CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This Chapter 380 Economic Development Agreement (the "Agreement") is entered by and between the CITY OF BRYAN, TEXAS, a home-rule municipal corporation organized under the laws of the State of Texas (hereinafter referred to as "City"), and the EPMC Group, LLC, a Texas Limited Liability Company (hereinafter referred to as "Developer"). City and Developer may also be referred to collectively as the "Parties" or individually as a "Party."

WHEREAS, the City is authorized under Chapter 380 of the Texas Local Government Code to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity within the City, including fulfilling a critical need for high-quality residential housing within the City; and

WHEREAS, City actively seeks economic development prospects in Bryan through participation in and establishment of an economic development program; and

WHEREAS, City desires to stimulate business, increase the City's tax base and create new jobs for its citizens; and

WHEREAS, Developer owns approximately 11.374 acres of land within the city limits of the City, consisting of Lot 2R, Block 4, Phase 4 of the Park Hudson Subdivision in Bryan, Brazos County, Texas more particularly described by boundary survey attached hereto as Exhibit "A" (the "Property"); and

WHEREAS, Developer plans to construct a senior active living market rate residential development project on the Property; and

WHEREAS, City has determined that commercial development on the University Drive corridor is desireable and advantageous for the citizens of City by providing employment, quality of life for citizens and enhancing both sales and ad valorem tax revenue; and

WHEREAS, Developer has advised the City that it is willing and desires to maximize to the development of the Property to accommodate a commercial component to the development of the Property by shifting a portion of required stormwater drainage infrastructure from on-premises to off-premises location by supplementing existing public stormwater drainage infrastructure, and certain financial incentives from the City would induce the Developer to construct or cause to be constructed on the Property, the Legacy BTX Development, a mixed-use planned development project which comprises active senior market rate multi-family residences and commercial, retail, and office uses (the "Project"); and

WHEREAS, Developer and the City agree it would be mutually beneficial for Developer to develop the Property as articulated in the Hudson Oaks Development Concept Plan, attached hereto as Exhibit "B" and incorporated herein for all purposes; and

WHEREAS, the expansion of stormwater drainage infrastructure in the vicinity of Copperfield Drive and the Project would benefit both the Developer and the City; and

WHEREAS, Developer's engineer has estimated Developer will expend significantly more than $290,000.00 in drainage improvments including upgrades to on-sirw and existing public stormwater infrastructure; and

WHEREAS, Developer plans to develop the Project at its sole cost, as is required of the Developer by the City of Bryan ordinances, and shall convey applicable public infrastructure to the City; and

WHEREAS, the City Council finds the Project and the construction by Developer of the Real Property Improvements and the stormwater drainage improvements will provide a valuable catalyst for development in the City and increased tax revenues to the City; and

WHEREAS, in consideration of the execution of the Project in accordance with the performance measures set forth herein, City agrees to use lawfully available revenues calculated based on the increase in ad valorem taxes generated from the Project to grant to Developer cash incentives (the "Chapter 380 Payments") as set out herein; and

WHEREAS, in consideration of the design, timely construction, and development of the Project, which will bring additional sales tax and ad valorem tax revenues to the City and additional jobs resulting from the Project, the City desires to enter into this Agreement pursuant to TEXAS LOCAL GOVERNMENT CODE, Chapter 380 and other laws applicable to the development of municipal infrastructure as an economic incentive for the Developer to develop and construct the Project; and

WHEREAS, the City Council finds given the incentives provided, Developer will realize a distinct benefit from proceeding with the Project based on the Project's value; and

WHEREAS, to ensure that the benefits City provides under this Agreement are utilized in a manner consistent with TEXAS LOCAL GOVERNMENT CODE, Chapter 380 and other law, Developer agrees to comply with certain conditions for receiving those benefits, including conditions relating to property development, procurement, and all city ordinances.

NOW, THEREFORE, for the reasons stated in these Recitals and in consideration of the mutual benefits to and promises of the Parties set forth below, the Parties are entering into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE I.
DEFINITIONS

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Ad Valorem Tax Revenues" means the amount of Real Property Taxes collected by the City on the Property, a portion of which will be repaid to Developer in the form of Chapter 380 Payments.

