

RESOLUTION NO. 31-2010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE TOWN OF SUNNYVALE TO PERMIT THE INSTALLATION AND MAINTENANCE OF A 12-INCH WATER MAIN BY THE TOWN OF SUNNYVALE WITHIN AN EXISTING CITY OF MESQUITE RIGHT-OF-WAY.

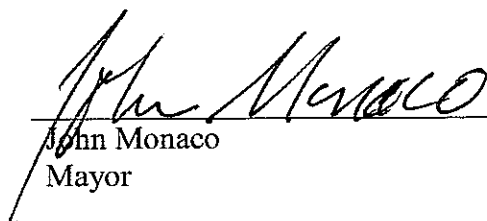
WHEREAS, the Town of Sunnyvale ("Sunnyvale") has requested and the City of Mesquite ("Mesquite") has agreed to enter into an interlocal agreement regarding the installation and maintenance of a 12-inch water main by Sunnyvale, at their sole expense, within an existing Mesquite right-of-way at a location north of the intersection of Town East Boulevard and Belt Line Road to a location north of the intersection of Northwest Drive and Belt Line Road; 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.

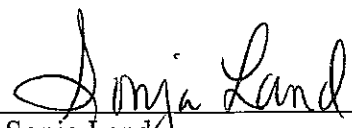
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Manager is hereby authorized to execute an Interlocal Agreement between the City of Mesquite ("Mesquite") and the Town of Sunnyvale ("Sunnyvale"), attached hereto as Exhibit "A," to permit the installation and maintenance of a 12-inch water main by Sunnyvale within an existing Mesquite right-of-way.

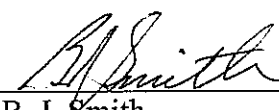
DULY RESOLVED by the City Council of the City of Mesquite, Texas on the 6th day of July, 2010.

  
\_\_\_\_\_  
John Monaco  
Mayor

ATTEST:

  
\_\_\_\_\_  
Sonja Land  
City Secretary

APPROVED:

  
\_\_\_\_\_  
B. J. Smith  
City Attorney

THE STATE OF TEXAS     §  
                                    §  
 COUNTY OF DALLAS       §

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF MESQUITE AND THE  
 TOWN OF SUNNYVALE TO PERMIT INSTALLATION BY THE TOWN OF  
 SUNNYVALE OF A 12- INCH WATER MAIN IN THE CITY OF MESQUITE  
 RIGHT-OF-WAY AT BELT LINE ROAD AT A LOCATION FROM NORTH OF  
 TOWN EAST BOULEVARD TO NORTH OF NORTHWEST DRIVE**

This agreement is made and entered into by and between the City of Mesquite, Texas ("Mesquite"), a Home Rule municipal corporation and the Town of Sunnyvale, Texas, ("Sunnyvale"), a Texas General Law municipality to allow construction of a 12-inch water main by Sunnyvale in Mesquite right-of -way as follows:

**Recitals**

WHEREAS, Sunnyvale has requested that they be permitted to construct and install a new 12-inch water main along the east side of Belt Line Road ("the 12-inch water main") within the Mesquite city limits and in Mesquite right-of-way as shown on Exhibit "A" attached hereto and made a part hereof for all purposes, to meet the water supply needs of Sunnyvale citizens; and

WHEREAS, Mesquite, at the request of Sunnyvale, has agreed to enter into an agreement to allow Sunnyvale, at their sole expense, to install and construct approximately 4,534 linear feet of 12-inch water main along the east side of the existing Belt Line Road right-of way east of the paved portion of the roadway from a location north of the intersection of Town East Boulevard and Belt Line Road to a location north of the intersection of Northwest Drive and Belt Line Road. The existing water main, located generally in the same area of the right-of-way, to be abandoned in place.

WHEREAS, 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; and

WHEREAS, Sunnyvale has current revenues available to complete this contract.

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

### **Recitals**

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.

### **Pre-Construction Responsibilities**

Sunnyvale shall prepare and submit engineering plans, prepared by a Registered Professional Engineer licensed in the State of Texas, for the construction and installation of a 12-inch water main along the east side of Belt Line Road to be constructed within the Belt Line Road right-of-way and within the city limits of Mesquite, hereinafter called "the Project." The engineering plans provided by Sunnyvale shall comply with the City of Mesquite General Design Standards and specifications and shall include a description of the work, size of main and location together with a location map and all other requirements attendant to such work. Mesquite shall be responsible for review and approval of the plans and Sunnyvale shall be responsible for the payment of all plan review and permit fees.

