

**HOPKINSCOUNTY  
CHAPTER 381 ECONOMIC DEVELOPMENT  
PROGRAM AND AGREEMENT**

This **CHAPTER 381 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into by and between **HOPKINS COUNTY, TEXAS**, a Texas political subdivision (hereinafter referred to as "County"), and **D6 INC.** (hereinafter referred to as the "Developer"), for the purposes and considerations stated below:

**WHEREAS**, Developer intends to construct a 25,000 sq. ft. addition to an existing manufacturing facility located at 201 Commercial Services Drive, Sulphur Springs, Hopkins County, Texas (hereinafter referred to as the "Project") within the County and desires to participate in the economic development program established in this Agreement; and

**WHEREAS**, Developer agrees to make a capital investment of more than **Six Million and No/100 Dollars (\$6,000,000.00)** towards the Project in the form of new business equipment, new business personal property, and new improvements to real property, not including inventory, in accordance with the terms of this Agreement; and

**WHEREAS**, Developer agrees to create thirty (30) new Full-Time Positions working on the Property during the Term of this Agreement; and

**WHEREAS**, the Developer desires to enter into this Agreement pursuant to Chapter 381 of the Texas Local Government Code (hereinafter referred to as "Chapter 381"); and

**WHEREAS**, the County desires to provide, pursuant to Chapter 381, an incentive to Developer to develop the Property as defined below; and

**WHEREAS**, the County has the authority under Chapter 381 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within Hopkins County, Texas; and

**WHEREAS**, the County determines that a grant of funds to Developer will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the County, and will further assist with economic development within the County; and

**WHEREAS**, the County has concluded and hereby finds that this Agreement clearly promotes economic development in Hopkins County, Texas, and, as such, meets the requisites under Chapter 381 of the Texas Local Government Code, and further is in the best interests of the County and Developer; and

**WHEREAS**, the County has concluded and hereby finds that this Agreement clearly promotes economic development in the Hopkins County, Texas, and, as such, meets the

requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the state, by eliminating unemployment or underemployment in the state, and by the development or expansion of commerce within the state.

**NOW, THEREFORE,** in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**SECTION 1. FINDINGS INCORPORATED.**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

**SECTION 2. TERM.**

This Agreement shall be effected as of the Effective Date of this Agreement, and shall continue thereafter until **December 31, 2030**, unless terminated sooner under the provisions hereof.

**SECTION 3. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The word "Agreement" means this Chapter 381 Economic Development Program and Agreement, authorized by Chapter 381 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (b) **City.** The word "City" means the City of Sulphur Springs, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 210 N. Davis Street, Sulphur Springs, Texas 75482.
- (c) **County.** The word "County" means Hopkins County, Texas, a political subdivision of the State of Texas, whose address for the purposes of this Agreement is 118 Church Street, Sulphur Springs, Texas 75482.
- (d) **Developer.** The word "Developer" means D6 Inc., its successors and assigns, whose address for the purposes of this Agreement is 201 Commercial Services Drive, Sulphur Springs, Texas 75482.
- (e) **Effective Date.** The words "Effective Date" mean the date of the latter to execute this Agreement by and between the Developer and the County.
- (f) **Event of Default.** The words "Event of Default" mean and include any of the Events of Default set forth in the section entitled "Events of Default" in this Agreement.

- (g) **Full-Time Position.** The words "Full-Time Position or "Full-Time Employment Positions" mean and include a job requiring a minimum of Two Thousand Eighty (2,080) hours of work averaged over a twelve (12) month period.
- (h) **Personalty.** The word "Personalty" means the taxable tangible personal property located on the Property other than tangible personal property that was located on the Property at any time before the period covered by this Agreement, excluding inventory and supplies.
- (i) **Program Grant or Program Grant Payment.** The words "Program Grant" or "Program Grant Payment" mean the economic development grants paid by the County to Developer in accordance with this Agreement, computed with reference to County ad valorem taxes assessed and collected for the Property and Personalty located on the Property.
- (j) **Project.** The word "Project" means those expenditures consisting of the construction of a 25,000 sq. ft. addition to an existing manufacturing facility and additional Personalty.
- (k) **Property.** The word "Property" means the real property located at 201 Commercial Services Drive, Sulphur Springs, Hopkins County, Texas.
- (l) **Term.** The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.

