

RESOLUTION NO. 73-2017

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; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AGREEMENT FOR SUCH PURPOSES WITH INDUSTRIAL DEVELOPMENTS INTERNATIONAL (Texas), L.P., FOR A PROPOSED INDUSTRIAL BUILDING IN THE SKYLINE INDUSTRIAL DISTRICT IN MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

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 Industrial Developments International (Texas), L.P., a Georgia limited partnership (the "Company"), the developer of three existing industrial buildings totaling over one million square feet of industrial space in the City's Skyline Industrial District, to develop a fourth industrial building on a remaining approximately 30-acre site, said proposed facility to contain at least 487,200-square-feet of floor space and to be located at 2250 Skyline Drive, Mesquite, Texas, and will provide lease space to attract new businesses to the City, 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.

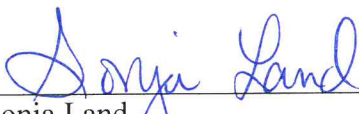
SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 5.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 4th day of December, 2017.



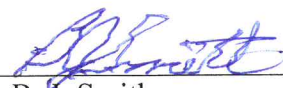
Stan Pickett
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED:



B. J. Smith
City Attorney

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**(Chapter 380 Agreement)**

This Economic Development Program Agreement (“Agreement”) is made and entered into by and between the City of Mesquite, a Texas home rule municipality (the “City”) and Industrial Developments International (Texas), L.P, a Georgia limited partnership (the “Company”).

WITNESSETH:

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

WHEREAS, the Company is the owner of that certain tract of real property located in the City of Mesquite, Texas, consisting of approximately 29.56 acres and being commonly known as 2250 Skyline Drive, Mesquite, Texas and being more particularly described in **Exhibit “A”** attached hereto and made a part hereof for all purposes (the “Land”); and

WHEREAS, the Company is considering constructing, improving, developing and operating a Class A industrial building containing at least 487,200 square feet of floor space (the “Building”) on the Land, to be known as the “Skyline Trade Center, Facility D”; and

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

WHEREAS, the Company will be making at least FIFTEEN MILLION AND NO/100 DOLLARS (\$15,000,000.00) of Project Improvements to the Land in connection with the construction of the Building; and

WHEREAS, the Company has advised the City that a contributing factor inducing the Company to make at least FIFTEEN MILLION AND NO/100 DOLLARS (\$15,000,000.00) of Project Improvements in connection with the construction of the Building on the Land is the agreement by the City to provide the Economic Development Incentive to the Company under the terms and conditions more fully set forth in this Agreement; and

WHEREAS, the Project Improvements will substantially increase the taxable value of the improvements on the Land thereby adding value to the City’s tax rolls and increasing the ad valorem real property taxes to be collected by the City; and

WHEREAS, the Company intends to lease the Mesquite Facility to one or more tenant(s) providing employment opportunities in the City; and

WHEREAS, the Company’s tenant(s) will install business personal property at the Mesquite Facility adding value to the City’s tax rolls and increasing the ad valorem personal property taxes to be collected by 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 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 (“Recitals”) are 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.

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

“Capital Investment” shall have the meaning set forth in Article VI, Section 2 of this Agreement and shall include only expenditures capitalized as capital assets on the books of the Company in accordance with generally accepted accounting principles.

“Capital Investment Certificate” shall have the meaning set forth in Article VI, 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; and (ii) 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(s) of Occupancy” shall mean one or more final certificate(s) of occupancy issued by the City to one or more tenant(s) of the Company authorizing such tenant(s) to occupy one or more space(s) consisting of at least twenty-five percent (25%) of the Building.

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

“Company” shall mean Industrial Developments International (Texas), LP, a Georgia limited partnership, its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

“Company Representative” shall mean the Chief Executive Officer, Chief Financial Officer or any other duly authorized officer of the Company acting on behalf of the Company.

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

“Construction Period for Shell Building” shall mean the period commencing with the Effective Date and continuing until and including March 31, 2019.

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

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

“Economic Development Incentive” shall mean the incentive described in Article VIII.

“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.

“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.

