CHAPTER 380
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Agreement ("Agreement") is entered into this 13th day of **June, 2022** (the "Effective Date") by and between the **City of Smithville**, a Texas general law municipality (the "City") and **Sammi and Travis Hill** ("Developer").

WHEREAS, the City owns the Smithville Municipal Airport (the "Airport"); and

WHEREAS, the Airport is in need of more hangar space; and

WHEREAS, the Developer is interested in utilizing space within the Airport to construct a hangar (the "Facility"); and

WHEREAS, the City is interested in owning and leasing back the Facility to the Developer; and

WHEREAS, Chapter 380 of the Texas Local Government Code provides a mechanism to allow the City to engage in the below-described actions because it promotes economic development within the City;

NOW, THEREFORE, in consideration of the mutual benefits and promises and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Authority. The Parties agree that they are both authorized to execute this Agreement, and that each Party is acting in reliance upon the other Party's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to lease, construct and occupy the Facility.

2. Term. This Agreement shall become enforceable as of the Effective Date and shall end based on the terms and conditions described below.

3. Rights and Obligations of Developer.

3.1 Construction. The Developer shall, within **12-months** after the Effective Date, begin construction of the Facility. A Certificate of Occupancy for the Facility will be obtained from the City by **July 1, 2023**.

3.2 Facility. The Facility shall be an airport hangar constructed as is typical for an airport hangar with a minimum square footage of **2,800 ft²** (40' x 70'). The Facility shall be located pursuant to approval a TXOT Aviation Airport Layout Plan (ALP) on Airport property. Developer must expend a minimum of One Hundred Forty Thousand Four Hundred and No/100 Dollars ($140,400.00) to construct the Facility. All invoices related to the construction of the Facility shall be presented to the City for review and approval prior to the City's issuance of a Certificate of Occupancy ("CO"). After the CO is issued, Developer will execute any and all documents necessary to convey all Developer's interest in the Facility to the City. Additionally, the Developer shall expend at least Ten Thousand and No/100 Dollars ($10,000.00) as its fifty

percent (50%) share to install pavement to and from the Hangar to the Airport ramp access / taxiway.

3.3 Rent. After issuance of the CO, the Developer, or its assignees (if assignment approved by the City), will receive lease credit at the amount of Six Hundred Fifty and No/100 Dollars **($650.00)** per month for eighteen **(18) years** as an offset for Developer's cost to construct the Facility. In the year 2040, or after the One Hundred Forty Thousand Four Hundred and No/100 Dollars ($140,400.00) lease credit has been fulfilled, Developer may lease the Facility for Seven Hundred Seventy-Five and No/100 Dollars **($775.00)** per month, for a term of seven **(7) years**.

3.4 Lease. The actual lease agreement shall be a separate standard Texas commercial lease form acceptable to both Parties. The Lease shall be approved by both Parties prior to Facility construction. Any assignment of the Lease or any sub-lease requires the written approval of the City, which shall not be unreasonably withheld. The Lease may be assigned to heirs of the Developer upon death or incapacity of **Sammi and Travis Hill**

3.5 Bonds. Prior to construction of the Facility, Developer must provide a five (5) year performance and payment bond to the City, with sureties approved by the City and naming the City as additional insured.

4. Rights and Obligations of City.

4.1 Fees. All building permit and inspection fees are waived.

4.2 Underground Electricity. The City will be solely responsible for the installation of all underground electricity needed to service the Facility. All monthly electrical service will be paid by the City for a period of twenty-five (25) years.

4.3 Insurance. The City shall be solely responsible for all property and casualty insurance on the Facility.

4.4 Taxes. Any and all taxes that may be assessed against the Facility will be the responsibility of the City.

4.5 Maintenance. The City will be responsible for all mowing and weed eating around the Facility.

4.6 Pavement. The City will construct and be responsible for fifty percent (50%) of all costs to install pavement from the Facility to the Airport landing strip.

