

RESOLUTION NO. 37-2016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY AND AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AGREEMENT FOR SUCH PURPOSES WITH UNITED PARCEL SERVICE, INC. AND BT-OH, LLC (COLLECTIVELY THE "COMPANY") REGARDING THE EXPANSION AND MODERNIZATION OF THE COMPANY'S BUSINESS AT 4200 SAMUELL BOULEVARD, MESQUITE, TEXAS.

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

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to United Parcel Service, Inc., an Ohio corporation, and BT-OH, LLC, an Ohio limited liability company (hereinafter collectively referred to as the "Company"), in connection with the expansion and modernization of the Company's business at 4200 Samuell Boulevard, Mesquite, Texas 75149, a copy of said agreement being attached hereto as Exhibit "A" and incorporated herein by reference (the "Agreement"); and

WHEREAS, after holding a public hearing and 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 local 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 and the Company, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, will benefit the City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 2. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions 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 necessary to consummate the transactions contemplated by the Agreement.


DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 1st day of August, 2016.



Stan Pickett  
Mayor

ATTEST:

APPROVED:



Sonja Land  
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, a Texas home rule municipality (the "City") and United Parcel Service, Inc., an Ohio corporation and BT-OH, LLC, an Ohio limited liability company (United Parcel Service, Inc. and BT-OH, LLC shall be referred to collectively herein as the "Company").

**WITNESSETH:**

**WHEREAS**, all capitalized terms used herein shall have the meanings set forth in this Agreement; and

**WHEREAS**, the Company is a global logistics company providing package delivery services and supply chain management solutions to customers all over the world (the "Company's Business"); and

**WHEREAS**, BT-OH, LLC is the owner of that certain tract of rea' property located in the City consisting of approximately 72 acres and being commonly known as 4200 S: muell Blvd., Mesquite, Texas 75149 and being more particularly described in **Exhibit "A"** attached hereto and made a part hereof for all purposes (the "Land"); and

**WHEREAS**, a building consisting of approximately 341,000 square feet is currently located on the Land (the "Building"); and

**WHEREAS**, the Land and Building are hereinafter sometimes collectively referred to as the "Mesquite Facility"; and

**WHEREAS**, United Parcel Service, Inc. is the tenant/occupant of the Building and is the owner of the Business Personal Property at the Mesquite Facility; and

**WHEREAS**, the Company is considering making substantial Capital Improvements to the Mesquite Facility that will secure the Mesquite Facility campus as a key Dallas/Fort Worth logistics hub for the Company; and

**WHEREAS**, the Company has advised the City that a contributing factor inducing the Company to make at least EIGHTY SEVEN MILLION AND NO/100 DOLLARS (\$87,000,000.00) of Capital Improvements to the Company's Mesquite Facility is the agreement by the City to provide the Economic Development Incentives to the Company under the terms and conditions as more fully set forth in this Agreement; and

**WHEREAS**, the planned Capital Improvements to the Mesquite Facility will include: (i) the construction of Capital Improvements to the existing Building; (ii) the construction of an approximately 350,000 square foot expansion of the existing Building; and (iii) the installation, renovation, replacement, upgrade, alteration, modification and addition to the Company's existing machinery, equipment, and other Business Personal Property at the Mesquite Facility, and will modernize the Mesquite Facility, update the Company's technology and increase the efficiency and productivity of the Company's operations at the Mesquite Facility; and

**WHEREAS**, the upgrade, expansion and modernization of the Company's operations at the Mesquite Facility will increase the productive life and the taxable value of the Building and Business Personal Property at the Mesquite Facility thereby adding value to the City's tax rolls and increasing the ad valorem real and personal property taxes to be collected by the City; and

**WHEREAS**, the upgrade, expansion and modernization of the Company's operations at the Mesquite Facility will result in the Company employing at least an additional 180 Full-Time Equivalent Employees; and

**WHEREAS**, the Company has agreed to make the commitment to operate the Company's Business at the Mesquite Facility during the Operations Period; and

**WHEREAS**, the upgrade, expansion and modernization of the Company's operations at the Mesquite Facility will result in the creation of new employment opportunities in the City and the commitment by the Company to operate the Company's Business at the Mesquite Facility during the Operations Period will result in the retention of employment opportunities in the City; and

**WHEREAS**, the City has established an Economic Development Incentive Program pursuant to Section 380.001 of the Texas Local Government Code (the "Program") and authorizes this Agreement as part of the Program; and

**WHEREAS**, the Company desires to participate in the Program by entering into this Agreement; 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 set forth in this Agreement will increase the amount of ad valorem real and personal property taxes assessed and collected by the City, result in employment opportunities being created and retained in the City, promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its citizens.

**NOW, THEREFORE**, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties agree as follows:

## **ARTICLE I**

### **Incorporation of Recitals**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

## **ARTICLE II**

### **Definitions**

As used herein, the following terms shall have the following meanings, to-wit:

"Agreement" shall mean this agreement together with all exhibits attached hereto.

"Annual Incentive Payment" and "Annual Incentive Payments" shall mean economic development incentives to be paid by the City to provide grants to the Company equivalent to the rebate or refund of a portion of the increase in ad valorem taxes paid by the Company to the City attributable to the approximately 350,000 square feet expansion of the Company's existing Building and the Company's New Business Personal Property at the Mesquite Facility for each Incentive Year up to a maximum of twenty (20) payments as more fully set forth herein.

"Annual Incentive Payment Request" shall mean a written request executed by a duly authorized Company Representative requesting the Annual Incentive Payment for the then applicable Incentive Year.

“Base Tax Year” shall mean the Tax Year commencing on January 1, 2016 and continuing until and including December 31, 2016.

“Base Year Full-Time Equivalent Employees” shall mean the number of Full-Time Equivalent Employees of the Company existing as of date of the issuance of the Certificate of Occupancy.

“Base Year Taxable Value” shall mean the combined values of the Land, Building and Business Personal Property as appraised by DCAD for the Base Tax Year [prior to any protest, challenge or appeal].

“Building” shall have the meaning set forth in the recitals to this Agreement.

“Building Expansion Capital Improvements” shall have the meaning set forth in Article VII, Section 1 of this Agreement.

“Business Personal Property” shall mean moveable items of personal property owned by the Company and used in the Company’s ordinary course of business which are located at the Mesquite Facility but are not permanently affixed to, or part of, the Land and shall consist of machinery, equipment, furniture, computers, vehicles and Taxable Inventory provided such items are taxed by the City as Business Personal Property of the Company for ad valorem tax purposes.

“Business Personal Property Capital Improvements” shall have the meaning set forth in Article VII, Section 1 of this Agreement.

“Capital Improvements” shall mean structural improvements, major renovations, replacements, upgrades and other substantial alterations, changes, modifications and additions to the Building and the Company’s Business Personal Property at the Mesquite Facility considered as capital assets under generally accepted accounting principles.

“Capital Investment” shall have the meaning set forth in Article VII, Section 2 of this Agreement.

“Capital Investment Certificate” shall have the meaning set forth in Article VII, Section 2 of this Agreement.

“Certificate of Compliance” shall mean a certificate in such form as is reasonably acceptable to the City executed on behalf of the Company by a duly authorized Company Representative certifying to the City: (i) that all Conditions Precedent have been satisfied and are then continuing; (ii) the number of Full-Time Equivalent Employees employed by the Company during Peak Operations of the Company for the calendar year immediately preceding the date of the Certificate of Compliance; and (iii) that no Default then exists by the Company under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Default by the Company under the terms of this Agreement.