“Impact Fees” mean all impact fees (including all water, sewer and roadway impact fees) imposed on new development by the City pursuant to the City’s Impact Fee Ordinance No. 4366, as now and hereafter amended, to offset the costs of roadway, water and sewer infrastructure necessitated by the development of real property. “Impact Fees” do not include dedication of property, rights-of-way, or easements for such facilities, or the construction of such improvements, imposed pursuant to the City zoning or subdivision regulations, nor do “Impact Fees” include fees placed in trust or escrow funds for the purpose of reimbursing developers for oversizing or constructing water or pro rata fees for reimbursement of the City’s costs for extending water mains nor charges for water services to a wholesale customer such as a water district, political subdivision or the state, or other wholesale utility customer.

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

“Lease Requirement” shall have the meaning set forth in Article VI, Section 9 of 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.

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

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

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

“Payment Date” shall have the meaning set forth in Article VIII, Section 2 of this Agreement.

“Payment Request” shall mean a written request executed by the Company and delivered to the City’s Director of Finance requesting the payment of the Economic Development Incentive.

“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.

“Project Improvements” shall have the meaning set forth in Article VI, Section 1 of this Agreement.

“Shell Building” means the base building only, including the base building structure and core building systems, but not including any buildouts or improvements necessary for occupancy by tenants.

“Tenant Three Year Occupancy Period Requirement” shall have the meaning set forth in Article VI, Section 10 of this Agreement.

“Term” shall have the meaning set forth in Article IV of this Agreement.

“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.

“Vacancy Event” shall have the meaning set forth in Article IX, Section 3 of this Agreement.

ARTICLE III

Authority for Agreement

This Agreement is authorized by Article III, Section 52-a of the Texas Constitution and 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: (i) increase the amount of ad valorem real property taxes assessed and collected by the City; (ii) result in employment opportunities being created in the City; (iii) result in an increase in the ad valorem business personal property taxes assessed and collected by the City; (iv) promote local economic development in the City, stimulate business and commercial activity in the City; and (v) benefit the City and its citizens.

ARTICLE IV

Term

The Term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) December 31, 2023; (ii) the date the Tenant Three Year Occupancy Period Requirement has been satisfied; or (iii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein (the “Term”).

ARTICLE V

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 120th day after the date the City notifies the Company of the violation, an amount equal to the total Economic Development Incentive 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 the amount of the Economic Development Incentive being recaptured from the date the 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 Incentive 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 V 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 V 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 V of this Agreement shall expressly survive the expiration or termination of this Agreement.

ARTICLE VI

Company's Additional Covenants

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

1. Project Improvements. During the Construction Period for Shell Building, the Company will construct the Shell Building for a new Class A industrial building on the Land containing at least 487,200 square feet of floor space substantially as described and/or depicted in **Exhibit "B"** attached hereto and made a part hereof for all purposes (the "Project Improvements");

2. Capital Investment. During the Construction Period for Shell Building, the Company will make expenditures in the amount of at least FIFTEEN MILLION AND NO/100 DOLLARS (\$15,000,000.00) in connection with the Project Improvements (the "Capital Investment"). Within sixty (60) days after the last day of the Construction Period for Shell Building, 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 Project Improvements as of the last day of the Construction Period for Shell Building (the "Capital Investment Certificate"). When calculating the expenditures required under this Article VI, 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 Project Improvements. The Company will substantially complete the Project Improvements on or before the expiration of the Construction Period for Shell Building;

4. 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, 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 VI;

5. 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;

6. 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 VI, Section 5 above;

7. Timely Payment of Taxes. The Company shall timely pay or contest all ad valorem taxes assessed against the Mesquite Facility during the Term of this Agreement prior to the date such taxes become delinquent;

8. Maintenance Obligations. The Company shall comply with all applicable building codes, zoning ordinances and all other codes, ordinances and regulations of the City applicable to the Mesquite Facility at all times during the Term of this Agreement and shall, at the Company's sole cost and expense, maintain the Building in good repair from the date construction of the Building is complete and thereafter during the Term of this Agreement;

9. Lease of Mesquite Facility. The Company shall enter into one or more lease agreement(s) leasing at least twenty-five percent (25%) of the Building to one or more tenant(s) for primary term(s) of at least three (3) years each no later than January 1, 2020 with commencement date(s) no later than December 31, 2020 (the "Lease Requirement");

