

ORDINANCE NO. 5109

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING ORDINANCE NO. 2021 AND RESOLUTION NO. 28-93, AND AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN INTERLOCAL AGREEMENT WITH THE CITY OF BALCH SPRINGS FOR PROVIDING WHOLESALE WASTEWATER SERVICE TO SPECIFIC BALCH SPRINGS SERVICE AREAS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the “**Act**”), cities, counties, special districts, and other legally constituted political subdivisions of the State of Texas are authorized to enter into interlocal contracts and agreements with each other regarding governmental functions and services as set forth in the Act; and

WHEREAS, pursuant to Ordinance No. 2021 approved on April 16, 1984, the City of Mesquite (“**Mesquite**”) agreed to provide sanitary sewer service to a portion of Dallas County Water Control and Improvements District No. 6 (“**District**”) that included areas within the City of Balch Springs (“**Balch Springs**”), under the terms and conditions provided in Ordinance No. 2021; and

WHEREAS, Ordinance No. 2021 was purportedly amended in 1993 by Resolution No. 28-93 to modify charges by Mesquite for sanitary sewer service provided to the District and Town of Sunnyvale; and

WHEREAS, in 2013, the District was dissolved and its assets and agreement with Mesquite for sanitary sewer service were transferred to Balch Springs, and Mesquite continued providing sanitary sewer services to portions of Balch Springs as specified by Ordinance No. 2021, as amended; and

WHEREAS, due to increased development inside portions of the Mesquite-serviced areas of Balch Springs, it is necessary to increase capacity in the South Mesquite Creek Sewer Line to accommodate the additional sewer flows from these developments; and

WHEREAS, on April 18, 2023, and following City Council approval on April 17, 2023, Mesquite and Balch Springs entered into a memorandum of understanding (“**MOU**”) defining expectations and responsibilities regarding wastewater service to the portion of Balch Springs experiencing increased development; and

WHEREAS, the MOU outlined Balch Springs’ responsibility to both immediately reduce excessive inflow and infiltration into the sanitary sewer system, and to negotiate in good faith a new wholesale wastewater service agreement to replace Ordinance No. 2021, as amended; and

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WHEREAS, the MOU outlined conditions precedent to Mesquite providing wholesale wastewater service to Balch Springs including, among others, that Balch Springs (a) pay a pro-rata share participation in the construction of an expanded sanitary sewer system servicing the identified new developments area including new sewer system flow meters, and (b) agree that billing will be based on actual flows into the newly expanded sewer system once the new meters are in place rather than based on the water usage of Balch Springs customers within the defined service area serviced by the new expanded system; and

WHEREAS, Mesquite staff and Balch Springs staff negotiated and prepared a Wholesale Wastewater Treatment Agreement Between City of Mesquite, Texas, and City of Balch Springs, Texas (“**Agreement**”), attached hereto as Exhibit 1 and incorporated herein by reference, for the purposes described above and further detailed in the Agreement, and that includes the terms and conditions described above so as to continue the provision of wastewater services to the areas of Balch Springs identified in the Agreement; and

WHEREAS, the Balch Springs City Council approved the Agreement at their regularly scheduled meeting on May 13, 2024; and

WHEREAS, the Mesquite City Council hereby finds that the City’s participation in the Agreement with Balch Springs is in the interests of the City and its citizens and should be approved.

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

SECTION 1. The facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct and are incorporated and adopted as part of this ordinance for all purposes.

SECTION 2. The City Council hereby authorizes the City Manager to finalize and execute the Agreement between Mesquite and Balch Springs attached hereto as Exhibit 1 and incorporated herein by reference, and to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices per the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$100,000; (iii) approve or deny any matter in the Agreement that requires the consent of the City with the exception of any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement which shall require City Council approval; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term, or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials, and waivers authorized by this Section 2 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 2 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council’s legislative functions.

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SECTION 3. Ordinance No. 2021 and Resolution No. 28-93 are hereby amended as identified in the Agreement attached hereto as Exhibit 1, but solely with respect to the subject matters expressly addressed in the Agreement and no others, and in all other respects Ordinance No. 2021 and Resolution No. 28-93 shall remain in full force and effect.

SECTION 4. In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Mesquite and the provisions of this Ordinance, the provisions of this Ordinance shall be controlling.

SECTION 5. Should any word, sentence, paragraph, subdivision, clause, phrase, or section of this Ordinance be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said Ordinance, which shall remain in full force and effect.

SECTION 6. This ordinance shall be in effect immediately upon its adoption.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 3rd day of June 2024.

DocuSigned by:
Daniel Aleman Jr.
D999585317D142B...

Daniel Alemán, Jr.
Mayor

ATTEST:

DocuSigned by:
Sonja Land
C2518095973F46A...

Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:

DocuSigned by:
David L. Paschall
666E18891208434...

David L. Paschall
City Attorney

**WHOLESALE WASTEWATER TREATMENT AGREEMENT
BETWEEN
CITY OF MESQUITE, TEXAS
AND
CITY OF BALCH SPRINGS, TEXAS**

THIS AGREEMENT (Agreement) made and entered into by and between CITY OF MESQUITE, TEXAS (Mesquite), a Home Rule municipality situated in Dallas County, Texas, and the CITY OF BALCH SPRINGS, TEXAS, (Balch Springs) a Home Rule municipality situated in Dallas County, Texas, both organized and operating under the provisions the Constitution and laws of the State of Texas. Mesquite and Balch Springs may be referred to herein collectively as the “Parties,” or individually as a “Party.”

