

RESOLUTION NO. 1507

A RESOLUTION OF THE CITY OF KYLE, TEXAS, APPROVING THE CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT: CITY OF KYLE “FIRST YEAR ON US” ECONOMIC INCENTIVE PROGRAM—TEA TIPPER 1; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; MAKING FINDINGS OF FACT; AND PROVIDING RELATED MATTERS.

WHEREAS, the City of Kyle, Texas (the “City”) has adopted the First Year on Us (“FYOS”) Economic Incentive Program in which qualifying owner-occupied business owners may apply for a one-time tax rebate up to \$10,000; and,

WHEREAS, HTeaO, a retail beverage business, meets the qualifications to enter into a Chapter 380 Agreement under the FYOS Economic Incentive Program;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, AS FOLLOWS:

SECTION 1. Findings. The hereinabove recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

SECTION 2. Authorization. The Chapter 380 Economic Development Agreement: City of Kyle “First Year on Us” Program – Tea Tipper 1 attached hereto as Exhibit A is hereby approved, and the City Manager is authorized to execute the Agreement. The form of Agreement approved by the City Council on December 19, 2023 is replaced with the attached Agreement.

SECTION 3. Effective Date. This resolution shall take effect immediately from and after its passage by the City Council of the City of Kyle.

SECTION 4. Open Meetings. It is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Government Code.

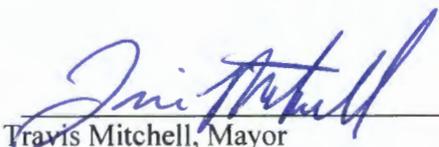
PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, on this 6th day of February, 2024.

THE CITY OF KYLE, TEXAS

ATTEST:



Jennifer Kirkland, City Secretary



Travis Mitchell, Mayor

EXHIBIT A

**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT:
CITY OF KYLE “FIRST YEAR ON US” ECONOMIC INCENTIVE PROGRAM–
TEA TIPPER 1**

This **CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT: CITY OF KYLE “FIRST YEAR ON US” PROGRAM – TEA TIPPER 1** (the "*Agreement*") is entered into to be effective as of the 6th day of February, 2024 (the "*Effective Date*"), by and between the City of Kyle, Texas (the "*City*"), a Texas home rule municipal corporation and Tea Tipper 1, LLC, a Texas limited liability company (the "*Company*"). The City and the Company are collectively referred to herein as the "*Parties*".

RECITALS

WHEREAS, under Chapter 380 of the Texas Local Government Code, the City established the First Year On Us economic development incentive program (the "*Program*") to encourage the location and expansion of businesses and to stimulate commercial activity on commercially zoned properties within the City; and

WHEREAS, the Company applied for an economic development incentive grant under the Program for improvements made to that certain property located at 2266 Kohlers Crossing, City of Kyle, Hays County, Texas Kyle (the "*Property*"), for the purpose of operating a HTeaO, a retail beverage business (the "*Business*"); and

WHEREAS, the Property is located in the retail services zoning district and is not located in a tax increment reinvestment zone or on the SCC KP or HPI properties; and

WHEREAS, the Company is not receiving any other economic development incentives from the City; and

WHEREAS, the Company owns the Property and the Business; and

WHEREAS, the Company is not delinquent in any taxes or fees owed to the City; and

WHEREAS, the renovation of the Building, the improvement of the Property, and the 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, sales tax, and employment; and

WHEREAS, the City and the Company desire to set forth the terms and conditions under which an economic incentive under the Program will be provided to the Company; and

WHEREAS, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters

hereof;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Section 1. Company's Obligations. (a) The Company shall construct and install permanent capital improvements on the Property, consisting of the following (the "**Improvements**"): construction of the building in which the Business will operate and other capital improvements serving the Property. The Improvements shall be constructed in accordance with the approved permits and construction plans, and all applicable City rules, ordinances, and regulations. The Company shall complete the Improvements and obtain a certificate of occupancy within within eighteen (18) months of the Effective Date. The Company will notify the City within seven (7) business days of any delays that will cause the Improvements to be completed after the deadline set forth in this Section 1(a).

(c) The Company will begin operating the Business on the Property within thirty (30) days of the issuance of the certificate of occupancy.

(d) The Company shall not be delinquent in any taxes or fees owed to the City.

(e) The Company covenants and certifies that the Company does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.001(4) of the Texas Government Code, as amended. 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 the Grant made under Section 2 of this Agreement. Repayment shall be paid within 120 days after the date following such conviction that the Company receives notice of violation from the City as provided by 2264.101(c) of the Texas Government Code, 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.

