

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF JOSHUA, TEXAS, AND WHATABURGER CORPORATE OFFICE

THIS CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF JOSHUA, TEXAS, AND WHATABURGER CORPORATE OFFICE (“Agreement”), is entered into as of this ____ day of _____, 2024, by and between the **CITY OF JOSHUA, TEXAS**, a home-rule municipality of the State of Texas (“the City”), and **WHATABURGER CORPORATE OFFICE**, a Texas corporation (“the Company”). Collectively, the City and the Company may be referred to as “Parties” and individually as a “Party,” acting by and through their respective authorized officers.

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City may establish and provide for the administration of an economic development program to advance economic growth, while also stimulating business and commercial activity within the City of Joshua; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City may enter into an agreement with any entity for administration of an economic development program; and

WHEREAS, the Company hereby agrees that it shall construct and operate a Whataburger in the City at 1044 S. Broadway Joshua, Texas (the “Property”), and in conjunction therewith, the City hereby agrees to the incentives referenced herein; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the City and the Company.

NOW, THEREFORE, for and in consideration of the terms, conditions and covenants set forth herein, the Parties agree as follows:

1. Water and Wastewater Impact Fee Reimbursements and Expedited Permitting. The City agrees that it shall reimburse the Company for any and all water and wastewater impact fees paid by the Company to the Johnson County Special Utility District, pursuant to Chapter 395 of the Texas Local Government Code, for the Whataburger located on the Property. The Company shall provide the City with appropriate evidence of its payment of the foregoing impact fees to Johnson County Special Utility District and the City shall reimburse the Company the amount of said impact fees within thirty (30) days of receipt of evidence of payment. Additionally, the City agrees that it shall endeavor to expedite permitting of any City permits required for the construction of the Whataburger on the Property.

2. City Fee Waivers/Reimbursements. The Parties agree and acknowledge that the Company, in constructing its restaurant facility, shall incur fees and/or costs for City permits, including but not limited to required inspections as well as engineering,

building, and development permits and fees. Therefore, the City agrees that, at the Company's discretion, it shall waive and/or reimburse the Company for any of the foregoing fees up to Ten Thousand Dollars and No/100 Cents (\$10,000.00), and the Company shall provide the City with appropriate evidence of any fees it so paid the City. Reimbursement of said costs by the City shall be within thirty (30) days of receipt of evidence of payment. In the event the Company opts to request the waiver of fees and/or costs, it shall so notify the City at least ten (10) business days in advance of the date the fees and/or costs sought to be waived will be imposed, and the City shall provide the Company with the dollar value of any such fees and/or costs so waived. The City shall maintain a running total of fees and/or costs either reimbursed or waived, and shall notify the Company when such waivers or reimbursements equal Ten Thousand and No/100 Dollars (\$10,000.00).

3. Default. Each of the following shall constitute an Event of Default under this Agreement:

(a) The Company does not obtain a building permit for the Whataburger on the Property prior to September, 2024.

(b) Any warranty, representation or statement made or furnished to the City by or on behalf of the Company under this Agreement or any document(s) related hereto is/are false or misleading in any material respect, either now or at the time made or furnished, and the Company fails to cure same within ninety (90) days after written notice from the City describing the violation, or if such violation cannot be cured within such 90-day period in the exercise of all due diligence, then if the Company fails to commence such cure within such 90-day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if the Company learns that any such warranty, representation or statement has become false or misleading at the time that it was made, and the Company fails to provide written notice to the City of the false and misleading nature of such warranty, representation or statement within ten (10) days after the Company learns of its false or misleading nature.

(c) The dissolution or termination of the Company's existence as a going business, the Company's insolvency, appointment of a receiver for the Company, any assignment of all or substantially all of the assets of the Company for the benefit of creditors of the Company, any type of creditor workout for the Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Company unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing.

(d) Failure of the Company to comply with or to perform any other term, obligation, covenant, or condition contained in this Agreement or in any related documents (including applicable City ordinances), or failure of the Company to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement between the Company and the City, and the Company fails to cure such failure within ninety (90) days after written notice from the City describing such failure, or if such

failure cannot be cured within such 90-day period in the exercise of all due diligence, then if the Company fails to commence such cure within such 90-day period or fails to continuously thereafter diligently prosecute the cure of such failure.

