

RESOLUTION NO. 07-2018

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 2202 E SCYENE RD, LLC, FOR A PROPOSED BUSINESS FACILITY EXPANSION AT 2202 EAST SCYENE ROAD 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 2202 E Scyene Rd, LLC (the "Company"), for a proposed business facility expansion at 2202 East Scyene Road in Mesquite, Texas, 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.

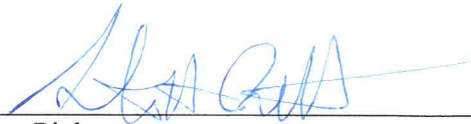
SECTION 2. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Agreement in accordance with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

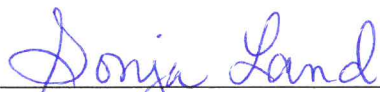
SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided 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 19th day of February, 2018.



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 2202 E Scyene Rd, LLC, a Texas limited liability company (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, being commonly known as 2202 E. Scyene Road, Mesquite, Texas 75181 and being more particularly described in **Exhibit "A"** attached hereto and made a part hereof for all purposes (the "Land") together with the approximately 45,000 square foot building located on the Land (the "Existing Building"); and

WHEREAS, the Company is in the business of, among other things, leasing the Land and Building to GPS Inventory Solutions, Inc., a Texas corporation ("GPS"); and

WHEREAS, GPS is in the business of inventory management and major equipment component repair for industrial customers ("GPS' Business"); and

WHEREAS, GPS currently operates GPS' Business in the Existing Building; and

WHEREAS, the Company is considering constructing an additional 50,000 square feet to the Existing Building (the "Phase 1 Improvements") for the purpose of leasing at least 25,000 square feet of the Phase 1 Improvements to GPS in order for GPS to expand its business in the City of Mesquite; and

WHEREAS, the Land and the Existing Building, as hereafter increased and/or expanded, is hereinafter sometimes collectively referred to as the "Mesquite Facility;" and

WHEREAS, the Company has agreed to make a capital investment of at least TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) in connection with the construction of the Phase 1 Improvements; and

WHEREAS, the Company and GPS have agreed to enter into a lease of at least 25,000 square feet of the Phase 1 Improvements; and

WHEREAS, the Company has advised the City that a contributing factor inducing the Company to lease at least 25,000 square feet of the Phase 1 Improvements to GPS to allow GPS to expand its business at the Mesquite Facility and inducing the Company to make a capital investment of at least TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) in connection with the Phase 1 Improvements is the agreement by the City to provide the Phase 1 Economic Development Incentive to the Company under the terms and conditions more fully set forth in this Agreement; and

WHEREAS, the Phase 1 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 expansion of GPS' Business at the Mesquite Facility will increase the 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 will increase employment opportunities in the City; and

WHEREAS, it is contemplated that in addition to the Phase 1 Improvements, the Company may, at the Company's option, construct up to an additional forty thousand (40,000) square feet to the Existing Building as more fully set forth herein; and

WHEREAS, such future expansion of the Mesquite Facility will increase the real and business personal property taxes assessed and collected by the City and increase 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 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.

"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 Phase 1 Conditions Precedent and Phase 2 Conditions Precedent, as applicable at the time of presentation of the Certificate of Compliance, 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 of Occupancy" shall mean a final certificate of occupancy issued by the City to GPS authorizing GPS to occupy at least 25,000 square feet of the Phase 1 Improvements and a final certificate of occupancy issued by the City for the Phase 2 Improvements, respectively.

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

"Company" shall mean 2202 E. Scyene Rd, LLC, a Texas limited liability company, 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.

"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 an incentive described in Article VIII of this Agreement and “Economic Development Incentives” shall mean more than one or all of the incentives described in Article VIII of this Agreement.

“Effective Date” shall mean the date the Company and the City execute this Agreement if 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 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.

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

“GPS” shall mean GPS Inventory Solutions, Inc., a Texas corporation.

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

“GPS Occupancy Period Requirement” shall have the meaning set forth in Article VI, Section 5 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.

“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 the Company and the City.

“Payment Request” shall mean the written request executed by the Company requesting the payment of an Economic Development Incentive.

