

**Notice Regarding Public Participation and
Joint Emergency City Council and Economic
Development Commission meeting of Members/City
Staff Attendance**

Due to the COVID-19 (coronavirus) public health emergency, and in an effort to reduce in-person meetings that assemble large groups of people, Governor Greg Abbott has granted a temporary suspension of certain rules that allows for (1) board members and city employees to participate in meetings via videoconference call or other remote electronic means without a physical quorum of board members being present at the site of the meeting; and (2) the use of videoconferencing and other remote means to allow the public to observe and/or hear the meeting.

In an effort to reduce the spread of the virus, for the April 17, 2020, 9:00 a.m. Joint Emergency City Council and Economic Development Commission meeting, ***individuals will not be allowed to physically attend the meeting.*** Individuals will be able to listen to the meeting via telephone conference call.

To listen to the meeting via telephone conference call, dial any of the following phone numbers:

(469) 309-4015

(888) 210-1560

Enter Meeting ID (PIN): 783209

If you encounter any problems joining or participating in the meeting, please call our help line at (469) 309-4005 for assistance.

A physical quorum of the Joint Emergency meeting between City Council and Economic Development Commission may not be present during the meeting as some Board Members may choose to participate in the meeting remotely as permitted by Governor Abbott's suspension of various statutes that may be interpreted to require face-to-face interaction between members of the public and public officials.

NOTICE OF A JOINT EMERGENCY CITY COUNCIL AND ECONOMIC DEVELOPMENT COMMISSION MEETING

AGENDA

NOTICE IS HEREBY GIVEN for an EMERGENCY meeting of the Mayor and City Council of the City of Waxahachie, Texas and the Economic Development Commission to be held via teleconference, ***Friday, April 17, 2020 at 9:00 a.m.***

Council Members:	David Hill, Mayor Mary Lou Shipley, Mayor Pro Tem Chuck Beatty, Councilmember Kevin Strength, Councilmember Melissa Olson, Councilmember
Economic Development Commission:	David Hill, Mayor Mary Lou Shipley, Mayor Pro Tem Rick Keeler, Planning & Zoning Commission Chairman Mackey Morgan Rhyan Phillips
Ex-officio Members:	Michael Scott, City of Waxahachie Bonny Cain, WISD Superintendent WISD Board of Trustee

1. Call to Order
2. Identification of a quorum (roll call)
3. Consider resolution to adopt Chapter 380 COVID-19 Emergency Loan for Small Businesses Program
4. Adjourn

The City Council reserves the right to go into Executive Session on any posted item.

This meeting location is wheelchair-accessible. Parking for mobility-impaired persons is available. Any request for sign interpretive services must be made forty-eight hours ahead of the meeting. To make arrangements, call the City Secretary at 469-309-4005 or (TDD) 1-800-RELAY TX

IMPORTANT NOTICE: Due to the COVID-19 (coronavirus) state of emergency and consistent with the Governor's Order regarding modifications to the Texas Open Meetings Act, and executive orders regarding the public, will not be admitted to the physical meeting location.



Memorandum

To: Honorable Mayor and City Council
Economic Development Commission
From: Michael Scott, City Manager 
CC:
Date: April 16, 2020
Re: Local Stimulus Program for Small Businesses

Concept:

Create a no-interest short-term loan program to assist small businesses who are adversely impacted by the COVID-19 crisis. The purpose of the program is to assist qualifying businesses in continuing to meet payroll and basic operating expenses in an effort to minimize the layoff of employees and continuation of its operations. Additionally, these funds are not intended to sustain a business long-term, but instead to provide bridge funding until funding from other sources is identified.

Description of Program:

The program will offer loans up to \$50,000 per business that applies to the City for assistance. The request may include the value of 3 months of expenses including payroll, operating, utilities, rent, etc. The business owners must complete the necessary application and furnish certain support documentation to the City. The Loan Review Committee (comprised of the Mayor, City Manager and Chamber of Commerce CEO) will review the applications and support documentation and award funding as it deems appropriate. The criteria for the award will be based on need,

business' investment in the community, and funding availability. The awards will be reviewed and granted on a first-come, first-served basis and at the sole discretion of the Loan Review Committee.

