

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Lewisville, Texas, a home rule municipality duly acting by and through its City Manager, ("City") and 4M Capital Ltd (herein referred to as "Company") (collectively, "Parties").

W I T N E S S E T H:

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code ("Statute"), the City adopted an Economic Incentive Policy for making economic development incentives and grants on May 20, 2019 ("the Policy Statement"); and

WHEREAS, the Policy Statement constitutes appropriate guidelines and criteria governing economic development agreements to be entered into by the City as contemplated by the Statute; and

WHEREAS, in order to maintain and/or enhance the commercial, economic, and employment base of the Lewisville area to the long-term interest and benefit of the City, in accordance with said Statute, the City desires to enter into this Agreement; and

WHEREAS, Company intends to lease a minimum of 300,000 square feet of space located at 1901 Midway Road as shown in Attachment "A" (the "Premises"); and

WHEREAS, the Company desires to make certain improvements to and open their distribution and warehouse facility at the Premises; and

WHEREAS, the Company's improvements to and operation of a distribution and warehouse facility at the Premises will create and retain permanent new jobs in the City; and

WHEREAS, the City desires to provide, pursuant to the Statute, an incentive to the Company for a term provided for herein; and

WHEREAS, the contemplated use of the Premises, as hereinafter defined, and the other terms hereof are consistent with encouraging development of said Premises in accordance with the purposes stated and are in compliance with the intent of the Statute, the Policy Statement and similar guidelines and criteria adopted by the City and all applicable law; and

WHEREAS, the City Council finds that the proposed improvements to the Premises are feasible and practicable and would be of benefit to the Premises and to the City after the expiration of this Agreement; and

WHEREAS, the City has determined that this Agreement contains sufficient controls to ensure that the above-mentioned public purposes are carried out in all transactions involving the use of public funds and resources in the establishment and administration of the Agreement.

NOW, THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the Parties do mutually agree as follows:

ARTICLE I **TERM**

The term of this Agreement (“Term”) shall be effective on the date that this Agreement is executed by both Parties (“Effective Date”) and shall continue through the date of the final disbursement of the Annual Grant due under Section 4.1 of this Agreement, unless sooner terminated in accordance with the termination provisions in this Agreement.

ARTICLE II **DEFINITIONS**

2.1 Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“**Agreement**” has the meaning set forth in the introductory paragraph of this Agreement.

“**Annual Grant**” has the meaning set forth in Article IV of this Agreement.

“**Business Personal Property**” means tangible personal property, other than inventory or supplies, that is classified by the Denton Central Appraisal District as business personal property, that is owned or leased by the Company, that is added to the Premises following the Effective Date, including, but not limited to, equipment, furniture and fixtures.

“**City**” has the meaning set forth in the introductory paragraph of this Agreement.

“**Company**” has the meaning set forth in the introductory paragraph of this Agreement.

“**Effective Date**” has the meaning set forth in Article I of this Agreement.

“**Event of Bankruptcy**” means that the Company becomes insolvent or bankrupt, has a receiver or trustee appointed for any part of its property, makes an assignment for the benefit of its creditors, or any proceeding is commenced either by the Company or against it under any bankruptcy or insolvency laws, which proceeding is not dismissed within sixty (60) days.

“Force Majeure” means any contingency or cause beyond the reasonable control of the Company, including without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions (unless caused by acts or omissions of the Company), fire, explosion or flood, and strikes.

“Grant Year” means a calendar year during the Term, but following the date of Substantial Completion, beginning January 1 of the calendar year through and including the following December 31 of the same calendar year.

“Improvements” means all improvements made by the Company after the Effective Date to the Premises, excluding Business Personal Property, in order to finish out the Premises as a distribution/warehouse facility.

“Inventory” means inventory, as defined by section 23.12 of TEX. TAX CODE, as amended, owned by Company, located at the Premises and valued by the Denton Central Appraisal District.

“Local Sales Tax” means the one percent (1%) sales and use tax imposed by the City on Taxable Items for its general fund, pursuant to Chapter 321, TEX. TAX CODE, as amended.

“Premises” has the meaning set forth in the recitals to this Agreement.

“Premises-Based Employees” shall mean the total number of individuals employed on a full-time basis by the Company primarily at the Premises.

