

RESOLUTION NO. 52-2020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, SUPPORTING THE RECONSTRUCTION OF US HIGHWAY 80 IN MESQUITE; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT TO CONTRIBUTE RIGHT-OF-WAY FUNDS ESTIMATED AT \$651,000.00 WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR HIGHWAY IMPROVEMENTS ON US HIGHWAY 80 FROM IH-30 TO EAST OF BELT LINE ROAD (SUNNYVALE TOWN LIMITS).

WHEREAS, Texas Transportation Code § 201.103 and § 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

WHEREAS, Texas Transportation Code § 201.209 authorizes the State and the City of Mesquite (the “City”) to enter into agreements in accordance with Texas Government Code, Chapter 79; and

WHEREAS, the City desires to enter into a fixed price joint participation agreement pursuant to 43 TAC § 15.52 to contribute to the State funding participation as defined in 43 TAC § 15.55 for the cost of acquiring the right of way (“ROW”) and relocating or adjusting utilities for the proper improvement of US Highway 80; and

WHEREAS, the Texas Department of Transportation (“TxDOT”) has completed the preliminary design and ROW documents and is ready to proceed with ROW acquisition and utilities adjustments for the reconstruction US Highway 80 in Mesquite; and

WHEREAS, the City requests that TxDOT assume responsibility for acquisition of all necessary ROW and adjustment of utilities for this highway project; and

WHEREAS, the City is required to contribute 10 percent of the estimated ROW acquisition costs for property required along US Highway 80, which is estimated to be \$651,000.00; and

WHEREAS, this project will reconstruct the US Highway 80 and IH-635 interchange, improve access throughout the corridor, and reconstruct the interchanges at Gus Thomasson Road / Gross Road and at Galloway Avenue; and

WHEREAS, upon full review and consideration of the Agreement, and all matters related thereto, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, and that the City Manager should be authorized to execute the Agreement on behalf of the City of Mesquite, Texas.

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

SECTION 1. The City Council hereby supports the reconstruction of US Highway 80 in Mesquite and hereby authorizes the City Manager to execute the Agreement between the City of Mesquite and the State of Texas, acting by and through TxDOT, to contribute right of way

funds which provides funding for certain highway improvements on US Highway 80 on behalf of the City of Mesquite, Texas.

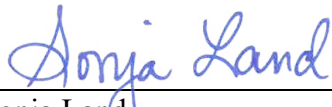
SECTION 2. This resolution shall become effective from and after its passage.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 19th day of October 2020.



Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

County Dallas
District Dallas
ROW CSJ 0095-10-056
CCSJ # 0095-10-033
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

APPROVED BY CITY COUNCIL
DATE 10.19.2020
AGENDA ITEM NO. 9

STATE OF TEXAS §

COUNTY OF TRAVIS §

AGREEMENT TO CONTRIBUTE RIGHT OF WAY FUNDS (FIXED PRICE)

THIS AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, (the "State"), and The City of Mesquite, Texas, acting through its duly authorized officials (the "Local Government").

WITNESSETH

WHEREAS, Texas Transportation Code §§ 201.103 and 222.052 establish that the State shall design, construct, and operate a system of highways in cooperation with local governments; and

WHEREAS, Texas Transportation Code, §§ 201.209 authorizes the State and a Local Government to enter into agreements in accordance with Texas Government Code, Chapter 791; and

WHEREAS, the State has deemed it necessary to make certain highway improvements on Highway No. US 80 from IH 30 to East Town East Blvd, and this section of highway improvements will necessitate the acquisition of certain right of way and the relocating and adjusting of utilities (the "Project"); and

WHEREAS, the Local Government requests that the State assume responsibility for acquisition of all necessary right of way and adjustment of utilities for this highway project; and

WHEREAS, the Local Government desires to enter into a fixed price joint participation agreement pursuant to 43 TAC §15.52 to contribute to the State funding participation as defined in 43 TAC §15.55 for the cost of acquiring the right of way and relocating or adjusting utilities for the proper improvement of the State Highway System;

WHEREAS, the Governing Body of the Local Government has approved entering into this agreement by resolution or ordinance dated October 19, 2020, which is attached to and made a part of this agreement as Attachment A. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement.

NOW THEREFORE, the State and the Local Government do agree as follows:

County Dallas
District Dallas
ROW CSJ 0095-10-056
CCSJ # 0095-10-033
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

AGREEMENT

1. Agreement Period

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. This agreement shall remain in effect until the Project is completed or unless terminated as provided below.

2. Termination

This agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The agreement is terminated in writing with the mutual consent of the parties;
- B. The agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or
- C. The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this agreement.

3. Local Project Sources and Uses of Funds

- A. The total estimated cost of the Project is shown in Attachment C, Project Budget Estimate and Payment Schedule, which is attached to and made a part of this agreement. The expected cash contributions from the Federal or State government, the Local Government, or other parties is shown in Attachment C. The Local Government shall pay to the State the amount shown in Attachment C as its required contribution of the total cost of the Project and shall transmit to the State with the return of this agreement, duly executed by the Local Government, a warrant or check for the amount and according to the payment schedule shown in Attachment C.
- B. The Local Government's fixed price contribution set forth in Attachment C is not subject to adjustment unless:
 1. site conditions change;
 2. work requested by the Local Government is ineligible for federal participation; or
 3. the adjustment is mutually agreed on by the State and the Local Government.
- C. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of

County Dallas
District Dallas
ROW CSJ 0095-10-056
CCSJ # 0095-10-033
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

- D. Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a warrant or check made payable to the "Texas Department of Transportation Trust Fund." The warrant or check shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to this highway project.
- E. Notwithstanding that this is a fixed price agreement, the Local Government agrees that in the event any existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive, including, but not limited to, outdoor advertising or storm water drainage facility requirements, is more restrictive than State or federal regulations, or any other locally proposed change, including, but not limited to, plats or re-plats, results in any increased costs to the State, then the Local Government will pay one hundred percent (100%) of all those increased costs, even if the applicable county qualifies as an Economically Disadvantaged County (EDC). The amount of the increased costs associated with the existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive will be determined by the State at its sole discretion.
- F. If the Local Government is an EDC and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.
- G. If the Project has been approved for an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the incremental payment schedule.

4. Real Property in Lieu of Monetary Payment

- A. Contributions of real property may be credited to the Local Government's funding obligation for the cost of right of way to be acquired for this project. Credit for all real property, other than property which is already dedicated or in use as a public road, contributed by the Local Government to the State shall be based on the property's fair market value established as of the effective date of this agreement. The fair market value shall not include increases or decreases in value caused by the project and should include the value of the land and improvements being conveyed, excluding any damages to the remainder. The amount of any credit for real property contributed for this project is clearly shown in Attachment C.
- B. The Local Government will provide to the State all documentation to support the determined fair market value of the donated property. This documentation shall include an appraisal of the property by a licensed appraiser approved by the State. The cost of appraisal will be the responsibility of the State. The State will review the submitted documentation and make a final determination of value; provided however, the State

County Dallas
District Dallas
ROW CSJ 0095-10-056
CCSJ # 0095-10-033
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

may perform any additional investigation deemed necessary, including supplemental appraisal work by State employees or employment of fee appraisers.

