



Life Safety Grant Program Policy

I. Overview

The goal and purpose of the City of Keller Life Safety Grant Program is to encourage the rehabilitation, enhancement, and restoration of existing buildings and business operations by providing financial assistance for the installation and compliance of the International Building Code fire suppression and safety code requirements. The program will benefit the City of Keller by increasing the economic vitality of commercial buildings and property values in Keller. This program provides a matching grant in the form of a reimbursement up to \$50,000 for eligible life safety improvements to existing commercial buildings in the City of Keller.

These funds are for eligible economic development projects in Keller which meet the criteria outlined in this policy. Funding for this program is at the discretion of the Keller City Council.

The applicant must meet the minimum requirements as outlined below, though additional requirements may apply as deemed appropriate by City Council. Please read all the requirements prior to submitting an application. Appendix A provides a list of terms used throughout this document and their definitions, as well as relevant city contacts for the Life Safety Grant Program.

II. Project Eligibility Requirements

- Must be an existing building located in the city limits of Keller.
- Expansion of existing buildings that trigger a new life safety system or the expansion of an existing system are eligible for consideration.
- Property must be free of city liens or delinquent property taxes.
- Applicant must not be past due in sales tax remittance.
- Building must be for commercial use in non-residential zoning districts. *(Buildings being utilized as a residence are not eligible for this program unless the building is being converted from a residential use to a commercial use. Please contact the Community Development Department for further information regarding the Site Plan process.)*
- Building must not have received Life Safety Grant Funding less than 5 years prior to application date *(Applicants may have received or simultaneously apply for Façade Improvement Grant Funding).*
- City Council must consider and approve the grant award before construction can begin on improvements included in grant request (any design or construction costs of the eligible improvements included in an applicant's request prior to grant approval by City Council are not eligible for grant funding.).

III. Eligible Improvements

For consideration of the grant, eligible improvements must be required by the current Building and/or Fire Code adopted by the City. Improvements must meet code standards, as adopted by the City; receive proper permits for installation and pass all final inspections of the City. Eligible improvements include (but are not limited to):

- Fire Suppression Systems (i.e. – sprinklers)
- Fire Alarm Systems
- CO² Monitoring Systems (as required for restaurants)
- ADA Accessible Restrooms
- Asbestos Study and Abatement

Improvements that are not required by current building and/or fire code, as adopted by the city, are ineligible for grant consideration.

IV. Application Requirements

- All eligibility requirements in Section II must be met to be considered for the grant program.
- Completed grant application (Appendix B) signed by the applicant and the owner of the property (if different from the applicant).
- Photo(s) of the building and areas to be improved.
- Written description of proposed improvements and an explanation of how the grant will affect the overall project.
- Drawings or renderings of proposed business that will occupy the building.

V. Submittal and Review Process

All applicants are encouraged to meet with city staff prior to submitting an application. City staff will review applications for completion, eligibility and considerations outlined in Section VI.

Only complete applications for eligible projects will be advanced for consideration to the Keller Economic Development Board (KEDB) and the Keller City Council. Incomplete applications will not be considered and shall expire after six (6) months. The six (6) month time period will begin on the date of the most recent staff correspondence with the applicant. A new completed application shall be submitted in order to resume activity on a grant application.

The KEDB considers eligible requests and provides recommendations for the grant award and fund allocation to City Council. The KEDB meets on the third Monday of each month and complete applications must be received at least ten (10) business days prior to that meeting to be considered. City Council will consider the request at their first meeting of the month following the KEDB meeting.

VI. Considerations for Grant Awards and Fund Allocation

The criteria used to review applications for grant funds shall include, but shall not be limited to, the following:

- The availability of grant funds allocated for the fiscal year and other applications.
- Project compliance with the terms and conditions set forth in this policy.
- The anticipated economic impact of the project on the revitalization of Keller for redevelopment.
- Anticipated increase in the taxable value of the subject property and the potential stimulus of economic activity for the surrounding properties.
- The overall anticipated project cost being paid by the applicant, outside of the grant amount.
- Additional consideration given to projects utilizing a Keller business.
(Local contractors can be found on www.keepitinkeller.com. They will also be noted with an asterisk () on the registered contractors list obtained from city staff.)*
- Other matters deemed appropriate by the City Council may be considered on a case-by-case basis.

