

## **CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVES AGREEMENT**

This Chapter 380 Economic Development Incentives Agreement (this “Agreement”) is made and entered into by and between the City of San Marcos (“City”) and Buc-ee’s San Marcos, LLC, a Texas limited liability company (“Developer”), as of February 20, 2024 (the “Effective Date”). City and Developer are sometimes individually referred to herein as a “Party” and are sometimes collectively referred to herein as the “Parties.”

### **RECITALS:**

**WHEREAS**, Developer is contemplating the purchase of a certain tract of land consisting of approximately 21.92 acres within the City of San Marcos, generally depicted in **Exhibit A**, attached hereto (“Property”); and

**WHEREAS**, in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Gov’t Code, City may establish and provide for the administration of a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity within the City; and

**WHEREAS**, in consideration for Developer’s agreement to purchase the Property and develop the Project (hereinafter defined) on the Property, City has agreed to offer incentives to Developer in the form of grants described in Article III of this Agreement; and

**WHEREAS**, the Project may require one or more alternatives to the application of certain provisions of the San Marcos Code of Ordinances with respect to certain requirements including, but not limited to, sign height and size limitations, outside storage screening requirements, landscape/parking design requirements, and building materials classifications; and the staff recommendation of approval of said alternatives, if necessary, shall be included as a material inducement to purchase the Property and develop the Project, and;

**WHEREAS**, Developer has agreed, in exchange for and as consideration for the incentives offered by the City, to satisfy and comply with the terms and conditions hereinafter set forth; and

**WHEREAS**, The City has concluded and hereby finds that this Agreement substantially advances a legitimate interest of the City by promoting economic development, attracting new consumers to the City, expanding the sales tax base of the City, increasing employment, and generating new ad valorem tax revenue for jurisdictions in Hays County, which will help stimulate the overall local economy; and

**NOW, THEREFORE**, by and in consideration of the mutual covenants and agreements contained herein, the City of San Marcos and Developer hereby agree as follows:

### **ARTICLE I DEFINITIONS**

Whenever used in this Agreement, the following terms shall have the meanings ascribed to them:

“**Affiliate**” means any entity directly or indirectly controlling or controlled by under direct or indirect common control with, or which directly or indirectly owns voting securities of an entity directly or indirectly controlled by, such specific entity.

“**Grant Payment(s)**” means the amount paid by the City to Developer under this Agreement.

**“Overpayment Amount”** means the percentage of a Grant Payment which Developer must reimburse to the City after delivery of a Job Compliance Affidavit showing Developer did not maintain the Minimum Job Threshold for the prior calendar year, which percentage shall be equal to the following: (175 minus Annual Job Average) divided by 175. For illustrative purposes, if Developer only maintains, on average, one-hundred fifty (150) full-time jobs in any given calendar year, then Developer shall reimburse to the City fourteen percent (14%) of the Grant Payments for such calendar year. Upon payment of the Overpayment Amount, Developer will be eligible to receive the -Grant Payments in future calendar months for the remainder of the Term.

**“Project”** means the development of approximately 21.92 acres as generally depicted on **Exhibit B** and the construction and operation of a retail development consisting of a Buc-ee’s Travel Center being approximately seventy-four thousand (74,000) square feet in size and providing approximately one hundred twenty (120) fueling positions. The Project shall have resulted in a minimum capital investment by Developer of \$50,000,000.00.

**“Project Term”** shall mean a period beginning on Tax Payment Effective Date and continuing for a period of fifteen (15) years.

**“Property”** means the real property described on **Exhibit A**, attached hereto.

**“Purchase Agreement”** means the Contract for the Purchase and Sale of Real Estate executed by and between Blanco Trace Development, LLC and CSMS Management, LLC dated as of September 22, 2022 for the sale of approximately 21.92 acres of real property in Hays County, Texas, as may be amended from time to time and/or assigned to Developer.

**“Real Property Improvements”** means any improvements constructed on the Project.

**“Sales Tax Revenues”** means the actual sales tax revenue derived from the sale of taxable items at the Project and collected by the City during the Project Term less any fees deducted by the Texas Comptroller.

**“Tax Payment Effective Date”** shall mean January 1 following the date the Project opens for business to the public.

## **ARTICLE II CONDITIONS TO PROJECT PERFORMANCE**

**2.1 Conditions to Project Performance.** The obligations of the parties hereunder are conditioned upon Developer acquiring title to the Property on or before the later to occur of June 1, 2024 or within 10 business days of the Property seller’s approval of a Final Plat creating the Buc-ee’s Parcel. In the event Developer does not acquire the title to the Property, Developer shall not have any obligation to construct or operate the Project and the City shall have no obligation to provide any economic development grant or other economic incentive to Developer.

## **ARTICLE III ECONOMIC DEVELOPMENT OBLIGATIONS OF DEVELOPER**

In consideration for the incentives provided by the City, Developer agrees and covenants, provided the conditions precedent set forth in Section 2.1 are satisfied, to construct and put into place real property improvements described in this Article, and to place all other economic development benefits set forth in this Article as follows:

### **Economic Development Agreement**

**3.1 Construction and Operation of Project.** Developer agrees to construct and operate a retail development consisting of a Buc-ee's Travel Center being approximately seventy-four thousand (74,000) square feet in size and providing approximately one hundred twenty (120) fueling positions on a tract of 21.92 acres as described on **Exhibit B** ("Project"). Developer shall submit to the City an application for a building permit no later than June 1, 2024 and shall commence construction of the Project on or before that date which is 90 days from Developer's receipt of the building permit. In no event shall Developer, having received an approved building permit from the City, commence construction of the Project later than March 31, 2025. Developer further agrees that the Project will be completed no later than eighteen (18) months after it commences construction of the Project. If requested in writing by the Developer, the City shall extend these deadlines for the period of delay, if (a) an event of Force Majeure delays commencement of construction or delays or suspends construction of the Project; or (b) disruption due to construction of infrastructure improvements by the City delays commencement of construction or delays or suspends construction of the Project. In addition, Developer and City each have the one-time right to extend any deadlines set forth herein for a period of up to 120 days for the convenience of such party, such right to be exercised by written notice to the other party on or before such deadline to be extended.