“Permitted Assignee” or “Permitted Assignees” shall mean (a) the trustee of a trust created for the benefit of any member of the Company as of the Effective Date or such member’s spouse, children or grandchildren; (b) the court appointed guardian for any member of the Company as of the Effective Date or the court appointed guardian of such member’s spouse, children or grandchildren; (iii) the executor or administrator of the estate of a deceased member of the Company who was a member of the Company as of the Effective Date; (iv) the heirs, distributees or beneficiaries of a member of the Company as of the Effective Date; and (iv) the spouse, children or grandchildren of a member of the Company as of the Effective Date.

“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.

“Phase 1 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.

“Phase 1 Capital Investment Certificate” shall have the meaning set forth in Article VI, Section 2 of this Agreement.

“Phase 1 Conditions Precedent” shall have the meanings set forth in Article VII, Section 1 of this Agreement.

“Phase 1 Construction Period” shall mean the period commencing with the Effective Date and continuing until and including December 31, 2018.

“Phase 1 Economic Development Incentive” shall have the meaning set forth in Article VIII, Section 1 of this Agreement.

“Phase 1 Improvements” shall have the meaning set forth in the Recitals to this Agreement and in Article VI, Section 1 of this Agreement.

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

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

“Phase 2 Conditions Precedent” shall have the meanings set forth in Article VII, Section 2 of this Agreement.

“Phase 2 Construction Period” shall mean the period commencing with January 1, 2019 and continuing until and including December 31, 2022.

“Phase 2 Economic Development Incentive” shall have the meaning set forth in Article VIII, Section 3 of this Agreement.

“Phase 2 Improvements” shall have the meaning set forth in Article VII, Section 2 (B) of this Agreement.

“Phase 2 Roadway Impact Fees” shall have the meaning set forth in Article VIII, Section 3 of this Agreement.

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

“Roadway Impact Fees” mean impact fees charged by the City 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 pursuant to the City’s Impact Fee Ordinance No. 4366, as now and hereafter amended.

“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.

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 real and personal property ad valorem taxes assessed and collected by the City; (ii) result in employment opportunities being created in the City; (iii) promote local economic development in the City, stimulate business and commercial activity in the City; and (iv) 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) July 1, 2024; or (ii) 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 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 the amount of each Economic Development Incentive being recaptured from the date each 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 Incentives to the Company upon the terms and conditions more fully set forth herein, the Company represents, covenants and agrees as follows, to-wit:

1. Phase 1 Improvements. During the Phase 1 Construction Period, the Company will construct an additional 50,000 square feet to the Existing Building substantially as described and/or depicted in **Exhibit “B”** attached hereto and made a part hereof for all purposes (the “Phase 1 Improvements”);

2. Phase 1 Capital Investment. During the Phase I Construction Period, the Company will make expenditures in the amount of at least TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) in connection with the Phase 1 Improvements (the “Phase 1 Capital Investment”). Within sixty (60) days after the last day of the Phase 1 Construction 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 of the Company certifying the amount of expenditures made by the Company in connection with the Phase 1 Improvements as of the last day of the Phase 1 Construction Period (the “Phase 1 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 Phase 1 Improvements. The Company shall substantially complete the Phase 1 Improvements on or before December 31, 2018;

4. Lease of Phase 1 Improvements. The Company shall lease at least 25,000 square feet of the Phase 1 Improvements to GPS for a primary term of at least five (5) years with a commencement date of no later than January 30, 2019 (the “Phase 1 Lease Requirement”) and shall provide a copy of such lease executed by the Company and GPS to the City prior to submitting a Payment Request for the Phase 1 Economic Development Incentive;

5. Occupancy of Phase 1 Improvements. At least 25,000 square feet of the Phase 1 Improvements shall be occupied by GPS continuously for a period of at least five (5) years commencing no later than January 30, 2019 (the “GPS Occupancy Period Requirement”);

6. Timely Payment of Development Fees. The Company shall timely pay to the City all impact fees, permit fees, development fees, review fees and inspection fees in connection with the Phase 1 Improvements including, without limitation, all Roadway Impact Fees and the City shall have confirmed receipt of all such impact, permit, development, review and inspection fees;

7. 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;

8. 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;

9. 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 8 above;

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

11. Maintenance Obligations. The Company shall comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City at all times during the Term of this Agreement and shall, at the Company’s sole cost and expense, maintain the Mesquite Facility in good repair at all times during the Term of this Agreement;

12. Compliance with Laws. The Company shall comply with all 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 agreements now or hereafter existing between the Company.