10. Occupancy of Building. At least twenty-five percent (25%) of the Building shall be occupied by one or more tenant(s) of the Company continuously for a period of at least three (3) years commencing no later than December 31, 2020 (the "Tenant Three Year Occupancy Period Requirement"). The Parties agree that the commencement date of the Tenant Three Year Occupancy Period Requirement shall be the date a Certificate of Occupancy is issued to the first tenant to occupy all or any portion of the Building;

11. Furthering Mesquite Recognition and Pride. The Company acknowledges that the City is engaging in and administering the Program to further the economic interests of the citizens of the City and that it is important that the City receive recognition for its efforts. In its communications, branding, marketing, and promotions throughout the term of this Agreement, the Company shall use commercially reasonable efforts to recognize that the Mesquite Facility is located in Mesquite, Texas rather than "in the Dallas area" or similar non-Mesquite specific descriptors;

12. Compliance with Laws. The Company shall comply with all applicable federal, state and local laws, ordinances and regulations relating to the ownership and operation of the Mesquite Facility during the Term of this Agreement;

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; and

14. Performance of Other Agreements. 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 all other written, executed agreements now or hereafter existing between the Company and the City.

ARTICLE VII

Conditions Precedent to Payment of Economic Development Incentive

The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay the Economic Development Incentive to the Company as set forth in Article VIII 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. Payment Request. The Company shall have submitted a Payment Request to the City accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request and, as of the date of the Payment Request, all other Conditions Precedent set forth herein shall have been satisfied and are then continuing;

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 FIFTEEN MILLION AND NO/100 DOLLARS (\$15,000,000.00) in connection with the Project Improvements no earlier than the Effective Date and no later than the expiration of the Construction Period for Shell Building. 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. Capital Investment Certificate. The Company shall have submitted the Capital Investment Certificate to the City and such certificate shall confirm that the Company has complied with Article VI, Section 2 of this Agreement;

4. Building Permits. The Company shall have submitted a complete application to the City for a building permit for the Building to be constructed as part of the Project Improvements on or before March 30, 2018;

5. Completion of Project Improvements. The Project Improvements shall have been substantially completed on or before the expiration of the Construction Period for Shell Building, as evidenced by the issuance by the City of a final inspection, final green tag, certificate of completion, or other equivalent, confirming completion of the requirements of the building permit issued by the City in connection with the construction of the Building;

6. Payment of Impact Fees. The Company shall have timely paid to the City all Impact Fees and other associated permit, development, review and inspection fees due and payable to the City in connection with the Project Improvements and the City shall have confirmed receipt of all Impact Fees and other associated permit, development, review and inspection fees;

7. Maintenance Obligations. The Building shall, as of the date of the Payment Request, be in compliance with all applicable building codes, zoning ordinances and all other codes, ordinances and regulations of the City applicable to the Mesquite Facility;

8. Lease of Mesquite Facility. The Company shall have satisfied the Lease Requirement and shall have provided the City with copies of such lease(s) executed by the Company and such tenant(s);

9. Certificate(s) of Occupancy. Certificate(s) of Occupancy shall have been issued to one or more tenant(s) of the Company authorizing such tenant(s) to occupy at least twenty-five percent (25%) of the Building and such tenant(s) shall have actually moved into the Building and are occupying at least twenty-five percent (25%) of the Building;

10. Records and Reports. The Company shall have delivered to the City copies of such invoices, paid receipts, payment records 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 VII;

11. Taxes. The Company shall have timely paid all ad valorem taxes assessed against the Land and Building due and payable as of the date of the Payment Request;

12. Performance of this 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;

13. Performance of other Agreements. 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 all other agreement(s) now and hereafter existing between the Company and the City and no default shall then exist under the terms of such agreement(s) 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 such agreement(s); and

14. No Conviction for Undocumented Workers. As of the date of the Payment Request, and at all times during the Term of this Agreement prior to the 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 VIII

Economic Development Incentive

1. Economic Development Incentive. The City hereby approves, subject to the Conditions Precedent and the covenants and limitations set forth in this Agreement, the payment of an economic development grant to the Company in the amount equal to the Impact Fees paid by the Company to the City during the Construction Period for Shell Building in connection with the Project Improvements up to the maximum collective amount of THREE HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$340,000.00) (the "Economic Development Incentive").

