

RESOLUTION NO. 27-2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AND APPROVE THE DALLAS COUNTY CAPITAL IMPROVEMENT PROGRAM FUNDING AGREEMENT FOR THE DESIGN AND CONSTRUCTION OF THE MILITARY PARKWAY TRAIL CONNECTING DOWNTOWN MESQUITE TO THE MESQUITE CHAMPIONSHIP RODEO.

WHEREAS, the City of Mesquite, Texas ("City"), and the County of Dallas, Texas ("County"), desire to enter into a Funding Agreement in order to contract for the implementation of the Major Capital Improvement Project which approved specified projects including improvements on Military Parkway Trail connecting the downtown Mesquite area to the Mesquite Championship Rodeo ("Project"); and

WHEREAS, the City and County entered into a Master Agreement Governing Major Capital Improvement Program in June of 2011 for the purpose of transportation improvements on roads inside Dallas County; and

WHEREAS, Chapter 791 of the Texas Government Code and Chapters 251 and 472 of the Texas Transportation Code provide authorization for local governments to contract with the each other for the performance of governmental functions and services, and joint funding of road or street projects; and

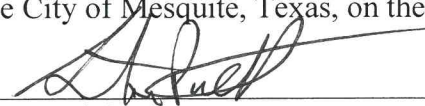
WHEREAS, the County will be completing the design on the Project and will be managing the construction.

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

SECTION 1. That the City Manager is hereby authorized to execute and approve the Dallas County Capital Improvement Program Funding Agreement, attached hereto as Exhibit "1," for the design and construction of the Military Parkway Trail connecting downtown Mesquite to the Mesquite Championship Rodeo.

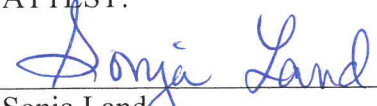
SECTION 2. That the project was selected in the Dallas County 6 Major Capital Improvement Program (MCIP) call for projects and will receive 50 percent of the project costs from Dallas County.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 7th day of August, 2017.



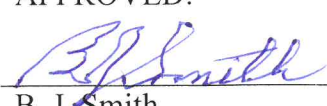
Stan Pickett
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED:



B. J. Smith
City Attorney

**DALLAS COUNTY CAPITAL IMPROVEMENT PROGRAM
FUNDING AGREEMENT**

The City of Mesquite, Texas, hereinafter called "City", and the County of Dallas, Texas, hereinafter called "County", desire to enter into a Funding Agreement, hereinafter called "FA", in order to contract for the implementation of the Major Capital Improvement Project authorized by Court Order 2014-0457 dated April 1, 2014, which approved specified projects including improvements on Military Parkway Trail connecting the downtown Mesquite area to the Mesquite Championship Rodeo, MCIP Project 11902/31901, hereinafter called "Project".

Witnesseth

WHEREAS, the Project is located within the City of Mesquite;

WHEREAS, the County has requested that it be designated as the Lead Agency for the Project and will provide the Project Manager;

WHEREAS, City and County entered into a Master Agreement Governing Major Capital Improvement Program (Master Agreement) on June 7, 2011, by Commissioners Court Order 2011-1014, for the purpose of transportation improvements on roads inside Dallas County; and

WHEREAS, Chapter 791 of the Texas Government Code and Chapters 251 and 472 of the Texas Transportation Code provide authorization for local governments to contract with each other for the performance of governmental functions and services, and joint funding of road or street projects.

NOW THEREFORE THIS FUNDING AGREEMENT is made and entered into by the City and the County for the mutual consideration stated herein.

**Article I
Project Funding Agreement**

This FA is between the County and the City to establish a preliminary proposed budget for the Project which will facilitate the movement of public transportation to benefit both the City and County. This FA is to specifically identify the Project as well as any changes in the rights and responsibilities of each of the parties as set forth in the Master Agreement which is hereby incorporated herein as if written word for word and any additions thereto. All terms of the Master Agreement remain in full force and effect except as modified herein. In the event of any conflict between the Master Agreement and this FA, this FA shall control.

