

RESOLUTION NO. 44-2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE SALE BY THE CITY OF MESQUITE, TEXAS (THE "CITY") OF AN APPROXIMATELY 5.315 ACRE TRACT OF CITY-OWNED PROPERTY LOCATED WITHIN THE MESQUITE RODEO CITY REINVESTMENT ZONE NUMBER ONE, CITY OF MESQUITE, TEXAS (THE "CITY TRACT") TO MM MESQUITE 50, LLC, A TEXAS LIMITED LIABILITY COMPANY (THE "DEVELOPER"); AUTHORIZING THE CITY MANAGER TO NEGOTIATE, FINALIZE AND EXECUTE A CONTRACT OF SALE, DEED AND ALL OTHER DOCUMENTS NECESSARY OR ADVISABLE TO COMPLETE THE SALE OF THE CITY TRACT TO THE DEVELOPER; 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 NEGOTIATE, FINALIZE AND EXECUTE AN AGREEMENT FOR SUCH PURPOSES WITH THE DEVELOPER PROVIDING A GRANT TO THE DEVELOPER IN THE AMOUNT OF THE PURCHASE PRICE OF THE CITY TRACT, THE CITY TRACT TO BE DEVELOPED AS PART OF A MIXED USE DEVELOPMENT CONTAINING RETAIL, RESTAURANT, OFFICE, RESIDENTIAL COMPONENTS, AND OTHER ASSOCIATED USES IN ACCORDANCE WITH CITY ORDINANCE NO. 4595 (THE "IRON HORSE PROJECT") IN THE CITY OF MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, the City of Mesquite, Texas ("City") and MM Mesquite 50, LLC, a Texas limited liability company (the "Developer") have executed that certain Iron Horse Development Agreement dated November 19, 2018, as amended by that certain First Amendment to Iron Horse Development Agreement between the City and the Developer dated effective March 18, 2019 and by that certain Second Amendment to Iron Horse Development Agreement between the City and the Developer dated effective May 20, 2019, said agreement, as now and hereafter amended, being hereinafter collectively referred to as the "Iron Horse Development Agreement," for the design, development and construction of a mixed use development containing retail, restaurant, office, residential components, and other associated uses in accordance with City Ordinance No. 4595 (the "Iron Horse Project"); and

WHEREAS, the City owns an approximately 5.315 acre tract of land within the Mesquite Rodeo City Reinvestment Zone Number One, City of Mesquite, Texas, and being more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes (the "City Tract"); and

WHEREAS, the Iron Horse Development Agreement contemplates that the City Tract will be purchased by the Developer for \$926,100.00, which is the fair market value of the City Tract, in accordance with Section 272.001(b)(6) of the Texas Local Government Code, and developed as part of the Iron Horse Project; and

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the 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 of the City (the "City Council") has been presented with a proposed agreement providing economic development incentives to the Developer in the form of a grant to the Developer in the amount of \$926,100.00 to purchase the City Tract (the "Grant"), a copy of said draft agreement being attached hereto as Exhibit "B" and incorporated herein by reference (the "Draft Agreement"); and

WHEREAS, the Grant to the Developer will incentivize the development of the Iron Horse Project; and

WHEREAS, the City Council has determined that the sale of the City Tract to the Developer and the Grant to the Developer is in the public interest of the City and its citizens; and

WHEREAS, after holding a public hearing and upon full review and consideration of the Draft Agreement and all matters attendant and related thereto, the City Council is of the opinion that negotiating and finalizing the terms and conditions of a final agreement between the City and the Developer relating to the Grant substantially in form of the Draft Agreement with such revisions as the City Manager deems advisable, is in the best interest of the City and will benefit the City and its citizens, and 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 hereby approves the sale of the City Tract to the Developer for the purchase price of \$926,100.00, and hereby authorizes the City Manager to negotiate, finalize and execute a contract of sale, deed and all other documents necessary or advisable to complete the sale of the City Tract to the Developer.

