

RESOLUTION NO. 2016-112R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT FOR "PROJECT TEXAS" THAT PROVIDES INCENTIVES IN THE FORM OF ANNUAL REFUNDS OF 50 PERCENT OF AD VALOREM TAXES FROM PERSONAL PROPERTY AND 75 PERCENT OF SALES TAX REVENUES GENERATED OVER TEN YEARS, WITH A POSSIBLE EXTENSION FOR TWO ADDITIONAL TEN YEAR PERIODS, FOR THE RECEIVING COMPANY TO LOCATE AND OPERATE AN INTERNET SALES OPERATIONS CENTER IN THE CITY; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The attached Chapter 380 Economic Development Incentive Agreement (the "Agreement") is hereby approved.


PART 2. The City Manager is authorized to execute the Agreement on behalf of the City.

PART 3. This resolution shall be in full force and effect from and after its passage.

ADOPTED on August 16, 2016.


Daniel Guerrero
Mayor

Attest:


Jamie Lee Case
City Clerk

CHAPTER 380 ECONOMIC

DEVELOPMENT INCENTIVE AGREEMENT

As of January 1, 2017 (the “Effective Date”) this Chapter 380 Economic Development Incentive Agreement (the “*Agreement*”) is entered into between the City of San Marcos, Texas (the “*City*”), a Texas municipal corporation, and BestBuy.com LLC, a Virginia limited liability company and its Affiliates (the “*Company*”). The City and Company are collectively referred to as the “*Parties*” or individually as a “*Party*.”

ARTICLE 1. RECITALS

Section 1.01. Commencing on or after the Effective Date, Company intends to establish an internet retail sales operations center in San Marcos to enhance its sales of consumer electronics, home appliances, and other goods, subject to the granting of economic development incentives.

Section 1.02. The City seeks to promote local economic development and to stimulate business and commercial activity in the City. The establishment of the Company internet retail sales operations center will advance the City’s interests by creating jobs, increasing sales and property tax revenues and enhancing the image of the City.

Section 1.03. The City is authorized under Chapter 380 of the Texas Local Government Code to offer certain economic development incentives for public purposes, including promotion of local economic development and the stimulation of business and commercial activity in the City.

Section 1.04. For the reasons stated in these Recitals, which are incorporated into and made a part of this Agreement, and in consideration of the mutual benefits and obligations set

forth herein, the Parties enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE 2. DEFINITIONS

Section 2.01. “*Affiliate*” means any entity that directly or indirectly controls, is controlled by, or is under common control with BestBuy.com, LLC.

Section 2.02. “*Business*” means the business activities of the Company’s internet retail sales operations center conducted in the City of San Marcos, Texas on the Site.

Section 2.03. “*Grant Payments*” includes both Sales Tax Revenue Grant Payments and Personal Property Tax Grant Payments as defined here.

Section 2.04. “*Job(s)*” means a full-time employment position at the Site, resulting from the Business, which position is (a) not seasonal, (b) provided a wage of no less than \$14.50 per hour, (except as set forth in 3.04) (c) provided with employer-sponsored health insurance available to the employee and dependents equal to coverage offered to any other full-time employee of the Company and, (d) provided with at least 30 hours of employment per week. Any position not meeting such criteria does not qualify as a “Job” for purposes of this Agreement.

Section 2.05. “*Personal Property*” means all materials, supplies, equipment, inventory or other personal property attributable to the Business on the Site that is subject to ad valorem taxes.

Section 2.06. “*Personal Property Taxes*” are the City’s share of the ad valorem taxes received by the City from the Hays County Tax Assessor-Collector on the value of all Personal Property on the Site.

Section 2.07. “*Personal Property Tax Grant Payments*” means the City’s payments to Company once per calendar year during the Term of an amount equal to 50 percent of Personal Property Taxes generated from operation of the Business at the Site during the full calendar year immediately preceding the year in which the payment is made.

Section 2.08. “*Sales Tax Revenue*” means the amount of sales and use tax revenues attributable to the Business collected by the Texas Comptroller of Public Accounts (or any similar successor tax collection entity of agency of the State) and that are paid to and actually received by the City. Said Sales Tax Revenue shall be collected under a State sales tax permit separate and distinct from Company’s existing physical retail sales locations in Texas.

