

RESOLUTION NO. 28-2004

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AGREEING TO THE REIMBURSEMENT OF A PERCENTAGE OF THE DEVELOPMENT COSTS FOR THE EXTENSION OF EAST LAKE ROAD

WHEREAS, the City has adopted a Thoroughfare Plan to map the present and possible future roadways within the City; and

WHEREAS, the Thoroughfare Plan calls for the extension of East Lake Road south from State Highway 351 to Interstate 20; and

WHEREAS, the City has adopted a Comprehensive Plan that calls for this area to be developed as a high-quality Activity Center; and

WHEREAS, commercial development in the immediate area of East Lake Road is expected to increase the daily traffic counts and spur further development indicating a future traffic need beyond what would presently be required; and

WHEREAS, a citizen owns the majority of property required for the planned extension of East Lake Road; and

WHEREAS, this citizen has agreed to extend East Lake Road across his property and dedicate it to City without the need for eminent domain proceedings in exchange for reimbursement of a portion of his development costs; now, therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:**

PART 1: That the City Council of the City of Abilene, Texas, hereby approves of the Development Agreement attached hereto as Exhibit A.

PART 2: That the City Manager or his designee is hereby authorized to sign the attached Development Agreement and any necessary auxiliary agreements directly related thereto.


PART 3: That this resolution shall take effect immediately from and after its passage.

ADOPTED this 2nd day of December, A.D. 2004.

ATTEST:

  
City Secretary

  
Mayor

APPROVED:  
  
City Attorney **T. Daniel Santee II**  
First Assistant City Attorney

Exh. A.

## **DEVELOPMENT AGREEMENT**

This Agreement is entered this the 10<sup>th</sup> day of February, 2005 between the City of Abilene (City) and Kenneth L. Musgrave (Developer).

WHEREAS, City has adopted a Thoroughfare Plan to map the present and possible future roadways within the City; and

WHEREAS, the Thoroughfare Plan of 2000 calls for the extension of East Lake Road south from State Highway 351 to Interstate 20; and

WHEREAS, the City adopted a Comprehensive Plan in 2004 that calls for this area to be developed as a high-quality Activity Center; and

WHEREAS, commercial development in the immediate area of East Lake Road is expected to increase the daily traffic counts and spur further development; and

WHEREAS, Developer owns the majority of property required for the planned extension of East Lake Road; and

WHEREAS, Developer has agreed to extend East Lake Road across his property and dedicate it to City without the need for eminent domain proceedings in exchange for reimbursement of a portion of his development costs.

### **WITNESSETH:**

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

### **BACKGROUND FACTS**

1. The 2000 Thoroughfare Plan calls for the construction of a Collector grade extension of East Lake Road from State Highway 351 southward to Interstate 20. Known commercial development west of East Lake Road to the north of State Highway 351 is expected to increase the traffic counts and spur further development in the surrounding area, thus indicating a future traffic need beyond what the Developer would be required to provide that can be met more cost effectively by the City partnering with the Developer to build the necessary streets.
2. The 2004 Comprehensive Plan calls for this area to be developed as an Activity Center, indicating a desire for an attractive appearance including appropriate streetscape design and landscaping, connectivity within and between developments for both vehicles and pedestrians, accommodation of automobiles, transit, bicyclists, and pedestrians, and a mixture of land uses including commercial, office, institutional, and higher density

residential uses. Therefore, the planned extension of East Lake Road, as well as other roads in the area, should incorporate landscaping and appropriate street design to meet the goals of the 2004 Comprehensive Plan and to encourage further development and investment in the area.

3. Developer owns the majority of the property in the immediate area of the proposed roadway, and all of the property through which the extension shall pass.
4. Recent development patterns in the area, including a large commercial development west of East Lake Road, and anticipated future development indicate that an Arterial street, rather than a Collector street, is more appropriate for the extension of East Lake Road.