RECITALS

- A. In 1984, Mesquite and Dallas County Water Control and Improvement District No. 6 (“District”) entered into an agreement (Mesquite Ordinance No. 2021) regarding the provision of sanitary sewer service to a portion of the District using the sanitary sewer line along South Mesquite Creek between the North Texas Municipal Wastewater Treatment Plant on Lawson Road and the Town East Boulevard (“South Mesquite Creek Sewer Line”). Ordinance No. 2021 was amended in 1993 by Resolution No. 28-93.
- B. In 2013, the District was dissolved and its assets and the agreement with Mesquite were transferred to Balch Springs (Balch Springs Resolution No. 732-13).
- C. Balch Springs intends to connect at least two new developments, McKenzie Trails and Arcadia Trails (“New Developments”) to the South Mesquite Creek Sewer Line.
- D. There is insufficient capacity in the lift station and collection line along Faithon P. Lucas Boulevard that conveys Wastewater to South Mesquite Creek Sewer Line to accommodate all of the additional sewer flows from the New Developments.
- E. There has been significant inflow and infiltration occurring within Balch Springs sewer system during rainfall events that has been discharged in the South Mesquite Creek Sewer Line.
- F. The Parties intend to address the capacity issue in the facilities identified in Recital D and the reduction of the inflow and infiltration problem.
- G. This Agreement replaces Ordinance No. 2021.

- H. Mesquite and Balch Springs agree that it is of mutual benefit to the public health, safety, and welfare of both communities to make and enter into this Agreement concerning the treatment by Mesquite of the wastewater of Balch Springs.
- I. Chapter 791, Texas Government Code, including Section 791.026, thereof, authorizes the making of and entering into this interlocal agreement.

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations and benefits in this Agreement, Mesquite and Balch Springs agree as follows:

ARTICLE I DEFINITIONS

Unless the context requires otherwise, the following terms and phrases used in this Agreement shall have meanings as follows:

“Agreement” means this Agreement.

“Balch Springs Wastewater Collection System” means Balch Springs’s sanitary sewer collection and related facilities and all other wastewater related facilities of Balch Springs.

“Industrial Wastewater” means the liquid and water-carried wastewater from industrial processes, as distinct from sewage, collected by a public sanitary sewer system.

“Infiltration and Inflow” means water that enters a wastewater collection system through physical defects in the system or from other point sources.

“Mesquite Wastewater System” means Mesquite’s sanitary sewer collection system and related facilities, and all other wastewater related facilities of Mesquite, including but not limited to the South Mesquite Sewer Line and the New Sewer Line.

“New Sewer Line” means the line to be located between the existing McKenzie Lift Station and the NTWMD’s intake line located south of Lawson Road.

“NTMWD” means the North Texas Municipal Water District.

“NTMWD Contract” means the October 1, 1975, Trinity East Fork Regional Wastewater Treatment System Contract, as may be amended from time to time, between NTMWD, the City of Plano, and Mesquite.

“Points of Connection” means the point or points where the Balch Springs Wastewater Collection System connects to Mesquite Wastewater System, the locations of which are identified on Exhibit A of this Agreement, which is incorporated herein for all purposes, or such other point of delivery established by mutual agreement of Balch Springs and Mesquite.

“South Mesquite Sewer Line” means the trunk line along South Mesquite Creek.

“TCEQ” means the Texas Commission on Environmental Quality.

“Wastewater” means the liquid and water carried waste discharged from sanitary conveniences of dwellings and buildings or similar sources connected to a public sanitary sewer system and Industrial Wastewater collected by a public sanitary sewer system, together with Infiltration and Inflow as may be present.

ARTICLE II WHOLESALE WATER SERVICES

2.1 Wholesale Wastewater Service.

(a) Subject to the terms and conditions of this Agreement and the requirements of applicable law, Mesquite agrees to provide Wholesale Wastewater Services to Balch Springs for the area previously served by the Dallas County Water Control and Improvement District No. 6, and the McKenzie Trails and Arcadia Trails developments (“Wholesale Wastewater Service Area”). The location of the Wholesale Wastewater Service Area is shown on Exhibit B, which is incorporated into this Agreement for all purposes. Mesquite shall receive Wastewater from the Balch Springs Wastewater Collection System at the Points of Connection.

(b) Balch Springs agrees it shall adopt and enforce: (1) wastewater ordinances and policies at least as stringent as, and not inconsistent with, Mesquite’s wastewater ordinances and policies; and (2) any pretreatment requirements for the retail customers as may be necessary to cause the quality of the Wastewater Balch Springs delivers to Mesquite’s Wastewater system pursuant to this Agreement to meet the requirements of this Agreement, Mesquite’s wastewater ordinances and policies, and the quality requirements as set out in Section 4.02 of the NTMWD Contract. If Balch Springs’ Wastewater exceeds the quality requirements described in Section 4.02 of the NTMWD Contract and the NTMWD surcharges Mesquite, Balch Springs agrees to pay Mesquite the amount of the surcharge. Balch Springs further agrees to exclude Industrial Wastewater that is not pretreated in accordance with Mesquite’s requirements from the Wastewater Balch Springs delivers to Mesquite.

1. Mesquite shall provide to Balch Springs a copy of the NTMWD Contract and in the event the quality requirements set out on Section 4.02 of the contract are updated, revised, or amended, Mesquite shall provide written notice and a copy of the updated, revised, or amended contract to Balch Springs.

