution with the goal to prevent delays in the commencement or prosecution of construction on the Project.

- K. Where planned roadway improvements (including, but not limited to storm drainage,) are in conflict with City/Town owned water and sanitary sewer systems, that could otherwise remain in place, the actual costs of the necessary adjustment of City/Town water and sewer utilities shall be pro rated at the overall percentage agreed to by City/Town and County for cost sharing. City/Town shall be responsible for funding one hundred percent (100%) of any Betterment; as well as 100% of any relocation that is caused by City/Town installation during the Project Duration. Except as provided herein, all costs for adjustment and/or relocation of utilities in the public ROW shall be the responsibility of the Utility Owner or of the City/Town Utility. Any Project delay or other damages caused by City/Town Utility failure to timely relocate or adjust the facility shall be at the entire cost of City/Town.
- L. To provide for continuing surveillance and control of ROW to prevent the construction, placement, storage or encroachment of any signs, personal property or other appurtenances in the existing or proposed ROW. In the event that the aforementioned features are allowed by City/Town to encroach on necessary ROW during the duration of the project, City/Town shall bear the entire cost of removal or relocation of said encroachment.
- M. To provide to County for County's or County's designee's use, at no cost, adequate copies of all construction standards, codes, (specifically including zoning and development codes), plats, specifications, guidelines, standards or any other pertinent information as determined by County to be required for the completion of the Project. Additionally, City/Town shall furnish County, at no cost, such documents as necessary to keep all items previously furnished to County current.
- N. Actively participate and provide authorized representation with decision making power at PCC and/or PDC, preconstruction meeting, partnering meetings and project team meetings which are necessary to project development/completion and fiduciary relationships.
- O. City/Town agrees to provide timely review of interim submittals. "Timely review" will be agreed upon during the PCC and/or PDC as a part of the Project schedule. City/Town further agrees that if no review notes are submitted by City/Town in writing to County on a timely basis, plans are approved as submitted.
- P. When City/Town is Lead Agency City/Town agrees to allow forty-five days for County review of submittals and any comments shall be incorporated into final document.
- Q. City/Town agrees that it will pay all additional project cost for any City/Town requested discretionary change, including, but not limited to Amenities and Utility Betterments, in or addition to the design or construction of the project subsequent to the City/Town opportunity to review the sixty five percent (65%) design plans.
- R. Provide at City's/Town's cost for the continuing maintenance of all the Project ROW, such as mowing, drainage, trash removal, etc., during the period between acquisition and construction.
- S. During the construction of the Project and after completion of the Project, City/Town will be responsible for the control, operation, police enforcement and/or emergency services, without cost or contribution from the County.

- T. After the completion of a Project and the one year maintenance period, the City/Town will be responsible for all future maintenance without cost or contribution from the County.
- U. Bear the entire cost of design, construction and administration for landscaping, streetscaping, streetlighting, as such items are not included in the Standard Basic Project Design and other amenities specified or requested by City in excess of Standard Basic Project Design.
- V. It is the intent of this Master Agreement that the County will be the Lead Agency. In the event that the City/Town and County agree in writing that City/Town will manage and administer one or more Projects, City/Town and County will enter into a PSA as to that project(s). In such instance, City/Town agrees to assume all Lead Agency responsibilities except as may be set forth in the PSA as determined by mutual consent.

#### **ARTICLE VIII. UTILITY IMPACTS.**

- A. In cases where a Utility is located in a Privately Owned ROW, and it is necessary to relocate the facility or make adjustments by reason of the widening or improvement of the designated project, the County (or City/Town if acting as the Lead Agency) will, after submission by utility company of ROW documentation and cost estimates acceptable to the City/Town, County and other Stakeholders, assign the actual costs for the relocation and/or adjustment of said utility to the Project.
- B. In cases where a Utility in Public ROW, excluding City/Town Utilities, occupies any portion of the Project ROW by Texas or Federal Law or by agreement with the City/Town that allows or permits the City/Town to cause the relocation of the utility for the construction of the project, the City/Town shall timely require and enforce the relocation or adjustment requirement at no cost to the project. In the event that the City/Town has no legal or contractual right to cause the relocation, the relocation or adjustment shall be relocated or adjusted and all cost shall be a Project Cost. City/Town shall take all steps necessary to insure that such relocation or adjustment shall not conflict with or delay the Project schedule.

#### **ARTICLE IX. COUNTY COVENANTS AND AGREES AS FOLLOWS:**

- A. To provide as a Project Cost preliminary engineering which will define project details, e.g., location, scope of work and specific right of way alignment for each improvement. Such preliminary engineering shall be submitted to the City for approval, prior to proceeding with the final design and any right of way acquisition.
- B. To provide as a Project Cost for the construction of transportation improvements based upon design criteria conforming to Standard Basic Project Design in conformity with applicable City ordinances and standards, to the extent of Commissioners Court approved program funding. Scope of work shall include the agreed upon design standards as the basis for improvement criteria. Deviations from mutually agreed upon application of City/Town standards and/or design criteria shall require prior approval of City/Town. Where City/Town standards do not exist, TxDOT standards as of the Effective Date of this Master Agreement shall be utilized unless otherwise mutually agreed by PSA.
- C. To actively participate and provide authorized representation at Predesign Charrette, preconstruction meeting, partnering meetings and project team meetings which are necessary to project development and completion and fiduciary relationships.

- D. To provide project management of each Project where County is Lead Agency from commencement to completion of construction. City and County may further agree by mutual consent to redefine project management roles as beneficial to the Project as defined in the MOA and supplemental agreements.
- E. Upon receipt of written request detailing the information requested, to provide information related to the Project to City/Town or City's/Town's designee at no cost to the City.
- F. County agrees to provide review of interim submittals within forty-five days and hereby agrees that if no review notes are submitted by County (if City/Town is filling the role as Project Manager) in writing to City/Town, plans are approved as submitted.
- G. To submit final engineering plans for review and written approval by City/Town at least thirty (30) days prior to advertising for construction.
- H. To provide for the acquisition, including acquisition by Eminent Domain, of the necessary additional ROW, on designated projects, in accordance with minimum standard requirements and utilizing existing public ROW to the maximum extent possible as a Project cost.
- I. To require all contractors to secure all necessary permits required by City/Town on said construction projects.
- J. To furnish record drawings of construction plans for the permanent records of City/Town within twelve (12) months upon completion and acceptance of the transportation improvement Project.
- K. To transfer the real property or property interest acquired by County and used for the Project to City/Town.
- L. In the event County and City agree in writing that City will be the Lead Agency for the agreed upon Project, County will reimburse City for agreed costs as detailed in Article XII. (Funding) in an amount not to exceed the Project cost as approved by Dallas County Commissioners Court and incorporated in the PSA. All County payments shall be in accordance with County Policies and Procedures or as may be mutually agreed between the parties and incorporated in a PSA.

