

RESOLUTION NO. 52-2021

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 OF MESQUITE (THE "CITY"); AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AMENDMENT TO AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (CHAPTER 380 AGREEMENT) BETWEEN THE CITY, SKYLINE TRADE CENTER B, LLC, AND H&K INTERNATIONAL, INC., FOR THE EXPANSION OF NEW JOBS AND THE EXTENSION OF LEASE TERMS AT A PROPERTY LOCATED AT 2200 SKYLINE DRIVE, MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AMENDMENT FOR SUCH PURPOSES AND TO TAKE ALL ACTIONS NECESSARY OR ADVISABLE TO COMPLETE THE TRANSACTIONS CONTEMPLATED BY THE AMENDMENT ON BEHALF OF THE CITY.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas (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") adopted an economic development program pursuant to Chapter 380 of the Texas Local Government Code (the "Program"), and on October 3, 2011, to implement the Program, the City Council approved an Economic Development Program Agreement between the City, a Texas home rule municipality, SKYLINE TRADE CENTER B, LLC, a Delaware limited liability company (the "Owner"), and H&K INTERNATIONAL, INC., a Delaware corporation (the "Company"), in connection with the Company relocating its manufacturing business to the Owner's facility located at 2200 Skyline Drive, Mesquite, Texas (the "Original Agreement"); and

WHEREAS, the City has been presented with a proposed amendment to the Original Agreement, a copy of said amendment being attached hereto as Exhibit A and incorporated herein by reference for all purposes (the "Amendment"); and

WHEREAS, the Amendment amends the Original Agreement to allow for additional incentives for Company committing to a 10-year lease extension of 2200 Skyline Drive, Mesquite, Texas, (the "Leased Premises") and increasing the number of full time employees performing job duties at or from the Leased Premises, and Company has advised the City that a contributing factor inducing Company to take these actions is approval of the Amendment; and

WHEREAS, after holding a public hearing and upon full review and consideration of the Original Agreement and Amendment and all matters related thereto, the City Council finds that the Amendment is in the best interest of the City and its citizens and will assist in implementing the Program whereby local economic development will be promoted, business and commercial activity will be stimulated in the City and employment opportunities in the City will be increased.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

SECTION 2. That the City Council finds that the terms and provisions of the Amendment, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, is in the best interest of and 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 approves the Amendment and authorizes the Amendment as part of the Program whereby, subject to the terms and conditions of the Original Agreement, as amended by the Amendment, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Original Agreement, as amended by the Amendment.

SECTION 4. That the City Manager is further hereby authorized to finalize and execute the Amendment and to take all actions necessary or advisable to complete the transactions contemplated by the Amendment.

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 per 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 requiring the consent of the City with the exception of any matter requiring the consent of the City Council pursuant to the terms of the Agreement; (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 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 than 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.

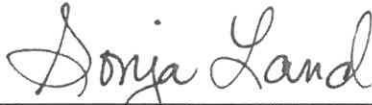
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 7th day of September 2021.



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Bruce Archer  
Mayor

ATTEST:



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Sonja Land  
City Secretary

APPROVED AS TO LEGAL FORM:



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David L. Paschall  
City Attorney

APPROVED BY CITY COUNCIL  
DATE 9.7.2021  
AGENDA ITEM NO. 24

AMENDMENT TO  
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT  
BETWEEN THE CITY OF MESQUITE,  
SKYLINE TRADE CENTER B, LLC and  
H&K INTERNATIONAL, INC.

This AMENDMENT TO ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (this "**Amendment**") is between the CITY OF MESQUITE, a Texas home rule municipality (the "**City**"), SKYLINE TRADE CENTER B, LLC, a Delaware limited liability company (the "**Owner**") and H&K INTERNATIONAL, INC., a Delaware corporation (the "**Company**"). The City, the Owner and the Company may hereafter sometimes be referred to singularly as a "**Party**" and collectively as the "**Parties**."

