

RESOLUTION NO. 21-2023

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 A TIRZ NO. 12 REIMBURSEMENT AGREEMENT, REPURCHASE OPTION AGREEMENT, AND CITY CHAPTER 380 INCENTIVE AND PERFORMANCE AGREEMENT FOR SUCH PURPOSES WITH IH 20 IP, LLC (THE “DEVELOPER”), AND THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NO. 12, CITY OF MESQUITE, TEXAS (IH-20 BUSINESS PARK) (THE “TIRZ”) REGARDING THE DEVELOPER’S CONSTRUCTION OF AN APPROXIMATELY 210.026-ACRE CLASS A INDUSTRIAL PARK IN THE TIRZ LOCATED AT 925 McKENZIE ROAD, 3400 McKENZIE ROAD, 2700 McKENZIE ROAD, 4800 LASATER ROAD, AND 4900 LASATER ROAD, MESQUITE, TEXAS; THE ACQUISITION FROM THE CITY AND BY THE DEVELOPER OF APPROXIMATELY 100.264 ACRES OF LAND IN THE TIRZ AND LOCATED AT 925 McKENZIE ROAD AND 3400 McKENZIE ROAD, MESQUITE, TEXAS, AND THE GRANTING TO THE DEVELOPER OF CERTAIN TIRZ REIMBURSEMENTS AND ECONOMIC DEVELOPMENT INCENTIVES; AND AUTHORIZING THE CITY MANAGER TO TAKE SUCH ACTIONS AND EXECUTE SUCH DOCUMENTS AS ARE NECESSARY OR ADVISABLE TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, 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, on July 2, 2018, by City Ordinance No. 4579 (“**Ordinance No. 4579**”), the City created Reinvestment Zone Number Twelve, City of Mesquite, Texas (IH-20 Business Park), a tax increment reinvestment zone created pursuant to Chapter 311 of the Texas Tax Code (the “**Act**”) consisting of approximately 248.1466 acres of land which included the following six tracts of land: (1) 4300 Lawson Road; (2) 3400 McKenzie Road; (3) 4800 Lasater Road; (4) 4900 Lasater Road; (5) 2700 McKenzie Road; and (6) 925 McKenzie Road and located within the corporate limits of the City of Mesquite, Dallas County, Texas, and being more particularly described and depicted in Exhibits “A” and “B” to Ordinance No. 4579 (the “**TIRZ**”); and

WHEREAS, on July 6, 2021, by City Ordinance No. 4876 (“**Ordinance No. 4876**”), the TIRZ boundaries were enlarged and the geographic area was increased to include approximately

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13 acres of City rights-of-way adjacent to the Original TIRZ Boundaries and approximately 828 acres of noncontiguous land generally located south of Scyene Road, west of Lawson Road, north of Berry Road, and east of Ashley Furniture Industries Distribution Center and being located within the corporate limits and extraterritorial jurisdiction of the City as more particularly described and depicted in Exhibits “B” and “B-1” to Ordinance No. 4876 ; and

WHEREAS, by City Ordinance No. 4579, the City established a Board of Directors for the TIRZ (the “**TIRZ Board**”); and

WHEREAS, the City created the TIRZ to promote development or redevelopment in the TIRZ, in accordance with the Act; and

WHEREAS, on July 6, 2021, the TIRZ Board approved a project plan and reinvestment zone financing plan for the TIRZ and recommended approval of such project plan and reinvestment zone financing plan to the City Council for approval; and

WHEREAS, on July 6, 2021, by City Ordinance No. 4877, the City Council approved a project plan and reinvestment zone financing plan for the TIRZ (such project plan and reinvestment zone financing plan, as thereafter amended, being hereinafter referred to as the “**TIRZ Project and Financing Plan**”); and

WHEREAS, on March 21, 2022, the TIRZ Board approved an amended project plan and reinvestment zone financing plan for the TIRZ and recommended approval of such project plan and reinvestment zone financing plan to the City Council for approval; and

WHEREAS, on March 21, 2022, by City Ordinance No. 4944, the City Council approved an amended project plan and reinvestment zone financing plan for the TIRZ; and

WHEREAS, on May 15, 2023, by City Ordinance No. 5023, the City Council approved another amended project plan and reinvestment zone financing plan for the TIRZ; and

WHEREAS, the City Council has been presented with a proposed TIRZ No. 12 Reimbursement Agreement, Repurchase Option Agreement, and City Chapter 380 Incentive and Performance Agreement (the “**Agreement**”) between the City, the TIRZ Board, and IH 20 IP, LLC (the “**Developer**”), regarding the Developer’s construction of an approximately 210.026-acre Class A Industrial Park located at 925 McKenzie Road, 3400 McKenzie Road, 2700 McKenzie Road, 4800 Lasater Road, and 4900 Lasater Road in Mesquite, Dallas County, Texas (collectively, the “**Property**”), and providing, among other things: (i) the development of the Property including, without limitation, the construction of a minimum 2,000,000-square feet of Class A Industrial buildings with a minimum \$115,000,000 capital investment; (ii) the acquisition from the City and by the Developer of approximately 100.264 acres of land in the TIRZ and located at 925 McKenzie Road and 3400 McKenzie Road, more particularly described and depicted in Exhibits “A” and “B” to Ordinance No. 4579; and (iii) the granting to the Developer of certain TIRZ reimbursements and economic development incentives in connection with development of the Property in accordance with the Agreement, a copy of which is attached hereto as Exhibit A and incorporated herein by reference; and

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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: (i) the Agreement will assist in implementing a program whereby state and local economic development will be promoted, and business and commercial activity will be stimulated in the City and TIRZ; (ii) the acquisition from the City and by the Developer of approximately 100.264 acres of land under the terms and subject to the conditions set forth in the Agreement is in the best interest of the City and will benefit the City, TIRZ, and its citizens; and (iii) the economic development incentives set forth in the Agreement are in the best interest of the City and TIRZ, and will benefit the City and its citizens.

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

SECTION 1. The facts, findings, 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. The City Council finds that the Agreement is in the best interest of the City and TIRZ, will benefit the City, TIRZ, and its citizens, and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City and TIRZ in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 3. 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 4. 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, its citizens and the TIRZ, are hereby approved.

SECTION 5. The City Manager is hereby authorized to: (i) finalize and execute the Agreement; and (ii) take such actions and execute such documents as are necessary or advisable to consummate the transactions contemplated by the Agreement, including but not limited to those necessary to the acquisition from the City and by the Developer of the approximately 100.264 acres of land in the TIRZ and located at 925 McKenzie Road and 3400 McKenzie Road, as more particularly described and depicted in Exhibits "A" and "B" to Ordinance No. 4579.

SECTION 6. 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

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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 6 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 6 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.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 15th day of May 2023.

DocuSigned by:

Daniel Aleman Jr.

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Daniel Alemán, Jr.
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

DocuSigned by:

Sonja Land

C2518095973F46A...

Sonja Land
City Secretary

DocuSigned by:

David Paschall

666E18891208434...

David L. Paschall
City Attorney

EXHIBIT A

**TIRZ No. 12 Reimbursement Agreement,
Repurchase Option Agreement, and
City Chapter 380 Incentive and Performance Agreement**

between

**The City of Mesquite,
the TIRZ Board,
and
IH 20 IP, LLC**

(to be attached)

**TIRZ #12 REIMBURSEMENT AGREEMENT,
REPURCHASE OPTION AGREEMENT,
AND
CITY CHAPTER 380 INCENTIVE AND PERFORMANCE AGREEMENT
IH 20 IP, LLC (IH-20 BUSINESS PARK)**

This TIRZ #12 Reimbursement Agreement, Repurchase Option Agreement and City Chapter 380 Incentive and Performance Agreement (“Agreement”) is made by and among the City of Mesquite, Texas (the “City”), Board of Directors of Reinvestment Zone Number Twelve, City of Mesquite, Texas (IH-20 Business Park) (the “Board”), and IH 20 IP, LLC, a Texas limited liability company (the “Developer”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized representatives.

WITNESSETH:

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

WHEREAS, Developer owns the Developer Property and in the near future will own the City Property; and

WHEREAS, the Combined Property is located within the Zone; and

WHEREAS, Developer intends to construct, or cause construction of the Facility, Facility Expansion, Infrastructure Improvements and related public improvements/infrastructure to serve the Combined Property upon full development; and

WHEREAS, Developer has advised the City and the Board that a contributing factor that would encourage Developer to construct the Facility, Facility Expansion and Infrastructure Improvements would be an agreement with the City and the Board to incentivize the development of the Facility, Facility Expansion and construction of the Infrastructure Improvements; and

WHEREAS, as partial consideration for Developer using the exterior and interior materials and design approved by the City in accordance with this Agreement and the exhibits attached hereto to construct the Facility, the City and/or the Board will provide, subject to the terms of this Agreement, the Chapter 380 Grant and TIRZ Reimbursement; and

WHEREAS, the City and Board desire to encourage new and expanded business enterprises within the City that will add employment opportunities, property tax base, and generate additional sales tax and other revenue for the City; and

WHEREAS, the promotion of new business enterprises and the expansion of existing businesses within the Zone will promote economic development, stimulate commercial activity,

generate additional sales tax and will enhance the property tax base and economic vitality of the City; and

WHEREAS, the City has established an Economic Development Incentive Program pursuant to Section 380.001 of the Texas Local Government Code (the “Program”) and authorizes this Agreement as part of the Program; and

WHEREAS, the City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 (“Chapter 380”) to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant of the City Property to the Developer in accordance with this Agreement is in accordance with the City’s 380 Program and will: (i) further the objectives of the City; (ii) benefit the City and the City’s inhabitants; and (iii) promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, the Board has determined that the Infrastructure Improvements are eligible project costs for the Zone, and the City and Board intend to amend the Zone Plan to include the Infrastructure Improvements; and

WHEREAS, the Board has determined that funding the Infrastructure Improvements in accordance with this Agreement will further the objectives of the Board, will benefit the City and the City’s inhabitants, will benefit the Zone, and will promote or develop new or expanded business enterprises and stimulate business and commercial activity in the City and the Zone.

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following words and phrases shall have the meaning set forth herein unless the context clearly indicates otherwise:

“16-inch Water Line” shall have the meaning ascribed in 3.1(c).

“Act” shall mean the Tax Increment Financing Act, Title 3, Subtitle B, Chapter 311 of the Texas Tax Code.

“Agreement” shall have the meaning ascribed in the introductory paragraph.

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Building Elevations” shall mean the conceptual renderings attached hereto as **Exhibit “D”**.

“Building Official” shall mean the “Building Official” of the City as defined in Section 202, “Definitions,” of Chapter 2, “Definitions,” of the International Building Code, 2018 Edition, a publication of the International Code Council, adopted and designated as the official building code of the City, as such definition may hereafter be amended by the adoption of a later edition of the International Building Code as the official building code of the City.

“Building Permit” shall mean a written permit or authorization issued by the City, after review and verification of code compliance, by the Building Official, or the Building Official’s designee, to the Developer allowing the Developer to proceed with construction of the Facility or Facility Expansion on the Combined Property, and includes any construction related permit required under Section 105, “Permits,” of Part 2, “Administration and Enforcement,” of Chapter 1, “Scope and Administration,” of the International Building Code, 2018 Edition, a publication of the International Code Council, adopted and designated as the official building code of the City, as such definition may hereafter be amended by the adoption of a later edition of the International Building Code as the official building code of the City.

“Board” shall have the meaning ascribed in the introductory paragraph.

“Chapter 380” shall have the meaning ascribed in the recitals.

“Chapter 380 Grant” shall have the meaning ascribed in Section 3.2(a).

“City” shall have the meaning ascribed in the introductory paragraph.

“City Manager” shall mean the acting City Manager of the City of Mesquite, TX.

“City Property” shall mean the approximately 48.397-acre tract of land, at 925 McKenzie Road, JP Anderson Abst 1 PG 015 save and except up to 3 acres to be deeded from the City of Mesquite to Oncor for an electrical substation and the approximately 51.867-acre tract of land at 3400 McKenzie Road, JP Anderson Abst 1 PG 015, located within the City of Mesquite, Texas 75185 save and except the approximately 3.162-acre

water tower site, all currently owned by the City of Mesquite and described and depicted in **Exhibit “C”**.

“City Regulation(s)” shall mean any ordinance, rule, regulation, standard, policy, order, guideline or other City-adopted or City-enforced requirement, as amended and adopted by the City and as are applicable to the Combined Property, including but not limited to the Code of Ordinances, the Planned Development zoning ordinance adopted on August 1, 2022 by Ordinance No. 4968.

“Combined Property” shall mean the City Property and the Developer Property.

“Commencement of Construction” or words of like import shall mean that: (A) for the Facility and Facility Expansion, as the case may be, (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction, (ii) all necessary Building Permits and other permits for the construction have been issued by the applicable governmental authorities, and (iii) actual construction has commenced; and (B) for the Infrastructure Improvements (i) a grading permit for one or more of the Infrastructure Improvements for the Combined Property has been obtained, (ii) the construction plans for the Infrastructure Improvements have been approved in writing by the City’s engineer, (iii) a contract or contracts for construction of the Infrastructure Improvements has been entered into by Developer, and (iv) within six (6) months of the approval of the construction plans by the City’s engineer, grading work has commenced pursuant to the grading permit.

“Complaining Party” shall have the meaning ascribed in Section 5.1.

“Completion of Construction” or words of like import shall mean that: (A) for the Facility and Facility Expansion, as the case may be, (i) construction has been substantially completed; (ii) the City has inspected the Facility or Facility Expansion; (iii) the City has issued a final shell certificate of occupancy; and (iv) construction of the Infrastructure Improvements is completed so that they are fully functional for their intended purpose and the City has accepted the Infrastructure Improvements, and (B) for the Infrastructure Improvements, that the City has inspected and accepted the Infrastructure Improvements, and issued a letter of acceptance.

“Concept Plan” shall mean the Concept Plan attached hereto as **Exhibit “B”**, as subsequently approved by the City pursuant to Section 3.1(b) hereof.

“Cure Time Notice” shall have the meaning ascribed in Section 5.1.

“Developer” shall have the meaning ascribed in the introductory paragraph.

“Developer Property” shall mean the real property described and depicted in **Exhibit “A”** which consists of the approximately 56.542-acre tract of land at 2700

McKenzie Road, JP Anderson Abst 1 PG 015; the 52.42-acre tract of land at 4800 Lasater Road, JP Anderson Abst 1 PG 015; and the tract known as the “Whataburger Tract” being the 0.80-acre tract of land at 4900 Lasater Road, JP Anderson Abstract 1, PG 015, all of which are described and depicted in Exhibit “A”, located within the City of Mesquite, Texas 75185.

“Effective Date” shall mean July 12, 2023.

“Event of Default” shall have the meaning ascribed in Section 5.2.

“Expiration Date” shall mean the earlier of (i) December 31, 2051, or (ii) the date that all Parties have fully satisfied their respective obligations herein.

“Facility” shall be the commercial building or the buildings, being at least 450,000 square feet in the general location on the Combined Property as shown on **Exhibit “B”**.

“Facility Expansion” shall be the expansion of the Facility that adds at least an additional 1,550,000 square feet for a combined total with the Facility of at least 2,000,000 square feet, in the general location on the Combined Property as shown on **Exhibit “B”**.

“Force Majeure” shall mean a major unforeseeable act or event that: (i) materially and adversely affects the affected Party’s ability to timely perform its obligation(s) under this Agreement; (ii) is beyond the reasonable control of the affected Party; (iii) is not caused by any act or omission on the part of the affected Party or the affected Party’s officers, partners, employees, agents, servants contractors, subcontractors, or any person entering the Combined Property under the express or implied invitation of the affected Party; and (iv) could not have been prevented or avoided by the Party who suffers it by the exercise of commercially reasonable efforts. “Force Majeure” must satisfy each of the above requirements and shall include (but not be limited to): (a) natural phenomena and acts of God such as lightning, floods, hurricanes, tornadoes, earthquakes; (b) explosions; (c) fires; (d) wars, civil disturbances and terrorism; (e) strikes, labor shortages, or shortage of materials or equipment, that delay construction for a minimum of thirty (30) consecutive days; (f) pandemics, epidemics, public health crises, or other uncontrollable circumstances in which a federal, state or municipal governmental order prevents or materially impedes commercial construction within the Combined Property; (g) abnormal weather based on the 5-year NOAA climatic average weather days for North Texas; (h) delays in the issuance of the Building Permits for the Facility and/or Facility Expansion or delays in the issuance of applicable permits for the Infrastructure Improvements except for delays caused in whole or in part by any act or omission of Developer or its consultants, contractors or subcontractors; or (i) changes in City Regulations that materially impact the design or construction of the Facility and/or the Facility Expansion, provided, however, that in no event will “Force Majeure” include a governmental order that prevents the Developer, or its contractors or subcontractors, from proceeding with the construction of the Facility, Facility Expansion, or any Infrastructure Improvements on the Combined Property as a

result of the Developer's, or its contractors or subcontractors' failure to comply with the City Regulations. Notwithstanding the forgoing, "Force Majeure" shall not include: (1) any financial or economic hardship; (2) insufficiency of funds; (3) changes in market or economic conditions; (4) any default or failure (financial or otherwise) of the general contractor or any subcontractor, vendor or supplier of the affected Party; or (5) any delay of the general contractor or any subcontractor, vendor or supplier, except for delay(s) as a result of an act or event defined herein as Force Majeure.

