

RESOLUTION NO. 39-98

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF MESQUITE, TEXAS, AND NORKOL CONVERTING, INC.; AUTHORIZING ITS EXECUTION BY THE MAYOR; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City Council has been presented a proposed Agreement by and between the City of Mesquite, Texas, and Norkol Converting, Inc., has established Reinvestment Zone No. Nine in the City of Mesquite, Texas, and has determined to enter into a commercial/industrial tax abatement agreement with Norkol Converting, Inc., a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the Mayor, shall be authorized to execute it on behalf of the City of Mesquite.

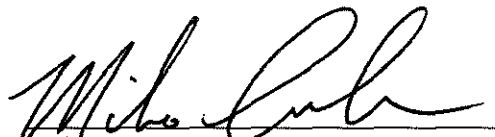
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. The terms and conditions of the Agreement having been reviewed by the City Council of the City of Mesquite and found to be acceptable in the best interests of the City of Mesquite and its citizens, are hereby in all things approved.

SECTION 2. The Mayor is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Mesquite, substantially according to the terms and conditions set forth in the Agreement.


SECTION 3. That this Resolution shall take effect from and after its adoption.

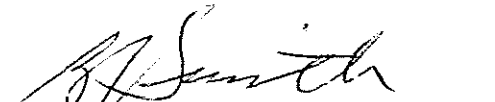
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 19th day of October, 1998.


Mike Anderson
Mayor

ATTEST:

APPROVED:


Ellen Williams
City Secretary


B.J. Smith
City Attorney

THE STATE OF TEXAS

COUNTY OF DALLAS

AGREEMENT

This Agreement is entered into, by and between the **CITY OF MESQUITE, TEXAS**, a home rule city and Municipal Corporation of Dallas County, Texas, duly acting herein by and through its Mayor (hereinafter referred to as "**CITY**"); and **NORKOL CONVERTING, INC.**, duly acting by and through its Chief Executive Officer, hereafter referred to as "**OWNER**").

WITNESSETH:

WHEREAS, on the 19th day of October, 1998, the City Council of the City of Mesquite, Texas, passed Ordinance No. 3267 establishing Reinvestment Zone No. Nine, City of Mesquite, Texas for commercial/industrial tax abatement, hereinafter referred to as the "**ORDINANCE**", as authorized by Chapter 312, Texas Property Tax Code, as amended, hereinafter referred to as "**STATUTE**"; and

WHEREAS, the **CITY** has adopted by Resolution 5-97, Criteria and Guidelines governing tax abatement reinvestment zones and agreements (the "**CRITERIA**"); and

WHEREAS, the **CRITERIA** constitute appropriate Guidelines and Criteria governing tax abatement agreements to be entered into by the **CITY** as contemplated by the **STATUTE**; and

WHEREAS, the **CITY** has adopted a resolution (Resolution No. 9-88) stating that it elects to be eligible to participate in tax abatement; and

WHEREAS, the **CITY** desires to participate in tax abatement to maintain and/or enhance the commercial/industrial economic and employment base of the Mesquite area to the long term interest and benefit of the **CITY**, in accordance with said **ORDINANCE** and **STATUTE**; and

WHEREAS, the contemplated use of the PREMISES, as hereinafter defined, the contemplated improvements to the PREMISES in the amount as set forth in this Agreement, and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. Nine in accordance with the purposes for its creation and are in compliance with the CRITERIA and the ORDINANCE and similar guidelines and criteria adopted by the CITY and all applicable law;

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. The property to be the subject of this Agreement shall be that property described by metes and bounds and map attached hereto as EXHIBITS "A" and "B" and made a part hereof and shall be hereinafter referred to as "PREMISES."

2. The OWNER shall commence construction of its manufacturing and distribution center on the PREMISES (hereinafter referred to as "IMPROVEMENTS") with a total investment for construction, real and business personal property of at least four million, eight hundred thousand dollars (\$4,800,000) and substantially complete same on or about December 1999; provided, that OWNER shall have such additional time to complete the IMPROVEMENTS as may be required in the event of a "force majeure" if OWNER is diligently and faithfully pursuing completion of the IMPROVEMENTS. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of OWNER including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omission of OWNER), delays caused by franchise utilities, fire, explosions or floods, and strikes. The date of completion of the IMPROVEMENTS shall be defined as the date a Certificate of Occupancy is issued by the City of Mesquite.