Section 2.09. “*Sales Tax Revenue Grant Payments*” means the City’s payments to Company, at the end of every Sales Tax Revenue Computation Quarter, during the Term, in an amount equal to 75 percent of Sales Tax Revenue generated from operation of the Business at the Site during the immediately preceding Sales Tax Revenue Computation Quarter.

Section 2.10. “*Sales Tax Revenue Computation Quarter*” means each calendar quarter beginning on January 1, April 1, July 1, or October 1, as applicable, and ending on the succeeding March 31, June 30, September 30, or December 31, as applicable. The first Sales Tax Revenue Computation Quarter shall commence on July 1, 2017 and end September 30, 2017 and is referred to herein as “Computation Quarter 1,” with each succeeding Computation Quarter within the Term of this agreement being consecutively numbered, concluding with Computation Quarter 120, provided the Term is extended per Section 4.03.

Section 2.11. “*Site*” means the real property within the corporate limits of the City of San Marcos, Texas upon which the activities of the Company’s internet retail sales operations center is located, the legal description of which is shown in Exhibit “A,” attached hereto and

made a part of this Agreement for all purposes.

Section 2.12. The “*Term*” of this Agreement shall commence on the Effective Date and continue until December 31, 2026 (unless terminated sooner, as provided in this Agreement), except that Company’s obligation to submit in 2027 a Compliance Certificate for the year 2026 and the City’s obligation, if any, to complete the Grant Payments due under this Agreement for the year 2026 shall continue until satisfied, subject to the limitations of this Agreement. The Term may be extended as provided in Section 4.03.

ARTICLE 3. OBLIGATIONS OF COMPANY

Section 3.01. Operation of Business. Company shall begin operation of the Business on the Site on or prior to the Effective Date, and shall continuously operate, maintain and manage the Business for the duration of the Term, unless Company determines that continued operation of the Business is not commercially reasonable. The Company shall install signage at the Site, displaying the name of the Business, which is permitted in accordance with applicable City ordinances.

Section 3.02. Exclusive Operation of Business in Texas. During the Term, Company shall not operate any other internet retail sales operations center within the State of Texas.

Section 3.03. Internet Retail Sales Attributable to the Business. The Parties acknowledge that there is no minimum annual internet retail sales required during the 2017 calendar year; however, during the third and fourth Sales Tax Revenue Computation Quarter, there will be a minimum of \$30,000,000, subject to sales and use tax, and attributable to the Business which shall be generated and allocated to the City. For the calendar year starting on January 1, 2018 and ending December 31, 2018, and for each calendar year thereafter, during the Term, a minimum of \$240,000,000 in internet retail sales, subject to sales and use tax, and

attributable to the Business shall be generated and allocated to the City as follows:

- a. 1st Sales Tax Revenue Computation Quarter – at least \$30,000,000;
- b. 2nd Sales Tax Revenue Computation Quarter – at least \$30,000,000;
- c. 3rd Sales Tax Revenue Computation Quarter – at least \$30,000,000;
- d. 4th Sales Tax Revenue Computation Quarter – at least the remaining balance of annual minimum.

Failure to meet this obligation is not susceptible to a Cure and shall result in automatic forfeiture by Company of the right to any Grant Payments for the applicable Sales Tax Revenue Computation Quarter or year during which such failure occurs.

Section 3.04. Incentivized Job Creation. On or before January 1, 2018, Company shall employ a minimum of 25 persons in Jobs on the Site, earning at least \$15.00 per hour. On or before January 1, 2019, Company shall employ a minimum of 40 persons in Jobs on the Site, earning at least \$15.00 per hour. On or before January 1, 2020, Company shall employ a minimum of 50 persons in Jobs on the Site, earning at least \$15.00 per hour, and shall maintain at least 50 persons in Jobs, earning at least \$15.00 per hour, until December 31, 2022. All other persons employed by Company on the Site in Jobs shall earn a wage of at least \$14.50 per hour.

If, at any time after January 1, 2023 and for the duration of the term, fewer than 50 persons are employed on the Site in connection with the Business, then all such persons shall be employed in positions qualifying as Jobs earning at least \$15.00 per hour. Failure to meet the obligations under this Section is not susceptible to a Cure and shall result in automatic forfeiture by Company of the right to any Grant Payments for the applicable Sales Tax Revenue Computation Quarter or year during which such failure occurs.