"Impositions" shall mean all taxes, assessments, impact fees, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authorities, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Developer or any property or any business owned by the Developer.

"Infrastructure Improvements" means the infrastructure improvements to serve the Combined Property, including but not limited to roadways, water, sewer, drainage and electric, and as described in detail in Exhibit "E-1", Exhibit "E-2" and Exhibit "E-3" and Exhibit "E-4".

"Inspection Period" shall have the meaning ascribed in Section 3.2(b)(3).

"McKenzie Road Improvements" shall have the meaning ascribed in Section 3.1(c).

"Memorandum" shall have the meaning ascribed in Section 6.27.

"NOAA" shall have the meaning of National Oceanic and Atmospheric Administration.

"Oncor Property" shall mean the approximately 3 acres of the City Property to be deeded from the City of Mesquite to Oncor for an electrical substation in the general location reflected in Exhibit "J".

"Option" shall have the meaning ascribed in Section 3.2(a)(2).

"Party(ies)" shall have the meaning ascribed in the introductory paragraph.

"Payment Request" means a complete written request from the Developer to the City and the Board, accompanied by copies of (A) (i) the grading permit(s) and Building Permit(s) for the Facility or (ii) in the event of a Developer default, evidence the Developer has conveyed the City Property back to the City under the terms and conditions of this Agreement or evidence the Developer has paid the City for the City Property under the terms and conditions of this Agreement, (B) construction plans, design approvals and letter of acceptance for the Infrastructure Improvements, or completed component thereof, from

the City, (C) contracts for construction of the Infrastructure Improvements, or completed component thereof, proof of payment, all bills paid affidavits, (D) proof of acceptance of the Infrastructure Improvements or any completed component thereof, by the City, and (E) copies of invoices, bills, and receipts in order to demonstrate; (i) costs incurred by Developer, exclusive of land value or acquisition costs, in designing and constructing the Infrastructure Improvements, or any completed component thereof, and (ii) such other information as may reasonably be requested by the City and/or Board for verification.

“Program” shall have the meaning ascribed in the recitals.

“Receiving Party” shall have the meaning ascribed in Section 5.1.

“Related Agreement” shall mean any agreement (other than this Agreement) by and between the City and/or the Board and the Developer, including but not limited to any Chapter 380 Grant assignment documents, and any other agreements related to the development of property within the Zone or providing incentives related to property in the zone with Developer, and any affiliate, subsidiary, business, related-entity, or entities with one or more common owners or investors of Developer. As of the Effective Date, there is no Related Agreement in existence.

“TIRZ Funds” shall mean the increment from ad valorem real property taxes levied and collected by the City solely on the captured appraised value of property located in the Zone, which shall be contained in the fund established by the City pursuant to Ordinance No. 4579 as amended by Ordinance No. 4876 for the deposit of Zone funds in accordance with the Act and the governing documents of the Zone adopted in accordance with the Act.

“TIRZ Reimbursement” shall have the meaning in Section 3.3(a).

“Tree Mitigation Fee” shall have the meaning ascribed in Section 3.1(d).

“Tree Preservation Ordinance” shall have the meaning ascribed in Section 3.1(d).

“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 §2264.001(4), as hereafter amended or replaced, or any other applicable law or regulation.

“Water Line Reimbursement” shall have the meaning ascribed in 3.1(e).

“Zone” shall mean Reinvestment Zone Number Twelve, City of Mesquite, Texas (IH-20 Business Park), which was created pursuant to City Ordinance No. 4579, adopted

on July 2, 2018, as amended and contains approximately 1,061.9 acres of property as generally shown on **Exhibit “I”** to this Agreement.

“Zone Plan” shall mean the Project and Financing Plan for the Zone (as authorized by the Act) adopted by City Ordinance No. 4877 on July 6, 2021, and the Project and Financing Plan for the Zone as amended to incorporate the items in **Exhibit “E”** attached hereto and made a part hereof.

**Article II
Term**

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date, unless sooner terminated as provided herein or as mutually agreed to by the Parties in writing.

**Article III
Projects**

3.1 (a) Developer’s Construction Deadlines. Developer shall design and construct, or cause the design and construction of, the Facility, the Facility Expansion, and the Infrastructure Improvements in accordance with this Agreement. Developer shall cause Commencement of Construction of the Facility, the Facility Expansion and the Infrastructure Improvements, except for the 16-inch Water Line which, if needed, shall have the deadline provided by Section 3.1(e) below, to occur no later than the following dates:

Item to be constructed	Commencement of Construction Deadline
Infrastructure Improvements	February 1, 2026
Facility	August 1, 2027
Facility Expansion	August 1, 2030

Developer shall cause Completion of Construction of the Facility, the Facility Expansion and the Infrastructure Improvements, except for the 16-inch Water Line which, if needed, shall have the deadline provided by Section 3.1(e) below, to occur no later than the following dates:

Item to be constructed	Completion of Construction Deadline
Infrastructure Improvements	July 30, 2027
Facility	January 31, 2029
Facility Expansion	July 1, 2033

Developer acknowledges and agrees that the City shall not issue any type of shell certificate of occupancy and/or certificate of occupancy for the Facility or the Facility Expansion until

Completion of Construction of the Infrastructure Improvements, including the 16-inch Water Line, unless it is determined the 16-inch Water Line is not needed under Section 3.1(e) below.

(b) Development of the Property. (1) Developer understands and acknowledges that development of the Combined Property, including but not limited to the Facility, Facility Expansion, Infrastructure Improvements, and other related improvements, must be in compliance with the City Regulations. Developer shall obtain performance and payment bonds required by Texas Government Code Chapter 2253 for the Infrastructure Improvements. Developer agrees that the Facility and Facility Expansion shall be Class A industrial buildings. Formal approval of a final Concept Plan for the Combined Property, by the City is required prior to Commencement of Construction of the Facility and the Facility Expansion. The Concept Plan may be amended, so long as the intent of this Agreement is still fulfilled, as development progresses with approval by the City Manager, in his sole discretion. The Developer shall submit and use diligent, good faith efforts to obtain final City approval of a final Concept Plan and final exterior building materials and design for the Facility and Facility Expansion, using, as a guide, the attached exhibits known as **Exhibits "B" and "D"**, and the City Regulations, not later than six (6) months before the respective Commencement of Construction deadline set forth in Section 3.1(a) above. The Facility and the Facility Expansion shall be constructed and operated in accordance with the City-approved portion of the Concept Plan, and Building Elevations in accordance with the City Regulations, and as provided herein.

(2) Developer acknowledges and agrees that the Combined Property shall be subject to those Impositions due and payable to the City in connection with the development of the Facility and Facility Expansion charged pursuant to City Regulations. Developer acknowledges and agrees it shall be responsible for obtaining Building Permits and any other permits required under the City Regulations in connection with the Infrastructure Improvements, the Facility, and the Facility Expansion.

(3) As consideration for the incentives provided herein, Developer has requested and the Parties agree that the building material regulations contained in this Agreement apply to the Combined Property, despite Texas Government Code Chapter 3000, effective September 1, 2019, as it presently exists or as such law may be subsequently amended. The Parties further acknowledge and agree that the terms, provisions, covenants, and agreements contained in this Agreement regarding: (i) the development of the Combined Property in compliance with the City Regulations and the exhibits hereto; and (ii) the construction of the Facility and Facility Expansion on the Combined Property in compliance with the City Regulations are covenants that touch and concern the land and that it is the intent of the Parties that such terms, provisions, covenants, and agreements shall run with the land and shall be binding upon the Parties hereto, their successors and assigns, and all subsequent owners of the Combined Property. Should Developer fail to comply with this Section 3.1(b)(3) for any portion of the Combined Property, the City and/or the Board shall have the right to reduce the TIRZ Reimbursement by the amount of the Chapter 380 Grant.

(c) McKenzie Road.

(1) The Infrastructure Improvements include improvements to relocate McKenzie Road as reflected in Exhibit “E-3” (the “McKenzie Road Improvements”). Upon conveyance of the City Property, the City will retain right-of-way for the McKenzie Road Improvements and Developer shall dedicate any additional right-of-way needed on the Developer Property for the McKenzie Road Improvements. In consideration of Developer’s right-of-way dedication, upon completion and acceptance of the McKenzie Road Improvements, the City shall abandon and deed the existing McKenzie Road right-of-way to the Developer, but retain a twenty-foot wide water utility easement over any land deeded to Developer where the existing sixteen-inch water line exists, said existing water line being reflected in Exhibit “E-1” (the “16-inch Water Line”). The City may, in its sole discretion, pay to design and construct the McKenzie Road Improvements, which will reduce the TIRZ Reimbursement and any Water Line Reimbursement due to Developer by the amount of such costs funded by the City. The City shall notify Developer in writing at least 120 days in advance should the City choose to exercise its rights under this paragraph. All costs shall be commercially reasonable, however all costs resulting from the City using a competitive bidding or purchasing process allowed by state law shall be deemed reasonable and not eligible for protest, so long as the scope of the McKenzie Road Improvements is substantially consistent with Exhibit “E-3”. The City shall be reimbursed its costs to design and construct the McKenzie Road Improvements from the TIRZ Funds. Should the City elect to design and construct the McKenzie Road Improvements, and such construction by the City directly prevents Developer from meeting any Commencement of Construction or Completion of Construction deadlines in Section 3.1(a) above, the Developer’s Commencement of Construction and Completion of Construction deadlines affected by the delay shall be extended by the number of days Developer was delayed by the City’s construction.

(2) Developer agrees that if there is no paved access driveway to the Oncor Property, then Developer shall grant Oncor a driveway access easement on the City Property from a public roadway to the Oncor Property in a location that provides access to the Oncor Property at no cost to Oncor.

(d) Trees. Section 1A-400, Tree Preservation, Part 1A, Landscaping, Buffering and Screening and Tree Preservation, Appendix C, Zoning Ordinance of the City’s Code of Ordinances shall apply to the Combined Property (the “Tree Preservation Ordinance”). However, the Parties agree that the City will approve an application for protected tree removal if submitted by Developer for the Combined Property and that the fee in lieu of replacement approved by the City’s arborist under Tree Preservation Ordinance for the Combined Property is \$100,000 (the “Tree Mitigation Fee”).

(e) 16-inch Water Line. Should the City’s engineer determine that the 16-inch Water Line is required to be relocated due to placement of the Facility or Facility Expansion on the Combined Property over or near the 16-inch Water Line, the Developer shall dedicate an easement for, and undertake construction, to relocate the 16-inch Water Line prior to Commencement of Construction of the Facility or Facility Expansion causing the need for the relocation. The location

for the new 16-inch Water Line easement and the design and plans for construction of the new, relocated 16-inch Water Line shall be pre-approved in writing by the City's engineer. If approved by the City's engineer, the existing 16-inch Water Line may be abandoned in place instead of removed. The actual costs incurred by Developer for construction of the new, relocated 16-inch Water Line and any removal of the existing 16-inch Water Line shall be reimbursed with the TIRZ Funds (the "Water Line Reimbursement").

(f) Sewer Line. The Infrastructure Improvements include multiple sewer line improvements, including the sewer line labeled as "Sewer Line A", as reflected in **Exhibit "E-2"**. Upon conveyance of the City Property, the City will retain any utility easements and right-of-way needed for the Infrastructure Improvements and Developer shall dedicate any additional right-of-way needed on the Developer Property for Infrastructure Improvements. The City may, in its sole discretion, pay to design and construct Sewer Line A, which will reduce the TIRZ Reimbursement and any Water Line Reimbursement due to Developer by the amount of such costs funded by the City. The City shall notify Developer in writing 120 days in advance should it choose to exercise its rights under this paragraph. All costs shall be commercially reasonable, however all costs resulting from the City using a competitive bidding or purchasing process allowed by state law shall be deemed reasonable and not eligible for protest, so long as the scope of Sewer Line A is substantially consistent with **Exhibit "E-2"**. The City shall be reimbursed its costs to design and construct Sewer Line A from the TIRZ Funds. Should the City elect to design and construct Sewer Line A, and such construction by the City directly prevents Developer from meeting any Commencement of Construction or Completion of Construction deadlines in Section 3.1(a) above, the Developer's Commencement of Construction and Completion of Construction deadlines affected by the delay shall be extended by the number of days Developer was delayed by the City's construction.

3.2 Chapter 380 Grant.

(a) Amount of Chapter 380 Grant.

(1) The City will convey the City Property to Developer upon Developer obtaining a grading permit from the City (not to be unreasonably withheld) to Commence Construction of the Infrastructure Improvements, except for the 16-inch Water Line, prior to February 1, 2026. Prior to conveying the City Property, the City may convey an easement to Oncor for overhead transmission lines that is no wider than 100 feet along the perimeter of the City Property in the general location reflected on **Exhibit "J"** marked as "Proposed Overhead Electric Transmission Mail (Revised) denoted by the dashed line.

(2) On the closing date of the City Property, (A) the City shall provide Developer a Special Warranty Deed substantially similar to **Exhibit "G"** and (B) Developer shall provide City a repurchase option in a separate written instrument substantially similar to the Repurchase Option Memorandum in **Exhibit "H"** (the "Option"), with the terms of Developer's return of the City Property to the City, or payment to City for the City Property, under such Option being described in Section 3.2(b), below.

(b) Return or Purchase of City Property by Developer.

(1) Should Commencement of Construction of the Infrastructure Improvements not be started by Developer on or before February 1, 2026, Developer shall, before March 31, 2026, convey the City Property back to the City free and clear of all liens and in substantially the same condition, as when it was conveyed to the Developer, or with any improvements, with a special warranty deed in substantially the same form as **Exhibit "G"**. Removal of liens or making payments required to remove any liens shall be Developer's responsibility. This subsection 3.2(b)(1) is not subject to any notice and cure provisions.

(2) If Commencement of Construction of the Facility has not begun by August 1, 2027, Developer shall either (A) pay the City fair market value of the City Property, which the Parties agree is \$3.00 per square foot, before August 31, 2027, or (B) before September 30, 2027, convey the City Property back to the City free and clear of all liens and in substantially the same condition as when it was conveyed to the Developer, with any Infrastructure Improvements, with a special warranty deed in substantially the same form as **Exhibit "G"**. Developer shall notify the City of whether it is selecting to pay for the City Property under (A) in the preceding sentence or return the City Property under (B) in the preceding sentence within fourteen (14) days after August 1, 2027; however, should Developer fail to timely provide such notice of whether Developer is selecting to pay for the City Property or convey the City Property back to the City, the City shall give Developer written notice that Developer has not selected to pay for the City Property or convey the City Property back to the City and Developer shall have 7 business days after receipt of such notice to provide the City notice of its selection. If Developer has not provided the City notice of its selection within the said 7 business days, the City shall select whether Developer shall pay for the City Property or return the City Property to the City. Removal of liens or making payments required to remove any liens shall be Developer's responsibility. This subsection 3.2(b)(2) is not subject to any notice and cure provisions.

(3) If (A) Commencement of Construction of the Facility was timely but Completion of Construction of the Facility has not occurred by January 31, 2029, (B) Commencement of Construction of the Facility Expansion has not occurred by August 1, 2030, or (C) Completion of Construction of the Facility Expansion has not occurred by July 1, 2033, Developer shall (i) pay the City for the City Property an amount equal to the lesser of: (a) Fair Market Price of the City Property, (b) \$3.00 per square foot, or (ii) convey the City Property back to the City free and clear of all liens and in substantially the same condition as when it was conveyed to the Developer, with any and all improvements, with a special warranty deed in substantially the same form as **Exhibit "G"**. Developer shall notify the City of whether it is selecting to pay for the City Property under (i) in the preceding sentence or return the City Property under (ii) in the preceding sentence within fourteen (14) days after the respective completion or commencement construction deadline Developer failed to meet and triggering the Option; however, should Developer fail to timely provide such notice of whether Developer is selecting to

pay for the City Property or convey the City Property back to the City, the City shall give Developer written notice that Developer has not selected to pay for the City Property or convey the City Property back to the City and Developer shall have 7 business days after receipt of such notice to provide the City notice of its selection. If Developer has not provided City notice of its selection within the said 7 business days, the City shall select whether Developer shall pay for the City Property or return the City Property to the City. Removal of liens or making payments required to remove any liens shall be Developer's responsibility. This subsection 3.2(b)(3) is not subject to any notice and cure provisions.

