

THE STATE OF TEXAS §
 § Chapter 380 Grant Agreement
COUNTY OF TARRANT §

THIS Agreement is executed on February 14, 2018, by and between **RICOS PRODUCTS COMPANY, INC.**, an entity duly authorized to do business in the State of Texas, acting by and through its authorized officer (hereafter referred to as "**OWNER**"), and the **CITY OF ARLINGTON, TEXAS**, a home-rule city and municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee, (hereafter referred to as "**CITY**").

W I T N E S S E T H:

WHEREAS, CITY and OWNER entered into a Tax Abatement Agreement on September 4, 2013; and

WHEREAS, CITY and OWNER desired amendments to the Tax Abatement Agreement and entered into a First Amended and Restated Tax Abatement and 380 Grant Agreement on February 19, 2016; and

WHEREAS, it was determined in 2017 that OWNER does not meet the qualifications of a party with whom the CITY can enter into a tax abatement agreement under the authority provided for in Texas Tax Code Chapter 311; and

WHEREAS, the First Amended and Restated Tax Abatement and 380 Grant Agreement has been terminated and the parties now desire to enter into this 380 Grant Agreement (hereafter referred to as "Agreement"); and

WHEREAS, CITY has found that providing a program of incentives to OWNER in exchange for OWNER's construction of a new industrial building will promote local economic development and stimulate business and commercial activity and retain jobs within the City of Arlington (hereafter referred to as "PROGRAM"); and

WHEREAS, the CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; NOW THEREFORE,

The CITY and OWNER, for and in consideration of the mutual premises and promises contained herein, do hereby agree, covenant, and contract as set forth below:

I.
Definitions

- A. "Added Taxable Value" is defined as the value of the Eligible Property above the Base Year Value, as appraised by the Tarrant Appraisal District.
- B. "Base Year Value" is defined as the tax year 2013 taxable value of the real property located at the Premises on January 1, 2013, as finally determined by Tarrant Appraisal District.
- C. "Business Operations" refers to OWNER's business located at 3011 Pinewood Drive, Arlington, Texas 76010 and is defined as snack food manufacturing and distribution and related ancillary operations.
- D. "Business Personal Property Improvements" are defined as tangible personal property (except inventory or supplies) delivered to, installed, or located on the Premises in connection with OWNER's Business Operations as defined herein, under OWNER's name as reported by the Tarrant Appraisal District.
- E. "Eligible Property" is defined as Real and Business Personal Property Improvements as provided in **Exhibit "A"** erected or affixed to the Premises between January 1, 2013, and January 1, 2015. **Exhibit "A"** is attached hereto and incorporated herein for all purposes.
- F. "Job" is defined as a permanent, full-time equivalent employment position that results in employment of an employee (not independent contractor) of OWNER within the City of Arlington of at least 1,820 hours per position in a year.
- G. "Median Wage" for Arlington will be determined by the Median Earnings for Workers as reported by the most recent release of the American Community Survey available at the time application is submitted to CITY. To qualify, an applicant's median wage must exceed the figure determined by multiplying the reported Margin of Error for Median Earnings for Workers times 1.20 and adding this figure to the reported estimate of Median Earnings for Workers. If Margin of Error is not reported, the figure that an applicant's median wage must exceed will be determined by taking the difference between the reported High Estimate and Estimate and multiplying the difference by 1.20 and adding this figure to the Estimate.
- H. "Premises" are defined as the real property (land and improvements) located at 3011 Pinewood Drive, described by metes and bounds in **Exhibit "B."** **Exhibit "B"** is attached hereto and incorporated herein for all purposes.
- I. "Real Property Improvements" are defined as improvements to the Premises and shall include buildings, structures or fixtures erected or affixed to land.

II.
General Provisions

- A. The Premises are not in an improvement project financed by tax increment bonds.
- B. The Premises are not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of CITY.
- C. It is acknowledged and agreed by the parties that the completion of the Eligible Property Improvements is consistent with the purposes of encouraging development or redevelopment of the Reinvestment Zone.