2. Payment of Economic Development Incentive. Provided all Conditions Precedent have been satisfied and are continuing as of the date the Company submits the Payment Request to the City and further provided that all Conditions Precedent have been satisfied and are continuing at all times during the period thereafter up to and including the "Payment Date" as hereinafter defined, the City will pay the Economic Development Incentive to the Company in one (1) installment sixty (60) days after the date the Company submits the Payment Request to the City (the "Payment Date").

3. Failure to Satisfy all Conditions Precedent. The Parties acknowledge that the City shall not be obligated to pay the Economic Development Incentive to the Company if the Company fails to satisfy all Conditions Precedent as required under Article VII.

4. Funds Available for Payment of Economic Development Incentive. The grant of the Economic Development Incentive payable by the City to the Company as more fully set forth in this Agreement is 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 but is payable only from the Impact Fees actually received in hand by the City from the Company. The Parties agree no other source of funds of the City is subject to the payment of the Economic Development Incentive. The Economic Development Incentive is subject to the City's appropriation of funds for such purpose to be paid in the budget year for which such Economic Development Incentive is to be paid. This Article VIII, Section 4 shall expressly survive the expiration or termination of this Agreement.

5. Limitation on Incentive Payments. Notwithstanding anything contained herein to the contrary, the maximum amount of the Economic Development Incentive payable under the terms of this Agreement shall be THREE HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$340,000.00). If there is any conflict between this Article VIII, Section 5 and any other term or provision of this Agreement, this Article VIII Section 5, shall control.

6. Right of Inspection. The City shall have the option, but not the obligation, on or before 30 days after the date the City receives the Payment Request, to inspect the Mesquite Facility to confirm the Company's compliance with the Conditions Precedent and other terms and provisions of this Agreement (the "Inspection Period"). If the City provides written notice to the Company during the Inspection Period that the City intends to conduct an inspection but the Company does not provide the City with reasonable access to the Mesquite Facility during the Inspection Period to permit the City to conduct such inspection, the time for the City to conduct such inspection shall be extended past the Inspection Period and the Payment Date shall be extended until ten (10) business days after the Company allows the City access to the Mesquite Facility to conduct such inspection. If the City fails to provide the Company with written notice during the Inspection Period that the City intends to conduct an inspection of the Mesquite Facility on or before the expiration of such Inspection Period, the City shall be deemed to have waived the right to inspect the Mesquite Facility pursuant to this Article VIII, Section 6 provided, however, nothing contained in this Article VIII, Section 6 shall waive or have any effect on the City's right to inspect the Mesquite Facility pursuant to Article VI, Section 5 of this Agreement.

ARTICLE IX

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 remedy available to the Non-Defaulting Party pursuant to the laws of the State of Texas.

3. Recapture of Economic Development Incentive. In the event of a Default by the Company under the terms of this Agreement during the Term of this Agreement, or in the event at least twenty-five percent (25%) of the Building is not occupied continuously by one or more tenant(s) of the Company during any portion of the Tenant Three Year Occupancy Period Requirement (the "Vacancy Event"), and provided the City has paid the Economic Development Incentive to the Company, the Company shall pay to the City, within thirty (30) days after written demand by the City, at the City's address set forth in Article X, Section 2 of this Agreement, or such other address as the City may hereafter notify the Company in writing, the amount equal to the following percentages of the Economic Development Incentive 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) three percent (3%) per annum, such interest rate to be calculated on the Economic Development Incentive being recaptured from the date the 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:

Date of Default or Date of Vacancy Event	Percentage of Economic Development Incentive Recaptured
If the Default or Vacancy Event occurs at any time during the period from the Effective Date until and including the last day of the first year of the Tenant Three Year Occupancy Period Requirement	50%
If the Default or Vacancy Event occurs at any time during the second year of the Tenant Three Year Occupancy Period Requirement	25%
If the Default or Vacancy Event occurs at any time during the third year of the Tenant Three Year Occupancy Period Requirement	10%

For the avoidance of doubt, in no event will a Vacancy Event be deemed to have occurred at any point during the Term hereof if the Tenant Three Year Occupancy Period Requirement is satisfied.

In the event the Company fails to timely pay any sums due by the Company to the City pursuant to this Article IX, Section 3, the Company shall be in breach of this Agreement and the City shall have the right, without further demand or 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 including, without limitation, institution of a suit in a court of competent jurisdiction, to collect such sums.

