

RESOLUTION NO. 28-2005

RESOLUTION RATIFYING THE EXECUTION OF THE LOWER EAST FORK
WASTEWATER INTERCEPTOR SYSTEM CONTRACT WITH NORTH TEXAS
MUNICIPAL WATER DISTRICT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE:

SECTION I

That the execution and delivery by the Mayor of the City of Mesquite (the "City") and the execution, attestation, and sealing by the City Secretary of the City of the "Lower East Fork Wastewater Interceptor System Contract" (the "Contract") with North Texas Municipal Water District in substantially the form and substance attached to this Resolution as Exhibit "A" and made a part hereof for all purposes, for and on behalf of the City, is hereby ratified and approved in all respects.

SECTION 2

That, upon its execution by the parties thereto, the Contract shall be binding upon the City in accordance with its terms and provisions.

SECTION 3

That this Resolution shall take effect and be in full force and effect from and after the date of its adoption and passage, and it is so resolved; and all ordinances and resolutions of the City in conflict herewith are hereby amended or repealed to the extent of such conflict, and all such ordinances and resolutions, and any contracts or agreements or parts authorized thereby, shall be of no further force or effect upon execution of the Contract to the extent of any such conflict.

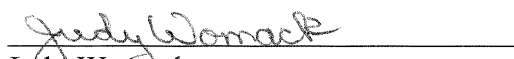
Duly passed and approved by the City Council of the City of Mesquite, Texas, on the 18th day of July, 2005.




Mike Anderson
Mayor

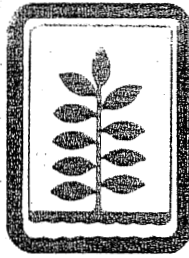
ATTEST:

APPROVED:



Judy Womack
City Secretary

B. J. Smith
City Attorney



APPROVED BY CITY COUNCIL

DATE 2/21/05

CITY SEC. _____

**NORTH TEXAS MUNICIPAL
WATER DISTRICT***Regional Service Through Unity*

February 24, 2005

Mr. Ted Barron
City Manager
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

Mr. Denny Wheat
City Manager
City of Seagoville
702 North Highway 175
Seagoville, Texas 75159

Re: Letter of Agreement, Lower East Fork Interceptor System Project.

Dear Sirs:

As we have previously discussed, it is the intent of the North Texas Municipal Water District ("NTMWD"), the City of Mesquite ("Mesquite"), and the City of Seagoville ("Seagoville") to enter into certain agreements and take certain actions related to the design and construction of the Lower East Fork Interceptor System ("LEFIS") Project. The purpose of this Letter of Agreement is to outline the responsibilities of each party.

The LEFIS Project includes facilities that are described in detail in a report entitled "Lower East Fork Interceptor System Wastewater Feasibility Study" ("LEFIS Study") prepared by Freeman-Millican, Inc. Consulting Engineers dated June 2004. The LEFIS Project includes the following facilities as described in the LEFIS Study: Line A, Proposed Mustang Creek Gravity Sewer; Line B, Proposed Gravity Line from Seagoville to Lift Station; Proposed Lift Station; and Line C, Proposed Force Main (to the South Mesquite Regional Wastewater Treatment Plant ("WWTP")).

Currently, NTMWD provides wastewater treatment service to Mesquite at the South Mesquite Regional WWTP, owned and operated by NTMWD. NTMWD provides wastewater treatment service to Seagoville through NTMWD's operation of the Seagoville WWTP. On

October 13, 2004, Seagoville entered into an Agreed Order ("AO") with the Texas Commission on Environmental Quality ("TCEQ") regarding operation of the Seagoville WWTP. Such AO identifies that Seagoville was taking steps to be incorporated into NTMWD's regional wastewater treatment and interceptor system. On January 3, 2005, NTMWD entered into a Compliance Agreement with TCEQ, which requires the design and construction of an interceptor system to transport wastewater flow from Seagoville to NTMWD's South Mesquite Regional WWTP. The Compliance Agreement contains specific, enforceable dates for the start and completion of the design and construction of the required facilities. Such dates are requirements with which NTMWD must comply. If such dates are not met, NTMWD will face possible enforcement by TCEQ.

Both Mesquite and Seagoville understand and acknowledge the benefit of designing and constructing a regional interceptor system to provide for the transport of wastewater from the cities to the South Mesquite Regional WWTP, as described in the LEFIS Study. To facilitate the LEFIS Project, NTMWD intends to enter into an Engineering Services Agreement for the design of the project and the development of the required easement documents. NTMWD will also administer the design contract and will provide for the inspection of the project and the subsequent operation and maintenance of the project. Related to the LEFIS Project, Mesquite and Seagoville individually intend to enter into separate agreements with 2219 Kaufman Partners Ltd. ("Mabrey") for the funding of the design and right-of-way acquisition for the required interceptor facilities. The funding agreed to by Mabrey includes the cost share for both Mesquite and Seagoville, as described in the LEFIS Study.