3. The OWNER agrees and covenants that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the IMPROVEMENTS as a good and valuable consideration of this AGREEMENT. OWNER further covenants and agrees that all construction of the IMPROVEMENTS will be in accordance with all applicable state and local laws and regulations or valid waiver thereof. In further consideration, OWNER shall thereafter, from the date a Certificate of Occupancy is issued until the expiration of the Agreement, continuously operate and maintain the PREMISES as a manufacturing and distribution center for Norkol Converting, Inc.

4. In the event that: (1) the IMPROVEMENTS for which an abatement has been granted are not completed in accordance with this Agreement; or (2) OWNER allows its ad valorem taxes owed the CITY to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes; or (3) OWNER breaches any of the terms or conditions of this Agreement, then this Agreement shall be in default. In the event that the OWNER defaults in its performance of (1), (2) or (3) above, then the CITY shall give the OWNER written notice of such default and if the OWNER has not cured such default within thirty (30) days of said written notice, or, if such default cannot be cured by the payment of money and cannot with due diligence be cured within a 90-day period owing to causes beyond the control of the OWNER, this Agreement may be terminated by the CITY or the abatement extended by this agreement may be reduced in percentage of taxes to be abated and/or period during which abatement is to be extended by revision of this agreement as may be determined by the CITY to be a reasonable abatement based upon partial performance by the OWNER. Notice shall be in writing and shall be delivered by personal delivery or certified mail to the Chief Executive Officer of Norkol

Converting, Inc., 11650 West Grand Ave., Northlake, Illinois 60164. As liquidated damages in the event of default, all taxes which otherwise would have been paid to the CITY without the benefit of abatement (but without the addition of penalty; interest will be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas) will become a debt to the CITY and shall be due, owing and paid to the CITY within sixty (60) days of the expiration of the above-mentioned applicable cure period.

5. The CITY represents and warrants that the PREMISES do not include any property that is owned by a member of council or boards, agencies, commissions, or other governmental bodies approving, or having responsibility for the approval of, this Agreement.

6. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement cannot be assigned by OWNER other than to wholly-owned subsidiary of OWNER unless written permission is first granted by the CITY, which permission shall be at the sole discretion of the CITY.

7. It is understood and agreed between the parties that the OWNER, in performing its obligations hereunder, is acting independently, and the CITY assumes no responsibilities or liabilities in connection therewith to third parties and OWNER agrees to indemnify and hold harmless therefrom.

8. The OWNER agrees and covenants that the IMPROVEMENTS herein described in this Agreement shall contribute to the creation and retention of not less than 25 jobs after the expiration of the abatement period.

9. The OWNER further agrees that the CITY, its agents and employees, shall have reasonable right of access to the PREMISES to inspect the IMPROVEMENTS in order to insure that the

construction of the IMPROVEMENTS are in accordance with this Agreement and all applicable state and local laws and regulations or valid waiver thereof. After completion of the IMPROVEMENTS, the CITY shall have the continuing right to inspect the PREMISES to insure that the PREMISES are thereafter maintained and operated in accordance with this Agreement.

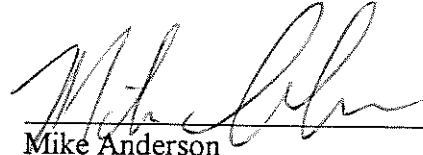
10. Subject to the terms and conditions of this Agreement, and subject to the rights and holders of any outstanding bonds of the CITY, a portion of ad valorem real property taxes and business personal property taxes from the PREMISES otherwise owed to the CITY shall be abated. Said abatement shall be an amount equal to 50 percent (50%) of the taxes assessed upon the increased value of the IMPROVEMENTS over the value in the year in which this Agreement is executed and in accordance with the terms of this Agreement and all applicable state and local regulations or valid waiver thereof; provided that the OWNER shall have the right to protest and/or contest any assessment of the PREMISES and said abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Said abatement shall extend for a period of five (5) years beginning January 1, 2000.

