

RESOLUTION NO. 23-2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE THE MASTER AGREEMENT GOVERNING TRANSPORTATION RELATED MAINTENANCE WITH DALLAS COUNTY.

WHEREAS, Dallas County has traditionally participated with the City of Mesquite (the "City") in maintenance activities and costs associated with maintenance of larger thoroughfares of regional significance; and

WHEREAS, the City contracted with Dallas County for roadway maintenance work performed by various Dallas County District Road and Bridge ("R & B") Maintenance crews; and

WHEREAS, the execution of a master agreement governing transportation related maintenance with Dallas County does not commit the City to any particular project or funding amount but does provide a framework by which future individual joint maintenance projects will be accomplished; and

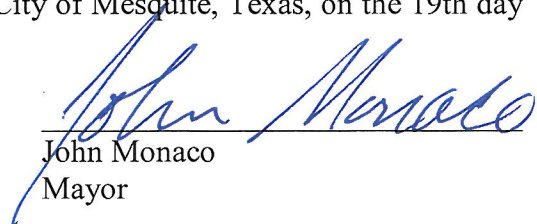
WHEREAS, no project specific agreement or other project initiating actions may be taken without a master agreement in place; and

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.

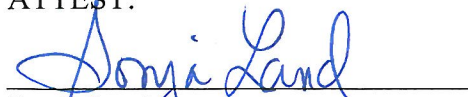
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the Mayor is hereby authorized to execute the Master Agreement Governing Transportation Related Maintenance with Dallas County, attached hereto as Exhibit "A," between the City of Mesquite and Dallas County, for future City/County maintenance projects.


DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 19th day of August, 2013.


John Monaco
Mayor

ATTEST:


Sonja Land
City Secretary

APPROVED:


B. J. Smith
City Attorney

STATE OF TEXAS §

COUNTY OF DALLAS §

**MASTER INTERLOCAL AGREEMENT BETWEEN DALLAS COUNTY
AND THE CITY OF MESQUITE, TEXAS, PERTAINING TO TRANSPORTATION-
RELATED MAINTENANCE ON OR ABOUT CERTAIN DESIGNATED ROADWAYS
SITUATED WITHIN THE TERRITORIAL LIMITS OF THE CITY OF MESQUITE**

WHEREAS, This Master Interlocal Agreement ("Agreement") is entered into by the authority of Chapter 791 of the Texas Government Code and Chapter 251 of the Texas Transportation Code to provide authorization for local governments to contract amongst themselves for the performance of governmental functions and services; and

WHEREAS, On occasion, the County of Dallas, Texas, hereinafter called "County", and the City of Mesquite, Texas, hereinafter called "City", desire to enter into an Interlocal Agreement for the purpose of City retaining and authorizing County, through its Road & Bridge forces, to maintain various "Type E" Roadways, situated wholly within the territorial limits of City; and

WHEREAS, "Type E" Roadway Projects shall be defined as improvements and maintenance of streets, alleys, roads, bridges and drainage facilities for a local governmental entity as defined under V.T.C.A., Government Code, Chapter 791. Dallas County Code, Sec. 102-3(5); and

WHEREAS, On occasion, the County and City desire to enter into an Interlocal Agreement for the purpose of jointly coordinating, facilitating and/or funding maintenance activity on certain duly qualified "Type B" Roadways, also situated wholly within the territorial limits of City; and

WHEREAS, "Type B" Roadway Projects shall be defined as improvements and maintenance of thoroughfares and bridges of major cross-county importance which are either existing or proposed. The Regional Thoroughfare Plan for North Central Texas Council of Governments shall be used as a guide to determine which thoroughfares are of major cross-county importance. Dallas County Code, Sec. 102-3(2); and

WHEREAS, On occasion, the County and City desire to enter into an Interlocal Agreement for purpose of City authorizing and retaining County, through its Road & Bridge forces, to perform minor transportation-related maintenance services, including but not limited to pothole repair, cleaning and clearing of drainage culverts, roadway debris removal, and the like, which services do not fall squarely within the purview of "Type E" or "Type B" Roadway Projects, such projects to be performed on or about public roadways and alleyways situated wholly within the territorial limits of City; and

WHEREAS, This collaboration between County and City is consistent with Strategy 4.2 of the Dallas County's Strategic Plan in that it fosters partnership between County and local cities therein on local transportation projects;

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

I. PURPOSE

City has requested in the past, and will likely request in the foreseeable future (1) that County participate in the funding only of, certain roadway maintenance projects ("projects") on City's street system, which projects shall be duly qualified "Type B" Roadway Projects, (2) that County provide certain roadway maintenance services on City's street system, which projects shall be duly qualified "Type B" or "Type E" Roadway Projects, or (3) that County, through its Road & Bridge forces, perform certain minor transportation-related maintenance services on or about City's streets and alleyways which do not fall squarely within the collaborations contemplated by either of the aforementioned. The terms and conditions set forth herein provide the cooperative framework for County and City to jointly undertake one or more of these transportation-related maintenance projects on or about public roadways situated wholly within the incorporated and territorial jurisdiction of the City, said roadway being of significance to Dallas County.