WHEREAS, the Parties entered into that certain Economic Development Program Agreement dated effective April 16, 2012, relating to economic development incentives to incentivize the Company to relocate its manufacturing business to the City (the "**Original Agreement**"), incorporated herein by reference; and

WHEREAS, all capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Original Agreement; and

WHEREAS, the Owner is the owner the Property described in **Exhibit A** to the Original Agreement and the Improvements thereon (collectively the "**Real Property**"); and

WHEREAS, the Original Agreement provided that the City would collect ad valorem taxes on the Taxable Value of the Real Property and Taxable Value of the Personal Property based on a collective minimum taxable value of SEVEN MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$7,200,000.00); and

WHEREAS, Dallas Central Appraisal District valued the Taxable Value of the Real Property and Taxable Value of the Personal Property for Tax Year 2021 as FOURTEEN MILLION NINE HUNDRED SIXTY-THREE THOUSAND TWO HUNDRED FIFTY-EIGHT AND NO/100 DOLLARS (\$14,963,258) resulting in approximately ONE HUNDRED SIX THOUSAND THIRTY-TWO DOLLARS AND 64/100 DOLLARS (\$106,032.64) in ad valorem taxes paid to the City for Tax Year 2021; and

WHEREAS, the Original Agreement provides a requirement for Full Time Employees which the Company has met and exceeded and anticipates continuing to exceed as provided herein and, accordingly, the Parties desire to amend the Original Agreement to provide an added incentive for additional Full Time Employees; and

WHEREAS, the Original Agreement provides a requirement for the Company to occupy the Improvements under the ten (10) year Lease with an option to extend the term of the Lease for at least two (2) additional periods of five (5) years each, and the Lease expires February 28, 2032; and

WHEREAS, in lieu of potentially exercising its two five-year options for extension of the Lease and for the inducements provided herein, the Company will enter into an extension of the Lease and continue its operations within the Improvements for an additional ten (10) years, and the Parties desire to amend the Original Agreement accordingly; and

WHEREAS, the Parties also desire to amend the Original Agreement to amend provisions of the Original Agreement for the purposes stated herein; and

WHEREAS, this Amendment is in the best interest of the City and its citizens; and

WHEREAS, the Parties desire to amend the Original Agreement as more fully set forth herein.

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this Amendment and the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties, in accordance with section 15.4 of the Original Agreement, agree to amend the Original Agreement as follows:

**1. Amendment to Definitions, Deletions and no Replacements.** Article II is amended to delete the following defined words and phrases:

- (a) "First Lease Extension Option" shall mean if the Company timely exercises in writing its option under the terms of the Lease to extend the term of the Lease for five (5) years after the Primary Term of the Lease.
- (b) "First Extended Term" shall have the meaning set forth in Article VIII of this Agreement.
- (c) "Second Lease Extension Option" shall mean if the Company exercises in writing the option under the terms of the Lease to extend the term of the Lease for five (5) years after the First Extended Lease Term.
- (d) "Second Extended Term" shall have the meaning set forth in Article VIII of this Agreement.

**2. Amendment to Definitions, Additions.** Article II is amended to add the following defined words and phrases:

- (a) "Extended Term" shall have the meaning set forth in Article VIII of this Amendment.
- (b) "Increased Number of Full Time Employees" shall mean both of the following for the corresponding Tax Year:
  - (i) Full Time Employees that are performing their job duties at or from the Leased Premises and/or are selling products produced at the Leased Premises and have

continually done so for a period of at least thirty (30) days prior to the execution date of a Certificate of Compliance for the following Tax Year:

<u>Tax Year</u>	<u>Number of Full Time Employees</u>
2022	144
2023	176
2024	184
2025	192
2026	200
2027	200
2028	200
2029	200
2030	200
2031	200

- (ii) Full Time Employees that are performing their job duties at or from the Leased Premises and have done so for a period of at least thirty (30) days prior to the execution date of a Certificate of Compliance:

<u>Tax Year</u>	<u>Number of Full Time Employees</u>
2022-2031	80

- (c) "Lease Extension" shall mean a written extension of the Lease entered into between the Owner and the Company on or before December 31, 2021 that extends the term of the Lease for ten (10) years after the Primary Term of the Lease.

**3. Amendment to Definitions, Deletions and Replacements.** Article II is amended to delete in the following defined words and phrases in their entirety and replace them with the following:

- (a) "Extended Expiration Date" shall mean December 31, 2031 in the event the Company enters into the Lease Extension.
- (b) "Term of this Agreement" shall mean the period commencing on the Effective Date and continuing until December 31, 2021, unless sooner terminated as provided herein; however, if this Agreement is extended for the Extended Term as more fully set forth in Article VIII of this Agreement, the "Term of this Agreement" shall mean the period commencing on the Effective Date and continuing until December 31, 2031, unless sooner terminated as provided herein.

