

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BETWEEN THE LA PORTE DEVELOPMENT CORPORATION, AND GIRARD EQUIPMENT INC, FOR USE OF TYPE B DEVELOPMENT CORPORATION SALES TAX FUNDS IN CONNECTION WITH THE LA PORTE DEVELOPMENT CORPORATION ENHANCEMENT GRANT PROGRAM**

THIS AGREEMENT made by and entered into this \_\_\_\_ day of March 2024, between the La Porte Development Corporation, a Type B non-profit corporation operating under authority of Texas Local Government Code Chapters 501 and 505, hereinafter "LPDC", and Girard Equipment, Inc., hereinafter referred to as the "Recipient".

**WITNESSETH:**

WHEREAS, the voters of the City of La Porte authorized the levying of additional sales tax within the City to promote economic development and the LPDC is authorized to use such tax revenues for certain qualifying projects and other economic development related purposes; and

WHEREAS, the La Porte Development Corporation has established the La Porte Enhancement Grant Program, the purpose of which is to offer financial incentives in the form of matching grants to aid business establishments located in the City of La Porte, Texas; and

WHEREAS qualifying applicants for matching grants under the La Porte Enhancement Grant Program are eligible to use grant funds for building site improvements including façade rehabilitation/enhancement, new awnings, canopies, porches, and signage, beautification projects, and parking lot improvements as outlined in the guidelines of the La Porte Enhancement Grant Program; and

WHEREAS, as an approved project of the La Porte Development Corporation, the La Porte Development Corporation will provide to qualifying applicants of the Enhancement Grant Program a subsidy of up to one-half (1/2) of the cost of building site enhancements, up to a maximum match amount of \$50,000.00; and

WHEREAS, the Recipient leases commercial property located at 531 N. 10<sup>th</sup> Street, La Porte, Texas, (the "Business Site" herein) for which Recipient wishes to make certain improvements, hereinafter described, under an Enhancement Grant Program application; and

WHEREAS, the Recipient wishes to renovate the Business Site by completing the following projects: replacement of signage; which would result in the expenditure by Recipient of an estimated **\$4,113.50** in capital improvements and directly or indirectly support the employment of at least one (1) employee at the Business Site, with one-half (50%) of such capital expenditure being eligible for reimbursement by the La Porte Development Corporation, up to a maximum of \$50,000.00; and

WHEREAS, the provision of financial incentives to the Recipient in connection with a La Porte Enhancement Grant Program application qualifies as a project of the LPDC for infrastructure, site improvements and other related improvements, as authorized by Texas Local Government Code Chapters 501 and 505, and it is the desire of LPDC to assist in the funding of same, finding that such expenditures will promote or develop new or expanded business enterprises.

WHEREAS, Texas law and the by-laws of the LPDC require that certain expenditures and projects by the LPDC be approved by the governing body of the City; and whereas the LPDC Board has previously approved as a general project of the La Porte Development Corporation the Enhancement Grant Program, with the condition that expenditures for any Enhancement Grant Program project providing for a contribution of the LPDC Board greater than \$25,000.00 must also be authorized by the La Porte City Council; and

NOW THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits that will accrue to each of the parties hereof, as well as to the citizens of the City of La Porte, Texas, the parties have agreed and do hereby agree as follows:

#### ARTICLE I

In consideration of the Recipient making eligible and approved improvements to the Business Site at 531 N. 10<sup>th</sup> Street, La Porte, Texas, in connection with an application under the La Porte Enhancement Grant Program, which program was considered in that certain public hearing and approved by formal action of the LPDC Board authorizing a proposed project for the expenditure of LPDC funds for the promotion or development of new or expanded business enterprises on December 13, 2021, LPDC agrees to provide the Recipient with a one-half (50%) matching grant payment in an amount not to exceed **\$2,056.75**, as a one-half (50%) match for Recipient's capital expenditure of **\$4,113.50**, which **\$2,056.75** payment shall be distributed upon the attainment of the following conditions:

- 1) Receipt by the LPDC of copies all applicable invoices and receipts of payment for the same invoices for all project components for the Business Site, which were previously approved by the LPDC Board, and have been completed;
- 2) Receipt by the LPDC of pictures showing proof of completion of each of the project components for the Business Site previously approved by the LPDC Board;
- 3) Receipt by LPDC of copies of all certificates and permits required by the City of La Porte, Texas, if any, to the Recipient for completion of the renovated Business Site;
- 4) Proof of minimum capital investment in the amount of **\$4,113.50** applied towards eligible and approved improvements of the Business Site and related infrastructure and site work. The renovation to the Business Site and related

infrastructure for which the required capital investment is made, must, at a minimum, include the following scope of work, and in the amounts indicated:

|         |            |
|---------|------------|
| Signage | \$4,113.50 |
| Total   | \$2,056.75 |

- 5) Submission to LPDC of an employment roster evidencing that Recipient employs at least one full-time or part-time equivalent individuals as employees at the Business Site. Proof of employment, for purposes of this agreement, shall require Recipient to produce a) copies of Recipient's 941 Report to the Internal Revenue Service and C3 Report to the Texas Workforce Commission for each employee (but with social security numbers of each employee redacted) and b) a notarized statement executed by Recipient's Board of Directors affirming that one (1) full time employee is employed by Recipient for positions permanently located at Business Site.
- 6) In no case will the payment of **\$2,056.75** be made by the LPDC if all the required items listed above are not delivered to and received by LPDC within one (1) year from the date on which this agreement is approved by the Board of the La Porte Development Corporation. In the case that all the required items listed above for the Business Site are presented to LPDC on or before said deadline, the LPDC shall convene a meeting of the LPDC Board of Directors for a date no later than forty-five (45) days. Upon verification of the completion of all project components by the LPDC Board for the Business Site, as reflected by formal vote of the LPDC Board of Directors that the Recipient has satisfied the requirements of this paragraph, LPDC will then remit the sum of **\$2,056.75** to the Recipient within a period not to exceed thirty (30) days.

## ARTICLE II

All funds received as herein provided shall be solely for the purpose of contributing towards the Recipient's costs in making eligible and approved improvements to the Business Site.

The Recipient further acknowledges that the incentive grant provided for herein is tied to a project of the LPDC for the promotion or development of new or expanded business enterprises, as authorized by Texas Local Government Code chapters 501 and 505.

## ARTICLE III

Disbursement and/or retention of the cash incentive identified in Article I of this Agreement shall be made as follows:

- A. Disbursement shall be made to Recipient, subject to the satisfaction of the conditions precedent or conditions subsequent contained within Article I of this Agreement.

- B. LPDC's obligation to Recipient shall not exceed **\$2,056.75**, nor shall LPDC be obligated to reimburse Recipient for requests delivered to LPDC after the termination of this Agreement.

#### **ARTICLE IV**

The Recipient understands that the funds paid to the Recipient by the LPDC are derived from tax revenues collected under Texas Local Government Code 505.252, and that LPDC has estimated the tax revenues to be collected during the term of this Agreement. The Recipient further understands, acknowledges, and agrees that if the tax revenue actually collected is less than 90% of the estimated tax revenues to be collected in any fiscal year during the term of this Agreement, LPDC will be under no obligation to provide funding to the Recipient for any payment or payments during or after the fiscal year for which there is a revenue shortfall. Upon execution of the Agreement, funds will be placed in a City of La Porte designated commitment account for purposes of this Agreement.

#### **ARTICLE V**

In the event of any default by the Recipient hereunder, including, but not limited to, use of the funds provided herein for purposes other than those stated in Article I of this Agreement, LPDC may cease all future payments hereunder and terminate this Agreement. In addition, LPDC shall have the right to reclaim and recapture, and the Recipient shall refund, any funds that are not spent in accordance with the terms of this Agreement, including 1) LPDC funds spent by the Recipient in contravention of this Agreement and 2) any LPDC funds previously paid to the Recipient but not yet spent by Recipient. In each such case, the previously paid cash payment or payments shall be remitted to the LPDC within sixty (60) of receipt of written demand for same.

Any breach of this covenant shall be grounds for immediate termination of the distribution of funds.

#### **ARTICLE VI**

The term of this Agreement will expire one (1) year from the date on which the Board of the La Porte Development Corporation approved the enhancement grant for Recipient.

