

RESOLUTION NO. 56-2023

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 AND PERFORMANCE AGREEMENT FOR SUCH PURPOSES WITH MSAP 216, LLC, AND 42 BP, LP (COLLECTIVELY 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 217-ACRE CLASS A INDUSTRIAL DEVELOPMENT IN THE TIRZ LOCATED AT 229, 231, AND 1600 LAWSON ROAD, MESQUITE, TEXAS, AND THE GRANTING TO THE DEVELOPER OF CERTAIN TIRZ REIMBURSEMENTS; 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, on July 2, 2018, by City Ordinance No. 4579 (“**Ordinance No. 4579**”), the City of Mesquite, Texas (“**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 established a Board of Directors for the TIRZ (the “**TIRZ Board**”); 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 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, the City created the TIRZ to promote development or redevelopment in the TIRZ, in accordance with the Act; and

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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, the TIRZ Board approved a second amended project plan and reinvestment zoning 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 May 15, 2023, by City Ordinance No. 5023, the City Council approved a second amended project plan and reinvestment zone financing plan for the TIRZ; and

WHEREAS, the City Council has been presented with a proposed TIRZ # 12 Reimbursement Agreement and Performance Agreement, (the “**Agreement**”), a copy of which is attached hereto as Exhibit A and incorporated herein by reference, between the City, the TIRZ Board, MSAP 216, LLC, a Texas limited liability company, and 42 BP, LP, a Texas limited partnership (collectively the “**Developer**”), regarding the Developer’s construction of an approximately 217-acre Class A Industrial Development in the TIRZ located at 229, 231, and 1600 Lawson Road within the TIRZ (the “**Property**”), and providing, among other things, for: (i) the development of the Property; (ii) the construction of public improvements included in the TIRZ Project and Financing Plan; and (iii) the granting to the Developer of certain TIRZ reimbursements in connection with construction of public improvements included in the TIRZ Project and Financing Plan.; and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that: (i) the Agreement will promote state and local economic development, and business and commercial activity will be stimulated in the City and TIRZ; and (ii) the economic TIRZ reimbursements 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.

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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.

SECTION 3. 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 4. 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.

SECTION 5. The City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council’s legislative functions.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 16th day of October 2023.

DocuSigned by:
Daniel Aleman Jr.
D999585317D142B...
Daniel Alemán, Jr.
Mayor

ATTEST:
DocuSigned by:
Sonja Land
C2518095973F46A...
Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:
DocuSigned by:
David Paschall
666E18891208434...
David L. Paschall
City Attorney

EXHIBIT A

TIRZ NO. 12 REIMBURSEMENT AGREEMENT

AND PERFORMANCE AGREEMENT

BETWEEN

MSAP 216, LLC, AND 42 BP, LP,

THE BOARD OF DIRECTORS OF TIRZ NO. 12,

AND THE CITY OF MESQUITE

**TIRZ #12 REIMBURSEMENT AGREEMENT
AND PERFORMANCE AGREEMENT
MSAP 216, LLC AND 42 BP, LP (AIRPORT EAST)**

This TIRZ #12 Reimbursement Agreement 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 MSAP 216, LLC, a Texas limited liability company, and 42 BP, LP, a Texas limited partnership (each owning a 50% undivided interest and collectively 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

WHEREAS, the Developer 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 Developer 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 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 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:

"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 "C-1" and "C-2"**.

"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 Developer 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.

“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 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 Developer Property, including but not limited to the Code of Ordinances, the Planned Development zoning ordinance adopted on September 5, 2023 by Ordinance No. 5059, as they may be amended.

“Commencement of Construction” or words of like import shall mean that 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.

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

“Completion of Construction” or words of like import shall mean that 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; and (iii) the City has issued a final shell certificate of occupancy.

“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 approximately 217.744 acres.

“Effective Date” shall mean October 23, 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 (i) the commercial or airport use related building or the buildings, being at least 250,000 square feet, or (ii) commercial or airport use related building or buildings developed by Developer with a minimum investment amount, excluding land value and land acquisition costs, of \$30,000,000, in the general location on the Developer Property as shown on Exhibit “B”.

“Facility Expansion” shall be the expansion of the Facility that (i) adds at least an additional 250,000 square feet for a combined total with the Facility of at least 500,000 square feet, or (ii) adds an additional investment amount, excluding land value and land acquisition costs, of \$30,000,000, for a combined total with the Facility of at least \$60,000,000 in the general location on the Developer 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 Developer 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 Developer 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 any 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 Developer 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 necessary for the development of the Facility and/or the Facility Expansion both on and off the Developer Property, including but not limited to roadways and traffic signals, offsite waterline to extend water to Developer Property, offsite sanitary sewer line to extend sanitary sewer to Developer Property, offsite storm channel, water lines, sewer lines, drainage and electric, etc. in accordance with the City Regulations, as generally described in **Exhibit “D”**.

“Memorandum” shall have the meaning ascribed in Section 6.27.

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

“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 (where applicable) of the grading permit(s), Building Permit(s), shell certificates of occupancy, contracts for construction of the Facility, and copies of invoices, bills, and receipts in order to demonstrate; (i) costs incurred by Developer, exclusive of land value or acquisition costs, of at least \$30,000,000 for the Facility, and (ii) such other information as may reasonably be requested by the City and/or Board for verification.

“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 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 are two Related Agreement in existence, being “TIRZ #12 Reimbursement Agreement, Repurchase Option Agreement, and City Chapter 380 Incentive and Performance Agreement IH 20 IP, LLC (IH-20 Business Park)” and “TIRZ #12 Reimbursement Agreement, Repurchase Option Agreement, and City Chapter 380 Incentive and Performance Agreement IH 20 IP, LLC (IH-20 Retail)”.

“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 3.2(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.

“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 “F”** 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 “D”** 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 and the Facility Expansion in accordance with

this Agreement. Developer shall cause Commencement of Construction of the Facility and the Facility Expansion to occur no later than the following dates:

Item to be constructed	Commencement of Construction Deadline
Facility	August 1, 2032
Facility Expansion	August 1, 2037

Developer shall cause Completion of Construction of the Facility and the Facility Expansion to occur no later than the following dates:

Item to be constructed	Completion of Construction Deadline
Facility	December 31, 2035
Facility Expansion	July 1, 2042

Developer and City acknowledge and agree that Developer may be able to develop a portion of the Developer Property and construct a portion of the Facility and/or the Facility Expansion without the Completion of Construction of all of the Infrastructure Improvements contemplated herein.

Developer further acknowledges and agrees that the City shall not issue a certificate of occupancy for the Facility or the Facility Expansion until Developer has caused the Completion of Construction of only the necessary components, as required by the City Regulations, of the Infrastructure Improvements for the specific portion of the Facility or Facility Expansion for which Developer is requesting a certificate of occupancy. As an example, if Developer is able to construct a building while only having to complete a portion of the Infrastructure Improvements (e.g. a water line) under the City Regulations, then Developer shall be able to get a certificate of occupancy for that building.

