

RESOLUTION NO. 66-2023

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 FIRST AMENDMENT TO AN ECONOMIC DEVELOPMENT PROGRAM CHAPTER 380 AGREEMENT (“380 AGREEMENT”) WITH LF GATEWAY LP, REGARDING THE CONSTRUCTION AND DEVELOPMENT OF THE PROPERTY LOCATED AT 3201 EAST CARTWRIGHT ROAD, IN THE CITY OF MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO FINALIZE, EXECUTE AND ADMINISTER THE FIRST AMENDMENT TO THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas (the “City”), and other municipalities to establish and provide for the administration of programs that promote local economic development and stimulate business and commercial activity; and

WHEREAS, on July 6, 2021, and pursuant to Chapter 380 of the Texas Local Government Code, the City Council of the City (the “City Council”) approved Resolution No. 42-2021 approving a Chapter 380 Agreement and economic development program (the “Program”) between the City and LF Gateway LP, a Texas limited partnership (the “Company”), for the development of approximately 6.787 acres of unimproved land zoned Planned Development – General Retail pursuant to Ordinance No. 2399 and located at 3201 East Cartwright Road, Mesquite, Texas 75181 the “Original Agreement”); and

WHEREAS, the City has been presented with a proposed amendment to the Original Agreement, as copy of said amendment being attached hereto as Exhibit 1 and incorporated herein by reference for all purposes (the “First Amendment”); and

WHEREAS, the First Amendment amends the Original Agreement at the Company’s request to extend deadlines for performance, to extend time in which to earn incentive grants, and to decrease the total building square footage requirements from 42,500 square feet to 32,500 square feet, and the City desires to grant the requests; and

WHEREAS, after holding a public hearing and upon full review and consideration of the First Amendment and all matters related thereto, the City Council finds that the First Amendment will assist in implementing a program promoting local economic development, stimulating business and commercial activity in the City, and benefiting the City and its citizens.

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

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

SECTION 2. The City Council finds that the terms of the proposed First Amendment, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference, will benefit the City and will serve the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 3. The City Council hereby approves the First Amendment and authorizes the First Amendment as part of the Program whereby, subject to the terms and conditions of the Original Agreement, as amended by the First Amendment, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Original Agreement, as amended by the First Amendment.

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

SECTION 5. The City Manager is further hereby authorized to administer the Original Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices per the Original Agreement; (ii) approve amendments to the Original Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Original Agreement in excess of \$100,000; (iii) approve or deny any matter in the Original Agreement requiring the consent of the City with the exception of any matter requiring the consent of the City Council pursuant to the terms of the Original Agreement; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term, or condition of the Original Agreement; (v) exercise any rights and remedies available to the City under the Original Agreement; and (vi) execute any notices, amendments, approvals, consents, denials, and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action than cannot be delegated by the City Council or that is within the City Council's legislative functions.

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

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DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 18th day of December 2023.

DocuSigned by:

Daniel Aleman Jr.

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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 1

FIRST AMENDMENT TO ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

(CHAPTER 380 AGREEMENT)

BETWEEN

THE CITY OF MESQUITE

AND

LF GATEWAY LP

**FIRST AMENDMENT TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
(CHAPTER 380 AGREEMENT)
BETWEEN THE CITY OF MESQUITE,
And LF GATEWAY LP**

This FIRST AMENDMENT TO ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (Chapter 380 Agreement) (this “**Amendment**”) is between the City of Mesquite, a Texas home rule municipality (the “**City**”), and LF GATEWAY LP, a Texas limited partnership (the “**Company**”). The City and the Company may hereafter sometimes be referred to singularly as a “**Party**” and collectively as the “**Parties**.”