SECTION 2. That the City Council finds that the Grant to the Developer to purchase the City Tract will benefit the City and its citizens 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 3. That the City Council hereby authorizes the City Manager to negotiate and finalize the terms and conditions of an economic development agreement between the City and the Developer providing the Grant to the Developer to purchase the City Tract, such agreement to substantially conform to the Draft Agreement, with such revisions as the City

Manager deems advisable (the "Final Agreement"), and further authorizes the City Manager to execute the Final Agreement and all other documents necessary to consummate the transactions contemplated by the Final Agreement.

SECTION 4. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Final Agreement, the City will provide economic development incentives to the Developer and take other specified actions as more fully set forth in the Final Agreement in accordance with the terms and subject to the conditions outlined in the Final Agreement.

SECTION 5. That the City Manager is further hereby authorized to administer the Final 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 Final Agreement; (ii) approve amendments to the Final Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Final Agreement in excess of \$50,000; (iii) approve or deny any matter in the Final Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Final Agreement that requires the consent of the City pursuant to the terms of the Final 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 Final Agreement; (v) exercise any rights and remedies available to the City under the Final Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

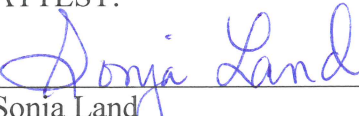
SECTION 6. That the sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 3rd day of June 2019.



Stan Pickett
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED:



David L. Paschall
City Attorney

DESCRIPTION

Being a 5.315 acre tract of land situated in the Joe Badgley Survey, Abstract number 74, City of Mesquite, Dallas County, Texas, and being all of that certain tract or parcel of land as described in deed to JADO Properties, Inc. as recorded in Volume 87209, Page 1419 of the Deed Records of Dallas County, Texas, said 5.315 acre tract being more particularly described as follows:

Beginning at a 1/2 inch iron rod found for the southeast corner of the herein described tract, the southeast corner of said JADO tract, the southernmost southwest corner of a called 2.821 acre tract of land as described in deed to Scyene Rodeo, LTD. as recorded in Volume 2000064, Page 2651 of said Deed Records, said iron rod also being in the north right-of-way line of Rodeo Drive (a 60 foot wide right-of-way) and being South 89 degrees 06 minutes 14 seconds West, a distance of 166.28 feet from the intersection of the north right-of-way line of Rodeo Drive with the west right-of-way line of Hickory Tree Road (a 60 foot wide right-of-way);

Thence South 89 degrees 06 minutes 14 seconds West, along the south line of said JADO tract and the north right-of-way line of Rodeo Drive, a distance of 545.97 feet to a 1/2 inch iron found for the southwest corner of said JADO tract and the southeast corner of a called 1.9483 acre tract (Tract 5) as described in said Scyene Rodeo, LTD. deed and being North 89 degrees 06 minutes 14 seconds East, a distance of 208.67 feet from a 1/2 inch iron rod found for reference;

Thence North 00 degrees 43 minutes 50 seconds West, along the west line of said JADO tract and east line of said called 1.9483 acre tract, a distance of 497.71 feet to a 1/2 inch iron rod found for the northwest corner of said JADO tract and the northeast corner of said called 1.9483 acre tract and being in the South line of a called 18.3003 acre tract (Tract 2) of said Scyene Rodeo, LTD. deed, said iron rod also being North 44 degrees 15 minutes 38 seconds East, a distance of 310.11 feet from a 1/2 inch iron rod found for the southernmost southwest corner of said called 18.3003 acre tract;

Thence North 89 degrees 10 minutes 20 seconds East, along the north line of said JADO tract and the south line of said called 18.3003 acre tract, a distance of 366.01 feet to a 1/2 inch iron rod found for the northernmost northeast corner of said JADO tract and the northernmost northwest corner of aforesaid called 2.821 acre tract;

Thence along the common line of said JADO tract and said called 2.821 acre tract the following calls:

South 00 degrees 44 minutes 54 seconds East, a distance of 222.59 feet to a 3/8 inch iron rod found;

North 89 degrees 08 minutes 34 seconds East, a distance of 179.97 feet to a 1/2 inch iron rod found;

South 00 degrees 42 minutes 52 seconds East, a distance of 274.56 feet to the Point Of Beginning and containing 5.315 acres or 231,525 square feet of land more or less.

