

Controller's Office

To the Honorable Mayor and City Council of the City of Houston:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- ( ) Funds have been encumbered out of funds previously appropriated for such purpose.
- ( ) Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- ( ) Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- (✓) No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- ( ) The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- ( ) A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- ( ) Other -

*C. B. Brown*  
*Attest*

City Controller of the City of Houston

Date: May 14, 2022

*AK*  
*De*

FUND REF: NA-5000 AMOUNT: 0 ENCUMB. NO.: NF600512-22

City of Houston, Texas, Ordinance No. 2022 - 390

AN ORDINANCE APPROVING AND AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF HOUSTON, TEXAS, AND MW HOUSTON, LLC FOR THE DEVELOPMENT, CONSTRUCTION AND OPERATION OF AN ART-FOCUSED, INTERACTIVE ENTERTAINMENT VENUE; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; AND DECLARING AN EMERGENCY.

\* \* \* \* \*

**WHEREAS**, by Ordinance No. 99-674, adopted by City Council on June 20, 1999, the City established a program in accordance with Article III, Chapter 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") under which the City has the authority to use public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City ("Chapter 380 Program"); and

**WHEREAS**, the Chapter 380 Program includes "Criteria for Chapter 380 Assistance" guidelines attached as Exhibit "A" to Ordinance No. 99-674; and

**WHEREAS**, Section 2 of Ordinance No. 99-674 provides that the Director of the City's Planning and Development Department or the Director's designee shall administer the Chapter 380 Program ("Program Administrator"); and

**WHEREAS**, the Director of the Planning and Development Department has designated the Deputy Director of the Mayor's Office of Economic Development/TIRZ as Program Administrator; and

**WHEREAS**, MW HOUSTON, LLC ("Developer") has submitted an application for assistance pursuant to the Chapter 380 Program; and

**WHEREAS**, Developer proposes to develop, construct and operate a permanent exhibition focusing on art and interactive entertainment, and consisting of approximately 32,242 square feet of space located generally at 2117 Opelousas Street #A in the Fifth Ward area of Houston (the "Project"); and

**WHEREAS**, the Program Administrator has reviewed Developer's application for assistance and has determined that Developer has satisfied the qualifications to be eligible for assistance, and further determined that the Project generally meets the "Criteria for Chapter 380 Assistance" guidelines; and

**WHEREAS**, in consideration of Developer causing the design, timely construction, development, financing, and operation of the Project, which will bring additional sales and use tax revenues to the City and create new jobs for the City, the City desires to enter into an Economic Development Agreement (the "Agreement") pursuant to Chapter 380 and other applicable law, to grant Developer a reimbursement of sales and use tax revenues generated by the Project, subject to Developer's satisfaction of certain conditions enumerated in the Agreement, including performance conditions relating to the investment of private funds for the Project, job creation and Project operations; and

**WHEREAS**, the City Council finds that the Project will result in a positive economic impact to the City through the timely development and diversification of the economy, elimination of unemployment and underemployment through the creation and retention of new jobs, the attraction of new businesses, and the retention and growth of the sales and use tax revenues generated by the Project for the City; and

**WHEREAS**, consistent with Article III, Chapter 52-a of the Texas Constitution, Chapter 380 and other law, the City Council finds it advantageous to the City to make a grant to Developer to advance the public purposes of promoting state or local economic development and stimulating business and commercial activity within the City; and

**WHEREAS**, the City Council has determined and hereby finds that the Agreement promotes economic development in the City and, as such, meets the requirements of Chapter 380 and the City's Chapter 380 Program, and is in the City's best interests; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** That the findings contained in the preamble of this Ordinance are determined to be true and correct and are adopted as a part of this Ordinance.

**Section 2.** That the City Council hereby approves and authorizes the contract, agreement, or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document attached hereto as **Exhibit "A"** and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

**Section 3.** That the Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such contract, agreement, or other undertaking referenced in the title of this Ordinance, in the event of changed circumstances.

**Section 4.** That the City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under such contract, agreement, or other undertaking without further authorization from City Council.

**Section 5.** That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 18<sup>th</sup> day of May, 2022.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is MAY 24 2022.

*A. J. Harris*  
City Secretary

(Prepared by Legal Department  
(JN:gd May 5, 2022)  
(Requested by Andrew F. Icken, Chief Development Officer)  
(L.D. File No. 042-2200019-001)

DocuSigned by: *[Signature]* <sup>DS</sup>  
03  
60540682004D4C0...  
Senior Assistant City Attorney



Meeting 5/18/2022

Aye	No	
✓		<b>Mayor Turner</b>
....	....	<b>Council Members</b>
✓		Peck
✓		Jackson
✓		Kamin
✓		Evans-Shabazz
✓		Martin
✓		Thomas
✓		Huffman
Absent on personal business		Cisneros
✓		Gallegos
✓		Pollard
✓		Castex-Tatum
✓		Knox
✓		Robinson
✓		Kubosh
✓		Plummer
✓		Alcorn
Caption	Adopted	

Captions Published in DAILY COURT REVIEW  
 Date: 5/24/2022

**EXHIBIT "A"**  
**ECONOMIC DEVELOPMENT AGREEMENT**

## ECONOMIC DEVELOPMENT AGREEMENT

This ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is made on the date countersigned by the City Controller ("Effective Date"), by and between the CITY OF HOUSTON, TEXAS ("City"), a Texas home-rule municipal corporation, and MW HOUSTON, LLC ("Developer"), a Delaware limited liability company doing business in Texas.

### RECITALS

A. Developer plans to enter into a lease agreement covering approximately 32,242 square feet of space located at 2117 Opelousas Street #A, Houston, TX 77020 ("Leased Premises"), with the owner of approximately 6.886 acres of land, in the Fifth Ward area of the City ("Land"), and depicted on the map attached hereto as **Exhibit A**, for the purpose of developing, constructing and operating an immersive and interactive art experience to include art installations, video and music production, and extended reality content ("Project"). A conceptual site plan for the Project is attached hereto as **Exhibit B**.

