

RESOLUTION NO. 56-2000

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE TOWN OF SUNNYVALE TO ACCEPT SANITARY SEWER EFFLUENT FROM THE STONE CANYON ESTATES; AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS, the Town of Sunnyvale has requested and the City of Mesquite has agreed to accept the sanitary sewer effluent from the Stone Canyon Estates (an 80-lot subdivision in the Town of Sunnyvale) until January 1, 2004; and

WHEREAS, the Interlocal Cooperation Act, V.T.C.A., Texas Government Code, Chapter 791, provides authorization for any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

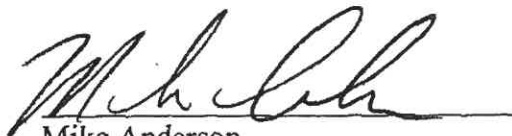
WHEREAS, an agreement between the Town of Sunnyvale and the City of Mesquite for the provisions to temporarily accept the sanitary sewer effluent from the Stone Canyon Estates until the Town of Sunnyvale can construct the permanent sanitary sewer system to accept this effluent will be in the best interests of the citizens of the Town of Sunnyvale.

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

SECTION 1. That the Mayor execute the Interlocal Agreement attached hereto as Exhibit "A" between the City of Mesquite and the Town of Sunnyvale for the provision to temporarily accept sanitary sewer effluent from the Stone Canyon Estates (80 lots only) until January 1, 2004.

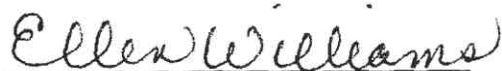
SECTION 2. That this resolution shall take effect from and after its passage.

DULY RESOLVED by the City Council of the City of Mesquite, Texas on the 18th day of December 2000.



Mike Anderson
Mayor

ATTEST:



Ellen Williams
City Secretary

APPROVED:



B. J. Smith
City Attorney

APPROVED BY CITY COUNCIL

DATE 12/18/00

CITY SEC. _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS § **INTERLOCAL AGREEMENT BETWEEN
THE CITY OF MESQUITE AND THE
TOWN OF SUNNYVALE FOR INTERIM
CAPACITY IN THE NORTH MESQUITE CREEK
WASTEWATER TRUNK MAIN FOR THE STONE
CANYON ESTATES**

This Interlocal Agreement is made and entered into by and between the City of Mesquite, a Texas Home Rule Municipal Corporation located in Dallas County, Texas (“Mesquite”) and the Town of Sunnyvale, a Type A General Law Municipal Corporation, located in Dallas County, Texas (“Sunnyvale”).

RECITALS

Mesquite and Sunnyvale desire to enter into an agreement at the request of Sunnyvale to provide Sunnyvale with limited capacity in Mesquite’s North Mesquite Creek Wastewater Trunk Main. Section 791.026 of the Interlocal Cooperation Act of the Texas Government Code authorizes any local government to contract with one or more local governments to obtain or provide part or all of a wastewater treatment facility or operation under the terms of the Act.

Mesquite owns and operates wastewater collection trunk mains which include, among other things, a 24-inch wastewater collection main located along North Mesquite Creek and a 30-inch wastewater collection main line. Both mains (collectively referred to as “Mesquite Wastewater Trunk Mains”) are designed to serve the North Mesquite Creek natural drainage basin that includes the City of Mesquite and a portion of the Town of Sunnyvale. Mesquite has permitted Sunnyvale to tie into both trunk mains and has accepted wastewater from Sunnyvale for transport to the North Texas Municipal Water District’s Regional Wastewater Treatment Plant. Mesquite has limited capacity in the trunk mains for wastewater from Sunnyvale in the amount up to 3.47 million gallons per day (mgd) including wet weather flows from inflow and

infiltration. Mesquite is willing to permanently dedicate this capacity to Sunnyvale for wastewater originating within the North Mesquite Creek natural drainage basin. For the limited time permitted under this agreement, Mesquite will accept up to 3.47 mgd of wastewater originating from both inside and outside the North Mesquite Creek natural drainage basin; however, the capacity for wastewater originating from the area defined herein as Stone Canyon Estates outside the North Mesquite Creek natural drainage basin is available only on an interim basis.

