

RESOLUTION NO. EDC-2024-16

A RESOLUTION OF THE CITY OF SANGER, TEXAS (CITY), ESTABLISHING AN ECONOMIC DEVELOPMENT PROGRAM (PROGRAM) PURSUANT TO SECTION 380.001 OF THE TEXAS LOCAL GOVERNMENT CODE AND AUTHORIZING AS PART OF THE PROGRAM THIS CHAPTER 380 AND ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT (AGREEMENT) BY AND BETWEEN THE CITY, THE SANGER TEXAS DEVELOPMENT CORPORATION (STDC) AND RANDALL'S FOOD & DRUGS, LP, DOING BUSINESS AS TOM THUMB (GRANTEE), TO PROMOTE ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; ESTABLISHING PERFORMANCE REQUIREMENTS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, the City of Sanger is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the State of Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes municipalities to establish and provide for the administration of programs that promote economic development and stimulate business and commercial activity in the City; and

WHEREAS, the Texas Development Corporation Act of 1979 (the Act), now codified in Title 12, Subtitle C1, of the Texas Local Government Code, authorizes communities to collect Type A and / or Type B economic development sales and use taxes; and

WHEREAS the residents of the City of Sanger, Texas (City) on May 2, 1998 passed an election approving the collection of sales and use tax for the benefit of the Sanger Texas Development Corporation (STDC), a Type B Economic Development Corporation; and

WHEREAS, Section 501.158 of the Texas Local Government Code authorizes the STDC to enter into a Performance Agreement to establish and provide for economic development grants that promote economic development and stimulate business and commercial activity in the City; and

WHEREAS, the City Council of the City on March 21, 2022 passed Resolution 2022-02 establishing the City's Incentives Policy (Policy); and

WHEREAS, the City desires to attract high-quality long-term investment and the creation of new jobs and to stimulate business and commercial activity in the City; and

WHEREAS, the City recognizes the importance of retaining existing businesses, attracting new businesses, and providing for the redevelopment of sub-standard properties; and

WHEREAS, the City desires to protect and enhance the City's fiscal ability to provide high-quality municipal services for the residents and businesses in the City; and

WHEREAS, Grantee has identified and committed to the performance requirements identified in the Agreement; and

WHEREAS, the City has concluded and hereby finds that the Chapter 380 and Economic Development Performance Agreement (Agreement) attached hereto as Exhibit A, promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and the Policy, and further finds it is in the best interest of the City; and

WHEREAS, the Sanger Texas Development Corporation on September 24, 2024 considered and recommended approval of this Agreement to the City Council; and

WHEREAS, the STDC is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, Section 505.158 of the Texas Local Government Code provides that “[f]or a Type B corporation authorized to be created by a municipality with a population of 20,000 or less, “project” also includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the corporation’s board of directors to promote new or expanded business development.” Further, the statute provides that “[a] Type B corporation may not undertake a project authorized by this section that requires an expenditure of more than \$10,000 until the governing body of the corporation’s authorizing municipality adopts a resolution authorizing the project after giving the resolution at least two separate readings”; and

WHEREAS, the City Council of the City of Sanger, Texas, finds and determines that the expenditure as specified in the Chapter 380 and Economic Development Performance Agreement, attached hereto as Exhibit A, will promote new or expanded business development, and otherwise meets the definition of “project,” as that term is defined by Sections 501.103 and 505.158 of the Texas Local Government Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANGER, TEXAS, THAT:

Section 1.

The facts and recitations contained in the preamble of this Resolution are hereby found and declared to be true and correct and are incorporated herein in their entirety.

Section 2.

The City Council hereby approves the Chapter 380 and Economic Development Performance Agreement, attached hereto as Exhibit A, pursuant to Chapter 380 of the Texas Local Government Code, and pursuant to the City’s Economic Development Policy, with Grantee.

Section 3.

The Council hereby authorizes the City Manager to execute the Agreement on behalf of the City of Sanger, Texas.

Section 4.

This Resolution shall become effective from and after its passage.

PASSED AND APPROVED this the 30th day of September, 2024.

Thomas Muir, Mayor

ATTEST:

Kelly Edwards, TRMC
City Secretary

Exhibit A
Chapter 380 and Economic Development Performance Agreement

**CHAPTER 380 AND
ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT**

This Chapter 380 and Economic Development Performance Agreement (Agreement) is made and entered into by and between the City of Sanger, a home-rule municipality of Denton County, Texas (City), the Sanger Texas Development Corporation (STDC), (together the Public Agencies) and Randall’s Food & Drugs, LP, doing business as Tom Thumb, (Grantee), (each individually a Party and collectively the Parties) each acting by and through its duly Authorized Representative(s).

