

RESOLUTION NO. 42-96

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE CITY OF SUNNYVALE PURSUANT TO CHAPTER 791 OF THE GOVERNMENT CODE KNOWN AS THE INTERLOCAL COOPERATION ACT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, it is necessary that the City of Mesquite enter into an agreement with the Town of Sunnyvale to construct a sanitary sewer interceptor main and a parallel interceptor main; and

WHEREAS, these interceptor and parallel mains are designed to serve only the North Mesquite Natural Drainage Basin that includes the City of Mesquite and a portion of the Town of Sunnyvale; and

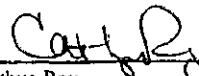
WHEREAS, the sanitary interceptor main is located along North Mesquite Creek between Mesquite's Reclamation Plant on Lawson Road and Town East Boulevard; the parallel interceptor main is extending to Duck Creek.

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

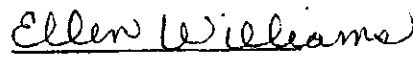
SECTION 1. That the City Council of the City of Mesquite does hereby authorize the Mayor to execute an Interlocal Agreement with the Town of Sunnyvale in accordance with the document outlined in Attachment "A".

SECTION 2. That this Resolution shall become effective immediately from and after its passage as the law in such cases provides.

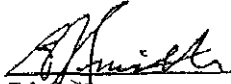
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 2nd day of December, 1996.

  
Cathye Ray  
Mayor

ATTEST:

  
Ellen Williams  
City Secretary

APPROVED:

  
B.J. Smith  
City Attorney

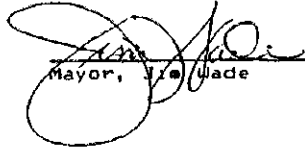
## RESOLUTION 96-6

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SUNNYVALE, TEXAS AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE CITY OF MESQUITE PURSUANT TO CHAPTER 791 OF THE GOVERNMENT CODE KNOWN AS THE INTERLOCAL COOPERATION ACT TO CONSTRUCT A SANITARY SEWER INTERCEPTOR MAIN ALONG NORTH MESQUITE CREEK BETWEEN MESQUITE'S RECLAMATION PLANT ON LAWSON ROAD AND TOWN EAST BOULEVARD, AND CURRENTLY IS CONSTRUCTING A PARALLEL INTERCEPTOR MAIN EXTENDING TO DUCK CREEK, WHICH ARE DESIGNED TO SERVE ONLY THE NORTH MESQUITE NATURAL DRAINAGE BASIN THAT INCLUDES THE CITY OF MESQUITE AND A PORTION OF THE TOWN OF SUNNYVALE.


BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SUNNYVALE, TEXAS:

The Town Council of the Town of Sunnyvale does hereby authorize the Mayor to execute an interlocal agreement with the City of Mesquite in accordance with the document outlined in "Attachment "A".

PASSED AND APPROVED on this the 11th day of November, 1996.

  
\_\_\_\_\_  
Mayor, Jim Wade

ATTEST:

  
\_\_\_\_\_  
Anne L. Harrison, Town Secretary

00148

STATE OF TEXAS       §  
                              §                   INTERLOCAL AGREEMENT  
COUNTY OF DALLAS   §

The City of Mesquite, Texas ("Mesquite") and the Town of Sunnyvale, Texas, ("Sunnyvale") hereby agree as follows:

I.    Recitals

1.    Mesquite has heretofore constructed a sanitary sewer interceptor main along North Mesquite Creek between Mesquite's Reclamation Plant on Lawson Road and Town East Boulevard, and currently is constructing a parallel interceptor main extending to Duck Creek, which are designed to serve only the North Mesquite natural drainage basin that includes the City of Mesquite and a portion of the Town of Sunnyvale.
2.    Mesquite is responsible for the maintenance and any future improvements to said interceptor main.
3.    Pursuant to Texas Local Government Code Chapter 395 ("ch. 395"), Mesquite and Sunnyvale each has adopted, and use assumptions, a capital improvements plan, and impact fees for wastewater facilities.
4.    The area within Sunnyvale to be served by the interceptor main lies within Mesquite's service area for wastewater impact fees and has been excluded from Sunnyvale's service areas for wastewater impact fees.
5.    Mesquite's capital improvements plan for wastewater facilities includes the sanitary sewer interceptor main serving the North Mesquite drainage basin that includes a portion of Sunnyvale, and has based its computation of impact fees for wastewater facilities in

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part on the costs of such improvement.

6 Pursuant to Texas Government Code Chapter 791 (the "Interlocal Cooperation Act"), Mesquite and Sunnyvale are authorized to enter into an interlocal agreement concerning the performance of governmental functions and services which Mesquite and Sunnyvale are each legally authorized to perform.