Section 3.05. Non-Discrimination and Compliance with Laws. Company agrees to

adopt and follow employment policies, rules and procedures intended to ensure that no discrimination will occur in the creation of Jobs on the basis of race, creed, color, national origin, sex or disability or other characteristics for which protection is available under applicable local, state and federal anti-discrimination laws. In performing its obligations under this Article, Company shall comply with all applicable laws, regulations and ordinances.

ARTICLE 4. ECONOMIC DEVELOPMENT INCENTIVE PROVIDED BY THE CITY

Section 4.01. Personal Property Tax Grant Payments. Subject to other terms and conditions in this Agreement and Company's compliance with this Agreement, the City will make Personal Property Tax Grant Payments to Company in an amount equal to 50 percent of Personal Property Taxes generated by the Business on the Site during the calendar year immediately preceding the Personal Property Tax Grant Payment.

Section 4.02. Sales Tax Revenue Grant Payments. Subject to other terms and conditions in this Agreement and Company's compliance with this Agreement, the City will make Sales Tax Revenue Grant Payments to Company at the end of every Sales Tax Revenue Computation Quarter, during the Term, in an amount equal to 75 percent of Sales Tax Revenue generated from operation of the Business at the Site during the immediately preceding Sales Tax Revenue Computation Quarter.

Section 4.03. Automatic Renewal. In the event that Company performs all of its obligations under Article 3 and is not operating under any notice of default from the City, at the end of the Term, this Agreement shall be automatically extended for two (2) consecutive ten (10) year periods.

Section 4.04. Payment Period for Ad Valorem Tax Portion of Grant Payment. Grant Payments made by the City between and including the years 2017 through 2026 shall

include rebates associated with Personal Property Taxes attributable to the previous tax years. No rebates associated with Personal Property Taxes shall be included in any Grant Payments made in 2027 through the end of the Term.

Section 4.05. Time for Requesting and Making Personal Property Tax Grant Payment. Beginning in 2017, and once each calendar year thereafter, within 45 days of the end of the calendar year, Company may request in writing to the City Manager, initiation of Personal Property Tax Grant Payments, as provided in this Article. The City shall not be required to make a Personal Property Tax Grant Payment during any applicable calendar year unless and until:

- a. Company has submitted a compliance certificate, in the form attached hereto as Exhibit “B”, together with all information the City may request to verify Company’s compliance with the terms of this Agreement;
- b. Personal Property Taxes for the prior calendar year are received by the City from the Hays County Tax Assessor-Collector; and
- c. Funds are appropriated by the San Marcos City Council for the specific purpose of making a Grant Payment under this Agreement as part of the City’s ordinary budget and appropriations approval process.

Provided the foregoing conditions have been satisfied and Company is, otherwise, in compliance with this Agreement, the City shall pay to Company any Grant Payments due within 30 days after the last to occur of the events in subsections (a), (b) and (c) of this Section.

Section 4.06. Time for Requesting and Making Sales Tax Revenue Grant Payment. Within forty-five (45) days following the end of each Computation Quarter, Company may request in writing to the City Manager, initiation of Grant Payments, as provided in this Article. The City shall not be required to make a Grant Payment during any applicable Computation

Quarter unless and until:

a. Company has submitted a compliance certificate, in the form attached hereto as Exhibit “B” , together with all information the City may request to verify Company’s compliance with the terms of this Agreement;

b. Company has generated internet retail sales, subject to sales and use tax, in accordance with Section 3.03; except that for the 4th Sales Tax Revenue Computation Quarter, if the Company has generated between \$240,000,000 and \$300,000,000 in internet retail sales, the Grant Payment shall be reduced proportionately, and if the Company has generated less than \$240,000,000 in internet retail sales, no Grant Payment shall be made for that Computation Quarter.

c. Sales Tax Revenue for the Computation Quarter is received by the City from the Texas Comptroller of Public Accounts; and

d. Funds are appropriated by the San Marcos City Council for the specific purpose of making a Grant Payment under this Agreement as part of the City’s ordinary budget and appropriations approval process.

Provided the foregoing conditions have been satisfied and Company is, otherwise, in compliance with this Agreement, the City shall pay to Company any Grant Payments due within 30 days after the last to occur of the events in subsections (a), (b), (c) and (d) of this Section. City agrees to provide notice to Company within five (5) days of receiving notice that payment of local sales tax revenues from the Texas Comptroller of Public Accounts is delayed for any reason.

