

# Exhibit A

## **ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (Chapter 380 Agreement)**

This ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (“Agreement”) is entered into by and between the CITY OF KELLER, TEXAS (the “City”), a home rule municipal corporation organized under the laws of the State of Texas, and Houghton-Wright Holdings LLC (the “Grantee”). The City and Grantee are collectively referred to as the “Parties”.

### **RECITALS**

The City and Grantee hereby agree that the following statements are true and correct and constitute the basis upon which the City and Grantee have entered into this Agreement:

WHEREAS, on January 18, 2022, the City approved Resolution No. 4471 (Resolution) establishing an Economic Development Program pursuant to Section 380.001 of the Texas Local Government Code (Section 380.001) and authorizing this Agreement as part of the Economic Development Program established by City Council Resolution (Program); and

WHEREAS, the City desires to participate in the Program by entering into this agreement; and

WHEREAS, the City Council of the City (City Council) find and determines that this Agreement will effectuate the purposes set forth in the Program, and that Grantee’s performance of its obligations herein will promote local economic development and stimulate Grantee and commercial activity in the City; and

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

### **1. INCORPORATION OF RECITALS**

The City Council has found at a duly-called and legally-noticed public meeting through the adoption of City Resolution No. XXX attached hereto as Exhibit “A.1” and hereby made a part of this Agreement for all purposes, and the City and Grantee hereby agree, that the recitals set forth above are incorporated herein and are true and correct and form the basis upon which the Parties have entered into this Agreement.

### **2. DEFINITIONS**

In addition to terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

Affiliate: Any Person directly controlling or controlled by Grantee, or any Person controlling or controlled by the same Person who is controlling or is controlled by Grantee. As used in this definition, the term “control” means ownership or the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

Agreement: Shall mean this Chapter 380 Economic Development Grant Agreement, aka Performance Agreement.

Appraisal District: Shall mean the Tarrant Appraisal District.

Base Value: Shall mean the Appraised Value of the Property as of the date of Effective Date of the Agreement.

Building Permit: A permit issued by the City authorizing one to construct, enlarge, alter, repair, move, improve, remove, convert or demolish any building or structure or portion thereof regulated by the City's building, plumbing, electrical, fire, energy, mechanical, and related codes. It does not include earth disturbance permits, tree removal permits or other non-building permits.

Certificate of Occupancy: Shall mean a temporary or permanent Certificate issued by the City and granting Grantee or its tenant(s) the right to occupy the Improvements.

City: Shall mean the City of Keller, Texas.

Commencement of Construction: Approval of the appropriate Building Permits and the commencement of actual on-site physical excavation or site grading required for installation of Improvements, excluding permits for clearing and grubbing.

Commercial Building Permit Fees: Fees paid to the City for review of building construction plans and building inspections.

Concept Plan: The Concept Plan or site plan for the Property, approved or as may be amended by the Council pursuant to the City's zoning regulations.

Construction Costs: The cost of permits, fees, construction materials, surveying and labor to construct the Facility. All other associated costs are deemed excluded, including, but not exclusively, the following costs: land, design, construction document preparation, bidding, and construction financing.

Council: Shall mean the City Council of the City.

Developer Agreement: That certain Developer Agreement (or Agreements) relating to the construction of Public Works Improvements.

Director: Shall mean the representative of the City's Economic Development Department.

Effective Date: The date that all parties have executed this Agreement.

Event of Default: Shall mean any of the Events of Default defined herein.

Facility: Whall mean the building(s), surface parking, structured parking and Site Improvements related to the Project.

Force Majeure: Any acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action, (except actions taken by the City pursuant

to or permitted by the terms of this Agreement, and except actions taken as a result of acts or omissions of Grantee), fire, explosion or flood, and strikes or other act beyond the reasonable control of Grantee, or the City, but not including the lack of funds.

Building Permit Fee: Any fee related to the review of non-Public Works construction plans and building plans required for the issuance of a building permit.

Grantee: Shall mean Houghton-Wright Holdings LLC.

Hotel Occupancy Tax (HOT): Shall mean the tax collected by the City pursuant to Chapter 351 of the Texas Tax Code.

