

**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF OVILLA, TEXAS AND
THE CITY OF OVILLA TYPE B ECONOMIC DEVELOPMENT CORPORATION**

This **CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT** ("Agreement") is made by and between The City of Ovilla, Texas, also referred to as ("City"), and the City of Ovilla Type B Economic Development Corporation ("Corporation"), acting by and through their respective authorized officers and representatives. Each also individually referred to as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, the City Council ("City Council") of the City of Ovilla, Texas ("City ") has investigated and determined that it is in the best interest of the City and its citizens to encourage economic development programs, including programs for making loans and grants of public money to promote local economic development and stimulate business and commercial activity in the City pursuant to Chapter 380, Texas Local Government Code, as amended ("Chapter 380"); and

WHEREAS, Texas Local Government Code Section 380.001 and Article III, Section 52-a, of the Texas Constitution authorizes the City to establish an economic development program ("Program") and the City hereby establishes such a Program whereby the City agrees to transfer land to the Corporation to advance the public purposes of stimulating business and commercial activity in the City, developing and diversifying the City's economy, reducing City and State unemployment or underemployment by creating employment opportunities, adding taxable improvements to real property in the City, and expanding commerce to and through the City; and

WHEREAS, the Corporation is a Type B corporation created pursuant to the authority of the Development Corporation Act of 1979 and by the City which at the time of the execution of this Agreement has an estimated population of 20,000 or less, for which the term "project" according to Section 505.155 may also include land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements the Corporation's board of directors finds to promote new or expanded business development; and

WHEREAS, the Corporation has requested to purchase real property from the City as defined in Article I below and more particularly described in Exhibit "A" hereto (the "Property") for the purposes of redeveloping the Property for commercial development in manner that promotes new or expanded business development within the City (the "Project") and has requested financial assistance from the City in the form of a sale of the Property for less than fair market value in exchange for economic development obligations to the City; and

WHEREAS, the City is authorized to transfer the Property to the Corporation for less than fair market value pursuant to Texas Local Government Code Sec. 253.0125 in exchange for economic development obligations to the City that ensure that the Corporation and any subsequent owner(s) will use the Property in a manner that primarily promotes a public purpose of the City related to economic development after publishing a notice of the land transfer in a newspaper of general circulation; and

WHEREAS, Corporation has advised that an economic development grant from the City would incentivize the Corporation to purchase the property and undertake the Project which would generate additional economic development and local use tax revenue and additional ad valorem property tax revenue for the City that would otherwise not be available to the City; and

WHEREAS, the Corporation's Board of Directors met on May 20, 2024, held a public hearing, and determined that the Project is appropriate and authorized pursuant to Texas Local Government Code Chapter 505, Subchapter D, Section 505.158; and

WHEREAS, on both June 10, 2024, and on July 8, 2024, the City Council met, investigated and determined that the Corporation's approved Project is an authorized project under Texas Local Government Code Chapters 501 and 505, and determined that Project qualifies for the Chapter 380 Program established by the City in this Agreement; and

WHEREAS, the City has determined that making an economic development grant to the Corporation in accordance with this Agreement will benefit the City and the City's inhabitants and advance a public purpose for the City by promoting local economic development and stimulating business and commercial activity in the City;

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

ARTICLE I DEFINITIONS

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

"Agreement" shall mean this Chapter 380 Economic Development Agreement, together with all exhibits, schedules, and attachments that are attached to this Agreement from time to time, if any.

"City" or **"Seller"** shall mean City of Ovilla, Texas.

"City Regulations" shall mean all adopted ordinances, rules, regulations and resolutions adopted by the City of Ovilla, Texas, whether in effect on the Effective Date and/or amended or adopted subsequent to the Effective Date of this Agreement.

"Closing" or **"Closing Date"** shall mean the date that fee simple title is transferred from City to Corporation via Special Warranty Deed.

"Commercial Use(s)" shall mean only those commercial uses allowed in the "CR Restricted Commercial District", exclusive of any Residential Use(s) allowed in "CR Restricted Commercial District" or any other Residential Uses whether or not allowed by the Zoning Ordinance in any residentially zoned district of the City, and that comply with all applicable requirements of the Historic Overlay District as defined herein.