VII. Approved Grant Process

- An Economic Development Program Agreement, also known as a Chapter 380 Agreement, will outline the terms of the grant as approved by City Council and must be signed by the grantee (and property owner if different) within two (2) weeks of grant approval to be eligible for payment of grant funds (for sample see Appendix C).
- Grantee must submit a minimum of two (2) quotes (three is encouraged) from bonafide contractors, for each eligible improvement within sixty (60) days of grant approval by City Council.
 - The awarded contractor must be the lowest quote and a registered contractor with the City of Keller. City staff will review and approve/deny the awarded contractor within 5 business days.
 - The awarded contractor must be approved by the Director of Economic Development and obtain appropriate permits prior to beginning construction. The applicant may request a one (1) time thirty (30) day extension for quote submittals from the Director of Economic Development. Projects that exceed these deadlines must reapply for grant consideration.
- Construction of improvements must commence within sixty (60) days of staff approval of awarded bid.
 - The applicant may request a one (1) time thirty (30) day extension for construction commencement from the Director of Economic Development. Projects that exceed these deadlines must reapply for grant consideration.
- Construction must be completed within one (1) year of grant application approval from City Council.
 - The applicant may request a one (1) time six (6) month extension to complete construction from the Director of Economic Development. Projects that exceed these deadlines must reapply for grant consideration.
- Any changes or modifications to the approved grant request specified in the Chapter 380 Agreement shall be approved by City Council.

- Improvements completed under the Life Safety Grant Program shall become permanent fixtures of the property and the removal, modification of or failure to maintain these improvements could result in recapture of the grant funds.
- Payment of the grant shall be in the form of a reimbursement, not to exceed 50% of the actual cost of receipts paid or the amount specified in the Chapter 380 Agreement, whichever is less.
 - Payment will be made after all work is satisfactorily completed according to the terms of the approved Chapter 380 Agreement and passed all city inspections.
 - Reimbursement requires submissions of copies of all receipts paid, a notarized lien release from each contractor, photos of all improvements, and a complete W-9 Form for grantee.

Appendices

The appendices contain administrative tools meant to improve and streamline the application process. City staff may update an appendix as administratively necessary, without City Council approval.

Appendix A – Terms/Definitions and City Contacts

Appendix B – Life Safety Grant Application

Appendix C – Sample Chapter 380 Agreement

Terms and Definitions

Chapter 380 Agreement – An economic development agreement allowed by Chapter 380 of the Local Government Code authorizing municipalities to offer incentives designed to promote economic development.

Code Requirements – The current building standards accepted as defined in the City of Keller's Unified Development Code (UDC) and most recently adopted versions of the International Building Code (IBC), National Electric Code (NEC) and International Fire Code.

Economic Impact – The economic effect of the proposed project on the property tax and sales tax revenues generated from the site in question and surrounding area, by stimulating business growth and other commercial activities.

Eligible Improvements: Shall mean the installation or modification of Fire Suppression Systems, Fire Alarm Systems, CO² Monitoring Systems, ADA Accessible Restrooms, and/or Asbestos Studies and Abatement as included in Section 5.

Fiscal Year – The 12-month period used for calculating annual financial statements. The City of Keller's fiscal year runs from October 1st – September 30th.

Keller Economic Development Board (KEDB) – The KEDB is an advisory board of citizens and business leaders appointed by City Council to work with city staff to further promote economic development efforts, including incentive review, planning, recruitment and marketing.

Quote: A detailed cost estimate from a bonafide contractor for the Eligible Improvements in this agreement.

Quote Approval: The written approval from the Director of Economic Development of the lowest submitted Quote.

Reimbursement Request: Grantee's submittal of Documentation of reasonably detailed evidence of compliance with the Chapter 380 Agreement. This shall include detailed invoicing from contractors and payments made sufficient to identify the costs directly related to the Eligible Improvements, a notarized lien release from each contractor, and photos of all Eligible Improvements.