III.
Improvement Conditions and Requirements

- A. OWNER shall improve the Premises by completing the Eligible Property described in **Exhibit "A"** by January 1, 2015.
- B. OWNER's completion of the Eligible Property described in **Exhibit "A"** of this Agreement must result in Added Taxable Value above the Base Year Value ("Added Value") of at least Two Million Five Hundred Thousand Dollars (\$2,500,000) not later than January 1, 2015.
- C. OWNER will create at least 45 new Jobs not later than January 1, 2015, and shall maintain those Jobs for the term of the agreement.
- D. OWNER shall operate and maintain on the Premises the Eligible Property described in **Exhibit "A"** for the term of the agreement.
- E. All proposed Eligible Property shall conform to the applicable building codes, zoning ordinances, and all other ordinances and regulations.
- F. OWNER shall not fail to render for taxation any property located within the City of Arlington.
- G. OWNER shall not allow the ad valorem taxes owed to CITY on any property owned by OWNER and located within the City of Arlington to become delinquent beyond the last day they can be paid without assessment of penalty, as such date is generally extended to allow for any appeal.
- H. OWNER covenants and certifies that OWNER does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.001(4) of the Texas Government Code. In accordance with section 2264.052 of the Texas Government Code, if OWNER is convicted of a violation under 8 U.S.D.

Section 132a(f), OWNER shall repay to the CITY the full amount of the grant payments provided under Section IV of this Agreement, plus 10% per annum from the date the grant payments were made. Repayment shall be paid within 120 days after the date following such conviction that OWNER receives notice of violation from the CITY as provided by 2264.101(c) of the Texas Government Code, OWNER shall not be liable for a violation by a subsidiary, affiliate, or franchisee of OWNER or by a person with whom OWNER contracts.

IV. Grants

- A. If the Improvement Conditions and Requirements set forth in Section III are met, CITY shall do the following:
1. On an annual basis beginning in 2018 and ending in 2022, City will provide a grant payment calculated as provided below in subsection IV.A.2.
 2. Each grant payment shall be determined annually based upon the following:
 - i. An amount equal to sixty percent (60%) of the ad valorem taxes collected by the CITY in the previous tax year for the Added Taxable Value of the Eligible Property.
 - ii. An additional amount equal to ten percent (10%) of the ad valorem taxes collected by the CITY in the previous tax year for the Added Taxable Value of the Eligible Property for each grant year the median wage of the persons employed at the Premises exceeds the CITY's Median Wage as defined in Section I.
- B. Each year OWNER must certify compliance by April 15 of payment in full of all real property taxes and business personal property taxes due by OWNER or its affiliates on the Eligible Property, subject to the right of protest. Failure to timely submit the annual certification in accordance with this subsection after notice and opportunity to cure as provided herein shall waive OWNER's right to the grant.
- C. Each year OWNER must certify compliance by April 15 of the jobs requirements specified in Section III on a form to be provided by the CITY. The CITY may require further information from the OWNER to substantiate the jobs requirement in Section III and Median Wage grant in Section IV. Failure to timely submit the annual certification and provide requested documentation in accordance with this Agreement after notice and opportunity to cure as provided herein shall waive OWNER's right to the grant.

- D. All grant payments will be paid by CITY to OWNER on or before June 1 of each year, beginning in June 2018 and ending in June 2022, provided the Conditions and Requirements contained in Section III have been met.

V.

Reports, Audits and Inspections

- A. Additional Reports and Records - Throughout the term of this agreement, OWNER shall furnish CITY any additional records and information reasonably requested to support the certifications required by this Agreement. OWNER hereby authorizes the CITY to request and receive any and all property tax information relating to the Eligible Property from the Tarrant Appraisal District ("TAD"). OWNER agrees that release of such information will be made by TAD, upon request from CITY, at any time from execution of this Agreement until it is terminated. OWNER agrees to provide any waivers and releases requested by TAD to the CITY.
- B. Right to Audit Books and Records - CITY shall have the right to audit the books and records related to the Eligible Property. CITY shall notify OWNER in advance in writing of their intent to audit in order to allow OWNER adequate time to make such books and records available.
- C. Inspection - At all times throughout the term of this Agreement, CITY shall have reasonable access to the Premises for the purpose of inspecting the Premises to ensure that the Eligible Property is constructed, installed, maintained, and operated in accordance with the terms of this Agreement. All inspections shall be conducted in a manner as to not unreasonably interfere with the installation of the Eligible Property or the operation of the Premises. The inspections shall be conducted within a reasonable time period after notice by CITY, provided, however, that all inspections shall be made with one (1) or more representative(s) of OWNER present and in accordance with the safety standards of OWNER.

