

THE STATE OF TEXAS

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**Chapter 380 Grant Agreement  
Project Phoenix**

COUNTY OF HAYS §

THIS Chapter 380 Grant Agreement – Project Phoenix (this “Agreement”) is executed by and between **Redbird Flight Simulations, Inc.**, an aerospace manufacturing company duly authorized to do business in the State of Texas, (hereafter referred to as “Company”), and the **CITY OF KYLE, TEXAS**, a home-rule city and municipal corporation of Hays County, Texas, acting by and through its City Manager or his designee (hereafter referred to as “CITY”).

**WITNESSETH:**

**WHEREAS**, the Company leases a portion of Hays Commerce Center Building 1, being approximately 50,000 square feet of property located Hays County, Texas, being more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes (the “Property”);

**WHEREAS**, the COMPANY made application to the City for a grant to finish out a 50,000 square foot building and to operate a flight simulation manufacturing business on the Property; and

**WHEREAS**, the relocation of the COMPANY to the Property, construction of the Facility, and operation of the Business on the Property will promote economic development of the City, encourage businesses to locate and expand in the City, and increase opportunities for increased property tax and employment; and;

**WHEREAS**, Chapter 380 of the Local Government Code provides statutory authority for granting the economic incentives and administering the Program provided herein;

**WHEREAS**, the use of the Premises (as hereafter defined), the Eligible Property (as hereafter defined) and the other terms hereof are consistent with encouraging economic development within the City;

**WHEREAS**, the City hereby establishes a program pursuant to Chapter 380, Texas Local Government Code, to provide for a grant of City ad valorem property taxes to the Developer under the terms and conditions of this Agreement; and

**WHEREAS**, the City Council finds that it is in the public interest to provide the economic incentives set forth herein subject to the terms and conditions of this Agreement.

**NOW THEREFORE**, the CITY and COMPANY, for and in consideration of the mutual premises and promises contained herein, do hereby agree, covenant and contract as set forth below:

**I.**  
**Definitions**

- A. “**Business Operations**” refers to the COMPANY’S aerospace manufacturing business located and conducted on the Property.
- B. “**Business Personal Property**” is defined as tangible personal property, materials, supplies, equipment, inventory, fixtures, or other personal property that are attributable to the Business Operations and located at the Premises and to the structures and uses present on the Property subject to ad valorem taxes, and that are not included in the definition of real property is Section 1.04(2) of the Texas Tax Code, as amended.
- C. “**Calendar Year**” is defined as the twelve-month period of time that begins on January 1<sup>st</sup> and ends on December 31<sup>st</sup> of the same numbered year.
- D. “**Chapter 380 Grant(s)**” is defined to mean the Property Tax Rebates described in Article V.
- E. “**Certificate of Occupancy**” means the final certificate of occupancy issued by the City for the Project.
- F. “**Documentation**” shall mean the reports, records, and documents the COMPANY is required to submit to the CITY under this Agreement.
- G. “**Eligible Property**” is defined as the Property, all real property improvements and business property located thereon.
- H. “**Facility**” means the minimum 50,000 square foot building, including finishing out the building, suitable for the Business Operations constructed on the Property in accordance with the CITY-approved plans, and applicable local, state, and federal regulations, out of which the Business Operations will be conducted.
- I. “**Full-time Employee or FTE**” is defined as an employee of the COMPANY whose assigned work location at the Property in the City of Kyle and working at least a thirty (30)-hour work week in the following positions: a minimum of 20 positions in assembly and the remaining positions in manufacturing, technology/engineers, and support staff; for the average base salary of \$79,030.00 annually and benefits that includes subsidized health insurance.