(c) Title to all Wastewater deliverable hereunder to Mesquite shall remain in Balch Springs to the Points of Connection and upon passing through Points of Connection, title thereto and to all Wastewater therefrom shall pass to Mesquite. As between the parties hereto, Balch Springs shall be in exclusive control and possession of, and solely responsible for, all Wastewater

until the same shall pass through such Points of Connection, and thereafter Mesquite shall be in exclusive control and possession thereof and solely responsible therefore.

(d) Mesquite shall be entitled to collect samples of Wastewater at or near the Points of Connection into Mesquite Wastewater System or from any point within Balch Springs Wastewater Collection System and cause the same to be analyzed in accordance with accepted methods in the industry to determine if such Wastewater complies with Mesquite's ordinances and policies and any pretreatment requirements. If analysis discloses that the Wastewater does not comply with Mesquite's ordinances and policies, Balch Springs shall be obligated to require the offending originator to immediately cease discharging such Wastewater into Balch Springs Wastewater Collection System or to pretreat such Wastewater such that the discharge of the prohibited Wastewater ceases immediately.

2.2 Measurement of Wastewater.

(a) Point of Connection One.

1. Point of Connection One shall be located near McKenzie Rd. south of Faithon P. Lucas Sr. Blvd./Mercury Rd.

2. At the Point of Connection, Mesquite shall construct and install, at Balch Springs' sole cost and expense, one or more wastewater meter, vault, and related appurtenances ("Mesquite Wastewater Meter") of the standard type for measuring properly Wastewater delivered by Balch Springs under this Agreement. Before commencement of construction and installation of the Mesquite Wastewater Meter, Mesquite shall prepare and submit to Balch Springs detailed plans and specifications for the Mesquite Wastewater Meter. Balch Springs agrees to review and to provide comments on any plans and specifications within 30 days after they are submitted to Balch Springs, however its failure to do so shall not in any way affect Mesquite's timeline for construction and Mesquite may proceed with construction. The Mesquite Wastewater Meter will be installed when the New Sewer Line described in Section 2.6 is constructed.

3. Once installed by Mesquite, Mesquite will operate, maintain, and replace Mesquite Wastewater Meter and Balch Springs shall have access to the Mesquite Wastewater Meter at all reasonable times. The reading, calibration and adjustment of the Mesquite Wastewater Meter shall be done by the employees or agents of Mesquite. All readings of the Mesquite Wastewater Meter shall be entered upon the proper books and records to be maintained by Mesquite, shall be reported regularly to Balch Springs and, upon written request, Balch Springs may have access to the Mesquite Wastewater Meter and to such record books during reasonable business hours.

4. Mesquite shall calibrate the Mesquite Wastewater Meter in the presence of a representative of Balch Springs if requested in writing by Balch Springs, and the parties shall jointly observe any adjustments that are made to the Mesquite Wastewater Meter in case any adjustment is found to be necessary.

5. If for any reason the Mesquite Wastewater Meter is out of service or out of repair, or if upon any test, the percentage of inaccuracy of any meter is found to be in excess of five percent (5%), registration thereof shall be corrected for a period of time extending back to the time when the inaccuracy began, if such time is ascertainable; and if not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event, further back than a period of six (6) months.

(b) Point of Connection Two.

1. Point of Connection Two is located at Hilltop Estates and Stoneleigh Apartments located off Cartwright Road, east of Interstate 635.

2. Balch Springs shall charge and collect from its customers connected to Point of Connection Two monthly service charges that equal the current and future rates for wastewater that Mesquite charges its retail customers within the Mesquite. These funds shall be remitted each month to the City of Mesquite as payment for wastewater discharges into Point of Connection Two. Balch Springs shall remit these payments to Mesquite at the same time and place as payments are due under Section 3.7.

2.3 Unit of Measurement. The unit of measurement for Wastewater delivered into the Mesquite Wastewater System pursuant to this Agreement shall be gallons, U.S. Standard Liquid Measure.

2.4 Curtailment of Service. The Parties agree that Mesquite may curtail Wastewater service in the event of a maintenance operation or emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an emergency circumstance.

2.5 Balch Springs Prevention of Infiltration and Inflow. Balch Springs will immediately, upon the Effective Date of this Agreement, identify actions taken to eliminate and prevent the excessive Inflow and Infiltration in the Balch Springs Wastewater Collection System that is discharged into the Mesquite Wastewater System. If additional actions are required to address excessive Inflow and Infiltration, and construction is required, Balch Springs shall complete that construction within one year after the Effective Date of this Agreement. Balch Springs Inflow and Infiltration rate shall not exceed four (4) times the Average Daily Dry Weather Flow (avg. 30-day dry weather flow) for each sewer basin (Maximum I&I Rate). Any Inflow and Infiltration that exceeds the Maximum I&I Rate is considered to be excessive Inflow and Infiltration. Balch Springs shall (i) annually inspect its wastewater infrastructure to prevent excessive Inflow and Infiltration, and (ii) provide Mesquite upon request with documents concerning Wastewater flows and efforts to prevent excessive Inflow and Infiltration. Balch Springs will adopt and enforce such ordinances as are reasonably necessary or prudent to minimize Inflow and Infiltration to Balch Springs Wastewater Collection System, and such ordinances shall be at least as stringent as, and not inconsistent with, the Mesquite's ordinances and policies. Balch Springs will prohibit the discharge of drainage water and stormwater run-off into Balch Springs Wastewater Collection System. If Balch Springs fails to prevent excessive Inflow and Infiltration, Mesquite may terminate Wastewater service to Balch Springs until such time as Balch Springs has corrected the excessive Inflow and Infiltration to Mesquite's sole satisfaction.

