

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO FINALIZE, EXECUTE AND ADMINISTER AN AGREEMENT REGARDING THE PROVISION OF WASTEWATER SERVICE BETWEEN THE CITY OF MESQUITE, TEXAS, AND WJ TRINITY POINTE, LP, FOR THE PROVISION OF WASTEWATER SERVICES TO THE WJ TRINITY POINTE, LP 283.647 ACRES DEVELOPMENT LOCATED ON THE WEST CORNER OF FM 2932 AND GRIFFIN LANE.

WHEREAS, pursuant to Ordinance No. 4785 adopted on June 15, 2020, the City Council approved a change of zoning to Planned Development – Industrial for the development of an industrial business park on 283.647 acres located on the west corner of FM 2932 and Griffin Lane in Kaufman County, Texas, having an address of 12955 FM 2932 and known as the 2932 Industrial Park (the “**Project**”); and

WHEREAS, WJ Trinity Pointe, LP (“**Wynne Jackson**”), is developing the Project; and

WHEREAS, Wynne Jackson has requested retail wastewater service from the City of Mesquite (the “**City**”) for the Project; and

WHEREAS, the City Council approved a Wastewater Transportation Agreement between the City and Kaufman County Municipal Utility District No. 12 (the “**District**”) to transport the wastewater originating from the Project through the District’s wastewater collection system to the Point of Entry on the Lower East Fork Wastewater Interceptor System; and

WHEREAS, for the purposes stated herein, Staff recommends the City enter into an Agreement Regarding the Provision of Wastewater Service with Wynne Jackson (the “**Agreement**”) substantially in the form of the Agreement attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council finds that the Agreement is in the best interest of the City and will benefit the City and its citizens.

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

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

SECTION 2. That the City Council finds that the terms and provisions of the Agreement is in the best interest of the City and will benefit the City and its citizens.

SECTION 3. That the City Council hereby approves the Agreement and hereby authorizes the City Manager to: (i) finalize and execute the Agreement; and (ii) take such actions

and execute such documents as are necessary or advisable to consummate the transactions contemplated by the Agreement.

SECTION 4. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by 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 \$50,000.00; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (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 4 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 4 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.

SECTION 5. The sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this resolution.


DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 19th day of January 2021.

Bruce Archer
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

Sonja Land
City Secretary



David L. Paschall
City Attorney

EXHIBIT A TO RESOLUTION NO. _____

AGREEMENT REGARDING THE PROVISION OF WASTEWATER SERVICE

AGREEMENT REGARDING THE PROVISION OF WASTEWATER SERVICE

This AGREEMENT REGARDING THE PROVISION OF WASTEWATER SERVICE (“Agreement”) is made between the City of Mesquite (“Mesquite” or the “City”), a Texas home-rule municipal corporation, and WJ Trinity Point LP., (“Wynne/Jackson”) a Texas corporation, (collectively, the “Parties”).

RECITALS

WHEREAS, Wynne/Jackson is developing 283.647 acres of property located on the west corner of FM 2932 and Griffin Lane in Kaufman County, Texas into an industrial park known as the 2932 Industrial Park (“Development”); and

WHEREAS, Wynne/Jackson has requested retail wastewater service from the City; and

WHEREAS, in order to provide the retail wastewater service to the Development the City has requested that the Kaufman County Municipal Utility District No. 12 (“District”) transport, and the District has agreed to transport, the wastewater originating from the Development through the District’s wastewater collection system (hereinafter defined) to the Point of Entry on the Lower East Fork Wastewater Interceptor System, as that term “Point of Entry” is defined in the June 21, 2005 Lower East Fork Wastewater Interceptor System Contract between the City of Mesquite, the City of Seagoville, and North Texas Municipal Water District; and

WHEREAS, to transport the wastewater from the Development for the City, the District requires the City to pay the District for a portion of the District’s costs for the construction of the Lower East Fork Wastewater Interceptor System, and for the use of capacity in the District’s wastewater collection system; and

WHEREAS, Wynne/Jackson has agreed to pay those costs on the City’s behalf so that the City may provide retail wastewater service to the Development.