NOTE: COMPANY DOES NOT REPRESENT THAT THE ABOVE ACREAGE AND/OR SQUARE FOOTAGE CALCULATIONS ARE CORRECT.

EXHIBIT “B”

380 Agreement between

The City of Mesquite and MMM Mesquite 50, LLC

**For the Transfer and Sale of City-Owned Property
in Accordance with Ordinance No. 4595
(the “Iron Horse Project”)**

CITY TRACT ECONOMIC DEVELOPMENT AGREEMENT

THIS City Tract Economic Development Agreement (the “Agreement”) by and between the CITY OF MESQUITE, TEXAS a home-rule city and municipal corporation situated in Dallas and Kaufman Counties, Texas (the “City”) and MM Mesquite 50, LLC (the “Developer”), a Texas limited liability company, for the development of a mixed use development containing retail, restaurant, office, residential components, and other associated uses in accordance with Ordinance No. 4595 approved by the City Council of the City on September 4, 2018, as amended (the “Iron Horse Project”) is executed as of this 3rd day of June, 2019 (the “Effective Date”).

WHEREAS, the City and Developer have executed that certain Iron Horse Development Agreement dated November 19, 2018, as amended by that certain First Amendment to Iron Horse Development Agreement between the City and the Developer dated effective March 18, 2019, said agreement, as now and hereafter amended, being hereinafter collectively referred to as the “Iron Horse Development Agreement,” for the design, development and construction of the Iron Horse Project; and

WHEREAS, the construction and operation of the Iron Horse Project will generate new City sales and use taxes, City mixed beverage taxes, and City ad valorem taxes; and

WHEREAS, the City owns an approximately 5.315 acre tract of property within the Iron Horse Project more particularly described in Exhibit A-2 to the Iron Horse Development Agreement (the “City Tract”) and in order to incentivize the development of the Iron Horse Project has determined to grant lawfully available funds of the City to the Developer in order to purchase the City Tract; and

WHEREAS, a portion of the City Tract will be developed as part of the Iron Horse Project for residential use and the remaining portion of the City Tract will be developed as part of the Iron Horse Project for commercial use; and

WHEREAS, the City has found that providing a grant of funds to Developer in exchange for Developer’s completion of the Public Improvements and development of the Iron Horse Project will promote local economic development and stimulate business and commercial activity and create jobs within the City (the “Program”); and

WHEREAS, the City has determined that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the Program contain controls likely to ensure that public purpose is accomplished; and

WHEREAS, Article III, Section 52-a of the Texas Constitution and Chapter 380 of Texas Local Government Code provide constitutional and statutory authority for establishing and administering the Program to provide grants or incentives of public money to promote local economic development and to stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements, covenants, and payments authorized herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.**

“Affiliates” means any person directly controlling, or directly controlled by or under direct common control with the Developer. As used in this definition, the term “control,” “controlling” or “controlled by” shall mean the possession, directly, of the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of the Developer, or (b) direct or cause the direction of management or policies of the Developer, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of the Developer or any affiliate of such lender.

“Commencement of Construction” means that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the applicable improvement, or portion thereof, as the case may be, on the Property; (ii) all necessary permits for the initiation of construction of the improvement, or portion thereof, as the case may be, on the Property pursuant to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) grading of the Property for the construction of the applicable improvement, or portion thereof, as the case may be, has commenced.

“Commercial/City Tract Event of Reversion” shall have the meaning set forth in Section 4(c) of this Agreement.

“Commercial Portion of the City Tract” shall have the meaning set forth in Section 5(a) of this Agreement.

“Completion of Construction of the Peachtree Road Improvements” shall mean that: (i) all of the Peachtree Road Improvements have been substantially completed pursuant to the City’s determination; and (ii) the City has accepted the Peachtree Road Improvements.

“Completion of Construction of the Private Horizontal Improvements” shall mean that: (i) all of the Private Horizontal Improvements have been substantially completed in accordance with all plans, approvals, and building permits issued by the City in connection with the Private Horizontal Improvements; (ii) the Private Horizontal Improvements have been inspected by the City; and (iii) the City has confirmed in writing that the construction of the Private Horizontal Improvements complies with all plans, approvals, and building permits issued by the City in connection with the construction of the Private Horizontal Improvements and in compliance with all City building codes, ordinances and regulations.