“Required Documentation” has the meaning set forth in Article IV of this Agreement.

“Required Use” means the Company’s continuous operation of a distribution/warehouse facility and other ancillary facilities, such as required parking and landscaping, at the Premises.

“Sales Tax Receipt Statement” has the meaning set forth in Article IV of this Agreement.

“Start-Up Grant” has the meaning set forth in Article IV of this Agreement.

“Start-Up Materials” has the meaning set forth in Article IV of this Agreement.

“Start-Up Period” has the meaning set forth in Article IV of this Agreement.

“Substantial Completion” means completion of the construction and installation of the Business Personal Property and Improvements on the Premises, as signified by the issuance of a certificate of occupancy by the City to the Company for the Premises.

“Taxable Item” has the meaning assigned by Chapter 151, TEX. TAX CODE, as amended.

“Term” has the meaning set forth in Article I of this Agreement.

ARTICLE III GENERAL PROVISIONS

3.1 As soon as practical after the Effective Date of this Agreement, the Company shall commence the construction and installation of Business Personal Property and Improvements to finish-out a minimum of 300,000 square feet space at the Premises at a total investment, by the date of Substantial Completion, of at least five million dollars (\$5,000,000.00).

3.2 The Company shall reach Substantial Completion by March 31, 2021. In the event of Force Majeure or, if in the reasonable opinion of the City Manager, the Company has made substantial progress toward Substantial Completion by the above date, additional time may be granted at the City Manager’s discretion.

ARTICLE IV ECONOMIC DEVELOPMENT INCENTIVES

4.1. Annual Grant. During each Grant Year of the Term following the date of Substantial Completion, continuing through the fifth (5th) Grant Year of the Term, and subject to the Company’s continued satisfaction of the terms and conditions of this Agreement, the City shall provide to the Company an annual economic development grant in an amount equal to fifty percent (50%) of the business personal property and inventory taxes paid to the City by Company on the Business Personal Property and Inventory located at the Premises (the “Annual Grant”). The Company shall pay all applicable taxes in accordance with state and local regulations.

4.2 Start-Up Grant. Subject to the terms and conditions of this Agreement, the City agrees to provide to the Company an economic development grant in an amount equal to one hundred percent (100%) of the Local Sales Tax on any Taxable Items, including but not limited to construction materials, equipment, furniture and fixtures, on which Local Sales Tax was paid by the Company (the “Start-Up Materials”) during the twelve (12) month period from the Effective Date (the “Start-Up Period”). Said grant shall be referred to as the “Start-Up Grant.”

a. The Company shall provide a statement in a form reasonably acceptable to the City setting forth the City’s receipts from the State of Texas from the collection of the

Local Sales Tax for the sale to and purchase by the Company of Start-Up Materials during the Start-Up Period which are to be used to determine the amount and eligibility of the Start-Up Grant, together with such supporting documentation, and additional documentation as the City may reasonably request (the “Sales Tax Receipt Statement”). The Sales Tax Receipt Statement shall be accompanied by the following:

1. A schedule as shown in Attachment “C”, detailing the amount of the Local Sales Tax collected and/or paid to the State of Texas as a result of the sale to and purchase by the Company of Start-Up Materials during the Start-Up Period;
2. Documentation reasonably establishing amounts of Local Sales Tax paid by the Company, which may include a copy of receipts received, sales and use tax returns and reports, sales and use tax prepayment returns, direct payment permits and reports, including amended sales and use tax returns or reports, filed by the Company showing the Local Sales Tax collected (including Local Sales Tax paid directly to the State of Texas) by the Company for the sale to and purchase by the Company of Start-Up Materials during the Start-Up Period; and
3. Information concerning any refund or credit received by the Company of the Local Sales Tax paid by the Company (including any Local Sales Tax paid directly to the State of Texas) which has previously been reported by the Company as Local Sales Tax paid or collected during the Start-Up Period.

