

STATE OF TEXAS  
COUNTY OF BEXAR

§  
§     **Economic Development Agreement**  
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This Chapter 380 Economic Development Agreement (“Agreement”) is made by and between the City of Helotes, Texas (“City”), a Texas Municipal Corporation, the City of Helotes Economic Development Corporation (“EDC”), and Texas Developers, LLC (“Developer”), sometimes collectively referred to as the “Parties,” acting by and through their respective authorized officers.

**RECITALS**

**WHEREAS**, the Developer represents a publicly-traded company formed as a result of the merger of two large companies in 2015. As part of the rationalization of the legal entity and operating structure for the new group, various operations are being consolidated with the assistance from the Developer. Certain subsidiaries of the merged entity have operations in New Braunfels, Austin, and Helotes, Texas (Comptroller Taxpayer ID 18701114300 & Comptroller Taxpayer ID 19430504548 with Location Nos. 00021 *New Braunfels*, 00044 *New Braunfels*, 00041 *Austin*, and 00045 *Helotes*). These subsidiaries, along with their affiliates and successor entities, are hereinafter referred to as the “Taxpayer”; and

**WHEREAS**, the Developer intends to provide development services, including causing Taxpayer to relocate its existing sales forces currently operating out of the aforesaid locations to Helotes, Texas; and

**WHEREAS**, Article III, Section 52-a of the Texas Constitution gives the Texas Legislature the authority to provide for loans and Grants of public money for the development and diversification of the State’s economy and the elimination of unemployment or underemployment; and

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code (“Chapter 380”), the City may establish and provide for the administration of an economic development program to advance economic growth, while also stimulating business and commercial activity within the Municipality; and

**WHEREAS**, pursuant to the Development Corporation Act, Article 5190.6 Tex. Rev. Civ. Stat. (“Act”), the City has created the Helotes Economic Development Corporation (EDC) to implement programs for promoting economic development; and

**WHEREAS**, the EDC’s mission is to promote, encourage, and enhance the creation of jobs, the expansion of the local tax base, and our quality-of-life for Helotes residents through projects that assist in the retention and expansion of existing employers, and which attract new employers and aid in economic development and growth; and

**WHEREAS**, the EDC has determined, as described in Exhibit “A,” that making economic development Grants to the Developer in accordance with this Agreement constitutes a

permissible "Program" within the terms of the Act and will promote new and expanded business development within the City, which is declared and expressly found to be in the public interest; and

**WHEREAS**, in addition to the six and a quarter percent (6.25%) sales and use tax imposed by the State of Texas, the City, withstanding a one quarter percent (1/4%) street maintenance sales and use tax, imposes a one percent (1.00%) sales and use tax (the "City Tax"), as authorized by Section 321.101 of the Texas Tax Code, and a one-half percent (0.50%) sales and use tax for economic development (the "EDC Tax"); and

**WHEREAS**, the EDC intends, and in connection with such intention, has adopted a Resolution, as described in Exhibit "A," to make payments to the Developer of seventy-five percent (75%) of the quarterly sales and use tax proceeds (at 0.50%) generated by Taxpayer and received by the EDC which are in excess of \$8,750.00 per quarter (the "**Incremental EDC Tax**") for the purpose of encouraging business expansion and the creation of new jobs in the City, provided the Taxpayer generates at least \$12,500,000.00 in taxable sales each calendar quarter; and

**WHEREAS**, the City Council of the City of Helotes, Texas intends, and in connection with such intention, has adopted an Ordinance, as described in Exhibit "B," to make payments to the Developer of seventy-five percent (75%) of the quarterly sales and use tax proceeds (at 1.00% (excludes Street Maintenance Sales Tax proceeds)) generated by Taxpayer and received by the City which are in excess of \$17,500.00 per quarter (the "**Incremental City Tax**") for the purpose of encouraging business expansion and the creation of new jobs in the City, provided the Taxpayer generates at least \$12,500,000.00 in taxable sales each calendar quarter.

**NOW, THEREFORE**, in consideration of the foregoing and on the terms and conditions hereinafter set forth and for other good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the City, EDC, and Developer agree as follows:

## **I.**

### **AUTHORITY AND TERM**

#### **1.1 Authority.**

The City and EDC's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and constitutes a valid and binding obligation of the City and EDC. The City and EDC acknowledge that the Developer is acting in reliance upon the City and EDC's performance of its obligations under this Agreement in making the decision to commit substantial resources and money to the consolidation of Taxpayer's sales forces within the "Project," hereinafter established.

#### **1.2 Term.**

This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date, hereinafter established, unless terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.

**1.3 Recitals incorporated.**

The representations, covenants and recitations set forth in the recitals to this Agreement are material to this Agreement and are hereby found and agreed to be true and correct, and are incorporated into and made a part hereof as though they were fully set forth in this Agreement.

**II.  
DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning, as ascribed by common and ordinary usage.

“Adversarial Proceedings” include any cause of action regarding this Agreement filed by the Developer in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration or mediation.

“City Administrator” shall mean that individual so-designated by the City to act on its behalf in the administration of certain duties set forth herein.

“Code” shall mean the City of Helotes Code of Ordinances.

“Consummated” shall have the meaning assigned by the Texas Tax Code, Section 321.203.

“Contract Progress Payment Request” (“CPPR”) shall mean a request for payment due to Developer from the City and EDC for the Project.

