

THE STATE OF TEXAS

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**Chapter 380 Grant Agreement
Project Ember**

COUNTY OF HAYS

THIS Chapter 380 Grant Agreement – Project Ember (this “Agreement”) is executed by and between M & A Kingdom Enterprises, LLC, a Texas limited liability 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 (hereafter referred to as “**CITY**”).

W I T N E S S E T H:

WHEREAS, the CITY has established the Restaurant Incentive Program (the “Program”) pursuant to Chapter 380, Texas Local Government Code, to provide for a grant of economic development incentives to qualifying restaurants under the terms and conditions of this Agreement; and

WHEREAS, the City has determined that the COMPANY qualifies for economic development incentives under the Program, subject to the terms and conditions of this Agreement;

WHEREAS, the Property is located within a tax increment financing district;

WHEREAS, the COMPANY owns the following described property: approximately 1.5 acres of property located in Hays County, Texas, being more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes (the “Property”);

WHEREAS, the COMPANY will install or cause to be installed approximately \$1,000,000.00 in capital improvements on the Property;

WHEREAS, the COMPANY made application to the CITY for an economic incentive related to the renovation of an approximately 2,200-square-foot building on the Property (the “**Facility**”) and the location and operation of an indoor/outdoor restaurant operating under the name “Hays Co Bar-B-Que & Catering”;

WHEREAS, the renovation of the Facility, the relocation of the COMPANY to the Property, and operation of the Business Operations 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;

WHEREAS, the Parties agree that the COMPANY must fulfill its obligations under this Agreement in order for the CITY to pay the Chapter 380 Grant (herein defined);

WHEREAS, Chapter 380 of the Texas 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 has established the Restaurant Incentive Program pursuant to Chapter 380, Texas Local Government Code, to provide for a grant of economic development incentives to qualifying restaurants 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 the 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 indoor/outdoor restaurant business operating under the name “Hays Co Bar-B-Que & Catering” 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”** means the twelve month period of time that begins on January 1st and ends on December 31st of the same numbered year.
- D. **“Chapter 380 Grant”** is defined to mean the economic incentive payment further described in Article V.
- E. **“Certificate of Occupancy”** means the final certificate of occupancy issued by the City for the Facility.
- F. **“Eligible Property”** is defined as the Property, all real property improvements and business personal property located thereon.
- G. **“Facility”** means the approximately 2,000-square-foot restaurant 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. **“Grant Criteria”** is defined as the criteria set forth in Article IV that the COMPANY must meet to receive the Chapter 380 Grant defined in Article V.

- H. **“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); (2) proof of payment of ad valorem, business personal property taxes, and all other applicable taxes; and (3) the 380 Grant Certification described in Article VI. The CITY may reasonably request additional records to support the information shown in the Ongoing Documentation and compliance with the applicable Grant Criteria.
- I. **“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 IV.A(2).
- J. **“Premises”** are defined as the real property (land and improvements) located on the Property.
- K. **“Project”** is defined to mean the Facility, together with all other accessory and permitted uses on the Property, upon which the Business Operations will be conducted.
- L. **“Property”** is defined as that certain approximately 1.5 acres, being more particularly described in **Exhibit A**.
- M. **“Quarterly Incentive Payment(s)”** means the quarterly Sales Tax Rebate for the four calendar quarters in each of the three (3) full Calendar Years that follow the first Sales Tax Rebate Payment beginning with the sales taxes paid during the first full calendar quarter after the COMPANY commences Business Operations at the Facility and meets the requirements of the Threshold Grant Criteria.
- N. **“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.
- O. **“Real Property Taxes”** shall mean the ad valorem tax assessed on the Eligible Property or a portion thereof, as appropriate, appraised by the Hays Central Appraisal District.
- P. **“Sales Tax”** means, as of the Effective Date, the levied 1.5% sales tax for commercial activity on the Property less the 0.5% sales tax enacted by the City of property tax reduction, equaling a total of 1.0% sales tax.
- Q. **“Sales Tax Rebate”** means the percentage of Sales Tax received by the City and paid to the COMPANY pursuant to Section V.A.1.
- R. **“Threshold Documentation”** is defined as copies of the following documents: (1) proof of compliance with Section IV.A(1); (2) proof that \$1,000,000 in Real Property Improvements were constructed on the Property; (3) proof that the Certificate of Occupancy for the Facility and documentation acceptable to the CITY demonstrating that the Facility was installed and completed on the Property by February 28, 2026; (4) the 380 Grant Certification described in Section VI.A. The CITY may request additional records to support the information shown in the Threshold Documentation or compliance with this

Agreement; and (5) proof of payment of all amounts due to any contractors/subcontractors for the Real Property Improvements, include lien waivers.

