

ECONOMIC DEVELOPMENT GRANT AGREEMENT

This Economic Development Grant Agreement (“Agreement”) is entered into by and between the **CITY OF HARKER HEIGHTS, TEXAS** (“City of Harker Heights”) and **CHUY’S OPCO, INC.** (“Chuy’s”). The purpose of this Agreement is to set forth the terms under which the City of Harker Heights will make certain economic development grants to Chuy’s.

The City of Harker Heights is authorized by Chapter 380 of the *Texas Local Government Code* to establish and provide for the administration of one or more programs for making loans and grants of public money to promote economic development and stimulate business and commercial activity in the City. The grants made and described herein are made for that purpose pursuant to the authority granted by Chapter 380.

The parties agree as follows:

1. Description of Project – Chuy’s Commitment – Chuy’s agrees to construct and operate a Chuy’s restaurant facility no less than 5,000 square feet in size on the property described as Savannah Commercial Addition Replat 2 – Phase 2, Lot 2R-1, Block 1 in the City of Harker Heights (“Premises”). Additionally, Chuy’s agrees to fully and appropriately equip the Premises in order to operate a full service Chuy’s restaurant thereon. Chuy’s agrees to expend no less than \$3,500,000 for site preparation and construction of the fully operational restaurant facility on the Premises. Chuy’s also agrees to expend no less than \$700,000 for furniture, fixtures and equipment to be used at the Chuy’s restaurant facility.

Chuy’s agrees to commence construction of the restaurant facility on or before the 30th day following execution of this Agreement, and to have the restaurant fully equipped and open for business by December 31, 2023. Once opened, Chuy’s agrees that the restaurant will be open daily and operated for a period of at least five (5) years after the date operations commence, subject to reasonable temporary closures due to casualty, condemnation, a Force Majeure Event (defined herein), renovation and/or repair (but periods for renovation shall not exceed ninety (90) consecutive days), and holidays (collectively, “Temporary Closures”). The commitments made by Chuy’s in Paragraph 1 of the Agreement shall be referred to as “Chuy’s Commitment.”

2. Economic Development Grants – In consideration for the performance of Chuy’s Commitment as required by this Agreement, the City of Harker Heights agrees to make certain economic development grants to Chuy’s in amounts based upon a percentage of City sales tax revenues collected by Chuy’s from sales activity within the City of Harker Heights and paid to the City of Harker Heights, less any refunds by Chuy’s or required to be made by the City (“Sales Taxes”). As used in this Agreement, “Chuy’s Net Sales Tax Revenues” shall mean City sales tax revenues collected by Chuy’s at its place of business described above that are remitted to and received by the City of Harker Heights less any refunds by Chuy’s or refunds required to be made by the City of Harker Heights. Subject to the performance by Chuy’s of its obligations hereunder, and subject to the conditions of this Agreement, the City of Harker Heights agrees to make an annual economic development grant to Chuy’s in the amount of 50% of Chuy’s Net Sales Tax Revenues, not to exceed \$200,000, each year for a period of five (5) years after Chuy’s initial opening to the general public. The five (5) year period during which economic grants will be paid

shall hereinafter be referred to as the “Grant Period.” The first grant payment shall be made based upon Chuy’s Net Sales Tax Revenues collected and remitted to the City during 2023.

To obtain an annual grant payment for any year during the Grant Period, Chuy’s shall within ninety (90) days after the end of any calendar year for which Chuy’s seeks a grant payment provide notice to the City of Harker Heights of the amount of Chuy’s Net Sales Tax Revenues collected by Chuy’s from taxable retail sales from the Premises in the previous year. Within sixty (60) days after receiving this notice, the City of Harker Heights shall review such information and confirm the net sales tax revenue information. Chuy’s will cooperate with the City of Harker Heights to determine the amount of Chuy’s Net Sales Tax Revenues. If requested by the City of Harker Heights, Chuy’s will cooperate to obtain and confirm information regarding the amount of Chuy’s Net Sales Tax Revenues from the Office of the Texas Comptroller of Public Accounts. The City of Harker Heights shall make the annual grant payment in an amount equal to 50% of Chuy’s Net Sales Tax Revenues (not to exceed \$200,000 for any year) to Chuy’s within sixty (60) days after receiving this notice from Chuy’s or, if applicable, receiving confirmation from the Office of the Texas Comptroller of Public Accounts regarding the amount of Chuy’s Net Sales Tax Revenues, whichever is later.

If the City of Harker Heights disagrees with the calculations of Chuy’s Net Sales Tax Revenues presented by Chuy’s, the parties shall consult to determine the correct amount of the grant payment.