2.6 New Sewer Line.

(a) Balch Springs shall pay its proportionate share of the costs to design and construct the New Sewer Line. Balch Springs's proportionate share of the costs shall be equal to "Balch Springs's Percentage of Capacity," which is calculated by dividing the "Balch Springs Capacity" by the "Total Capacity" of the New Sewer Line. Upon completion of the final plans and specifications of the New Sewer Line, Mesquite shall determine the Total Capacity of the New Sewer Line and the Balch Springs Capacity. Mesquite shall calculate Balch Spring's total proportionate share of the cost of the New Sewer Line ("New Sewer Line Capital Charge").

- i. Upon completion of design of the New Sewer Line, the City of Mesquite will provide the City of Balch Springs with an opinion of probable construction cost (OPCC) and the actual design cost of the New Sewer Line. If actual construction costs exceed the OPCC by more than 10%, due to cost escalation, change orders or any other reason, Mesquite will notify Balch Springs in writing of said cost increases as they occur during the construction of the project.

(b) After completion of the New Sewer Line and Mesquite's determination of the New Sewer Line Capital Charge owed by Balch Springs, each monthly bill provided by Mesquite to Balch Springs under Article III for a period of sixty (60) months shall include, as a separate and additional component, an amortized amount for the New Sewer Line Capital Charge with interest thereon. The New Sewer Line Charge and interest shall be amortized in equal amounts over five (5) years. The applicable interest rate shall be the interest rate on the last bonds Mesquite issued for the construction of the New Sewer Line plus one-half percent (0.5%).

(c) Upon final payment of the New Sewer Line Charge with interest in accordance with this Agreement, Mesquite shall remove the New Sewer Line Capital Charge from the monthly statements for wastewater service furnished by Mesquite to Balch Springs.

(d) Mesquite agrees that Balch Springs may prepay the remaining balance of the New Sewer Line Charge in full at any time by providing not less than thirty (30) days' prior written notice to Mesquite, which notice shall specify the payoff date. Upon receipt of such notice, Mesquite shall prepare a written invoice for payment that specifies the remaining balance of the New Sewer Line Charge, with pro-rated interest, due and payable as of the payoff date.

2.7 Liability of Balch Springs. As between the Parties, liability for damages to third persons arising from the reception, transportation, delivery, treatment and disposal of all Wastewater will remain with Balch Springs to the Points of Connection. Balch Springs agrees that any sewer backups caused by force majeure, intrusion of roots into Balch Springs Wastewater Collection System, defects in construction of Balch Springs Wastewater Collection System or other circumstances that are not under the direct control of Mesquite do not arise out of the act or

omission of Mesquite, and Mesquite shall have no liability in connection therewith. As between the Parties, liability for damages to third persons will pass to Mesquite at the Points of Connection to the Mesquite Wastewater System.

2.8 Liability of Mesquite. Subject to the foregoing, Mesquite will bear the responsibility as between the Parties for the proper reception, transportation, treatment, and disposal of such Wastewater received by it the Points of Connection in accordance with the Agreement. However, the Parties agree that they will not construe this Agreement to cause Mesquite to have liability for damages to the Mesquite Wastewater System or to third persons arising from the delivery by Balch Springs of any Wastewater that is prohibited under this Agreement.

2.9 Non-Waiver of Governmental Immunity. This Agreement shall not be construed as a waiver of any governmental immunity that Mesquite or Balch Springs may enjoy with respect to any claims brought by third party persons or entities.

ARTICLE III CHARGES, BILLING, AND PAYMENTS

3.1 Point of Connection One Monthly Usage Rate and Charge.

(a) The Monthly Usage Rate is the rate per 1000 gallons of Wastewater as determined by the City Council of Mesquite. The initial Monthly Usage Rate shall be 1.4 times the rate NTMWD charges Mesquite for wastewater services. Subject to Sections 3.2, the Mesquite City Council may at any time and from time to time change the Monthly Usage Rate. Mesquite shall provide written notice of any proposed change to the Monthly Usage Rate at least thirty (30) days prior to the Mesquite City Council's consideration of any changes to the Monthly Usage Rate. Notwithstanding the foregoing, the Monthly Usage Rate shall automatically be increased in any month if the bulk rate charged by NTMWD is increased.

(b) The Monthly Usage Charge shall be calculated by multiplying the then-current Monthly Usage Rate by the amount of Wastewater delivered to Mesquite at the Point of Connection One, expressed in thousands of gallons.

3.2 Payments by Balch Springs. Balch Springs recognizes the statutory and contractual authority of Mesquite to fix and to revise (if and when necessary, in accordance with the provisions of this Agreement relating to fixing of charges) the charges for services to be rendered and made available to Balch Springs hereunder so that the total amount to be paid by Balch Springs shall at all times be not less than an amount sufficient to pay or provide for the payment of:

(a) the bulk rate charged by NTMWD for wastewater services provided to Mesquite; and

(b) all operation and maintenance expenses, including but not limited to wages and salaries, employee benefits, chemicals, the purchase and carrying of stores, materials and supplies,

power and utilities, supervision, engineering and professional fees, testing, auditing, claims, insurance and all other items and expenses of a like or different nature reasonably required for the efficient maintenance and operation thereof and the performance of the provisions of this Agreement; repairs and replacements of damaged, worn-out or obsolete parts of the Mesquite Wastewater System, provided that the items paid out of any depreciation or replacement fund established in any bond resolution shall not be duplicated or included herein; improvements, capital additions and betterments to keep the Mesquite Wastewater System in operation to render adequate service to Balch Springs and to comply with the requirements of, any rule or regulation or permit to discharge waste into the receiving state waters issued by any regulatory body having jurisdiction; and the administrative and general expense of Mesquite attributable to administration of the Mesquite Wastewater System; and

(c) the principal of and interest on any bond as such becomes due and any reserve and contingency funds required for such bonds.