NOW THEREFORE, in consideration of the mutual promises of the Parties as set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

ARTICLE I WASTEWATER SERVICE REQUIREMENTS

1.01 Wynne/Jackson agrees to pay the District \$547,658.75 to reimburse the District a portion of the costs incurred by the District for the Lower East Fork Wastewater Interceptor System and to pay the District \$437,049.40 for use of the capacity in the District’s wastewater collection system.

1.02 Upon payment to the District, Wynne/Jackson will submit written proof of payment to the City.

1.03 Wynne/Jackson acknowledges that Daily Average Flow of wastewater delivered to the District from the Development may not exceed 0.169 million gallons per day (MGD), and that the Peak Flow of wastewater may not exceed 0.676 MGD. “Daily Average Flow” means the arithmetic average of all determinations of the daily discharge within a period of one calendar year. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily discharge, the determination shall be the average of all instantaneous measurements taken during a 24-hour period. The pre-developed initial Daily Average Flow above was estimated by multiplying 20 gallons per day per person by each 400 square feet of proposed building floor area. “Peak Flow” means the highest two hour average flow rate expected to be delivered to the District under any operational conditions, including periods of high rainfall (generally the two-year, 24 hour storm is assumed) and prolonged periods of wet weather. The pre-developed initial Peak Flow above was estimated by multiplying the Average Daily Flow by a peak factor of 4.0.

1.04 Wynne/Jackson agrees to place a restrictive covenant, the form of which is attached hereto as *Exhibit A*, and which is to be recorded in Kaufman County, Texas, that runs with the land on the property of Development in favor of the City that restricts the amount of wastewater that may be delivered from the Development to the District’s wastewater collection system to those limits as set out in Section 1.03, and, in the event flows exceed those limits, allows the City to (A) surcharge the Development’s owner for the discharge of wastewater in excess of the Daily Average Flow or Peak Flows as provided in Section 1.03 at a rate of 2.0 times the City’s commercial wastewater rate for the Development, as provided by Section 1.08, (B) collect additional fees from the Development’s owner to purchase additional capacity in the District’s wastewater collection system and to provide the District with pro rata reimbursement for costs it incurred to construct the Lower East Fork Wastewater Interceptor or to obtain capacity in other North Texas Municipal Water District wastewater facilities, and (C) require the Development’s owner to pay for the construction of additional wastewater facilities that will allow the City to transport the wastewater to the Lower East Fork Wastewater Interceptor. The restrictive covenant shall provide that the City may terminate water service (or have the water service terminated) for failure to comply with the restrictive covenant. The restrictive covenant shall terminate when the District no longer transports wastewater from the Development through the District’s wastewater collection system. Wynne/Jackson shall provide the City with a copy of the recorded restrictive covenant once it is recorded in Kaufman County, Texas.

1.05 The City will not release any engineering plans required for the Development as provided by the City’s Engineering Design Manual, Section 1.7.1 unless and until Wynne/Jackson makes the payments required by Section 1.01 and records the restrictive covenant described in Section 1.04.

1.06 The City agrees to cause the District to dedicate a temporary construction easement to Wynne/Jackson for the construction of the facilities required to meter and transport the wastewater from the Development through the District’s wastewater collection system. The easement shall be of sufficient width to allow open-cut trenching and installation of the facilities

as well as material staging and equipment maneuvering. Furthermore, the City agrees to waive any and all tree removal and mitigation requirements it may have related to the installation of the wastewater collection system facilities. Wynne/Jackson shall construct the facilities required to meter and transport the wastewater from the Development through the District's wastewater collection system within the temporary construction easement that the District will grant to Wynne/Jackson. Upon completion of the facilities required to meter the wastewater from the Development through the District's wastewater collection system, Wynne/Jackson shall dedicate those facilities to the District. Wynne/Jackson shall also dedicate to the District an easement over the portion of Development within which any of these facilities are located. The City shall not provide retail wastewater service to the Development unless and until the requirements of this Section 1.06 have been met. Upon the dedication of the facilities and easements, Wynne/Jackson shall provide evidence to the City that such dedication has been completed.