"Corporation" or "Buyer" shall mean City of Ovilla Type B Economic Development Corporation

"Developer" shall mean an individual, corporation, partnership or other entity with whom Corporation enters into an agreement for the purchase and/or development of the Property, including without limitation an agreement that includes the conveyance of fee simple title, leasehold interest, license interest, or any other interest in the Property in any manner allowed by law.

"Effective Date" shall mean the date this Agreement is last signed by all Parties.

"Force Majeure" shall mean any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorism, governmental approvals, laws, regulations, or restrictions, or any other cause of any kind whatsoever which is beyond the reasonable control of the party.

"Historical Overlay District" shall mean the Historical Overlay District as defined and regulated by the Zoning Ordinance, State Law and other City Regulations, as amended from time to time.

"Program" shall mean the economic development program established by the City in this Agreement pursuant to Chapter 380 of the Texas Local Government Code together with any amendments, permutations, or recodifications of such Code provisions whether renaming such economic incentive or other modifications thereof.

"Property" shall mean the real property and any improvements located upon an approximate 2.86 acre tract of land comprised of Parcel ID Number 187784, more commonly identified as 708 West Main Street, Ovilla, Ellis County, Texas 75154 (misidentified in ECAD as being located within Red Oak, Texas), Parcel ID Number 187741 and Parcel ID Number 194811, each of which are located within the corporate limits of the City of Ovilla, Ellis County, Texas and are more particularly described on **Exhibit "A"** attached hereto and incorporated as if fully set forth herein.

"Reconveyance" shall mean the return of fee simple title to City as set forth in Article IV of this Agreement.

"Residential Use(s)" shall mean any use allowed by the Zoning Ordinance which is classified as residential and allowed in any zoning district of the City, or any type of use which is residential in nature as that term is commonly used or as defined by state or federal law whether or not specifically identified in the Zoning Ordinance.

"Zoning Ordinance" shall mean the adopted Zoning Ordinance of the City of Ovilla, Texas, and all amendments thereto, in effect upon the Effective Date and/or amended or adopted subsequent to the Effective Date of this Agreement.

ARTICLE II TERM

The term of this Agreement shall begin on the Effective Date and continue for a period of twenty (20) years unless otherwise terminated under the provisions of this Agreement. This Agreement may be extended for an additional period of time on terms mutually acceptable to both Parties by a written agreement executed by both Parties.

ARTICLE III PURCHASE TERMS AND ECONOMIC DEVELOPMENT GRANT

3.01 **Restricted Sale, Purchase and Transfer.** Subject to and conditioned upon Corporation's agreement with, satisfaction of, and compliance with all terms of this Agreement, City agrees to sell the Property to Corporation, and Corporation agrees to purchase the Property subject to the terms and conditions as provided in this Agreement. Corporation further understands and agrees that the Property is being conveyed by City to Corporation for the purposes of the promotion of economic development with the intent that the development of the Property, and all portions thereof, be developed and used exclusively for Commercial Use in accordance with the terms of this Agreement and subject to Reconveyance to City for Corporation's failure to comply with the terms of this Agreement, including without limitation, **Article IV, "Performance Obligations of Corporation"** of this Agreement.

3.02 **Conditions Precedent to Conveyance of Title.** The City's agreement hereunder to convey fee simple title in the Property to Corporation is conditioned upon Corporation compliance with its obligations under this Agreement, and each of the following conditions are individually and collectively conditions precedent to the City's agreement to convey the Property to Corporation: (i) Corporation's agreement hereunder and covenant that upon Corporation's receipt of fee simple title in the Property, Corporation shall not use the Property itself or transfer or convey the Property, including any portion thereof, in fee simple, leasehold, license or any other manner to a third party for any purpose other than Commercial Use as defined herein; (ii) Corporation's agreement and covenant that prior to or after Corporation's receipt of fee simple title to the Property, Corporation shall not utilize Corporation's funds for development of the Property or offer any type of incentive payment or in-kind incentive to any third party seeking to develop the Property, or any portion thereof, for any purpose other than Commercial Use; and (iii) Corporation's agreement and covenant that upon receipt of fee simple title to the Property, Corporation shall cause the filing of conditions, covenants and restrictions in the Ellis County land records restricting the use of the Property to Commercial Use as defined herein; and (iv) Corporation's agreement and covenant that Corporation shall take all necessary actions to effect Reconveyance of the Property to City upon written request of City pursuant to **Article IV, "Performance Obligations of Corporation"** of this Agreement (collectively "Conditions Precedent").