- C. Credit shall be given only for property transferred at no cost to the State after the effective date of this agreement and the issuance of spending authority, and only for property which is necessary to complete this project, has title acceptable to the State, and is not contaminated with hazardous materials. Credit shall be in lieu of monetary contributions required to be paid to the State for the Local Government's funding share of the right of way to be acquired for this project. The total credit cannot exceed the Local Government's matching share of the right of way obligation under this agreement, and credits cannot be reimbursed in cash to the Local Government, applied to project phases other than right of way, nor used for other projects.
- D. In the event the Local Government's monetary contributions to the State for acquisition of right of way, when added to its real property credits, exceed the Local Government's matching share of the right of way obligation, there will be no refund to the Local Government of any portion of its contributed money.

5. Amendments

Amendments to this agreement due to changes in the character of the work, terms of the agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written supplemental agreement.

6. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, to the following addresses:

Local Government:	State:
<u>Cliff Keheley, City Manager</u>	Director of Right of Way Division
<u>City of Mesquite</u>	Texas Department of Transportation
<u>1515 N Galloway Ave</u>	125 E. 11 th Street
<u>Mesquite, Texas 75149</u>	Austin, Texas 78701

All notices shall be deemed given on the date delivered or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail and that request shall be honored and carried out by the other party.

County Dallas
District Dallas
ROW CSJ 0095-10-056
CCSJ # 0095-10-033
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

7. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

8. Legal Construction

If one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

9. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

10. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

11. Sole Agreement

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the subject matter of this agreement.

12. Ownership of Documents

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

13. Inspection of Books and Records

The Local Government shall maintain all books, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the State and, if federally funded, the Federal Highway

County Dallas
District Dallas
ROW CSJ 0095-10-056
CCSJ # 0095-10-033
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

Administration (FHWA) or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this agreement or until any impending litigation, or claims are resolved. Additionally, the State and FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

14. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

15. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

16. Civil Rights Compliance

The parties to this agreement shall comply with the regulations of the U.S. Department of Transportation as they relate to nondiscrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

17. Applicability of Federal Provisions

Articles 18 through 23 only apply if Federal funding is used in the acquisition of right of way or the adjustment of utilities.

18. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

19. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the DBE Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.

County Dallas
District Dallas
ROW CSJ 0095-10-056
CCSJ # 0095-10-033
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally -Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

20. Debarment Certification

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this

County Dallas
District Dallas
ROW CSJ 0095-10-056
CCSJ # 0095-10-033
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

21. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

22. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
 1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows Federal government to track the

County Dallas
District Dallas
ROW CSJ 0095-10-056
CCSJ # 0095-10-033
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and

3. Report the total compensation and names of its top five (5) executives to the State if:

- i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
- ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

23. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- B. If threshold expenditures of \$750,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://txdot.gov/inside-tdot/office/audit/contact.html>
- C. If expenditures are less than \$750,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$750,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

24. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

County Dallas
District Dallas
ROW CSJ 0095-10-056
CCSJ # 0095-10-033
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

**ATTACHMENT A
RESOLUTION OR ORDINANCE**

RESOLUTION NO. 52-2020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, SUPPORTING THE RECONSTRUCTION OF US HIGHWAY 80 IN MESQUITE; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT TO CONTRIBUTE RIGHT-OF-WAY FUNDS ESTIMATED AT \$651,000.00 WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR HIGHWAY IMPROVEMENTS ON US HIGHWAY 80 FROM IH-30 TO EAST OF BELT LINE ROAD (SUNNYVALE TOWN LIMITS).

WHEREAS, Texas Transportation Code § 201.103 and § 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

WHEREAS, Texas Transportation Code § 201.209 authorizes the State and the City of Mesquite (the "City") to enter into agreements in accordance with Texas Government Code, Chapter 79; and

WHEREAS, the City desires to enter into a fixed price joint participation agreement pursuant to 43 TAC § 15.52 to contribute to the State funding participation as defined in 43 TAC § 15.55 for the cost of acquiring the right of way ("ROW") and relocating or adjusting utilities for the proper improvement of US Highway 80; and

WHEREAS, the Texas Department of Transportation ("TxDOT") has completed the preliminary design and ROW documents and is ready to proceed with ROW acquisition and utilities adjustments for the reconstruction US Highway 80 in Mesquite; and

WHEREAS, the City requests that TxDOT assume responsibility for acquisition of all necessary ROW and adjustment of utilities for this highway project; and

WHEREAS, the City is required to contribute 10 percent of the estimated ROW acquisition costs for property required along US Highway 80, which is estimated to be \$651,000.00; and

WHEREAS, this project will reconstruct the US Highway 80 and IH-635 interchange, improve access throughout the corridor, and reconstruct the interchanges at Gus Thomasson Road / Gross Road and at Galloway Avenue; and

WHEREAS, upon full review and consideration of the Agreement, and all matters related thereto, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, and that the City Manager should be authorized to execute the Agreement on behalf of the City of Mesquite, Texas.

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

SECTION 1. The City Council hereby supports the reconstruction of US Highway 80 in Mesquite and hereby authorizes the City Manager to execute the Agreement between the City of Mesquite and the State of Texas, acting by and through TxDOT, to contribute right of way

Public Works / Agreement w-TxDOT to Contribute ROW Funds / October 19, 2020

Page 2 of 2

funds which provides funding for certain highway improvements on US Highway 80 on behalf of the City of Mesquite, Texas.

SECTION 2. This resolution shall become effective from and after its passage.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 19th day of October 2020.



Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

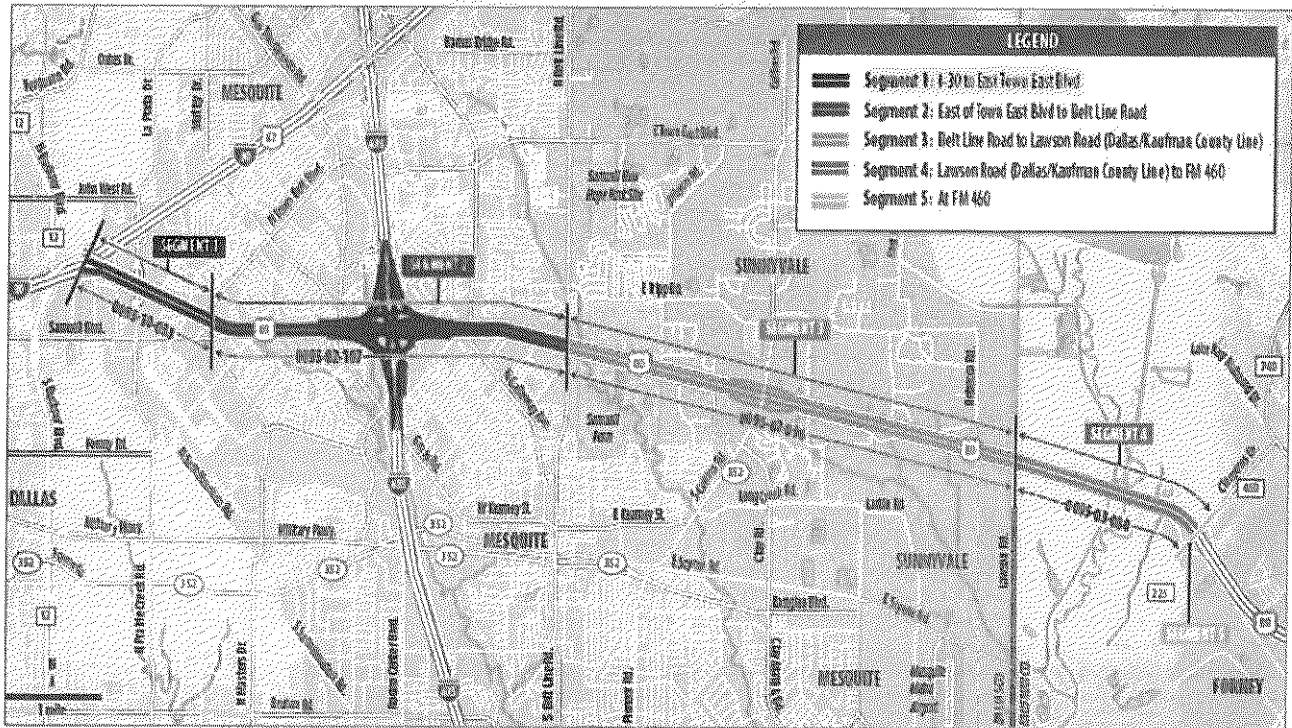
APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

County Dallas
District Dallas
ROW CSJ 0095-10-056
CCSJ # 0095-10-033
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

ATTACHMENT B LOCATION MAP SHOWING PROJECT



NOTE: Highlighted areas are not drawn to exact scale

TDCIT graphic

County Dallas
District Dallas
ROW CSJ 0095-10-056
CCSJ # 0095-10-033
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

ATTACHMENT C
PROJECT BUDGET ESTIMATE AND PAYMENT SCHEDULE



County	Dallas
District	Dallas District
ROW CSJ #	0095-10-056
CCSJ #	0095-10-033

Federal Project #	
CFDA Title: Highway Planning and Construction	
FHWA CFDA # 20.205	
Federal Highway Administration	
Not Research and Development	

**Standard Agreement to Contribute
State Performs Work
Attachment C**

Description	Total Estimated Cost	Participation				Total % (should be 100%)
		State		Local		
		%	Cost	%	Cost	
Right of Way Acquisition	\$341,122.00	90.0%	\$307,009.80	10.0%	\$34,112.20	100.0%
Reimbursable Utility Adjustments	\$0.00	90.0%	\$0.00	10.0%	\$0.00	100.0%
Joint Bid - Reimbursable Utility Adjustments						0.0%
TOTAL	\$341,122.00		\$307,009.80		\$34,112.20	

Fixed Amount

Except as otherwise provided in the Agreement, the fixed amount of Local Government participation will be that amount provided above.



125 EAST 11TH STREET, AUSTIN, TEXAS 78701-2483 | 512.463.8588 | WWW.TXDOT.GOV

November 9, 2020

Cliff Keheley, City Manager
City of Mesquite
c/o Wes McClure
1515 N. Galloway Ave.
Mesquite, Texas 75149

RE: Dallas County
RCSJ-0095-10-056, CCSJ-0095-10-033
US 80 from: IH 30 to: East Town East Blvd.

Dear Mr. Keheley,

Attached is a fully executed "Agreement to Contribute Right of Way Funds (Fixed Price)" agreement for the City of Mesquite in connection with the project stated above. This attached agreement was fully executed November 6, 2020.

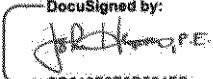
The amount due, at this time is stated in "Attachment C" of the enclosed agreement. Please remit a check made payable to the "Texas Department of Transportation" to the address shown below.

Texas Department of Transportation (TxDOT)
Attention: Tresa Mixon - ROW
4777 US Highway 80 East
Mesquite, Texas 75150-6643

To ensure proper credit to your account, please include the ROW CSJ No. 0095-10-056 on all payments and/or correspondence. For clarity and tracking purposes, it is strongly suggested that this payment not be combined with any other transactions to TxDOT.

If you have any questions, please contact Tresa Mixon at (214) 319.3546.

Sincerely,

DocuSigned by:

CD810F8E9D584EF...
John Hudspeth, P.E.

Director of Transportation, Planning and Development

Attachments
cc: Craig Dearman 

APPROVED BY CITY COUNCIL
DATE 10.19.2020
AGENDA ITEM NO. 9

County Dallas
District Dallas
ROW CSJ 0095-02-122
CCSJ # 0095-02-107
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

AGREEMENT TO CONTRIBUTE RIGHT OF WAY FUNDS (FIXED PRICE)

THIS AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, (the "State"), and The City of Mesquite, Texas, acting through its duly authorized officials (the "Local Government").

WITNESSETH

WHEREAS, Texas Transportation Code §§ 201.103 and 222.052 establish that the State shall design, construct, and operate a system of highways in cooperation with local governments; and

WHEREAS, Texas Transportation Code, §§ 201.209 authorizes the State and a Local Government to enter into agreements in accordance with Texas Government Code, Chapter 791; and

WHEREAS, the State has deemed it necessary to make certain highway improvements on Highway No. US 80 from East Town East Blvd. to Belt Line Road, and this section of highway improvements will necessitate the acquisition of certain right of way and the relocating and adjusting of utilities (the "Project"); and

WHEREAS, the Local Government requests that the State assume responsibility for acquisition of all necessary right of way and adjustment of utilities for this highway project; and

WHEREAS, the Local Government desires to enter into a fixed price joint participation agreement pursuant to 43 TAC §15.52 to contribute to the State funding participation as defined in 43 TAC §15.55 for the cost of acquiring the right of way and relocating or adjusting utilities for the proper improvement of the State Highway System;

WHEREAS, the Governing Body of the Local Government has approved entering into this agreement by resolution or ordinance dated October 19, 2020, which is attached to and made a part of this agreement as Attachment A. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement.