B. The City recognizes the positive economic impact that the Project will bring to the City through the timely development and diversification of the economy, elimination of unemployment and underemployment through the creation and retention of new jobs, the attraction of new businesses, and the retention and growth of the sales and use tax revenues generated by the Project for the City.

C. The City has established a program in accordance with Article III, Chapter 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380"), authorizing the City to use public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City of Houston, including the authority to enter into sales and use tax rebate agreements such as this Agreement.

D. Consistent with Article III, Section 52-a of the Texas Constitution, Chapter 380, and other laws, the City wishes to enter into this Agreement with Developer to advance the public purposes of developing and diversifying the economy of the state, and eliminating unemployment or underemployment in the state.

E. The City has also adopted financial policies relating to local economic development that prioritize increased economic opportunity for underserved Houstonians with the goal of reducing poverty and unemployment, including financial incentive programs and resources to targeted areas that have poverty and unemployment rates above the City average. The Project will be part of a mixed-use redevelopment located in a census tract designated as a "high-poverty area" and Qualified Opportunity Zone, and this Agreement is consistent with the City's policies.

F. In consideration of Developer causing the design, timely construction, development, financing, and operation of the Project, which will bring additional sales and use tax revenues to the City and create new jobs for the City, the City agrees to grant to Developer, pursuant to Chapter 380 and other applicable law, a reimbursement of sales and use tax revenues generated by the Project, the terms and conditions of which are more fully described in this Agreement.

G. The City has determined and hereby finds that this Agreement promotes economic development in the City of Houston and, as such, meets the requirements of Chapter 380 and the City's established economic development program, and is in the City's best interests.

H. To ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Chapter 380 and other law, Developer has agreed that its receipt of such benefits shall be conditioned upon its satisfaction of certain conditions enumerated herein, including performance conditions relating to the investment of private funds for the Project, job creation and Project operations.

I. In consideration of the foregoing recitals and the mutual promises, agreements, services, obligations, covenants, and benefits set forth in this Agreement, the City and Developer agree and contract as follows:

## **ARTICLE I DEFINITIONS AND TERMS**

Section 1.1 Incorporation of Recitals and Exhibits. The recitals in this Agreement and the exhibits attached to this Agreement are hereby incorporated for all purposes.

- Exhibit A** Map of Leased Premises and Land
- Exhibit B** Conceptual site plan
- Exhibit C** Form of Operations Commencement Letter
- Exhibit D** Form of Developer Certification
- Exhibit E** Form of Agreement for Disclosure of Confidential Tax Information

Section 1.2 Singular and Plural. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa.

Section 1.3 Definitions and Terms. The terms "Agreement," "Chapter 380," "City," "Developer," "Effective Date," "Land," "Leased Premises," and "Project" shall have the meanings set forth above, and the terms defined below shall have the meanings set forth below.



"Affiliate" shall mean all entities, incorporated or otherwise, under common control with, controlled by, or controlling the Developer. For purposes of this definition, "control" means fifty percent (50%) or more of the Developer determined by either value or vote.

"Director" shall mean the City's Chief Development Officer or such official's designee.

"Force Majeure" shall have the meaning ascribed to it in Article VI of this Agreement.

"Full-time Employee" shall mean an employee who is provided a regular work schedule of at least 30 hours per week.

"Part-time Employee" shall mean an employee, who is not a Full-time Employee. Part-time Employees who, collectively, are provided a work schedule of at least 30 hours per week shall be considered one Full-time Employee.

"Maximum Reimbursement Amount" shall mean TWO MILLION SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS (\$2,700,000) over the Term of this Agreement, which amount may be reduced pursuant to the terms of this Agreement.

"Operations Commencement Date" shall mean the date on which both of the following events have occurred: (i) Developer receives from the City a certificate of occupancy for the Project, and (ii) the Project is open for business to the public.

"Operating Year" shall mean the period of time beginning on the Operations Commencement Date and continuing through the last day of the calendar quarter that includes the one-year anniversary of the Operations Commencement Date, and each of the nine (9) consecutive twelve-month periods thereafter. The initial Operating Year (referred to as "Operating Year 1") will be more than twelve (12) months.

"Reimbursement Amount" shall mean ninety percent (90%) of the Sales Tax Revenues for Operating Years 1 through 10, with the total Reimbursement Amount not to exceed the Maximum Reimbursement Amount.

"Initial Reimbursement Date" shall mean the last day of the calendar quarter (e.g., March 31, June 30, September 30 or December 31) immediately following the calendar quarter that includes the one-year anniversary of the Operations Commencement Date. The Initial Reimbursement Date, and each anniversary date thereof during the Term of this Agreement, is individually referred to as a "Reimbursement Date."

“Sales Tax Revenues” shall mean the amount of sales and use tax generated by the Project and collected by or for the City and remitted to the City by the State Comptroller pursuant to Chapter 321, Texas Tax Code, as amended.

“State Comptroller” shall mean the Texas Comptroller of Public Accounts, or such other agency responsible for collecting sales and use taxes within the State of Texas and remitting them to the City.

## ARTICLE II TERM OF THE AGREEMENT

Section 2.1 Term. This Agreement shall remain in effect for the period commencing on the Effective Date and, unless sooner terminated in accordance with this Agreement, ending on the earlier of: (i) the date that the Maximum Reimbursement Amount has been paid to Developer, and (ii) the 10th Reimbursement Date (“Term”).