WHEREAS, the Company is the owner of that certain tract of real property located in the City of Mesquite, Texas, consisting of approximately 6.787 acres, located at 3201 East Cartwright Road, Mesquite, Texas 75181, and being more particularly described in **Exhibit “A”** to the Original Agreement (defined below) (the “**Property**”); and

WHEREAS, on July 6, 2021, by Resolution No. 42-2021, incorporated herein by reference, the City Council of the City adopted an economic development program pursuant to Chapter 380 of the Local Government Code to promote local economic development and to stimulate business and commercial activity in the City by incentivizing the Company to develop the Property; and

WHEREAS, the Parties thereafter entered into that certain Economic Development Program Agreement (Chapter 380 Agreement) dated effective July 14, 2021, relating to the economic development incentives approved by the City Council (the “**Original Agreement**”), incorporated herein by reference; and

WHEREAS, the Company requested extension of deadlines for performance, extension of time in which to earn Incentive Grants, and decreases in the total building square footage requirements from 42,500 square feet to 32, 500 square feet and the City desires to grant the requests; and

WHEREAS, the Parties desire to amend the Original Agreement as more particularly described herein to reflect the agreed upon revision; and

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

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

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

1. Amendment to Term. The Term identified in Article IV of the Original Agreement shall be deleted in its entirety and replaced with the following:

“The Term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) January 31, 2032; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein; or (iii) the City has paid Company the Maximum Incentive Amount (“**Term**”).”

2. Amendment to Article VII, Section 7.2. Article VII, Section 7.2 of the Original Agreement shall be deleted in its entirety and replaced with the following:

“7.2 Payment Conditions Precedent. The Company and the City hereby expressly acknowledge and agree that the City’s obligation to pay an Incentive Grant payment to the Company shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (the “**Payment Conditions Precedent**”) in addition to the General Conditions Precedent stated above:

1. Construction and Completion of Off-Site Improvements, Phase 1 Improvements and Subsequent Improvements. The Off-Site Improvements identified in **Exhibit “B”** hereto shall have been constructed on or before July 31, 2023. One (1) building on the Property shall be completed on or before June 30, 2024 in compliance with the completion requirements for all Improvements provided below in this section (the “**Phase 1 Improvements**”). Construction of further improvements on the Property (the “**Subsequent Improvements**”) as depicted in **Exhibit “B”** may be constructed thereafter and shall be completed on or before December 31, 2031. The Phase 1 Improvements and Subsequent Improvements shall be constructed in compliance with the Architectural and Development Standards attached hereto as **Exhibit “C”** and generally in appearance as depicted in **Exhibit “F”**, and the Off-Site Improvements shall be constructed in accordance with City Regulations. The Phase 1 Improvements and all Subsequent Improvements shall be timely completed, each as evidenced by the issuance by the City of a final inspection, final green tag, certificate of completion, or other equivalent, confirming completion of the requirements of the building permit issued by the City in connection with the construction of the Phase 1 Improvements and Subsequent Improvements, and formal acceptance by the governmental entity that will own the Off-Site Improvements. If construction of the Off-Site Improvements, Phase 1 Improvements or construction of the Subsequent Improvements are not timely completed, this Agreement shall automatically terminate and the Parties shall have no further rights or obligations hereunder excepting those that survive termination of this Agreement.
 - a. Notwithstanding the foregoing, Company may request modification of the Improvements. Any such request must be made in writing to the City Manager. The City Manager may, in the City Manager’s sole discretion, approve in writing any such request provided the request does not result

in (i) reduction of any area of landscaping, (ii) a change in signage requirements provided in this Agreement, (iii) reducing the quality of materials to be used in construction, and (iv) violation of any of the City Regulations. In the event the City Manager rejects any such request and upon thirty (30) days' written notice by Company to the City, Company may terminate this Agreement without penalty and may retain any Incentive Grant paid by the City to Company subject to Article V.

2. Minimum Square Footage of on-site Improvements. On or before the December 31, 2031, the buildings constructed on the Property shall have a collective minimum square footage of 32,500. Square footage for the purposes of this section is the area contained within the space occupied by the user(s) of a building. The Company shall have submitted to the City a certificate confirming that the Company has complied with this Section 7.2 on or before December 31, 2031. This minimum square footage requirement is not a condition precedent to Company submitting an Incentive Grant request and the City paying any such request during the period from the Effective Date to December 31, 2031, but is a condition precedent to Company submitting an Incentive Grant request and the City paying any such request for any period subsequent to December 31, 2031, and is further grounds for termination of the Agreement should this condition remain unsatisfied on or after December 31, 2031."