7. Mesquite and Sunnyvale are each authorized to enact and administer impact fee programs for wastewater facilities pursuant to ch. 395, and hereby desire to enter into an interlocal agreement for the assessment, collection and expenditure of wastewater impact fees collected within that portion of Sunnyvale to be served by the sanitary sewer interceptor main serving the North Mesquite drainage basin, together with other aspects of impact fee administration.

NOW THEREFORE, in consideration of the mutual promises herein contained, Mesquite and Sunnyvale agree as follows.

**II. Geographic Scope of Agreement.**

This agreement concerns the administration of Mesquite's wastewater impact fee program within that area of Sunnyvale which is also a portion of the North Mesquite Creek Drainage Basin and is depicted on Exhibit A attached hereto. For purposes of this agreement, such area shall be referred to as the "Sunnyvale benefit area."

**III. Provision of Service.**

Mesquite shall provide wastewater facilities to new development within the Sunnyvale benefit area. Sanitary sewer interceptor mains and other area-wide facilities to serve

the Sunnyvale benefit area shall be owned and operated by and maintained by Mesquite. Lateral sewer mains, however, shall be owned and maintained by Sunnyvale with the Sunnyvale benefit area. Any design, construction, replacement, or repair of such facilities shall be undertaken by Mesquite or a private developer pursuant to an executed development agreement. Mesquite shall authorize connection of new development within the Sunnyvale benefit area to its wastewater facilities upon substantially similar terms and conditions such as are applicable to new development within the incorporated limits of Mesquite, as set forth in its duly adopted utility regulations, the Water and Sewer Main Extension Ordinance, Chapter 16, Mesquite City Code, and design standards, specifically, the City of Mesquite Standard Details for Sanitary Sewer Construction, on file with the Engineering Division of the City of Mesquite.

#### IV. Development Approval.

Sunnyvale shall be solely responsible for the review and approval, conditional approval or denial of applications for new development within the Sunnyvale benefit area in accordance with its duly adopted planning, zoning, subdivision and related development regulations. Sunnyvale shall provide applicants with information concerning compliance with Mesquite's utility regulations.

#### V. Construction Activities.

In connection with the provision of service described in Article III hereof, Mesquite may from time to time enter into construction activities in the Town of Sunnyvale in connection with its construction repair or maintenance of these facilities or other facilities which may primarily benefit Mesquite. In connection with such construction activity, Mesquite and

Sunnyvale agree as follows:

a. Mesquite hereby assumes the entire responsibility and liability for work, supervision, labor and materials provided, whether or not erected in place, and for all plant, scaffolding, tools, equipment, supplies and other things provided by Mesquite, and Mesquite shall at all times prosecute the work in a good and workmanlike manner, with diligence and continuity; in the event of any loss, damage or destruction thereof from any cause, Mesquite shall be liable therefor, and shall repair, rebuild and make good said loss, damage or destruction at Mesquite's cost.

b. Mesquite shall be liable to Sunnyvale for all costs Sunnyvale incurs or becomes responsible for as a result of Mesquite's failure to perform hereunder in accordance with the terms hereof. Mesquite's failure to perform shall include the failure of its contractors or subcontractors to perform. Mesquite's liability shall include but not be limited to (1) damages and other delay costs payable by Sunnyvale to any party; (2) warranty and rework costs; (3) liability to third parties; (4) consultants' fees; and (5) attorneys' fees and related costs.

c. If any person (including employees of Mesquite) suffers any kind of injury or death, or if any property is damaged, lost or destroyed, as a result in whole or in part, directly or indirectly, of Mesquite's acts or omissions, or Mesquite's performance of the work, whether or not involving the negligence of Mesquite, its employees, agents, contractors or subcontractors and whether or not involving the concurring negligence of Sunnyvale, its employees, servants, agents or subcontractors, Mesquite assumes the liability therefore and shall defend, indemnify and hold harmless from and against any and all claims, demands, or damages resulting therefrom

or relating thereto to Sunnyvale and its agents, servants, employees and sureties. With respect to any action involving Mesquite's actions or omissions, (i) Mesquite shall at its own expense defend Sunnyvale and all other indemnified parties, and (ii) Mesquite shall pay all costs and expenses (including attorneys' fees and costs) of, and satisfy all judgments entered against Sunnyvale and all other indemnified parties. Nothing herein shall preclude Sunnyvale from participating in any such defense. Mesquite's assumption of liability herein includes, but is not limited to, assumption of all liabilities on account of or in any way related to Mesquite's work.