“Certificate of Occupancy” shall mean a final certificate of occupancy issued to the Company by the City authorizing the Company to operate the Company’s Business from the approximately 350,000 square foot expansion of the existing Building.

“City” shall mean the City of Mesquite, a Texas home rule municipality.

“Company” shall mean United Parcel Service, Inc., an Ohio corporation and BT-OH, LLC, an Ohio limited liability company, and their successors and assigns only as permitted by Article XI, Section 1 of this Agreement.

“Company’s Business” shall have the meaning set forth in the Recitals of this Agreement.

“Company Representative” of United Parcel Service, Inc. shall mean a duly-authorized officer of United Parcel Service, Inc. acting on behalf of United Parcel Service, Inc. “Company Representative” of BT-OH, LLC shall mean a duly-authorized officer of the manager or managing member of BT-OH, LLC acting on behalf of BT-OH, LLC.

“Condition Precedent” and “Conditions Precedent” shall have the meanings set forth in Article VIII of this Agreement.

“DCAD” shall mean the Dallas Central Appraisal District.

“Default” shall have the meaning set forth in Article X, Section 1 of this Agreement.

“Defaulting Party” shall have the meaning set forth in Article X, Section 1 of this Agreement.

“Development and Review Fees” shall have the meaning set forth in Article IX, Section 3 of this Agreement.

“Development and Review Fees Grant” shall have the meaning set forth in Article IX, Section 3 of this Agreement.

“Development and Review Fees Grant Payment” shall have the meaning set forth in Article IX, Section 5 of this Agreement.

“Economic Development Incentives” shall collectively mean the Annual Incentive Payments, the Development and Review Fees Grant, and the Roadway Impact Fees Grant.

“Effective Date” shall mean the date the Company and the City execute this Agreement if both the Company and the City execute this Agreement on the same date. If the Company and the City execute this Agreement on different dates, any reference to the “Effective Date” shall mean the later of the two dates this Agreement is executed by the Company and the City.

“Existing Building Capital Improvements” shall have the meaning set forth in Article VII, Section 1 of this Agreement.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of a receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, the voluntary commencement of any proceeding under any bankruptcy or insolvency laws by any Party, or the involuntary commencement of any proceeding against any Party under any bankruptcy or insolvency laws and such involuntary proceeding is not dismissed within ninety (90) days after the filing thereof.

“Event of Force Majeure” shall mean a major unforeseeable act or event that: (i) prevents a Party from performing its obligations under this Agreement (the “Non-Performing Party”); (ii) is beyond the reasonable control of the Non-Performing Party; (iii) is not caused by any act or omission on the part of the Non-Performing Party or the Non-Performing Party’s officers, agents, representatives, employees, contractors, customers or invitees; and (iv) could not have been prevented or avoided by the exercise by the Non-Performing Party of such reasonable diligence and reasonable care as would be exercised by a prudent person under similar circumstances. An “Event of Force Majeure” must satisfy each of the above requirements and includes the following, to-wit: lightning, floods, ice storms, hurricanes, tornadoes, earthquakes, natural disasters, acts of God, explosions, fires, war, terrorism, temporary work stoppages due to strikes by employees and material shortages due to the inability of the Company to obtain materials from the Company’s suppliers for reasons other than the cost of the materials and civil disturbances.

Notwithstanding the foregoing, an “Event of Force Majeure” does not include any financial or economic hardship, changes in market or economic conditions, or insufficiency of funds.

“Full-Time Employees” shall mean full-time paid employees of the Company who: (i) have been employed by the Company for a minimum of thirty (30) consecutive days, (ii) work a minimum of thirty five (35) hours per week on average over a calendar year provided, however, for any employee who has been employed by the Company for at least thirty (30) consecutive days but less than a full calendar year, such calculation shall be based on such employee’s actual period of employment until such time as such employee shall have been employed by the Company for a full calendar year; (iii) are eligible for employee healthcare benefits; and (iv) conduct their job duties at or from the Mesquite Facility. For purposes of calculating the number of Full-Time Employees at the Mesquite Facility, warehouse employees, office employees and drivers who pick up packages for delivery at the Mesquite Facility shall be included.

“Full-Time Equivalent Employees” or “FTEs” shall mean any combination of Full Time Employees or Part-Time Employees employed by the Company whose collective hours worked are equal to or greater than an average of thirty-five (35) hours per week. Full-Time Employees or Part-Time Employees who leave the employment of the Company during the period in which FTEs are to be calculated under this Agreement shall not be included in the calculation of FTE’s for such period but any employees who are hired by the Company during such period and who meet the definition of Full-Time Employees or Part-Time Employees as set forth herein will be included in such calculation.

“Incentive Period” shall mean the period commencing with January 1 of the calendar year immediately succeeding the calendar year in which the Certificate of Occupancy is issued by the City to the Company and continuing until December 31 of the 20<sup>th</sup> year after the issuance of the Certificate of Occupancy, provided, however, the Incentive Period may be extended as more fully set forth in Article IX, Section 10 of this Agreement.

“Incentive Year” shall mean a period consisting of three hundred and sixty five (365) calendar days [or three hundred and sixty six (366) calendar days for any calendar year that is a leap year] beginning on January 1 and ending on December 31 of each calendar year during the Incentive Period.

“Increased Taxable Value” shall mean the amount calculated by subtracting the Base Year Taxable Value from the combined values of the Land, Building and Business Personal Property as appraised by DCAD [prior to any protest, challenge or appeal] for the first Tax Year that DCAD’s appraised valuations of the Land, Building and Business Personal Property include the New Capital Improvements.

“Investment Period” shall mean the period commencing with the Effective Date and continuing until and including December 31, 2021.

“Jobs Certificate” shall have the meaning set forth in Article VII, Section 6 of this Agreement.

“Land” shall have the meaning set forth in the recitals to this Agreement.

“Maximum Lawful Rate” shall mean the maximum lawful rate of non-usurious interest that may be contracted for, charged, taken, received or reserved by the City in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits the City to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law).

“Mesquite Facility” shall have the meaning set forth in the recitals to this Agreement.

“New Business Personal Property” shall mean new items of Business Personal Property that are purchased by the Company and installed at the Mesquite Facility after the Effective Date and that are considered as capital assets under generally accepted accounting principles and shall specifically exclude vehicles, Taxable Inventory and Non-Taxable Inventory.

“New Capital Improvements” shall have the meaning set forth in Article VII, Section 1 of this Agreement.

“New Full-Time Equivalent Employees” or (“New FTEs”) shall mean any combination of Full-Time Employees or Part-Time Employees employed by the Company after the issuance of the Certificate of Occupancy whose collective hours worked are equal to or greater than an average of thirty-five (35) hours per week. Full-Time Employees or Part-Time Employees who are employed by the Company after the issuance of the Certificate of Occupancy but who leave the employment of the Company during the period in which New FTEs are to be calculated under this Agreement shall not be included in the calculation of New FTE’s for such period but any employees who are hired by the Company during such period and who meet the definition of Full-Time Employees or Part-Time Employees as set forth herein will be included in such calculation.

“Non-Defaulting Party” shall have the meaning set forth in Article X, Section 1 of this Agreement.

“Non-Performing Party” shall have the meaning set forth in the “Event of Force Majeure” definition in this Agreement.