(b) Development of the Property. (1) Developer understands and acknowledges that development of the Developer 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 only as 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 and buildings related to airport uses, such as hangars. Formal approval of a final Concept Plan for the Developer 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 City approval of a Concept Plan and exterior building materials and design for the Facility and Facility Expansion, using, as a guide, the attached exhibits known as **Exhibits “B”, “C-1”, and “C-2”**, 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. Notwithstanding any provision in this Agreement, buildings developed and constructed as airport related uses on the Developer Property, including but not limited to hangars, will be developed and constructed using similar design, construction materials and finishes, and landscaping and screening requirements as current existing hangars in the Mesquite Metro Airport, as generally shown on Exhibit "C-2".

(2) Developer acknowledges and agrees that the Developer 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, the City Regulations and Planned Development Zoning Ordinance No. 5059 apply to the Developer 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 Developer Property in compliance with the City Regulations and the exhibits hereto; and (ii) the construction of the Facility and Facility Expansion on the Developer 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 Developer Property. Should Developer fail to comply with this Section 3.1(b)(3) for any portion of the Developer Property, the City and/or the Board shall have the right to terminate the TIRZ Reimbursement.

(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 Developer 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 Developer Property and that the fee in lieu of replacement approved by the City's arborist under Tree Preservation Ordinance for the Developer Property is \$20,000 (the "Tree Mitigation Fee").

3.2 TIRZ Reimbursement.

(a) Reimbursement for Costs of Infrastructure Improvements. Assuming Developer's timely completion and compliance of Developer's obligations to Commence Construction and Complete Construction of the Facility as set forth in Section 3.1 above, 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 \$20,000 Tree Mitigation Fee, not to exceed Eight Million dollars (\$8,000,000) (the "TIRZ Reimbursement"). Within sixty (60) days

of verification of the Payment Request in accordance with Section 3.2(b) below, and subject to Section 4.1 below, the City shall pay the TIRZ Reimbursement; however, should the TIRZ Funds available be less than the amount owed for the TIRZ 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 has been paid. Notwithstanding the foregoing, the TIRZ Reimbursement amount owed to Developer shall never exceed the costs, excluding land value and land acquisition costs, in designing and constructing the Facility and Facility Expansion, if those total costs are less than the costs of the Infrastructure Improvements. Should Developer timely commence and complete the Facility as set for in Section 3.1, Developer shall be entitled to receive TIRZ Reimbursements from available TIRZ Funds as set forth in this Section 3.2(a), subject to the City's right of offset in Section 5.4 below.

(b) Payment Requests; Cost Verification. Within thirty (30) days of Completion of Construction of the Facility, Developer shall submit the Payment Request for the TIRZ Reimbursement to the Board and the City for each functioning component of the Infrastructure Improvements. 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 March 21, 2022, the City adopted Ordinance No. 4944 amending the Zone Plan to include the Infrastructure Improvements identified on Exhibit "D", so that such are eligible to be reimbursed with the TIRZ Reimbursement.

(d) Funds for TIRZ Reimbursement. The Parties hereto acknowledge that the TIRZ 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) payment of offsets to the City under a Related Agreement or Section 5.4 of this Agreement, (iii) reduction of the TIRZ Reimbursement as set forth in this Agreement the City hereby represents to Developer that 100% of the TIRZ Funds shall be used solely to make TIRZ Reimbursements due under this Agreement and Related Agreements on a pro-rata basis, which shall be based upon the amount of any approved Payment Request(s)/request for payment for Developer under this Agreement and for a party to a Related Agreement, and costs incurred by City under a Related Agreement for infrastructure, until the entire TIRZ Reimbursement as it may be reduced hereunder, is paid to Developer. The City further represents to Developer that the City has not entered into and hereafter will not enter into any agreements that would obligate the City to utilize any of the TIRZ Funds to make any other payments until the TIRZ Reimbursement to Developer has been paid in full, other than agreements entered into with IH-20 IP, LLC, who is a party to TIRZ #12. The TIRZ 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 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 3.2(d) shall expressly survive the expiration or termination of this Agreement.

Article IV
Conditions to TIRZ Reimbursement Payments

4.1 General. Developer (i) agrees to each of the following, and (ii) agrees that the Board's and the City's requirement to pay, or continue paying, the TIRZ 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 Requests in compliance with this Agreement. The City and Board are entitled to verify the Payment Requests before all or any portion of the TIRZ Reimbursement is paid.

(c) Expenditure. The Payment Requests provide verification that Developer: (i) will anticipate incurring costs, excluding land value and land acquisition costs, of \$30,000,000 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 \$30,000,000 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 \$8,000,000.

(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 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 Developer 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 Developer 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 Developer 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 Developer 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.

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 such TIRZ Reimbursement under Section 5.3 below 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 Developer 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 non-defaulting 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, , 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 the Infrastructure Improvements, and subsequently commits an Event of Default, 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 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 due at such time under this Agreement, (ii) what portion of the TIRZ 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.

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, 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 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
42 BP, LP
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 Developer 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 Developer Property; (b) any

affiliate or related entity of Developer; or (c) any lienholder on the Developer 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 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 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 being recaptured from the date each payment of the TIRZ 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 TIRZ 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 "E"** ("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 3.2(c). Section 3.1(b)(3) of this Agreement binds and constitutes a covenant running with the Developer 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 Developer 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 Developer Property.

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

- Exhibit "A" Developer Property Legal Description and Depiction
- Exhibit "B" Concept Plan
- Exhibit "C-1" Building Elevations
- Exhibit "C-2" Building Elevations for airport related uses
- Exhibit "D" Estimated Costs of the Infrastructure Improvements & Other TIRZ Items
- Exhibit "E" Memorandum of Agreement

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

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

EXECUTED on this 13 day of December, 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

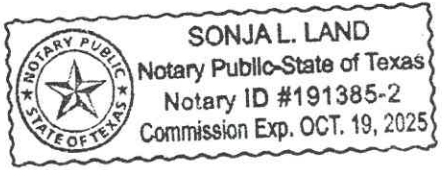
STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on Dec. 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:

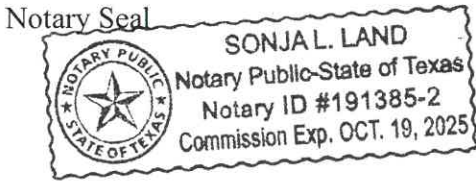
David L. Paschall
Name: David L. Paschall
Title: City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on Dec. 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: _____



DEVELOPER:

42 BP, LP , a Texas limited partnership

By: 42 A, LLC, a Texas limited liability company, General Partner of 42 BP, LP

By: [Signature]
Name: Scott Rohrman
Title: Manager of 42 A, LLC

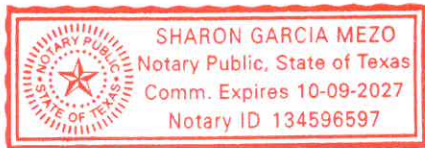
STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on December 6th, 2023, by Scott Rohrman, as the Manager of 42 A, LLC, the General Partner of 42 BP, LP, on behalf of said limited partnership.