**3.2 Operations.** Developer agrees to operate the Project continuously for a period of fifteen (15) years beginning on the Tax Payment Effective Date (as defined below); provided, neither (a) minor interruptions due to emergency conditions nor (b) interruptions due to Force Majeure shall be a Default.

**3.3 Certificate of Completion and Subsequent Job Creation.** On or before the date that is twelve (12) months after Developer receives its Certificate of Occupancy for the Project (the "Job Threshold Commencement Date"), Developer shall create at least one hundred seventy-five (175) full time equivalent jobs (the "Minimum Job Threshold") on the Project and shall maintain on average, as calculated every year from and after the Job Threshold Commencement Date, such level of employment during the Project Term. Full time employees are those employees employed in positions scheduled to work at least one thousand eight hundred twenty (1,820) hours per year or forty-five (45) weeks per year. By the Job Threshold Commencement Date, Developer shall provide to the City an affidavit certifying its compliance with the foregoing employment requirements in the form attached hereto as **Exhibit C** ("Job Compliance Affidavit") and thereafter, on or before February 1 of each year until the end of the Project Term or earlier termination of this Agreement, Developer shall provide a supplementary Job Compliance Certificate to the City. If the average number of full-time jobs maintained by Developer and/or its Affiliate(s) for any calendar year (the "Annual Job Average") does not meet or exceed the Minimum Job Threshold, the Developer shall reimburse the City the Overpayment Amount. A failure to meet the Minimum Job Threshold shall not be a Default under this Agreement. The City's sole and exclusive remedy with respect to a failure to meet the Minimum Job Threshold shall be to demand the Overpayment Amount from Developer and to offset the Overpayment Amount from future Grant Payments if such Overpayment Amount is not paid as required herein.

**3.4 Construction and Dedication of Public ROW Improvements.** Provided Developer obtains all required permits and approvals, Developer shall construct, at its sole cost and expense, public ROW improvements required for the Project and shall convey the rights-of-way and the ROW improvements to the applicable governmental authority. All such public ROW improvements shall be constructed in consultation with the City and in accordance with all state and local requirements.

**3.5 Additional Developer Agreements.** Developer also agrees to the following requirements of the Project:

- a. Include the words "SAN MARCOS" within a panel of no less than 90 square feet attached to the Primary Freestanding Sign as generally depicted on **Exhibit D**. The Primary

Freestanding Sign shall be substantially similar in design and appearance to that shown in **Exhibit D**.

**b.** Maintain membership in the San Marcos Area Chamber of Commerce for the Term of the Agreement.

**c.** Upon opening for business to the public, provide space within the retail space of the Project for the location of an electronic kiosk provided by the City, at the City's sole cost and expense, which will provide digital access about various community-oriented sites venues, events, and programs. Developer shall have the right to designate the location, design, and hours of operation of the kiosk.

**d.** Install a rainwater reclamation system as part of the initial construction of the Project.

**e.** Within 30 days of the Project's opening to the public, make a one-time \$100,000.00 contribution to the City of San Marcos Community Fund.

**f.** Make an effort to hire qualified residents of the City of San Marcos for the travel center.

**g.** Make an effort to hire local contractors and suppliers in constructing the Project.

**h.** The Project will not provide for the servicing and/or fueling of 18 wheeled tractor-trailer or similar vehicles (excepting those 18 wheeled tractor-trailer or similar vehicles delivering merchandise, supplies and/or fuel to the Project).

**i.** Install one or more oil and water separators through which stormwater collected on the Property within the boundaries of the area depicted in **Exhibit E** shall pass prior to entering the city drainage or detention systems."

**j.** All exterior lighting fixtures will be high efficiency LED (or equivalent future technology), having time or light sensing controls with fully shielded, full cut-off and all downward directional fixtures mounted as low as practical.

**j.** The requirements set forth in subsections 3.5(a), , (c), (d),, , and (i) above shall survive expiration of the Project Term or termination of this Agreement due to Developer Default if and so long as Developer operates the Project on the Property. Notwithstanding anything to the contrary in this Agreement, the Property and the Project shall not be bound by this Agreement following any sale of the Property **after** termination of this Agreement or any foreclosure or deed in lieu of foreclosure by any lender with a deed of trust or other security interest in the Property or Project.

**3.6.** Developer shall comply with all obligations of state law relating to the timely collection, payment or remission of sales tax to the State of Texas. Developer shall be authorized to file such protest or make such objection to the payment of sales taxes as may be authorized by law.

## ARTICLE IV ECONOMIC INCENTIVES

**4.1 Project - Economic Development Grant.** Provided the conditions precedent set forth in Section 2.1 are satisfied, for a fifteen (15) year period commencing on the Tax Payment Effective Date, City agrees to pay to Developer an economic development grant in the form of monthly payments made solely from Sales Tax Revenues collected at the Project as allowed by Chapter 380 of the Texas Local Government Code, and as more particularly set forth in Subsection 4.1(a) below. The Grant Payments shall be payable to Developer as provided hereinafter, unless this Agreement is earlier terminated pursuant to the terms hereof. Developer understands and agrees the City is not certifying or otherwise encumbering any funds for the Grant Payments. Developer agrees not to make any claims against City for any monies other than those from Sales Tax Revenues from the Project. Nothing in this Agreement shall require City to make payment from revenue sources other than from Sales Tax Revenues from the Project.