“Non-Taxable Inventory” shall mean goods in transit, free-port goods and merchandise, supplies, materials or other goods that are non-taxable.

“Operations Period” shall mean the period from the Effective Date and continuing thereafter until and including the last day of the Incentive Period.

“Part-Time Employees” shall mean paid employees of the Company who: (i) have been employed by the Company for a minimum of thirty (30) consecutive days; (ii) work a minimum of twenty (20) hours per week on average over the period of time that such employee has been employed by the Company; and (iii) conduct their job duties at or from the Mesquite Facility. For purposes of calculating the number of Part-Time Employees at the Mesquite Facility, warehouse employees, office employees and drivers who pick up packages for delivery at the Mesquite Facility shall be included.

“Party” shall mean either the Company or the City.

“Parties” shall mean both the Company and the City.

“Peak Operations” shall mean the period commencing with October 1<sup>st</sup> and continuing until and including December 31<sup>st</sup> of each calendar year during the Incentive Period.

“Person” or “Persons” shall mean one or more individual(s) or corporation(s), general or limited partnership(s), limited liability company(s), trust(s), estate(s), unincorporated business(es), organization(s), association(s) or any other entity(s) of any kind.

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

“Real Property Capital Improvements” shall have the meaning set forth in Article VII, Section 1 of this Agreement.

“Roadway Impact Fees” shall have the meaning set forth in Article IX, Section 6 of this Agreement.

“Roadway Impact Fees Grant” shall have the meaning set forth in Article IX, Section 6 of this Agreement.



“Roadway Impact Fees Grant Payment” shall have the meaning set forth in Article IX, Section 8 of this Agreement.

“Tax Year” shall mean a period consisting of three hundred and sixty five (365) calendar days [or three hundred and sixty six (366) calendar days for any calendar year that is a leap year] beginning on January 1<sup>st</sup> of each calendar year during the Term of this Agreement and continuing until and including December 31<sup>st</sup> of the same calendar year.

“Tax Years” shall mean more than one Tax Year.

“Taxable Inventory” shall mean taxable merchandise and supplies owned by the Company and located at the Mesquite Facility and shall include raw materials, work-in-process and finished goods.

“Temporary Periods” as used herein shall mean one or more periods of time when the Company’s continuous operation of the Company’s Business from the Mesquite Facility is prevented by an Event of Force Majeure provided, however, in no event will any such period exceed nine (9) months.

“Term” shall mean the period commencing on the Effective Date and continuing until the earlier of: (i) one hundred and eighty (180) days after the end of the Incentive Period; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein.

“Undocumented Workers” shall mean individuals who, at the time of employment with the Company, are not: (i) lawfully admitted for permanent residence to the United States or are not authorized under law to be employed in that manner in the United States; and (ii) such other Persons as are included within the definition of undocumented workers pursuant to 8 U.S.C. §1324a (f) or any other applicable law or regulation.

### **ARTICLE III**

#### **Authority for Agreement**

This Agreement is authorized by Chapter 380 of the Texas Local Government Code. 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 increase the amount of ad valorem real and personal property taxes assessed and collected by the City, result in employment opportunities being created and retained in the City, promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its citizens.

### **ARTICLE IV**

#### **Term**

The Term of this Agreement shall commence on the Effective Date and shall continue until one hundred and eighty (180) days after the last day of the Incentive Period, unless sooner terminated as provided herein.

## ARTICLE V

### Agreement Regarding Protest, Challenge or Appeal of Property Valuations

1. Agreement Regarding Protest, Challenge or Appeal of Property Valuations. The Company acknowledges that a material consideration for the City's agreement to enter into this Agreement and to pay the Economic Development Incentives set forth herein is the City's expectation that the New Capital Improvements to be made by the Company as set forth herein will result in substantially increased ad valorem tax revenue for the City. The Company may protest, challenge or appeal valuations of the Land, Building and/or the Business Personal Property as originally appraised by DCAD for any Incentive Year during the Term of this Agreement provided, however, in consideration of the City's agreement to enter into this Agreement and grant the Economic Development Incentives under the terms and conditions set forth herein, the Parties agree that if such protest, challenge or appeal results in a reduction in the combined valuation of the Land, Building and the Business Personal Property for such Incentive Year in the amount of 75% or more of the Increased Taxable Value, no Annual Incentive Payment will be due or payable by the City to the Company for that Incentive Year. For illustration purposes only, if the Base Year Taxable Value was Forty Million Dollars (\$40,000,000), the Increased Taxable Value was Fifty Million Dollars (\$50,000,000) and a tax protest, challenge or appeal by the Company for an Incentive Year results in the reduction of the combined valuation of the Land, Building and Business Personal Property for such Incentive Year to Fifty-Two Million Five Hundred Thousand Dollars (\$52,500,000) or less, no Annual Incentive Payment would be due or payable by the City to the Company for such Incentive Year.

2. Survival. The terms, provisions, covenants, agreements, conditions, obligations and rights and remedies of each Party pursuant to Article V of this Agreement shall expressly survive the expiration or termination of this Agreement.

## ARTICLE VI

### Company's Covenant Not to Employ Undocumented Workers

1. Covenant Not to Employ Undocumented Workers. The Company hereby certifies that the Company and each branch, division, and department of the Company does not employ any Undocumented Workers and the Company hereby covenants and agrees that the Company and each branch, division and department of the Company will not knowingly employ any Undocumented Workers during the Term of this Agreement.

2. Covenant to Notify City of Conviction for Undocumented Workers. The Company further hereby covenants and agrees to provide the City with written notice of any conviction of the Company, or any branch, division or department of the Company, of a violation under 8 U.S.C. §1324a (f) within thirty (30) days from the date of such conviction.

3. Repayment of Economic Development Incentives in Event of Conviction for Employing Undocumented Workers. If, after receiving any Economic Development Incentive under the terms of this Agreement, the Company, or a branch, division or department of the Company, is convicted of a violation under 8 U.S.C. §1324a (f), the Company shall pay to the City, not later than the 120<sup>th</sup> day after the date the City notifies the Company of the violation, an amount equal to the total amount of all Economic Development Incentives previously paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on each such Economic Development Incentive being recaptured from the date each such Economic Development Incentive was paid by the City to the Company until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.

4. Limitation on Economic Development Incentives. The City shall have no obligation to pay any Economic Development Incentives to the Company if the Company, or any branch, division or department of the Company is convicted of a violation under 8 U.S.C. §1324a (f).

5. Remedies. The City shall have the right to exercise all remedies available by law to collect any sums due by the Company to the City pursuant to this Article VI including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

6. Limitation. The Company is not liable for a violation of Article VI of this Agreement by a subsidiary, affiliate, or franchisee of the Company, or by a person with whom the Company contracts.

7. Survival. The terms, provisions, covenants, agreements and obligations of the Company and the rights and remedies of the City set forth in Article VI of this Agreement shall expressly survive the expiration or termination of this Agreement.