b. In the event the State of Texas determines that the City erroneously received sales tax receipts, or that the amount of sales and use tax paid by the State of Texas to the City exceeds the correct amount of sales and use tax applicable to the Start-Up Grant, the Company shall, within sixty (60) days after receipt of notification thereof from the City specifying the amount by which such Start-Up Grant exceeded the amount to which the Company was entitled pursuant to such State of Texas determination, pay such amount to the City. As a condition precedent to payment of such refund, the City shall provide the Company with a copy of such determination by the State of Texas. The provisions of this Section 4.2.b shall survive no more than four (4) years after the termination of this Agreement. If the City receives notice from the State of Texas of any audit or inquiry that may result in an obligation for the Company to make a payment to the City under this

Section, the City will notify the Company within fourteen (14) days of receipt of such notice. Failure by the City to provide such notice within the time provided herein shall not relieve the Company of its obligations under this section.

c. In the event the Company files an amended sales and use tax return, or report with the State of Texas, or if additional sales and use tax is due and owing, as determined or approved by the State of Texas, affecting sales tax receipts for the Start-Up Grant, the City shall pay to the Company any underpayment of the Start-Up Grant, provided the City has received sales tax receipts attributed to such adjustment. As a condition precedent to payment of such adjustment, the Company shall provide the City with a copy of any Company amended sales and use tax report or return made available to the Company, any relevant receipts, or any relevant direct payment and self-assessment returns. The provisions of this Section 4.2.c shall survive no more than four (4) years after the termination of this Agreement.

d. Under no circumstances shall the City be obligated to pay the Start-Up Grant unless the City has received Local Sales Tax receipts for the Start-Up Period attributable to the sale to and purchase by the Company of Start-Up Materials during the Start-Up Period and has received the Sales Tax Receipt Statement. Start-Up Grant disbursement by the City shall be based on actual Local Sales Tax receipts disbursed to the City by the State of Texas.

4.3 Timing of Grants and Required Documentation. The Company acknowledges that this Agreement makes an allowance for the Annual Grant and Start-Up Grant to be paid upon completion of submittal of documents to the City in accordance with this Agreement. The City agrees that, subject to the Company's satisfaction of the terms and conditions of this Agreement, the grants will be paid to the Company within forty-five (45) days of the City's timely and satisfactory receipt of all of the following: (1) proof of payment of the Company's tax liability relevant to the computation of the grant amount; (2) its Annual Compliance Report shown on Attachment "C"; (3) a letter of request for payment; and (4) any other documentation or information required by this Agreement (the "Required Documentation"). The Company shall submit the Required Documentation as follows:

4.3.1 **Annual Grant.** After the close of each Grant Year during the Term, prior to

the City's payment of the Annual Grant earned during such Grant Year, the Company shall submit the Required Documentation for that Grant Year to the City no later than March 31 of the following Grant Year.

4.3.2 Start-Up Grant. No later than thirty (30) days following the end of the Start-Up Period, prior to the City's payment of the Start-Up Grant, the Company shall submit the Required Documentation to the City.

ARTICLE V AGREEMENT CONDITIONS

5.1 The Company's eligibility to receive any of the economic development incentives provided for in this Agreement is contingent upon its satisfaction of the following conditions, in addition to the specific conditions, if any, that apply to a particular incentive:

5.1.1 Required Use Condition. During the Term of this Agreement following Substantial Completion and continuing thereafter until expiration of this Agreement or earlier termination of same, the Company shall fully occupy the Premises, and the Premises shall not be used for any purpose other than the Required Use. The Company shall not allow the Required Use to cease on the Premises except to the extent of an event of Force Majeure or as a temporary cessation of operations for reasonable business purposes; provided, however, that the resulting interruptions of such other business reasons do not exceed ninety (90) days during the Term of this Agreement.

5.1.2 Minimum Investment Condition. The Company shall invest a minimum of five million dollars (\$5,000,000.00) in Business Personal Property and Improvements to finish-out a minimum of 300,000 square feet space at the Premises. The Business Personal Property and Improvements must reach Substantial Completion by March 31, 2021, or within such additional time as may be granted by the City under this Agreement.

5.1.3 Minimum Employment. At all times during the Term of this Agreement following Substantial Completion, the Company shall employ a minimum of one hundred and fifty-five (155) Premises-Based Employees. Notwithstanding the foregoing and so long as the Company is otherwise in compliance with all other terms of this Agreement, this condition shall be deemed satisfied so long no less than ninety percent (90%) of the

required minimum Premises-Based Employees are employed by the Company at any time during the Term of this Agreement following Substantial Completion.

