

RESOLUTION NO. 75-2021

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; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN ECONOMIC DEVELOPMENT PROGRAM CHAPTER 380 AGREEMENT FOR SUCH PURPOSES WITH QT SOUTH, LLC, A TEXAS LIMITED LIABILITY COMPANY, FOR THE CONSTRUCTION AND DEVELOPMENT OF A RETAIL FUEL CENTER AND CONVENIENCE STORE LOCATED AT 5040 LAWSON ROAD IN MESQUITE, TEXAS, AND AUTHORIZING THE CITY MANAGER TO FINALIZE, EXECUTE, AND ADMINISTER THE AGREEMENT 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 has been presented with a proposed agreement providing economic incentives to QT South, LLC (the “**Developer**”), for the construction and development of a retail fuel center and convenience store in the City, a copy of said agreement being attached hereto as Exhibit 1 and incorporated herein by reference (the “**Agreement**”); and

WHEREAS, the property is located on an approximately 1.772-acre tract of land situated in the John P. Anderson Survey, Abstract No. 1, City of Mesquite, Dallas County, Texas, and being a portion of a called 12.9579-acre tract of land described as Tract I in the deed to Roy Burklow recorded in Volume 93214, Page 2667 of the deed records of Dallas County, Texas, as more particularly described and/or depicted in Exhibit A to the Agreement, and generally located at 5040 Lawson Road, City of Mesquite, Dallas County, Texas (the “**Property**”); and

WHEREAS, the City would like to encourage the development of the Property by granting certain economic development incentives to the Developer; and

WHEREAS, development of the Property will increase the taxable value of the Property thereby adding value to the City’s tax rolls and increasing the ad valorem property taxes and sales taxes to be collected by the City, along with increasing employment opportunities in the City; 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 Developer, a copy of which is attached hereto as Exhibit 1 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 Developer 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 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 1st day of November 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

**EXHIBIT 1**

**CHAPTER 380 AGREEMENT BETWEEN**

**THE CITY OF MESQUITE, TEXAS, AND**

**QT SOUTH, LLC**

CITY OF MESQUITE, TEXAS  
AND  
QT SOUTH, LLC

CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AND AGREEMENT

This CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into by and between the CITY OF MESQUITE, TEXAS, a Texas home-rule municipality (hereinafter referred to as the "City"), and QT SOUTH, LLC, a Texas limited liability company (hereinafter referred to as the "Developer") (each a "Party" and collectively the "Parties"), for the purposes and considerations stated below:

**WHEREAS**, the Developer agrees to construct or cause to be constructed a QT gas station and convenience store on an approximately 1.772-acre tract of land situated in the John P. Anderson Survey, Abstract No. 1, City of Mesquite, Dallas County, Texas, and being a portion of a called 12.9579-acre tract of land described as Tract I in the deed to Roy Burklow recorded in Volume 93214, Page 2667 of the deed records of Dallas County, Texas, as more particularly described and/or depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes, and generally located at 5040 Lawson Road, City of Mesquite, Dallas County, Texas (hereinafter referred to as the "**Property**"); and

**WHEREAS**, the Property is currently not serviced by water; and

**WHEREAS**, the City agrees to construct or cause to be constructed a waterline extension to the Property in order to service the Property at an estimated costs of \$850,000.00; and

**WHEREAS**, the waterline extension will also provide water service to other properties in the area promoting further development; and

**WHEREAS**, the Developer agrees to contribute \$400,000.00 towards the construction of said waterline extension to service the Property; and

**WHEREAS**, the Developer desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code, an incentive to Developer to develop the Property as defined below; and

**WHEREAS**, the City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of Mesquite, Texas; and

**WHEREAS**, the City has determined that a grant of funds to the Developer will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, will eliminate unemployment and underemployment in the State and City, and will enhance business and commercial activity within the City of Mesquite, Texas; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Mesquite, Texas, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and the Developer; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Mesquite, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

**SECTION 1. FINDINGS INCORPORATED.**

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

**SECTION 2. TERM.**

This Agreement shall be effective as of the Effective Date of this Agreement, and shall continue thereafter until **October 31, 2023**, unless terminated sooner under the provisions hereof.