## ARTICLE VII

### Company's Additional Covenants

In consideration of the City's agreement to make the Economic Development Incentives to the Company upon the terms and conditions as more fully set forth herein, the Company represents, covenants and agrees as follows, to-wit:

1. New Capital Improvements. During the Investment Period, the Company will: (i) construct Capital Improvements to the existing Building substantially as described and/or depicted in **Exhibit "B"** attached hereto and made a part hereof for all purposes (the "Existing Building Capital Improvements"); (ii) construct Capital Improvements consisting of an approximately 350,000 square foot expansion of the existing Building, substantially as described and/or depicted in **Exhibit "C"** attached hereto and made a part hereof for all purposes (the "Building Expansion Capital Improvements"); and (iii) purchase and install New Business Personal Property at the Mesquite Facility substantially as described and/or depicted in **Exhibit "D"** attached hereto and made a part hereof for all purposes (the "Business Personal Property Capital Improvements"). The Existing Building Capital Improvements and the Building Expansion Capital Improvements are hereinafter sometimes collectively referred to as the "Real Property Capital Improvements." The Real Property Capital Improvements and the Business Personal Property Capital Improvements shall hereinafter sometimes collectively be referred to as the "New Capital Improvements;"

2. Capital Investment. During the Investment Period, the Company will make expenditures in the amount of at least EIGHTY SEVEN MILLION AND NO/100 DOLLARS (\$87,000,000.00) in connection with the New Capital Improvements (the "Capital Investment"). Within sixty (60) days after the last day of the Investment Period, the Company shall submit to the City a certificate in such form as is reasonably acceptable to the City executed by a Company Representative certifying the amount of expenditures made by the Company in connection with the New Capital Improvements as of the last day of the Investment Period (the "Capital Investment Certificate"). When calculating the expenditures required under this Article VII, Section 2, the Parties agree that no expenditure shall be included as part of the Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Company in accordance with generally accepted accounting principles;

3. Completion of Real Property Capital Improvements. The Company will complete the Real Property Capital Improvements on or before December 31, 2019, provided that if construction delays prevent timely completion, the Company may obtain a one-year extension of such completion date to December 31, 2020 by providing a one-time extension notice in writing to the City no later than November 31 of 2019;

4. Certificate of Occupancy. The Company will obtain a Certificate of Occupancy for the approximately 350,000 square foot expansion of the existing Building on or before December 31, 2020;

5. Business Personal Property Capital Improvements. The Company will purchase, install and commence operation of the Business Personal Property Capital Improvements at the Mesquite Facility on or before December 31, 2021;

6. New Full-Time Equivalent Employees. The Company will employ and retain a minimum of 16 (sixteen) net New Full-Time Equivalent Employees in each Incentive Year during the first five (5) calendar years of the Incentive Period and a minimum of twenty (20) net New Full-Time Equivalent Employees during the sixth (6<sup>th</sup>) through tenth (10<sup>th</sup>) calendar years of the Incentive Period, as set forth in the table below, for a total of 180 net New Full-Time Equivalent Employees during the first ten (10) calendar years of the Incentive Period. For the eleventh (11<sup>th</sup>) calendar year of the Incentive Period and each calendar year thereafter during the Incentive Period, the Company shall retain the 180 net New Full-Time Equivalent Employees hired during the first ten (10) calendar years of the Incentive Period. Within sixty (60) days after the last day of each calendar year of the Incentive Period, the Company shall submit to the City a certificate in such form as is reasonably acceptable to the City executed by a Company Representative certifying: (i) the number of Full-Time Equivalent Employees as of the date of the issuance of the Certificate of Occupancy; and (ii) the number of New Full-Time Equivalent Employees employed by the Company as of December 31 of each calendar year of the Incentive Period (the “Jobs Certificate”):

Incentive Year	Cumulative Required New Full-Time Equivalent Employees
Incentive Year 1	16
Incentive Year 2	32
Incentive Year 3	48
Incentive Year 4	64
Incentive Year 5	80
Incentive Year 6	100
Incentive Year 7	120
Incentive Year 8	140
Incentive Year 9	160
Incentive Year 10	180
Incentive Years 11-20 and for any calendar year the Incentive Period is extended pursuant to Article IX, Section 10	180

7. Full-Time Equivalent Employees. During Peak Operations of each Incentive Year, the Company shall employ and retain at least the number of Full-Time Equivalent Employees equal to the Base Year Full-Time Equivalent Employees plus the additional cumulative New Full-Time Equivalent Employees required by Article VII, Section 6 above;

8. Operations of Company’s Business at the Mesquite Facility. The Company shall operate the Company’s Business at the Mesquite Facility during the Operations Period except for such Temporary Periods when the Company’s use of the Mesquite Facility is prevented by an Event of Force Majeure;

9. Records and Reports. The Company shall deliver to the City within sixty (60) days after written request, copies of such invoices, paid receipts, payment records, employment records, Texas Workforce Commission reports and other documentation as the City may reasonably request to confirm compliance by the Company with the representations, covenants and agreements set forth in this Article VII;

10. Inspection. The Company shall provide the City, its agents and employees with access to the Mesquite Facility at such times as the City may reasonably request to conduct such inspections as the City deems necessary in order to confirm compliance by the Company with the representations, covenants and

agreements of the Company as set forth in this Agreement provided the City has given the Company at least seventy-two (72) hours prior written notice of such inspection, so long as the inspection does not substantially interfere with or otherwise compromise the Company's or its facility's operational efficiency, safety, security or confidentiality;

11. Representative of Company to Accompany Inspections. The Company shall provide a representative of the Company to accompany the City during all inspections of the Mesquite Facility conducted by the City pursuant to Article VII, Section 10 above;

12. Timely Payment of Taxes. The Company shall timely pay all ad valorem taxes assessed against the Land, the Building [including the existing Building and the approximately 350,000 square feet expansion of the existing Building] and the Business Personal Property of the Company located at the Mesquite Facility during the Term of this Agreement prior to the date such taxes become delinquent; and

13. Performance of Agreement. The Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement.

## ARTICLE VIII

### Conditions Precedent to Payment of Annual Incentive Payments

The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay any Annual Incentive Payment for any Incentive Year shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (sometimes referred to singularly herein as a "Condition Precedent" and sometimes collectively referred to as the "Conditions Precedent"), to-wit:

1. Annual Incentive Payment Request. The Company shall have submitted an Annual Incentive Payment Request to the City requesting payment of such Annual Incentive Payment no earlier than January 1st and no later than February 28<sup>th</sup> of the calendar year following the Incentive Year for which the Annual Incentive Payment is being requested. Each such Annual Incentive Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Annual Incentive Payment Request;

2. Capital Investment. The Company shall have satisfied its obligation to make the Capital Investment by making expenditures in the collective amount of at least EIGHTY SEVEN MILLION AND NO/100 DOLLARS (\$87,000,000.00) in connection with the New Capital Improvements no earlier than the Effective Date and no later than December 31, 2021. When calculating such expenditures, the Parties agree that no expenditure shall be included as part of the Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Company in accordance with generally accepted accounting principles;

3. Completion of Real Property Capital Improvements. The Real Property Capital Improvements shall have been completed on or before December 31, 2019 or, if extended pursuant to Article VII, Section 3 above, on or before December 31, 2020;

4. Certificate of Occupancy. A Certificate of Occupancy for the approximately 350,000 square foot expansion of the existing Building shall have been issued to the Company on or before December 31, 2020 and the Company shall have commenced operations of the Company's Business in the approximately 350,000 square foot expansion of the existing Building on or before December 31, 2021;

5. Capital Investment Certificate. The Company shall have submitted to the City the Capital Investment Certificate and such certificate shall confirm that the Company has complied with Article VII, Section 2 of this Agreement;

6. New Business Personal Property Capital Improvements. The Business Personal Property Capital Improvements shall have been delivered and installed at the Mesquite Facility on or before December 31, 2021;