RECITALS

WHEREAS, the STDC is a Type B economic development corporation operating pursuant to Chapter 505 of the Texas Local Government Code; and

WHEREAS, the STDC on September 24, 2024, found the improvements to be constructed by Grantee will promote new or expanded business development, approved this Agreement and recommended authorization of this Agreement to the City Council of the City (City Council); and

WHEREAS, the STDC Board of Directors have determined the financial assistance provided to Grantee pursuant to this Agreement meets the definition of “project” as that term is defined in Sections 501.103 and 505.158 of the Texas Local Government Code; and the definition of “cost” as that term is defined by Section 501.152 of the Texas Local Government Code; and

WHEREAS, on September 30, 2024, the City Council approved Resolution No. EDC - 2024 - 16 (Resolution) establishing an Economic Development Program pursuant to Section 380.001 of the Texas Local Government Code (Section 380.001) and authorizing this Agreement as part of the Economic Development Program established by City Council Resolution (Program); and

NOW, THEREFORE, in consideration of the mutual benefits and premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**Section 1.
Incorporation of Recitals**

The Parties hereby agree that the recitals set forth above and within the Resolution are incorporated herein and are true and correct and form the basis upon which the Parties have entered into this Agreement.

**Section 2.
Definitions**

Ad Valorem Taxes: Shall have the meaning established by the Appraisal District.

Affiliate: Shall mean an entity that directly, or indirectly through one or more persons or entities, controls, is controlled by, or is under common control with, the specified entity.

Agreement: Shall mean this Chapter 380 and Economic Development Performance Agreement, summarizing the Performance Requirements of the Grantee and the Incentives to be provided by the City and the STDC upon fulfillment of those Performance Requirements.

Annual Report: Shall mean report provided by the Grantee regarding the status of the Performance Requirements.

Appraisal District: Shall mean the Denton County Appraisal District.

Approval: Shall mean the signing and dating of a written document by a Person authorized to represent the approving Party.

Authorized Representative: Shall mean the Person having the capacity and authority to sign legal agreements on behalf of the applicable Party.

Building: Shall mean the building proposed as the grocery store and having a minimum of 50,000 square feet.

Building Permit: Shall mean the permit issued by the Building Inspections department of the City allowing for construction to begin on the Building.

Certificate of Occupancy: Shall mean a temporary or permanent Certificate of Occupancy as issued by the City.

City: Shall mean the City of Sanger.

Closure: Shall mean the cessation of operations and reduction in employees to only those necessary to maintain the Facility. A Closure does not include a temporary closure due to the restoration, reconstruction, expansion, alteration or remodeling of the Building, casualty, condemnation or Force Majeure.

Completion – Substantial or Substantial Completion: Shall mean the date a Certificate of Occupancy or equivalent is issued by the City.

County: Shall mean Denton County, Texas.

Documentation: Shall mean reasonable evidence of FTE Employees in the Facility, pursuant to Section 3.3 herein.

Effective Date: Shall mean the date of the last signing of all Parties to this Agreement.

Employee: Shall mean a person performing a duty for the Grantee on the Property, specifically to exclude those constructing the Facility to be occupied by the Grantee.

Employee, Full-Time Equivalent (FTE): Shall mean an Employee that works a minimum of thirty-five (35) hours per week inclusive of overtime hours, or the number of part-time Employees that together are employed thirty-five (35) hours per week equivalent to the minimum threshold noted above, e.g. two part-time Employees working 17.5 hours each is equal to one Full-Time Equivalent Employee.

Event(s) of Default or Default: Shall be as defined in Section 8.

Facility: Shall mean the Property and all Improvements on the Property.

Force Majeure: Shall mean war, riots, civil commotion, strikes, labor disputes, embargoes, natural disasters, fire or other casualty, pandemic or epidemic, adverse weather conditions, damage or impediments caused by adverse weather conditions, inability to procure labor or building materials, Acts of God or any other cause or contingency similarly beyond the control of the Parties.

Grant: Shall mean an Incentive payment made by the City and / or STDC to the Grantee pursuant to the provisions outlined in this Agreement.

Improvements: Shall mean the New Construction of buildings, interiors, site work, parking and drives, landscaping, irrigation, lighting and specifically excluding land, Business Personal Property and Public Improvements.

Improvements – Public or Public Improvements: Shall mean the construction of water, sanitary sewer, streets and storm drainage improvements that upon completion and acceptance are typically dedicated to the City.

