

STATE OF TEXAS §
§ ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
COUNTY OF DALLAS §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Coppell, Texas (“City”), and Main Street Coppell Property Owners Association, Inc, a Texas non-profit corporation (“Company”) (collectively the “Parties” or singularly a “Party”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, Company owns the real property and located at 1 Main Street, Coppell, Texas (the “Property”) on which an entry feature sign into “Main Street Coppell” is located (the “Existing Sign”); and

WHEREAS, Company desires to replace the Existing Sign with a new sign (hereinafter defined as the “Sign”) and has agreed to provide space on the Property to City for use in promoting the Coppell Arts Center and events held at the Coppell Arts Center (hereinafter defined as the “Coppell Arts Center Signage”); and

WHEREAS, Company has advised City that a contributing factor that would induce Company to replace and install the Sign and permit its use by City would be an agreement by City to provide an economic development grant to Company as set forth herein; and

WHEREAS, promoting the expansion of existing businesses within City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the property tax base and economic vitality of City; and

WHEREAS, City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in City; and

WHEREAS, promoting the expansion and maintenance of existing business enterprises within City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the property tax base and economic vitality of City; and

WHEREAS, City has adopted programs for promoting economic development and this Agreement and the economic development incentives set forth herein are given and provided by City pursuant to and in accordance with those programs; and

WHEREAS, City has determined that making the Grant (hereinafter defined) to Company in accordance with this Agreement is in accordance with City’s Economic Development Program and will: (i) further the objectives of City; (ii) benefit City and City’s inhabitants; and (iii) promote local economic development and stimulate business and commercial activity within City;

NOW THEREFORE, in consideration of the foregoing and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“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.

"Casualty" shall mean damage, destruction or other property casualty resulting from any theft, vandalism, fire or any Force Majeure or other sudden, unexpected or unusual cause. A Casualty shall be deemed to have occurred if the Sign is wholly or partially destroyed by fire, earthquake, flood or similar casualty.

“City” shall mean the City of Coppell, Texas.

“Commencement of Construction shall mean that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for the construction and installation of the Sign; (ii) all necessary permits for the construction and installation of the Sign have been issued by the applicable governmental authorities; and (iii) installation of the Sign has commenced.

“Company” shall mean Main Street Coppell Property Owners Association, Inc, a Texas non-profit corporation.

“Completion of Construction” shall mean that: (i) the construction and the installation of the Sign has been substantially completed; and (ii) City has verified the completion of installation of the Sign by Company and the signage for the Coppell Arts Center.

“Coppell Arts Center” shall mean the City-owned building located at 505 Travis Street, Coppell, Texas.

“Coppell Arts Center Signage” shall have the meaning assigned in the Recitals.

“Effective Date” shall mean the last date of execution hereof.

“Expiration Date” shall mean the date the Parties have fully satisfied their respective obligations herein.

“Existing Sign” shall have the meaning assigned in the Recitals.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the Party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Grant” shall mean an economic development grant in the amount equal to the costs incurred and paid by Company for the installation of the Sign not to exceed Ten Thousand Dollars (\$10,000.00) to be paid as set forth herein.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, 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 Company or any property or any business owned by Company within City.

“License” shall have the meaning assigned by Section 3.4.

“Payment Request” shall mean a written request from Company to City for payment of the Grant accompanied by the copies of receipts and invoices and such other information as may be reasonably requested by City to document the actual costs incurred and paid by Company for the replacement and installation of the Sign.

“Property” shall have the meaning assigned in the Recitals.

“Related Agreement” shall mean any agreement (other than this Agreement) by and between City and Company, or any of its affiliated or related entities.

“Sign” shall mean a new entry feature sign into Main Street Coppell to be located on the Property in accordance with plans approved by City’s Community Development Department.

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.

Article III

Grant

3.1 Grant. City agrees, subject to the continued satisfaction of all the terms and conditions of this Agreement by Company and the obligation of Company to repay the Grant

pursuant to Article V hereof to provide the Grant to Company within thirty (30) days after receipt of a Payment Request following Completion of Construction of the Sign.

3.2 Current Revenue. The Grant shall be paid solely from annual appropriations from the general funds of City or from such other funds of City as may be legally set aside for such purpose consistent with Article III, Section 52(a) of the Texas Constitution. Under no circumstances shall the obligations of City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision; provided; however, City agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the installments of the Grants for the then ensuing fiscal year.

3.3 Grant Limitations. City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Lessee. None of the obligations of City under this Agreement shall be pledged or otherwise encumbered by Company in favor of any commercial lender and/or similar financial institution.

3.4 License.

(a) Company hereby grants City a perpetual exclusive license for the purpose of constructing, installing, repairing and maintaining signage on the Property advertising the Coppell Arts Center and other City facilities, events and activities occurring or to occur at the Coppell Arts Center and/or other City facilities (the "License"). The grant of the License also includes the right for City, its employees and contractors to cross the Property for the purpose of accessing the Coppell Arts Center Signage. City agrees to repair or caused to be repaired any damage to the Property resulting from the activities of City, its employees, or contractors so that the Property is returned substantially to its former condition prior to the damage occurring.