[Signature]
NOTARY PUBLIC, State of Texas

My Commission Expires: 10-9-2027

Notary Seal



By: MSAP 216, LLC
A Texas limited liability company

By: SLJ Equities, LLC, a Texas limited liability company, Manager of MSAP 216, LLC

By: [Signature]
Name: Louis H. Lebowitz
Title: President of SLJ Equities, LLC

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on December 7th, 2023, by Louis H. Lebowitz, as the President of SLJ Equities, LLC, the Manager of MSAP 216, LLC, on behalf of said limited liability company.

10-9-2027

[Signature]



NOTARY PUBLIC, State of Texas

My Commission Expires: 10-9-2027

Notary Seal

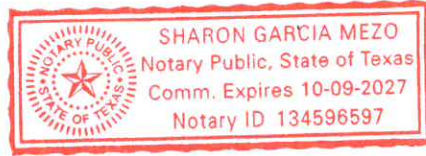


EXHIBIT "A"

DEVELOPER PROPERTY LEGAL DESCRIPTION AND DEPICTION

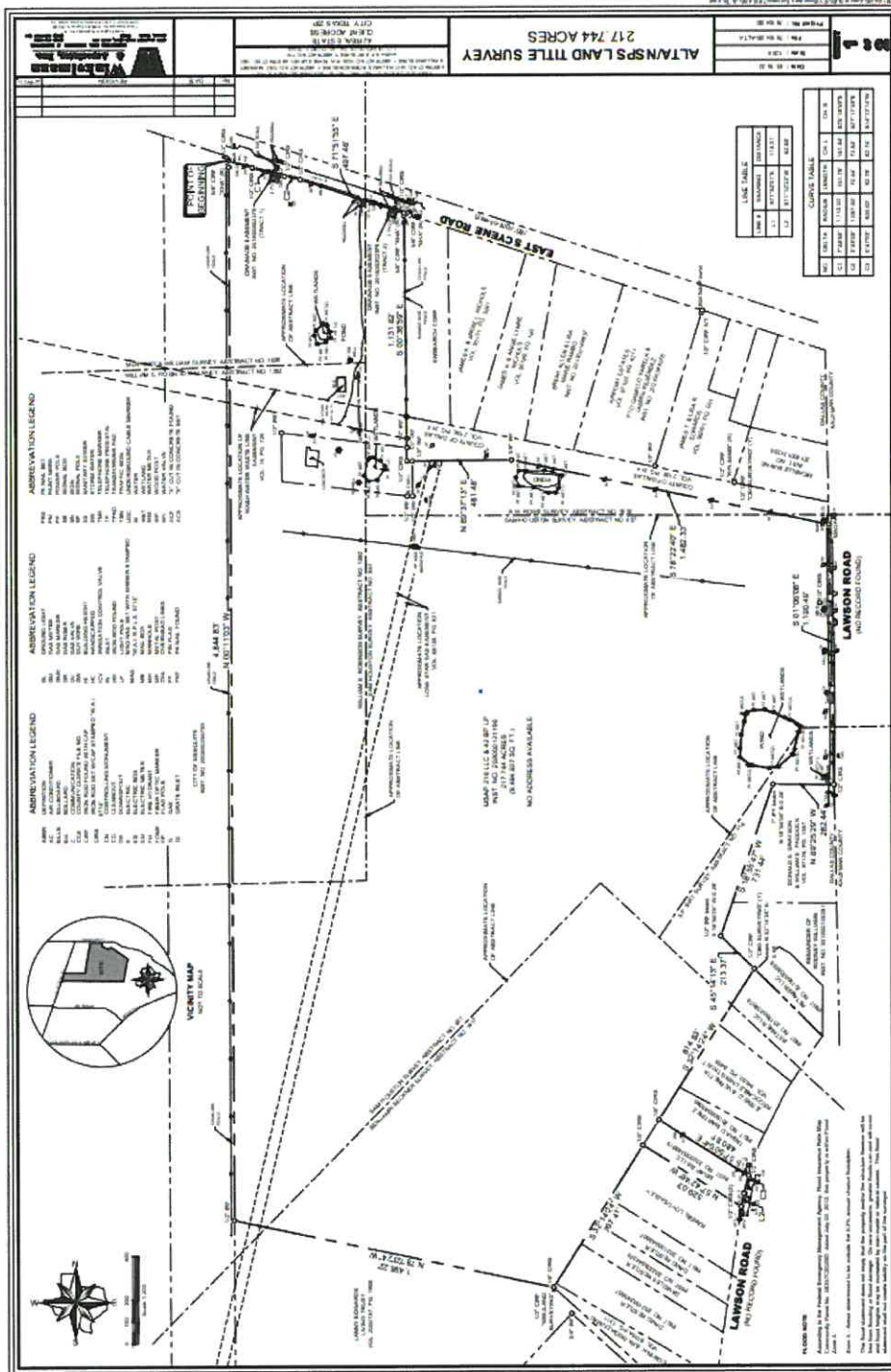


EXHIBIT "C-1"