Section 4.07. Subject to Funding. The Grant Payments made and any other financial obligation of the City hereunder shall be paid solely from lawfully available funds that have been budgeted and appropriated each applicable fiscal year during the Term by the City as provided in

this Agreement. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grant Payments or other payments unless the City budgets and appropriates funds to make such payments during the City's fiscal year in which such Grant Payment(s) or other payments are payable under this Agreement. If the City fails to appropriate funds for a Grant Payment, Company may, at its option, terminate this Agreement effective upon written notice to the City, whereby Company is excused from its obligations thereunder in any given year the City fails to approve the expenditure, subject to any unpaid Grant Payment properly due to Company for which a lawful appropriation of funds has occurred. **Company shall have no other recourse against the City for the City's failure to budget and appropriate funds during any fiscal year to meet the purposes and satisfy its obligations under this Agreement. City shall have no recourse against the Company for any payment made in a prior Computation Quarter, including but not limited to offset of current Computation Quarter payments.**

ARTICLE 5. DEFAULT, TERMINATION AND REMEDIES

Section 5.01. Default; Termination or Suspension of Payments. Except as otherwise provided herein, at any time during the Term of this Agreement that Company is not in compliance with its obligations under this Agreement, the City may send written notice of such non-compliance to Company. If such non-compliance is not cured within 30 days after Company's receipt of such notice or, if non-compliance is not reasonably susceptible to cure within 30 days and a cure is not begun within such 30-day period and, thereafter, continuously and diligently pursued to completion on a schedule approved by the City (in either event, a

“*Cure*”), then the City may, at its sole discretion and option, terminate this Agreement or withhold Grant Payments otherwise due for the relevant time period in which the non-compliance occurred and continues.

Section 5.02. Non-Termination Election by City. If the City elects to withhold Grant Payments under this Section rather than to terminate the Agreement, then, upon a Cure by Company, Company will be eligible to receive future Grant Payments (provided it is otherwise in compliance and subject to other limitations of this Agreement) for the remainder of the Term. However, a Grant Payment withheld by the City shall be deemed forfeited by Company and the City shall not be liable for retroactive payment of such forfeited Grant Payment. For example, if Company is in default and has not effected a Cure in the quarter ended March 31, 2020, Company will not receive a Grant Payment for that quarter. Company will, however, be eligible to receive a Grant Payment for the subsequent quarter if the default is Cured. Except as to circumstances arising from an event of *force majeure*, the Term shall not be extended as a result of any Cure period agreed to by the City under this Section.

Section 5.03. Termination for Misrepresentation. Notwithstanding any provision for notice of non-compliance and any opportunity to cure, the City may terminate this Agreement immediately by providing written notice to Company if Company, its officers or signatories to this Agreement misrepresented or misrepresent any material fact or information: (i) upon which the City relied in entering into this Agreement; (ii) upon which the City relies in making a Grant Payment to Company; or (iii) as an inducement for the City to make a Grant Payment to Company.

Section 5.04 Termination by Company. The Company may terminate this Agreement at any time for convenience with at least one hundred twenty (120) days prior written notice,

such termination to be effective as of the end of the full Sales Tax Revenue Computation Quarter.

Section 5.05 Other Termination Rights. The Parties acknowledge and agree that this Agreement will automatically terminate and the Parties herein will be relieved of their obligations and rights set forth herein if the Company does not receive a ruling from the State of Texas, deemed favorably to the Company, confirming the Sales Tax Revenue definition set forth herein.

Section 5.06. Other Remedies. Upon breach of any obligation under this Agreement, in addition to any other remedies expressly set forth in this Agreement with respect to such breach, the City may pursue such remedies as are available at law or in equity for breach of contract. Similarly, with regard to violations of applicable ordinances of the City, the City may seek such relief as is available for violation so such ordinances, including fines and injunctive relief.

Section 5.07. Offset. With sixty (60) days prior written notice, the City may deduct from any Grant Payments, as an offset, any delinquent and unpaid fees, sums of money or other fees, charges or taxes assessed and owed to or for the benefit of the City by Company, if such delinquency is not Cured within the sixty (60) days. If such amounts are deducted from any Grant payment, Company shall have an opportunity to cure or resolve the underlying delinquency of unpaid sums within 120 after the date of the Grant Payment. If the deficiency is cured within such 120 period, the amount deducted from the Grant Payment will be added back to the next Grant Payment.

