

RESOLUTION NO. 33-2007

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 CITY MANAGER TO EXECUTE AN AGREEMENT WITH TARGET CORPORATION 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 Target Corporation, 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 Target Corporation, 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.

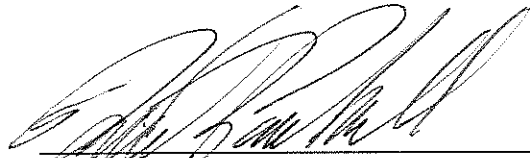
SECTION 2. That the City Council hereby adopts an economic development program whereby the City will make economic development program payments to Target Corporation and take other specified actions, in accordance with the terms outlined in the Agreement.

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 City Manager is hereby authorized to finalize and 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 20th day of August, 2007.



David Paschall  
Mayor Pro Tem

ATTEST:

APPROVED:



Judy Womack  
City Secretary



B. J. Smith  
City Attorney

DATE 8.20.07 #8  
CITY SEC. J. Womack

**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 Target Corporation (the "Owner"), for the purposes and considerations stated below:

**WITNESSETH:**

WHEREAS, on June 19, 2006, the City adopted Resolution No. 40-2006 establishing an Economic Development Program pursuant to Section 380.001 of the Texas Local Government Code ("Section 380.001") and establishing criteria and guidelines to effectively and fairly administer the provision of business incentives (the "Program") to aid in the economic development of the City; and

WHEREAS, without this Agreement and the City's Development Program Incentives granted herein, Owner would not have been able to pursue the Project; and

WHEREAS, on August 20, 2007, the City adopted Resolution No. 33-2007 authorizing this Agreement as part of such Program; and

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

WHEREAS, the Owner's Target Store located on the Premises has been a major retail destination for Mesquite citizens for many years; and

WHEREAS, the Owner has contributed to the quality of life in Mesquite through its Community Foundation; and

WHEREAS, the Owner desires to expand its presence as a retail anchor within the community by constructing a state-of-the-art Super Target store with approximately 175,000 square-feet; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program, and that the Owner'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, meets all of the requirements, criteria and guidelines of the Program 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 Owner's development and operation of the Project as hereinafter defined. This development will increase the taxable value of the Property and will increase the sales tax generated for 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.

"Owner Affiliate" means any Person directly or indirectly controlling, controlled by, or under common control with the Owner. 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 9 of this Agreement.

"Defaulting Party" has the meaning set forth in Section 9 of this Agreement.

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

"Opening Date" means the first day the Project is open for business and collects sales tax on the sale of goods.

"Owner" means the Target Corporation.

"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 at East Emporium Circle at North Town East Boulevard, Mesquite, Dallas County, Texas, as more particularly described on Exhibit "A" hereto.

"Project" means the construction of an approximately 175,000 square foot retail establishment and the operation of said establishment as a Super Target.

"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 (i) the payment of the total of \$3,200,000 in Program Payments to the Owner, or (ii) 20 years from the Opening Date, whichever date is sooner.

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

For completing the Project construction and selling products that will produce sales tax revenue for the City beginning on the Opening Date and continuing throughout the term of this Agreement, the City shall grant Owner the following Program Payment incentives:

(a) Sales Tax Incentives. The City shall reimburse to the Owner from proceeds received by the City on only 1 percent of the City’s 2% local sales tax on taxable sales at the Project, an amount equal to:

1. From and after the Opening Date through the end of 12 calendar years thereafter, 75 percent of the City’s 1% local sales tax on taxable sales at the Project;

2. From and after 13 calendar years from the Opening Date through the end of 15 calendar years from the Opening Date, 60 percent of the City’s 1% local sales tax on taxable sales at the Project; and

3. From and after 16 calendar years from the Opening Date through the end of the Term of this agreement as set out in Section 3 above, 25 percent of the City’s 1% local sales tax on taxable sales at the Project.

4. Regarding the above sales tax reimbursement amounts, Owner agrees that it will provide City, on a monthly basis, a copy of any financial report that Owner will submit to the Comptroller of the State of Texas (“Comptroller”) relating to Owner’s remission of sales taxes collected in the City as a result of the operation of the Project (the “Report”). Additionally, Owner hereby consents to the State of Texas releasing these monthly reported figures along with any State audit adjustments to the City, and the City hereby consents to keep this information “Confidential” in accordance with the Texas Tax Code, including, without limitation, Section 151.027 and to the extent allowed by law.

5. The City will pay Owner, on a monthly basis and after receiving the Report, confirmation of payment from the State, the percentages set out in 1, 2 and 3 above.

6. It is the intention of the parties that the percentages set out in 1, 2 and 3 above be calculated solely from 1% of the City’s 2% local sales tax. Excluded from these percentages are sales tax revenues generated for the Mesquite Quality of Life Corporation, EDST 4B, and the sales tax revenues generated for the reduction of property tax rates.