“Detailed Confidentiality Report” or “DCR” shall mean a report, sample attached hereto as Exhibit “C”, provided by the State to the City and EDC, in accordance with Texas Tax Code, Section 321.3022, which lists the amount of Sales and Use Tax paid (at 1.50% (excludes Street Maintenance Sales Tax proceeds)) (including any refunds, credits, or adjustments) by Taxpayer and received by the City and EDC from the State for the sale or use of Taxable Items by Taxpayer Consummated within the Property for specified periods which are to be used to justify the Developer’s CPPR, together with such supporting documentation required herein and as the City and EDC may request.

“Effective Date” shall mean the last date of Agreement execution by all Parties.

“Expiration Date” shall mean the earlier of:

1. December 31, 2036; or
2. Uncured default by the Developer.

“Fiscal Year” shall mean October 1st of any given calendar year through September 30th of any given following calendar year.

Gender: The gender of the wording throughout this Agreement shall always be interpreted to mean either sex, or, where the context requires, the plural of any word shall include the singular.

“Grant(s)” or “Grants” or “Grant” shall collectively mean payments, pursuant to a CPPR (as defined in Section 4.1 herein), made from the City and the EDC to the Developer equal to Sales Tax Receipts.

“Incremental City Tax” shall mean quarterly sales and use tax proceeds (at 1.00% (excludes Street Maintenance Sales Tax proceeds)) generated by Taxpayer and received by the City which are in excess of \$17,500.00 per quarter.

“Incremental EDC Tax” shall mean quarterly sales and use tax proceeds (at 0.50%) generated by Taxpayer and received by the EDC which are in excess of \$8,750.00 per quarter.

“Project” shall mean the relocation of existing sales forces to Helotes currently operating out of the locations specified within the Recitals to this Agreement.

“Property” shall mean the business location of the Taxpayer in the corporate limits of the City of Helotes, Texas upon which the Project, authorized by this Agreement, shall be implemented, including any subsequent location of the Taxpayer in Helotes’ corporate limits.

“Sales and Use Tax” shall mean the one and one-half percent (1.50% (excludes Street Maintenance Sales Tax proceeds)) sales and use tax imposed by the City, which includes the EDC Tax but does not include the one quarter percent (0.25%) street maintenance sales and use tax, on the sale or use of Taxable Items Consummated in the City by the Taxpayer, it being expressly understood that the Sales and Use Tax receipts are being used only as a measurement for City and EDC participation through the use of their general fund or other lawful source of payment.

“Sales Tax Payment Period” shall mean each calendar quarter following the Effective Date through the Expiration Date.

“Sales Tax Receipts” shall mean seventy-five percent (75%) of the Incremental City Tax and seventy-five percent (75%) of the Incremental EDC Tax generated by Taxpayer’s payment of the one and one-half percent (1.50% (excludes Street Maintenance Sales Tax proceeds)) Sales and Use Tax for the applicable Sales Tax Payment Period on the sale or use of Taxable Items Consummated within the Property; provided, however, that if the Taxpayer generates less than \$12,500,000.00 in taxable sales for a given calendar quarter, Sales Tax Receipts shall be deemed to be zero for such calendar quarter and no Grant payments shall be due for that quarter.

“Taxable Items” shall mean both “taxable items” and “taxable services,” defined by Chapter 151, Texas Tax Code, as amended.

**III.**  
**ECONOMIC DEVELOPMENT GRANTS**

**3.1 Grants.**

The City and EDC agree to make payments to the Developer through Economic Development Grants (“Grants” or “Grant(s)” or “Grant”) for the relocation of existing sales forces currently operating out of the locations specified within the Recitals to this Agreement to the Property within Helotes, Texas.

**3.2 Grants Payments.**

The City and EDC shall remit to Developer Sales Tax Receipts in the form of Grants related to the sale or use of Taxable Items Consummated within the Property for the Sales Tax Payment Period requested by the Developer and associated with the Project. The **GRANTS** will be paid to the Developer within thirty (30) days following the City and EDC’s receipt of a properly completed CPPR (as defined in Section 4.1 herein) from the Developer for each calendar quarter ending after the Effective Date and shall continue until termination of this Agreement. The Parties agree that the payment of Sales Tax Receipts in the form of Grants to the Developer is subject to the City and EDC’s actual collection of Sales Tax Receipts. In the event the Sales Tax Receipts are insufficient during the term of this Agreement to pay the **GRANTS**, the City and EDC shall not be obligated to pay the **GRANTS** from any other source of funds or required to pay such deficit to the Developer. Notwithstanding any provision contained herein to the contrary, the Developer shall have the right to receive Sales Tax Receipt Grant payments beginning with the first calendar quarter ending after the Effective Date and continuing until the Agreement is terminated, as provided by Article VI.

**3.3 Grants Limitations.**

The City and EDC shall only be obligated to pay **GRANTS** from Sales Tax Receipts actually received by the City and EDC. Developer represents that it understands that any contributions by the Developer in anticipation of reimbursement from **GRANTS** shall never be obligations of the general funds of the City or EDC, but are only obligations of the applicable **GRANT** funds, and are subject to the extent of the City and EDC’s capacity to reimburse the Developer.

**3.4 Grants Funds.**

**GRANTS** to be provided herein shall be paid solely from lawful, available funds from the City and EDC. Under no circumstances shall any **GRANTS** include any receipts from the City and EDC’s imposition and collection of Sales and Use Tax for the sale of Taxable Items at any location, business, establishment, or entity Consummated within the City other than from the sale or use of Taxable Items by the Taxpayer Consummated within the Property.

**3.5 No Bonds or Notes.**

The City, EDC, and Developer represent that they understand and agree that neither the City nor the EDC shall issue any bonds or notes to cover any Project costs directly or indirectly related to the Developer’s improvements to or in the Property under this Agreement. The City and EDC understand that Developer may choose to issue notes utilizing **GRANTS**

reimbursements for eligible costs directly or indirectly related to the Property under this Agreement. The City and the EDC will not be parties to the Developer's notes.