1.07 The City agrees to provide retail wastewater service within the Development in accordance with the City's Code of Ordinances conditioned upon: (A) Wynne/Jackson's payments to the District as provided by Section 1.01 of this Agreement; (B), Wynne/Jackson's recording of the restrictive covenant described in Section 1.04; and (C) the completion and acceptance by the City of wastewater facilities constructed by Wynne/Jackson that are necessary to provide wastewater service to the Development and transport the wastewater to the District's wastewater collection system.

1.08 Wynne/Jackson acknowledges that the City may set different retail commercial wastewater service rates for the Development because, in addition to the payments required by Section 1.01, the City must pay the District to have the wastewater from the Development transported through the District to the Lower East Fork Wastewater Interceptor System. The rates set by the City for the provision of retail wastewater service to the Development are within the City's discretion.

ARTICLE II ADDITIONAL PROVISIONS

2.01 Recitals. The Parties acknowledge and agree that the "Recitals" set forth in this Agreement are true and correct.

2.02 Term and Termination.

A. The term of this Agreement shall begin on the Effective Date. It shall terminate upon the completion of the requirements set out in Sections 1.01, 1.04, and 1.06.

B. This Agreement shall terminate if Wynne/Jackson fails to obtain from the City the release of engineering plans for the wastewater facilities that will serve the Development by December 31, 2026. The requirements related to the release of engineering plans are set out in

Section 1.7.1 of the City's Engineering Design Manual and are in addition to the requirements of Section 1.05.

2.03 Severability. If any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and this Agreement shall be construed as if such invalid provision had never been contained herein, and the remaining enforceable provisions of this Agreement are expressly deemed severable for this purpose.

2.04 Cooperation. The Parties hereto agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

2.05 Entire Agreement. This Agreement contains the entire agreement of the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.

2.06 Amendments. Any amendment to this Agreement must be in writing and shall be effective only if signed by the authorized representatives of each Party to this Agreement.

2.07 Force Majeure. If for any reason of force majeure, either Party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, then that Party shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the force majeure event. The obligation of the Party giving the notice, so far as it is affected by the force majeure and provided the cause is not reasonably within its control, shall be suspended during the continuance of the inability then claimed, but for no longer period and to no greater extent than the force majeure causes such inability. The term "force majeure" as used in this Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, order or actions of any kind of government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, pandemics, landslides, lighting, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, canals, or other structures, partial or entire failure of water supply including pollution (accidental or intentional), and any other cause not reasonably within the control of either Party.

2.08 No Third-Party Beneficiaries. This Agreement shall inure only to the benefit of the Parties and their successors and assigns as permitted by this Agreement. No person or entity that is not a Party to this Agreement shall be considered a third-party beneficiary of this Agreement.

2.09 Assignment. Neither Party may assign its rights and obligations under this Agreement without first obtaining a written consent from the other Party, which consent shall not be unreasonably withheld or delayed.

2.10 Applicable Law. This Agreement shall be construed in accordance with Texas law.

2.11 Venue. Venue for any action arising hereunder shall be in Dallas County, Texas.

2.12 Notices. Any notice required or contemplated by this Agreement shall be deemed given (i) if mailed via Certified Mail Return Receipt Requested, on the earlier of the date actually received or five business days after mailed, and (ii) if deposited with a private delivery service (such as U.P.S. or FedEx), when delivered, as evidenced by a receipt signed by a person at the delivery address, when received at the delivery address. All notices shall be addressed as follows:

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

And

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

WJ Trinity Point LP
Attn: Michael C. Jackson
600 N. Pearl, Suite 650
Dallas, Texas 75201

2.13 Events of Default. Except as provided in this section, no Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has had a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than 15 days after written notice of the alleged failure has been given). If an event of default shall occur, then the aggrieved Parties shall be entitled to specific performance, injunctive relief, and damages to the maximum extent available under applicable law.

2.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, and all of which will constitute one and the same instrument. Each Party represents and warrants that they have the full right, power and authority to execute this Agreement.

