

ORDINANCE NO. 2706

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, APPROVING AMENDMENT TO ESCROW AGREEMENT; AUTHORIZING AND DIRECTING THE SUBSTITUTION OF CERTAIN SECURITIES HELD UNDER THE ESCROW AGREEMENT; APPROVING OTHER MATTERS RELATED THERETO; AND DECLARING AN EMERGENCY

WHEREAS, pursuant to Ordinance No. 2260, approved by the City Council of the City of Mesquite, Texas (the "City") on November 25, 1985, the City issued its Permanent Improvement and Refunding Bonds, Series 1985 and approved the execution and delivery of a certain Escrow Agreement with MBank Dallas, N.A.;

WHEREAS, the City Council hereby finds and determines that it is in the best interest of the City that such Escrow Agreement be amended in order to permit the substitution of certain securities held thereunder for other securities the principal of and interest on which are unconditionally guaranteed by the United States of America;

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

Section 1. That the Mayor and City Secretary are hereby authorized and directed to execute and deliver the "Amendment to Escrow Agreement" in substantially the form attached hereto as "Exhibit A." In addition, the Mayor or City Manager are authorized and directed to take any and all action necessary and incidental to substituting certain securities held in pursuant to the Escrow Agreement for other securities the principal of and interest on which are unconditionally guaranteed by the United States of America. Such substitution shall be subject to the receipt of a verification by a nationally recognized public accounting firm to that the substitutions will not adversely effect the adequacy of the funds held in the escrow to pay the "Refunded Bonds" and upon evidence satisfactory to the City Manager that any credit rating with respect to the Refunded Bonds will not be adversely affected.

Approved this 15th day of October, 1990.

George L. Venner Sr.

Mayor, City of Mesquite

ATTEST:

Lynn Prugel

City Secretary, City of Mesquite

AMENDMENT TO ESCROW AGREEMENT

This Amendment to Escrow Agreement (the or this "Amendment"), dated October 15, 1990, is entered into by and between the City of Mesquite, Texas (the "Issuer") and Ameritrust Texas National Association, successor to MBank Dallas, N.A., as Escrow Agent. Terms not otherwise defined in this Amendment shall have the same meanings assigned to them in the "Escrow Agreement" (as defined below).

WHEREAS, the Issuer and the Escrow Agent heretofore entered into a certain Escrow Agreement, dated as of November 1, 1985 (the "Escrow Agreement"); and

WHEREAS, the Issuer has requested that the Escrow Agent amend the Escrow Agreement in certain respects;

NOW, THEREFORE, for an in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the benefits to the Issuer described herein, the Issuer and the Escrow Agent agree as follows:

1. Section 4.01 of the Escrow Agreement is hereby amended to read as follows:

"Section 4.01. Except as provided in this Article IV, the Escrow Agent shall not have any power or duty to invest or reinvest any money held hereunder; or to make substitutions of the Escrowed Securities; or to sell, transfer or otherwise dispose of the Escrowed Securities."

2. Section 4.03 of the Escrow Agreement is hereby amended to read as follows:

"Section 4.03. Substitution of Securities. At the written request of the Issuer, and upon compliance with the conditions hereinafter stated, the Escrow Agent shall sell, transfer, otherwise dispose of or request the redemption of all or any portion of the Escrowed Securities and apply the proceeds therefrom to purchase Refunded Bonds or direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America and which do not permit the redemption thereof at the option of the obligor. Any such transaction may be effected by the Escrow Agent

only if (1) the Escrow Agent shall have received a written opinion from a recognized firm of certified public accountants that such transaction will not cause the amount of money and securities in the Escrow Fund to be reduced below an amount which will be sufficient, when added to the interest to accrue thereon, to provide for the payment of principal of and interest on the remaining Refunded Bonds as they become due, and (2) the Escrow Agent shall have received the unqualified written legal opinion of nationally recognized bond counsel or tax counsel acceptable to the Issuer and the Escrow Agent to the effect that (a) such transaction will not cause any of the Refunding Bonds to be an "arbitrage bond" within the meaning of the Code, and (b) that such transaction complies with the Constitution and laws of the State of Texas."

4. Section 5.01 of the Escrow Agreement is hereby amended to read as follows:

"Section 5.01. In General. Except as provided in Section 3.02 and 4.02 hereof, no withdrawals, transfers, or reinvestments shall be made of cash balances in the Escrow Fund; provided, however, that nothing in this Section shall prevent payment to the Issuer of excess money received as the result of a substitution of securities pursuant to Section 4.03."

5. Except as expressly set forth herein, all terms and conditions of the Escrow Agreement shall be and remain in force and effect.

6. This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

7. If any provision of this Amendment shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

8. This Amendment shall be governed by and construed in accordance with the laws of the State of Texas, without regard to choice of law.

00040

IN WITNESS WHEREOF, the Issuer and the Escrow Agent have caused this Amendment to be executed by their duly authorized officers, effective as of the date and year first written above.

CITY OF MESQUITE, TEXAS

By: George A. Kenner, Sr.
Mayor

ATTEST:

By: Lynn Prugel
City Secretary

[SEAL]

AMERITRUST TEXAS NATIONAL
ASSOCIATION, as Escrow Agent

By: Miss P. Brock

Title: Assistant Vice President

ATTEST:

By: Kelley Adams

Title: Trust Officer

[SEAL]