**ARTICLE X. PRELIMINARY DESIGN CHARRETTE (PDC), PRELIMINARY  
CONCEPT CHARRETTE (PCC)**

- A. City/Town and County, as specified in Articles VII and IX, respectively, will designate officials or representatives to participate in a PCC and/or PDC to be conducted on a mutually agreeable date and location. At least part of this meeting will be conducted on the Project site.
- B. Results from PCC will identify the general project scope, the basic approach and concepts to be taken with the project, the elements of CSS that will be included, and some ideas for alignments alternatives. Lead agency will already have been determined, and as well as project administration and management roles, to include the Project Manager. Key project team participants shall be introduced to stakeholders at the PCC and or PDC. Results from the PDC will identify the preferred alignment of the project which all stakeholders can support and build momentum behind, and provide all stakeholders a commitment for project delivery schedules and project budgets.

**ARTICLE XI. FISCAL FUNDING**

Notwithstanding anything to the contrary herein, this Master Agreement is expressly contingent upon the availability of County funding for each item and obligation contained herein. City/Town shall have

no right of action against the County as regards this Master Agreement, specifically including any funding by County of the Project in the event that the County is unable to fulfill its obligations under this Master Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Master Agreement or failure of any funding party to budget or authorize funding for this Master 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 Master Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

Notwithstanding anything to the contrary herein, this Master Agreement is expressly contingent upon the availability of City/Town funding for each item and obligation contained herein. County shall have no right of action against the City/Town as regards this Master Agreement, specifically including any funding by City/Town of the Project in the event that the City/Town is unable to fulfill its obligations under this Master Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Master Agreement or failure of any funding party to budget or authorize funding for this Master Agreement during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the City/Town, at its sole discretion, may provide funds from a separate source or terminate this Master Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

#### **A. ARTICLE XII. FUNDING**

A. City/Town and County mutually agree to proportionately fund the Direct Project and Program costs as agreed by the parties in a PSA. Unless otherwise specified in the PSA, County shall bear fifty percent (50%) of the total Direct Project and Program costs excluding the Amenities, relocation or adjustment of City/Town Utilities, Utility Betterment, Indirect Cost, Direct Cost not supported by detailed hourly accounting system and other items as specified in this Master Agreement, Funding Agreement or any PSA. County shall not be responsible for any amount of funding in excess of the Project not-to-exceed amount as shown in the PSA. Unless otherwise specified in the PSA, City/Town shall bear fifty percentage (50%) of all Direct Project and Program costs. In addition, City/Town agrees to fund all other City cost as provided herein, including, but not limited to, Amenities, relocation or adjustment of City/Town Utilities, Utility Betterment, Indirect Cost, Direct Cost not supported by detailed hourly accounting system and other items as specified in this Master Agreement, Funding Agreement or any PSA.

B. Unless otherwise stated in a PSA, the milestones for each project shall be (1) preliminary and primary design (2) ROW acquisition and utility relocation or adjustment and (3) construction. The Lead Agency shall prepare an estimated cost for each milestone. Upon approval of the cost by the other party, each party shall fund its share of the respective milestones by placing that amount of money in an escrow account or otherwise encumber the funds to insure that the Lead Agency will have sufficient funding available from current revenue for the timely payment of Project milestone costs. The Lead Agency may bill the other party for periodic payments for the actual amount of work completed toward the completion of the milestone. Upon completion of the milestone, the non-management party will be furnished a notice that such work has been completed and the amount of funding that may be utilized to pay subsequent milestone Project cost. Notwithstanding any other term or condition contained herein or in any PSA, neither party will be required to award any contract until

written certification has been received that funding has been placed in escrow or encumbered for the payment of the non-awarding party's portion of the Project cost.

C. In the event that the cost of the Project shall exceed the not-to-exceed amount, City/Town and County agree to either reduce the scope of construction or seek additional funding to complete the Project at the agreed upon cost share percentages. At the termination of the Project, the Lead Agency will do a final cost accounting of the Project. In the event that the amount paid by either party exceeds its portion of the actual cost, the difference will be remitted to such party. In the event that additional funds are due, the Lead Agency will bill the other party who agrees to pay such funds within thirty (30) days of receipt of such billing.

D. If City/Town elects to manage Project, County will reimburse City/Town based on invoices for actual costs expended as supported by documentation approved by County Auditor. Any and all supporting documentation required by County Auditor shall be included with invoice from City/Town.

E. Upon execution of a PSA, City/Town shall escrow an amount adequate for initial project costs which County may use to pay for initial professional services required for scoping, preliminary, and primary design.

F. City/Town and County shall enter into Funding Agreement and/or PSA to establish commitments as required for each project. Suggested timeframes for Funding Agreements, PSAs and/or any amendments are:

- a. As soon as project accepted by Commissioners Court and as a result of the kick off partnering meeting, a Funding Agreement to establish Lead Agency for preliminary engineering and general funding responsibilities and procedures for reimbursement by Participating Agency; or
- b. When the preliminary engineering plans are at 60% complete; or
- c. After construction bids are opened amend the PSA as needed.

### **ARTICLE XIII. NO THIRD-PARTY BENEFICIARY ENFORCEMENT.**

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all right of action relating to such enforcement shall be strictly reserved to City/Town and County and nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other person on this Agreement. It is the express intention of City/Town and the County that any entity other than City/Town or the County 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.

