CITY COUNCIL SPECIAL MEETING

Monday, March 20, 2023

Notice is hereby given that the City Council of the City of Big Spring, Texas will meet in Special Session on Monday, March 20, 2023, at 12:00 PM at the City Council Chambers Located at 307 East 4th Street, Big Spring, Texas. **We welcome the public to attend the meeting via telecommunication. Citizens will be able to view the City Council Meeting on Our Local Channel 17 through Suddenlink or on Our Website http://mybigspring.com/224/Channel-17-Live.**

CITY COUNCIL MEETING ETIQUETTE

Gentlemen are requested to remove their hats inside the City Council Chambers. As a courtesy to those in attendance, please place your cell phone on "Silent" or "Vibrate." Please, no talking during the meetings. Take all conversations outside so that others can hear.

Thank you!

Open Session

1. Call to Order		Moore

Consent Items

2. Final Reading an Ordinance Amending Ordinance Number 038-2022 Which Adopted the Annual Operating Budget for the City of Big Spring, Texas for the Fiscal Year Beginning October 1, 2022, and Ending September 30, 2023, Increasing the Operating Account for the Airpark Master Plan Project by Transferring from a Capital Account to Operating Funds for the Purpose of Funding the Master Plan Effort in its Entireity; Providing for Repeal of Ordinances in Conflict Herewith; Providing for Publication; and Providing an Effective Date	3-6	Feeley

New Business

3. Discussion and Possible Action Regarding the Real Estate Purchase Agreement for 1801 West I-20 and the Economic Development Incentive Agreement with 3-D Development, LLC	7-53	Moore

4.	Discussion and Possible Action Regarding the Expiration of the SAFER Grant, and the Number of Civil Service Positions for Firefighters and the Big Spring Fire Department		Moore
5.	First Reading of an Ordinance of the City Council Amending Chapter 2 of the Code of Ordinances Entitled "Administration," Article III, Entitled "Officers and Employees," Section 2-57 Entitled "Adoption of Civil Service for Firefighters and Civil Service Positions," Subsection (c) by Reducing by Attrition Only Firefighters; Providing for Severability; and Providing an Effective Date	54-55	Hagen

Council Input

The City Council reserves the right to meet in executive session on any agenda item should the need arise pursuant to Chapter 551, Subchapter D of the Texas Government Code, or the Texas Disciplinary Rules of Professional Conduct.

I hereby certify that this agenda was posted on the official bulletin board at the City of Big Spring, City Hall Building, located outside 310 Nolan Street. Given by order of the City Council and Posted on Friday, March 17, 2023 at 11:30 a.m. in accordance with Title 5, Texas Government Code and Chapter 551.

In addition, this agenda and supporting documents are posted on the City of Big Spring's Website, www.mybigspring.com, in accordance with legal requirements.

Tami L. Davis, City Secretary

THE MEETING FACILITY IS ACCESSIBLE TO DISABLED PERSONS. ANY DISABLED PERSON NEEDING SPECIAL ACCOMMODATION OR A HEARING IMPAIRED PERSON WISHING TO HAVE AN INTERPRETER SHOULD REQUEST SERVICES AT LEAST 48 HOURS PRIOR TO THE SCHEDULED MEETING BY CONTACTINGTAMI DAVIS AT 432-264-2513 OR EMAIL: TDAVIS@MYBIGSPRING.COM.

CITY OF
Big Spring

MEMORANDUM

Date:	March 10, 2023
To:	Mayor Moore, Big Spring City Council Members and Todd Darden, City Manager
From:	Mike Feeley A.A.E., Airport Director
Re:	Ordinance requesting support to transfer available resources in the Airpark Budget to fund a proposed grant increase to facilitate the completion of sponsor requested/state supported items in the Master Plan Grant Project

Staff received a request from the Texas Department of Transportation (TXDOT) on March 1, 2023, advising staff that TXDOT had finalized a fee negotiation with our Airport Consultant that resulted in an increase of project costs culminating in an increase of City of Big Spring share by $77,900.00 dollars. The original projects costs were estimated to be $365,000 on a 90/10 cost share making the City of Big Spring participation to be an estimated $36,500.

The project scope of the cost share work includes:

Airport Layout Plan (ALP) Update Including Height Hazard Ordinance and Property Map, the general description being:

- Develop/update the Airport Layout Plan (ALP) update with narrative consistent with the most current FAA Advisory Circulars and Standard Operating Procedures
- Develop a Capital Improvement Plan, including a recommended phasing plan and financial overview that considers local, state, federal, and alternative funding sources.
- Prepare and update the Airport Property Map (APM) consistent with the most current FAA Advisory Circulars and Standard Operating Procedures
- Establish attainable goals for airport improvements and development based on forecast for aviation demand and critical aircraft.
- Develop a Height Hazard Zoning Map incorporating the airports Federal Aviation Regulations (FAR) Part 77 surfaces.

As part of the scope of the project TXDOT approved the addition of project line items that were not eligible for state funding participation but were deemed to be essential by city staff, the consultant and TXDOT staff as part of the revitalization of McMahon-Wrinkle Airports administrative requirements as are required by the FAA Airport Assurances. The line items were added to the city's RFQ so that once our consultant was selected, we could move forward with the work using the same consultant selected in the TXDOT process and approved by the State Aviation Commission. Those line items include:

- Airport Lease Rate and Schedule of Rates and Charges
- Airport Rules and Regulations
- Airport Minimum Standards
- Airport Land Use Compatibility Study
- Updating the Storm Water Pollution Prevention Plan (SWPPP)
- Updating the Spill Prevention, Control and Countermeasure Plans (SPCC)

To recap the original project cost was estimated to be $365,000.00 with 90% from TXDOT totaling $328,000.00 and the City of Big Spring share at 10% totaling $36,500.00. After the fee negotiation with the consultant and the addition of the add-in line items the total project cost is now $442,900.00 with an additional City of Big Spring obligation of $77,900.00.

Staff is in support of this Ordinance.

ORDINANCE NO. _______

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING ORDINANCE NUMBER 038-2022 WHICH ADOPTED THE ANNUAL BUDGET FOR THE CITY OF BIG SPRING, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2022 AND ENDING SEPTEMBER 30, 2023 BY INCREASING THE OPERATING ACCOUNT FOR THE AIRPARK MASTER PLAN PROJECT BY TRANSFERRING FROM A CAPITAL ACCOUNT TO OPERATING FUNDS FOR THE PURPOSE OF FUNDING THE MASTER PLAN EFFORT IN IT'S ENTIREITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS the City Council adopted the annual 2022-23 budget for the City of Big Spring, Texas on September 27, 2022 ("Budget"); and

WHEREAS Airpark budgeted funds under Buildings – Special Projects to provide resources for participating in the development of a new hangar by the Hangar 25 Museum. The Hangar 25 Board has made the decision to not pursue the additional hangar and the board desires to repair the existing Hangar 25 doors. Staff intends to bring forward a proposed budget item in the next fiscal year to address the Hangar 25 Door Project as a result the currently budgeted funds for the additional hangar will not be utilized in this fiscal year as a result Airpark is requesting to transfer from the capital account to operating to provide the resources necessary for the City of Big Spring match associated with the TxDOT Master Planning Project.; and

WHEREAS the City Council desires to authorize the transfer of available resources from capital to provide funds for the City of Big Spring match associated with the TxDOT Master Planning Project.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS:

SECTION 1. The Airpark Fund Budget of the Annual Budget for the City of Big Spring, Texas for the Fiscal Year beginning October 1, 2022 and ending September 30, 2023 is hereby increasing the amount of $77,900.00 to the operating account number 410-021-610-5521-3 (Master Plan - Airpark) and decreasing the same amount from the capital account number 410-021-610-6201 (Buildings – Special Projects) for the purpose of providing the City of Big Spring match associated with the TxDOT Master Planning Project.

SECTION 2. The remaining portions of Ordinance Number 038-2022 shall remain in full force and effect.

SECTION 3. Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the reminder of this ordinance shall not be affected thereby.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 5. The City Secretary is hereby authorized and directed to cause the publication of this ordinance in accordance with law.

SECTION 6. This ordinance shall be in full force and effective from and after its publication as required by law.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the **14th** day of **March, 2023** with all members of the Council voting "aye" for the passage of same.

PASSED AND APPROVED on second reading at a special meeting of the City Council on the **20th** day of **March, 2023** with all members of the Council voting "aye" for the passage of same.

____
Robert H. Moore III, Mayor

ATTEST:

____
Tami L. Davis, City Secretary

REAL ESTATE PURCHASE AGREEMENT

Big Spring, Texas

THIS REAL ESTATE PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the Effective Date (being the date of last execution hereof by the parties), by and between the City of Big Spring, a home-rule Texas municipal corporation (the "Seller"), and 3-D Development, LLC. a Kentucky limited liability company (the "Buyer"). The Title Company (as defined below) joins the execution of this AGREEMENT for the sole purpose of acknowledging its obligations under Section 3 hereof.

FOR GOOD AND VALUABLE CONSIDERATION, including without limitation the covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. SALE AGREEMENT; PROPERTY. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, on the terms hereinafter stated, a certain 11.06 +/- acre parcel of land (Geo ID B4450000100, Property ID R000006787) located at 1801 West I-20 Frontage Road, in Howard County, Big Spring, Texas 79720, the legal description of which will be generated in conjunction with a survey of such parcel, together with all improvements and fixtures located thereon, if any, and all rights, easements, and other interests appurtenant thereto (collectively, the "Property"), subject only to the Permitted Exceptions (as defined in Section 8.1 below). A general depiction of the Property is attached hereto as Exhibit A.

2. PURCHASE PRICE. The purchase price to be paid by Buyer to Seller for the Property is Nine Hundred Thousand and No/100 Dollars ($900,000.00) (the "Purchase Price"), payable as follows:

2.1 Earnest Money. Upon Seller's execution of this Agreement and delivery thereof to Buyer (by mail, facsimile, or email), Buyer shall deposit Twenty Thousand ($20,000.00 in current U.S. funds (the "Earnest Money") with the Title Company (defined below) to be applied against the Purchase Price at Closing (as defined below) or otherwise disposed of pursuant to the terms of this Agreement.

2.2 Cash Payment. At Closing, Buyer shall pay to Seller the balance of the Purchase Price, subject to adjustment as hereinafter provided, in immediately available current U.S. funds.