NOW THEREFORE, the State and the Local Government do agree as follows:

County Dallas
District Dallas
ROW CSJ 0095-02-122
CCSJ # 0095-02-107
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

AGREEMENT

1. Agreement Period

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. This agreement shall remain in effect until the Project is completed or unless terminated as provided below.

2. Termination

This agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The agreement is terminated in writing with the mutual consent of the parties;
- B. The agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or
- C. The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this agreement.

3. Local Project Sources and Uses of Funds

- A. The total estimated cost of the Project is shown in Attachment C, Project Budget Estimate and Payment Schedule, which is attached to and made a part of this agreement. The expected cash contributions from the Federal or State government, the Local Government, or other parties is shown in Attachment C. The Local Government shall pay to the State the amount shown in Attachment C as its required contribution of the total cost of the Project and shall transmit to the State with the return of this agreement, duly executed by the Local Government, a warrant or check for the amount and according to the payment schedule shown in Attachment C.
- B. The Local Government's fixed price contribution set forth in Attachment C is not subject to adjustment unless:
 1. site conditions change;
 2. work requested by the Local Government is ineligible for federal participation; or
 3. the adjustment is mutually agreed on by the State and the Local Government.
- C. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of

County Dallas
District Dallas
ROW CSJ 0095-02-122
CCSJ # 0095-02-107
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

- D. Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a warrant or check made payable to the "Texas Department of Transportation Trust Fund." The warrant or check shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to this highway project.
- E. Notwithstanding that this is a fixed price agreement, the Local Government agrees that in the event any existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive, including, but not limited to, outdoor advertising or storm water drainage facility requirements, is more restrictive than State or federal regulations, or any other locally proposed change, including, but not limited to, plats or re-plats, results in any increased costs to the State, then the Local Government will pay one hundred percent (100%) of all those increased costs, even if the applicable county qualifies as an Economically Disadvantaged County (EDC). The amount of the increased costs associated with the existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive will be determined by the State at its sole discretion.
- F. If the Local Government is an EDC and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.
- G. If the Project has been approved for an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the incremental payment schedule.

4. Real Property in Lieu of Monetary Payment

- A. Contributions of real property may be credited to the Local Government's funding obligation for the cost of right of way to be acquired for this project. Credit for all real property, other than property which is already dedicated or in use as a public road, contributed by the Local Government to the State shall be based on the property's fair market value established as of the effective date of this agreement. The fair market value shall not include increases or decreases in value caused by the project and should include the value of the land and improvements being conveyed, excluding any damages to the remainder. The amount of any credit for real property contributed for this project is clearly shown in Attachment C.
- B. The Local Government will provide to the State all documentation to support the determined fair market value of the donated property. This documentation shall include an appraisal of the property by a licensed appraiser approved by the State. The cost of appraisal will be the responsibility of the State. The State will review the submitted documentation and make a final determination of value; provided however, the State

County Dallas
District Dallas
ROW CSJ 0095-02-122
CCSJ # 0095-02-107
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

may perform any additional investigation deemed necessary, including supplemental appraisal work by State employees or employment of fee appraisers.

- C. Credit shall be given only for property transferred at no cost to the State after the effective date of this agreement and the issuance of spending authority, and only for property which is necessary to complete this project, has title acceptable to the State, and is not contaminated with hazardous materials. Credit shall be in lieu of monetary contributions required to be paid to the State for the Local Government's funding share of the right of way to be acquired for this project. The total credit cannot exceed the Local Government's matching share of the right of way obligation under this agreement, and credits cannot be reimbursed in cash to the Local Government, applied to project phases other than right of way, nor used for other projects.
- D. In the event the Local Government's monetary contributions to the State for acquisition of right of way, when added to its real property credits, exceed the Local Government's matching share of the right of way obligation, there will be no refund to the Local Government of any portion of its contributed money.

5. Amendments

Amendments to this agreement due to changes in the character of the work, terms of the agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written supplemental agreement.

6. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, to the following addresses:

Local Government:	State:
<u>Cliff Keheley, City Manager</u>	Director of Right of Way Division
<u>City of Mesquite</u>	Texas Department of Transportation
<u>1515 N Galloway Ave</u>	125 E. 11 th Street
<u>Mesquite, Texas 75149</u>	Austin, Texas 78701

All notices shall be deemed given on the date delivered or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail and that request shall be honored and carried out by the other party.

County Dallas
District Dallas
ROW CSJ 0095-02-122
CCSJ # 0095-02-107
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

7. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

8. Legal Construction

If one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

9. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

10. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

11. Sole Agreement

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the subject matter of this agreement.

12. Ownership of Documents

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

13. Inspection of Books and Records

The Local Government shall maintain all books, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the State and, if federally funded, the Federal Highway

County Dallas
District Dallas
ROW CSJ 0095-02-122
CCSJ # 0095-02-107
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

Administration (FHWA) or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this agreement or until any impending litigation, or claims are resolved. Additionally, the State and FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

14. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

15. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

16. Civil Rights Compliance

The parties to this agreement shall comply with the regulations of the U.S. Department of Transportation as they relate to nondiscrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

17. Applicability of Federal Provisions

Articles 18 through 23 only apply if Federal funding is used in the acquisition of right of way or the adjustment of utilities.

18. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

19. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the DBE Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.

County Dallas
District Dallas
ROW CSJ 0095-02-122
CCSJ # 0095-02-107
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally -Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

20. Debarment Certification

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this

County Dallas
District Dallas
ROW CSJ 0095-02-122
CCSJ # 0095-02-107
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

21. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

22. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
 - 1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
 - 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows Federal government to track the

County Dallas
District Dallas
ROW CSJ 0095-02-122
CCSJ # 0095-02-107
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and

3. Report the total compensation and names of its top five (5) executives to the State if:

- i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
- ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

23. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- B. If threshold expenditures of \$750,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://txdot.gov/inside-txdot/office/audit/contact.html>
- C. If expenditures are less than \$750,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$750,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

24. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

County Dallas
District Dallas
ROW CSJ 0095-02-122
CCSJ # 0095-02-107
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT


Signature

Cliff Keheley
Typed or Printed Name

City Manager
Title

10-23-2020
Date

THE STATE OF TEXAS

DocuSigned by:


Rose Wheeler
Contracts & Finance Director
Right of Way Division
Texas Department of Transportation
11/6/2020

Date

APPROVED AS TO FORM:


for megrate CITY ATTORNEY

County Dallas
District Dallas
ROW CSJ 0095-02-122
CCSJ # 0095-02-107
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

**ATTACHMENT A
RESOLUTION OR ORDINANCE**

RESOLUTION NO. 52-2020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, SUPPORTING THE RECONSTRUCTION OF US HIGHWAY 80 IN MESQUITE; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT TO CONTRIBUTE RIGHT-OF-WAY FUNDS ESTIMATED AT \$651,000.00 WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR HIGHWAY IMPROVEMENTS ON US HIGHWAY 80 FROM IH-30 TO EAST OF BELT LINE ROAD (SUNNYVALE TOWN LIMITS).