3. Requirements and Conditions for Economic Development Grants – The economic development grants described herein are subject to the following requirements and conditions:

A. All construction of real property improvements required by this Agreement must be made in material compliance with all City of Harker Heights codes, ordinances and laws.

B. Chuy’s must operate a Chuy’s restaurant on the Premises for the entire term of this five (5) year Agreement, subject to Temporary Closures. If Chuy’s otherwise discontinues business operations on the Premises before all grants to be paid hereunder have been paid, this Agreement shall terminate upon written notice to Chuy’s. “Temporary Closure” means closure of the Chuy’s restaurant facility for less than fourteen consecutive days. Chuy’s shall be deemed to have ceased business operations if there are more than four Temporary Closures at the Chuy’s restaurant constructed on the Premises in any calendar year during the term of this Agreement.

C. Chuy’s will maintain and properly repair all of the real property improvements described above, as well as the equipment contained therein, as necessary to keep the same in good working order for the entire five (5) year term of this Agreement.

D. Chuy's acknowledges its obligation to timely pay its State sales tax obligations. Failure of Chuy's to pay sales taxes within thirty days after they become delinquent, will terminate this Agreement.

4. Compliance – Chuy's binds itself hereby, and agrees, to construct and make all real property improvements described herein, and to furnish the Chuy's restaurant constructed on the Premises, to comply with its obligations in this Agreement. Chuy's acknowledges and agrees that the purpose of this Agreement is to encourage economic development within the city limits of the City of Harker Heights and Chuy's covenants that all uses of the Premises shall be consistent with the general purpose of encouraging development within the city limits of the City of Harker Heights during the period that this Agreement is in effect. Chuy's shall comply with any reasonable request by the City of Harker Heights for information related to improvements made by Chuy's or compliance by Chuy's with its obligations hereunder. Chuy's will cooperate in regard to any audit or inspection by the City of Harker Heights during the Grant Period and up to one year thereafter, to assure compliance by Chuy's. Chuy's shall also provide the City of Harker Heights' designated employees or consultants with reasonable access (with 24 hours prior notice) to inspect the Premises to ensure that the improvements required herein are being maintained in accordance with the provisions of this Agreement. Such inspection shall not interfere with the business operations of Chuy's on the Premises and shall not occur more than twice per calendar year.

5. Notice of Breach. Notwithstanding anything herein to the contrary, neither party shall be deemed to be in default under this Agreement until the passage of thirty (30) days after receipt by such party of notice of default from the other party (the "Cure Period"), which notice shall specify, in reasonable detail, the nature of the default. Upon the passage of the Cure Period without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement; provided that, if the nature of the default is such that it cannot be reasonably cured within the Cure Period, the Party receiving the notice of default may, during such Cure Period, give the other Party written notice that it has commenced curing the default within the Cure Period and will diligently and continuously prosecute the cure to completion as soon as reasonably possible, and such written notice together with diligent and continuous prosecution of the cure shall extend the Cure Period for up to an additional sixty (60) calendar days so long as the cure is being diligently and continuously pursued during such time.

6. Remedies. Notwithstanding anything herein to the contrary, the City of Harker Heights' sole remedy for Chuy's uncured failure to perform the Chuy's Commitment shall be to terminate this Agreement and receive the recoupment provided below in Section 7, plus any additional applicable recovery provided in Section 9 if Chuy's does not repay such amounts. Except as provided in this Agreement, no right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder.

7. Termination and Recoupment of Incentives – This Agreement terminates and is cancelled at the end of the five (5) year contract term unless cancelled early or terminated as set out herein. In the event Chuy's fails to meet its obligations under this Agreement, this Agreement shall terminate and (1) Chuy's shall not be entitled to any grant for the year in which this

Agreement is terminated, and (2) Chuy's shall be obligated to repay and reimburse the City of Harker Heights an amount equal to the last grant payment made to Chuy's by the City of Harker Heights pursuant to this Agreement prior to the termination .

8. Force Majeure – Neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to a “Force Majeure Event.” A “Force Majeure Event” as used in this Agreement shall be defined as a delay or failure of performance caused by any act, event, or condition that has a material effect on the ability of the applicable impacted party to perform its obligations under this Agreement if such act, event, or condition is beyond the reasonable control of such party and is not the result of willful or negligent action or inaction of the excused party, and shall include, without limitation, (1) acts of God, war, public disorder, insurrection, rebellion, floods, hurricanes, earthquakes, lightening, power failure or other natural calamity, casualty or event of a similar nature; (2) epidemics or pandemics; (3) action or inaction of governmental or regulatory agency or judicial bodies or changes in laws; (4) explosions or fire; (5) strikes or labor disturbances or labor shortages; (6) any unforeseen act or omission of a third party; (7) supply chain disruption or material shortage beyond the control of the impacted party or its contractor, including inadequate transportation serviceability, inability or delay in obtaining supplies or adequate or suitable materials or labor shortages; (8) delays in obtaining goods or services from any subcontractor, material provider or supplier by reasons of any occurrence of any of the foregoing causes; or (9) governmental action, other than the exercise by the City of Harker Heights of its rights hereunder.