3. ESCROW OF EARNEST MONEY.

3.1 Release of Funds. The Title Company will deliver the Earnest Money under the following conditions:

i. to Seller upon final Closing;

ii. to Buyer upon the Title Company's receipt of signed, written notice from Buyer on or before the expiration of the Inspection Period (as defined below) of Buyer's election to terminate this Agreement; or

iii. to Buyer or Seller, as applicable, upon the Title Company's receipt of written demand therefor based upon the other party's default (the "Defaulting Party") and failure to timely cure (a "Default EM Demand"), along with the facts underlying such default; provided that, the Title

Company shall not honor the Default EM Demand unless and until five (5) business days after the Title Company provides a copy of the same to the Defaulting Party, as set forth in Section 3.2 below, and the Defaulting Party either (a) expressly consents in writing to delivery of Earnest Money in accordance with the Default EM Demand or (b) fails to timely provide a Notice of Objection (as defined and addressed below).

3.2 Objection to Release. Within two (2) business days of the receipt by the Title Company of a Default EM Demand, the Title Company shall send a copy thereof to the Defaulting Party. The Defaulting Party may object to the Default EM Demand by sending written notice thereof (the "Notice of Objection") to the Title Company within five (5) business days of receipt of the Default EM Demand. Upon the timely receipt of a Notice of Objection, the Title Company shall promptly, within two business days, send a copy thereof to the demanding party and thereafter hold the Earnest Money until (i) the Title Company receives written instruction from Seller and Buyer directing the disbursement of the Earnest Money, or (ii) in the event of litigation between Seller and Buyer, the Title Company shall deliver the Earnest Money to the clerk of the court in which said litigation is pending.

3.3 Limitation of Liability of Title Company. The Title Company may act upon any instrument or other writing it reasonably believes to be genuine and signed and presented under proper authority and shall not be held liable in connection with any such action, except in the case of the Title Company's willful default or gross negligence. Buyer and Seller jointly and severally agree to indemnify and hold the Title Company harmless from all loss, liabilities, cost, and expenses arising from its compliance with this Section 3, including, without limitation, reasonable attorneys' fees and court costs.

4. TITLE AND SURVEY REVIEW.

4.1 Title Commitment. As soon after the Effective Date as reasonably possible, Buyer shall obtain a commitment for the issuance by National Commercial Services Colorado , 1401 17th Street, Suite 480, Denver, CO 80202, (the "Title Company", Contact: Teresa Hott, telephone: 303.291.9984; email: Teresa.hott@fnf.com) of an ALTA owner's title insurance policy, with extended coverage, insuring title to the Property to be good and marketable fee simple (the "Commitment"), together with legible copies of all recorded documents constituting exceptions under the Commitment (Collectively, the "Exception Documents")

4.2 Prior Title Policy. Within 10 days after the Effective Date, Seller shall forward to the Title Company copies of any prior issued title insurance policies in Seller's possession or control, which cover any part of the Property.

4.3 Survey. As soon after the Effective Date as reasonably possible, Buyer shall obtain a current survey of the Property (the "Survey") prepared by a registered professional land surveyor designated by Buyer, in conformance with the ALTA Standards and Buyer's then current survey requirements. The delivery of a survey which does not meet the requirements of this Section 4.3 will not constitute delivery or receipt of the Survey hereunder.

4.4 Title and Survey Objections; Cure Period. After Buyer's receipt of the last of the Commitment, Exception Documents and Survey, Buyer shall give written notice to Seller of any matters contained therein to which Buyer objects, has comments or wants additional information on, and any pre-Closing requirements (the "Title Objection Letter"). Seller shall have until Closing to cure objections set forth in the Title Objection Letter

Seller's initials: ________ Buyer's initials: ________

and shall exercise reasonable efforts in doing so; provided that, in any event, Seller shall be obligated, at Closing, to (i) remove exceptions relating to monetary or other liens which may be removed upon the payment of money, (ii) satisfy Seller's requirements under the Commitment; and (iii) provide the deliverables set forth in Section 8 below). If an objection is not timely cured or requirement timely satisfied, in addition to any other remedies available hereunder, Buyer shall have the option to either (a) waive the same, (b) postpone closing until such objection is cured or satisfied as mutually agreed by Buyer and Seller or (c) terminate this Agreement and receive a refund of the Earnest Money (along with any interest earned thereon), in which event both parties will be relieved of any further liability hereunder (except as otherwise expressly provided herein).

5. DUE DILIGENCE; BUYER'S INSPECTION PERIOD.

5.1 Seller's Due Diligence Deliveries. Within 10 days after the Effective Date, Seller shall deliver to Buyer all plans, engineering or environmental reports, surveys and records, in Seller's possession or control, which relate to the ownership, development, operation or condition of the Property or any part thereof. Upon termination of this Agreement other than through Closing, Buyer shall promptly return the same to Seller. Also within 10 days after the Effective Date, Seller shall deliver to Buyer a draft ordinance (or resolution), or in the alternative a written opinion from the Seller's City Attorney or Chief Legal Officer, describing the legal basis for the Seller's authority to sell the Property to the Buyer upon final Closing.

5.2 Inspection. Seller agrees that Buyer, its representatives and agents, will be permitted a period of One Hundred and Eighty (180) days, commencing on the Effective Date (the "Inspection Period"), within which to enter upon and inspect the Property and to conduct, at Buyer's expense, any and all feasibility, environmental, or other studies, analyses or examinations of the Property as Buyer deems necessary or desirable, and to satisfy itself with regard to zoning and permitting issues, availability of utilities, and all other matters related to the Property and/or Buyer's development thereof. Buyer shall have the option to extend the Inspection Period for Two (2) additional Sixty-day (60) periods, with each such additional period being deemed a part of the "Inspection Period" (each an "Extension Option"). To exercise an Extension Option, Buyer shall provide written notice thereof to Seller and, in each such event, Five Thousand Dollars ($5,000.00) of the Earnest Money (to be applied against the Purchase Price in the event of Closing) will be deemed non-refundable (except in the event the Closing does not occur due to Seller's default or wrongful refusal to close) and immediately released to Seller by the Title Company. If during the Inspection Period (as extended, as the case may be) Buyer, in its sole and absolute discretion, determines that the Property is unsatisfactory in any respect, Buyer shall have the option to terminate this Agreement by written notice to Seller. In such event, Buyer shall repair any material damage to the Property caused by Buyer in the exercise of its rights under this Section 5 and the Earnest Money (excluding any portion previously released to Seller), along with any interest earned thereon, shall immediately be returned to Buyer and both parties will be relieved of all obligations hereunder (except as otherwise expressly provided herein). Buyer agrees to indemnify and hold Seller harmless from all claims or costs arising or resulting from Buyer's inspections pursuant to this Section 5. This obligation shall survive any termination of this Agreement.

6. SELLER'S WARRANTIES. Seller, represents and warrants the following as of the Effective Date and the Closing:

6.1 Authority of Seller. Seller has full power and authority to execute, deliver and perform under this Agreement pursuant to Tex. Loc. Gov't Code, Section 272.001(a), and such execution, delivery and performance have been specifically authorized by all requisite organizational action of Seller and in accordance with Texas

Seller's initials: ________ Buyer's initials: ________

law. Upon full execution, this Agreement will be valid and binding upon Seller, and enforceable against Seller in accordance with its terms.

Seller's initials: ________ Buyer's initials: ________

6.2 No Violations/Conflicts. The execution by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not and will not (a) conflict with or result in a breach of any of the terms or provisions of (i) any bond, debenture, note or other evidence of indebtedness, or (ii) any contract, indenture, mortgage, loan agreement, lease, joint venture or other agreement or instrument to which Seller is a party or by which Seller or the Property is bound; or (b) result in any violation of any governmental requirement, ordinance, regulation, law or statute.

6.3 Eminent Domain. To the best of Seller's knowledge, there are no pending or threatened governmental proceedings in eminent domain, for rezoning, for building moratorium or otherwise, which would affect the Property.

6.4 Litigation. There are no legal actions, suits or other legal or administrative proceedings or investigations pending or threatened against Seller or the Property, and Seller is not aware of any facts that might result in any such action, suit, investigation, or other proceeding.

6.5 Bankruptcy. Seller has not: (i) filed any voluntary or had involuntary filed against it in any court or with any governmental body pursuant to any statute either of the United States or of any State, a petition in bankruptcy or insolvency or seeking to effect any plan or other arrangement with creditors, or seeking the appointment of a receiver; (ii) had a receiver or conservator, or liquidating agent or similar person appointed for all or a substantial portion of its assets;(iii) suffered the attachment or other judicial seizure of all, or substantially all of its assets; (iv) given notice to any person or governmental body of insolvency; or (v) made an assignment for the benefit of its creditors to taken any other similar action for the protection or benefit of its creditors. Seller is not insolvent and will not be rendered insolvent by the performance of its obligations under this Agreement.

6.6 Taxes and Assessments. Except regarding ad valorem taxes which are not yet delinquent, no claim or liability is pending or has been assessed or asserted against Seller or the Property in connection with any ad valorem taxes, special assessments or other impositions, including without limitation personal property taxes.

6.7 No Agreements or Commitments. Except as disclosed in writing to Buyer prior to the Effective Date, Seller has not entered into (i) any agreement, lease, option, right of first refusal, commitment or arrangement granting to any person or entity, other than Buyer, the present or future right to purchase, occupy, lease or otherwise acquire an interest in the Property or any part thereof, (ii) any agreement, commitment or arrangement regarding the development of the Property or any part thereof and from the Effective Date through Closing, Seller will not enter into any such agreement or arrangement or any service agreement affecting the Property or any part thereof, without Buyer's prior written approval.

6.8 Governmental Action/Requirement. Seller has not received notice of any violation of any ordinance, regulation, law or statute from any governmental agency pertaining to the Property, or any part thereof, and to the best of Seller's knowledge, no governmental or quasi-governmental authority has imposed any requirement that a developer of the Property pay, whether directly or indirectly, any special fees or contributions, or incur any expenses or obligations, in connection with any development of the Property, or any part thereof.

~~6.9~~ Independent Parcel. To Seller's knowledge, the Property is an independent parcel which does

Seller's initials: ________ Buyer's initials: ________

not rely on any drainage, sewer, access, structural or other facilities located on any property other than thee

Property: (i) to fulfill any zoning, building code or other municipal or governmental requirement, (ii) furnish the ~~e~~ Property any utilities, or (iii) fulfill the requirements of any agreement affecting the Property.

~~6.10~~6.9 Environmental. See Exhibit D for Seller's Disclosure. Other than the information in Exhibit D, to the best of Seller's knowledge:

(i) No Hazardous Materials (as defined herein) are now located on, under or at the Property, and neither Seller nor any other person has ever caused or permitted any Hazardous Materials to be placed, held, located, or disposed of on, under or at the Property.

(ii) No part of the Property contains any asbestos or asbestos containing materials, any polychlorinated biphenyls ("PCBs"), or any underground storage tanks ("USTs") or has ever been used as a dump site or storage site (whether permanent or temporary) for any Hazardous Materials.

(iii) No property adjoining the Property is being used or has been used at any previous time for the disposal, storage, treatment, processing, or other handling of Hazardous Materials nor is any other property adjoining the Property affected by Hazardous Materials contamination.

