

STATE OF TEXAS)
)
COUNTY OF EL PASO) **CHAPTER 381 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT**

This Chapter 381 Economic Development Program Agreement (“Agreement”) is made and entered into by and between the County OF EL PASO, TEXAS (“County”), a Texas home rule municipal corporation, and COPPERFIELD, LLC (“Applicant”), a Minnesota LLC, for the purposes and considerations stated below:

WHEREAS, the Applicant desires to enter into this Agreement pursuant to Chapter 381 of the Texas Local Government Code (“Chapter 381”); and

WHEREAS, the County desires to provide, pursuant to Chapter 381, an incentive to Applicant to develop the wire manufacturing facility as more fully described below; and

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

WHEREAS, the County determines that a grant of incentive funds to Applicant will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the County; and

WHEREAS, the County and Applicant desire that development of a wire manufacturing facility occur in the County of El Paso; and

WHEREAS, the creation of a wire manufacturing facility will encourage increased economic development in the County, provide significant increases in the County’s property tax revenues, and improve the County’s ability to provide for the health, safety and welfare of the citizens of El Paso; and

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

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

SECTION 1. DEFINITIONS.

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

- A. Agreement. The word “Agreement” means this Chapter 381 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement.
- B. Applicant. The word “Applicant” means Copperfield, LLC, a Minnesota LLC.
- C. County. The word “County” means the County of El Paso, Texas.
- D. Development. The word “Development” means the wire manufacturing facility as more fully described on Exhibit “A”, which is attached hereto and incorporated herein for all purposes.
- E. Full-Time Employment. The words “Full-Time Employment” mean a job requiring a minimum of two thousand and eighty (2,080) hours of work averaged over a twelve (12) month period, including allowance for vacation and sick leave, with full company benefits, including company paid health insurance (Employee must not be required to pay a more than fifty percent (50%) of the premium) with such jobs being located at the Development, within the County of El Paso, Texas. These requirements are more completely described in Exhibit “B” which is attached hereto and incorporated herein for all purposes.
- F. Grant. The word “Grant” means a payment to Applicant under the terms of this Agreement computed with reference to property taxes generated by the Development and payable from the County’s general revenue fund.
- G. Grant Submittal Package. The words “Grant Submittal Package” mean the documentation required to be supplied to County on a yearly basis as a condition of receipt of any Grant, with such documentation more fully described in Exhibit “C” which is attached hereto and incorporated herein for all purposes.
- H. Qualified Expenditures. The words “Qualified Expenditures” means those costs incurred by Applicant in the acquisition, construction or furnishing of the Development.

SECTION 2. TERM AND GRANT PERIOD.

The term of this Agreement shall be eight (8) years from the Effective Date of this Agreement. The Effective Date of this Agreement shall be the date upon which both parties have fully executed this Agreement, as noted below. However, the Applicant’s eligibility for Grant payments shall be limited to five (5) consecutive years (the “Grant Period”) within the term of this Agreement. The Grant Period shall begin with the first year being the first tax year that begins after: (i) the issuance of the Certificate of Occupancy for the Development; and, (ii) the Applicant having met all Full Time Employment job requirements noted in Exhibit “B”, which is attached hereto and incorporated herein for all purposes. Failure of the Applicant to receive its Certificate of Occupancy and meet its Full Time Employment job requirements within two (2) years of the

Effective Date of this Agreement shall result in the immediate termination of this Agreement. The County shall review Applicant's eligibility for Grant Payments on an annual basis during the Grant Period.

SECTION 3. OBLIGATIONS OF APPLICANT.

During the term of this Agreement, Applicant shall comply with the following terms and conditions:

- A. Applicant agrees to develop, construct, and operate, at its sole cost, the Development. Applicant shall commence construction and or improvements of the Development within twelve (12) months of the Effective Date of this Agreement. Applicant shall receive a certificate of occupancy, and be open for business to the general public within twelve (12) months from the commencement of construction and/or improvements to the Development. Applicant agrees that it shall make Qualified Expenditures of not less than Ten Million Three Hundred Eighty Thousand Dollars (\$10,380,000) in the Development. The County shall be permitted to review Applicant's receipts of Qualified Expenditures to evidence the expenditure of a minimum amount of Ten Million Three Hundred Eighty Thousand Dollars (\$10,380,000).
- B. Applicant agrees that it shall create, staff, and maintain the Full-Time Employment positions described in Exhibit "B" for the Development as soon as reasonably possible from the Effective Date of this Agreement, and shall maintain the Full-Time Employment positions for the Development through the entire Grant Period of this Agreement. Applicant shall maintain the Full-Time Employment positions for each quarter of each fiscal year with the total per day hours worked averaged over each fiscal quarter.