"Affiliate" means any person or entity which directly or indirectly controls, is controlled by or is under common control with Developer, during the term of such control. A person or entity will be deemed to be "controlled" by any other person or entity if such other person or entity (a)

possesses, directly or indirectly, power to direct or cause the direction of the management of such person or entity whether by contract or otherwise, (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity or (c) has direct or indirect ownership of at least fifty percent (50%) of the equity interests in the entity.

"Bankruptcy or Insolvency" shall mean the dissolution or termination of a Party's existence as a going business, insolvency, appointment of receiver for any portion of the Property owned by Developer or a material part of a 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, the filing of a voluntary petition for bankruptcy protection by a Party, or the commencement of an involuntary bankruptcy proceeding against such Party, and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Base Year Taxable Value" shall mean the Taxable Value of the Property as of January 1, 2021.

"Chapter 380 Payment(s)" or **"Cash Incentives"** shall mean that amount paid as a grant under Texas Local Government Code, Chapter 380, by City to Developer in an amount equal to 50 percent of Real Property Taxes collected by City and attributable to the Incremental Taxable Value in the calendar year immediately preceding the year in which a Chapter 380 Payment is requested. Such amount shall be calculated based upon the Incremental Taxable Value for each year of the Agreement, unless otherwise provided herein.

"Commencement of Construction" means that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Project or the applicable phase of the Project; (ii) all necessary permits for the construction of the Project or for the applicable phase of the Project, pursuant to the respective plans therefor have been issued by all applicable governmental authorities; and (iii) grading of the applicable portion of the Property and for construction of the respective phase of the Project.

"Completion of Construction" or "Complete Construction" shall mean that: (i) the construction of the Phase 1 (market rate senior active living residential development, Phase 2 (commercial development), and/or the stormwater drainage infrastructure, as the case may be, has been substantially completed; and (ii) the City Engineer has accepted the respective infrastructure, as the case may be.

"Developer" shall mean EPMC Group, a Texas Limited Liability Company and its Affiliates.

"Effective Date" shall mean the date that this Agreement is fully executed by both the City and Developer.

"End-User" shall mean any person or entity to whom all or a portion of the Property is sold or transferred by Developer.

"Expiration Date" means the earlier to occur of (i) the date the Chapter 380 Payment is received from the City in the year following 7 years after the First Year of Cash Incentives or (ii) 18 months from Completion of Construction of Phase 1, if at that time, the Developer has not

Commenced Construction of Phase 2; or (iii) the total amount of Chapter 380 Payments received by Developer has reached the Maximum Payment Amount, as defined herein. In recognition of the fact that the Chapter 380 Payments by necessity are calculated and paid after taxes have been assessed and paid to the City, and therefore always run in arrears, the term of this Agreement shall be deemed to be extended for the time necessary to make any payments otherwise due and payable to Developer which extend beyond the original term of the Agreement.

"Facility" shall mean a building or structure erected on the Property.

"First Year of Cash Incentive(s)" shall mean the first calendar year following the calendar year in which the Incremental Taxable Value of the Property is at least $22,000,000.00.

"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, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such Party), fires, explosions or floods, strikes, slowdowns or work stoppages. In no event shall Force Majeure include Developer's financial inability to perform or Developer's inability to perform as a result of changes in market conditions.

"Improvements" shall mean the construction of the Phase 1 and Phase 2 Subdivision Improvements, Residential Improvements, and new Facilities on the Property and other ancillary facilities such as required parking and landscaping more fully described in the submittals filed with City, from time to time, in order to obtain a building permit(s), and stormwater drainage infrastructure. Improvements may include future retail and general commercial and office uses as determined by the City Council through the rezoning process.

"Incremental Taxable Value" means the Taxable Value for the Property as of January 1st of a given year less the Base Year Taxable Value.

"Maximum Payment Amount" means the total not to exceed amount of cash incentives which may be paid to Developer by City as a Chapter 380 Payment during the term of this Agreement, which amount shall not exceed TWO HUNDRED NINETY THOUSAND DOLLARS ($290,000.00).