“Completion of Construction of the Public Improvements” shall mean that (i) all of the Public Improvements have been substantially completed pursuant to the City’s determination; and (ii) the City has accepted the Public Improvements.

“Developer Event of Default” shall have the meaning set forth in Section 7(d) of this Agreement.

“Grant” means lawfully available funds of the City, subject to annual appropriation, in the amount of \$926,100.00.

“Party” or “Parties” means Developer and the City.

“Peachtree Road Improvements” means the improvements to be designed and constructed by the Developer to Peachtree Road in connection with the Iron Horse Project and as more particularly set forth in Exhibit J to the Iron Horse Development Agreement.

“PID” means the Iron Horse Public Improvement District authorized and created by the City pursuant to the PID Act and the PID Resolution.

“PID Act” means Chapter 372 of the Texas Local Government Code, as amended.

“PID Resolution” means Resolution No. 15-2019 approved by the City Council of the City on February 4, 2019, authorizing and creating the Iron Horse Public Improvement District pursuant to the PID Act.

“Private Horizontal Improvements” means all private horizontal improvements to be constructed on the Property in connection with the development of the Iron Horse Project as contemplated by the Iron Horse Development Agreement.

“Property” means approximately 58.213 acres of land located within the City and depicted in Exhibit “A” and described in Exhibit B to the PID Resolution.

“Public Improvements” means public improvements to be developed and constructed or caused to be developed and constructed inside and outside the PID by the Developer to serve the PID and the Property as set forth in the Service and Assessment Plan.

“Residential Portion of the City Tract” shall have the meaning set forth in Section 5(a) of this Agreement.

“Residential/City Tract Event of Reversion” shall have the meaning set forth in Section 4(c) of this Agreement.

“Service and Assessment Plan” means the document attached as Exhibit A to the ordinance levying special assessments on the Property pursuant to Chapter 372, Texas Local Government Code, as such document may be updated, amended and supplemented from time to time, all as contemplated by the Iron Horse Development Agreement.

“Term” means the term of this Agreement as specified in Section 2 of this Agreement.

“Undocumented Workers” shall mean (i) individuals who, at the time of employment with the Developer, are not 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 worker” pursuant to V.T.C.A., Government Code Section 2264.001(4), as hereafter amended or replaced or any other applicable law or regulations.

2. **Term.** This Agreement shall be effective as of the date of execution by all Parties and shall remain in full force and effect until the date that is the earlier of: (i) the termination of this Agreement upon a Developer Event of Default or a termination pursuant to Section 7 of this Agreement; and (ii) the date that is the later of (a) the transfer of the City Tract to the Developer; (b) the Commencement of Construction of the Private Horizontal Improvements within the Iron Horse Project provided such Commencement of Construction has occurred on or before November 19, 2023; and (c) the expiration or termination of the Iron Horse Development Agreement as set forth in Article XIII of the Iron Horse Development Agreement.

3. **Developer’s Obligations.**

Construction of the Public Improvements. In consideration of the City entering into this Agreement providing for the payment of funds constituting the Grant (hereinafter defined) to Developer under the terms and conditions set forth herein, Developer agrees to design and construct or cause to be designed and constructed the Public Improvements on the Property.

4. **Grants by City.**

(a) In exchange for Developer’s compliance with all terms and provisions of this Agreement, City shall, as an incentive, grant to the Developer \$926,100.00 (the “Grant”).

(b) The Grant shall be payable contemporaneously with the closing of the purchase of the City Tract by the Developer, and shall be applied as a credit to the purchase price of the City Tract, and shall be payable only upon satisfaction of all conditions as specified in Section 5 of this Agreement, from lawfully available funds, subject to annual appropriation.