4.7 Survey. The City will pay all costs to survey the property around the Facility and assign a 911 address.

4.8 Lease. The City will enter into a lease with Developer based on the terms described in Sections 3.3 and 3.4 above.

5. Miscellaneous.

5.1 Mutual Assistance. City and Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.

5.2 Representations and Warranties. City represents and warrants to Developer that this Agreement is within its authority, and that it is duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Developer represents and warrants to City that it has the requisite authority to enter into this Agreement.

5.3 Default. If either City or Developer should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party with notice of such default, and a reasonable opportunity to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If Developer remains in default after notice and opportunity to cure, City shall have the right to pursue any remedy at law or in equity for Developer's breach. If Developer remains in default after notice and opportunity to cure, City shall have the right to pursue any remedy at law or in equity for Developer's breach.

5.4 Attorney's Fees. In the event any legal action or proceeding is commenced in a court of competent jurisdiction between City and Developer to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

5.5 Entire Agreement. This Agreement contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by City and Developer.

5.6 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

5.7 Amendment. This Agreement may be amended by the mutual written agreement of the parties.

5.8 Termination. In the event Developer elects not to construct the Facility as contemplated by this Agreement, Developer shall notify City in writing, and this Agreement and the obligations on the part of both parties shall be deemed terminated and of no further force or effect. The Developer understands that the City reserves the right to further expand, develop, or improve the Airport, including the early termination of this agreement, in such instance that the continued leasing of the hangar would have a negative impact on any proposed development or improvements at the Airport. This agreement may be terminated regardless of the desires, wishes, or views of the Developer and without interference or hindrance, but only so long as such expansion, development, or improvements are shown on a Texas Department of Transportation and/or FAA approved Airport Layout Plan or Master Plan. The City will provide twelve (12) months written notice of termination pursuant to the provisions stated above. If the agreement is terminated early, the City will pay the Developer an amount in cash equal to the difference between the lease credit earned through the actual termination date and $140,400.

5.9 Notice. Any notice and/or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to City: **City of Smithville**
PO Box 449
317 Main Street
Smithville, TX / 78957
Attn: City Manager / Airport Manager
Email: citymanager@ci.smithville.tx.us

With a required copy to:

Sheets & Crossfield, PLLC
309 E. Main St.
Round Rock, TX 78664
Attn: Charles Crossfield
Phone: (512) 255-8877
Email: Charlie@scrrlaw.com

If to Developer:

Sammi and Travis Hill
159 Flower Hill Road
Smithville, TX 78957
Phone: (512) 663-9637
Email: sammileehill@gmail.com

With a required copy to:

Ben Schovajsa
236 West Colorado Street
LaGrange, TX 78945
Phone: (979) 968-3184
Email: ben@lagrangelawyers.com

Either party may designate a different address at any time upon written notice to the other party.

5.10 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Bastrop County, Texas.

5.11 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

5.12 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.

5.13 No Third-Party Beneficiaries. This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

5.14 Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (a "*force majeure* event"). A *force majeure* event for the purposes of this Agreement shall include, but not be limited to, acts of God; fire; explosion; vandalism; Pandemic Measures; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay. Except as otherwise expressly provided herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*.

5.15 "Pandemic Measures" means any quarantine, cordon sanitaire, "shelter in place," work shut down order, non-essential business designation, occupancy or spacing limitation, protective or cleaning measures, or any other valid law, ordinance or regulation issued in response to a pandemic, or an epidemic occurring in the vicinity of the Project, by a governmental entity with jurisdiction over the Project or the Work, and which hinders or delays a Party's ability to satisfy an obligation of this Agreement.

5.16 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 any partnership or joint venture among the parties. City, its past, present, and future officers, elected officials, employees, and agent of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Facility or the design, construction or operation of any portion of the Facility.

EXECUTED to be effective as of the 24th day of June, 2022.

CITY OF SMITHVILLE, TEXAS

By: Robert Tamble
Robert Tamble, City Manager / Airport Manager

Date: June 24th, 2022

SAMMI and TRAVIS HILL

By: Sammi Hill
Sammi Hill

By: Travis Hill
Travis Hill

Date: June 24th, 2022