## ARTICLE III DEVELOPER OBLIGATIONS

In consideration of City agreeing to pay Developer the Reimbursement Amount in accordance with the terms, provisions and conditions of this Agreement, Developer agrees to comply with and satisfy the following conditions in order to receive the Reimbursement Amount:

Section 3.1 Lease Execution. Developer agrees to enter into a lease agreement (“Lease”) with the Landowner for the Leased Premises within sixty (60) days of the Effective Date of this Agreement, and furnish a copy of the executed Lease (which may be reasonably redacted by Developer) to the City within ten (10) days of execution; provided, however, that the Director, in his or her sole judgment and discretion, may extend the time period for lease execution upon Developer’s written request. Developer’s failure to enter into such Lease within sixty (60) days of the Effective Date (as same may be extended) shall be deemed an “Event of Termination.”

Section 3.2 Commencement of Operations. Developer agrees to cause the Operations Commencement Date to occur within thirty (30) months of the Effective Date of this Agreement, and execute an Operations Commencement Letter in the form attached to this Agreement as **Exhibit C** as soon as reasonably practical after the Operations Commencement Date. Upon Developer’s written request, the Director shall grant a one-time six-month extension for the Operations Commencement Date to occur. Developer’s failure to cause the Operations Commencement Date to occur within thirty (30) months of the Effective Date (as same may be extended) shall be deemed an “Event of Termination.”

Section 3.3 Project Funding. Developer agrees to fund and pay at least \$30,000,000 (“Minimum Investment”) of Project Costs associated with the Project.

Developer's failure to satisfy the Minimum Investment shall not constitute a default under this Agreement or otherwise affect the City's obligation to pay the Reimbursement Amount as provided herein. As used herein, "Project Costs" shall mean all costs of design, development and construction of the Project incurred by Developer, including (i) all costs of design, engineering, planning, materials, labor, construction, testing and inspection and other services arising in connection with the design and construction of the Project; (ii) all payments arising under any contracts entered into for the design or construction of the Project; and (iii) all costs incurred in connection with obtaining governmental approvals, certificates and permits required in connection with the construction of the Project.

Section 3.4 Operational Condition. Developer shall continuously operate the Project at least five (5) days a week during the Term of this Agreement, subject only to temporary and occasional closures as set forth in the Lease (the "Operational Condition").

Section 3.5 Job Creation. Developer agrees to employ at least: (i) 102 Full-time Employees at the Project during Operating Year 1; (ii) 111 Full-time Employees at the Project during Operating Year 2; (iii) 116 Full-time Employees at the Project during Operating Year 3; and (iv) 127 Full-time Employees at the Project during Operating Years 4 through 10 (collectively, the "Job Creation Condition"). Developer further agrees to use commercially reasonable efforts to pay its employees a minimum pay rate of at least \$18 per hour, as supported by Developer's payroll reports or similar records. If Developer fails to meet the Job Creation Condition for any Operating Year (which shall be deemed an "Event of Reduction"), then the City, as its sole and exclusive remedy, shall reduce the Reimbursement Amount for that Operating Year by a percentage representing the rate of non-compliance. By way of example, if Developer employs 51 Full-time Employees at the Project during Operating Year 1, instead of the required 102, the Reimbursement Amount for Operating Year 1 shall be reduced by fifty percent (50%).

Section 3.6 Hiring Local Area Residents. Developer agrees to use commercially reasonable efforts to hire local residents at the Project, with a goal of at least twenty-five percent (25%) of Full-time Employees being local residents (such, the "Local Hiring Goal"). In this section, a "local resident" refers to an individual who resides in any of the following locations: zip code 77020, zip code 77026, the Greater Fifth Ward neighborhood, or the Denver Harbor neighborhood. It is understood that Developer does not ask prospective job candidates where they reside during their candidacy. As part of this Section, Developer also agrees to: (i) provide City Council Members and the Director a link to available job postings and hiring information for placement on council member websites and local job boards, and (ii) participate in local workforce development initiatives and programs, such as the City's Community Re-Entry Network Program and Turnaround Houston. The parties agree that Developer will be deemed to be in compliance with this section if Developer satisfies the Local Hiring Goal or if it demonstrates it has undertaken such efforts listed in clauses (i) and (ii) above (such, the "Local Development Initiatives").

For any Operating Year that Developer: (A) does not meet the Local Hiring Goal and (B) either fails to: (i) provide City Council Members and the Director a link to available job postings and hiring information for placement on council member websites and local job boards, or (ii) participate in local workforce development initiatives and programs, such as the City's Community Re-Entry Network Program and Turnaround Houston (the failure to meet both Clauses (A) and (B)(i) or the failure to meet both Clauses (A) and (B)(ii) is a separate "Event of Reduction"), then the City, as its sole and exclusive remedy, may reduce the Reimbursement Amount for that Operating Year by up to five percent (5%) for each Event of Reduction (i.e., up to ten percent (10%) in total). The Director agrees to exercise good faith judgment in determining the amount of reduction in the Reimbursement Amount, if any.

Section 3.7 Partnership with Schools and Colleges. Developer agrees to pursue partnerships with schools and colleges to foster art education, such as conducting events or trainings for educators; providing complimentary use of Project facilities; offering paid internships for students; participating in workforce development programs through Fifth Ward Community Redevelopment Corporation; donating free tickets to area schools for field trips; providing tours of the Project; and conducting workshops or demonstrations of art installations to students (collectively, the "Partnership Condition"). If Developer fails to meet the Partnership Condition for any Operating Year (which shall be deemed an "Event of Reduction"), then the City, as its sole and exclusive remedy, may reduce the Reimbursement Amount for that Operating Year by up to five percent (5%). The Director agrees to exercise good faith judgment in determining the amount of reduction in the Reimbursement Amount, if any.