- J. “**Grant Criteria**” is defined as the criteria set forth in Article IV that the COMPANY must meet to receive the Chapter 380 Grants defined in Article V.
- K. “**Maximum Grant Amount**” is defined as the maximum amount the CITY will pay to COMPANY under this Agreement in Property Tax Rebates, and which amount shall be Thirty-Nine Thousand Three Hundred and Seventeen and 00/100 dollars (\$39,317.00).
- L. “**Ongoing Documentation**” is defined as copies of the following documents for the tax year for which a Chapter 380 Grant is sought: (1) proof of compliance with Section IV.A(2); and (2) the 380 Grant Certification described in Article VI. The CITY may request additional records to support the information shown in the Ongoing Documentation and compliance with the applicable Grant Criteria.
- M. “**Ongoing Grant Criteria**” is defined as the criteria the COMPANY is required to meet for payment of Chapter 380 Grants after Year 1, which are set forth in Section VI.A(2).
- N. “**Premises**” are defined as the real property (land and improvements) located on the Property.
- O. “**Project**” is defined to mean the Facility, to be constructed on the Property, in accordance with the CITY-approved plans and applicable local, state, and federal regulations, together with all other accessory and permitted uses on the Property, upon which the Business Operations will be conducted.
- P. “**Property**” is defined as that certain 50,000 square foot portion of building at Hays Commerce Center Building 1, being more particularly described in **Exhibit A**.
- Q. “**Real Property Improvements**” are defined as improvements to the Property, which shall include the Project and any other buildings, structures or fixtures erected or affixed to land on the Property that are included in the definition of real property set forth in Section 1.04(2), Texas Tax Code as amended.
- R. “**Real Property Taxes**” shall mean the ad valorem tax assessed on the Added Taxable Value of the Eligible Property or a portion thereof, as appropriate, appraised by the Hays Central Appraisal District, minus the Tax Increment.
- S. “**Threshold Documentation**” is defined as: (1) the certificate of occupancy for the Facility; (2) documentation acceptable to the CITY demonstrating that the Facility was installed and completed on the Property by HPI; (3) the 380 Grant Certification described in Section VI.A. The CITY may request additional records to support the information shown in the Threshold Documentation.
- T. “**Threshold Grant Criteria**” is defined as the criteria the COMPANY is required to meet for payment of Chapter 380 Grants to be paid in Year 1, which are set forth in Section IV A(1).

- U. **“Year 1”** is defined as the tax year (which is anticipated to be 2023) following the date on which the Facility is constructed and completed on the Property, a Certificate of Occupancy is issued for the Facility, and the COMPANY begins Business Operations.

**II.**  
**General Provisions**

- A. The Eligible Property is not in an improvement project financed by tax increment bonds.
- B. The Eligible Property is not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of CITY.
- C. It is acknowledged and agreed by the parties that the completion of the Project is consistent with the purposes of encouraging state and local economic development and to stimulate business and commercial activity within the City.

**III.**  
**Representations and Warranties**

- A. The CITY hereby represents and warrants to COMPANY that the CITY has full constitutional and lawful right, power, and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary CITY proceedings, findings, and actions. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of the CITY, is enforceable in accordance with its terms and provisions, and does not require the consent of any other governmental authority.
- B. COMPANY hereby represents and warrants to the CITY that COMPANY has full constitutional and lawful right, power, and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all actions necessary. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of COMPANY, is enforceable in accordance with its terms and provisions, and does not require the consent of any other authority or entity.

**IV.**  
**Performance Criteria**

- A. Grant Criteria.
  - 1. **Threshold Grant Criteria.** The following events must occur for the COMPANY to receive the Chapter 380 Grant described in Article V:

- a. The COMPANY completes the Project and obtains a Certificate of Occupancy for the Project on or before August 31, 2022.
  - b. A minimum of Two Million Two Hundred Thousand Dollar (\$2,200,000.00) in Real Property Improvements are installed and constructed on the Property on or before August 31, 2022.
  - c. The Company commences the Business Operations on the Property and employs at least fifty-nine (59) Full-Time Employees at the Business within thirty (30) days of obtaining the Certificate of Occupancy.
  - d. The Business Operations are ongoing at the Property.
  - e. The Company is in compliance with Sections IV.B-E.
2. **Ongoing Grant Criteria.** After the first Chapter 380 Grant payment made to the Company, the Company must comply with the following requirements for each year in which the Company seeks a Chapter 380 Grant payment:
- a. The Facility is continuously open for business and the Business Operations are being conducted at the Facility.
  - b. The COMPANY shall employ no less than the number of Full-Time Equivalent Employees within the municipal boundaries of the City of Kyle as designated in the chart below:

Year	Existing Jobs on Site	New Jobs	Total
1	-	59	59
2	59	4	63
3	63	1	64
4	64	1	65

- c. The Business Operations are ongoing at the Property.
  - a. The COMPANY is in compliance with Section IV.B-E.
- B. The Project shall conform to the applicable building codes, zoning ordinances, CITY-approved plans, and all other applicable ordinances and regulations.
- C. COMPANY or its designated third party shall not allow the ad valorem taxes owed to CITY or the Hays Consolidated Independent School District (the “District”) on any real property or business personal property owned by COMPANY and located within the City of Kyle or the District to become delinquent beyond the last day they can be paid without assessment of penalty.
- D. COMPANY shall not fail to render for taxation any business personal property located within the City of Kyle.
- E. COMPANY covenants and certifies that COMPANY does not and will not knowingly and directly employ an undocumented worker as that term is defined by Section 2264.001(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if COMPANY is convicted of a violation

under 8 U.S.D. Section 132(a)(f), COMPANY shall repay to the CITY the full amount of Chapter 380 Grants made under Article V of this Agreement. Repayment shall be paid within 120 days after the date following an unappealable conviction of COMPANY, provided, however, COMPANY shall not be liable for a violation by a subsidiary, affiliate, or franchisee of COMPANY or by a person with whom COMPANY contracts.

**V.**  
**Economic Development Grants**

**A. Chapter 380 Grants.**

Subject to the terms and limitations (including but not limited to the Maximum Grant Amount) of this Agreement, and COMPANY's full and timely performance of, and compliance with, each of the applicable Grant Criteria set forth in Article IV, the CITY agrees to pay to the COMPANY the following Chapter 380 Grant commencing in Year 1 and continuing for each subsequent year up to three additional years:

Year 1: 85%  
Year 2: 65%  
Year 3: 45%  
Year 4: 25%  
Year 5: 0%

**B. Payment of Chapter 380 Grants** Subject to the terms, conditions, and limitations and the COMPANY'S full and timely performance of and compliance with each of the requirements contain in this Agreement, the City shall pay the Chapter 380 Grants annually upon the later of the following to occur:

- (1) Thirty (30) days following the date the Documentation is received by the City;  
or
- (2) Within thirty (30) days following the date of ad valorem taxes are received by the City and the COMPANY has notified the City that the taxes have been paid; provided that the Threshold Grant Criteria or the Ongoing Grant Criteria, applicable, have been met and the Documentation has been provided.

**C. Maintenance of Books and Records.** The CITY shall maintain complete books and records showing ad valorem taxes received by the CITY from the Property, which books and records shall be deemed complete if kept in accordance with generally accepted accounting principles as applied to Texas municipalities. Such books and records shall be available for examination by the duly authorized officers or agents of COMPANY during normal business hours upon request made not less than five (5) business days prior to the date of the examination. The CITY shall maintain such books and records throughout the term of this Agreement and store the same for four (4) years thereafter.

**VI.**  
**Reports, Audits and Inspections**

- A. **Annual Certification and Reports.** The Company shall certify in writing annually to the City that Company is in compliance with the terms of this Agreement, and shall provide the City with reports and records reasonably necessary to demonstrate fulfillment of the performance criteria set forth in Article IV for each year of the agreement, as follows:

A certified payroll list submitted by February 28 of each year which includes a list of all Full-time Equivalent Employees (not independent contractors) employed by the Employer at the Property during the prior calendar year. The annual employment report must include the following information and must also include a certification verifying that the information provided is true and accurate:

- a. Name of Reporting Entity
  - b. Reporting Period
  - c. Name of Each Employee.
  - d. Position Title of Each Employee.
  - e. Average Number of Hours Worked Per Week by Each Employee during the Reporting Period.
  - f. Actual Taxable Compensation Paid to Each Employee during the Reporting Period (amount that will be reported in Box 1 of IRS Form W-2 Wage & Tax Statement).
1. **Certification.** Company shall complete and certify a 380 Grant Certification to be provided by City for each year of this Agreement, to be due annually not later than April 30, (in the form substantially similar to that attached hereto as **Exhibit B**), which shall include the Threshold Documentation in the first year that a Chapter 380 Grant is sought, and the applicable Ongoing Documentation for subsequent years for which Chapter 380 Grant are sought.
2. **Additional Reports.** Additionally, throughout the term of this Agreement, Company shall furnish City any additional records and information reasonably requested to support the Grant Criteria and the reports required by this Agreement. The Company shall further furnish the City with copies of or access to additional information reasonably required to verify the information set forth in the Threshold Documentation.
- B. **Right to Audit Books and Records.** City shall have the right to audit the books and records related to the Eligible Property. City shall notify the COMPANY in

advance in writing of their intent to audit in order to allow the COMPANY adequate time to make such books and records available.

- C. **Inspection.** At all times throughout the term of this Agreement, City shall have reasonable access to the Property upon providing at least 48 hours' written notice to the Company for the purpose of inspecting the Property to ensure that the Facility designed, constructed and installed in accordance with the terms of this Agreement.

## **VII.** **Breach**

- A. **Breach.** A breach of this Agreement may result in termination or modification of this Agreement as provided herein. The following conditions shall constitute a breach of this Agreement:
1. The COMPANY fails to meet the performance criteria as specified in Article IV above.
  2. The COMPANY falsely certifies that it has met the performance criteria in the documentation submitted to the CITY under Article VI.
  3. CITY fails to timely make payments to COMPANY under the terms of this Agreement.
- B. **Notice of Breach.** Notwithstanding anything herein to the contrary, no Party shall be deemed to be in default under this Agreement until the passage of sixty (60) business days after receipt by such Party of notice of default from the other Party ("Cure Period"), which notice shall specify, in reasonable detail, the nature of the default. Upon the passage of the Cure Period without cure of the default, such Party shall be deemed to have defaulted for purposes of this Agreement; provided that, if the nature of the default is such that it cannot reasonably be cured within the Cure Period, the Party receiving the notice of default may during such Cure Period give the other Party written notice that it has commenced cure within the Cure Period and will diligently and continuously prosecute the cure to completion as soon as reasonably possible, and such written notice together with diligent and continuous prosecution of the cure shall extend the Cure Period for up to an additional ninety (90) calendar days so long as the cure is being diligently and continuously pursued during such time; and provided further that, if the cure cannot be reasonably accomplished within the additional ninety (90) calendar day period but the applicable facts, circumstances, and progress establish that a cure will be obtained within a reasonable period of time following the expiration of the ninety (90) calendar day period, the time for cure will be extended for an additional period of time as mutually agreed by the Parties (such agreement not to be unreasonably withheld); provided, further, that if a default is not cured within the applicable Cure Period, or, as applicable, written notice having been given and cure being commenced and diligently and continuously prosecuted, within the additional ninety (90) calendar days after the giving of the written notice, or, as otherwise applicable within the time mutually agreed by the Parties due to the defaulting Party

not being able to obtain a cure within the additional ninety (90) calendar days after the defaulting Party gives written notice that it is commencing cure, then the non-defaulting Party may pursue the remedies set forth in this Agreement, as well as any other remedies available in equity or law.