"Payment Request" means a written request from Developer to the City for payment of the annual Cash Incentive accompanied by a report of all property ID numbers for each record owner of a lot, parcel or Facility located on the Property.

"Personal Property" shall have the meaning ascribed to it in Section 1.04 of the Texas Tax Code, as amended.

"Phase 1 of the Project" shall mean a senior active living market rate residential development, as per the June 2020 amended Park Hudson PD Planned Development Zoning District, as approximately shown on Exhibit "B".

"Phase 2 of the Project" means the construction of a minimum of 12,000 square feet of commercial along University Drive East, as approximately shown on Exhibit "B".

"Project" or "Legacy BTX" is Developer's planned mixed-use development of the Property in phases, consisting of a senior active living market rate residential development, retail, general commercial and office uses as depicted on the conceptual land plan attached hereto as Exhibit "B".

"Property" means the real property consisting of Lot 2R, Block 4, Phase 4 of the Park Hudson Subdivision in Bryan, Brazos County, Texas and depicted by a boundary survey in Exhibit "A".

"Real Property" shall have the meaning ascribed to it in Section 1.04 of the Texas Tax Code, as amended.

"Real Property Taxes" means the City's share of the ad valorem taxes received by the City from the Brazos County Tax Assessor-Collector on the value of the Real Property located on the Property, which shall include land and improvements taxed by the City, and shall exclude ad valorem taxes received by the City on Personal Property located on the Property.

"Residential Improvements" means the new construction of residential buildings(s), and all the appurtenances thereto, whether single family, duplex or multi-family in purpose.

"Storm Sewer Improvements" means up-sizing the existing off-site public storm sewer that runs along Copperfield Drive from the Property north to Park Hudson Creek, and the on-site drainage detention on the Property.

"Storm Sewer Public Improvements" means the portion of the Storm Sewer Improvements to up-size the existing off-site public storm sewer.

"Subdivision Improvements" means all improvements to real property required of the Developer by the City of Bryan Subdivision Ordinance, which cost shall be borne solely by Developer.

"Taxable Value" means the appraised value as certified by the Brazos Central Appraisal District as of January 1st of a given year.

ARTICLE II.
TERM

2.01 The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES OF DEVELOPER AND CITY

3.01 In order to induce City to enter into this Agreement, Developer represents and warrants as follows:

(a) Developer is a duly organized and validly existing limited liability company under the laws of the State of Texas.

(b) Developer has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and all other instruments to be executed and delivered by the Developer in connection with its obligations hereunder. The execution, delivery, and performance by Developer of this Agreement have been duly authorized by all requisite action by the Developer, and this Agreement is a valid and binding obligation of the Developer enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally.

(c) The Developer is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which the Developer is a party or by which the Developer or any of its property is bound that would have any material adverse effect on the Developer's ability to perform under this Agreement.

(d) To its best knowledge, Developer is not a party to or otherwise bound by any agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which could reasonably be expected to materially and adversely affect the Developer's ability to perform its obligations under this Agreement.

(e) The Developer fully intends, subject to the conditions set forth in this Agreement, to commence and complete the Project.

3.02 In order to induce Developer to enter into this Agreement, City represents and warrants as follows:

(a) City is a home rule city operating under the laws of the State of Texas and is authorized and empowered to enter into this Agreement.

(b) The City has the authority to levy, assess, and collect ad valorem taxes on the Property and to use the taxes collected by it from property within the City, including the Property, as provided in this Agreement.

ARTICLE IV.
THE STORM SEWER IMPROVEMENT CONSTRUCTION

4.01 **Design.** Within thirty (30) days of the Effective Date of this Agreement, Developer shall engage a Professional Engineer, licensed in the State of Texas and proficient in Civil Engineering (the "Engineer"), to design the Storm Sewer Public Improvement in accordance with City of Bryan Engineering Standards and Specifications (the "Design Plans"). The Design Plans shall be subject to review and final approval by the City Engineer.

4.02 **Construction Plans.** Before commencing construction of the Storm Sewer Public Improvements, Developer shall cause Developer's engaged engineer to prepare the plans and specifications for the construction of the Storm Sewer Public Improvements in accordance with the approved Design Plans, which plans shall be submitted for, and subject to, the review and

approval of the City Engineer (the "Construction Plans"). The Developer agrees to comply with all applicable legal requirements of the City and any other agencies having jurisdiction. No material modifications to the Construction Plans may be made without review and approval by the City Engineer, which approval shall not be unreasonably delayed or withheld.