VI.

Use of Premises

The Premises at all times shall be used in a manner that is consistent with CITY's Unified Development Code and all other applicable federal, state, and local laws.

VII.

Breach and Recapture

- A. Breach - A breach of this Agreement may result in termination or modification of this Agreement and recapture by CITY of grant payments. The following conditions shall constitute a breach of this Agreement:

1. OWNER terminates use of the Premises any time during the duration of the Agreement; or
 2. OWNER fails to meet the Conditions and Requirements as specified in Section III above.
- B. Notice of Breach - In the event that CITY makes a reasonable determination that OWNER has breached this Agreement, then CITY shall give OWNER written notice of such. OWNER has sixty (60) days following receipt of said written notice to reasonably cure such breach, or this Agreement may be terminated by CITY, and recapture of grant payments may occur. Notice of breach shall be in writing and shall be delivered by personal delivery or certified mail to OWNER at its address provided in section IX of this Agreement.
- C. Recapture - During the term of this Agreement, should OWNER commit and fail to timely cure a breach of this Agreement, CITY may terminate this Agreement and recapture all grant payments made under this Agreement. It shall be the duty of CITY to determine whether to require recapture of grant payments after termination of this Agreement and to demand payment of such. Repayment of grant payments shall become due 60 days following receipt of such demand. The rights of CITY to require recapture and demand repayment of grant payments, and the obligation of OWNER to pay such, shall survive termination of this Agreement. The City Attorney has the authority, on behalf of the CITY, to initiate any litigation necessary to pursue payment of recaptured grant payments pursuant to this Agreement.

VIII.

Effect of Sale or Lease of Property

The grant payments authorized by this Agreement shall not be assignable to any new owner or lessee of all or a portion of the Premises or Eligible Property unless such assignment is approved in writing by the CITY with approval of the City Council, which approval shall not be unreasonably withheld.

IX.

Notice

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail postage prepaid or by hand delivery:

OWNER: Ricos Products Company, Inc.
 Attention: Jeremy Powledge, Chief Financial Officer
 830 South Presa
 San Antonio, Texas 78210

CITY: City of Arlington
Attention: Economic Development Manager
Post Office Box 90231
Arlington, Texas 76004-3231

X.
City Council Authorization

This Agreement was authorized by resolution of the City Council authorizing the City Manager or his designee to execute this Agreement on behalf of the CITY.

XI.
Severability

In the event any section, subsection, paragraph, sentence, phrase, or word is held invalid, illegal, or unconstitutional, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word.

XII.
Estoppel Certificate

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to a subsequent purchaser or assignee of OWNER, shall include, but not necessarily be limited to statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the grant payments in effect, and such other matters reasonably requested by the party(ies) to receive the certificates.

XIII.
Owner's Standing

OWNER, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same, and OWNER shall be entitled to intervene in said litigation.

XIV.
Applicable Law

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

XV.
Indemnification

It is understood and agreed between the parties that the OWNER, in performing its obligations hereunder, is acting independently, and CITY assumes no responsibility or liability to third parties in connection therewith, and OWNER agrees to indemnify and hold harmless CITY from any such responsibility or liability. It is further understood and agreed among the parties that CITY, in performing its obligations hereunder, is acting independently, and the OWNER assumes no responsibility or liability to third parties in connection therewith, and CITY agrees to the extent allowed by law to indemnify and hold harmless OWNER from any such responsibility or liability.

XVI.
Force Majeure

It is expressly understood and agreed by the parties to this Agreement that the parties shall not be found in default of this Agreement if any party's failure to meet the requirements of this Agreement is delayed by reason of war, Act of God, fire, or other casualty of a similar nature.

XVII.
No Other Agreement

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by the parties.