**3.6 Confidentiality.**

The City and EDC agree, to the extent allowed by law, to keep all information and documentation received from the State of Texas, pursuant to this Agreement hereof ("Confidential Tax Information"), confidential. The City and EDC will use the Confidential Tax Information solely for the purposes of determining the Developer's entitlement to **GRANT** funds. Further, the City and EDC agree to maintain the appropriate confidentiality of any information and documentation provided by Developer, unless disclosure of such information and documentation shall be required by a court order, a lawfully issued subpoena, State Law, municipal ordinance, or at the direction of the Office of the Texas Attorney General.

**IV.**

**CONDITIONS TO ECONOMIC DEVELOPMENT GRANTS**

The obligation of the City and EDC to pay **GRANTS** shall be conditioned upon the Developer's continued compliance with and satisfaction of each of the conditions set forth in this Agreement, as solely and finally determined by the City Council of the City of Helotes, Texas without recourse.

**4.1 Contract Progress Payment Request (CPPR).**

Developer shall, as a condition precedent to the payment of any **GRANTS**, provide the City and EDC with a CPPR in suitable form for the applicable **GRANTS** period. A CPPR shall, at a minimum, include a cover sheet summarizing the monthly or quarterly Taxable Sales, applicable sales and use tax reported by the Taxpayer to the State Comptroller for the Grant period, and anticipated Grant payment to be made by the City and EDC to the Taxpayer for the applicable Grant period. A CPPR shall also include copies of all executed applicable Texas Sales and Use Tax Returns for the applicable Grant period.

**4.2 Detailed Confidentiality Report.**

As a condition to the payment of any Sales Tax Receipt Grants hereunder, the City and EDC shall receive a Detailed Confidentiality Report for the applicable Sales Tax Payment Period for which payment of a Grant is requested. The City and EDC shall have no duty to calculate Sales Tax Receipts, determine the Developer's entitlement to any Grants, or pay any Grants during the term of this Agreement until such time as the City and EDC have been provided with a Detailed Confidentiality Report for the applicable Sales Tax Payment Period. At the request of the City or EDC, the Developer shall provide such additional documentation as may be reasonably requested by the City or EDC to evidence, support, and establish the Sales and Use Tax paid and collected (including Sales and Use Tax paid directly to the State pursuant to a direct payment permit) by Taxpayer for the sale or use of Taxable Items by the same Consummated within the Property and received by the City and EDC from the State. The Detailed Confidentiality Report shall, at a minimum, contain, include, or be accompanied by the following:

- (a) A schedule detailing the amount of Sales and Use Tax proceeds collected by Taxpayer and paid to the State as a result of the sale or use of Taxable Items Consummated within the Property for the previous City and EDC Fiscal Quarter; and
- (b) Information concerning any refund or credit of Sales and Use Tax received by Taxpayer (including any Sales and Use Tax paid directly to the State pursuant to a direct payment permit) which have previously been reported by Taxpayer as Sales and Use Tax paid or collected.

#### **4.3 Retailers' Report.**

For any Sales Tax Payment Period, the City and EDC shall only remit Grants related to Sales and Use Taxes that appear on the Detailed Confidentiality Report for the Taxpayer within the Property during the Sales Tax Payment Period.

#### **4.4 Sales Tax Disclosure.**

Developer covenants and agrees to include, as a condition, language which requires Developer, Taxpayer and their successors and assigns to sign or cause to be signed any documentation necessary to authorize the State Comptroller's Office to release and disclose to the City and EDC, for the term of this Agreement, any and all Sales and Use Tax information relating to Taxpayer generating Sales and Use Tax proceeds within the Property, including, as necessary, a form in materially the same format as that attached hereto as Exhibit "C".

#### **4.5 Audit.**

Developer shall, upon reasonable prior written notice to the City Secretary and during normal business hours and at Developer's expense, have the right to audit and inspect the City and EDC's records, books, and all other relevant records related to this Agreement. The City and EDC shall, upon reasonable prior written notice to the Developer and during normal business hours and at City and EDC's expense, have the right to audit and inspect the Developer's records, books, and all other relevant records related to this Agreement. The Parties agree to maintain the appropriate confidentiality of such records, unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, State Law, municipal ordinance, or at the direction of the Office of the Texas Attorney General.

#### **4.6 Recapture.**

In the event of Default by the Developer and/or Taxpayer, the City and EDC shall, after providing Developer notice and an opportunity to cure, have the right to cease all payments and recapture all GRANTS provided to Developer during the entire calendar year in which the default occurs, plus interest at the rate of the prime rate plus 1% per annum.

#### **4.7 Guidelines for Submission.**

The City Administrator may develop guidelines setting forth the specific details and procedural requirements for the timely submission of CPPR(s) and the disbursement of Grants pursuant to this Agreement, including appropriate penalties for late, deficient, or untimely submissions. Such guidelines shall be implemented by written order signed by the City Administrator.

**V.**  
**COVENANTS AND DUTIES**

**5.1 Developer's Covenants and Duties.**

Developer makes the following covenants and warranties to the City and EDC and agrees to timely and fully perform the obligations and duties contained in Article V of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Developer.

**5.1.1** 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 and the United States of America during any term of this Agreement.

**5.1.2** The execution of this Agreement has been duly authorized by Developer, and the individual signing this Agreement is the duly authorized manager and empowered to execute such Agreement and bind the Developer. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Developer's operating agreement, by-laws, or of any agreement or instrument to which Developer is a party to or by which it may be bound.