3. Amendment to Article VIII, Section 8.2. Article VIII, Section 8.2 of the Original Agreement shall be deleted in its entirety and replaced with the following:

"8.2 Payment Request. Company shall submit a Payment Request for each Incentive Grant payment owed to Company by the City accompanied by Company's itemization and basis for each amount included in the Payment Request, along with any required documentation, and as of the date of such Payment Request, all terms of this Agreement, including applicable conditions precedent set forth herein, shall have been satisfied and are then continuing (the "**Payment Request**"). A Payment Request shall be submitted to the City's Finance Director at 757 N. Galloway, Mesquite, Texas 75149 within thirty (30) days of Company's entitlement to an Incentive Grant earned herein. The earliest date for submission of the first Payment Request is March 1, 2022 for the Off-Site Improvements if timely constructed. Company shall also be entitled to submit Payment Requests in 2023 for Off-Site Improvements if timely constructed. Thereafter, Company shall be entitled to submit further Payment Requests and receive further Incentive Grant payments provided that the construction of at least one (1) building on the Property is completed on or before June 30, 2024. Each subsequent Payment Request, if any, shall be submitted on or before July 31 and no earlier than June 1 of any year thereafter during the Term. Notwithstanding the foregoing: (a) a Payment Request for an Incentive Grant earned in calendar year 2031 shall be submitted to the City's Finance Director on or before January 31, 2032; and (b) a Payment Request cannot be submitted after expiration of the Term."

4. Amendment to Exhibit "C," Sections 3.a. and 3.b. Sections 3.a. and 3.b. of Exhibit "C", Architectural and Development Standards, of the Original Agreement are hereby amended to allow a black metal ornamental fence approved by the City in lieu of a wrought iron fence as provided in these sections. No other part of Sections 3.a. and 3.b. is amended or otherwise modified by this amendment and all other requirements of Sections 3.a. and 3.b. remain applicable.

10. Recitals. The recitals contained in this Amendment are true and correct and reflect the intent of the Parties regarding the subject matter of this Amendment. In the event it becomes necessary to interpret any provision of this Amendment, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Amendment and the recitals are hereby incorporated into this Amendment and shall be considered part of the covenants, consideration and promises that bind the Parties.

11. Effect of Amendment. This Amendment amends the Original Agreement in no other manner except as expressly set forth herein. In the event there is any conflict between this Amendment and the Original Agreement, the terms and provisions of this Amendment shall control.

12. Modification. This Amendment may only be revised, modified or amended by a written document signed by the City, the Company and the Landlord. Oral revisions, modifications or amendments are not permitted.

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

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

15. Entire Agreement. This Amendment sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature relating to the subject matter of this Amendment are entirely superseded hereby and extinguished by the execution of this Amendment.

16. Authority. Each Party represents that it has the full power and authority to enter into and fulfill its obligations under this Amendment and that the Person signing this Amendment on behalf of such Party has the authority to sign this Amendment and bind such Party.

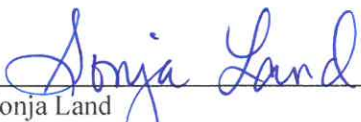
17. Form 1295 Certificate. The Company and the Landlord agree to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Company and the Landlord agree to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agree to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Amendment, a duly executed completed Form 1295 Certificate.

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

19. Law Governing. This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of Texas (without giving effect to any conflict of law principles that would result in the application of the laws of any state other than Texas). The Parties agree that venue of any suit to construe or enforce this Agreement shall lie exclusively in state courts in Dallas County, Texas.

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

ATTEST:

By: 
Sonja Land
City Secretary

Date: 12.28.2023

CITY:

CITY OF MESQUITE,
a Texas home rule municipality

By: 
Name: Cliff Kenaley
Title: City Manager

Date: 12-28-23

APPROVED AS TO FORM:


City Attorney or his Designee

[Signatures Continue on Next Page]