

**PROJECT PERFORMANCE AGREEMENT BETWEEN
THE CITY OF HEWITT AND ATWOOD RANCH & HOME**

This Project Performance Agreement is entered into by and between the City of Hewitt, Texas (hereinafter "City") and Atwood Distributing, LP d/b/a Atwood Ranch & Home (hereinafter "Business").

1. Program Project The Business proposes to construct and operate an Atwood's Store on a parcel of land of approximately 409,464 square feet (9.4 acres) located on Lot 10 Block 1 at the NWC of I-35 and Alliance Pkwy, Commerce Park in Hewitt, McLennan County, Texas, and being more specifically described as set forth in Exhibit "A" attached hereto and incorporated herein (hereinafter "Property"). The Store shall be at least 50,000 square feet, and the capital investment of the Business in developing and constructing the Store, including land acquisition, infrastructure, and construction shall be at least \$4,000,000 (hereinafter "Project").

1.1 The Business proposes that the Store will start operations by October 1, 2021 barring extensions required by matters beyond its control (hereinafter "Operations Date").

2. Commitment and Incentives. Should Business construct the Project and begin operations by the Operations Date (hereinafter "Development Requirements") then in return for such performance, the City agrees to pay an economic development grant to the Business as authorized by Section 380.001 of the *Texas Local Government Code* and the City's Chapter 380 Economic Development Program. The Grant is further described in Sections 3 and 4 below.

3. Grant

3.1 Definitions.

"Grant" means a Chapter 380 Economic Development grant as authorized by Section 380.001 of the *Texas Local Government Code* and the City's Chapter 380 Economic Development Program to be made in annual payments as provided herein. This Grant is not a sales tax rebate, rather, the amount of the grant is tied to a percentage of sales taxes generated by the Business and received by the City for purposes of providing a logical calculation.

"Agreement Year" means a calendar year within the term of this Agreement.

"Base Year" means the calendar year when this Agreement is signed.

"Base Year Amount" means the total City sales tax collected by operations on the Project Premises during the Base Year.

"City's Sales Tax Rate" The current aggregate sales tax rate charged in the City as of the Effective Date is eight and one-quarter percent (8.25%), of which one and one-half percent (1.5%) represents the City's sales tax rate.

"Net Sales Tax Revenues" means the City sales tax revenues generated from sales tax collected by the Business in each Agreement Year in excess of the Base Year Amount, less any refunds by the Business or required to be made by the City.

"Annual Grant Amount" is the amount of the grant to be paid to the Business at the end of the Agreement Year.

"Total Grant Amount" is the not-to-exceed total of all grant funds that the Business is eligible to receive under this Agreement, which is \$500,000. The Grant shall end when the \$500,000 cap is reached, regardless of whether additional time remains on the Grant Term. If the \$500,000 cap is reached during an Agreement Year, the Annual Grant Amount payable to the Business will be pro-rated.

"Grant Percentage" means the percentage provided in Section 4 of this Agreement to be applied in each Agreement Year to the Net Sales Tax Revenues to arrive at the Annual Grant Amount.

"Grant Period" means the total number of Agreement Years during which the Business is eligible for a grant, which is a period of seven (7) calendar years following the start of the Business' operations.

3.2 Calculation.

Upon satisfaction of the Development Requirements, City shall commence making the annual grant payments of the Annual Grant Amount to Business calculated as follows:

City Sales Tax Collections attributable to the Business in Agreement Year - Base Amount and refunds = Net Sales Tax Revenues x Grant Percentage= Annual Grant Amount.

If the Business begins operations during an Agreement Year, the Annual Grant Amount will be determined on a prorated basis for the remainder of that Agreement Year, which shall count as the first Agreement Year against the Grant Period. By written notice provided to the City, the Business may elect to have the Grant Period start on the next January 1 instead of during a partial calendar year. If such an election is made, Business will not be entitled to any Grant Amount for the partial year.

3.3 Payment. The Annual Grant Amount for an Agreement Year does not become payable until the City receives full payment from the state comptroller of its share of sales taxes for the calendar year constituting the Agreement Year. Payment shall be made to the Business by the City within 30 days after receipt of payment in full of the City's share of sales taxes for the Agreement Year. The total of all Annual Grant Amounts shall not exceed the Total Grant Amount.