Section 3.8 Public Art Installations. Developer agrees to create or commission one (1) public art installation to be located at or nearby the Project, which installation shall be made accessible or visible to the general public at no cost during each Operating Year (the "Public Art Condition"). If Developer fails to meet the Public Art Condition for any Operating Year (which shall be deemed an "Event of Reduction"), then the City, as its sole and exclusive remedy, may reduce the Reimbursement Amount for that Operating Year by up to five percent (5%). The Director, in his or her sole judgment and discretion, shall determine the amount of reduction in the Reimbursement Amount, if any.

Section 3.9 Minority and Women Business Enterprise. With respect to the design, installation and construction of the Project, Developer shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances (link: [https://library.municode.com/tx/houston/codes/code\\_of\\_ordinances?nodeId=COOR\\_CH\\_15CO\\_ARTVMIWOSMBUEN](https://library.municode.com/tx/houston/codes/code_of_ordinances?nodeId=COOR_CH_15CO_ARTVMIWOSMBUEN)) and the applicable Office of Business Opportunity's ("OBO") Policies and Procedures. Developer agrees to make good faith efforts to award subcontracts or supply agreements in at least ten percent (10%) of the value of such contracts to MWBEs listed on OBO's certified firm directory ("Stated MWBE Goal"). Developer acknowledges that it has reviewed the requirements for good faith efforts on file with OBO and will comply with them as such exist on the Effective Date.

If Developer's MWBE participation level is less than the Stated MWBE goal, then Developer must provide a written explanation to the Director of the following: (1) the discrepancy between Developer's MWBE participation level and the Stated MWBE goal, (2) the reason for the discrepancy (in Developer's opinion), and (3) Developer's good faith efforts (in accordance with the City's policy) towards achieving the Stated MWBE Goal. Developer's failure to meet the Stated MWBE Goal shall not constitute a default under this Agreement or otherwise affect the City's obligation to pay the Reimbursement Amount as provided herein.

Section 3.10 Local Contractors and Suppliers. Developer agrees to exercise commercially reasonable efforts to utilize local contractors and suppliers at the Project. A contractor or supplier shall be considered as "local" if it has maintained an office within the City of Houston for at least one year. As part of exercising commercially reasonable efforts, Developer agrees to: (i) provide the Director a link to available contracting opportunities at the Project for distribution and placement on various websites, newsletters, and local supplier/contractor boards; (ii) partner with Mayor's Office of Cultural Arts, Houston Arts Alliance and other local art organizations to promote opportunities for local artists and suppliers; and (iii) explore and provide other opportunities for recruiting local artists and suppliers. Developer's failure to comply with this section shall not constitute a default under this Agreement or otherwise affect the City's obligation to pay the Reimbursement Amount as provided herein.

Section 3.11 Developer Certification. It is a condition to payment of the Reimbursement Amount that Developer submit to the City, no later than sixty (60) days prior to each Reimbursement Date, an annual Developer Certification substantially in the form attached hereto as **Exhibit D**, unless the City approves any variance thereto requested by Developer, certifying that the Developer has met all applicable conditions, together with documentation as reasonably necessary to evidence same. In the event Developer fails to comply with and satisfy any applicable condition, Developer shall submit documentation showing specific efforts to satisfy and comply with such condition(s).

Section 3.12 Maintenance of Records. Developer shall be responsible for maintaining records evidencing compliance with all of Developer's obligations required under this Article III, and shall make such records available to the City for examination at the City's reasonable request. The City shall have the right to review and audit such records at Developer's Houston offices during customary business hours upon a minimum of 30 days' prior written notice to Developer. Developer shall keep its books and records available for this purpose for at least two (2) years after this Agreement terminates.

Section 3.13 Sales Tax Disclosure. The City agrees to request from the State Comptroller sales tax reports as provided in Section 321.3022, Texas Tax Code, as amended, establishing the amount of Sales Tax Revenues during the Term ("Sales Tax Disclosure"). Developer agrees to provide any release or releases to the City necessary to allow the State Comptroller to provide the Sales Tax Disclosure. The City and

Developer shall rely on the Sales Tax Disclosure as accurate and definitive for purposes of this Agreement. A form of release is attached hereto as **Exhibit E**. The City shall not be required to pay Developer the Reimbursement Amount until such time that Developer provides any required release and the State Comptroller provides the City the Sales Tax Disclosure.

#### **ARTICLE IV CITY OBLIGATIONS**

Section 4.1 Payment of Reimbursement Amount. Beginning on the Initial Reimbursement Date and continuing on each subsequent Reimbursement Date during the Term of this Agreement, the City agrees to pay the Reimbursement Amount due to Developer for the preceding Operating Year.

Section 4.2 Maximum Reimbursement Amount. The City shall not be obligated to make payments to Developer that cumulatively exceed \$2,700,000 over the Term of this Agreement, which amount may be reduced pursuant to the following paragraph.

The Project may be eligible for designation as an enterprise project under Chapter 2303, Texas Government Code ("Texas Enterprise Zone Act"). In the event the Project is so designated and Developer is awarded a refund of state sales and use tax pursuant to the Texas Enterprise Zone Act, the Maximum Reimbursement Amount under this Agreement shall be reduced by the amount of the state sales and use tax refund awarded to the Developer. A reduction in the Maximum Reimbursement Amount pursuant to this section shall be in addition to any other applicable reductions provided for in this Agreement. Developer agrees to notify the City of the amount of state sales and use tax refund awarded to Developer pursuant to the Texas Enterprise Zone Act, if any.

Section 4.3 Confidential Information. The parties hereby designate this Agreement as a revenue sharing agreement, thereby entitling the City to request sales tax information from the State Comptroller, pursuant to Section 321.3022, Texas Tax Code, as amended. Unless determined otherwise by the Texas Attorney General in writing, any information received relating to the Sales Tax Revenues shall be considered confidential proprietary financial information not subject to immediate release to the public. The City shall seek a written opinion from the Texas Attorney General, raising any applicable exception to release, prior to any release to a third party under the Texas Public Information Act.