### **ARTICLE XIV. RIGHT OF ENTRY**

The City/Town agrees that County shall have the right to enter upon the Project area for the time period necessary for the completion of the Project. City/Town agrees to furnish such police or other City/Town personnel as requested by County for traffic control or other public safety matters at no cost to the Project or County.

## **ARTICLE XV. LIST OF PROJECTS**

City/Town agrees that it has been furnished with a list of the potential Projects as approved by the Dallas County Commissioners Courts, subject to the agreement between the parties of a PSA. City/Town stipulates and agrees that the Commissioners Court Order approving the projects identifies the potential Project location and describes the type of project in sufficient detail that the City/Town is fully aware of the location and type of projects being considered.

## **ARTICLE XVI. ORPHAN ROAD POLICY;**

The County encourages all cities adjacent to orphan roads in the county to develop, commit to and submit a plan to the County for completing the annexation of the orphan road segments and assuming full responsibility for these roadways. In instances where two cities abut the same orphan road segment, the County encourages the two cities to jointly develop a plan of the annexation of that segment. The County offers its assistance to the cities in developing such plans.

- A. The County, at the discretion of the Commissioners' Court, may give additional selection value to projects in cities that have submitted a specific plan for the annexation of orphan roads when the County selects, approves and schedules projects for funding in the County's major MCIP. Such preference may also be given in approving projects for road and bridge district participation (Type "B" work).
  - B. The County, at the discretion of the Commissioners Court, may also refuse to participate in discretionary projects, such as road and bridge district projects or MCIP projects, in a City/Town that elects not to pursue the annexation of orphan road segments that abut its boundaries. Failure to notify the County of the City's/Town's intent to annex and/or failure to submit a plan for annexation in a timely manner shall be construed by the County as the City's/Town's election not to pursue annexation.
  - C. The County, at the discretion of the Commissioners Court, may select specific orphan road segments for improvement when a City commits to annexation of the segment upon completion of the project. However, the specific plan for annexation of orphan roads submitted by the City/Town will not be limited to annexation upon completion of improvements by the County. The County improvements may be made as road and bridge projects or as MCIP projects (subject to other MCIP criteria including regional thoroughfare plan designation and City/Town cost participation.)
  - D. This policy application is prospective and projects selected by the County and approved by the Commissioners Court prior to the date of the adoption of this policy shall not be impacted by this policy.
  - E. The County shall provide written notification of the adoption of, and future revisions of, this policy to the cities abutting orphan road segments.
  - F. The provisions of this Article XVI shall survive the termination of this Master Agreement.
- (Ord. No. 2002-637; Ord. No 2006-1171)



**ARTICLE XVII. SUBDIVISION REGULATIONS IN THE  
EXTRA TERRITORIAL JURISDICTION**

County and City/Town agree that City is the office that is authorized to: (1) accept plat applications for tracts of land located in the extraterritorial jurisdiction; (2) collect all applicable plat application fees; (3) provide applicants one response indicating approval or denial of the plat application; and (4) establishes a single set of consolidated and consistent regulations related to plats, subdivision construction plans, and subdivisions of land. The provisions of this Article XVII shall survive the termination of this Master Agreement.

**ARTICLE XVIII. MISCELLANEOUS GENERAL PROVISIONS**

**A. Applicable Law.** This Agreement and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the State of Texas and exclusive venue shall be in Dallas County, Texas. Notwithstanding anything herein to the contrary, this Agreement is expressly made subject to County's and City/Town's Sovereign Immunity, Title 5 of Texas Civil Practice and Remedies Code, and all applicable State of Texas and Federal laws.

**B. Entire Agreement.** This Agreement, constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto as herein provided.

**C. Severability.** If any provision of this Agreement shall be held invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

**D. Default/Waiver/Mitigation.** It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law.

**E. Federal or State of Texas Funding.** In the event that any work or part thereof is funded by State of Texas or U. S. Government funding and any statute, rule, regulation, grant, contract provision or other State of Texas or U. S. Government law, rule, regulation or other provision imposes additional or greater requirement(s) than stated herein, City/Town agrees to timely comply therewith without additional cost or expense to County.

**F. Headings.** The titles which are used following the number of each paragraph are only for convenience in locating various provisions of this Agreement and shall not be deemed to affect the interpretation or construction of such provision.

**G. Number and Gender.** Words of any gender used in this Agreement shall be held and construed to include any other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.

**H. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**I. Notice.** Any notice provided for in this Agreement to be given by either party to the other, shall be required to be in writing and shall be deemed given when personally delivered, or three (3) business days after being deposited in the United States Mail, postage prepaid, certified, returned receipt requested, or registered addressed as follows:

To County: County of Dallas  
Director of Public Works  
Dallas County  
Administration Building  
411 Elm Street, Fourth Floor  
Dallas, Texas 75202-3389

To City/Town: City of Mesquite, Texas  
City Manager  
PO Box 850137  
Mesquite, Texas 75185-0137

Either party may change its address for notice by giving the other party notice thereof.

The City/Town of Mesquite, State of Texas, has executed the Agreement pursuant to duly authorized City/Town Council Resolution 20-2011, Minutes \_\_\_\_\_ Dated the 16 day of May, 2011.

The County of Dallas, State of Texas, has executed this agreement pursuant to Commissioners Court Order Number 2011-1014 and passed on the 7th day of June, 2011.

**CITY OF MESQUITE**

BY John Monaco  
John Monaco, Mayor  
DATE 5/24/11

ATTEST Sonya Land  
CITY SECRETARY ~~ATTORNEY~~

**COUNTY OF DALLAS**

BY Clay Lewis Jenkins  
Clay Lewis Jenkins, County Judge  
DATE June 7, 2011

APPROVED AS TO FORM:  
Gordon R. Hikel  
Gordon R. Hikel, Chief, Civil Division  
Dallas County District Attorney

\*By law, the District Attorney's 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).