(c) Pursuant to the execution and approval of the appropriate sale documents and title transfer documents, the City intends to transfer the City Tract contemporaneously with payment by the Developer of the purchase price therefor. Such transfer documents and deed shall provide: (i) for reversion of the Residential Portion of the City Tract to the City at no cost to the City in the event that: (1) Completion of Construction of the Public Improvements has not occurred on or before November 19, 2023; (2) Completion of Construction of the Private Horizontal Improvements within the Iron Horse Project has not occurred on or before November 19, 2023; (3) Completion of Construction of the Peachtree Road Improvements has not occurred on or before November 19, 2023; and/or (4) this Agreement, the Peachtree Road Economic Development Agreement (hereinafter defined) and/or the Iron Horse Development Agreement is terminated by the City prior to the Completion of Construction of the Public Improvements, the Completion of Construction of the Private Horizontal Improvements, and/or the Completion of Construction of the Peachtree Road Improvements (each a “Residential/City Tract Event of Reversion”); and (ii) for reversion of the Commercial Portion of the City Tract to the City at no cost to the City in the event: (1) Completion of Construction of the Public Improvements has not occurred on or before

November 19, 2023; (2) Completion of Construction of the Private Horizontal Improvements within the Iron Horse Project has not occurred on or before November 19, 2023; (3) Completion of Construction of the Peachtree Road Improvements has not occurred on or before November 19, 2023; (4) of a termination of the City Tract Economic Development Agreement; (5) of a termination of the Peachtree Road Economic Development Agreement (hereinafter defined); and/or (6) of the termination of the Iron Horse Development Agreement upon an Event of Default by the Developer pursuant to Article XIV of the Iron Horse Development Agreement (each a “Commercial/City Tract Event of Reversion”).

(d) The City shall acknowledge the Commencement of Construction of the Private Horizontal Improvements within the Iron Horse Project by providing a written letter to the Developer within thirty (30) business days after the City has determined in its reasonable discretion that Commencement of Construction of the Private Horizontal Improvements within the Iron Horse Project has occurred. Provided this Agreement has not been sooner terminated, the City shall provide a written partial release of the City’s reversionary interest in the Residential Portion of the City Tract in recordable form to the Developer within thirty (30) business days after the expiration of the later of (i) the date the City has confirmed in its reasonable discretion that Completion of Construction of the Public Improvements has occurred, provided such Completion of Construction of the Public Improvements has occurred on or before November 19, 2023; (ii) the date the City has confirmed in its reasonable discretion that Completion of Construction of the Private Horizontal Improvements within the Iron Horse Project has occurred, provided such Completion of Construction of the Private Horizontal Improvements has occurred on or before November 19, 2023, and (iii) the date the City has confirmed in its reasonable discretion that Completion of Construction of the Peachtree Road Improvements has occurred, provided such Completion of Construction of the Peachtree Road Improvements has occurred on or before November 19, 2023.

(e) Provided this Agreement has not been sooner terminated, the City shall provide a written partial release of the City’s reversionary interest in the Commercial Portion of the City Tract in recordable form to the Developer within thirty (30) business days after the expiration of the later of (i) the date the City has confirmed in its reasonable discretion that Completion of Construction of the Public Improvements has occurred, provided such Completion of Construction of the Public Improvements has occurred on or before November 19, 2023; (ii) the date the City has confirmed in its reasonable discretion that Completion of Construction of the Private Horizontal Improvements within the Iron Horse Project has occurred, provided such Completion of Construction of the Private Horizontal Improvements has occurred on or before November 19, 2023, (iii) the date the City has confirmed in its reasonable discretion that Completion of Construction of the Peachtree Road Improvements has occurred, provided such Completion of Construction of the Peachtree Road Improvements has occurred on or before November 19, 2023; (iv) the date on which the Developer satisfies all of its obligations under this Agreement; (v) the date on which the Developer satisfies all of its obligations under the Peachtree Road Economic Development Agreement (hereinafter defined); and (vi) the date on which the City and the Developer discharge all of their obligations under the terms of the Iron Horse Development Agreement, including (a) the Public Improvements have been completed and the City has accepted the Public Improvements and (b) the PID Bond Proceeds (as defined in the Iron Horse Development Agreement) have been expended for the construction of all of the Public

Improvements and the Developer has been reimbursed for all completed and accepted Public Improvements.

