



**CITY OF LOWELL  
SPECIAL COUNCIL MEETING AGENDA  
MONDAY, JULY 25, 2022, 6:00 P.M.**

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- 1. CALL TO ORDER – Mayor Sandy Railey**
- 2. ADOPTION OF AGENDA FOR THIS MEETING**
- 3. PUBLIC COMMENTS**
- 4. UNFINISHED BUSINESS**
  - A. Public Hearing for Consideration of Economic Development Agreement for Project Hearth pursuant to 160D-1001 (p. 1-16)
- 5. ADJOURN**

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## AGENDA ITEM INFORMATION

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**AGENDA ITEM #:** 4-A

**DESCRIPTION:** PUBLIC HEARING FOR CONSIDERATION OF ECONOMIC DEVELOPMENT AGREEMENT FOR PROJECT HEARTH PURSUANT TO 160D-1001

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Project "Hearth", Building #3 within the NorthPoint Development has applied for a Level 4 Economic Development Investment Grant from the City of Lowell, The City of Gastonia, and Gaston County.

Background: For the past twenty years, a joint effort has been made to study and plan for development of the property owned by the Lineberger family north of I-85 that is within the Cities of Lowell and Gastonia. The property's location adjacent to I-85 makes it ideal for commercial development. Project HEARTH plans to invest a minimum total of \$135 million in Building #3. Project HEARTH will result in the creation of new jobs within Lowell, promote business, increase the tax base, and stimulate and stabilize the local economy. Project HEARTH is eligible for a Level Four Investment Grant. This grant will mirror the grant schedule provided by Gaston County and City of Gastonia. The development agreement will be negotiated by the Manager and the City Attorney based on the approved program.

Staff recommends approval of the Economic Development Investment Grant Agreement and Resolution RS9-2022.

**NORTH CAROLINA  
GASTON COUNTY**

**ECONOMIC DEVELOPMENT  
AGREEMENT**

This ECONOMIC DEVELOPMENT AGREEMENT dated as of the \_\_\_\_ day of June 2022, is entered into by and between GASTON COUNTY, a political subdivision of the State of North Carolina (the "County"), the CITY OF LOWELL, a municipal corporation of the State of North Carolina (the "City") and Project Hearth, a Delaware limited liability company authorized to do business in the State of North Carolina (the "Company").

**WITNESSETH:**

WHEREAS, the Company proposes to lease, construct, equip and occupy a facility in the Gateway 85 Park located in Gaston County, North Carolina, ("Property"), so that the Company can establish a logistics facility (the "Facility") at a cost of approximately \$135 million dollars of investment in land, building and equipment by the Company in consideration of certain incentives to be provided to the Company by the County and the City, and other inducements, all as more fully described herein; and

WHEREAS, pursuant to the Local development Act of 1925, North Carolina General Statutes §158-7.1, and the County's and City's policies on economic development incentive grants, the County and City have determined, after each having conducted a public hearing thereon, to provide certain incentives to the Company as more particularly described herein, in order to to induce the Company to complete construction of the Facility and certain other improvements upon the Property, to locate certain equipment upon the Property, and to provide certain high quality jobs at the Facility; and

WHEREAS, N.C. Gen. Stat. §160D-1001 (2021) authorizes the City to enter into Development Agreements, subject to the procedures and limitations as provided by Article 10 of Chapter 160D for various purposes which include but are not limited to creating community opportunities; promoting long term-commitment of private and public resources and capital; and carefully coordinating the planning, financing and construction of developments; and, further, as set forth in the provisions of N.C. Gen. Stat. §160D-1001 through §160D-1012, such above-referenced procedures and limitations include approval of the development agreement by the governing body of the local government by Ordinance after a duly noticed public hearing; and

WHEREAS, the parties desire hereby to document their respective commitments, and, to the fullest extent permitted by North Carolina law, contractually bind them thereto; and

WHEREAS, it is anticipated that the Company's capital investment in and at the Property and its operations thereat will generate (i) significant ad valorem tax, sales tax and other revenues to the County; (ii) ad valorem tax, sales franchise/excise/and/or fees; (iii) an increase in commercial activity through new construction; (iv) new jobs for City residents at a minimum wage rate as described herein; and (v) a process or plan for maximizing private investment in the Property and surrounding parcels; all of which revenue sources and benefits constitute a material part of the financial basis for the County and City entering into this Agreement; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the parties agree, and contract as follows:

**1. The Facility.** The Company proposes to lease the Property (as more specifically defined and describe on Exhibit 2 attached hereto) and complete construction of the Facility and other improvements and locate and maintain upon the Property equipment and other personal property, representing a combined investment of not less than **\$135,000,000**. The Company currently expects to complete upfitting of the Facility not later than five (5) years after the occupancy of the Property. The County's lawfully-appointed tax assessor, finance officer or finance director and other duly authorized and designated County officials charged with carrying out this Agreement on behalf of the County and City and having a need to know shall have the right to examine Company's records at the location where such records are customarily kept from time to time on reasonable notice and at reasonable times as may be necessary to verify Company's investments in the Facility to include machinery & equipment. Subject to the provisions of Subsection 10(a) below, the Company's failure to make any specified investment or operate the Facility for a specified period shall not (i) constitute a default hereunder nor result in any obligation to repay or reimburse any annual grant payment made hereunder or (ii) constitute a covenant or condition broken whereupon the County and City shall be relieved of their obligations to convey the Property to the Company or make any grant payment identified in Section 3 or Section 4 below or provide any other inducement described herein.

**2. Grants.**

**Gaston County/City of Gastonia Incentive Grant**

Based upon the Company establishing a logistics facility and subject to performance by the Company of the terms and conditions of this Agreement, the County and City will pay to Company a standard Level IV grant from any lawfully available funds not otherwise restricted, for a period of ten (10) consecutive years starting with the County's fiscal year ending **June 30, 2023 or 2024**, annual economic development

incentive grants (each a "Grant"). For purposes of convenience only in quantifying the benefit to the County and City, the amount of each annual Grant shall be measured by and equal to the applicable percentage set out below of the ad valorem taxes actually paid by the Company to the County and the City, as the case may be, on the assessed tax value of the Facility according to the Company's "Business Personal Property" and "Real Property and Personal Property" listings as filed for the Facility and the Property for the corresponding period.<sup>1</sup> As pursuant to County's and City's published guidelines describing their respective Investment Grant Programs (see **Exhibit 1** herein), Company will be expected to complete a grant application no later than **April 15, 2024**, being the year following the Company's selected calendar base-year initiating its incentive grant term with County and City. **County and City confirm that Company has at its sole discretion made the decision to file its grant application initiating its grant base-year term either by April 15, 2023 (for calendar year 2022) or by April 15, 2024 (for calendar year 2023).**

**TABLE A**

<b>Applicable Percentage</b>	<b>Based on Facility and Property Assessed Value as of 202__</b>
85%	2023
85%	2024
85%	2025
85%	2026
85%	2027
70%	2028
70%	2029
70%	2030
70%	2031
70%	2032

**3. Additional grants and inducements.** The City and County additionally agree to provide the following grants and inducements to Company from lawfully available funds not otherwise restricted for the applicable project costs as set forth in this section 3 and expressly incorporated herein by reference.

<sup>1</sup> The Real Property Investment Grant shall be paid only to the entity responsible for paying the real property taxes, as determined by the County's lawfully appointed tax assessor or other designated officials, Company, and any Landlord or property owner, It being the expressed intention of the Parties that the total Investment Grant applicable to the real property shall not exceed the applicable percentage of Real Property Assessed Value as set forth in Table 2-A.

(i) Business Retention and Expansion Program

The County EDC agrees to provide a central point-of-contact for any future expansions contemplated by Company involving existing industry issues which might need to be addressed on Company's behalf. This would include but not be limited to training, incumbent worker programs, utility upgrades and vendor support. The County EDC's Existing Industry Coordinator shall be designated as the initial point of contact. Once the Company's Facility is established, the County's Existing Industry Coordinator agrees to conduct periodic visits to the plant to ensure that the Company's expectations of local and State support have been met.

(ii) Project Coordination

The County also agrees to provide the following assistance to Company:

(a) Permitting: Upon project announcement, a designee from the County EDC and the City will assemble a project team to meet with the Company's design and construction administration team at a location and time of Company's choice.