WHEREAS, Texas Transportation Code § 201.103 and § 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

WHEREAS, Texas Transportation Code § 201.209 authorizes the State and the City of Mesquite (the "City") to enter into agreements in accordance with Texas Government Code, Chapter 79; and

WHEREAS, the City desires to enter into a fixed price joint participation agreement pursuant to 43 TAC § 15.52 to contribute to the State funding participation as defined in 43 TAC § 15.55 for the cost of acquiring the right of way ("ROW") and relocating or adjusting utilities for the proper improvement of US Highway 80; and

WHEREAS, the Texas Department of Transportation ("TxDOT") has completed the preliminary design and ROW documents and is ready to proceed with ROW acquisition and utilities adjustments for the reconstruction US Highway 80 in Mesquite; and

WHEREAS, the City requests that TxDOT assume responsibility for acquisition of all necessary ROW and adjustment of utilities for this highway project; and

WHEREAS, the City is required to contribute 10 percent of the estimated ROW acquisition costs for property required along US Highway 80, which is estimated to be \$651,000.00; and

WHEREAS, this project will reconstruct the US Highway 80 and IH-635 interchange, improve access throughout the corridor, and reconstruct the interchanges at Gus Thomasson Road / Gross Road and at Galloway Avenue; and

WHEREAS, upon full review and consideration of the Agreement, and all matters related thereto, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, and that the City Manager should be authorized to execute the Agreement on behalf of the City of Mesquite, Texas.

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

SECTION 1. The City Council hereby supports the reconstruction of US Highway 80 in Mesquite and hereby authorizes the City Manager to execute the Agreement between the City of Mesquite and the State of Texas, acting by and through TxDOT, to contribute right of way

Public Works / Agreement w-TxDOT to Contribute ROW Funds / October 19, 2020

Page 2 of 2

funds which provides funding for certain highway improvements on US Highway 80 on behalf of the City of Mesquite, Texas.

SECTION 2. This resolution shall become effective from and after its passage.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 19th day of October 2020.



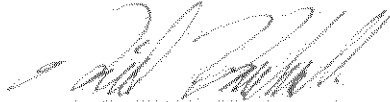
Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

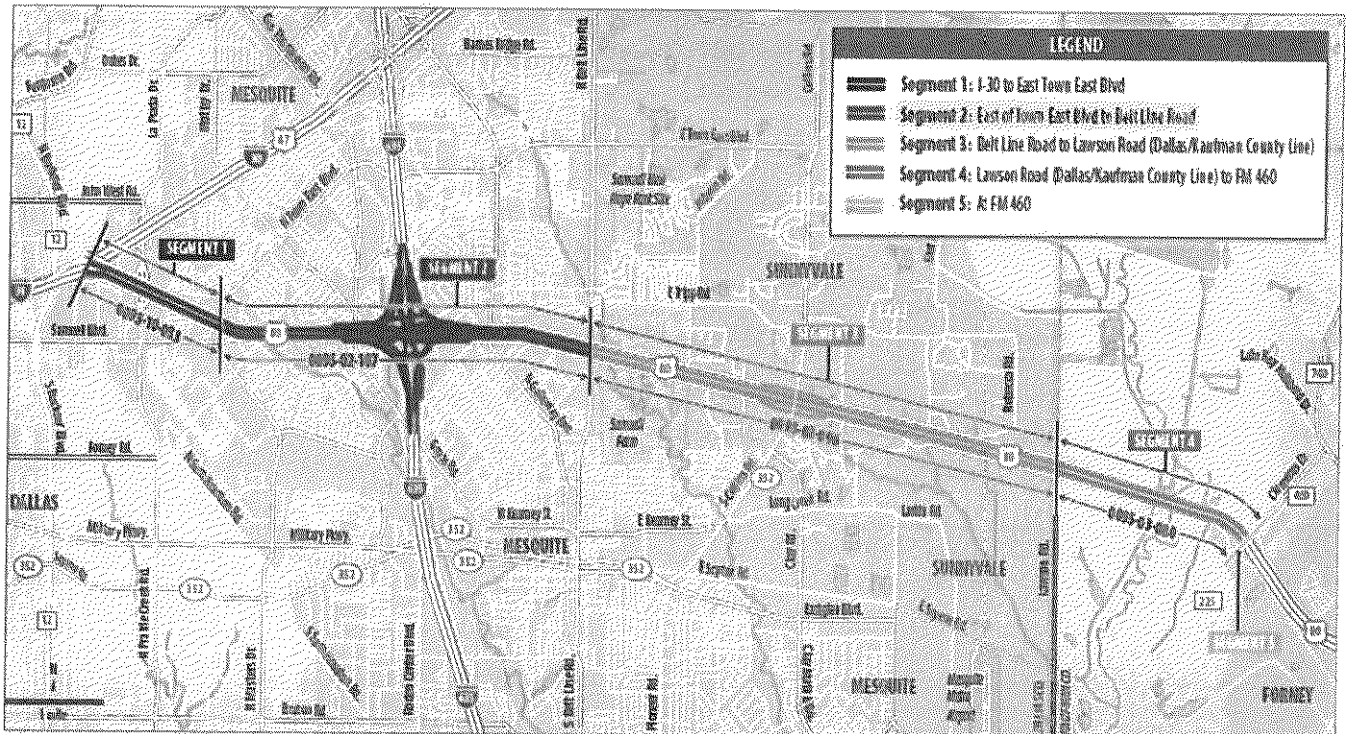
APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

County Dallas
 District Dallas
 ROW CSJ 0095-02-122
 CCSJ # 0095-02-107
 Federal Project #: - - -
 CFDA Title: Highway Planning & Construction
 CFDA # 20.205
 Federal Highway Administration
 Not Research and Development

ATTACHMENT B LOCATION MAP SHOWING PROJECT



NOTE: Highlighted areas are not drawn to exact scale.

6/20/01 graphic

County Dallas
District Dallas
ROW CSJ 0695-02-122
CCSJ # 0695-02-107
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

ATTACHMENT C
PROJECT BUDGET ESTIMATE AND PAYMENT SCHEDULE



County	Dallas
District	Dallas District
ROW CSJ #	0095-02-122
CCSJ #	0095-02-107

Federal Project #	
CFDA Title:	Highway Planning and Construction
FHWA CFDA #	20.205
Federal Highway Administration	
Not Research and Development	

**Standard Agreement to Contribute
State Performs Work
Periodic Payments
Attachment C**

Description	Total Estimated Cost	Participation				Total % (should be 100%)
		State		Local		
		%	Cost	%	Cost	
Right of Way Acquisition	\$5,382,150.00	90.0%	\$4,843,935.00	10.0%	\$538,215.00	100.0%
Reimbursable Utility Adjustments	\$544,225.00	90.0%	\$489,802.50	10.0%	\$54,422.50	100.0%
Joint Bid - Reimbursable Utility Adjustments						0.0%
TOTAL	\$5,926,375.00		\$5,333,737.50		\$592,637.50	

Fixed Amount

Except as otherwise provided in the Agreement, the fixed amount of Local Government participation will be that amount provided above.