**SECTION 3. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program and Agreement, authorized by Chapter 380 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (b) **Capital Investment Certificate.** The words “Capital Investment Certificate” means a certificate in such form as is reasonably acceptable to the City executed by the Developer certifying the amount of expenditures made by the Developer in connection with the construction of the Qualified Expenditures as of the date of such certificate (each a “**Capital Investment Certificate**”) provided, however, the Parties agree that only

expenditures capitalized as capital assets on the books of the Developer in accordance with generally accepted accounting principles shall be included in the expenditures reported in each Capital Investment Certificate.

- (c) **City.** The word “City” means the City of Mesquite, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City’s address is 1515 N. Galloway, Mesquite, Texas 75149.
- (d) **Commence Construction.** The words “Commence Construction” mean obtain from the City a building permit for the Property.
- (e) **Developer.** The word “Developer” means QT South, LLC, a Texas limited liability company, whose address for the purposes of this Agreement is P.O. Box 3475, Tulsa, Oklahoma 74101-3475.
- (f) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the City and Developer.
- (g) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth in the section entitled “Events of Default” in this Agreement.
- (h) **Façade/Elevation Plan.** The words “Façade/Elevation Plan” mean that certain building façade/elevation plan for the Qualified Expenditures, a copy of such building façade/elevation plan being attached hereto as *Exhibit B* of this Agreement, which is attached hereto and is incorporated herein for all purposes.
- (i) **Project.** The word “Project” means the Qualified Expenditures as required by this Agreement.
- (j) **Property.** The word “Property” means the approximately 1.772-acre tract of land situated in the John P. Anderson Survey, Abstract No. 1, City of Mesquite, Dallas County, Texas, and being a portion of a called 12.9579-acre tract of land described as Tract I in the deed to Roy Burklow recorded in Volume 93214, Page 2667 of the deed records of Dallas County, Texas, as more particularly described and/or depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes, and generally located at 5040 Lawson Road, City of Mesquite, Dallas County, Texas.
- (k) **Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures consisting of the construction of the QT gas station and convenience store with an aggregate total of a minimum of 4,900 square feet of retail space located on the Property, as generally depicted in *Exhibit B* of this Agreement. The Qualified Expenditures shall comply with all City, county, state and federal development standards, architectural standards, and applicable law, including City’s zoning ordinance and landscape plan requirements. The term “Qualified Expenditures” must be capital in nature, and does not include land acquisition costs.

- (l) **Roadway Impact Fees.** The words “Roadway Impact Fees” mean the impact fees charged by the City to the Developer to fund or recoup all or part of the cost of roadway capital improvements or roadway facility expansions necessitated by and attributable to the Qualified Expenditures located on the Property pursuant to the City’s Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended.
- (m) **Sewer Impact Fees.** The words “Sewer Impact Fees” mean the impact fees charged by the City to the Developer to fund or recoup all or part of the cost for wastewater or sewer facilities necessitated by and attributable to the Qualified Expenditures located on the Property pursuant to the City’s Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended.
- (n) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.
- (o) **Water Impact Fees.** The words “Water Impact Fees” mean the impact fees charged by the City to the Developer to fund or recoup all or part of the cost for water facilities necessitated by and attributable to the Qualified Expenditures located on the Property pursuant to the City’s Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended.
- (p) **Waterline Extension.** The words “Waterline Extension” mean the approximately 2,950 linear foot water line extension of 12-inch C900 PVC pipe along the south side of Interstate 20 (IH-20) from Shannon Road to Lawson Road and replacement of the six inch (6”) water main under IH-20 with a new 12-inch C900 PVC main in order to service the Property, as depicted in *Exhibit C* of this Agreement, which is attached hereto and incorporated herein for all purposes.

#### **SECTION 4. AFFIRMATIVE OBLIGATIONS OF DEVELOPER.**

The Developer covenants and agrees with City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Construction of Qualified Expenditures.** Developer covenants and agrees to construct or cause to be constructed the Qualified Expenditures located on the Property. Developer covenants and agrees to Commence Construction of the Qualified Expenditures within two (2) months of City’s completion of the Waterline Extension consistent with Section 5(a) of this Agreement. In addition, Developer covenants and agrees to submit to the City a Capital Investment Certificate in a form acceptable to the City for the Qualified Expenditures made to the Property in the minimum amount of **Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00)** within nine (9) months after commencement of construction of said Qualified Expenditures (the “**Qualified Expenditures Completion Date**”).



- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained from the City a certificate of occupancy for a minimum of 4,900 square feet of retail space located on the Property by the Qualified Expenditures Completion Date.
- (c) **Timely Payment of Waterline Extension.** The Developer covenants and agrees to timely pay to the City the sum of **Four Hundred Thousand and No/100 Dollars (\$400,000.00)** for the construction of the Waterline Extension within ten (10) business days after the City notifies Developer in writing that the City has awarded a contract for the construction of the Waterline Extension (the "**Waterline Extension Fee**") as required by Section 5(a) of this Agreement.
- (d) **Timely Payment of City Development Fees.** The Developer covenants and agrees to timely pay to the City all impact fees, permit fees, development fees, review fees and inspection fees, including, without limitation, all Roadway Impact Fees, Sewer Impact Fees, and Water Impact Fees, in connection with the Project. On or after completion of the Project and receipt of a certificate of occupancy consistent with Section 4(b) of this Agreement, the Developer covenants and agrees to submit proof of payment of said fees and the Capital Investment Certificate to the City.
- (e) **Performance.** Developer covenants and agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the City and Developer.

## **SECTION 5. AFFIRMATIVE OBLIGATIONS OF THE CITY.**

City covenants and agrees with Developer that, while this Agreement is in effect, and provided Developer has timely complied with its obligations under this Agreement, it shall comply with the following terms and conditions:

- (a) **Waterline Extension.** Conditioned on Developer timely paying the City the Waterline Extension Fee, the City covenants and agrees to construct or cause to be constructed the Waterline Extension. The City covenants and agrees to award a contract for the construction and installation of the Waterline Extension by **March 31, 2022**. The City covenants and agrees to commence construction of the Waterline Extension within thirty (30) days of receipt of payment by Developer to the City of the Waterline Extension Fee consistent with Section 4(c) of this Agreement. Further, the City covenants and agrees to complete construction of the Waterline Extension by **July 31, 2022**, or within five (5) months of commencement of said construction, whichever is later. Commencement of construction of the Waterline Extension shall be evidenced by the City providing the contractor a notice to proceed.
- (b) **Performance.** City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Developer and City.

## SECTION 6. CESSATION OF ADVANCES.

If City has made any commitment to make any financial assistance to the Developer, whether under this Agreement or under any other agreement and including but not limited to construction of the Waterline Extension, the City shall have no obligation to disburse any financial assistance specified in Section 5 of this Agreement if: (i) the Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

## SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or City to comply with or to perform any term, obligation, covenant or condition contained in this Agreement, or failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and City is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the City by or on behalf of Developer under this Agreement that is intentionally false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from City and/or Dallas County Central Appraisal District is an Event of Default.

## SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 7 of this Agreement, the non-defaulting Party shall give written notice to the other Party of any default, and the defaulting Party shall have thirty (30) days to cure said default. Should said default remain uncured, the non-defaulting Party shall have the right to terminate this Agreement. In the event the Developer pays the City the Waterline Extension Fee but City fails to construct the Waterline Extension and does not return the Waterline Extension Fee to the developer within thirty (30) days of demand for same, Developer shall be entitled to recover the amount of the Waterline Extension Fee. Except for the immediately

foregoing, the sole remedy of the Parties is termination of this Agreement. The Parties acknowledge and agree that this Agreement is not a contract for goods or services and the City's immunity from suit is not waived pursuant to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. If and only in the event a court of competent jurisdiction determines the City's immunity from suit is waived under Subchapter I of Chapter 271, V.T.C.A., Local Government Code and that Developer can maintain a claim for damages, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement or otherwise to recover damages:

1. the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount of the Waterline Extension Fee that the City has not returned to the Developer and that any such amount shall not bear interest of any kind; and
2. the recovery of damages against the City shall not include attorneys' fees or consequential, punitive, exemplary, or speculative damages including, but not limited to, lost profits.

#### **SECTION 9. MUTUAL REPRESENTATIONS.**

By execution hereof, each signatory warrants and represents that they have the requisite authority to execute this Agreement and the related documents and that the representations made herein, and in the related documents, are true and accurate in all respects.

#### **SECTION 10. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the Party or Parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Dallas County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Dallas County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other Party.
- (d) **Authority.** The Developer 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 Developer 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 Developer has the authority to sign this Agreement on behalf of the Developer.

- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Development Standards.** The Parties acknowledge that effective September 1, 2019, the Legislature of the State of Texas enacted HB 2439, codified at V.T.C.A., Government Code, Title 10, Subtitle Z “Miscellaneous Provisions Prohibiting Certain Government Actions”, Chapter 3000 “Governmental Action Affecting Residential and Commercial Construction, regarding the regulation by municipalities of building products, materials, and aesthetic methods for residential and commercial buildings (the “Act”). Specifically, §3000.002 of the Act prohibits cities from adopting or enforcing a rule, charter provision, ordinance, order, building code or other regulation that prohibits or limits the use or installation of certain building products or materials or that establishes certain standards for building products, materials or aesthetic methods. The Developer acknowledges that, notwithstanding the Act, in consideration of the agreement of the City to pay the Economic Development Incentives to the Developer under the terms and subject to the conditions set forth in this Agreement, the Developer is contractually agreeing: (i) to construct the Qualified Expenditures in compliance with the Façade/Elevation Plan including, without limitation, the Developer agrees: (a) to use and install the paint colors, building products and materials as set forth in the Façade/Elevation Plan; and (b) to comply with the elevations, materials overlay, composition overlay, scale overlay, proportion overlay, rhythm overlay, transparency overlay, articulation overlay, expression overlay, color overlay, and aesthetic methods as set forth in the Façade/Elevation Plan. The Parties acknowledge that the provisions of this Section 10(g) is material to the City’s agreement to grant the Economic Development Incentives and is a bargained for consideration between the Parties.
- (h) **Entire Agreement.** This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the Parties.
- (i) **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.
- (j) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the “Notice”) is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by a nationally recognized overnight delivery service with receipt requested, and addressed as follows:

if to the City:

City of Mesquite, Texas

1515 N. Galloway  
Mesquite, Texas 75149  
Attn: City Manager  
Phone Number: (972) 216-6293

And copy to: City of Mesquite, Texas  
1515 N. Galloway  
Mesquite, Texas 75149  
Attn: City Attorney  
Phone Number: (972) 216-6272

if to the Developer: QT South, LLC  
P.O. Box 3475  
Tulsa, Oklahoma 74101-3475  
Attn: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
E-mail: \_\_\_\_\_

- (k) **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.
- (m) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.
- (n) **Sovereign Immunity and Legislative Authority.** The City does not waive any statutory or common law right to sovereign or governmental immunity by virtue of its execution hereof and, notwithstanding anything in this Agreement, this Agreement does not control, waive, limit or supplant the City Council's legislative authority or discretion.
- (o) **Takings - Waiver.** Developer hereby agrees that the payment of the Waterline Extension Fee is roughly proportional to the benefit received by Developer for construction of the Waterline Extension and Developer hereby waives any takings claim or illegal exactions that it may have. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any value received by City relative to said payment are related both in nature and extent to the impact of the development of Developer's property on City's infrastructure. Both Developer and City further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the Project.

- (p) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (q) **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 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.
- (r) **WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES. THE DEVELOPER 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, EXEMPLARY OR SPECULATIVE DAMAGES.**
- (s) **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.
- (t) **Undocumented Workers Provision.** The Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120<sup>th</sup> day after the date the City notifies Developer of the violation.
- (u) **Non-Boycott of Israel Provision.** In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless Developer is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Developer verifies that Developer does not boycott Israel and will not boycott Israel during the Term of this Agreement.


- (v) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.
- (w) **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, 87<sup>th</sup> Tex. Reg. Session (2021) (effective September 1, 2021).
- (x) **Verification Against Discrimination of Firearm or Ammunition Industries.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19, 87<sup>th</sup> Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the Developer represents that: (1) the Developer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Developer will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.
- (y) **Verification Against Discrimination Developer Does Not Boycott Energy Companies.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 13, 87<sup>th</sup> Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the Developer represents that: (1) the Developer does not boycott energy companies; and (2) the Developer will not boycott energy companies during the Term of this Agreement.
- (z) This Agreement must be fully executed on or before sixty (60) days after the Mesquite City Council approves of this Agreement by resolution or it is otherwise void and of no effect.

