

## **FIRST AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT**

This First Amendment to Economic Development Agreement (this "**Amendment**") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2025 (the "**Amendment Effective Date**"), by and between the City of Boerne, Texas, a Texas home-rule municipal corporation ("**City**"), and Buc-ee's, Ltd., a Texas limited partnership ("**Developer**"). City and Developer are sometimes individually referred to herein as "Party" and are sometimes collectively referred to herein as the "Parties."

### **RECITALS**

WHEREAS, the City and Developer previously entered into that certain Economic Development Agreement dated August 29, 2016 (the "**Original Agreement**");

WHEREAS, since the execution of the Original Agreement, certain conditions and circumstances have changed requiring modification of the original terms;

WHEREAS, the Parties now desire to amend the Original Agreement to incorporate subsequent understandings, utility and roadway obligations, clarified project requirements, and to delete provisions no longer applicable;

WHEREAS, the City has determined that the Original Agreement as amended by this Amendment will promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, the City Council has determined that the terms and obligations of the City created by this Agreement as amended by this Amendment are in the best interests of the City and its residents.

### **AGREEMENT**

NOW THEREFORE, in consideration of the mutual benefits described in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

1. Exhibits A, B, C, and E, of the Original Agreement are hereby replaced with Exhibits A, B, C, and E attached to this Amendment.
2. The fifth Recital of the Original Agreement, which references the Supplemental Project, is hereby deleted in its entirety.
3. Article 1, Section 1 of the Original Agreement is hereby amended and restated to provide in its entirety as follows:

"1. Project. Developer intends to construct, or cause to be constructed, a retail development consisting of a Buc-ee's travel center being no more than fifty-four thousand (54,000) square feet of building area and providing no more than one hundred (100) gas and/or diesel

fueling positions, serving 100 vehicles, and twenty-six (26) or more electric vehicle charging stations, as permitted, on the Property (the “**Project**”). Developer shall create within twelve (12) months of the opening of the Project to the public and maintain during the Project Term (defined in Article II, 1a) an average, annualized minimum of two hundred (200) full-time equivalent jobs at the Project. No tractor-trailer, commonly referred to as semi-truck or eighteen-wheelers, vehicles shall be permitted to be served at or on the Project, except those vehicles required for delivery and service to the store. The Project shall be developed generally in accordance with the Site Plan attached hereto as Exhibit B.”

4. Article 1, Section 2 of the Original Agreement which is therein titled ‘Supplemental Project’ is hereby deleted in its entirety.
5. Article II, Section 2 of the Original Agreement which is therein titled ‘Supplemental Project Economic Development Grant’ is hereby deleted in its entirety
6. Article II, Section 3 of the Original Agreement is hereby amended and restated to provide in its entirety as follows:

“3.     Extension of Utilities to the Property

A.     Extension of Water to the Property. The City warrants and represents that it has, at the City’s sole cost and expense, extended or caused to be extended to the southwestern Property boundary a water main no less than twelve inches (12") in diameter, and made such line available for connection by Developer, as shown on Exhibit G (the “**Water Extension**”). The City shall be wholly responsible for the installation, operation, maintenance, and costs thereof, of the Water Extension and any necessary off-Property water main looping. Except for the Water Extension and off-Property water main looping, Developer shall be wholly responsible for installation and costs of water main extensions and looping on the Property per approved plans.

B.     Extension of Sanitary Sewer, Electric, and Gas to the Property. City shall, at the City’s sole cost and expense, for purposes of serving the full development and use of the Property for the Project:

(i) Prior to the commencement by Developer of vertical improvements on the Project, extend (or cause to be extended) to the northwestern Property boundary line and make available for connection by Developer a sanitary sewer main being no less than twelve (12) inches in diameter (the “Sewer Extension”), such sanitary sewer main shall be located as depicted on Exhibit G;

(ii) Prior to the commencement by Developer of vertical improvements to the Project, provide (or cause to be provided) to the eastern Property boundary line and make available for connection, a 3-phase overhead primary electric distribution line, such electric distribution line shall be located as depicted on Exhibit G; and

(iii) Prior to the commencement by Developer of vertical improvements to the Project, provide (or cause to be provided) to the eastern Property boundary line and make available for connection a 6-inch natural gas distribution main capable of providing a service flow no less than 776 cfm at 5 psi, such location of the natural gas distribution main shall be located as depicted on Exhibit G.

C. Developer may commence site grading, upon approval of a city grading permit for the site area, provided such activities do not conflict with the operation or maintenance of existing utilities prior to their abandonment.