3.4 Compliance with Development Requirements. Payment to Business of any Grant funds under this Agreement is subject to the Business complying with its Development Requirements. The effect of non-compliance is addressed in Section 6 below.

4. Grant Period and Percentage. The economic development grant provided to the Business by the City under this Agreement shall:

- a) Be for a Grant Period of seven (7) years; and
- b) Be at a Grant Percentage of One-hundred (100%) percent.

The Grant Period is subject to when the Total Grant Amount of \$500,000 is reached. Once the Total Grant Amount is reached the Grant ends, even if years remain under the Grant Period. In no circumstance will the total of all Annual Grant Amounts paid to the Business exceed the Total Grant Amount. If the Total Grant Amount is reached during an Agreement Year, the Grant does not apply to the rest of the year.

5. Reporting and Provision of Information.

5.1 General. The Business would necessarily have to meet its Development Requirements for the Grant to begin, it is important that the City receive information during the Project, and before the Operations Date.

5.2 Reports During Development and Construction. At least quarterly during the development and construction of the Project, the Business shall provide a written report to the City Manager showing the percentage of completion of the Project, the estimated completion date of the Project, and whether the Business is still on target for the Operations Date.

5.3 Capital Investment Verification. Prior to the Operations Date the Business shall provide the City Manager with a reasonably itemized summary of Project costs to verify that the capital investment promised has been made by the Business. The City Manager or his/her designee shall have the right to inspect records supporting the cost summary upon reasonable request.

5.4 Extension of Operations Date. The Operations Date is fixed as set forth above and shall only be extended when required due to matters clearly outside of the control of the Business. The Business must submit a written request for extension to the City Council which identifies in detail the reasons that the extension is needed. The City Council will not unreasonably withhold an extension however, it may deny an extension if the Business fails to show that the matter(s) requiring the extension were clearly beyond its control. The total of all extensions may not exceed 180 days.

6. Breach by Business.

6.1 General. If the Business builds nothing and/or never begins operations the Grant never begins and that is the sole consequence. The breaches addressed hereunder are for less than complete failure to meet the Development Requirements. These are:

- a. failure to meet the \$4,000,000 capital investment requirement;
- b. failure to begin operations by the Operations Date (including any extensions granted);
- c. failure to provide required reports; and/or
- d. failure to provide a Project cost summary to verify capital investment or to allow a review of supporting documents as required herein.

In the instance of one or more of these breaches the Total Grant Amount will be reduced on a set pro-rata basis described below. For (a), failure to provide at least 75% of the capital investment shall also result in cancellation of the Grant.

6.2 Breach of Capital Investment Requirement. Reductions in the Total Grant Amount for capital investment equal to or more than 75% of the required capital investment, but less than 100% will be addressed by reducing the Total Grant Amount by the percentage deficiency in capital investment. For example, if the Business achieves 90% of its capital investment requirement, the Total Grant Amount is reduced by 10%.

6.3 Failure to Begin Operations by the Operations Date (including any extensions granted). Failure to meet the Operations Date (plus approved extensions) will result in reductions to the Total Grant Amount as follows:

- a. 1-12 months of delay- reduction of 1% per month; and
- b. Delay exceeding 12 months---reduction of 5% per month.

6.4 Failure to Provide Reports. The City Manager and the Business shall set a date when the first report is due. Thereafter, a report is due every three months. The City Manager shall send the business a notice that its report is due at least 10 days before the due date. If the Business has been given the notice and still fails to provide a report, a warning will be given in writing to the Business by the City Manager that if it fails to provide a report within 10 days of the warning, a 1% reduction will be made to the Total Grant Amount. If the Business still fails to provide a report, a 1% reduction is made to the Total Grant Amount.

6.5 Failure to Provide Cost Summary Verification or Allow Review of Supporting Documents. If the Business fails to provide a Project cost summary verifying its capital investment or refuses to allow the City Manager or designee to review the supporting documents on reasonable request, the Grant shall be suspended until such time as the Business complies.

6.6 Reductions are Cumulative. The reductions to the Total Grant Amount set forth above are cumulative of one another.

7. Additional Requirements and Terms.

7.1 Business shall keep the Project insured against loss or damage by fire or any other casualty.

7.2 Inventory does not count as capital investment.

7.3 The City, by approving this Agreement, assumes no liability or responsibility therefore or for any defect in said Project. The relationship between parties at all times shall NOT be deemed a partnership or joint venture for purposes of this Agreement, or any other purpose.