Applicant shall provide the County with an annual report by April 30th of each year during the term of this Agreement, certifying the status of compliance through the preceding year. Such annual report shall include the number of new jobs created and retained for the Development, information on any new investments in the Development, and any other information relevant to the Development and the County's economic development goals. Documentation for jobs may be in the form of quarterly IRS 941 returns, Texas Workforce Commission Employer Quarterly Reports, or employee rosters that show the hours worked and the positions filled. Applicant shall also provide the County with such other reports as may reasonably be required.

Applicant, during normal business hours, at its principal place of business in El Paso, shall allow the County or its agents reasonable access to Applicant's employment records and books, and other records that are related to the economic development considerations and incentives described herein, to verify employment records and any other records related to the County's economic development considerations and incentives provided herein. The confidentiality of such records will be maintained in accordance with and subject to all applicable laws.

- C. Unless otherwise agreed by the County and Applicant, each Grant Submittal Package shall be in the form provided in Exhibit “C”. If Applicant fails to timely submit a Grant Submittal Package for a particular year, the County may give Applicant written notice of its failure to timely submit such Grant Submittal Package, and Applicant shall have thirty (30) calendar days from the date on which such written notice is given in which to submit such Grant Submittal Package. The County’s determination of the amount of the Grant payment due to Applicant is final; provided, however, that the Applicant may appeal to the Commissioners Court within thirty (30) days of payment. The Commissioners Court shall hear the appeal within thirty (30) days of request for appeal and the Commissioners Court’s determination of the amount of the Grant payment shall be final. Nothing herein shall limit (or be construed to limit) Applicant’s rights and remedies as described in Section 5 of this Agreement.

- D. Applicant shall pay by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on the Development and any other property within the County of El Paso. The parties to this Agreement agree that the taxable value of the Development, after completion of all construction and improvements, will have a minimum base value of Ten Million Three Hundred Eighty Thousand Dollars (\$10,380,000). Applicant shall have the right to contest the appraised value of the Development as provided by law. However, Applicant covenants and agrees that during the term of this Agreement it shall not challenge or permit anyone else to take actions on its behalf to challenge any assessments by the Central Appraisal District at \$10,380,000 or lower. It is the intent of the parties that the assessed value of the Development on the tax rolls shall have a minimum base value of \$10,380,000 during the term of this Agreement and any affirmative act by Applicant to reduce the assessed value to amount below \$10,380,000 will be deemed an event of default that will result in termination of this Agreement.

SECTION 4. OBLIGATIONS OF COUNTY.

During the term of this Agreement and so long as an event of default has not occurred and is continuing as set forth herein (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), the County shall comply with the following terms and conditions:

- A. The County agrees to process any Grant Payments to Applicant within ninety (90) days after its approval of the Applicant’s Grant Submittal Package.

- B. Pursuant to the County’s “Incentives Policy – Guidelines and Criteria” and a cost/benefit calculation completed solely by and at the County’s discretion, the County shall determine the total amount of Grant Payments due to the Applicant, if any, on an annual basis. The minimum amount of the Grant Payment the Applicant shall be eligible for each year shall be as set forth in Exhibit “B”.

SECTION 5. EVENTS OF DEFAULT.