XVIII.
**Procurement of Goods and Services from Arlington Businesses
and/or Historically Underutilized Businesses**

In performing this Agreement, OWNER agrees to use diligent efforts to purchase all goods and services from Arlington or Tarrant County businesses whenever such goods and services are comparable in availability, quality and price.

As a matter of policy with respect to CITY projects and procurements, CITY also encourages the use, if applicable, of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor, or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers, or other persons or organizations proposed for work on this Agreement, the OWNER agrees to consider this policy and to use their reasonable and best efforts to select and employ such companies and persons for work on this Agreement.

XIX.
Headings

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XX.
Successors and Assigns

The parties to this Agreement each bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement.

No successor, executor, administrator, or assign is valid in the place of the parties to this Agreement without the written consent of CITY and such consent shall not be unreasonably withheld.

XXI.
Termination

This Agreement shall terminate in accordance with the terms of this Agreement, unless earlier terminated.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above.

RICOS PRODUCTS COMPANY, INC.

BY _____
Signature Jeremy Falsberg
Type or Printed Title _____
Date 2/14/18

WITNESS:



CITY OF ARLINGTON, TEXAS

BY

JIM PARAJON

Deputy City Manager

Date

2-9-18

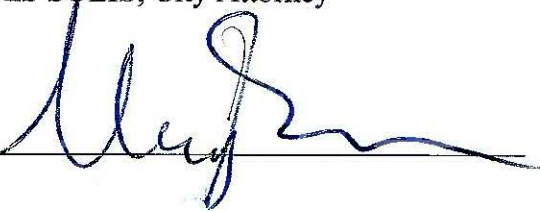
ATTEST:


MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:

TERIS SOLIS, City Attorney

BY

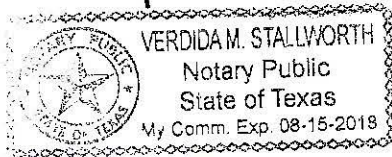


THE STATE OF TEXAS §
 §
COUNTY OF _____ §

RICOS PRODUCTS COMPANY, INC.
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Jeremy P. Kedge, known to me (or proved to me on the oath of _____ or through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **RICOS PRODUCTS COMPANY, INC.**, an entity duly authorized to do business in the State of Texas, and as the _____ thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 14th day of February, 2018.



08-15-2018
My Commission Expires

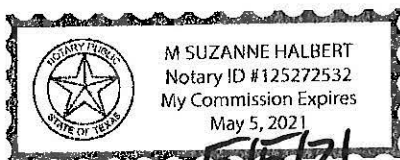
Verdida M. Stallworth
Notary Public in and for
The State of Texas
Verdida M. Stallworth
Notary's Printed Name

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **JIM PARAJON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **Deputy City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 9th day of March, 2018.



5/5/21
My Commission Expires

M Suzanne Halbert
Notary Public in and for
The State of Texas
M. SUZANNE HALBERT
Notary's Printed Name

Exhibit "A"

ELIGIBLE PROPERTY

Ricos Products Company, Inc. Manufacturing Plant Building Improvement and Project Description

The Pinewood building purchase includes a \$2.1M improvement investment of the existing 100,100 square foot building. The improvements include the customization of the 3,000 square foot office space, warehouse, and manufacturing area of the building. This project in the amount of \$4.6M includes the following investment:

Real Property Improvements:

- Production room with accommodations for chip and popcorn lines
- Chemical and clean rooms
- Packaging room
- Kitchen build out
- Maintenance room build out
- Warehouse build out
- Penetrations of existing tilt walls for new doors and window openings
- Roof supports for HVAC equipment
- Concrete repair – misc. and drains
- New 277/480 electrical distribution with coordination
- New lighting design
- Modification of existing dock doors
- Rework of parking lot and load docks

Business Property Improvements:

- Purchase of JC Ford 1,500 lb./hour chip line
- Purchase of JC Ford packaging component of chip line
- Purchase of various office equipment

Exhibit "B"

PROPERTY DESCRIPTION

The west ½ of Site 68, Great Southwest South, Great Southwest Industrial District, an addition to the City of Arlington, Tarrant County, Texas, according to plat recorded in Volume 388-58, Page 229, Deed Records of Tarrant County, Texas.