**4.2 City's Chapter 380 Payments.** In consideration for the performance by Developer of its obligation under this Agreement, the City shall make monthly grant payments to Developer in the amount of fifty percent (50%) of the Sales Tax Revenues. For illustrative purposes, the City's current sales tax rate is 1.5 percent. As such, the City's grant payment to Developer would equal 50 percent of 1.5 percent, minus any fees deducted by the Texas Comptroller. Such monthly Grant Payments shall constitute the grant payment due and payable to Developer. Such monthly Grant Payments will be paid monthly for a period of fifteen (15) years beginning on the Tax Payment Effective Date. At the conclusion of each month during the Project Term, Developer shall provide an invoice to the City stating the amount of the Grant Payment due for such month and the documented basis for such calculation. Thereafter, the City will pay the Grant Payment within thirty days of the receipt of the invoice or within sixty days after the end of the month covered by the invoice, whichever is later until all payments are made in accordance with this Agreement. If the City disagrees with the invoice calculations, the parties shall consult to determine the correct amount for the Grant Payment. In recognition that Grant Payments are calculated and paid after taxes have been assessed and paid to the City, and therefore always run in arrears, the term of this Agreement shall be deemed to include any payments otherwise due and payable to Developer which extend beyond the original term of the Agreement. Within thirty (30) days after the City makes the last (twelfth) Grant Payment of each year of the Project Term, the City and Developer shall consult to determine if there is any difference between (1) the total amount of Grant Payments paid for the previous twelve month period, and (2) the total amount of such payments that are to be made under this Agreement based on the sales tax actually collected by the City on taxable sales at the Project (minus any fees deducted by the Comptroller and any refund by Developer or refunds required to be made by the City) for that one year period. If necessary, the parties shall then conduct a reconciliation. If, based on actual sales tax receipts, the amount of Grant Payments paid are less than the amount that should have been paid (based on the provisions of this Agreement) during such twelve (12) month period, the City shall pay the difference to Developer within sixty (60) days of the reconciliation calculation. If the amount of Grant Payments paid by the City exceeds the amount that should have been paid during that period, the City shall be entitled to a credit against the next Grant Payment(s) due to Developer in the amount that the total Grant Payments for that period exceeded the amount required by this Agreement. If the amount paid for the last year of the Project Term exceeds the amount that this Agreement requires, Developer shall pay an amount equal to such excess to the City within sixty (60) days of the reconciliation calculation.

**4.4 Payment from Current Revenues.** Any payments required to be made by the City under this Agreement will be paid only from current revenues or other funds lawfully available to the City for such purpose in each fiscal year during the Term.

**4.5. Modification of Sign Standards.** The City agrees to allow deviations from certain requirements under the San Marcos Development Code applicable to the construction of the Freestanding Pole Sign under Section 3.5(a) and shown in Exhibit D as follows:

**a.** The freestanding pole sign shall be permitted up to 68 feet in height instead of the 42.5 feet permitted in the San Marcos Development Code.

**b.** The freestanding pole sign shall be permitted for a sign face area up to 360 square feet (inclusive of the “San Marcos” panel) instead of the 260 square feet of area permitted in the San Marcos Development Code. A minimum of 90 square feet shall be dedicated for the “San Marcos” panel as depicted in the attached “WITH CITY PANEL” elevation.

Except as specifically modified in this section, all signs on the Property shall meet the applicable requirements of the San Marcos Development Code, including the location restrictions in Section 7.3.1.6.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE CITY**

**5.1** The City represents and warrants that:

**a.** The City is a home rule Texas municipal corporation and has the power to enter into and has taken all required actions to date required to authorize this Agreement and carry out its obligations hereunder.

**b.** The City knows of no litigation, proceedings, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed to Developer.

## **ARTICLE VI DEVELOPER REPRESENTATIONS AND WARRANTIES.**

**6.1** Developer represents and warrants that:

**a.** Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Project Term. As used herein, the term “good standing” means the status of Developer with the Comptroller of the State of Texas shall be “Active”.

**b.** No litigation or governmental proceeding is pending or, to the knowledge of Developer, threatened against or affecting Developer with respect to the Property or the Project that may result in any material adverse change in Developer’s business or operation.

**c.** No bankruptcy proceedings or other similar proceedings are currently pending or contemplated against Developer, and Developer has not been informed of any potential involuntary bankruptcy proceedings.

**d.** Developer shall remain current and in good standing with all sales taxes, property taxes, fees and other recurring charges of City, the State of Texas, and Hays County taxing jurisdictions with respect to the Property and the Project throughout the Project Term; provided Developer or its Affiliates may contest any such taxes as provided for by applicable law.

## **ARTICLE VII**

### **DEFAULT, TERMINATION, AND REMEDIES**

**7.1 Developer's Representation and Covenants limited to Project.** The City agrees and acknowledges that Developer's representations, warranties, covenants, agreements and performance obligations under this Agreement are limited to and apply exclusively to the operations of Developer at the Property for the Project and any determination as to whether Developer is in violation or Default of this Agreement will be limited to Developer's operations on the Property for the Project.

**7.2 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 Developer if Developer, its officers or signatories to this Agreement intentionally misrepresented or misrepresent any material fact or information: (a) upon which the City relied in entering into this Agreement; (b) upon which the City relies in making an incentive payment; or (c) as an inducement for the City to make an incentive payment.