Section 5.08. Force Majeure. A *force majeure* event means an event beyond the reasonable control of a Party obligated to perform an act or take some action under this

Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations. If a *force majeure* event occurs and such event prevents a Party from fulfilling its obligations hereunder, the applicable time period for performing such obligations shall be extended by the period of delay resulting from the *force majeure*.

ARTICLE 6. INFORMATION

Section 6.01. Information. Company shall, at such times and in such form as the City Manager may reasonably request, provide information concerning the performance of the Company's obligations under this Agreement. Information may include, but is not limited to, IRS Form 941 and Company reports detailing employment data inclusive of tenure, start date, hours worked, and hourly wages paid, as permitted by obligations of confidentiality owed to employees, and as allowed by applicable State and Federal laws. City shall, as reasonably requested by Company, provide information regarding Sales Tax Revenue as provided by the Texas Comptroller of Accounts.

Section 6.02. Compliance Certification. Beginning in calendar year 2017 and continuing each calendar year thereafter during the Term, Company shall submit to the City Manager, within forty-five (45) days following the end of each Computation Quarter a duly executed Compliance Certificate in substantially the form attached as Exhibit "B" certifying that Company is in full compliance with its obligations under this Agreement or, if not in full compliance, a statement disclosing the nature of any non-compliance and any reasons therefor. After receiving a timely submitted Compliance Certificate, the City shall have 30 days to notify

Company in writing of any questions that the City may have concerning any of the information in the Compliance Certificate, and Company shall diligently work in good faith to respond to such questions to the City's reasonable satisfaction.

Section 6.03. Review of Records. Company agrees that the City will have the right to review the business records of Company that relate to its performance under this Agreement in order to determine Company's compliance with the terms of this Agreement, subject to Company's obligations of confidentiality and pursuant to applicable State and Federal laws. Such review shall occur at any reasonable time and upon at least seven days' prior notice to Company, and only once per Sales Tax Revenue Computation Quarter. To the extent reasonably possible, Company shall make all such records available in electronic form or otherwise available to be accessed through the internet.

Section 6.04. Public Information. Subject to the requirements of the Texas Public Information Act (the "Act"), or order of a court of competent jurisdiction, Company may be required to disclose or make available to the City any information relating to this Agreement. Company agrees to cooperate with the City in response to any request for information under the Act or court order. The City will endeavor to provide Company with advance notice of any such request for information or court order so that Company may seek any relief to which Company believes it is entitled. The City's obligations under this Section do not impose a duty upon the City to challenge any court order or ruling of the Texas Attorney General to release information in response to a specific request for information under the Act.

ARTICLE 7. REPRESENTATIONS AND WARRANTIES OF COMPANY

Section 7.01. Organization. Company is a duly organized, validly existing Limited Liability Company, in good standing under the laws of the Virginia and is authorized to conduct

business or own real property in the State of Texas. The activities that Company proposes to carry on at the Site may lawfully be conducted by Company.

Section 7.02. Authority. The execution, delivery and performance by Company of this Agreement are within Company's powers and have been duly authorized.

Section 7.03. Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Company, enforceable against Company in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

Section 7.04. No Defaults. Company is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which they are parties or by which they or any of their property is bound that would have any material adverse effect on Company's ability to perform under this Agreement.

Section 7.05. Full Disclosure. Neither this Agreement nor any schedule or Exhibit attached hereto in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to keep the statements contained herein or therein, in the light of the circumstances in which they were made, from being misleading.

ARTICLE 8. MISCELLANEOUS

Section 8.01. Entire Agreement. This Agreement, including the Recitals and the Exhibits hereto, contains the entire agreement between the Parties with respect to the transactions contemplated herein and supersedes any prior understandings or written or oral agreements between the Parties.

Section 8.02. Amendments. This Agreement may only be amended, altered, or terminated by written instrument signed by all Parties.