BUILDING ELEVATIONS

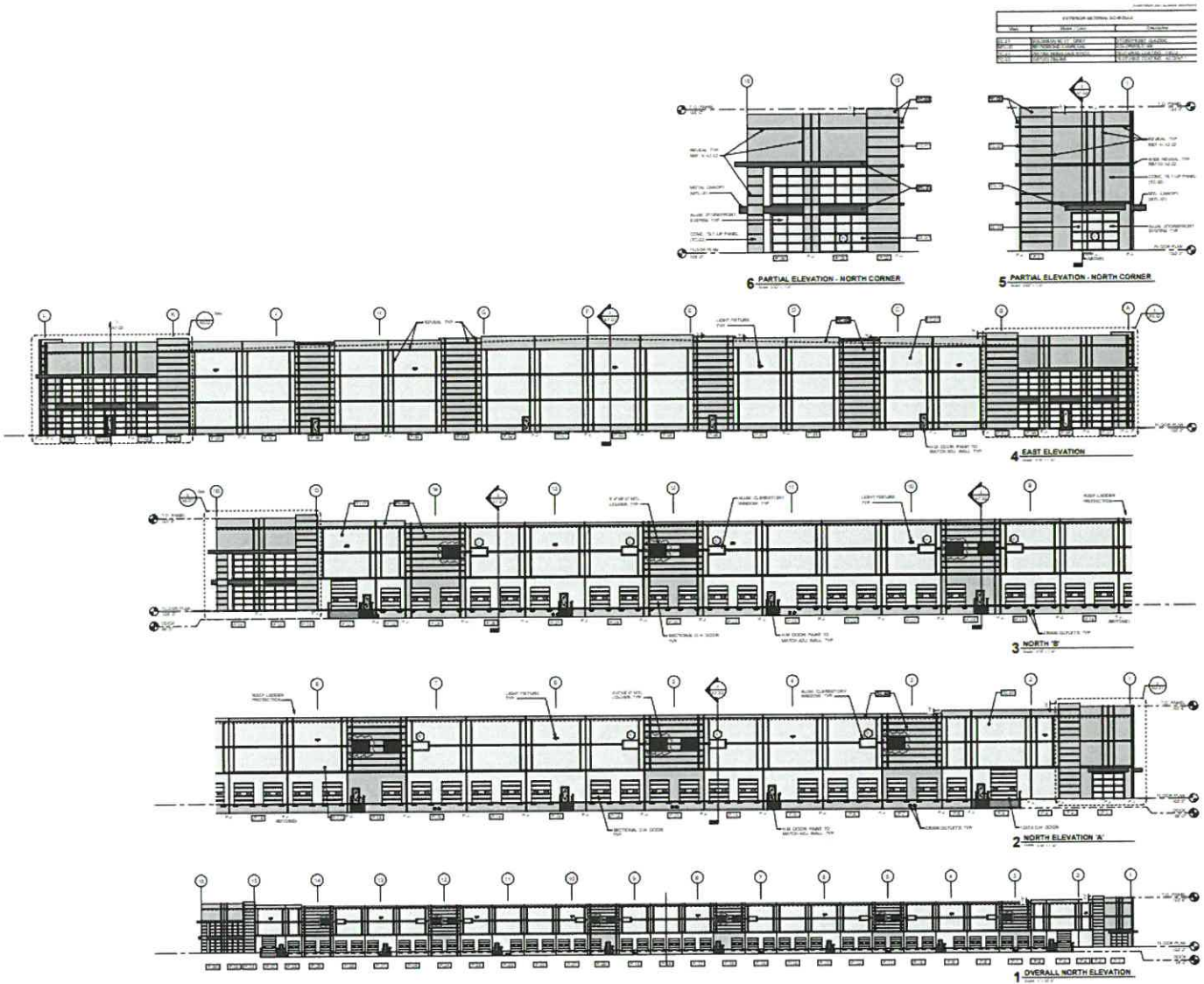


EXHIBIT “C-2”

Building Elevations for airport related uses



EXHIBIT “D”

Estimated Costs of the Infrastructure Improvements & Other TIRZ Items

EXHIBIT D - Estimated Costs of the Infrastructure Improvements & Other TIRZ Items*	
Mesquite Airport East	
October 2023 DRAFT	
Category**	Estimated Project Costs
Utilities - Offsite Water: 12" line to connect existing water line to the site.	\$ 350,000
Utilities - Offsite Sanitary Sewer: extension to connect to the site.	\$ 750,000
Offsite Storm Water Channel: offsite storm water channel (exact route and design TBD)	\$ 6,000,000
Contingency - to be used in any line item	\$ 900,000
Total Estimated Costs - including interest, design, inspection fees, supervision, engineering, planning, legal, contingency, etc.	\$ 8,000,000
<p>*Current TIRZ estimates are based on the Concept Plan and TIRZ items identified to date. TIRZ estimates will most definitely change once all TIRZ work is fully designed and engineered, 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 to this list as they are identified as development of the Developer Property progresses. Estimated cost figures may be moved from one line item to another line item.</p>	



VG-364-2023-202300259103

Dallas County
John F. Warren
Dallas County Clerk

Instrument Number: 202300259103

Real Property Recordings

Recorded On: December 28, 2023 12:49 PM

Number of Pages: 17

" Examined and Charged as Follows: "

Total Recording: \$86.00

RECEIVED
JAN 09 2024
CITY OF MESQUITE
CITY SECRETARY

***** THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 202300259103
Receipt Number: 20231228000548
Recorded Date/Time: December 28, 2023 12:49 PM
User: Pamela G
Station: CC149

Record and Return To:

CITY SECRETARY - CITY OF MESQUITE
PO BOX 850137
MESQUITE TX 75185



STATE OF TEXAS
Dallas County

I hereby certify that this Instrument was filed in the File Number sequence on the date/time printed hereon, and was duly recorded in the Official Records of Dallas County, Texas

John F. Warren
Dallas County Clerk
Dallas County, TX

EXHIBIT "E"

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 13 day of December, 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 **MSAP 216, LLC**, a Texas limited liability company, and **42, BP, LP** a Texas limited partnership, and/or its successors and assigns (collectively the "Airport East Owners"). (collectively referred to herein as the "Parties").

1. TIRZ Agreement. The Parties entered into that certain TIRZ #12 Reimbursement Agreement and Performance Agreement, MSAP 216, LLC and 42 BP, LP having an effective date of Oct. 23, 2023 (the "Agreement") affecting approximately 217.744 acres owned by Airport East Owners and described on Exhibit A attached (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, Airport East Owner's obligation to construct certain infrastructure to serve the tract and certain facilities on the Tract.

3. Covenant for Building Material Regulations. Airport East Owners, as owner of 217.744+ acres of the, 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. 5059, attached hereto as Exhibit B 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 13 day of December, 2023.

CITY:

CITY OF MESQUITE, TEXAS

ATTEST:

Sonja Land
Name: Sonja Land
Title: City Secretary

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

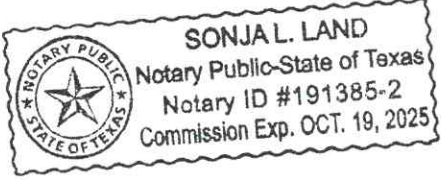
STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on Dec. 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

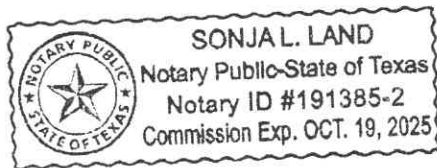
STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on Dec. 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



Airport East Owners:

42 BP, LP , a Texas limited partnership

By: 42 A, LLC, a Texas limited liability company, General Partner of 42 BP, LP

By: _____
Name: Scott Rohrman
Title: Manager of 42 A, LLC

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on December 6th, 2023, by Scott Rohrman, as the Manager of 42 A, LLC, the General Partner of 42 BP, LP, on behalf of said limited partnership.

NOTARY PUBLIC, State of Texas

My Commission Expires: 10-9-2027

Notary Seal



By: MSAP 216, LLC
A Texas limited liability company

By: SLJ Equities, LLC, a Texas limited liability company, Manager of MSAP 216, LLC

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

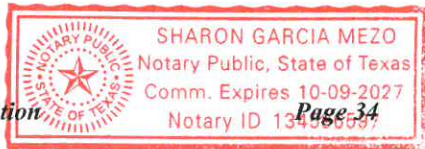
STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on December 7th, 2023, by Louis H. Lebowitz, as the President of SLJ Equities, LLC, the Manager of MSAP 216, LLC, on behalf of said limited liability company.