- C. **Repayment of Chapter 380 Grants.** In the event that the COMPANY commits a breach of this Agreement according to Section VII.A (2), the COMPANY shall pay back to the CITY the Chapter 380 Grant for the tax year for which false certification was submitted within thirty (30) days of written demand by the CITY.
- D. **Tax Lien Not Impaired.** It is expressly agreed and acknowledged between the parties to this Agreement that nothing in this Agreement shall be deemed or construed to affect the lien for taxes against the property established by Section 32.01 of the Texas Tax Code. Such lien shall secure the payment of all taxes, penalties and interest ultimately imposed on the Property. Any such lien may be fully enforced pursuant to the provisions of the Code. For purposes of this Subsection, "property" refers to the Premises and Eligible Property described herein.
- E. **Limitations on Liability.** The City shall not be liable for consequential damages, specifically lost profits, and any damages claimed against the City shall be limited to amounts recoverable under §271.153 of the Texas Local Government Code. The parties agree that this Agreement shall not be interpreted as or otherwise claimed to be a waiver of sovereignty or governmental immunity on the part of the City.
- F. **Personal Liability of Public Officials; No Debt Created.** No employee of the City, nor any councilmember or agent of the City, shall be personally responsible for any liability arising under or growing out of this Agreement. The Chapter 380 Grant made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

## VIII.

### **Indemnification**

**COMPANY COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, THE CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND RELATING TO COMPANY'S ACTIONS UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED**

**TO COMPANY OR COMPANY'S AFFILIATE'S NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF COMPANY OR COMPANY'S AFFILIATE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF COMPANY OR COMPANY'S AFFILIATE, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. COMPANY SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY, RELATED TO OR ARISING OUT OF COMPANY OR COMPANY'S TENANTS' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT COMPANY'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING COMPANY OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

**IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, SHALL NOT BE AN INDEMNITY EXTENDED BY COMPANY TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE OR INTENTIONAL MISCONDUCT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL APPLY ONLY, TO THE EXTENT OF ANY COMPARATIVE NEGLIGENCE STATUTES AND FINDINGS, WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND IT SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. COMPANY FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND IN THE NAME OF CITY ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY (AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES), IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.**

**IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY AND THE COMPANY SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND / OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND ELECTED OFFICIALS PERMITTED BY LAW.**

**IX.**  
**Notice**

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail postage prepaid or by hand delivery:

**COMPANY:** Redbird Flight Simulations, Inc.,  
301 Vista Ridge Dr., Ste. 300  
**With a copy to:** Kyle, TX 78640

**CITY:** City of Kyle  
Attn: City Manager  
100 W. Center Street  
Kyle, TX 78640

**With a copy to:** Paige H. Saenz  
The Knight Law Firm, LLP  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

**X.**  
**City Council Authorization**

This Agreement was authorized by motion and vote of the City Council recorded in the minutes authorizing the City Manager or his designee to execute this Agreement on behalf of the CITY.

**XI.**  
**Severability**

In the event any section, subsection, paragraph, sentence, phrase or word is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

**XII.**  
**Estoppel Certificate**

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to a subsequent purchaser or assignee of COMPANY, shall include, but not necessarily be limited to statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the eligible grants and such other matters reasonably requested by the party(ies) to receive the certificates.

**XIII.**  
**COMPANY's Standing**

COMPANY, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions or City Council actions authorizing same, and COMPANY shall be entitled to intervene in said litigation.

**XIV.**  
**Applicable Law**

This Agreement shall be construed under the laws of the State of Texas without regarding to its conflict of laws provisions. Venue for any action under this Agreement shall be the State's District Court of Hays County, Texas. This Agreement is performable in Hays County, Texas.

**XV.**  
**Force Majeure**

It is expressly understood and agreed by the parties to this Agreement that the parties shall not be found in default of this Agreement if any party's failure to meet the requirements of this Agreement is delayed by reason of war, Act of God, fire, pandemic, material or labor shortage, strike, civil unrest, governmental action, or any other reason beyond the reasonably control of COMPANY, or other casualty or event of a similar nature.

**XVI.**  
**No Other Agreement**

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified or supplemented only by an instrument or instruments in writing executed by the parties.