3.3 Payments by Balch Springs Unconditional. Balch Springs and Mesquite recognize that any bonds will be payable from, and secured by, a pledge of the sums of money to be received by Mesquite under this Agreement and that in order to make the bonds marketable at the lowest available interest rate, it is to the mutual advantage of Balch Springs and Mesquite that Balch Springs's obligation to make the payments required hereunder be, and the same is hereby, made unconditional. All sums payable hereunder to Mesquite shall, so long as any part of any bonds are outstanding and unpaid, be paid by Balch Springs without set-off, counterclaim, abatement, suspension or diminution except as otherwise expressly provided herein; and so long as any part of the bonds are outstanding and unpaid, this Agreement shall not terminate, nor shall Balch Springs have any right to terminate this Agreement nor be entitled to the abatement of any payment or any reduction thereof nor shall the obligations hereunder of Balch Springs be otherwise affected for any reason, it being the intention of the parties that so long as any part of the bonds are outstanding and unpaid, all sums required to be paid by Balch Springs to Mesquite shall continue to be payable in all events and the obligations of Balch Springs hereunder shall continue unaffected, unless the requirement to pay the same shall be reduced or terminated pursuant to an express provision of this Agreement.

3.4 Operating Expense. The parties agree and Balch Springs represents and covenants that all moneys required to be paid by Balch Springs under this Agreement shall constitute an operating expense of Balch Springs's wastewater system as authorized by the Constitution and laws of the State of Texas, including the Regional Waste Disposal Act, as amended (compiled as Chapter 30, Texas Water Code), and Article 1113, Vernon's Texas Civil Statutes, as amended.

3.5 Source of Payments. All payments required to be made by Balch Springs to Mesquite under this Agreement shall be payable from the income of Balch Springs's wastewater system. Mesquite shall never have the right to demand payment by Balch Springs of any obligations assumed by or imposed upon it under or by virtue of this Agreement from any funds raised or to be raised by taxation, and Balch Springs's obligations under this Agreement shall never be construed to be a debt of Balch Springs of such kind as to require it under the Constitution and laws of the State of Texas to levy and collect a tax to discharge such obligation.

3.6 Covenant to Maintain Sufficient Income. Balch Springs agrees to fix and maintain such rates and collect such charges for the facilities and services provided by its wastewater system as will be adequate to permit Balch Springs to make prompt payment of all expenses of operating and maintaining its wastewater collection system, including payments under this Agreement and to make prompt payment of the interest on and principal of any bonds or other obligations of Balch Springs payable, in whole or in part, from the revenues of its wastewater system. Balch Springs further agrees to comply with all of the provisions of the ordinances or indentures authorizing its bonds or other obligations which are payable, in whole or in part, from the revenues of its wastewater system.

3.7 Billing.

(a) For Point of Connection One and the New Sewer Line Capital Charge, Mesquite will render bills to Balch Springs at least once each month for the payments required by Section 3.2. Such bills shall be due and payable at Mesquite's office indicated below by the 20th day after such bill is deposited into the United States mail, properly stamped, addressed and postmarked to Balch Springs.

(b) For any payments made by Balch Springs to Mesquite, Balch Springs shall make all payments in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall make payment to Mesquite at its office in the City of Mesquite, Texas, or at such other place as Mesquite may from time to time designate by sixty (60) days written notice.

3.8 Delinquency in Payment. All bills or payments to Mesquite become delinquent if not paid by such due date and a penalty of 10 percent shall be added to the total due. If any portion of the total due remains unpaid for 30 days from the due date, Mesquite shall give written notice that wastewater service will be terminated 15 days from the date of notice. If Balch Springs has not paid the amount due within that 15-day period, Mesquite may terminate service and Balch Springs must pay all amounts due including wastewater charges, delinquency penalty, reconnection fees, and any reasonable attorney fees incurred by Mesquite. In addition to termination of service, Mesquite may pursue any and all available legal remedies which may be appropriate, including, but not limited to, the initiation of legal proceedings for the collection of any delinquent bill. All sums payable under this Agreement shall be paid without offset, counterclaim, abatement, suspension or diminution except as otherwise specifically agreed to. If Balch Springs disputes the amount to be paid, it shall nevertheless promptly make payment as billed by Mesquite and if it is subsequently determined by an agreement or court decision that such disputed payment should have been less, Mesquite will then make proper adjustments so that Balch Springs will receive its overpayments plus interest at Mesquite's average interest rate for revenue bond indebtedness on such overpayments. For purposes of this section, funds shall be deemed received by Mesquite if a payment is received by Mesquite by 5:00 pm on the due date.

ARTICLE IV TERM AND REMEDIES

4.1 Term. This Agreement shall become effective upon approval by each of the respective governing bodies of Balch Springs and Mesquite and upon the date of the last signatory to execute this Agreement and shall remain in effect from the Effective Date until 11:59 pm on September 30, 2043.

4.2 Material Breach; Notice and Opportunity to Cure.

(a) In the event that one Party believes that another Party has materially breached one of the provisions of this Agreement, the non-defaulting Party will make written demand to cure and give the defaulting Party up to 30 days to cure such material breach or, if the curative action cannot reasonably be completed within 30 days, the defaulting Party will commence the curative action within 30 days and thereafter diligently pursue the curative action to completion. This period must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting party due to such breach; provided, however, that Balch Springs may not terminate this Agreement as a remedy for default.