**Article II
Incorporated Documents**

This FA incorporates, as if fully reproduced herein word for word and number for number, the following items:

1. Master Agreement authorized by Court Commissioners Court Order 2011-1014 dated June 7, 2011, and additions thereto as incorporated herein.
2. Attachment "A", Current Cost Estimates and Funding Sources, as shown in Attachment "A".
3. Attachment "B", Project Location Map, as shown in Attachment "B".

Article III

Term of Agreement

This FA shall become effective when signed by the last party whose signature makes the respective agreement fully executed. This FA will remain in effect until:

1. Incorporation into the Project Specific Agreement; or
2. Termination upon the terms and conditions as set forth in the Master Agreement, Article IV Section A, Termination.

Article IV

Project Description

This FA is entered into by the parties to provide the Preliminary Feasibility Study and/or the final approved preliminary engineering, specifications and estimates (hereinafter "PS&E") which will define the Project. The Project is defined as trail improvements that run parallel along Rodeo Center Boulevard from Rodeo Drive, continuing north for approximately 0.3 miles to Military Parkway. The Project continues along Military Parkway/Davis Street from the Rodeo Center Boulevard intersection, continuing east for approximately 1.4 miles to Galloway Avenue as further detailed in Attachment "B". The transportation improvements include that the trail is proposed to go underneath IH 635/LBJ Freeway. This FA will provide public transportation improvements within the City of Mesquite, Texas. The trail is proposed to be 10 feet wide. The Project will aid in roadway safety and facilitate the movement of public transportation to benefit both the City and the County by, among other things, providing alternate routes for use by pedestrians, bicyclists, and other non-motorized vehicle operators who would otherwise use public streets within the City and the County for travel, thus resulting in a reduction in traffic conflicts between such users and motorists traveling on the same streets. The trail appears in the City of Mesquite's Master Plan as part of Loop Segment 'C', which connects to the Regional Veloweb and Six Cities Trail. The City does hereby give its approval for expenditure of County funds for the construction, improvement, maintenance, or repair of a street located within the municipality.

The Preliminary Feasibility Study and/or PS&E will be submitted to the City for approval, prior to proceeding with the final design and any right-of-way acquisition. The City shall review and comment on the PS&E within thirty (30) days. If the County has not received comments within thirty (30) days, the County will assume the City has reviewed the deliverables, had no comments, and proceed with the Project. Upon PS&E approval, this FA shall be incorporated into a Project Specific Agreement (PSA), and continue as the source of authorization for proceeding with the Project pending approval of the PSA.

Article V
Fiscal Funding

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

Article VI
Agreements

I. County and City Responsibilities:

1. County will be the Lead Agency for the Project.
2. City and County have mutually agreed that the Project limits are from Rodeo Drive to Military Parkway (along Rodeo Center Boulevard) and from Rodeo Center Boulevard to Galloway Avenue (along Military Parkway/Davis Street).
3. City will procure the professional consulting services necessary to support the County's design efforts for the Project. Professional consulting services may include, but are not limited to geotechnical, survey and structural design. County will work closely with the City to define the scopes and negotiate the fees for any required professional consulting services. County will reimburse City for 50% of all costs for professional consulting services. County will review all invoices submitted by consulting firms prior to approval and processing of these invoices by City.
4. County and City will execute the necessary agreements for the implementation of design and construction of the Project mutually agreed-upon and incorporated herein by this FA.
5. The Project may require the acquisition of road right-of-way within the alignment which is all real property needed or convenient for roadway purposes as shown in the Project design or right-of-way plans and shall include all real property outside of the designed right-of-way needed or convenient to the construction, drainage, interface with

adjoining streets or alleys, driveways or other access ways or other Project permanent or temporary easements which is approved by the City and County. Such right-of-way acquisition shall be the responsibility of the County as Lead Agency, and shall be funded as part of Project costs. Such acquisitions will be transferred into the City's name as owner as the City will be solely responsible for maintenance after construction is completed.

II. City Responsibilities:

1. City will attend all Project task force meetings and public meetings.
2. City shall review and comment on all drawings and documents within thirty (30) days. If the County has not received comments within thirty (30) days, the County will assume the City has reviewed the plans, had no comments, and proceed with the Project.
3. City shall be responsible for maintaining the roadway, improvements, grading area, drainage structures, striping, and signage after the Project is complete.