(iv) No investigation, administrative order, consent order and agreement, litigation, or settlement with respect to Hazardous Materials or Hazardous Materials contamination is proposed, threatened, anticipated or in existence with respect to the Property.

As used herein, "Hazardous Materials" means those elements or compounds, including, but not limited to asbestos, petroleum products and PCBs, which are now or at any time hereafter contained in the list of hazardous substances adopted by the Environmental Protection Agency ("EPA") or the list of toxic pollutants designated by Congress or the EPA or which are defined as hazardous, toxic, pollutant, flammable, infectious or radioactive by any of the Environmental Laws. "Environmental Laws" means any federal, state, or local laws, ordinances, statutes, codes, rules, regulations, orders, or decrees now or hereinafter promulgated relating to (a) pollution; (b) protection of human health, natural resources or the environment; (c) the treatment, storage or disposal of Hazardous Materials; or (d) the emission, discharge, release, or threatened release of Hazardous Materials into the environment.

~~6.11~~6.10 Wetlands. To Seller's knowledge, no part of the Property is wetlands property.

The foregoing representations and warranties will survive the Closing, will not be merged into the documents executed at or in conjunction with the Closing, and will not be affected by an investigation, verification, or approval by a party.

7. TIME AND PLACE OF CLOSING. Subject to Section 15 the consummation of the transaction contemplated by this Agreement (the "Closing") shall take place within Thirty (30) days of the end of the Inspection Period (as extended, as the case may be), with the exact time and date for Closing to be designated by Buyer upon not less than 2 business days prior notice (which may be provided in writing or by telephone), subject to the reasonable approval of Seller. The Closing will take place at the offices of the Title Company (whether in person or as a "paper closing", as each party elects) or at such other place as may be agreed to by Buyer and Seller.

Seller's initials: ________ Buyer's initials: ________

8. SELLER'S DELIVERIES AT CLOSING. At Closing, Seller shall deliver to Buyer or the Title Company, as applicable, the following:

8.1 Deed. A duly executed and acknowledged original Special Warranty Deed conveying to Buyer marketable fee simple title to all of the Property (the "Deed") free of all liens and encumbrances and defects in title other than those acceptable to Buyer under Section 4.4 above (the "Permitted Exceptions"). The Deed will be in form prepared by Buyer, subject to the reasonable approval of Seller. If required by applicable homestead or other law, the Title Company or local recording requirements, any individual Seller shall cause his/her spouse to execute the Deed.

8.2 Lien and Possession Affidavit(s). An Affidavit or Affidavits executed by Seller, to the effect that (i) the Property is free from claims for mechanics', materialmen's and laborers' liens and (ii) there are no parties in possession of the Property or any part thereof, with such Affidavit(s) to be in form acceptable to the Title Company and sufficient to permit deletion of the pertinent standard exceptions.

8.3 FIRPTA. An affidavit executed by Seller, in the form required by law, that Seller is not a "foreign person" as defined in the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), Section 1445 of the Internal Revenue Code, as amended from time to time.

8.4 Possession. Possession of the Property.

8.5 Closing Statement. The closing statement, prepared by the Title Company, reflecting the financial terms of the transaction contemplated by this Agreement (the "Closing Statement"), executed by Seller.

8.6 Intentionally Deleted.

8.7 Authorizing Ordinance (or Resolution); Meeting Minutes. An ordinance (or resolution) approved by the Seller's governing body at a public meeting noticed and conducted in accordance with Texas Open Meetings Act, and executed by its Mayor, authorizing the sale and conveyance of the Property in accordance with Texas law and the Seller's charter, along with a copy of the approved or otherwise certified minutes of the public meeting where such approval and authorization occurred.

8.8 Further Instruments. Any and all further instruments which Buyer or the Title Company shall reasonably request of Seller in order to meet requirements of the Commitment or to otherwise effect the conveyance of the Property as contemplated in this Agreement.

9. BUYER'S DELIVERIES AT CLOSING. At Closing, Buyer shall deliver to Seller (i) the remainder of the Purchase Price, subject to proration and adjustment, as provided herein; (ii) the Closing Statement, executed by Buyer; and (iii) any and all further instruments which Seller or the Title Company shall reasonably request of Buyer in order to meet requirements of the Commitment or to otherwise effect the conveyance of the Property as contemplated in this Agreement.

10. **CLOSING COSTS.** The Closing costs of this transaction will be allocated as follows:

BUYER	COST OR EXPENSE	SELLER
	Seller's attorney's fees, if any	X
X	Buyer's attorney's fees, if any	
x	Commitment / Title Policy premium	
X	Survey, as revised	
	Documentary stamps, transfer taxes or fees, if any	X
	Recording fees to clear / un-encumber title	X
X	Recording fees for deed	
½	Title Company closing or escrow charges	up to $250.00

11. **BROKERAGE.** Buyer represents that it has not dealt with any real estate broker, salesperson, or finder, in connection with the transactions contemplated by this Agreement, on its behalf, other than Lamar E. Lawson of (Lawson Commercial Realty Inc.), the "Buyer's Broker". Seller represents that it has not dealt with any real estate broker, salesperson or finder, in connection with the transactions contemplated by this Agreement. All broker fees and commissions owed to Buyer's Broker in connection herewith, totaling 5% of the Purchase Price, shall be paid at Closing by Buyer. Buyer agrees to indemnify, defend, and hold harmless Seller from and against any and all liabilities and claims for commissions and fees by persons purporting to have acted on Buyer's behalf in regard to the Agreement, other than Buyer's Broker. Seller agrees to indemnify, defend, and hold harmless Buyer from and against any and all liabilities and claims for commissions and fees by Buyer's Broker and any persons purporting to have acted on Seller's behalf in regard to the Agreement. The obligations of this Section 11 shall survive the Closing.

12. **DEFAULT AND REMEDIES.**

12.1 Buyer's Default - Seller's Remedy. If Buyer defaults in its performance hereunder (except as excused by Seller's default) and fails to cure such default within 10 days after receipt of written demand therefore from Seller, then Seller shall have the exclusive option to either (i) waive the default; or (ii) terminate this Agreement by written notice to Buyer and upon such termination Seller shall be entitled to receive the Earnest Money (along with any interest earned thereon) as liquidated damages and not as a penalty, it being specifically agreed that the actual damages to Seller as a result of Buyer's default would be difficult or impossible to ascertain. Upon such termination and receipt of the Earnest Money, the parties will be discharged from any further obligations and liabilities hereunder (except as otherwise expressly provided herein).

~~12.2~~ Seller's Default - Buyer's Remedy. If Seller defaults in its performance hereunder (except as excused by Buyer's default) and fails to cure such default within 10 days after receipt of written demand therefore from Buyer, or in the event any of Seller's representations or warranties are found to be false in any material respect, Buyer shall have the option to (i) seek specific performance; (ii) waive such default; or (iii) terminate this Agreement by written notice to Seller and upon such termination the Earnest Money (along with any interest earned thereon) shall be returned to Buyer and Buyer may, if it so elects, pursue against Seller any and all available remedies, including but not limited to damages in an amount not to exceed Buyer's Cost (as defined herein). For purposes of this Section 12.2, "Buyer's Cost" shall mean all expenses, if any, actually incurred by Buyer (a) in obtaining the Commitment and Survey, including any attendant expenses for related municipal or other searches; (b) in exercising its rights under Section 5 above regarding Buyer's due diligence and

Seller's initials: ________ Buyer's initials: ________

inspection of the Property, including without limitation, the cost of any environmental studies or assessments, engineering reports, site development plans, traffic studies, or other investigations or testing; and (c) in utilizing third parties in relation to the negotiation of this Agreement and/or under Section 4 or Section 5, and expressly including without limitation, reasonable and necessary fees incurred for services provided by engineers, consultants and attorneys. The Seller agrees this Agreement constitutes a "contract" as defined by Tex. Loc. Gov't Code Section 271.151(2)(A) and "Buyer's Cost" shall qualify as a balance due and owed by the Seller under this Agreement in accordance with Tex. Loc. Gov't Code Section 271.153.

13. INDEMNITY. To the greatest extent allowed by Texas law, the Seller agrees to defend, indemnify and to hold Buyer harmless from any claim, action, demand, judgment, cost and expense (including without limitation, reasonable attorneys' fees) (i) arising or resulting from Seller's breach of any term, agreement, representation, warranty, or covenant in this Agreement or (ii) related to the Property, to the extent arising or relating to an event occurring prior to the date of Closing, no matter when the same is instituted (*i.e.* prior to or after the date of Closing), whether in tort or contract, and whether the same be filed in court or not. The foregoing indemnification obligation is in addition to any other indemnity obligations under this Agreement and shall survive the Closing or earlier termination of this Agreement. Buyer agrees to defend, indemnify and to hold Seller harmless from any claim, action, demand, judgment, cost and expense (including without limitation, reasonable attorneys' fees) (i) arising or resulting from Buyer's breach of any term, agreement, representation, warranty, or covenant in this Agreement or (ii) related to the Property, to the extent arising or relating to an event occurring after the date of Closing, whether in tort or contract, and whether the same be filed in court or not. The foregoing indemnification obligation is in addition to any other indemnity obligations under this Agreement and shall survive the Closing or earlier termination of this Agreement,

14. CASUALTY LOSS; EMINENT DOMAIN; FORCE MAJEURE.

14.1 Casualty Loss; Eminent Domain. All risk of loss by fire or other casualty in relation to the Property will be on Seller up to and including the date of Closing. If eminent domain proceedings are commenced with respect to any part of the Property prior to the date of Closing, or if Buyer is advised by any authority having eminent domain powers that a condemnation of any part of the Property is contemplated, then Buyer, at its option, may (i) terminate this Agreement, in which event the Earnest Money (along with any interest earned thereon) shall be returned to Buyer and the parties will be relieved of all obligations hereunder (except as otherwise expressly provided herein); or (ii) continue this Agreement in force, in which event any condemnation proceeds received by Seller shall be immediately paid over to Buyer (or escrowed with the Title Company for the account of Buyer, if prior to Closing), which obligation of Seller will survive the Closing.

14.2 Force Majeure. If Buyer's performance under this Agreement (other than payment obligations), ability to conduct any due diligence (including, without limitation, under Section 5, above), or receipt of any permit, authorization, or similar matter is delayed by any reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, disease, pandemic, public emergency, court injunction or any circumstances which are reasonably beyond the control of Buyer (a "Force Majeure Event"), Buyer shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation, including, without limitation, the Inspection Period, shall be extended for a period of time equal to the period Buyer was delayed.