4.03 **Competitive Bidding.** Construction contracts for the Storm Sewer Public Improvements shall be let on a competitive bidding basis as required by law applicable to the City. After preparation of final plans and specifications and their approvals as required by this Agreement, the Developer shall advertise for or solicit bids for construction as described in the final plans and specifications. The City's representatives shall be notified of, and invited to attend when applicable, pre-bid conferences, bid openings, and the award of contracts in accordance with the notice provision of Section 13.07 of this Agreement. The City shall designate from time to time in writing the persons who shall be their designated representatives. Failure of the City's representative to attend any pre-bid conference, bid opening or award of contract meeting shall not be cause to postpone or otherwise delay such meeting. Developer shall construct the Storm Sewer Public Improvements at its expense under the Terms of this Agreement.

4.04 **Payment and Performance Bonds.** The Developer shall require each contractor constructing the Storm Sewer Public Improvements to furnish a payment and performance bond in an amount equal to the full cost of Developer's construction contract with that contractor, conditioned on the contractor's full and timely performance under the construction contract. The payment and performance bond(s) must be in a form approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds $100,000.00, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of $1,000,000.00 by a reinsurer listed on the U.S. Treasury list. The Developer and City shall be named as dual obligees for each payment and performance bond(s) and copies of certificates of such bond(s) shall be delivered to the City.

4.04.1 In the event Developer fails or refuses to complete the Storm Sewer Public Improvements by the Completion Date, the City shall be entitled to exercise its rights as an obligee under the performance bond(s) and may complete the construction of the Storm Sewer Public Improvements and charge the performance bond(s) for the costs. Nothing herein shall be construed as a limitation on the City's right to exercise any and all legal and equitable remedies available to the City. The provisions of this subsection 4.05.1 shall survive the termination of this Agreement.

4.05 **Insurance.** Developer shall require each contractor constructing the Storm Sewer Public Improvements to carry the types of insurance and coverage with respect to the Storm Sewer Public Improvements as set forth in attached Exhibit "C". The Construction Contract shall require the contractor to deliver to the City Manager certificates of insurance evidencing such coverage before the Commencement of Construction and shall provide that within ten (10) days before expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewals and payment of premium shall be delivered by each of the Developer's construction contractor(s) to the City Manager.

4.06 **Construction.** The Developer shall Commence Construction of the Storm Sewer Public Improvements not later than six (6) months after the final approval by the City Engineer of the Construction Plans, and subject to events of Force Majeure, shall cause Completion of Construction to occur not later than twelve (12) months after the Commencement of Construction (the "Completion Date"). Prior to commencement of construction of any Storm Sewer Public Improvements, the Developer or its engaged engineer will give written notice by certified mail or hand-delivery to the City Manager stating the date that construction will be commenced. Construction of the Storm Sewer Public Improvements will be in accordance with the approved Construction Plans, and with the applicable City of Bryan Engineer's Standards and Specifications. During the progress of the construction and installation of the Storm Sewer Public Improvements, the City may conduct periodic, on-the-ground inspections.

4.07 **Mechanics' Liens**. Developer is expressly prohibited from subjecting the Storm Sewer Public Improvements to any liens of mechanics, artisans, laborers, materialmen, contractors or subcontractors, or to any other liens or charges whatsoever arising out of any construction and development work arising in any other manner in connection with the construction of the Storm Sewer Public Improvements.

4.08 **Final Acceptance of Public Improvements.** The City will not issue a Letter of Acceptance for the Storm Sewer Public Improvements until they are completely constructed (Final Completion) to the satisfaction of the City Engineer. However, upon substantial completion a "punch list" of outstanding items shall be presented to Developer's contractors indicating those outstanding items and deficiencies that need to be addressed for Final Completion of the Storm Sewer Public Improvements.