III. County Responsibilities:

1. County shall use the total funding committed by the City and the County solely for the purpose of eligible Project costs.
2. County shall inform the City of all Project activity and approvals.
3. County shall provide a final accounting of Project costs once the planning is complete and accepted by the City. The accounting shall have sufficient detail for the Auditor to verify Project costs.

Article VII
Funding

County and City mutually agree to proportionately fund the Direct Project and Program cost as follows and as summarized in Attachment "A":

1. Notwithstanding any provision in the Master Agreement, this FA, any amendment thereto, or any other agreement between the parties regarding this Project, the total Project cost is estimated at Two Million, Two Hundred Eighty Thousand Dollars and no cents (\$2,280,000.00) as shown in Attachment "A". The County's total obligation to this Project is to provide funding in the amount not to exceed One Million One Hundred Forty Thousand Dollars and no cents (\$1,140,000.00), reduced by all County in-house delivery costs of the total Project cost, of which Two Hundred Sixty Thousand Dollars and no cents (\$260,000.00) is obligated for engineering and right-of-way acquisition for the Project by this FA.
2. The County in-house Project delivery costs may include all County Project delivery costs including but not limited to preliminary scoping and research, preliminary design services, special services, primary design services, right-of-way acquisition, administration, inspection, laboratory services and construction.
3. The City agrees to provide funding for the Project in the amount not-to-exceed One Million One Hundred Forty Thousand Dollars and no cents (\$1,140,000.00), as indicated in Attachment "A", of which Two Hundred Sixty Thousand Dollars and no cents (\$260,000.00) is obligated for engineering and right-of-way acquisition for the Project by this FA. City agrees to encumber an amount adequate for total estimated

Project costs as determined prior to the commencement of each Project milestone as determined by County within 30 days of notification by County. The City will pay Project costs as invoiced by the County.

4. Any payments to be made by any party hereto shall be from current revenue or other lawfully available funds in accordance with Chapter 791, Texas Government Code.
5. Preliminary cost estimates will be generated to review the adequacy of the project budget. The project scope will be modified as agreed by City and County to remain within the estimated cost, if necessary.

Article VIII **Miscellaneous**

- I. No Third Party Beneficiaries. The terms and provisions of this FA are for the benefit of the parties hereto and not for the benefit of any third party. It is the express intention of City and County that any entity other than City or County receiving services or benefits under this FA shall be deemed an incidental beneficiary only. This FA is intended only to set forth the contractual right and responsibilities of the parties hereto.
- II. Applicable Law. This FA is and shall be expressly subject to the Sovereign Immunity of County and Governmental Immunity of City, Title 5 of the Texas Civil Practice and Remedies Code, as amended, and all applicable federal and state laws. This FA shall be governed by and construed in accordance with the laws and case decisions of the State of Texas. Exclusive venue for any legal action regarding this FA filed by either City or County shall be in Dallas County, Texas.
- III. 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 two (2) business days after being deposited in the United States Mail, postage prepaid, by certified mail, return receipt requested; or by registered mail and addressed as follows:

To County: County of Dallas
Ms. Alberta L. Blair, P.E.
Director of Public Works
Dallas County Administration Building
411 Elm Street, Fourth Floor
Dallas County, Texas 75202-3389

To City: City of Mesquite
Matthew Holzapfel, P.E.
Assistant Director of Public Works
1515 N. Galloway Avenue
Mesquite, Texas 75149

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

- IV. Assignment. This FA may not be assigned or transferred by either party without the prior written consent of the other party.