Local Government requested approval for periodic payments of its funding obligation pursuant to 43 TAC §15.52 and the executive Director has approved the request. Attached is completed Special Approval Form - DED Approval.

Period payment schedule:

Initial payment by the Local Government to the State, with execution of this agreement. **\$0.00**

Dollars **\$100,000.00** on or before **October 1, 2020**

Dollars **\$492,637.50** on or before **October 1, 2021**



Texas Department of Transportation

125 EAST 11TH STREET, AUSTIN, TEXAS 78701-2483 | 512.463.8588 | WWW.TXDOT.GOV

November 9, 2020

Cliff Keheley, City Manager
City of Mesquite
c/o Wes McClure
1515 N. Galloway Ave.
Mesquite, Texas 75149

RE: Dallas County
RCSJ-0095-02-122, CCSJ-0095-02-107
US 80 from: East Town East Blvd. to: Belt Line Road

Dear Mr. Keheley,

Attached is a fully executed "Agreement to Contribute Right of Way Funds (Fixed Price)" agreement for the City of Mesquite in connection with the project stated above. This attached agreement was fully executed November 6, 2020.

The amount due, at this time is stated in "Attachment C" of the enclosed agreement. Please remit a check made payable to the "Texas Department of Transportation" to the address shown below.

Texas Department of Transportation (TxDOT)
Attention: Tresa Mixon - ROW
4777 US Highway 80 East
Mesquite, Texas 75150-6643

To ensure proper credit to your account, please include the ROW CSJ No. 0095-02-122 on all payments and/or correspondence. For clarity and tracking purposes, it is strongly suggested that this payment not be combined with any other transactions to TxDOT.

If you have any questions, please contact Tresa Mixon at (214) 319.3546.

Sincerely,

DocuSigned by:

CD610F6E0D584EF...

John Hudspeth, P.E.

Director of Transportation, Planning and Development

Attachments

cc: Craig Dearman



OUR VALUES: People • Accountability • Trust • Honesty
OUR MISSION: Connecting You With Texas

An Equal Opportunity Employer

APPROVED BY CITY COUNCIL
DATE: 10.19.2020
AGREEMENT NO. 9

County Dallas
District Dallas
ROW CSJ 0095-02-123
CCSJ # 0095-02-096
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development.

STATE OF TEXAS §

COUNTY OF TRAVIS §

AGREEMENT TO CONTRIBUTE RIGHT OF WAY FUNDS (FIXED PRICE)

THIS AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, (the "State"), and The City of Mesquite, Texas, acting through its duly authorized officials (the "Local Government").

WITNESSETH

WHEREAS, Texas Transportation Code §§ 201.103 and 222.052 establish that the State shall design, construct, and operate a system of highways in cooperation with local governments; and

WHEREAS, Texas Transportation Code, §§ 201.209 authorizes the State and a Local Government to enter into agreements in accordance with Texas Government Code, Chapter 791; and

WHEREAS, the State has deemed it necessary to make certain highway improvements on Highway No. US 80 from Belt Line Road to Lawson Road (Dallas/Kaufman County Line), and this section of highway improvements will necessitate the acquisition of certain right of way and the relocating and adjusting of utilities (the "Project"); and

WHEREAS, the Local Government requests that the State assume responsibility for acquisition of all necessary right of way and adjustment of utilities for this highway project; and

WHEREAS, the Local Government desires to enter into a fixed price joint participation agreement pursuant to 43 TAC §15.52 to contribute to the State funding participation as defined in 43 TAC §15.55 for the cost of acquiring the right of way and relocating or adjusting utilities for the proper improvement of the State Highway System;

WHEREAS, the Governing Body of the Local Government has approved entering into this agreement by resolution or ordinance dated October 19, 2020, which is attached to and made a part of this agreement as Attachment A. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement.

NOW THEREFORE, the State and the Local Government do agree as follows:

County Dallas
District Dallas
ROW CSJ 0095-02-123
CCSJ # 0095-02-096
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

AGREEMENT

1. Agreement Period

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. This agreement shall remain in effect until the Project is completed or unless terminated as provided below.

2. Termination

This agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The agreement is terminated in writing with the mutual consent of the parties;
- B. The agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or
- C. The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this agreement.

3. Local Project Sources and Uses of Funds

- A. The total estimated cost of the Project is shown in Attachment C, Project Budget Estimate and Payment Schedule, which is attached to and made a part of this agreement. The expected cash contributions from the Federal or State government, the Local Government, or other parties is shown in Attachment C. The Local Government shall pay to the State the amount shown in Attachment C as its required contribution of the total cost of the Project and shall transmit to the State with the return of this agreement, duly executed by the Local Government, a warrant or check for the amount and according to the Payment schedule shown in Attachment C.
- B. The Local Government's fixed price contribution set forth in Attachment C is not subject to adjustment unless:
 1. site conditions change;
 2. work requested by the Local Government is ineligible for federal participation; or
 3. the adjustment is mutually agreed on by the State and the Local Government.
- C. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of

County Dallas
District Dallas
ROW CSJ 0095-02-123
CCSJ # 0095-02-096
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

- D. Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a warrant or check made payable to the "Texas Department of Transportation Trust Fund." The warrant or check shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to this highway project.
- E. Notwithstanding that this is a fixed price agreement, the Local Government agrees that in the event any existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive, including, but not limited to, outdoor advertising or storm water drainage facility requirements, is more restrictive than State or federal regulations, or any other locally proposed change, including, but not limited to, plats or re-plats, results in any increased costs to the State, then the Local Government will pay one hundred percent (100%) of all those increased costs, even if the applicable county qualifies as an Economically Disadvantaged County (EDC). The amount of the increased costs associated with the existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive will be determined by the State at its sole discretion.
- F. If the Local Government is an EDC and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.
- G. If the Project has been approved for an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the incremental payment schedule.