(b) Company shall at its sole cost maintain the Sign in a good state of appearance and repair, reasonable wear and tear excepted and shall perform such maintenance and repair any damage to the Sign as may be reasonably necessary.

(c) In the event the Sign is wholly or partially destroyed or damaged by Casualty, Company shall promptly repair, replace, restore and reconstruct the Sign including the signage for the Coppell Arts Center in a good and workmanlike manner consistent with the plans previously approved by the City Community Development Department. Company shall, subject to events of Force Majeure and within thirty (30) days from the date of such Casualty, commence to repair, reconstruct or replace the damaged or destroyed Sign or portion thereof, and pursue the repair, reconstruction, or replacement of the Sign so as to restore the Sign to substantially the condition it was in before the Casualty. In the event Company fails to timely repair, restore or reconstruct the Sign, and complete the same within thirty (30) days from the date Company commences the restoration work, City shall have the right but not the obligation to cause such work to be performed and charge the costs of such work to Company.

(d) Company shall reimburse City upon written demand for any costs and expenses which City incurs in the repair, maintenance or replacement of the Sign in the event Company fails

to repair, maintain, restore or replace the Sign as required herein, and City shall not be liable to Company for any damages with respect thereto.

- (e) The License shall survive termination of this Agreement and the Expiration Date.

Article IV Conditions to Grant

The obligation of City to pay the Grant shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the following conditions.

4.1 Payment Request. Company shall, as a condition precedent to the payment of the Grant, timely provide City with the applicable Payment Request.

4.2 Good Standing. Company shall not have an uncured breach or default of this Agreement, or a Related Agreement.

4.3 Sign Construction. Company shall, subject to events of Force Majeure cause Commencement of Construction of the Sign to occur within ninety (90) days after the Effective Date; and, subject to events of Force Majeure, cause Completion of Construction of the Sign to occur within thirty (30) days thereafter.

4.4 Signs. Company shall submit and obtain approval of such plans for the Sign as may be reasonably required by the City Community Development Department prior to Commencement of Construction of the Sign. City shall submit and obtain approval of such plans for the Coppel Arts Center Signage as may be reasonably required by the City Community Development Department and Company.

4.5 Approval. Plans for the Sign must be approved by City's Community Development Department prior to Commencement of Construction. Plans for the Coppel Arts Center Signage must be approved by City's Community Development Department and Company prior to Commencement of Construction.

Article V Termination; Repayment

5.1 Termination. This Agreement shall terminate upon any one of the following:

- (a) by mutual written agreement of the Parties;
- (b) on the Expiration Date;

- (c) by either Party, if the other Party 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;
- (d) by City, if Company suffers an event of Bankruptcy or Insolvency;
- (e) by City, if any Impositions owed to City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such Impositions); or
- (f) by either 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.

5.2. Repayment. In the event the Agreement is terminated by City pursuant to Section 5.1(c), (d), (e), or (f), Company shall immediately repay to City an amount equal to the Grant previously paid by City to Company immediately preceding the date of such termination, plus interest at the rate of interest periodically announced by the *Wall Street Journal* as the prime or base commercial lending rate, or if the *Wall Street Journal* shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by City) as its prime or base commercial lending rate, from the date on which the Grant(s) is paid by City until such Grant(s) is refunded by Company. The repayment obligation of Company set forth in this section 6.2 hereof shall survive termination.

5.3 Right of Offset. City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Company, 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 City has been reduced to judgment by a court.

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.

6.2 Limitation on Liability. It is understood and agreed between the Parties that Company 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. Company agrees to indemnify and hold harmless 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 Company's performance of the conditions under this Agreement.

6.3 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.

6.4 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 on the day actually received if sent by courier or otherwise hand delivered:

If intended for City, to:

Attn: Mike Land
City Manager
City of Coppell
255 E. Parkway Blvd.
Coppell, Texas 75019

With a copy to:

Robert E. Hager
City Attorney
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 N. Akard, Suite 1800
Dallas, Texas 75201

If intended for Company, to:

Attn: Joel Busby, President
Main Street Coppell Property Owners Association, Inc.
P.O. Box 191185
Dallas, Texas 75219

6.5 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.

6.6 Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

6.7 Governing Law. This Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action under this Agreement shall be 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 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.

6.9 Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to the matters in this Agreement, 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.

6.10 Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

6.11 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

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

6.13 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 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.

6.14 Assignment. This Agreement shall be binding on and inure to the benefit of the Parties and their respective administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned by Company without the prior written consent of the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed.

6.15 Right of Offset. City may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, or otherwise, and regardless of whether or not the debt due City has been reduced to judgment by a court.

6.16 Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the Grant, and any other funds received by Company from City as of the date of such violation within one hundred twenty (120) days after the date Company is notified by City of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid.

(Signature Page to Follow)

SIGNED AND AGREED on this _____ day of _____, 2020.

CITY OF COPPELL, TEXAS

By: _____
Mike Land, City Manager

SIGNED AND AGREED on this _____ day of _____, 2020.

**MAIN STREET COPPELL PROPERTY OWNERS
ASSOCIATION, INC**

By: _____
Joel Busby, President