**EXHIBIT "A"**  
**TO THE**  
**MASTER AGREEMENT GOVERNING**  
**MAJOR CAPITAL IMPROVEMENT PROGRAM**



**DEPARTMENT OF PUBLIC WORKS**

**411 ELM ST., 4TH FLOOR  
DALLAS, TEXAS 75202**

**PROJECT MANAGEMENT PRACTICES  
MANUAL**

**5 PHASE  
PROJECT DELIVERY SYSTEM**

**JULY 2009**

# INTRODUCTION

The purpose of this manual is to provide a standard practice guide on project management practices within the Dallas County Public Works Department. It is meant to assure that a standard approach is used by all Project Managers (PMs) and other project team members in the delivery of County-led transportation projects. The guidelines are meant to meet the requirements and intent of the American Public Works Association's (APWA) publication entitled "The Public Works Management Practices Manual" (The Manual). The Manual contains 529 recommended practice statements that describe the critical elements necessary for a full-service public works agency to accomplish its mission. We estimate that about 300 statements apply to the missions of Dallas County Public Works Department. The practice statements "call for the development and implementation of a policy or procedure in the form of a rule, regulation, written directive, or for the execution of an activity, report, procedure or other action." This PMP manual is intended to fulfill that requirement and covers a number of practice statements. It begins with Practice Statement 10.8 "Project Management" in the Chapter 10, "Planning and Development." It also includes practices elements in a general sense from Chapters 11 "Engineering Design," Chapter 12 "Bid Process," Chapter 13 "Project Management," Chapter 14 "Right-of-Way Management," and Chapter 15 "Utility Coordination." Our basic methodology is a strong matrix approach, so that our PMs are assigned from the time a planning initiative become a true approved project, to completion of the total project. We use the terminology found in the Project Management Institute's "A Guide to the Project Management Body of Knowledge" (PMBOK). This includes the definition of a "Matrix Organization" which we aspire to be. This definition is: "Any organization structure in which the project manager shares responsibility with the functional managers for assigning priorities and for directing the work of individuals assigned to the project." When we speak of a project matrix team, we are referring to a team led by an appointed PM who has team members from throughout the 4 functional divisions of Dallas County Public Works. These four divisions are Transportation and Planning, Property, Engineering & Construction, and Program & Engineering Management. The PMs are assigned to the Engineering and Construction division, but manage projects from cradle to completion. There is no hand-off between functional divisions.

This Practice Manual is purposely short. We desire to provide a guide to project delivery practices, not an exhaustive "how to" manual. Other Public Works Practices (all indexed to the APWA Practices Chapters and numbers) do provide more detailed instructions on the specific elements of project delivery. Our experience is that very thick manuals are not used as much as shorter guidelines that provide the boundaries of good practice and a standard approach on the essentials. We then empower our individual PMs to work within the guidelines, leveraging their own strengths (their "hedgehog" talents) to work the details in delivering their individual projects.

## PHASE 1 -- PLANNING & PRELIMINARY DESIGN

### STEP ONE, PROJECT DEFINITION

1. Transportation Planning distributes a "Call for Projects" to all Dallas County cities. This is a process initiated every 2 to 3 years and involves partnering with all the cities and stakeholders. The nomination period is open for 4-6 months before projects are submitted, usually in August of odd numbered years. Public Works will host a partnering workshop and

include a luncheon in the middle of a meeting about 4 hours long. Various aspects of this Call for Projects Workshop and process will be adjusted based on input from city partners.

2. Planning Division will adjust the project selection criteria based on input from the cities, criteria that NCTCOG is using, and guidance from the County Commissioners. The final criteria and Call process will be briefed and approved by the Commissioners Court and a 5-signature letter will be used to transmit the Call to the cities. The amount of time for the nomination process will be adjusted based on feedback from the cities. This is to assure they have enough time to brief their elected officials, plan for inclusion of projects in city bond elections, and prioritize city capital spending. After the Planning Division assures all the information is submitted correctly (and assists some of the smaller city staffs in submissions), a matrix team of Public Works (PW) employees begins with an executeability analysis that precedes selection of projects for inclusion in the County's MCIP. The team, with Engineering & Construction, Planning, & Property people involved, provides assistance with risk assessments from various perspectives --feasibility, cost estimates, scope definition, political aspects, funding, technical issues, utilities, safety, environmental, and traffic factors, etc. Property Division team members examine Right-of-Way (ROW) & utilities, looking at feasibility, types of property involved, other significant factors, such as at-grade railroad crossings, relocations, etc.
3. The Director and AD's meet with each Commissioner separately to go over the slate of nominated and analyzed projects in his/her District. Google Earth or other technology is used to give the Commissioner a comprehensive look at the nominated project and its environs. The pros and cons of each project are discussed with each Commissioner taking their own approach to project selection. The technical grading scores act as a common denominator to assure only effective projects are in the ballpark for selection. Public Works provides data on previous funding commitments, and percent of thoroughfare roads & population of each city, to help Commissioners decide on the projects to be selected. Every project is placed into a Program Year (PY) (year slated for construction start), based on District and overall County MCIP cash flow projections. After briefing each Commissioner and the Judge, the updated spreadsheet called the "MCIP Transportation Funding Commitments" is presented in Briefing format in public forum to the Commissioners Court. The following week, a Court Order is submitted and the MCIP is then formally approved by the Court, with a 5 Signature Court Order.
4. The MCIP has been formulated on the premise that legal agreements should reflect the nature and character of the program. Equal funding partnerships, matrix Project Management, Context Sensitive Solutions methods of project delivery, and partnering principles applied in every phase of project delivery are the essential elements of the MCIP. The time it takes for getting inter-local agreements approved should never be on the critical path of project delivery. Therefore much effort has been expended between the Civil DA legal staff and Public Works staff to formulate a "Master Agreement Governing Transportation Major Capital Improvement Projects." This MCIP Master Agreement has been signed by 26 Dallas County cities with approved projects and serves as the legal basis for partnerships between the various cities and Dallas County. It will be renewed every 10 years. Later during project design, enough information will be known to forge a Project Supplemental Agreement (PSA) that details the specifics of that particular project. None of the basic elements of a city-county legal agreement have to be repeated in the PSA, thus simplifying the process and time involved.