3.03. **Conveyance.** At Closing, City shall deliver a Special Warranty Deed to Corporation in form and substance reasonably acceptable to Corporation and City, conveying good and indefeasible title to the Property to Corporation free and clear of any and all encumbrances, except any permitted exceptions identified in any title commitment for the Property, the restrictions on the Property as set forth in this Agreement, and the obligation for Reconveyance pursuant to **Article IV** and **Article V** of this Agreement.

3.04 **Purchase Price.** The Purchase Price of the Property shall be Three Fifty Thousand and No/100 Dollars (\$350,000.00), a reduced sales price from the appraised value of Three Hundred Sixty-Six Thousand and No/100 Dollars (\$366,000.00) for the Property or as determined by an appraisal obtained by the City.

3.05 **Title Policy.** If Corporation desires to obtain a title policy, Corporation may purchase such policy at its cost.

3.06. **Inspection Period.** There shall be no inspection period. Corporation has completed an inspection of the Property.

3.07. **Property Sold "AS IS".** Corporation acknowledges and agrees that the Property and the improvements located thereon are being purchased and will be conveyed "AS IS" with all faults and defects, whether patent or latent, as of the Closing.

3.08 **Closing Date and Costs.** City and Corporation shall close on the transfer of the Property within sixty (60) days of the Effective Date pursuant to a Special Warranty Deed executed by City granting fee simple title to the Property to the Corporation. Each Party shall pay its own costs associated with the conveyance of the Property.

ARTICLE IV PERFORMANCE OBLIGATIONS OF CORPORATION

The City and Corporation each agree that as a condition of this Agreement, Corporation shall comply with the following performance requirements, conditions, and restrictions on the Property which represent material obligations of this Agreement. Corporation on behalf of itself and any subsequent Developer(s) of the Property are subject to the following restrictions, each of which survive Closing and termination of this Agreement:

4.01 Required Property Improvements and Uses.

4.01.01 Building Demolition/Commercial Uses/Sales Tax Generating. Corporation agrees to demolish or to cause the demolition of the building located on the Property at its sole cost and expense and to market the Property for economic development purposes that comply with the terms of this Agreement, that are limited to Commercial Uses, and that are consistent with the Conditions Precedent set forth in **Section 3.01.01. Conditions Precedent to Conveyance of Title.** The building shall be demolished no later than (120) days after the Closing Date. The Property shall be solely used for Commercial Use. No Residential Use of the Property shall be permitted. The Property shall be used for Commercial Uses by a business in which at least 90% of the business' revenue generates sales tax to the City.

4.01.02. Improvements. Corporation shall construct or cause Developer(s) to construct parking spaces that comply with City Regulations as necessary to accommodate a minimum number of parking spaces required by City Code for property located within a zoning district in which Commercial Uses are allowed, and make other improvements to the Property as required by State law and all

applicable City Regulations to obtain a certificate of occupancy from the City for a building or buildings to accommodate Commercial Uses (collectively "Improvements"). All Improvements shall be completed in accordance with the terms of this Agreement and all applicable State and Federal laws and City Regulations, including but not limited to the requirements of the Zoning Ordinance for Commercial Uses and for the Historical Overlay District.

4.01.03. Restrictions on Property, CCRs, and Clawback. Corporation agrees to file or cause the filing of conditions, covenants, and restrictions, binding upon Corporation and future landowners, which prohibit the use of the Property for Residential Use purposes and restrict the Property's use for anything other than Commercial Uses as defined herein (the "Conditions, Covenants and Restrictions"). The Conditions, Covenants and Restrictions shall be filed in the Ellis County Land Records within thirty (30) days of the Closing Date. Further, Corporation agrees that any and all agreements that it executes with Developer(s) for the Property shall include restrictions and obligations necessary to restrict development and use of the Property to Commercial Uses, to expressly exclude any type or nature of Residential Use upon on the Property, and shall include a restriction agreement or other clawback provisions as is necessary for Reconveyance to City to ensure that City is able to regain title, possession, and control of the Property in the event that any one or more of the Conditions Precedent or the terms of this Agreement are violated by Developer and/or Corporation.

