

RESOLUTION NO. _____

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

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

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

WHEREAS, pursuant to Resolution No. 27-2017, passed on August 7, 2017, the City of Mesquite, Texas ("City"), and the County of Dallas, Texas ("County"), entered into a County Major Capital Improvement Project Funding Agreement for preliminary studies and engineering review of the Military Parkway Trail improvements connecting the downtown Mesquite area to the Mesquite Championship Rodeo ("Project") and to establish a preliminary proposed budget for the Project; and

WHEREAS, the City and the County now desire to enter into a Project Specific Agreement for the design and construction of the Project; and

WHEREAS, the County will be completing the design of the Project and will be managing the construction; and

WHEREAS, the City will be responsible for 50 percent of the Project costs.

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

SECTION 1. The City Manager is hereby authorized to execute and approve the Project Specific Agreement with Dallas County, attached hereto as Exhibit "A" and incorporated herein by reference, for the design and construction of the Military Parkway Trail connecting downtown Mesquite to the Mesquite Championship Rodeo, with City's estimated Project contribution of \$1,140,000.00.

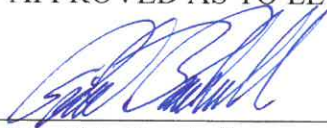
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 15th day of July 2019.

Stan Pickett
Mayor

ATTEST:

Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

**Dallas County Capital Improvement Program
Project Specific Agreement
to the Master Agreement Governing
Major Capital Improvement Program**

This Project Specific Agreement hereinafter "PSA" to the Master Agreement Governing Major Capital Improvement Program, hereinafter ("Master Agreement") is made by and between the **City of Mesquite, Texas**, hereinafter "City," and the **County of Dallas, Texas**, hereinafter "County," acting by and through its duly authorized officials, for the purpose of Transportation Improvements on the Military Parkway Trail connecting the downtown Mesquite area to the Mesquite Championship Rodeo, MCIP Project 11902/31901, hereinafter "Project."

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

WHEREAS, City and County entered into a Funding Agreement on September 19, 2017, by Commissioners Court Order 2017-1207 for the implementation of the Project; and

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

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

NOW THEREFORE, this PSA is made and entered into by the City and the County for the mutual consideration stated herein.

Witnesseth

Article I.

Project Funding Agreement

This PSA is to specifically identify the Project, changes in the rights and responsibilities of each of the parties as set forth in the Master Agreement and additions thereto as incorporated herein. This PSA will be an addition to the Master Agreement and incorporate each of its terms and conditions. All terms of the Master Agreement remain in full force and effect except as modified herein. In the event of any conflict between the Master Agreement and this PSA, this PSA shall control.

Article II.

Incorporated Documents

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

1. Master Agreement authorized by County Commissioners Court Order 2011-1014 dated June 7, 2011, and additions thereto as incorporated herein.
2. Project Scoping Sheets, which are attached and incorporated herein as Attachment "A."

3. Map showing the location of proposed public transportation improvements in the Military Parkway Trail for which the County is requesting City MCIP participation, which is attached and incorporated herein as Attachment "B."
4. Current Cost Estimates and Funding Sources, which are attached and incorporated herein as Attachment "C."

Article III.

Term of Agreement

This PSA shall become effective when signed by the last party whose signature makes the respective agreement fully executed and shall terminate upon the completion and acceptance of the Project by Dallas County Commissioners Court or upon the terms and conditions in the Master Agreement, Article IV., Section A, Termination. The Funding Agreement entered into by Dallas County and the City of Mesquite, Texas for the Military Parkway Trail connecting the downtown Mesquite area to the Mesquite Championship Rodeo, MCIP 11902/31901 shall terminate upon this agreement being fully executed.

Article IV.

Project Description

This PSA is entered into by the parties for public transportation improvements within the City of Mesquite, Texas. The Project is defined as trail improvements that run parallel along Rodeo Center Boulevard from Rodeo Drive, continuing north for approximately 0.3 miles to Military Parkway. The Project continues along Military Parkway/Davis Street from the Rodeo Center Boulevard intersection, east for approximately 1.4 miles to Galloway Avenue, as further detailed in Attachment "A" and depicted in Attachment "B." The Project will be known as Military Parkway Trail MCIP 11902/31901, the construction of an approximately 2.3 mile trail from Mountain Creek Preserve to Senter Park. The Project will facilitate the movement of public transportation to benefit both the City and County by, among other things, providing alternate routes for use by pedestrians, bicyclists, and other non-motorized vehicle operators who would otherwise use public streets within the City and the County for travel, thus resulting in a reduction in traffic conflicts between such users and motorists traveling on the same streets. The City does hereby give its approval for the expenditure of County funds for the construction, improvement, or repair of a street located within the municipality.

