CHAPTER 381 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
[Caterpillar Inc.-Project Hydra]

This Chapter 381 Economic Development Agreement ("Agreement") is entered into to be effective as of May 12, 2022, by and between the Comal County, Texas (hereinafter called "County"), a political subdivision of the State of Texas and Caterpillar Inc., a Delaware Corporation authorized to do business in Texas (hereinafter called "Company"), otherwise known as the "Parties" to this Agreement.

RECITALS

WHEREAS, Chapter 381 of the Texas Local Government Code authorizes the commissioners court of a county to enter into an agreement to promote economic development and to stimulate, encourage, and develop business location and commercial activity in the county; and

WHEREAS, Company desires to expand its Schertz Texas operations within an existing building that is located at 6800 Doerr Ln, Schertz TX 78154; and

WHEREAS, over the term of the Agreement, Company intends to create an additional 24 and maintain 145 full time employees with a minimum annual payroll of $8,426,420 at the end of Calendar Year 2026 and throughout the life of the agreement; and

WHEREAS, County intends to provide grants as outlined in Performance Table A based upon the personal property taxes on New Tangible Personal Property paid by Company over eight (8) years and other terms and conditions set forth in this Agreement; and

WHEREAS, the location of the Company, as proposed, will contribute to the economic development of Comal County by creating new jobs and increased employment, promoting and developing expanded business enterprises, increased development, increased personal property value and tax revenue for Comal County, and will have both a direct and indirect positive overall improvement/stimulus in the local and state economy;

WHEREAS, the County desires to offer incentives to Company to enable Company to expand the personal property investment in the existing Facility pursuant to this Agreement; and

WHEREAS, the Parties are executing and entering into this Agreement to set forth certain terms and obligations of the Parties with respect to such matters; and

WHEREAS, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof; and

WHEREAS, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings; if any, have been conducted in

accordance with Texas law; and

WHEREAS, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, the Parties agree as follows:

ARTICLE I
RECITALS

1. Recitals. The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement.

ARTICLE II
AUTHORITY AND TERM

1. Authority. The County's execution of this Agreement is authorized by Chapter 381 of the Texas Local Government Code and constitutes a valid and binding obligation of the County. The County acknowledges that Company is acting in reliance upon the County's performance of its obligations under this Agreement in making the decision to commit substantial resources and money to the establishment of the Project, hereinafter established.

2. Term. This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date, hereinafter established, unless terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.

3. Purpose. The purpose of this Agreement is to formalize the agreements between the Company and the County for the granting of funds in the form of an incremental personal property tax rebate on New Tangible Personal Property to cover certain costs associated with Company's Project. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation by the Company may constitute a breach of the entire Agreement and terminate any further commitments (if any) by the County unless an alternative penalty or remedy is provided for herein.

ARTICLE III
DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

"Annual Payroll" shall mean the total wages paid, exclusive of employee benefits, to Full-time Employees at the Facility.

"Bankruptcy" shall mean the dissolution or termination of a Party's existence as a going business, insolvency, appointment of receiver for any party of such Party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Certificate of Occupancy" shall mean the signed certificate issued by the City of Schertz Inspections Division granting the Company the right to occupy the Facility and confirming that the entire work covered by the permit and plans are in place.

"Default" shall mean failure by any Party to timely and substantially comply with any performance requirement, duty, or covenant if uncured sixty (60) days following receipt of written notice from any other Party.

"Effective Date" shall be the date of final signature on this Agreement

"Expiration Date" shall mean the earlier of:

1. May 15, 2034; or
2. The date of termination, provided for under Article VII of this Agreement.

"Facility" shall mean the property and improvements being located at Schertz facility located at 6800 Doerr Ln, Schertz TX 78154.

"Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party, including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of a party), fires, explosions or floods, strikes, slowdowns or work stoppages, but in no instance shall a force majeure event exceed ninety (90) days in the aggregate.

"Full-time Employee" shall mean: (1) an employee with a regular work schedule of at least 36 hours per week as reported on the Texas Employers Quarterly Wage Report from the Texas Workforce Commission and (2) are entitled to at least the customary employer-sponsored employee benefits package afforded by the Company to its similarly situated employees at other locations.

"Grant" shall mean the cash rebate payments from County to Company as set forth in Performance Table A based upon the taxes paid by Company for New Tangible Personal Property on-site at the Facility.

"New Tangible Personal Property" shall mean new personal property in the form of new manufacturing equipment put into service at the Facility before December 31, 2023, that is added

to the Project subsequent to the execution of this Agreement and accounted for in a separate account on the tax rolls by the Comal County Appraisal District and Comal County Assessor Collector.