The "Fair Market Price" means the price for the City Property (including any improvements thereon and all related non-proprietary surveys, designs, drawings, blueprints, and related documents, all of which will be conveyed to City in connection with any conveyance of the City Property hereunder) a willing purchaser would pay and a willing seller would accept for a comparable transaction involving similar land and improvements as the City Property (including any improvements thereon) considering its highest and best use, neither being under any compulsion to purchase or sell and both having reasonable knowledge of the relevant facts, if offered for sale in the open market with a reasonable period of time in which to consummate a transaction. In calculating the Fair Market Price, all relevant facts (excluding the fact of the existence of this Option) will be taken into account, including the location of the City Property and restrictions on the use of the City Property, as well as the following items which will all be conveyed to the City with the deed conveyance: any improvements thereon and all related non-proprietary surveys, designs, drawings, blueprints, and related documents. The Parties and any appraisers will take into account sale transactions in comparable areas of north Texas which are similar to the area in which the City Property is located. The Fair Market Price will be based on the highest and best use of the City Property as of the time of the determination or appraisal process, as applicable. The Fair Market Price shall be determined as follows:

- (i) By Mutual Agreement. Within ten (10) days after the date of the notice to exercise the Option, Developer and City will attempt, but will have no obligation, to reach a mutual written agreement of the Fair Market Price.
- (ii) By Appraisal. If Developer and City are unable to reach a written agreement within ten (10) days of the event triggering time period under this Section 3.2(b)(3), the Fair Market Price will be determined by appraisal. If the Parties are able to agree upon a single appraiser within said ten (10) day period, that appraiser will make the Fair Market Price determination within forty-five (45) days thereafter. If the Parties are unable to agree upon a single appraiser, the Parties will each have three (3) days after the expiration of the initial ten (10) day period in which to designate an appraiser. Within seven (7) days after both such appraisers have been designated, they will meet and appoint a third appraiser. The third appraiser selected by the other two appraisers will then make an independent written determination of the Fair Market Price within forty-five (45) days thereafter. If either Party fails to appoint a second appraiser as provided above then the appraiser appointed by the other Party will constitute the single appraiser and will determine the Fair Market

Price within forty-five (45) days after the seven (7) day appointment period above expires. If the two appraisers appointed by the parties are unable to agree upon the appointment of the third appraiser and the Parties fail to agree upon the appointment of such a third appraiser within the seven (7) day period above, then either Party, upon written notice to the other Party, may apply for such appointment to any court in the county in which the City Property is located having jurisdiction over the matter. Each appraiser appointed hereunder must be a disinterested person of recognized competence who has been a member in good standing of the American Institute of Real Estate Appraisers for at least ten (10) years and is otherwise qualified in the general geographical areas where the City Property is located. The costs of the Fair Market Price determination, including the appraisal fees and other costs, will be borne by the Party incurring such costs, except that the fees of the single or the third appraiser, as the case may be, will be borne equally by the Parties. If an appraiser fails, refuses or is unable to act in the manner provided herein, a new appraiser will be appointed in his or her stead. Such an appointment will be made in the same manner as provided above for the appointment of the appraiser so failing, refusing or unable to act.

In the event Developer returns the City Property to the City under Section 3.2(b)(1), Section 3.2(b)(2) or Section 3.2(b)(3) of the Option terms above, City shall have a period of ninety (90) days after Developer's deadlines in Section 3.2(b)(1), Section 3.2(b)(2), or 3.2(b)(3), respectively, to perform any and all investigations or studies City deems necessary or desirable to determine whether City desires to purchase the City Property ("Inspection Period"). Developer shall convey the City Property back to the City free and clear of all liens, with Developer paying all customary and reasonable closing costs, with the exception of a title policy, and the closing of the purchase and sale shall occur within ninety (90) days after the expiration of the Inspection Period at such location as selected by City. Removal of liens or making payments required to remove any liens shall be Developer's responsibility. Developer shall convey the City Property to City pursuant to the Option free and clear of any and all hazardous waste and hazardous materials contamination, if any, which arose during Developer's ownership of the City Property and which shall be remediated and abated by Developer prior to the closing of the purchase and sale pursuant to the Option, and the closing date may be delayed by City for a period of time City may determine is reasonable for Developer to complete such remediation and abatement. The Option shall be in addition to any and all remedies available at law or in equity to City and City's successors and assigns to enforce compliance with the terms and provisions of the restriction contained herein and shall run with the City Property.

In the event the Developer pays the City for the City Property under Section 3.2(b)(2) or Section 3.2(b)(3) of the Option terms above, Developer shall pay the full amount due within ninety (90) days of the missed deadline in Section 3.2(b)(2) or Section 3.2(b)(3), respectively. Should Developer fail to timely pay the amount owed to City for the City Property as required by this Section 3.2, the City and/or the Board shall reduce any TIRZ Reimbursement and any Water Line Reimbursement as an offset under Section 5.4 of this Agreement, and use such funds to pay the City, until such amount owed by Developer has been paid in full to the City. Even if this

Agreement terminates, the Option shall not terminate until the City has been paid the full amount due for the City Property.

(c) Funds for the Chapter 380 Grant. The Chapter 380 Grant is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City but is payable only from funds of the City authorized by the Program and Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380. This Article III, Section 3.2(c) shall expressly survive the expiration or termination of this Agreement.

3.3 TIRZ Reimbursement.

(a) Reimbursement for Costs of Infrastructure Improvements. Assuming Developer's timely completion and compliance of Developer's obligations to commence and complete the Infrastructure Improvements as set forth in Section 3.1 above and Article IV below, the City and Board will provide reimbursement to the Developer in an amount equal to the Developer's actual design and construction costs for the Infrastructure Improvements plus the \$100,000 Tree Mitigation Fee, not to exceed Twenty-Five Million dollars (\$25,000,000) (the "TIRZ Reimbursement"), plus the amount of the Water Line Reimbursement, if any. Within sixty (60) days of verification of the Payment Request in accordance with Section 3.3(b) below, the City shall pay the TIRZ Reimbursement and any Water Line Reimbursement to Developer; however, should the TIRZ Funds available be less than the amount owed for the TIRZ Reimbursement and any Water Line Reimbursement, the City shall then make annual payments to Developer by May 31st of each calendar year using the TIRZ Funds received since the last payment and continuing each subsequent year until the full amount of the TIRZ Reimbursement and any Water Line Reimbursement has been paid. Notwithstanding the first sentence of this paragraph, should timely Completion of Construction of any of the Infrastructure Improvements be completed by Developer, but then the City Property is conveyed back to the City pursuant to Section 3.2(b)(2) or Section 3.2(b)(3) above, the Developer shall still be entitled to receive the TIRZ Reimbursement and any Water Line Reimbursement as set forth herein.

(b) Payment Requests; Cost Verification. Within thirty (30) days of the last to occur of (i) Completion of Construction of the Infrastructure Improvements, and (ii) issuance of a Building Permit for the Facility, Developer shall submit the Payment Request for the TIRZ Reimbursement and the Water Line Reimbursement, if any, to the Board and the City. The Board and the City shall verify the Payment Request within thirty (30) calendar days after receipt thereof, and if a Payment Request is incomplete or if other information is necessary to approve the Payment Request, the Board and/or City shall notify Developer, and Developer shall promptly supply any missing or necessary additional information necessary to verify and approve the Payment Request.

(c) Zone Plan Amendment. On or before March 31, 2024, the City and the Board shall amend the Zone Plan to include the Infrastructure Improvements and 16-inch Water Line identified on **Exhibit "E"**, so that such are eligible to be reimbursed with the TIRZ Reimbursement and any Water Line Reimbursement.

(d) Funds for TIRZ Reimbursement. The Parties hereto acknowledge that the TIRZ Reimbursement and Water Line Reimbursement to be made to Developer shall come solely from the TIRZ Funds. After (i) payment of the City's administrative costs and professional services for the Zone, (ii) reduction of the TIRZ Reimbursement and/or reduction of any Water Line Reimbursement as set forth in this Agreement, and (iii) proportional payments are made to the City to reimburse the City for the design and construction of the McKenzie Road Improvements and Sewer Line A, the City hereby represents to Developer that 100% of the TIRZ Funds shall be used solely to reimburse Developer until the entire TIRZ Reimbursement and any Water Line Reimbursement, as it may be reduced hereunder, is paid to Developer. Payments of TIRZ Funds to the Developer and to the City shall be made in proportion to the amount due to the City for its costs to design and construct the McKenzie Road Improvements and Sewer Line A and the amount due to the Developer for the TIRZ Reimbursement and any Water Line Reimbursement. For the sole purpose for providing an example of proportionate payments, if Developer is owed \$20,000,000 for TIRZ Reimbursement and the City is owed \$5,000,000 for the McKenzie Road Improvements, and the TIRZ Fund (after reductions allowed herein) has \$1,000,000 of revenue available for the year, \$800,000 would be paid to Developer and \$200,000 would be paid to the City. The TIRZ Reimbursement and any Water Line Reimbursement payable by the City and/or Board to the Developer is payable only from the TIRZ Funds and is not secured by a pledge of ad valorem taxes, or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. Payment of the TIRZ Reimbursement and any Water Line Reimbursement is subject to the Board's and/or City's appropriation of funds for such purpose to be paid in the budget year for which such installment is to be paid, but neither the City nor the Board shall unreasonably withhold payment. This Article III, Section 3.3(d) shall expressly survive the expiration or termination of this Agreement.

Article IV

Conditions to Chapter 380 Grant and TIRZ Reimbursement Payments

4.1 General. Developer (i) agrees to each of the following, and (ii) agrees that the obligation of the City to (a) provide the Chapter 380 Grant and (b) convey the City Property, and (iii) agrees that the Board's and the City's requirement to pay, or continue paying, the TIRZ Reimbursement and any Water Line Reimbursement hereunder, shall be conditioned upon the compliance and satisfaction of each of the terms and conditions of this Agreement by the Developer, plus each of the terms and conditions set forth below:

(a) Good Standing. Developer shall not have an uncured breach of this Agreement or a Related Agreement. There shall be no uncured breach of a Related Agreement.

(b) Payment Request. Developer shall have timely provided the City and Board with the complete Payment Request in compliance with this Agreement. The City and Board are entitled to verify the Payment Request before all or any portion of the TIRZ Reimbursement and any Water Line Reimbursement is paid.

(c) Expenditure. The Payment Request provides verification that Developer: (i) will anticipate incurring costs, excluding land value and land acquisition costs, of \$25,000,000 in designing and constructing the Facility, which may be evidenced by contracts reflecting costs with design firms, general contractors, and the like, for design and construction; (ii) will anticipate incurring costs, excluding land value and land acquisition costs, of \$90,000,000 in designing and constructing the Facility Expansion by the dates provided in Section 3.1(a); and (iii) evidence, which may include contracts reflecting costs with engineering firms, general contractors, and the like, for design and construction, proof of payment and all bills paid affidavits, of the actual amount spent in designing and constructing the Infrastructure Improvements to determine the reimbursement amount for Infrastructure Improvements, with said reimbursement for Infrastructure Improvements not to exceed \$25,000,000.

(d) Certificate of Occupancy and Design Guidelines. Developer shall have timely received a shell certificate of occupancy for the Facility and the Facility Expansion and the building materials approved by the City in accordance with the terms hereof were used in construction of the Facility and the Facility Expansion.

(e) Improvements. Developer shall have timely achieved Completion of Construction of the Infrastructure Improvements, Facility and Facility Expansion in accordance with this Agreement.

(f) Timely Payment of Fees. Developer shall timely pay to the City all impact fees, permit fees, development fees, review fees and inspection fees in connection with development of the Combined Property including, without limitation, the Facility and Facility Expansion.

(g) Inspection. Developer shall provide the City, its agents and employees with reasonable access to the Combined Property at such times as the City may reasonably request (but upon no less than 24 hours' notice unless in an emergency) to conduct such inspections as the City reasonably deems necessary in order to confirm compliance by the Developer with the representations, covenants and agreements of the Developer as set forth in this Agreement. This Section 4.1(g) is not meant to alter or change the City's right to inspect for other reasons, including but not limited to building inspections done through the permitting process.

(h) Representative of Developer to Accompany Inspections. With reasonable notice, Developer shall provide a representative of Developer to accompany the City during all inspections of the Combined Property conducted by the City pursuant to Section 4.1(g) above.

(i) Timely Payment of Impositions. Developer shall timely pay all Impositions owed by the Developer to the City during the Term of this Agreement prior to the date such Impositions become delinquent.

(j) Compliance with Laws. Developer shall comply with all federal, state and local laws, ordinances and regulations relating to the Combined Property during the Term of this Agreement.

(k) Performance of Agreement. Developer shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by Developer under the terms of this Agreement.

(l) Performance of Related Agreements. Developer shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Developer under the terms of all Related Agreements now or hereafter existing between the Developer and the City.

(m) No Goods or Services. The Developer agrees the performance of any or all obligations of the Developer under the terms of this Agreement does not constitute the provision of goods or services to the City.

Article V

Defaults; Remedies; Termination and Offsets

5.1 Notice and Cure. Before any event described in Section 5.2 of this Agreement shall be deemed to be an Event of Default and a breach of this Agreement, the Party claiming such Event of Default (“Complaining Party”) shall notify, in writing, the Party alleged to have failed to perform the alleged Event of Default (“Receiving Party”) and shall demand performance. No Event of Default or breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the Complaining Party within thirty (30) days of the receipt of such notice, with completion of performance within thirty (30) days. If the Receiving Party cannot cure the Event of Default within thirty (30) days using commercially reasonable efforts, then within seven (7) days of receipt of the notice of Event of Default, the Receiving Party shall send a notice to the Complaining Party that includes: (a) a detailed explanation of the reason for default; (b) a detailed description, with timeline reflecting the earliest possible time, of the action(s) that will be taken to remedy the Event of Default; and (c) the date by which the Event of Default will be cured using commercially reasonable efforts (the “Cure Time Notice”). If a Cure Time Notice is not timely provided by the Receiving Party to the Complaining Party, then the Event of Default must be cured by the Receiving Party within thirty (30) days of the receipt of the notice of Event of Default. If the actions and time to cure set forth in the Cure Time Notice are not considered commercially reasonable by the Complaining Party, the Complaining Party shall notify the Receiving Party of the number of additional days considered commercially reasonable, in excess of thirty (30) days, to be provided to cure the Event of Default. Notwithstanding and in addition to a termination under Section 5.2, this Agreement may also be terminated by the City without prior notice or opportunity to cure for Developer’s breach or default of any provision in Section 3.2, but the Developer’s obligation to pay for the City Property or return the City Property to the City shall survive such termination.

5.2 Termination. This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following, each being an “Event of Default”:

(a) by the City and/or the Board, if Developer defaults or breaches any of the terms or conditions of this Agreement or a Related Agreement and such default or breach is not cured within thirty (30) days after written notice thereof, however if the Developer timely provided a complete Payment Request for the Infrastructure Improvements and qualified for the TIRZ Reimbursement prior to termination under this Section 5.2(a), then City's obligation to pay the TIRZ Reimbursement shall survive such termination;

(b) by the City and/or the Board, if any Impositions owed to the City by Developer shall have become delinquent provided, however, the Developer retains the right to timely and properly protest and contest any such Impositions;

(c) by the City and/or the Board, if Developer suffers an event of Bankruptcy or Insolvency;

(d) by any Party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable;

(e) by the City and/or Board immediately if Developer files any false documentation with any Payment Request;

(f) by the City and/or Board, if any applicable Building Permits or other permits required for the Facility or the Combined Property and issued by the City are lawfully revoked or expire, and Developer fails to make reasonable efforts to obtain new Building Permits or other permits, as determined by the City or Board, and such default is not cured by Developer within thirty (30) days after written notice thereof;

(g) by the City and/or Board immediately upon the filing by Developer of any lawsuit against the City or the Board; or

(h) by Developer if City fails to amend the Zone Plan so that the City can make the payments to Developer contemplated herein.