- V. Binding Agreement; Parties Bound. This FA has been duly executed and delivered by both parties and constitutes a legal, valid and binding obligation of the parties, their successors and permitted assigns.
- VI. Amendment. This FA may not be amended except in a written instrument specifically referring to this FA and signed by the parties hereto.
- VII. Number and Gender. Words of any gender used in this FA shall be held and construed to include any other gender and words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise.
- VIII. Effective Date. This FA shall commence on the Effective Date. The Effective Date of this FA shall be the date it is executed by the last of the parties. Reference to the date of execution shall mean the Effective Date.
- IX. Counterparts. This FA 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.
- X. Severability. If one or more of the provisions in this FA shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not cause this FA to be invalid, illegal or unenforceable, but this FA shall be construed as if such provision had never been contained herein, and shall not affect the remaining provisions of this FA, which shall remain in full force and effect.
- XI. Entire Agreement. This FA embodies the complete agreement of the parties, supersedes all oral or written previous and contemporary agreements between the parties and relating to matters in the FA.
- XII. Contingent. This Agreement is expressly subject to and contingent upon formal approval by the Dallas County Commissioners Court and by resolution of the City Council.

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The City of Mesquite, State of Texas, has executed this agreement pursuant to duly authorized City Council Resolution No. 27-2017, dated the 7th day of August, 2017.

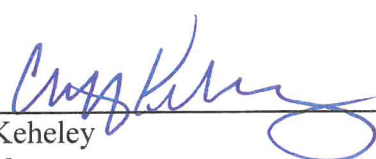

The County of Dallas, State of Texas, has executed this agreement pursuant to Commissioners Court Order Number 2017-1207 and passed on the 19th day of September, 2017.

COUNTY OF DALLAS

X 
Clay Lewis Jenkins,
County Judge

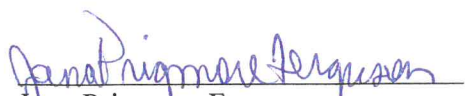
September 19, 2017

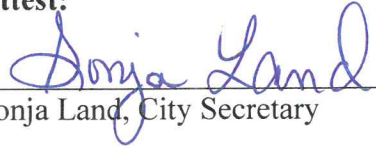
CITY OF MESQUITE

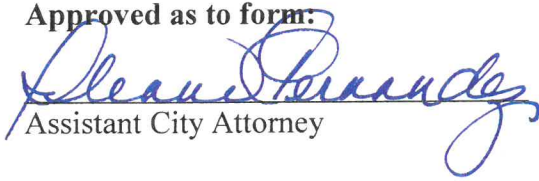

Cliff Keheley
City Manager 

8.21.2017
Date

Approved as to Form*:
Faith Johnson
District Attorney


Jana Prigmore Ferguson
Assistant District Attorney

Attest:

Sonja Land, City Secretary

Approved as to form:

Assistant City Attorney

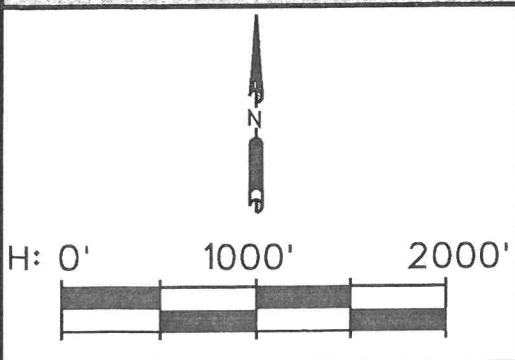
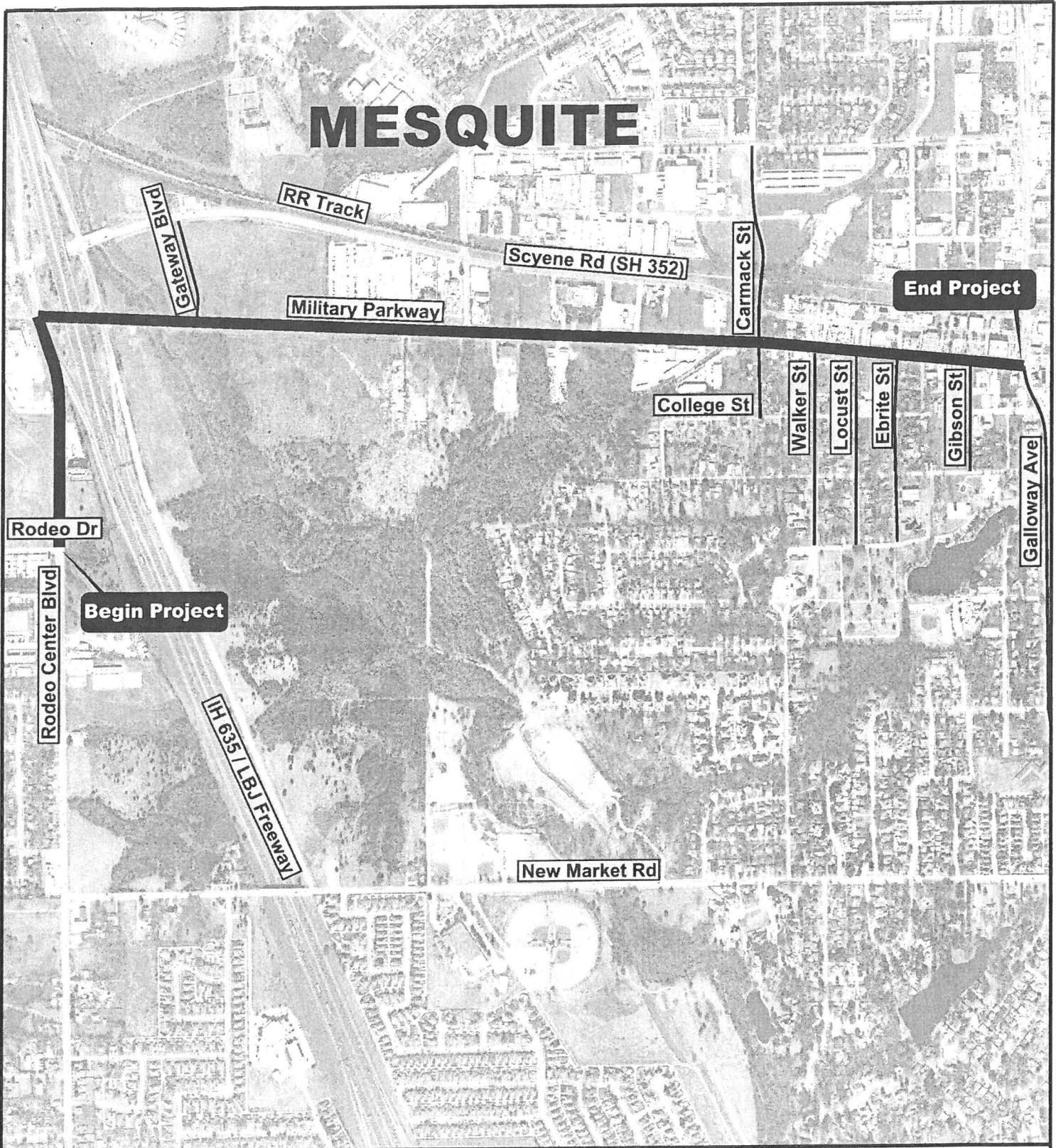
*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our 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)

ATTACHMENT "A"
CURRENT COST ESTIMATES & FUNDING SOURCES

Military Parkway Trail MCIP 11902/31901

PROJECTED COSTS				
Dallas County IHPD – Design¹			\$300,000	
Dallas County IHPD – All Others			\$335,000	
Professional Services (for survey, structural & geotechnical)			\$105,000	
Construction Cost			\$1,520,000	
Materials Testing			\$20,000	
Total			\$2,280,000	
FUNDING SOURCES				
Expenditure	This FA		Future Amendment	
	County	City	County	City
IHPD	\$207,500	\$207,500	\$110,000	\$110,000
Professional Services	\$52,500	\$52,500	\$0	\$0
Construction & Testing	\$0	\$0	\$770,000	\$770,000
Totals	\$260,000	\$260,000	\$880,000	\$880,000
¹ Dallas County in-house design staff will lead the design efforts for the project. Costs for professional services as shown will support the design efforts.				

MESQUITE



ATTACHMENT B PROJECT LOCATION MAP

MILITARY PARKWAY TRAIL
MCIP 11902/31901
Galloway Ave to Rodeo Dr
Length - 1.7 Miles
MAPSCO : 49A-V, U, T, S, W