- S. **“Threshold Grant Criteria”** is defined as the criteria the COMPANY is required to meet for payment of Chapter 380 Grants to be paid, which are set forth in Section IV A(1).
- T. **“Year 1”** is defined as the tax year 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. For example, if COMPANY completes all improvements on the Property and receives its Certificate of Occupancy at any time during the calendar year 2024, then Year 1 will be tax year 2025, which covers the taxes due based on the assessed value of the property as of January 1, 2025, and which payments are generally due January 31, 2026.

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 the 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. The COMPANY hereby represents and warrants to the CITY that the 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 constructs at least \$1,000,000 in Real Property Improvements on the Property.
- b. The company make the required utility improvements of:
 - i. upsizing water line to 12" line and fire hydrant improvement;
 - ii. burying telecom lines along frontage roads;
 - iii. upgrading electric needs for the site.
- c. The COMPANY completes and obtains a Certificate of Occupancy for the Facility or before March 31, 2026.
- d. The COMPANY commences the Business Operations on the Property within sixty (60) days of obtaining the Certificate of Occupancy.
- e. The COMPANY is in compliance with Sections IV.B-D.
- f. The COMPANY provides all necessary Threshold Documentation.

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 during regular business hours and Business Operations are conducted at the Facility.
- b. The COMPANY is in compliance with Section IV.B-D.
- c. The COMPANY provides all necessary Ongoing Documentation.

B. The Project shall conform to the applicable building codes, zoning ordinances, plans and elevations approved by the jurisdiction issuing permits for the Project, and all other applicable ordinances and regulations.

C. The COMPANY shall not allow the ad valorem taxes or business personal property 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 or the District to become delinquent beyond the last day they can be paid without assessment of penalty. Notwithstanding the foregoing the COMPANY may contest and appeal any and all taxes/ad valorem taxes associated with the Property and owed to the CITY or the District or any other applicable governmental entity, and during such appeal/contest the COMPANY shall not be required to pay taxes/ad valorem taxes associated with the Property to the CITY or the District or any other applicable governmental entity, except as may be required by law or other contract, until such time as the contest/appeal is finally and fully resolved. The CITY shall not be required to pay the Chapter 380 Grant until the contest/appeal is finally and fully resolved and all taxes are actually received by the CITY.

- D. The COMPANY covenants and certifies that the 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 the COMPANY is convicted of a violation under 8 U.S.D. Section 132(a)(f), the 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 an unappealable conviction of the COMPANY, provided, however, the COMPANY shall not be liable for a violation by a subsidiary, affiliate, or franchisee of the COMPANY or by a person with whom the COMPANY contracts.

V.

Economic Development Grants

A. Chapter 380 Grants.

1. Subject to the terms and 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 COMPANY the following Chapter 380 Grant commencing in Year 1 and continuing for each subsequent year up to two additional years, up to a maximum CITY contribution of \$500,000.

Year 1:

- An amount equal to 50% of the Real Property Taxes received by the CITY on an annual basis for the value attributable to the Real Property Improvements and 50% of the Sales Tax received by the CITY on a quarterly basis for sales at the Facility.
- \$400,000 one-time grant for infrastructure improvements

Year 2: An amount equal to 50% of the Real Property Taxes received by the CITY on an annual basis for the value attributable to the Real Property Improvements and 50% of the Sales Tax received by the CITY on a quarterly basis for sales at the Facility.

Year 3: An amount equal to 50% of the Real Property Taxes received by the CITY on an annual basis for the value attributable to the Real Property Improvements and 50% of the Sales Tax received by the CITY on a quarterly basis for sales at the Facility.