The short-term loans are being made to provide the business additional working capital to navigate through this uncertain economic time. The loan first payment will come due 6 months after the loan is granted and will be repaid over a period of up to 24-months without interest and without penalty for prepayment.

The loan will be memorialized through the approval of a LGC 380.001 authorized "380 Agreement" between the business owner and the City of Waxahachie. For the sake of expediency in providing these funds to assist the business, such Agreements will be signed by the Mayor and only after an affirmative vote of the Review Committee.

Request:

Allocate up to \$1 Million from unrestricted fund balance to fund the Local Stimulus Program for Small Businesses. Designate Mayor, City Manager, and Chamber of Commerce CEO as the Loan Review Committee. Authorize Mayor to sign associated 380 Agreements on behalf of the City awarding the business loans. There is an associated Resolution for your consideration that outlines and adopts this Program.



COVID-19 Emergency Loan Program Application

Background

The City of Waxahachie is implementing a COVID-19 Emergency Loan Program ("Program") to provide assistance to local businesses suffering from financial impacts related to the COVID-19 (coronavirus) pandemic. The purpose of this Program is to provide working capital for personnel costs, rent, utilities, etc. for existing small businesses within the City of Waxahachie, Texas. Through the Program, \$1,000,000 in total funds has been allocated. The City will provide loans which may equal up to 3 months total operating, payroll, rent, etc. expenses, not to exceed \$50,000 per business. All loans will be interest free and have no more than a 24-month repayment schedule with up to 6 months first payment deferral. These small business loans are being made available from the City in the form of a "380 Agreement" between the business owner and the City. The application period for this loan will remain open until funding has been exhausted or until the City of Waxahachie determines that the program goals have been satisfied.

Eligibility & Consideration

To qualify for funding under this Program, the business applicant must meet all of the following criteria:

- Business must be physically located in the corporate city limits of Waxahachie, and must be in compliance with all applicable zoning, land use, and other ordinances. *Non-profit and home-based businesses do not qualify for the COVID-19 Emergency Loan Program.*
- Business must have 50 or fewer employees.
- Business must have been in operation for at least 6 months.
- Business must maintain 80% of typical staffing levels throughout the duration of the loan.
- Business must be in good standing (financial & compliance) with the City and creditors.
- Business must submit a COMPLETE application packet including:
 - Completed application form,
 - Most recent tax returns,
 - Balance sheet, and
 - Profit-and-loss statements for the last six months.
- There is a limit of one loan per applicant.
- Once awarded, a 380 Agreement and Promissory Note will be executed to complete the loan process and initiate payment of funds.
- **Please note that award of these loan funds may impact funding from other Federal and State programs. Applicant should check terms of other such grant and loan programs.**
- Application for this program does not guarantee award of funding. Funding will be awarded at the sole discretion of the City of Waxahachie and based on need, investment, and availability.

If you have questions or need assistance with your application, please email emergencyloan@waxahachie.com or call 469.309.4122.



COVID-19 Emergency Loan Program Application

1. Applicant Information

Contact Name(s): _____

Name of Business: _____

Physical Address: _____ Waxahachie, TX Zip: _____

Mailing Address: _____ Waxahachie, TX Zip: _____

Contact Phone: _____ Email: _____

2. Business Information

Cash on Hand and In Banks: \$ _____ Own? ☐ Rent? ☐

Typical Monthly Revenue: \$ _____

Typical Monthly Expenses: \$ _____

Purpose of Loan Request: _____

Name of Primary Financial Institution: _____

Have you approached your bank about financial assistance? Yes ☐ No ☐

If approved, amount of loan: \$ _____

Have you applied for any federal or state assistance programs for businesses? Yes ☐ No ☐

If approved, amount of assistance: \$ _____ Type: _____

Number of years in business: _____

Number of years at current location: _____

Number of Part-time or Seasonal Employees: _____

Number of Full-Time Employees: _____

3. Commitment

I agree to adhere to the COVID-19 Emergency Loan Program guidelines as established by the City of Waxahachie. And further, attest that the information provided as part of this application packet submission is true and correct to the best of my knowledge.