Site Plan – An architectural plan, landscape architecture document, and a detailed engineering drawing of proposed improvements of a given lot. This plan typically shows a buildings footprint, travelways, parking, drainage, facilities, sewer and water lines, etc.

Substantial Completion: Shall mean the date the Project passes all final city inspections; or a Certificate of Occupancy or equivalent is issued by the City allowing occupancy of the Facilities.

Important City Contacts:

Economic Development

Mary Culver
Director of Economic Development

817-743-4020
mculver@cityofkeller.com

Melanie Boykins
Economic Development Specialist

817-743-4021
mboykins@cityofkeller.com

Community Development

Planning Department

817-743-4130
communitydevelopment@cityofkeller.com

Building Services

Permit Desk

817-743-4110
buildingservices@cityofkeller.com

Fire Safety and Prevention

Debra Crafton
Fire Marshall

817-743-4472
dcrafton@cityofkeller.com

Public Works

Public Works Admin

817-743-4080
publicworks@cityofkeller.com

Code Enforcement

Melinda Hernandez
Code Enforcement Administrator

817-743-4118
mhernandez@cityofkeller.com



Life Safety Grant Program Application

I. Applicant Information

- A. Applicant Name _____
- B. Assumed Name (DBA) _____
- C. Business Name _____
- D. Street Address _____
- E. Mailing Address _____
- F. Work Phone _____ Cell Phone _____
- G. Email _____

II. Property Owner Information (if different from Applicant)

- A. Owner Name _____
- B. Business Name _____
- C. Street Address _____
- D. Mailing Address _____
- E. Work Phone _____ Cell Phone _____
- F. Email _____

III. Property and Project Description

- A. Address/Location of property to be considered for the City of Keller Life Safety Grant Program

- B. Is the building currently occupied by a business?

Yes No If yes, please list the business name(s) and Certificate of Occupancy numbers below.

- C. Is this a residential building that is being converted for commercial use?

Yes No *Please note: if a residential property is being converted to commercial use, a site plan is required. If a site plan has been submitted, please list the permit number below.*

- D. Have development plans been submitted to the city for the project?

Yes No *Please note: any design costs incurred prior to City Council approval of a grant are not eligible for reimbursement under the Life Safety Grant Program. If development plans have been submitted, please list the permit number below.*

- E. Has the applicant and/or property owner been a recipient of any City of Keller incentives or grants before?

Yes No If yes, please list the type of incentive/grant, property address(es) and year(s) the grant was awarded below.

- F. To your knowledge, have any City of Keller incentives or grants been utilized for this property before?

Yes No If yes, please list the type of incentive/grant, property address(es) and year(s) the grant was awarded below.

- G. Are there any current code enforcement actions, tax liens, or judgement liens against the property?