**4. Amendment to Definition, Certificate of Compliance.** The definition of "Certificate of Compliance" in Article II shall be amended by adding the following to the end of the existing definition:

“The Certificate of Compliance shall further certify whether the Company satisfied the definition of Increased Number of Full Time Employees for the Tax Year for which the Certificate of Compliance is submitted.”

5. **Amendment to Article VI.** Article VI, section 13 shall be deleted in its entirety and replaced with the following:

“13. To deliver to the City within ten (10) business days after written request, copies of such employment records or other documentation as the City may reasonably request to confirm compliance by the Company with the Conditions Precedent set forth in Article VI of this Agreement and any Payment Request related to Increased Number of Full Time Employees;”

6. **Amendment to Article VII.** Article VII shall be amended to add a new section 16 to read as follows:

“16. Any Payment Request relating to Increased Number of Full Time Employees shall include the Company’s IRS 941 returns and Texas Workforce Commission Employer Quarterly Reports for the Tax Year for which the Payment Request is submitted. At the option of the City, the Company shall have submitted to the City such other employment records or other documentation as the City may reasonably request to confirm compliance by the Company with the requirements for Increased Number of Full Time Employees; and”

7. **Amendment to Article VIII.** Article VIII shall be deleted in its entirety and replaced with the following:

## “ARTICLE VIII

### City’s Covenants

(a) Subject to the Company’s obligation to repay the Incentive Payments as set forth in Article XI and Article XIII of this Agreement, and provided all Conditions Precedent have been satisfied and are then continuing, the City shall pay Incentive Payments to the Company during the Initial Term of this Agreement equal to the rebate or refund to the Company of (i) the percentage set forth below of the ad valorem taxes paid to the City for ad valorem taxes assessed against the Property and Improvements for the following Tax Years during the Initial Term of this Agreement, and (ii) the percentage set forth below of the ad valorem taxes paid to the City for ad valorem taxes assessed against the Tangible Personal Property for the following Tax Years during the Initial Term of this Agreement, both as determined by the Dallas Central Appraisal District, provided, however, in no event shall such Incentive Payments include any rebate or refund of any ad valorem taxes assessed or collected against the Property, the Improvements and/or any personal property located at the Leased Premises by the Mesquite Independent School District, the County of Dallas and/or any other taxing entity other than the City:

<u>Tax Year</u>	<u>Percentage</u>
2012 & 2013	90%
2014	80%
2015	70%
2016	40%
2017	30%
2018	20%
2019, 2020 & 2021	10%

(b) If, prior to the end of the Initial Term of this Agreement, the Company (i) enters into the Lease Extension, (ii) timely delivers to the City a fully executed copy of the Lease Extension and (iii) timely delivers to the City a written confirmation signed by the Owner acknowledging that the Lease has been extended through at least December 31, 2031, this Agreement will be extended until December 31, 2031, unless sooner terminated as provided herein (the “**Extended Term**”).

(c) Subject to (i) the Company’s obligation to repay the Incentive Payments as set forth in Article XI and Article XIII of this Agreement, (ii) all Conditions Precedent having been satisfied and are then continuing and (iii) the Initial Term of this Agreement is extended for the Extended Term as more fully set forth in this Article VIII, then the City shall pay Incentive Payments to the Company during the Extended Term of this Agreement equal to the rebate or refund to the Company of (i) thirty-five percent (35%) of the ad valorem taxes paid to the City for ad valorem taxes assessed against the Property and Improvements for each Tax Year during the Extended Term, and (ii) thirty-five percent (35%) of the ad valorem taxes paid to the City for ad valorem taxes assessed against the Tangible Personal Property for each Tax Year during the Extended Term, both as determined by the Dallas Central Appraisal District, provided, however, in no event shall any Incentive Payment for such Tax Years include any rebate or refund of any ad valorem taxes assessed or collected against the Property, the Improvements and/or any personal property located at the Leased Premises by the Mesquite Independent School District, the County of Dallas and/or any other taxing entity other than the City. In no event shall the City be required to pay an Incentive Payment under both subparagraphs (c) and (d) of this Article VIII.