Signature of Applicant

Date



COVID-19 Emergency Loan Program Application

STATE OF TEXAS §
 §
COUNTY OF ELLIS §

Before me, the undersigned authority, on this ____ day of _____, 2020, personally appeared - _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[Seal]

By: _____
Notary Public, State of Texas

My Commission Expires: _____

Please submit your completed application packet electronically to emergencyloan@waxahachie.com . An original copy must also be mailed to City of Waxahachie, COVID-19 Emergency Loan Program, PO Box 757, Waxahachie, TX 75168. For more information, call 469.309.4122.

CITY OF WAXAHACHIE, TEXAS

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
WAXAHACHIE, TEXAS, ADOPTING A CHAPTER 380 COVID-19
LOCAL STIMULUS PROGRAM FOR SMALL BUSINESSES.**

WHEREAS, the City passed Resolution No. 1155 on August 11, 2011, establishing a Chapter 380 Economic Development Program, which sets out application procedures and review and approval procedures, and requirements to be met for granting economic development assistance in accordance with Article III, Chapter 52-a of the Texas Constitution, and Chapter 380 of the Texas Local Government Code ("**Chapter 380**"); and

WHEREAS, the City desires to implement a COVID-19 Emergency Loan Program to provide assistance to local businesses suffering from financial impacts related to the COVID-19 (coronavirus) pandemic through a Local Stimulus Program for Small Businesses; and

WHEREAS, the City desires to establish, pursuant to Chapter 380, no-interest short-term loan program to assist small businesses who are adversely impacted by the COVID-19 crisis, with the purpose of the program to assist qualifying businesses in continuing to meet payroll and basic operating expenses in an effort to minimize the layoff of employees and promote the continuation of business operations; and

WHEREAS, these loan funds are not intended to sustain a business long-term, but are instead to provide bridge funding until funding from other sources is made available; and

WHEREAS, the loan program would offer loans of up to \$50,000 per qualifying business that applies to the City for assistance; and

WHEREAS, the loan request may include the value of 3 months of expenses, including payroll, operating, utilities, rent, etc.; and

WHEREAS, the business must complete a required application and furnish certain supporting documentation to the City so that the Loan Review Committee, which shall be comprised of the Mayor, City Manager, and Chamber of Commerce CEO, may review the application and supporting documentation and award funding as it deems appropriate; and

WHEREAS, the criteria for the loan awards will be based on need, business investment in the community, and funding availability; and

WHEREAS, the loan awards will be reviewed and granted on a first-come, first-served, basis and at the sole discretion of the Loan Review Committee; and

WHEREAS, the short-term loans will be made to provide the business additional working capital to navigate through this uncertain economic time, with the first loan payment to be due 6 months after the loan is granted and with such loan to be repaid over a period of up to 24-months without interest and without penalty for prepayment; and

WHEREAS, the loan will be memorialized through the approval of a Texas Local Government Code Section 380.001 authorized “380 Loan Agreement” between the business owner and the City of Waxahachie, the basic template and form of such agreement which is attached hereto and incorporated by reference as it set out fully herein; and

WHEREAS, for the sake of expediency in providing these funds to assist the business, such 380 Loan Agreements will be signed by the Mayor and only after an affirmative vote of the Loan Review Committee; and

WHEREAS, this Resolution authorizes and allocates up to One Million Dollars (\$1,000,000) from the City’s unrestricted fund balance to fund the Local Stimulus Program for Small Businesses, and designates the Mayor, City Manager, and Chamber of Commerce CEO as the Loan Review Committee; and

WHEREAS, this Resolution further expressly authorizes the Mayor to sign associated 380 Loan Agreements on behalf of the City to award the business loans without further action of the City Council, provided that such loans are within the parameters established by this Resolution and the authorized 380 Loan Agreement template attached hereto.

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

Section 1. Findings.