7. Annual Business Personal Property Requirements. The Business Personal Property Capital Improvements shall be located and operational at the Mesquite Facility as of January 1st of the Incentive Year for which the Annual Incentive Payment is being requested except for items that have become obsolete and/or items that have been replaced in the ordinary course of the Company's Business;

8. Jobs Certificate. The Company shall have submitted to the City the Jobs Certificate and such Job Certificate shall confirm that the Company has complied with Article VII, Sections 6 and 7 of this Agreement;

9. Full-Time Equivalent Employees. During Peak Operations of the Incentive Year for which the Annual Incentive Payment is being requested, the Company shall have employed and retained at least the number of Full-Time Equivalent Employees equal to the Base Year Full-Time Equivalent Employees plus an additional sixteen (16) net New Full-Time Equivalent Employees per calendar year for the first five (5) calendar years of the Incentive Period and at least twenty (20) net New Full-Time Equivalent Employees per calendar year for the sixth (6<sup>th</sup>) through tenth (10<sup>th</sup>) calendar years of the Incentive Period, for a total of 180 net New Full-Time Equivalent Employees by the tenth (10<sup>th</sup>) and succeeding calendar years of the Incentive Period, as set forth in the table in Article VII, Section 6 above;

10. Certificate of Compliance. The Certificate of Compliance submitted by the Company to the City shall confirm that the Company has complied with the employment obligations set forth in Article VII, Sections 6 and 7 of this Agreement for the Incentive Year for which the Annual Incentive Payment is being requested;

11. Records and Reports. The Company shall have delivered to the City copies of such invoices, paid receipts, payment records, employment records, Texas Workforce Commission reports and such other documentation as the City may reasonably request to confirm compliance by the Company with the Conditions Precedent set forth in this Article VIII;

12. Operation of Company's Business at Mesquite Facility. The Company shall have operated the Company's Business at the Mesquite Facility from the Effective Date and continuously thereafter until and including the date of the Annual Incentive Payment Request except for such Temporary Periods when the Company's use of the Mesquite Facility is prevented by an Event of Force Majeure;

13. Taxes. The Company shall have timely paid all ad valorem taxes assessed against the Land, the Building [including the existing Building and the approximately 350,000 square feet expansion of the existing Building] and the Company's Business Personal Property at the Mesquite Facility for the Incentive Year for which the Annual Incentive Payment is being requested and for all previous Tax Years during the Incentive Period and the City shall have confirmed the receipt of such tax payments;

14. Reduction in Appraised Values. The combined valuations of the Land, Building and Business Personal Property as originally appraised by DCAD for such Incentive Year shall not have been reduced by an amount equal to 75% or more of the Increased Taxable Value as a result of a protest, challenge or appeal of the valuations by DCAD of the Land, Building and/or Business Personal Property for such Incentive Year;

15. Pending Final Decision of Appraised Valuations. The time for any protest, challenge or appeal of the valuations of the Land, Building and Business Personal Property as appraised by DCAD for such Incentive Year has passed; or, for any Incentive Year in which the Company, or any Person acting on behalf of the Company, has filed a protest, challenge or appeal of the appraised valuations of the Land,

Building and/or Business Personal Property, a final, non-appealable administrative order or judicial decision shall have been entered determining the fair market value of the Land, Building and Business Personal Property for such Incentive Tax Year to be an amount equal to or greater than the Base Year Taxable Value plus 25% of the Increased Taxable Value;

16. Performance of Agreement. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement and no Default by the Company shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Default by the Company under the terms of this Agreement;

17. Inspection. At the option of the City, the City shall have inspected the Mesquite Facility to confirm the Company’s compliance with the terms and provisions of this Agreement; and

18. No Conviction for Undocumented Workers. As of the date of the Annual Incentive Payment Request, and at all times during the Term of this Agreement prior to the Annual Incentive Payment Request, the Company shall not have been convicted by a court of competent jurisdiction of knowingly employing Undocumented Workers to work for the Company at the Mesquite Facility or at any other branch, division or department of the Company.

**ARTICLE IX**

**Economic Development Incentives**

The Economic Development Incentives to be provided by the City to the Company pursuant to this Agreement shall consist of the following, to-wit:

1. Annual Incentive Payments. As part of the Economic Development Incentives granted by the City to the Company pursuant to this Agreement, the City hereby approves, subject to the Conditions Precedent more fully set forth in Article VIII of this Agreement, economic development grants to the Company in the following amounts, to-wit:

Provided all Conditions Precedent set forth in Article VIII of this Agreement have been satisfied and are then continuing and subject to the terms and provisions set forth in Article V of this Agreement, the City shall pay up to a maximum of twenty (20) Annual Incentive Payments to the Company in the amount calculated by *subtracting* the total amount of taxes paid by the Company to the City for ad valorem taxes assessed against the Land, the Building and the Company’s Business Personal Property at the Mesquite Facility for the Base Tax Year from the total amount of taxes paid by the Company to the City for ad valorem taxes assessed against the Land, the Building [including the existing Building and the approximately 350,000 square feet expansion of the existing Building] and the Company’s Business Personal Property at the Mesquite Facility for the then applicable Incentive Year and *multiplying* that amount by the percentages set forth below for the corresponding Incentive Year, to-wit:

Incentive Year	Percentage of City Tax Grant
Incentive Years 1-5	80%
Incentive Years 6-8	70%
Incentive Years 9-10	60%
Incentive Years 11-20 and for any calendar year the Incentive Period is extended pursuant to Article IX, Section 10	50%

For illustration purposes only, if the total amount of ad valorem taxes paid by the Company to the City for ad valorem taxes assessed against the Land, the Building [including the existing Building and the approximately 350,000 square feet expansion of the existing Building] and the Company's Business Personal Property at the Mesquite Facility for the sixth Incentive Year was \$80,000\* and the total amount of ad valorem taxes paid by the Company to the City for ad valorem taxes assessed against the Land, the Building and the Company's Business Personal Property at the Mesquite Facility for the Base Tax Year is \$50,000\*, the amount of the Annual Incentive Payment for the sixth Incentive Year would be \$21,000\*, calculated as follows, to-wit:

$$\$80,000* - \$50,000* (\$30,000*) \times 70\% = \$21,000*.$$

\*The above figures are for illustration purposes only. The actual amount of the Annual Incentive Payment payable for any Incentive Year will be adjusted based on the actual total amount of ad valorem taxes paid by the Company to the City for ad valorem taxes assessed against the Land, the Building and the Company's Business Personal Property at the Mesquite Facility for the Base Tax Year and the actual total amount of ad valorem taxes paid by the Company to the City for ad valorem taxes assessed against the Land, the Building [including the existing Building and the approximately 350,000 square feet expansion of the existing Building] and the Company's Business Personal Property at the Mesquite Facility for the then applicable Incentive Year.

Notwithstanding the foregoing, if the total amount of taxes paid by the Company to the City for ad valorem taxes assessed against the Land, the Building [including the existing Building and the approximately 350,000 square feet expansion of the existing Building] and the Company's Business Personal Property at the Mesquite Facility for any Incentive Year are less than the total amount of taxes paid by the Company to the City for ad valorem taxes assessed against the Land, the Building and the Company's Business Personal Property at the Mesquite Facility for the Base Tax Year, no Annual Incentive Payment will be due or payable by the City to the Company for such Incentive Year.