ARTICLE VII

Conditions Precedent to Payment of Economic Development Incentives

1. Phase 1 Conditions Precedent. The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay the Phase 1 Economic Development Incentive to the Company shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (the "Phase 1 Conditions Precedent"), to-wit:

- A. Payment Request. The Company shall have submitted a Payment Request for the Phase 1 Economic Development Incentive to the City accompanied by a Certificate of Compliance dated effective as of the date of such Payment Request and, as of the date of such Payment Request, all other Phase 1 Conditions Precedent set forth herein shall have been satisfied and are then continuing;
- B. Capital Investment. The Company shall have satisfied its obligation to make the Phase 1 Capital Investment by making expenditures in the collective amount of at least TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) in connection with the Phase 1 Improvements during the Phase 1 Construction Period. When calculating such expenditures, the Parties agree that no expenditure shall be included as part of the Phase 1 Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Company in accordance with generally accepted accounting principles;
- C. Phase 1 Capital Investment Certificate. The Company shall have submitted the Phase 1 Capital Investment Certificate to the City and such certificate shall confirm that the Company has complied with Article VI, Section 2 of this Agreement;
- D. Completion of Phase 1 Improvements. The Phase 1 Improvements shall have been substantially completed on or before December 31, 2018 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 Phase 1 Improvements;
- E. Payment of Fees. The Company shall have timely paid to the City all impact fees, permit fees, development fees, review fees and inspection fees in connection with the Phase 1 Improvements including, without limitation, all Roadway Impact Fees and the City shall have confirmed receipt of all such impact fees, permit fees, development fees, review fees and inspection fees;
- F. Maintenance Obligations. The Mesquite Facility shall be in compliance with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City as of the date of the Payment Request for the Phase 1 Economic Development Incentive and the Existing Building, as expanded by the Phase 1 Improvements, shall be in good repair and condition;
- G. Lease of Phase 1 Improvements. The Company shall have satisfied the Phase 1 Lease Requirement and shall have provided the City with a copy of an executed lease agreement between the Company and GPS evidencing the satisfaction of the Phase 1 Lease Requirement;
- H. Certificate of Occupancy. A Certificate of Occupancy shall have been issued to GPS authorizing GPS to occupy at least 25,000 square feet of the Phase 1 Improvements and GPS shall have moved into and shall have commenced operating GPS' Business at or from at least 25,000 square feet of the Phase 1 Improvements;

- I. 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 Phase 1 Conditions Precedent;
 - J. Taxes. The Company shall have timely paid all ad valorem taxes assessed against the Mesquite Facility and GPS shall have timely paid all ad valorem taxes assessed against GPS' business personal property at the Mesquite Facility as of the date of the Payment Request for the Phase 1 Economic Development Incentive;
 - K. 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;
 - L. Performance by the Company 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);
 - M. 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
 - N. No Conviction for Undocumented Workers. As of the date of the Payment Request for the Phase 1 Economic Development Incentive, and at all times during the Term of this Agreement prior to such 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.
2. Phase 2 Conditions Precedent. The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay the Phase 2 Economic Development Incentive to the Company shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (the "Phase 2 Conditions Precedent"), to-wit:
- A. Payment Request. The Company shall have submitted a Payment Request for the Phase 2 Economic Development Incentive to the City accompanied by a Certificate of Compliance dated effective as of the date of such Payment Request and, as of the date of such Payment Request, all other Phase 2 Conditions Precedent set forth herein shall have been satisfied and are then continuing;
 - B. Phase 2 Improvements. The Company shall construct an additional 40,000 square feet to the Existing Building comparable in design and use to the Phase 1 Improvements, resulting in the building located on the Land consisting of at least 101,000 square feet (the "Phase 2 Improvements");
 - C. Phase 2 Capital Investment. The Company shall have made expenditures in the amount of at least TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) in connection with the Phase 2 Improvements (the "Phase 2 Capital Investment") and shall have submitted to the City, within sixty (60) days after the last day of the Phase 2 Construction Period, a certificate in such form as is reasonably acceptable to the City executed by a Company Representative of the Company certifying the amount of expenditures made by the Company in connection with the Phase 2 Improvements as of the last day of the Phase 2 Construction Period (the "Phase 2 Capital Investment Certificate"). When calculating the expenditures required under this Article VII, Section 2 (C), the Parties agree that no expenditure shall be included as part of the Phase 2 Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Company in accordance with generally accepted accounting principles;