**7.3 Developer Default and City Remedies.**

**a. Developer Default.** Developer will be deemed to be in "Default" of this Agreement if during the Project Term (1) it, or any successor thereof, discontinues business operations at the retail development described in Section 3.1 for a period of more than three hundred sixty five (365) consecutive days or (2) if it fails to substantially comply with any other material provision of this Agreement and does not cure such failure within sixty (60) days after receipt of notice from the City describing such failure in reasonable detail; provided, such failure shall not be a Default if such failure is not reasonably susceptible to cure within sixty (60) days and Developer commences curing such failure within such sixty (60) day period and thereafter continuously and diligently pursues such cure to completion. A failure under Section 3.3 of this Agreement shall not in any event be a Default.

**b. City Remedies.** Upon an un-cured Default by Developer, the City has the right to terminate this Agreement and/or pursue any legal or equitable remedies it may have under this Agreement or applicable law. Notwithstanding anything to the contrary in this Agreement, the City expressly releases Developer from any claims for speculative, indirect, consequential, or punitive damages arising from a breach of this Agreement.

**7.4 City Default and Developer Remedies.**

**a. City Default.** Except as provided in Section 4.4, the City will be deemed to be in "Default" of this Agreement only if it fails to substantially comply with any material provision of this Agreement and does not cure such failure within sixty (60) days after receipt of notice from Developer describing such failure in reasonable detail; provided, such failure shall not be a Default if such failure is not reasonably susceptible to cure within sixty (60) days and the City commences curing such failure within such sixty (60) day period and thereafter continuously and diligently pursue such cure to completion.

**b. Developer Remedies.** Upon Default by the City, Developer has the right to terminate this Agreement and/or pursue any legal or equitable remedies it may have under this Agreement or applicable law. Notwithstanding anything to the contrary in this Agreement, Developer expressly releases the City from any claims for speculative, indirect, consequential, or punitive damages arising from a breach of this Agreement.

## **7.5 Limitations.**

a. **Effect of Force Majeure Event.** A Party will not be deemed to be in Default or otherwise in violation of any term of this Agreement to the extent such Party's action, inaction or omission is the result of Force Majeure (defined in Section 8.13 herein) event. The Parties agree to use commercially reasonable efforts to promptly resolve any Force Majeure event that adversely and materially impacts their performance under this Agreement. A Force Majeure event pauses a Party's performance obligation for the duration of the event but does not excuse it.

b. **Overpayments.** Notwithstanding the limitations on remedies in this Article, it is understood and agreed that, because the incentive payments are from public funds, any verified overpayments to Developer may be recovered by the City or, at the City's sole discretion, through available remedies at law or in equity, or by reducing future incentive payments by the amount of an overpayment.

c. **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 owed to or for the benefit of the City by Developer; provided that before offsetting any amounts the City must provide Developer with (a) advance notice of such offset, (b) sixty (60) days to take action to remedy the situation giving rise to the offset, and (c) reasonable opportunity, at Developer's own expense, to contest such offset.

d. **Limitation on Damages.** Notwithstanding anything contained in this Agreement to the contrary, under no circumstance shall a Party be entitled to punitive, special or consequential damages.

e. **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.

With respect to the above-referenced remedies afforded to Developer under this Agreement, to the extent of the holding of the Texas Supreme Court in *City of League City, Texas v. Jimmy Changas, Inc.* (No. 21-0307), the City's execution of this Agreement constitutes a waiver certain immunities of the City from liability or suit solely with respect to (a) actions to enforce City's obligations under this Agreement and (b) writs of mandamus with respect to the performance of City's obligations under this Agreement. In all other respects, the Parties agree that City has not waived, nor shall be deemed hereby to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein.

**7.6 Indemnity. DEVELOPER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS COMMISSION MEMBERS, BOARD MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, AND CAUSES OF ACTIONS, LIABILITIES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, OF ANY NATURE WHATSOEVER, ASSERTED BY A THIRD PARTY AND ARISING OUT OF DEVELOPER'S PERFORMANCE OF THIS AGREEMENT. THE RIGHTS AND OBLIGATIONS CREATED BY THIS SECTION 7.6 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT BUT, WITH RESPECT TO ANY IMPROVEMENTS DEDICATED TO THE CITY, SHALL TERMINATE UPON FINAL ACCEPTANCE OF SUCH IMPROVEMENTS OR ACCEPTANCE OF SUCH CONVEYANCE BY THE CITY.**



**7.7     Acknowledgement of City's Compliance with Applicable Law.**

**a.**        Developer acknowledges and agrees that:

**i.**        The conveyances, dedications, easements and/or payment of money required by this Agreement to be performed by Developer, in whole or in part, do not constitute a:

- (A)     Taking under the Texas or United States Constitution;
- (B)     Violation of the Texas Water Code, as it exists or may be amended;
- (C)     Nuisance; or
- (D)     Claim for damages or reimbursement against City for a violation of any federal or state constitution, statute or case law or any federal, state or local ordinance, rule or regulation.

**ii.**        The amount of Developer's financial or infrastructure contribution or conveyance of real property or interests therein (after receiving all contractual offsets, credits and reimbursements, if any) agreed to in this Agreement is roughly proportional to the demand that such Developer's development places on City's infrastructure.

**iii.**        Developer hereby releases City from any obligation to perform or commission a takings impact assessment under Chapter 2007 of the Texas Government Code, as it exists or may be amended.