Article V.

Fiscal Funding

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

Notwithstanding anything to the contrary herein, this PSA is expressly contingent upon the availability of City funding for each item and obligation contained herein. County shall have no right of action against the City as regards this PSA, specifically including any funding by City of the Project in the

event that the City is unable to fulfill its obligations under this PSA as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this PSA or failure of any funding party to budget or authorize funding for this PSA during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the City, as its sole discretion, may provide funds from a separate source or terminate this PSA. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

Article VI. **Agreements**

I. County and City Responsibilities:

1. County will be the Lead Agency for the Project.
2. City and County mutually agree that the Project limits will be from Galloway Avenue to Rodeo Drive, as shown in Attachment "B."
3. The agreed-upon Standard Basic Project Design for the Project is as defined in the Project Scoping Sheets, Attachment "A." Such design shall be the Standard Basic Project Design for the Project and specifically does not include Paving and Drainage Amenities or Utility Betterments as defined in the Master Agreement. If the City adds relocation or adjustment of City Utilities or Utility Betterments, the City agrees that it will pay 100% of the costs of these additions.
4. The City agrees that County may include any Utility relocations, adjustments, or Betterments as optional items to the construction bidding. City further agrees to review the bids submitted, the bid specifications, quantities, bid amount and any other item the City shall choose to review and furnish a written acceptance or rejection of the bid within ten (10) days of receipt. In the event the bid is accepted, City agrees to encumber an amount adequate for the total estimated Project costs as indicated in Attachment "B."
5. The Project may require the acquisition of right-of-way which is specifically, all real property needed or convenient for transportation and/or drainage purposes as shown in the Project design or right-of-way plans and specifically includes all real property outside of the designed right-of-way needed, if applicable, or convenient to the construction, drainage, interface with adjoining streets or alleys, driveways or other access ways or other Project permanent or temporary easements which is approved by the City and County. Such right-of-way acquisition shall be the responsibility of the County as Lead Agency, and shall be funded as part of the Project costs.
6. In order to certify compliance with the expenditure of the Project funding for this PSA, the County agrees to furnish to the City, its Auditor, or its designated representative(s) the unrestricted right to audit any and all accounting and other records regarding any funds paid or claimed under this agreement, including, but not limited to all books, records, reports, tickets, deposits, expenditure, budget or any item therein, supporting data, computer records and programs, and all items of hardware, software or firmware, or any other item utilized by the County regarding this PSA (records). County contracts and agrees that all records shall be kept and maintained for a period of time not less than four (4) years from the date of the termination of this PSA. Such records shall be provided to the City in Dallas County, Texas and available for audit upon reasonable request.
7. The results of any audit shall be furnished to County for comment. In the event that any audit shall determine that moneys are owed to City, such sums are deemed to be due and payable to City of Mesquite, Texas, within thirty (30) days of the date of an invoice for such cost being deposited in the United States mail, via certified mail, with return receipt requested.

II. City Responsibilities:

1. City shall execute the necessary agreements for the implementation of design and construction

of the Project mutually agreed upon and incorporated herein by this PSA.

2. This PSA is City approval of the preferred alignment and the proposed estimated budget.
3. City shall provide a City Council Resolution commitment to meet the Project funding.
4. City will retain the right to review plans and amendments during preparation of the deliverables under the contract.
5. City shall coordinate any necessary utility adjustments for construction of the Project.
6. City shall be responsible for maintaining the roadway after the Project is complete.

III. County Responsibilities:

1. County shall be the Lead Agency for the Project. County will provide project management of the Project from commencement of planning to completion of construction.
2. County shall advertise the Project with City funded items as optional bid items.