Section 8.03. Notices. All notices required by this Agreement will be delivered to the following by certified mail or electronic mail transmission:

City:

City Manager
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666
E-mail: citymanagerinfo@sanmarcostx.gov

Company:

VP of Tax
Tax Department
Best Buy Co., Inc.
7601 Penn Avenue South
Richfield, MN 55423

Each Party will notify the other Party in writing of any change in information required for notice under this paragraph.

Section 8.04. Applicable Law and Venue. This Agreement will be construed under the laws of the State of Texas. This Agreement is performable in Hays County, Texas. Mandatory venue for any action under this Agreement will be in the state court of appropriate jurisdiction for the action in Hays County, Texas. Mandatory venue for any matters in federal court will be in the United States District Court for the Western District of Texas, Austin Division.

Section 8.05. No Liability. Company agrees that City assumes no liability or responsibility by approving plans, issuing permits or approvals or making inspections related to any matter arising under this Agreement.

Section 8.06. No Waiver of Immunity or Liability. Nothing in this Agreement, and no action of the City under this Agreement, will constitute a waiver of any immunity of the City to

suit or to liability or of any limitations on liability granted by law or the Texas Constitution.

Section 8.07. No Joint Venture. It is understood and agreed between the Parties that the City and Company, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture. **THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT, AND COMPANY AGREES TO INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY SUCH LIABILITIES.**

Section 8.08. Third Party Beneficiaries and Assignability. This Agreement is for the exclusive benefit of the Parties and no third party may claim any right, title or interest in any benefit arising under this Agreement. Company may not assign any of its rights, or delegate or subcontract any of its duties under this Agreement, in whole or in part, without the prior written consent of the City, except that Company may assign this Agreement to an Affiliate; such assignment to be effective only upon receipt by the City of written notice thereof together with documentation establishing the relationship of the Affiliate to Company.

Section 8.09. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

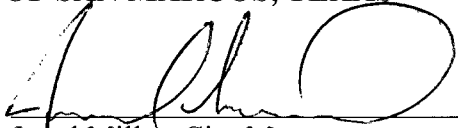
Section 8.10. Estoppel. Upon written request by Company, the City shall execute and

deliver to Company an estoppel certificate certifying as follows: (a) whether this Agreement is unmodified and in full force and effect (or if modified, disclosure of such modifications and whether this Agreement is in full force and effect as modified); (b) whether to the City's knowledge, Company is in default under this Agreement; and (c) any other reasonable factual inquiries a party may request regarding this Agreement.

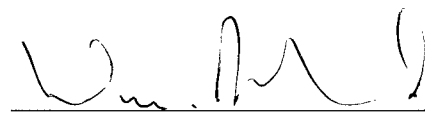
Section 8.11. Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

EXECUTED to be effective as of the Effective Date.

CITY OF SAN MARCOS, TEXAS

By: 
Jared Miller, City Manager

COMPANY

By: 

Name: William Skallerud

Title: VP Assoc General Counsel

EXHIBIT "A"
Legal Description of Site

7.43 acres, more or less, of land area in the J.M. Veramendi Survey No. 2, City of San Marcos, Hays County, Texas, being a portion of that 7.27 acre tract conveyed in a deed from A.E. Fiedler, Jr. to A & A Properties, dated January 28, 1977 and recorded in Volume 292, Page 677 of the Hays County Deed Records, and said tract being a portion of that 20-acre tract of land described in a deed from Nelson P Bengston to Charles R. Redford, Jr. and recorded in Volume 194, Page 236 of the Hays County Deed Records, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" diameter iron rod set with an aluminum cap in the southwest line of Bugg Lane for the east corner of the A & A Properties tract and the Redford 20-acre tract, being the north corner of Blanco Gardens subdivision, as recorded in Volume 1, Page 1 of the Hays County Plat Records;

THENCE with the common southeast line of the A & A Properties tract and the Redford tract and the northwest line of the Blanco Gardens Subdivision S46°42'44"W 442.41 feet to a 1/2" diameter iron rod set with an aluminum cap for the south corner of this tract and the A & A Properties tract, being the east corner of the 7.01 acre tract conveyed in a deed from Bertha Faye Dudley to B. F. Davidson, dated July 26, 1978 and recorded in Volume 313, Page 519 of the Hays County Deed Records, said corner being in the approximate centerline of a power line easement as recognized and used upon the ground, pass on this course at approximately 420 feet on overhead power transmission line, from said south corner an iron rod found bears S45°58'43"E 2.67 feet;