7.4 If on account of any breach or breach by Business of its obligations under the terms, conditions, or covenants of this Agreement, it shall be necessary for City to employ or engage an attorney or attorneys to enforce or defend any of the rights or remedies hereunder, and should City prevail, City shall be entitled to any reasonable attorney's fees, costs, or expenses it incurs in connection herewith.

7.5 If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective while this agreement is in effect, such provision shall be automatically deleted from this agreement and the legality, validity and enforceability of the remaining provisions of this agreement shall not be affected thereby.

7.6 This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are performable in McLennan County, Texas. Venue of any dispute under or arising out of this Agreement shall be in a court of competent jurisdiction in McLennan County, Texas.

7.7 This Agreement and its attachments constitute the sole and only Agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof. No representations outside of this Agreement are being relied upon by the parties.

7.8 No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

7.9 The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

7.10 This Agreement is binding on the parties and their respective successors, heirs

and assigns.

7.11 This agreement may be executed in multiple counterparts, each of which constitutes an original.

7.12 The City acknowledges that Business has completed and submitted to the City a Form 1295 as required by Section 2252.908 of the Government Code and agrees to acknowledge such receipt on the Texas Ethics Commission website.

7.13 As required by Chapter 2264 of the Government Code Business has executed the certification regarding the hiring of undocumented aliens attached hereto as **Exhibit "B"**, the terms of which are incorporated herein,

7.14 As provided by Section 2270.002, Government Code, Business certifies that it does not boycott Israel. Business acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

7.15 Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Business certifies Business (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Business acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.


7.16 This Agreement shall be considered a "contract subject to his subchapter" under Section 271.152 of the Local Government Code for purposes of enforcement of this Agreement.

AGREED:

Atwood Distributing, LP d/b/a Atwood Ranch & Home

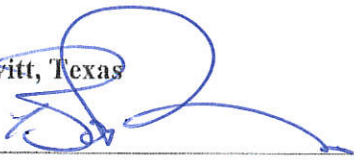
BY: Atwood Distributing GP, LLC

ITS: General Partner

Signed by: 
Brian Atwood, Manager

Date: 3/12/2020

City of Hewitt, Texas

Signed by: 
Bo Thomas, City Manager

Date: 3-17-2020

Attest:

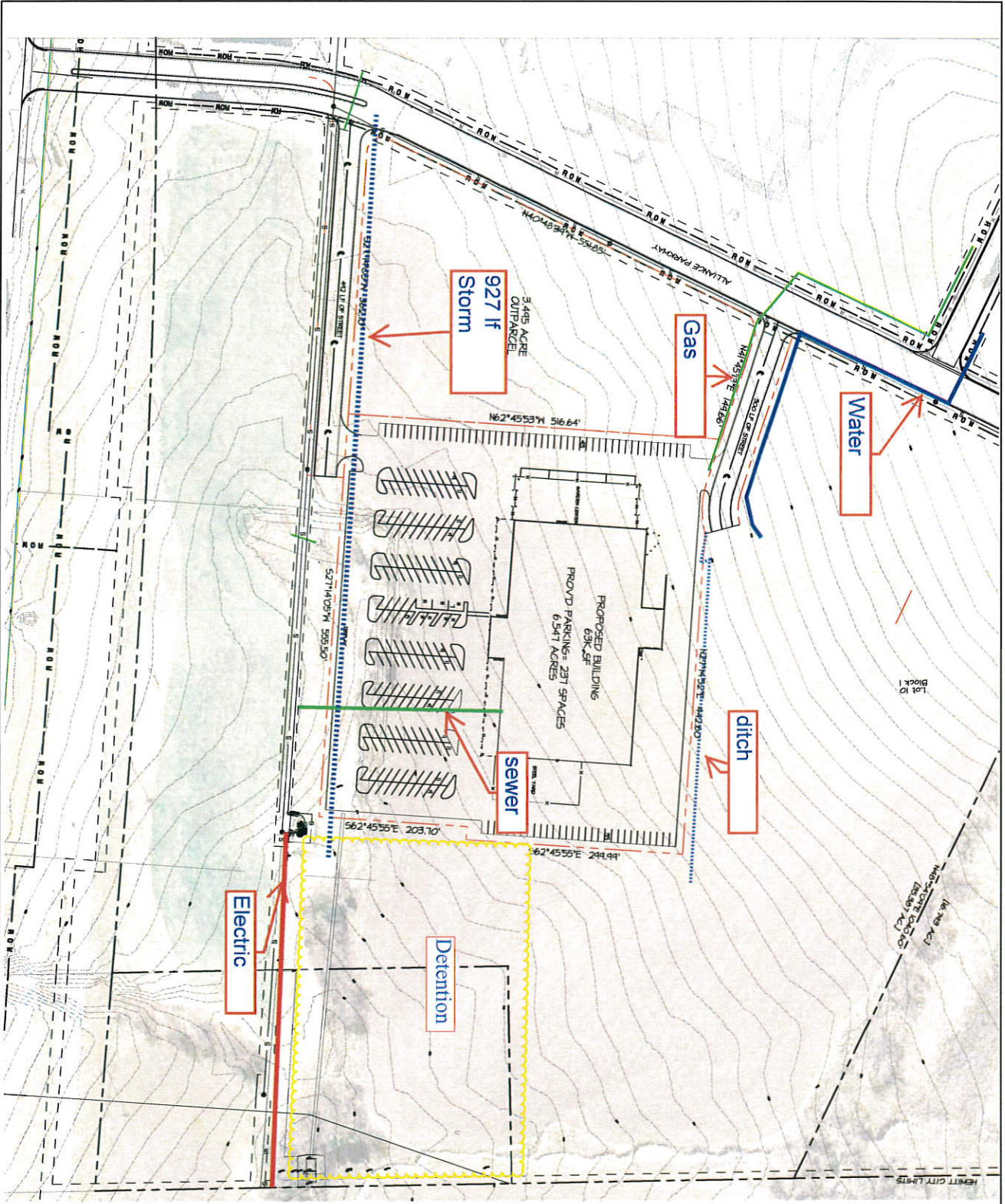
Lydia Lopez, City Secretary

Approved:

Michael W. Dixon, City Attorney

Exhibit "A"

Property



Drawing Date: 02/28/2018 Project: 181111 Drawing: 0000000000	HEMITT, TX RABB CONSTRUCTION	SITE PLAN	Scale: 1" = 100' Drawn By: XXXXXXXXXXXX Checked By: XXXXXXXXXXXX File No:	[REDACTED] - 2018 HEMITT, TX, 181111 PROJECT: HEMITT, TX PREPARED FOR: RABB CONSTRUCTION DATE: 02/28/2018 BY: [REDACTED]	MTG engineers & surveyors 5950 SHAWNEE ROAD DALLAS, TEXAS 75249 PHONE: 972.443.8800 FAX: 972.443.8801 WWW.MTG-ENGINEERS.COM © MTE 2018	No.	Revision/Description	Date

Exhibit "B"

Certification Regarding Hiring of Undocumented Aliens

Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), relates to restrictions on the use of certain public subsidies. Atwood Distributing, LP ("Company") hereby certifies that Company, and any branches, divisions, or departments of Company, does not and will not knowingly employ an undocumented worker, as that term is defined by Section 2264.001(4) of the Texas Government Code.

In the event that Company, or any branch, division, or department of Company, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens), subject to any appellate rights that may lawfully be available to and exercised by Company, Company must repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the amount of funds received by Company from the City pursuant to the economic development agreement being negotiated with the City, if any, plus Simple Interest at a rate of four percent (4%) per annum. For the purposes of this Agreement, "Simple Interest" is defined as a rate of interest applied only to an original value, in this case the amount of funds received. This rate of interest can be applied each year, but will only apply to the amount of the funds received and is not applied to interest calculated. For example, if the aggregate amount of funds received by Company is \$10,000 and it is required to be paid back with four percent (4%) interest five years later, the total amount would be $\$10,000 + [5 \times (\$10,000 \times 0.04)]$, which is \$12,000.

This certification does not apply to convictions of any Affiliate of Company, any franchisees of Company, or any person or entity with whom Company contracts.

Atwood Distributing LP.
By: [Signature]
Its: PRESIDENT