B. Payment of Annual Chapter 380 Grants

1. The CITY shall pay the Real Property Tax Rebate amount annually and the Sales Tax Rebate quarterly as provided in this Subsection B beginning with the real property taxes received for Year 1. To be eligible to receive the Chapter 380 Grant in the years following Year 1, the terms of V.A.1 must be met each year. The COMPANY will not be paid the 380 Grant payment for those tax years in which the Ongoing Grant Criteria are not met.

2. Each year on or before April 30, the COMPANY shall provide the CITY the Documentation described in Article VI. The CITY shall pay the Real Property Tax Rebate Amount annually upon the later to occur of: (i) forty-five (45) days following the date the Documentation is received by the CITY; or (ii) within forty-five (45) days following the date the Real Property Taxes are received by the City and the COMPANY has notified the CITY that the taxes have been paid; provided that the applicable Grant Criteria as set forth in Article IV have been met.
3. After receipt for the Documentation for a particular year, the CITY shall pay the COMPANY the Sales Tax Rebates for the Calendar Year in which the Documentation was provided beginning with the first full calendar quarter after the COMPANY commences Business Operations at the Facility ; provided that the applicable Grant Criteria as set forth in Article IV have been met. The Sales Tax received by the CITY for the twelve (12) calendar quarters of the three Calendar Years beginning with Year 1 will be deposited and paid out to the COMPANY, in arrears. The CITY shall pay each respective Quarterly Incentive Payment to the COMPANY on or before the thirtieth (30th) day of the month that follows the receipt by the CITY from the State of Texas of the Sales Tax for the previous calendar quarter within each Calendar Year each year in which the applicable Grant Criteria are met and following the receipt of all necessary documentation from the COMPANY, including all Threshold and Ongoing Documentation.

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 to the CITY that the 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 as follows:

1. **Certification.** COMPANY shall complete and certify a 380 Grant Certification in a form substantially similar to that set forth in **Exhibit B**, which shall include the COMPANY Threshold or Ongoing Documentation, as appropriate. Such Documentation and Certification shall be submitted at the time the COMPANY pays its respective Real Property Taxes each year.

2. **Sales Tax Reports.** The COMPANY shall provide or cause to be provided to the CITY any required permission to access information filed with the State of Texas related to sales taxes collected and remitted to the State of Texas by the COMPANY on the Property promptly upon request by the CITY to allow the CITY to verify the amount of Sales Tax Rebate to be paid to the COMPANY under this Agreement. The CITY shall not be required to pay the Sales Tax Rebate until the CITY has received all permissions required to access such information, and the Sales Tax Rebate shall be calculated solely on sales tax receipts that can be verified based on records held by the State of Texas and provided to the CITY.
 3. **Additional Reports.** The 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 or Ongoing Documentation.
- B. **Right to Audit Books and Records.** CITY shall have the right to audit the books and records of the COMPANY related to the Eligible Property. CITY shall notify the COMPANY in writing in advance of their intent to audit in order to allow the COMPANY adequate time to make such books and records available (in no event shall the COMPANY, as applicable, have less than five business days in order 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 is designed, constructed and installed in accordance with the terms of this Agreement. Notwithstanding the foregoing, the CITY's inspection of the Property shall not interfere with the operation of the Property.

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 the performance criteria in the Threshold Documentation submitted to the CITY under Article VI has been met.
 3. CITY fails to timely make payments to the COMPANY under the terms of this Agreement.
- B. **Notice of Breach.** Notwithstanding anything herein to the contrary, except with regard to breach under Section VII.A(2) above, no Party shall be deemed to be in default under this

Agreement until the passage of 60 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..

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 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" includes 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 sovereign 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 GROSS 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 SUBCONSULTANT 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 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'S 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 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, WITH COUNSEL REASONABLY SATISFACTORY TO THE CITY ATTORNEY.

IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY 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 ITS 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: M&A Kingdom Enterprises LLC
101 Catclaw Cv
San Marcos, TX 78666

CITY: City of Kyle
Attn: City Manager
1700 Kohlers Crossing
Kyle, TX 78640

With a copy to: City Attorney
1700 Kohlers Crossing
Kyle, TX 78640

X.
City Council Authorization

This Agreement was authorized by resolution of the City Council 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. The CITY shall have no obligation to execute and estoppel certificate unless such certificate is in a form reasonably acceptable to the City Attorney.