### **Construction Activities**

Construction of the Project shall not begin until this agreement has been fully executed by Mesquite and Sunnyvale. Construction of the Project shall be under the direction and responsibility and sole expense of Sunnyvale. Sunnyvale shall make every effort to assure that any construction activity is completed in a timely manner and shall assure that access to businesses and residential property is provided at all times. Sunnyvale shall repair any and all damage in connection with the Project to Belt Line Road and the right-of-way.

Mesquite shall have the right to inspect and approve the Project work and Sunnyvale shall comply with all requirements of Mesquite and pay all inspection fees.

### **Maintenance**

Sunnyvale is responsible for the maintenance and any future improvements to the water main.

Upon completion, and for two years after acceptance by Mesquite of the Project, Sunnyvale shall be responsible for repair of all damage in the right-of way associated with the Project work.

In connection with the above and with its ongoing use of the Project facilities, Sunnyvale may from time to time have the need to engage in activities at the location of the Project in connection with repair or maintenance of the facilities. In connection with such maintenance activity, Sunnyvale shall, prior to engaging in any such activity, notify Mesquite and obtain any and all permits required by law prior to the execution of such work, except in the case of an emergency whereby Sunnyvale may proceed with necessary work but notify Mesquite as soon as possible and obtain all required permits as soon as practicable.

### Laws Regulations and Ordinances

Sunnyvale shall be bound by, and at its own cost shall comply with, all federal, state and local laws, codes, ordinances and regulations applicable to Sunnyvale's completion of the Project and any and all maintenance and construction activities and the performance of the work related thereto.

Specifically and without limitation of the foregoing, Sunnyvale 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.

Sunnyvale shall comply with and be responsible for any and all federal, state or local codes, ordinances or regulations, including, but not limited to, any fines, penalties or corrective measures.

### Liability/Indemnity

Sunnyvale assumes the entire responsibility and liability for work, supervision, labor and materials provided pursuant to this agreement, whether or not erected in place, and for all plant, scaffolding, tools, equipment, supplies and other things provided by Sunnyvale, and Sunnyvale 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, Sunnyvale shall be liable, therefore, and shall repair, rebuild and make good said loss, damage or destruction at Sunnyvale's cost.

Sunnyvale agrees to be responsible for any liability or damages Sunnyvale may suffer as a result of claims, demands, costs or judgments, including reasonable attorneys' fees against Sunnyvale, including worker's compensation claims arising out of the performance of the construction and services under this agreement, or arising from any accident, injury or damage whatsoever to any person or persons or to the property of any person(s) or corporations occurring during the performance of this agreement and caused by the negligence of Sunnyvale, its agents, officers and/or employees.

Sunnyvale agrees to defend, indemnify and hold Mesquite, its officers, agents and employees harmless against any and all claims, lawsuits and judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons that may arise out of or be occasioned by any negligent act or omission of Sunnyvale, its officers, agents, employees and contractors, as a result of or in connection with this Agreement. With respect to any action involving Sunnyvale's actions or omissions, which Sunnyvale is solely negligent: (i) Sunnyvale shall, at its own expense, defend Mesquite; and (ii) Sunnyvale shall pay all costs and expenses (including attorneys' fees and costs) of, and satisfy all judgments entered against Mesquite. Nothing herein shall preclude Mesquite from participating in any such defense. The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of Mesquite, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of Sunnyvale and Mesquite, responsibility and indemnity, if any, shall

be apportioned comparatively in accordance with the law of the State of Texas, without waiving any governmental immunity available to Sunnyvale or Mesquite under Texas law.

Nothing herein contained or otherwise shall confer upon any third party any additional rights or remedies against Mesquite or Sunnyvale and nothing herein contained or otherwise shall be deemed to waive, diminish or impair Sunnyvale or Mesquite's limit of liability or immunity under Texas law.

**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:

Matthew Holzapfel, P.E. – City Engineer

City of Mesquite – Engineering Division

1515 N. Galloway Avenue

Mesquite, TX 75149

Sunnyvale:

Town Administrator

127 North Collins Rd.

Sunnyvale, TX 75182-9516

**Governing Law and 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.

**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.

Term

This Agreement shall remain in full force and effect so long as Sunnyvale continues to use and maintain the 12-inch water main for supplying water to its citizens unless otherwise terminated prior to then by mutual agreement of the parties.

Multiple Originals

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

Effective Date

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

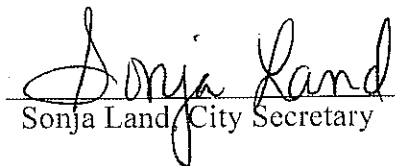
Authority to Contract

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.

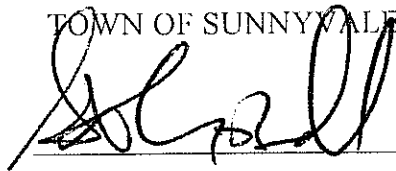
EXECUTED BY THE PARTIES this 12<sup>th</sup> day of July, 2010.