5.3 Remedies. Upon the occurrence of any Event of Default, except as otherwise provided in this Agreement, the nondefaulting Party may pursue specific performance and/or termination of this Agreement as its sole and exclusive remedies; provided, however, that (i) specific performance may not be asserted with respect to governmental or legislative actions by the City, and (ii) neither Party shall have the right to terminate this Agreement unless the nondefaulting Party sends a second notice which expressly provides that the nondefaulting Party will terminate this Agreement if the Event of Default is not cured by the defaulting Party within thirty (30) days after the second notice. An Event of Default by any Party shall not entitle any nondefaulting Party to seek or recover consequential, exemplary or punitive damages or attorneys' fees. If at the time Developer commits an Event of Default, the Developer has not Completed Construction of the Infrastructure Improvements, Developer shall no longer be entitled to receive the TIRZ Reimbursement, however for components of the Infrastructure Improvements that can

function independently and have been accepted by the City, i.e. a roadway or a waterline, Developer will receive the TIRZ Reimbursement for those components of the Infrastructure Improvements for which Developer has Completed Construction, subject to the City's receipt of a valid Payment Request and the City's rights of offset set forth in the Agreement. However, if Developer timely Completed Construction of the Infrastructure Improvements, and subsequently commits an Event of Default, but is not in breach or default of Section 3.2(b)(2) or Section 3.2(b)(3), Developer shall be entitled to receive the TIRZ Reimbursement for the costs of the Infrastructure Improvements verified in the Payment Request through the Expiration Date.

5.4 Offsets. If, and only if, Developer is in default under this Agreement beyond any applicable notice and cure periods, the City and/or the Board may, at their option, but upon prior written notice to Developer, offset any TIRZ Reimbursement and any Water Line Reimbursement due and payable to Developer under this Agreement against any debt (including Impositions) lawfully due to the City and/or the Board from the Developer, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement, or otherwise, and regardless of whether or not the debt due the City and/or the Board has been reduced to judgment by a court. If the City and/or the Board exercise this right of offset, the City and/or the Board (as applicable) shall provide Developer with a detailed accounting of funds setting forth: (i) the TIRZ Reimbursement and any Water Line Reimbursement due at such time under this Agreement, (ii) what portion of the TIRZ Reimbursement and any Water Line Reimbursement due under this Agreement were used to pay other debts due and payable to the City and/or the Board, and (iii) what other debts were paid and in what amounts. The offsets described in this paragraph are in addition to the City's rights to reduce the TIRZ Reimbursement and any Water Line Reimbursement by the amount of the Chapter 380 Grant.

Article VI Miscellaneous

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto; provided, however the right of the Developer to receive the TIRZ Reimbursement and any Water Line Reimbursement, as they may be reduced hereunder, shall not transfer to the Developer's successors and/or assigns unless expressly agreed to in writing signed by both the Parties and such successor/assignee, and only to the extent such assignment is allowed under Section 6.11.

6.2 Limitation on Liability. Except for the Board's obligations to pay the TIRZ Reimbursement and any Water Line Reimbursement and the City's obligation to convey the City Property, provide the Chapter 380 Grant, the TIRZ Reimbursement and any Water Line Reimbursement as set forth in this Agreement, the City and Board, and its past, present, and future officers, employees, contractors, representatives, and agents assume no responsibilities or liabilities to Developer, or any third parties in connection with the Facility, Facility Expansion and Infrastructure Improvements, and Developer hereby waives any and all claims against the City and Board for any injury to persons or damage to property in connection therewith. Developer acknowledges and agrees that there shall be no personal recourse to the directors, officers,

employees, representatives or agents of the City and Board, who shall incur or assume no liability in respect of any claims based upon or relating to this Agreement. It is understood and agreed between the Parties that Developer, in satisfying the conditions of this Agreement, has acted independently, and the City and Board assume no responsibilities or liabilities to third parties in connection with these actions.

6.3 No Partnership or 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.

6.4 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

6.5 Notice. Any notice and/or certificate or statement required or permitted to be given to any Party under the terms of this Agreement shall be in writing and shall be deemed properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Party at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective and deemed delivered, whether actually received or not, one (1) business day after deposit in the United States mail. Notices sent by a nationally recognized courier service as set forth above shall be effective and deemed delivered, whether actually received or not, one (1) business day after deposit with the nationally recognized courier service. Notices given in any other manner shall be effective and deemed delivered only if and when received by the addressee. For purposes of notice, the addresses of the Parties are as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

If intended for City, to:

Attn: City Attorney
City of Mesquite
PO Box 85017
Mesquite, TX 75185-0137

With a copy to:

Julie Fort
Messer & Fort, PLLC
6371 Preston Rd. STE 200
Frisco, TX 75034

If intended for Board, to:

Attn: Executive Director
Reinvestment Zone Number 12
City of Mesquite
PO Box 850137
Mesquite, TX 75185-0137

If intended for Developer, to:

Attn: Scott Rohrman
IH 20 IP, LLC
2030 Main St. Ste. 342
Dallas, Texas 75201
sr@42realestate.com

6.6 Entire Agreement. This Agreement is the entire Agreement among the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement among the Parties that in any manner relates to the subject matter of this Agreement, except a Related Agreement.

6.7 Governing Law; Venue. This Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law, rule, or principle that might result in the application of the laws of another jurisdiction. Exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.8 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.9 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall 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.

6.10 Exhibits. All exhibits to this Agreement are incorporated as if fully set forth herein by reference for all purposes wherever reference is made to the same.

6.11 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. The obligations, requirements, or covenants of

Developer relating to the Combined Property and the Facility and Facility Expansion shall be able to be assigned, without the prior written consent of the City, but upon notice to the City, to (a) any person or entity that is or will become an owner of any portion of the Combined Property; (b) any affiliate or related entity of Developer; or (c) any lienholder on the Combined Property. In addition, any payments to Developer due hereunder may be collaterally assigned by the Developer to any lender of Developer upon advance written notice to the City. Each assignment shall be in writing executed by Developer and the assignee and shall obligate the assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each assignment shall be provided to City within thirty (30) days of execution thereof. No assignment by Developer shall release Developer from any liability that resulted from an act or omission by Developer that occurred prior to the effective date of the assignment, unless the City approves the release in writing.

6.12 Recitals. The recitals to this Agreement are incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

6.13 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.14 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.15 Consents and Approvals. Unless stated otherwise in this Agreement, whenever a Party is required to consent to or approve of the action of another Party pursuant to Agreement, such consent or approval shall not be unreasonably withheld, denied, or delayed.

6.16 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 Economic Development Incentives in Event of Conviction for Employing Undocumented Workers. If, after receiving the TIRZ Reimbursement and any Water Line Reimbursement 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 Developer's proportionate share of the costs of the Infrastructure Improvements, as calculated under Texas Local Government Code Section 212.904, reimbursed to the Developer by the TIRZ Reimbursement and any Water Line Reimbursement previously paid by the City and/or the Board to the Developer under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the maximum lawful rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on the amount of the TIRZ Reimbursement and any Water Line Reimbursement being recaptured from the date each payment of the TIRZ Reimbursement and any Water Line Reimbursement was paid by the City and/or the Board 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 lawful rate.
- (d) Limitation on Economic Development Incentives. The City and the Zone shall have no obligation to pay any of the Chapter 380 Grant, the TIRZ Reimbursement and/or any Water Line Reimbursement, or to perform any other obligations hereunder, to the Developer 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) Remedies. 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 this Article VI, Section 6.16 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 Article VI, Section 6.16 of this Agreement 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 Article VI, Section 6.16 of this Agreement shall expressly survive the expiration or termination of this Agreement.

Section 6.17 Anti-Boycott Verification. The Developer hereby verifies that it and its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, if and to the extent this Agreement is constructed to be 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 Section 2271.002, Texas Government Code, but only to the extent such section is

applicable, and to the extent such section does not contravene applicable federal law. As used in 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 "affiliate" as used in this Section 6.17 to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

Section 6.18 Iran, Sudan and Foreign Terrorist Organizations. The Developer represents that neither the Developer, nor their parent company, wholly-or majority-owned subsidiaries, and other affiliates are a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, 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>,

<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such section does not contravene applicable federal law and excludes the Developer and each of the Developer's 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 "affiliate" as used in this Section 6.18 to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

Section 6.19 Firearms. Pursuant to Texas Government Code Chapter 2274, 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 governmental entity, 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.

Section 6.20 Energy Boycott. Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the Developer is a company with at least ten (10) or more full-time employees and this Agreement has a value of at least \$100,000 or more that is paid wholly or partly from public funds of the governmental entity, the Developer represents that: (1) the Developer does not boycott energy companies; and (2) will not boycott energy companies during the term of the Agreement.

Section 6.21 Form 1295 Certificate. The Developer represents that it has complied with Texas Government Code, Section 2252.908 and in connection therewith, the Developer has completed a Texas Ethics Commission Form 1295 Certificate generated by the Texas Ethics Commission's electronic filing system in accordance with the rules promulgated by the Texas

Ethics Commission. The Developer 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 and the Board, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate. The Parties agree that, except for the information identifying the City and the Board and the contract identification number, the City and the Board are not responsible for the information contained in the Form 1295 completed by the Developer. The information contained in the Form 1295 completed by the Developer has been provided solely by the Developer, and the City and the Board have not verified such information.

Section 6.22 Legislative Discretion. The Parties agree that by execution of this Agreement, the City and the Board do not waive or surrender any of their governmental powers, immunities or rights and, notwithstanding any provision of this Agreement, this Agreement does not control, waive, limit or supplant the legislative authority or discretion of the City Council or the Board. Notwithstanding, the City specifically waives immunity from suit for the sole purpose of, and only to the extent necessary to, allow(ing) Developer to seek specific performance of this Agreement.

Section 6.23 No Acceleration. All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.

Section 6.24 No Third-Party Beneficiaries. The Parties to this Agreement do not intend to create any third-party beneficiaries of this Agreement. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No person who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third-party beneficiary.

Section 6.25 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.

Section 6.26 Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

Section 6.27 Memorandum of Agreement. A Memorandum of this Agreement, in the form attached hereto as **Exhibit "F"** ("Memorandum"), and a Memorandum as to any amendments hereto and assignments hereof shall be recorded in the deed records of Dallas County. The Memorandum shall be recorded after the Effective Date but only upon the City amending the Zone Plan in accordance with Section 3.3(c). Section 3.1(b)(3) of this Agreement binds and constitutes a covenant running with the Combined Property. Upon the Effective Date, this Agreement shall be binding upon the Parties, and their successors and assigns permitted by this Agreement and forms a part of any other requirements for development within the Combined Property. Section

3.1(b)(3) of this Agreement, when recorded in the Memorandum, shall be binding upon the Parties and their successors and assigns as permitted by this Agreement, and upon the Combined Property.

Section 6.28 Exhibits. The following exhibits are attached to this Agreement and are incorporated herein for all purposes:

- Exhibit "A" Developer Property Description and Depiction
- Exhibit "B" Concept Plan
- Exhibit "C" City Property Legal Description and Depiction
- Exhibit "D" Building Elevations
- Exhibit "E-1" Detailed Description of the water Infrastructure Improvements
- Exhibit "E-2" Detailed Description of the sewer Infrastructure Improvements
- Exhibit "E-3" Detailed Description of the McKenzie Road Improvements
- Exhibit "E-4" Estimated Costs of the Infrastructure Improvements & Other TIRZ Items
- Exhibit "F" Memorandum of Agreement
- Exhibit "G" Form of Special Warranty Deed
- Exhibit "H" Repurchase Option Memorandum
- Exhibit "I" Map depicting general location of property in the Zone
- Exhibit "J" Map depicting general location of Oncor Property and Easement

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

EXECUTED on this 13th day of July, 2023.

[execution pages follow]

CITY:

CITY OF MESQUITE, TEXAS

ATTEST:

Sonja Land

Name: Sonja Land
Title: City Secretary

By: *Cliff Keheley*

Name: Cliff Keheley
Title: City Manager

APPROVED AS TO LEGAL FORM:

David L. Paschall

Name: David L. Paschall
Title: City Attorney

STATE OF TEXAS §

§

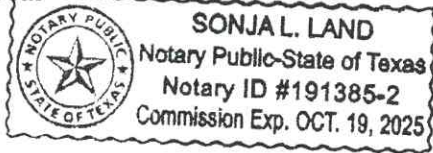
COUNTY OF DALLAS §

This instrument was acknowledged before me on July 13 2023, by Cliff Keheley, City Manager of the City of Mesquite, Texas, a Texas home rule municipality, on behalf of said home rule municipality.

Sonja L. Land
NOTARY PUBLIC, State of Texas

My Commission Expires: _____

Notary Seal



BOARD:

Board of Directors of Reinvestment Zone
Number Twelve, City of Mesquite, Texas

ATTEST:

Sonja Land
Name: Sonja Land
Title: City Secretary

By: *Daniel Aleman, Jr*
Name: Daniel Aleman, Jr
Title: Chairman

APPROVED AS TO LEGAL FORM:

David L. Paschall
Name: David L. Paschall
Title: City Attorney

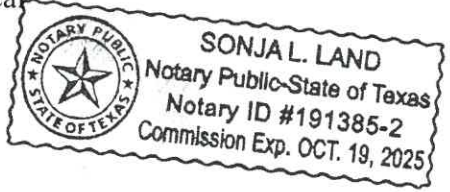
STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on July 13, 2023, by Daniel Alemán, Jr, Reinvestment Zone Number 12, City of Mesquite Board Chairman, on behalf of said Board.

Sonja L. Land
NOTARY PUBLIC, State of Texas

My Commission Expires: _____

Notary Seal



DEVELOPER:

IH 20 IP, LLC , a Texas limited liability company

By: 42 BP, LP, a Texas limited partnership, a Manager of IH 20 IP, LLC

By: *Scott Rohrman*

Name: Scott Rohrman

Title: Manager of the GP of 42 BP, LP

By: SLJ Equities, LLC, a Texas limited liability company, a Manager of IH 20 IP, LLC

By: *Louis H. Lebowitz*

Name: Louis H. Lebowitz

Title: President of SLJ Equities, LLC

STATE OF TEXAS §

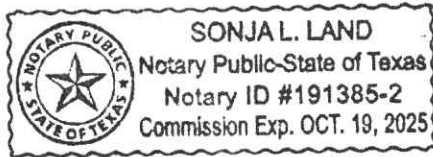
COUNTY OF DALLAS §

This instrument was acknowledged before me on July 13, 2023, by Scott Rohrman, as the Manager of the GP of 42 BP, LP as a Manager of IH 20 IP, LLC, on behalf of said entities.

Sonja L. Land
NOTARY PUBLIC, State of Texas

My Commission Expires:

Notary Seal



STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on July 7, 2023, by Louis H. Lebowitz, as the President of SLJ Equities, LLC as a Manager of IH 20 IP, LLC, on behalf of said entities.

