

**CHAPTER 380 ECONOMIC
DEVELOPMENT INCENTIVE AGREEMENT**

As of October 15, 2024 (the “*Effective Date*”) this Chapter 380 Economic Development Incentive Agreement (the “*Agreement*”) is entered into between the City of San Marcos, Texas (the “*City*”), and H-E-B, LP (“*Company*”). The City and Company may also be referred to collectively as the “*Parties*” or individually as a “*Party*”.

PART 1. RECITALS

Section 1.01. The City determined that there existed a shortage of grocery stores sufficient to adequately serve residents throughout the City and, therefore, sought to encourage grocery store operators to locate new grocery stores by offering financial incentives in the form of property and sales tax refunds to do so.

Section 1.02. In response to the offer of the proposed incentives, Company wishes to construct a grocery store (“*Grocery Store*”) in the City on the Project Site.

Section 1.03. The Company’s opening of a new grocery store will benefit the City by creating new jobs and generating revenue for the City from the addition of ad valorem property tax and sales tax revenue to support the City’s operations and delivery of services to the public.

Section 1.04. The City is authorized under Chapter 380 of the Texas Local Government Code (“*Chapter 380*”) to offer economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity in the City.

Section 1.05. The City has determined that providing economic development incentives under this Agreement will promote local economic development and stimulate business and commercial activity in the City.

Section 1.06. 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 to and promises of the Parties set forth herein, the Parties enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE II DEFINITIONS

Section 2.01. “*Additional Property Taxes*” are the City’s total share of the ad valorem taxes received from the Hays County Tax Assessor-Collector each calendar year during the Term on the value of all Personal Property and Real Property Improvements on the Project Site (defined below) that exceed the Base Tax Year Value.

Section 2.02. “*Base Tax Year Value*” means the ad valorem tax value, as established by the Hays County Appraisal District of the Real Property Improvements and Personal Property on the Project Site as of January 1, 2024.

Section 2.03. “*Business*” means the business activities of Company conducted in the City of San Marcos, Texas on the Project Site, including, but not limited to the operation of a minimum 100,000 square foot H-E-B branded grocery store.

Section 2.04. “*Grant Payments*” means the City’s payments to Company in the form of refunds of a percentage of Additional Property Taxes and Sales Tax Revenue generated by the Business as outlined in Article IV.

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

Section 2.06. “*Project*” means the addition of Real Property Improvements (as defined below), Personal Property and Company’s operation of the Business.

Section 2.07. “Project Site” means the approximately 17.7-acre tract of land located at the southeast corner of IH-35 and McCarty Lane, San Marcos Texas as shown in *Exhibit A*, attached hereto and made a part hereof.

Section 2.08. “Real Property Improvements” means such improvements to real property on the Project Site, other than Personal Property, subject to ad valorem tax assessment.

Section 2.09. “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) (collectively referred to herein as the “*Comptroller*”) and that are remitted to and received by the City.

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.

Section 2.11. The “*Term*” of this Agreement shall commence on the Effective Date and continue until the Grant Payments due hereunder are paid by the City. The Term may be extended as necessary due to *force majeure* events or reduced in the event of a default by the Company beyond the applicable notice and cure period as set forth herein, or City’s non-appropriation of funds for Grant Payments pursuant to Section 6.02 of this Agreement.

ARTICLE III COMPANY’S PRIMARY OBLIGATIONS

Section 3.01. Operation of Business. Subject to Company obtaining a certificate of occupancy from the City for the Business, Company shall open the Grocery Store to the public on or before December 31, 2026 (the “**Opening Date**”), subject to any extensions

arising from *force majeure* events.

Section 3.02. Compliance with Laws. In performing its obligations under this Article, Company and City shall comply with all applicable laws, regulations and ordinances.

**ARTICLE IV
GRANT PAYMENTS FROM THE CITY**

Section 4.01. Grant Payments. Subject to other terms and conditions of this Agreement and provided that Company is not in default beyond the applicable notice and cure period set forth herein, the City will make Grant Payments to Company in the manner set forth in this Article.

Section 4.02. Five-Year Payment Period. Beginning in the first (1st) full calendar year following Company's Opening Date, the City shall make Grant Payments to the Company through and including the fifth (5th) calendar year thereafter. There will be two types of Grant Payments:

- (a) Grant Payments for Additional Property Taxes; and
- (b) Grant Payments for Sales Tax Revenue.

Grant payments shall be made in the form of refunds to Company of a percentage of Additional Property Taxes and Sales Tax Revenue over five years as follows:

Grant Payment Year	Refund Amount
1	80 percent
2	80 percent
3	60 percent

4	50 percent
5	25 percent

Section 4.03. Time for Payment.