Each roadway maintenance project commenced hereunder shall be fully and specifically set forth and described in a separate Project Specific Agreement ("PSA"), and shall be approved by specific order of the Dallas County Commissioners Court, as well as the governing body of City. Projects considered hereunder that are neither Type B, C or E roadway maintenance or improvements, as those type project are defined by Dallas County Code, Sec 102-3, and that do not exceed the amount of \$25,000 may be approved by the Dallas County Director of Public Works and the Mesquite City Manager, and shall be binding on the entities just as if approved by the governing bodies.

Projects undertaken pursuant to this Agreement are for the benefit of the City and County, and not the purposeful benefit of any third parties. It is the express intention of City and County that any person or entity, other than City or County, receiving services or benefits hereunder shall be deemed incidental beneficiaries only.

Nothing herein shall be construed so as to prevent County and City from collaborating and working jointly, without prior and formal approval of their respective governing bodies, in cases of national, state or local emergencies or natural disasters.

II. CITY'S CONTRIBUTION

For duly qualified "Type B" Roadway Projects contemplated hereunder, City shall be responsible for the total funding and payment for the roadway maintenance services, less any amounts contributed by County, which contributions, if any, may not exceed fifty percent (50%) of the total project costs, and may be made through commitment of County's financial resources or in-kind services, i.e. use of County's labor, equipment and/or materials.

For all other projects contemplated hereunder, City shall be responsible for one hundred percent (100%) of the funding for services provided in whole or in part through use of County Road & Bridge personnel, equipment and/or materials.

All expenditures herein undertaken by City or County for the performance of these government functions shall be made from current revenues available to them.

III. CITY'S OBLIGATIONS

Prior to the commencement of any project hereunder, City shall clearly detail the location, scope and nature of the services it desires performed, whether by County or a third party. Should City desire that County, through deployment of its Road & Bridge workforces, perform such services, County shall prepare a written and detailed proposal for City's consideration and approval, indicating all work to be performed by County, and at what costs and expense to City. Should City desire that roadway maintenance be performed by a third party, City shall prepared a written and detailed proposal for County's consideration and approval, again indicating all work to be performed by the third party, and at what expense to City and County.

Before any such work commences, City and County must have a clear and mutual understanding of the scope of services to be provided and the costs associated with each such project. Said mutual understanding shall be evidenced by supplemental documentation, i.e. project specific proposals, which shall only be binding once approved by County and the governing body of City. Said proposals, if approved, shall be confirmed in writing, which shall be considered supplemental hereto.

For all projects wherein the County is obligated to provide maintenance and/or services, immediately upon County's commencement of work duly authorized by them, City shall set aside, segregate and escrow for County's benefit, the full agreed amounts for costs and expenses for each project undertaken. County may elect to bill against segregated funds on a monthly basis for services performed during the course of the month, or it may bill against the segregated funds in full once a project is completed. In either event, County shall be paid promptly, and in full once the project is completed.

Where required by nature of the projects undertaken, City, at its own expense, shall be responsible for the following: (1) informing the public of the proposed maintenance or construction activity, (2) acquiring any right-of-way necessary to complete the project under consideration, (3) locating all manholes, water valves, and other utilities within the project, (4) making all utility relocations or adjustments necessary for the project, (5) remediation of any hazardous or regulated materials, or other environmental hazard on or near the project site, and (6) where necessary, providing appropriate traffic control support, including but not limited to flagging, cones, barricades, shadow vehicles, arrow boards, signage, police presence, etc., to enable the project to be completed in a timely and safe manner. City agrees to accomplish these functions, if required by projects under consideration, in a timely and efficient manner to insure that such activity will not delay the County's timely performance of its maintenance activities.

City agrees to permit County, at County's expense, to conduct routine special studies of traffic conditions within City, which studies might include traffic counts, measurements of speeds, delays, congestion, and the like.

IV. COUNTY'S CONTRIBUTION

For all projects contemplated hereunder, County shall contribute as follows:

1. For all duly qualified "Type B" Roadway Projects, County shall contribute an amount not to exceed fifty percent (50%), which contribution may be made through pledge and commitment of County Road and Bridge funds, use of County Road and Bridge personnel and/or equipment, or a combination of the two, and

2. For all other duly qualified projects, County's contribution hereunder shall be limited solely to supplying labor, materials and/or equipment necessary to provide roadway maintenance services, all of which shall be provided at City's, or another funding source's expense.