THENCE entering the Redford 20-acre tract with the common line of the A & A Properties tract and the Davidson tract, same being the approximate centerline of said power line easement as recognized and used upon the ground N45°58'43"W 739.71 feet to an iron rod found for the north corner of the Davidson tract and west corner of the A & A Properties tract and this tract, and being in the southeast line of Linda Drive;

THENCE with the common line of Linda Drive and the A & A Properties tract N48°36'00"E 344.61 feet to a 1/2" diameter iron rod set with an aluminum cap being in the common northeast line of the aforementioned Redford 20-acre tract and the southwest line of State Highway 80 pass on this course at approximately 22 feet an overhead power transmission line;

THENCE crossing the A & A Properties tract with the common line of the Redford 20-acre tract and state Highway 80, S76°13'58"E 252.20 feet to the remains of a highway monument found in the common southwest line of Bugg Lane and northeast line of the A & A Properties tract;

THENCE with the common line of Bugg Lane, the A & A Properties tract and the Redford tract S42°47'39"E 515.92 feet to the PLACE OF BEGINNING. There are contained within these metes and bounds 7.43 acres, more or less, of land area as described from public records and measurements made on the ground during July, 1983 by James E. Byrn and Associates of San Marcos, Texas.

EXHIBIT "B"

Form of Compliance Certificate

CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
COMPLIANCE CERTIFICATE AND REQUEST FOR CHAPTER 380 GRANT PAYMENT

From: [Company Name] ("Company")

To: City of San Marcos ("City")
Attn: City Manager
630 East Hopkins Street
San Marcos, TX 78666

Report Date: _____

Reporting Period: _____ to _____ (the "Reporting Period")

The undersigned, on behalf of Company, hereby requests a Chapter 380 Payment pursuant to the terms of the Chapter 380 Economic Development Incentive Agreement dated as of _____, 2016, between the City and Company (the "Chapter 380 Agreement") (capitalized terms not otherwise defined in this Certificate have the meaning given to them in the Chapter 380 Agreement) for the Reporting Period and in support provides the following information:

Personal Property Ad Valorem Tax Assessed Value:

\$ _____ (Annual amount only following 4th Quarter)

Personal Property Taxes Paid:

\$ _____ (Annual amount only following 4th Quarter)

Sales Taxes Revenues* for the Reporting Period:

\$ _____

The amounts inserted above reflect the final calculations following the process described in this paragraph below. *The City will file such forms and applications with the Texas Comptroller of Public Accounts for purposes of receiving Confidential Sales and Use Tax Information Reports necessary to calculate Sales Tax Revenue each year. The City will provide Company with all copies of all monthly or other periodic reports it receives from the Comptroller, *subject to any confidentiality requirements under applicable laws*. To the extent complete information necessary to calculate Sales Tax Revenue is unavailable to the City and if Company is requesting a Chapter 380 Payment for Sales Tax Revenue, Company shall cooperate with the City to provide such information to which Company has access and the Parties will reconcile all data

available in order to determine the amount of Sales Tax Revenue generated for the reporting period.

Personal Property Tax Portion of Chapter 380 Payment = ___% X Personal Property Taxes <i>(To be provided annually only with Grant Payment request following 4th Quarter)</i>	Amount
Sales Tax Portion of Chapter 380 Payment = ___% X Sales Tax Revenues	Amount
Total Chapter 380 Payment Request	Total

- Total Jobs at beginning of Reporting Period: _____
- Total Jobs at end of Reporting Period: _____
- Please list any final judicial determinations or administrative decisions that Company unlawfully discriminated in violation of Section 3.05 of the Chapter 380 Agreement: *[attach separate sheet]*

The City Manager may agree to an amendment to this form from time to time, provided such amended form shall be substantially similar in reporting the information necessary to confirm compliance with the Chapter 380 Agreement and to calculate the Chapter 380 Payments.

Upon request of the City Manager, Company shall permit the City to conduct an audit and inspection of Company's records in accordance with the terms of the Chapter 380 Agreement.

The City Manager may designate one or more persons to act or receive information on the City's behalf under this certificate and the Chapter 380 Agreement.

I, _____ [Insert name and title], certify that the foregoing information is true and correct and that Company has materially complied with all terms and conditions of the Chapter 380 Agreement.

[Name and Title]

Date