~~**15.**~~ **CONDITIONS PRECEDENT TO OBLIGATION OF BUYER TO CLOSE.** Each of Buyer and Seller acknowledge and agree that (i) the nature of Buyer's intended development of the Property requires the satisfaction of substantial due diligence including, without limitation, receipt of multiple permits, authorizations, and the like

Seller's initials: ________ Buyer's initials: ________

from governmental authorities, the timing of which is not wholly within Buyer’s control; (ii) while the time periods in this Agreement are intended to be sufficient, the date of the Closing may need to be postponed as necessary to allow the conditions below to be satisfied, provided Buyer is acting in good faith and with due diligence in pursuing the same; and (iii) the foregoing is a material consideration for Buyer to consummate the transaction contemplated by this Agreement In addition to any other conditions precedent herein, the obligation of Buyer to close under this Agreement is subject to the following:

~~15.1~~14.3 Title. Prior to Closing, Buyer shall have received and approved of a pro forma title policy, indicating the Title Company's agreement to issue, in due course, an ALTA owner's policy of title insurance including extended coverage, in form materially consistent with Buyer's title objection letter and including any endorsements thereto reasonably requested by Buyer (the "Title Policy").

~~15.2~~14.4 Performance of Obligations. Seller shall have (i) executed and delivered to Buyer or the Title Company all documents required to be delivered by Seller at Closing, (ii) taken all other action required of Seller at the Closing, and (iii) performed or observed all of the obligations and covenants of and required by Seller pursuant to this Agreement prior to or as of the Closing.

~~15.3~~14.5 Permits and Approvals. Buyer shall have received all permits, consents, and approvals from all governmental authorities having jurisdiction which may be necessary or desirable for Buyer's intended development of the Property.

~~15.4~~ Removal of Items. Seller shall have removed all personal items (except for those that constitute part of the Property), if any, from the real property constituting a part of the Property. In addition, (i) Buyer shall have no duty, liability or obligation to Seller or any third party with regard to any personal items not so removed by Seller; (ii) Buyer shall be entitled to store or dispose of any such property in any manner permitted by applicable law (and be reimbursed by Seller for expenses related thereto, upon demand, with interest accruing on amounts owed at 12% per annum until paid in full); and (iii) Seller shall defend, indemnify and hold Buyer harmless from and against any claim, liability, damage or expense related thereto, which indemnity will survive the Closing. The foregoing rights and obligations of this Section 15.4 shall survive the Closing.

If any condition precedent is not timely satisfied, Buyer shall have the right, at its option, to (i) terminate this Agreement by written notice to Seller, in which event, the Earnest Money (along with any interest earned thereon) shall be immediately returned to Buyer and both parties shall be relieved of all obligations hereunder (except as otherwise expressly provided herein), or (ii) extend the Closing as necessary to allow such condition(s) to be satisfied, provided Buyer is acting in good faith and with due diligence in pursuing the same.

~~16.~~15. PRORATION OF TAXES; ROLLBACK TAXES.

~~16.1~~15.1 In General. All general and ad valorem taxes accruing in or assessed with respect to the Property during the calendar year of the Closing shall be prorated based on such calendar year between Buyer and Seller as of the date of Closing, with Seller to have the last day. If Closing shall occur before the tax rate is fixed for the then current year, the apportionment of taxes shall be upon the basis of the tax rate of the preceding year applied to the latest assessed valuation.

~~16.2~~ Rollback Taxes; Escrow Agreement. Any and all rollback taxes or other taxes assessed against the Property covering periods prior to Closing (herein, "Additional Taxes"), irrespective of the triggering event, timing of assessment, or whether notice thereof is received prior to or after Closing, shall be the sole obligation of Seller, it being expressly agreed that, in no event, shall Buyer have any responsibility or liability for Additional Taxes, Seller shall timely pay the same and Seller shall indemnify, defend and hold Buyer harmless from any~~y~~

Seller's initials: ________ Buyer's initials: ________

claims, damages or expenses (including but not limited to attorney's fees) related thereto. If it is determined prior to Closing that the Property is or will be subject to Additional Taxes, the parties shall enter into an escrow agreement on or before Closing, which shall provide for the escrow of sufficient funds by Seller to pay any Additional Taxes. If there are inadequate funds in escrow to satisfy any Additional Taxes, Seller shall pay therein such additional funds as are necessary, within 5 days from the date Seller receives notification of an inadequacy. In the event there is a surplus of funds after Additional Taxes have been paid in full, such surplus is to be refunded to Seller.

~~16.3~~15.2 Unpaid Taxes, Assessments, and Charges. Notwithstanding anything in this Agreement to the contrary, the amount of any unpaid taxes, assessments, and other similar charges which Seller is obligated to pay and discharge may, at the option of Buyer (and subject to Seller's consent, which shall not be unreasonably withheld), be paid by Buyer out of the balance of the Purchase Price, if invoices therefor, with any interest and penalties thereon figured to the date of Closing, are furnished to or obtained by the Title Company at the Closing and the Title Company omits the same as an exception to the Title Policy.

It is expressly acknowledged and agreed that the obligations and indemnification contained in this Section 16 shall survive the Closing.

~~17.~~16. NOTICES. All notices or other communication hereunder must be in writing (except where expressly permitted otherwise) and given by personal delivery or sent by (i) registered or certified mail return receipt requested, postage prepaid, (ii) nationally recognized overnight courier service, or (iii) electronic transmission (e-mail or facsimile), addressed as follows (unless written notice of change thereof is provided):

TO SELLER:
City of Big Spring
310 Nolan Street
Big Spring, Texas 79720
tdarden@mybigspring.com
Copy to:
ahagen@mybigspring.com

TO BUYER:
3-D Development, LLC.
P.O. Box 595
LaGrange, Kentucky 40031
502-379-1201
Attn: Patrick Davis
E-mail: Patrick@3dtransparency.com
Copy to: Chris@3dtransparency.com

Notice shall be deemed received on the earlier of (i) actual receipt; (ii) 3 business days after deposit in the U.S. Mail; (iii) the first business day after deposit with an overnight courier; or (iv) if by electronic transmittal, the day of transmission, provided that the transmission is completed no later than 4:00 p.m. CT on a business day. Any notice or communication not received because of a change of address or facsimile number, without notice to the other party thereof, or refusal to accept delivery, will be deemed received, notwithstanding the same, as set forth above.

Seller's initials: ________ Buyer's initials: ________

18. <u>LIKE-KIND SECTION 1031 EXCHANGE</u>. Seller and Buyer shall each have the right to assign, in whole or in part, its rights hereunder to a ”qualified intermediary” in connection with a ”like-kind exchange”, as those terms are used pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, and agree to cooperate with the other party to the extent such transaction does not result in additional expense to the cooperating party or delay the Closing, including execution of documents reasonably requested to effectuate such exchange, provided that such documents are in a form reasonably satisfactory to the executing party, and further provided that the form of such requested documents are provided to the executing party no less than five (5) days prior to the Closing. In the event the cooperating party determines that the like-kind exchange transaction will cause it to incur additional expense or delay the Closing, such party agrees to allow the other party, at the latter's option, to (i) reimburse or compensate the cooperating party for any such additional expense and/or delay, or (ii) terminate the like-kind exchange transaction and pay all expenses of either party related thereto. Notwithstanding anything in this Agreement to the contrary, any such assignment pursuant to this <u>Section 20</u> shall not relieve the assigning party of or be deemed to modify in any way any of the assigning party's obligations, representations, warranties, or covenants in this Agreement.

19. <u>OWNER'S AUTHORIZATION</u>. Seller acknowledges that in connection with Buyer's inspection and feasibility studies regarding Buyer's intended development of the Property, Buyer may be required to submit certain applications, permit requests, or other documents with governmental authorities or agencies having jurisdiction over the Property. Accordingly, Seller shall cooperate with Buyer, at Buyer's sole expense, in connection with any such applications, permit requests, or the like and, within five (5) days following a request from Buyer therefor, Seller shall deliver an original of the Owner's Authorization in the form attached hereto as <u>Exhibit B</u>, duly executed and acknowledged by Seller, authorizing Buyer to submit such applications and documents relating to the Property on Seller's behalf. Notwithstanding the foregoing, if any applicable governmental entity or agency requires a specific form of authorization different from the Owner's Authorization attached hereto as <u>Exhibit B</u>, Seller, upon Buyer's request, shall execute and deliver such specific form to Buyer.

20. <u>MISCELLANEOUS</u>. Time is of the essence in this Agreement. This Agreement embodies the entire understanding with respect to the subject matter hereof, may not be modified except by a written instrument signed by the parties and shall be binding upon and inure to the parties, their respective successors, and assigns. The terms hereof shall not be construed in favor of or against either party but shall be construed as if Buyer and Seller jointly prepared this Agreement. If any provisions of this Agreement is held to be void or unenforceable, such provision will be deemed modified so as to conform as nearly as possible to the void or unenforceable provision while still remaining valid and enforceable, and the remaining terms of this Agreement shall not be affected. This Agreement may be executed by facsimile, electronic or original signature of the parties and in any number of counterparts, each of which (assuming no modification or alteration) will constitute an original and all of which, when taken together, will constitute one and the same instrument. It is the intent of the parties that, to the extent lawful, the laws of the State in which the Property is located govern the validity and interpretation of this Agreement. Except as otherwise provided in this Agreement, the rights of Seller can be assigned, in whole or in part, only upon the prior written consent of Buyer. Buyer may assign this Agreement, in whole or in part, provided that the assignee assumes all obligations of Buyer under this Agreement. If either party commences legal action against the other to enforce its rights hereunder, the prevailing party in such action shall be entitled to recover from the other, in addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental thereto. If the terms of this Agreement provide for performance of any act or the expiration of any time on a Saturday, Sunday or federal holiday, the due date or expiration date shall take place on the next date that is not a Saturday, Sunday or federal holiday.

21. <u>LIMITATION OF BUYER'S WARRANTIES AND REPRESENTATIONS.</u> Seller makes no warranties or representations regarding the condition of the Property except as contained in this Agreement.

22. <u>BUYER INDEMNITY OF SELLER.</u> Buyer shall indemnify and hold Seller harmless from all liability, claims, losses, damages, costs, and expenses, including attorney's fees, arising out of or resulting from the performance of any inspection or survey it or its agents perform on the Property.

23. <u>INSPECTION REPORTS.</u> Should closing of this transaction not occur for any reason, Buyer shall provide Seller with all relevant written inspection reports.

24. <u>EXHIBITS AND DOCUMENTS.</u> Exhibits A, B, C, and D, and any other document referenced in this Agreement or in its Exhibits is hereby attached and incorporated into this Agreement.

25. <u>GOVERNMENTAL IMMUNITY</u>.