(b) Any non-defaulting Party will mitigate direct or consequential damage arising from any breach or default to the extent reasonably possible under the circumstances.

(c) The Parties agree that they will negotiate in good faith to resolve any disputes and may engage in non-binding mediation, or other alternative dispute resolution methods as recommended by the laws of the State of Texas.

4.3 Equitable Relief.

(a) The Parties acknowledge that Mesquite is limited in its ability to terminate this Agreement in the event of Balch Springs's default, whether a monetary default or otherwise, because Mesquite may have outstanding bonds and because Balch Springs may have an obligation to provide continuous and adequate wastewater services to its retail customers at the time of the default and may lack alternative sources for service. In recognition of this, and that failure in the performance of Balch Springs' obligations could not be adequately compensated in money damages alone, Balch Springs agrees that in the event of any default on its part that the Mesquite shall have available to it equitable remedies including, without limitation, the right to obtain a writ of mandamus or specific performance or an injunction against Balch Springs requiring Balch Springs to levy and collect rates and charges sufficient to pay the amounts owed to Mesquite by Balch Springs under this Agreement.

(b) The Parties acknowledge that Balch Springs is limited in its ability to terminate this Agreement in the event of Mesquite's default because Balch Springs may have an obligation to provide continuous and adequate water and wastewater services to its retail customers at the time of the default and may lack alternative sources for service. In recognition of this, and that failure in the performance of Mesquite's obligations could not be adequately compensated in money

damages alone, Mesquite agrees that in the event of any default on its part that Balch Springs shall have available to it equitable remedies including, without limitation, the right to obtain a writ of mandamus or specific performance or an injunction against Mesquite requiring it to perform its duties under this Agreement.

4.4 Remedies. Except as otherwise provided by this Agreement, the parties agree that their sole and exclusive remedies with respect to any breach of this Agreement or obligations set forth herein shall be specific performance (including payment of sums owed under this Agreement), mandamus, and injunctive relief. Nothing in this Section shall be construed to authorize termination by Balch Springs.

4.5 No Additional Waiver Implied. Failure to enforce or the waiver of any provision of this Agreement or any breach or nonperformance by either Party shall not be deemed a waiver by the other Party of the right in the future to demand strict compliance and performance of any provision of this Agreement. No officer or agent of either Party is authorized to waive or modify any provision of this Agreement. No modifications to or recession of this Agreement may be made except by a written document signed by all Parties' authorized representatives.

4.6 Actual Damages. No Party shall be liable or have any responsibility to the other for any indirect, special, consequential, punitive, delay-related or performance-related damages including, without limitation, lost earnings or profits. Such limitation on liability shall apply to any claim or action, whether it is based on whole or in part on agreement, negligence, strict liability, tort, statute or other theory of liability.

4.7 Rights after Termination. Except as specifically provided otherwise in this Agreement, all of the rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

ARTICLE V OTHER PROVISIONS

5.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or oral or written agreements between the Parties respecting the subject matter of this Agreement.

5.2 Force Majeure. If force majeure prevents either party hereto from performing any of its obligations under this Agreement (except the unconditional obligation of Balch Springs to make the payments required in this Agreement), in whole or in part, then the obligations of such party, to the extent affected by such force majeure, shall be suspended during the continuance of any inability so caused, so long as such party is exercising due diligence to resume performance at the earliest practicable time. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other party. The term "force majeure," as used herein, shall include, without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of government of the

United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure or inability on part of Balch Springs to operate the Balch Springs Wastewater Collection System hereunder, or of Mesquite to receive or treat waste, and any other inability of either party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, and which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

5.3 Addresses and Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by either party to the other must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram, when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of four (4) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to Mesquite:

City of Mesquite, Texas
Attn: City Manager
1515 N. Galloway
Mesquite, TX 75149
Phone: 972-216-6293

And

City of Mesquite, Texas
Attn: City Attorney
1515 N. Galloway
Mesquite, TX 75149
Phone: 972-216-6272

If to Balch Springs:

City of Balch Springs
Attn: City Manager
13503 Alexander Road
Balch Springs, TX 75181
Phone: 972-286-4477

The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other party.

5.4 Modification. This Agreement shall be subject to change(s) or modification(s) only with the mutual consent of the governing bodies of each of the parties hereto, but Balch Springs recognizes that any bond resolution may contain covenants by Mesquite not to consent to certain change(s) or modifications of this Agreement.

5.5 Assignability. This Agreement shall not be assignable by Mesquite without the prior written consent of Balch Springs and shall not be assignable by Balch Springs without prior written consent of Mesquite.

5.6 Parties in Interest. This Agreement shall be for the sole and exclusive benefit of Mesquite, Balch Springs, and the owners and holders of any bonds. Mesquite is hereby granted the specific right to assign, mortgage, transfer in trust, pledge or otherwise hypothecate or encumber Balch Springs's obligations to make payments under this Agreement. Notwithstanding the foregoing, this Agreement does not create any third-party benefits to any person or entity other than the signatories hereto and their authorized successors in interest and is solely for the consideration herein expressed.

5.7 Captions. The captions appearing at the first of each numbered article and section in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement, or any provision hereof, or in connection with the duties, obligation, or liabilities of the respective parties hereto or in ascertaining intent, if any question of intent should arise.

5.8 Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, administrative rule, regulation or finding, rule of public policy, or for any other reason, this Agreement shall remain in effect and be construed as if the invalid, inoperative, or unenforceable provision had never been in the Agreement, and such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

5.9 Merger. This Agreement constitutes the entire agreement between the parties relative to the subject matter thereof. There have been and are no agreements, covenants, representations, or warranties between the parties other than those expressly stated herein or expressly provided for herein.