4. Real Property in Lieu of Monetary Payment

- A. Contributions of real property may be credited to the Local Government's funding obligation for the cost of right of way to be acquired for this project. Credit for all real property, other than property which is already dedicated or in use as a public road, contributed by the Local Government to the State shall be based on the property's fair market value established as of the effective date of this agreement. The fair market value shall not include increases or decreases in value caused by the project and should include the value of the land and improvements being conveyed, excluding any damages to the remainder. The amount of any credit for real property contributed for this project is clearly shown in Attachment C.
- B. The Local Government will provide to the State all documentation to support the determined fair market value of the donated property. This documentation shall include an appraisal of the property by a licensed appraiser approved by the State. The cost of appraisal will be the responsibility of the State. The State will review the submitted documentation and make a final determination of value; provided however, the State

County Dallas
District Dallas
ROW CSJ 0095-02-123
CCSJ # 0095-02-096
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

- may perform any additional investigation deemed necessary, including supplemental appraisal work by State employees or employment of fee appraisers.
- C. Credit shall be given only for property transferred at no cost to the State after the effective date of this agreement and the issuance of spending authority, and only for property which is necessary to complete this project, has title acceptable to the State, and is not contaminated with hazardous materials. Credit shall be in lieu of monetary contributions required to be paid to the State for the Local Government's funding share of the right of way to be acquired for this project. The total credit cannot exceed the Local Government's matching share of the right of way obligation under this agreement, and credits cannot be reimbursed in cash to the Local Government, applied to project phases other than right of way, nor used for other projects.
 - D. In the event the Local Government's monetary contributions to the State for acquisition of right of way, when added to its real property credits, exceed the Local Government's matching share of the right of way obligation, there will be no refund to the Local Government of any portion of its contributed money.

5. Amendments

Amendments to this agreement due to changes in the character of the work, terms of the agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written supplemental agreement.

6. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, to the following addresses:

Local Government:	State:
<u>Cliff Keheley, City Manager</u>	Director of Right of Way Division
<u>City of Mesquite</u>	Texas Department of Transportation
<u>1515 N Galloway Ave</u>	125 E. 11 th Street
<u>Mesquite, Texas 75149</u>	Austin, Texas 78701

All notices shall be deemed given on the date delivered or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail and that request shall be honored and carried out by the other party.

County Dallas
District Dallas
ROW CSJ 0095-02-123
CCSJ # 0095-02-096
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

7. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

8. Legal Construction

If one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

9. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

10. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

11. Sole Agreement

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the subject matter of this agreement.

12. Ownership of Documents

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

13. Inspection of Books and Records

The Local Government shall maintain all books, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the State and, if federally funded, the Federal Highway

County Dallas
District Dallas
ROW CSJ 095-02-123
CCSJ # 095-02-096
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

Administration (FHWA) or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this agreement or until any impending litigation, or claims are resolved. Additionally, the State and FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcripts.

14. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

15. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

16. Civil Rights Compliance

The parties to this agreement shall comply with the regulations of the U.S. Department of Transportation as they relate to nondiscrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

17. Applicability of Federal Provisions

Articles 18 through 23 only apply if Federal funding is used in the acquisition of right of way or the adjustment of utilities.

18. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

19. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the DBE Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.

County Dallas
District Dallas
ROW CSJ 095-02-123
CCSJ # 095-02-096
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally -Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

20. Debarment Certification

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this

County Dallas
District Dallas
ROW CSJ 0095-02-123
CCSJ # 0095-02-096
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

21. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

22. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
 1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows Federal government to track the

County Dallas
District Dallas
ROW CSJ 095-02-123
CCSJ # 095-02-096
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fed.gov.dnb.com/webform>; and

3. Report the total compensation and names of its top five (5) executives to the State if:

- i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
- ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

23. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- B. If threshold expenditures of \$750,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://txdot.gov/inside-tdot/office/audit/contact.html>
- C. If expenditures are less than \$750,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$750,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

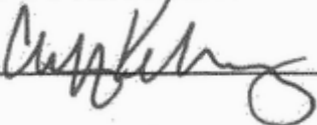
24. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

County Dallas
District Dallas
ROW CSJ 0995-02-123
CCSJ # 0995-02-096
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

Signature 

Typed or Printed Name CLIFF KEHLERY

City Manager _____
Title _____

Date 10-23-2020


THE STATE OF TEXAS

Designated By: Rose Wheeler

Rose Wheeler
Contracts & Finance Director
Right of Way Division
Texas Department of Transportation

Date 11/3/2020

APPROVED AS TO FORM:


CITY ATTORNEY

County Dallas
District Dallas
ROW CSJ 0095-02-123
CCSJ # 0095-02-096
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

**ATTACHMENT A
RESOLUTION OR ORDINANCE**

RESOLUTION NO. 52-2020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, SUPPORTING THE RECONSTRUCTION OF US HIGHWAY 80 IN MESQUITE; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT TO CONTRIBUTE RIGHT-OF-WAY FUNDS ESTIMATED AT \$651,000.00 WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR HIGHWAY IMPROVEMENTS ON US HIGHWAY 80 FROM IH-30 TO EAST OF BELT LINE ROAD (SUNNYVALE TOWN LIMITS).

WHEREAS, Texas Transportation Code § 201.103 and § 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

WHEREAS, Texas Transportation Code § 201.209 authorizes the State and the City of Mesquite (the "City") to enter into agreements in accordance with Texas Government Code, Chapter 79; and

WHEREAS, the City desires to enter into a fixed price joint participation agreement pursuant to 43 TAC § 15.52 to contribute to the State funding participation as defined in 43 TAC § 15.55 for the cost of acquiring the right of way ("ROW") and relocating or adjusting utilities for the proper improvement of US Highway 80; and

WHEREAS, the Texas Department of Transportation ("TxDOT") has completed the preliminary design and ROW documents and is ready to proceed with ROW acquisition and utilities adjustments for the reconstruction US Highway 80 in Mesquite; and

WHEREAS, the City requests that TxDOT assume responsibility for acquisition of all necessary ROW and adjustment of utilities for this highway project; and

WHEREAS, the City is required to contribute 10 percent of the estimated ROW acquisition costs for property required along US Highway 80, which is estimated to be \$651,000.00; and

WHEREAS, this project will reconstruct the US Highway 80 and IH-635 interchange, improve access throughout the corridor, and reconstruct the interchanges at Gus Thomasson Road / Gross Road and at Galloway Avenue; and

WHEREAS, upon full review and consideration of the Agreement, and all matters related thereto, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, and that the City Manager should be authorized to execute the Agreement on behalf of the City of Mesquite, Texas.

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

SECTION 1. The City Council hereby supports the reconstruction of US Highway 80 in Mesquite and hereby authorizes the City Manager to execute the Agreement between the City of Mesquite and the State of Texas, acting by and through TxDOT, to contribute right of way

Public Works / Agreement w-TxDOT to Contribute ROW Funds / October 19, 2020

Page 2 of 2

funds which provides funding for certain highway improvements on US Highway 80 on behalf of the City of Mesquite, Texas.

SECTION 2. This resolution shall become effective from and after its passage.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 19th day of October 2020.



Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

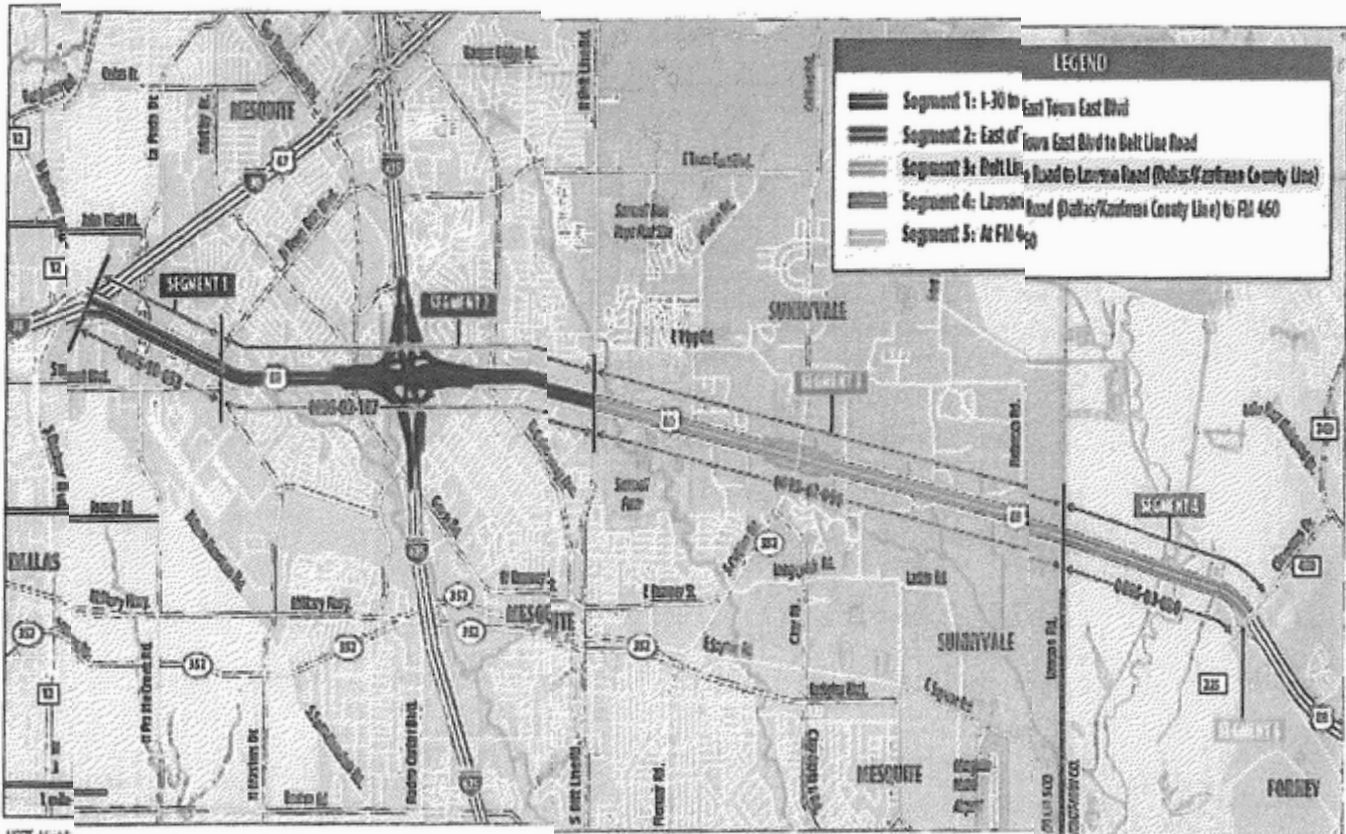
APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

County Dallas
District Dallas
ROW CSJ 0995-02-123
CCSJ # 0995-02-096
Federal Project #: ---
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

ATTACHMENT B LOCATION MAP SHOWING PROJECT



NOTE: Highway right-of-way areas are not drawn to exact scale.

TxDOT graphic

County Dallas
District Dallas
ROW CSJ 0095-02-123
CCSJ # 0095-02-096
Federal Project #: - - -
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

**ATTACHMENT C
PROJECT BUDGET ESTIMATE AND PAYMENT SCHEDULE**



County	Dallas
District	Dallas District
ROW CSJ #	0095-02-123
CCSJ #	0095-02-096

Federal Project #	
CFDA Title:	Highway Planning and Construction
FHWA CFDA #	20.205
Federal Highway Administration	
Not Research and Development	

**Standard Agreement to Contribute
 State Performs Work
 Attachment C**

Description	Total Estimated Cost	Participation				Total % (should be 100%)
		State		Local		
		%	Cost	%	Cost	
Right of Way Acquisition	\$76,528.00	90.0%	\$68,875.20	10.0%	\$7,652.80	100.0%
Reimbursable Utility Adjustments	\$160,656.00	90.0%	\$144,590.40	10.0%	\$16,065.60	100.0%
Joint Bid - Reimbursable Utility Adjustments						0.0%
TOTAL	\$237,184.00		\$213,465.60		\$23,718.40	

Fixed Amount

Except as otherwise provided in the Agreement, the fixed amount of Local Government participation will be that amount provided above.



125 EAST 11TH STREET, AUSTIN, TEXAS 78701-2483 | 512.463.8588 | WWW.TXDOT.GOV

November 4, 2020

Cliff Keheley, City Manager
City of Mesquite
c/o Wes McClure, P.E.
1515 N. Galloway Ave.
Mesquite, Texas 75149

RE: Dallas County
RCSJ-0095-02-123, CCSJ-0095-02-096
US 80 from: Belt Line Rd. to: Lawson Rd. (Dallas/Kaufman County Line)

Dear Mr. Keheley,

Attached is a fully executed "Agreement to Contribute Right of Way Funds (Fixed Price)" agreement for the City of Mesquite in connection with the project stated above. This attached agreement was fully executed November 3, 2020.


The amount due, at this time is stated in "Attachment C" of the enclosed agreement. Please remit a check made payable to the "Texas Department of Transportation" to the address shown below.

Texas Department of Transportation (TxDOT)
Attention: Tresa Mixon - ROW
4777 US Highway 80 East
Mesquite, Texas 75150-6643

To ensure proper credit to your account, please include the *ROW CSJ No. 0095-02-123* on all payments and/or correspondence. For clarity and tracking purposes, it is strongly suggested that this payment not be combined with any other transactions to TxDOT.


If you have any questions, please contact Tresa Mixon at (214) 319.3546.

Sincerely,

DocuSigned by:


CD610F8E0D584EF
John Hudspeth, P.E.
Director of Transportation, Planning and Development

Attachments

cc: Craig Dearman 

OUR VALUES: People • Accountability • Trust • Honesty
OUR MISSION: Connecting You With Texas