2. Payment Date for Annual Incentive Payments. Provided all Conditions Precedent set forth in Article VIII of this Agreement have been satisfied and are then continuing, the Annual Incentive Payments due and payable pursuant to Article IX, Section 1 of this Agreement shall be due and payable by the City to the Company on the later of: (i) April 1<sup>st</sup> of the calendar year following the Incentive Year for which the Annual Incentive Payment is payable; or (ii) thirty (30) days after all Conditions Precedent to the payment of such Annual Incentive Payment have been satisfied.

3. Development and Review Fees Grant. The City, as part of its normal course of business, charges development and review fees associated with the design, permit approval, construction and inspection of improvements being constructed in the City in accordance with the applicable development rules and regulations of the City ("Development and Review Fees"). As part of the Economic Development Incentives granted by the City to the Company pursuant to this Agreement, the City hereby approves, subject to the conditions precedent more fully set forth in Article IX, Section 4 of this Agreement, an economic development grant to the Company in the amount equal to the amount of Development and Review Fees paid by the Company to the City in connection with the Real Property Capital Improvements that exceed the amount of TWO HUNDRED AND FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) (the "Development and Review Fees Grant"). By way of illustration only, if the total amount of Development and Review Fees paid by the Company to the City in connection with the Real Property Capital Improvements is \$300,000.00, the maximum amount of the Development and Review Fee Grant to be paid by the City to the Company pursuant to this Agreement would be \$50,000.00. By way of further illustration, if the Development and Review Fees paid by the Company to the City in connection with the Real Property Capital Improvements is \$200,000.00, the amount of the Development and Review Fee Grant to be paid by the City to the Company pursuant to this Agreement would be \$0.

4. Conditions Precedent to Payment of Development and Review Fees Grant. The conditions precedent to the payment by the City to the Company of the Development and Review Fees Grant shall be the following, to-wit: (i) the Company shall have timely paid to the City all Development and Review Fees assessed by the City to the Company in connection with the Real Property Capital Improvements;



(ii) the total amount of Development and Review Fees paid by the Company to the City in connection with the Real Property Capital Improvements shall exceed the sum of TWO HUNDRED AND FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00); (iii) the Company shall have submitted to the City a written request for payment of the Development and Review Fees Grant; (iv) the City shall have confirmed that the City has received payment of all Development and Review Fees assessed by the City to the Company in connection with the Real Property Capital Improvements; and (v) no Default by the Company shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Default by the Company under the terms of this Agreement.

5. Payment of Development and Review Fees Grant. Provided the conditions precedent set forth in Article IX, Section 4 above have been satisfied and are then continuing, the City will pay the Development and Review Fees Grant to the Company in one installment equal to the sum, if any, that the Development and Review Fees paid by the Company to the City in connection with the Real Property Capital Improvements exceed the amount of TWO HUNDRED AND FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) (the Development and Review Fees Grant Payment"). The Development and Review Fees Grant Payment shall be due and payable by the City to the Company within thirty (30) days after the satisfaction of all conditions precedent set forth in Article IX, Section 4 above.

6. Roadway Impact Fees Grant. The City, as part of its normal course of business, charges impact fees for roadway facilities in order to generate revenue to fund or recoup all or part of the cost of roadway capital improvements or roadway facility expansions necessitated by and attributable to new development projects in accordance with the City's Impact Fee Ordinance No. 4366 ("Roadway Impact Fees"). The Parties acknowledge that Roadway Impact Fees shall not include impact fees, if any, assessed by the City in accordance with the City's Impact Fee Ordinance No. 4366 in connection with any improvements or facility expansions other than roadway expansions or facilities as defined in the Impact Fee Ordinance including, without limitation, Roadway Impact Fees shall not include any impact fees assessed pursuant to the City's Impact Fee Ordinance No. 4366 for water or wastewater facilities. As part of the Economic Development Incentives granted by the City to the Company pursuant to this Agreement, the City hereby approves, subject to the conditions precedent more fully set forth in Article IX, Section 7 of this Agreement, an economic development grant to the Company in the amount equal to the amount of Roadway Impact Fees paid by the Company to the City in connection with the Real Property Capital Improvements up to the maximum sum of \$500,000.00 (the "Roadway Impact Fees Grant"). By way of illustration only, if the Roadway Impact Fees paid by the Company to the City in connection with the Real Property Capital Improvements is \$600,000.00, the maximum amount of the Roadway Impact Fees Grant to be paid by the City to the Company pursuant to this Agreement would be \$500,000.00.

7. Conditions Precedent to Payment of Roadway Impact Fees Grant. The conditions precedent to the payment by the City to the Company of the Roadway Impact Fees Grant shall be the following, to-wit: (i) the Company shall have timely paid to the City all Roadway Impact Fees assessed by the City to the Company in connection with the Real Property Capital Improvements; (ii) the Company shall have submitted to the City a written request for payment of the Roadway Impact Fees Grant; (iii) the City shall have confirmed that the City has received payment of all Roadway Impact Fees assessed by the City to the Company in connection with the Real Property Capital Improvements; and (iv) no Default by the Company shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Default by the Company under the terms of this Agreement.

8. Payment of Roadway Impact Fees Grant. Provided the conditions precedent set forth in Article IX, Section 7 above have been satisfied and are then continuing, the City will pay the Roadway Impact Fees Grant to the Company in one installment equal to the sum of the Roadway Impact Fees paid by the Company to the City in connection with the Real Property Capital Improvements up to the maximum sum of \$500,000.00 (the "Roadway Impact Fees Grant Payment"). The Roadway Impact

Fees Grant Payment shall be due and payable by the City to the Company within thirty (30) days after the satisfaction of all conditions precedent set forth in Article IX, Section 7 above.

9. Funds Available for Payment of Economic Development Incentives. The grants of Economic Development Incentives payable by the City to the Company as more fully set forth in this Agreement are not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. All Economic Development Incentives payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. Each Economic Development Incentive including, without limitation, each Annual Incentive Payment (including, without limitation, any Annual Incentive Payment payable during any extension of the Incentive Period as more fully set forth in Article IX, Section 10 below), shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which such Economic Development Incentive including, without limitation, each Annual Incentive Payment, is to be made. All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of each Party pursuant to this Article IX, Section 9 shall expressly survive the expiration or termination of this Agreement.

10. Potential Extension of Incentive Period. In the event that the City does not appropriate funds in any budget year for the payment of any Annual Incentive Payment due under this Agreement during such budget year, such failure shall not be considered a Default by the City under Section X of this Agreement, and the City shall not be obligated to pay the Company the Annual Incentive Payment otherwise due during such budget year; provided, however, the Incentive Period of this Agreement shall be extended one (1) year for each year the City fails to appropriate funds for the payment of any Annual Incentive Payment otherwise due under this Agreement. All terms, provisions, covenants, agreements, conditions, obligations and rights and remedies of the Parties including, without limitation, the Conditions Precedent set forth in Article VIII of this Agreement, shall continue to apply during any extended Incentive Period. In the event the City fails to appropriate funds in any budget year for the payment of the Annual Incentive Payment otherwise due for such budget year, the Company shall have the right, but not the obligation, as the Company's sole and exclusive remedy, to terminate this Agreement in which event neither Party hereto shall have any further rights or obligations hereunder. In the event the Incentive Period is extended pursuant to this Article IX, Section 10, the amount of the Annual Incentive Payment for each extended year shall be calculated by **subtracting** the total amount of taxes paid by the Company to the City for ad valorem taxes assessed against the Land, the Building and the Company's Business Personal Property at the Mesquite Facility for the Base Tax Year from the total amount of taxes paid by the Company to the City for ad valorem taxes assessed against the Land, the Building [including the existing Building and the approximately 350,000 square feet expansion of the existing Building] and the Company's Business Personal Property at the Mesquite Facility for each extended year and **multiplying** that amount by fifty percent (50%). The Parties acknowledge and agree that any extension of the Incentive Period as more fully set forth in this Article IX, Section 10 shall not increase the number of Annual Incentive Payments payable by the City under the terms of this Agreement and notwithstanding anything contained in this Agreement to the contrary, in no event shall the City be obligated to pay more than twenty (20) Annual Incentive Payments to the Company under the terms of this Agreement. The payment of any Annual Incentive Payment during any extended year shall also be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which such payment is to be made. To the extent there is a conflict between this paragraph and any other language or covenant in this Agreement, this paragraph shall control, provided, however, to the extent there is any conflict between this paragraph and Article IX, Section 9 above, Article IX, Section 9 shall control.