5. A kickoff meeting is next held with each of the City Partners who have projects selected. This key meeting sets the basic parameters for each of the projects, such as cash flow requirements for each partner, who the lead agency for project delivery will be, agreed upon technical criteria, known risks, roles for each stakeholder, etc., all focused on assuring timely project delivery and moving the project into construction during the selected PY. If there is a great deal of uncertainty associated with the project (e.g. part of some economic development such as transit oriented development, or part of brown field development, or other significant environmental challenges, or a very significant change in planned use of an area in the future, e.g. industrial changing to mixed use, etc), then the lead agency may conduct a *Planning Charrette*. The purpose of this meeting with all significant stakeholders is to determine the beginning scope and the realm of possible approaches. Serious design cannot begin until there is stakeholder agreement on a relatively reasonable set of alternatives, which bear some relationship to the scope of funding currently available. Partnering relationships will also be established at this Charrette which should be sustained throughout the life of the project.
6. Public Works commits to using Partnering Principles of Trust, Commitment, and Shared Vision in addition to Best Practices of Project Management Principles throughout the life of the project. Each City is invited to use the same principle-centered teamwork as we work together to deliver the selected projects. This partnering approach is also an integral part of Context Sensitive Solutions (CSS), a design methodology that involves early and continuous involvement of all stakeholders.
7. For every project that the city and county stakeholders agree to assign Dallas County as the Lead Agent, a Project Manager (PM) will be assigned by the Assistant Director of Engineering and Construction. In addition the Assistant Director in consultation with the PM and other Assistant Directors and PW Business Unit leaders, will identify matrix team members for the project.
8. An initial Project Funding & Execution Status (PFES) and Program Management and Planning Status (PMAPS) form will be developed by the PM for each project in coordination with the PEMD & the AD, Engineering & Construction. Each business unit leader will review PFES and PMAP in order to provide an adequate workforce for each project, and assure team members assignments are balanced.
9. Decision on use of Subsurface Utility Engineering (SUE) will be made before initiating design. In the analysis of candidate projects, utility relocation risks will have been identified. When these risks are high (the usual situation), then funding will be planned in the design for SUE efforts. PW now has in place an IDIQ contract for quick implementation of SUE consultant efforts. Utility partnering efforts include initiatives for joint efforts wherever feasible. This information will be critical for designers to use as they launch the design. Total integration of the SUE methodology will help assure that ALL utility impacts are considered in every phase of project delivery.

## **STEP TWO, PRELIMINARY DESIGN**



1. A systematic decision process as part of the Public Works Business Operating Plans (PWBOP) updating is done to determine which design efforts will be completed with in-house designers and which will be done by consultants. For consultant selection, a rigorous and systematic process will be used to select the best qualified consultants for each project. An initial contract will be signed with a best qualified consultant to perform the entire preliminary design, or participate as a Preliminary Design liaison, trainer, or expert to advise

an in-house design force for the project. As much as possible, an Indefinite Delivery, Indefinite Quantity (IDIQ) methodology will be used to help assure inordinate amounts of time are not used in the best qualified selection process required by state law. City partners will be given the opportunity to provide input to the County in the consultant selection process.

2. County, city, or joint team of in-house designers or selected consultant firm begins initial design efforts under the leadership of the PM. This design effort will be initiated formally with a ***Design Partnering Workshop***. The PM will assure all significant stakeholders are invited and commit to attend & participate. The meeting will be designed to assure all stakeholders are committed to a smooth and strong start to design, that all the vital stakeholders are involved early, and that progress meetings are scheduled on a regular basis. This will involve commitments by the design team (consultant or in-house) and by the city and county people involved in design approval. Goals include committing to resolve alignment issues early in the design process. In some circumstances, a feasibility study may be required to compare & contrast different alternatives before real design can begin. Estimated ROW takes, utility impacts, and environmental affects for each alternative may need to be reported before stakeholders decide on a preferred alternative for preliminary design. The design partnering meeting will be held over a lunch hour and include a 50%-50% cost shared, modest lunch.
3. CSS methodology will continue to be used, stressing total stakeholder involvement, throughout the project delivery process. Task Force and Matrix Team meetings will be scheduled in order to assure effective teamwork. The Institute of Transportation Engineers (ITE) manual "Context Sensitive Solutions in Designing Major Urban Thoroughfares for Walkable Communities" will be used as an overall design guide.
4. When a consultant is used as the design agent, a contract will be negotiated for the preliminary design only, unless the project is relatively simple and the final solutions are not in question. The idea is to avoid protracted negotiations on the total scope and fee, when many of the factors influencing final design consideration are not yet known. An amendment to the contract for completion of the Primary Design can be negotiated after Preliminary Design is nearing completion. At this time, the unknowns should be relatively few and the scope negotiation much easier to navigate. The decision to amend the contract for completion of the Primary Design will be made after an interim evaluation is completed using the County's consultant evaluation system. Every effort will be made to assure a seamless design process, without interruptions by prolonged negotiations in signing the Primary Design amendment to the contract.
5. A ***Preliminary Design Charrette*** (PDC) will be planned by the Project Manager who will lead the execution with all stakeholders (Cities, utilities, County, any private parties or other decision-makers). The scope of invitees to the PDC will be dependent upon project complexity and number of unknowns. The goal of the PDC is to build consensus and support behind the project and alignment alternative that is finally selected by the stakeholders. Many projects have been derailed by lack of support when opposition arises. A great effort will be made to assure attendance of all the key players. This consensus building effort is an integral part of any CSS approach to design. The Director and Assistant Directors will be personally involved and the PM will make special efforts to assure political leaders have the meeting on their calendars and plan to attend, or at least have a clear invitation. In addition, by name individual contacts will have to be made to assure utility company representatives attend, since key alignment decisions will be made that can affect,



or be affected by, probable utility locations. If applicable, the PDC will include an orientation walk-thru of the project site, which includes right of way assessment. The PM will highlight specific City zoning and other ROW requirements, or ask the city partner to highlight these.

6. As part of the CSS approach, a Public Involvement (PI) strategy will be forged under the leadership of the PM, and the advisement of the PW Transportation & Planning Division (T&P). T&P will attain and maintain a PI center of expertise and advise PMs on various techniques and methods to use to best involve the public and other stakeholders. Public Works will use innovative methods in coordination with our cities, such as workshop/small group formats, inviting outside consultants, etc. City methods & approaches will always be respected and adhered to in this area.
7. Phase 1 ends with approval of the Preliminary Design Report, Preliminary Alignment/Profile and Preliminary Sizing of bridges and drainage structures along with S.U.E. determination, Preliminary Survey Report, and Preliminary Utility Investigation Report.
8. The design firm or in-house design team will have begun necessary permitting and environmental assessments. Basically the level of effort will approximate that required of the Preliminary Schematic and Environmental Assessment Phase that currently is required on the TxDOT STP/MM projects.
9. Roadway plans are estimated to be 60-65% complete at the end of Preliminary Design Phase.