25.1 Seller's execution of this Agreement represents a proprietary function of Seller (the City of Big Spring, Texas) for which Tex. Loc. Gov't Code Chapter 101 does not apply. This Agreement is a contract as defined by Tex. Loc. Gov't Code Section 271.151(2)(A) for which the Texas Legislature has expressly waived immunity from suit pursuant to Tex. Loc. Gov't Code Section 271.152 for the purpose of adjudicating a claim for breach of the contract, including specific performance, that arises out of this Agreement. Buyer's damages, if any, shall be limited in accordance with Tex. Loc. Gov't Code Section 271.153. Notwithstanding the foregoing, nothing herein prohibits the Buyer from seeking a declaratory judgment concerning the construction or validity of this Agreement pursuant to Tex. Civ. Prac. & Rem. Code Section 37.004.

25.2 Notwithstanding the limited waiver of governmental immunity stated in Section 25.1 above, the Seller (the City of Big Spring, Texas) expressly retains all other rights to and privileges of governmental immunity from suit, damages and limitations of liability and damages available to Seller in accordance with Texas law.

25.3 Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City of Big Spring which would otherwise be barred under the doctrine of governmental immunity or operation of law.

26. <u>WAIVER.</u> No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

27. <u>ANNEXATION OF PROPERTY</u>. Seller discloses to Buyer that the entire Property will be annexed to the City of Big Spring prior to closing. Buyer agrees to this condition.

28. <u>ANNEXATION OF ADJACENT PROPERTY</u>. Buyer promises as a condition precedent before closing that it or its agent or successor in interest will petition the City of Big Spring to voluntarily annex and come into an annexation agreement approved by the City regarding the following parcel of land to the incorporated city limits

Seller's initials: ________ Buyer's initials: ________

of the City of Big Spring. Property ID: R000049619; Legal Description: Acres 4.960, SC 26 BK 33 1N MARTIN SIGN COMPANY 024 BLK/TRACT BK 33 1N 4.96 ACRES ACQ 03212014, Howard County, Texas.

29. **RIGHT OF RE-ENTRY.** Notwithstanding any other provision in this Agreement, Buyer and Seller covenant that it is expressly understood and agreed that if the Property is not in operation under a certificate of occupancy as a major retail center/travel center by June 30, 2025, Seller shall have the right to reenter and assume ownership of the Property, it being the intent of Seller to convey the right, title, and interest described on a condition subsequent, save that in exercising this right, Seller must repay the purchase price to Buyer, and Seller's right to reenter shall terminate on September 5, 2025 at 11:59 PM Central Daylight Time. In the event that the condition subsequent occurs, the parties agree that each will negotiate with the other in good faith to resolve the issue.

30. **NON-BOYCOTT.** Pursuant to Chapter 2271, Texas Government Code, the Seller may not enter into a contract for goods or services unless the contract contains a written verification the contracting party; (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. By executing this Agreement, the Buyer verifies it does not boycott Israel and will not boycott Israel during the term of this Agreement.

31. **FOREIGN TERRORIST LIST.** Pursuant to Section 2252.152, Texas Government Code, the Buyer warrants, represents, and agrees the Buyer is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts as a company that engages in business with Sudan, Iran or a foreign terrorist organization.

32. **RESERVATION OF MINERAL ESTATE.** This Agreement is for the sale of the surface estate of the Property only. The Seller will retain the Mineral Estate of the Property.

32.1. "Mineral Estate" means all oil, gas, and other minerals in the Property; the exclusive right to search for oil and gas and other minerals in the Property; the right to produce the oil and gas and other minerals in the Property; an implied easement to use as much of the surface of the Property as is reasonably necessary for development of the oil and gas and other minerals, including the rights of ingress and egress; the right to lease the Mineral Estate in the Property (the executive right) to third-party lessees; and the right, as the holder of all of the interest in the Mineral Estate, to the financial benefits arising out of a future lease of the mineral rights.

32.2 The Mineral Estate owned by Seller is not conveyed in this Agreement. Seller reserves all of the Mineral Estate owned by Seller except as stated in 32.3. The excepted and reserved interest is subject to any valid, recorded oil, gas, and/or other mineral lease or leases that cover the interest reserved, but includes all delay rentals, royalties, and other rights and payments due or to become due under the terms of such lease or leases to the lessor, the lessor's heirs, successors and assigns. On termination of any or all of such leases, the interest of the lessee shall revert to Seller or Seller's heirs, successors and assigns.

32.3

Seller waives the implied easement for the surface of the Property as related to the development of the oil and gas and other minerals, including the rights of ingress and egress to the surface.

[*Signature Page to Follow*]

Seller's initials: ________ Buyer's initials: ________

EXECUTED BY THE PARTIES, to be effective as of the Effective Date.

SELLER:

By: ____

Name: Todd Darden

Title: City Manager, City of Big Spring, Texas

Date of Execution:________________, 2023

BUYER: **3-D Development LLC**.
A Kentucky Corporation

By:____

Name: Patrick Davis

Title: President/Member

Date of Execution:________________, 2023

Seller's initials: ________ Buyer's initials: ________

EXHIBIT A

A General Depiction of Property

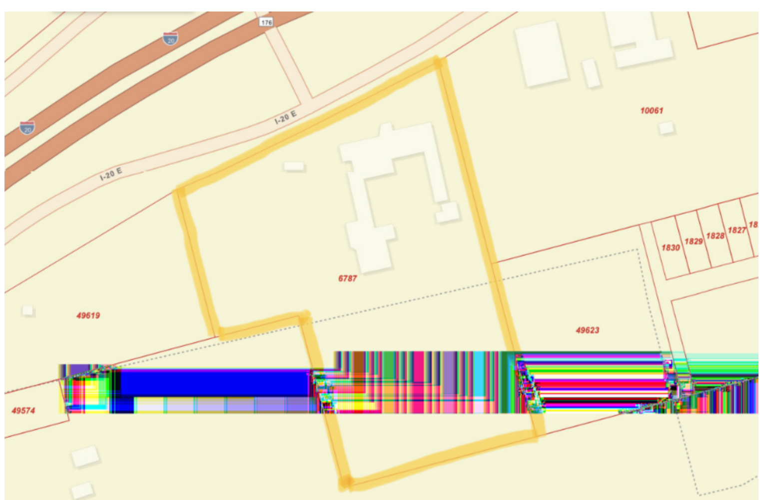

EXHIBIT B
Owner's Authorization

The undersigned, on behalf of [____________________] (the "Owner"), does hereby certify that Owner is the owner of record of that certain real property further described on Exhibit A attached hereto, as evidenced in the deed attached hereto as Exhibit B or other such proof of ownership as may be required. Owner hereby authorizes and appoints [_____________________________] of 3-D Development, LLC., a Kentucky corporation, to act on behalf of Owner solely with respect to applying to the Agencies listed below, as may be necessary, for applications related to development permits or other actions pursuant to:

___	Rezoning/Modification	___	Stormwater Management Permit
___	Zoning Exception	___	Access Management
___	Appeals, if necessary	___	Water and Sewer Approvals
___	Concurrency	___	Wetland Permits
___	Construction Permits	___	Other permits, as may be required

The authorization granted herein shall last for a period of [_________________] following the date of acknowledgement below, after which such authorization shall terminate without any further action by either party.

[____],
a(n) [_______________________]

By:____________________________________
Name:_________________________________
Title:__________________________________

STATE OF [_________________]

COUNTY OF [______________]

Sworn to and subscribed before me this [___] day of [___________], 2023 by [____________________] as [_________________________________] of [_______________________________].

____
Notary Public
Commission Number ______________
My commission expires:___________________

AGENCIES:
[_______________________________]

[EXHIBITS TO BE ATTACHED; FORM OF ACKNOWLEDGMENT
TO BE CONFORMED TO LOCAL LAW REQUIREMENTS]

EXHIBIT C

The City of Big Spring, Texas (Seller), agrees to be responsible for the demolition of all structures currently on the "Property" and for the removal of all materials related to said demolition. In addition, any and all environmental contamination found on the "Property", including asbestos and asbestos containing materials, as well as any and all hazardous waste/hazardous substances will be remediated by the Seller. After all remediation has been completed, a copy of an NFA letter issued by the appropriate agency of the State of Texas will be provided to the Buyer.

By: ____

Name: ~~Andrew Hagen~~Todd Darden

Title: City ~~Attorney:~~Manager, Big Spring, Texas

Date of Execution: _____________________, 2023

EXHIBIT D

Seller discloses to Buyer that at the time of this agreement, the Property has on it one or more building structures where the presence of asbestos has been detected. Seller and Seller's agents are engaged in the process of abatement of asbestos and removal of the structure(s). At the time of closing, any building structure(s) will have been removed. In addition:

1. Asbestos Representation and Warranty

(a) Seller represents and warrants that except as disclosed on "Pre-Abatement Asbestos Schedule," that there is not now nor has there ever been present at, in, or under the facility, any asbestos-containing materials.

2. Walk Away Provision

Seller covenants that, pending the closing, it will allow Purchaser and its agent's reasonable access to the premises for the purposes of ascertaining site conditions and for inspecting the premises; such inspection shall include, but not be limited to, taking samples of any suspect ACM. If, prior to the closing, Purchaser determines that the presence of ACM shall cause it to incur, immediately or at a future date, unreasonable additional costs, Purchaser, at its sole discretion, shall have the right to terminate this Agreement.

3. Purchase Price Reduction

(a) Seller covenants that, prior to the closing, it will allow Purchaser and its agents, including, but not limited to, Purchaser's environmental consultant, reasonable access to the premises for the purposes of ascertaining site conditions and for inspecting the premises; such inspection shall include, but not be limited to, taking samples of any suspected ACM.

(b) If, prior to closing, Purchaser's environmental consultant determines that ACM is present and that some or all of the ACM should be removed, Purchaser's environmental consultant shall, prior to the closing, prepare a reasonable cost estimate for undertaking the removal.

(c) Seller agrees that there will be a reduction in cash purchase price equal to the estimated cost of undertaking the recommended removal of the ACM as prepared by Purchaser's environmental consultant.