**iv.**        Developer hereby agrees that any property which it conveys to City pursuant to this Agreement is roughly proportional to the benefit received by Developer for such land, and Developer hereby waives any claim therefore that it may have. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any value received by City relative to said conveyance are related both in nature and extend to the impact of the development of Developer's adjacent property on City's infrastructure. Developer and City further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the public infrastructure.

**v.        DEVELOPER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, AND CAUSES OF ACTIONS, LIABILITIES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, OF ANY NATURE WHATSOEVER, ASSERTED BY THIRD PARTIES, INCLUDING BUT NOT LIMITED TO, DEVELOPER'S PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES OR TRUSTEES, BROUGHT PURSUANT TO THIS SECTION 7.7.**

**b.**        Developer releases City, its council members, officers, agents, representatives and employees from any and all claims or causes of action based on excessive or illegal exactions.

c. Developer waives any claim for damages or reimbursement against City for a violation of any federal or state constitution, statute or case law or any federal, state or local ordinance, rule or regulation.

d. This Section shall survive the termination of this Agreement.

**7.8 Vested Rights/Chapter 245 Waiver.** This Agreement shall confer no vested rights on the Property, or any portion thereof, unless specifically enumerated herein. In addition, nothing contained in this Agreement shall constitute a “permit” as defined in Chapter 245 of the Texas Local Government Code, as amended, and nothing in this Agreement provides City with fair notice of any project of Developer. Developer waives any statutory claim under Chapter 245 of the Texas Local Government Code, as amended, arising out of any acts or omissions under this Agreement. This Section shall survive the termination of this Agreement.

## **ARTICLE VIII MISCELLANEOUS PROVISIONS**

**8.1 Binding Agreement.** Except as provided herein, this Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

**8.2 Reports.** During the term of this Agreement, upon written request of the City, Developer shall provide public records reasonably requested by the City to confirm compliance with the Minimum Job Threshold requirement. Failure to provide such assistance shall be grounds for the City to withhold grant payments until assistance is provided and records received.

**8.3 No Waiver.** Except as set forth in Section 7.5 above, nothing contained in this Agreement shall be construed in any way to limit or to waive the City’s sovereign immunity. However, the Parties agree that they have entered into this Agreement in good faith, intend to deal with each other in good faith, and intend for this Agreement to be enforceable as to its terms under Texas law.

**8.4 Applicability of Ordinances.** Developer acknowledges and agrees this Agreement does not alter the applicability of the ordinances of the City. Further, this Agreement does not waive or limit any of the obligations of Developer to City under any other ordinance whether now existing or in the future arising. This Agreement (i) is not in any manner to be considered a waiver by the Parties of any requirement contained in the City’s ordinances and/or development requirements. (ii) will not and does not conflict with said ordinances, and in the event of such a conflict the terms of said ordinances control; and (iii) does not modify any City ordinances and/or development requirements. Where silent in this Agreement, the terms of City ordinances and/or development requirements shall control.

**8.5 Separate Status.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise.

**8.6 Construction and Interpretation.**

a. Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words “including”, “such as”, or words of similar import, when following any general term, statement or matter, shall not be construed to limit such statement, term or matter to specific terms, whether or not language of non-limitation, such as “without limitation” or “but not limited to” are used with reference thereto, but rather shall be deemed to refer to all

other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

**b.** The captions preceding the text of each article and section of this Agreement are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

**c.** This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one (1) complete document.

**8.7 Revenue Sharing Agreement.** The City designates this Agreement as materially similar to a revenue sharing agreement, thereby entitling the City to request and receive sales and use tax information from the State of Texas Comptroller, pursuant to Section 321.3022 of the Texas Tax Code for any and all projects associated with this Agreement.

**8.8 Assignability.** Developer may assign or transfer its rights (including the right to receive payments), duties and obligations under this Agreement to any person or entity only with prior written approval and consent by City, which approval shall not be unreasonably withheld, conditioned or delayed; provided, Developer may assign this Agreement to an Affiliate if such Affiliate assumes all obligations under this Agreement. In the event Developer desires to assign or transfer its rights, duties or obligations under this Agreement to any party, Developer or its proposed assignee, shall provide the City with such information that it reasonably requires to determine the ability of the assignee to comply with the terms of this Agreement, including the obligation to repay incentives in the event of default. Any buyer, assignee or transferee must agree in writing to assume all obligations of this Agreement. Any approval by the City must be in writing.

**8.9 Severability.** If any provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the Parties.

**8.10 Entire Agreement.** This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior written and oral matters related to this Agreement. Any amendment to this Agreement must be in writing and signed by all Parties hereto or permitted or approved assignees.

**8.11 Exhibits.** All exhibits attached to this Agreement are incorporated herein by reference and are expressly made part of this Agreement as if copied verbatim.

**8.12 Notice.** Any notice or demand, which any party is required to or may desire to serve upon the other, must be in writing, and shall be sufficiently served if (i) personally delivered, (ii) sent by registered or certified mail, postage prepaid, or (iii) sent by commercial overnight carrier, and addressed to:

If to City:

City of San Marcos  
ATTN: City Manager  
630 East Hopkins Street  
San Marcos, TX 78666

If to Developer:

Buc-ee's San Marcos, LLC  
327 FM 2004  
Lake Jackson, Texas 77566

With Copy to:

Buc-ee's, Ltd  
Attn: Legal Department  
327 FM 2004  
Lake Jackson, TX 77566

or such other address or addresses which any Party may be notified in writing by any other Party to this Agreement.