(b) Recruitment and Training: The County shall cause a designee from the County EDC to facilitate meetings between Company, the North Carolina Employment Services Division, Gaston County Workforce Development Board, and the North Carolina Community College System to initiate the activities of recruitment and training of employees on behalf of the Company. These activities are standard State of North Carolina programs administered and delivered by local agencies.

4. **Conditions.** During each of the years that the Company is eligible for incentive Grants, the Grants for each year will be paid to Company in accordance with the schedule set forth in Section 2 Table A. The County and City will only be obligated to make incentive Grants for a given year if the Company is then current in its payments of all taxes, and only after the Company has made its ad valorem tax payments to the County and City for the year for which incentive Grants are payable under this Agreement, and the Company has paid and complied with its other obligations and duties to the County and City set forth herein. The payment of all taxes due the County and City as a condition to eligibility for Grants in any year during the Grant term is a material condition of this Agreement and shall not be construed as implying or suggesting that the County or City is reimbursing to the Company any or all of any annual ad valorem taxes collected from the Company. Additionally, Company shall not be entitled to receive Grants for any year after completion of the Facility during which the Company fails to operate the Facility. For the purposes of determining whether the Facility has been operated during any given year, temporary interruptions in operations necessitated by inclement weather,

utility disruptions, repairs, replacements, and ordinary and necessary service shall be disregarded in accordance with the force majeure provisions of Section 9.

5. **No Pledge of Faith and Credit.** No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the County or City within the meaning of any constitutional debt limitation. The parties acknowledge that the scope, term and duration hereof are in all events reasonable. No provision of this Agreement shall be construed or interpreted as delegating governmental powers or as a donation or a lending of the credit of the County or City within the meaning of the North Carolina Constitution. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the County's or City's moneys. To the extent of any conflict between this Section and any other provision of this Agreement, this Section shall take priority.

6. **Assignment.**

(a) Except as provided in the following provisions of this Section 6 or otherwise set forth in this Agreement, no party shall assign its rights hereunder.

(b) Notwithstanding the foregoing, the Company may assign its rights hereunder to any entity that it controls, that controls the Company or that is under the common control of another with the Company.

(c) Nothing in the foregoing shall be interpreted or construed to prohibit the Company (or any permitted assignee under Subsection 6(b)) from engaging in a sale-leaseback transaction or using, or permitting the use of, the Property or any portions thereof by or for the benefit of third parties under leases, subleases, licenses, contracts, or other arrangements satisfactory to the Company (or its permitted assignee under Subsection 6(b)) in its sole and absolute discretion. The Company will give the County and City at least 30 days' prior written notice of any assignment hereunder.

7. **Default and Termination.** Except as otherwise provided in this Agreement, in the event of any breach of any terms or conditions of this Agreement, by either Party to this Agreement, or any assignee or successor, such Party shall, upon written notice, proceed immediately to cure or remedy the breach. In the event action is not taken or not diligently pursued, or the breach not cured or remedied within a reasonable time, the aggrieved Party may by written Notice terminate this Agreement and all further liability hereunder, or in the alternative may institute proceedings necessary or desirable in its opinion to cure and remedy the breach, including, but not limited to, proceedings to compel specific performance by the Party in default or breach of its obligations.

8. **Disclaimers.** The Company acknowledges that neither the County nor City has designed the Facility, neither the County nor City has supplied any plans or specifications with respect thereto, and neither the City nor the County: (a) is a manufacturer of, or dealer in, any of the component parts of the Facility or similar

facilities: (b) made any recommendation, given any advice or taken any other action with respect to (1) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Facility or any component part thereof or any property or rights relating thereto, or (2) any action taken or to be taken with respect to the Facility or any component part thereof or any property or rights relating thereto at any stage of the construction thereof: nor (c) made any warranty or other representation, express or implied, that the Facility or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the Company intends therefor, or (iii) is safe in any manner or respect.

The County and City make no express or implied warranty or representation of any kind whatsoever with respect to the Facility or any component part thereof, including but not limited to any warranty or representation with respect to the merchantability or the fitness or suitability thereof for any purpose, and further including the design or condition thereof; the safety, workmanship, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the Facility's ability to perform any function; or any other characteristic of the Facility; it being agreed that the Company is to bear all risks relating to the Facility, the completion thereof and the transactions contemplated hereby and the Company hereby waives the benefits of any and all implied warranties and representations of the County and City as they may relate to the foregoing. Nothing herein is intended to contradict or make void any warranty or representation made in the land Contract.

