

RESOLUTION NO. 04-2005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH INDUSTRIAL DEVELOPMENTS INTERNATIONAL, L.P. FOR SUCH PURPOSES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes municipalities to establish and provide for the administration of programs that promote economic development and stimulate business and commercial activity in the City of Mesquite (the "City"); and

WHEREAS, the City Council has been presented with a proposed agreement by and between the City and Industrial Developments International, L.P. ("IDI"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (the "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 Agreement will assist in implementing a program whereby economic development will be promoted and business and commercial activity will be stimulated in the City.

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

SECTION 1. That the City Council finds that the terms of the proposed agreement by and between the City of Mesquite (the "City") and Industrial Developments International, L.P. ("IDI"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (the "Agreement"), will promote economic development and stimulate business and commercial activity in the City and otherwise meet the criteria of Section 380.001 of the Texas Local Government Code.


SECTION 2. That the City Council hereby adopts an economic development program whereby the City will make economic development program payments to IDI, and take other specified actions, in accordance with the terms outlined in the Agreement.

SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 4. That the Mayor is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City substantially according to the terms and conditions set forth in the Agreement.


SECTION 5. That this resolution shall become effective immediately from and after its passage.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 18th day of January, 2005.




Mike Anderson
Mayor

ATTEST:



Judy Womack
City Secretary

APPROVED:



B. J. Smith
City Attorney

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
(Chapter 380 Agreement)

This Economic Development Program Agreement ("Agreement") is made and entered into by and between the City of Mesquite, Texas (the "City"), and Industrial Developments International (Texas), L.P., (the "Company") for the purposes and considerations stated below:

WITNESSETH:

WHEREAS, on January 18, 2005, the City adopted Resolution No. **04-2005** (the "Resolution") establishing an Economic Development Program pursuant to Section 380.001 of the Texas Local Government Code ("Section 380.001") and authorizing this Agreement as part of the Economic Development Program established by the Resolution (the "Program");

WHEREAS, the Company desires to participate in the Program by entering into this Agreement; and

WHEREAS, the Premises (as hereinafter defined) consists of three separate tracts of land currently owned by three separate parties and poses unique challenges to its assemblage for development; and

WHEREAS, the Company is unwilling to purchase the Premises and develop the Project unless the City enters into this Agreement; and

WHEREAS, the Project (as hereinafter defined) takes advantage of the unique site in order to have the least visual impact on the adjacent residential neighborhoods; and

WHEREAS, the Project takes advantage of the unique site in order to have the least traffic impact on the adjacent residential neighborhoods; and

WHEREAS, the Project requires extensive water line extensions that would be the responsibility of the City within the next six years regardless of any adjacent industrial development; and

WHEREAS, the Project will add industrial facilities that are needed for the attraction of new industry and the creation of new jobs; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program, and that the Company's performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City;

NOW, THEREFORE, in consideration of the mutual benefits and premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is

hereby acknowledged, the parties agree as follows:

1. Authorization.

The City has concluded that this Agreement is authorized by Section 380.001, and is authorized by Resolution of the City. The City has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to the City as a result of the Company's development and operation of the Project. The City has concluded that the development of the Project will increase the taxable value of the Premises and indirectly result in creation of additional jobs throughout the City and the value of the benefits of the Project will outweigh the amount of expenditures required of the City under this Agreement.

2. Definitions. The following definitions shall apply to the terms used in this Agreement:

"Building" means any industrial building within the Project constructed by the Company.

"City" means the City of Mesquite, Texas.

"Company Affiliate" means any Person directly or indirectly controlling, controlled by, or under common control with the Company. As used in the definition of "Affiliate," the term "control" means, directly or indirectly, the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"Effective Date" means the date that all parties have executed this Agreement.

"Force Majeure" means any contingency or cause beyond the reasonable control of the Company including, without limitation, acts of God or the public enemy, war or other public emergency, riot, civil commotion, insurrection, governmental or defacto governmental action (unless caused by wrongful acts or omissions of the Company), fire, explosion or flood, strikes, non-availability of materials or supplies, delay in transportation, accidents, floods, weather, or delays by utility companies in bringing utility lines to applicable portion of the Premises.

"Initial Construction" means any construction of any Building, upon the Premises for which a building permit is required, but does not include any renovation, remodeling, retrofitting, or reconfiguration of any building or structure then existing upon the Premises.

"Person" means an individual or a corporation, partnership, trust, estate,

unincorporated organization, association, or other entity.

“Premises” means that certain tract of real property located in Dallas County, Texas, consisting of approximately 90 acres, more or less, as more particularly described on Exhibit A hereto.

“Project” means the construction of approximately 1,400,000 square feet of industrial buildings to be constructed and developed over a ten-year period on the Premises.

“Program” has the meaning set forth in the recitals to this Agreement.

“Program Payment” means the payments to be made by the City pursuant to Section 4 of this Agreement.

“Road Impact Fee” means a fee for roadway facilities imposed on new development pursuant to Chapter 7.5 of the City Code of Ordinances.