Incentives: Shall have the meanings as defined in Sections 4 and 5.

Investments - Eligible or Eligible Investments: Shall mean the Investments as defined in Section 3 herein.

New Construction: Shall mean the first-time construction of Improvements utilizing newly purchased materials, and specifically excluding any remodeling or renovations undertaken after issuance of the first Certificate of Occupancy.

Performance Requirements: Shall mean the requirements identified in Section 3 herein.

Program Payments: The grant payments to be made by any Public Agency.

Property – Business Personal or Business Personal Property: Shall mean the tangible and movable items used in the course of business not permanently affixed to, or part of, the real estate. Examples of Business Personal Property include: furniture, computers, vehicles and equipment not affixed to the Property, and rolling stock.

Property – Real or Real Property: Shall mean the Property and the Improvements constructed on or affixed to the Property.

Property: Shall mean the approximately 5.17 acres of land generally located at as shown on the Concept Plan of Belz Road Retail Addition, Phase 1, Lot 7, Block A in Denton County, Texas, as more particularly described on Exhibit A herein.

Recapture (aka Claw-back): The provision in Section 3.12 of this Agreement that states how and to what extent any Incentives provided must be paid back to the granting Party if the Performance Requirements are not met.

Tax – Ad Valorem: Shall mean the tax collected by the City from the owners of taxable real and tangible Business Personal Property based on the taxable value of such Property.

Term of the Agreement: Shall have the meaning as defined in Section 6.

Section 3.

Grantee's Performance Requirements

In consideration and as a prerequisite to the receipt of any Incentives offered by any of the Public Parties, Grantee shall acquire or construct Real Property Improvements and acquire Business Personal Property (together the Eligible Investments) according to the following Eligible Investments Summary. Grantee may use third parties to acquire or construct the Real Property Improvements, design, finance, apply for and obtain Building Permits and obtain a Certificate of Occupancy.

3.1. Eligible Investments Summary: See the Eligible Investments shown below to be made or acquired by the Grantee. The Parties understand that this is a budget estimate, that items may be added or removed, and that the costs may increase or decrease for individual items. All performance metrics required for receipt of Incentives shall be outlined in Section 4 (City Incentives) and Section 5 (STDC Incentives).

3.1.1. Informational Exhibits: The Grantee has provided the following exhibit for informational purposes only.

A. Exhibit A – Property and Concept Plan Exhibit: An exhibit showing the location of the Property.

3.1.2. Real Property Improvements: Following are brief summaries of the planned Improvements.

- A. Grocery Store: Grantee shall construct, or have constructed, and operate, a full-service grocery store Building having a minimum of fifty-thousand (50,000) square feet and submit to the STDC by December 31, 2026, documentation reasonably acceptable to the STDC for the Real Property Improvements, including (without limitation) the costs for the design, engineering and construction (hard and soft costs) of the Real Property Improvements, and Business Personal Property Investment, including (without limitation) all soft costs, fees and labor for the installation thereof, in the total minimum amount of Twelve Million and No/100 Dollars (\$12,000,000).
 - B. Site Improvements: All site improvements typical to development of a retail grocery store shall be constructed.
- 3.1.3. Business Personal Property Investments: Following are brief summaries of planned Business Personal Property Investments.
- A. Storage and Display: All appurtenances necessary to store and display raw and prepared foods, as well as other non-food products shall be appropriately placed in the building.
 - B. Operational Property: All property necessary to sell products and support operational employees shall be included.
- 3.1.4. Certificate of Occupancy: Grantee shall obtain a Certificate of Occupancy on or before December 31, 2026.
- 3.2. Intentionally omitted.
- 3.3. Target Employment: Subject to several uncontrollable economic impacts or added operational efficiencies, Grantee anticipates that the Eligible Investments shall allow for the hiring of new Full-Time-Equivalent employees at the Facility. A FTE Target for each year shall be required in accordance with the Forgivable Loan Schedule as shown in Section 5.1.4.
- 3.3.1. Employment Report: For the purposes of determining employment each year for determining Incentives pursuant to Section 5.1 herein, Grantee shall provide the STDC with Documentation certified by the Grantee's Director of Human Resources for the Southern Division (Employment Report) for its Facility as follows.
- A. Annually: The Employment Report for the fourth calendar quarter of the year of the Term of the Agreement shall be provided in January following each such fourth calendar quarter.
 - B. As Needed: As periodically and reasonably needed to demonstrate compliance as requested by the Executive Director of the STDC, including prior to evaluating for payment of the Incentives.
- 3.3.2. Forgivable Loan Repayment: Grantee shall pay to the STDC an amount equal to the deficiency in reaching the FTE Target employment pursuant to the calculations in Section 5. Said payment shall be made to the STDC within thirty (30) days of receiving an invoice for the deficiency amount.
- 3.4. Conflict of Interest Questionnaire: Grantee shall complete a Conflict of Interest Questionnaire as required by Chapter 176 of the Texas Local Government Code.