5.10 Necessary Documents and Actions. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

5.11 Applicable Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas. The obligations contained within this Agreement are performable in Dallas County, Texas. Any action in law or equity brought to enforce or interpret any provision of this Agreement shall be brought in a court of competent jurisdiction with venue in Dallas County, Texas.

5.12 Negotiation by Counsel. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

5.13 Due Authorization and Binding Obligation. This Agreement has been duly authorized, executed and delivered by all necessary action of the Parties. This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the Parties hereto.

5.14 Counterparts and Electronic Transmissions. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. A telecopied, emailed, or electronically transmitted by facsimile of an executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each Party to the terms hereof. However, each Party agrees to promptly deliver to the other Party an original, duly executed counterpart of this Agreement.

5.15 Legal Construction. Whenever context is required, the singular will include the plural and the neuter will include the masculine or feminine gender, and vice versa.

5.16 Authority. This Agreement is made and entered into pursuant to the provisions of the Interlocal Cooperation Act, V.T.C.A. Government Code, Chapter 791; V.T.C.A. Local Government Code, Chapter 552; and other applicable law.

5.17 Business Days. In the event that any date or any period provided for in this Agreement shall end on a Saturday, Sunday or legal holiday, the applicable period shall be extended to the first business day following such Saturday, Sunday or legal holiday. As used herein, the term “legal holiday” means any state or federal holiday for which financial institutions or post offices are generally closed in the State of Texas.

CITY OF MESQUITE

DocuSigned by:

Cliff Keheley

76B2EEBD9F6142E...

Cliff Keheley, City Manager
City of Mesquite, Texas

6/4/2024

Date

ATTEST:

DocuSigned by:

Sonja Land

C2518095973F46A...

Sonja Land, City Secretary
City of Mesquite, Texas

DS



APPROVED AS TO FORM:

DocuSigned by:

David L. Paschall

666E18891208434...

David L. Paschall, City Attorney

CITY OF BALCH SPRINGS

DocuSigned by:
Charles Fenner
BB6F802DA351406...

Charles R. Fenner
Balch Springs, Texas
Date: 6/3/2024

ATTEST:

DocuSigned by:
Cindy Gross
E0D1217A066A4E3...

Cindy Gross, City Secretary
City of Balch Springs, Texas

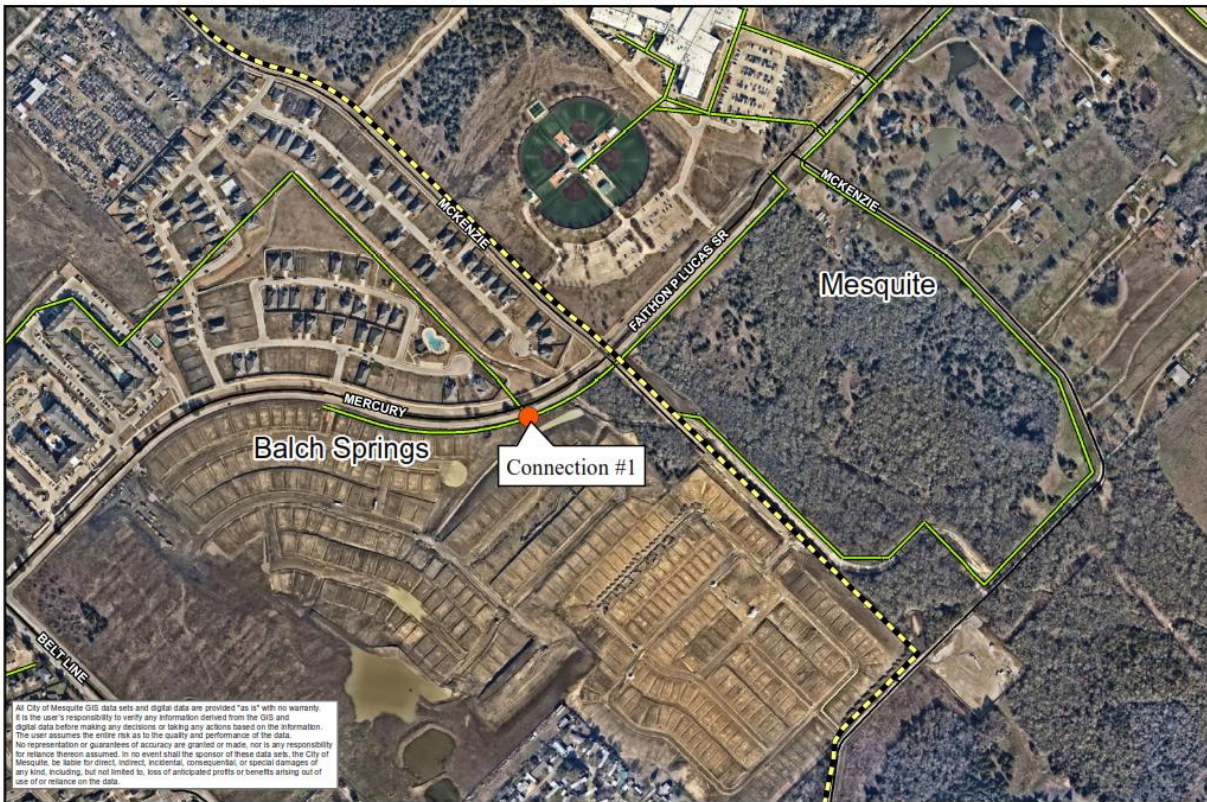
APPROVED AS TO FORM:

DocuSigned by:
Susan B. Thomas
C317CFC186914F6...