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

- A. **Failure to Maintain Development and Job Requirements.** Applicant's failure or refusal to operate the Development and maintain required Full Time Employment pursuant to this Agreement through the entire Grant Period of this Agreement, and Applicant's failure or refusal to cure within thirty (30) days after written notice from the County describing such failure, shall be deemed an event of default. However, if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but the Applicant has not yet commenced such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure, such actions or omissions shall also be deemed an event of default.
- B. **False Statements.** In the event the Applicant provides any written warranty, representation or statement under this Agreement or any document(s) related hereto that is/are false or misleading in any material respect, either now or at the time made or furnished, and Applicant fails to cure same within thirty (30) days after written notice from the County describing the violation shall be deemed an event of default. If such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, and Applicant fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, such actions or omissions shall also be deemed an event of default. Further, if Applicant obtains actual knowledge that any previously provided warranty, representation or statement has become false or misleading after the time that it was made, and Applicant fails to provide written notice to the County of the false or misleading nature of such warranty, representation or statement within ten (10) days after Applicant learns of its false or misleading nature, such action or omission shall be deemed an event of default. In the event this Agreement is terminated pursuant to this Section, all Grant Payments previously provided by the County pursuant to this Agreement shall be recaptured and repaid by Applicant within sixty (60) days from the date of such termination.
- C. **Insolvency.** The dissolution or termination of Applicant's existence as a going business or concern, Applicant's insolvency, appointment of receiver for any part of Applicant's portion of the Property, any assignment of all or substantially all of the assets of Applicant for the benefit of creditors of Applicant, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Applicant shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) days after filing, no event of default shall be deemed to have occurred.
- D. **Construction of Development.** Applicant's failure to comply with its construction obligations set forth in this Agreement and Applicant's failure to cure same within thirty (30) days after written notice from the County shall be deemed an event of default. If such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence but Applicant fails or refuses to commence such cure within such thirty (30) day period or

fails or refuses to continuously thereafter diligently prosecute such cure, except to the extent such failure is caused by any act or failure to act on the part of the County, such actions or omissions shall be deemed events of default.

- E. Property Taxes. In the event Applicant allows any property taxes owed to the County to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within thirty (30) days after written notice thereof from the County and/or El Paso Central Appraisal District, such actions or omissions shall be deemed an event of default. Subject to the restrictions noted herein, Applicant shall have the right to contest the appraised value of the Development.
- F. Other Defaults. Failure of Applicant or the County to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, and Applicant or the County fails to cure such failure within thirty (30) days after written notice from the other party describing such failure shall be deemed an event of default. If such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but if Applicant or the County also fails or refuses to commence such cure within such thirty (30) day period or fails or refuses to continuously thereafter diligently prosecute the cure of such failure, such act or omission shall be deemed an event of default.
- G. Failure to Cure. If any event of default by Applicant shall occur, and after Applicant fails to cure same in accordance herewith, then this Agreement is terminated without any further action required of the County and the County's obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.

SECTION 6. TERMINATION OF AGREEMENT BY COUNTY WITHOUT DEFAULT OF APPLICANT.

The County may terminate this Agreement for its convenience and without the requirement of an event of default by Applicant, which shall become effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including a formal decision or action by a court of final review holding that a Chapter 381 Economic Development Agreement such as this Agreement is an unconstitutional debt.

SECTION 7. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- A. Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by both parties.

- B. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.
- C. Assignment of Applicant's Rights. Applicant understands and agrees that the County expressly prohibits Applicant from selling, transferring, assigning or conveying in any way any rights to receive the Grant proceeds without the County's prior written consent. Any such attempt to sell, transfer, assign or convey without the County's prior written consent shall result in the immediate termination of this Agreement, with no ability for the Applicant to cure.
- D. Applicant's Sale or Transfer of the Development. Prior to any sale or other transfer of ownership rights in the Development, Applicant shall notify the County in writing of such sale or transfer within thirty (30) business days of the effectiveness of such sale or transfer. This provision is a material term of this Agreement and the failure to notify the County of such sale or transfer within the applicable period shall constitute an event of default.
- E. Binding Obligation. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The County warrants and represents that the individual executing this Agreement on behalf of the County has full authority to execute this Agreement and bind the County to the same. The individual executing this Agreement on Applicant's behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant to the same.
- F. Completion of Development. As consideration for the agreements of the County as contained herein, Applicant agrees that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the Development and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations.
- G. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- H. Execution of Agreement. The El Paso County Commissioners Court has authorized the County Judge to execute this Agreement on behalf of the County.
- I. Filing. The County shall file this Agreement in the deed records of El Paso County, Texas.
- J. Force Majeure. It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same

during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

- K. Notices. All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

County: County of El Paso
County Judge
500 E. San Antonio
El Paso, Texas 79901

Copy To: County of El Paso
County Commissioner, Precinct 2
500 E. San Antonio
El Paso, Texas 79901

Applicant: Copperfield, LLC
1115 W. North Street
Bremen, IN 46506

- L. Ordinance Applicability. The signatories hereto shall be subject to all ordinances/orders of the City and County of El Paso, whether now existing or in the future arising; provided however no ordinance/order shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Development unless specifically enumerated herein.
- M. Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- N. Sovereign Immunity. No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have executed this Agreement on this 7th day of April, 2008.