**XVII.**  
**Headings**

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**XVIII.**  
**Successors and Assigns**

The parties to this Agreement each bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. No successor, executor, administrator or assign is valid in the place of the

parties to this Agreement without the written consent of CITY and such consent shall not be unreasonably withheld.

**XIX.**  
**Counterparts**

This Agreement may be executed in any number of counterparts, each of which may be executed by any one or more of the parties hereto, but all of which shall constitute one instrument, and shall be binding and effective when all of the parties hereto have executed at least one counterpart.

**XX.**  
**No Third-Party Beneficiaries**

For purposes of this Agreement, including its intended operation and effect, the parties specifically agree that: (1) the agreement only affects matters/disputes between the parties to this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY or COMPANY or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or COMPANY.

**XXI.**  
**Remedies**

Except as provided in this Agreement, no right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this agreement may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this agreement.

**XXII.**  
**Termination**

During the term of this Agreement, should the COMPANY commit a breach of this Agreement according to the Section XI.A, the City may terminate this Agreement, subject to Section VII.B. Furthermore, the City may terminate the Agreement in the event that the COMPANY fails to obtain a Certificate of Occupancy for the Project by 8/31/2022 by giving thirty (30) days' written notice to the COMPANY.

**XXVII.**  
**Statutory Verifications**

In accordance with Chapter 2270, Texas Government Code, the City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it: (a) does not boycott Israel; and (2) will not boycott

Israel during the term of the contract. The signatory executing this contract on behalf of the COMPANY verifies that the COMPANY does not boycott Israel and will not boycott Israel during the term of this Agreement.

To the extent the Agreement constitutes a contract for goods or services within the meaning of Section 2274 of the Texas Government Code, as amended, solely for purposes of compliance with therewith, and subject to applicable Federal law, the COMPANY represents that the COMPANY and all wholly owned subsidiary, majority-owned subsidiary, parent company and affiliates of COMPANY do not, and will not for the duration of this agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association. Further, the COMPANY represents that the COMPANY and all wholly owned subsidiary, majority-owned subsidiary, parent company and affiliates of COMPANY do not, and will not for the duration of this agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association. The phrase “Discriminates Against a Firearm Entity or Firearm Trade Association” as used in this paragraph have the meanings assigned to the phrase “Discriminate Against a Firearm Entity or Firearm Trade Association” in Section 2274.001(3) of the Texas Government Code, as amended.

To the extent the Agreement constitutes a contract for goods or services within the meaning of Section 2274 of the Texas Government Code, as amended, solely for purposes of compliance with therewith, and subject to applicable Federal law, the COMPANY represents that neither the COMPANY nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer (i) boycotts energy companies or (ii) will boycott energy companies through the term of this Agreement. The phrase “Boycott Energy Companies” as used in this paragraph have the meanings assigned to the phrase “Boycott Energy Company” in Section 809.001 of the Texas Government Code, as amended.

To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, COMPANY represents that COMPANY nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of COMPANY is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code. Further, COMPANY represents that COMPANY nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

**XXVIII.**  
**Effective Date**

This Agreement shall be effective on    Dec. 20, 2022        (the “Effective Date”).

*{Signatures on the following page}*

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement on the day and year written above.

**COMPANY**

**BY:**

  
\_\_\_\_\_

SIGNATURE

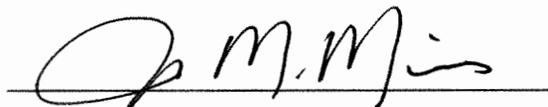
CEO

\_\_\_\_\_  
TYPED OR PRINTED TITLE

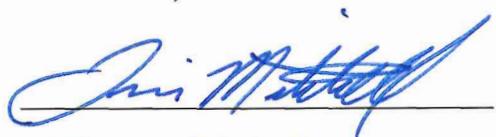
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\_\_\_\_\_  
DATE

