

STATE OF TEXAS §

COUNTY OF BRAZOS §

**DEVELOPMENT AGREEMENT BETWEEN  
THE AMERICAN TRADE GROUP, INC. AND  
THE CITY OF BRYAN, TEXAS**

This Agreement entered into on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between **THE CITY OF BRYAN, TEXAS**, a Texas home rule municipal corporation, acting herein by and through its duly elected City Council, (“**City**”), and **THE AMERICAN TRADE GROUP, INC.**, a corporation incorporated and operating under the laws of the State of Texas, (“**Company**”); collectively referred to as “**PARTIES.**”

WHEREAS, Company is a lumber company that is currently located within the Bryan Industrial Park in Bryan, Texas, that needs to expand its operations and desires to move its corporate headquarters to Bryan; and

WHEREAS, the City strongly desires to keep this employer in Bryan, and is interested in obtaining the new full time positions that would come with the new headquarters; and

WHEREAS, the City is empowered by the Texas constitution and Chapter 380 of the Texas Local Government Code to offer grants of money to ensure the development of new or expanded economic growth; and

WHEREAS, the City is willing to offer a waiver of permit fees and a rebate of taxes from increased value in exchange for the acquisition and upgrade of property for a new corporate headquarters as well as creating the new positions as set forth herein; and

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for good and other valuable consideration, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

**A. PERFORMANCE REQUIREMENTS**

1. Company will complete the acquisition of 1001 W. Villa Maria Road, more particularly described as Lot 2, Western National Bank subdivision, as shown on the plat of same recorded in Volume 577, Page 707 of the Official Records of Brazos County Texas (“Property”) and will invest approximately \$900,000.00 in improvements to the Property, which must be constructed in compliance with all applicable City codes and ordinances. Within twelve (12) months of the effective date of this Agreement, Company must have obtained a certificate of occupancy for such improvements.
2. The value of the Property, as appraised by the Brazos Central Appraisal District (“BCAD”) following completion of construction of the renovation, must be at least \$1,500,000 as of January 1, 2020. Company must meet or exceed this threshold through the end of the term of this Agreement.
3. Company must have created twelve (12) new full time employment positions by the end of 2019, with an average annual salary of \$60,000.00, exclusive of benefits. A full time employee is a person with permanent employment for 1,820 hours or more per year or thirty-five (35) hours or more per week on an annualized basis. Company will use its best efforts to ensure that employees

hired for these positions are residents of Bryan. Company must meet or exceed this threshold through the end of the term of this Agreement.

**B. DEVELOPMENT FEES**

4. City agrees to waive up to \$5,000.00 in fees for building, mechanical, electrical, and plumbing permits issued prior to December 31, 2019.
5. City agrees to “fast track” the project’s development process.

**C. REBATE**

6. Provided that the Company has met the Performance Requirements set forth in section A above, starting in 2020, the Company is entitled to a rebate of the tax revenue generated from the Increased Value on the Property. Once taxes are paid for a given year, the City will rebate the tax revenue generated from the Increased Value on the Property. As used herein, the term “Increased Value” shall mean the BCAD value for each given year, less the greater of \$737,500.00 or the certified BCAD value of the Property as of July 25, 2019.
7. All taxes for a given year must have been paid for Company to be eligible for the rebate. The City must be provided with an invoice along with the forms required by section E below. The rebate will be paid within thirty (30) days of receiving a complete invoice.

**D. TERM**

8. The term of this Agreement shall be from the effective date through December 31, 2025.
9. The terms of this Agreement are subject to annual appropriation for same by the City Council and in the event that the City Council fails to appropriate funds, this Agreement shall terminate automatically at the beginning of the fiscal year for which funds are not appropriated.
10. This Agreement is not assignable. In the event that all or a portion of the property is sold, the Agreement shall terminate with respect to the portion of the Property that was sold.