To implement the LEFIS Study and to move forward with the LEFIS Project, NTMWD, Mesquite and Seagoville have agreed to the following actions:

- (1) Mesquite agrees to provide funding for the design and right-of-way acquisition for the entire LEFIS Project, which funding includes the "Mesquite Cost Share" and the "Seagoville Cost Share" of the facilities identified in the LEFIS Study to transfer flow from Seagoville and from the extraterritorial jurisdiction ("ETJ") of Mesquite to the South Mesquite Regional WWTP. As identified in the LEFIS Study, the LEFIS Project includes the following facilities for which Mesquite agrees to provide funding: Line A, Proposed Mustang Creek Gravity Sewer; Line B, Proposed Gravity Line from Seagoville to Lift Station; Proposed Lift Station; and Line C, Proposed Force Main (to the South Mesquite Regional WWTP). The total amount of the funding is equal to \$1,711,500, of which the Mesquite Cost Share is \$1,338,393, and the Seagoville Cost Share is \$373,107.
- (2) Mesquite agrees to provide funds, as described in Paragraph (1), for the design and right-of-way acquisition of the LEFIS Project in the amount of \$1,711,500 to NTMWD no later than March 4, 2005.
- (3) Mesquite agrees that if it elects to proceed with the construction of the LEFIS project, Mesquite will enter into a contract identified as "Lower East Fork

Wastewater Interceptor System Contract” with NTMWD by June 21, 2005. The Lower East Fork Wastewater Interceptor System Contract provides for the transport of wastewater from the facilities described in Paragraph (1) to the South Mesquite Regional WWTP.

- (4) Seagoville agrees to enter into a contract identified as “Lower East Fork Wastewater Interceptor System Contract” with NTMWD by June 15, 2005. The Lower East Fork Wastewater Interceptor System Contract provides for the transport of wastewater from the facilities described in Paragraph (1) to the South Mesquite Regional WWTP.
- (5) Seagoville agrees to enter into a contract identified as “Trinity East Fork Regional Wastewater System Contract” by June 15, 2005. The Trinity East Fork Regional Wastewater System Contract provides for the treatment of wastewater at NTMWD’s South Mesquite Regional WWTP.
- (6) NTMWD agrees to commence with design of the project as soon as funds are received from Mesquite and the NTMWD Board of Directors has approved an Engineering Services Agreement for the design of the LEFIS Project. During the time prior to execution of the Lower East Fork Wastewater Interceptor System Contract and the Trinity East Fork Regional Wastewater System Contract, NTMWD will make every effort to proceed with the design in a manner that will result in a usable design for Seagoville and NTMWD should Mesquite fail to enter into the Lower East Fork Wastewater Interceptor System Contract.
- (7) Should Mesquite fail to enter into the Lower East Fork Wastewater Interceptor System Contract with NTMWD by June 21, 2005, Seagoville is not obligated nor has Seagoville agreed to repay any of the funds received from Mesquite for design and acquisition of right-of-way for the Seagoville Cost Share of the LEFIS Project.
- (8) Should Mesquite fail to enter into the Lower East Fork Wastewater Interceptor System Contract with NTMWD by June 21, 2005, NTMWD is not obligated nor has NTMWD agreed to repay any of the funds received from Mesquite for design and acquisition of right-of-way for the LEFIS Project.
- (9) Should Mesquite fail to enter into the Lower East Fork Wastewater Interceptor System Contract with NTMWD by June 21, 2005, Seagoville and NTMWD have the right to use any and all engineering documents developed for the LEFIS Project.
- (10) Should Mesquite fail to enter into the Lower East Fork Wastewater Interceptor System Contract with NTMWD by June 21, 2005, Seagoville and NTMWD will

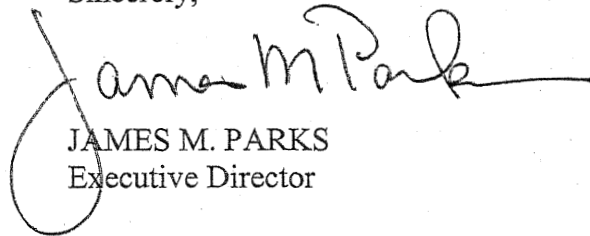
have the right to use the total amount of the funds provided by Mesquite, in the amount of \$1,711,500 for design, acquisition of right-of-way, or construction of facilities to allow transfer of Seagoville wastewater flow to the South Mesquite WWTP associated with the LEFIS Project.