### **DEVELOPER RESPONSIBILITIES**

1. Developer shall be responsible for the entire up front expense of the roadway extension project (Project) as estimated in the attached Schedule A.
2. The Project shall be designed by Developer's engineers to the plans and specifications for the construction of such Project as approved by City and street design should adequately accommodate autos, bicyclists, pedestrians, and transit service per the recommendations of the Comprehensive Plan.
3. The Developer shall submit any streetscape and landscape elements to the City for review by the appropriate departments.
4. The Developer shall bid elements of the Project to be constructed within the public r.o.w. competitively, in accordance with the Local Government Code.
5. The Developer will designate a contact person available to answer questions on behalf of Developer. The contact person for this Agreement is Kenneth Musgrave. The secondary contact person for this Agreement is Eddie Chase, PE.
6. The Developer's engineer/construction manager shall allow inspection of the construction site by City at all reasonable times.
7. The Developer shall coordinate the intersecting of the Project with State Highway 351 and Interstate 20 through the Texas Department of Transportation (TxDOT), with the assistance of City.
8. The Developer shall dedicate the Project as a public thoroughfare upon acceptance by the City following completion.
9. The Developer shall retain responsibility for maintenance and upkeep of median, right-of-way (r.o.w.) and entry landscaping and irrigation systems.
10. The Developer shall allow City to draw effluent water through Developer's effluent water distribution system for r.o.w. irrigation should that be determined as the most cost-effective water supply. If effluent water is used for r.o.w. irrigation, consumption shall be metered and said metered water volume shall not be deducted from Developer's current effluent water allocation. In addition, if and when, additional effluent water is available for allocation, Developer shall be considered for an additional allocation at the rates set by Council at that time.

## CITY'S RESPONSIBILITIES

1. The City shall reimburse Developer a percentage of the total cost of the Project as set forth in the attached Schedule B.
2. The City shall review and approve all plans and specifications for every aspect of the Project for adherence to the Thoroughfare Plan, Comprehensive Plan and the City of Abilene Standard Specifications for Construction.
3. The City will designate a contact person available to answer questions on behalf of the City. The contact person for this Agreement is Andy Anderson. The secondary contact person for this Agreement is Richard Burdine.
4. The City will assist with the coordination of the Project with TxDOT, endeavoring to persuade TxDOT to pay for all or a substantial portion of the cost of signaling the intersection of SH 351 and East Lake Road (FM 2833).
5. The City will pursue abandonment of the public right of access on the current unpaved segment of East Lake Road extending southward from State Highway 351 and intersecting with Scottish Road once improved access is provided by the Project.
6. The City will pursue abandonment of the public right of access on the current segment of Scottish Road running between Interstate 20 and the current unpaved East Lake Road once improved access is provided by the Project.
7. The City shall be responsible for payment for water used for r.o.w. irrigation.
8. The City shall be responsible for maintenance of lighting fixtures installed within the r.o.w. and for payment for lighting electricity.

## MISCELLANEOUS TERMS

### 1. Indemnity

**The Developer must indemnify, hold harmless, and defend the City, its officers, agents and employees, from and against liability for any claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorneys' fees and other reasonable costs arising out of the Developer's work and activities conducted in connection with this Contract, including all causes of action based upon common, constitutional, or statutory law, or based in whole or in part upon negligent or intentional acts or omissions of Developer, its officers, agents, employees, sub-contractors, licensees, invitees, and other persons.**

**Developer must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, sub-contractors, licensees, invitees and other persons, as well as their property, while in the vicinity where the work is being done. The City is not liable or responsible for the negligence or intentional acts or omissions of the Developer, its officers, agents, employees, sub-contractors, licensees, invitees, and other persons.**

**The City assumes no responsibility or liability for harm, injury, or any damaging events, which are directly or indirectly attributable to premise defects, whether real or**

**alleged, which may now exist or which may hereafter arise upon the premises, responsibility for all such defects being expressly assumed by the Developer. The Developer agrees that this indemnity provision applies to all claims, suits, demands, and actions arising from all premise defects or conditions.**

**The City and Developer must provide the other prompt and timely notice of any event covered which in any way affects or might affect the Developer or City, and the City has the right to compromise and defend the same to the extent of its own interests.**

2. Venue and Choice of Law

Venue for any cause of action arising under this Agreement is Taylor County, Texas. This Agreement is governed by the laws of the State of Texas both as to interpretation and performance. This Agreement shall, in any dispute over its meaning or application, be interpreted fairly and reasonably, and not more strongly for or against either party.

3. Assignment

The Developer may not assign in whole or in part any rights, duties, obligations or interest arising from this Agreement without the City's prior written consent, and such consent will not be unreasonably withheld.

4. Successor in Interest

The provisions of this Agreement requiring the installation and maintenance of and landscaping features within the r.o.w., median, and entryway shall run with the land and specifically survive any transfer of the property or an interest therein, in whole or in part, to a purchaser, tenant or lessee and any document evidencing such transfer of interest shall incorporate the appropriate terms and conditions of this Agreement.

5. Amendment or Modification

This Agreement, including schedules and attachments, constitutes the entire agreement of the parties. Any statements, promises, or agreements made by either party or its agent, which are not contained in this Agreement, are of no effect. This Agreement may not be amended or modified except by both parties' written consent.