Yes No

H. Project Description

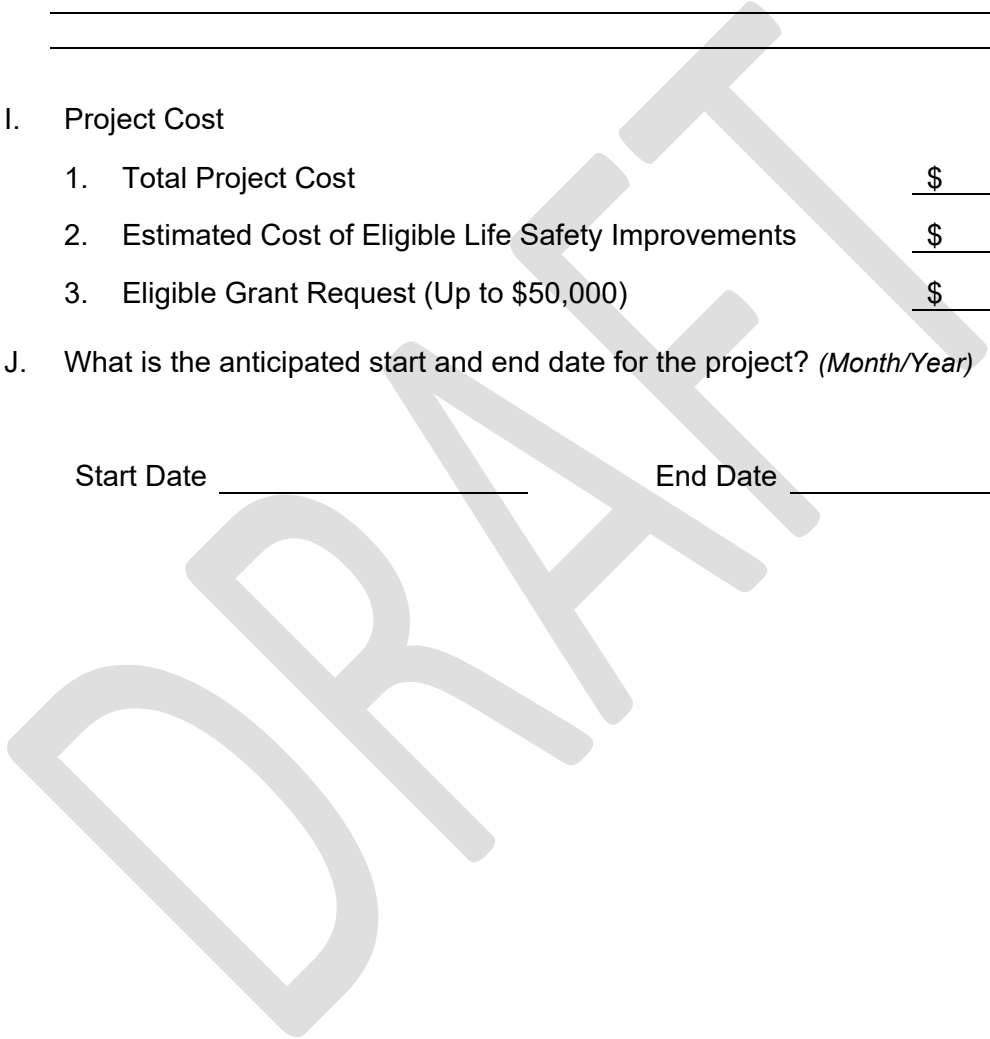
(Please Describe what improvements will be made to the existing property and how the award of this grant impacts the project. 1,000 words max. May submit on a separate sheet of paper.)

I. Project Cost

- 1. Total Project Cost \$ _____
- 2. Estimated Cost of Eligible Life Safety Improvements \$ _____
- 3. Eligible Grant Request (Up to \$50,000) \$ _____

J. What is the anticipated start and end date for the project? (*Month/Year*)

Start Date _____ End Date _____



K. Deadline Acknowledgements

I, the applicant, verify that I must complete the following obligations in order to be considered for the City of Keller Life Safety Grant. I understand that the grant will not be processed if all items below are not met.

- Submission of a minimum of two (2) quotes from separate bonafide contractors within sixty (60) days of the Grant Approval Date.
 - The contract will be awarded to the lowest submitted Quote and the contractor must be registered with the City of Keller.
- Obtain appropriate Building Permits prior to the Commencement of Construction.
- Construction must commence within sixty (60) days of Quote Approval.
- Eligible Improvements must be substantially Complete within one year of the Grant Approval Date.

DISCLAIMER

I acknowledge that I understand the terms of the City of Keller Life Safety Grant Program, and it is my intent to meet the specified terms of this application if approved. I understand further that this project is approved for grant reimbursement only in strict accordance with the approved plans that are attached to this application and hereby made part of this agreement. I further understand that change orders on the work in progress require approval by the City of Keller City Council and that failure to comply with this agreement may jeopardize receipt of grant funds.

Applicant Signature _____ Date _____

Property Owner Signature _____ Date _____
(if different from applicant)

Information Below to be Filled Out by City Staff Only

Date Received _____

Staff Initials _____

Application

Complete

Incomplete Missing Items _____

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 Property Owner/Grantee Name of Company Name from Signature Block on Application, owner of property located at Street Address, Keller, Texas (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, 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, on October 15, 2024, the City approved Resolution No. XXXX, establishing a Life Safety Grant Policy pursuant to the City of Keller Economic Development 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:

Appendix C

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.

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.

Council: Shall mean the City Council of the City.