4.02 **Property Restrictions Apply to Subsequent Purchasers or Lessees.** The Corporation shall execute a performance agreement with all subsequent Developer(s) of the Property that incorporates the terms of (i) this Agreement for Conditions Precedent and Reconveyance requirements set forth in Articles III and IV of this Agreement; and (ii) the Special Warranty Deed executed by City. The requirements of this Agreement, including without limitation the requirements of Articles III and IV, shall be included in any and all deeds, licenses, leases or other documents executed by and between Corporation and Developer(s).

4.03 **Remedy of Reconveyance.** If Corporation fails to comply with any term or condition of this Agreement, then the Corporation shall comply with the Reconveyance requirements of this Agreement and take all actions necessary to return fee simple title to City within thirty (30) days of a written request by City. Contemporaneously with the Reconveyance, the City shall refund Corporation's Purchase Price under this Agreement.

4.04 **Enforcement and Lien.** Corporation grants a lien on the Property to the City to secure the Corporation's performance of its obligations to the City under this Agreement. City may record this Agreement or a memorandum of this Agreement in the real property records of Ellis County, Texas. Corporation and City shall cooperate to prepare and sign any additional documents necessary to protect the City's lien rights under this Agreement. Provided there is no material breach of this Agreement by the Corporation, City will, on request, execute and record a release of any lien under this Agreement at the end of the Term of this Agreement. City shall have the right, but not the obligation to enforce any material breach of this Agreement after sending written notice of such material breach to Corporation.

**ARTICLE V
DEFAULT AND TERMINATION**

5.01 **Material Breach.** A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe, or comply with any of its covenants, agreements, or obligations hereunder or breaches or violates any of its representations contained in this Agreement. Upon default, City shall be entitled to all remedies allowed by law, including the remedy of Reconveyance of the Property as set forth in Article IV.

5.02 **Termination.** This Agreement may be terminated upon any one or more of the following:

- (a) by mutual written agreement of the Parties;
- (b) by City or Corporation, respectively, if the other Party defaults or breaches any of the terms or conditions of this Agreement in any material respect and such default or breach is not cured within thirty (30) days after written notice thereof by the City or Corporation, as the case may be;
- (c) by City or Corporation, respectively, 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; and/or
- (d) expiration of the term, or any subsequent renewal of the term.

The rights, responsibilities and liabilities of the Parties under this Agreement shall be extinguished upon the termination of this Agreement except for any rights, responsibilities and/or liabilities that accrued prior to such termination.

**ARTICLE VI
MISCELLANEOUS**

6.01 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the Parties to this Agreement and their respective successors and permitted assigns. This Agreement may not be assigned without the express written consent of City, which consent shall not be unreasonably withheld or delayed.

6.02 **Limitation on Liability.** It is understood and agreed between the Parties that the Corporation and City, in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions. The Corporation agrees to indemnify and hold harmless the City from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever by a third party arising out of the Corporation's performance of the conditions under this Agreement.

6.03 **No 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 between the Parties.

6.04 **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.

6.05 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below (or such other address as such Party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered sent via fax.

If intended for City, to:

City of Ovilla, Texas
Attn: David Henley, City Manager
105. South Cockrell Hill Road
Ovilla, Texas 75154

With a copy to:

Attn: Patricia Adams
Messer Fort McDonald
6371 Preston Rd, Ste 200
Frisco, TX 75034

If intended for the Corporation:

Attn: Ovilla Economic Development Corporation
Attn: Economic Development Director
105. South Cockrell Hill Road
Ovilla, Texas 75154

6.06 **Entire Agreement.** This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement.

6.07 **Governing Law.** The laws of the State of Texas shall govern the Agreement; and this Agreement is fully performable in Ovilla, Ellis County, Texas with exclusive venue for any action concerning this Agreement being in a court of competent jurisdiction in Ellis County, Texas.

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

6.09 **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 **Recitals Adopted.** The recitals as set forth above are declared true and correct and are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the City and Corporation.

6.11 **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 and any such counterparts shall be deemed to be incorporated herein.

6.12 **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.