6. Compliance with Laws, Charter, Ordinances

Developer, its agents, employees and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Abilene, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

Developer must obtain all necessary permits and licenses required in completing the work contracted for in this Agreement.

7. Notice

All notices must be in writing, hand-delivered or mailed by certified mail, to the other party at the address below. The name and address for notification may be changed by notice to the other party.

**City -       ATTN:       Andy Anderson, Project Administrator**  
**555 Walnut St.**  
**Abilene, TX 79601**  
**(325) 676-6284 (325) 734-3300 Fax**

**Developer - ATTN:       Kenneth L. Musgrave**  
**500 Chestnut, Suite 700**  
**Abilene, Texas 79602**  
**(325) 673-6662 (325) 673-4128 Fax**

**IN WITNESS HEREOF** the parties have executed this Agreement.

**CITY OF ABILENE**

**DEVELOPER**

By: *Sam S. Blaney*  
Title: *City Manager*

By: *Kenneth L. Musgrave*  
Kenneth L. Musgrave

Address: 500 Chestnut, Suite 700  
Abilene, Texas 79602

Phone Number: (325) 673-6662  
*Social Security # 458-38-2711*  
Federal Tax I.D.#

ATTEST:

ATTEST: (If Corporation)

*Op Moore*  
City Secretary

\_\_\_\_\_  
Corporation's Secretary

Corporate Seal (if available):

APPROVED:

*Tush Aldridge*  
City Attorney

**SCHEDULE A**  
PROJECT ELEMENTS AND ESTIMATED COST

**Extension of East Lake Road between SH 351 and IH20**

- |  |               |
|--|---------------|
| 1. Segment 1 — a lighted, median-divided arterial with 2 travel lanes in each direction in a 120' r.o.w., allowing the City to add a travel lane in each direction in the future<br>1,850 linear feet at \$130.00/l.f. |               |
| 2. Segment 2 — a lighted, median-divided arterial with 2 travel lanes in each direction in a 100' r.o.w. 2,450 linear feet at \$130.00/l.f.  | \$240,500.00  |
| 3. R.O.W. cost for segment 1 (222,000 s.f.) and segment 2 (245,000 s.f.) 10.72 acres at \$10,000/acre  | \$ 107,200.00 |
| 4. Relocation of ranch entry and 4,300 l.f. of fencing   | \$ 24,000.00  |
| 5. Contingency for traffic signalization at East Lake Rd & SH 351  | \$ 75,000.00  |

**R.O.W. Irrigation, Landscaping and Lighting**

- |   |               |
|---|---------------|
| 6. Extension of effluent water irrigation system from Musgrave Ranch to IH20, approximately 6,000l.f. | \$ 42,4000.00 |
| 7. Median and Entry Landscaping and Irrigation System   | \$100,000.00  |
| 8. Median Lighting  | \$100,000.00  |

**Engineering, Surveying, Platting, Legal, etc.**

- |   |              |
|---|--------------|
| 14% of construction costs for items 1., 2., 5. — 8. above | \$122,700.00 |
|---|--------------|

**Contingency**

\$ 69,700.00

**Total Estimated Project Cost**

**\$1,200,000.00**

1. City Manager's Authority

The City and Developer acknowledge that the above estimated cost is preliminary and will be refined upon project engineering. Therefore, the City Manager is authorized by the City Council to reallocate funds among the various cost categories so long as the total amount to be reimbursed by City does not exceed that established in Schedule B.