(f) The Developer shall pay all assessments billed on the City Tract. The City shall not be responsible for the payment of any assessments on the City Tract. All sale and transfer documents shall provide that the City shall not be obligated to pay any assessments levied on the City Tract pursuant to the PID Act. All sale and transfer documents shall further provide that the Developer shall be responsible for the payment of all taxes accruing on the City Tract from the date the City Tract is transferred by the City to the Developer and thereafter during the Developer's ownership of the City Tract. The terms and provisions of this Section 4(f) and the obligations of the Developer pursuant to this Section 4(f) shall expressly survive the termination of this Agreement.

5. **Conditions to Grant.** The Grant shall not be disbursed by the City unless and until all of the following conditions have been satisfied:

(a) The Developer has provided a survey to the City with metes and bounds descriptions and depictions of the portion of the City Tract to be developed for residential use (the "Residential Portion of the City Tract") and the portion of the City Tract to be developed for commercial use (the "Commercial Portion of the City Tract"), both in accordance with the Concept Plan attached as Exhibit "C" to the Iron Horse Development Agreement, and the City has approved of such survey and of the descriptions and depictions of the portions of the City Tract to be used for residential and commercial purposes;

(b) The City and the Developer have entered into transfer and sale documents acceptable to the City by September 1, 2019, such transfer and sale documents to include, but not be limited to, the provisions in Section 4 of this Agreement;

(c) No development fees owed by the Developer (including all plat review fees, plan review and permit fees, inspection fees, and impact fees) are delinquent as of the date of transfer of the City Tract;

(d) No Developer Event of Default shall then exist, and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Developer Event of Default under the terms of this Agreement;

(e) No Event of Default set forth in Article XIV of the Iron Horse Development Agreement shall then exist, and no event shall exist which, but for notice, the lapse of time, or both, would constitute an Event of Default by the Developer under the terms of Article XIV of the Iron Horse Development Agreement; and

(f) The Developer shall not have been convicted by a court of competent jurisdiction of knowingly employing Undocumented Workers to work for the Developer at the Property or at any other branch, division or department of the Developer.

6. **Indemnification.**

DEVELOPER IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PROPERTY OR THE PUBLIC IMPROVEMENTS. DEVELOPER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, IN THEIR PUBLIC CAPACITY, FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITIES OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND ATTORNEYS' FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF, LOSS OF USE, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, EXCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES.

7. **Termination, Default and Remedies.**

- (a) This Agreement is terminable by written agreement of the Parties.
- (b) This Agreement is terminable by the City upon the following occurrences:
 - (i) A Developer Event of Default under this Agreement.
 - (ii) An Event of Default by the Developer pursuant to Article XIV of the Iron Horse Development Agreement, subject to any notice and cure provisions as provided therein.
 - (iii) Commencement of Construction of the private horizontal improvements within the Iron Horse Project has not occurred on or before November 19, 2023.
- (c) This Agreement is terminable by the Developer upon the following occurrences:
 - (i) The Developer has otherwise met all conditions for the Grant and the City does not appropriate lawfully available funds to make the Grant payment.
 - (ii) The City does not transfer the City Tract to the Developer on or before September 1, 2019.
- (d) **Events of Default.** The following are events of default of the Developer under this Agreement (each a "Developer Event of Default"):
 - (i) The Developer shall fail to comply in any material respect with any term, provision or covenant of this Agreement, and shall not cure such failure within ninety (90) days after written notice thereof is given by the City to the Developer;

- (ii) The Developer shall fail to comply in any material respect with any term, provision or covenant of that certain Peachtree Road Economic Development Agreement between the Developer and the City dated effective of even date herewith (the "Peachtree Road Economic Development Agreement"), and shall not cure such failure within ninety (90) days after written notice thereof is given by the City to the Developer;
- (iii) The filing by Developer of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's, rights;
- (iv) The consent by Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;
- (v) The entering of an order for relief against Developer or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Developer in any involuntary proceeding, and the continuation of such order, judgment or degree unstayed for any period of ninety (90) consecutive days; or
- (vi) The failure by Developer or any Affiliates to pay City ad valorem taxes or any assessments on property owned by the Developer and/or any Affiliates within the Iron Horse Project if such failure is not cured within thirty (30) days after written notice by the City.