"Project" shall mean the investment of New Tangible Personal Property at the Facility, the retention of 145 jobs, the addition of 24 jobs with a minimum payroll of $6,775,000 for retained jobs and $8,426,420 for total jobs as described in Performance Table A.

ARTICLE IV
ECONOMIC DEVELOPMENT INCENTIVE TERMS AND CONDITIONS

1. Incentive.

Subject to the satisfaction of all the terms and conditions of this Agreement, including the creation and retention of the minimum number of full-time jobs set forth herein, and the obligation of Company to repay the Grant pursuant to Article V hereof, the County agrees to provide Company with the following economic development incentives:

County shall provide a grant based on taxes paid to Comal County and in accordance with Performance Table A in the form of an annual rebate capped at the personal property taxes payable to Comal County as to the New Tangible Personal Property Required & Max Rebate Base Value (Example: 60 days after receiving certification of Year 1 performance the County shall grant 70% of personal property taxes paid to Comal County on up to $21,750,000 worth of New Tangible Personal Property).

The Grant shall be paid within sixty (60) days after receipt of a copy of the Annual Report reflecting that the applicable performance period objectives have been met as shown in the following Performance Table:

Performance Table A

Performance Period Ending December 31	Full-Time Employees Created and Retained/ Minimum Payroll	Minimum Retained Existing Personal Property	New Tangible Personal Property Required & Max Rebate Base Value	Certification Date	Rebate percentage of taxes paid on Incremental Tangible Personal Property Investment
Year 0 – 2023	Manufacturing equipment is located on-site by December 31, 2023				
Year 1 – 2024	145/ $6,775,000	$50,000,000	$21,750,000	15-Feb-25	70%

Year 2 - 2025	145/ $6,775,000	$50,000,000	$19,750,000	15-Feb-26	70%
Year 3 - 2026	169 / $8,426,420	$50,000,000	$17,750,000	15-Feb-27	70%
Year 4 - 2027	169 / $8,426,420	$50,000,000	$16,000,000	15-Feb-28	55%
Year 5 - 2028	169 / $8,426,420	$50,000,000	$14,000,000	15-Feb-29	55%
Year 6 - 2029	169 / $8,426,420	$50,000,000	$12,000,000	15-Feb-30	55%
Year 7 - 2030	169 / $8,426,420	$50,000,000	$10,000,000	15-Feb-31	30%
Year 8 - 2031	169 / $8,426,420	$50,000,000	$8,000,000	15-Feb-32	30%
Year 9 – 2032	169 / $8,426,420	$50,000,000	$6,500,000	15-Feb-33	0%
Year 10 - 2033	169 / $8,426,420	$50,000,000	$5,000,000	15-Feb-34	0%

2. Current Revenue. The funds distributed hereunder shall be paid solely from lawfully available funds of the County. Under no circumstances shall the obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3. Confidentiality. The County agrees to the extent allowed by law, to keep all tax information and documentation received, pursuant to this Agreement hereof, confidential. In the event a request is made for such information pursuant to the Texas Public Information Act, County will not disclose the information unless required to do so by the Attorney General of Texas under the provisions of the applicable statutes.

4. Conditions Precedent. The obligation of the County to pay funds in the form of a Grant shall be conditioned upon Company's continued compliance with and satisfaction of each of the conditions set forth in this Agreement as reflected in the Performance Table above.

5. Annual Report. The Company shall submit an Annual Certification Report (an "Annual Report") for the preceding Calendar Year to the Comal County Auditor each year not later than February 15th. The Annual Report should substantially conform to the Form of Annual Certification Report attached as Exhibit A to this Agreement. The first Annual Report will be due February 15th, 2025.

ARTICLE V
COVENANTS AND DUTIES

1. Company's Covenants and Duties. Company makes the covenants and warranties to the County and agrees to timely and fully perform the obligations and duties contained in Article IV of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Company.

(a) Company is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement and shall timely and fully comply with all of the terms and conditions of this Agreement to commence and complete the Project in accordance with the Agreement.

(b) The execution of this Agreement has been duly authorized by Company's authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Company's by-laws, or of any agreement or instrument to which Company is a party to or by which it may be bound.

(c) Company is not a party to any Bankruptcy proceedings currently pending or contemplated, and Company has not been informed of any potential involuntary Bankruptcy proceedings.

(d) To its current, actual knowledge, and subject to the Certificate of Occupancy (or other approvals and permits to be obtained under subpart (e) immediately below), Company has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City of Schertz and will continue to use commercially reasonable efforts to maintain all necessary rights, licenses, permits, and authority.

(e) Company agrees to obtain or cause to be obtained, all necessary permits and approvals from City of Schertz and/or all other governmental agencies having jurisdiction over the construction of any improvements to the Facility and shall be responsible for paying, or causing to be paid, to City of Schertz and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project.