(a) **Grant Payments for Additional Property Taxes.** The City will make a Grant Payment for Additional Property Taxes to the Company within 30 days of the later of: i) the the Hays County Tax Assessor-Collector (“**Hays County**”) remitting or crediting Additional Property Taxes to the City for the applicable calendar year and ii) the City’s receipt of a written request from Company for a Grant Payment. If the City has not received such applicable payment at the time of its receipt of the Company’s written request, the City shall immediately request such payment from Hays County. With respect to the first calendar year, the written request will be accompanied by a certification that Company is in compliance with this Agreement for such calendar year.

(b) **Grant Payments for Sale Tax Revenue.** The City will make a Grant Payment for Sales Tax Revenue to the Company within 30 days of the later of: i) the Comptroller remitting or crediting Sales Tax Revenue to the City after each Sales Tax Revenue Computation Quarter and ii) the City’s receipt of a written request from Company for a Grant Payment. If the City has not received such applicable payment at the time of its receipt of the Company’s written request, the City shall immediately request such payment from the Comptroller. With respect to the first Sales Tax Revenue Computation Quarter, the written request will be accompanied by a certification that Company is in compliance with this Agreement for the applicable Sales Tax Revenue Computation Quarter.

**ARTICLE V
REPRESENTATIONS AND WARRANTIES**

As of the Effective Date, Company represents and warrants to the City, as follows:

Section 5.01. Organization. Company is a duly organized Texas limited partnership, validly existing and in good standing under the laws of the State of Texas 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 Project Site may lawfully be conducted by Company.

Section 5.02. 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 5.03. 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 the Project Site is bound that would have any material adverse effect on Company's ability to perform under this Agreement.

Section 5.04. Full Disclosure. To Company's and City's actual knowledge without duty to investigate, 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.

Section 5.05. Authority. Each of Company and City represent that the execution, delivery and performance by it of this Agreement is within such Party's respective powers and has been duly authorized by such Party.

**ARTICLE VI
PERSONAL LIABILITY OF PUBLIC OFFICIALS
AND LIMITATIONS ON CITY OBLIGATIONS**

Section 6.01. Personal Liability of Public Officials. No employee or elected official of the City shall be personally responsible for any liability arising under or growing out of this Agreement. No employee of Company shall be personally responsible for any liability arising under or growing out of this Agreement.

Section 6.02. Grant Payment Subject to Appropriation. 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 accordance with 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) are payable under this Agreement, provided that City shall use best efforts to budget and appropriate such funds. If the City fails to appropriate funds for a Grant Payment, Company may at its option (i) terminate this Agreement effective upon written notice to the City, subject to any unpaid Grant Payment properly due to Company for which a lawful appropriation of funds has occurred, (ii) waive the request for such applicable year

or (iii) extend this Agreement until such time that all Grant Payments contemplated hereunder are fully paid to Company with each Grant Payment being re-calculated for the applicable year if extended.

ARTICLE VII INFORMATION

Section 7.01. Information. Company shall, upon written request from City, confirm in writing the applicable date that it obtained a certificate of occupancy and/or opened for business, as applicable, but not more than one (1) time during the Term.

Section 7.02. Confidentiality. Subject to the requirements of the Texas Public Information Act, or order of a court of competent jurisdiction, nothing contained herein shall require Company to disclose or make available to the public any information, the disclosure of which would violate applicable laws, or to disclose or make available to the public proprietary or other confidential or business information of Company as determined by Company. If the City receives a Public Information Act request for such information, the City will notify Company, and it shall be Company's responsibility to seek a request for a ruling from the Texas Attorney General as to whether such information may be withheld from the public.

ARTICLE VIII DEFAULT, TERMINATION AND REMEDIES

Section 8.01. Default and Termination Generally. Except as otherwise provided herein, if Company does not satisfy its obligations under Section 3.04 of this Agreement or otherwise materially defaults hereunder, the City may send written notice of such non-compliance to Company. If such non-compliance is not cured within thirty (30) days after Company's receipt of such notice or, if non-compliance is not reasonably susceptible to

cure within thirty (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 its sole remedy hereunder, terminate this Agreement or withhold Grant Payments that would have been due for the calendar year or years in which the non-compliance occurs. 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 such withheld Grant Payments and Grant Payments in future years for the remainder of the Term.

Section 8.02. No Obligation to Commence Construction, Construct or Operate. Notwithstanding anything herein to the contrary, Company shall have no obligation to commence construction, obtain a Certificate of Occupancy, open for business or operate; provided that Company will provide City with two (2) months’ notice of its intent to commence construction of the Project.

