

RESOLUTION NO 13-40

A RESOLUTION AUTHORIZING 380 AGREEMENT WITH RANDOLPH D&L COMPANY, LLC d/b/a QUALITY CONCRETE PRODUCTS; AND GRANTING AUTHORITY TO THE MAYOR TO EXECUTE SAID RESOLUTION AND AUTHORIZING CITY SECRETARY TO AUTHENTICATE MAYOR'S SIGNATURE TO THIS RESOLUTION AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL INSTRUMENTS REQUISITE IN IMPLEMENTING THIS RESOLUTION AND AUTHORIZING CITY SECRETARY TO AUTHENTICATE CITY MANAGER'S SIGNATURE TO THIS RESOLUTION.

A regular meeting of the City Council of the City of Commerce, Texas, was held in Commerce, Texas at City Hall on the 15th day of October 2013, at 6:00 p.m., a majority of Council Members being present and constituting a quorum, the following resolution was adopted.

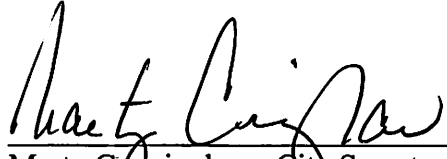
WHEREAS, after careful consideration the City Council of the City of Commerce deems it to be in the best interest and welfare of the City of Commerce that the aforementioned 380 Agreement with Randolph D&L Company, LLC d/b/a Quality Concrete Products be authorized and prepared for signature.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor of the City of Commerce, Texas, be authorized and he is hereby authorized to execute the Resolution.

BE IT FURTHER RESOLVED, that the City Secretary be authorized and she is hereby authorized to attest to the signature of the Mayor to this Resolution, and to attest to the signature of the City Manager to any and all instruments requisite to implementing said Resolution.

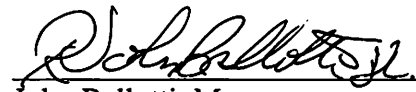
PASSED BY THE GOVERNING BODY of the City Council of the City of Commerce, Texas, on the 15th day of October 2013.

ATTEST:


Marty Cunningham, City Secretary

(seal)

CITY OF COMMERCE:

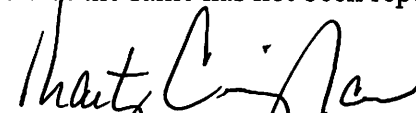

John Ballotti, Mayor

APPROVED AS TO FORM:


Jay Garrett, City Attorney

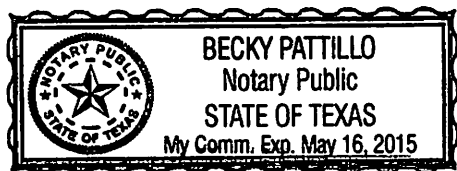
I, Marty Cunningham, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of a Resolution, and that the same has not been repealed and is in full force and effect.

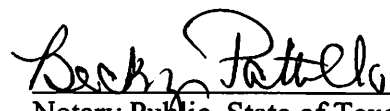
(seal)


Marty Cunningham, City Secretary

Sworn to and subscribed before me on this the 21st day of October 2013, to certify which witness my hand and seal of office.

(seal)




Notary Public, State of Texas

STATE OF TEXAS

§

COUNTY OF HUNT

§

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This Chapter 380 Economic Agreement (the "Agreement") is between the **CITY OF COMMERCE TEXAS** (the "City"), and **DAVID GORDON AND LORI GORDON, AND RANDOLPH D & L COMPANY, LLC, D/B/A QUALITY CONCRETE PRODUCTS, A TEXAS LIMITED LIABILITY COMPANY** (THE "COMPANY").

RECITALS

1. The Company is the owner of a piece of property at 915 Bois d'Arc Street Commerce, Texas (the "Land") and has built a 120' x 60' building (the "Improvements") on the Land; and
2. The City has determined that this project will promote new business enterprise and create new jobs within Commerce for the benefit of the community as a whole; and
3. The City has desires to contribute certain incentive payments upon certain terms and conditions; and
4. Chapter 380 of the Texas Local Government Code provides that Texas municipalities may create programs to promote local economic development; and
5. City has approved a program for the rebate of a portion of the ad valorem taxes collected based on the increase in valuation attributed to the new Improvements placed on the Land as an incentive to encourage redevelopment projects and to further enhance the benefits of improvements to businesses and the community as a whole; and
6. The Commerce City Council hereby finds that this Agreement embodies an eligible program and clearly promotes economic development in the City of Commerce, Texas and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and the City's economic development program, and further, is in the best interest of the City.

The parties agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning in this Agreement unless the context clearly indicates otherwise.

- 1.1 "Bankruptcy or Insolvency"** means the dissolution or termination of a party's existence as a going business, insolvency, appointment of receiver for any part of such party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing of the bankruptcy proceeding.
- 1.2 "Base Value"** means the Taxable Value for the Land and Improvements as of January 1, 2012.
- 1.3 "Commencement Date"** means January 1, 2014.
- 1.4 "Expiration Date"** means December 31, 2018.
- 1.5 "Impositions"** means all ad valorem taxes which are or may be assessed, charged, levied, or imposed by the City of Commerce on the Land and Improvements owned by Company within the City.
- 1.6 "New Value"** means the Taxable Value for the Land and Improvements as of January 1 of each year during the term of this Agreement.
- 1.7 "Reimbursement"** means the difference between the ad valorem taxes computed on the Base Value and ad valorem taxes computed on the New Value for the City of Commerce ad valorem taxes only. It is the intent of this agreement that the Reimbursement shall be an amount equal to one hundred percent (100%) of the City of Commerce ad valorem taxes paid by Company on the new Improvements constructed on the Land after the Base Value date for a period of five (5) years. City ad valorem property taxes associated with the Land and improvements constructed prior to the date of the base value shall not be included when calculating the Chapter 380 payments.
- 1.8 "Taxable Value"** means the appraised value as certified by the appraisal district or its successor, for a given year.