NOTARY PUBLIC, State of Texas

My Commission Expires: 10-9-2027

Notary Seal



Memorandum of Option

EXHIBIT A
LEGAL DESCRIPTION OF 217.744 ACRES OF THE TRACT

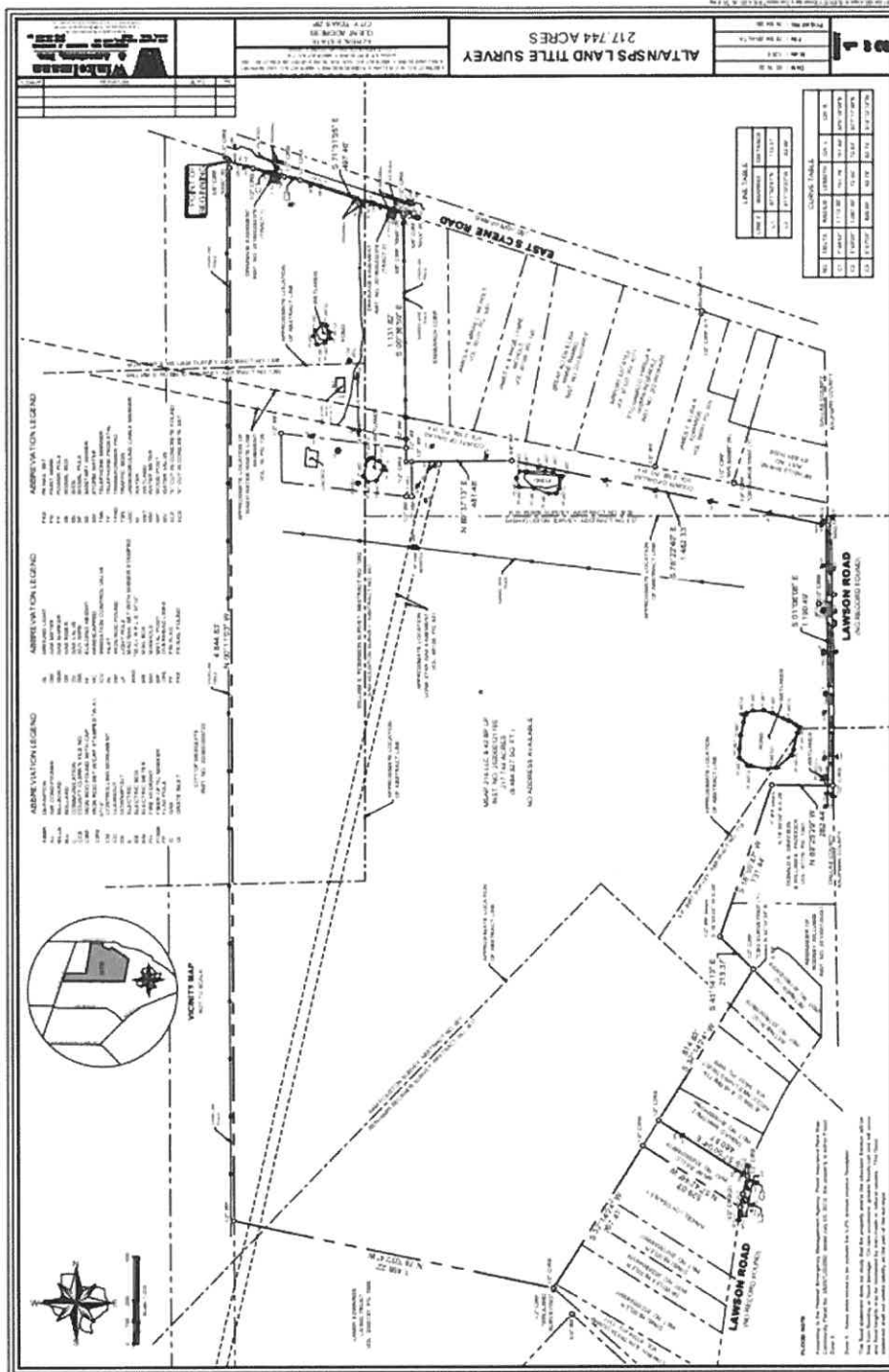


EXHIBIT B
Planned Development Zoning Ordinance No. 5059

ORDINANCE NO. _____
File No. Z0822-0253

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE MESQUITE ZONING ORDINANCE BY APPROVING A CHANGE OF ZONING FROM INDUSTRIAL TO PLANNED DEVELOPMENT – INDUSTRIAL ON PROPERTY GENERALLY LOCATED TO THE WEST OF LAWSON ROAD, SOUTH OF EAST SCYENE ROAD AND EAST OF THE MESQUITE METRO AIRPORT (4650 AND 4698 EAST SCYENE ROAD, AND 215, 225, 229, 231, AND 1600 LAWSON ROAD) TO ALLOW AN INDUSTRIAL BUSINESS PARK SUBJECT TO CERTAIN STIPULATIONS; REPEALING ALL ORDINANCES IN CONFLICT WITH THE PROVISIONS OF THIS ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING PUBLICATION OF THE CAPTION HEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission and the City Council, in compliance with the Charter of the City of Mesquite, state laws and the zoning ordinance, have given the required notices and held the required public hearings regarding the rezoning of the subject property; and

WHEREAS, the City Council finds that it is in the public interest to grant this change in zoning.

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

SECTION 1. The subject property is approximately 218 acres and described and depicted in Exhibit A, attached hereto and incorporated herein by reference, and generally located to the west of Lawson Road, south of East Scyene and east of the Mesquite Metro Airport (4650 and 4698 East Scyene Road, and 215, 225, 229, 231, and 1600 Lawson Road), City of Mesquite, Dallas County, Texas (collectively the “**Property**”).

SECTION 2. The Mesquite Zoning Ordinance is amended by approving a change of zoning for the Property from Industrial to Planned Development – Industrial to allow an industrial business park subject to the Development Standards and the Concept Plan, attached hereto as Exhibits B and C, respectively, and incorporated herein by reference.

SECTION 3. All ordinances, or portions thereof, of the City of Mesquite in conflict with the provisions of this ordinance, to the extent of such conflict are hereby repealed; otherwise, they shall remain in full force and effect.

SECTION 4. The Property shall be used only in the manner and for the purposes provided for by the Mesquite Zoning Ordinance, as amended.

SECTION 5. Should any word, sentence, clause, paragraph, or provision of this ordinance be held to be invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 6. Any violation of the provisions or terms of this Ordinance by any "person," as defined in Mesquite City Code, Chapter 1, [Section 1-2](#), shall be deemed a Class C Misdemeanor criminal offense, and upon conviction thereof, shall be subject to a penalty of fine, or any other general penalties, as provided in Mesquite Zoning Ordinance, Part 5, 5-100, [Section 5-103](#) (General Penalties), or successor and as amended.

SECTION 7. This Ordinance shall be published in the City's official newspaper in accordance with Mesquite City Charter, Article IV, [Section 24](#).

SECTION 8. This Ordinance shall take effect and be in force from and after five days after publication.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 5th day of September 2023.

