

WILLIAMSON COUNTY AND TEXAS BULLION DEPOSITORY

CHAPTER 381 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT

This **CHAPTER 381 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (this "Agreement") is made and entered into by and between **WILLIAMSON COUNTY** ("hereinafter referred to as "County"), a Texas political subdivision, and **TEXAS BULLION DEPOSITORY COMPANY**, (hereinafter "Company"), for the purposes and considerations stated below:

WHEREAS, the Company desires to enter into this Agreement pursuant to Chapter 381 of the Texas Local Government Code (hereinafter referred to as "Chapter 381"); and

WHEREAS, the County desires to provide, pursuant to Chapter 381, an incentive to Company to locate IN Williamson County, under the conditions described herein 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; and

WHEREAS, the County hereby establishes an economic development program and authorizes the making of economic development grants to Developer in recognition of the positive economic benefits to the County through Developer's construction of a 60,000 square foot building, as more fully described herein, (the "Project"); and

WHEREAS, the County determines that the grants as specified herein to Company will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the County; and

WHEREAS, the Company intends to expend at least \$12,000,000 for the construction of a 60,000 square foot building and other improvements (the "Facility") to be located on a tract of land (the "Property"), as described on the attached Exhibit "A"; and

WHEREAS, the Company intends to create up to 300 Full-Time Equivalent positions which will encourage increased economic development in the County, provide significant increases in the County's tax revenues, and improve the County's ability to provide for the health, safety and welfare of its citizens; and

WHEREAS, the County has concluded and hereby finds that this Agreement clearly promotes economic development in the County 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.

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. TERM.

This Agreement shall be effective for six (6) years from the Effective Date of this Agreement, or possibly at an earlier date, as specified herein.

SECTION 2. DEFINITIONS.

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

- (a) Ad Valorem Taxes. The words "Ad Valorem Taxes" shall mean those real and business personal ad valorem taxes paid to the County based on the assessed value of real and personal property within the Project.
- (b) Agreement. The word "Agreement" means this Chapter 381 Economic Development Program and Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (c) Company. The words "Company" mean Texas Bullion Depository. For the purposes of this Agreement, Company's address is _____.
- (d) County. The word "County" means Williamson County, Texas. For purposes of this Agreement, County's address is 710 Main Street, Suite 101, Georgetown, TX 78626.
- (e) Full-Time Equivalent Job. The words "Full-Time Equivalent Job" means a job filled by (a) one (1) individual for a period of not less than forty (40) hours per week, or (b) two (2) or more individuals for a period of not less than forty (40) hours per week in the aggregate, each of which may also be a "Part-Time Equivalent Job" if it is filled by one (1) individual for twenty (20) hours per week or less.
- (f) Grant. The word "Grant" means a payment to Company under the terms of this Agreement computed with reference to real property and personal property Ad Valorem Taxes generated by Company, 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 as a condition of receipt of any Grant.
- (h) Personal Property Ad Valorem Taxes. The words "Personal Property Ad Valorem Taxes" shall mean those business personal ad valorem taxes paid to the County based on the assessed value of personal property within the Project as determined by the Williamson County Central Appraisal District.
- (i) Property. The word "Property" shall mean the real property as described in Exhibit "A".
- (j) Real Property Ad Valorem Taxes. The words "Real Property Ad Valorem Taxes" shall mean those real property ad valorem taxes paid to the County based on the assessed value of real property within the Project as determined by the Williamson County Central Appraisal District.

SECTION 3. OBLIGATIONS OF COMPANY.

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

- (a) In consideration of the County entering into this Agreement, Company will expend at least \$12,000,000 to construct the Facility. The Company acknowledges that this Agreement is specifically contingent upon Company's continued operation of the Facility throughout the term of this Agreement. In the event the Facility is not constructed by _____ (subject to delays of Force Majeure), or if Company discontinues the operation of the Facility, then the County may terminate this Agreement after provision of written notice.
- (b) On or before the 1st day of March of each calendar year for the term of this Agreement, Company agrees to submit to the County a Grant Submittal Package containing the following:
 - (1) Evidence acceptable to the County that Company has paid by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on the Project.
 - (2) Unless otherwise agreed by the County and Company, each Grant Submittal Package shall be in a form as approved by the County. If Company shall fail to timely submit a Grant Submittal Package for a particular year, then the County **may** give Company written notice of Company's failure to timely submit such Grant Submittal Package, and Company shall have thirty (30) calendar days calculated 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 Company is final.
- (c) The parties to this Agreement agree that the taxable value of the Property will have a minimum base value of Seventy-One Million and No/100 Dollars (\$71,000,000) throughout the term of this Agreement.
- (d) The Company agrees to provide at least 300 Full-Time Equivalent Jobs throughout the term of this Agreement at the Facility. The Company shall provide to the County an affidavit stating the number of employees that is employed by the Company at the Facility no later than March 1 of each calendar year during the term of this Agreement. Failure of Company to provide at least 300 Full-Time Equivalent Jobs shall not be considered an event of default unless the number of Full-Time Equivalent Jobs actually provided is less than 200. If the actual number of Full-Time Equivalent Jobs is less than 300 (but equal to or greater than 200), the percentage of the Grant reimbursement will be reduced by the same percentage that the actual number of Full-Time Equivalent Jobs bears to the required number of Full-Time Equivalent Jobs.