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

ARTICLE X

Miscellaneous Provisions

1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns 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 consent shall not be unreasonably withheld, conditioned or delayed. In the event the Company is a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the shares of the Company or the sale, transfer or assignment of a controlling interest in the membership interests 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 or membership 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. In the event the Company is a partnership, the sale, transfer or assignment of a controlling interest in the shares of a corporation or the membership interests of a limited liability company or the partnership interests of a partnership that is the Company's general or managing partner 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 interests 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, mortgage, pledge, encumber 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, conditioned or delayed. 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

and in the event the Company attempts to assign this Agreement in violation of this Article X, Section 1, the City shall have the right to terminate this Agreement by written notice to the Company.

2. Notices. Any notice and/or certificate or statement required or permitted to be given to any Party under the terms of this Agreement shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Party at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective one (1) business day after deposit in the United States mail. Notices sent by a nationally recognized courier service as set forth above shall be effective one (1) business day after deposit with the nationally recognized courier service. Notices 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: Industrial Developments International (Texas), LP
c/o IDI Logistics
1100 Peachtree Street, Suite 1000
Atlanta, Georgia 30309
Attn: CIO
Phone: (404) 479-4053
Email: bryan.blasingame@idigazeley.com

IDI Logistics
1100 Peachtree Street, Suite 1000
Atlanta, Georgia 30309
Attn: General Counsel
Phone: (404) 479-1618
Email: david.laibstain@idigazeley.com

IDI Logistics
5420 LBJ Freeway, Suite 1275
Dallas, Texas 75240
Phone: (972) 560-7003
Email: david.seaman@idigazeley.com

With a copy to: Alston & Bird LLP
1201 West Peachtree Street
Atlanta, Georgia 30327
Attn: Amber Pelot
Phone: (404) 881-7528
Email: amber.pelot@alston.com

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

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

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 the Company 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. 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.

5. 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.

6. 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.

7. 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.

8. Governing Law; Venue. 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). The Parties agree that venue of any suit to construe or enforce this Agreement shall lie exclusively in state courts in Dallas County, Texas.

9. **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.**

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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. The Company represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of the Company has the authority to sign this Agreement on behalf of the Company.

17. City Council Authorization. The City represents that it has obtained all consents and approvals necessary to enter into this Agreement with the Company. This Agreement was authorized by resolution no. 73-2017 of the City Council approved at a City Council meeting duly held on December 4, 2017.

18. 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 X, Section 18 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 X, Section 18 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.

19. Non-Collusion. The Company represents and warrants that neither Company nor anyone on the Company's behalf has given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any employee, agent, representative or official of the City as an inducement to or in order to obtain the benefits to be provided by the City under this Agreement.

20. Date for Performance. If the time period by which any act required hereunder must be performed falls on a Saturday, Sunday, legal or City holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

21. Form 1295 Certificate. The Company agrees to comply with Texas Government Code, Section 2242.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate, execute the completed certificate before a notary and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed and notarized completed Form 1295 Certificate.

22. Execution of Agreement by Parties. If this Agreement is not executed by both the Company and the City on or before February 2, 2018, this Agreement will be null and void and of no force or effect

23. 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.

24. Company shall provide to the City a proposed short form memorandum of this Agreement ("Memorandum of Contract") within 30 business days after the Effective Date. If the City approves of the form of the Memorandum of Contract, such approval not to be unreasonably withheld, conditioned or delayed, the City will execute it and provide it to the Company who may record it at Company's expense. Upon expiration of the Term, provided the Company is not in Default of this Agreement, the City and Company shall promptly terminate of record the Memorandum of Contract.