Impact Fee - Water: Any water Impact Fee charged by the City. This shall not include the “pass-through” Impact Fees owed to any other Agency.

Impact Fee - Wastewater: Any wastewater (aka sanitary sewer) Impact Fee charged by the City. This shall not include the “pass-through” Impact Fees owed to any other Agency.

Impact Fee - Roadway: Any roadway Impact Fee charged by the City.

Improvements: Shall mean the New Construction of the Facility and Site Improvements and though not exclusively, excluding any tenant build-out improvements or Business Personal Property.

Liens and Assessments: Shall mean any lien or assessment owed to the City by any Party to this Agreement, mowing and maintenance liens.

New Construction: Shall mean the first-time construction of Improvements utilizing newly purchased materials, and specifically excluding any remodeling or renovations undertaken after issuance of the first Certificate of Occupancy.

Operator: Shall mean Houghton Horns.

Performance Agreement: A written contract summarizing the performance requirements of Grantee or developer and the Incentives to be provided by the City upon fulfillment of those performance requirements. Also referred to as the Agreement.

Person: An individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

Program: Has the meaning set forth in the recitals to this Agreement.

Program Payments: The annual grant payments to be made by the City in accordance with this agreement.

Project: Shall mean the Improvements and the Property.

Property – Business Personal: Shall mean the tangible Business Personal Property as defined by the Appraisal District and within the Improvements on the Property.

Property - Real: Shall mean the Property and the Improvements constructed on the Property, subject to the limitations of the Appraisal District.

Property: Shall mean the 0.59 acres of land, being real property located in Tarrant County, Texas, as more particularly described on Exhibit A.2 attached hereto.

Section 380.001: Has the meaning set forth in the recitals to this Agreement.

Site Improvements: Shall mean the grading, landscaping, irrigation system, lighting, Public Works Improvements and signage affixed to the ground.

Substantial Completion: Shall mean the date a Certificate of Occupancy or equivalent is issued by the City allowing occupancy of the Facilities.

Tax – Ad Valorem: Shall mean the tax collected by the City from the owners of taxable real and tangible business personal property.

Tax – Local Sales and Use: Shall mean the City’s 1% local option portion, allocated to the City’s general fund, that is received on all taxable sales occurred from the Project.

Taxable Value: Appraised value after the application of any lawful exemptions as determined by the Appraisal District.

### **3. TERM**

This Agreement shall be effective as of the Effective Date and shall terminate upon completion of the Program Payments as provided in Section 5.6, unless earlier terminated pursuant to Section 7.

### **4. OBLIGATIONS OF GRANTEE**

In consideration and as a prerequisite of the City’s incentives, Grantee agrees to the following:

#### **4.1. Completion Guidelines**

- a. Building Permit: Grantee shall obtain a building permit within one year of the Effective Date.
- b. Substantial Completion: the Improvements shall be Substantially Complete within two years of the Effective Date.
  - i) Workmanlike Pursuit: Grantee agrees and covenants that it will diligently and faithfully in a good and workmanlike manner pursue (or cause to be pursued) the completion of the Improvements as a good and valuable consideration of this agreement.

#### **4.2. Construction Finish Out & Equipment Purchase**

Grantee shall build a performance space, install the required fire safety systems for an assembly occupancy and purchase performance equipment including:

- a. Install fire suppression wet system
- b. Full encapsulation with insulation
- c. New exit doors with crash bars
- d. Reverse interior doors to open outwards with safety hardware
- e. New vinyl flooring for stage
- f. Framing to fill in wall between stage and baptismal, fill in wall between stage and back office and open up walls around stage
- g. Install acoustic diffusers on walls
- h. Purchase of a grand piano, audience seating, stage lighting and microphones

**4.3. Developer Agreement**

Grantee agrees to execute the City's Developer Agreement(s).

**4.4. Ad Valorem Taxes**

Grantee agrees to remain current on payment of ad valorem property taxes for the term of this Agreement; provided, however, Grantee retains the right to timely and properly protest and contest any such ad valorem taxes and so long as Grantee is timely and properly protesting or contesting the same, it shall not constitute an event of default under this agreement. If Grantee becomes delinquent in the payment of ad valorem taxes on Property owned by Grantee, it shall be an event of default under this Agreement.