Grayson McCarter Graham
NOTARY PUBLIC, State of Texas

My Commission Expires:

Notary Seal:

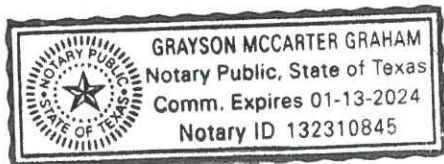


EXHIBIT "A"

DEVELOPER PROPERTY DESCRIPTION AND DEPICTION

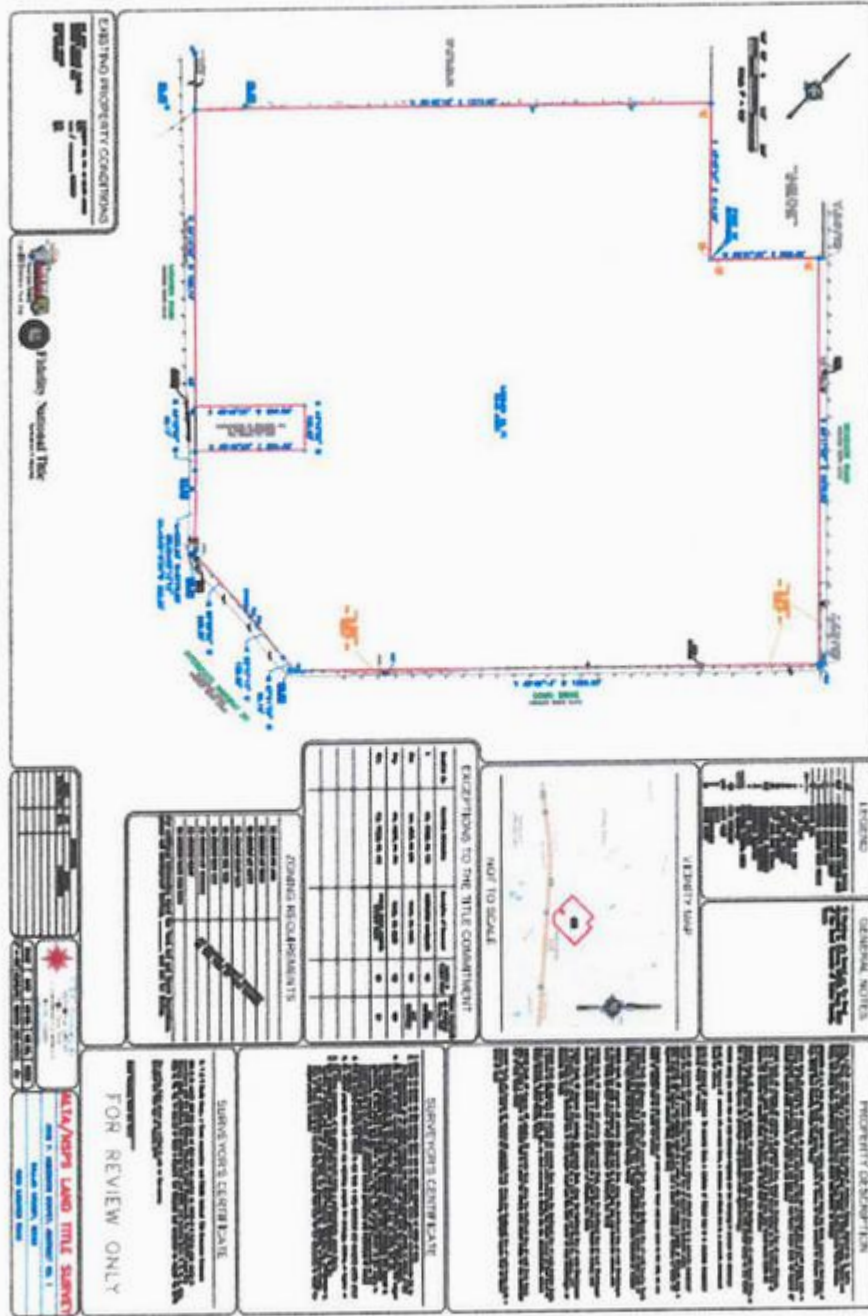
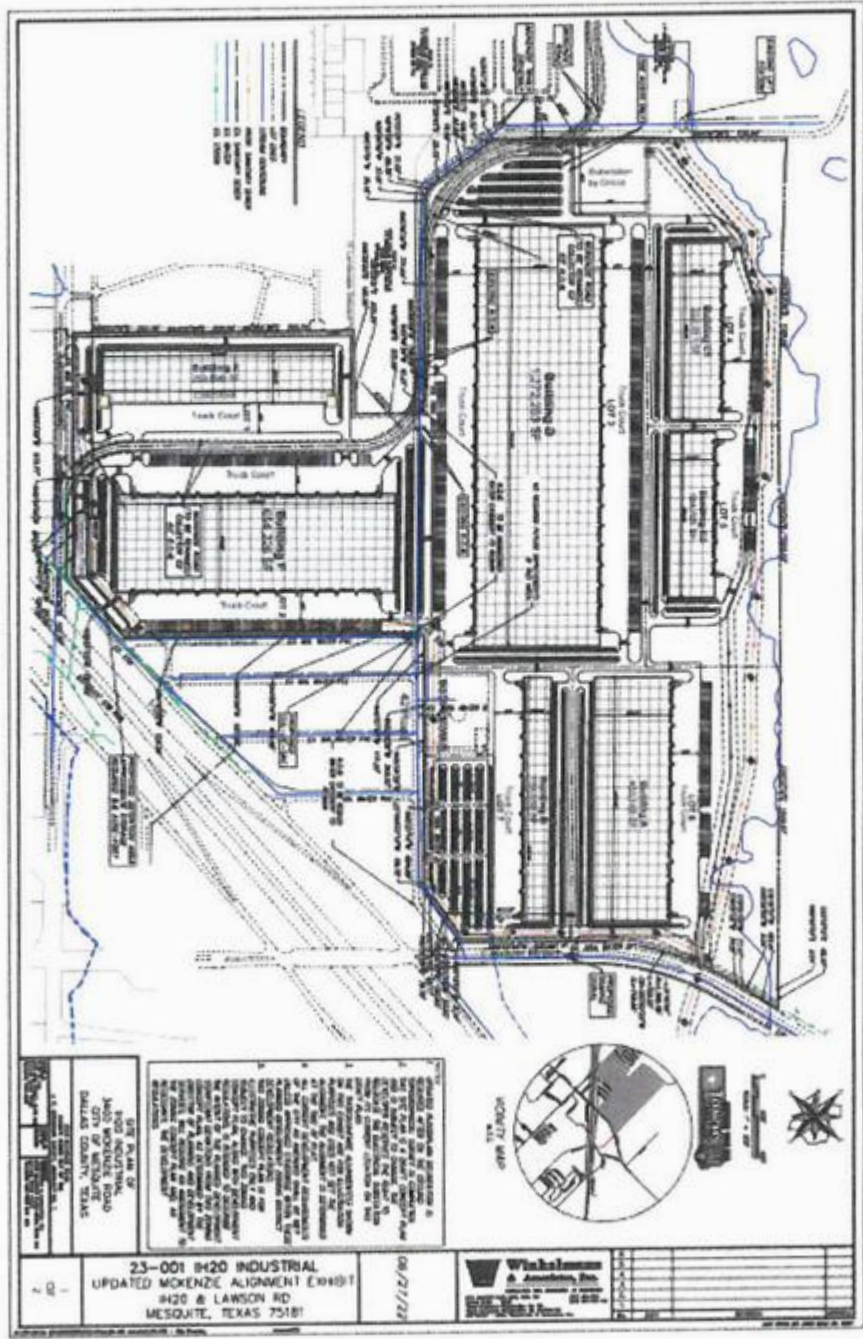


EXHIBIT B CONCEPT PLAN



Legal Description

Being a tract of land situated in the John Anderson Survey, Abstract No. 1, City of Mesquite, Dallas County, Texas, and being all of a tract conveyed to Mesquite Independent School District as recorded in Volume 92143, Page 475, Deed Records of Dallas County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod found for corner at the east corner of said Mesquite ISD tract, said corner being the south corner of a tract conveyed to Carolyn Lucas Bass Trustee of the George F. Lucas Trust as recorded in Volume 92253, Page 1752, Deed Records of Dallas County, Texas, and said corner being the north corner of a tract conveyed to Joan Leslie Warner Williams & Nancy Sue Warner Gray as recorded in Volume 92253, Page 1752, Deed Records of Dallas County, Texas;

THENCE S 43° 50' 04" W following the northwest line of said Joan Leslie Warner Williams & Nancy Sue Warner Gray tract a distance of 1756.83' to a 1/2" iron rod with yellow plastic cap set for corner in the northeast Right of Way line of McKenzie Road;

THENCE N 45° 18' 50" W following the northeast Right of Way line of McKenzie Road a distance of 919.36' to a 1/2" iron rod with yellow plastic cap set for corner to the beginning of a curve to the right;

THENCE along said curve to the right following the northeast Right of Way line of McKenzie Road through a central angle of 53° 33' 04", a radius of 138.82', an arc length of 129.75', with a chord bearing of N 18° 32' 19" W and a chord length of 125.07' to a 1/2" iron rod with yellow plastic cap set for corner;

THENCE N 08° 06' 05" E following the east Right of Way line of McKenzie Road a distance of 286.80' to a 1/2" iron rod with yellow plastic cap set for corner;

THENCE along said curve to the right following the southeast Right of Way line of McKenzie Road through a central angle of 36° 47' 57", a radius of 187.43', an arc length of 120.38', with a chord bearing of N 26° 30' 03" E, and a chord length of 118.32' to a 1/2" iron rod with yellow plastic cap set for corner;

THENCE N 44° 46' 23" E following the southeast Right of Way line of McKenzie Road a distance of 1356.47' to a 1/2" iron rod found for corner;

THENCE S 45° 22' 01" E a distance of 1210.72' to the POINT OF BEGINNING and containing 2,108,164 square feet or 48.397 acres of land



TRACT 1

Being located in the J. P. Anderson Survey, Abstract No. 1 and a portion of the 93.718 acre tract deeded from Dale W. Foster to Macomo Properties; recorded in Volume 85231, Page 3139, Deed Records, Dallas County, Texas (D.R.D.C.T.) and being more particularly described by metes and bounds as follows:

Bearing orientation is based on Interstate Highway I-20 orientation.

COMMENCING at the Northeast corner of the Woodland Park Addition, as per map recorded in Volume 72024, Page 2639, Map Records, Dallas County, Texas; said commencing point also being the intersection of the centerline of Como Road with the original centerline of McKenzie Road (being 30 feet northeast of the present southwest line); Thence South 45°00'08" East, along the original centerline of said McKenzie Road, 162.40 feet; THENCE North 45°47'36" East, 20.00 feet to an iron rod at the POINT OF BEGINNING of the tract described herein (said Beginning Point being at a fence corner post in the Northeast line of said McKenzie Road);

THENCE North 45°28'52" East, along a crooked fence, 1751.47 feet to an old fence corner post;

THENCE South 45°10'15" East, 1646.04 feet to a point in the north Right-of-Way line of Lawson Road, said point also being in the Southwesterly line of a 34.42 acre tract of land now or formerly owned by Robert R. Ambridge, et. al., recorded in Volume 86023, Page 3597, Deed Records, Dallas County, Texas;

THENCE South 76°01'01" West, 256.19 feet, along said north Right-of-Way line, to a point that is the Point of Curvature of a circular curve concave to the South, having a central angle of 31°17'17" and a radius of 1390.00 feet;

THENCE in a southwesterly direction along said curve and north Right-of-Way line 759.05 feet to the point of Tangency;

THENCE continuing along said north Right-of-Way line South 44°43'44" West, 630.96 feet to a point for corner said point also being in the Right-of-Way of Interstate

Highway I-20;

THENCE North 45°16'16" West, along said Right-of-Way 10.00 feet to a point for corner;

THENCE North 80°16'38" West, along said Right-of-Way, 305.33 feet to a point for corner said point also being in the Northeasterly Right-of-Way of said McKenzie Road;

THENCE North 45°21'14" West along the said McKenzie Road Right-of-Way, 1074.71 feet to the Point of Beginning and containing 55.0290 acres of land, more or less.