D. Developer shall be responsible for all costs associated with providing any underground electric lines to serve the Property.

E. Developer shall be responsible for coordinating relocation/removal of all telecoms as necessary on utility poles serving the property to ensure timely removal.”

7. Article II, Section 4 of the Original Agreement which is therein titled ‘Credit Towards City Fees’ is hereby deleted in its entirety.
8. Article II, Section 5 of the Original Agreement is hereby amended to add, to the end of the section, the following sentence:

“The Parties acknowledge that the transfer of the TxDot Tract to Developer has been completed as evidenced by the instrument recorded at 383691 of the Official Public Records of Kendall County, Texas.”

9. Article II, Section 6 of the Original Agreement is hereby amended to add, to the end of the section, the following:

“The Parties acknowledge that the transfer of right-of-way from the Texas Department of Transportation to the City has been completed as evidenced by the instrument recorded at Document No. 389403 of the Official Public Records of Kendall County, Texas.

The extension of Buc-ee’s Way ROW shall be as set forth below:

A. Developer shall commence sitework for the Buc-ee’s Way ROW improvements upon approval of final plat by the Planning & Zoning Commission and issuance of a Construction Release Permit.

B. The City shall reimburse Developer for costs incurred in the construction of the Buc-ee’s Way ROW improvements, including roadway and drainage improvements, per Article II, Section 8 of this Agreement.

C. Any new signage modifications within TxDOT right-of-way required for Buc-ee’s Way ROW improvements shall be at Developer’s sole cost and expense.

D. Any traffic signal modifications within TxDOT right-of-way required for Buc-ee's Way ROW improvements shall be at Developer's sole cost and expense.

E. Developer shall dedicate the right-of-way as "Buc-ee's Way," with the final plat of the project. The official naming of the right-of-way as "Buc-ee's Way" is a material consideration for Developer's agreements herein, particularly the sign height reduction specified in Article III, Section 3 of this Agreement.

F. The City shall process any necessary zoning corrections for the TxDOT right-of-way tract to ensure consistency with the Project's zoning requirements.”

10. Article II, Section 7 of the Original Agreement which is therein titled ‘Texas Capital Fund Grant’ is hereby deleted in its entirety.

11. Article II, Section 8 of the Original Agreement is hereby amended and restated to provide in its entirety as follows:

“8. Funding for Improvements.

A. Developer shall procure bids for the Sewer Extension and Buc-ee's Way ROW improvements in accordance with Chapter 252 of the Texas Local Government Code, subject to City concurrence on bid form and advertisement.

B. Developer shall provide the City with anticipated costs based on accepted bids.

C. Developer shall separately account for costs of the Sewer Extension and Buc-ee's Way ROW improvements (the "**Cost of Work**") in periodic pay applications submitted to the City for review.

D. Within thirty (30) days of receipt of each pay application, the City shall either approve by written acceptance or request specific additional information or revisions.

E. Upon final completion and City acceptance of the Sewer Extension and Buc-ee's Way ROW improvements, Developer shall submit a statement of final Cost of Work.

F. Within thirty (30) days of receipt, the City shall either approve such statement by a final acceptance letter (“**Final Acceptance Letter**”) or request specific additional information or revisions and, upon receipt of such required additional information, issue a Final Acceptance Letter.

G. The Cost of Work as set forth in the Final Acceptance Letter shall be paid by the City to Developer in no more than five (5) equal annual installments (each an “**Annual Reimbursement Payment**”), subject to annual budget appropriation and available funds.

H. The City shall pay the first Annual Reimbursement Payment within thirty (30) days following the date of the Final Acceptance Letter, with subsequent payments due annually thereafter until the Cost of Work is paid in full. Prepayment is allowed.

12. Article III, Section 1 of the Original Agreement is hereby amended and restated to provide in its entirety as follows:

“1. Conveyance of Buc-ee’s Way ROW. Developer shall dedicate the Buc-ee’s Way Right of Way to the public as ‘Buc-ee’s Way’ with the final plat of the Project.”

13. Article III, Section 2 of the Original Agreement is hereby amended and restated to provide in its entirety as follows:

“2. Conveyance of Utility Easements. Developer shall dedicate the utility easements, as generally depicted on Exhibit G attached hereto and made a part or as otherwise approved by Developer and City, to the public with the final plat of the Project.”

14. Article III, Section 3 of the Original Agreement is hereby amended and restated to provide in its entirety as follows:

“3. Open Space Park Land and Developer Enhancements.

A. Prior to opening the Project to the public, Developer shall dedicate approximately nine (9) acres of open space as park land to the City, the exact acreage and location to be shown on the final plat.