Such notice shall be deemed to have been served (a) four (4) business days after the date such notice is deposited and stamped by the U.S. Postal Service, except when lost, destroyed, improperly addressed or delayed by the U.S. Postal Service, or (b) upon receipt in the event of personal service, or (c) the first business day after the date of deposit with an overnight courier, except when lost, destroyed or improperly addressed; provided, however, that should such notice pertain to the change of address to either of the Parties hereto, such notice shall be deemed to have been served upon receipt thereof by the Party to whom such notice is given.

**8.13 Force Majeure.** In the event any party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such party's giving notice and full particulars of such force majeure in writing to the other party as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

**a.** The term "force majeure" as used herein, shall include, but not be limited to, pandemics, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other inability of either party, whether similar to those enumerated or otherwise and not within the control of the parties claiming such inability, which by the exercise of due diligence and care such party could not have avoided ("Force Majeure").

**8.14 Governing Law and Venue.** This Agreement and the relationship between the Parties shall be governed by the laws of the State of Texas, and venue for any action pertaining to this Agreement shall be in the State District Court of Hays County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of the said Court.

**8.15 Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Agreement, the Parties shall designate and appoint a representative to act as a liaison between the Parties. The initial representative for the City shall be the City Manager or his designee ("City Representative"), and the initial representative for Developer shall be Stan Beard ("Developer Representative"). The representatives shall be available at all reasonable times and places to discuss and review the performance of the Parties to this Agreement and the development of the Property.

**Economic Development Agreement**

**8.16 Effective Date.** This Agreement shall be binding and take effect only upon all Parties signatures hereto, attachment of all required exhibits, and receipt by the Parties of a fully executed copy hereof. For the purposes of timetables provided in this Agreement, the Effective Date shall be the date first above written.

**8.17 Legal Contest.** This Agreement is entered into in accordance with applicable law as understood by the Parties. In the event any part, provision or paragraph hereof shall become unenforceable by reason of judicial decree or determination, the Parties agree to the extent possible to ensure that all other provisions of this Agreement, including the intent of this Agreement, be honored and performed.

**8.18 Economic Incentives Constitute a Program.** This Agreement constitutes an economic development program to promote state or local economic development and to stimulate business and commercial activity in the City and the area annexed for limited purposes pursuant to Article III, Sec. 52-a, Texas Constitution and Chapter 380, Texas Local Government Code.

**8.19 Public and Confidential Information.** Information provided by or on behalf of Developer pursuant to this Agreement that Developer considers to be proprietary and/or confidential and marked as such shall be maintained by City as confidential to the extent allowed by law. If proprietary financial or trade secret information is requested under the Texas Public Information Act ("Act"), City shall follow the standards set out in the Act and under the Texas Attorney General's procedures for such requests and Developer shall be responsible for defending the confidentiality of such information.

**8.20 Automatic or Optional Termination.**

a. In the event Developer elects not to proceed with the acquisition of the Property or the development of the Project, Developer will notify City in writing and this Agreement and the obligations of the Parties hereunder shall automatically terminate and be of no further force or effect as of the date of such notice.

b. If Hays County does not approve a Chapter 381 economic development incentive agreement acceptable to Developer prior to acquiring the Property, Developer may, at its option, notify City in writing and this Agreement and the obligations of the Parties hereunder shall automatically terminate and be of no further force or effect as of the date of such notice.

If a term, covenant or condition of this Agreement does not have an earlier express termination date, all terms covenants and conditions of this Agreement shall automatically terminate upon the expiration of the Project Term.

**8.21 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.

**8.22 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.

**8.23 Incorporation of Recitals.** The Recitals set forth hereinabove are declared true and correct and are hereby incorporated into and made a part of this Agreement for all purposes.

EXHIBITS ATTACHED:

Exhibit A	Property Description (Survey and Legal Description)
Exhibit B	Project (Site plan for Buc-ee's)
Exhibit C	Job Compliance Affidavit (form)
Exhibit D	Pole Sign
Exhibit E	Oil/Water Separator Locations

*(Signature Pages Follow)*

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF SAN MARCOS:

By: \_\_\_\_\_  
Stephanie Reyes, City Manager

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

DEVELOPER:

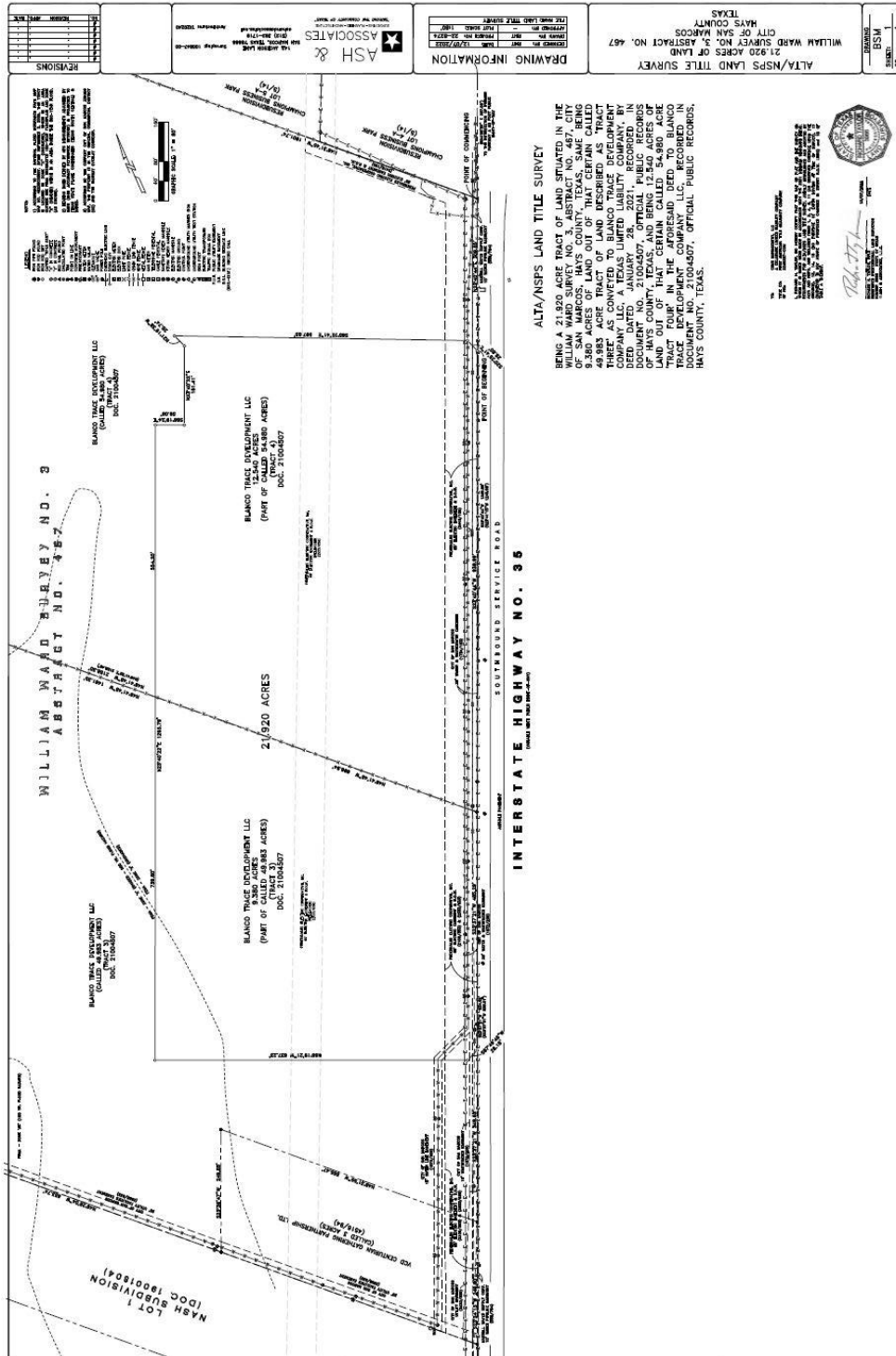
BUC-EE'S SAN MARCOS, LLC

By: \_\_\_\_\_  
Joe O'Leary, Vice President

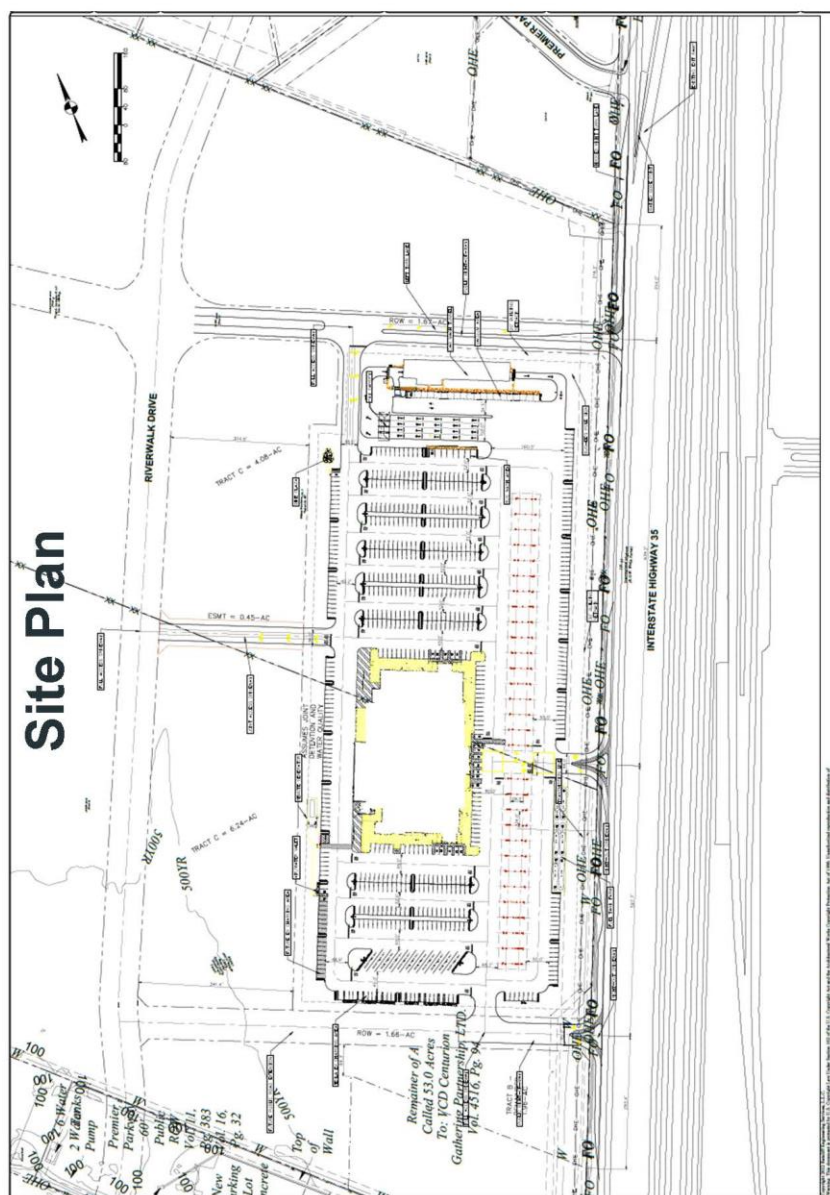


The map is a detailed plat map of a portion of the City of San Diego. It shows various lots and parcels, with a large yellow-shaded rectangular area highlighted in the center-right. The map includes numerous labels for lots, such as 'Lot 1, Block 1, Subdivision 1' and 'Lot 2, Block 1, Subdivision 1'. It also shows streets, easements, and other land features. A north arrow and a scale bar are located in the upper right corner. An inset map in the top right corner shows the location of the highlighted area within the larger context of the city. The map is titled 'PLAT MAP' and 'CITY OF SAN DIEGO'.