“Section 380.001” has the meaning set forth in the recitals to this Agreement.

“Site Plan” means the preliminary plat of the Premises depicting the Project, as may be amended from time to time.

“Substantial Completion” means completion of construction of a Building and the Water Line Improvements (as defined below), as established by the issuance of a certificate of occupancy for the shell building and acceptance of the water line by the City.

“Term” has the meaning set forth in Section 3 of this Agreement.

3. **Term.**

This Agreement shall be effective as of the Effective Date and will terminate upon the expiration of 10 years from the Effective Date (unless earlier terminated as provided herein, the “Term”); provided, however, that if the Company has not (a) acquired the Premises on or before March 31, 2005 or (b) submitted the Site Plan for approval by the City by January 1, 2006, in accordance with Section 5, this Agreement shall terminate as of either such date (as applicable) and neither the Company nor the City shall have any further obligation hereunder.

4. **City’s Development Program Incentives.**

(a) For all Initial Construction by the Company upon the Premises during the Term, the City hereby grants the Company the following incentives:

Fee Waivers and Reductions.

The City agrees to reimburse the Company in an amount equal to the Road Impact Fee charged to and paid by the Company in connection with the construction of any Building. The reimbursement shall occur on or before fifteen (15) days after the issuance of a certificate of occupancy for the applicable Building. The reimbursement of the Road Impact Fees is anticipated for a total of 1,400,000 square feet of industrial buildings on the Premises.

(b) In connection with the Initial Construction of the Project's first Building (the "First Building"), the City hereby grants the following incentives:

Infrastructure Incentives.

The City shall reimburse to the Company an amount equal to the cost of any water line extension and/or storm sewer improvements (collectively, the "Water Line Improvements") required to serve the Project as a whole (the "Water Line Costs"). The Water Line Costs shall be deemed to include, without limitation, preparation of all blueprints, schematic renderings, architect's drawings, specifications, written descriptions, feasibility studies, engineering studies, inspection fees, permit fees and similar items, all labor necessary to perform such construction and all materials and equipment incorporated therein, provided that for purposes herein, the Water Line Costs shall never be deemed to exceed \$1,150,000. The Company shall coordinate with City staff the design, bidding and construction of the Water Line Improvements. The reimbursement by the City to the Company for the Water Line Costs shall occur following the issuance of a certificate of occupancy for the First Building.

5. Company Covenants.

In consideration of the City's incentives under this Agreement (including the payment of monies to the Company), the Company agrees to use commercially reasonable efforts to:

- (a) cause the professional preparation of the Site Plan and submit the Site Plan for approval by the City by December 31, 2005; and
- (b) commence construction on the First Building by September 1, 2005 and Substantial Completion of the First Building by May 31, 2006, as both such dates may be extended by delay caused by Force Majeure or delay caused by a governmental entity (including but not limited to, delay in connection with permitting and inspections and/or approval of the Site Plan).

6. Mutual Assistance.

The City and the Company shall take all reasonable measures which are necessary or

appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

7. Covenants Running with the Land.

The Company's rights, covenants, restrictions, burdens, privileges and charges, set forth in this Agreement shall exist at all times as long as this Agreement is in effect, among all parties having any right, title or interest in any portion of all the Premises, but which covenants shall absolutely expire without the requirement of any further action by any person upon the expiration of the Term or earlier termination of this Agreement as provided herein. Notwithstanding the foregoing, the Company's right to receive any Program Payment shall be personal to the Company and shall remain the right of the Company regardless of the transfer of any portion of the Premises to any third party unless specifically and expressly assigned to such party in writing by the Company. Although any termination provided for herein shall be self-effective and require no further action of the parties hereto, at the Company's request the City hereby agrees to execute reasonable documentation in recordable form further evidencing such termination.

8. Representations and Warranties.

The City represents and warrants to the Company that the Program and this Agreement are within the scope of its authority and the provisions of its charter and that it is duly authorized and empowered to establish the Program and enter into this Agreement. Subject to Section 11 below, the Company represents and warrants to the City that it has the requisite authority to enter into this Agreement.

9. Default.

(a) Any Program Payments from the City which are not timely paid by the City shall incur interest at the highest rate per annum allowed by applicable law from the date such Program Payment is due until paid.

(b) In the event the Company fails to fulfill any of the obligations set forth in Section 5 of this Agreement, the City may, upon written notice to the Company, terminate this Agreement in which event, upon receipt of such notice from the City (unless the applicable obligation has been fulfilled by the Company prior to the receipt of such notice), the Company shall remit to the City a sum equal to the total of all Program Payments made to the Company pursuant to this Agreement, plus interest at the highest rate per annum allowed by applicable law from the date of such notice, until paid, the parties hereby agreeing that such termination and reimbursement shall be the sole and exclusive remedy of the City and the City hereby waives and covenants not to bring any action or suit, whether legal or equitable, against the Company for damages or other redress in the event of such failure or of any default by the Company hereunder.