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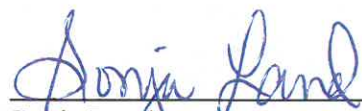
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

**CITY:**


**CITY OF MESQUITE, TEXAS,**  
A Texas home-rule municipality

  
\_\_\_\_\_  
Cliff Keheley  
City Manager

**ATTEST:**

  
\_\_\_\_\_  
Sonja Land  
City Secretary

**APPROVED AS TO LEGAL FORM:**

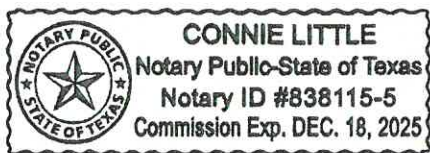
  
\_\_\_\_\_  
David L. Paschall  
City Attorney

STATE OF TEXAS

§  
§  
§

COUNTY OF DALLAS

This instrument was acknowledged before me on the 15 day of December, 2021, by Cliff Keheley, City Manager of the City of Mesquite, Texas, a Texas home-rule municipality, on behalf of said municipality.



  
\_\_\_\_\_  
Notary Public, State of Texas





*Exhibit A*

[Legal Description and/or Depiction  
Of the Property]

**BEING** A 1.772 ACRE TRACT OF LAND SITUATED IN THE JOHN P ANDERSON SURVEY, ABSTRACT NO. 1, CITY OF MESQUITE, DALLAS COUNTY, TEXAS, AND BEING A PORTION OF A CALLED 12.9579 ACRE TRACT OF LAND DESCRIBED AS TRACT I IN THE DEED TO ROY BURKLOW RECORDED IN VOLUME 93214, PAGE 2667 OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS, SAID 1.772 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**COMMENCING** AT A TXDOT TYPE I MONUMENT FOUND FOR AN EXTERIOR CORNER OF SAID 12.9579 ACRE TRACT OF LAND, SAID TXDOT TYPE I MONUMENT ALSO BEING IN THE SOUTH RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 20 (VARIABLE WIDTH RIGHT-OF-WAY); THENCE SOUTH 86 DEGREES 49 MINUTES 04 SECONDS EAST, WITH THE COMMON NORTH LINE OF SAID 12.9579 ACRE TRACT OF LAND AND SOUTH RIGHT-OF-WAY LINE OF SAID INTERSTATE HIGHWAY 20, A DISTANCE OF 339.63 FEET TO A 1/2 INCH IRON ROD WITH CAP STAMPED "1519 SURVEYING" SET FOR THE **POINT OF BEGINNING** OF THE HEREIN DESCRIBED 1.772 ACRE TRACT OF LAND;

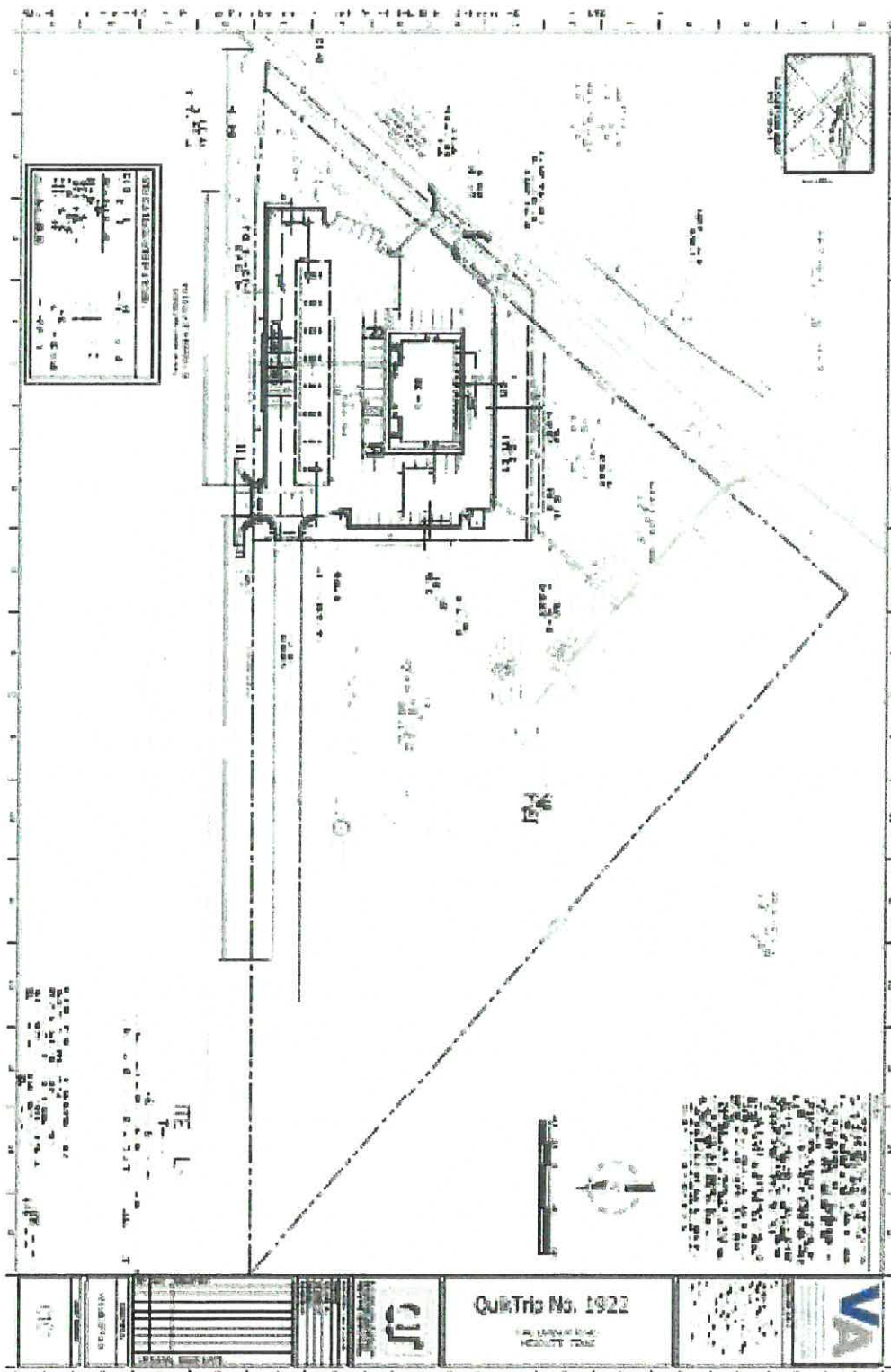
**THENCE** SOUTH 86 DEGREES 49 MINUTES 04 SECONDS EAST, WITH THE COMMON NORTH LINE OF SAID 12.9579 ACRE TRACT OF LAND AND SOUTH RIGHT-OF-WAY LINE OF SAID INTERSTATE HIGHWAY 20, A DISTANCE OF 288.59 FEET TO A TXDOT TYPE I MONUMENT FOUND FOR CORNER;