Section 2. Economic Incentive. Subject to the terms and conditions contained in this Agreement and subject to the Company's compliance with this Agreement, the City shall pay the Company a Chapter 380 Grant an the amount equal to one dollar for every tax dollar generated as a direct result of the installation of the Improvements on the Property up to a maximum of Ten Thousand and 00/100 Dollars (\$10,000.00) (the "**Grant**"). The Grant shall be paid within forty-five (45) days after completion and issuance of a certificate of occupancy for the Improvements and provision of the following documents; provided the Business is operating on the Property; the Company is in compliance with Section 1; and the Company has certified in writing on the form provided by the City that the Company is in compliance with the terms and conditions of this Agreement:

- a) A list of all permits and certificates of occupancy for the Improvements;
- b) The Hays County tax assessments records for the year of the application for the Grant and the year in which the Improvements were included on the tax rolls;
- c) An affidavit that all contractors and vendors who designed and/or installed the improvements have been paid; and

- d) Any other information reasonably required by the City to confirm compliance with the Agreement.

Section 3. Return of Grant Funds. The Company shall repay the Grant to the City within thirty (30) days of the City's written demand for repayment of the Grant if Owner falsely certifies that it has meet the performance criteria in its certification and documents submitted to the City under Section 2.

Section 4. Further Action. The City and the Company will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions.

Section 5. Representations and Authority. The City certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with its City Charter and City ordinances. The Company hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or management agreement of the Company.

Section 6. Personal Liability of Public Officials. 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 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.

Section 7. Information. The Company shall, at such times and in such form as City may require, furnish periodic information concerning the status of the performance of its obligations under this Agreement as may be requested in writing by the City.

Section 8. 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 ON THE PROJECT OR THE UTILITY EXTENSION PROJECT, 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 TENANTS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF COMPANY OR COMPANY'S TENANTS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF COMPANY OR COMPANY'S TENANTS, 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.

Section 9. Default. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of thirty (30) days after receipt by such party of notice of default from the other party. Upon the passage of thirty (30) days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement. In the event of default, the non-defaulting party to this Agreement may pursue the remedy of mandamus, injunction, or specific performance or any other legal or equitable relief to which the

non-defaulting Party may be entitled. All remedies will be cumulative and the pursuit of one (1) authorized remedy will not constitute an election of remedies or a waiver of the right to pursue any other authorized remedy.

Section 10. 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 on the part of the City.

Section 11. 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 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.

Section 12. Waiver. Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not, regardless of length of time during which that failure continues, be deemed a waiver of that party's right to insist upon strict compliance with all terms of this Agreement. In order to be effective as to a party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

Section 13. Attorneys' Fees. In the event of action pursued in court to enforce rights under this Agreement, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

Section 14. Force Majeure.

- (a) The term "Force Majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority; insurrections; riots; epidemic; landslides; lightning, earthquakes; fires, hurricanes; storms, floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability.
- (b) If, by reason of Force Majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such Force Majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the Force Majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

- (c) It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

Section 15. Reservation of Rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws, and neither party waives any legal right or defense available under law or in equity.

Section 16. Notices. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, by messenger, or by reputable overnight carrier, and shall be deemed delivered when received at the addresses of the parties set forth below, or at such other address furnished in writing to the other parties thereto:

Company: Tea Tipper 1
304 Juniper Dr.
Mountain City 78610

City: City of Kyle
1700 Kohlers Crossing
Kyle, Texas 78640
Attn: City Manager

Section 17. Miscellaneous.

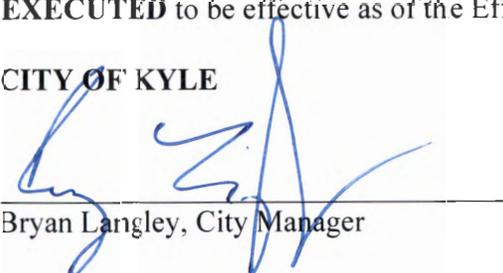
- (a) Entire Agreement. This Agreement, including exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.
- (b) Amendment. This Agreement may only be amended, altered, or revoked by written instrument signed by all parties.
- (c) Successors and Assigns. In this Agreement, unless a clear contrary intention appears, reference to any party includes such party's successors and assigns, and reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns. This Agreement is not assignable without the prior written permission of the other parties thereto.
- (d) Applicable Law. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas, without regard to its conflicts of laws, and

venue shall lie in State courts located in Hays County, Texas.

- (e) Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceability under the present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- (f) No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the City and the other parties, or between the Bank and the other parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.
- (g) Time is of the Essence. It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.
- (h) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

EXECUTED to be effective as of the Effective Date.

CITY OF KYLE



Bryan Langley, City Manager

ATTEST:



Jennifer Kirkland, City Secretary

Company: Tea Tipper 1, LLC

By: 

Name: Eric Perucca

Title: Owner\Member