d. In the event that Mesquite or any of its agents, employees, suppliers, or subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items belonging to or under the control of Sunnyvale, Mesquite shall be liable to Sunnyvale for any loss or damage (including personal injury or death) which may arise or result from such use, except where such loss or damage shall be due solely to the negligence of Sunnyvale employees operating Sunnyvale-owned or leased equipment.

e. Mesquite's assumption of liability is independent from, and not limited in any manner by Mesquite's insurance coverage obtained pursuant hereto. All amounts owed by Mesquite to Sunnyvale as a result of the liability provisions of this provision shall be paid upon demand.

f. Mesquite has received separate independent consideration for indemnification hereunder.

g. Mesquite hereby waives any and all limitations on damages with respect to Sunnyvale, whether such limitations arise by statute, Mesquite's charter, ordinances or

otherwise.

Construction Insurance.

a. Prior to commencing the work, Mesquite shall procure, with Sunnyvale, and such other parties as are required by Sunnyvale, named as additional insured parties on a primary basis and waiving all rights of subrogation in favor of them, and thereafter maintain at its own expense until expiration of Mesquite's obligations hereunder, insurance coverage from insurers acceptable to Sunnyvale in such amounts, in such form and containing such terms as may be required by Sunnyvale. No insurance coverage furnished pursuant hereto shall be changed or terminated except upon thirty (30) days advance written notice to Sunnyvale from the carrier or the licensed agent therefore. In the event that any employee of Mesquite or any subcontractor of Mesquite shall be leased or otherwise engaged, or otherwise at the request of Sunnyvale, Mesquite shall provide the alternate employer endorsement naming Sunnyvale in connection with Mesquite's Workers Compensation Insurance.

b. Mesquite waives all rights of recovery against Sunnyvale, and such other parties as are required by Sunnyvale for losses within the scope of Mesquite's Insurance.

c. Upon request, Mesquite shall provide Sunnyvale with certified copies of insurance policies required hereby.

Laws Regulations and Ordinances.

a. Mesquite shall be bound by, and at its own cost shall comply with, all Federal, state and local laws, codes, ordinances and regulations applicable to Mesquite's construction activities and the performance of the work related thereto.

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b. Specifically and without limitation of the foregoing, Mesquite and all its subcontractors, and all employees, servants and agents of any of them, shall comply strictly with the applicable requirements of the Occupational Safety and Health Act of 1970, as amended, all other applicable health and safety laws and regulations, and all laws and regulations applicable to the hiring of aliens.

c. Mesquite shall be liable to Sunnyvale for all loss, damage, cost and expense attributable to any acts of commission or omission by Mesquite, or any of its subcontractors, and all employees, servants or agents of any of them, resulting from failure to comply with any Federal, state or local codes, ordinances or regulations, including, but not limited to, any fines, penalties or corrective measures.

Timing

Mesquite shall make every effort to assure that any construction activity is completed in a timely manner and that accesses to businesses and residential property is provided at all times.

**VI. Assessment, Calculation and Collection of Wastewater Impact Fees.**

Wastewater impact fees for new development within the Sunnyvale benefit shall be assessed, calculated and collected by the Town of Sunnyvale, on behalf of the City of Mesquite, at the times and in the manner provided in Mesquite Ordinance No. \_\_\_\_ ("Mesquite impact fee ordinance"), which is attached hereto as Exhibit "B" and incorporated herein by reference, and as it may be amended from time to time. Mesquite shall promptly notify Sunnyvale of any amendments to its impact fee ordinance affecting the time or manner in which wastewater impact fees are to be assessed, calculated and collected. The rates for assessment and

collection of wastewater impact shall be as provided in the Mesquite impact fee ordinance.

Wastewater impact fees collected on behalf of Mesquite shall be duly transferred to Mesquite at such times as may be agreed upon, but in no event longer than thirty (30) days following collection of the fees.

**VII. Accounting for Wastewater Impact Fees.**

Sunnyvale shall keep records of the dates that wastewater impact fees were assessed and collected within the Sunnyvale benefit area and shall regularly notify Mesquite. Following transfer of the of the funds to Mesquite, Mesquite shall be solely responsible for maintaining records on the wastewater impact fees collected by Sunnyvale within the Sunnyvale benefit area, including accounting and all administrative matters for expenditure of, refund of, or interest due on such impact fees, as provided for in the Mesquite impact fee ordinance and administrative guidelines adopted pursuant thereto.

**VIII. Administration of Mesquite Impact Fee Program.**

All other aspects of Mesquite's impact fee program for wastewater facilities within the Sunnyvale benefit area shall be administered solely by Mesquite, including without limitation, applications for credits against or abatement of wastewater impact fees, refunds or rebates of wastewater impact fees, appeals or other requests for relief from the calculation or collection of wastewater impact fees within such benefit area. Sunnyvale shall bear no responsibility whatever for such administrative decisions and actions, and Mesquite shall indemnify Sunnyvale for any claims arising from such administrative functions.