4.08.1 When construction of the Storm Sewer Public Improvements is finally completed by the contractor, in accordance with this Agreement, and the following items have been accomplished, the City will accept them as being complete, as evidenced by the issuance of a letter of acceptance by the City Engineer to the Developer:

a. A final inspection of all improvements has been accomplished and the resulting 'Punch List' corrected; and

b. The contractor has provided the City a Maintenance Bond, equal to one hundred percent (100%) of the approved cost estimates provided by the developer indicating that he will be responsible for defects in the project due to faulty materials and/or workmanship for a period of one (1) year from date of final acceptance; and

c. The developer has submitted an "All Bills Paid Affidavit" from the Contractor and Developer evidencing to the City that final payment to the contractor has been made, and that all subcontractors and persons furnishing labor and materials have been paid in full and all claims settled, and

d. The required "as built" construction plans have been submitted to and accepted by the City, and

e. The certification of the Developer's design engineer as to the completeness of the "as built" drawings has been submitted to the City Engineer.

4.09 **Title vests in the City.** Upon issuance of the Letter of Acceptance, title to all of the Storm Sewer Public Improvements shall be vested in the City and Developer relinquishes any right, title or interest in and to such improvements or any part thereof. It is understood and agreed that the City shall have no liability or responsibility in connection with such improvements until title vests in the City, as stated herein.

ARTICLE V.
CHAPTER 380 PROGRAM

5.01 If the Developer performs the following requirements, pertaining to the Project, City agrees to pay to Developer the Chapter 380 Payments as stated in this Agreement:

(a) As consideration of and part of the Chapter 380 Agreement, Developer shall Commence Construction of the Phase 1 of the Project within twelve (12) months Effective Date of this Agreement.

(b) As a condition precedent to the City's obligation to make a Chapter 380 payment in any given year during the term of this Agreement, Developer, at a minimum, must: (i) Complete Construction of the Phase 1 of the Project; (ii) Commence Construction of Phase 2 within eighteen (18) months of completion of Phase 1 and (iii) obtain and/or maintain a minimum Incremental Taxable Value of the Property in any given calendar year of at least $22,000,000.00.

(c) During the Term of this Agreement, Developer shall not allow the ad valorem taxes owed to City on the Property owned by the Developer, or any other property owned by Developer and located within the City of Bryan, to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal. Nor shall Developer fail to render for taxation any property owned by Developer and located within the City of Bryan.

(d) Completion of Construction of Phase 2 of the Project must occur no later than 42 months after the Effective Date of this Agreement.

(e) Developer agrees to use commercially reasonable efforts to pursue new commercial and retail tenants and End-Users to add value to the Property and create new jobs.

ARTICLE VI.
GENERAL REQUIREMENTS

6.01. Developer agrees as good and valuable consideration for this Agreement that construction of the Improvements by Developer will be in accordance with all applicable federal, state and local laws, city codes, ordinances, rules and regulations.

6.02 This Agreement shall not constitute a waiver by the City of any codes, ordinances, rules and regulations. Further, Developer acknowledges that by executing this Agreement, no entitlement or agreements concerning zoning or land use shall arise, either implied or otherwise.

6.03 Construction plans for the Improvements constructed on the Property by Developer will be filed with City, which shall be deemed to be incorporated by reference herein and made a part hereof for all purposes.

6.04 Developer agrees to maintain the Improvements owned by it during the term of this Agreement in accordance with all applicable federal, state and local laws, city codes, ordinances, rules and regulations.

6.05 City, its agents and employees shall have the right of access to the Property during construction by Developer to inspect the Improvements at reasonable times and with reasonable notice to Developer, and in accordance with visitor access and security policies of Developer and Developer's tenants, in order to insure that the construction of the Improvements are in accordance with this Agreement and all applicable state and local laws and regulations (or valid waiver thereof).

ARTICLE VII.
THE CHAPTER 380 PAYMENTS

7.01 **Condition Precedent.** The City's obligation to make the Chapter 380 Payment to Developer as set forth herein is contingent and conditioned upon: (i) Developer's Completion of Construction of Phase 1 of the Project, (ii) Commencement of Construction of Phase 2 within eighteen (18) months of completion of Phase 1 and (iii) A minimum Incremental Taxable Value of the Property in the then preceding calendar year of at least TWENTY-TWO MILLION DOLLARS ($22,000,000.00); and (iii) Developer is in compliance with all of the terms and conditions set forth in this Agreement.

7.02 Subject to the Developer's compliance with the conditions precedent set forth in Section 7.01 above, City agrees to pay to Developer annually an amount equal to fifty percent (50%) of the Ad Valorem Tax Revenues collected by the City on the Incremental Taxable Value of the Property for the preceding calendar year by the Developer and/or any End User in accordance with the terms of this Agreement, provided that the total amount of Chapter 380 Payments paid to Developer under this Agreement shall not exceed TWO HUNDRED NINETY THOUSAND DOLLARS ($290,000.00).

7.03 In no event will the Chapter 380 Payment paid in connection with a tax year exceed the amount of ad valorem taxes actually collected by the City on the Property by July 1 for such tax year.

7.04 The City's obligation to make the Chapter 380 Payment(s) hereunder is subject to annual appropriation by the Bryan City Council, which the City agrees to use good faith efforts to appropriate such funds each year during the Term of this Agreement. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the City's obligations under this Agreement shall be pledged or

otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

7.05 The total amount of Chapter 380 Payments paid by the City under this Agreement shall in no event exceed TWO HUNDRED NINETY THOUSAND DOLLARS ($290,000.00), at which time City's obligation to make the Chapter 380 Payments to Developer ends.

7.06 City will remit the first Chapter 380 Payment to Developer no later than sixty (60) days after receipt by the City Manager of a proper Payment Request from the Developer in accordance with the terms of this Agreement. Beginning with the First Year of Cash Incentives, Developer may only submit a Payment Request during the period commencing July 1 and ending on December 31 of any given year. The failure by Developer to timely submit to the City Manager a Payment Request will result in the forfeiture of the Chapter 380 Payment attributable to that tax year.

7.07 During the term of this Agreement, Developer shall be subject to all taxation, including but not limited to, sales tax and ad valorem taxation; provided, this Agreement does not prohibit Developer from claiming any exemptions from tax provided by applicable law.

ARTICLE VIII.
DEFAULT

8.01 **Events of Default**. Developer shall be in default of this Agreement upon the occurrence of any of the following during the term of this Agreement:

(a) Developer fails to comply with any of its obligations under this Agreement;

(b) Developer fails to file any required report or statement or to give any required notice pursuant to this Agreement; or

(c) Developer fails to timely pay any sales or property taxes owed to the City and fails to properly follow legal procedures for protest or contest of such taxes.

8.02 If the Developer should default in the performance of any obligation of this Agreement, the City shall provide Developer written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to pursuing any remedy for default.

8.03 If Developer remains in default after notice and opportunity to cure, City shall have the right to (i) suspend the Chapter 380 Payments or (ii) terminate the Agreement and the Chapter 380 Payments which have accrued after the date of default; and (iii) to exercise all available remedies at law and at equity.

8.04 If Developer does not have timely Completion of Construction, Developer agrees to reimburse City the Cash Incentives previously paid to the Developer hereunder excluding any reimbursement payments previously made by the Developer. Such reimbursement shall be due and payable 120 days after the Developer receives written notice of default accompanied by copies of all applicable invoices. Each party is responsible for its own attorney's fees and costs.

8.05 The provisions regarding termination of the Agreement and the recapturing of previously paid Cash Incentives shall also apply should the Developer fail to pay sales or property taxes owed to the City and fails to properly follow legal procedures for protest or contest of such taxes, but only to the extent of the sales or property taxes owed to the City and which Developer has failed to pay.

8.06 The Developer's obligation to repay any recapture amounts to the City under Section 8.04, and the City's right and authority to pursue any default and to recover all of the Chapter 380 Payments made to Developer under this Agreement shall survive the termination of this Agreement.

ARTICLE IX.
EVENTS OF FORCE MAJEURE

9.01 It is expressly understood and agreed by the Parties to this Agreement that if the performance by either Party of any obligation hereunder is delayed by reason of an event of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same for the time and to the extent necessary to allow the affected Party to overcome the event of Force Majeure and resume performance thereof. The Party claiming delay of performance as a result of an event of Force Majeure shall deliver written notice of the commencement of such delay to the other Party as soon as reasonably practicable after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of delay caused by a Force Majeure event, the claiming Party shall not be entitled to extend the time for performance as provided herein.