(d) Subject to (i) the Company’s obligation to repay the Incentive Payments as set forth in Article XI and Article XIII of this Agreement, (ii) all Conditions Precedent having been satisfied and are then continuing, (iii) the Initial Term of this Agreement is extended for the Extended Term as more fully set forth in this Article VIII, and (iv) the Company’s satisfaction of the Increased Number of Full Time Employees definition for the Tax Year for which a Certificate of Compliance is submitted, the City shall pay an Incentive Payment to the Company for that Tax Year equal to the rebate or refund to the Company of:

(i) for Tax Years 2022 through 2026, forty percent (40%) of the ad valorem taxes paid to the City for ad valorem taxes assessed against the Property and Improvements for that Tax Year, and forty percent (40%) of the ad valorem taxes paid to the City for ad valorem taxes assessed against the Tangible Personal Property for that Tax Year, both as determined by the Dallas Central Appraisal



District, provided, however, in no event shall any Incentive Payment for any such Tax Year include any rebate or refund of any ad valorem taxes assessed or collected against the Property, the Improvements and/or any personal property located at the Leased Premises by the Mesquite Independent School District, the County of Dallas and/or any other taxing entity other than the City; and

(ii) for Tax Years 2027 – 2031, forty-five percent (45%) of the ad valorem taxes paid to the City for ad valorem taxes assessed against the Property and Improvements for that Tax Year, and forty-five percent (45%) of the ad valorem taxes paid to the City for ad valorem taxes assessed against the Tangible Personal Property for that Tax Year, both as determined by the Dallas Central Appraisal District, provided, however, in no event shall any Incentive Payment for any such Tax Year include any rebate or refund of any ad valorem taxes assessed or collected against the Property, the Improvements and/or any personal property located at the Leased Premises by the Mesquite Independent School District, the County of Dallas and/or any other taxing entity other than the City.

Any Incentive Payment paid pursuant to this subparagraph shall be in lieu of, and not in addition to, any Incentive Payment that may have been owed under the immediately preceding Article VIII, subparagraph (c) of the Amendment. In no event shall the City be required to pay an Incentive Payment under both subparagraphs (c) and (d) of this Article VIII.

(e) Notwithstanding anything contained herein to the contrary: (i) in no event will the City be required to pay any Incentive Payment for any Tax Year during the Initial Term and/or the Extended Term of this Agreement unless all ad valorem taxes assessed against the Property, the Improvements and the Tangible Personal Property by the City for that Tax Year and for all previous Tax Years have been timely paid by the Company or the Owner and collected and received by the City provided, however, for any Tax Year in which the Company or the Owner files an Acceptable Protest, the payment of ad valorem taxes assessed against the Property, the Improvements and the Tangible Personal Property for such Tax Year shall be considered as timely paid if paid in such amounts and on or before such delinquency dates as provided in §42.08 and §42.42 of the Property Tax Code, as amended; and (ii) all Incentive Payments shall cease and no Incentive Payments shall be due and payable for any Tax Year after the termination of this Agreement.

(f) Each Incentive Payment due and payable under the terms of this Agreement shall be paid by the City to the Company within sixty (60) days after the later of the following dates, to-wit: (i) the date the Company submits its Payment Request and Certificate of Compliance to the City requesting payment of the Incentive Payment for such Tax Year; (ii) the date the Owner has timely paid all ad valorem taxes assessed against the Property and Improvements for such Tax Year, provided, however, for any Tax Year in which the Owner files an Acceptable Protest, the payment of ad valorem taxes assessed against the Property and Improvements for such Tax Year shall be considered as timely paid if paid in such amounts and on or before such delinquency dates as provided in §42.08 and §42.42 of the Property Tax Code, as amended; (iii) the date the Company has timely paid all ad