EXHIBIT "D"
BUILDING ELEVATIONS

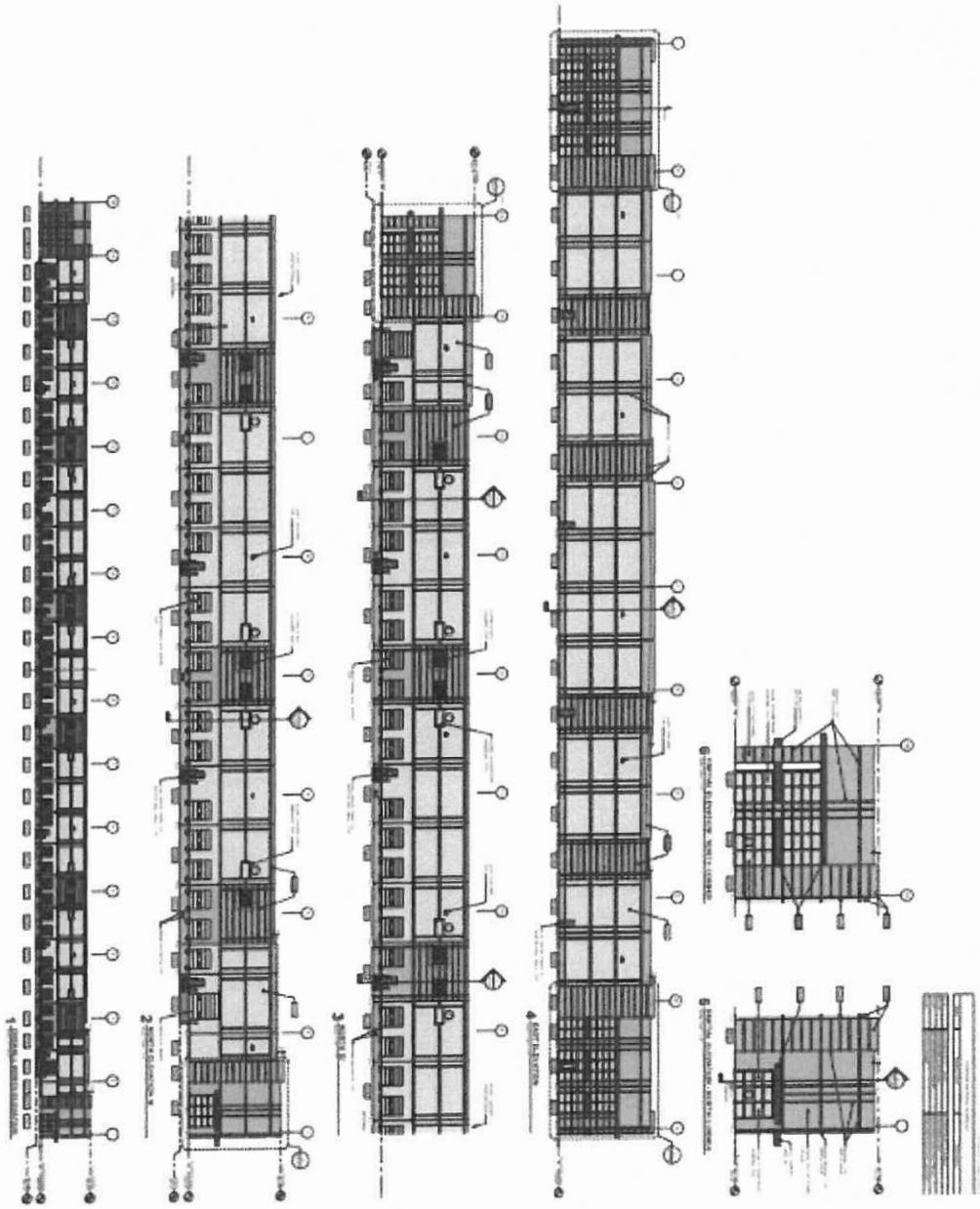


EXHIBIT "E-1"
Detailed Description of the water Infrastructure Improvements

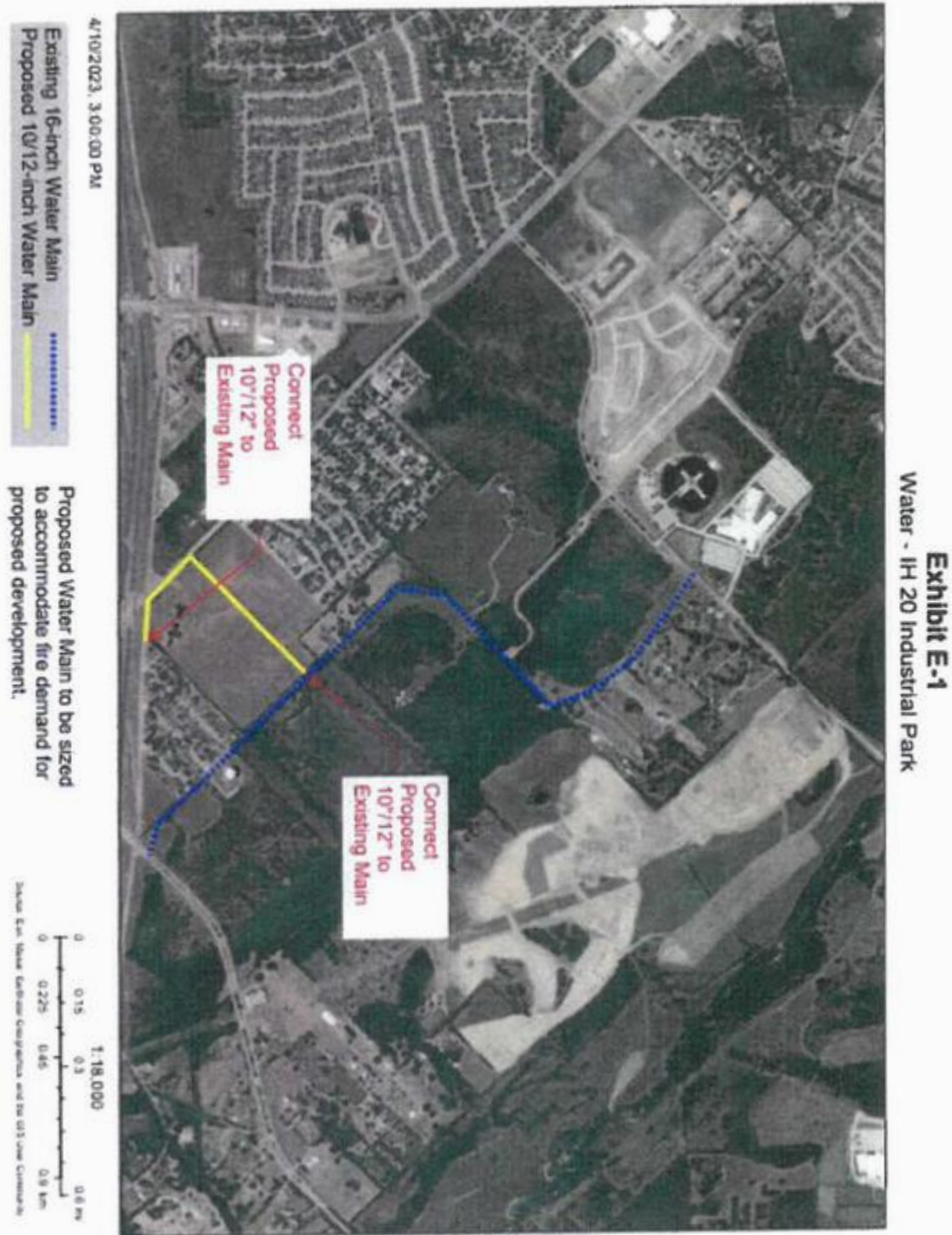


Exhibit E-1
Water - IH 20 Industrial Park

EXHIBIT "E-2"
Detailed Description of the sewer Infrastructure Improvements

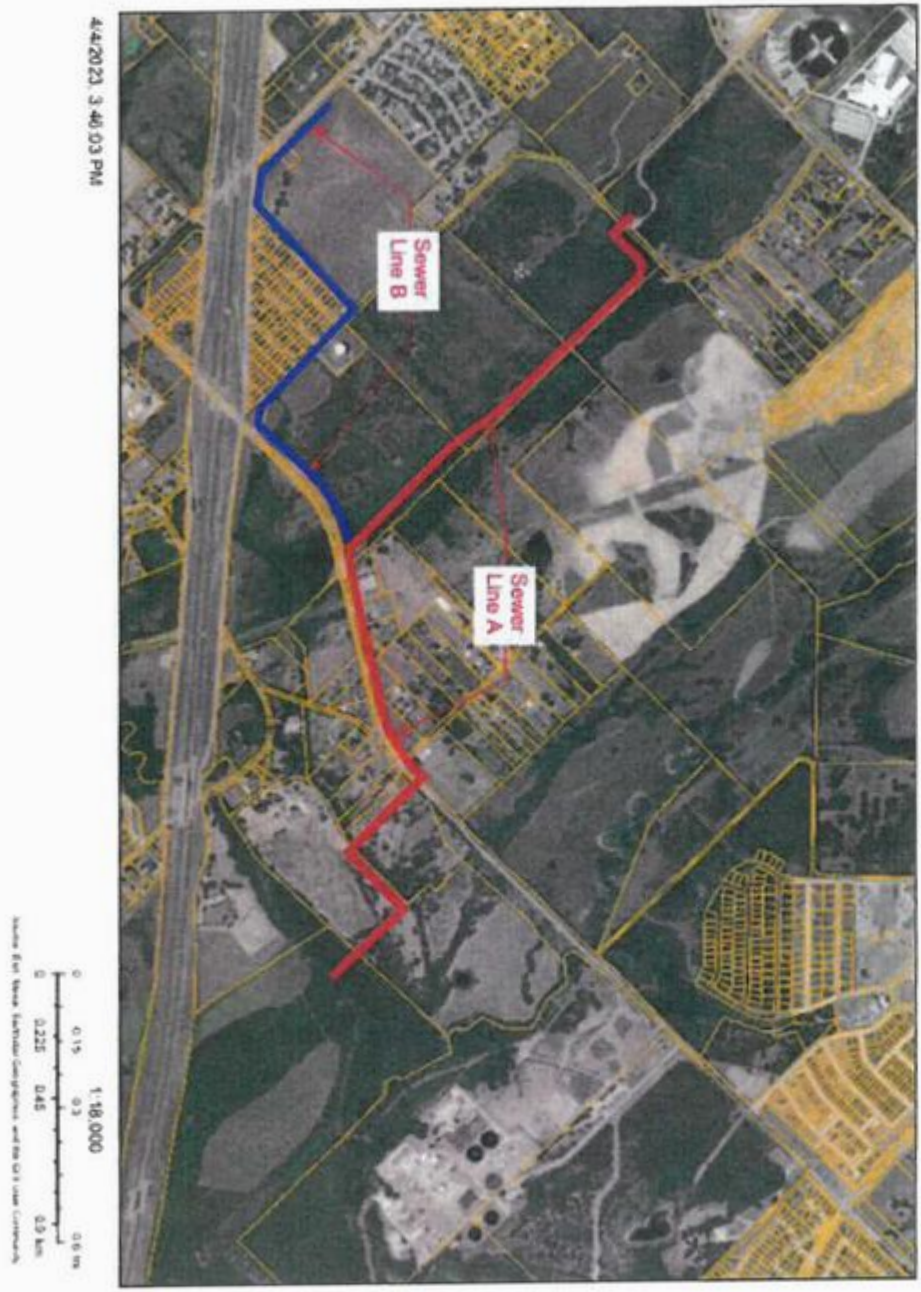


Exhibit E-2
Sanitary Sewer - IH 20 Industrial Park

EXHIBIT "E-4"

Estimated Costs of the Infrastructure Improvements & Other TIRZ Items

EXHIBIT E-4	
Mesquite IH-20 Industrial	
Estimated TIRZ Costs* 5-9-2023	
Category**	Estimated Project Costs
General Costs: Excavation & Grading - clearing and grubbing site (Could be part of Exhibits E-1, E-2 and E-3 or other items not on the Exhibits)	\$ 700,000
General Costs: Retaining Walls, Creek enhancements, turf matting on creek banks for erosion control, Waters of the US, and other.	\$ 5,500,000
Exhibit E-2: Sanitary Sewer - sanitary sewer route as generally shown on Exhibit E-2.	\$ 6,500,000
Exhibit E-3: McKenzie Road Re-route - as generally shown on Exhibit-3.	\$ 7,800,000
Contingency - to be used in any line item	\$ 4,500,000
Total Estimated Costs*** - including interest, inspection fees, supervision, engineering, planning, legal, contingency, etc.	\$ 25,000,000
<p>*Current TIRZ estimates are based on the Concept Plan and the conceptual exhibits attached hereto as E-1, E-2 and E-3. TIRZ estimates will most definitely change once full construction drawings are completed and once hard pricing is received.</p> <p>** This list is a list of current contemplated categories of TIRZ items. Additional eligible TIRZ line items are allowed to be added as they are identified as development of the Combined Property progresses. Cost figures may be moved from one line item to another line item.</p> <p>***Should the Existing 16-Inch Water Main depicted in Exhibit E-1 need to be relocated for any reason, the cost will be added as an eligible TIRZ reimbursable item. The cost of the Proposed 10/12 inch Water Main shown in Yellow on Exhibit E-1 will be added as an eligible TIRZ reimbursable item.</p>	

EXHIBIT "F"

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

MEMORANDUM OF AGREEMENT AND COVENANT

THE STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS:**
COUNTY OF DALLAS §

THIS MEMORANDUM OF AGREEMENT AND COVENANT (this "**Memorandum**") is made and entered into as of the ____ day of _____, 2023, between and among **CITY OF MESQUITE, TEXAS**, (the "**City**"), **BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER 12, CITY OF MESQUITE, TEXAS (IH-20 BUSINESS PARK)** (the "**Board**"), and **IH 20 IP, LLC**, a Texas limited liability company and/or its successors and assigns (the "**IH 20**"). (collectively referred to herein as the "**Parties**").

1. TIRZ Agreement. The Parties entered into that certain TIRZ #12 Reimbursement Agreement, Repurchase Option Agreement, and Chapter 380 Incentive and Performance Agreement, IH 20, LP (IH-20 Business Park) having an effective date of _____, 2023 (the "**Agreement**") affecting approximately 109.762 acres owned by IH 20 and described on Exhibit A attached hereto and approximately 100.264 acres, excluding any property owned by Oncor, owned by the City and to be conveyed to IH 20 as a Chapter 380 economic development incentive grant and described on Exhibit B attached hereto (together the "**Tract**").

2. Notice. The purpose of this Memorandum is to place third parties on notice of the rights and obligations of the Parties under the Agreement including, without limitation, IH 20's obligation to construct certain infrastructure to serve the tract and certain facilities on the Tract.

3. Covenant for Building Material Regulations. IH 20, as owner of 109.762± acres of the Tract and grantee of the remainder of the Tract, does with the signature below hereby consent to and affirm the City's ability to apply, enforce and uphold the building materials, elevation plans, and design and construction standards within the project and upon the Tract, as set forth in the Agreement, the City's zoning regulations, including but not limited to Planned Development Zoning Ordinance No. 4968, attached hereto as Exhibit C and incorporated as if fully set forth herein, in order to further the expressed objectives and to uphold the architectural integrity of the property in Reinvestment Zone Number 12, City of Mesquite, Texas (IH-20 Business Park) and

the Tract (such design and construction standards hereinafter referred to as the "Regulations"). I agree that the Regulations are covenants that touch and concern the land and that it is my intent that such terms, provisions, covenants, and agreements contained within the Regulations shall run with the land and shall be binding upon the Parties identified below, their successors and assigns, and all subsequent owners of the Tract.

4. Binding Effect. This Memorandum shall run with title to the Tract and be binding on the successors in title to, and future owners of the Tract or any portion thereof. This Memorandum shall not be amended, changed or altered without the express written consent of the City.

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the ____ day of _____, 2023.

CITY:

CITY OF MESQUITE, TEXAS

ATTEST:

Name: Sonja Land
Title: City Secretary

By: _____
Name: Cliff Keheley
Title: City Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2023, by Cliff Keheley, City Manager of the City of Mesquite, Texas, a Texas home rule municipality, on behalf of said home rule municipality.

NOTARY PUBLIC, State of Texas

My Commission Expires:

Notary Seal

BOARD:

Board of Directors of Reinvestment Zone
Number Twelve, City of Mesquite, Texas

ATTEST:

Name: Sonja Land
Title: City Secretary

By: _____
Name: Daniel Alemán, Jr
Title: Chairman

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2023, by Daniel Alemán, Jr, Reinvestment Zone Number 12, City of Mesquite Board Chairman, on behalf of said Board.

NOTARY PUBLIC, State of Texas

My Commission Expires:

Notary Seal

IH 20:

IH 20 IP, LLC , a Texas limited liability company

By: 42 BP, LP, a Texas limited partnership, a Manager of IH 20 IP, LLC

By: _____
Name: Scott Rohrman
Title: Manager of the GP of 42 BP, LP

By: SLJ Equities, LLC, a Texas limited liability company, a Manager of IH 20 IP, LLC

By: _____
Name: Louis H. Lebowitz
Title: President of SLJ Equities, LLC

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2023, by Scott Rohrman, as the Manager of the GP of 42 BP, LP as a Manager of IH 20 IP, LLC, on behalf of said entities.

NOTARY PUBLIC, State of Texas

My Commission Expires:

Notary Seal

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2023, by Louis H. Lebowitz, as the President of SLJ Equities, LLC as a Manager of IH 20 IP, LLC, on behalf of said entities.

NOTARY PUBLIC, State of Texas

My Commission Expires:

Notary Seal:

EXHIBIT A
LEGAL DESCRIPTION OF 109.762 ACRES OF THE TRACT

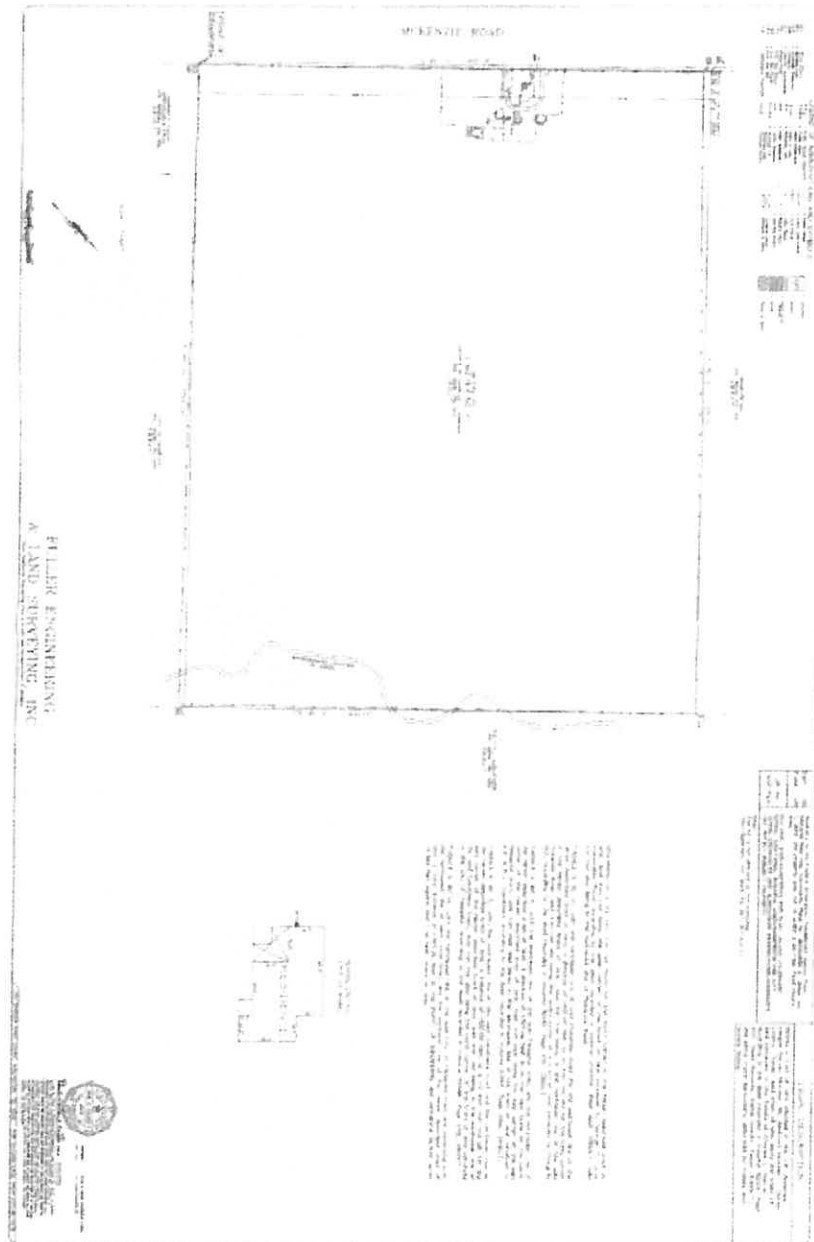
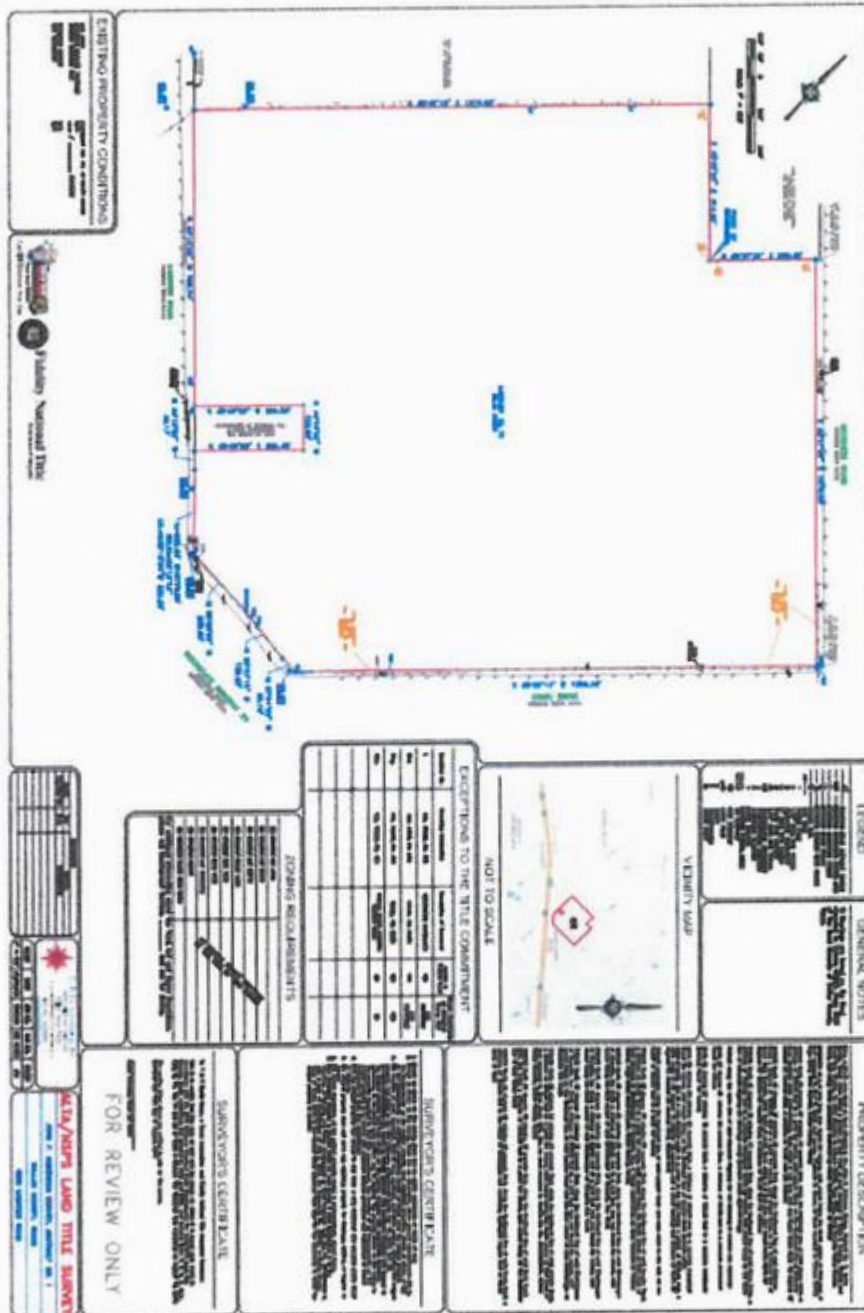