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## PHASE 2 -- PRIMARY DESIGN

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1. The initial task is negotiation of an amendment to the preliminary design contract with consultant for Primary Design, or if that is not successful, assignment of the work to an in-house design team.
2. The Scope of Work should now be well defined by all Phase 1 efforts and includes geotechnical investigations, utility analyses (including application of all the S.U.E. data derived in Phase 1), constructability review, environmental analysis, neighborhood public workshops, traffic information approval, estimated ROW parcels, & integration of context sensitive solution elements.
3. Part of negotiations both with in-house design teams and consultants includes definitive delivery dates for various deliverables, phases, and reviews. All commitments made during the Design Partnering meeting and follow-on Task Force meetings will be honored, by all stakeholders. In paying submitted invoices for progress during the design period, earned value analysis concepts will be used to track cost and schedule progress. We DO NOT make 'cost plus' assumptions about consultant's work efforts. Since our 2-phase negotiation system allows for better scope definition, the instances of misunderstanding on true project scope are reduced.
4. Consultant or In-house Design Team works closely with all stakeholders -- under the guidance and direction of the County PM, in a partnering mode. The lead designer is the Technical Manager at this point in the process, and is always under the matrix leadership of the PM. Any available internet or intranet based Project Management tools, including extranets, will be

used to optimal effect during the life of the project. When one of our IDIQ consultants is hired (survey, miscellaneous design, SUE or materials testing) we will work with them using partnering concepts and treat them as members of the Public Works team. Also, the design firm for water and/or wastewater services will be integrated, and wherever possible, we will attempt to assure the design consultant for the transportation project is also selected by our city partner to design the municipal utility improvements. We will expect any of our consultant partners to become familiar with the elements of our 5-Phase project delivery system and to commit to the precepts of design partnering..

5. Traffic and utilities data will be considered in design, with data from partner city, County, NCTCOG, TxDOT, or consultant. Agreed upon level of S.U.E. will be key input into design details, and utilities partnering imperatives will be used throughout the design and construction phases.
6. Any required environmental impact analysis will be completed during phase 2. Common sense will be used to address significant issues without wasting time on clearly unimportant areas. The goal is to execute environmentally sustainable transportation infrastructure that improves the overall quality of life of our joint customers, the transportation users and citizens of Dallas County and our cities.
7. Right of Way (ROW) documents will be finalized, with quality controlled by the consultant or in-house design team. The Quality Assurance (QA) function will be completed by both the PM and the Property Division in a smoothly coordinated manner, using pre-coordinated checklists. At the appropriate time, the documents will be delivered to Property Division, but the PM still retains overall responsibility for timely project delivery. Early involvement on ROW issues, including utility relocation aspects (such as getting possible Rights of Entry for utility relocation) is critical for success. Early provision of final and accurate ROW documents will be a critical milestone of the design contract.
8. Design Consultant or In-house Design Team completes work on provided schedule, keeping all the commitments made during the Design Partnering Meeting and the Preliminary Design Charrette. Consultants and/or In-house Design Team are expected to assure that they accomplish “muddy boots” design with true “eyes-on” the total project site. The project should have been walked several times by the time the design is complete. Most underground utilities have above ground markings, which are often overlooked until construction. In design review, we will avoid lengthy rounds of passing designs back and forth, in favor of “over-the-shoulder” reviews, as required to meet design completion timelines. These will include city and other interested stakeholders under the orchestration of the PM.
9. The PM completes an interim evaluation of the design consultant. Special note will be taken of the consultant’s system for assuring QC of all design effort including ROW documents. After construction is complete, the PM performs a final consultant evaluation, using our standard evaluation system contained in the contract. The consultant is given an opportunity to evaluate the County’s project management process as well.

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## **PHASE 3 – DESIGN COMPLETION & RIGHT-OF-WAY INITIATION**

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1. Begins with the delivery of the initial, unsealed ROW documents to the County by the consultant. Consultants will first bring a few ROW documents for review by the PM and Property Division team members, to assure they fully understand the details and level of Quality Control we expect in their submittals. Standards and scheduling will be clearly spelled out in writing within Consultant's contract. Deliverables will include ROW maps and deed records.
2. Consultant is required by contract to submit property owner deeds along with right of way maps which have received an internal quality control process. The PM assures utility representatives are informed of the project and all know utilities are shown on the plans. Diligent efforts will be made to assure that all private or public utility easements are identified on the maps and plans as required in Consultant Contract. All the SUE efforts should be included in the design documents.
3. The PM, still leading project delivery, assures the County or City ROW Functional Manager works to assure efficient execution of ROW planning and acquisition services, as part of the Project Matrix Team. The Property Division will manage the ROW Services IDIQ contract, if this delivery tool is used. Before writing a work order for the ROW services IDIQ, the Property Division Chief will meet with the Chief of Engineering & Construction and the PM, to assure adequate project budget is available for the added cost of procuring ROW services.
4. The PM monitors and tracks progress, helping to resolve issues as they develop. He/she, keeps all stakeholders informed, using e-tools and networking. Any available internet-based Project Management tools, including extranets, as well as intranets will be used to optimal effect during the life of the project.
5. Consultants or In-house Design Team are to avoid taking ROW that is not absolutely necessary to the construction of the project by performing a Preliminary Design/Right of Way Review Board. The PM uses his/her Matrix Team to minimize the ROW takings and assures appropriate leadership to assure project delivery dates are met.
6. Consultant will make minor changes resulting from property owner requests or other changes that arise naturally in ROW negotiations.
7. As required, the Project Manager will be prepared for expert testimony at any Eminent Domain hearings.
8. The PM decides, in consultation with other stakeholders and early enough to preclude re-work by consultant, the packaging of the Plans, Specs & Estimates (PS&E) package for the construction bidding purposes. The PM will use the Standard Practices of the Public Works Department as the guide, with the precise formats being customized to the type of project involved. Each city partner may have specific requirements, or if the project is a local-let of a federalized project, federal provisions will be included, as per TxDOT guidance.