The provisions of this Section shall survive the Agreement's termination.

9. **Controlling Law.** This Agreement is entered into pursuant to the laws of the State of North Carolina and shall be construed and enforced thereunder.

10. **Force Majeure.** If by reason of acts of God, floods, storms, insurrection, riots, acts of the public enemy, national catastrophe, inability to obtain materials, or similar unexpected events including, without limitation, supply chain disruption, the Company is unable to complete the construction and related undertakings called for herein, or if same is delayed as a result of such event or events, then the parties hereto agree to extend the time period that the County and City will be obligated to make the payments and provide the incentives described herein to a date to be mutually agreed upon by the parties hereto based upon the gravity and duration of such unexpected event.

11. **Defaults; Remedies; Dispute Resolution and Cooperation.**

(a) In the event of litigation for any alleged breach of this Agreement, exclusive jurisdiction and venue for such litigation shall be in the Superior Court of Gaston



County, North Carolina or the United States District Court for the Western District of North Carolina. The County and City further agree to reasonably assist the Company in its present as well as future applications for any incentives, grants and programs that may be or, alternatively, become available from the County, the City and/or the State, and that the County and City will cooperate with the Company in its defense (should any defense ever be necessary) of this Agreement and/or the incentives granted hereunder, so as to support and in no way undercut same. The Company also agrees to reasonably cooperate with the County, the City and other North Carolina, federal and municipal authorities in any such efforts. In the event that any of the incentives or other agreements of the County or the City are determined to be invalid, the County and City agree that they will, to the extent permitted by law, reasonably provide the Company with any permitted incentives of substantial equal value pursuant to one or more replacement incentive grant programs.

12. Notices.

(a) Whenever this Agreement requires or permits any consent, approval, notice, request, proposal, or demand (collectively, "Notice") from one party to another, the Notice must be in writing and shall be effective upon the first to occur of (i) actual receipt by the intended recipient, or (ii) the third (3rd) business day after it is properly deposited in the United States mail via certified mail, return receipt requested.

(b) Each party's address to which such Notices shall be delivered is listed below:

(1) If to Company, to

[REDACTED]

with copies to:

[REDACTED]

[REDACTED]

(2) If to County, to

Gaston County Government Offices  
Attn: County Manager  
P.O. Box 1578  
Gastonia, NC 28053

(3) If to the City, to  
City of Lowell  
Attn: City Manager  
101 West First Street  
Lowell, NC 28098

(c) Any party entitled to receive a Notice hereunder may change the address which it previously had specified for receiving the same, at any time and from time to time, by delivering a written change notice in accordance with the above provisions to the other parties five (5) business days prior to the effective date of such change.

13. **Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next Business Day.

14. **Severability.** If any provision of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction, then (a) such determination shall not invalidate or render unenforceable any other provision of this Agreement; (b) such provision shall be construed as closely as possible to the parties' original intent in order to render such provision valid or enforceable, as applicable; and (c) the remaining terms hereof, together with such reconstructed provision, shall constitute the parties' entire agreement hereof.

15. **Amendments.** This Agreement shall not be changed except in writing and signed by all the parties.

16. **Binding Effect and Effectiveness.** Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns, notwithstanding changes in corporate or other governance. The County represents and warrants that it has approved this Agreement and the terms and incentives hereunder, and that the same are in compliance with any economic development or other policies or applicable legal authorities, and that the terms and incentives hereunder have been, and this Agreement shall further be conditioned upon it being stamp-certified as having been, pre-audited in order to comply with the budgetary accounting requirements (if any) that apply, under the Local Government Budget and Fiscal Control Act or otherwise. Such certification is set forth at the end of this Agreement and must be signed by the Finance Officers for the County and the City.