The facts and recitations contained in the preamble of this Resolution are hereby found and declared to be true and correct legislative findings and are adopted as part of this Resolution for all purposes.

Section 2. COVID-19 Emergency Loan Program and Local Stimulus Program for Small Businesses.

The COVID-19 Emergency Loan Program and Local Stimulus Program for Small Businesses is hereby established as set forth in this Resolution and the attached 380 Loan Agreement template.

PASSED AND APPROVED by the City Council of the City of Waxahachie, Texas this the 20th day of April, 2020.

David Hill, Mayor

ATTEST:

Lori Cartwright, City Secretary

APPROVED AS TO FORM:

Robert F. Brown, City Attorney

ATTACHMENT

Economic Development Loan Agreement Template

STATE OF TEXAS §
 § **Economic Development Loan Agreement**
COUNTY OF ELLIS §

This Economic Development Loan Agreement (“**Agreement**”) is made by and between the **CITY OF WAXAHACHIE**, a Texas municipality (“**City**”), and **BUSINESS NAME**, a Texas **BUSINESS TYPE** (“**Borrower**”), acting by and through their respective authorized officers, to be effective as of the date signed by the Mayor of the City and an authorized agent of the Business (the “**Effective Date**”).

RECITALS:

WHEREAS, the City passed Resolution No. 1155 on August 11, 2011, establishing a Chapter 380 Economic Development Program which sets out application procedures and review and approval procedures, and requirements to be met for granting economic development assistance in accordance with Article III, Chapter 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code (“**Chapter 380**”); and

WHEREAS, the City desires to implement a COVID-19 Emergency Loan Program to provide assistance to local businesses suffering from financial impacts related to the COVID-19 (coronavirus) pandemic; and

WHEREAS, the City desires to provide, pursuant to Chapter 380, assistance to Borrower located at **BUSINESS ADDRESS**, Waxahachie, Texas (“**Property**”), which Property is more specifically described on Exhibit “A” attached hereto; and

WHEREAS, the Borrower advised the City that a contributing factor that would encourage the Borrower to remain operational and retain at least 80% of their employee staffing and operation levels as measured prior to the COVID-19 Pandemic, would be a loan agreement with the City to provide certain economic development assistance to the Borrower to defray a portion of lost revenues brought on by the COVID-19 Pandemic that limits the ability to pay for operational and payroll costs; and

WHEREAS, the Borrower has applied for economic development assistance to continue operations and retain at least **number** jobs, which the Borrower expects will cost approximately \$**Loan Amount**; and

WHEREAS, the City Council appointed Loan Review Committee has reviewed the Borrower’s loan application and the proposed Agreement, and determined that it is in the best interest of the City and its citizens that this Agreement should be executed by the City, and that the Agreement will contribute to the economic stability and general welfare, help maintain trade in the City of Waxahachie, Texas, and retain employment; and

WHEREAS, the City Council has determined that this Agreement meets the requirements of Chapter 380 and of the City of Waxahachie Resolution No. 1155 and the requirements of the COVID-19 Emergency Loan Program as approved by the City Council on April 17, 2020.

NOW, THEREFORE, in consideration of the foregoing, and other considerations the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I DEFINITIONS

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

“**Borrower**” shall mean *Name of Business*, a Texas *Type of Business*.

“**City**” shall mean the City of Waxahachie, Texas.

“**Effective Date**” is the date this Loan Agreement is executed by the Mayor of the City and an authorized agent of *Name of Business*.

“**Exhibit “A”**” refers to the real property legal description of the Property.

“**Expiration**” **Date** shall mean the 30-month anniversary date of the Effective Date.

“**Guarantor**” means each person or entity that signs a guarantee of payment of this Loan Agreement.

“**Loan Agreement**” shall mean this Chapter 380 Economic Development Loan Agreement, together with the exhibit(s) attached to this Agreement.