Daniel Alemán, Jr.
Mayor

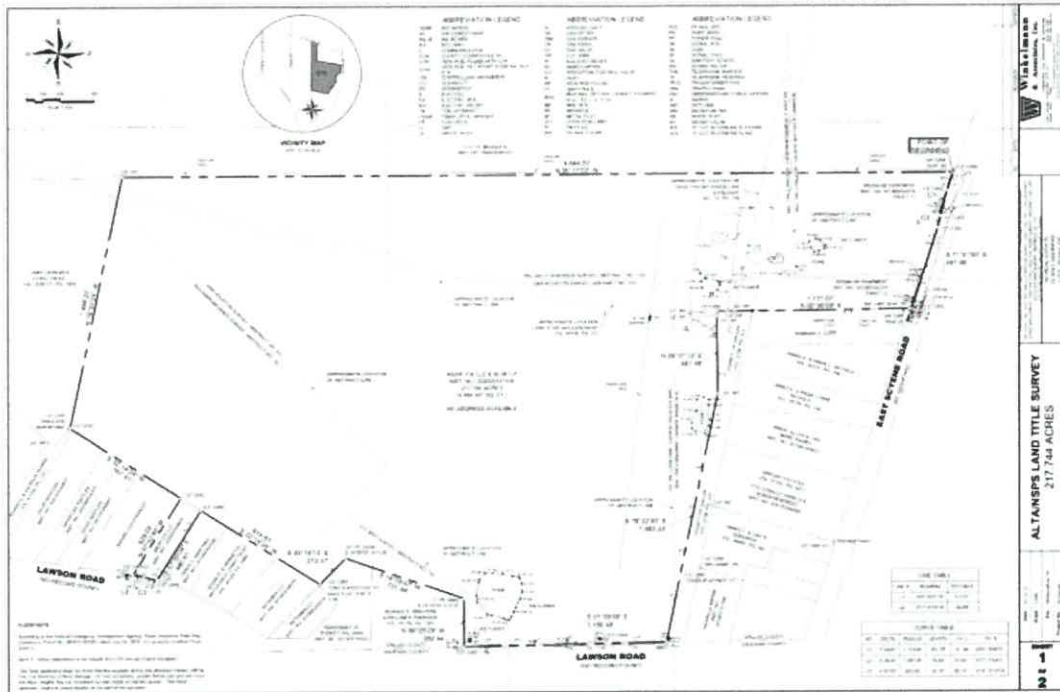
ATTEST:

APPROVED AS TO LEGAL FORM:

Sonja Land
City Secretary

David L. Paschall
City Attorney

EXHIBIT A – FILE NO. Z0822-0253 - LEGAL DESCRIPTION



Z0822-0253
EXHIBIT B – PD STANDARDS

This Planned Development Industrial ("PD-I") district 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 ratios, and other development standards are met. Where these regulations conflict with or overlap another ordinance, this ordinance will control.

1. Permitted Land Uses. The permitted uses on the Property include the permitted uses in the Industrial District classification ("I") and all the Commercial District classifications ("C") 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 unless this PD-I & C changes any requirements. Prohibited uses on the Property are identified in subsection 2 below.
 - a. The permitted uses requiring a conditional use permit ("CUP") in the Industrial and Commercial zoning districts 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 in addition to all uses in the MZO covering Industrial, Commercial, Retail and Office:
 - i. Indoor crop production
 - ii. Self storage with a minimum of two stories for all self-storage structures where the storage units are accessed through the building's interior
 - iii. Manufacturing – (not to include chemical production or processing of raw materials)
 - iv. Aircraft hangars and airport-related uses may be consistent with the existing structures located on the Mesquite Metro Airport property
 - v. Commercial, Office, Retail, Data Centers, and Cold Storage
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: Retail Alternative Financial Institutions
 - d. SIC Code 593a: Retail Pawnshops
 - e. SIC Code 5993: Retail Tobacco Stores
 - f. SIC Code 5947: Retail Gift, Novelty, Souvenir Shops
 - g. SIC Code 5999g: Retail 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.

Planning and Zoning Division
Prepared by

Z0822-0253
EXHIBIT B – PD STANDARDS

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 screening is prohibited. Said screening shall be provided, or constructed prior to the issuance of a Certificate of Occupancy. Notwithstanding the foregoing requirements, areas within the Property developed as airport related uses will not be subject to the screening standards in this Section 5.
 - 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 and Scyene Roads:
 - i. A 15-ft wide landscape buffer shall be established along the property line parallel to Lawson Road and Scyene Road (only when the Property abuts the right-of-ways) (the "15 Foot Landscape Buffer").
 - ii. Within the 15 Foot Landscape Buffer, or the green space within the immediately adjacent right-of-way, one tree shall be provided for each 60 linear feet, and trees shall be planted no more than 60 feet apart (on center) (the "Buffer Tree Line").
 - b. District screening shall consist of the following: (District screening shall apply only to areas of the Property abutting Residential properties)
 - i. An 8' tall, long-span precast decorative concrete screening wall, or
 - ii. An 8' tall wrought-iron fence with a continuous vegetative screen a minimum of 6 feet in height at planting.
 - iii. Barbedwire is prohibited.
 - c. 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
Chinquapin Oak	Quercus muhlenbergii
Live Oak	Quercus virginiana
Texas Red Oak	Quercus texana

Z0822-0253
EXHIBIT B – PD STANDARDS

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 may be used to fulfill the tree requirement in MZO's Section, 1A-202.A.2 or in other documents.

The number and size of the trees required to meet Section 1A-200 of the MZO may be modified to avoid conflicts with the Mesquite Airport operations with the approval of the Director of Planning and Development Services.

8. Notwithstanding the requirements contained in Section 6 and Section 7 of this PD, areas within the Property developed as airport related uses will not be subject to the landscaping, screening and buffer zones requirements.
9. 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.
10. The maintenance and replacement of trees and other landscaping installed in the right-of-way are the responsibility of the adjacent property owner.
11. 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.
12. Any tree preservation and mitigation requirements in an approved Development Agreement for the Property will overrule the requirements in Section 1A-400 of the MZO. 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 will apply.
13. 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 City Manager.
 - 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

Z0822-0253
EXHIBIT B – PD STANDARDS

- 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 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 the property.
14. Exterior lighting is not required except for purposes of public safety. However, if installed, all exterior lighting shall meet the following design standards, unless different standards are required for aircraft hangars and buildings for airport related uses.
- 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.
15. 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.