- 3.5. Inspection: Grantee shall grant the City and its agents and employees, upon reasonable prior written notice to Grantee, shall, at reasonable hours, have reasonable right of access to the Property to inspect the Improvements in order to insure that the construction of the Improvements are in accordance with this Agreement and all applicable state and local laws and regulations or valid waiver thereof; and subject to Grantee reasonable security requirements, they shall have the continuing right to inspect Property to insure that the Improvements are thereafter maintained, operated and occupied in accordance with this Agreement.
- 3.6. Continuous Operation: In further consideration, from the date a Certificate of Occupancy is issued and the Facility opens for business to the public, Grantee covenants and agrees that the Facility will be continuously operated, maintained and occupied as a full-service retail grocery, until the Expiration of the 36-Month Period (defined in Section 3.12.2(B) of this Agreement), except in the event of a temporary closure due to the restoration, reconstruction, expansion, alteration or remodeling of the Building, casualty, condemnation or Force Majeure.
- 3.7. Annual Reporting: Grantee shall in the month of January for each year of the Term of the Agreement, provide an Annual Report to the Public Agencies including Documentation adequate necessary for the Public Agencies to confirm Grantee's satisfaction of the Performance Requirements in the Agreement, including, though not exclusively, the following:
 - 3.7.1. Certified Statement: A certified statement that Grantee is compliant with the provisions of this Agreement in the form attached hereto as Exhibit B.
- 3.8. Ad Valorem Taxes: Grantee shall ensure that Ad Valorem Property Taxes it owes to the City, if any, related to the Facility shall be current and in good standing throughout the Term of the Agreement; provided, however, Grantee retains the right to timely and properly protest and contest any such Ad Valorem Taxes due and so long as Grantee is timely and properly protesting or contesting the same, it shall not constitute an Event of Default under this Agreement. If Ad Valorem Taxes due on the Facility become delinquent, it shall be an Event of Default under this Agreement (which is not cured within the allowable time period).
- 3.9. Documentation: Grantee shall submit to the Public Agencies, as a condition of payment of any incentive, Documentation of compliance with the requirements of Section 3.3 herein, including any Documentation reasonably necessary to demonstrate such compliance.
- 3.10. Compliance: Grantee shall comply with any and all remaining terms and provisions herein.
- 3.11. Compliance with Laws and Regulations: Grantee agrees that all construction of the Improvements will be in accordance with all applicable local, state and national laws and regulations or valid waiver thereof.
- 3.12. Recapture Payments: In the Event of Default (which is not cured within the allowable time period) by the Grantee, or in the event of Closure of the Facility during the Term of the Agreement, the obligation to repay all Grants provided pursuant to this Agreement, will become a debt to the Public Agencies from Grantee and shall be due, owing and paid to the Public Agencies by Grantee (Recapture Payment) within 120 days of the expiration of the applicable cure period or the permanent closing, as provided in Section 3.12.2 below.
 - 3.12.1. Maximum Recapture Amount: The Maximum Recapture Payment shall not exceed the Early Operation Grant, City Construction Completion Grant, and Forgivable Loan as provided by either of the Public Agencies.
 - 3.12.2. Recapture Payments: Recapture Payments to the City and the STDC shall be based on satisfying the Continuous Operation requirement noted above and as follows:

- A. City Early Operation Grant: Closure before June 30, 2027 shall require the Grantee to pay to the City one hundred percent (100%) of any amounts paid to the Grantee as an Early Operation Grant described in Section 4.2 of this Agreement.
- B. City Construction Completion Grant: Closure before the date which is thirty-six (36) months after the Facility opens for business to the public (“Expiration of 36-Month Period”) shall require the Grantee to pay to the City a pro-rated amount of the City Construction Completion Grant described in Section 4.1 of this Agreement, actually paid to Grantee, times a percentage, the numerator of said percentage being the number of months remaining until the Expiration of 36-Month Period after the uncured Event of Default or the Closure of the Facility, and the denominator being thirty-six (36).
- C. STDC Forgivable Loan: Closure before the Term of the Agreement shall require the Grantee to pay to the STDC a pro-rated amount of the Forgivable Loan described in Section 5.1 of this Agreement, times a percentage, the numerator of said percentage being the number of months remaining in the Term of the Agreement after the uncured Event of Default or the Closure of the Facility, and the denominator being forty-eight (48).