Article II

2.1 The Company shall make and retain the Improvements.

2.2 The Company shall make all Improvements in compliance with applicable City

building codes.

2.3 The City shall make incentive payments to the Company for building the Improvements on the Land.

Article III Term of Agreement

3.1 This Agreement's term begins on the Commencement Date and ends on the Expiration Date, unless sooner terminated as provided in this Agreement.

Article IV Chapter 380 Payments

4.1 The City shall pay the Company the annual Reimbursement no later than October 31st during each of the 5 years of the Agreement, such being on October 31, 2014; October 31, 2015; October 31, 2016; October 31, 2017; and October 31, 2018.

Article V Termination

5.1 Termination. This Agreement terminates on the Expiration Date, and may prior to the Expiration Date, be terminated upon any one or more of the following:

- a. By mutual written agreement of the parties;
- b. By either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and the default or breach is not cured within 30 days after written notice of the default or breach;
- c. By the City, if any Impositions owed to the City or the State of Texas by the Company have become delinquent, however the Company retains the right to timely and properly protect and contest any Impositions;
- d. By the City, if the Company suffers an event of Bankruptcy or Insolvency; or
- e. By either party if any subsequent Federal or State legislation or any decision of a court declares or renders this Agreement invalid, illegal, or unenforceable;
- f. By the Company allowing its ad valorem taxes owed to the City to become delinquent.

5.2 Repayment. In the event the Agreement is terminated by the City under

Sections 5.1(b), (c), (d), or (e)

- a. the Company shall immediately refund the City an amount equal to the Reimbursement, plus
- b. interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate from the Commencement Date until paid.

The repayment obligation of the Company under this Section will survive termination.

Article VI Miscellaneous

6.2 No Joint Venture. The terms of this Agreement are not intended to and will not be deemed to create a partnership or joint venture among the parties.

6.3 Notice. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and certified, with return receipt requested, by delivering the same in person to such party, or by delivering the same by confirmed facsimile during the recipient's normal business hours. Notice given in accordance herewith shall be effective upon the earlier of receipt at the address of the addressee or on the second (2nd) business day following deposit of same in the United States mail as provided for herein, regardless of whether same is actually received. For purposes of notice, the addresses of the parties and their facsimile numbers shall be as follows:

If to Commerce:

**City of Commerce
1119 Alamo Street
Commerce, TX 75428
Attn: Marc Clayton, City Manager
Fax No. 903/886-8929**

If to the Company:

**Randolph D & L Company, LLC
915 Bois d'Arc Street
Commerce TX 75428
Attn: Lori Gordon, President**

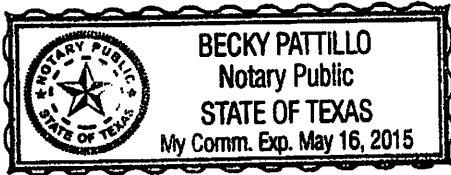
Either party may change its address or facsimile number for notice by giving ten (10) days prior written notice thereof to the other party.

ACKNOWLEDGEMENTS

STATE OF TEXAS §
COUNTY OF HUNT §

This instrument was acknowledged before me on this the 24th day of October, 2013, by **MARC CLAYTON, CITY MANAGER OF THE CITY OF COMMERCE, TEXAS** as an act of said entity.

Given under my hand and seal of office this 24th day of October, 2013.

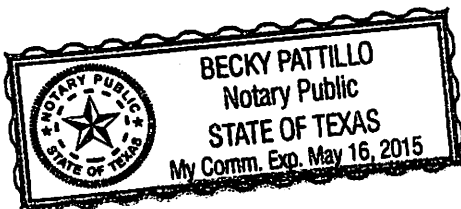


Becky Pattillo
Notary Public, State of Texas
Becky Pattillo
Notary's Printed Name
My Commission Expires: 5-16-15

STATE OF TEXAS §
COUNTY OF HUNT §

This instrument was acknowledged before me on this the 24th day of October, 2013, by **LORI GORDON, PRESIDENT OF RANDOLPH D & L COMPANY, LLC** as an act of said entity.

Given under my hand and seal of office this 24th day of October, 2013.



Becky Pattillo
Notary Public, State of Texas
Becky Pattillo
Notary's Printed Name
My Commission Expires: 5-16-15

6.4 Entire Agreement. This Agreement is intended to be the final, complete and exclusive agreement between the parties relating 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 in any Exhibits attached to the Agreement.

6.5 Governing Law. This is a Texas contract and will be construed and enforced under and be governed in all respects by the laws of the State of Texas, without regard to the conflict of laws principles of the State of Texas.

6.6 Amendments. This Agreement may only be amended by the mutual written agreement of the parties.

6.7 Headings. The headings and captions in this Agreement are for convenience only and in no way define and describe the scope or content of any provision of this Agreement.

6.8 Counterparts. This agreement may be executed in counterparts. The parties will deem each of the counterparts as an original instrument but all of the counterparts will constitute one and the same instrument.

The parties have executed this Agreement effective the date first written above.

RANDOLPH D & L COMPANY, LLC

By: Lori Gordon
Lori Gordon, President

Date: 10-24-2013

By: David Gordon
David Gordon, Secretary

Date: 10-24-2013

CITY OF COMMERCE

By: Marc Clayton
Marc Clayton, City Manager

Date: 10/24/13