

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

**AMENDED AND RESTATED TEXAS LOCAL GOVERNMENT CODE CHAPTER 380
AGREEMENT FOR REIMBURSEMENT OF PAYMENT FOR CLOSURE OF STREET
RIGHT-OF-WAY, BETWEEN OAKLAND LAND & DEVELOPMENT, INC., A MISSISSIPPI
CORPORATION, AND THE CITY OF LA PORTE, TEXAS**

This AMENDED AND RESTATED AGREEMENT is entered into by and between the City of La Porte, Texas, a Texas municipal corporation of Harris County, Texas ("CITY"), and Oakland Land & Development, Inc., a Mississippi Limited Liability Corporation (hereinafter called "DEVELOPER"). DEVELOPER and CITY may be referred to jointly herein as the "Parties" and individually as a "Party."

WITNESSETH:

WHEREAS, Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code provides statutory authority for a local government to establish and provide for the administration of one or more programs, for making loans and grants and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality;

WHEREAS, CITY has found that providing a program consisting of a grant of funds to DEVELOPER in exchange for DEVELOPER'S completion of the Project proposed by DEVELOPER will promote local economic development and stimulate business and commercial activity and create jobs within the CITY (hereafter referred to as "PROGRAM"); and

WHEREAS, the Project proposed by DEVELOPER will additionally benefit CITY by generating revenue from the assessment of ad valorem tax on personal property, inventory and real property; and

WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

NOW THEREFORE, for the reasons stated in these Recitals, which are incorporated into and made part of this Agreement, and in consideration of the mutual covenants and obligations herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. The Project.

1.1 DEVELOPER is planning to construct approximately twenty-two (22) office/industrial/warehouse buildings within a thirty (30) acre area in La Porte, Texas, between West G Street and West D Street and bordered to the west by South 15th Street and to the east by a drainage way (F2 I 6 Linear detention pond, including Blocks 866, 864, and 863), which project is more particularly described in Exhibit A (the "Project" herein) and the location of DEVELOPER'S tracts is more particularly described in Exhibit B (the "Property" herein). Construction of said buildings is estimated to occur over an (8) year period with a total minimum capital investment by DEVELOPER of \$12,000,000.00.

1.2 As a precondition to implementation of the Project, DEVELOPER determined that it was

necessary to close, vacate and abandon portions of the existing rights-of-way within Sector23 between West Main Street, SH 146, West Fairmont Parkway, and North 16th Street (the "Rights-of Way" herein), which separated DEVELOPER'S tracts, in order to consolidate said tracts and thereafter construct street access along West F Street, 14th Street, and West E Street (see Exhibit C) to facilitate the construction and development of the proposed Project.

1.3 DEVELOPER completed applications and received approval of the La Porte City Council to close, vacate and abandon the Rights of Way pursuant to Chapter 62, Article II of CITY's Code of Ordinances, more fully described in Exhibit D.

1.4. DEVELOPER has paid CITY \$362,457.94 for Rights-of -Way closure described in Section 1.3 above.

1.5 In exchange for the development of the Project, and attainment of certain performance standards upon completion of the Project as more fully described herein, DEVELOPER seeks CITY's agreement to reimburse DEVELOPER for payment of fair market value required under Chapter 62 of CITY'S Code of Ordinances, for construction of West F Street, 14th Street, and West E Street.

Section 2. CITY Obligations.

2.1 CITY agrees to reimburse DEVELOPER in an amount not to exceed the payment of fair market value received by CITY for closure of Rights-of-Way paid by DEVELOPER, in the form of a grant pursuant to this Agreement and as allowed by Texas Local Government Code Chapter380, as an inducement to DEVELOPER to complete the Project. However, as provided in Section 3 of this Agreement, CITY'S agreement to reimburse DEVELOPER is conditioned on DEVELOPER's obligation to attain certain specified performance benchmarks in connection with the Project. The failure of DEVELOPER to satisfy the specified performance benchmarks shall provide CITY the right to forfeit such reimbursement and to be forever released from any obligation to make such reimbursement.

2.2 Payments to DEVELOPER shall occur based on and in accordance with requirements outlined in Section 3 for completed construction of buildings within the Property, as described in Exhibit B. The DEVELOPER shall submit proof of Certificate of Occupancy and documentation of capital investment for each building as completed. The capital investment for each building relative to the total capital investment amount of \$12,000,000.00 will determine the payment amount for each submitted reimbursement request.

- a. Individual reimbursement requests shall be pro-rated based on a total incentive amount not to exceed \$362,457.94.
- b. In no case will reimbursement of the entire \$362,457.94 be made if a copy of the Certificate of Occupancy and documentation of capital investment totaling at least \$12,000,000 for all buildings is not submitted to the CITY by March 27,2025.
- c. In the case that proof of Certificate of Occupancy and documentation of capital investment for an individual building or buildings are received on or before March 27, 2025, the CITY shall convene a meeting of the City Council for a date no later than forty-five (45) days after the receipt and final verification of submitted documentation by CITY from DEVELOPER. Upon

verification of the completion of the aforementioned building or buildings, as reflected by a formal vote of the City Council that DEVELOPER has satisfied the requirements of this paragraph, CITY will then remit payment to DEVELOPER within a period not to exceed thirty (30) days.