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 in this Agreement (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), County will comply with the following terms and conditions:

- (a) For each calendar year during the term of this Agreement and beginning in tax year _____, an amount equaled to fifty (50%) percent of the Real Property Ad Valorem Tax revenue paid by Company and attributed solely to the Property shall be tendered from the County's general fund as a Grant by the County to Company on an annual basis upon Company's satisfaction of the requirements of this Agreement. The County agrees to process any county Real Property Ad Valorem Tax Grant payments to Company within sixty (60) days after the County has approved the Grant Submittal Package.
- (b) For each calendar year during the term of this Agreement and beginning in tax year _____, an amount equaled to one hundred (100%) percent of the Personal Property Ad Valorem Tax revenue paid by Company and attributed solely to Property shall be tendered from the County's general fund as a Grant by the County to Company on an annual basis upon Company's satisfaction of the requirements of this Agreement. The County agrees to process any county Personal Property Ad Valorem Tax Grant payments to Company within sixty (60) days after the County has approved the Grant Submittal Package.
- (c) The above-described Ad Valorem Tax Grant payments shall be paid for a period of five (5) years, beginning on _____ and continuing for 5 years, so long as Company complies with the terms and condition of this Agreement. After the term has expired, all future Real Property and Personal Property Ad Valorem Taxes shall be retained by the County.
- (d) Company agrees that it is the sole obligation of Company to present satisfactory evidence to the County that all Ad Valorem Tax payments have actually been paid to and received by the County for the Project. If for any reason, the County is unable to verify that the Ad Valorem Tax payments were received by the County, the County is under no obligation to make the Grant payments.

SECTION 5. EVENTS OF DEFAULT.

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

- (a) Failure to Comply with Agreement. Failure to substantially comply with any of the terms and conditions of this Agreement shall constitute an event of default. Company shall have thirty (30) days after receipt of notice of default to cure said default. Failure to cure the default within thirty (30) days after receipt of notice of default may result in the termination of this Agreement by the County.
- (b) Insolvency. The dissolution or termination of Company's existence as an active business or concern, Company's insolvency, appointment of receiver for any part of Company's assets, any assignment of all or substantially all of the assets of Company for the benefit

of creditors of Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Company unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing.

- (c) Delinquent Taxes. Company agrees that the County has no legal obligation under this Agreement to make any Grant Payments to Company unless County is satisfied that all Ad Valorem Tax Payments due and owing against the Property have been paid.
- (d) Failure to Cure. If any Event of Default by Company shall occur, and if Company fails to cure same in accordance herein, then this Agreement may be terminated and the County's obligations end at that time.

SECTION 6. TERMINATION OF AGREEMENT BY COUNTY WITHOUT DEFAULT.

County may terminate this Agreement without an event of default by Company and effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including case law holding that a Chapter 381 Economic Development Agreement grants such as are included in this Agreement is an unconstitutional debt.

SECTION 7. GRANT RECAPTURE.

In the event that Company is in default of this Agreement, the County may recapture and collect from Company the Grant payments previously made to Company after providing Company written notice and a minimum period of thirty (30) days to cure such default, and the default has not been cured within said time. In the event Company does not so cure, Company shall pay to the County the all previously paid Grant payments within thirty (30) days after the County makes demand for same. In addition to other available remedies under law and equity, the County shall have all remedies for the collection of the Grant payments as provided generally in the Tax Code for the collection of delinquent property taxes.

SECTION 8. 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 the party or parties sought to be charged or bound by the alteration or amendment.
- (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 Williamson County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Williamson County, Texas.
- (c) Assignment. Company understands and agrees that the County expressly prohibits Company from selling, transferring, assigning or conveying in any way any rights to receive the Grant proceeds without the County's prior written consent.

- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. County warrants and represents that the individual executing this Agreement on behalf of County has full authority to execute this Agreement and bind County to the same. Company warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **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.
- (f) **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the date of the later to execute this Agreement by Company and County.
- (g) **Execution of Agreement.** The Commissioners Court shall authorize the County Judge to execute this Agreement on behalf of County.
- (h) **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.
- (i) **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 above. 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.
- (j) **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.
- (k) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

COMPANY:

TEXAS BULLION DEPOSITORY

By: _____

Name: _____

Title: _____

Date: _____

COUNTY:

COUNTY OF WILLIAMSON, TEXAS

By: _____

Dan A. Gattis, County Judge

Attest:

By: _____

County Clerk