XIII.
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 the respective party, 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 authorized representatives of 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

COMPANY's rights and obligations under this Agreement may be assigned by only upon written approval of the City Manager, which approval shall not be unreasonably withheld. Any request to assign this Agreement must be in writing and must be sent to the CITY in accordance with Article IX. Any requested assignment must be in writing, set forth the assigned rights and obligations and be executed by the proposed assignee.

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 the COMPANY; 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 the COMPANY.

XXI.
Remedies

Except as provided in this Agreement, no right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy available at law or equity; but each shall be cumulative of every right or remedy available 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.
Term and Termination

A. Term.

Unless terminated earlier as provided herein, this Agreement shall terminate upon the earliest occurrence of any one or more of the following: (1) the written agreement of the Parties; (2) payment of all incentives in accordance with Article V; or (3) The Agreement's Expiration Date. The Expiration Date shall be the date five years from the Effective Date (defined hereunder) of this Agreement; provided that the following shall survive termination of this Agreement for any reason: the obligation of the CITY to pay the Chapter 380 Agreement if the performance criteria and applicable terms and conditions of the Agreement are met; Article III; Article VI.B; Article VII; Article VIII; Article XIII, Article XIV, Article XV, Article XVI, , Article XX, and Article XXI.

B. Termination.

During the term of this Agreement, should the COMPANY commit a breach of this Agreement according to the Sections VII.A(1) or (2), the CITY may terminate this Agreement, subject to Section VII.B. In addition, the CITY may terminate the Agreement in the event that the COMPANY fails to obtain a Certificate of Occupancy for the Project by March 31, 2026, by giving thirty (30) days' written notice to the COMPANY.

XXVII.
Statutory Verifications

- A. To the extent the Agreement constitutes a contract for goods or services within the meaning of Chapter 2270, Texas Government Code, as amended, solely for purposes of compliance with therewith, and subject to applicable Federal law, 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.
- B. To the extent the Agreement constitutes a contract for goods or services within the meaning of Chapter 2274 of the Texas Government Code, as amended, solely for purposes of compliance therewith, and subject to applicable Federal law, the COMPANY represents that the COMPANY and all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, 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 subsidiaries, majority-owned subsidiaries, parent companies, 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.
- C. To the extent the Agreement constitutes a contract for goods or services within the meaning of Chapter 2274 of the Texas Government Code, as amended, solely for purposes of compliance 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 COMPANY (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.
- D. To the extent this Agreement constitutes 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.

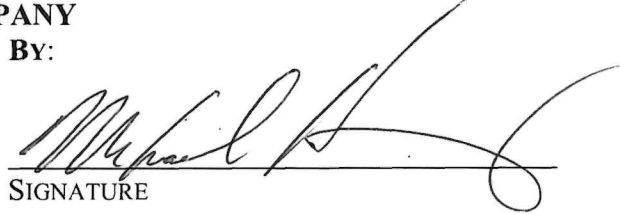
XXVIII.
Effective Date

This Agreement shall be effective on the last date of signature of any party (the “Effective Date”).

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

COMPANY

By:


SIGNATURE

owner
TYPED OR PRINTED TITLE

7-9-24
DATE

WITNESS:



THE STATE OF TEXAS
COUNTY OF HAYS

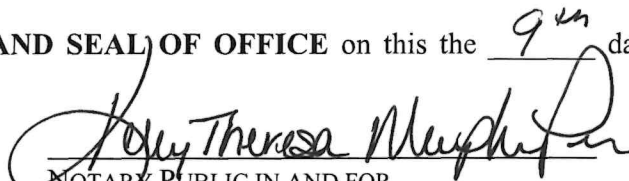
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Acknowledgment

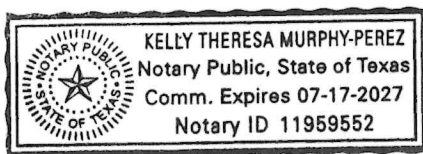
BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared MICHAEL HERNANDEZ, known to me (or proved to me on the oath of _____ or through DRIVERS LICENSE (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of Hays Co Bar-B-Que, INC. such entity duly authorized to do business in the State of Texas, and as the _____ 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 9th day of SEPTEMBER, 2024.


NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

7-17-2027
MY COMMISSION EXPIRES:

KELLY THERESA MURPHY-PEREZ
NOTARY'S PRINTED NAME



CITY OF KYLE, TEXAS

By: _____

BRYAN LANGLEY
CITY MANAGER

Date: _____

9/4/24

ATTEST:

JENNIFER KIRKLAND

CITY SECRETARY

THE STATE OF TEXAS

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§
§

CITY OF KYLE, TEXAS

COUNTY OF HAYS

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Bryan Langley, 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 County, Texas, and as the City Manager 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 4th day of
September, 2024.

Cynthia Gonzales

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

03-25-2028
MY COMMISSION EXPIRES:

Cynthia Gonzales
NOTARY'S PRINTED NAME

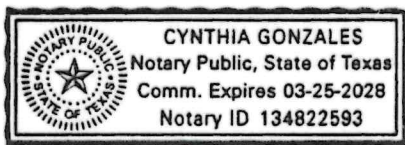


EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT B

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

Chapter 380 Grant Certification

PROJECT STATUS – THRESHOLD GRANT CRITERIA (provide in Year 1 only)

Certificate of Occupancy for the Project issued _____.

Business Operations commenced on _____.

Provide documentation of expenditure of at least \$1,000,000 in Real Property Improvements on the Property.

Utility upgrades were made that include upsizing the water line to a 12" line, burying telecom along frontage road, and electric upgrades to serve the site.

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

- ☐ Proof of payment of the ad valorem and business personal property taxes.

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 met the requirements of the Threshold Grant Criteria, as that terms is defined in the Agreement applicable to the RESTAURANT.

Michael Hernandez Owner
Printed Name and Title of Certifying Officer

[Signature]
Signature of Certifying Officer

9-9-24
Date

830-832-5457
Telephone Number

MichaelHernandez@gmail.com
Email Address

NOTE: This Chapter 380 Grant Certification shall be filed with the City prior to the payment of the Chapter 380 Grant.

FIELD NOTE DESCRIPTION FOR AN 1.53 ACRE TRACT OF LAND, SITUATED IN HAYS COUNTY, TEXAS:

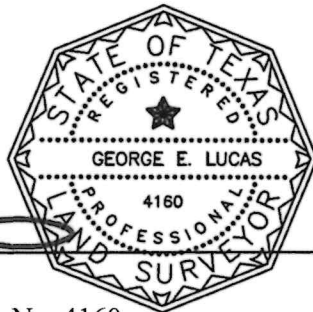
BEING A 1.53 ACRE TRACT OF LAND, OUT OF THE Z. HINTON SURVEY, ABSTRACT 220, SITUATED IN HAYS COUNTY, TEXAS, CONVEYED BY WARRANTY DEED WITH VENDOR'S LIEN TO KYLE 505, LLC, RECORDED IN DOCUMENT NO. 19035508 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a railroad tie being used as a fence post, lying in east right-of-way line of S. Old Highway 81, a public road, marking a southwest corner of a 0.80 acre tract of land, conveyed by Warranty Deed to R & R Industrial Life Service as recorded in Volume 1965, Page 181 the Official Public Records of Hays County, Texas, for the northwest corner of this tract;

THENCE, South $80^{\circ}42'59''$ East, along the north line of this tract, common with the south line of said R & R Industrial Life Service tract, a distance of 168.43 feet, to a corner fence post lying in the west right-of-way line of Interstate Highway 35, a public road, marking the southeast corner of said 0.80 acre tract of land, for the northeast corner of this tract;

THENCE, South $08^{\circ}41'15''$ West, along the east line of this tract, common with the west right-of-way line of IH-35 FRONTAGE ROAD, a public road, a distance of 720.08 feet, to a concrete monument found marking the intersection of S. Old Highway 81 and IH-35, at the point-of-curvature of a curve to the right, for the south corner of this tract;

THENCE, along said curve to the right, an arc length 741.75 feet, said curve having a radius of 5,673.72 feet, a chord which bears North $04^{\circ}26'47''$ West, for a distance of 741.22 feet, to the POINT OF BEGINNING, containing 1.53 acres of land, more or less.



George E. Lucas
Registered Professional Land Surveyor No. 4160
Celco Surveying, Firm Registration No. 10193975
18018 Overlook Loop, Suite 105
San Antonio, Texas
Date: June 05, 2024