

RESOLUTION NO. 05-2005

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 PROLOGIS 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 ProLogis, 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 ProLogis, 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 ProLogis, 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.



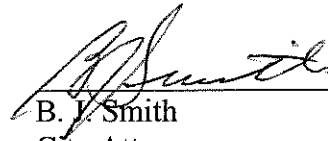
Mike Anderson
Mayor

ATTEST:

APPROVED:



Judy Womack
City Secretary



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 ProLogis (the "Company") for the purposes and considerations stated below:

WITNESSETH:

WHEREAS, on January 18, 2005, the City adopted Resolution No. 05-2005 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 City Council Resolution (the "Program");

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

WHEREAS, the Company has previously developed an industrial facility adjacent to the proposed project which has generated tax base for the City and jobs for its citizens; and

WHEREAS, the proposed location of the project is on land that is currently non-tax producing property and the proposed project will generate immediate tax revenue to the City; 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 as hereinafter defined. This development will increase the taxable value of the Property 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:

“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.

“Complaining Party” has the meaning set forth in Section 10 of this Agreement.

“Defaulting Party” has the meaning set forth in Section 10 of this Agreement.

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

“Force Majeure” means 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 defacto governmental action (unless caused by acts or omissions of OWNER), fire, explosion or flood, and strikes.

“Initial Construction” means any construction of any phase of the Project, 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 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 30 acres, more or less, as more particularly described on Exhibit A hereto.

“Project” means the 521,200 square foot industrial building to be constructed and operated 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.

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

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

3. **Term.**

This Agreement shall be effective as of the date of execution by all parties. This Agreement will terminate upon the expiration of 10 years from the date of the certificate of occupancy; provided, however, that if the Company has not completed construction of the Project by June 30, 2006, in accordance with Section 10(b), this Agreement shall terminate and the City shall have no further obligation hereunder.

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

For all Initial Construction by Company upon the Premises during the term of this Agreement, the City shall grant Company the following incentives:

(a) **Fee Waivers and Reductions.**

(1) The City agrees to reimburse the City's Road Impact Fees in an amount equal to the Road Impact Fee charged to the Company. The reimbursement shall occur following the issuance of a certificate of occupancy for the Project.

(b) **Tax Incentives.**

(1) The City shall rebate to the Company an amount equal to seventy-five percent of the real property improvement value taxes and the business personal property taxes paid the City for a five-year period beginning in the 2006 tax year. Following the expiration of the initial five year term, the City shall rebate to the Company an amount equal to fifty-five percent of the real property improvement value taxes and the business personal property taxes paid the City for an additional five-year period. The maximum term of this incentive is ten years from the 2006 tax year.

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:

- (a) take all reasonable steps to cause all Construction Sales to occur in the City in order to generate city sales tax revenue to the extent feasible;
- (b) commence construction of the Premises by September 1, 2005. The building shall be a minimum of 521,200 square feet and be of masonry materials. Company shall have such additional time to complete the improvements as may be required if City determines that Company has not completed the improvements due to an event of Force Majeure, or if in the reasonable opinion of the City, the Company has made substantial progress toward completion of the improvements. Notwithstanding these provisions, the

Certificate of Occupancy for Phase I must be obtained by June 30, 2006;

- (c) maintain and operate the Project and the Premises as an industrial facility; and
- (d) comply with all applicable federal, state and local laws in the operation of the Project.

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 Property, but which covenants shall absolutely expire without further action by any person upon termination of this Agreement as provided herein.

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. The Company represents and warrants to the City that it has the requisite authority to enter into this Agreement.

9. Default.

(a) If either party should default (the "Defaulting Party") with respect to any of its obligations hereunder and should fail, within 30 days after delivery of written notice of such default from the other party (the "Complaining Party") to cure such default, the Complaining Party, by action or proceeding at law or in equity, may be awarded its damages for such default. Notwithstanding anything to the contrary contained herein, any Program Payments from the City which are not timely paid by the City shall incur interest at the lesser of (a) fifteen percent (15%) per annum, or (b) the highest rate per annum allowed by applicable law from the date such Program Payment is due until paid.

(b) The Company agrees, that upon an event of default of Section 9 hereunder, and upon receipt of notice from the City, to remit to the City a sum equal to the total of all incentives granted by the City to the Company pursuant to this Agreement, plus interest at

the highest rate per annum allowed by applicable law from the date payments were made, until paid.

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. 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 WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF, LOSS OF USE OF, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES, PROVIDED HOWEVER THAT THIS INDEMNIFICATION SHALL NOT APPLY IF A COURT OF COMPETENT JURISDICTION FINDS THAT THE DAMAGE OR LIABILITY ARISES FROM THE SOLE NEGLIGENCE OF THE CITY, ITS OFFICERS, OR EMPLOYEES.

11. 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: ProLogis
2310 LBJ Freeway
Suite 200
Dallas, Texas 75234
Attention: Gary Anderson, Senior Vice President

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.

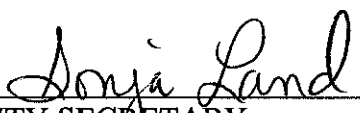
(i) Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the 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, Mayor

ATTEST:

Asst. 
CITY SECRETARY

PROLOGIS
By: 
Gary Anderson
Senior Vice President

APPROVED AS TO FORM AND LEGALITY:

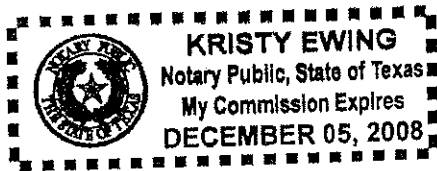

CITY ATTORNEY

Date: 1-18-05

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

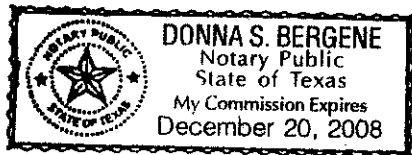
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COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Gary Anderson, Senior Vice President, 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 partnership, and said Gary Anderson acknowledged said instrument to be his free act and deed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE in said County and State this 9th day of March, 2005.

Donna S Bergene
Notary Public in and for the State of Texas



Donna S. Bergene
Notary's Printed Name

My Commission Expires: 12/20/2008

**EXHIBIT A
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

Description of Premises