

ORDINANCE NO. 3888

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A DEVELOPER PARTICIPATION AGREEMENT WITH ONE MESQUITE CREEK, L.P., A TEXAS LIMITED PARTNERSHIP, TO INCREASE THE CAPACITY OF THE DRAINAGE SYSTEM IN GROSS ROAD BY CONSTRUCTION OF APPROXIMATELY 458 FEET OF SEVEN-FOOT BY FOUR-FOOT CONCRETE BOX CULVERT IN AN AMOUNT NOT TO EXCEED \$250,000 FOR THE VILLAS AT MESQUITE CREEK PROJECT; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, One Mesquite Creek, L.P., a Texas limited partnership (“Developer”) owns all of a certain tract of undeveloped land in the City of Mesquite to be developed as Villas at Mesquite Creek (“Project”); and

WHEREAS, it is prudent and in the public interest to increase the capacity of the drainage system in Gross Road by the construction of approximately 458 feet of seven-foot by four-foot concrete box culvert due to the inadequate drainage system that presently exists in this segment of Gross Road in conjunction with the construction of the other drainage and utility infrastructures associated with said Project; and

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into a Developer Participation Agreement (“Agreement”) regarding the construction of certain public improvements related to the development of the Project; and

WHEREAS, Texas Local Government Code §212.071, as amended, authorizes municipalities to participate in the developer’s costs of construction of public improvements such as those provided for in the Agreement in an amount not greater than 30 percent of the total contract price without compliance with Chapter 252 of the Texas Local Government Code, as amended; and

WHEREAS, the City Council has carefully reviewed and considered the proposed Agreement; and

WHEREAS, the City Council has determined that participating in the Agreement is in the best interest of the citizens of Mesquite.

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

SECTION 1. That the City Manager is hereby authorized to execute the Developer Participation Agreement (“Agreement”), attached hereto as Exhibit “A,” between the City of Mesquite, Texas and One Mesquite Creek, L.P., a Texas limited partnership, in an amount not to exceed \$250,000.

SECTION 2. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 4. That this ordinance shall take effect immediately from and after its passage.

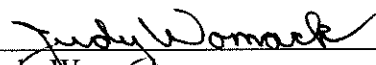
DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 18th day of September, 2007.

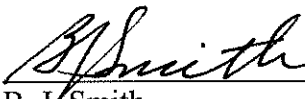


David Paschall
Mayor Pro Tem

ATTEST:

APPROVED:



Judy Womack
City Secretary

B. J. Smith
City Attorney

DATE 9-18-07#2BCITY SEC. J. Wamack

**DEVELOPER DRAINAGE PARTICIPATION AGREEMENT
FOR VILLAS OF MESQUITE CREEK**

THIS DEVELOPER PARTICIPATION AGREEMENT ("Agreement") is made and entered into as of the 12 day of **October, 2007**, by **One Mesquite Creek, L.P., a Texas limited partnership** (hereinafter called "Developer") and the City of Mesquite, Texas, a Texas Municipal corporation and home rule City of the State of Texas principally situated in Dallas County, Texas (hereinafter called "City").

WITNESSETH:

WHEREAS, Developer owns all of a certain tract of undeveloped land in the City of Mesquite, Dallas County, Texas, to be developed as **Villas at Mesquite Creek** (hereafter referred to as the "Project"); and

WHEREAS, it is in the public interest to **increase the capacity of the drainage system in Gross Road by the construction of approximately 458 feet of seven-foot by four-foot concrete box culvert due to the inadequate drainage system that presently exists in this segment of Gross Road**; and

WHEREAS, it is prudent to construct this drainage improvement in Gross Road in conjunction with the construction of the other drainage and utility infrastructure of the Villas at Mesquite Creek and other improvements associated (concrete parking lots, channel, fencing) being constructed with said PROJECT; and

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into this Developer Participation Agreement regarding the construction of certain off-site public drainage improvements related to the development of the Project; and

WHEREAS, Texas Local Government Code §212.071, et seq. as amended, authorizes municipalities to participate in the developer's costs of construction of public improvements such as those provided for in this Agreement in an amount not greater than 30 percent of the total contract price without compliance with Chapter 252 of the Texas Local Government Code, as amended; and

WHEREAS, this Agreement is further authorized by an ordinance duly enacted by the governing body of the City; and

WHEREAS, DEVELOPER has revenues available to fund the PROJECT as herein agreed;

WHEREAS, the City has current revenues available to participate in the cost of the public improvements.

NOW, THEREFORE, in consideration of the covenants, conditions, and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer does hereby agree that the Property shall be developed in accordance with the following provisions and conditions, in addition to other City ordinance requirements and other applicable governmental regulations:

I. The Project

Developer agrees to include in its construction of public improvements, specifically the construction of **apartments, parking lots, utility and drainage improvements** within the subdivision, hereinafter called the "Project", **the construction of a new seven-foot by four-foot concrete box culvert drainage system**, hereinafter called "**Off-Site Drainage Improvements**" that will serve the Northridge Addition and the subject PROJECT, all utility work to be done in accordance with plans approved in accordance with City requirements.

II. Bonds

The Project's public improvements to be constructed by Developer pursuant to this Agreement consist of an approximate total of **458 feet of seven-foot by four-foot concrete box culvert drainage system with associated appurtenances** with a **total projected cost of \$362,538.00**. To assure payment, and in compliance with Local Government Code §212.073, Developer agrees to have a performance bond executed by a corporate surety in accordance with Chapter 2253, Government Code in an amount equal to 100% of the cost of construction of the Project. The bond must be in a form acceptable to the City and must be maintained in effect until the City has accepted the Project.