valorem taxes assessed against the Tangible Personal Property for such Tax Year provided, however, for any Tax Year in which the Company files an Acceptable Protest, the payment of ad valorem taxes assessed against the Tangible Personal Property for such Tax Year shall be considered as timely paid if paid in such amounts and on or before such delinquency dates as provided in §42.08 and §42.42 of the Property Tax Code, as amended; (iv) the date the City has confirmed the collection and receipt by the City of the payment by the Owner of all ad valorem taxes assessed against the Property and the Improvements for such Tax Year; (v) the date the City has confirmed the collection and receipt by the City of the payment by the Company of all ad valorem taxes assessed against the Tangible Personal Property for such Tax Year; (vi) the “Delayed Payment Date” (as hereinafter defined); and (vii) the date the City has confirmed that all Conditions Precedent to the payment of the Incentive Payment for such Tax Year have been satisfied and are then continuing, provided that if the City desires to inspect the Leased Premises to confirm the Company’s compliance with the terms and provisions of this Agreement, the City shall send written notice to the Company requesting access to the Leased Premises to perform such inspection within thirty (30) days after the Company submits the Payment Request and Certificate of Compliance.

(g) For any Tax Year in which the Owner and/or the Company have filed an Acceptable Protest, the “**Delayed Payment Date**” as used herein shall mean the later of the following dates, to-wit: (i) the date the Dallas County Appraisal Review Board’s written order determining the appraised value of the Property and Improvements for such Tax Year has become a final, non-appealable decision and all administrative remedies have been exhausted; (ii) the date the Dallas County Appraisal Review Board’s written order determining the appraised value of the Tangible Personal Property for such Tax Year has become a final, non-appealable decision and all administrative remedies have been exhausted; (iii) the date the written order of any court conducting a judicial review of the appraised value of the Property and Improvements for such Tax Year has become a final, non-appealable decision; and (iv) the date the written order of any court conducting a judicial review of the appraised value of the Tangible Personal Property for such Tax Year has become a final, non-appealable decision.

**8. Amendment to Article IX.** Article IX shall be amended to delete sections 16 and 17 and add new sections 16, 17 and 18 to read as follows:

“16. If the Company ceases operations of the Company’s business at the Leased Premises at any time during the Term of this Agreement except for such temporary periods of time that Company’s continued occupancy of the Leased Premises is prevented by an Event of Force majeure;

17. An Event of Bankruptcy or Insolvency by the Company; and/or

18. If the Company fails at any time during the Extended Term to employ the required Increased Number of Full Time Employees, provided, however, in the event of a voluntary or involuntary termination of a Full Time Employee, which termination causes the number of Full Time Employees to fall below the required Increased Number of Full Time Employees, the Company shall not be in default of



14. **Severability.** The sections, paragraphs, sentences, clauses, and phrases of this Amendment are severable and, if any phrase, clause, sentence, paragraph, or section of this Amendment 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 Amendment 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 Amendment.

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

16. **Entire Agreement.** The Original Agreement and this Amendment set 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 relating to the subject matter of the Original Agreement and this Amendment are entirely superseded hereby and extinguished by the execution of this Amendment.

17. **Form 1295 Certificate.** The Company and the Owner agree to comply with Texas Government Code, § 2252.908 and in connection therewith, the Company and the Landlord agree to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agree to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, § 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 Amendment, a duly executed completed Form 1295 Certificate.

18. **Reservation of Legislative Authority.** Notwithstanding any provision in this Agreement, this Agreement does not control, waive, limit or supplant the City Council's legislative authority or discretion.

19. **Right to Offset.** The City shall have the right to offset any amounts due and payable by the City under this Amendment against any debt (including taxes) lawfully due and owing by the Owner or Company, regardless of whether the amount due arises pursuant to the terms of the Original Agreement, this Amendment or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

20. **Funds Available for Payment of Incentive Payments.** The grants of economic development incentives payable by the City to the Company as more fully set forth in this Amendment are not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. All Incentive Payments payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. Each Incentive Payment shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the Incentive Payment payment is to be made.

21. **Authority to Execute and Perform Amendment.** The City hereby represents and warrants that: (i) the City is duly authorized and empowered to enter into this Amendment and perform its obligations hereunder; and (ii) the individual executing this Amendment on behalf of the City has full authority to execute this Amendment on behalf of the City and bind the City to this Amendment. The Company hereby represents and warrants that: (i) the Company is duly authorized and empowered to enter into this Amendment and perform its obligations hereunder; and (ii) the individual executing this Amendment on behalf of the Company has full authority to execute this Amendment on behalf of the Company and bind the Company to this Amendment. The Owner hereby represents and warrants that: (i) the Owner is duly authorized and empowered to enter into this Amendment and perform its obligations hereunder; and (ii) the individual executing this Amendment on behalf of the Owner has full authority to execute this Amendment on behalf of the Owner and bind the Owner to this Amendment.