**5.1.3** The Developer is not a party to any bankruptcy proceedings currently pending or contemplated, and Developer has not been informed of any potential involuntary bankruptcy proceedings.

**5.1.4** To its current, actual knowledge, Developer has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.

**5.1.5** Developer shall timely and fully comply with all of the terms and conditions of this Agreement.

**5.1.6** Developer agrees to complete, or cause to be completed, the relocation or reallocation of existing sales forces currently operating out of the locations specified within the Recitals to this Agreement to the Property within Helotes, Texas. Developer agrees to provide, or cause to be provided, all materials, labor, and services for completing the Project. Developer shall comply with all applicable City Code provisions for completing the Project.

**5.1.7** Developer shall cooperate with the City and EDC in providing all necessary information to assist the City and EDC in complying with this Agreement. The Developer, in the execution of this Agreement, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. The Developer shall not engage in employment practices that have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap, political belief, or affiliation.

**5.1.8 Developer Bears Risk of Reimbursement.** The Developer represents that it understands that any expenditures made by the Developer in anticipation of reimbursement from Grants funds shall not be, nor shall be construed to be, financial obligations of the City or the EDC. The Developer shall bear all risks associated with reimbursement, including, but not limited to: pre-development agreement costs, incorrect estimates of Grants funds, changes in tax rates or tax collections, changes in State Law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, default by tenants, unanticipated effects covered under legal doctrine of force majeure, and / or other unanticipated factors.

**5.1.9 Financing.** The cost of the Project and all other improvement expenses associated with the Project shall be funded through the use of Developer's or Taxpayer's own capital or through credit secured solely by the Developer or Taxpayer. The Developer may use any or part of the Property as collateral for construction loans or other loans, as required for the financing of the Project; however, no property with a lien still attached may be offered to the City or EDC for dedication. The City and EDC will use available Grants funds to reimburse the Developer for Project costs it has expended. These Grants fund reimbursements made to the Developer are not intended to reimburse the Developer for all its costs incurred in connection with performing its obligations under this Agreement.

**5.2 City and EDC's Covenants and Duties.**

The City and EDC are obligated to pay the Developer from Sales and Use Tax contemplated by this Agreement over a period not to exceed the later of twenty (20) years or December 31, 2036, subject to Developer's timely and full satisfaction of all applicable duties and terms within this Agreement, as solely determined by the City Council of the City of Helotes, Texas. Further, City and EDC's obligations to pay the Developer shall cease upon the earlier of: (1) reaching the Agreement's Expiration Date; or (2) Default by the Developer.

**5.3 Substantial Compliance and Default.**

A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement. Failure by either Party to timely and substantially comply with any material performance requirement, duty, or covenant shall be considered an act of default if uncured within sixty (60) days of receiving written notice from the other Party (a "Default"). Failure of the Developer to timely and substantially cure a Default will give the City and EDC the right to terminate this Agreement, as solely determined by the City Council of the City of Helotes, Texas. Failure of the City or EDC to timely and substantially cure a Default will give Developer the right to terminate this Agreement and/or pursue other legal remedies including, without limitation, Dispute Resolution pursuant to Article 7 of this Agreement.

**VI.**  
**TERMINATION**

**6.1 Termination.**

This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

- (a) The written agreement of the Parties;
- (b) The Agreement's Expiration Date; or
- (c) Termination under Section 5.3 above.

**6.2 Extension Beyond Term and Reimbursement.**

In recognition of the fact that Grants are, by necessity, calculated and paid after taxes have been levied and paid to the City and EDC and, therefore, will always be paid in arrears, the Expiration Date of this Agreement will be extended until any and all Grants relating to applicable Sales Tax Receipts during the effective term of the Agreement have been paid in full by the City and EDC to the Developer. The Parties hereto agree that neither the City nor the EDC can guarantee that Grants funds shall completely reimburse the Developer, but that the Grants funds paid to Developer during the effective term hereof shall constitute the total reimbursement to the Developer regardless of the actual cost thereof.

**VII.**  
**DISPUTE RESOLUTION**

**7.1 Mediation.**

If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, Dallas, Texas, before resorting to litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All costs of negotiation, mediation, and arbitration, collectively known as alternate dispute resolution ("ADR"), shall be assessed equally between the City, EDC, and Developer, with each party bearing their own costs for attorneys' fees, experts, and other costs of ADR and any ensuing litigation.

**7.2** During the term of this Agreement, if Developer files and / or pursues an adversarial proceeding against the City or EDC regarding this Agreement without first engaging in good faith mediation of the dispute, then, at the City and EDC's option, all access to the Grants provided for hereunder may be deposited with a mutually acceptable escrow agent that

will deposit such finds in an interest bearing account until the resolution of such adversarial proceeding.

7.3 Under no circumstances will the Grants funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against City or EDC.

## **VIII.** **MISCELLANEOUS**

### **8.1 Binding Agreement.**

The terms and conditions of this Agreement shall be binding on and inure to the benefit of the City, EDC, Developer, and their respective successors and assigns. The City Administrator shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the City Council of the City of Helotes, Texas, on behalf of the City and EDC related thereto.

### **8.2 Mutual Assistance.**

City, EDC, and Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

### **8.3 Representations and Warranties.**

City and EDC represent and warrant to the Developer that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Developer represents and warrants to the City and EDC that it has the requisite authority to enter into this Agreement.