(b) Property Tax Rebates. The City shall pay Owner 50 percent of the Incremental Ad Valorem Tax on the real property and improvements at the Project for the tax years 2009 through 2026. "Incremental Ad Valorem Tax" means any increase in the City Ad Valorem Tax over the City Ad Valorem tax that would be due on the value of the Project, including all real property and improvements, as it existed on August 20, 2007. This amount will be paid by the City to the Owner no later than 30 days after the Owner provides the City with proof of payment of such property tax.

(c) City Fee Rebates. The City shall rebate the road impact fees, the building permit fees, and the engineering review fees charged for the Project. This amount will be paid by the City to the Owner no later than 90 days after the Owner provides the City with proof of payment of any such fee.

(d) Limitation. Under no circumstances shall the amount of the incentives in a, b and c above collectively total more than \$3,200,000. Should the maximum incentive of \$3,200,000 be achieved prior to the end of the term of this Agreement then this Agreement shall be considered satisfied for all parties and shall automatically terminate, with neither party having any further liability to the other party.

**5. Owner Covenants.**

In consideration of the City's incentives under this Agreement (including the payment of monies to the Owner), the Owner agrees to:

- (a) If possible, 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; and
- (b) Maintain and operate the Project and the Premises as a retail facility open to the general public during the Project's regular business hours; and
- (c) Take all reasonable steps to comply with all applicable federal, state and local laws in the operation of the Project.

**6. Mutual Assistance.**

The City and the Owner 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, including without limitation, executing further documents.

**7. No Joint Venture.**

It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the

parties. The City, its past and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with the Project or the design, construction or operation of any portion of the Project.

**8. Representations and Warranties.**

The City represents and warrants to the Owner 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 Owner 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 highest rate per annum allowed by applicable law from the date such Program Payment is due until paid.

(b) The Owner agrees, that upon an event of default of Section 5 hereunder, and upon receipt of notice from the City, to remit to the City a sum equal to the total of all monies Owner received from the City 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. Miscellaneous Matters.**

(a) Non-shareholder contribution to capital. The City hereby designates all Program Payments made to Target as non-shareholder contributions to capital pursuant to Section 118 of the Internal Revenue Code of 1986 and intends such payments to be a reimbursement for land and/or building costs incurred by Target.

(b) 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.

(c) 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.

- (d) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the transactions contemplated herein.
- (e) Amendment. This Agreement may only be amended, altered or revoked by written instrument signed by the Owner and the City.
- (f) Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. The Owner may assign all or part of its rights and obligations hereunder (a) to any Affiliate, or, any non-Affiliate Person if the transaction is one of Sale/Leaseback or similar which results in the Owner's continued operation of the Project, which assignment shall be effective upon written notice to the City, or (b) to any Person other than an those described in (a) with the prior written approval of the City, which approval shall not be unreasonably withheld.
- (g) 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:

Target Corporation:                    Scott A. Nelson  
Senior Vice President, Real Estate  
Target Corporation  
1000 Nicollet Mall, TPN-12D  
Minneapolis, Minnesota 55403  
Phone: (612) 761-1561  
Fax: (612) 761-3729  
Email: scott.nelson@target.com

With a copy to:

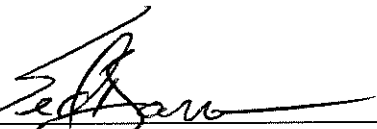
John S. Torigian, Esq.  
Krell & Torigian  
1600 Smith Street  
Suite 3885  
Houston, Texas 77002  
Phone: (713) 951-7603  
Fax: (713) 951-7611  
Email: jtorigian@msn.com

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

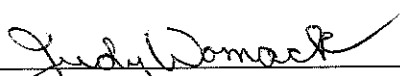


- (h) Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.
- (i) Applicable Law. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Dallas County, Texas.
- (j) 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.
- (k) 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:   
Ted Barron, City Manager


ATTEST:

  
City Secretary

**TARGET CORPORATION**

By:   
Scott A. Nelson  
Senior Vice President, Real Estate

APPROVED AS TO FORM AND LEGALITY:



City Attorney or his Designee

Date: 8/20/07

THE STATE OF TEXAS

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COUNTY OF DALLAS

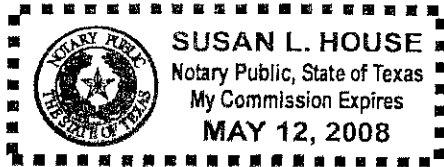
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BEFORE ME, the undersigned authority, on this day personally appeared Ted Barron, City Manager of the CITY OF MESQUITE, a municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to 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 7<sup>th</sup> day of September, 2007.

Susan L. House  
Notary Public in and for the State of Texas



Susan L. House  
Notary's Printed Name

My Commission Expires: 5-12-08



**EXHIBIT "A"**  
**TO**  
**ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

**Description of Premises**