**IX. Authorization to assess and collect wastewater impact fees within Sunnyvale.**

Sunnyvale hereby authorizes Mesquite to assess and collect wastewater impact fees within its corporate limits, to wit, within the Sunnyvale benefit area, pursuant to the terms of this interlocal agreement.

**X. Enforcement**

In accordance with Chapter 16, Mesquite City Code, and Sunnyvale Ordinance No. 267, or as either may hereafter be amended or superseded, Mesquite shall have full enforcement powers over issuing permits, monitoring discharges, and taking action to stop violations and require corrections within the Sunnyvale benefit area, including issuing citations for violations or issuing stop-work orders pursuant to Sections 16-61, 16-103, and 16-120 of the Mesquite City Code and Sunnyvale Ordinance No. 267, and referring and hearing appeals before the environmental appeals committee pursuant to Section 16-104 of the Mesquite City Code and Sunnyvale Ordinance No. 267. Penalties shall be in accordance with Mesquite City Code Chapter 16, or as Texas or Federal law may authorize. Any enforcement actions pursuant to Mesquite City Code Chapter 16, Sunnyvale Ordinance No. 267, or Texas Water Code §26.124 may be filed and prosecuted either by Sunnyvale and/or Mesquite in the appropriate venue.

**XI. Exemptions.**

This agreement is not intended to apply to assessment or collection of wastewater impact fees, pro rata fees for wastewater facilities or any other similar charge which is the subject of an agreement with a property owner expressly providing for such assessment and/or collection that pre-dates the effective date of this agreement. The terms of such agreement shall prevail over any conflicting provisions of this interlocal agreement; provided, however, that this section

does not preclude conformance of such prior agreement with the terms of this interlocal agreement upon consent of the property owner of new development subject to such prior agreement.

**XII. Recitals As Part of Agreement.**

The recitals and representations made above constitute part of this agreement, are found to be true and correct, are considered contractual in nature and are not merely recitations of fact, and are incorporated herein for all purposes. The representations, warranties, covenants, and agreements set forth herein shall survive the execution hereof.

**XIII. Fees.**

Both parties shall bear their own costs associated with the fulfillment of this Agreement, unless provided otherwise under a different contract or agreement; provided, however, that Sunnyvale may charge a fee per service unit for collection of impact fees not to exceed \$ 25.00. Except as provided herein, no requests shall be made by the parties to one another for administrative costs or the costs of staff time. This shall not preclude the parties from entering into agreements for sharing the costs of improvements to the North Mesquite Drainage Basin, or other joint improvements.

**XIV. Notice.**

For purposes of this Agreement only, Mesquite and Sunnyvale designate the following individuals to receive notice on behalf of the City and Town, except these designations shall not apply for service of documents in litigation.

Mesquite:     Manager, Engineering Services  
                  P.O. Box 850137

Mesquite, TX 75185-0137

Sunnyvale: City Administrator  
537 Long Creek Road  
Sunnyvale, TX 75182

**XV. Venue.**

Venue and jurisdiction of any suit or cause of action arising under or in connection with this Agreement shall be exclusively in a court of competent jurisdiction sitting in Dallas County, Texas. This Agreement shall be interpreted in accordance with the laws of the State of Texas.

**XVI. Severability.**

If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability shall not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.

**XVII. Expiration.**

This Agreement shall remain in full force and effect so long as Mesquite is responsible for the maintenance and construction of improvements in the North Mesquite Drainage Basin, unless terminated prior to then by mutual agreement.

**XVIII. Multiple Originals.**

This Agreement may be executed in multiple originals, with an original to each party.

XIX. Effective Date.

This Agreement shall be effective upon passage of resolutions by the governing bodies of Mesquite and Sunnyvale.

XX. Authority to Contract.

Mesquite and Sunnyvale mutually represent and rely thereon that they are authorized by their respective governing body to enter into this interlocal agreement pursuant to the Interlocal Cooperation Act. Each will furnish the other certified copies of a resolution adopted by their respective governing bodies approving this Agreement and authorizing their respective chief executives to execute the same on behalf of and as the act of the City and Town.

EXECUTED BY THE PARTIES this 11 day of November, 1996.

CITY OF MESQUITE

TOWN OF SUNNYVALE

Cathy Ray  
Cathy Ray, Mayor

Jim Wade  
Jim Wade, Mayor

ATTEST:

Ellen Williams  
Ellen Williams  
City Secretary

ATTEST:

Anne Harrison  
Anne Harrison  
City Secretary