### **8.4 Assignment.**

Developer shall have the right to assign all of its rights, duties, and obligations under this Agreement to a duly qualified third party with prior written approval of the City Council of the City of Helotes, Texas; provided, however, that any assignment provided for herein shall not serve to enlarge or diminish the obligations and requirements of this Agreement, nor shall they relieve Developer of any liability to the City or EDC, including any required indemnity in the event that any Assignee hereof shall at any time be in default of the terms of this Agreement. The City and EDC may demand and receive adequate assurance of performance, including the deposit or provision of financial security, by any proposed Assignee prior to its approval of an assignment.

### **8.5 Independent Contractors.**

8.5.1 It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Developer, at no time, will be acting as an agent of the City or EDC and that all consultants or contractors engaged by Developer will be independent contractors of Developer. The Parties hereto understand and agree that City or EDC will not be liable for any claims that may be asserted by any third party occurring in connection with

services performed by Developer under this Agreement, unless any such claims are due to the fault of the City or EDC.

**8.5.2** By entering into this Agreement, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the City or EDC, with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

**8.6 Notice.**

Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, facsimile with receipt confirmation, or by depositing the same in the United States Mail, postage prepaid and certified with return receipt requested, addressed to the Party at the address set forth below:

If intended for City or EDC:

City Administrator  
12951 Bandera Road (Physical)  
P.O. Box 507 (Mailing)  
Helotes, TX 78023

With a required copy to:

Frank Garza  
Davidson, Troilo, Ream & Garza, PC  
601 NW Loop 410, Ste. 100  
San Antonio, Texas 78216

If intended for Developer:

Texas Developers, LLC  
Attn: Charles F. Barnwell, Jr.  
3475 Lenox Road, Ste. 650  
Atlanta, GA 30326

Either Party may designate a different address or primary contact at any time upon written notice to the other Party.

**8.7 Governing Law.**

This Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement shall be in Bexar County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

**8.8 Amendment.**

This Agreement may be amended by mutual written agreement of the Parties, as approved by the City Council of the City of Helotes, Texas.

**8.9 Legal Construction.**

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found

to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

**8.10 Interpretation.**

Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

**8.11 Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the City Council of the City of Helotes, Texas.

**8.12 No Personal Liability of Public Officials.**

No public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

**8.13 Paragraph Headings.**

The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

**8.14 Counterparts.**

This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

**8.15 Exhibits.**

Any Exhibits attached hereto are incorporated by reference for all purposes.

**8.16 Survival of Covenants.**

Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties pertaining to a period of time following the termination of this Agreement shall survive termination.

**8.17 Employment of Undocumented Workers.**

During the term of this Agreement, the Developer agrees to not knowingly employ any undocumented workers, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), the Developer shall be in Default and repay the amount of the Grants and any other funds received by the Developer from the City and EDC as of the date of such violation within one hundred twenty (120) days after the date the Developer is

notified by the City or EDC of such violation, plus interest at the rate of six percent (6.00%) compounded annually from the date of the violation until paid in full. The Developer is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of the Developer or by a person with whom the Developer contracts; provided, however, that identical federal law requirements provided for herein shall be included as part of any agreement or contract which Developer enters into with any subsidiary, assignee, affiliate, or franchisee for which Grants provided herein will be used.

#### **8.18 Indemnification.**

**THE DEVELOPER SHALL INDEMNIFY THE CITY AND EDC AND THEIR RESPECTIVE OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITIES ARISING OUT OF THE DEVELOPER'S AND/OR TAXPAYER'S ACTIVITIES UNDER THIS AGREEMENT INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER'S AND/OR TAXPAYER'S AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF DEVELOPER OR TAXPAYER WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT. PROVIDED, HOWEVER, SHOULD THE STATE COMPTROLLER DETERMINE THAT THE CITY AND/OR EDC ERRONEOUSLY RECEIVED INCREMENTAL CITY OR EDC TAX, THE DEVELOPER SHALL ONLY BE LIABLE TO CITY AND/OR EDC FOR THE ACTUAL SALES TAX RECEIPTS ERRONEOUSLY PAID TO DEVELOPER BY THE CITY AND/OR EDC.**

**IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY AND THE EDC SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTEREPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFCATION TO THE CITY AND EDC PERMITTED BY LAW.**

#### **8.19 Insurance.**

**8.19.1** The Developer shall maintain, at its own cost and expense, such usual, customary, and appropriate insurance. Insurance shall be carried with financially responsible insurance companies, licensed in the State of Texas, with an A.M. Best Rating of A(-)VI or better. The following are the types of insurance policies and the minimum limits of insurance coverage which shall be maintained by the Developer throughout the Agreement Term.

**8.19.2** Comprehensive General Liability Insurance. With limits of liability for bodily injury of not less than \$1,000,000.00 any one occurrence, and for property damage of not less than \$1,000,000.00 any one occurrence, and \$2,000,000.00 aggregate.

**8.19.3 Comprehensive Automobile Liability Insurance.** With limits of liability for bodily injury of not less than \$1,000,000.00 any one person, and \$2,000,000.00 any one occurrence, and for property damage of not less than \$1,000,000.00 any one occurrence. Such coverage shall include owned, hired, and non-owned vehicles.

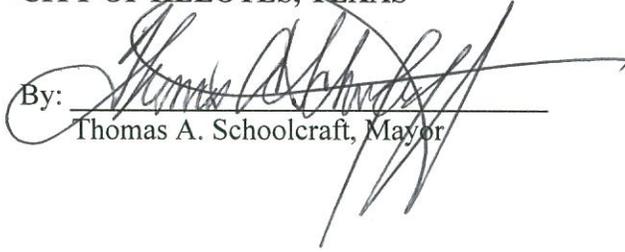
**8.19.4** The failure of the Developer, at any time, to maintain the required insurance required by Section 8.19 shall be considered an event of default.