The impacted party shall give notice as soon as possible, but in all cases within ten (10) days of a Force Majeure Event to the other party, stating all details of the underlying cause and the period of time the occurrence is expected to continue. The impacted party shall use its best efforts to end the failure or delay and ensure that the effects of such Force Majeure Event are minimized. These efforts will include, without limitation, use of best efforts to timely identify and obtain alternative sources of supply or services, as the case may be. The impacted party shall resume the performance of its obligations as soon as reasonably practical after the removal of the cause. In the event that the Force Majeure Event is caused by the failure of a contractor, subcontractor or material provider to perform its obligations, the impacted party shall take all reasonable steps to cause the failure to be remedied as soon as reasonably possible and shall pursue all available legal remedies to assure timely performance and mitigate the effects of such failure.

9. Attorney's Fees – If on account of any breach or default by either party of its obligations under the provisions of this Agreement it shall be necessary for the other party to employ an attorney or attorneys to enforce or defend any of the rights or remedies hereunder, the prevailing party shall be entitled to any reasonable attorney's fees, expert witness fees, costs, or expenses it incurs in connection therewith.

10. Venue and Controlling Law – Texas law shall govern interpretation and application of this Agreement and all disputes hereunder. This Agreement is performable, and shall be performed, in Bell County, Texas. Venue for any dispute between the parties shall be Bell County, Texas.

11. Amendment – No amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing, is dated subsequent to the date of this Agreement and is duly executed by the parties.

12. Severability – If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall automatically be deleted from this Agreement and the legality, validity, or enforceability of the remaining provisions shall not be affected.

13. Prior Agreements Superseded – This Agreement constitutes the sole and only agreement between the parties herein with respect to the subject matter of the Agreement and supersedes any prior understanding or written or oral agreements between the parties respecting the subject matter hereof.

14. No Waiver – No waiver by the City of Harker Heights or Chuy’s of any event of default or breach of any covenant, condition or agreement herein contained shall be treated as a waiver of any subsequent default or breach of the same or any covenant, condition or agreement herein.

15. Assignment – This Agreement may not be assigned by Chuy’s without prior written consent of the City of Harker Heights, which will not be unreasonably withheld if the Premises will still be used for the operation of a Chuy’s restaurant.

16. Relationship of the Parties – Nothing hereunder shall create a partnership or joint venture between the parties to this Agreement.

17. Revenue Sharing Agreement – The City of Harker Heights designates this Agreement as materially similar to a revenue sharing agreement, thereby entitling the City of Harker Heights to request and receive sales and use tax information from the State of Texas Comptroller pursuant to §321.3022 of the *Texas Tax Code* for any and all projects associated with this Agreement.

18. Notice – Any notice or demand which any party is required to or may desire to serve upon the other must be in writing and shall be sufficiently served if (1) personally delivered, (2) sent by registered or certified mail, postage prepaid, or (3) sent by commercial overnight carrier and addressed to:

If to the City:

City of Harker Heights
c/o City Manager
305 Miller’s Crossing
Harker Heights, Texas 76548

If to Chuy’s:

Chuy’s Opco, Inc.
c/o Tim Larson / Legal Department
1623 Toomey Road
Austin, Texas 78704

Such notice shall deem to have been served (1) four (4) business days after such notice is deposited and stamped by the United States Postal Service, or (2) upon delivery in the event of personal service, or (3) the first business day after the date of deposit with an overnight courier.

19. Program – This Agreement constitutes an economic development program to promote local economic development and to stimulate business and commercial activity within the City of Harker Heights pursuant to Chapter 380 of the *Texas Local Government Code*.

EXECUTED by the City of Harker Heights on this the 24 day of January, 2023.

CITY OF HARKER HEIGHTS, TEXAS



By: _____

David Mitchell

David Mitchell
City Manager

ATTEST:

Julie Adams

City Secretary

EXECUTED by Chuy's Opco, Inc. on this the 3rd day of February, 2023.

CHUY'S OPCO, INC.

By: _____

Tim Larson

Print Name: _____

TIM LARSON

Title: _____

VP and General Counsel