10. **Indemnification.**

THE COMPANY IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PREMISES OR IMPROVEMENTS LOCATED THEREON. THE COMPANY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST CLAIMS SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND ATTORNEYS FEES ACTUALLY INCURRED BY THE CITY (COLLECTIVELY, "LOSSES") TO THE EXTENT SUCH LOSSES ARE DUE TO ANY DEATH OR INJURY TO A PERSON ON THE PREMISES OR THE LOSS OF, LOSS OF USE OF, OR DAMAGE TO PROPERTY ON THE PREMISES, SO LONG AS SUCH LOSSES ARISE OUT OF OR OCCUR AS A DIRECT CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, PROVIDED HOWEVER THAT THIS INDEMNIFICATION SHALL NOT APPLY IF A COURT OF COMPETENT JURISDICTION FINDS THAT THE LOSSES AROSE FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY (WITHOUT ANY CONTRIBUTORY NEGLIGENCE OR WILLFUL MISCONDUCT OF THE COMPANY), ITS OFFICERS, OR EMPLOYEES. NOTWITHSTANDING THE FOREGOING, THE COMPANY SHALL NOT HAVE LIABILITY HEREUNDER AFTER IT CEASES TO HOLD TITLE TO THE PORTION OF THE PREMISES ON WHICH THE APPLICABLE "LOSS" OCCURRED. ADDITIONALLY, THE CITY SHALL LOOK SOLELY TO THE EQUITY OF THE COMPANY IN THE PROJECT FOR THE SATISFACTION OF THE INDEMNITY OBLIGATIONS CONTAINED HEREIN. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE COMPANY'S LIABILITY UNDER THE FOREGOING INDEMNITY SHALL IN NO EVENT EXCEED THE COMPANY'S EQUITY INTEREST IN THE PROJECT.

11. **Acquisition of the Premises.**

The City hereby acknowledges that the Company does not own the Premises as of the date hereof. The Company shall be under no obligation to acquire the Premises, provided that if the Company has not acquired the Premises on or before March 31, 2005, this Agreement shall terminate in its entirety and neither the Company nor the City shall have any further obligations hereunder (including, but not limited to those obligations contained in Section 10, above). Neither this Agreement nor a memorandum thereof may be filed of record prior to the acquisition of the Premises by the Company.

12. **Miscellaneous Matters.**

(a) **Section or Other Headings.** Section or other headings contained in this Agreement

are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(b) Attorneys Fees. In the event any legal action or proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorneys' fees and expenses incurred by reason of such action.

(c) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the transactions contemplated herein.

(d) Amendment. This Agreement may only be amended, altered, or revoked by written instrument signed by the Company and the City.

(e) Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. The Company may assign all or part of its rights and obligations hereunder (a) to any Affiliate effective upon written notice to the City, or (b) to any Person other than an Affiliate with the prior written approval of the City, which approval shall not be unreasonably withheld.

(f) Notice. Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing;

Company: Industrial Developments International (Texas), L.P.
5420 LBJ Freeway
Suite 1275
Dallas, Texas 75240
Attention: Doug Johnson, Vice President/Development

City: Mayor
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

(g) Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

(h) Applicable Law. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Dallas County, Texas.

(i) Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

(j) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

THE CITY OF MESQUITE

By: Mike Anderson
Mike Anderson, Mayor

Date: 1/24/05

ATTEST:

asst. Sonja Land
CITY SECRETARY

Industrial Developments International
(Texas), L.P.

By: ID International (Texas), Inc., a
Georgia corporation, its sole general
partner

By: Timothy Gunter
Timothy Gunter
EVP/COO

Date: 1/27/05

APPROVED AS TO FORM AND LEGALITY:

AB Smith
CITY ATTORNEY

Date: 1-20-05

THE STATE OF TEXAS

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COUNTY OF DALLAS

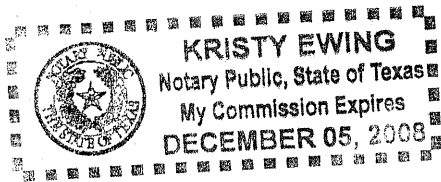
BEFORE ME, the undersigned authority, on this day personally appeared Mike Anderson, Mayor of the CITY OF MESQUITE, a municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he was duly authorized to perform the same by appropriate resolution of the City Council of the City of Mesquite and that he executed the same as the act of the said City for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 24 day of January, 2005.

Kristy Ewing
Notary Public in and for the State of Texas

Kristy Ewing
Notary's Printed Name

My Commission Expires: 12-5-08



THE STATE OF TEXAS

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COUNTY OF DALLAS

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BEFORE ME, the undersigned authority, on this day personally appeared _____, _____ of ID International Texas, Inc., sole general partner of Industrial Developments International (Texas), L.P., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said instrument was signed on behalf of said corporation on behalf of such partnership, and said _____ acknowledged said instrument to be his free act and deed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE in said County and State
this _____ day of _____, 2005.

Notary Public in and for the State of Texas

Notary's Printed Name

My Commission Expires: _____

**EXHIBIT A
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

Description of Premises