**8.20 Additional Instruments.**

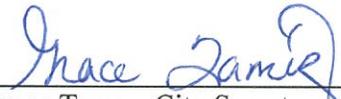
City, EDC, and Developer agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

Executed on this 21<sup>st</sup> day of September, 2016

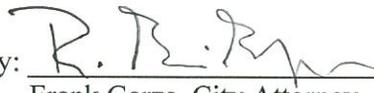
**CITY OF HELOTES, TEXAS**

By:   
Thomas A. Schoolcraft, Mayor

**ATTEST:**

By:   
Grace Tamez, City Secretary

**APPROVED AS TO FORM:**

By:   
Frank Garza, City Attorney



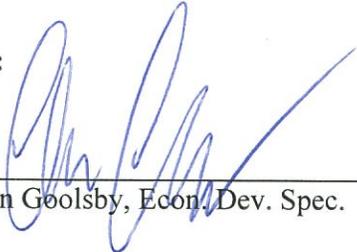
Executed on this 25<sup>th</sup> day of September 2016

**CITY OF HELOTES ECONOMIC  
DEVELOPMENT CORPORATION**

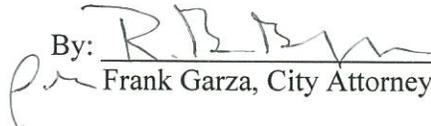


By: \_\_\_\_\_  
Rick Schroder, Executive Director

**ATTEST:**

  
By: \_\_\_\_\_  
Glenn Goolsby, Econ. Dev. Spec.

**APPROVED AS TO FORM:**

  
By: \_\_\_\_\_  
Frank Garza, City Attorney



Executed on this 20<sup>th</sup> day of September, 2016

TEXAS DEVELOPERS, LLC

By: R. Bruce Jacobson  
Name: R. Bruce Jacobson  
Title: Manager

APPROVED AS TO FORM:

By: Kyle Jones

**EXHIBITS**

Exhibit "A"  
Exhibit "B"  
Exhibit "C"

EDC Resolution of Support  
City Ordinance  
Detailed Confidentiality Report Instructions  
& Sample Contract Progress Payment Request

**A RESOLUTION**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY OF HELOTES ECONOMIC DEVELOPMENT CORPORATION ("EDC") APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY, THE CITY OF HELOTES ECONOMIC DEVELOPMENT CORPORATION, AND TEXAS DEVELOPERS, LLC (THE "DEVELOPER") FOR THE PURPOSE OF SETTING FORTH THE TERMS AND OBLIGATIONS BETWEEN THE CITY, EDC, AND THE DEVELOPER WITH RESPECT TO PROVISION OF SALES TAX GRANTS FOR A PUBLICLY-TRADED COMPANY LOCATED WITHIN THE CORPORATE CITY LIMITS AND DESIRING TO AMEND ITS OPERATING STRUCTURE AND CONSOLIDATE OPERATIONS WITHIN THE CITY OF HELOTES; AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE SAID DEVELOPMENT AGREEMENT ON BEHALF OF THE EDC; AUTHORIZING THE EXECUTIVE DIRECTOR TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE PROVISIONS OF THIS RESOLUTION; INCORPORATING RECITALS; PROVIDING FOR SEVERABILITY; REPEALING ANY OTHER PROVISIONS IN CONFLICT HERewith; AND ADOPTING AN EFFECTIVE DATE.**

**WHEREAS**, Texas Developers, LLC represents a publicly-traded company located within the corporate City limits and said company desires to amend its operating structure and consolidate its operations within the City; and

**WHEREAS**, Article III, Section 52-a of the Texas Constitution gives the Texas Legislature the authority to provide for loans and grants of public money for the development and diversification of the State's economy and the elimination of unemployment or underemployment; and

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code ("Chapter 380"), the City may establish and provide for the administration of an economic development program to advance economic growth, while also stimulating business and commercial activity within the municipality; and

**WHEREAS**, pursuant to the Development Corporation Act, Article 5190.6 Tex. Rev. Civ. Stat. ("Act"), the City has created the EDC to implement programs for promoting economic development; and

**WHEREAS**, the EDC's mission is to promote, encourage, and enhance the creation of jobs, the expansion of the local tax base, and the quality of life for Helotes residents through

projects that assist in their retention and expansion of existing employers and which attract new employers and aid in their economic development and growth; and

**WHEREAS**, the vision of the EDC includes a balance of sales and property taxes that takes into account our town's historic roots and unique environment, resulting in an improved quality of life for all Helotes citizens; and

**WHEREAS**, the EDC Board of Directors approved this Resolution upon the Project's presentment, a public hearing held thereon, and notice of said hearing having first been duly published in San Antonio Express News, the EDC website, and the City of Helotes agenda bulletin board and has determined that making an economic development grant to the Developer in accordance with this Agreement constitutes a permissible "Program" within the terms of the Act, as defined by Art. 5190.6 Development Corporation Act of 1979, Secs. 2 and 4(B) of Vernon's Texas Civil Statutes and will promote new and expanded business development within the City, which is declared and expressly found to be in the public interest; and

**WHEREAS**, in addition to the six and a quarter percent (6.25%) sales and use tax imposed by the State, the City imposes a one percent (1.25%) sales and use tax, as authorized by Section 321.101 of the Texas Tax Code, and the EDC imposes a one-half percent (0.50%) sales and use tax; and

**WHEREAS**, the EDC intends, and in connection with such intention, has adopted a Resolution, as described in Exhibit "A," to make payments to the Developer of seventy-five percent (75%) of the quarterly sales and use tax proceeds (at 0.50%) generated by Taxpayer and received by the EDC which are in excess of \$8,750.00 per quarter (the "**Incremental EDC Tax**") for the purpose of encouraging business expansion and the creation of new jobs in the City, provided the Taxpayer generates at least \$12,500,000.00 in taxable sales each calendar quarter; and