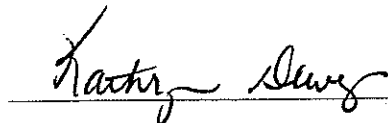
CITY OF MESQUITE:

  
\_\_\_\_\_  
Ted Barron, City Manager


  
\_\_\_\_\_  
Sonja Land, City Secretary

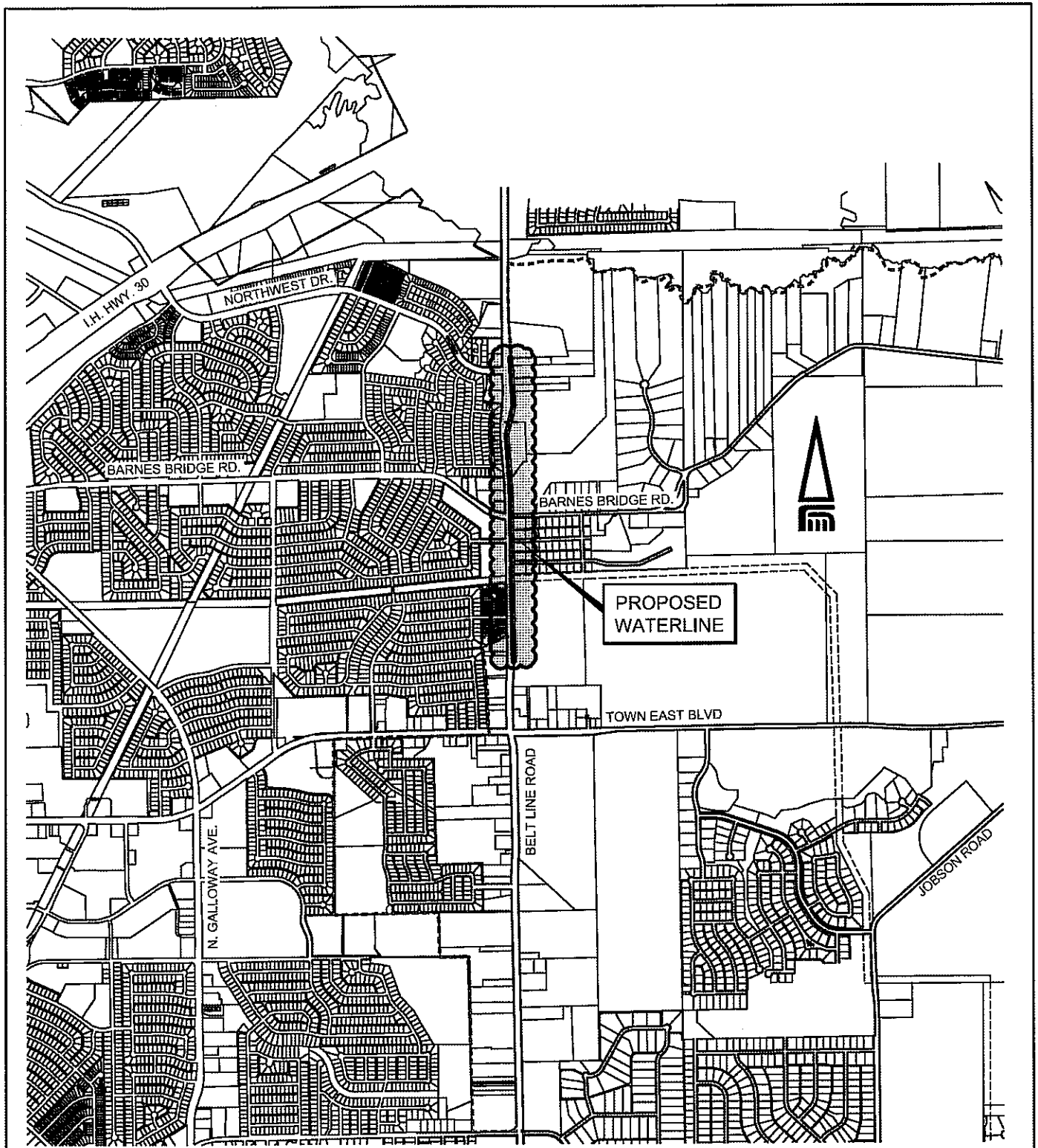
TOWN OF SUNNYVALE

  
\_\_\_\_\_

  
\_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney or his designee



LOCATION MAP OF PROPOSED 12" WATERLINE  
FOR TOWN OF SUNNYVALE, TEXAS

1"=2000'

EXHIBIT A