3.13 Failure to Initially Meet Prerequisites: Notwithstanding anything in this Agreement to the contrary, Grantee’s failure to initially meet the prerequisites in Sections 3.1 and 3.3 of this Agreement shall not be an Event of Default under this Agreement but shall disqualify Grantee from the receipt of the Incentives set forth in this Agreement.

Section 4. City Incentives

Subject to Grantee’s performance of its obligations as required by this Agreement and determination that Grantee is in compliance with the provisions of this Agreement in all material respects, to promote local economic development pursuant to the Program, the City shall grant Grantee the following economic development incentives:

- 4.1. City Construction Completion Grant: City will provide a one-time Grant equal to seven hundred and fifty thousand dollars (\$750,000) to the Grantee subject to the following considerations.
 - 4.1.1. Grantee shall obtain a Certificate of Occupancy for the Building on or prior to December 31, 2026.
 - A. Delayed Opening: The Construction Completion Grant shall be reduced by twenty-five thousand dollars (\$25,000) per month beginning with January of 2027 until the Certificate of Occupancy is issued.
 - 4.1.2. The Building shall be occupied and operating.
 - 4.1.3. Payment: Payment shall be made to the Grantee by the City within twenty (20) days after satisfaction of the above considerations in Section 4.1.1 and Section 4.1.2 above.
- 4.2. Early Operation Grant: To encourage early occupancy and operational status, the City will provide a Grant equal to \$56,250 each full month that the Grantee is open and operational prior to December 2026, subject to the following limitations:
 - 4.2.1. Term: The Grants shall be limited to no more than eight (8) Grants beginning with a payment in June, 2026 for a full month of operation in May, 2026.
 - 4.2.2. Max Amount: The total of all Grants paid shall not exceed four hundred and fifty thousand dollars (\$450,000).

4.2.3. Monthly Payments: Monthly Grants shall be paid within twenty (20) days of the end of each full month of operation.

Section 5.
STDC Incentives

Subject to Grantee’s performance of its obligations as required by the Agreement and determination that Grantee is in compliance with the provisions of this Agreement in all material respects, to promote local economic development pursuant to the Program, the STDC shall grant Grantee the following economic development incentives:

- 5.1. Forgivable Loan: The STDC shall provide to the Grantee a Forgivable Loan (Loan) subject to the following provisions.
 - 5.1.1. Amount: The amount of the Loan shall be one million dollars (\$1,000,000).
 - 5.1.2. Loan Date: The Loan shall be provided to Grantee within twenty (20) days of the issuance of a Certificate of Occupancy by the City.
 - 5.1.3. Term: The Loan shall have a four-year term.
 - 5.1.4. Forgivable Amounts: Beginning the first year after issuance of a Certificate of Occupancy, each year shall have an amount of two hundred and fifty thousand dollars (\$250,000) eligible to be forgiven based on the actual percentage of FTE’s reached for that year as compared to the FTE Target in accordance with the following schedule. (Numbers shown as Actual FTE’s are examples only.)

Forgivable Loan Schedule							2024-08-26
A	B	C	D	E	F	G	H
3	Year	FTE Target	Actual FTE's	% of Target Reached	Yearly Amount Forgivable	Amount Forgiven	Amount Due That Year
4	Year 1	85	80	94.12%	\$250,000	\$235,294	\$14,706
5	Year 2	85	92	108.24%	\$250,000	\$250,000	\$0
6	Year 3	85	95	111.76%	\$250,000	\$250,000	\$0
7	Year 4	85	98	115.29%	\$250,000	\$250,000	\$0
8	Notes:						
9	Numbers shown in Red Text (Column D) are for example purposes only.						
10	When the Actual FTE's exceeds the FTE Target, the amount due that year will be zero (\$0)						
11	When the Actual FTE's is below the FTE Target, the amount due that year will be equal to the percentage that the Actual FTE's is below the FTE Target.						

5.1.5. Repayment: Where the Actual FTE’s is less than the FTE Target, the Grantee shall return to the STDC an amount equal to the percentage that the Actual is below the FTE Target as shown in the Schedule.

Section 6.
Term

This Agreement shall be effective as of the Effective Date and shall terminate four (4) years after the issuance of the Certificate of Occupancy, unless earlier terminated pursuant to Section 8. Any payment due during said four (4) year period shall survive the Term of this Agreement.

