

STATE OF TEXAS §

COUNTY OF BRAZOS §

BRYAN KIMBELL BUILDING, LLC
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This Chapter 380 Economic Development Agreement (“Agreement”) is entered into on this the ____ day of _____, 2024 by and between **THE CITY OF BRYAN, TEXAS**, (“City”) a Texas home rule municipal corporation, acting herein by and through its duly elected City Council, and **BRYAN KIMBELL BUILDING, LLC**, (“Developer”) a limited liability company created and operating under the laws of the State of Texas; collectively referred to as “**PARTIES.**”

WHEREAS, the Texas Constitution prohibits any city, or other political subdivision, from lending its credit or granting public money to any individual, association or corporation whatsoever without a valid public purpose for doing so; and

WHEREAS, the Texas Constitution specifically states that economic development programs created pursuant to Chapter 380 of the Texas Local Government Code serve the public purpose of alleviating poverty, joblessness, economic blight, and provide other intangible benefits incidental to the development of the local economy; and

WHEREAS, Developer is in the process of renovating the historic Kimbell Feed building on the north end of downtown Bryan, which includes demolition of substandard elements, and redevelopment of the property as a multi-use commercial property with retail, food & beverage, and a cultural arts district visitor’s center; and

WHEREAS, the project is in line with the City’s objectives for re-development of Downtown North, and will be a catalyst for future developments in the area; and

WHEREAS, the Developer has requested assistance to offset the cost of the Project, and the City Council has determined that it is in the best interests of the community to bear the cost of the grants in light of the projected benefits to the City; and

NOW, THEREFORE IT IS AGREED BY THE PARTIES AS FOLLOWS

I. GENERAL TERMS

1. *Definitions.* As used herein, the terms listed below shall defined as follows:
 - a. BCAD – the Brazos Central Appraisal District
 - b. City – the City of Bryan, Texas, a home-rule municipal corporation acting by the City Council, the mayor, and as context requires through the City Manager and/or designee.
 - c. Developer – Bryan Kimbell Building, LLC acting by and through its registered agent and managing director, Kristy Lynn Petty.
 - d. Development Codes – the Building Code, Mechanical Code, Plumbing Code, and National Electric Code, as adopted by the City and as may be later amended. The term also applies to the City’s Subdivision Ordinance, Chapter 110 of the Bryan Code of Ordinances.

- e. Effective Date – the date above written, which shall be after all parties have signed, and dated the date the last party signs.
 - f. Project – the construction of a multi-use commercial facility with approximately 6,000 s.f. of retail space and approximately 6,000 s.f. of office space which is anticipated to house the Cultural Arts District Visitor’s Center.
 - g. Property – Lot 1R, Block 264R, Bryan Old Townsite, according to the plat thereof recorded in Volume 14716, Page 290 of the Official Property Records of Brazos County, Texas.
2. Term. This term of this Agreement shall be from the Effective Date through December 31, 2029, unless earlier terminated as provided herein.

II. DEVELOPER’S OBLIGATIONS

- 1. Developer agrees to apply for a roofing permit with thirty (30) days of the effective date of this Agreement.
- 2. Developer agrees to complete construction on the Project by May 1, 2024. Construction is complete for the purposes of this section when a certificate of occupancy has been issued for the entire Project, excluding any interior rental spaces awaiting a tenant for final finishes.
- 3. Developer agrees to comply with the requirements of the Development Codes throughout the construction of the Project. This includes but is not limited to, obtaining all necessary permits, prior to beginning construction, as well as complying with the standards for construction set forth in the Development Codes.
 - a. In the event of a dispute with the City regarding an interpretation or enforcement of a provision of one of the Development Codes, Developer may appeal the City’s decision as provided by the Code and in the event that the appeal is successful (i.e. the City’s decision is overturned or modified) Developer shall not be deemed to be in breach.
 - b. The Parties acknowledge that the City is not required to issue a citation or obtain a conviction for a violation of a Development Code in order to establish a breach of this Agreement.
- 4. Developer agrees that by 2025, the taxable appraised value of the real property (including improvements business personal property, if any) shall be \$2,000,000.00 or higher.

III. ECONOMIC DEVELOPMENT GRANT

- 1. *Façade Improvement Grant*. The City will offer a grant of up to a maximum \$150,000 as reimbursement for façade restoration and repair improvements. Prior to receiving any payments for this grant, Developer must comply with the terms, conditions, and requirements of City’s Façade Improvement Grant program with the exception that City Council approval is will be granted provided that the plans and specifications for the improvements preserve, protect, and restore the existing façade facing Main Street to the extent reasonably feasible. The façade improvements must be completed in accordance with City ordinances and approved plans and specifications. Documentation of the cost of such improvements must be attached to a written request for reimbursement submitted to the City.