- (11) Should Mesquite fail to enter into the Lower East Fork Wastewater Interceptor System Contract with NTMWD by June 21, 2005, Seagoville recognizes and acknowledges the potential change in condition of the LEFIS Project. At that time, NTMWD agrees to review the LEFIS Project with Seagoville and any potential changes and impacts on the LEFIS Project.
- (12) Provided that Mesquite and Seagoville have entered into the Lower East Fork Wastewater Interceptor System Contract and the Trinity East Fork Regional Wastewater System Contract, as identified above, by June 21, 2005, NTMWD will proceed with completion of the design of the LEFIS Project. Once the project design is completed, NTMWD will receive bids for construction of the LEFIS Project. NTMWD plans to issue bonds for the construction of the LEFIS Project. Such bonds will include funds allowing for the reimbursement to Mesquite for the funds received for the design and right-of-way acquisition costs. NTMWD agrees to reimburse Mesquite for the design and right-of-way acquisition costs upon receipt of bond proceeds. Upon reimbursement for the engineering design and right-of-way acquisition for the LEFIS project in the amount of \$1,711,500.00 to Mesquite, Mesquite will reimburse Seagoville for the Seagoville Cost Share.
- (13) NTMWD agrees to pursue expeditious design and construction of the LEFIS Project. Pursuant to the Compliance Agreement between NTMWD and TCEQ, the completion date for construction of the LEFIS Project is October 31, 2007. Should at any time progress on the LEFIS Project be delayed such that in the opinion of NTMWD the October 31, 2007 completion date will not be met, NTMWD will notify Mesquite and Seagoville in writing of the estimated revised completion date and the reasons for the delay in the LEFIS Project.
- (14) This Letter of Agreement contains the entire agreement of NTMWD, Mesquite, and Seagoville with respect to the subject matter of this Letter of Agreement. No agreement, statement, or promise made by any party or to any employee, agent, or officer of any party, that is not contained in this Letter of Agreement shall be valid, binding, or of any force or effect. Any amendments or revisions to this Letter of Agreement must be in writing and signed by the party or parties to be charged. This Letter of Agreement shall remain valid and enforceable until superseded by subsequent written agreement.

By signing below, Mesquite and Seagoville agree to the provisions of this Letter of Agreement as they are set out above. Mesquite and Seagoville acknowledge that each city will

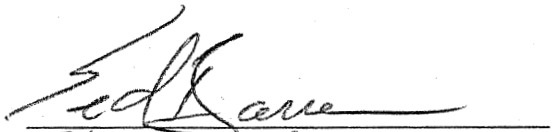
provide an executed copy of this Letter of Agreement to NTMWD by no later than March 4, 2005. Receipt of the executed Letter of Agreement by March 4, 2005, will allow the NTMWD to execute an Engineering Services Agreement and proceed with design and right-of-way acquisition for the project. By signing this letter, NTMWD agrees to the provisions of this Letter of Agreement as they are set out above.

Sincerely,



JAMES M. PARKS
Executive Director


AGREED:



Ted Barron - City Manager
City of Mesquite

Date: 2/25/05


AGREED:



James D. Wilkins - Mayor
City of Seagoville

Date: 3/3/05

Approved as to form:



Asst. City Attorney
City of Mesquite

CERTIFICATE OF RESOLUTION

THE STATE OF TEXAS :
 COUNTY OF DALLAS :
 CITY OF MESQUITE :

We, the undersigned officers of the City of Mesquite, Texas, hereby certify as follows that:

1. The City Council of the City of Mesquite convened in REGULAR MEETING ON THE 18TH DAY OF JULY, 2005, at the City Hall, and the roll was called of the duly constituted officers and members of said City Council, to-wit:

Mike Anderson, Mayor	John Monaco
Stan Pickett, Mayor Pro Tem	David Paschall
John L. Heiman, Jr., Deputy Mayor Pro Tem	Shirley Roberts
Judy Womack, City Secretary	Dennis Tarpley

and all of said persons were present, except the following absentees: None
 _____, thus constituting a quorum. Whereupon, among other business, the following was transacted at said Meeting: a written

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was duly introduced for the consideration of said City Council and duly read. It was then duly moved and seconded that said Resolution be adopted and passed; and, after due discussion, said motion, carrying with it the adoption and passage of said Resolution, prevailed and carried by the following record vote:


AYES: All members of said City Council shown present above voted "Aye"; except None.

NOES: None.

2. A true, full, and correct copy of the aforesaid Resolution adopted and passed at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; that said Resolution has been duly recorded in said City Council's minutes of said Meeting; that the above and foregoing paragraph is a true, full, and correct excerpt from said City Council's minutes of said Meeting pertaining to the adoption and passage of said Resolution; that the persons named in the above and foregoing paragraph are the duly chosen, qualified, and acting officers and members of said City Council as indicated therein; and that each of the officers and members of said City Council was duly and sufficiently notified officially and personally, in advance, of the time, place, and purpose of the aforesaid Meeting, and that said Resolution would be introduced and considered for adoption and passage at said Meeting; and that said Meeting was open to the public, and public notice of the time, place, and purpose of said Meeting was given, all as required by Chapter 551,

Texas Government Code.

SIGNED AND SEALED the 18th day of July, 2005.



City Secretary, Judy Womack



Mayor, Mike Anderson

(CITY SEAL)