**WITNESS:**

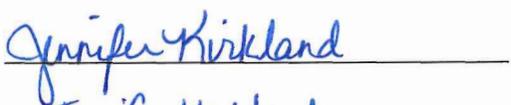
  
\_\_\_\_\_

CITY OF KYLE, TEXAS

By:   
Travis Mitchell  
MAYOR

Date: 12/20/2022

ATTEST:

  
Jennifer Kirkland  
CITY SECRETARY

APPROVED AS TO FORM:

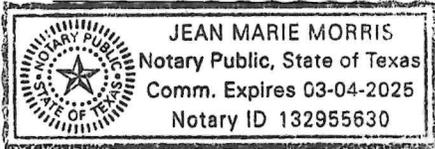
By:   
Paige Sienz  
CITY ATTORNEY

Date: 12/20/2022

THE STATE OF TEXAS § COMPANY  
COUNTY OF HAYS § Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Todd Willinger, known to me (or proved to me on the oath of \_\_\_\_\_ or through personally known (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of ROBIRD FLIGHT, such entity duly authorized to do business in the State of Texas, and as the CEO thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 19<sup>th</sup> day of December, 2022.



3/4/25

MY COMMISSION EXPIRES:

J. M. Morris  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

Jean M. Morris  
NOTARY'S PRINTED NAME

THE STATE OF TEXAS §  
COUNTY OF HAYS § CITY OF KYLE, TEXAS  
Acknowledgment

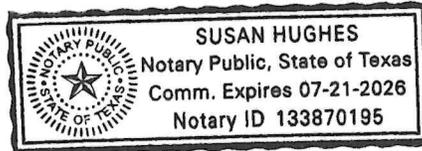
BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Travis Mitchell, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF KYLE, TEXAS**, a municipal corporation of Hays and Travis Counties, Texas, and as the mayor thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 20<sup>th</sup> day of December, 2022.

Susan Hughes  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

7/21/2026  
MY COMMISSION EXPIRES:

Susan Hughes  
NOTARY'S PRINTED NAME



## **EXHIBIT A**

Approximately 50,000 Square feet of Hays Commerce Center, Building 1 located at 301 Vista Ridge Dr., Ste. 300, Kyle, TX 78640





**EXHIBIT B**  
**CITY OF KYLE**  
**ANNUAL CHAPTER 380 AGREEMENT (THE "AGREEMENT") GRANT**  
**REPORT FORM**

**Chapter 380 Grant Certification – Tax Year \_\_\_\_\_**

**PROJECT STATUS – THRESHOLD GRANT CRITERIA**—Fill this section out for Tax Year 1 only; this section may be deleted for subsequent years.

Construction commenced on \_\_\_\_\_

Certificate of Occupancy for the Project issued \_\_\_\_\_.

**Please provide each of the following documents as an attachment to this Certification:**

- Certificate of Occupancy.
- Proof of payment of the ad valorem and business taxes for the Property.
- Documentation acceptable to the City establishing the number of FTE's employed at the Facility by the Company.
- Documentation demonstrating the minimum investment required by the Agreement

**ONGOING GRANT CRITERIA**

- Documentation acceptable to the City establishing the number of FTE's employed at the Facility by the Company.
- Proof of payment of the ad valorem and business taxes for the Property.

**CERTIFICATION**

I certify that to the best of my knowledge and belief, the information and attached documents provided in this Chapter 380 Grant Certification are true and accurate and in compliance with the terms of the Chapter 380 Agreement with the City of Kyle. I further certify that to the best of my knowledge and belief, I am have been the requirements of the Threshold Grant Criteria, as that terms is defined in the Agreement.

\_\_\_\_\_  
Printed Name and Title of Certifying Officer

\_\_\_\_\_  
Signature of Certifying Officer

\_\_\_\_\_

Date

\_\_\_\_\_

Telephone Number

\_\_\_\_\_

Email Address

NOTE: This Chapter 380 Grant Certification shall be filed annually on or before April 30 of each calendar year beginning with 202\_\_ (unless required earlier by the Agreement) and each year thereafter so long as the Chapter 380 Agreement is in existence.