5.1.4 Community Support. The Company shall provide the City with a minimum annual contribution to support an economic development activity during each twelve (12) month period for the Term of this Agreement. The amount is determined based on the level of incentives provided by the City. A schedule of the applicable payment amount is attached as Attachment "D".

5.2 The Company must certify annually to the governing body of the City, through the City's Director of Economic Development, as to its attainment of the above-stated conditions by submitting an Annual Compliance Report, as shown in Attachment "B" and appropriate supporting documentation, no later than March 31 of each calendar year during the Term and continuing until the expiration of the Agreement.

ARTICLE VI **TERMINATION**

This Agreement may be terminated upon any one of the following:

1. By written agreement of the Parties;
2. Expiration of the Term;
3. By either of the Parties in the event the other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within sixty (60) days after written notice thereof;
4. By the City, if the Company suffers an Event of Bankruptcy; and
5. By the City, if any taxes, assessments or payments owed to the City or the State of Texas by the Company shall become delinquent and not cured within sixty (60) days after written notice thereof (provided, however, that the Company retains the right to timely and properly protest and contest any such taxes or assessments).

In the event the Agreement is terminated by the City pursuant to this Article subsection (3), (4), or (5), the Company shall be ineligible for further economic development incentives pursuant to this Agreement and shall, within thirty (30) days of written notice of termination, be required to refund

all funds received from the City under this Agreement up to the date of termination.

ARTICLE VII **MISCELLANEOUS**

7.1 The terms and conditions of this Agreement are binding upon the successors and assigns of all Parties hereto. This Agreement cannot be assigned by the Company unless written permission is first granted by the City, which consent shall not be unreasonably withheld, so long as the assignee agrees to be bound by all terms and conditions of this Agreement. It is understood and agreed between the Parties that the Company in performing their obligations thereunder, are acting independently, and the City assumes no responsibility or liabilities in connection therewith to third parties.

7.2 The Company further agrees that the City and its agents and employees shall have reasonable rights of access to the Premises for inspection purposes in order to ensure that the use and maintenance of the Premises are in accordance with all applicable agreements with the City, including this Agreement, and all applicable state and local laws and regulations, as well as the continuing right, subject to the Company's reasonable security requirements, to inspect the Premises to ensure that the Premises is thereafter maintained, operated, and occupied in accordance with all applicable agreements with the City, provided that with respect to matters concerning this Agreement (i) the City must give the Company reasonable notice by phone, email or letter of any such inspection, and (ii) a representative of the Company shall have the right to accompany the agent or employee of the City who is conducting such inspection. The City represents and warrants that the Premises do not and will not include any property that is owned by a member of the City Council having responsibility for the approval of this Agreement.

7.3 Notices required to be given to any party to this Agreement shall be given personally or by nationally-recognized overnight courier or certified mail with return receipt requested to the party at its address as set forth below, and shall be deemed delivered one (1) day after the date deposited with the overnight courier and three (3) days after the date deposited in the United States' mail:

For City by notice to:

City of Lewisville
Attn: Economic Development Director
151 W. Church Street
P.O. Box 299002
Lewisville, Texas 75057

For Company by notice to:

4M Capital Ltd
1745 Hayden Drive, #100
Carrollton, Texas 75006
Attn: Dominic Maggiano, Chief Financial Officer

Either Party may change the address to which notices are to be sent by giving the other Party written notice in the manner provided in this paragraph.

7.4 No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

7.5 This Agreement may be modified or rescinded only by a writing signed by both of the Parties or their duly authorized agents.

7.6 Venue for any litigation arising from this Agreement shall lie in Denton County, Texas.

7.7 THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY THE COMPANY'S BREACH OF THIS AGREEMENT OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF THE COMPANY, ITS OFFICERS, AGENTS, EMPLOYEES OR

SUBCONTRACTORS, OR THE COMPANY, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT. THE PROVISIONS OF THIS PARAGRAPH 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. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

7.8 This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which in the aggregate shall constitute one agreement.

7.9 If any provision contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. In lieu of each invalid, illegal or unenforceable provision, there shall be added a new provision by written agreement of the Parties as similar in terms to such invalid, illegal or unenforceable provision as may be possible and yet be valid, legal and enforceable.