ARTICLE II PURPOSE of the LOAN

The purpose of this loan is to provide working capital for personnel costs, rent, utilities, etc. for existing small businesses within the City of Waxahachie, Texas. Pursuant to Chapter 380.001 of the Texas Local Government Code, the City has established a program for the purpose of making loans and grants of public money and providing personnel and services of the City to promote state or local economic development and to stimulate business and commercial activity within the City. This Agreement implements this program by providing interest free loans to encourage Borrower, who has been adversely affected by the COVID-19 pandemic, to maintain their business operations and retain jobs.

ARTICLE III LOAN

3.1 Loan Amount. City agrees, subject to the conditions contained in the Agreement, to make an economic development loan to Borrower in an amount not to exceed *Fifty Thousand and no/100 Dollars (\$50,000)*.

3.2 Loan Disbursement. City shall make the one-time advance within Five (5) business days following the execution of the agreement by both parties.

ARTICLE IV TERM and PAYMENT SCHEDULE

4.1 Term. The Term shall be from and after the Effective Date for 30 months, consisting of a 6-month payment deferral period followed by a 24-month repayment schedule thereafter, and shall

terminate upon the repayment in full of the outstanding balance of any loan amount advanced pursuant to Article III.

4.2 Payment Schedule. Following the 6-month payment deferral period monthly payments in the amount of \$0000.00 shall be due and payable on the 1st of each month.

ARTICLE V CONDITIONS OF THE BORROWER

The obligation of the City to provide Assistance shall be conditioned upon Borrower's compliance with and satisfaction of each of the terms and conditions of this Agreement, and each of the conditions set forth in this Article. Borrower's compliance is necessary in order for the City to realize the full economic development benefits from the Assistance awarded by the City.

5.1 Application Packet. Prior to the disbursement of funds pursuant to this Loan Agreement, the Borrower shall submit to the City a notarized COVID-19 Emergency Loan Program Application Packet including:

- A. The completed application form,
- B. Most recent tax returns,
- C. Balance sheet, and
- D. Profit-and loss statements for the last six months.

Once the documents listed above have been executed and delivered, the COVID-19 Emergency Loan Application will be deemed closed.

5.2 Staffing. Borrower agrees to maintain at least number jobs throughout the duration of the loan.

5.3 Business Operations. Borrower also agrees to maintain a physical location within the corporate city limits of Waxahachie and to remain open during standard business hours and in full operation providing goods and/or services to the general public.

5.4 Good Standing. Borrower will keep all taxes due to City in accordance with applicable law during the Term of this Agreement, and if not paid after thirty (30) days' notice of any such delinquent taxes, Borrower shall be considered in default until taxes are not delinquent. Borrower also agrees to stay in compliance with all applicable zoning, land use, and other City of Waxahachie ordinances.

5.5 No Collateral. The Loan Agreement issued hereunder shall be unsecured.

5.6 Notice of Change. Borrower agrees that it will notify the City in writing within 30 days of the occurrence of any of the following: (i) if Borrower is an individual, a change in the place of Borrower's principal residence; (ii) if Borrower is an organization, a change in Borrower's place of business, the opening of any new place of business or the closing of any existing place of business; (iii) any other change in the Borrower's physical location; any change of status to a non-profit or home-based business. Failure to do so shall constitute a material default upon the terms of this Loan Agreement. Borrower shall also be considered in default if status changes to a non-profit or home-based business.

ARTICLE VI DEFAULT AND REMEDY

6.1 Notice and Remedy. Any party to this Agreement that believes that the other party to this Agreement has defaulted in the performance of any condition, term, or obligation owed to that party hereunder shall give notice of the default to the defaulting party, specifying in detail the provision or provisions of this Agreement that have allegedly been breached, and what specific action must be taken to cure or correct the default and giving such party thirty (30) days to cure any such default. Notwithstanding the foregoing, the parties hereto shall have all remedies provided at law and in equity with respect to this Agreement.