Exhibit E

Environmental Matters

1. <u>Access Rights and Conditions</u>. Subject to the terms and conditions hereinafter set forth, Seller grants to Buyer, its employees, agents and contractors ("Designated Representatives") a license for reasonable access to the Property, to conduct such additional observations and sampling by Buyer's independent consultant of environmental media at the Property, as Buyer deems appropriate, in accordance with the following terms and conditions:

   a. Buyer shall notify Seller at least three (3) business days in advance of any required access to the Property.

   b. The Prospective Buyer shall consult with designated representatives of Seller prior to undertaking any testing or sampling which involves boring, drilling, or similar intrusive penetration of the soil or structures on the Property.

   c. Buyer agrees to split any samples that are taken of environmental media at the Property, and Buyer agrees to identify the parameters and test methods which will be utilized in analyzing such sampling.

   d. Buyer shall assume full responsibility for proper characterization, manifesting, storage and disposal of any materials or wastes generated as a result of sampling by Buyer.

   e. Buyer agrees, and will require its agents, consultants, employees and contractors to agree to comply with all applicable laws, regulations, rules and permits pertaining to the Property, including, but not limited to, the Occupational Health and Safety Act and all applicable environmental laws, health and safety laws and regulations. Seller shall be a third party beneficiary of such agreements by Buyer's agents, consultants, employees and contractors.

   f. Upon completion of its investigations, Buyer shall promptly restore the property to substantially the condition. It was in prior to engaging in the investigations, including the repair or replacement of any and all damage to the property.

   g. Buyer agrees to indemnify and hold, harmless Seller from and against any and all claims, suits, actions, damages, costs, liabilities, obligations, fines, or penalties (collectively "claims") resulting from or arising out of injury, or death of any person, damage, or lost to any property, any non-compliance with some subsection (e) above, or any damage to the environment, resulting from or arising out of the performance of the investigations by buyer or buyers, consultants, contractors, or agents, except to the extent that such losses, damages, liabilities, or expenses result from the negligence or wilful misconduct of Seller, or Seller's employees, agents or contractors. Seller and Buyer recognize and agree that Buyer has neither created, nor contributed to the existence of any regulated substances, or other environmental conditions on the property existing as of the date of this event, and that by virtue of the investigations conducted under the section, Buyer is not an owner or operator of the property, or the generator, transporter, storer, treater, or disposer of any regulated substances found or identified at the property, and Buyer is not undertaking or arranging for the handling, removal, treatment, storage, transportation or disposal of regulated. Substances found rectified at the property, except in either case, with respect to the specific materials generated as the result of the buyers sampling investigation work.

2. <u>Presumption Provisions</u>. The parties agree that the following presumptions will be used in determination of whether an environmental condition is a pre-closing environmental condition, which is Seller's environmental responsibility, or a post-closing environmental condition, which is Buyer's environmental responsibility:

   a. If the environmental condition was or is identified in an environmental audit, assessment or sampling of environmental media conducted prior to or within six months after the closing date, collectively ("baseline environmental studies,") such environmental conditions shall be presumed to be a pre-closing environmental condition.

   b. If the environmental condition is discovered six months after the closing and the environmental condition involves contamination that could have been detected using the analytic methods and parameters utilized by Seller and Seller's agents in its environmental studies and work at the property, such shall be a post-closing environmental condition.

   c. If the environmental condition involves a regulated substance that was used, generated, or stored by Buyer, or is a decomposition product of a substance used, generated or store by Buyer and such regulated substance was not used, generated or stored by Seller, or Seller's predecessors, such environmental condition shall be presumed to be a post-closing environmental condition.

   d. Where any provision of this section provides for a presumption to be used in determining responsibility for an environmental condition, such presumption shall be a rebuttable presumption. Such presumption shall place the burden of going forward, and the burden of persuasion upon the party against whom the presumption applies. The presumption may be overcome by a preponderance of the evidence to the contrary.

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

STATE OF TEXAS §

COUNTY OF HOWARD §

THIS AGREEMENT ("Agreement") by and between the CITY OF BIG SPRING, TEXAS, a Texas municipal corporation (the "City") and 3-D DEVELOPMENT, LLC a Kentucky limited liability company, its successors or assigns ("Developer"), (City and Developer collectively referred to as the "Parties" and sometimes individually as a "Party"), is entered into upon the "Effective Date," as more clearly defined herein.

WHEREAS, City owns approximately 11 acres of real property in the City, generally described as LT 1 BK 1 MID TEX SUBDIVISION, an Addition to the City of Big Spring, Howard County, Texas, filed in Envelope #132-B; the same being an approximate 11.06-acre tract out of SW/4 of Section 26, Block 33, T-1-N, T&P Ry. Co. Survey, Howard County, Texas also known as 1801 I-20 E, Big Spring, Texas 79720, as further described in the attached **Exhibit "A"** (the "Property"); and

WHEREAS, Developer intends to develop the Property primarily as a major commercial/retail project consisting initially of an approximately 14,000 square foot commercial structure used for a business creating jobs and occupying all of the tract (the "Project," as more fully defined below and shown in the Project Site Plan attached as **Exhibit "B"**) that will require significant investment; and

WHEREAS, the Property currently encompasses a structure that once served as a hotel and was converted to serve as a correctional facility and upon which the City has begun the process to abate asbestos containing material from the site and demolish the structure in its entirety; and,

WHEREAS, the Property is currently assessed by the Howard County Appraisal District for tax year 2022 at $1,748,221, but has appraised at a value much lower, and currently generates no annual ad valorem property taxes for the City, and currently generates no sales tax for the City; and

WHEREAS, the Developer expect a total investment of over $12 million for the development of the Project; and

WHEREAS, the Project, upon completion, may potentially generate approximately $4 million in annual gross sales excluding fuel sales, and the Property may potentially have an assessed value of approximately $4 million; and

WHEREAS, in accordance with Article III, Section 52-a of the Texas Constitution, and Section 380.001 of the Texas Local Government Code ("Section 380"), the City may establish and provide for the administration of a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City; provided the program created or loan or grant made is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City; and

WHEREAS, the City imposes an ad valorem tax of $0.673163 per $100 of assessed property value (the "Ad Valorem Tax") for the tax year 2022, as authorized by Section 6.01 of the Texas Tax Code; and

WHEREAS, the City and Developer agree that the provisions of this Agreement substantially advance a legitimate interest of the City by providing public infrastructure, expanding the tax base of the City, increasing employment, and promoting economic development.

NOW, THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the Parties hereby agree as follows:

ARTICLE I
RECITALS & PROJECT

1. Recitals. The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement.

2. Project. The Developer intend to develop the Property for a commercial/retail development, consisting of approximately 11.06 acres or greater commercial/retail building area, and a major retail center/travel center as described above, all as further shown in Exhibit "B". The Project is further defined in Article III.

ARTICLE II
AUTHORITY AND TERM

1. Authority. The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and constitutes a valid and binding obligation of the City. The City acknowledges that the Developer is acting in reliance upon the City's performance of its obligations under this Agreement in making the decision to commit substantial resources and money to the establishment of the Project.

2. Consideration. City's obligations under this Agreement are due and only due to Developer upon all of the following conditions being met by Developer: (1) Developer acquires fee ownership with no joint tenants in the property described in **Exhibit A**; (2) Developer continues to hold fee ownership with no joint tenants of the property described in **Exhibit A**; (3) Developer consents to and petitions for voluntary annexation of the parcel specified in Article V, Section 4 of this Agreement.

3. Term. This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date (the "Term"), unless terminated sooner in accordance with Article IX. The "Expiration Date" shall mean the earlier of:

A. The City's fulfillment of all obligations and conditions herein and the reimbursement pursuant to the Ad Valorem Tax Reimbursement Grant ~~and Public Infrastructure Grant of the Maximum Grant Amount to Developer~~; or

B. Ten (10) years from the last day of the First Full Grant Period.

ARTICLE III
DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage. The gender of the wording throughout this Agreement shall always be interpreted to mean either sex, and where the context requires, the plural of any word shall include the singular.

"Ad Valorem Tax Reimbursement Grant" shall mean the City's payment to a Developer reimbursing that Developer for the percentage of the City Ad Valorem Taxes on real property and personal property paid for a particular portion of the Property attributed to the Project above the Base Year ~~value for that same particular portion of the Property~~Value as reflected in the Article IV Performance Table.

"Project" or "Facility" shall mean an approximately 14,000 square foot facility located on an approximately 11.06-acre tract of land within the Property, as further shown in the Project Site Plan attached as **Exhibit "B."**

"Bankruptcy" or "Insolvency" shall mean the dissolution or termination of a Party's existence as a going business, insolvency, appointment of receiver for any party 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.

"Base Year Value" shall mean ~~the value of the Property as of January 1, 2023.~~zero dollars ($0.00).

"City" means the City of Big Spring, Texas.

"City Ad Valorem Tax" means the City of Big Spring's ad valorem tax for the parcels in **Exhibit "A"** and **Exhibit "C."** The City's ad valorem tax rate~~, which~~ is currently $0.673163 per $100 of assessed property value in the City of Big Spring ~~as of the Effective Date~~. For purposes of this Agreement, the City Ad Valorem Tax rate shall automatically be updated to reflect any changes to the City's ad valorem tax rate.

"Consummated" shall have the same meaning assigned by Texas Tax Code, Section 321.203, or its successor.

"Days" shall mean calendar days, whether capitalized or not, unless stated otherwise.

"Developer" shall mean 3-D Development, LLC, a Kentucky limited liability company, and/or its successors and assigns.

"Effective Date" shall mean the date in which the Agreement is effective, which is the later of the date the Agreement is executed by and on behalf of the City, and the date the conditions of Article II, Section 2 are met.

"Estimated Total Improvement Cost" means the estimated cost to fully develop the Property, approximately $12 million.

"First Full Grant Period" shall mean the period beginning on January 1 and ending on December 31 for the year following the year in which the Project receives a certificate of occupancy and begins operation.

"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 a party), fires, explosions, floods, strikes, slowdowns, or work stoppages. It shall not include reasonably foreseeable interruptions in the material supply chain.

"Grant(s)" shall collectively mean the Ad Valorem Tax Reimbursement Grants to be paid to a Developer as set forth herein; subject, however, at all times, to the Maximum Grant Amount (as defined below).

"Grant Period" shall mean each successive one (1) calendar year period, starting with the First Grant Period.

"Payment Request" shall mean a written request from Developer(s) to the City for payment of the applicable Grant for the applicable Grant Period.

"Project" shall mean the development of the Property and associated Public Improvements within the Property or adjacent to the Property. The Project shall consist of the Project, as well as other ancillary facilities, including, but not limited to, areas developed for roads, parking, drainage, landscaping, and open space. The Project shall comply generally in shape and form with the Project Site Plan, attached hereto as **Exhibit "B"**, except that the number, size, and layout of the structures within the Developer Project may deviate from the Project Site Plan.

"Property" shall mean the real property described in **Exhibit "A"**, upon which the Project, authorized by this Agreement, shall be constructed.

"State of Texas" shall mean the Office of the Texas Comptroller, or its successor.

"Tax Year" shall mean January 1st of any given calendar year through December 31st of the same calendar year.

ARTICLE IV
ECONOMIC DEVELOPMENT INCENTIVES

The bringing of a retail establishment to Big Spring, Texas, the increased tax revenue, and other benefits potentially created by the Project, are intended to provide a catalyst to the economy of the City in numerous ways. In exchange for the benefit conferred upon the City, City agrees to provide Developer with the economic development incentives, which under no circumstance shall exceed the Maximum Grant Amount, as outlined below.