2.15 Effective Date. The Effective Date of this Agreement is the date upon which this Agreement was executed by the last Party.

[Signature pages to follow]

CITY OF MESQUITE, TEXAS

Cliff Keheley, City Manager
City of Mesquite, Texas

Date

ATTEST:

Sonja Land, City Secretary
City of Mesquite, Texas

APPROVED AS TO FORM:

David L. Paschall, City Attorney

WYNNE/JACKSON, INC.

_____, Title
WJ Trinity Point LP.

Date

ATTEST:

EXHIBIT A

DECLARATION OF RESTRICTIVE COVENANT

STATE OF TEXAS §
 §
COUNTY OF KAUFMAN §

THIS DECLARATION OF RESTRICTIVE COVENANT (this “**Declaration**”) in favor of the City of Mesquite, Texas, a municipal corporation (“**City**”), is executed to be effective as of _____, 2020 (the “**Effective Date**”) by WJ Trinity Point LP, a Texas corporation (the “**Owner**”).

RECITALS

WHEREAS, Owner is developing 283.517 acres of property located on the west corner of FM 2932 and Griffin Lane in Kaufman County, Texas into an industrial park known as the 2932 Industrial Park (“**Development**”); and

WHEREAS, ownership by Owner of the Development property is recorded in the Kaufman County Official Public Records at _____ (“**Property**”) as identified in **Exhibit A** attached to this Restrictive Covenant; and

WHEREAS, Owner has requested retail wastewater service from the City; and

WHEREAS, in order to provide the retail wastewater service to the Development, Kaufman County Municipal Utility District No. 12 (“**District**”) has agreed to transport the wastewater originating from the Development through the District’s wastewater collection system to the point of entry into the Lower East Fork Wastewater Interceptor System as those facilities are identified on **Exhibit B** attached to this Restrictive Covenant; and

WHEREAS, the District and the City have executed the Wastewater Transportation Agreement between the City of Mesquite and Kaufman County Municipal Utility District No. 12, dated _____ (“**Wastewater Transportation Agreement**”), which is attached hereto as **Exhibit C**; and

WHEREAS, to transport the wastewater from the Development for the City pursuant to the Wastewater Transportation Agreement, the District requires the City to pay the District for a portion of the District’s costs incurred for the construction of the Lower East Fork Wastewater Interceptor System, and for the use of capacity in the District’s wastewater collection system; and

WHEREAS, Owner has agreed to pay those costs on the City’s behalf so that the City may provide retail wastewater service to the Development; and

WHEREAS, Owner acknowledges that the City may, at its discretion, set different retail wastewater service rates for the Development because the City must pay the District to have the

wastewater from the Development transported through the District to the Lower East Fork Wastewater Interceptor System; and

WHEREAS, the amount of wastewater that may be transported from the Development through the District is limited by the Wastewater Transportation Agreement; and

WHEREAS, because the Development is an industrial park, it is difficult to predict how much wastewater will come from the Development as that depends in large part on the types of activities that will be conducted in the Development; and

WHEREAS, if the amount of wastewater from the Development exceeds what the City and the District have agreed may be transported through the District, the City will need to either renegotiate the Wastewater Transportation Agreement to increase capacity or otherwise build additional wastewater collection facilities to bypass the District, both of which would require additional funds to be collected from the owner of the Property in order to accommodate the increased wastewater transport demand.

NOW THEREFORE, in consideration of the City's agreement to accept a restrictive covenant for the Property, the receipt and sufficiency of which the Owner hereby acknowledge, the Owner agrees to the following restrictions being placed upon the Property, and hereby does place in favor of the City, the following restrictions on the Property (hereinafter the "Restrictions"):

The Daily Average Flow of wastewater from the Property may not exceed 0.169 million gallons per day (MGD), and the Peak Flow of wastewater from the Property may not exceed 0.676 MGD. "Daily Average Flow" means the arithmetic average of all determinations of the daily discharge within a period of one calendar year. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily discharge, the determination shall be the average of all instantaneous measurements taken during a 24-hour period. "Peak Flow" means the highest two hour average flow rate expected to be delivered to the District under any operational conditions, including periods of high rainfall (generally the two-year, 24 hour storm is assumed) and prolonged periods of wet weather.