22. **No Joint Venture.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

23. **Execution of Agreement by All Parties.** If this Amendment is not executed by the Owner, the Company and the City on or before September 19, 2021, this Agreement will be null and void and of no force or effect.

24. **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 Amendment. The Owner represents and warrants that neither Owner nor anyone on the Owner'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 Amendment.

25. **Effective Date.** The Effective Date of this Amendment shall be the last date on which the authorized representatives of all Parties have signed this Amendment.

26. **Law Governing.** This Amendment 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.

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

28. **Anti-Boycott Verification.** If Texas Government Code Chapter 2271 is applicable to this Amendment, by signing below, the Owner and the Company hereby represent, verify, and warrant that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

29. **Iran, Sudan and Foreign Terrorist Organizations.** If § 2252.153 of the Texas Government Code is applicable to this Amendment, by signing below Owner and Company hereby represent, verify, and warranty that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under § 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a “foreign terrorist organization” as defined in § 2252.151 of the Texas Government Code.

30. **Effect of Amendment on Lease.** The Parties agree that this Amendment does not amend the Lease.

31. **Time is of the Essence.** The Parties agree that time is of the essence of this Agreement.

32. **Report Agreement to Comptroller’s Office.** City covenants and agrees to report this Agreement to the State Comptroller’s office within fourteen (14) days of the Effective Date of this Agreement, in accordance with Section 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021).

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

*[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY;  
SIGNATURE PAGES FOLLOWING]*

**ATTEST:**

By: Sonja Land  
Sonja Land  
City Secretary

Date: 10.8.2021

**CITY:**

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

By: Cliff Keheley  
Name: Cliff Keheley  
Title: City Manager

Date: 10-8-21

**APPROVED AS TO FORM:**

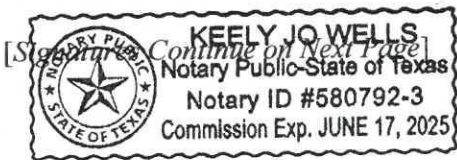
[Signature]  
City Attorney or his Designee

THE STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS           §

This instrument was acknowledged before me on 10.8.2021, by Cliff Keheley, City Manager of the City of Mesquite, Texas, a Texas municipal corporation, on behalf of said municipal corporation.

[Signature]  
NOTARY PUBLIC, State of Texas

My Commission Expires:  
6/17/2025



[Signature] *Continue on Next Page*

**COMPANY:**

**H&K INTERNATIONAL, INC.,**  
a Delaware corporation

By: 

Name: John Morgan

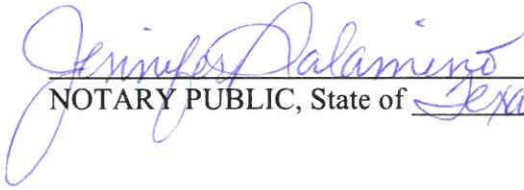
Title: President

Date: 8/31/2021

THE STATE OF Texas §

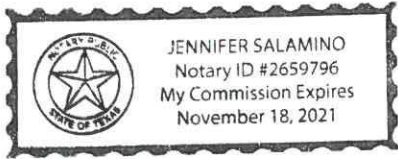
COUNTY OF DALLAS §

This instrument was acknowledged before me on 08/31/2021, by John Morgan  
President of H&K INTERNATIONAL, INC., a Delaware corporation, on behalf of said  
corporation.

  
NOTARY PUBLIC, State of Texas

(My Commission Expires)

[Signatures Continue on Next Page]





**OWNER:**

**SKYLINE TRADE CENTER B, LLC,**  
a Delaware limited liability company

By: 

Name: David Laibstain

Title: SVP and General Counsel

Date: September 22, 2021

THE STATE OF Georgia           §  
   §  
COUNTY OF Gwinnett           §

This instrument was acknowledged before me on September 22, 2021, by David Laibstain, the SVP, General Counsel of SKYLINE TRADE CENTER B, LLC, a Delaware limited liability company, on behalf of said limited liability company.

  
NOTARY PUBLIC, State of Georgia

My Commission Expires:  
Feb. 10, 2025

