

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BETWEEN  
THE CITY OF BOERNE, TEXAS, AND GUY SANDERS**

The purpose of this ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (“this Agreement”) is to provide an indication of support for a project located at 153 S. Main St., Boerne, Texas 78006 by Guy Sanders (“DEVELOPER”) within the city limits of the CITY OF BOERNE, a Texas home rule municipality (“the City”) (collectively referred to as the “Parties”).

**WHEREAS**, DEVELOPER is an individual doing business in the City of Boerne with his primary place of business at 153 S. Main in Boerne, Kendall County, Texas (the “Property”);

**WHEREAS**, the electric infrastructure previously existing in this area of S. Main Street and adjacent to the Property has not been adequate in the past to meet the requirements for expansion of businesses on the Property or for other businesses wishing to locate in the area in order to meet the requirements of the electric code adopted by the City;

**WHEREAS**, DEVELOPER has undertaken a project at or near 153 S. Main Street in the City of Boerne, Kendall County, Texas for the purpose of expanding and adding business establishments at the Property and replacing, renovating and upgrading the electric infrastructure on the Property, increasing the capacity of the electric infrastructure beyond what is needed for the Property, such that it will allow for increased electric service and consequentially, increase the desirability to businesses of other properties in the area;

**WHEREAS**, the City believes that the Project, and the provision of increased access to electric service, on the Property and beyond, will draw job producing businesses to the area and otherwise benefit the City, its residents and the surrounding community and will be an asset to same;

**WHEREAS**, it would be in the best interest of all Parties to enter into an agreement for the Project on the Property;

**WHEREAS**, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code and in accordance with the City’s incentive policy, an incentive to DEVELOPER for development of the Project;

**WHEREAS**, the City has the authority under Chapter 380 to make loans and grants of public money for the purposes of promoting local economic development and stimulating business and commercial activity;

**WHEREAS**, the City has determined that a grant of funds of the municipality to DEVELOPER for the Project will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the City;

**WHEREAS**, the City and DEVELOPER agree that development of the Project will encourage increased economic development in the City, will provide increases in the City’s tax revenues and improve the City’s ability to provide for the health, safety and welfare of its citizens;

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380, and further is in the best interests of the City and DEVELOPER; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State of Texas, by eliminating unemployment or underemployment in the state, and by the development or expansion of commerce within the State of Texas.

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

**Section I**  
**The Understanding**

**1.01 Purpose.** The above recitals are incorporated as if fully set forth herein. The purpose of this Agreement is to provide the terms, conditions, and responsibilities of DEVELOPER and the City for construction of the Project on the Property.

**1.02 Authority.** The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and by City Resolution No. \_\_\_\_\_. This Agreement constitutes a valid and binding obligation on the Parties, subject to conditions precedent as stated herein. The Parties acknowledge that DEVELOPER is acting in reliance upon the other Party's performance of the obligations under this Agreement in making the decision to commit substantial resources and money to development of the Property and completion of the Project.

**1.03 DEVELOPER Obligations.**

**1.03.1 Construction of the Project.** DEVELOPER will proceed with reasonable commercial diligence to complete the Project on the Property by December 31, 2020. Time is of the essence for this Agreement and should the Project delineated in this Agreement not be completed by close of business on this date, then the default provisions set forth in Section II shall apply.

**1.03.2 Cumulative Construction Costs.** DEVELOPER will complete the Project on the Property with a cumulative cost or value incurred greater than or equal to One Million dollars (\$1,000,000.00). Such amount includes the costs associated with construction, infrastructure expenses, furniture, fixtures, and equipment associated with the Project. The Company shall maintain commercially reasonable detailed and accurate records of all contracts, receipts and expenditures made or incurred in connection with the construction of the Project on the Property and shall make same available to the City for inspection with reasonable notice of such inspection.

**1.03.3 Costs Responsibility.** DEVELOPER will remain wholly responsible for the cost and expenses associated with the Project.

**1.03.4 Fees Responsibility.** DEVELOPER will remain wholly responsible for the cost, expense and acquisition of all permits, meter fees, impact fees and any other City related service fees associated with the Project.

**1.03.5 City of Boerne Access.** DEVELOPER agrees to allow the City to enter the construction site throughout the construction of the Project to monitor its progression.