III. Responsibility for Project

Developer will assume all responsibility for the Project management and administration including but not limited to construction contract administration and materials testing except as otherwise provided for herein. Developer will provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, utilities, including relocations and adjustments, transportation, and other facilities and services necessary for the proper completion of the Project in a first-class good and workmanlike manner, and in strict compliance with this Agreement and the project design approved by the City, using the highest degree of skill and attention normally exhibited by contractors on similar projects in Dallas County.

IV. Utility Relocation

Utility relocations and adjustments will be made in accordance with City's utility franchises or agreements with the utility companies.

V. Developer Control of Project

Developer shall have full power over, and exclusive control of, the specific details of

the Project and its development, subject only to the general limitations and obligations under this Agreement and applicable local, state and federal statutes and regulations. Nothing contained in this Agreement or in any related document shall be construed as making the City and Developer joint venturers or partners, nor shall Developer be or represent itself to be an employee or agent of the City. Developer acknowledges that the City shall in no way be responsible for the construction of the Project or any portion thereof.

VI. City Inspection

City Inspectors will do inspections for the Project public improvements during the construction phase. If the City Engineer determines that all work has been completed in conformance with City requirements, then the City Engineer shall give his approval for that improvement work.

VII. Affidavit of Payment by Developer

After completion and acceptance of all work, Developer must furnish to City an affidavit of all bills paid with respect to the completed work.

VIII. City's Payment to Developer

Upon satisfaction of the conditions contained herein, and in consideration of the obligations incurred by Developer pursuant to this Agreement, the City agrees to participate in the funding of the Project public improvements and reimburse Developer in the amount of **\$250,000.00**, which represents a portion of the costs associated with **458 feet of seven-foot by four-foot concrete box culvert off-site drainage system with associated appurtenances**. This amount may not and does not exceed 30 percent of the actual cost of the entire Project. City's payment to Developer for its share of the project will be made within 30 days from receipt of all documentation required herein and acceptance of the Project by the City Engineer. In no event will City reimburse Developer for use of Developer's staff or equipment

IX. Developer's Records

Developer shall maintain detailed and accurate records of all contracts, receipts and expenditures made or incurred in connection with the Project. The records shall be maintained for the term of the Project and for two (2) years following the completion date. As required by Texas Local Government Code § 212.074, Developer's books and other records related to the Project shall be available for inspection upon request by the City.

X. Indemnification

DEVELOPER agrees to defend, indemnify and hold CITY, its officers, agents and employees harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of

damages is sought, suffered by any person or persons, that may arise out of or be occasioned by any negligent act or omission of DEVELOPER, its officers, agents, employees or contractors, as a result of this Agreement; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of DEVELOPER and CITY, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, waiving any governmental immunity available to CITY and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

XI. Assignment

Developer's rights and obligations under this Agreement are neither assignable or delegable and the Developer covenants not to assign its rights hereunder without the written consent of the City. Any attempted to assignment or delegation in violation of this paragraph shall be void.

XII. Modification of Agreement

This Agreement may be modified or amended only by the mutual consent of the parties hereto.

XIII. Complete Agreement

This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters.

XIV. Notification

Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing as follows:

If to Developer:

**Hal T. Thorne, President
One Mesquite Creek, L.P., a Texas limited partnership
South Carrier Parkway, Suite 100
Grand Prairie, Texas 75051**

If to City:

**Matthew Holzapfel, PE, City Engineer
City of Mesquite, Texas**

1515 N. Galloway Avenue
Mesquite, Texas 75149

XV. Severability

Any clause, sentence, provision, paragraph or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal or ineffective.

XVI. Jurisdiction

This Agreement shall be construed under the laws of the State of Texas and all obligations of the parties hereunder are performed in Dallas County, Texas.

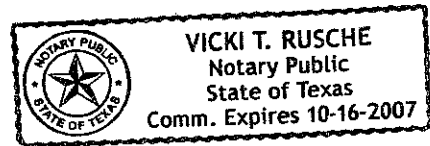
XVII. Venue

Venue for any cause of action arising in connection with this Agreement shall be in Dallas County, Texas.

EXECUTED in duplicate the day and year first above written.

**One Mesquite Creek, L.P., a Texas limited partnership
Developer**

By: Hal T. Thorne
Hal T. Thorne, President



Acknowledgment



State of Texas §
County of Dallas §

Before me the undersigned authority on this day personally appeared **Hal T. Thorne**, known to be the person whose name is subscribed to the fore going document and known to me to be the **President** (title) of **One Mesquite Creek, L.P., a Texas limited partnership** (Developer's name) and acknowledged to me that he executed said document with full authority to do so and for the purposes and consideration expressed therein. Given under my hand and seal of office the 9th day of October, 2007.

Vicki T. Rusche
Notary Public in and for the
State of Texas

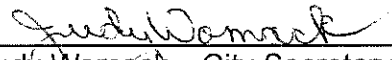
My Commission Expires: _____

City of Mesquite, Texas
City

By: 
Ted Barron - City Manager 

By authority of Council ordinance No. 3898
dated: September 18, 2007

Attest:


Judy Womack - City Secretary

APPROVED AS TO FORM:


City Attorney or Designee