**WHEREAS**, the City Council of the City of Helotes, Texas intends, and in connection with such intention, has adopted an Ordinance, as described in Exhibit "B," to make payments to the Developer of seventy-five percent (75%) of the quarterly sales and use tax proceeds (at 1.00%) generated by Taxpayer and received by the City which are in excess of \$17,500.00 per quarter (the "**Incremental City Tax**") for the purpose of encouraging business expansion and the creation of new jobs in the City, provided the Taxpayer generates at least \$12,500,000.00 in taxable sales each calendar quarter.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF HELOTES ECONOMIC DEVELOPMENT CORPORATION THAT:**

**SECTION ONE. FINDINGS OF FACT.** All of the above recitals and those recitals included within the Chapter 380 Economic Development Agreement, attached hereto as Attachment "A" and incorporated herein by reference as if fully copied and set forth at length, are found to be true and correct, and the EDC incorporates the same in this Resolution as findings of fact.

**SECTION TWO. APPROVAL AND PUBLIC PURPOSE.** The Chapter 380 Economic Development Agreement between the City, EDC, and Texas Developers, LLC be approved and declared to serve the economic development purpose of promoting new and expanded business development within the City.

**SECTION THREE. AUTHORIZATION.** The Executive Director is authorized to take all necessary steps to implement the provisions of this Resolution.

**SECTION FOUR. SEVERABILITY.** If any section, subsection, sentence, clause, or phrase of this Resolution is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this Resolution. The EDC Board of Directors hereby declares that it would have passed this Resolution, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared void.

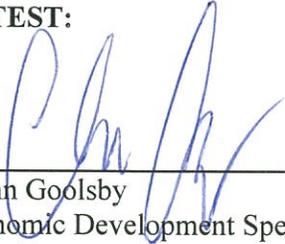
**SECTION FIVE. EFFECTIVE DATE.** This Resolution shall be effective immediately upon execution.

**PASSED AND APPROVED** by the Board of Directors of the City of Helotes Economic Development Corporation this 8<sup>th</sup> day of September 2016.



Rick A. Schroder  
Executive Director

**ATTEST:**



Glenn Goolsby  
Economic Development Specialist



Exhibit "B"

ORDINANCE NO. 592

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HELOTES, TEXAS (THE "CITY") APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY, THE CITY OF HELOTES ECONOMIC DEVELOPMENT CORPORATION (THE "EDC"), AND TEXAS DEVELOPERS, LLC (THE "DEVELOPER") FOR THE PURPOSE OF SETTING FORTH THE TERMS AND OBLIGATIONS BETWEEN THE CITY, EDC, AND THE DEVELOPER WITH RESPECT TO PROVISION OF SALES TAX GRANTS FOR A PUBLICLY-TRADED COMPANY LOCATED WITHIN THE CORPORATE CITY LIMITS AND DESIRING TO AMEND ITS OPERATING STRUCTURE AND CONSOLIDATE OPERATIONS WITHIN THE CITY OF HELOTES; AUTHORIZING MAYOR THOMAS A. SCHOOLCRAFT TO EXECUTE SAID DEVELOPMENT AGREEMENT ON BEHALF OF THE CITY COUNCIL; AUTHORIZING THE CITY ADMINISTRATOR TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE PROVISIONS OF THIS ORDINANCE; INCORPORATING RECITALS; PROVIDING FOR SEVERABILITY; REPEALING ANY OTHER CODE PROVISIONS, ORDINANCES, OR PARTS OF ORDINANCES, AND OTHER PROVISIONS IN CONFLICT HEREWITH; AND ADOPTING AN EFFECTIVE DATE.

Whereas, the City of Helotes, Texas (the "City") desires to ensure that the growth and development which occurs within the corporate limits of the City is regulated and controlled in such a manner that said growth is beneficial to the public health, safety, and welfare; and

Whereas, Texas Developers, LLC represents a publicly-traded company located within the corporate City limits and said company desires to amend its operating structure and consolidate its operations within the City; and

Whereas, Article III, Section 52-a of the Texas Constitution gives the Texas Legislature the authority to provide for loans and grants of public money for the development and diversification of the State's economy and the elimination of unemployment or underemployment; and

Whereas, pursuant to Chapter 380 of the Texas Local Government Code ("Chapter 380"), the City may establish and provide for the administration of an economic development program to advance economic growth, while also stimulating business and commercial activity within the municipality; and

Whereas, the aforementioned negotiations have been memorialized in this Agreement between the City, EDC, and the Developer.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HELOTES, TEXAS THAT:**

**Section One. Approval.** The Agreement, attached hereto as Attachment A, between the City, EDC, and the Developer (collectively referred to as the "Parties") setting forth the Agreement terms and obligations of the Parties with regard to the development is hereby approved.

**Section Two. Authorization.** Mayor Thomas A. Schoolcraft is authorized to execute the Agreement on behalf of the City Council of the City of Helotes, Texas.

**Section Three. Authorization.** The City Administrator is authorized to take all necessary steps to implement the provisions of this Ordinance.

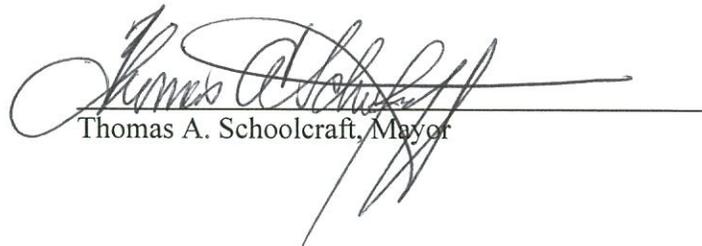
**Section Four. Recitals.** The legislative findings referenced above are hereby adopted.