Susan B. Thomas

EXHIBIT A
POINTS OF CONNECTION

Exhibit A- Connection Point #1



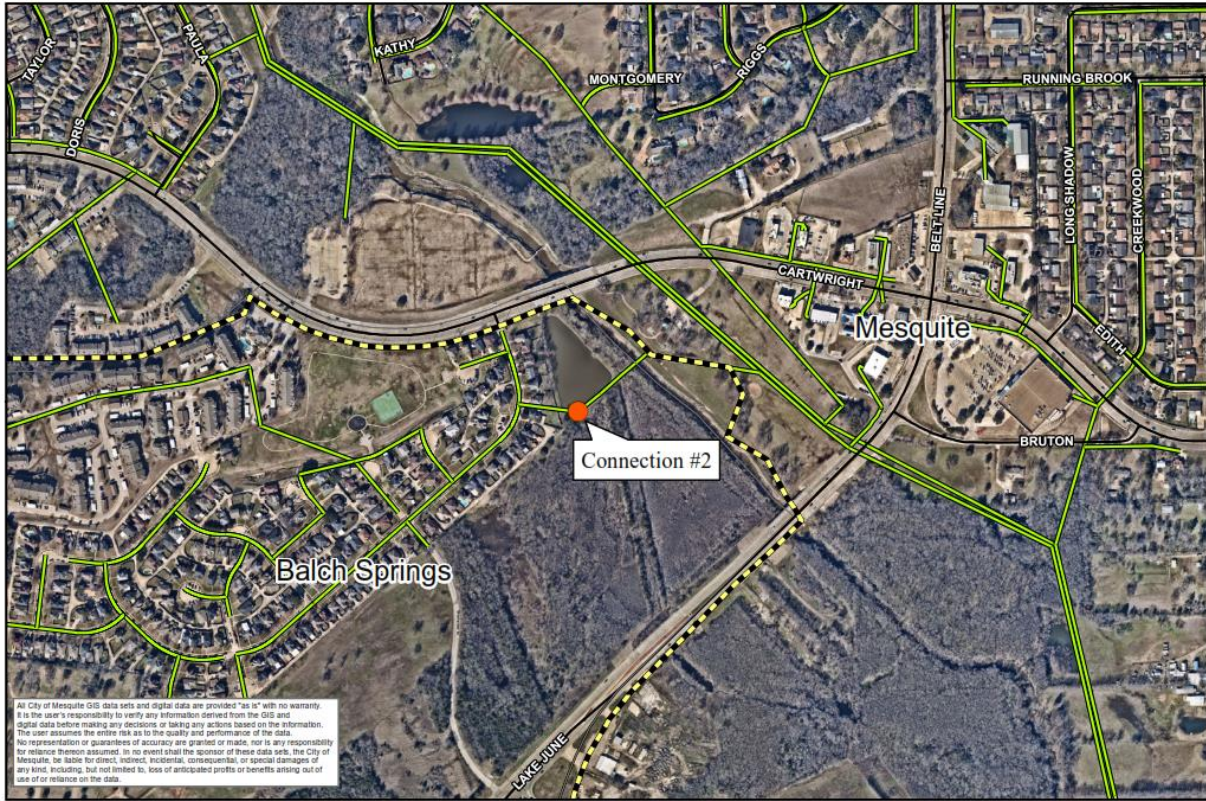
- Connections
- - - Mesquite City Limit
- Sanitary Sewer Lines

Drawn By: Suzette Stone
Engineering Map Date: 3/12/2024
Document Path Q:\GIS\Projects\Public_Works_PW_Director\BalchSprings_ILA_Exhibits

1 inch = 500 feet



Exhibit A- Connection Point #2



- Connections
- - - Mesquite City Limit
- Sanitary Sewer Lines

Drawn By: Suzette Stone
Engineering Map Date: 3/12/2024
Document Path G:\GIS\Projects\Public_Works_P\W_Director\BalchSprings_ILA_Exhibits

1 inch = 500 feet



Exhibit B
SERVICE AREAS

Exhibit B- Connection Point #1 Service Area



All City of Mesquite GIS data sets and digital data are provided "as is" with no warranty. It is the user's responsibility to verify any information derived from the GIS and digital data before making any decisions or taking any actions based on the information. The user assumes the entire risk as to the quality and performance of the data. No representation or guarantees of accuracy are granted or made, nor is any responsibility for reliance thereon assumed. In no event shall the sponsor of these data sets, the City of Mesquite, be liable for direct, indirect, incidental, consequential, or special damages of any kind, including, but not limited to, loss of anticipated profits or benefits arising out of use of or reliance on the data.

MESQUITE
T E X A S
Real. Texas. Service.

- Service Area
- Connections
- Mesquite City Limit
- Sanitary Sewer Lines

Drawn By: Suzette Stone
Engineering Map Date: 3/12/2024
Document Path: Q:\GIS\Projects\Public_Works\FW_Director\BalchSprings_ILA_Exhibits

1 inch = 1,000 feet



Exhibit B- Connection Point #2 Service Area



MESQUITE
TEXAS
Real. Texas. Service.

- Service Area
- Connections
- Mesquite City Limit
- Sanitary Sewer Lines

Drawn By: Suzette Stone
Engineering Map Date: 3/12/2024
Document Path: Q:\GIS\Projects\Public_Works_PW_Director\BalchSprings_ILA_Exhibits

1 inch = 500 feet