- 1.03.6** *Applicable Regulations.* Notwithstanding the terms set forth in this Agreement, DEVELOPER will remain subject to and shall comply with all applicable laws, statutes, regulations and ordinances as currently exist or as may be amended from time to time.
- 1.03.7** *Maximum Total Reimbursement Amount (“MTRA”).* The total reimbursement amount is set at seventy-six thousand one hundred and seventy-two dollars and eighty-five cents (\$76,172.85) for all Chapter 380 Payments and Incentives described within this Agreement. Once this amount is reached, the City is under no further obligation under this Agreement and the Agreement terminates as a matter of law.
- 1.03.8** *Undocumented Workers.* During the Term of this Agreement, DEVELOPER agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. § 1324a(f), DEVELOPER shall repay the City for all funds that may be received by the DEVELOPER from the City as of the date of such violation, such payment being due within 120 business days after the date the City is notified by the DEVELOPER of such violation, with interest at the City’s weighted average yield of its investment portfolio from the date the Chapter 380 Payment was made to DEVELOPER to the date of the repayment. In no event shall any provision hereof be deemed to have waived any defense the DEVELOPER may have to any allegation of a violation of 8 U.S.C. § 1324a(f).
- 1.03.9** *Certified Compliance.* Within thirty (30) days following a written request, DEVELOPER will provide to the City a letter certifying that they are in compliance with this Agreement.
- 1.03.10** *Warranties.* The DEVELOPER makes the following warranties:
- 1.03.10.1** DEVELOPER is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the term of this Agreement.
  - 1.03.10.2** DEVELOPER is not involved in any litigation or governmental proceeding, nor has any such proceeding been threatened against DEVELOPER, that may result in any material adverse change in DEVELOPER’ business, properties or operation.
  - 1.03.10.3** There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and DEVELOPER has not been informed of any potential involuntary bankruptcy proceedings.

#### **1.04 City Obligations.**

- 1.04.1** *Grant.* Subject to the conditions set forth in this Agreement, the City agrees to provide developer with a grant up to the MTRA as described in 1.03.10 above as partial reimbursement for DEVELOPER’s costs for the Project, to be distributed to DEVELOPER in the form of a monthly credit to DEVELOPER’s electric bill from the City. The monthly credit shall not exceed each month’s balance due to the City for electric service received by DEVELOPER.
- 1.04.2** *Cessation of ownership or business.* The City’s obligation hereunder is subject to the continued ownership of the Property by Guy Sanders and the continuous operation of business on the Property.

## **Section II** **Termination**

This Agreement shall terminate automatically on the occurrence of one of the following:

- 2.01 Seventh Anniversary** - The seventh anniversary of the date this Agreement is signed by both Parties;
- 2.02 Achievement of Purpose** - Once the purpose of this Agreement has been achieved and all amounts due have been paid;
- 2.03 Misrepresentation** - If any representation or warranty made by DEVELOPER herein or relied upon by the City in entering this Agreement is determined by the City to have been false or misleading in any material respect when made or when deemed made or repeated following notice and mediation as set out in Section 2.09 below;
- 2.04 Default** - If DEVELOPER fails to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within three (3) Business Days following notice and mediation as set out in Section 2.09 below;
- 2.05 Bankruptcy** - If DEVELOPER becomes Bankrupt;
- 2.06 Lack of Available Funds.** If funds are not appropriated by the City Council for any fiscal year of this Agreement due to lack of available funds the City shall notify DEVELOPER of the date of termination in writing and this Agreement and all obligations of the Parties shall terminate at the end of the then current fiscal year;  
or
- 2.07 Sale of Property.** In the event Guy Sanders sells or otherwise transfers his interest in the Property to a third party.

*2.08 Credits and application of credits to utility bill cease upon termination.* Should this Agreement be terminated for any reason, the City's obligations hereunder shall cease and no further credits will be applied to Guy Sander's electric account for this Agreement. Any remaining unused credit placed on the account pursuant to this Agreement shall be refunded to the City.

*2.09 Notice, mediation, and claw-back.* Should the City wish to terminate this Agreement pursuant to Section 2.03 or 2.04, the City shall send written notice to DEVELOPER of the intent to terminate, including the nature of the misrepresentation or default alleged by the City and any claw-back amount being claimed by the City ("the Notice"). The Notice shall be sent by Certified Mail, Return Receipt Requested and will be considered delivered upon deposit of the Notice in the United States Mail. Upon delivery of the Notice, the City will suspend all pending credits and payments to Guy Sanders until such time as any requested mediation, if any, has occurred and a final determination has been made by the City regarding whether the alleged misrepresentation or default occurred and the amount of any claw-back owed to the City. Upon receipt of the Notice, DEVELOPER may request mediation with the City by providing written notice of intent to mediate to the City within ten business days of the date the notice was received. If mediation is timely requested, the Parties shall agree upon a mediator and participate in mediation within 90 days of the date the Notice is received by DEVELOPER. Following mediation, or if no mediation is held, within 91 days of the date the Notice is received by DEVELOPER, the City shall provide DEVELOPER with its final determination on this matter in writing, delivered by Certified Mail, Return Receipt Requested. If the final decision of the City is to terminate this Agreement, the Agreement will terminate immediately upon delivery of the final determination letter by the City. Upon such termination, DEVELOPER will be required to reimburse the City for the full amount of credits made to DEVELOPER's electric account by

the City over the term of this Agreement, less any financial benefit received by the City prior to the termination of the Agreement, as determined by the City.