**SCHEDULE B**  
**PROJECT REIMBURSEMENT CALCULATION**

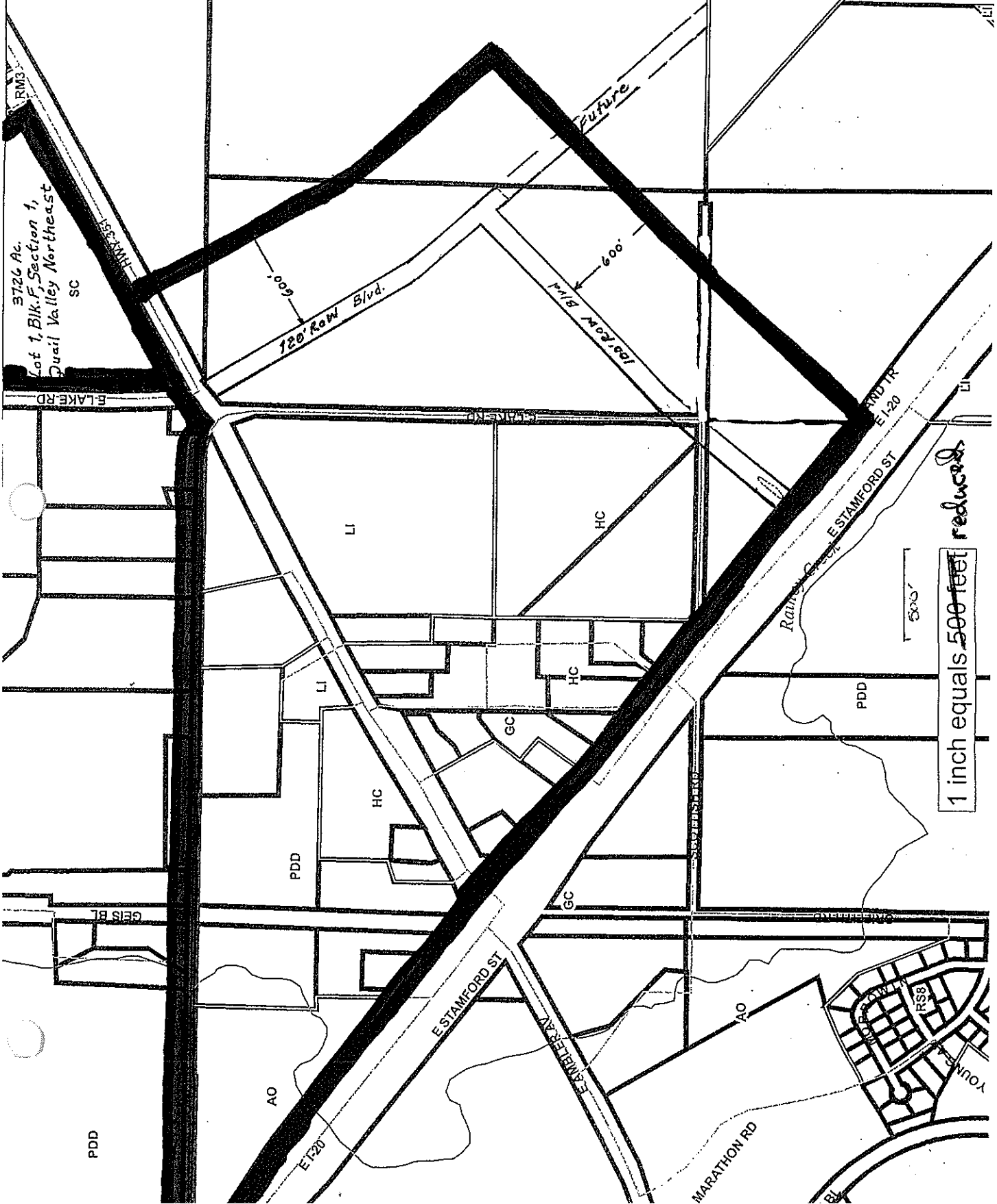
The City will reimburse the lesser of 50% of the final Project cost or \$600,000, plus 5% per annum (Reimbursement Sum) over a maximum ten-year period. Funds for the Reimbursement Sum shall only be paid from property tax revenue based on the following guidelines:

1. The City shall dedicate a portion of its share of the property tax revenue including rollback taxes within the area bounded on the South by Interstate 20, the West by Lowden Street, the North by State Highway 351 and the extension of East Lake Road, and to the East by the extension of a future road running perpendicular to East Lake Road and parallel to State Highway 351, and an area six hundred feet (600') north and east of the East Lake Road extensions (Development Zone), and an additional area consisting of approximately 37.26 acres north of State Highway 351 and identified as Lot 1, Block F, Section 1, Quail Valley Northeast, Taylor County, Texas. The subject area is depicted in the attached Schedule C.
2. The City shall calculate the portion of its share of the property tax revenue including rollback taxes within the Development Zone dedicated to the Reimbursement Sum by using a base of the 2004 property tax values as assessed by the Taylor County Central Appraisal District (Base Value).
3. Beginning upon completion and acceptance of the Project by the City and continuing annually until the Reimbursement Sum is paid in full, **or for a period of ten years**, whichever occurs first, the City shall, on or before January 30 of each year a payment is due, pay Developer the sum equaling 50% of City's share of the property tax revenue including rollback taxes from within the Development Zone that is over and above the Base Value.





**SCHEDULE C**  
(Development Zone proposed project)



1 inch equals 500 feet reduced