2. *Life Safety Grant.* The City will offer a grant of up to a maximum \$50,000 as reimbursement for qualified life safety improvements required by the Building Code and Fire Code. Prior to receiving any payments for this grant, Developer must comply with the terms, conditions, and requirements of City's Life Safety Grant Program (City of Bryan Resolution No. 3853), with the exception that no further City Council approval is required. This includes but is not limited to the obtaining a CO for life safety improvements in accordance with City ordinances and documentation of the cost of same attached to a written request for reimbursement submitted to the City.
3. *Additional Life Safety Grant.* In the event that the BCAD value meets or exceeds \$2,500,000 and all of the approximately 12,000 s.f. of leasable space is occupied by 2026, the City Council will make an exception to the \$50,000 per property limit. In such an event the City will offer a grant of up to a maximum \$50,000 as reimbursement for qualified life safety improvements required by the Building Code and Fire Code. Prior to receiving any payments for this grant, Developer must comply with the terms, conditions, and requirements of City's Life Safety Grant Program (City of Bryan Resolution No. 3853), with the exception that no further City Council approval is required. This includes but is not limited to the obtaining a CO for life safety improvements in accordance with City ordinances and documentation of the cost of same attached to a written request for reimbursement submitted to the City. The grant must be for new or otherwise unreimbursed life safety improvements.

IV. DEFAULT & TERMINATION

1. Breach by Developer. It is a breach of this Agreement if the Developer
 - a. fails to comply with the Development Codes, provided that Developer has the right to cure such failure within thirty (30) days of receiving notice of same from the City; or if a longer period of time is necessary to cure such breach, Developer has a reasonable amount of time agreed to in writing by the City, which shall not be longer than ninety (90) days from notice of such breach;
 - b. allows ad valorem property taxes (either real property or personal property accounts) on the Property and any other property owned by Developer in the City limits to become delinquent, provided that it is understood that a tax is not delinquent if it is the subject of an on-going appeal under Tax Code Chapter 42; and/or
 - c. fails to reach or maintain the \$2,000,000.00 valuation, per BCAD, for the Property.
2. Default. If a breach under section IV(1)(a) is not timely cured, or in the event of a breach under sections IV(1)(b) or (c) which cannot be cured, the City may declare Developer in default. In the event of a default, the City is entitled to terminate the Agreement, demand a claw-back as provided below, and may seek any other remedies available at law or in equity.

V. MISCELLANEOUS

1. Texas Government Code Chapter 2264. In accordance with Chapter 2264 of the Texas Government Code, Developer agrees not to employ any person who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("*Undocumented Worker*"). During the term of this Agreement, Developer shall notify City of any complaint brought against Developer alleging that Developer has employed Undocumented Workers. If Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), the total amount of economic development grants it has received pursuant to this Agreement, together with interest at the rate of five percent (5%) per annum from the date of each payment of an economic development grant, shall be

repaid by Developer to the City not later than the 120th day after the date the City notifies Developer of the violation. Developer shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom Developer contracts.

2. Foreign Business Engagements. Developer represents and warrants, for purposes of Subchapter F of Chapter 2252 of the Texas Government Code, that at the time of execution and delivery of this Agreement neither the Developer, nor any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Developer, (i) engages in business with Iran, Sudan or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is an Owner listed by the Texas Comptroller under Sections 806.051, 807.051 or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" as used in this clause has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.
3. HB 1295 Compliance. Section 2252.908 of the Texas Government Code requires that for certain types of contracts, Developer must fill out a conflict-of-interest form ("Disclosure of Interested Parties") at the time you submit your signed contract to the City. Developer bears the responsibility of determining if this Agreement requires such a form and to comply.
4. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. Developer shall not assign this Agreement without the written approval of the City Council. An assignment to a subsidiary or affiliate company of Developer shall not be prohibited under the section.
5. Severability. If any term of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such term shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining terms of this Agreement shall not be affected thereby, and in lieu of such deleted terms, there shall be added as part of this Agreement a term that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted term.
6. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
7. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.
8. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
9. Current Revenues. The payment obligations of the City pursuant to this Agreement are subject to annual appropriation for same by the City Council, and in the event that the City Council fails to appropriate funds, this Agreement shall terminate automatically at the beginning of the fiscal year for which funds are not appropriated.
10. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are

cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

11. No Waiver. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.
12. Notices. Any notices required to be provided pursuant to this Agreement are deemed provided upon personal delivery or within three (3) days after being sent via U.S. Certified Mail, Return Receipt Requested to the addresses provided herein. City and Developer hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

CITY City of Bryan Attn: City Manager P.O. Box 1000 Bryan, Texas 77805-1000 300 S. Texas Ave. Bryan, Texas 77803	DEVELOPER Bryan Kimbell Building, LLC Attn: Kristy Lynn Petty 201 N. Main St. Bryan, Texas 77803
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13. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
14. Incorporation of Exhibits. The exhibits attached hereto are included as if fully set forth herein for all purposes.
15. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.
16. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.
17. Gender and Number. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise

Executed to be effective this _____ day of _____, 2024.

ATTEST:

CITY OF BRYAN, TEXAS

Mary Lynne Stratta, City Secretary

Bobby Gutierrez, Mayor

APPROVED AS TO FORM:

Thomas A. Leeper, City Attorney

BRYAN KIMBELL BUILDING, LLC

Kristy Lynn Petty, Managing Director