**THENCE** SOUTH 82 DEGREES 19 MINUTES 06 SECONDS EAST, WITH THE COMMON NORTH LINE OF SAID 12.9579 ACRE TRACT OF LAND AND SOUTH RIGHT-OF-WAY LINE OF SAID INTERSTATE HIGHWAY 20, A DISTANCE OF 134.80 FEET TO A 1/2 INCH IRON ROD WITH CAP STAMPED "1519 SURVEYING" SET FOR THE NORTHEAST CORNER OF SAID 12.9579 ACRE TRACT OF LAND, SAID 1/2 INCH IRON ROD WITH CAP STAMPED "1519 SURVEYING" ALSO BEING THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF SAID INTERSTATE HIGHWAY 20 WITH THE NORTHWESTERLY RIGHT-OF-WAY LINE OF LAWSON ROAD (100' RIGHT-OF-WAY), FROM WHICH A TXDOT TYPE I MONUMENT FOUND FOR REFERENCE BEARS SOUTH 83 DEGREES 28 MINUTES 39 SECONDS EAST, A DISTANCE OF 3.18 FEET;

**THENCE** SOUTH 44 DEGREES 10 MINUTES 57 SECONDS WEST, WITH THE COMMON SOUTHEASTERLY LINE OF SAID 12.9579 ACRE TRACT OF LAND AND NORTHWESTERLY RIGHT-OF-WAY LINE OF SAID LAWSON ROAD, A DISTANCE OF 299.57 FEET TO A 1/2 INCH IRON ROD WITH CAP STAMPED "1519 SURVEYING" SET FOR CORNER;

**THENCE** NORTH 86 DEGREES 49 MINUTES 03 SECONDS WEST, A DISTANCE OF 226.44 FEET TO A 1/2 INCH IRON ROD WITH CAP STAMPED "1519 SURVEYING" SET FOR CORNER;

**THENCE** NORTH 03 DEGREES 10 MINUTES 56 SECONDS EAST, A DISTANCE OF 236.66 FEET TO THE **POINT OF BEGINNING** AND CONTAINING 77,173 SQUARE FEET, OR 1.772 ACRES OF LAND, MORE OR LESS.





*Exhibit C*

[Depiction of Waterline Extension]