4. Effect of Default by the Company. If any Event of Default by the Company shall occur, and after the Company fails to cure same in accordance herewith, all economic development incentives described herein shall be due and owing to the City subject to any and all lawful offsets, settlements, deductions or credits to which the Company and/or its successors may be entitled. If an Event of Default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.

5. Right of Access. The Company further agrees that the City, its agents and employees, shall have a reasonable right to access to the Property and any improvements thereon to inspect same in order to ensure that the construction of the improvements is in accordance with this Agreement and/or all applicable federal, state and local laws, ordinances and regulations. After completion of the improvements, the City and its agents and employees shall have the continuing right of inspection to ensure that such are thereafter maintained and operated in accordance with this Agreement and/or all applicable federal, state and local laws.

6. Construction of Agreement; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Johnson County, Texas. Venue for any action arising under this Agreement shall lie in Johnson County, Texas.

7. Notices. Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the City:	The City of Joshua, Texas 101 S. Main Street Joshua, Texas 76058 Attn: City Manager's Office
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If to the Company:	Whataburger Corporate Office c/o Mark Rowe, Corporate Controller 300 Concord Plaza Drive San Antonio, Texas 78216
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8. Attorney's Fees to Prevailing Party. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

9. **Entire Agreement; Binding Effect of Agreement.** This Agreement contains the entire agreement between the Parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

10. **Invalidation.** Invalidation of any one of the provisions of this Agreement by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

11. **Facsimile.** A telecopied facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each Party to the terms herein.

12. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

13. **Filing.** This Agreement shall be filed in the deed records of Johnson County, Texas.

14. **Authority to Execute Agreement.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The Company warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind the Company to same.

15. **Non-Binding Mediation.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

16. **Sovereign Immunity.** The Parties agree that the City has not waived its sovereign immunity from suit by entering into and performing its obligations under this Agreement.

17. **Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

18. **Amendment; Assignment.** This Agreement shall not be modified or amended except in writing signed by the Parties. A copy of each amendment to this Agreement, when fully executed and recorded, shall be provided to each Party. Further, this Agreement shall not be assigned or otherwise transferred without the express written consent of the City.

19. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

20. Compliance with Chapter 2264, Texas Government Code. The Company certifies that it does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the term of this Agreement, the Company, or its successors, heirs, assigns, grantees, trustees, representatives, and all others holding any interest in the Property now or in the future, is convicted of a violation under 8 U.S.C. § 1324a(f), the Company shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of six percent (6%), not later than the 120th day after the date the City notifies the Company of the violation.

21. Filing of Form 1295 Certificate. The Company agrees to comply with Texas Government Code Section 2252.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

22. Prohibition on Contracts with Certain Companies Provision. In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that the Company is not on a list maintained by the State Comptroller's Office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

23. Report Agreement to Texas Comptroller's Office. The City covenants and agrees to report this Agreement to the Texas Comptroller's Office within fourteen (14) days of the Effective Date of this Agreement, in accordance with Section 380.004 of the Texas Local Government Code.

24. Verification Against Discrimination of Firearm or Ammunition Industries. Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the Company employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the Company represents that (1) the Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Company will not discriminate during the term of the Agreement against a firearm entity or firearm trade association.

25. Verification Against Discrimination and Non-Boycott of Energy Companies. Pursuant to Texas Government Code Chapter 2276, unless otherwise

exempt, if the Company employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the Company represents that: (1) the Company does not boycott energy companies; and (2) the Company will not boycott energy companies during the Term of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

THE CITY OF JOSHUA, TEXAS

Scott Kimble, Mayor

ATTEST:

Alice Holloway, City Secretary

STATE OF TEXAS)
)
COUNTY OF JOHNSON)

This instrument was acknowledged before me on the ____ day of _____, 2024, by Scott Kimble, Mayor of the City of Joshua, Texas.

Notary Public, State of Texas

WHATABURGER CORPORATE OFFICE

Name: _____
Title: _____

STATE OF TEXAS)
)
COUNTY OF BEXAR)

This instrument was acknowledged before me on the ____ day of _____, 2024, by _____, the _____ of Whataburger Corporate Office, on behalf of said corporation.

Notary Public, State of Texas

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