Section 7.
Conflict of Interest

The Property is not owned or leased to any member of the City Council, Planning and Zoning Commission or STDC Board of Directors. In addition, Grantee agrees to complete a Conflict-of-Interest Questionnaire as required by Chapter 176 of the Texas Local Government Code.

Section 8.
Default and Termination

Grantee shall immediately notify the Public Agencies in writing upon becoming aware of any change in the existence of any condition or event which would constitute a Default or, with the giving of notice or passage of time, or both, would constitute a Default under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the Grantee is taking or proposes to take with respect thereto.

If any Party should fail to comply with the terms of this Agreement, or if a bankruptcy or other insolvency proceeding shall be filed by or against any Party and such proceeding is not vacated within 30 days, it shall be deemed a Default and the Party shall have 30 days after delivery of written notice of such Default from the other Party to cure such Default. If the noncompliance is not cured within that period, the non-defaulting Party may terminate this Agreement by written notice and shall have no further obligation to the other Party; provided that the City shall grant Grantee an extension to cure the Default if Grantee demonstrates, to the reasonable satisfaction of the City Council that: (1) the Default cannot be cured by the payment of monies and (2) cannot be reasonably cured within 30 days and (3) that Grantee is diligently pursuing cure.

In the event, Grantee defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by the Public Agencies to Grantee pursuant to Sections 4 and 5 of this Agreement shall become immediately due and payable by Grantee to Public Agencies consistent with Section 3.12 of this Agreement, which shall be the Public Agencies' sole and exclusive remedy for Grantee's default under this Agreement.

Notwithstanding the foregoing, in the event any Party fails to pay the other Party any monetary amounts owing under this Agreement when due, or as otherwise provided by this Agreement, and such failure continues for a period of 30 days after delivery of written notice of such Default, then such outstanding amounts shall accrue interest from the date owing until paid at the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. That rate in effect on September 1 is equal to the annual sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

Section 9.
Knowing Employment of Undocumented Workers

Grantee acknowledges that effective September 1, 2007, the City is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. Grantee hereby certifies that Grantee, and any branches, divisions, or departments of Grantee, 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 Grantee, or any branch, division, or department of Grantee, 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):

- 9.1. Conviction During Term: If such conviction occurs during the Term of this Agreement, this Agreement shall terminate contemporaneously upon such conviction (subject to any appellate rights that may lawfully be available to and exercised by Grantee) and Grantee shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of the Program Payments by Grantee hereunder, in any, plus Simple Interest of three percent (3%) annually.
- 9.2. Conviction After Expiration or Termination: If such conviction occurs after expiration or termination of this Agreement, subject to any appellate rights that may lawfully be available to and exercised by Grantee, Grantee shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of the Program Payments received by Grantee hereunder, if any, plus Simple Interest of three percent (3%) annually.

- 9.3. Applicability: This Section does not apply to convictions of any subsidiary or Affiliate entity of Grantee, by any franchisees of Grantee, or by a person or entity with whom Grantee contracts.
- 9.4. Survivability: Notwithstanding anything to the contrary herein, this Section shall survive the expiration or termination of this Agreement.

Section 10.
Force Majeure

Any Party may be excused from performance under this Agreement when its performance is prevented as the result of Force Majeure as defined in Section 2. If a Party suffers an event of Force Majeure, it shall provide written notice of the event to the other Party promptly after its occurrence. Subject to this provision, such nonperformance shall not be deemed an Event of Default.

Following the occurrence of any event of Force Majeure, Grantee shall have such additional time to complete the applicable portion of this Agreement as may be reasonably required if Grantee is diligently and faithfully pursuing the completion of the same.

Section 11.
Indemnification

GRANTEE EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE PUBLIC AGENCIES AND THEIR OFFICERS AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF GRANTEE OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING FROM THE PERFORMANCE OF THIS AGREEMENT. THE INDEMNITY PROVIDED FOR ABOVE SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE, GROSS NEGLIGENCE, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF A PUBLIC AGENCY OR BOTH PUBLIC AGENCIES, OR THEIR AGENTS, EMPLOYEES OR CONTRACTORS. Nothing in this paragraph may be construed as waiving any immunity available to the Public Agencies under state law. This provision is solely for the benefit of Grantee and the Public Agencies and is not intended to create or grant any rights, contractual or otherwise, in or to any other Person.

Section 12.
General Provisions

- 12.1. Section or Other Headings: Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 12.2. Entire Agreement: This Agreement (with all referenced exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of the Parties, superseding all oral or written previous and contemporary agreements between the Parties relating to matters set forth in this Agreement.
- 12.3. Amendment: This Agreement may only be amended, altered, or revoked by written instrument signed by the Grantee and the Public Agencies.