6.2. Default of Borrower. In the event Borrower fails to make any payment or any part thereof as provided in the Agreement described herein, within fifteen (15) days of the due date thereof, or in the event that the Borrower fails or refuses to perform any covenants or agreements hereunder on the Borrower's part made and entered into, Agreement or under any agreement between the Borrower and the City made in connection with the Agreement, or in the event of failure of the Borrower to promptly pay, when due, any taxes, charges, liens, assessments, or encumbrances, or in the event a petition is filed by or against Borrower under any applicable bankruptcy law, and that petition is not dismissed or stayed within 90 days, the City may at its option (i) declare this Agreement to be in default and the total indebtedness owed by the Borrower to the City, including principal and interest, shall at the option of City immediately become due and payable, upon thirty (30) days' written notice to the Borrower, (ii) upon written notice to the Borrower impose an interest rate to the default rate provided for herein, said default rate to thereafter apply to the entire unpaid principal balance until the default is cured to the City's satisfaction or (iii) take such other action as the City deems necessary and appropriate, consistent with the terms of the Agreement and applicable law.

Anything in the foregoing or in any of the other Loan Documents to the contrary notwithstanding, the City may in the event of a default not capable of cure immediately declare a default.

6.3. Default Interest Rate. In the event of any default by Borrower upon the terms of this Agreement or any of the Loan Documents, then the entire outstanding principal balance of the Loan shall thereafter bear interest until paid or until the default is cured to the City's satisfaction at a fixed rate three percentage points higher than the prime rate of interest published weekly in the Wall Street Journal, as published at the time of the default.

6.4 Rights and Remedies of the City. The rights and remedies herein conferred upon the City shall be cumulative and not alternative and shall be in addition and not in substitution of or in derogation of rights and remedies conferred by the Agreement or any other agreements between the parties hereto or by any applicable law. The failure of the City to enforce strict performance of any covenant, promise, or condition herein contained, including timely payments due hereunder, shall not operate as a waiver of the right of the City thereafter to require that the terms hereof be strictly performed according to the tenor thereof.

ARTICLE VII MISCELLANEOUS PROVISIONS

7.1 Assignment by Borrower and the City. This Agreement shall not be assignable, in whole or in part, by Borrower. In the event of a sale or financing of the Borrower's business or any party thereof to a third-party purchaser or related entity or affiliate, Borrower shall provide written

notice to the City thirty (30) days prior to the sale of the Business. Full payment of the remaining balance of the loan shall be due to the City within five (5) days of the completed sale transaction.

7.2 Notices. All notices required to be given by this Agreement shall be in writing and shall be effective when actually delivered or one day after being deposited with FedEx or other national overnight courier service, addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving notice to the other party, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

If to Borrower:

With copy to:

Company Name	Company Attorney
Attn:	Attn:
Street Address	Street Address
City, State Zip	City, State Zip
Email:	Email:

If to City:

With copy to:

City of Waxahachie, Texas
Attn: Michael Scott, City Manager
401 S. Rogers Street
Waxahachie, Texas 75165
Email: mscott@waxahachie.com

City Attorney
Attn: Robert Brown
Street 740 East Campbell Road, Suite 800
City, Richardson, TX 75081
Email: rbrown@bhlaw.net

7.3 Employment of Undocumented Workers. Borrower certifies that Borrower 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, Borrower is convicted of a violation under 8 U.S.C. § 1324a(f), Borrower shall be considered in default of this Agreement.

7.4 No Boycott of Israel. In accordance with Section 2270.002 of the Texas Government Code (as added by Tex. H.B. 89, 85th Leg. R.S. (2017)), the Borrower verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.

7.5 State Comptroller's List. In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S. B. 252, 85th Leg., R.S. (2017)), the Parties covenant and agree that the Borrower is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

7.6 Borrower shall indemnify, save, and hold harmless City, its directors, officers, agents, attorneys, and employees (collectively, the "Indemnitees") from and against: (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnatee if the claim, demand, action or cause of action directly or indirectly relates to tortious interference with contract or business interference, or wrongful or negligent use of City's financial assistance by Borrower or its agents and employees; (ii) any administrative or investigative proceeding by any governmental authority directly or indirectly related, to a claim, demand, action or cause of action in which City is a disinterested party; (iii) any claim, demand, action or cause of action which directly or indirectly contests or challenges the legal authority of City or Borrower to enter into this Agreement; and (iv) any and all liabilities, losses, costs, or expenses (including reasonable attorneys' fees and disbursements) that any Indemnatee suffers or incurs as a result of any of the