#### **ARTICLE V DEFAULT AND REMEDY**

Section 5.1 Developer Default.

Section 5.1.1 Developer's failure to comply with Section 3.1 or Section 3.2 of this Agreement shall be deemed an "Event of Termination." Upon the

occurrence of an Event of Termination, the City shall have the option to terminate this Agreement by written notice to Developer. An Event of Termination may not be cured by Developer and this Agreement shall terminate upon the date of Developer's receipt of the City's written notice. The Director may act on behalf of the City to effect any such termination.

Section 5.1.2 Developer's failure to meet any of the conditions and obligations enumerated in Sections 3.5 through 3.8 for any Operating Year during the Term of this Agreement shall be deemed an "Event of Reduction." Upon the occurrence of an Event of Reduction, the City shall, as its sole and exclusive remedy, reduce the Reimbursement Amount to be paid to Developer in accordance with the applicable section(s). A reduction in the Reimbursement Amount due to an Event of Reduction shall be irrevocable and may not be recouped by Developer for the Operating Year in which the Event of Reduction occurred. For purposes of clarity, an Event of Reduction shall apply only to the Operating Year in which it occurs. The Maximum Reimbursement Amount for which the Developer is eligible over the Term shall remain unchanged. For clarity, the Developer shall be eligible to receive the Maximum Reimbursement Amount during the Term if Sales Tax Revenues generated in subsequent Operating Years support such reimbursement.

Section 5.1.3 Developer's failure to comply with and satisfy Sections 3.4, 3.11, 3.12 or 3.13 under this Agreement in any material respect, shall be deemed an event of default (unless otherwise specified elsewhere in this Agreement), whereupon the City shall deliver written notice to Developer detailing such event(s) of default. If such event(s) of default is not cured within sixty (60) days following the date of Developer's receipt of the City's written notice, then the City, as its sole and exclusive remedy, may terminate this Agreement by written notice to Developer, and the City's obligation to make any payments to Developer shall be null and void as of the date of such written notice. The Director may act on behalf of the City to effect any such termination.

Section 5.2 City Default. The City's failure to perform any of its obligations in substantial compliance with this Agreement (except for its obligation to pay Developer, with which the City shall strictly comply) shall be deemed an event of default, whereupon Developer shall deliver written notice to the City detailing such event(s) of default. If such event(s) of default is not cured within sixty (60) days following the date of the City's receipt of Developer's written notice, then Developer shall have all rights and remedies to which it is entitled under this Agreement and under all applicable laws. Notwithstanding anything in this Agreement which is or may appear to be to the contrary, nothing in this Agreement shall be construed as a waiver of the City's immunity from suit.

## ARTICLE VI FORCE MAJEURE

Section 6.1 Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of Force Majeure (as hereinafter defined) that directly impacts such party, then the time for such performance shall be extended by the amount of time of such delay. "Force Majeure" means fires, interruption of utility services, epidemics in the City, pandemics, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Developer, riots, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical.

## ARTICLE VII GENERAL PROVISIONS

Section 7.1 Time of the Essence. Time is of the essence in the performance of this Agreement.

Section 7.2 Notices. All notices, requests, demands or consents required or permitted to be given hereunder must be in writing and must be delivered in person or by certified mail, return receipt requested, or by prepaid overnight delivery service. Any notice addressed and mailed as provided herein shall be deemed to be given 3 business days after being mailed, and any notice delivered in person shall be deemed to be given upon delivery. Notice must be addressed to the party to whom the notice is given at its address set out below or other address the receiving party has designated previously by proper notice to the sending party.

If to Developer:

Meow Wolf, Inc.  
For: MW Houston, LLC  
Address: 4001 Office Court Drive, Suite 206  
Santa Fe, NM 87507  
Attn: Melissa Garza, General Counsel

With a copy to (which shall not constitute notice):

Ryan, LLC  
Three Galleria Tower  
13155 Noel Road  
Suite 100  
Dallas, Texas 75240  
Attn: Chief Legal Officer



If to the City:

City of Houston Mayor's Office of Economic Development  
901 Bagby  
Houston, Texas 77002  
Attn: Chief Development Officer

Section 7.3 Severability. Should any of the provisions contained in this Agreement be held unenforceable in any respect, such unenforceability shall not affect any other provisions of this Agreement, and all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

Section 7.4 Entire Agreement. This Agreement merges the prior negotiations and understandings of the parties and embodies the entire agreement of the parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the parties regarding this Agreement.

Section 7.5 Written Amendment. Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Developer. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

Section 7.6 Governing Law and Venue. This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

Section 7.7 Captions. Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

Section 7.8 Non-waiver. If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

Section 7.9 Enforcement. The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Developer shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Developer's compliance with this Agreement, with the exception of those documents made confidential by federal or state law or regulation.

Section 7.10 Ambiguities. If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

Section 7.11 Survival. Developer shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement.

Section 7.12 Successors and Assigns. This Agreement binds and benefits the parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment set out in the following section. This Agreement does not create any personal liability on the part of any officer or agent of the City or the Developer.

Section 7.13 Assignments. Developer shall have the right to assign this Agreement to an Affiliate or any other entity that succeeds to the ownership of Developer without the approval of the City, provided that Developer provides the City with written notice within thirty (30) days after the date of such assignment. Otherwise, Developer shall not assign this Agreement at law or otherwise without the City's prior written consent; the Director may act on behalf of the City to provide any such approval or consent. Developer shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

Section 7.14 Remedies Cumulative. Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

Section 7.15 Governmental Function. The City has the legal authority to perform and to provide the governmental function or service which is the subject matter of this Agreement. Notwithstanding anything contained herein to the contrary, the City neither waives nor relinquishes any immunity or defense on behalf of itself and its respective agents, officers, directors, officials, legal representatives and employees as a result of the execution of this Agreement and performance of the functions or obligations described herein.