11. This Agreement was authorized by Resolution No. 39-98 of the City Council at its Council meeting on the 19th day of October, 1998, authorizing the Mayor to execute the Agreement on behalf of the City.

12. This shall constitute a valid and binding Agreement between the CITY and NORKOL CONVERTING, INC. when executed in accordance herewith.

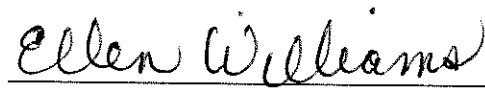
13. The Agreement is performable in Dallas County, Texas, witness our hands this

CITY OF MESQUITE, TEXAS



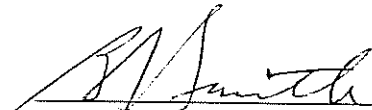
Mike Anderson
Mayor

ATTEST:



Ellen Williams
City Secretary

APPROVED:



B.J. Smith
City Attorney

NORKOL CONVERTING, INC.

Chief Executive Officer

ATTEST:

Reinvestment Zone No. Nine Metes and Bounds Survey

Whereas Norkol Curtis Building Partnership is the sole owner of

Being a 6.437 acre tract of land situated in the Daniel Tanner Survey, Abstract No. 1462, in the City of Mesquite, Dallas County, Texas, said tract being all of that certain 6.411 acre tract conveyed to the Northern Trust Company as trustee for the Electronic Data Systems Corporation Retirement Trust as evidenced by Deed recorded in Volume 89234, Page 1789, Deed Records of Dallas County, Texas (DRDCT) and being more particularly described by metes and bounds as follows (bearings based on the west right-of-way line of Town East Boulevard (a 100-foot wide right-of-way) as per deed in Volume 90196, Page 3744, DRDCT, said bearing being South 00° 10'00" East):

BEGINNING at a found 5/8 inch iron rod on the south line of Curtis Boulevard (50-foot wide right-of-way), said point being South 89° 50'00" West, 836.35 feet from the west line of said Town East Boulevard, said point also being the northwest corner of that certain 12.00 acre tract (Tract 1) conveyed to Foamex, L.P., a Delaware Limited Partnership as evidenced by Deed recorded in Volume 90196, Page 3744, DRDCT;

THENCE South 00° 10'00" East, departing the south line of said Curtis Boulevard and along the west line of said Foamex Tract 1, a distance of 525.00 feet to a 1/2 inch iron rod set for corner said point being the northeast corner of a called 0.798 acre tract (Tract 2) as described in said Foamex Deed;

THENCE South 89° 50'00" West, departing the west line of said Foamex Tract 1 and along the north line of said Foamex Tract 2, a distance of 157.00 feet to a 1/2 inch iron rod set at the beginning of a curve to the right;

THENCE in a northwesterly direction along the arc of said curve to the right, having a central angle of 45° 14'00" and a radius of 528.15 feet, an arc distance of 416.96 feet to a 1/2 inch iron rod set for corner, said point being on the northerly right-of-way line of a Texas and Pacific Railway Company tract, as evidenced by Deed recorded in Volume 70087, Page 199, DRDCT;

THENCE North 44° 56'00" West, along the northerly line of said Texas and Pacific Railway tract, a distance of 234.07 feet to 1/2 inch iron rod found for corner at the intersection of the northerly line of said Texas and Pacific Railway tract with the southerly right-of-way line of said Curtis Boulevard;

THENCE North 45° 04'00" East, a distance of 48.07 feet to a 1/2 inch iron rod found for the beginning of a non-tangent curve to the right;

THENCE Northeasterly along said curve to the right, having a central angle of 45° 05'15", a radius of 579.55 feet and a radial bearing of South 45° 01'40" East, an arc distance of 456.06 feet to a 1/2 inch iron rod set for corner;

THENCE North 89° 50'00" East, a distance of 251.59 feet to the POINT OF BEGINNING and containing 6.437 acres of land, more or less.

Norkol Converting, Inc.