1. **Ad Valorem Tax ~~Equivalent~~Reimbursement Grant.** An annual Ad Valorem Tax ~~Equivalent~~Reimbursement Grant ~~consisting of an amount equal to a percentage of the increase in City Ad Valorem Taxes paid attributable to the Project as follows:~~.

   A) Project: City shall provide an annual Ad Valorem Tax ~~Equivalent~~Reimbursement Grant as described above to Developer ~~for~~no earlier than the ~~increase in City Ad Valorem Taxes paid attributable~~First Full Grant Period and then according to ~~the Project, in the annual percentages illustrated in the Performance Table below~~Article IV, Section 3.

2. **Real Property Improvement Grant.** City shall provide a grant in the form of making ready the Property for purchase and development by Developer. City will abate all asbestos and demolish all existing structures on the property prior to selling the Property to Developer for the Project. Such grant has an estimated value of approximately $500,000. This grant shall not be directly to the Developer, but will be realized by Developer through purchasing the real property. This Real Property Improvement Grant is not counted toward the Maximum Grant Amount.

The ~~Annual~~Ad Valorem Tax Reimbursement Grant payments by City to Developer shall be paid within sixty (60) days after receipt of a copy of the Annual Report ~~reflecting that the applicable performance period objectives have been met as shown in the following Performance Table:~~ .

3. **Maximum Grant Amount**. The Maximum Grant Amount is ~~the~~calculated as follows. The City ad valorem tax paid by Developer for the ~~Property (for the~~ parcels in **Exhibit A** and **Exhibit C**~~),~~ in a given year as listed in the Performance Table below, is taken minus the amount of ~~City ad valorem tax the City was receiving (for the parcels in **Exhibit A** and **Exhibit C**) prior to the date of execution of this agreement,~~the Base Year Value, the result being the difference. The difference is multiplied by the percentage amount in the Performance Table ~~below.~~for the corresponding Tax Year, the result being the product. The product for a given year is the Maximum Grant Amount.

Performance Table

Performance Period Jan 1 - Dec 31	~~Proposed incremental~~ Ad Valorem Tax Rebate % not to exceed total max
Yr. 0 ~~- 2022-~~ 2023	
Yr. 1 – ~~2023~~2024	100%
Yr. 2 – ~~2024~~2025	100%
Yr. 3 – ~~2025~~2026	80%
Yr. 4 ~~- 2026-~~ 2027	80%
Yr. 5 – ~~2027~~2028	60%
Yr. 6 ~~-- 2028-~~ 2029	60%
Yr. 7 ~~-- 2029-~~ 2030	40%
Yr. 8 ~~-- 2030-~~ 2031	40%
Yr. 9 ~~-- 2031-~~ 2032	20%
Yr.10 ~~-- 2032-~~ 2033	20%

All subsequent years will have an ad valorem tax rebate percentage of 0%.

ARTICLE V
CONDITIONS TO ECONOMIC DEVELOPMENT GRANTS

The obligation of the City to pay any Grants shall be conditioned upon Developer's continued compliance with and satisfaction of, in all material respects, each of the applicable conditions set forth in this Agreement.

1. Local Vendors. Developer agrees to make good faith efforts to give preference and priority to suppliers of goods and services within the city of Big Spring except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency in the normal course of business.

2. Development. On or before January 1, 2025, Developer shall make improvements and conduct operations that increase the assessed ad valorem value of the Property.

3. Reserved.

4. Annexation and Plat. Developer owns or will own a 4.96 acre tract of land adjacent to the Property that will be a part of the Project. Developer shall petition the City to voluntarily annex this certain parcel of land, described in the attached **Exhibit C**, within thirty days of the execution of this Agreement, and shall plat the parcel into a parcel with the Property upon annexation, and the completion of the transfer of the Property from City to Developer. The assessed value of this parcel by the Howard County Appraisal District is $5,839 for tax year 2022.

5. Required Reporting

Annual Reports. Beginning for calendar year 2024, Developer shall deliver to City the following reports by March 31, 2024, and on March 31 of each subsequent year of the Agreement:

(a) Annual reports stating:

The amount of ~~property~~City ad valorem taxes paid with regard to the ~~Facility~~properties in **Exhibit A** and **Exhibit C** for the most currently available calendar year, including the amount of such taxes that constitute the Real Property Taxes and Personal Property Taxes.

(b) With the Annual report, Developer shall provide an annual certification of full compliance with all requirements of this Agreement, including certification that all reports required by this Agreement have been submitted for the year certified.

Additional Reports, Information and Privacy.

(a) Upon written request by City, Developer shall within a reasonable time provide additional information reasonably necessary to determine if Developer is in compliance with this Agreement. All information required by this Agreement shall be submitted to the City Manager at the address specified for giving notice in this Agreement.

5. The payment of all indebtedness and obligations incurred by Developer in connection with the development and construction of the Facility and the operation of the Facility shall be solely the obligations of Developer. City shall not be obligated to pay any indebtedness or obligations of Developer.

6. Developer is obligated to make timely payment of ad valorem taxes for the parcels specified in **Exhibit A** and **Exhibit C** during the Term of this Agreement.

ARTICLE VI
COVENANTS AND DUTIES

1. Developer's Covenants and Duties. Developer makes the following covenants and warranties to the City and agrees to timely and fully perform such obligations and duties of this Agreement. Any false or substantially misleading statements by Developer contained herein or failure by Developer to timely and fully perform those obligations and duties of Developer within this Agreement shall be an act of Default by the Developer after notice and opportunity to cure as provided in this Agreement. Developer is responsible for complying with the conditions provided herein.

(a) Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.

(b) The execution of this Agreement has been duly authorized by Developer's authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in material contravention of any law, rule, regulation, or of the provisions of Developer's by-laws, or of any agreement or instrument to which Developer is a party to or by which it may be bound.

(c) Developer is not a party to any Bankruptcy proceedings currently pending or contemplated, and as of the date of Developer's execution of this Agreement Developer has not been informed of any potential involuntary Bankruptcy proceedings.

(d) To its current, actual knowledge, Developer has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.

(e) Developer shall timely and fully comply with all of the terms and conditions of this Agreement in all material respects.

(f) Developer agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of such Public Improvements to the Property.

(g) Developer shall be responsible for paying, or causing to be paid, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the portions of the Project for which Developer is responsible. Developer may develop in accordance with the ordinances, rules, and regulations of the City in effect as of the Effective Date, unless specified otherwise in this Agreement.

(h) The cost of improvement expenses associated with the Project shall be funded through the use of the Developer' own capital or through credit secured solely by that Developer. Developer may use any or part of the Property for which it has an ownership interest as collateral for the construction loan or loans as required for the financing of the Project; however, no property with a lien still attached may be offered to the City for dedication. In the event property is dedicated to the City with a lien attached, and the Developer does not cure such lien within the period prescribed in Section 3 of this Article, Developer shall be in breach of this Agreement.

(i) In accordance with Texas Government Code Chapter 2264.051, Developer certifies that it, and all branches, divisions or departments of the Developer do not and will not knowingly employ an undocumented worker, as that term is defined by Texas Government Code Chapter 2264.

(j) Developer shall pay, or cause to be paid, monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by Developer in regard to the Project or the Property.

2. City's Covenants and Duties.

(a) Grant Payments. Notwithstanding any provision herein to the contrary, the City shall not be obligated to pay any amount that exceeds the Maximum Grant Amount. Grant payments shall be made from sources contemplated by this Agreement over a period not to exceed the Expiration Date, subject to timely and full satisfaction of all applicable duties and terms within this Agreement. Further, City's obligations to pay Developer shall cease upon the earlier of: (1) payment in full of the Maximum Grant Amount; (2) reaching the Agreement's Expiration Date; or (3) Default by Developer.

3. Substantial Compliance and Default. Failure by either Party to timely and substantially comply with any performance requirement, duty, or covenant shall be considered an act of "Default" by the failing Party if uncured within sixty (60) days of receiving written notice from the other Party, subject to Force Majeure. Developer may request relief from performance of any terms of this Agreement if Developer is prevented from compliance due to Force Majeure. To

obtain relief based on Force Majeure, Developer(s) shall submit a written request for consent to the City, such consent not to be unreasonably withheld, delayed, or conditioned. Failure of Developer to timely and substantially cure a Default will give the City the right to terminate this Agreement as reasonably determined by the City Council of the City of Big Spring, Texas.

(a) **Construction.** All Improvements constructed on or installed, including personal property, within the Facility required by this Agreement shall be completed by December 31, 2024, and failure to comply with this section shall cause the automatic termination of this Agreement without the need for any further action by City; and, City shall have no obligation to make any Grant Payments to Developer. Enforcement of this section is subject to Force Majeure. In the event of unforeseeable third-party delays, which are not Force Majeure, and upon a reasonable showing by Developer that it has in good faith commenced and is diligently pursuing the correction, removal, or abatement of such delays by using commercially reasonable efforts, the City of Big Spring City Council may consent to and excuse any such delays.

(b) Reports and Information. Developer's failure to timely and substantially comply with the reporting requirements of this Agreement shall be a default; and, City shall be under no obligation to make any Grant Payment until compliance with such reporting requirements.

(c) Recapture. In the event of Default by the Developer, the City shall as its sole and exclusive remedy for Default hereunder, after providing Company notice and an opportunity to cure, have the right to discontinue all future Grant payments and recapture all amounts previously paid under this Agreement (as applicable, the "Recaptured Amount").

(d) The Recaptured Amount shall be paid by the Developer within one hundred twenty (120) days after the date Developer is notified by the City of such Default (the "Payment Date") provided said Default was not cured. In the event the Recaptured Amount is not repaid by the applicable Payment Date, the unpaid portion thereof shall accrue interest at the rate of two percent (2.00%) per annum from the Effective Date until paid in full.

ARTICLE VII
TERMINATION

1. Termination. This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

(a) The written agreement of the Parties;

(b) The Agreement's Expiration Date;

(c) Default by Developer and termination by the City in accordance with Section 3 of Article VI hereof. In the event of a Default by one Developer, the Agreement shall terminate for the defaulting Developer if the City exercises its termination right in accordance with Section 3 of Article VI hereof, however, the Agreement shall remain in full force and effect between the non-defaulting Developer and the City.

2. Extension Beyond Term and Reimbursement. In recognition of the fact that Grants are, by necessity, calculated and paid after taxes have been levied and paid to the City and, therefore, will always be paid in arrears, the Expiration Date of this Agreement will be extended until any and all Grants collected during the preceding year have been distributed by the City to Developer. The Parties hereto agree that the City cannot guarantee that Grant funds shall completely reimburse the Developer for the full value of the improvements.