Section 7.16 Signatures. The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

**[EXECUTION PAGE FOLLOWS]**

The undersigned, intending to be legally bound hereby, have duly executed this Agreement effective as of the Effective Date.

**DEVELOPER:**

**MW HOUSTON, LLC,**  
a Delaware limited liability company

By: MEOW WOLF, INC., a Delaware corporation, its Managing Member

By: \_\_\_\_\_  
Name: Jose Tolosa  
Title: CEO  
Date: May \_\_, 2022

**THE CITY:**

ATTEST

**CITY OF HOUSTON, TEXAS**

\_\_\_\_\_  
Pat Jefferson Daniel  
City Secretary

\_\_\_\_\_  
Sylvester Turner  
Mayor of the City of Houston

APPROVED AND  
RECOMMENDED:

COUNTERSIGNED:

\_\_\_\_\_  
Andrew F. Icken  
Chief Development Officer

\_\_\_\_\_  
Chris Brown  
City Controller

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

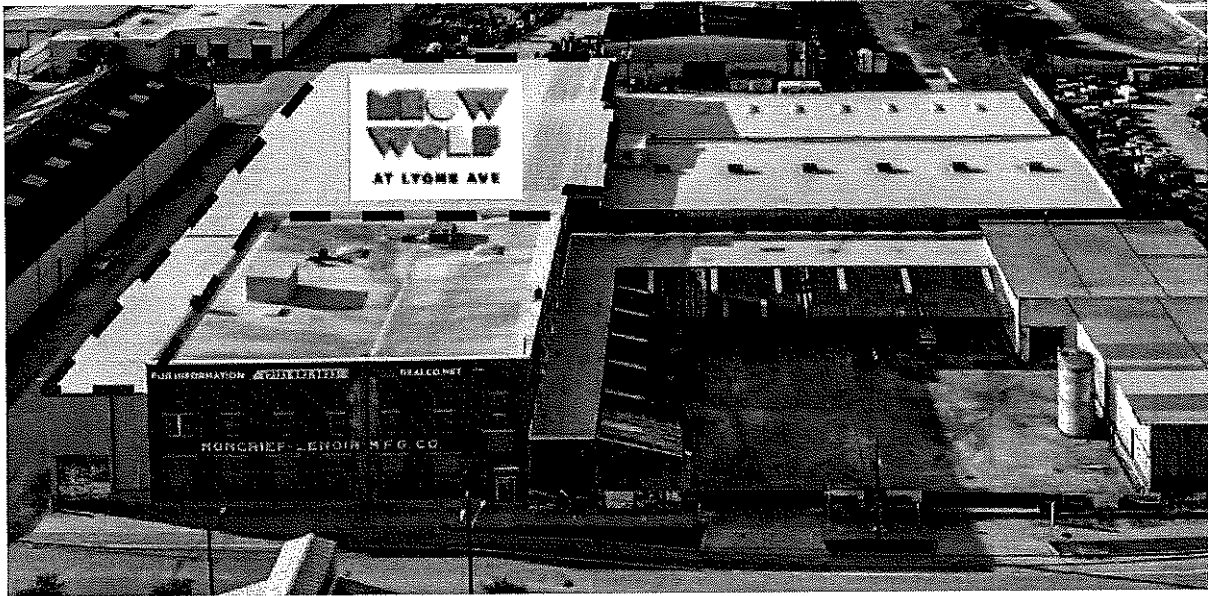
APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney  
LD No. 042-2200019-001