V. COUNTY'S OBLIGATIONS

County shall not undertake performance of any project hereunder, until such time as same has been specifically approved per the protocol set forth in Section I, above. Once so approved, if called upon to do so, County shall perform all services contemplated hereunder in a timely, good and workmanlike manner, consistent with professional industry standards. Further, County shall not assign its rights, or delegate its duties and obligations hereunder to any third party without prior written approval of City. Nothing herein shall be construed to prohibit County from using subcontractors, where reasonably necessary, to aid in the completion of projects.

Should County, in executing any project contemplated hereunder, encounter adverse conditions unforeseen by City or County, County shall immediately bring same to attention of City, and await direction and guidance from City on resolution of same. Where reasonably required by nature of the unknown condition, County may cease performance hereunder until such time as adverse conditions are rectified or remedied by City, and such delay shall not constitute a material breach of this Agreement.

VI. TERM

The initial term of this Agreement shall be from the date of last execution by any required signatory party hereto until December 31, 2017. However, either party hereto, shall have the absolute right to terminate this Agreement, without cause, at any time, upon providing sixty (60) days written notice to the other party. If necessary, notice of termination shall be tendered consistent with the notice provisions and protocol stated below.

VII. LIABILITY

Nothing stated herein shall be construed as a waiver of all the protections afforded County as a sovereign governmental unit. To the extent afforded by Texas Tort Claims Act, County shall be responsible only for claims, demands, judgments and the like attributable to the sole acts and omissions of its agents, officers and/or employees. County assumes no liability or responsibility for the acts and omissions of City, their employees, agents, officers or others working through them in any capacity.

Nothing stated herein shall be construed as a waiver of all the protections afforded City as a sovereign governmental unit. To the extent afforded by the Texas Tort Claims Act, City shall be responsible only for claims, demands, judgments and the like attributable to the sole acts and omissions of its agents, officers and/or employees. City assumes no liability or responsibility for the acts and omissions of County, their employees, agents, officers or others working through them in any capacity.

VIII. MISCELLANEOUS PROVISIONS

A. **Entire Agreement.** This Agreement and any attachments hereto sets forth the entire agreement between the parties respecting the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, whether oral or in writing, between the parties respecting the same.

B. **Severability.** If any term, covenant, condition or provision of this Agreement shall be declared invalid by a tribunal of competent jurisdiction, the remaining terms, covenants, conditions, and provisions shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

C. **Not an Agent.** County and City mutually agree that neither entity acting hereunder shall be considered an agent of the other, and that each entity is responsible, if at all, for its own acts, forbearance, and deeds.

D. **Venue.** This Agreement and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the State of Texas and venue shall lie exclusively in Dallas County, Texas.

E. **Amendment.** This Agreement may be supplemented and/or amended at any time through the mutual consent of both County and City, so long as all amendments, changes, revisions, and discharges of this Agreement, in whole or in part, are reduced to writing and executed by the parties thereto.

F. **Notice.** All notices, requests, demands, and other communication under this Agreement shall be tendered in writing and shall be deemed to have been duly given when either delivered in person, via e-mail, or via certified mail, postage prepaid, return receipt requested to the respective parties as follows:

COUNTY:

Director of Public Works
Dallas County
411 Elm Street, Fourth Floor
Dallas, Texas 75202

and

Commissioner John Wiley Price
Dallas County Commissioner, District #3
411 Elm Street, Second Floor
Dallas, Texas 75202

CITY:

Director of Public Works
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

G. **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.

H. **Headings.** The headings and titles used herein are for sake of convenience only, and not intended to affect the interpretation or construction of such provisions.

I. **Contingent.** This Agreement is expressly contingent upon formal approval by the Dallas County Commissioners Court and the governing body of the City of Mesquite, Texas.

The City of Mesquite, State of Texas, has executed the Agreement pursuant to duly authorized City Council Action on the 19th day of August, 2013.

The County of Dallas, State of Texas, has executed this agreement pursuant to Commissioners Court Order Number 2013-1500 and passed on the 10th day of September, 2013.

Executed this the 20th day of August, 2013.

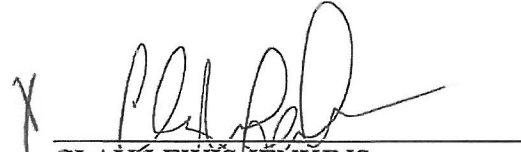
Executed this the 10th day of September, 2013.

CITY OF MESQUITE:



JOHN MONACO
MAYOR

COUNTY OF DALLAS:

X 

CLAY LEWIS JENKINS
COUNTY JUDGE

ATTEST:



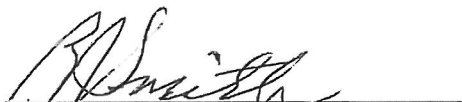
SONJA LAND
CITY SECRETARY

APPROVED AS TO FORM:


CRAIG WATKINS
DISTRICT ATTORNEY

TERESA GUERRA SNELSON
CHIEF, CIVIL DIVISION

APPROVED AS TO FORM:



B.J. Smith, City Attorney



Paul E. Hamilton
Assistant 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).