## ARTICLE X

### Defaults Recapture of Incentives Remedies

1. Default. A Party shall be in default of this Agreement (the “Defaulting Party”): (i) upon the occurrence of an Event of Bankruptcy or Insolvency of such Party; or (ii) if such Party fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by such Party under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the other Party (the “Non-Defaulting Party”) (each a “Default”).

2. Remedies. Upon the occurrence of a Default, the Non-Defaulting Party shall have the right to terminate this Agreement by written notice to the Defaulting Party and shall further have the right to exercise any and/or all other rights and/or remedies available to the Non-Defaulting Party pursuant to the laws of the State of Texas.

3. Non-Payment of Economic Development Incentives. In the event the Company is determined by the City to be in Default of this Agreement, the City shall have no obligation to pay any Economic Development Incentives to the Company for the year in which the Default occurred.

4. Recapture of Economic Development Incentives. In the event this Agreement is terminated by the City pursuant to Article X, Section 2 above, the City shall have no obligation to pay any further Economic Development Incentives to the Company and the Company shall immediately pay to the City, at the City’s address set forth in Article XI, Section 2 of this Agreement, or such other address as the City may hereafter notify the Company in writing, the sum equal to the lesser of: (i) five percent (5%) of all Economic Development Incentives previously paid by the City to the Company pursuant to this Agreement; or (ii) Fifty Thousand and No/100 Dollars (\$50,000.00). In the event the Company fails to timely pay any sums due by the Company to the City pursuant to this Article X, Section 4, the Company shall be in breach of this Agreement and the City shall have the right, without further notice to the Company, to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas to collect such sums.

5. Survival. All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of each Party pursuant to this Article X shall expressly survive the expiration or termination of this Agreement.

## ARTICLE XI

### Miscellaneous Provisions

1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns permitted under the terms of this Article XI, Section 1, provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of the Company hereunder may not be assigned or transferred by the Company to any Person without the prior written consent of the City which may not be unreasonably withheld by the City. In the event the Company is a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the shares or membership interests of the Company or the sale, transfer or assignment of a controlling interest in the shares, membership or partnership interests of any majority shareholder or member of the Company shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares, membership or partnership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. Furthermore, neither the Company nor any approved assignee or their legal representatives or successors

in interest shall, by operation of law or otherwise, assign, or otherwise transfer this Agreement or any part hereof, or the interest of the Company or any approved assignee under this Agreement, without obtaining the City's prior written consent, which may not be unreasonably withheld by the City. Any consent by the City to any assignment of this Agreement shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. Every assignee shall be subject to and be bound by all the provisions, covenants, and conditions of this Agreement and shall be required to obtain the prior written consent of the City with respect to any future or further assignment. Any attempted assignment in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement by the Company. A collateral assignment shall not require consent pursuant to this Section.

2. Notices. Any notice and/or certificate or statement required or permitted to be given under the terms of this Agreement shall be in writing and shall be considered properly given if mailed by United States mail, certified mail, return receipt requested, in a postage paid envelope addressed to the Party at the address set forth below, or by delivering same in person to the intended addressee by hand delivery or by a nationally recognized courier service such as United Parcel Service. Notices mailed by certified mail as set forth above shall be effective upon deposit in the United States mail. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

COMPANY: United Parcel Service Inc.  
1331 S Vernon St  
Anaheim, CA 92805  
Attention: Shane Simpson

BT-OH, LLC  
1331 S Vernon St  
Anaheim, CA 92805  
Attention: Shane Simpson

With a Copy to: Duff & Phelps Corporation  
919 Congress Ave, #1450,  
Austin, TX 78701  
Attention: Michael Lateur

CITY: City of Mesquite  
1515 N. Galloway Avenue  
Mesquite, TX 75149  
Attention: City Manager

With a copy to: City Attorney  
City of Mesquite  
1515 N. Galloway Ave.  
Mesquite, Texas 75149

3. Right to Offset. The City shall have the right to offset any amounts due and payable by the City under this Agreement against any debt (including taxes) lawfully due and owing by any one or both of United Parcel Service, Inc. and/or BT-OH, LLC to the City, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

4. Remedies Cumulative. Each right and remedy of the Parties provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas shall be cumulative and concurrent and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas.

5. Captions. The descriptive captions of this Agreement are for convenience of reference only and shall in no way define, describe, limit, expand or affect the scope, terms, conditions, or intent of this Agreement.

6. Modification. This Agreement may only be revised, modified or amended by a written document signed by the City and the Company. Oral revisions, modifications or amendments are not permitted.

7. 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.

8. Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a Default of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.

9. **GOVERNING LAW, VENUE, FORUM AND WAIVER OF TRIAL BY JURY.** THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY STATE OTHER THAN TEXAS). EACH PARTY AGREES THAT ANY SUIT, ACTION OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT SHALL ONLY BE BROUGHT IN A UNITED STATES FEDERAL DISTRICT COURT IN THE NORTHERN DISTRICT OF TEXAS OR A TEXAS STATE COURT LOCATED IN DALLAS COUNTY, TEXAS AND EACH PARTY WAIVES THE RIGHT TO CHALLENGE THE VENUE OF SUCH COURTS OR TO SEEK THE TRANSFER OF SUCH SUIT, ACTION OR PROCEEDING TO A MORE CONVENIENT FORUM. THE PARTIES HEREBY IRREVOCABLY AGREE TO SUBMIT TO THE PERSONAL AND SUBJECT MATTER JURISDICTION OF UNITED STATES FEDERAL DISTRICT COURTS IN THE NORTHERN DISTRICT OF TEXAS AND TEXAS STATE COURTS LOCATED IN DALLAS COUNTY, TEXAS (AND ALL OTHER FEDERAL AND TEXAS STATE COURTS TO WHICH ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE APPEALED). THE PARTIES WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT.

10. **WAIVER OF CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.** THE COMPANY AND THE CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.

11. Severability. The sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable and, if any phrase, clause, sentence, paragraph, or section of this Agreement should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect the validity or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid provision had never been included in the Agreement.

12. No Partnership or Joint Venture. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership or joint venture between the Parties.

13. No Third Party Beneficiaries. The Parties to this Agreement do not intend to create any third party beneficiaries of the contract rights contained herein. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No Person who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third party beneficiary.

14. Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

15. Counterparts. This Agreement may be executed in any number of original, facsimile or electronically-scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument.

16. Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Agreement. There are no oral agreements between the Parties.