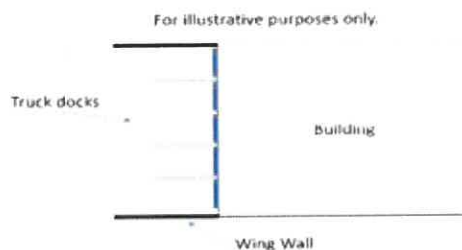


EXHIBIT C – FILE NO. Z0822-0253 - CONCEPT PLAN

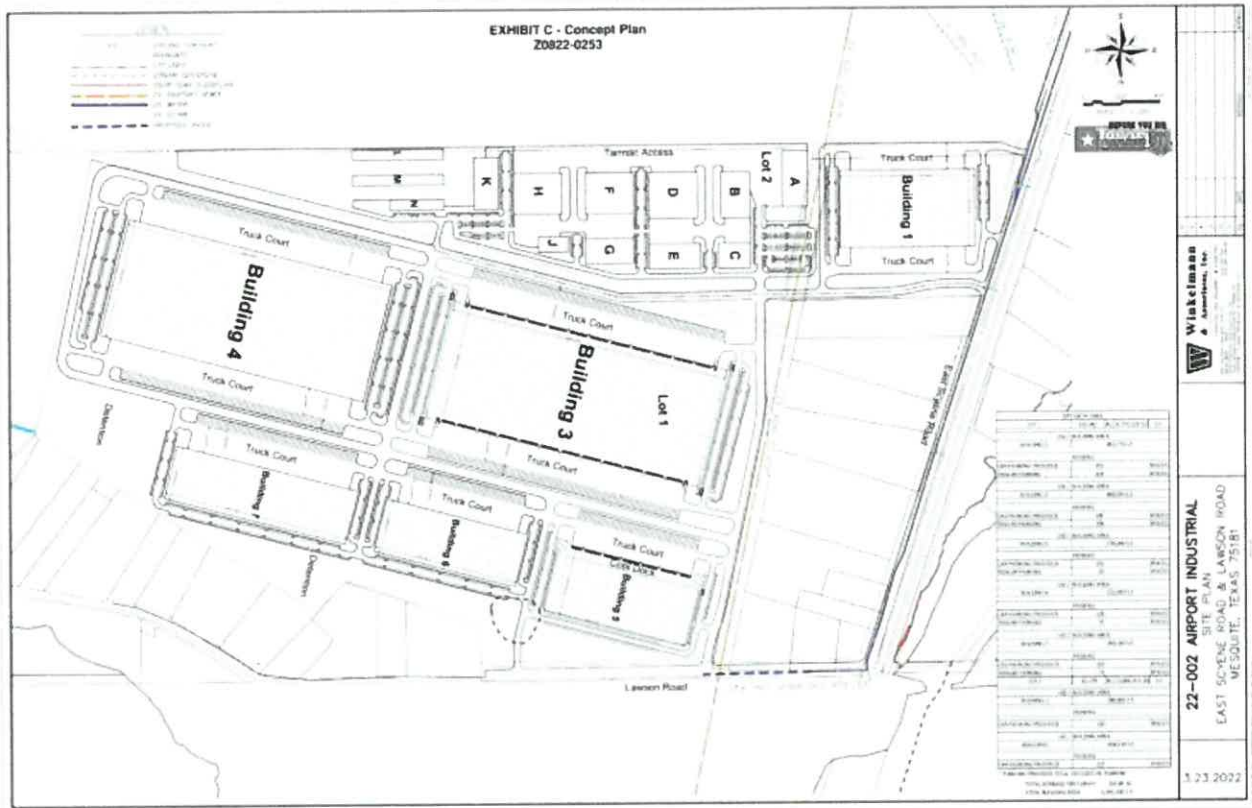
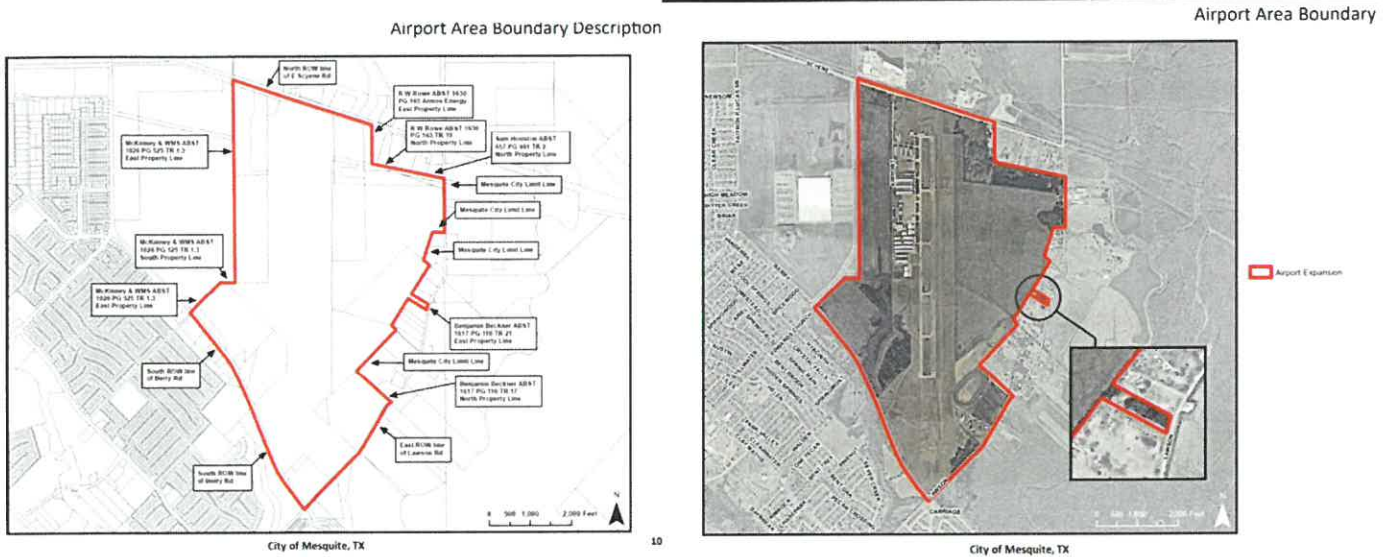


Exhibit "F" Map depicting general location of property in the Zone



Airport Area Boundary Description

Beginning at the northeast corner of Edwards Survey, ABST 445 Blk L Lot 2A Creek Crossing Estates 17, and commencing northeast over and across Berry Road to a corner of McKinney & Williams Survey, ABST 1026 PG 525 Tract 1.3, thence:

Northeasterly along the east property line of McKinney & Williams Survey, ABST 1026 PG 525 Tract 1.3 for a distance of approximately 1,075 feet for a corner of said McKinney & Williams Survey, ABST 1026 PG 525 Tract 1.3, thence:

Easterly along the south property line of McKinney & Williams Survey, ABST 1026 PG 525 Tract 1.3 for a distance of approximately 300 feet for a corner of said McKinney & Williams Survey, ABST 1026 PG 525 Tract 1.3, thence:

Northerly along the east property line of McKinney & Williams Survey, ABST 1026 PG 525 Tract 1.3, continuing over and across Scyene Road to a point where said line reaches the north ROW line of Scyene Road, thence:

Easterly along the north ROW line of Scyene Road, said ROW line also being the corporate boundary line of the City of Mesquite, to a point where said corporate boundary line is parallel with the east property line of R.W. Rowe ABST 1630 PG 165 Atmos Energy Tract, thence:

Southerly along the east property line of R.W. Rowe ABST 1630 PG 165 Atmos Energy Tract to the southeast corner of said Atmos Energy Tract, said corner also being a point of intersection with the north property line of R.W. Rowe ABST 1630 PG 165 Tract 19, thence:

Easterly along the north property line of R.W. Rowe ABST 1630 PG 165 Tract 19 for a distance of approximately 800 feet for a shared corner of Sam Houston ABST 657 PG 461 Tract 2, thence:

Easterly along the north property line of Sam Houston ABST 657 PG 461 Tract 2 and continuing to the corporate boundary line of the City of Mesquite, said corporate boundary line also being the approximate centerline of Lawson Road, thence:

Southerly along the corporate boundary line of the City of Mesquite to a point where said corporate boundary line heads west, continuing over and across a portion of Lawson Road, to a point where said corporate boundary line reaches the northwest corner of Benjamin Beckner Survey, ABST 1617 PG 110 Tract 10, thence:

Southwesterly along the corporate boundary line of the City of Mesquite to a point where said corporate boundary line reaches the northwest corner of Benjamin Beckner Survey, ABST 1617 PG 110 Tract 21, thence:

Southeasterly along the north property line of Benjamin Beckner Survey, ABST 1617 PG 110 Tract 21 to the northeast corner of said Tract 21, thence:

Southerly along the east property line of Benjamin Beckner Survey, ABST 1617 PG 110 Tract 21 to the southeast corner of said Tract 21, thence:

Northwesterly along the south property line of Benjamin Beckner Survey, ABST 1617 PG 110 Tract 21 to the southwest corner of said Tract 21, said corner also being a point of intersection with the corporate boundary line of the City of Mesquite, thence:

Southwesterly along the corporate boundary line of the City of Mesquite to a point where said corporate boundary line reaches the northwest corner of Benjamin Beckner Survey, ABST 1617 PG 110 Tract 17, thence:

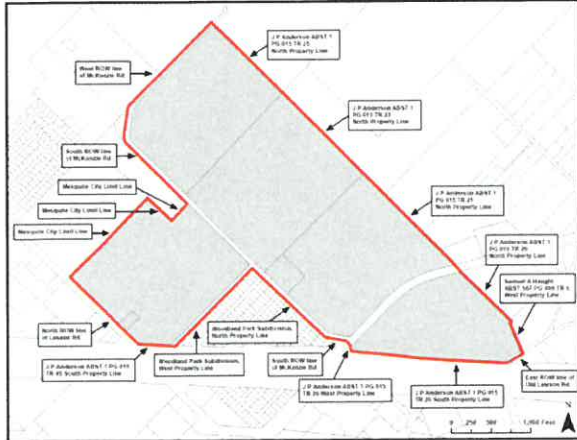
Southeasterly along the north property line of Benjamin Beckner Survey, ABST 1617 PG 110 Tract 17, over and across Lawson Road, to a point where said line reaches the east ROW of Lawson Road, thence:

Southwesterly along the east ROW line of Lawson Road to a point where said ROW line intersects with the south ROW line of Berry Road, thence:

Northwesterly along the south ROW line of Berry Road to the northeast corner of Edwards Survey, ABST 445 Blk L Lot 2A Creek Crossing Estates 17, which is the point of beginning.

City of Mesquite, TX

IH-20 Area Boundary Description



City of Mesquite, TX

IH-20 Area Boundar



IH-20 Area Boundary Description

Beginning at the southwest corner of Blk A Lot 2 Woodland Park Subdivision, thence:

Northeasterly along the west property line of Woodland Park Subdivision, said line also being the east ROW line of Como Drive, to the northwest corner of Blk B Lot 19 of Woodland Park Subdivision, thence:

Southeasterly along the north property line of Woodland Park Subdivision, said property line also being the south ROW line of McKenzie Road (Alexander Road), to a point where said property line departs the south ROW line of McKenzie Road (Alexander Road), thence:

Easterly along the south ROW line of McKenzie Road (Alexander Road) and continuing over and across Lawson Road to a point where said line reaches the west property line of John P. Anderson Survey, ABST 1 PG 015 Tract 20, thence:

Southwesterly along the west property line of John P. Anderson Survey, ABST 1 PG 015 Tract 20 where said property line transitions to the south property line of John P. Anderson Survey, ABST 1 PG 015 Tract 20, thence:

Easterly along the south property line of John P. Anderson Survey, ABST 1 PG 015 Tract 20, said property line also being the north ROW line of the IH-20 westbound service road, and continuing over and across Old Lawson Road to a point where said line reaches the west property line of Samuel A. Haught Survey, ABST 567 PG 698 Tract 13, thence:

Northeasterly for a distance of approximately 180 feet along the west property line of Samuel A. Haught Survey, ABST 567 PG 698 Tract 13, said property line also being the east ROW line of Old Lawson Road, to a point parallel with the west property line of Samuel A. Haught Survey, ABST 567 PG 698 Tract 6, thence:

Northwesterly, over and across Old Lawson Road, along the west property line of Samuel A. Haught Survey, ABST 567 PG 698 Tract 6 for a distance of approximately 410 feet to a corner, thence:

Northeasterly along the west property line of Samuel A. Haught Survey, ABST 567 PG 698 Tract 6 for a distance of approximately 30 feet for a corner, said corner also being a common corner of John P. Anderson Survey, ABST 1 PG 015 Tract 20, thence:

Northwesterly along the north property line of John P. Anderson Survey, ABST 1 PG 015 Tract 20 for a distance of approximately 900 feet for a shared corner of Wainwright Blk 1 Lot 1, thence:

Northwesterly, over and across Lawson Road, to a point where said line intersects with the northeast corner of John P. Anderson Survey, ABST 1 PG 015 Tract 21, thence:

Northwesterly along the north property line of John P. Anderson Survey, ABST 1 PG 015 Tract 21 for a distance of 1,250 feet where said property line becomes the common boundary line with Reinvestment Zone Number Fifteen, City of Mesquite, Texas (Solterra), and continuing along the common boundary line with Reinvestment Zone Number Fifteen, City of Mesquite, Texas (Solterra) to a point where said line intersects with the northeast corner of John P. Anderson Survey, ABST 1 PG 015 Tract 23, thence:

Northwesterly along the north property line of John P. Anderson Survey, ABST 1 PG 015 Tract 23, said property line also being the common boundary line with Reinvestment Zone Number Fifteen, City of Mesquite, Texas (Solterra) to a point where said property line intersects with the northeast corner of John P. Anderson Survey, ABST 1 PG 015 Tract 25, thence:

Northwesterly along the north property line of John P. Anderson Survey, ABST 1 PG 015 Tract 25, said property line also being the common boundary line with Reinvestment Zone Number Fifteen, City of Mesquite, Texas (Solterra), over and across McKenzie Road (Alexander Road), to a point where said line reaches the west ROW line of McKenzie Road (Alexander Road), thence:

Southwesterly along the west ROW line of McKenzie Road (Alexander Road) to a point of curvature and continuing south and southeast along the south ROW line of McKenzie Road (Alexander Road), said ROW line also being the corporate boundary line of the City of Mesquite, to a corner of John P. Anderson Survey, ABST 1 PG 015 Tract 45, thence:

Southwesterly along the corporate boundary line of the City of Mesquite, to a point where said corporate boundary line reaches the north ROW line of Lasater Road, thence:

Southeasterly along the north ROW line of Lasater Road, said ROW line also being the corporate boundary line of the City of Mesquite, to a corner of John P. Anderson Survey, ABST 1 PG 015 Tract 45, thence:

Easterly along the south property line of John P. Anderson Survey, ABST 1 PG 015 Tract 45, said property line also being the north ROW line of the IH-20 westbound service road, continuing over and across Como Drive to the southwest corner of Blk A Lot 2 Woodland Park Subdivision, which is the point of beginning.

City of Mesquite, TX