IV. Funding:

County and City mutually agree to proportionately fund the Direct Project and Program cost as follows:

1. Notwithstanding any provision in the Master Agreement, this PSA, any amendment thereto, or any other agreement between the parties regarding this Project, the total Project cost is estimated to be Two Million, Two Hundred Eighty Thousand Dollars and no cents (\$2,280,000.00). The County's total obligation to this Project is to provide funding in an amount not to exceed One Million, One Hundred Forty Thousand Dollars and no cents (\$1,140,000), reduced by the County's estimated share of in-house project delivery (IHPD) costs of the total Project cost, estimated to be Three Hundred Fifty Thousand Dollars and no cents (\$350,000.00). The City agrees to provide funding to this Project in the amount of One Million, One Hundred Forty Thousand Dollars and no cents (\$1,140,000.00).
2. Project costs may include County Project delivery costs including but not be limited to preliminary scoping and research, preliminary design services, special services, primary design services, inspection, laboratory services and construction.
3. The City agrees to encumber an amount adequate for total estimated Project costs as determined prior to the commencement of each Project milestone as determined by the County within thirty (30) days of notification by the County. The City will pay Project costs as invoiced by the County.
4. If the total Project costs, excluding paving and drainage amenities or utility betterments, should exceed the total Project cost, the City and the County agree to amend the Project's scope to remain within the current estimated amount.

Article VII.

Miscellaneous

1. **Indemnification.** County and City agree that each shall be responsible for its own negligent acts or omissions or other tortious conduct in the course of performance of this PSA, without waiving any governmental/sovereign immunity available to County or City or their respective officials, officers, employees, or agents under Texas or other law and without waiving any available defenses under Texas or other law. Nothing in this paragraph will be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities.
2. **No Third Party Beneficiaries.** The terms and provisions of this PSA are for the benefit of the parties hereto and not for the benefit of any third party. It is the express intention of City and County that any entity other than City or County receiving services or benefits under this PSA shall be deemed an incidental beneficiary only. This PSA is intended only to set forth the contractual right and responsibilities of the parties hereto.

3. Governing Law and Venue. This PSA is and shall be expressly subject to the Sovereign Immunity of County and Governmental Immunity of City, pursuant to Title 5 of the Texas Civil Practice and Remedies Code, as amended, and all applicable federal and state laws. This PSA shall be governed by and construed in accordance with the laws and case decisions of the State of Texas. Exclusive venue for any legal action regarding this PSA filed by either City or County shall be in Dallas County, Texas.
4. Notice. Any notice provided for in this Agreement to be given by either party to the other, shall be required to be in writing and shall be deemed given when personally delivered, or two (2) business days after being deposited in the United States Mail, postage prepaid, by certified mail, return receipt requested; or by registered mail; and addressed as follows:

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

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

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

5. Assignment. This PSA may not be assigned or transferred by either party without the prior written consent of the other party.
6. Binding Agreement; Parties Bound. When this PSA has been duly executed and delivered by both parties, this PSA shall constitute a legal, valid and binding obligation of the parties, their successors and permitted assigns.
7. Amendment. This PSA may not be amended except in a written instrument specifically referring to this PSA and signed by the parties hereto.
8. Number and Gender. Words of any gender used in this PSA shall be held and construed to include any other gender and words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise.
9. Effective Date. This PSA shall commence on the Effective Date. The Effective Date of this PSA shall be the date it is executed by the last of the parties. Reference to the date of execution shall mean the Effective Date.
10. Counterparts. This PSA may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
11. Severability. If one or more of the provisions in this PSA shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not cause this PSA to be invalid, illegal or unenforceable, but this PSA shall be construed as if such provision had never been contained herein, and shall not affect the remaining provisions of this PSA, which shall remain in full force and effect.
12. Entire Agreement. This PSA embodies the complete agreement of the parties, supersedes all

oral or written previous and contemporary agreements between the parties and relating to matters in the PSA.

13. Contingent. This agreement is expressly subject to and contingent upon formal approval by the Dallas County Commissioners Court and by resolution of the City Council of Mesquite. This PSA is also contingent upon the executed LPAFA between City and TxDOT. If any other agreement terminates, this PSA shall terminate as well.
14. No Joint Enterprise/Venture. City and County agree that neither party is an agent, servant, or employee of the other party. No joint enterprise/venture exists between the City and County.

The City of Mesquite, State of Texas, has executed this agreement pursuant to duly authorized City Council Resolution _____, Minutes _____ dated the ____ day of _____, 2019.

The County of Dallas, State of Texas, has executed this agreement pursuant to Commissioners Court Order Number _____ and passed on the ____ day of _____, 2019.

County of Dallas:

City of Mesquite:

Clay Lewis Jenkins, County Judge

Mayor

Date

Date

Approved as to Form*:
John Creuzot
District Attorney

By: _____

Approved as to Form:

By: _____
Sherri McLeod Turner
Assistant District Attorney

By: _____
Ileana Fernandez
Assistant City Attorney

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).