# EXHIBIT A-2



## EXHIBIT B



## EXHIBIT C

### JOB COMPLIANCE AFFIDAVIT

STATE OF TEXAS           §  
   §  
COUNTY OF \_\_\_\_\_ §

On this day personally appeared \_\_\_\_\_. a person known to me, who,  
being duly sworn, stated as follows:

1. "My name is \_\_\_\_\_. I am over 21 years of age, have never been convicted of a felony, and am fully competent to testify to the truth of the matters stated herein. To the best of my knowledge, each and every statement contained herein is true and correct.
2. I am the \_\_\_\_\_ of Buc-ee's San Marcos, LLC, a Delaware limited liability company
3. Buc-ee's San Marcos, LLC, and/or its affiliates, has/have directly maintained from January 1, 20\_\_ through December 31, 20\_\_, an average of at least 150 full time equivalent jobs at the Buc-ee's travel center located in San Marcos, Texas."

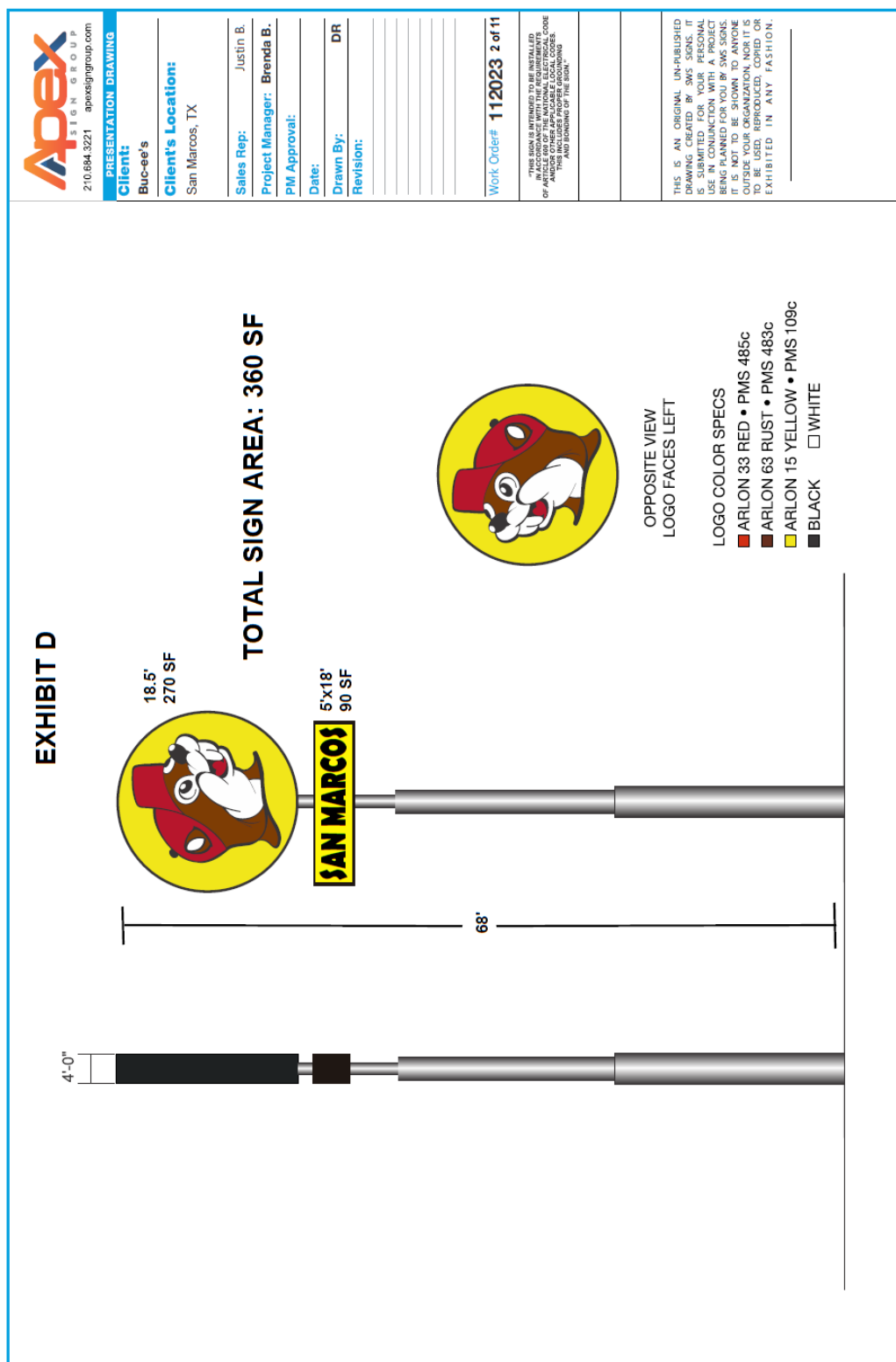
Further Affiant sayeth not.  
\_\_\_\_\_.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Sworn and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_ • 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

## Economic Development Agreement



## EXHIBIT E