ATTEST:

COUNTY OF EL PASO, TEXAS

County Clerk

By _____
County Judge Anthony Cobos

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Assistant County Attorney

County Contract Administrator
County Commissioner, Precinct 2

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2008, by Anthony Cobos, as County Judge of the County of El Paso, Texas (City).

Notary Public, State of Texas

My Commission Expires:

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

EXHIBIT A
[Legal Description]

EXHIBIT B
[Employment Requirements & Grant Payment Eligibility]

SECTION 1. MINIMUM JOB RETENTION AND CREATION REQUIREMENTS.

In order to be eligible for any Grant Payments, Applicant is required to retain and create new jobs as follows:

(New Jobs Created)

	Retain	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Total
CV	26	8	0	4	4	5	47
PVC	20	16	0	4	4	5	49
Cabler / Z Packer	0	4	0	0	0	0	4
Silicone	0	6	0	0	0	0	6
Towers	0	4	0	0	0	0	4
Braiders	0	20	0	0	0	0	20
Drawers	4	12	0	4	4	5	29
Bunchers	12	8	0	4	4	5	33
Maintenance	17	0	0	4	0	2	23
Supervisors	15	1	1	4	0	0	21
Managers	3	3	1	2	1	1	11
Quality	3	0	0	4	0	0	7
IT Support	0	1	0	0	0	0	1
HR	1	1	0	0	0	0	2
Shipping	3	0	0	4	0	0	7
Lab	0	1	0	0	0	0	1
Tooling	1	2	0	0	0	0	3
Engineering	2	4	0	0	0	0	6
Scheduling	2	3	0	0	0	0	5
Purchasing	2	1	0	0	0	0	3
Material Handling	0	11	0	0	0	0	11
Reception	0	1	0	0	0	0	1
Inventory Clerk	1	0	0	0	0	0	1
Customer Service	4	1	0	0	0	0	5
Truck Drivers	2	0	0	0	0	0	2
Totals:	118	108	2	34	17	23	302

EXHIBIT B (Continued)
[Employment Requirements & Grant Payment Eligibility]

SECTION 2. ELIGIBILITY FOR GRANT PAYMENTS.

The Applicant's eligibility for Grant Payments and any subsequent Grant Payments made by the County to the Applicant shall be determined pursuant to and in accordance with the following:

- A. Grant Payments shall be made equivalent to at least twenty-five percent (25%) of the taxes collected on the Development's personal and real property tax account(s) for the tax year covered by the Grant Submittal Package, upon Applicant's certification of at least eighty percent (80%) of the new jobs required herein for which wages are at or above ninety percent (90%) of the Median County Wage for the year covered by the Grant Submittal Package; or
- B. Grant Payments shall be made equivalent to at least fifty percent (50%) of the taxes collected on the Development's personal and real property tax account(s) for the tax year covered by the Grant Submittal Package, upon Applicant's certification of at least ninety percent (90%) of the new jobs required herein for which wages are at or above ninety percent (90%) of the Median County Wage for the year covered by the Grant Submittal Package.

SECTION 3. MEDIAN COUNTY WAGE.

For purposes of this Agreement, the Median County Wage is that wage established for the County of El Paso as adjusted on January 1 of each year. However, in no event shall the applicable Median County Wage used for determination of Grant Payment eligibility be less than the Median County Wage established for 2007, which is \$10.57 per hour.

EXHIBIT C

[Grant Submittal Package Form]

COPPERFIELD, LLC believes that it has substantially met its obligations under the Chapter 381 Agreement dated the ____ day of _____, 2008 and signed by _____ of COPPERFIELD, LLC. Pursuant to the Agreement, COPPERFIELD, LLC submits this Grant Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Grant payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted.

Job Certification Annual Report plus attachments (all attachments as referenced within the Agreement).

Property Tax Payment Receipt(s) of payment for tax year _____.

It is understood by COPPERFIELD, LLC that the County of El Paso has up to ninety (90) days to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

COPPERFIELD, LLC

Printed Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2008, by _____, as _____ of COPPERFIELD, LLC (Applicant).

Notary Public, State of _____

My Commission Expires:
