

RESOLUTION NO. 15-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY OF MESQUITE; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE A FIRST AMENDMENT TO AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (CHAPTER 380 AGREEMENT) FOR SUCH PURPOSES WITH HC SOLTERRA, LLC (THE “DEVELOPER”), PROVIDING A GRANT AMOUNT EQUAL TO CERTAIN ROADWAY CAPITAL RECOVERY FEES COLLECTED BY THE CITY FOR THE DEVELOPMENT OF APPROXIMATELY 1,424-ACRES OF LAND, PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas (the “**City**”), and other municipalities to establish and provide for the administration of programs that promote local economic development and stimulate business and commercial activity; and

WHEREAS, on April 5, 2021, and pursuant to Chapter 380 of the Texas Local Government Code, the City Council of the City (the “**City Council**”) approved Resolution 17-2021 approving a Chapter 380 Agreement and economic development program (the “**Program**”) between the City and HC SOLTERRA, LLC, a Texas limited liability company (the “**Developer**”), for the development of approximately 1,424 acres of real property generally located southwest of East Cartwright Road and both northwest and southeast of Faithon P. Lucas, Sr. Boulevard in Mesquite, Texas (the “**Original Agreement**”); and

WHEREAS, the City has been presented with a proposed amendment to the Original Agreement, as copy of said amendment being attached hereto as Exhibit 1 and incorporated herein by reference for all purposes (the “**First Amendment**”); and

WHEREAS, the First Amendment amends the Original Agreement to provide a grant to reimburse the Developer in an amount equal to one hundred percent (100%) of each Roadway Capital Recovery Fee collected by the City from the first 1,000 residential and commercial lots, and thirty-three percent (33%) of each Roadway Capital Recovery Fee collected by the City from the remaining residential and commercial lots within the approximately 1,424-acre tract of real property depicted and described in Exhibits A and B in the Original Agreement, in addition to adding State law required provisions; and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement will assist in implementing a program whereby local economic development will be promoted, and business and commercial activity will be stimulated in the City.

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

SECTION 1. That the facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

SECTION 2. That the City Council finds that the terms and provisions of the First Amendment, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference, is in the best interest of and will benefit the City and its citizens and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 3. That the City Council hereby approves the First Amendment and authorizes the First Amendment as part of the Program whereby, subject to the terms and conditions of the Original Agreement, as amended by the First Amendment, the City will provide economic development incentives to the Developer and take other specified actions as more fully set forth in the Original Agreement, as amended by the First Amendment.

SECTION 4. That the City Manager is further hereby authorized to finalize and execute the First Amendment and to take all actions necessary or advisable to complete the transactions contemplated by the First Amendment.

SECTION 5. That the City Manager is further hereby authorized to administer the Original Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices per the Original Agreement; (ii) approve amendments to the Original Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Original Agreement in excess of \$50,000; (iii) approve or deny any matter in the Original Agreement requiring the consent of the City with the exception of any matter requiring the consent of the City Council pursuant to the terms of the Original Agreement; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term, or condition of the Original Agreement; (v) exercise any rights and remedies available to the City under the Original Agreement; and (vi) execute any notices, amendments, approvals, consents, denials, and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

SECTION 6. That the sections, paragraphs, sentences, clauses, and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph, or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality, or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal, or unenforceable provision had never been included in this resolution.

Eco Dev / HC Solterra, LLC / First Amendment to 380 Agreement / April 3, 2023
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DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 3rd day of April 2023.

DocuSigned by:
Daniel Aleman Jr.
D999585317D142B...

Daniel Alemán, Jr.
Mayor

ATTEST:

DocuSigned by:
Sonja Land
C2518095973F46A...

Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:

DocuSigned by:
David Paschall
666E18891208434...

David L. Paschall
City Attorney

EXHIBIT 1

**FIRST AMENDMENT TO AN
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
(Chapter 380 Agreement)**

Between the City of Mesquite and HC Solterra, LLC

**FIRST AMENDMENT TO CHAPTER 380 GRANT AGREEMENT
(Solterra)**

This First Amendment to Chapter 380 Grant Agreement (this "Amendment") is executed between HC Solterra, LLC, a Texas limited liability company (the "Developer") and the City of Mesquite, Texas (the "City"), each a "Party" and collectively the "Parties" to be effective April 4, 2023 (the "Effective Date").