- D. Completion of Phase 2 Improvements. The Phase 2 Improvements shall have been substantially completed during the Phase 2 Construction Period 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 Phase 2 Improvements;
- E. Payment of Fees. The Company shall have timely paid to the City all impact fees, permit fees, development fees, review fees and inspection fees in connection with the Phase 2 Improvements including, without limitation, all Roadway Impact Fees and the City shall have confirmed receipt of all such impact fees, permit fees, development fees, review fees and inspection fees;
- F. Maintenance Obligations. The Mesquite Facility shall be in compliance with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City as of the date of the Payment Request for the Phase 2 Economic Development Incentive and the Existing Building, as expanded by the Phase 1 Improvements and the Phase 2 Improvements, shall be in good repair and condition;
- G. Certificate of Occupancy. A Certificate of Occupancy shall have been issued for the Phase 2 Improvements;
- H. 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 Phase 2 Conditions Precedent;
- I. Taxes. The Company shall have timely paid all ad valorem taxes assessed against the Mesquite Facility and GPS shall have timely paid all ad valorem taxes assessed against GPS' business personal property at the Mesquite Facility as of the date of the Payment Request for the Phase 2 Economic Development Incentive;
- J. 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;
- K. Performance by the Company 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);
- L. 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
- M. No Conviction for Undocumented Workers. As of the date of the Payment Request for the Phase 2 Economic Development Incentive, and at all times during the Term of this Agreement prior to such 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 Incentives

1. Phase 1 Economic Development Incentive. The City hereby approves, subject to the Phase 1 Conditions Precedent and the covenants and limitations set forth in this Agreement, an economic development grant to the Company in the amount equal to the Roadway Impact Fees paid by the Company to the City during the Phase 1 Construction Period in connection with the Phase 1 Improvements up to a maximum of SIXTY FIVE THOUSAND AND NO/100 DOLLARS (\$65,000.00) (the "Phase 1 Economic Development Incentive").

2. Payment of Phase 1 Economic Development Incentive. Provided all Phase 1 Conditions Precedent have been satisfied and are then continuing, and subject to the covenants and limitations set forth in this Agreement, the City will pay the Phase 1 Economic Development Incentive to the Company in one (1) installment within sixty (60) days after GPS has obtained a Certificate of Occupancy for at least 25,000 square feet of the Phase 1 Improvements.

3. Phase 2 Economic Development Incentive. The City hereby approves, subject to the Phase 2 Conditions Precedent and the covenants and limitations set forth in this Agreement, an economic development grant to the Company in the amount equal to a portion of the Roadway Impact Fees paid by the Company to the City during the Phase 2 Construction Period in connection with the Phase 2 Improvements (the "Phase 2 Roadway Impact Fees") in the amount not to exceed the difference between SIXTY FIVE THOUSAND AND NO/100 DOLLARS (\$65,000.00) and the Phase 1 Economic Development Incentive (the "Phase 2 Economic Development Incentive"). For purposes of illustration, if the Phase 1 Economic Development Incentive is \$40,000 and the Phase 2 Roadway Impact Fees are \$30,000.00, the amount of the Phase 2 Economic Development Incentive would be \$25,000.

4. Payment of Phase 2 Economic Development Incentive. Provided all Phase 2 Conditions Precedent have been satisfied and are then continuing, and subject to the covenants and limitations set forth in this Agreement, the City will pay the Phase 2 Economic Development Incentive to the Company in one (1) installment within sixty (60) days after a Certificate of Occupancy has been issued for the Phase 2 Improvements.