Section 8.03. Failure to Operate. If Company fails to satisfy the Opening Date set forth herein, subject to force *majeure* events and the applicable notice and cure period, City shall have the right to terminate this Agreement or withhold Grant Payments as its sole remedy upon the delivery of written notice to Company of such election at any time prior to Company’s satisfaction thereof.

Section 8.04. Offset. 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.

Section 8.05. Force Majeure Events. An event of *force majeure* means an event beyond the reasonable control of a Party obligated to perform an act or take some action under this Agreement (excluding, however, in all events financial inability), including, but not limited to, acts of God, pandemic, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, unusual weather delays, availability of supplies and materials, floods, lightning, permit delays, 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* event.

Section 8.06. Indemnification. The City shall not be obligated to pay any indebtedness or obligations of Company. Company hereby agrees to indemnify and hold the City, and the City's elected officials and employees, harmless from and against (i) any indebtedness or obligations of Company; (ii) any other loss, claim, demand, lawsuit, liability or damages arising from the gross negligence or intentional misconduct of Company in the performance of its obligations under this Agreement, or (iii) breach of any representation, warranty, covenant or agreement of Company contained in this Agreement, subject to the notice and cure provisions. Company's indemnification obligation hereunder shall include payment of the City's reasonable attorneys' fees, costs and expenses with respect thereto.

Section 8.07. Default by City. Notwithstanding anything herein to the contrary, if the City fails to timely comply with any of the requirements, obligations, duties, terms,

conditions or warranties of City set forth in this Agreement, such failures shall be a default by the City and the City shall have thirty (30) days to cure and remove the default upon receipt of written notice to do so from Company. Company shall have the right to pursue any rights or remedies at law or in equity against City or as set forth herein. The City's failure to appropriate funds under Section 6.02 is not a default, subject to the terms, provisions and conditions thereof. Notwithstanding anything to the contrary in this Agreement, Developer expressly releases the City from any claims for lost profits, speculative, indirect, consequential, or punitive damages arising from a breach of this Agreement.

ARTICLE IX MISCELLANEOUS

Section 9.01. 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.

Section 9.02. Amendments. This Agreement may only be amended, altered, or terminated by written instrument signed by all Parties.

Section 9.03. Assignment; Successors. 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.

Section 9.04. 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.

Section 9.05. Notices. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-

class mail, postage prepaid, or delivered by hand, messenger, reputable overnight carrier, or email and shall be deemed delivered when received at the respective physical or email address of the recipient Party set forth below, or at such other address furnished in writing to the other Party:

Company: H-E-B, LP
646 S. Flores Street
San Antonio, TX
Attn: Jared O'Brien
Telephone: (832) 496-1147
Email: *obrien.jared@heb.com*

With a copy to: Golden Steves & Gordon LLP
200 E. Basse Road, Suite 200
San Antonio, Texas 78209
Attn: Ami Gordon
Telephone: (210) 745-3710
Email: *agordon@goldensteves.com*

City: City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666
Attn: City Manager
Telephone: (512) 393-8101
Email: *citymanagerinfo@sanmarcostx.gov*

Section 9.06. Applicable Law and Venue. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in State courts located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

Section 9.07. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceability under the applicable present or future laws, then, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision

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

Section 9.08. Third Parties. The City and Company intend that this Agreement shall not benefit or create any right or cause of action in, or on behalf of, any third-party beneficiary, or any individual or entity other than the City and Company or permitted assignees or successors of the City and Company, except that the indemnification and hold harmless obligations by Company provided for in this Agreement shall inure to the benefit of the indemnitees named therein.

Section 9.09. No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

Section 9.10. Immunity. The City, in entering this Agreement does not waive, except when specifically waived by operation of law, its immunity from suit or any other limitations on its liability, contractual or otherwise, as granted by the Texas Constitution or applicable laws of the State of Texas.

Section 9.11 Undocumented Workers. During the term of this Agreement and in accordance with Chapter 2264 of the Texas Government Code, Developer agrees to not knowingly employ any undocumented worker and if convicted of a violation under 8 U.S.C § 1324a(f), grant payments shall terminate.

Section 9.12 Disclosure of Interested Parties. Developer agrees that it shall comply with the requirements of Section 2252.908 by filing form 1295 with the Texas Ethics Commission to the extent applicable.

Section 9.13. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument, and facsimile or electronic (in PDF) copies of this Agreement and facsimile or electronic (in PDF) signatures to this Agreement shall be authorized and deemed effective.

EXECUTED to be effective as of the Effective Date.

CITY OF SAN MARCOS, TEXAS:

By: _____
Stephanie Reyes, City Manager

H-E-B, LP:

By: _____
Benjamin R. Scott
Group Vice President of Real Estate and
Shopping Center Development

EXHIBIT A

[Attach site map, plat or legal description]