**E. COMPLIANCE & AUDIT**

11. Attached to each annual invoice for rebate, Company shall provide the City with a copy of the ad valorem tax receipt for the given year reflecting that taxes have been paid as well as the “Reimbursing Employer’s Quarterly Report” for the previous four (4) quarters, required to be filed for the purposes of administering the Texas Unemployment Compensation Act, or a similar form filed with a successor agency. Whatever form is submitted to the City shall report the number of employment positions, distributed by wage brackets.
12. Company shall submit its invoice and supporting documentation no later than ninety (90) days following the end of the calendar year for which the rebate applies or the rebate for that given year is waived. City is not obligated to request an invoice or the required supporting documentation, and will not issue a rebate without same.
13. Company agrees to provide the City, or its designees, reasonable access during business hours to the books and records related to the considerations, incentives, and performance requirements stated in this Agreement.

## **F. DEFAULT & TERMINATION**

14. **Breach.** In the event Company (i) fails to comply with the City Codes as required by this Agreement; (ii) has delinquent ad valorem or sales taxes owed to the City (provided Company retains its right to timely and properly protest such taxes or assessment); (iii) has an “Event of Bankruptcy or Insolvency”; or (iv) materially breaches any of the terms and conditions of this Agreement, then the City may send written notice of such breach. In the event the City is in breach of the terms or conditions of this Agreement, Company may send written notice of such breach.
15. **Cure Period.** The breaching party shall have thirty (30) days from the date of receipt of such notice in which to cure the breach, unless it cannot be reasonably cured within such time in which case the breaching party shall have up to ninety (90) days to cure, provided that the cure is diligently pursued during that time.
16. **Termination.** If a breach is not cured as provided above, the breaching party is in default. In addition to other remedies available in equity or at law, if a party is in default, the other party may terminate this Agreement effective immediately by providing written notice.
17. **Clawback.** In the event of a default by Company, City is entitled to be paid an amount equal to the sum of all permit fees waived and all rebates paid pursuant to this Agreement. Such payment is due immediately upon receipt of the notice of termination. Unless payment is received by the City within thirty (30) days of receipt of notice of termination, the City is also entitled to interest on such amounts calculated at ten percent (10%) per annum, from the date of the notice of termination.

## **G. MISCELLANEOUS**

18. **Texas Government Code Chapter 2264.** In accordance with Chapter 2264 of the Texas Government Code, Company agrees not to employ any person who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States (“*Undocumented Worker*”). During the term of this Agreement, Company shall notify City of any complaint brought against Company alleging that Company has employed Undocumented Workers. If Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the total amount of economic development grants it has received pursuant to this Agreement, together with interest at the rate of 5% per annum from the date of each payment of an economic development grant, shall be repaid by Company to the City not later than the 120th day after the date the City notifies Company of the violation. Company shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom Company contracts.
19. **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. Company shall not assign this Agreement without the written approval of the City Council. An assignment to a subsidiary or affiliate company of Company shall not be prohibited under the section.
20. **Severability.** If any term of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such term shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining terms of this Agreement shall not be affected thereby, and in lieu of such deleted terms, there shall be added as part of this Agreement a term that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted term.

21. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
22. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.
23. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
24. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
25. No Waiver. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.
26. Notices. Any notices required to be provided pursuant to this Agreement are deemed provided within three (3) days after being sent via U.S. Certified Mail, Return Receipt Requested, or on the day of transmission by facsimile, email, or when hand delivered to the address provided herein. City and Company hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

<p><b>CITY</b>  City of Bryan, City Manager  P.O. Box 1000  Bryan, Texas 77805-1000</p>	<p><b>COMPANY</b>  Barry Hendler, President  PO Drawer 5220  Uvalde, Texas 778802</p>
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27. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
28. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
29. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.
30. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.

31. Gender and Number. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise

Executed to be effective this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

**ATTEST:**

**CITY OF BRYAN, TEXAS**

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

\_\_\_\_\_  
Andrew Nelson, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Janis K. Hampton, City Attorney

**AMERICAN LUMBER, INC.**

\_\_\_\_\_  
Barry Hendler, President