(f) Company shall cooperate with the County in providing all reasonably necessary information to assist them in complying with this Agreement.

(g) During the term of this Agreement, Company agrees to not knowingly employ any undocumented workers as part of the Project, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), Company shall be in Default (subject to the remedies in Article V above). Company is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts provided however that identical federal law requirements provided for herein shall be included as part of any agreement or contract which Company enters into with any subsidiary, assignee, affiliate, or franchisee for which Grant provided herein will be used.

(h) Company shall maintain and prepare financial statements in accordance with generally accepted accounting principles in the United States of America as established by the Financial Accounting Standards Board.

(i) Company shall grant County the right to periodically (and with reasonable advance notice) verify the terms and conditions of this Agreement including, but not limited to, the number of persons employed by Company as a result of the assistance provided hereunder, the addresses of those persons, the number of hours each employee worked during the previous 12 months, the total expenses attributable to training and employing those employees, and the cumulative payroll for the Facility.

2. County's Covenants and Duties. The County is obligated to pay Company a Grant in the form of a rebate on New Tangible Personal Property taxes paid to Comal County as outlined in Article IV. and Performance Table A as to the New Tangible Personal Property Required and Max Rebate Base Value. The Grant shall be paid within sixty (60) days after receipt of a copy of the Annual Report reflecting that the applicable performance period objectives have been met as set forth in this Agreement..

3. Substantial Compliance and Default. Failure by any Party to timely and substantially comply with any performance requirement, duty, or covenant shall be considered an act of Default if uncured sixty (60) days following receipt of written notice from any other Party. Failure of Company to timely and substantially cure a Default will give the County the right to terminate this Agreement, in whole or in part, as reasonably determined by the Board of Directors of the County.

4. Recapture. In the event of Default by the Company, the County shall as its sole and exclusive remedy for Default hereunder, after providing Company notice and an opportunity to cure for the stated cure period, have the right to discontinue or reduce, in whole or in part, all future Grant payments and recapture any and all amounts previously paid under this Agreement (as applicable, the "Recaptured Amount").

The Recaptured Amount shall be paid by the Company within one hundred eighty (180) days after the date Company is notified by the County of such Default (the "Payment Date") provided said Default was not cured during the applicable cure period. In the event the Recaptured Amount is not repaid by the applicable Payment Date, the unpaid portion thereof shall accrue interest at the rate of two percent (2.00%) per annum from the Effective Date until paid in full.

ARTICLE VI
TERMINATION

1. Termination. This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

(a) The written agreement of the Parties;

(b) The Agreement's Expiration Date;

(c) Default beyond applicable cure period by Company (at the option of the County).

ARTICLE VII
DISPUTE RESOLUTION

1. If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party.

2. Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against either the County or the City of Schertz.

ARTICLE VIII
MISCELLANEOUS

1. Binding Agreement. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. Notwithstanding any other provision of this Agreement to the contrary, performance of either Party under this Agreement is specifically contingent on Company maintaining a Certificate of Occupancy from the City of Schertz and expanding operations at the Facility under the terms of this Agreement.

2. Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

3. Representations and Warranties. The County represents and warrants to Company that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Company represents and warrants to the County that it has the requisite authority to enter into this Agreement.

4. Assignment. Company may not assign this Agreement without the prior written consent of the County. The County will not unreasonably withhold its consent of the assignment in the case of merger, corporate restructure, or acquisition of Company. However, the County may deny such consent if in the County's sole discretion it has concerns regarding, including without limitation, the lack of financial viability of the assignee, the business reputation of the assignee, the assignee's engaging in a type of business that would reflect poorly on the County, or the assignee's lack of compliance with federal, state, or local laws and ordinances.

5. Independent Contractors.

(a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Company at no time will be acting as an agent of the County and that all consultants or contractors engaged by Company respectively will be independent contractors of Company; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture

between the Parties and any implication to the contrary is hereby expressly disavowed. Neither the County, nor its past, present or future officers, elected officials, employees or agents assume any responsibility or liability to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

(b) By entering into this Agreement, except as specifically set forth herein, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the County with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

(c) No employee of the County, or any board member, or agent of the County, shall be personally responsible for any liability arising under or growing out of this Agreement.

6. Notice. Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, or on the first business day after depositing the same in the hands of a reputable overnight courier (such as United States Postal Service, FedEx or UPS) and addressed to the Party at the address set forth below:

If to the County:

Comal County, Texas
Attention: County Judge
150 N. Seguin Ave.
New Braunfels, TX 78130

With a copy to:
Comal County Auditor
150 N. Seguin Ave., Suite 2019
New Braunfels, TX 78130

If to the Company:

Attention: Facility Manager
Caterpillar, Inc.
6800 Doerr Ln, Schertz TX 78154

With a copy to:
Corporate Real Estate & Economic Development Mgr.