8. **City's Remedies.**

(a) With respect to the occurrence of a Developer Event of Default the City may pursue the following remedies:

- (i) The City may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, damages, and termination of this Agreement. The City shall not terminate this Agreement unless it delivers to the Developer a second notice expressly providing that the City will terminate within thirty (30) additional days. Termination or non-termination of this Agreement upon a Developer Event of Default shall not prevent the City from suing the Developer for specific performance, damages, actual damages, excluding punitive, special and consequential damages, injunctive relief or other available remedies with respect to obligations that expressly survive termination;
- (ii) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity;
- (iii) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy; and/or

(iv) If the City Tract has been transferred by the City to the Developer at the time of any termination of this Agreement by the City pursuant to Section 7(b) and/or Section 8(a)(i) of this Agreement, the Developer shall transfer the City Tract to the City at no cost to the City, and such obligation of the Developer shall expressly survive the termination of this Agreement.

(b) With respect to the occurrence of a Residential/City Tract Event of Reversion and/or a Commercial/City Tract Event of Reversion, the City may pursue the following additional remedies:

(i) If the City Tract has been transferred by the City to the Developer at the time of the occurrence of a Residential/City Tract Event of Reversion, the Developer shall transfer the Residential Portion of the City Tract to the City at no cost to the City, and such obligation of the Developer shall expressly survive the termination of this Agreement; and

(ii) If the City Tract has been transferred by the City to the Developer at the time of the occurrence of a Commercial/City Tract Event of Reversion, the Developer shall transfer the Commercial Portion of the City Tract to the City at no cost to the City, and such obligation of the Developer shall expressly survive the termination of this Agreement.

9. **Developer Remedies.** Upon the failure of the City to comply in any material respect with any term, provisions or covenant of this Agreement within ninety (90) days after written notice by the Developer to the City, the Developer may pursue any legal remedy or remedies available to the Developer pursuant to the laws of the State of Texas (specifically excluding specific performance and other equitable remedies and specifically excluding punitive, special and consequential damages), and termination of this Agreement; provided, however, that the Developer shall have no right to terminate this Agreement unless the Developer delivers to the City a second notice which expressly provides that the Developer will terminate within thirty (30) days if the default is not addressed as herein provided.

10. **General Provisions.**

(a) **Representations and Warranties.** Developer represents and warrants to the City that it has the requisite authority to enter into this Agreement. Developer represents and warrants to the City that it will not violate any federal, state or local laws in construction of the Public Improvements and that all Public Improvements shall conform to the applicable building codes, zoning ordinances and all other ordinances and regulations of the City.

(b) **Section or Other Headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(c) **Limited Waiver of Immunity.**

- i. The City and the Developer hereby acknowledge and agree that to the extent this Agreement is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended, the City's immunity from suit is waived only as set forth in such statute.
- ii. Should a court of competent jurisdiction determine the City's immunity from suit is waived in any manner other than as provided in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement:
 - 1) The total amount of money awarded is limited to actual damages in an amount not to exceed the balance due and owed by City under this Agreement;
 - 2) The recovery of damages against City or the Developer may not include consequential damages or exemplary damages;
 - 3) The Parties may not recover attorney's fees; and
 - 4) The Developer is not entitled to specific performance or injunctive relief against the City.

(d) **Limitation on Damages.** In no event shall any Party have liability under this Agreement for any exemplary or consequential damages.

(e) **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by Developer and the City and approved by the City through its City Council.

(f) **Assignment.** This Agreement may not be assigned by either Party without the express written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The provisions hereof shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns.