- 12.4. Successors and Assigns: This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns. Grantee may assign all or part of its rights and obligations hereunder (a) to any Grantee Affiliate effective upon written notice to the Public Agencies, provided the Grantee Affiliate agrees in writing to comply with each and every obligation of Grantee in this Agreement including constructing the Eligible Improvements to a design standard consistent with the Concept Plan, or (b) to any Person other than a Grantee Affiliate with the prior written approval of the Public Agencies, so long as in the Public Agencies' sole discretion the Eligible Improvements will be constructed to a design standard consistent with the Concept Plan and the assignee is financially able to perform this Agreement. After Substantial Completion of the Eligible Improvements, Grantee's obligation under this Agreement may be assigned to unrelated third parties upon written notice to the Public Agencies and the assignees written agreement to comply with each and every obligation of Grantee contained herein as the same relate to the applicable portion of the Property conveyed to such third Party. Nothing in this Section shall release Grantee from Grantee's obligations under Section 3 hereof unless the Public Agencies gives their express written consent.
- 12.5. Notice: Any notice and / or statement required and permitted to be delivered shall be deemed delivered by hand delivery, depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate Party at the following addresses, or at such other addresses provided by the Parties in writing:

The remainder of this page left blank intentionally

If intended to the City:

City of Sanger
John Noblitt, City Manager
502 Elm Street
Sanger, TX 76266

With a copy to:

If intended to the STDC:

Sanger 4B Texas Development Corporation
John Payne, Board President
301 Bolivar Street
Sanger, TX 76266

With a copy to:

Sanger 4B Texas Development Corporation
Shani Bradshaw, Executive Director
301 Bolivar Street
Sanger, TX 76266

If intended to the Grantee:

Randall's Food & Drugs LP
Attn: David P. Hardin
2401 E. Randol Mill Rd., #300
Arlington, TX 76063

With a copy to:

Randall's Food & Drugs LP
Attn: Legal Dept. (#361-Sanger TX)
250 E. Parkcenter Blvd.
Boise, Idaho 83706

- 12.6. Interpretation: Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.
- 12.7. Applicable Law and Venue: This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and is fully performable in Denton County, Texas, and venue of any dispute relating to this Agreement shall lie in Denton County, Texas.
- 12.8. Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.
- 12.9. Limitation on Liability: No Party shall be liable to any other Party for any special or consequential damages, direct or indirect, punitive damages, interest, or cost of court or expenses related to litigation for any Closure or Event of Default by such Party under this Agreement.
- 12.10. Representations: Grantee represents and warrants to the Public Agencies that it has the requisite authority to enter into this Agreement. City represents and warrants to the Grantee that it has the requisite authority to enter into this Agreement. STDC represents and warrants to the Grantee that it has the requisite authority to enter into this Agreement.
- 12.11. No Joint Venture: The Parties agree that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties. The Public Agencies, their elected or appointed officials, directors, employees and agents do not assume any responsibility to any third party in connection with Grantee's construction or operation of the Facility.
- 12.12. Conflicting Agreements: Where conflicts might arise between this Agreement and any other agreements between the Public Agencies and Grantee, this Agreement shall prevail. Grantee agrees to comply with the City's normal development regulations while developing the Property, except where those regulations conflict with the provisions of this Agreement.
- 12.13. Severability: In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.
- 12.14. Revenue Sharing Agreement: The City designates this Agreement as a revenue sharing agreement, thereby entitling the City to request Sales and Use Tax information from the State Comptroller, pursuant to Section 321.3022 of the Texas Tax Code, as amended.
- 12.15. Source of Funds: All payments required to be made by the Public Agencies hereunder shall be made by the Public Agencies from current revenues available to the Public Agencies.
- 12.16. Non-Boycott of Israel Provision: In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless Grantee is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Grantee verifies that Grantee does not boycott Israel and will not boycott Israel during the Term of the Agreement.

- 12.17. Prohibition on Contracts with Certain Companies Provision: In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Grantee 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.
- 12.18. Report Agreement to Comptroller's Office: City covenants and agrees to report this Agreement to the State Comptroller's office within fourteen (14) days of the Effective Date of this Agreement, in accordance with Section 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021).
- 12.19. Verification Against Discrimination of Firearm or Ammunition Industries: Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Grantee employs at least ten (10) full-time 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 Grantee represents that: (1) the Grantee does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Grantee will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association, as such terms are defined in Chapter 2274.
- 12.20. Verification Against Discrimination Grantee Does Not Boycott Energy Companies: Pursuant to Texas Government Code Chapter 2276, (as added by Texas Senate Bill 13, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Grantee employs at least ten (10) full-time 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 Grantee represents that: (1) the Grantee does not boycott energy companies; and (2) during the Term of the Agreement, the Grantee will not boycott energy companies, as such terms are defined in Chapter 2276.