7.10 Whenever the context requires, all words herein shall be deemed to include the male, female, and neuter gender, singular words shall include the plural, and vice versa.

7.11 This Agreement was authorized by action of the City Council, authorizing the City Manager to execute the Agreement on behalf of the City.

7.12 Submitted herewith is a completed Form 1295 generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "Form 1295"). The City hereby confirms receipt of the Form 1295 from the Owner, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Parties understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Owner; and, neither the City nor its consultants have verified such information.

7.13 During the term of this Agreement, the Company agrees not to knowingly employ any undocumented workers as defined in TEX. GOVT. CODE §2264.001. If convicted of a violation under 8 U.S.C. §1324a(f), the Company shall repay the amount of the abatements and

any other funds received by the Company from the City as of the date of such violation not later than one hundred and twenty (120) days after the date the Company is notified by the City of a violation of this section, plus interest from the date the abatements were paid to the Company, at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate. The payment of interest shall be as if it had been accruing from the date the abatement was paid to the Company until the date the abatements are repaid to the City. Pursuant to Section 2264.101(c), TEX. GOV'T CODE, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

(SIGNATURE PAGE FOLLOWS)

DATED this the _____ day of _____, 2020.

CITY OF LEWISVILLE, TEXAS

Donna Barron, City Manager

ATTEST:

Julie Worster, City Secretary

APPROVED TO FORM:

Lizbeth Plaster, City Attorney

4M Capital Ltd

By: 

Name: Dominic Maggiano

Title: CFO

Attachment "A"
Premises
1901 Midway Road, Lewisville, Texas

Insert Floor Plan here

Attachment "B"
Annual Compliance Report

Company Name:

Company Address:

Capital Investment Value – 1st Year (documentation required): N/A

Capital Investment Value – Reporting Year (documentation required): N/A

Date of Completion Deadline:

Annual Incentive Value Paid by the City to the Company:

Donation Amount in Support of a City Sponsored Event or Program Annually:

Membership in the Lewisville Chamber of Commerce:

Please list the dollar amount for the following:

Current Year Appraised Real Property Value – Land	
Current Year Appraised Real Property Value – Improvements	
Current Year Appraised Business Personal Property Value – Machinery, Equipment and Other BPP	
Current Year Appraised Inventory Value	
Proportionate Share of Property Taxes paid by Company to Sublandlord – Real Property	
Property Taxes Paid – Business Personal Property	
Property Taxes Paid – Inventory Tax	

Attachment "B"

Annual Compliance Report

Please provide a copy of your Quarterly Payroll Report along with the following information:

	Part Time	Full Time
Total Current Employees at End of Reporting Period		
Number of New Employees Added During Reporting Period		

Annual Payroll During Reporting Period:

Average Salary During Reporting Period:

Has construction/installation of planned improvements commenced? Yes No

Has construction/installation of planned improvements been completed? Yes No

Construction Dollars Spent This Reporting Period:

Additional Information to be Attached:
Quarterly Payroll Report
Brief Narrative Highlighting the Progress of the project
If Applicable, a Statement Addressing any Failure to Meet Requirements of the Economic Development Agreement
Letter of Request re: the Economic Development Agreement grants plus supporting documents

I certify on behalf of the Company that, to the best of my knowledge, the information and attachments provided herein are true and accurate and in compliance with the terms of the Economic Development agreement with the City of Lewisville.

Name of Certifying Officer

Title

Signature of Certifying Officer

Date

Telephone:

Fax:

E-mail:

Attachment "C"

Sales Tax Calculations Spreadsheet

Attachment C

Schedule of Local Sales Tax Paid on Construction Items Purchases

Attachment "D"
Schedule of Community Support

<u>Annual Incentive Value Paid by the City to the Company</u>	<u>Annual Support Paid by the Company to the City for a Community Event, Economic Development Activity or Other Charitable Contribution</u>
\$5,000 to \$10,000	\$1,000
\$10,001 to \$20,000	\$2,500
\$20,001 to \$50,000	\$5,000
\$50,001 to \$75,000	\$10,000
Greater than \$75,001	\$15,000