The Town of Sunnyvale owns a wastewater collection system and has conveyed wastewater from the North Mesquite Creek natural drainage basin to Mesquite's North Mesquite Creek Wastewater Trunk Main. In 1994, by special permission of Mesquite, Sunnyvale began to convey wastewater from outside the North Mesquite Creek natural drainage basin to the North Mesquite Creek Wastewater Trunk Main via a lift station and gravity line. Sunnyvale now desires to increase its volume of wastewater conveyed to Mesquite from both within and outside the North Mesquite Creek natural drainage basin. The additional area outside of the North Mesquite Creek natural drainage basin for which Sunnyvale is seeking service is located between an area south of U.S. Highway 80 and east of State Highway 352 containing a maximum of eighty (80) residential lots. Sunnyvale requires the capacity in the Mesquite Wastewater Trunk Mains to serve this 80-lot subdivision outside the North Mesquite Creek natural drainage basin on an interim basis until Sunnyvale can convey wastewater to the City of Garland or elsewhere. This defined area shall be referred to herein as Stone Canyon Estates. Sunnyvale understands that the capacity provided by Mesquite for service in Stone Canyon Estates located outside the North Mesquite Creek natural drainage basin is available only for a maximum period of 3 years or less. Sunnyvale understands that no continuation of service to Stone Canyon Estates will be implied after 3 years.

The relationship between Sunnyvale and Mesquite has been governed by a 1974 Joint Policy Statement and a 1996 Interlocal Agreement as amended by Mesquite City Council. The

provisions of this Interlocal Agreement unless otherwise specifically stated herein, are applicable only to Stone Canyon Estates. This Interlocal Agreement provides for explicit expiration of service for Stone Canyon Estates which lies outside the North Mesquite Creek natural drainage basin.

In consideration of the foregoing, of the mutual benefits, covenants and agreements herein expressed, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mesquite and Sunnyvale agree as follows:

I.

**DISCHARGE OF WASTEWATER, SERVICE AREAS, CAPACITY,
METERING AND CONSTRUCTION OF REPLACEMENT CAPACITY**

Section 1.01. Discharge. In accordance with the terms of this Interlocal Agreement, Sunnyvale shall have the right to discharge wastewater from its collection system into the North Mesquite Creek Wastewater Trunk provided that Sunnyvale satisfies all of the requirements of this Agreement.

Section 1.02. Limitation of Acceptance to Wastewater Generated Within Specific Areas of Sunnyvale. Wastewater from Sunnyvale's collection system will be accepted only from that portion of Sunnyvale that is within: (a) the North Mesquite Creek natural drainage basin and the area outside of the North Mesquite Creek natural drainage basin which is the subject of the 1994 permission reference above; and (b) for a limited time specified under this agreement, areas outside the North Mesquite Creek natural drainage basin in the area defined herein as Stone Canyon Estates located south of U.S. Highway 80 and east of State Highway 352 (80 lots maximum). A more precise description of the North Mesquite Creek natural drainage basin is included in Exhibit A.

Section 1.03. Point of Entry. Sunnyvale shall discharge wastewater from the collection system from the Stone Canyon Estates area in Exhibit A to a manhole located at the southwest corner of

Old Barn Lane and State Highway 352. Sunnyvale is responsible to transport its wastewater to the Point of Entry.

II.

QUALITY OF WASTEWATER

Section 2.01. Prohibited Discharges.

(a) Sunnyvale shall prohibit any person from introducing into the Mesquite Wastewater Trunk Mains any substances which may pass through or interfere with the operation of Mesquite's Wastewater Trunk Mains or with North Texas Municipal Water District's (NTMWD) publicly-owned treatment works (POTW). In addition, Sunnyvale shall prohibit the introduction of any substances into the Mesquite Wastewater Trunk Mains that have an adverse effect on the environment, or may endanger life, health or property, or constitute a public nuisance.

(b) The standards relating to quality of wastewater and restrictions imposed upon Sunnyvale's discharge into the Mesquite Wastewater Trunk Mains at the Points of Entry are the same standards imposed by the City of Mesquite for discharges within Mesquite's municipal boundaries under Chapter 16 of the Code of Mesquite.

Section 2.02. Termination of Service. If any person's wastewater discharge into Mesquite's Wastewater Trunk Mains violates this Interlocal Agreement, Mesquite may require Sunnyvale to terminate the service to the premises within 90 days from the time that the uncorrected violation occurred. In such event, Sunnyvale shall be responsible for notice to the user and to require compliance or discontinuance of such connection.

Section 2.03. Enforcement. In accordance with Chapter 16, Mesquite City Code, and Sunnyvale Ordinance No. 267 and any other ordinance or resolution passed pursuant to this Agreement, 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 Service 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 any other ordinance or resolution passed pursuant to this Agreement, 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 and any other ordinance or resolution passed pursuant to this Agreement. 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 and any other ordinance or resolution passed pursuant to this Agreement, or Texas Water Code Chapter 7 may be filed and prosecuted either by Sunnyvale and/or Mesquite in the appropriate venue.

III.

COLLECTION LINE MAINTENANCE AND CONNECTION REQUIREMENTS

Section 3.01. Internal Collection Lines. Sunnyvale agrees to maintain, or contract to maintain, all wastewater collection lines within the service area that connect directly or indirectly to Mesquite Wastewater Trunk Mains. Sunnyvale further agrees that it will promptly repair any breaks within the service area to prevent the discharge of wastewater and the entry of surface or ground water, sand, or other foreign materials into the collection lines.

Section 3.02. Construction and Connection. In the event of any new construction or renovation involving wastewater collection within the service area of Sunnyvale, all wastewater collection lines, taps, and construction connected directly or indirectly to the Mesquite Wastewater Trunk Mains shall at least meet the applicable standards of Mesquite and shall be reviewed and approved by Mesquite prior to approval of plans by Sunnyvale.

The specific procedures for service connection are:

(a) Any person of Stone Canyon Estates desiring to connect to the Mesquite Wastewater Trunk Mains, either directly or indirectly, shall make application in writing to

Sunnyvale indicating the building and/or properties proposed to be served and the type of service and quantity and type of flow proposed.

(b) A copy of such application shall be forwarded to Mesquite City Engineer by Sunnyvale.

(c) Copies of plans and engineering data shall be submitted to Sunnyvale for approval.

(d) Upon receipt of the plans and engineering data by Sunnyvale, copies shall be forwarded to Mesquite City Engineer for approval or modification.

(e) Upon approval of plans and engineering, the developer or contractor shall notify Mesquite Engineering Division when work will begin and obtain inspection of all work within Mesquite during construction.

(f) The actual connection to the Mesquite Wastewater Trunk Mains will be at the user's expense and subject to inspection by Mesquite Engineering Division.

(g) When all work is completed in conformity with Mesquite specifications and final approval is given, Mesquite City Engineer shall notify Sunnyvale of such final approval and Sunnyvale may then issue such certificate of occupancy as may be applicable.

Section 3.03. Line Repair by Mesquite. In the event that Mesquite shall discover a break in the wastewater collection lines or within the Service Area of Sunnyvale, Mesquite shall promptly notify Sunnyvale of such break, which notice can be by telephone so long as such notice is confirmed in writing via fax or e-mail within twenty-four (24) hours. Sunnyvale shall promptly correct such break within twenty-four (24) hours of notice.

Section 3.04. Unit of Measurement. The unit of measurement for wastewater shall be 1,000 gallons, United States Standard Liquid Measure.

IV.

CAPACITY FEES, IMPACT FEES, AND PAYMENT

Section 4.01. Charges and Rates for Capacity. Sunnyvale is currently paying for wastewater services from Mesquite based upon metered water usage of individual users at rates Mesquite charges for wastewater services within Mesquite. This payment arrangement shall continue for the proposed 80 lots in the area shown in Exhibit A.

Section 4.02. Billing.

(a) So long as Sunnyvale's charges and payments are based upon metered water, payment shall be paid on or before the last day of each month. The payment will be accompanied by a list of current accounts which includes the property owner name and address. The list of accounts will identify each account as a residential user and include applicable fees and volume of water used.

(b) Impact Fees. Impact fees shall continue to be collected and used by Sunnyvale in accordance with Ordinance 266 as amended from time to time for all service areas designated in such Ordinance whether or not any portion of such areas are served on an interim basis by Mesquite pursuant to this Interlocal Agreement.

(c) All payments under this Interlocal Agreement shall be made to Mesquite by and on behalf of Sunnyvale, rather than by individual users.

Section 4.03. Sunnyvale Rates. Sunnyvale shall fix and collect rates from wastewater services sufficient to provide prompt payment of monies due Mesquite under this Interlocal Agreement.

V.

TERMINATION

Section 5.01. Explicit Expiration Provision. The capacity for wastewater flows originating outside the North Mesquite Creek Natural Drainage Basin for Stone Canyon Estates will terminate and no longer be available on January 01, 2004 (Expiration Date) or when Sunnyvale has constructed the facilities to transport wastewater from the Sunnyvale service area as shown

on Exhibit A to the City of Garland or to other facilities, whichever occurs first. NO CONTINUATION OF SERVICE BY MESQUITE WILL BE IMPLIED UPON EXPIRATION AS PROVIDED UNDER THIS SECTION TO THE STONE CANYON ESTATES SUBDIVISION OUTSIDE THE NORTH MESQUITE CREEK NATURAL DRAINAGE BASIN. If necessary, Mesquite may obtain enforcement of termination by Court Order.

VI.

GENERAL PROVISIONS

Section 6.01. Notice. Notices required by this Interlocal Agreement shall be satisfied by delivery of a written statement to the appropriate individual, listed below, via either certified mail, return receipt requested, or hand delivery on or before the date that notice is required unless otherwise specified within this Agreement. The individual designated below or the address for notice may be amended from time to time by delivery of thirty (30) days' notice to the other party.

| | | | |
|-----------|--|------------|--|
| Mesquite: | City Manager City of Mesquite 1515 N. Galloway Avenue Mesquite, Texas 75149 | Sunnyvale: | Town Manager Town of Sunnyvale 537 Long Creek Road Sunnyvale, Texas 75182 |
|-----------|--|------------|--|

Section 6.02. Applicable Law. This Interlocal Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Dallas County, Texas.

Section 6.03. Binding Effect. This Interlocal Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns where permitted by this Agreement.

Section 6.04. Partial Invalidity. In case any one or more of the provisions contained in this Interlocal Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Interlocal Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 6.05. Sole Agreement. Except as otherwise provided below, this Interlocal Agreement constitutes the sole and only agreement of the parties hereto respecting Stone Canyon Estates and supersedes any prior understandings or written or oral agreements concerning Stone Canyon Estates, including the 1974 Joint Policy Statement, as amended, and 1996 Interlocal Agreement, as amended, between the parties respecting the subject matter addressed herein.

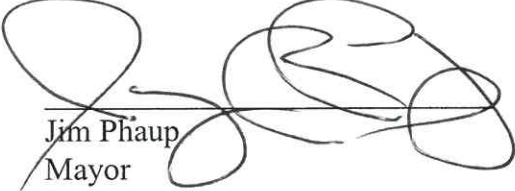
Section 6.06. Authority to Contract. Mesquite and Sunnyvale mutually represent and rely thereon that they are authorized by their respective governing body to enter into this Interlocal Agreement pursuant to the Interlocal Cooperation Act. Each will furnish the other certified copies of a resolution adopted by their respective governing bodies approving this Interlocal Agreement and authorizing their respective chief executives to execute the same on behalf of and as the act of the City and Town.


Section 6.07. Force Majeure. If, because of force majeure, either Mesquite or Sunnyvale is reasonably prevented from performing its obligations under this Interlocal Agreement, and if the party experiencing force majeure gives the other party written notice of the existence of force majeure within three days after such occurrence, then the obligations of the parties shall be suspended or reduced to the extent made reasonably necessary by the existence of the force majeure. The term “force majeure” shall mean a cause beyond the reasonable control of the party affected, such as, but not restricted to, flood, earthquake, storm, fire, explosion, war, sabotage, riots, civil disturbance, strike, lockout, work stoppages, restraint by court order or other public authority, and action or nonaction by or failure to obtain the necessary authorization or approval from any governmental agency or authority, which by the exercise of due diligence, such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. A party rendered unable to fulfill any of its obligations under this Interlocal Agreement by reason of force majeure shall exercise due diligence to remove such inability with all reasonable dispatch.


Section 6.08. Default. If either party defaults in the observance or performance of any of the provisions, agreements or conditions to be observed or performed on its part under this Agreement, the other party may give written notice to the party in default of its intention to terminate this Interlocal Agreement, specifying the failure or default relied upon. Upon the expiration of forty-five (45) days after the giving of such notice, this Interlocal Agreement shall terminate, unless within such forty-five (45) day period, or such longer period as may be specified in such notice or any amendment of or supplement to such notice, the default specified in such notice shall have been fully cured.

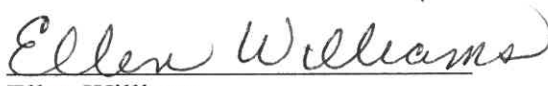
Section 6.09. Fines or Civil Penalties. Sunnyvale agrees to assume liability for fines or civil penalties imposed by a regulatory agency for violations of federal, state or local laws or regulations to the extent violations are caused by the intentional, willful or sole negligent actions of Sunnyvale.

WITNESS OUR HANDS this the 18th day of December, 2000, to be effective Jan. 1, ~~2000~~. 2001.

TOWN OF SUNNYVALE, TEXAS
By: 
Jim Phaup
Mayor

CITY OF MESQUITE, TEXAS
By: 
Mike Anderson
Mayor

ATTEST:
By: 
Anne Harrison
Town Secretary

ATTEST:
By: 
Ellen Williams
City Secretary

Approved as to form:


Allison Fuller Graham
Assistant City Attorney