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:

By: Sonja Land
Sonja Land
City Secretary
Date: 1.29.18

APPROVED AS TO FORM:

Paula Anderson
City Attorney or his Designee

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

By: Cliff Keheley
Name: Cliff Keheley
Title: City Manager
Date: 1-26-18

COMPANY:

**INDUSTRIAL DEVELOPMENTS
INTERNATIONAL (TEXAS), LP,
a Georgia limited partnership**

By: ID International (Texas), LLC
Its General Partner

By: Bryan Blasingame
Name: Bryan Blasingame
Title: Executive Vice President -
Chief Investments Officer

Date: January 24, 2018

EXHIBIT "A"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Legal Description of Land

STATE OF TEXAS:
COUNTY OF DALLAS:

BEING a tract of land situated in the Daniel Tanner League, Abstract No. 1462, City of Mesquite, Dallas County, Texas, being a portion of those tracts of land as described in deeds to Industrial Developments International (Texas), L.P., recorded in Volume 2005019, Page 1477 and Volume 2005031, Page 5063, and all of that tract of land as described in deed to Industrial Developments International (Texas), L.P., recorded in Volume 2005055, Page 9353, Deed Records, Dallas County, Texas (DRDCT), and being more particularly described as follows:

BEGINNING at a cut X in concrete found in the westerly right-of-way line of N. Peachtree Road (100' R.O.W. - Volume 71054, Page 405, DRDCT) at the southeast corner of Lot 2, Block A, Skyline Trade Center, an addition to the City of Mesquite, Dallas County, Texas as recorded in 20080082732, DRDCT;

THENCE along the westerly right-of-way line of said N. Peachtree Road, as follows:

Southeasterly, along a curve to the left, having a radius point that bears N 58°16'03" E, 1369.75 feet, a central angle of 04°25'34", an arc distance of 105.82 feet, and a chord that bears S 33°56'44" E, 105.79 feet to a 1/2" rebar found at the end of said curve;

S 36°09'31" E, tangent to said curve, a distance of 248.77 feet to a 1/2" rebar capped Goodwin & Marshall found at the beginning of a curve to the right, from which a 1/2" rebar found bears S 36°09'31" E, 1.00 feet;

Southeasterly, along said curve, having a radius of 659.73 feet, a central angle of 52°30'00", an arc distance of 604.51 feet, and a chord that bears S 09°54'31" E, 583.58 feet to a 1/2" rebar capped Goodwin & Marshall found at the end of said curve;

S 16°20'30" W, tangent to said curve, a distance of 334.98 feet to a 1/2" rebar found at the intersection of the westerly right-of-way line of said N. Peachtree Road and the northerly right-of-way line of the Texas and Pacific Railroad right-of-way (called 200' R.O.W.), said point being the southeast corner of said Industrial Developments International (Texas), L.P. tract recorded in Volume 2005055, Page 9353, DRDCT;

THENCE departing the westerly right-of-way line of said N. Peachtree Road, along the northerly right-of-way line of said Texas and Pacific Railroad right-of-way, as follows:

N 73°39'11" W, a distance of 972.43 feet to a 1/2" rebar capped Goodwin & Marshall found at the beginning of a tangent curve to the left, having a radius of 5829.65 feet;

Northwesterly, along said curve, having a central angle of 05°05'40", an arc distance of 518.35 feet, and a chord that bears N 76°12'01" W, 518.18 feet to a 1/2" rebar capped Goodwin & Marshall found at the southeast corner of Lot 3, Block A, Skyline Trade Center, an addition to the City of Mesquite, Dallas County, Texas as recorded in 20070058327, DRDCT;

THENCE N 13°00'22" E, departing the northerly right-of-way line of said Texas and Pacific Railroad right-of-way, non-tangent to said curve, along the east line of said Lot 3, Block A, a distance of 827.14 feet to a cut X in concrete found at the northeast corner of said Lot 3, Block A, said point lying in the south line of said Lot 2, Block A;

THENCE along the south line of said Lot 2, Block A, as follows:

S 76°59'38" E, a distance of 706.42 feet to a cut X in concrete found at the beginning of a tangent curve to the left, having a radius of 300.00 feet;

Northeasterly, along said curve, having a central angle of 60°25'50", an arc distance of 316.41 feet, and a chord that bears N 72°47'27" E, 301.95 feet to a cut X in concrete found at the point of reverse curve of a curve to the right, having a radius of 300.00 feet;

Northeasterly, along said curve, having a central angle of 14°25'05", an arc distance of 75.49 feet, and a chord that bears N 49°40'09" E, 75.29 feet to a cut X in concrete found at the end of said curve;

N 56°52'39" E, tangent to said curve, a distance of 4.83 feet to the POINT OF BEGINNING and containing 1,287,414 square feet or 29.555 acres of land.

End of Exhibit

EXHIBIT "B"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Project Improvements