**EXHIBIT A**

**MAP OF LEASED PREMISES AND LAND**





# EXHIBIT B

## CONCEPTUAL SITE PLAN

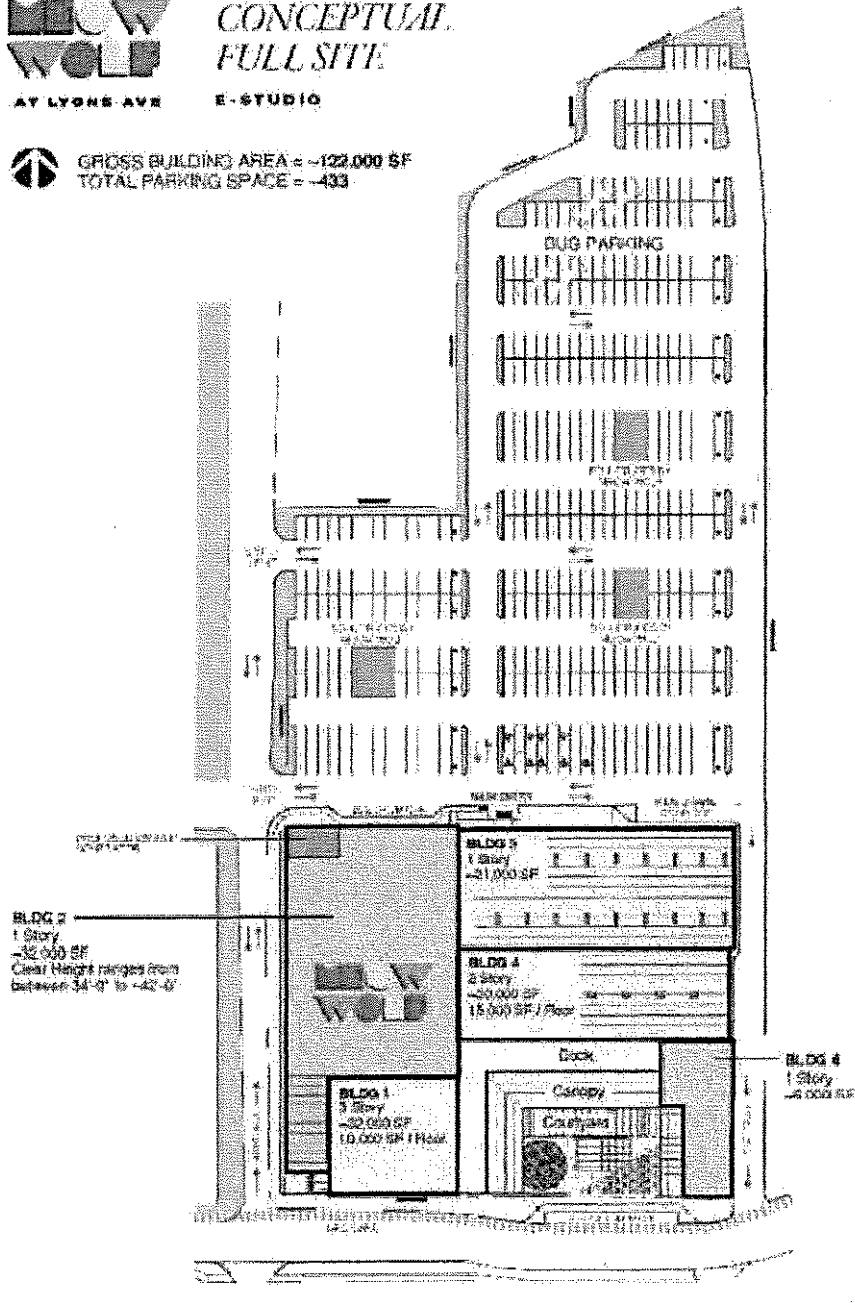


CONCEPTUAL  
FULL SITE

E-STUDIO



GROSS BUILDING AREA = ~122,000 SF  
TOTAL PARKING SPACE = ~433



**EXHIBIT C**

**FORM OF OPERATIONS COMMENCEMENT LETTER**

This Operations Commencement Letter is made as of \_\_\_\_\_, 20\_\_\_\_, between MW Houston, LLC, a Delaware limited liability company ("Developer"), and City of Houston, a Texas home-rule municipal corporation ("City"). Developer and City agree to and acknowledge the following matters:

- 1) Developer and City have entered into that certain Economic Development Agreement dated effective \_\_\_\_\_, 20\_\_\_\_ ("Agreement"), covering the Project located at 2117 Opelousas Street #A, Houston, Texas 77020, as more particularly described in the Agreement.
- 2) All terms defined in the Agreement shall have the same meaning when used in this Operations Commencement Letter.
- 3) A certificate of occupancy for the Project was received on \_\_\_\_\_, 20\_\_\_\_.
- 4) The Project opened for business to the public on \_\_\_\_\_, 20\_\_\_\_.
- 5) The Operations Commencement Date is \_\_\_\_\_, 20\_\_\_\_.
- 6) The Operating Years are as follows:
  - a) Operating Year 1 \_\_\_\_\_, 20\_\_\_\_ through \_\_\_\_\_, 20\_\_\_\_;
  - b) Operating Year 2 \_\_\_\_\_, 20\_\_\_\_ through \_\_\_\_\_, 20\_\_\_\_;
  - c) Operating Year 3 \_\_\_\_\_, 20\_\_\_\_ through \_\_\_\_\_, 20\_\_\_\_;
  - d) Operating Year 4 \_\_\_\_\_, 20\_\_\_\_ through \_\_\_\_\_, 20\_\_\_\_;
  - e) Operating Year 5 \_\_\_\_\_, 20\_\_\_\_ through \_\_\_\_\_, 20\_\_\_\_;
  - f) Operating Year 6 \_\_\_\_\_, 20\_\_\_\_ through \_\_\_\_\_, 20\_\_\_\_;
  - g) Operating Year 7 \_\_\_\_\_, 20\_\_\_\_ through \_\_\_\_\_, 20\_\_\_\_;
  - h) Operating Year 8 \_\_\_\_\_, 20\_\_\_\_ through \_\_\_\_\_, 20\_\_\_\_;
  - i) Operating Year 9 \_\_\_\_\_, 20\_\_\_\_ through \_\_\_\_\_, 20\_\_\_\_;
  - j) Operating Year 10 \_\_\_\_\_, 20\_\_\_\_ through \_\_\_\_\_, 20\_\_\_\_;



7) The Reimbursement Dates are as follows:

- a) \_\_\_\_\_, 20\_\_ ;
- b) \_\_\_\_\_, 20\_\_ ;
- c) \_\_\_\_\_, 20\_\_ ;
- d) \_\_\_\_\_, 20\_\_ ;
- e) \_\_\_\_\_, 20\_\_ ;
- f) \_\_\_\_\_, 20\_\_ ;
- g) \_\_\_\_\_, 20\_\_ ;
- h) \_\_\_\_\_, 20\_\_ ;
- i) \_\_\_\_\_, 20\_\_ ;
- j) \_\_\_\_\_, 20\_\_ .

IN WITNESS WHEREOF, Developer and City have executed this Operations Commencement Letter as of the day and year first above written.

**"DEVELOPER":**

**"CITY":**

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

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

**EXHIBIT D**

**FORM OF DEVELOPER CERTIFICATION**

Chief Development Officer  
City of Houston, Texas  
P.O. Box 1562  
Houston, Texas 77002

Re: Developer Certification for Operating Year \_\_\_\_; Economic Development Agreement dated effective \_\_\_\_\_, 2022 ("Agreement"), by and between the City of Houston, Texas ("City") and Meow Wolf, Inc. ("Developer").

This Developer Certification is being delivered by Developer to the City pursuant to Section 3.11 of the Agreement, for purposes of demonstrating compliance with developer obligations. All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

The undersigned is a corporate officer of Developer (or such officer's designee) authorized to make this Developer Certification, and hereby attests to the following statements which are true and are within the personal knowledge of the undersigned.