17. **Liability of Officers and Agents.** No official, officer, agent or employee of the County, the City or Company shall be subject to any personal liability or accountability by reason of the execution or performance of this Agreement or any other documents related to the transactions contemplated hereby. Such officials, officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such official, officer, agent or employee from the performance of any official duty provided by law. Nevertheless, the parties, and each person executing this Agreement on behalf thereof, represent and warrant that they have the full right and authority to enter into this Agreement, which is binding upon the party represented by them, and to sign on behalf of the party indicated, and are acting on behalf of themselves, their constituent members, and the successors and assigns of each of them.

18. **Publicity.** Neither the County nor City shall make any public announcement of the entering into of this Agreement or the terms and conditions hereof without the prior written consent of the Company.

19. **Recordation.** Pursuant to N.C. Gen. Stat. § 160D-1011, the Company shall record this Agreement with the register of deeds in Gaston County within fourteen (14) days after execution.

20. **Entire Agreement.** This Agreement, together with any exhibits attached or referenced herein, reflects and contains the entire and only agreement between the Parties relating to the subject matter herein. This Agreement supersedes and replaces all prior agreements, discussions and representations on all subjects relating to the Property, its development, any available Investment Grants or other issues provided for herein. Neither Party is entering into this Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Agreement and the exhibits hereto.

21. **Counterparts.** This Agreement may be executed in any number of separate counterparts. Each executed counterpart shall constitute an original, but all of them taken together shall constitute a single instrument.

[THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY]

Project Hearth  
a Delaware limited liability company

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

GASTON COUNTY

By: \_\_\_\_\_  
Chad Brown, Chairman  
Gaston County Board of Commissioners

ATTEST:

\_\_\_\_\_  
Donna S. Buff,  
Clerk to the Board of Commissioners

This instrument has been pre-audited to the extent, and in the manner, required by the "Local Government Budget and Fiscal Control Act."

\_\_\_\_\_  
Gaston County Finance Officer, on behalf of the County

Approval as to form:

\_\_\_\_\_  
Assistant County Attorney

This Agreement was approved by the Gaston County Board of Commissioners at its meeting held the 22<sup>nd</sup> day of June, 2021.

CITY OF LOWELL

By: \_\_\_\_\_  
Sandy Railey, Mayor

\_\_\_\_\_, City Clerk

This instrument has been pre-audited to the extent, and in the manner, required by the "Local Government Budget and Fiscal Control Act".

\_\_\_\_\_  
City of Lowell Finance Officer

Approval as to form:

\_\_\_\_\_  
City Attorney

LIST OF EXHIBITS TO BE ATTACHED

- Exhibit 1 Investment Grant Programs
- Exhibit 2 Site Plan and/or description of the Property



**RESOLUTION TO APPROVE INCENTIVES PURSUANT TO  
N.C.GEN.STAT.§158-7.1 AND TO AUTHORIZE THE CITY OF LOWELL TO  
ENTER INTO AN ECONOMIC DEVELOPMENT AGREEMENT (EDA) WITH  
PROJECT HEARTH**

**RESOLUTION NUMBER: RS9-2022**

**WHEREAS**, Project HEARTH is considering a total investment of \$135 million to establish a facility in the City of Lowell, to include the purchase and installation of machinery & equipment, with the expectation to complete this investment on or before December 31, 2022; and,

**WHEREAS**, the firm intends to create at least 128 new jobs, within five years of establishing operations, expecting to pay an average annual wage of \$36,515; and,

**WHEREAS**, North Carolina General Statute §158-7.1 authorizes the City to undertake an economic development project by providing grants for the location of industry; and,

**WHEREAS**, the City of Lowell developed an economic grant policy to provide global advanced manufacturing companies and distribution facilities with high quality industrial park locations; and,

**WHEREAS**, it is anticipated that the Company's capital investment in and at the Property and its operations thereat will generate significant ad valorem tax, sales tax and other revenues to the City; and,

**WHEREAS**, the City will prepare a detailed economic development agreement (EDA), between Project HEARTH, and the City of Lowell, so as to induce the company to provide good job opportunities and capital investment which will enhance the City's ability to attract additional business and industry.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOWELL** that the City Manager is authorized to execute any documents necessary to complete an Economic Development Agreement for Project HEARTH.

THIS RESOLUTION, adopted on the 25th day of July, 2022.



\_\_\_\_\_  
**Sandy Railey, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Cheryl Ramsey, City Clerk**