RECITALS

WHEREAS, the City and the Developer entered into that certain Chapter 380 Grant Agreement effective April 5, 2021 (the "Agreement"); and

WHEREAS, all capitalized terms used in this Amendment shall be defined as stated in the Agreement unless otherwise defined in this Amendment; and

WHEREAS, except as amended herein, all terms and provisions of the Agreement shall remain in effect and shall apply to this Amendment; and

WHEREAS, the City and the Developer entered into that certain Development Agreement dated October 19, 2020 (the "Original Agreement"), a First Amendment to Development Agreement dated March 15, 2021 (the "First Amendment") and a Second Amendment to Development Agreement dated February 20, 2023, (the "Second Amendment"), and together with the Original Agreement and the First Agreement hereinafter collectively referred to as the "Development Agreement") relating to the development of that certain approximately 1,424.398-acre tract of real property (the "Property") described on Exhibit A of the Development Agreement; and

WHEREAS, due to the addition of intersection improvements, signalization improvements, and trail and pedestrian bridge improvements, the Parties agreed in the Second Amendment to add a Roadway Capital Recovery Fee (as hereinafter defined) in the amount of \$3,000 per residential and commercial lot within the Property to be collected in addition to the Roadway Impact Fees; and

WHEREAS, the Parties desire to add provisions to the Agreement relating to granting a rebate to the Developer of a portion of the Roadway Capital Recovery Fee;

NOW THEREFORE, for and in consideration of the mutual covenants of the Parties set forth in this Amendment, and for other good and valuable consideration the receipt and adequacy of which are acknowledged and agreed by the Parties, the Parties agree as follows:

1. Capitalized terms not otherwise defined in this Amendment shall have the meanings set forth in the Agreement.

2. Section 2.1 heading and Section 2.1(a) of the Agreement are amended to read as follows:

"2.1 Water and Sewer Impact Fee and Roadway Capital Recovery Fee Grant.

(a) Subject to the annual appropriation of funds and the terms, provisions and conditions set forth in this Agreement, the City shall pay to the Developer an amount equal to: (i) fifty percent (50%) of the Water and Sewer Impact Fees (as hereinafter defined) collected by the City in connection with each building permit issued for a building within the Property (excluding Commercial Buildings) according to the terms of this Agreement, (ii) one hundred percent (100%) of each Roadway Capital Recovery Fee collected by the City from the first 1,000 residential and commercial lots within the Property from which a Roadway Capital Recovery Fee is collected, and (iii) thirty-three and three tenths percent (33.3%) of each Roadway Capital Recovery Fee collected by the City from the remaining residential and commercial lots within the Property From which a Roadway Capital Recovery Fee is collected(collectively, the "Grant"). Such collection of Water and Sewer Impact Fees and Roadway Capital Recovery Fees shall be made at the time a permit application has been made to the City for construction of a building on the Property."

3. Section 3.2 of the Agreement is amended to renumber Section 3.2(f) as Section 3.2(g) and Section 3.2(f) is added to read as follows:

"(f) "Roadway Capital Recovery Fee" means the \$3,000 roadway fee charged to each residential and commercial lot within each PID Phase (as defined in the Development Agreement) required by to be paid by Section 6.06 of the Development Agreement, as amended by the Second Amendment to the Development Agreement between the Parties effective as of February 20, 2023.

(g) Capitalized Terms Not Otherwise Defined. All capitalized terms used in this Agreement and not otherwise defined in this Agreement shall have the meanings ascribed to such terms in the Development Agreement."

4. Section 3.8 of the Agreement is amended to read as follows: "Upon termination of this Agreement as a result of an Event of Default, all payments to Developer pursuant to this Agreement shall cease from the date of termination forward, and all Water and Sewer Impact Fees and Roadway Capital Recovery Fees shall be collected by the City solely for the City's authorized use."