Section 13.

Remedies Cumulative

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any Party shall not preclude or waive its rights to use any or all other remedies. Without limiting the provisions of this Agreement, said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise.

Section 14.

Waiver

No waiver by a Party in any Event of Default, or breach of any covenant, condition or stipulation herein contained shall be treated as waiver of any subsequent Default or breach of the same or any other covenant, condition or stipulation hereof.

Section 15.

Right to Offset

The City may, at its option, offset any amounts due and payable to Grantee under this Agreement against any debt (including taxes) lawfully due to City from Grantee and which are delinquent under applicable law or by agreement, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court, provided that if Grantee is in good faith challenging the validity of any debt, in accordance with applicable laws, the City may not offset unless and until such challenge is finally resolved.

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EXECUTED and effective as of the date of the last Authorized signature below (the Effective Date).

City: The City of Sanger, Texas

Executed this ____ day of _____, ____.

Grantee: Randall's Food & Drugs LP

Executed this ____ day of _____, ____.

By: _____
John Noblitt, City Manager

By: _____
Joel Guth, Authorized Signatory

Attest:

Kelly Edwards, City Secretary

STDC: Sanger Texas Development Corporation
Executed this ____ day of _____, ____.

Approved as to form:

By: _____
John Payne, STDC President

Hugh Coleman, City Attorney

Exhibit A
Property / Concept Plan Exhibit



Exhibit B
Form of Certified Statement

(to be attached)

Chapter 380 and Economic Development Performance Agreement

Certified Statement

This Certified Statement is pursuant to Section 3.7.1 of the Chapter 380 and Economic Development Performance Agreement (the "Agreement") by and between the City of Sanger, Texas (the "City"), the Sanger Texas Development Corporation (the "STDC"), and Randall's Food & Drugs, LP (the "Company"). This annual report is due in the month of January for each year of the Term of the Agreement, by **January 31, 2025**, and annually thereafter until **January 31, 2029**, unless the Agreement is amended or terminated.

I. Project Information:

A. Company Information:

Company's Legal Name:	Randall's Food & Drugs LP
Project Address:	2401 E. Randol Mill Rd., #300 Arlington, Texas 76063
Name of Primary Contact:	Attn: David P. Hardin

II. Reporting Information:

In accordance with Section 3.7.1 of the Agreement, the Company is delivering to the City and STDC (the "Public Agencies") this Certified Statement signed by a duly authorized representative of the Company which certifies to the Public Agencies and provides adequate documentation to confirm Company's satisfaction of the performance requirements contained in the Agreement.

This Annual Compliance Verification Report is for the reporting period of (the "Reporting Period")

January 1, 202_____ to December 31, 202_____ .

The Real Property Improvements required by Section 3.1.2 of the Agreement are as follows:

The Business Personal Property Improvements required by Section 3.1.3 of the Agreement are as follows:

The Target Employment required by Section 3.3 of the Agreement is as follows:

III. Certification:

I certify that, to the best of my knowledge and belief, the information provided herein is true and accurate and in compliance with the terms of the Agreement.

I further certify that the representations and warranties contained within the Agreement remain true and correct as of the date of this Certified Statement, and the Company reaffirms those representations and warranties as of the date hereof.

I further certify that the employment information provided herein is true and correct to the best of my knowledge and I can provide appropriate documentation to support my claim if so requested.

I understand that this Certified Statement is being relied upon by the Public Agencies in connection with the expenditure of public funds.

I have the legal and express authority to sign this Certified Statement on behalf of Randall's Food & Drugs LP.

RANDALL'S FOOD & DRUGS LP,
A Delaware limited partnership,

Name: _____
Title: _____
Date Signed: _____

STATE OF _____
COUNTY OF _____

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This information was acknowledged before me on this _____ day of _____, 202_____, by _____, _____ of Randall's Food & Drugs LP, a Delaware limited partnership, on behalf of said Delaware partnership.

Notary Public, State of _____

Please send an original to the following address:

City of Sanger, Texas
502 Elm Street
Sanger, Texas 76266
Attn: City Manager

Sanger 4B Texas Development Corporation
301 Bolivar Street
Sanger, Texas 76266
Attn: Executive Director