17. Authority. The Company represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. Each Party represents and warrants to each other Party that this Agreement has been duly authorized by such Party and that each Party has the full power and authority to enter into and fulfill its obligations under this Agreement. Each Person signing this Agreement represents that such Person has the authority to sign this Agreement on behalf of the Party indicated.

18. City Council Authorization. This Agreement was authorized by resolution of the City Council approved at a City Council meeting.

19. Usury Savings Clause. The Company and City intend to conform strictly to all applicable usury laws. All agreements of the City and the Company are hereby limited by the provisions of this Article XI, Section 19 which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no event shall any interest contracted for, charged, received, paid or collected under the terms of this Agreement exceed the Maximum Lawful Rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under applicable law. If, from any possible development of any document, interest would otherwise be payable to City in excess of the Maximum Lawful Rate, any such construction shall be subject to the provisions of this Article XI, Section 19 and such document shall be automatically reformed and the interest payable to the City shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. If the City shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Lawful Rate, an amount equal to the amount which would have been excessive interest shall at the option of the City be

refunded to Company or applied to the reduction of the principal amount owing under this Agreement or such document in the inverse order of its maturity and not to the payment of interest. The right to accelerate any indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and City does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the City shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Lawful Rate.

20. Execution of Agreement by Parties. If this Agreement is not executed by both the Company and the City on or before August 31, 2016, this Agreement will be null and void and of no force or effect.

21. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents, officers and/or officials on the dates set forth below.

ATTEST:

**CITY OF MESQUITE,  
a Texas home rule municipality**

By: SUSAN HOUSE

Susan House  
Assistant City Secretary

Date: 8.23.16

By: Cliff Kealey

Name: Cliff Kealey  
Title: City Manager

Date: 8.23-16

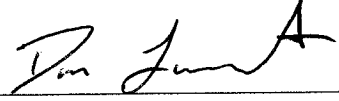
APPROVED AS TO FORM:

[Signature]

City Attorney or his Designee

**COMPANY:**

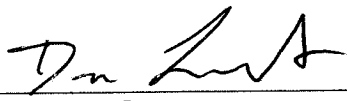
United Parcel Service, Inc., an Ohio corporation

By:   
Name: Don Lancaster  
Title: Vice President, Corporate Tax

Date: 7-28-16

**COMPANY:**

BT-OH, LLC, an Ohio limited liability company

By:   
Name: Don Lancaster  
Title: Vice President, Corporate Tax

Date: 7-28-16



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

**Legal Description of Land**

AUSTIN  
BLK C LOT 1 ACS 72.7692  
VOL84168/2378 CO-DALLAS  
0030200C00100 3380030200C

PL  
CWX

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

**Existing Building Capital Improvements**

Expand Existing Building  
Building Demo - existing MDC  
Exterior Wall Demo  
Office Demo  
Fuel Tank Removal  
Yard Concrete Demo  
Yard Asphalt Paving Demo  
In / Out Door Install in Existing Wall  
Site Lighting Poles  
Demolition/Relocate - Auto Equip.  
Restriping - existing lot  
Relocate H.R. office (MDC unit)  
Roof Replacement / Repair  
Paving Patch In and Repair

PL  
CNR

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

**Building Expansion Capital Improvements**

**Site**

Site Clearing  
Cut / Fill  
Import  
Export  
Utilities to Site  
Fencing  
Landscaping  
Fuel Islands - Gas  
Fuel Islands - Diesel  
Additional Fuel Dispensers  
Employee Paving - Asphalt  
Feeder Paving - Asphalt  
Feeder Paving - Concrete  
Retention Pond  
Curb and Gutter  
Staging rail yard - staging positions  
Retaining wall  
Storm water modifications  
Existing detention pond & line relocation

**Facility**

SF of core building shell  
    Roof  
    Electric  
    Heat Warehouse  
    Plumbing  
    Fire Sprinkler  
SF of finger buildings  
SF of exterior wall  
Center Offices  
    HVAC Offices  
Mezzanine  
Input Doors  
Output Doors  
Metro Doors  
Air Doors  
Drive thru Doors

Shop Doors  
Customer Counter  
Metro Dock  
Elevator  
Trench Drains  
Auto Shop Wall  
Parking deck structure  
Pit - enclose existing opening

**Other Structures**

MDCs  
PDCs  
Guard House  
Wash Tunnels  
Wash Tunnel Equip  
Remote Shop  
Remote Customer Counter

**MDRs**

Automotive MDRs  
Facility MDRs  
Plant Engineering MDRs  
TSG/IS Data Communications  
Phone

**Other**

A & E  
Environmental  
Soils  
Paving  
Roofing  
Structural  
Surveying  
Traffic Studies

*DL*  
*CHK*

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

**Business Personal Property Capital Improvements**

**MODULES**

METERED MODULE @ CAMERA  
ADDL. CONTROLS EXIST EQUIP  
PRIMARY/OUTBOUND CHUTES  
PRI SHOE SORTER(S)  
OUTBOUND SHOE SORTER(S)  
VISICON SINGULATOR  
SINGULATOR PLATFORM  
SS DOUBLE DENSITY TT- Mantissa  
SINGLE DEST. @ SMALLS SORTER  
VDC, LOOSE SMALLS - 1-SIDED  
SS INDUCT, MANUAL, 5 POS.  
INTRALOX FLOW-SPLITTER  
INPUT DR PLAT + IRREG SLIDE  
OUTPUT DR. PLAT.  
METRO RO 30CAR-2 SIDES CONCRETE  
LATERAL FEED CONVEYOR  
SMALLS SORT COMPONENTS  
SMALLS SORT RUNOUT CONVEYOR  
SMALLS SORT TRANSPORTS  
TRANSPORT CONVEYORS  
HI-SPEED TRANSPORT CONV S  
IRREGS TRANSPORT CONV S  
ADD COMPONENTS  
PLATFORM  
POWER TURN  
INJECTOR ASSY  
IDS TUNNEL  
D.A. CONSOLIDATED POSITION  
D.A. TSG HARDWARE  
SSLAW UNIT

**Cameras**

Redundant 5/6 sided cameras Hybrid  
Redundant 5 sided camera full CCD  
Full Redundant 6 sided camera full CCD  
HSWS 6 sided camera with scales  
Unload 3 sided camera  
Redundant top and camera  
Scanner/Camera and dimmer for autoinduct  
Top Camera for unload  
UPSview Lic  
Upsview PCs  
Upsview PC back-up  
Camera PC configurations  
PC Cabinet

Camera Managing Software for Large facilities  
Camera Integration  
Label Applicator/Integration  
Label Applicator HMI Programming  
Label Applicator panel programming  
Label Applicator Panel

**XLE/ASX**

ASX System  
XLE Software Loading and Configuring ( New interface)  
XLE Software Loading and Configuring  
XLE Hardware  
XLE (New Sorter building Initial cost)

**PLC**

Posisorter  
Crossbelt  
Automated Inducts  
Sortrac  
Singulator  
ARB  
Tilt Tray Single  
Tilt Tray Double  
Semi-Automated Inducts  
Volume Distribution Unit  
Flow Splitter  
Merge/Collector  
PLC Programming Transports

**HMI**

Posisorter/Crossbelt  
Automated Inducts  
Sortrac/Singulator  
ARB  
Tilt Tray Single  
Semi Automated Inducts  
Voulme Distribution Unit  
Flow Splitter  
Tilt Tray Double  
Merge/Collector  
Network Switch

DL  
CNR