Section 3. DEVELOPER Obligations.

3.1 As a condition for CITY's reimbursement of DEVELOPER'S payment of fair market value for closure of Rights-of-Way as a grant to induce completion of the Project, DEVELOPER promises to submit to CITY, and shall submit to CITY the following items, on or before the deadline indicated in Section 5:

- a) Proof of Certificate of Occupancy issued by CITY for each building situated on the Property, with such building(s) having a minimum building footprint of 3,000 square feet; and
- b) Documentation substantiating capital investment of each building by DEVELOPER for building construction and other related building improvements, which are necessary to develop the proposed Project, not to include street improvements identified in Section 1.5. The total capital investment for all buildings must be at least \$12,000,000.00.

3.2 DEVELOPER agrees that CITY will have the right to review the business records of DEVELOPER that relate to the Project and this Agreement in order to determine DEVELOPER'S compliance with the terms of this AGREEMENT. Such review shall occur at any reasonable time and upon thirty (30) days' prior notice to DEVELOPER. To the extent reasonably possible, DEVELOPER shall make all such records available in electronic form.

3.3 DEVELOPER shall not allow any portion of ad valorem taxes owed to CITY on the Property, or any other property owned by DEVELOPER and located within the City of La Porte, Texas to become delinquent beyond the date when due, and as such date may be extended to permit protest of valuation or any appeal; nor shall DEVELOPER fail to render for taxation any personal property, including inventory and equipment, owned by DEVELOPER and located within the City of La Porte, Texas.

3.4 DEVELOPER covenants and certifies that DEVELOPER does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.01(4) of the Texas Government Code. In accordance with Section 2265.052 of the Texas Government Code, if DEVELOPER is convicted of a violation under 8 U.S.C. Section 1324a (t), DEVELOPER shall forfeit reimbursement from the CITY.

Section 4. Force Majeure.

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not ("**Force Majeure**"), the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction

requirement shall be extended for a period of time equal to the period such party was delayed.

Section 5. Term.

The term of this Agreement shall begin upon the execution hereof by both Parties and end either upon the complete performance of all obligations and conditions imposed upon DEVELOPER under this Agreement (unless sooner terminated in writing in accordance with this Agreement), or on March 27, 2025, whichever date occurs first.

Section 6. Indemnity.

DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT ARISE OUT OF OR ARE OCCASIONED BY DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT ACT OR OMISSION OF DEVELOPER, ITS OFFICERS, AGENTS, ASSOCIATES, OR EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF CITY OR ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH DEVELOPER AND CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

Section 7. Termination.

Termination for Misrepresentation. Notwithstanding any provision for notice of default and any opportunity to cure provided for in this Agreement, CITY may terminate this Agreement immediately by providing written notice to DEVELOPER, if DEVELOPER, its officers or signatories to this Agreement misrepresented or misrepresents any material fact or information:

1) upon which CITY relied in entering into this Agreement; 2) upon which CITY relied in making reimbursement to DEVELOPER; or 3) which served as an inducement for CITY to make a grant to DEVELOPER.

Section 8. Personal Liability of Public Officials.

No employee or elected official of CITY shall be personally responsible for any liability arising under or related to this Agreement. Under no circumstances shall City's actions or obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

Section 9. Venue and Governing Law.

This Agreement is performable in Harris County, Texas and venue of any action arising out of this Agreement shall be exclusively in Harris County. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

Section 10. Notices.

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

If intended for CITY, to:

City of La Porte, Texas 604
W. Fairmont Pkwy. La Porte,
Texas 77571 ATTN: City
Manager

If intended for DEVELOPER, to:

Oakland Land & Development, Inc. by:
Jeff Burkhalter, Manager
PO Box 952
Natchez, MS 39121-0952

Section 11 Applicable Laws.

This Agreement is made subject to the provisions of the Charter and ordinances of CITY, as amended, and all applicable state and federal laws (collectively, the "Applicable Laws"), and violation of same shall constitute a default under this Agreement.

Section 12. Legal Construction.

In case 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 any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

Section 13. Counterparts.

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

Section 14. Captions.

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

Section 15. Successors and Assigns.

The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement **SHALL NOT** be assigned by DEVELOPER to any other person or entity, without prior, written CITY approval. Written approval of the CITY shall be required for an assignment to an Affiliate of DEVELOPER, but in such case approval shall not be unreasonably withheld. "Affiliate of DEVELOPER," as used herein, is defined as a parent, sister, partner, joint venture, or subsidiary entity of DEVELOPER; any entity in which DEVELOPER is a major shareholder, owns an equity interest, or is a joint venture or partner (whether general or limited).

Section 16. Entire Agreement.

This Agreement embodies the complete agreement of the parties hereto regarding waiver of payment of the fair market value to close the Right-of-Way in connection with the Project, superseding all oral or written previous and contemporary agreements between the parties, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

CITY OF LA PORTE, TEXAS

EXECUTED THIS 15 day of
Feb, 2022, by CITY, signing by
and through its City Manager.



Oakland Land & Development, Inc.
EXECUTED THIS 22 day of
February 2022, by Jeff Burkhalter