5. Section 3.23 of the Agreement is amended to read as follows: "The Grant payable by the City to the Developer as more fully set forth in this Agreement is not secured by a pledge of ad valorem taxes, financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. The Grant is calculated based on the Water and Sewer Impact Fees and Roadway Capital Recovery Fees collected by the City but is not payable from the Water and Sewer Impact Fees and Roadway Capital Recovery Fees paid to the City. The Grant shall be paid only from funds of the City authorized by the Texas Constitution and the Texas Local Government Code. The obligations of the City under this Agreement are non-recourse, and such obligations do not create a debt or other obligation payable from any other City revenues, taxes, income or property. Neither the City nor any of its appointed or elected officials or any of their officers or employees shall incur any liability hereunder to the Developer, any assignee or any other Person, entity or party in their individual capacities by reason of this Agreement or their acts or omissions under this Agreement. Each Grant payment is subject to the City's appropriation of funds for such purpose to be paid in the budget year for which each Grant payment is to be paid. In the event of

any conflict between the terms and provisions of this Article III, Section 3.21 and any other term or provision of this Agreement, the terms and provisions of this Article III, Section 3.21 shall control. This Article III, Section 3.21 shall expressly survive the expiration or termination of this Agreement."

6. The Agreement is amended to add a new Section 3.33 as follows: "Verification Regarding Discrimination Against Fossil Fuel Companies. To the extent this Amendment constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, "boycott energy companies," a term defined in Section 2274.001(1), Texas Government Code (as enacted by such Senate Bill) by reference to Section 809.001, Texas Government Code (also as enacted by such Senate Bill), shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above."

7. The Agreement is amended to add a new Section 3.34 as follows: "Verification Regarding No Discrimination Against Firearm Entities and Firearm Trade Associations. To the extent this Amendment constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification and the following definitions,

(a) 'discriminate against a firearm entity or firearm trade association,' a term defined in Section 2274.001(3), Texas Government Code (as enacted by such Senate Bill), (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and

(ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association,

(b) 'firearm entity,' a term defined in Section 2274.001(6), Texas Government Code (as enacted by such Senate Bill), means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (defined in Section 2274.001(4), Texas Government Code, as enacted by such Senate Bill, as weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (defined in Section 2274.001(5), Texas Government Code, as enacted by such Senate Bill, as devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (defined in Section 2274.001(1), Texas Government Code, as enacted by such Senate Bill, as a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (defined in Section 250.001, Texas Local Government Code, as a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting), and

(c) 'firearm trade association,' a term defined in Section 2274.001(7), Texas Government Code (as enacted by such Senate Bill), means any person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code."

8. The Agreement is amended to add a new Section 3.35 as follows: "Affiliate. As used in Sections 3.19, 3.20, 3.33 and 3.34, the Developer understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit."

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

CITY:

CITY OF MESQUITE, TEXAS

ATTEST:

Sonja Land
Name: Sonja Land
Title: City Secretary

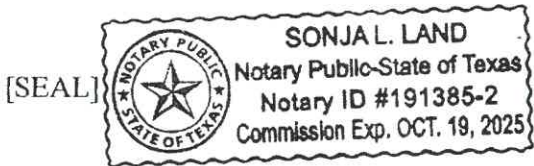
By: Cliff Keheley
Name: Cliff Keheley
Title: City Manager

APPROVED AS TO FORM:
David L. Paschall
Name: David L. Paschall
Title: City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on this 4 day of April, 2022²³, by Cliff Keheley, City Manager of the City of Mesquite, Texas, on behalf of said municipality.

Sonja L Land
Notary Public, State of Texas



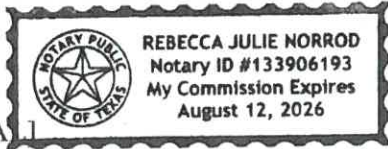
DEVELOPER

HC Solterra, LLC,
a Texas limited liability company

By: *Phillip Huffines*
Phillip Huffines
Managing Director

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on this 28th day of MARCH 202~~2~~³,
by Phillip Huffines, Managing Director of HC Solterra, LLC, a Texas limited liability company,
on behalf of said limited liability company.



[SEA]

Rebecca Julie Norrod
Notary Public, State of Texas