### **Section III** **Amendments**

No amendment, modification or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement and duly authorized by each Party's representative. Amendments may be made due to changes in the character of the work, the terms of the Agreement, or the respective responsibilities of the Parties. Amendments shall be enacted through a mutually agreed upon written instrument and signed by the authorized representative of each Party.

### **Section IV** **Designated Contact Person**

- 4.01** The following individuals are designated as the contact person/representative for the respective Parties:

City of Boerne  
**Attn: City Manager.**  
P.O. Box 1677  
447 N. Main Street  
Boerne, Texas 78006

DEVELOPER  
Guy Sanders  
153 S. Main St.  
Boerne, Texas 78006

- 4.02** For purposes of this Agreement, all communications and notices between the Parties shall be directed to the designated contact person/representative of the Parties and shall be deemed sufficient if in writing and hand delivered or mailed, registered or certified mail, postage prepaid, to the above listed addresses. All notices and information required to be given under this Agreement shall be given in writing and shall be effective when hand-delivered or on the 3rd day after being deposited in the United States mail, registered or certified mail, postage prepaid and addressed to the Party to whom the notice is to be given at the addresses shown herein.
- 4.03** Notice of change of the designated representative and/or the address of such representative by either Party must be made in writing and delivered to the other Party's last known address within five (5) business days of such change.

### **Section V** **Indemnification**

**TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS, CITY AND ELECTED OFFICIALS, OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, AND LOSSES, (INCLUDING BUT NOT LIMITED**

**TO FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS), ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER' ACTIVITIES UNDER THIS AGREEMENT, PROVIDED THAT ANY SUCH CLAIM, COST, LOSS, OR DAMAGE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM BUT ONLY TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT OR OMISSION OF DEVELOPER, ANY SUBCONTRACTOR, ANY SUPPLIER, OR ANY INDIVIDUAL OR ENTITY DIRECTLY OR INDIRECTLY EMPLOYED BY ANY ONE OR MORE OF THEM TO PERFORM ANY WORK PURSUANT TO THIS AGREEMENT OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE. CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY RELATED TO OR ARISING OUT OF DEVELOPER' ACTIVITIES IN PERFORMANCE OF ANY WORK HEREUNDER AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DEVELOPER' COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OBLIGATIONS UNDER THIS PARAGRAPH.**

**Section VI**  
**Terms and Conditions**

- 6.01** The construction and validity of this Agreement shall be governed by the laws of the State of Texas. Venue for any legal action commenced hereunder shall be in a court of appropriate jurisdiction in Kendall County, Texas.
- 6.02** In the event any portion of this Agreement is deemed illegal, invalid or unenforceable, then the remainder of this Agreement shall not in any way be affected thereby and may be enforced to the greatest extent permitted by applicable law.
- 6.03** It is expressly understood and agreed that this Agreement was jointly drafted by the Parties with the assistance of legal counsel selected by each of the Parties. Accordingly, the Parties hereby agree that all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning or interpretation of this Agreement.
- 6.04** This Agreement, including the Recitals, which are material provisions of the Agreement, constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes any prior understandings or written or oral agreements between the Parties concerning the subject matter of this Agreement. However, this Agreement: (i) is not in any manner to be considered a waiver by the Parties of any requirement contained in the City's Ordinances and/or Development Requirements; (ii) will not and does not conflict with the City's Ordinances and/or Development Requirements and in the event of such a conflict the terms of the City's Ordinances and/or Development Requirements control; and (iii) does not modify any of the City's Ordinances and/or Development Requirements. Where silent in this Agreement, the terms of City's Ordinances and/or Development Requirements shall control.

- 6.05** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.
- 6.06** Each Party represents to the other Party that the individual signing this Agreement has the authority to bind that Party to the obligations set forth herein.
- 6.07** Nothing herein shall be deemed to create any relationship of agency or partnership between the Parties.

Executed in duplicate originals, each of which shall have the full force and effect of an original, on this \_\_\_\_\_ DAY OF \_\_\_\_\_ 2020.

CITY OF BOERNE,

BY: \_\_\_\_\_  
RON BOWMAN

GUY SANDERS,

\_\_\_\_\_