5. Limitation of Economic Development Incentives. Notwithstanding anything contained in this Agreement to the contrary, the Parties agree that the maximum collective amount of the Economic Development Incentives payable under the terms of this Agreement (including, without limitation, the Phase 1 Economic Development Incentive and the Phase 2 Economic Development Incentive) is the sum of SIXTY FIVE THOUSAND AND NO/100 DOLLARS (\$65,000). 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. 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 but are payable only from the Roadway 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 Incentives. The Economic Development Incentives are subject to the City's appropriation of funds for such purpose to be paid in the budget year for which such Economic Development Incentives are to be paid. This Article VIII, Section 6 shall expressly survive the expiration or termination 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 by the Company, the City shall have the right to terminate this Agreement by written notice to the Company and shall further have the right to exercise any remedy available to the City pursuant to the laws of the State of Texas. Upon the occurrence of a Default by the City, the Company shall have the right to terminate this Agreement by written notice to the City and shall further have the right to exercise any remedy available to the Company 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, or in the event at least 25,000 square feet of the Phase I Improvements are not occupied by GPS during any portion of the GPS Occupancy Period Requirement, the Company shall immediately pay to 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 fifty percent (50%) of the 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 Economic Development Incentive being recaptured from the date each 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. 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 Assignees provided, however, notwithstanding anything contained herein to the contrary, except for assignments of this Agreement to Permitted Assignees, 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 be withheld in the City's sole discretion. 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 to any Person other than a Permitted Assignee or the sale, transfer or assignment of a controlling interest in the membership interests of the Company to any Person other than a Permitted Assignee 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 to any Person other than a Permitted Assignee 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, any Permitted Assignee or 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, any Permitted Assignee or any approved assignee under this Agreement, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. 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. No assignment of this Agreement shall contain any terms in contravention of any provisions of this Agreement. No assignment of this Agreement shall be effective unless: (i) the assignment is in writing signed by the assignor and the assignee; (ii) the assignee assumes the assignor's obligation to timely keep and perform all terms, provisions, agreements, covenants,

conditions and obligations of the assignor under the terms of this Agreement; (iii) a true and correct copy of such assignment has been provided to the City; and (iv) with respect to any assignment other than to a Permitted Assignee, the City has approved such assignment in writing. Every assignee shall be subject to and 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 to any Person other than a Permitted Assignee. 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 deemed 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 and deemed delivered, whether actually received or not, 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 and deemed delivered, whether actually received or not, one (1) business day after deposit with the nationally recognized courier service. Notices given in any other manner shall be effective and deemed delivered 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: 2202 E Scyene Rd, LLC
Attention: Loretta Wallace
2202 E. Scyene Road
Mesquite, Texas 75181
469.689.0461
Loretta.wallace@gpsinventorysolutions.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. This Agreement was authorized by resolution of the City Council approved at a City Council meeting.

18. Usury Savings Clause. The Company and the 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. Form 1295 Certificate. The Company agrees to comply with Texas Government Code, Section 2252.908 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 and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

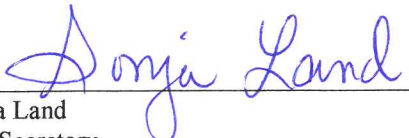
21. Execution of Agreement by Parties. If this Agreement is not executed by the Company and the City on or before April 19, 2018, this Agreement will be null and void and of no force or effect.

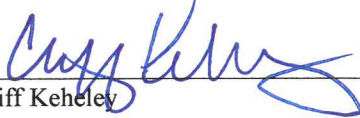
22. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

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**

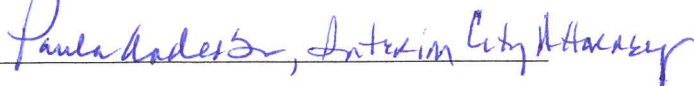
By: 
Sonja Land
City Secretary

By: 
Name: Cliff Keheley
Title: City Manager

Date: 4.17.18

Date: April 17, 2018

APPROVED AS TO FORM:

, Interim City Attorney

City Attorney or his Designee

COMPANY:

**2202 E Scyene Rd, LLC,
A Texas limited liability company**

By: Loretta Wallace
Name: Loretta Wallace
Title: Managing Member

Date: 4-16-2018

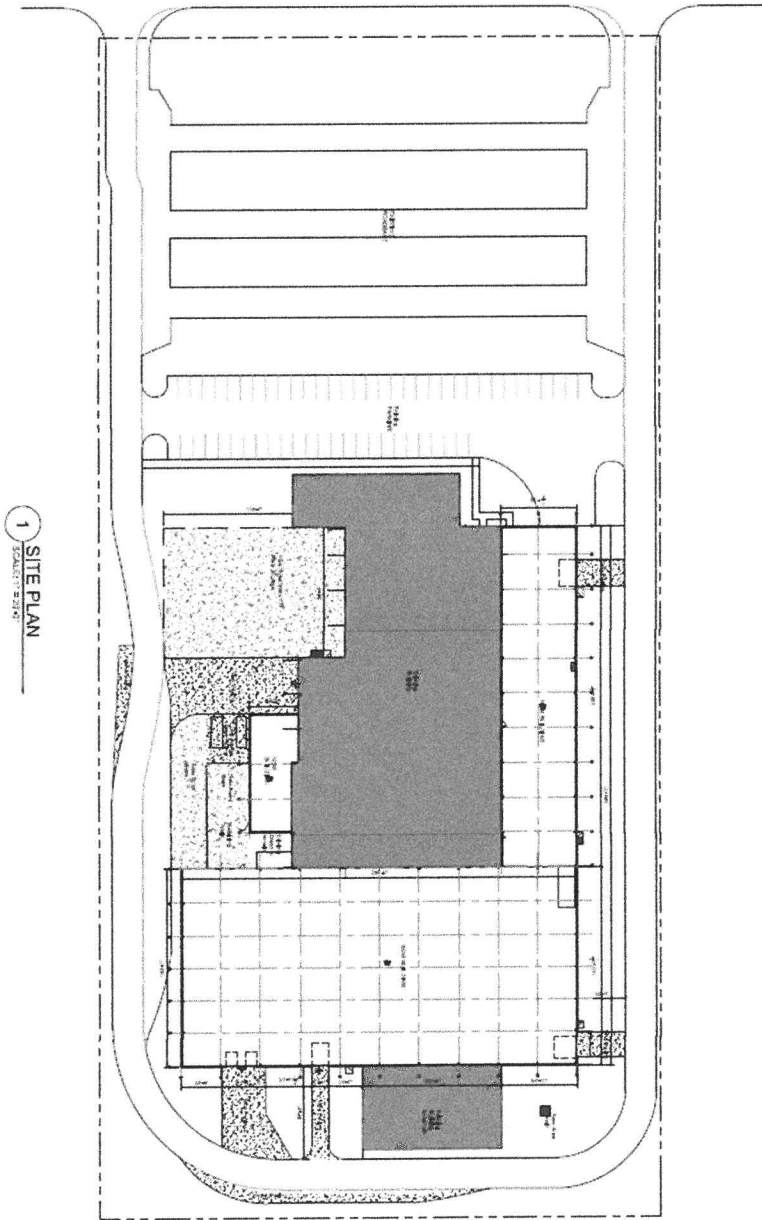
EXHIBIT "A"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Legal Description of Land


Being Lot 1R-A, Block 1, of Paragon Park, an Addition to the City of Mesquite, Dallas County, Texas, according to the plat thereof recorded in Volume 2002132, Page 65, of the Map Records of Dallas County, Texas.

EXHIBIT "B"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Phase 1 Improvements



1 SITE PLAN
 SCALE: 1" = 20'-0"

<p>DRAWING NUMBER AS-1.0</p>	<p>DRAWN BY PATRICK HARRIS</p>	<p>DATE 01/10/2018</p>	<p>REVISIONS</p>	<p>Addition to GPS Inventory Solutions, Inc. 2202 E. Scyene Road Mesquite, TX 75181</p>	<p>PROGRESS DRAWING NOT FOR REGULATORY APPROVAL, PERMITTING OR CONSTRUCTION</p>	 <p>NATIONWIDE CONSTRUCTION DESIGN-BUILD-SUPERVISION 721 South 39th Avenue, Mesquite, TX 75061 Phone: (972) 454-6666 Fax: (972) 454-3193 www.nwconstruction.com</p>
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