(g) **Notice.** Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate Party at the following addresses, or at such other addresses provided by the Parties in writing:

DEVELOPER: Attn: Mehrdad Moayedi
MM Mesquite 50, LLC
1800 Valley View Lane, Suite 300
Farmers Branch, TX 75234

Copy to: Travis Boghetich
Boghetich Law, PLLC

1800 Valley View Lane, Suite 300
Farmers Branch, TX 75234

CITY: City of Mesquite, TX
City Manager's Office
1515 N. Galloway Ave.
Mesquite, TX 75149

Copy to: City of Mesquite, TX
City Attorney
1515 N. Galloway Ave.
Mesquite, TX 75149

(h) **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

(i) **Applicable Law.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas without regard to any conflict of law rules, and venue shall lie in Dallas County, Texas.

(j) **Severability.** In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

(k) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument. The City Manager is hereby authorized to execute this Agreement on behalf of the City.

(l) **Independent Parties.** Nothing herein shall be construed as creating a partnership or joint enterprise between the City and Developer. Furthermore, the Parties acknowledge and agree that the doctrine of respondeat superior shall not apply between the City and Developer, nor between the City and any officer, director, member, agent, employee, contractor, subcontractor, licensee, or invitee of Developer.

(m) **No Rights Conferred on Others.** Nothing in this Agreement shall confer any right upon any person other than the City and Developer and no other person is considered a third party beneficiary to this Agreement.

(n) **Approval Not Guaranteed.** Nothing contained in this Agreement shall be construed as obligating the City to approve any application required for development of the Property that is not in conformity with the City's adopted development regulations.

(o) **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the transaction contemplated herein.

(p) **Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor will there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

(q) **Annual Appropriation.** The Grant shall be subject to annual appropriation by the City Council in the annual budget and the City's obligations under this Agreement shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas.

(r) **No Acceleration.** All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.

11. **Form 1295 Certificate.** The Developer agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer 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.

12. **Undocumented Workers.**

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

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

(c) **Repayment of Grant in Event of Conviction for Employing Undocumented Workers.** If, after receiving the Grant under the terms of this Agreement, the Developer or a branch, division or department of the Developer is convicted of a violation under 8 U.S.C. §1324a (f), the Developer shall pay to the City, not later than the 120th day after the date the City notifies the Developer of the violation, an amount equal to the Grant plus interest at the rate equal to the lesser of: (i) the maximum rate allowable by law; or (ii) five percent (5%) per annum, such interest rate to be calculated on the amount of the Grant from the date the Grant was paid by the City to the Developer until the date repaid by the Developer to the City and such interest rate shall adjust periodically as of the date of any change in the maximum rate allowable by law.

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

(e) Remedy for Violation. The City shall have the right to exercise all remedies available by law to collect any sums due by the Developer to the City pursuant to Section 12 of this Agreement including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

(f) Limitation. The Developer is not liable for a violation of 8 U.S.C. §1324a (f) by a subsidiary, affiliate, or franchisee of the Developer, or by a person with whom the Developer contracts.

(g) Survival. The terms, provisions, covenants, agreements and obligations of the Developer and the rights and remedies of the City set forth in Section 12 of this Agreement shall expressly survive the expiration or termination of this Agreement.

13. Anti-Boycott Verification. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other “affiliates” (as hereinafter defined), if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with V.T.C.A., Government Code, §2270.002, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer understands “affiliates” for purposes of this Section 13 means any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

14. Iran, Sudan and Foreign Terrorist Organizations. The Developer represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other “affiliates” (as hereinafter defined) is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under V.T.C.A., Government Code, §2252.153 or §2270.0201, and posted on any of the following pages of such officer’s internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with V.T.C.A., Government Code, §2252.152, and to the extent such Section does not contravene applicable Federal law and excludes the Developer and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Developer understands “affiliates” for purposes of this Section 14 means any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

Signature pages follow

EXECUTED on this _____ day of _____, 2019.

CITY OF MESQUITE, TEXAS

By: _____
City Manager

ATTEST:

City Secretary

APPROVED AS TO FORM:

By: _____
City Attorney

EXECUTED on this _____ day of _____, 2019.

DEVELOPER:

MM Mesquite 50, LLC,
a Texas limited liability company

By: MMM Ventures, LLC,
a Texas limited liability company
Its Manager

By: 2M Ventures, LLC,
a Delaware limited liability
company
Its Manager

By: _____
Name: Mehrdad Moayedi
Its: Manager