REMEDIAL RIGHTS

The City shall have the following remedial rights should the Owner violate the Restrictions:

1. If the Daily Average Flow or the Peak Flow is exceeded in any calendar year, the City may assess a surcharge against the Owner of the Property for the discharge of wastewater in excess of the Daily Average Flow or Peak Flows at a rate of 2.0 times the City's then-current commercial wastewater rate.

2. If the Daily Average Flow or Peak Flow is exceeded for two consecutive calendar years and the District is agreeable to increasing the amount of wastewater that the District will transport from the Development to the point of entry on the Lower East Fork Wastewater

Interceptor System, the Owner agrees to pay to the City the additional fees required by the District to purchase additional capacity in the District's wastewater collection system and the provide the District with pro rata reimbursement for the costs the District incurred to construct the Lower East Fork Wastewater Interceptor or to obtain capacity in other North Texas Municipal Water District wastewater facilities.

3. If the District is not agreeable to increasing the amount of wastewater that the District will transport from the Development to the point of entry on the Lower East Fork Wastewater Interceptor System, the Owner shall pay for the construction of additional wastewater facilities that will allow the City to transport the wastewater to the Lower East Fork Wastewater Interceptor or to other wastewater collection facilities.

4. The City may terminate wastewater service if the Owner fails to comply with Paragraphs 1, 2, or 3.

OTHER PROVISIONS

1. Notice of Remedial Actions. The City shall provide the Owner with written notice of the failure to comply with this Restrictive Covenant. Such written notice shall provide the Owner with thirty (30) days to comply with the Restrictive Covenant, or to request that the City pursue additional transportation capacity with the District.

2. Payment for Additional Capacity. If the City amends the Wastewater Transportation Agreement to increase the amount of wastewater that may be transported through the District from the Property, the Owner shall pay the additional fees required by the District to the City within the time period prescribed by the City.

3. Payment for Additional Facilities. If the District and the City do not amend the Wastewater Transportation Agreement, the Owner shall pay the City for the construction of additional wastewater facilities that will allow the City to transport the wastewater to the Lower East Fork Wastewater Interceptor or other wastewater collection facilities within the time period prescribed by the City.

This Restrictive Covenant is perpetual and shall run with the land and be binding on all parties having any right, title, or interest in the Property, in whole or in part, and their heirs, successors, and assigns. Unless released earlier by written release approved by the City Council of the City of Mesquite, Texas and executed by the City Manager of the City of Mesquite or his or her designee and filed in the same Official Property Records as those in which this Restrictive Covenant is filed, this Restrictive Covenant shall terminate when the District no longer transports wastewater from the Property through the District's wastewater collection system.

Executed on this ____ day of _____, 20____.

WJ Trinity Point LP

By: _____

Name: _____

Title: _____

Accepted as Third Party Beneficiary this ____ day of _____, 20____.

City of Mesquite, Texas

ATTEST:

By: _____
_____, City Manager of the City of Mesquite

_____, City Secretary

STATE OF TEXAS

§
§
§

COUNTY OF _____

BEFORE ME, on this the ____ day of _____, 20____, personally appeared _____, _____ of WJ Trinity Point LP known to me to be the person whose name is subscribed to the foregoing instrument, and ____ acknowledged to me that ____ executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 20____.

Notary Public of the State of Texas

My commission expires: _____

STATE OF TEXAS

§
§
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COUNTY OF DALLAS

BEFORE ME, on this the ____ day of October 2020, personally appeared _____, the City Manager of the City of Mesquite, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that ____ executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 20____.

Notary Public of the State of Texas

My commission expires: _____

EXHIBIT A TO THE RESTRICTIVE COVENANT
THE PROPERTY

EXHIBIT B TO THE RESTRICTIVE COVENANT
THE FACILITIES

EXHIBIT C TO THE RESTRICTIVE COVENANT
WASTEWATER TRANSPORTATION AGREEMENT