EXHIBIT "A"

DEVELOPER PROPERTY DESCRIPTION AND DEPICTION



Legal Description

Being a tract of land situated in the John Anderson Survey, Abstract No. 1, City of Mesquite, Dallas County, Texas, and being all of a tract conveyed to Mesquite Independent School District as recorded in Volume 92143, Page 475, Deed Records of Dallas County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod found for corner at the east corner of said Mesquite ISD tract, said corner being the south corner of a tract conveyed to Carolyn Lucas Bass Trustee of the George F. Lucas Trust as recorded in Volume 92253, Page 1752, Deed Records of Dallas County, Texas, and said corner being the north corner of a tract conveyed to Joan Leslie Warner Williams & Nancy Sue Warner Gray as recorded in Volume 92253, Page 1752, Deed Records of Dallas County, Texas;

THENCE S 43° 50' 04" W following the northwest line of said Joan Leslie Warner Williams & Nancy Sue Warner Gray tract a distance of 1756.83' to a 1/2" iron rod with yellow plastic cap set for corner in the northeast Right of Way line of McKenzie Road;

THENCE N 45° 18' 50" W following the northeast Right of Way line of McKenzie Road a distance of 919.36' to a 1/2" iron rod with yellow plastic cap set for corner to the beginning of a curve to the right;

THENCE along said curve to the right following the northeast Right of Way line of McKenzie Road through a central angle of 53° 33' 04", a radius of 138.82', an arc length of 129.75', with a chord bearing of N 18° 32' 19" W and a chord length of 125.07' to a 1/2" iron rod with yellow plastic cap set for corner;

THENCE N 08° 06' 05" E following the east Right of Way line of McKenzie Road a distance of 286.80' to a 1/2" iron rod with yellow plastic cap set for corner;

THENCE along said curve to the right following the southeast Right of Way line of McKenzie Road through a central angle of 36° 47' 57", a radius of 187.43', an arc length of 120.38', with a chord bearing of N 26° 30' 03" E, and a chord length of 118.32' to a 1/2" iron rod with yellow plastic cap set for corner;

THENCE N 44° 46' 23" E following the southeast Right of Way line of McKenzie Road a distance of 1356.47' to a 1/2" iron rod found for corner;

THENCE S 45° 22' 01" E a distance of 1210.72' to the POINT OF BEGINNING and containing 2,108,164 square feet or 48.397 acres of land.

TRACT 1

Being located in the J. P. Anderson Survey, Abstract No. 1 and a portion of the 93.718 acre tract deeded from Dale W. Foster to Macomo Properties; recorded in Volume 85231, Page 3139, Deed Records, Dallas County, Texas (D.R.D.C.T.) and being more particularly described by metes and bounds as follows:

Bearing orientation is based on Interstate Highway I-20 orientation.

COMMENCING at the Northeast corner of the Woodland Park Addition, as per map recorded in Volume 72024, Page 2639, Map Records, Dallas County, Texas; said commencing point also being the intersection of the centerline of Como Road with the original centerline of McKenzie Road (being 30 feet northeast of the present southwest line); Thence South $45^{\circ}00'08''$ East, along the original centerline of said McKenzie Road, 162.40 feet; THENCE North $45^{\circ}47'36''$ East, 20.00 feet to an iron rod at the POINT OF BEGINNING of the tract described herein (said Beginning Point being at a fence corner post in the Northeast line of said McKenzie Road);

THENCE North $45^{\circ}28'52''$ East, along a crooked fence, 1751.47 feet to an old fence corner post;

THENCE South $45^{\circ}10'15''$ East, 1646.04 feet to a point in the north Right-of-Way line of Lawson Road, said point also being in the Southwesterly line of a 34.42 acre tract of land now or formerly owned by Robert R. Ambridge, et. al., recorded in Volume 86023, Page 3597, Deed Records, Dallas County, Texas;

THENCE South $76^{\circ}01'01''$ West, 256.19 feet, along said north Right-of-Way line, to a point that is the Point of Curvature of a circular curve concave to the South, having a central angle of $31^{\circ}17'17''$ and a radius of 1390.00 feet;

THENCE in a southwesterly direction along said curve and north Right-of-Way line 759.05 feet to the point of Tangency;

THENCE continuing along said north Right-of-Way line South $44^{\circ}43'44''$ West, 630.96 feet to a point for corner said point also being in the Right-of-Way of Interstate

Highway I-20;

THENCE North $45^{\circ}16'16''$ West, along said Right-of-Way 10.00 feet to a point for corner;

THENCE North $80^{\circ}16'38''$ West, along said Right-of-Way, 305.33 feet to a point for corner said point also being in the Northeasterly Right-of-Way of said McKenzie Road;

THENCE North $45^{\circ}21'14''$ West along the said McKenzie Road Right-of-Way, 1074.71 feet to the Point of Beginning and containing 55.0290 acres of land, more or less.

EXHIBIT C
Planned Development Zoning Ordinance No. 4968

Z0622-0243
EXHIBIT B – PD STANDARDS

This Planned Development Industrial (PD-I) must adhere to all conditions of the Mesquite City Code, including but not limited to the Mesquite Zoning Ordinance ("MZO"), as amended, and adopts Industrial base district standards consistent with the Concept Plan attached hereto and incorporated herein as **EXHIBIT C**, and the standards identified below, which apply to this PD-I district. The number of buildings, sizes, and locations shown on **EXHIBIT C** may be modified provided the parking, and other development standards are met. Where these regulations conflict with or overlap another ordinance, the more stringent restriction will control.

1. **Permitted Land Uses.** The permitted uses on the Property include the permitted uses in the Industrial District classification ("I") as set out in the MZO, and those permitted uses on the Property are subject to the same requirements as set out in the MZO. Prohibited uses on the Property are identified in subsection 2 below.
 - a. The permitted uses requiring a conditional use permit ("CUP") as set out in the MZO, also require a CUP for the use to be permitted on the Property unless permitted in subsection b below.
 - b. The following uses are permitted on the Property
 - i. Indoor crop production
 - ii. Self storage with a minimum of two stories for all self-storage structures
 - iii. Manufacturing – (not to include chemical production or processing of raw materials)
 - iv. Electrical Substation
2. **Prohibited Land Use.** The following use are prohibited on the property:
 - a. SIC Code 32a: Permanent Concrete Batch Plants
 - b. SIC Code 40: Railroad Passenger Terminal
 - c. SIC Code 61: Alternative Financial Institutions
 - d. SIC Code 593: Used Merchandise
 - e. SIC Code 593a: Pawnshops
 - f. SIC Code 5993: Tobacco Stores
 - g. SIC Code 5947: Gift, Novelty, Souvenir Shops
 - h. SIC Code 5999g: Paraphernalia Shops
3. The overnight parking of heavy load vehicles and/or unmounted trailers (and 18-wheelers) is permitted at any parking location within the PD if it is associated with a valid Certificate of Occupancy for a use located in any building within the Property.
4. The minimum number of off-street parking spaces shall be as follows: Uses allowed in the Industrial District classified as distribution, fulfillment, warehousing, manufacturing, or storage shall provide 15 spaces plus one space per 7,000 square feet. Data centers shall provide one space per 10,000 square feet. Reduction in this requirement may be provided by meeting requirements in Section 3-403 of the MZO, or by receiving a Special Exception from the Board of Adjustment.
5. When adjacent to a public right-of-way or park, a truck court, and/or outdoor storage (including heavy load vehicle parking, overhead doors or loading docks) shall be screened with a solid masonry wall, or a solid landscape hedge pursuant to Mesquite Zoning Ordinance's Section, 1A-303.D, and further defined below in 5(a). Wood or chain link

Planning and Zoning Division
Prepared by Garrett Langford

Z0622-0243
EXHIBIT B – PD STANDARDS

screening is prohibited. Said screening shall be provided, or constructed prior to the issuance of a Certificate of Occupancy.

- a. A Solid Landscape Hedge shall consist of a large evergreen shrub, or small ornamental evergreen trees a minimum of six feet (6') in height at the time of planting. These shrubs/ornamental screening plants shall be planted a maximum of eight feet (8') on center, and be full to the ground.
- b. Mature plant growth should provide continuous screening. Acceptable Screening species include, but are not limited to, Magnolias, Hollies, Cedars, or Junipers.

6. The screening and buffer zones shall include the following.

- a. Along Lawson Road:
 - i. A 15-ft wide landscape buffer shall be established along the property line parallel to Lawson Road (the "15 Foot Landscape Buffer"). A buffer tree line shall be established within the 15 Foot Landscape Buffer.
 - ii. A four-foot (4') high earthen berm with 1 canopy tree at 60 feet on center and two medium shrubs between canopy trees. The minimum planting height for the shrubs is four feet. The earthen berm may be located within the adjacent right-of-way.
- b. Along Lasater and McKenzie Roads where they are on a boundary of the PD:
 - i. A 15-ft wide landscape buffer shall be established along the property line parallel to the above named streets (the "15 Foot Landscape Buffer"). A buffer tree line shall be established within the 15 Foot Landscape Buffer.
 - ii. Within the 15 Foot Landscape Buffer, or the green space within the immediately adjacent right-of-way or the easement one tree shall be provided for each 60 linear feet, and trees shall be planted no more than 60 feet apart (on center).
- c. District Screening is not required. If fencing is provided, it shall consist of the following:
 - i. Chainlink (black coated) or wrought-iron fence is permitted up to 8-ft in height along the interior or rear property lines.
 - ii. Wrought iron fence is permitted up to 8-ft in height between the front/interior property lines and the building.
 - iii. Barbedwire is prohibited.
- d. Trees in the 15 Foot Landscape Buffer shall be selected from the following list. Trees planted outside of the landscape buffers shall be selected from Section 1A – 500 of the Mesquite Zoning Ordinance. A variety of species shall be required such that no single species shall exceed 25% of the total number of trees.

Common Name	Scientific Name
Texas Walnut	Juglans microcarpa
Pecan	Carya illinoensis
Caddo Maple	Acer saccharum var. caddo
Cedar Elm	Ulmus crassifolia

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EXHIBIT B – PD STANDARDS

Chinquapin Oak	Quercus muhlenbergii
Live Oak	Quercus virginiana
Texas Red Oak	Quercus texana
Shantung Maple	Acer truncatum
Lacebark Elm	Ulmus parvifolia

7. The term, "Landscape Buffers" refers to any 15 Foot Landscape Buffer. Trees and landscaping installed in the Landscape Buffers or the green space within the immediately adjacent right-of-way, or the easement may be used to fulfill the tree requirement in Mesquite Zoning Ordinance's Section, 1A-202 A.2 or in other documents.
8. The truck courts and building size areas shall be excluded from the calculation for the required landscaping area. The minimum installation size of each tree shall be a minimum of 3 caliper-inches at 1 foot above the ground.
9. The maintenance and replacement of earthen berms, trees, and landscaping installed in the right-of-way are the responsibility of the adjacent property owner.
10. The quantities of trees required to meet the requirements of this PD are based on each tree having a minimum caliper-inch of 3-inches at one foot above the ground. As an option, the total number of required trees planted on a lot may be decreased by increasing the tree caliper-inch, only if the total caliper inches required are matched. For example, if 100 trees are required per ordinance (100 trees x 3-inches = 300 caliper-inches), the Property may elect to plant 75 trees if each tree is 4 caliper inches (75 trees x 4 inches = 300 caliper-inches). However, this option cannot be used to reduce the number of trees required in the Landscape Buffer or in the solid landscape hedge.
11. Any tree preservation and mitigation requirements in an approved Development Agreement for the Property will overrule the requirements in Section 1A-400 of the Mesquite Zoning Ordinance. If there is no Development Agreement or it does not include provisions for tree preservation and mitigation, Section 1A-400 of the Mesquite Zoning Ordinance would apply.
12. Sign regulations for free standing signs – All signage shall comply with the Mesquite Sign Ordinance except as modified below.
 - a. Pole signs shall be prohibited.
 - b. District identification and directional signage shall be permitted in the PD at locations agreed to between the developer and the City of Mesquite.
 - i. All district identification and directional signage shall have the same architectural design and material as permitted by the Mesquite Sign Ordinance. The district identification or directional sign shall match the design and materials of the first such sign installed with the PD.
 - ii. District identification and directional signage to be located a minimum of 30 feet from adjoining private property lines and shall not obstruct the vision of traffic within a triangular area formed by the intersection of adjacent curb lines from a point on each curb line 20 feet from the intersection.
 - iii. District identification and directional signage shall be installed by the developer of the property where a sign is to be located. After installation

Z0622-0243
EXHIBIT B – PD STANDARDS

and acceptance, the City will maintain the district identification sign. The signs shall be placed in a maintenance easement dedicated to the City of Mesquite.

- iv. District identification and directional signage shall conform to the sign standards in the Mesquite Sign Ordinance; provided that such signs shall not count towards the number of signs permitted on a property.

13. Exterior lighting is not required except for purposes of public safety. However, if installed, all exterior lighting shall meet the following design standards:

- a. Light sources shall be concealed or shielded with luminary shielding, skirts, or cut-offs with an angle not exceeding 90 degrees ("cutoff angle") if without said concealment or shielding, there would be potential for glare and unnecessary diffusion on adjacent property over one foot-candle additional illumination levels at any point off-site. For purposes of this provision, "cutoff angle" is further defined as the angle formed by a line drawn from the direction of light rays at the light source or reflector, and a line perpendicular to the ground from the light source above from which no light is emitted.
- b. Light fixtures used to illuminate flags, statues, or any other objects mounted on a pole, pedestal, or platform shall use a narrow cone beam of light that will not extend beyond the illuminated object.
- c. For upward-directed architectural, landscape, and decorative lighting, direct light emissions shall not be visible above the building roof line.
- d. No flickering or flashing lights shall be permitted, except for temporary decorative seasonal lighting.

13. A wing wall shall be installed to screen the truck docks (see illustration). The wing wall height may exceed 8-ft in height, with the final size to be determined during the site plan review process.

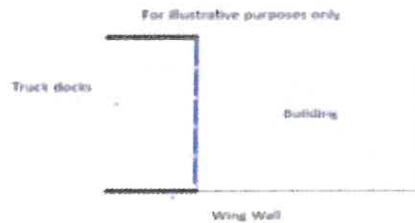


EXHIBIT G
FORM OF SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS:**
COUNTY OF DALLAS §

THIS SPECIAL WARRANTY DEED ("**Deed**") is made as of the ____ day of _____, 2023 (the "**Effective Date**"), by the **City of Mesquite, Texas**, a Texas municipal corporation (hereinafter referred to as "**Grantor**"), and _____, a _____ (hereinafter referred to as "**Grantee**"), whose mailing address is _____.