#### **SECTION 4. OBLIGATIONS OF DEVELOPER.**

Developer covenants and agrees with County that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Project.** Developer covenants and agrees to make a capital investment of not less than **Six Million and No/100 Dollars (\$6,000,000.00)** for the Project in the form of new buildings and improvements, new business personal property, new business equipment, but excluding inventory to be situated on the Property. Developer covenants and agrees to complete construction of the Project by **December 31, 2021**. Developer covenants and agrees to submit to the County invoices, receipts, or other documentation in a form acceptable to the County for expenditures made towards the Project in a minimum amount of **Six Million and No/100 Dollars (\$6,000,000.00) by December 31, 2021**.
- (b) **Certificate of Occupancy for the Project.** Developer covenants and agrees to obtain from the City a certificate of occupancy for the Project by **December 31, 2021**.
- (c) **Operate the Project.** Developer covenants and agrees during the Term of this Agreement to keep open the Project located on the Property.
- (d) **Job Creation and Retention.** Developer covenants and agrees by **December 31, 2021**, and through the Term of this Agreement to employ and retain a minimum of thirty

(30) Full-Time Employment Positions working on the Property. Developer covenants and agrees beginning on **December 31, 2021**, and annually thereafter during the Term of this Agreement, Developer shall deliver to the County an annual compliance verification signed by a duly authorized representative of Developer that shall certify the number of Full-Time Equivalent Employment Positions, and shall disclose and certify the average wage for all Full-Time Equivalent Employment Positions (the "Annual Compliance Verification"). Developer covenants and agrees beginning on **December 31, 2021** and annually thereafter during the Term of this Agreement, there will be a total of ten (10) Annual Compliance Verifications due and submitted to the County covering the Full-Time Employment Positions created and maintained during the Term of this Agreement. All Annual Compliance Verifications shall include quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports. In addition, Developer covenants and agrees beginning on **December 31, 2021**, and during the Term of this Agreement, Developer shall deliver to County an annual compliance verification signed by a duly authorized representative of Developer that shall certify the following:

- (1) the taxable appraised value of the Property and Personalty located on the Property for the applicable tax year; and
  - (2) the ad valorem taxes paid to the County for the Property and Personalty located on the Property for the applicable tax year.
- (e) **Payment of Ad Valorem Taxes.** Developer shall pay by January 31<sup>st</sup> of each year during the Term of this Agreement all the ad valorem taxes due for the previous year on the Personalty and Property. Developer shall have the right to contest the appraised value of the Personalty and Property as provided by law.
- (f) **Performance.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between Developer and the County.

#### **SECTIONS. OBLIGATIONS OF COUNTY.**

County covenants and agrees with Developer that, while this Agreement is in effect, it shall comply with the following terms and conditions:

##### **(a) Program Grant Payment.**

- (1) Ad Valorem Taxes. During the Term of this Agreement, should Developer fail to maintain the following: (1) a Certificate of Occupancy as required by Section 4(b) of this Agreement; and (2) the minimum Full-Time Employment Positions working at the Property as required by Section 4(d) of this Agreement, then the County shall have no obligation to make a Program Grant Payment to Developer for the applicable tax year. The failure of Developer to satisfy the above-mentioned requirements for any tax year during the Term of this Agreement shall not prevent Developer from receiving a Program Grant Payment

in future tax years consistent with this Agreement.

In the event, during the Term of this Agreement, Developer satisfies the requirements contained in Section 4(b) and 4(d) of this Agreement, and the initial investment by Developer for the Property and Personalty located on the Property and the tax value of Personalty relocated to the Property by Developer is at least a combined **Six Million and No/100 Dollars (\$6,000,000.00)**, the County shall make a Program Grant Payment to Developer based upon the following percentages:

<b>Tax Year</b>	<b>Percentage of County Ad Valorem Taxes Reimbursed</b>
2021	100%
2022	90%
2023	80%
2024	70%
2025	60%
2026	50%
2027	40%
2028	30%
2029	20%
2030	10%

Notwithstanding the foregoing, the County shall have no obligation to pay Developer any Program Grant Payment until receipt of the Annual Compliance Verification required pursuant to Section 4(d) of this Agreement. The County covenants and agrees to provide the Program Grant Payment to Developer within thirty (30) days following receipt of the latter of: (1) ad valorem taxes paid to the County for the Property and Personalty; and (2) the Annual Compliance Verification.

- (b) **Performance.** County agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Developer and County.
- (c) **Limited Reimbursement.** The Percentage of County Ad Valorem Taxes Reimbursed applies only to the Project addition including new Personalty and not to any existing improvements, Personalty and the real estate.

#### **SECTION 6. CESSATION OF ADVANCES.**

If County has made any commitment to make any advance of financial assistance to Developer, whether under this Agreement or under any other agreement, the County shall have no obligation to advance or disburse any financial assistance if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

## SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or the County to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or County to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and County is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the County by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the County to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from County and/or Hopkins County Central Appraisal District is an Event of Default.

## SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

Failure of either party to comply with or perform any term, obligation or condition of this Agreement shall constitute an Event of Default. The non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to begin to cure said default. Should said default remain uncured, the non-defaulting party shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default. In the event Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the aggregate total of all financial assistance provided by the County to Developer pursuant to Section 5 of this Agreement, shall become immediately due and payable by Developer to the County.

## SECTION 9. INDEMNIFICATION.

Developer shall indemnify, save, and hold harmless County, its directors, officers, agents, attorneys, and employees (collectively, the "Indemnitees") from and against: (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnatee if the claim, demand, action or cause of action directly or indirectly relates to tortious interference with contract or business interference, or wrongful or negligent use of

County's financial assistance by Developer or its agents and employees; (ii) any administrative or investigative proceeding by any governmental authority directly or indirectly related, to a claim, demand, action or cause of action in which County is a disinterested party; (iii) any claim, demand, action or cause of action which directly or indirectly contests or challenges the legal authority of County or Developer to enter into this Agreement and related issues; and (iv) any and all liabilities, losses, costs, or expenses (including reasonable attorneys' fees and disbursements) that any Indemnitee suffers or incurs as a result of any of the foregoing; provided, however, that Developer shall have no obligation under this Section to County with respect to any of the foregoing arising out of the gross negligence or willful misconduct of County or the breach by County of this Agreement. If any claim, demand, action or cause of action is asserted against any Indemnitee, such Indemnitee shall promptly notify Developer, but the failure to so promptly notify Developer shall not effect Developer's obligations under this Section unless such failure materially prejudices Developer's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. If requested by Developer in writing, as so long as no Default or Event of Default shall have occurred and be continuing, such Indemnitee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Developer to participate in such contest. Any Indemnitee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Developer may be liable for payment of indemnity hereunder shall give Developer written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Developer's concurrence thereto.

#### SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hopkins County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Hopkins County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. County warrants and represents that the individual executing this Agreement on behalf of County has full authority to execute this Agreement and bind County to the same. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this





Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of Three percent (3%), not later than the 120<sup>th</sup> day after the date the County notifies Developer of the violation of Chapter 2234 of the Texas Government Code.

- (m) In accordance with Section 2270.002 of the Texas Government Code (as added by Tex. H.B. 89, 85<sup>th</sup> Leg., R.S. (2017)), the Developer verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (n) In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S.B. 252, 85<sup>th</sup> Leg., R.S. (2017)), the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 803.051, 807.051, or 2252.153 of the Texas Government Code.

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**COUNTY:**

**HOPKINSCOUNTY, TEXAS**

A Texas political subdivision

By: Robert Newsom  
Robert Newsom, County Judge  
Date Signed: 11-23-2020

**ATTEST:**

Tracy Smith  
Tracy Smith, County Clerk



**STATE OF TEXAS**

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**COUNTY OF HOPKINS**

This instrument was acknowledged before me on the day of November 23, 2020 by Robert Newsom, County Judge of Hopkins County, Texas, a Texas political subdivision, on behalf of said political subdivision.

Donna L. Goins  
Notary Public, State of Texas