B. In addition to the park land dedication, Developer agrees to provide the following enhancements to the Project prior to opening the Project to the public:

(i) **Sign Plan:** Developer shall reduce the height of the planned freestanding sign from seventy-five feet (75') to sixty feet (60') above finished grade per the grading plans as of the date of execution of this Amendment and as shown on Exhibit X, contingent upon: (1) the City's official acceptance of Buc-ee's Way right-of-way by plat, and (2) the inclusion of green exit signs, per TxDOT requirements for guide signs, for Buc-ee's Way at applicable locations in both directions on Interstate 10;

(ii) **Security Fencing:** Developer shall install eight-foot (8') security fencing of material complying with City standards along the rear property line of the Property discouraging pedestrian access from Buc-ee’s to the city-owned open space along Suggs Creek as shown on Exhibit Y. An 8 ft. black woven wire fence with a 16 ft. wide gated access to the dedicated open space is recommended;

(iii) **Enhanced Landscaping:** As shown on Exhibit Y, attached hereto, Developer is providing enhanced landscaping and planting areas that incorporate native, drought tolerant plant selections throughout the Property which exceeds the

City's minimum landscaping requirements. Unless utility or drainage conflicts exist, the final landscape design shall closely represent the more detailed plan sheets previously approved by the City of Boerne Design Review Committee Creative Alternative (2021-1009) on 12/9/2021. Tree preservation efforts exceed both the 2019 Zoning Ordinance and current UDC tree preservation requirements. The preservation of existing onsite trees and planting trees above minimum tree planting requirements result in no fee in lieu of mitigation payments by Developer to the Tree Restoration Fund;

(iv) **Site Lighting Plan:** Developer shall implement the site lighting plan previously approved under City review authority and attached as Exhibit Z which includes dark-sky compliant fixtures and prevents light spillage to adjacent properties. The Site Lighting Plan incorporates the Illuminating Engineering Society's (IES) recommended lighting levels for parking facilities and gas station canopies, and the incorporation of IES recommendations results in compliance with current UDC Dark Sky Regulations.

(v) **HVAC Condensate Recovery System:** Developer shall install and maintain an HVAC condensate recovery and irrigation system to promote water conservation at the Project, subject to City review authority.

15. The fifth line of Article III, Section 4 of the Original Agreement is hereby amended to delete the words "and the Supplemental Project". The seventh line of Article III, Section 4 of the Original Agreement is hereby amended to delete the words "and/or Supplemental Project[s]". The eighth line of Article III, Section 4 of the Original Agreement is hereby amended to delete the words "or Supplemental Project City Payment".
16. A new Section 6 is hereby added to Article III of the Original Agreement to provide in its entirety as follows:

"6. Construction Timeline. Developer shall commence construction of the Project by the date that is later of (i) eighteen (18) months from the Amendment Effective Date and (ii) thirty (30) days after issuance of all permits required to commence construction of the Project (the "Commencement Date") and shall complete construction and open the Project to the public within thirty-six (36) months of the Commencement Date, subject to *force majeure* provisions contained herein."
17. **Counterparts.** This Amendment may be executed in multiple counterparts, each of which shall be deemed an original.
18. **Authority.** Each Party represents and warrants that it is duly authorized to enter into this Amendment and that the persons executing this Amendment on behalf of each Party have the authority to do so. Failure to commence construction within the required period shall constitute default unless extended by written agreement of the Parties due to force majeure or other mutually agreed cause.

19. **Terms.** Terms that are capitalized but not defined in this Amendment shall have the meaning as defined in the Agreement.

20. **Agreement.** Except as modified by this Amendment, the Agreement shall remain in full force and effect and the Parties affirm the terms and conditions of the Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this First Amendment to Economic Development Agreement as of the date first written above.

**CITY OF BOERNE, TEXAS**

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

Ben Thatcher, City Manager

ATTEST:

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Lori Carroll, City Secretary

APPROVED AS TO FORM:

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William M. McKamie, City Attorney

**BUC-EE'S, LTD.**

By: Buc-ee's Management, LLC, a Texas limited liability company, its General Partner

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

Name: \_\_\_\_\_ Title: \_\_\_\_\_

**EXHIBITS**

Exhibit A - Property Description

Exhibit B - Site Plan

Exhibit C - TxDot Tract Legal Description

Exhibit E - Buc-ee's Way ROW Legal Description

Exhibit G - Utility Extension Locations

Exhibit X - Sign Plan (60' Height)

Exhibit Y - Landscaping and Fencing Plan

Exhibit Z - Site Lighting Plan