## PHASE 4 – ROW Completion & Utility Adjustment

1. ROW acquisition is carried to completion, again under the active project management and leadership of the PM, with proactive activity of the ROW acquisition team. If the city or another partner such as TxDOT is the ROW acquisition agency, the PM will still track carefully the progress and proactively lead efforts to remove obstacles, etc. to keep progress on schedule.
2. The PM will use partnering principles as well as results of S.U.E. to assure utility adjustments are accomplished in time to keep scheduled project advertisement and contract award dates. The elements of Public Works Practice (PWP) 15.1, "Utilities Coordination" will be used as the guide. These principles are based on successful partnering efforts for over 10 years with major utility providers (including the UPRR). The PM will assure the attached *Essential Elements of Utility Partnering* and GUIDELINES FOR ASSURING SMOOTH RELATIONSHIPS BETWEEN LOCAL GOVERNMENTS AND UPRR is proactively used by all matrix team members.
3. The Project Manager tracks and resolves issues and work schedules, using the Matrix Team to proactively lead efforts to remove obstacles of acquisition and utilities relocation to ensure project schedule. As a matter of standard procedure, the use of utilities Rights of Entry (ROE) will be explored on every project. When conditions are there, we will use the ROE as a way to take the utility adjustment time off the project critical path. R&B forces may be needed to clear trees from the new ROW or to move fencing, and will be procured through requests to the Commissioner involved.
4. The City works as part of Matrix Team to expedite utility relocations. Many times, franchise utilities have relationships based on franchise utility agreements with cities that can be used beneficially to secure cooperation. Monthly Task Force meetings are initiated during this phase to assure early and frequent communication with all stakeholders. All team members are to proactively partner with the utilities and facilitate their relocation. Departmental policy is 0 RR (Zero Relocation of Relocations). The practices of PWP 15.1 "Utilities Coordination" will be used by all PMs. This includes use of the Utilities Special Work Assistance Team (U-SWAT) to help resolve tough utility challenges in a timely manner. The U-SWAT team is a resource for the PM and does not relieve him/her of the necessity for close team work, involvement & leadership during the utilities phase of the project. We regard the project as "in construction" during the time our utilities partners are operating in our ROW, relocating their utilities. We work hard to assure that all franchise utilities are relocated in a manner that is safe and will not impact our road construction (e.g. from improper backfill of their trenches, conflict with storm sewers, conflicts with water or sanitary sewer lines, bridge abutments, inlets, etc).
5. An Advertising Risk Assessment (ARA) is completed prior to engaging the Purchasing Department in advertising the project for construction bids. Advertising is not issued until all utilities are within a reasonable and confirmable clearance date. A deliberate decision will be made on how many days from bid opening until contract award, and how many days from contract award until the Work Order (notice to proceed) is given. Work Order dates will not be projected to occur BEFORE high assurance that all known utilities will have been relocated. A second important function of the ARA is to ascertain all the funding commitments, to update

the PFES to include all funds already expended, and to calculate an up-to-date construction estimate, called a Current Working Estimate (CWE). All of the above actions will be coordinated and finalized at a meeting scheduled and run by the PM with the Director, Assistant Director and a city partner representatives in attendance. This meeting will be scheduled as one of the critical milestones for the project.

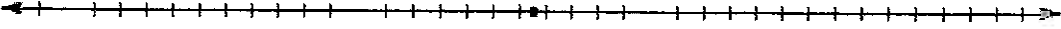
6. The PM will assure designers (in-house or consultant) will be kept on-call for projects if required to complete requested Engineering During Construction (EDC) services, such as shop drawing submittal review and consultation on design intent, assumptions, etc. The intent is to retain the best part of the tremendous energy, effort and focus that the consultant or in-house design team has just expended in designing the project.

## **PHASE 5 -- CONSTRUCTION**

### **STEP ONE CONSTRUCTION**

1. The PM does all the work to advertise the project and works with the County Purchasing Department for bid opening. A 100% design completion CWE will be completed by the PM and will be used as the fair-cost government estimate for construction bidding purposes.
2. The PM leads the execution of the Project Supplemental Agreement (PSA) with each Partner giving approval of final funding on a timely basis. An updated PFES will be needed at this time. Project Manager prepares Court Briefing Memo and Court Order to award the construction contract as well as the PSA. (Note: on some projects with complicated design phases, the PSA may be signed earlier, during Phase 2).
3. The PM completes all the work for construction contract award. PM works with all partners to assure a logical and timely notice to proceed is given. This order to begin work and the contract time period will be based on status of utility relocations, any city requirements, etc.
4. The PM will plan, schedule and execute the Construction Partnering and Pre-Construction Meeting with key stakeholders in attendance. The PM will schedule for attendance and participation the Director and Assistant Director for E&C. Careful pre-planning ensures the attendance of the right stakeholders and staff. In Dallas County PW, we will normally facilitate our own Partnering meetings since we have the expertise and experience to accomplish this without hiring specialized consultants. Costs for a modest lunch will be shared 50%-50% between the county and the contractor.
5. The PM leads throughout the construction phase. The PM assures partnering principles and spirit of Partnering (**Trust, Commitment, and Shared Vision**) are maintained throughout the project construction phase. The PM establishes a regular day and time each week for the weekly construction meeting in the field. The PM assures constant communication with customers and other project stakeholders, including especially the people and businesses who are located along the road being improved or built. . This may include a construction oriented Public Information Neighborhood Meeting, as well as periodic project newsletters, notices of key construction events or phasing, progress postings on city web-sites, meeting with neighborhood interests (property owners, schools, churches, businesses, etc). We are interested in not only achieving a high quality end-product, but also in delivering the project in a user-friendly manner. This is all part of total Context Sensitive Solutions project delivery.