1. Section 3.3 - Project Funding (one-time requirement)
  - a. The actual amount of Project Costs funded and paid by Developer is \$\_\_\_\_\_. [Please include high-level summary of Project Costs. If Developer has not satisfied the Minimum Investment of at least \$30,000,000, Developer will also include statement describing reason(s) for the reduced investment.]
2. Section 3.4 - Operational Condition (applicable in all Operating Years)
  - a. During Operating Year \_\_\_\_\_, Developer continuously operated the Project \_\_\_\_\_ days a week, subject only to temporary and occasional closures as set forth in the Lease.
3. Section 3.5 - Job Creation (applicable in all Operating Years)
  - a. During Operating Year \_\_\_\_\_, Developer employed \_\_\_\_\_ Full-time Employees as defined in the Agreement. [Please include a copy of Developer's employee handbook in effect during the applicable Operating Year, and payroll reports or similar records to support Full-Time Employee count.]
  - b. During Operating Year \_\_\_\_\_, employees received a minimum pay rate of \$\_\_\_\_\_ per hour. [Please include payroll reports or similar records to support average pay rate.]
  - c. The table below shows the distribution of jobs and salaries:

Employee Type	Count	Average Salary
Full-Time, Salaried		
Full-Time, Hourly		
Part-Time, Hourly		

4. Section 3.6 – Hiring Local Area Residents (applicable in all Operating Years)

a. Local Hiring Goal

i. During Operating Year \_\_\_\_\_, Developer had \_\_\_\_\_ Full-time Employees, of which \_\_\_\_\_% were considered local residents. [Please include supporting documentation.]

b. Local Development Initiatives

i. During Operating Year \_\_\_\_\_, Developer provided City Council Members and the Director links to available job postings and hiring information for placement on council member websites and local job boards. [Please include supporting documentation.]

ii. During Operating Year \_\_\_\_\_, Developer participated in local workforce development initiatives and programs, such as: \_\_\_\_\_. [Please include supporting documentation.]

5. Section 3.7 - Partnership with Schools and Colleges (applicable in all Operating Years)

a. During Operating Year \_\_\_\_\_, Developer pursued partnerships with schools and colleges to foster art education, such as: \_\_\_\_\_. [Please include supporting documentation.]

6. Section 3.8 - Public Art Installation (applicable in all Operating Years)

a. During Operating Year \_\_\_\_\_, Developer created or commissioned \_\_\_\_\_ public art installation(s), which was/were installed at the following location(s): \_\_\_\_\_, and made accessible or visible to the general public at no cost. [Please include picture of public art installation(s).]

7. Section 3.9 - Minority and Women Business Enterprise (as applicable)

a. During Operating Year \_\_\_\_\_, Developer awarded \_\_\_\_\_ (dollars) in subcontracts or supply agreements, of which \_\_\_\_\_% were with firms listed in the OBO's certified firm directory. [Please include supporting documentation. Also, if less than 10%, please provide a written explanation to the Director of the following: (1) the discrepancy between Developer's MWBE participation level and the Stated MWBE goal, (2) the reason for the discrepancy (in Developer's opinion), and (3) Developer's good faith efforts (in accordance with the City's policy) towards achieving the Stated MWBE Goal.]

8. Section 3.10 - Local Contractors and Suppliers (as applicable)

a. During Operating Year \_\_\_\_\_, Developer's efforts to utilize local contractors and suppliers at the Project include: \_\_\_\_\_. [Please describe efforts and

include supporting documentation, e.g., list of local artists employed by or contracted for the Project.]

9. This Developer Certification is being provided no later than sixty (60) days prior to each Reimbursement Date and Developer agrees to provide such additional documentation as reasonably necessary to evidence compliance with the Agreement.

MW HOUSTON,LLC

BY:

\_\_\_\_\_  
NAME – SIGNATURE

\_\_\_\_\_  
NAME – PRINTED

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Sworn to and subscribed to before me on the \_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of MW Houston,  
LLC, a Delaware limited liability company doing business in Texas.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_

**EXHIBIT E**

**FORM OF AGREEMENT FOR  
DISCLOSURE OF CONFIDENTIAL TAX INFORMATION**

This Agreement for Disclosure of Confidential Tax Information ("Agreement") is entered into between the City of Houston, Texas ("City") and \_\_\_\_\_ [*business name as registered with Texas Comptroller*] ("Taxpayer") for the purposes indicated herein.

I, \_\_\_\_\_ [*name*], \_\_\_\_\_ [*title*], and the duly authorized agent of \_\_\_\_\_ [*business name as registered with Texas Comptroller*], a vendor doing business at \_\_\_\_\_ [*name and address of business location as registered with Texas Comptroller*], do hereby stipulate and agree as follows:

I hereby authorize the Texas Comptroller's Office to release and disclose any and all Sales and Use tax information relating to the operation of Taxpayer's business location to the City. I understand and agree that this release will be made by the Texas Comptroller's Office to the City on an ongoing monthly basis beginning on the date this Agreement is executed. This Agreement waives any and all rights with respect to the parties regarding the confidentiality of tax information under Sections 111.006, 151.027, Tax Code, or other state law.

The City agrees that it will use the tax information disclosed by the Texas Comptroller's Office pursuant to this Agreement solely and exclusively for the purposes of an economic development agreement between the City and Taxpayer pursuant to Chapter 380, Texas Local Government Code.

This Agreement is entered into in Houston, Harris County, Texas, and Texas law will apply to its interpretation and enforcement.

SIGNED AND AGREED TO on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Printed name:  
Title:  
On Behalf of the "City"

\_\_\_\_\_  
Printed Name:  
Title:  
On behalf of the "Taxpayer"  
Texas Taxpayer Identification No.  
\_\_\_\_\_  
Outlet No. \_\_\_\_\_  
Agreement Expiration Date: \_\_\_\_\_