**4.5. Documentation**

Grantee shall submit to the City, as a condition of payment of any incentive, reasonably detailed evidence of compliance with Section 4 herein. This shall include detailed invoicing from contractors and payments made sufficient to identify the costs directly related to this Section.

The Grantee will provide a waiver of sales tax confidentiality, which will authorize the Comptroller of Public Accounts to release sales tax information pertaining to the Operator before the date of Substantial Completion.

**4.6. Compliance**

Grantee shall comply with any and all remaining terms and provisions herein.

**4.7. Compliance with Laws and Regulations**

Grantee covenants and agrees that all construction of the Facility will be in accordance with all applicable local, state and national laws and regulations or valid waiver thereof.

**4.8. Liens and Assessments**

Grantee shall be free and clear of any Liens and/or Assessments owed to the City and must be in good standing with the City to qualify for and receive any incentives.

## **5. CITY OBLIGATIONS**

Subject to Grantee's performance of its obligations as required by the Agreement, to promote local economic development pursuant to the Program, the City shall grant Grantee the following economic development incentives:

### **5.1. Cash Grant**

The City will grant back 100% of the cost of the installation of the fire suppression system, including full encapsulation insulation, and new exit doors with crash bars, not to exceed a combined total of \$130,000. This Grant will be paid upon substantial completion of the project and within 90 days of receipt of a payment request, which shall include copies of invoices paid and photos of the work, by the City.

## **6. Conflict of Interest**

The Property is not owned or leased to any member of the City Council, any member of the Planning and Zoning Commission or member of the Keller Economic Development Board. In addition, Grantee agrees to complete a Conflict of Interest Questionnaire as required by Chapter 176 of the Texas Local Government Code.

## **7. Default and Termination**

Grantee shall immediately notify the City in writing upon becoming aware of any change in the existence of any condition or event which would constitute a default or, with the giving of notice or passage of time, or both, would constitute a default under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the notifying party is taking or proposes to take with respect thereto.

If either party should fail to comply with the terms of this Agreement, or if a bankruptcy or other insolvency proceeding shall be filed by or against either party and such proceeding is not vacated within 30 days, it shall be deemed a default and the party shall have 30 days after delivery of written notice of such default from the other party to cure such default. If the noncompliance is not cured within that period, the non-defaulting party may terminate this Agreement by written notice and shall have no further obligation to the other party; provided that the City shall grant Grantee an extension to cure the default if Grantee demonstrates, to the reasonable satisfaction of the City Council that: the default cannot be cured by the payment of monies and (2) cannot be reasonably cured within 30 days and (3) that Grantee is diligently pursuing cure.

Notwithstanding the foregoing, in the event either party fails to pay the other party any monetary amounts owing under this Agreement when due, and such failure continues for a period of 30 days after delivery of written notice of such default, then such outstanding amounts shall accrue interest from the date owing until paid at the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. That rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published

in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

**8. NO INDEPENDENT CONTRACTOR OR AGENCY RELATIONSHIP.**

It is expressly understood and agreed that Grantee shall not operate as an independent contractor or as an agent, representative or employee of the City. Grantee shall have the exclusive right to control all details and day-to-day operations relative to the Eligible Improvements, Subject Site and any improvements thereon and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees in connection therewith. Grantee acknowledges that the doctrine of *respondeat superior* will not apply as between the City and Grantee, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Grantee further agrees that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the City and Grantee.

**9. INDEMNIFICATION.**

***GRANTEE, AT NO COST TO THE CITY, AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO GRANTEE'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) GRANTEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT; OR (ii) ANY ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF GRANTEE, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS (OTHER THAN THE CITY, OR ITS EMPLOYEES, OFFICERS, AGENTS, ASSOCIATES, CONTRACTORS OR SUBCONTRACTS), OR SUBCONTRACTORS DUE OR RELATED TO OR ARISING FROM THE ELIGIBLE IMPROVEMENTS AND ANY OPERATIONS AND ACTIVITIES ON THE SUBJECT SITE OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT.***

**10. NOTICES.**

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid, or by hand delivery:

**City:**

City of Keller  
Attn: City Manager  
P.O. Box 770  
Keller, Texas 76244

**Grantee:**

Houghton-Wright Holdings LLC  
Attn: Derek Wright  
1129 Oak Bend Ln.  
Keller, TX 76248

**With Copies to (which shall not constitute notice):**

Boyle & Lowry, L.L.P.  
Attn: L. Stanton Lowry  
4201 Wingren Dr., Suite 108  
Irving, Texas 75062

**11. ASSIGNMENT AND SUCCESSORS.**

Grantee may at any time assign, transfer or otherwise convey any of its rights or obligations under this Agreement to an Affiliate without the approval of the City so long as Grantee, the Affiliate and the City, which approval shall not be unreasonably withheld or denied, first execute an agreement under which the Affiliate agrees to assume and be bound by all covenants and obligations of Grantee under this Agreement. Grantee may also assign its rights and obligations under this agreement to a financial institution or other lender for purposes of granting a security interest in the Eligible Improvements and/or Subject Site, provided that such financial institution or other lender first executes a written agreement with the City governing the rights and obligations of the City, Grantee and the financial institution or other lender with respect to such security interest. Otherwise, Grantee may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the prior consent of the City Council which consent shall not be unreasonably withheld, conditioned or delayed, so long as (i) the prior approval of the assignee or successor and a finding by the City Council that the proposed assignee or successor is financially capable of meeting the terms and conditions of this Agreement and (ii) prior execution by the proposed assignee or successor of a written agreement with the City under which the proposed assignee or successor agrees to assume and be bound by all covenants and obligations of Grantee under this Agreement. Any attempted assignment without the City Council's prior consent shall constitute a breach and be grounds for termination of this Agreement following receipt of written notice from the City to Grantee. Any lawful assignee or successor in interest of Grantee of all rights under this Agreement shall be deemed "Grantee" for all purposes under this Agreement.

**12. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.**

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the City's Charter, codes, and ordinances, as amended. The Eligible Improvements shall be consistent with all City codes, ordinances, rules and regulations of the City. This Agreement shall not constitute a waiver by the City of any codes, ordinances, rules and regulations. Further, Grantee acknowledges that by executing this Agreement, no entitlement or agreements concerning zoning or land use shall arise, either implied or otherwise.

**13. GOVERNMENTAL POWERS.**

It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities that are outside of the terms, obligations, and conditions of this Agreement.

**14. NO WAIVER.**



The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

**15. VENUE AND JURISDICTION.**

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division. This Agreement shall be construed in accordance with the laws of the State of Texas.

**16. NO THIRD PARTY RIGHTS.**

The provisions and conditions of this Agreement are solely for the benefit of the City and Grantee, and any lawful assign or successor of Grantee, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

**17. FORCE MAJEURE.**

It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, or other circumstances which are reasonably beyond the control or knowledge of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such requirement shall be extended for a period of time equal to the period such party was delayed. Notwithstanding anything to the contrary herein, it is specifically understood and agreed that Grantee's failure to obtain adequate financing to complete the Eligible Improvements by the Completion Deadline shall not be deemed to be an event of force majeure and that this Section 16 shall not operate to extend the Completion Deadline in such an event.

**18. INTERPRETATION.**

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

**19. SEVERABILITY CLAUSE.**

It is hereby declared to be the intention of the Parties that sections, paragraphs, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph or section of this Agreement shall be declared unconstitutional or illegal by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Agreement since the same would have been executed by the Parties without the incorporation in this Agreement of any such unconstitutional phrase, clause, sentence, paragraph or section. It is the intent of the Parties to provide the economic incentives contained in this Agreement by all lawful means.

**20. CAPTIONS.**

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**21. ENTIRETY OF AGREEMENT.**

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Grantee, and any lawful assign and successor of Grantee, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both parties and approved by the City Council of the City in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

**22. COUNTERPARTS.**

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

**EXECUTED** as of the last date indicated below:

**CITY OF KELLER:**

**GRANTEE:**

**LEGAL NAME**

By: \_\_\_\_\_  
Mark Hafner  
City Manager

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY:**

By: \_\_\_\_\_  
L. Stanton Lowry  
City Attorney