FOR AND IN CONSIDERATION of \$10.00 and other good and valuable consideration to Grantor in hand paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, Grantor has SOLD, CONVEYED, and GRANTED, and by these presents does hereby SELL, CONVEY, and GRANT, unto Grantee, its successors and assigns, subject to the Permitted Exceptions (defined below), that certain real property in Dallas County, Texas, which is described in **Exhibit A** attached hereto and incorporated herein by reference (the "**Property**"), together with any improvements located in, on, or under the Property.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anyway belonging unto Grantee, its successors and assigns, forever; and Grantor does hereby bind Grantor and Grantor's heirs, successors, executors and assigns, to WARRANT AND FOREVER DEFEND, all and singular the Property unto the Grantee, Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise; provided, however that this conveyance is made by Grantor and accepted by Grantee subject to: (a) all of the title exceptions revealed in or by the recorded documents and other matters listed on **Exhibit B** attached to and incorporated in this Deed by reference, to the extent the same are valid, subsisting, and affect the Property (the "**Permitted Exceptions**"); and (b) all standby fees, taxes and assessments by any taxing authority for the current and all subsequent years, and all liens securing the payment of any of the foregoing.

IN CONNECTION WITH THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN, AND EXCEPT FOR THE SPECIAL WARRANTY OF TITLE, THE

REPRESENTATIONS AND THE OTHER WARRANTIES SET FORTH IN THIS DEED AND GRANTOR'S REPRESENTATIONS, WARRANTIES, AND COVENANTS EXPRESSLY SET FORTH IN THE "PURCHASE AND SALE AGREEMENT" DATED _____, 2023 BETWEEN GRANTOR, AS SELLER, AND GRANTEE, AS PURCHASER, RELATING TO THE SALE AND CONVEYANCE OF THE PROPERTY (THE "**EXPRESS WARRANTIES**"), GRANTOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY OR CONDITION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SPECIFICALLY, GRANTOR DOES NOT MAKE ANY REPRESENTATIONS REGARDING HAZARDOUS WASTE, AS DEFINED BY THE LAWS OF THE STATE OF TEXAS OR THE UNITED STATES, AND ANY REGULATIONS ADOPTED PURSUANT THERETO, OR THE DISPOSAL OF ANY HAZARDOUS WASTE OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES IN OR ON THE PROPERTY. Grantee accepts the Property in its present AS-IS condition WITH ALL FAULTS, subject to the Express Warranties.

Grantor does hereby represent and warrant that there are no liens, attachments or other encumbrances which will affect the title or right of the Grantor to convey the Property to the Grantee.

EXECUTED AND DELIVERED to be effective as of the Effective Date.

EXHIBIT “H”

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER’S LICENSE NUMBER.

REPURCHASE OPTION MEMORANDUM

THE STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS:**
COUNTY OF DALLAS §

REPURCHASE OPTION MEMORANDUM (this “Memorandum”) is executed this _____ day of _____, 2023 by **IH 20 IP, LLC**, a Texas limited liability company and/or its successors and assigns (“Optionor”), and by **THE CITY OF MESQUITE, TEXAS** (“Optionee”).

This Memorandum is placed of record solely to provide notice that Optionor has granted to Optionee an option (the “Option”) to purchase and/or become the owner of the property described on Exhibit A hereto (the “Property”) in accordance with the terms and subject to the conditions of an unrecorded TIRZ #12 Reimbursement Agreement, Repurchase Option Agreement, and Chapter 380 Incentive and Performance Agreement, IH 20, LP (IH-20 Business Park) having an effective date of _____, 2023, executed by Optionor and Optionee (the “Agreement”).

The term of the Option (the “Term”) expires on the earlier of (i) December 31, 2051, or (ii) the date all parties have fully satisfied their respective obligations in the Agreement, subject to extension for certain “Force Majeure” conditions as defined and provided in the Agreement, unless sooner terminated as provided in the Agreement.

Upon request, and although not required to evidence that the Option, the Agreement, all of Optionee’s rights thereunder, and this Memorandum have been terminated, Optionee will execute, cause to be acknowledged, and deliver to Optionor within five (5) days of request therefor, a recordable release of this Memorandum; provided, however, if Optionee fails to execute, cause to be acknowledged, and deliver to Optionor such recordable release within such five (5) day period, then Optionor may execute, record and provide Optionee with a copy of a sworn written statement affirming that the Option, the Agreement, all of Optionee’s rights thereunder, and this Memorandum have been terminated. Such sworn statement of Optionee may be relied on by third parties unless Optionee executes, records and sends Optionor a copy of a contradictory sworn statement within ten (10) days after receiving a copy of Optionor’s sworn written statement.

This Memorandum does not alter, amend, or modify the Agreement in any way. If there is an inconsistency between the provisions of this Memorandum and the Agreement, the provisions of the Agreement will control. This Memorandum is governed by the laws of the State of Texas. This Memorandum may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, but all such counterparts together will constitute but one and the same agreement.

[Signature and Acknowledgement Pages Follow]

OPTIONEE:

CITY OF MESQUITE, TEXAS

ATTEST:

Name: Sonja Land
Title: City Secretary

By: _____
Name: Cliff Keheley
Title: City Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2023, by Cliff Keheley, City Manager of the City of Mesquite, Texas, a Texas home rule municipality, on behalf of said home rule municipality.

NOTARY PUBLIC, State of Texas

My Commission Expires:

Notary Seal

OPTIONOR:

IH 20 IP, LLC , a Texas limited liability company

By: 42 BP, LP, a Texas limited partnership, a Manager of IH 20 IP, LLC

By: _____

Name: Scott Rohrman

Title: Manager of the GP of 42 BP, LP

By: SLJ Equities, LLC, a Texas limited liability company, a Manager of IH 20 IP, LLC

By: _____

Name: Louis H. Lebowitz

Title: President of SLJ Equities, LLC

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2023, by Scott Rohrman, as the Manager of the GP of 42 BP, LP as a Manager of IH 20 IP, LLC, on behalf of said entities.

NOTARY PUBLIC, State of Texas

My Commission Expires:

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STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2023, by Louis H. Lebowitz, as the President of SLJ Equities, LLC as a Manager of IH 20 IP, LLC, on behalf of said entities.

NOTARY PUBLIC, State of Texas

My Commission Expires:

Notary Seal:

Legal Description

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THENCE S 43° 50' 04" W following the northwest line of said Joan Leslie Warner Williams & Nancy Sue Warner Gray tract a distance of 1756.83' to a 1/2" iron rod with yellow plastic cap set for corner in the northeast Right of Way line of McKenzie Road;

THENCE N 45° 18' 50" W following the northeast Right of Way line of McKenzie Road a distance of 919.36' to a 1/2" iron rod with yellow plastic cap set for corner to the beginning of a curve to the right;

THENCE along said curve to the right following the northeast Right of Way line of McKenzie Road through a central angle of 53° 33' 04", a radius of 138.82', an arc length of 129.75', with a chord bearing of N 18° 32' 19" W and a chord length of 125.07' to a 1/2" iron rod with yellow plastic cap set for corner;

THENCE N 08° 06' 05" E following the east Right of Way line of McKenzie Road a distance of 286.80' to a 1/2" iron rod with yellow plastic cap set for corner;

THENCE along said curve to the right following the southeast Right of Way line of McKenzie Road through a central angle of 36° 47' 57", a radius of 187.43', an arc length of 120.38', with a chord bearing of N 26° 30' 03" E, and a chord length of 118.32' to a 1/2" iron rod with yellow plastic cap set for corner;

THENCE N 44° 46' 23" E following the southeast Right of Way line of McKenzie Road a distance of 1356.47' to a 1/2" iron rod found for corner;

THENCE S 45° 22' 01" E a distance of 1210.72' to the POINT OF BEGINNING and containing 2,108,164 square feet or 48.397 acres of land.

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Bearing orientation is based on Interstate Highway I-20 orientation.

COMMENCING at the Northeast corner of the Woodland Park Addition, as per map recorded in Volume 72024, Page 2639, Map Records, Dallas County, Texas; said commencing point also being the intersection of the centerline of Como Road with the original centerline of McKenzie Road (being 30 feet northeast of the present southwest line); Thence South 45°00'08" East, along the original centerline of said McKenzie Road, 162.40 feet; THENCE North 45°47'36" East, 20.00 feet to an iron rod at the POINT OF BEGINNING of the tract described herein (said Beginning Point being at a fence corner post in the Northeast line of said McKenzie Road);

THENCE North 45°28'52" East, along a crooked fence, 1751.47 feet to an old fence corner post;

THENCE South 45°10'15" East, 1646.04 feet to a point in the north Right-of-Way line of Lawson Road, said point also being in the Southwesterly line of a 34.42 acre tract of land now or formerly owned by Robert R. Ambridge, et. al., recorded in Volume 86023, Page 3597, Deed Records, Dallas County, Texas;

THENCE South 76°01'01" West, 256.19 feet, along said north Right-of-Way line, to a point that is the Point of Curvature of a circular curve concave to the South, having a central angle of 31°17'17" and a radius of 1390.00 feet;

THENCE in a southwesterly direction along said curve and north Right-of-Way line 759.05 feet to the point of Tangency;

THENCE continuing along said north Right-of-Way line South 44°43'44" West, 630.96 feet to a point for corner said point also being in the Right-of-Way of Interstate

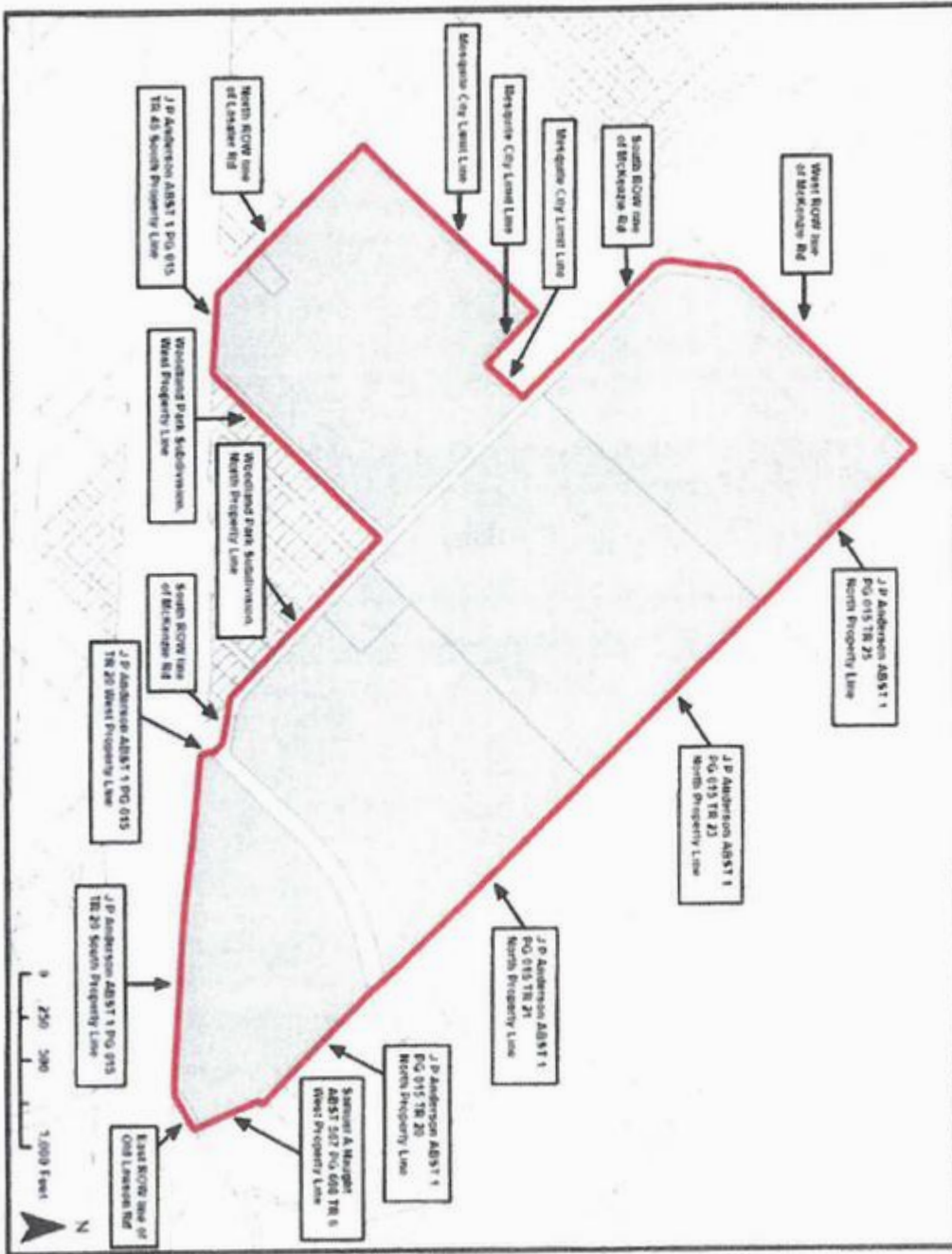
Highway I-20;

THENCE North 45°16'16" West, along said Right-of-Way 10.00 feet to a point for corner;

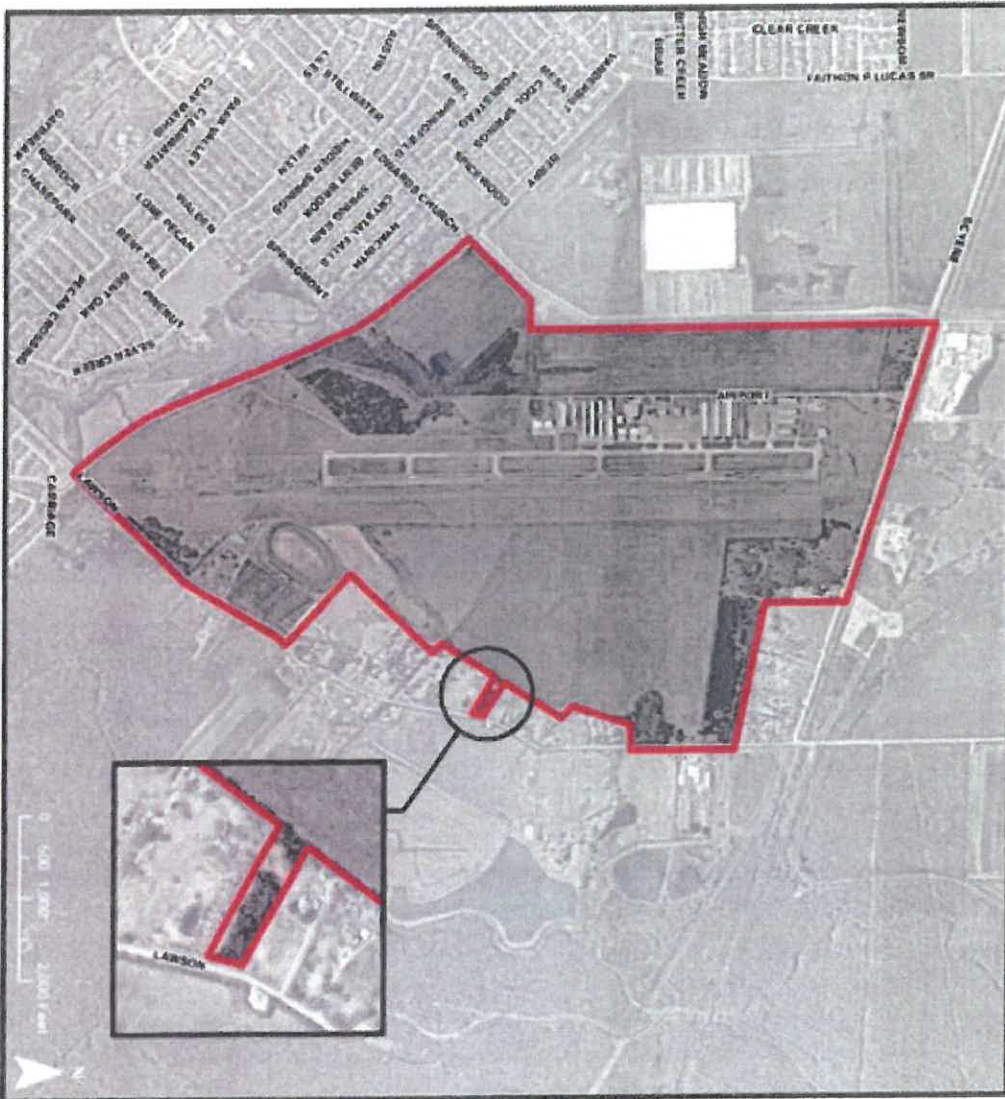
THENCE North 80°16'38" West, along said Right-of-Way, 305.33 feet to a point for corner said point also being in the Northeasterly Right-of-Way of said McKenzie Road;

THENCE North 45°21'14" West along the said McKenzie Road Right-of-Way, 1074.71 feet to the Point of Beginning and containing 55.0290 acres of land, more or less.

Exhibit "I"
Map depicting general location of property in the Zone



IH-20 Area Boundary Description



Airport Area Boundary

 Airport Expansion

City of Mesquite, TX

Exhibit "J"
Map depicting general location of Oncor Property and Easement

