



City of Rowlett

Official Copy

Resolution: RES-145-15

4000 Main Street
Rowlett, TX 75088
www.rowlett.com

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS, RATIFYING A SECOND AMENDMENT TO THE ECONOMIC DEVELOPMENT PROGRAM AGREEMENT BETWEEN THE CITY AND 3840 MAIN, LLC, TO REVISE THE DEFINITION OF FORCE MAJEURE AND TO INCLUDE A WAIVER OF IMPACT FEES IN AN AMOUNT NOT TO EXCEED \$16,643.26; AUTHORIZING THE CITY MANAGER TO ENTER INTO THE AMENDMENT TO THE AGREEMENT ON THE CITY'S BEHALF; AND, PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Rowlett, Texas, has entered into an Economic Development Program Agreement ("Agreement") with 3840 Main, LLC, a developer, for the construction of a restaurant facility to be located at 3840 Main Street, in the City; and

WHEREAS, the City and the Developer have entered into an amendment of the Agreement as of June 16, 2015, to extend the deadline for completion of construction to afford additional time to the Developer to achieve the completion of construction; and

WHEREAS, the Developer has requested an amendment to clarify the definition of Force Majeure and to include in the Grant a waiver of impact fees, which the Council herein approves by authorizing an Amendment to the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS:

Section 1: That the City Council of the City of Rowlett does hereby approve the Second Amendment to the Economic Development Program Agreement by and between the City of Rowlett, Texas and 3840 Main, LLC, attached hereto and incorporated herein as Exhibit "A".

Section 2. That the City Council does hereby authorize the City Manager of the City of Rowlett, Texas, to execute the Amendment to the Agreement and any other associated documents on the City's behalf.

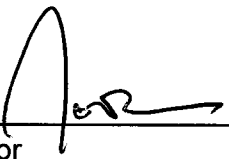
Section 3: This resolution shall take effect immediately upon its passage.

At a meeting of the City Council on December 1, 2015 this Resolution be adopted. The motion carried by the following vote:

Ayes: 7 Mayor Gottel, Mayor Pro Tem Gallops, Deputy Mayor Pro Tem Dana-Bashian, Councilmember van Bloemendaal, Councilmember Pankratz, Councilmember Bobbitt and Councilmember Sheffield

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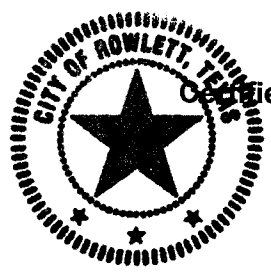



Approved by 
Mayor

Date December 1, 2015

Approved to form by 
City Attorney

Date December 1, 2015



Certified by 
City Secretary

Date December 1, 2015

STATE OF TEXAS §
 §
 COUNTY OF DALLAS §

**SECOND AMENDMENT TO
 ECONOMIC DEVELOPMENT
 PROGRAM AGREEMENT**

THIS SECOND AMENDMENT TO ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (“Second Amendment”) is made and entered into by and between the City of Rowlett, Texas, (“City”) and 3840 Main, LLC, (“Developer”), as of the date set forth hereinbelow.

WHEREAS, the City has entered into an Economic Development Program Agreement (“Agreement”) with Developer effective on or about April 8, 2014, which provided for, *inter alia*, the transfer of real estate from the City to Developer conditioned on certain performance criteria; and

WHEREAS, the parties have agreed to an amendment of the Agreement on or about June 16, 2015, revising the scheduled date for the Completion of Construction; and

WHEREAS, the parties have agreed to this second amendment of the Agreement to revise the definition of “Force Majeure” in Article 1, and to revise Section 3.1 of the Agreement, in accordance with the terms hereof.

NOW THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Developer and the City hereby agree as follows:

1. Section 3.1 of Article 3 of the Agreement be and is hereby amended such that Section 3.1 is replaced and shall henceforth read in its entirety as follows:

**“ARTICLE 3
 Economic Development Grant**

3.1. Grant. Subject to the terms, covenants and conditions of this Agreement, the City will make economic development grants to Developer from lawfully available funds in an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00), to defray a portion of the costs of the necessary costs of design, construction, renovation and installation of infrastructure, buildings and facilities for the Project. This part of the Grant shall be paid by the City one (1) year after Completion of Construction, payable from any source of funds lawfully available to the City. In addition, the City shall also waive and release Developer from payment of water, sewer and roadway impact fees, as and when due, in an aggregate amount not to exceed Sixteen Thousand Six Hundred Forty-Three and 26/100 Dollars (\$16,643.26).

...”

2. ~~Article Section 3.1 of Article 3 of the Agreement~~ be and is hereby amended such that the definition of “Force Majeure” Section 3.1 is replaced and shall henceforth read in its entirety as follows:

**“ARTICLE 1
Certain Definitions**

...

“Force Majeure” shall mean any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental approvals, laws, regulations, or restrictions, or other cause beyond the control of the party, and where relevant shall include delays occasioned due to adverse weather, including rain, that delays or prevents the progress of construction.

...”

3. All other terms, provisions and conditions of the Agreement shall remain in effect as written.

This Amendment shall be effective as of the 17th day of November, 2015, regardless of the date signed.

CITY OF ROWLETT, TEXAS

By: Brian Funderburk
Brian Funderburk, City Manager

Date: 11-17-15

ATTEST:

Laura Hallmark
Laura Hallmark, City Secretary

**3840 Main, LLC,
A Texas Limited Liability Corporation**

By: Decco, LLC
Its Member Manager

By: Don E. Cass
Don E. Cass, its Manager

Date: 11-19-15