#### **ARTICLE VII**

All funds provided by the LPDC pursuant to this Agreement may be used only for the purposes authorized by this Agreement. Notwithstanding Article I, above, City shall be under no obligation to make any fund disbursements if the reports required under this Article have not been delivered to the LPDC.

## **ARTICLE VIII**

This Agreement does not create any joint venture, partnership, or agency relationship between the LPDC and the Recipient. The Recipient shall have exclusive control of, and the exclusive right to control the details of the work to be performed by the Recipient hereunder and all personnel performing same and shall be solely responsible for the acts and omissions of its officers, members, agents, servants, employees, subcontractors, program participants, volunteers, licensees, and invitees. In no event shall any person participating in or performing any of the Recipient's duties or responsibilities hereunder be considered an officer, agent, servant, or employee of the LPDC.

## **ARTICLE IX**

The Recipient agrees to assume and does hereby assume all responsibility and liability for damages sustained by persons or property, whether real or asserted, by or from the carrying on of work by the Recipient or in the performance of services performed and to be performed by the Recipient hereunder. The Recipient covenants and agrees to, and does hereby indemnify, defend, and hold harmless LPDC and all their respective officers, agents, and employees from all suits, actions, claims, and expenses of any character, including attorney's fees, brought for or incurred on account of any injuries or damages, whether real or asserted, sustained by any person or property by or in consequence of any intentional or negligent act, omission, or conduct of the Recipient, its agents, servants or employees.

## **ARTICLE X**

This Agreement may be amended by the mutual agreement of the Parties hereto in writing to be attached to and incorporated into this Agreement.

## **ARTICLE XI**

The Recipient shall adhere to all local, state, and federal laws and regulations that may affect its actions made pursuant to this Agreement and shall maintain in effect during the term of this Agreement any and all federal, state, and local licenses and permits which may be required of Recipients generally.

## **ARTICLE XII**

The Recipient may not assign this Agreement, or any of the benefits provided herein including but not limited to incentive payments identified in Article I, without the written consent of LPDC.

## **ARTICLE XIII**

The waiver by LPDC of any breach of any term, condition, or covenant herein contained shall not be deemed a waiver of any subsequent breach of the same, or any other term, condition, or covenant.

#### **ARTICLE XIV**

The obligations of the Parties to this Agreement are performable in Harris County, Texas and if legal action is necessary to enforce same, venue shall lie in Harris County, Texas.

#### **ARTICLE XV**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

#### **ARTICLE XVI**

This Agreement may be executed in triplicate, each of which shall be deemed an original and constitute one and the same instrument.

#### **ARTICLE XVII**

Neither LPDC nor the Recipient shall be required to perform any term, condition, or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean Acts of God, civil riots, floods, and any other cause not reasonably within the control of LPDC or the Recipient except as herein provided, and which by the exercise of due diligence LPDC or the Recipient is unable, wholly or in part, to prevent or overcome.

#### **ARTICLE XVIII**

In submitting this application, the applicant whose signature appears below affirms its intent and commitment to comply in full with Section 2264.052 of the Government Code and certifies that it does not and will not knowingly employ an undocumented worker during any time period associated with the public subsidy for which the application is being submitted. The applicant further certifies its understanding and agreement that if it is convicted of a violation of 8 U.S.C. Section 1324a(f), providing for civil and/or criminal penalties for engaging in a pattern or practice of knowingly hiring or continuing to employ unauthorized aliens, it shall repay the amount of the public subsidy with interest, at the rate and according to the terms of the agreement signed under Section 2264.053 of the Government Code, not later than the 120th day after the date the city notifies the business of the violation.

#### **ARTICLE XIX**

The Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the Parties, which relate to matters in this Agreement.

SIGNED AND AGREED to by LPDC and the Recipient on the dates indicated below.

**LA PORTE DEVELOPMENT CORPORATION**

\_\_\_\_\_  
Nancy Ojeda, President

\_\_\_\_\_  
Date

ATTEST

\_\_\_\_\_  
Secretary of the Corporation

**GIRARD EQUIPMENT INC**

\_\_\_\_\_  
Andrew Mulvey, North American Sales Manager

\_\_\_\_\_  
Date

ATTEST

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