foregoing; provided, however, that the Borrower shall have no obligation under this Section to City with respect to any of the foregoing arising out of the gross negligence or willful misconduct of City or the breach by City of this Agreement. If any claim, demand, action or cause of action is asserted against any Indemnitee, such Indemnitee shall promptly notify Borrower, but the failure to so promptly notify Borrower shall not affect Borrower's obligations under this Section unless such failure materially prejudices Borrower's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. If requested by Borrower in writing, as so long as no Default or Event of Default shall have occurred and be continuing, such Indemnitee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Borrower to participate in such contest. Any Indemnitee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Borrower may be liable for payment of indemnity hereunder shall give Borrower written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Borrower's concurrence thereto.

7.7 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto.

7.8 Limitation on Liability. It is understood and agreed between the parties that Borrower and the City, in satisfying the conditions of this Agreement, have acted independently, and assume no responsibilities or liabilities to third parties in connection with these actions.

7.9 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

7.10 Merger. This Agreement embodies the entire understanding between the parties and there are no representations, warranties or agreements between the parties covering the subject matter of this Agreement.

7.11 Captions. The captions of each section of this Agreement are inserted solely for convenience and shall never be given effect in construing the duties, obligations or liabilities of the parties hereto or any provisions hereof, or in ascertaining the intent of either party, with respect to the provisions hereof.

7.12 Interpretations. This Agreement and the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

7.13 Amendments. This Agreement may only be amended by a written agreement signed by Borrower and the City, and no City officer or official is authorized or empowered to vary or waive the terms of this Agreement absent such amendment.

7.14 Binding Obligation. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Borrower and Guarantor warrant and represent that the individual or individuals executing this Agreement on behalf of the Borrower and Guarantor have full authority to execute this Agreement and bind Borrower and Guarantor to the same. City warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

7.15 Governing Law. The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Ellis County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

7.16 Recitals. The City and Borrower covenant and agree that all matters set forth in the recitals of this Agreement are accurate and true. The findings set forth in the recitals of this Agreement are hereby incorporated into this Agreement as the official findings of the City Council.

7.17 Rights of Lenders and Interested Parties. The City is aware that financing for acquisition, development and/or construction of Improvements to the Property may be provided, in whole or in part, from time to time, by one or more third parties, including, without limitation, lenders, major tenants, equity partners and purchasers or developers of portions of the Property (collectively, the "**Interested Parties**"). In the event of default by the Borrower, the City shall provide notice of such event of default at the same time notice is provided to the Borrower to any Interested Parties previously identified to the City. If any Interested Parties are permitted under the terms of its agreement with the Borrower to cure the event of default and/or to assume the Borrower's position with respect to this Agreement, the City agrees to recognize such rights of any Interested Parties and to otherwise permit such Interested Parties to assume such rights and obligations of Borrower under this Agreement. The City agrees not to pursue remedies under this Agreement for a period of thirty (30) days after notice is given to such Interested Parties. Such Interested Parties will not, however, have a duty to cure any such default. The City shall, at any time upon reasonable request by the Borrower, provide to any Interested Party an estoppel certificate or other document evidencing that this Agreement is in full force and effect and that no event of default by the Borrower exists hereunder (or, if appropriate, specifying the nature and duration of any existing event of default).

7.18 Gender; Construction. Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words "including," "such as," or words of similar import, when following any general term, statement or matter, shall not be construed to limit such statement, term or matter to specific terms, whether or not language of non-limitation, such as "without limitation," or "but not limited to," are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the narrowest scope of such statement, term or matter.

7.19 Severability. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

7.20 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

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EXECUTED on this _____ day of _____, 2020.

CITY OF WAXAHACHIE

By: _____
Mayor David Hill

ATTEST:

Title _____

COMPANY NAME, A TEXAS BUSINESS TYPE

By:

By: _____

Name: _____

Title: _____

ATTEST:

Title _____

EXHIBIT "A"

REAL PROPERTY LEGAL DESCRIPTION