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

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

Eligible Improvements: Shall mean the installation or modification of Fire Suppression Systems, Fire Alarm Systems, CO² Monitoring Systems, ADA Accessible Restrooms, and/or Asbestos Studies and Abatement as included in Section 5.

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

Facility: Shall mean the building(s), surface parking, and structured parking 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.

Grant Approval Date: The date that the Council adopted the Resolution approving the Agreement, as described in Section 1.

Grantee: Shall mean Company Name from Signature Block on Application.

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

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 grant payments to be made by the City in accordance with this agreement, detailed in Section 5.

Project: Shall mean the Eligible Improvements and the Property.

Property: Shall mean the approximately X.XX square-foot facility, being real property located in Tarrant County, Texas, as more particularly described as Legal Description.

Quote: A detailed cost estimate from a bonafide contractor for the Eligible Improvements in this agreement.

Quote Approval: The written approval from the Director of Economic Development of the lowest submitted Quote.

Reimbursement Request: Grantee's submittal of Documentation as described in Section 4.4 to the Director.

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

Substantial Completion: Shall mean the date the Project passes all final city inspections; or a Certificate of Occupancy or equivalent is issued by the City allowing occupancy of the Facilities.

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 5.2, 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. Quote Approval:
 - i) Grantee shall submit a minimum of two (2) Quotes from separate bonafide contractors within sixty (60) days of the Grant Approval Date.
 - ii) The Grantee shall obtain Quote Approval from the Director and award the contract to the lowest submitted Quote and ensure the contractor is registered with the City of Keller.
- b. Building Permits: Grantee shall obtain appropriate Building Permits prior to the Commencement of Construction.
- c. Commencement of Construction: Grantee shall commence construction within sixty (60) days of Quote Approval.
- d. Substantial Completion: the Eligible Improvements shall be Substantially Complete within one year of the Grant Approval 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 Eligible Improvements as a good and valuable consideration of this agreement.

4.2. Maintenance of Eligible Improvements

In further consideration, Grantee covenants and agrees that the Eligible Improvements will be maintained for the life of the building, except in the event of Force Majeure. The failure to maintain, removal or modification of the Eligible Improvements, without express written consent by the City, could result in recapture of the Grant, as outlined in Section 8.

4.3. 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.

4.4. 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, a notarized lien release from each contractor, and photos of all Eligible Improvements.

4.5. Compliance

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

4.6. Compliance with Laws and Regulations

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

4.7. 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. Life Safety Grant

The City will provide a cash grant equaling 50% of the actual cost of the following Eligible Improvements, up to \$50,000, whichever is less, in the form of reimbursement described in Section 5.2.

- a. Fire Suppression Systems (i.e. – sprinklers)
- b. Fire Alarm Systems
- c. CO² Monitoring Systems
- d. ADA Accessible Restrooms
- e. Asbestos Study and Abatement

This Grant will be paid within 30 days of a reimbursement request with the required documentation outlined in Section 4.4.

5.2. Annual Program Payments

Upon Satisfactory Documentation being provided to the City by Grantee, the City shall make a Program Payment to Grantee pursuant to the Agreement.

- a. The Program Payment shall be paid based on the paid receipts documented in Section 4.4, in the form of a reimbursement. The Program Payment will not exceed 50% of the paid receipts or \$50,000. The Program Payment will be issued within 30 days of the reimbursement request.

- b. Condition Precedent: Notwithstanding any other provisions hereof, City shall not be obligated to make any Program Payments or other payment or grant pursuant to this Agreement unless and until Grantee is in compliance with the provisions of this Agreement in all material respects.

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. **Grant Recapture**

In the event that the Eligible Improvements are removed from the Property the Grantee shall immediately refund and return all Program Payments to the City within thirty (30) days of said removal. Failure to return all Program Payments shall be deemed a material breach of the Agreement and the City may seek any and all remedies to recover the same, including the recovery of all costs and reasonable attorneys fees.

9. **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.

10. **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.

11. **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:

LEGAL NAME
Attn:
123 Keller Pkwy
Keller, TX 76248

With Copies to (which shall not constitute notice):

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

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. CAPTIONS.

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

22. 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.

23. 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: _____
Aaron Rector
Interim City Manager

By: _____

Name: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
L. Stanton Lowry
City Attorney