**Section Five. Severability.** Should any article, section, part, paragraph, sentence, phrase, clause, or word of this Ordinance, or any appendix or exhibit thereof, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provisions herein continue to be held unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

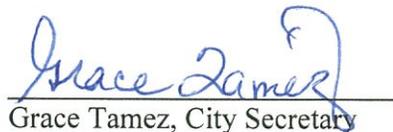
**Section Six. Repealer.** All Code provisions, ordinances, and other provisions in conflict with the provisions of this Ordinance are hereby repealed.

**Section Seven. Effective Date.** This Ordinance shall become effective upon passage by the City Council of the City of Helotes, Texas.

**PASSED and APPROVED this 8<sup>th</sup> day of SEPTEMBER 2016.**

  
Thomas A. Schoolcraft, Mayor

**ATTEST:**

  
Grace Tamez, City Secretary



## **Exhibit “C”**

### **Confidential Information Reports**

#### **Description:**

These reports are created for local sales taxing jurisdictions (city, county, transit authority or special purpose district) to use for economic forecasting. They show actual local sales and use tax allocation amounts paid to a local sales taxing jurisdiction by certain businesses in specific months. Data is shown for the current calendar year (to-date) and the previous calendar year. The information is confidential and not open to public inspection.

The Confidentiality Report shows the aggregate local sales and use tax amounts paid to the local sales taxing jurisdiction each month by businesses that annually remit to the Comptroller state and local sales and use tax payments totaling more than \$5,000.

The Detailed Confidentiality Report identifies the local sales and use tax amounts paid to the local sales taxing jurisdiction each month by businesses that annually remit to the Comptroller state and local sales and use tax payments totaling more than \$5,000 with additional information detailing the reporting period and/or audit period making up the aggregate amount. The detailed report also notes if the reporting period and/or audit period was from a regular sales and use tax account and/or a direct payment account.

Local sales taxing jurisdictions that do not impose property tax may request that the above reports include local sales and use tax amounts paid to the local sales taxing jurisdiction each month by businesses that annually remit to the Comptroller state and local sales and use tax payments totaling more than \$500.

#### **Specific Data/Information:**

- Taxpayer number
- Master mailing address (including city, state and ZIP code)
- SIC (Standard Industrial Classification) / NAICS (North American Industry Classification System) codes
- Allocation month
- Amount allocated to the local sales taxing jurisdiction during the specified allocation month, aggregate or with reporting period detail, and taxpayer account type: 26 = sales and use, 27 = direct payment
- Total tax paid to the local sales taxing jurisdiction by each business during the months included on the report

#### **Distribution Information:**

The report is produced monthly and is distributed upon request.

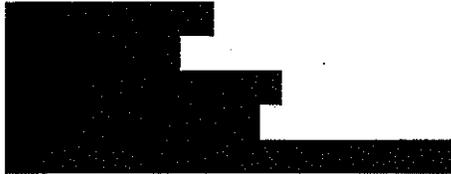
**Contact:**

Open Records/General Counsel Division, at (800) 531-5441, ext. 6-6013.  
The fax number is (512) 475-1610.

**Comments:**

- The information on the report is confidential, is not to be made available to the public, and may be used only for economic forecasting.
- The report information is available electronically on request.
- A request for the Confidentiality Report or the Detailed Confidentiality Report must be made in writing each year by the city's mayor, the county judge or the jurisdiction's chief administrative officer or by the governing body of the local sales taxing jurisdiction. Local sales taxing jurisdictions that do not impose property tax must specifically state that they do not impose property tax and that they want information on businesses that annually remit to the Comptroller state and local sales and use tax payments totaling more than \$500.

July 19, 2016



Dear Mike,

Pursuant to Section 5(a) of our Chapter 380 Economic Development Agreement, please find enclosed the April, May and June 2016 Texas sales and use tax returns [REDACTED] [REDACTED] which were previously filed with the Texas Comptroller.

Based on the sales and use tax returns and the above-mentioned agreement, Program Grant Payments due are \$ [REDACTED], prior to taking into account timely filing discounts, prepayment discounts and the state administrative fees. A summary schedule supporting this amount is included for your reference along with the applicable wiring instructions.

Please let me know if you have any questions or need any additional information. My phone number is 404.637.0943.

Very truly yours,



R. Bruce Jacobsohn

Enclosure

Estimated Local Tax Liability - January, February, March 2016

	Local Tax Allocated to City on Returns at 1.5%		Incremental Combined City and EDC Tax	Street Maintenance Tax at 0.25%	Total Local Tax before Base Reduction	Developer Share (75% of Combined Incremental City and EDC Tax)
		Less Base				
1/31/2016	\$ 150,000.00			\$ 25,000.00	\$ 175,000.00	
2/29/2016	150,000.00			25,000.00	175,000.00	
3/31/2016	150,000.00			25,000.00	175,000.00	
<b>Total</b>	<b>\$ 450,000.00</b>	<b>\$ 26,250.00</b>	<b>\$ 423,750.00</b>	<b>\$ 75,000.00</b>	<b>\$ 525,000.00</b>	<b>\$ 317,812.50</b>

Note> For illustration purposes only. Assumes \$10 million of sales per month.

Wire To:  
 Account Name:  
 Receiving Bank  
 City, State  
 ABA  
 Account Number  
 Amount