## **STEP TWO- PROJECT CLOSE OUT**

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1. The PM assures final estimate is paid to Contractor on a timely basis. The Contractor may have to be persuaded to close out the project, or the County may take unilateral action to close out, if it is in our best interests
  2. The PM completes the final Evaluation on the Contractor, using interim evaluation results (if one was done), and performance during the entire contract period. The Contractor evaluates Dallas County Public Works (on a voluntary basis).
  3. The PM assures that as-built plans are provided for the ultimate owner from marked-up construction plans.
  4. PM works with the Public Works Program & Engineering Management Division (PEMD) to assure total project costs are finalized, a final PEFS is completed and Program Management is able to disencumber any remaining funds to be put back into the MCIP fund.
  5. The PM assures city is invoiced for their remaining portion of the total project costs.
  6. The PM formally turns the project over to the City by letter citing the date of return to City for maintenance.
  7. PM plans an ARR to capture lessons learned and celebrate project completion with all involved in project delivery from design to construction completion.
  8. PM conducts one year Maintenance Bond Inspection in conjunction with all applicable stakeholders, assuring all corrections, repairs, etc are completed.
  9. The PM completes closes out the project including conduction an After Action Review to assure lessons learned are shared within the Dept and city.

## *Essential Elements of Utility Partnering*

1. Know the utilities' customers and **remember that we have the same customers.**
2. Make utilities move **only if absolutely necessary to achieve the project purpose.**
3. Move only once if the move is, in fact, **essential.**
4. Get involved with actual field reconnaissance early. Include and engage Project Representatives or Constructibility personnel very early.
5. Get the acquiring agency's Right of Way personnel involved early.
6. Schedule initial Utility Partnering Conference early. Make partnering the theme and the first topic. Do it on the jobsite to increase the effectiveness.
7. Involve and Invite Utility representatives to Neighborhood or Public Meetings.
8. Distribute roadway plans early to get started with the utility planning.
9. Coordinate with all utilities to ensure that one has no negative impact on another. Coordination should ensure that enough right of way is acquired to accommodate all of the facilities.
10. When plans are changed, get them to utility companies promptly. Provide a list of changes for our partners.
11. Communicate with utilities frequently to ensure knowledge of changing personnel and appropriate contact person.
12. Review utility company's plans, comment on plans and implement the coordination long before fieldwork needs to begin.
13. Do not begin implementing a project schedule without total feedback from all companies.
14. Identify the precise sequence of relocations that need to occur. Many companies are predecessors of other companies' relocations. Communicate this sequence to all utilities and other stakeholders. Ensure that the sequence is streamlined as much as possible.
15. One way of ensuring the streamlining of the sequence is web-based notification when each company is complete or is scheduled to be complete. Scheduling is as important as the sequence.
16. Consider that seasonal shutdown restrictions will have significant and adverse schedule impacts, sometimes up to one year. Also consider that certain times of day are restricted from utility relocation. In addition, develop procedures for emergency situations and learn the appropriate "windows of opportunity" for change-overs, etc.
17. Share accurate information with all companies & see that they share information with each other.
18. Communicate the need to follow City Ordinances, particularly those relating to traffic control, backfill and pavement restoration. Traffic control plan must be filed and approved.
19. Insure that the companies have measures for handling complaints about their work and that they do not inconvenience our mutual customers more than is absolutely essential. **Remember, O R R !!**

# GUIDELINES FOR ASSURING SMOOTH RELATIONSHIPS BETWEEN LOCAL GOVERNMENTS AND UPRR

- **Start Early Coordination** – Set up a meeting with UPRR local representative Steve Marchenke to share project selection lists, to ascertain projects with UPRR impacts. Then on impacted projects, share preliminary designs, invite UPRR to early meetings, such as stakeholder preliminary design charrettes, public workshops, etc.
- **Work out precisely the location of railroad project impacts**, before contacting UPRR. This speeds the coordination process greatly. Use MAPSCO location, subdivision, and RR Mile Post where ever possible
- **Use the UPRR.com website for a wealth of information, maps, etc.** This can save time in answering questions and can provide much information about UPRR, including points of contact, e-mail and telephone information, instructions, applications, specifications, DOT crossing information, permit requirements, ROW agreements, etc. **Very, very valuable.** Our in-house or consultant designers need to explore this web-site before launching road design whenever there is going to be a RR crossing. Procedures and responsibilities are clearly laid out, as are design guidelines and specifications. Avoid nasty surprises that can impact project costs if not budgeted.
- **Expect the UPRR owned ROW to contain many other utilities (telecommunications, power, pipelines, etc), that you will have to pay to relocate.** These are private easements the utilities have paid for and the project will have to bear the costs of relocation. UPRR is a good source of information on the potential conflicts that you will encounter. Budgeting accurately for these costs will avoid nasty surprises later.
- **Do not even think about changing Exhibit B of the standard agreement.** UPRR has agreements to work out in 23 states, and their lawyers are very vigilant to watch for precedents that might bind UP elsewhere. Work on win-wins in the body of the agreement.
- **Avoid adversarial actions and relationships, instead try the partnering approach.** UPRR will respond in-kind. They desire to maintain integrity in relations with all their communities. Do not presume upon them (e.g., impossible responses on coordination that you failed to start timely, making demands they cannot meet, presuming the worst).
- **Look for ways to forge win-wins, for UPRR and the local community.** Understand that USDOT has a policy since 1992 to reduce at-grade RR crossings by 25%. This puts tremendous pressure on RR's to accomplish this goal. Does your community have a number of little-used crossings? Explore ways to eliminate them and UPRR can do much to meet the needs of your current project.
- **When appropriate, have our attorneys communicate directly with UPRR attorneys.** The key is to have worked out all the coordination we can before that, using the information, contacts and principles described in these guidelines. Then, the Project Manager should stay involved to assure that going down “legal rabbit trails” is avoided whenever possible. If we follow the spirit of win-win, then both sides will have better results, even if our attorneys are involved, as they have to be.
- **When you're in doubt and have searched all the readily available information, call Steve Marchenke, Ken Rouse, or UPRR Real Estate division in Omaha.** Even though they have large territories to cover, they are never too busy to help you proactively solve a problem and forge a win-win. If you have a “folder number,” this will save them much time in looking up the project file information.