100 NE Adams St. AB4260
Peoria, IL USA 61629-4260

Any Party may designate a different address at any time upon written notice to the other Parties.

7. Governmental Records. All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10

8. Governing Law. The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement (subject to the dispute resolution mechanisms of Article VIII above) shall be in the Courts of Comal County. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

9. Amendment. This Agreement may be amended by mutual written agreement of the Parties, as approved by the Board of Directors of the County.

10. Legal Construction. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

11. Payment of Legal Fees. Each Party shall bear its own attorney's fees in connection with the negotiation of this Agreement.

12. Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the Board of Directors of the County.

14. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

15. 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.

16. Exhibits. Any Exhibits attached hereto are incorporated by reference for all purposes.

17. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

18. Indemnification.

COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE COUNTY ITS ELECTED OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION ARISING OUT OF NEGLIGENCE OF COMPANY IN CONNECTION WITH THIS AGREEMENT.

19. Additional Instruments. The Parties agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

20. Force Majeure. Whenever a period of time is herein prescribed for action to be taken by the Company, the Company shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to causes of any kind whatsoever which are caused by Force Majeure.

21. Limitation on County's Liability. Company specifically agrees that the County shall only be liable to Company for the amount of the Chapter 381 Payments it is required to pay Company, and shall not be liable to Company for any other actual or consequential damages, direct or indirect, or any other interest for any act of default by the County under the terms of this Agreement.

Executed on this 12th day of May 2022.

COMAL COUNTY, TEXAS

By: _____
Name: Scott Haag
Title: County Commissioner

ATTEST:

By: Bobbie Koepp

Name: Bobbie Koepp
Title: County Clerk

COMMISSIONERS' COURT
COMAL COUNTY, TEXAS

Executed on this _____ day of _____, 2022

COMPANY

Caterpillar Inc.

By: _____
Name:
Title:

Exhibit A

SAMPLE ANNUAL CERTIFICATION REPORT FORM

[SEE ATTACHED]

Annual Certification Report

Reporting Period: January 1 to December 31, 20__

The Annual Certification Report for the Economic Development Incentive Agreement between the Comal County and _____, is due on **February 15, 20___**. Please sign and return the Annual Certification Report form with the accompanying narrative.

I. Project Information

Project Information:

Company's legal name: _____

Project address subject to incentive: _____

Company primary contact: _____ Title: _____

Phone number: _____ E-mail address: _____

II. Reporting Information

Employment and Wage Information:

Has the Company employed undocumented workers? ☐ Yes ☐ No

What is the total number of Full-time Employees located at the Schertz facility during the calendar year? _____

What is the total Annual Payroll for the Schertz facility during the calendar year? _____

Investment Information:

What is the 20___ appraised ad valorem tax value for New Tangible Personal Property? _____

What is the 20___ appraised ad valorem tax value for Tangible Personal Property? _____

Narrative:

A brief narrative explaining the current year's activities and/or any potential defaults has been provided? ☐ Yes ☐ No

III. Additional Information (Voluntary)

Employment:

Number of full-time jobs added in past year: _____

Number of employees that live in Comal County, Texas: _____

IV. CERTIFICATION

I certify that, to the best of my knowledge and belief, the information and attachments provided herein are true and accurate and in compliance with the terms of Economic Development Incentive Agreement.

I further certify that the representations and warranties contained within the Agreement remain true and correct as of the date of this Certification, and XXX Corporation remakes those representations and warranties as of the date hereof.

I further certify that the employment and wage information provided is true and accurate to the best of my knowledge and I can provide documentation from the Texas Workforce Commission to support my claim if so requested.

I understand that this Certificate is being relied upon by Comal County in connection with the expenditure of public funds.

I have the legal and express authority to sign this Certificate on behalf of Caterpillar Inc..

Name of Certifying Officer	Certifying Officer's Title
Phone Number	E-Mail Address
Signature of Certifying Officer	Date

STATE OF TEXAS X
COUNTY OF XXX X

This information was acknowledged before me on this _____ day of _____, _____ by [first and last name] , [title] for XX Corporation, a Texas County, on behalf of said agency.

_____
Notary Public, State of Texas

_____
Notary's typed or printed name

My commission expires

_____

The Annual Certification Report is to be completed, signed and returned on or before February 15, 20__. Please send an original to the following address:

Attention: County Auditor
Comal County
150 N. Seguin Ave., Suite 2019
New Braunfels, TX 78130