6.13 **Governmental Immunity.** The Parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

6.14 **Mediation.** Subject to the consent of both Parties, any dispute between Seller and Buyer related to this Agreement which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider prior to the filing of any lawsuit. The Parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a Party from seeking equitable relief from a court of competent jurisdiction.

6.15. **Undocumented Workers.** As a further condition precedent to this Agreement, Corporation hereby certifies that it does not now, and will not, knowingly employ an Undocumented Worker as defined by the Tex. Gov't. Code Sec. 2264.001(4)(A-B). If, after receiving a Program Grant, the business, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), the business shall repay the amount of all Program Grants received, plus interest at 5% per annum, not later than the 120th day after the date the City notifies the Corporation of the violation. Further, as defined by Tex. Gov't Code Sec. 2264.101, the Corporation shall not be liable for a violation of this provision by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the Corporation contracts.

6.16. **Compliance.** To the greatest extent required by law, Corporation during the term of this Agreement shall comply with all local ordinances, state and federal laws and environmental regulations related to the Approved Project.

6.17. **Force Majeure.** In the event of Force Majeure, the affected Party shall have such additional time to comply with its obligations hereunder, as the case may be, so long as the affected Party is diligently and faithfully pursuing the fulfillment of its obligations. If the delay caused by Force Majeure is longer than thirty (30) days, the Parties may upon written agreement, extend the affected deadline by written modification.

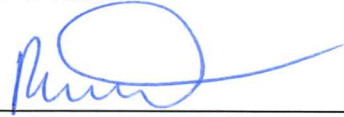
6.18. **Boycott of Israel.** In accordance with Chapter 2270, Texas Government Code, Corporation verifies that it does not boycott Israel and will not boycott Israel during the term of this Amended Agreement.

6.19. **Anti-Terrorism**. In accordance with Section 2252.152 of the Texas Government Code, Corporation represents that it has no contacts with companies engaged in business with Iran, Sudan, or other foreign terrorist organizations as determined by the list maintained by the Texas Comptroller.

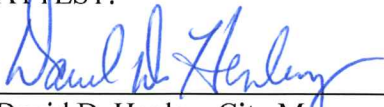
[SIGNATURE PAGES FOLLOW]

EXECUTED as of the 28th day of September, 2024.

CITY OF OVILLA


By: 
Richard Dormier, Mayor

ATTEST:


David D. Henley, City Manager

EXECUTED as of the 28th day of September, 2024.

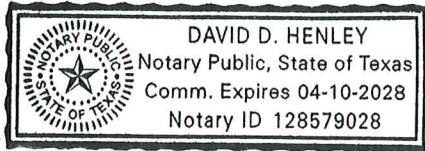
**CITY OF OVILLA TYPE B ECONOMIC
DEVELOPMENT CORPORATION**

By: 
Name: Kimberly Case
Title: President

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF ELLIS §

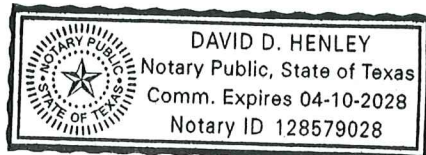
This instrument was acknowledged before me on the 28th day of September, 2024 by Richard Dormier, Mayor of the City of Ovilla, Texas, on behalf of the City.



David D. Henley
Name: David D. Henley
Notary Public, State of Texas
My commission expires: 4/10/2028

STATE OF TEXAS §
 §
COUNTY OF ELLIS §

This instrument was acknowledged before me on the 28th day of September, 2024 by Kimberly Case, President of the Board of Directors of the City of Ovilla Type B Economic Development Corporation on behalf of the Corporation.



David D. Henley
Name: David D. Henley
Notary Public - State of Texas
My commission expires: 4/10/2028

EXHIBIT “A”
Property Description

An approximate 2.86 acre tract of land, comprised of the following three parcels: (i) Parcel ID Number 187748 more commonly identified as 708 West Main Street, Ovilla, Texas, 75154 (misidentified in ECAD as being within Red Oak, Texas); and (ii) Parcel ID Number 187741 located within the corporate limits of the City of Ovilla, Texas; and (iii) Parcel ID Number 194181 located within the corporate limits of City of Ovilla, Texas (collectively the “Property”).