ARTICLE VIII
DISPUTE RESOLUTION

1. Mediation. If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties in dispute shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties in dispute agree to try in good faith to settle the dispute by mediation under the Mediation Rules of the American Arbitration Association before resorting to litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party in dispute with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. The Parties in dispute shall notify the Party not in dispute of any scheduled mediation at least fourteen (14) days prior to the mediation. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All costs of negotiation, mediation, and arbitration collectively known as alternate dispute resolution ("ADR") shall be assessed equally between the City and the Party in dispute with each party bearing their own costs for attorneys' fees, experts, and other costs of ADR and any ensuing litigation. Any Party not directly in dispute shall receive notice at least thirty days prior of any scheduled meditations and/or arbitrations.

2. During the Term of this Agreement, if Developer files and/or pursues an adversarial proceeding against the City regarding this Agreement then, at the City's option, all access to the Grants to that Developer provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest-bearing account until the resolution of such adversarial proceeding.

ARTICLE IX
MISCELLANEOUS

1. Binding Agreement. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the City, Developer, and their respective successors and assigns. The City Manager shall be responsible for the administration of this Agreement and shall have the

authority to execute any instruments, duly approved by the City Council of the City of Big Spring, Texas, on behalf of the City related thereto.

2. Mutual Assistance. City and Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

3. Representations and Warranties. City represents and warrants to Developer that this Agreement is within City's authority, and that City is duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Developer represents and warrants to the City that Developer has the requisite authority to enter into this Agreement.

4. Assignment. Except as stated within this Section 4, Developer shall have the right to assign all of their rights, duties, and obligations under this Agreement for all or some of the Property to a duly qualified third party with prior written notice to the City. An assignee shall assume all of the obligations and responsibilities, as well as receive the benefits, of the Developer assigning its portion of the Agreement with respect to the portion of the Property to which the assignment relates. An assigning Developer shall be relieved of all obligations and responsibilities relating to its respective portion of the Agreement with respect to which the assignment is made, provided the assigning Developer delivers to the City an agreement between itself and the assignee documenting the assignment and assignee's agreement to perform such responsibilities and obligations. In addition, a Developer may assign its rights to receive payment under this Agreement to a lender, and upon receipt of such assignment in writing by the City, and the City's further receipt of a written notice from such lender to pay such lender directly, the City will deliver amounts owing to such Developer hereunder to such lender (payable to such lender) until such time such lender authorizes otherwise in writing, and City shall be entitled to rely on any such assignment, notice and/or authorization without investigation. Assignments beyond the scope specified above are conditioned on the pre-approval by the City Council of Big Spring.

5. Independent Contractors.

(a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Developer at no time will be acting as agents of the City and that all consultants or contractors engaged by Developer respectively will be independent contractors of the Developer; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that City will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by each Developer respectively under this Agreement, unless any such claims are due to the fault of the City.

(b) By entering into this Agreement, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the City with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

(c) No employee of City, or any councilmember or agent of City, shall be personally responsible for any liability arising under or growing out of this Agreement.

6. Notice. Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery at the time of such delivery, facsimile with receipt confirmation at the time of transmission of such facsimile, or by depositing the same in the United States Mail, postage prepaid and certified with return receipt requested, at the time of such deposit, addressed to the Party at the address set forth below:

7.

If intended for City:

City of Big Spring
Attention: City Manager
310 Nolan Street
Big Spring, TX 79720

With a copy to:
City of Big Spring
Attention: City Attorney
310 Nolan Street
Big Spring, TX 79720
ahagen@mybigspring.com

If to Developer:

Attention: __________
Address
Address

With a copy to:
Legal Counsel.
Attention: ______
Address
Address

Any Party may designate a different address at any time upon written notice to the other Party.

8. Governmental Records. All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10.

9. Governing Law. This Agreement, and all claims or causes of action (whether in contract, implied contract, tort, equity or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution, or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of Texas, including its statutes of limitations, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas.

10. Choice of Forum and Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or based upon/relating to this Agreement or the transactions contemplated hereby or shall be exclusively filed and adjudicated in state courts sitting in Howard County, Texas. Service of process, summons, notice, or other document by certified mail shall be effective service of process for any suit, action, or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

11. Amendment. This Agreement may be amended by mutual written agreement of the Parties, as approved by the City Council of the City of Big Spring, Texas.

12. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

13. Legal Construction. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, 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 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.

14. Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

15. Payment of Legal Fees. Developer commits to reimburse the City for the necessary legal fees and third-party consultant fees incurred by the City in the preparation of this Agreement and any amendment to this Agreement requested by Developer. Timely payment shall be made within 60 days of submittal of invoice to Developer by the City. Each Party shall bear its own attorney's fees in connection with any dispute resolution necessary under this Agreement.

16. Entire Agreement. This Agreement constitutes 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, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the City Council of the City of Big Spring, Texas.

17. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

18. 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.

19. Exhibits. Any Exhibits attached hereto are incorporated by reference for all purposes.

20. 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.

21. Employment of Undocumented Workers. During the Term of this Agreement, each Developer agrees to not knowingly employ any undocumented workers, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), that Developer shall be in Default and repay the amount

of the Grants and any other funds received by that Developer from the City as of the date of such violation within one hundred twenty (120) days after the date the defaulting Developer is notified by the City of such violation, plus interest at the rate of six percent (6.00%) compounded annually from the date of the violation until paid in full. A Developer is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Developer or by a person with whom the Developer contracts, or the other Developer, provided however that identical federal law requirements provided for herein shall be included as part of any agreement or contract which each Developer enters into with any subsidiary, assignee, affiliate, or franchisee for which Grants provided herein will be used.

22. Indemnification. **DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, AND ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, ADJUSTMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO ANY OF THE FOLLOWING: ANY CLAIMS OR DEMANDS BY THE STATE OF TEXAS THAT THE CITY HAS BEEN ERRONEOUSLY OR OVER-PAID SALES AND USE TAX FOR ANY PERIOD DURING THE TERM OF THIS AGREEMENT AS A RESULT OF ANY ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY SUCH DEVELOPER UNDER THIS AGREEMENT EXCEPT THAT THE INDEMNITY PROVIDED HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE ACTION OR OMISSIONS OF THE CITY. EACH DEVELOPER IS RESPONSIBLE FOR ITS OWN ACTS OR OMISSIONS UNDER THIS SECTION; THE PROVISIONS OF THIS SECTION SHALL NOT BE INTERPRETED TO CAUSE ONE DEVELOPER TO INDEMNIFY THE CITY FOR THE OTHER DEVELOPER'S ACTIONS. THE PROVISIONS OF THIS SECTION 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. IT BEING THE INTENTION OF THE PARTIES THAT EACH DEVELOPER SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY ANNUAL GRANTS PAID TO SUCH DEVELOPER HEREIN THAT INCLUDES CITY SALES TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WAS ERRONEOUSLY PAID, DISTRIBUTED OR ALLOCATED TO THE CITY.**

23. Additional Instruments. City and Developer agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

24. Estoppel Certificate. Any party hereto may request an estoppel certificate related to the Project (hereafter referred to as "Certificate") from another party hereto so long as the Certificate is requested in connection with a bona fide business purpose. The Certificate may include, but is not limited to, statements that this Agreement is in full force and effect without default, information on Grants that have been issued and Grants that have been requested, and such other matters reasonably requested by the Party requesting the Certificate.

The remainder of this page intentionally remains blank and signature pages to follow:

Executed on this _______ day of ___________ ~~2022~~2023.

CITY OF BIG SPRING, TEXAS

By: ________________________________
Todd Darden, City Manager

ATTEST:

By: ________________________________
Tami Davis City Secretary

APPROVED AS TO FORM:

By: ________________________________
Andrew W. Hagen, City Attorney

Executed on this ______ day of __________________, ~~2022~~2023.

~~DEVELOPER~~3-D DEVELOPMENT LLC
a ~~Texas~~Kentucky limited liability
~~__________~~company

~~By: ________________________________~~
~~Name: ________________________________~~
~~Title: ________________________________~~
By: ________________________________
Patrick Davis, President/Member

EXHIBITS

Exhibit "A"	Property Description
Exhibit "B"	Project Site Plan
Exhibit "C"	Property to be Annexed

EXHIBIT "A"

Property Description

Property ID R000006787; Legal Description: LT 1 BK 1 MID TEX SUBDIVISION, an Addition to the City of Big Spring, Howard County, Texas, filed in Envelope #132-B; the same being an approximate 11.06-acre tract out of SW/4 of Section 26, Block 33, T-1-N, T&P Ry. Co. Survey, Howard County, Texas also known as 1801 I-20 E, Big Spring, Texas 79720.

EXHIBIT "B"

Site Plan attached.

EXHIBIT "C"

Property Description

Property ID: R000049619; Legal Description: Acres 4.960, SC 26 BK 33 1N MARTIN SIGN COMPANY 024 BLK/TRACT BK 33 1N 4.96 ACRES ACQ 03212014, Howard County, Texas.

ORDINANCE NO. ________

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION," ARTICLE III, ENTITLED "OFFICERS AND EMPLOYEES," SECTION 2-57 ENTITLED "ADOPTION OF CIVIL SERVICE FOR FIREFIGHTERS AND CIVIL SERVICE POSITIONS," SUBSECTION (c) BY REDUCING BY ATTRITION ONLY FIREFIGHTERS; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of Big Spring has determined that the City is unable to maintain the additional firefighter positions from the expiring grant; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, THAT:

SECTION 1. In the Big Spring City Code Chapter 2 entitled "Administration," and Article III entitled "Officers and Employees," Section 2-57, entitled "Adoption of civil service for firefighters' and civil service positions designated," is amended in part as follows:

Big Spring City Code
Chapter 2 – Administration
Article III – Officers and Employees

Section 2-57 – Adoption of civil service for firefighters and civil service positions designated.
~~Section 2-57 – Adoption of civil service for firefighters' and civil service positions designated.~~

. . .

(c) . . .

*** Firefighter 26 ~~36~~

. . .

*** The city will reduce, through attrition only, firefighters to 26 from 36. As such position is reduced by attrition will the number be reduced accordingly. ~~In 2019, the Big Spring Fire Department was awarded the SAFER grant from FEMA. The grant pays for ten firefighter positions for a three-year period (ending in 2022). Prior to the~~

~~end of the three-year term, the fire chief and HR director will evaluate the ability of the city to maintain the additional firefighters. If it is determined that the city is unable to maintain the additional firefighter positions, the additional firefighter positions will be eliminated through attrition; however, the city will maintain no less than 26 firefighters.~~

SECTION 2. Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the reminder of this ordinance shall not be affected thereby.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 4. This Ordinance shall take effect after passage in accordance with the provisions of the Charter of the City of Big Spring on April 1, 2023, and it is accordingly so ordained.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the **14th** day of **March**, **2023** with all members of the Council voting "aye" for the passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the **28th** day of **March**, **2023** with all members of the Council voting "aye" for the passage of same.

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Robert H. Moore, III, Mayor

ATTEST:

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Tami L. Davis, City Secretary