ARTICLE X.
TERMINATION

10.01 This Agreement shall terminate upon any one or more of the following:

(a) By mutual agreement of the Parties;

(b) Expiration Date;

(c) Developer has been paid the Maximum Payment Amount;

(d) Developer suffers an event of Bankruptcy or Insolvency;

(e) Either Party breaches any of the terms or conditions of the Agreement and any such breach is not cured within thirty (30) days after written notice; or

(f) Developer may sell or otherwise convey the Property or any portion of the Property to a third party, other than an Affiliate as defined herein, with City's written consent, which may not be unreasonably withheld, prior to the Property obtaining a minimum Incremental Taxable Value of $22,000,000, provided that the value is reached within the time period set forth in this Agreement. If this occurs, the City's obligations under this Agreement remain in effect. Otherwise, the City's obligations under this Agreement to make any

Chapter 380 Payments to Developer or a third party shall terminate as of the Property not obtaining the minimum Incremental Taxable Value in the time period set forth in this Agreement.

ARTICLE XI.
INDEMNIFICATION

11.01 **Developer does hereby agree to waive all claims, release, indemnify, defend and hold harmless the City, and all of their officials, officers, agents and employees, in both their public and private capacities, from and against any and all liability, claims, losses, damages, suits, demands or causes of action including all expenses of litigation and/or settlement, court costs and attorney fees which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property occasioned by the error, omission, or negligent act of Developer, its officers, agents, or employees arising out of or in connection with the performance of this Agreement, and Developer will at its own cost and expense defend and protect the City from any and all such claims and demands. The indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Developer or any contractor or subcontractor under workman's compensation or other employee benefit acts.**

ARTICLE XII.
REPORTING AND AUDITING

12.01 **Compliance Certification.** Developer shall, before December 31 of each calendar year that the Agreement is in effect, certify in writing to City that it is in compliance with each term of the Agreement, using the certification form attached hereto as Exhibit "D". The submission of these reports shall be the responsibility of Developer and shall be signed by an officer of the Developer.

12.02 **Maintenance of Records.** Developer shall be responsible for maintaining records of all costs incurred and payments made for the Project, and all records evidencing compliance with all Developer obligations required under this Agreement. Developer shall maintain such records for a period of one (1) year after termination or completion of this Agreement.

12.03 **Access to Records / Right to Audit.** Developer shall allow City reasonable access, during normal business hours, to review and audit its records and books and all other relevant records related to the Agreement upon five (5) business days' prior written notice to the Developer, during the development period. Post development, City much give thirty (30) days' notice to Development to review and audit records

ARTICLE XIII.
MISCELLANEOUS

13.01 **Incorporation of Recitals.** The determinations recited and declared in the preambles to this Agreement are true and correct and are hereby incorporated herein as part of this Agreement.

13.02 **Entire Agreement.** This Agreement, including any exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.

13.03 **Exhibits, Titles of Articles, Sections and Subsections.** The exhibits attached to this Agreement, if any, are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

13.04 **Amendments.** This Agreement may only be amended, altered, or terminated by written instrument signed by all parties.

13.05 **Assignment.** Developer may not assign this Agreement without the prior written consent of the City Manager, except that Developer may assign this Agreement in whole or in part to an Affiliate or in connection with any merger, reorganization, sale of all or substantially all of its assets or any similar transaction; provided that Developer provides the City Manager with written notice promptly after any such assignment. The Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and assigns.

13.06 **No Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused, unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

13.07 **Notices.** Notices under this Agreement are sufficient if given by nationally recognized overnight courier service, certified mail (return receipt requested), facsimile with electronic confirmation, or personal delivery to the other Party at the address below. If no address is listed for a Party, notice to such Party will be effective if given to the last known address. Notice is effective: (a) when delivered personally, (b) three business days after sending by certified mail, (c) on the business day after sending by a nationally recognized courier service, or (d) on the business day after sending by facsimile with electronic confirmation to the sender. Each Party may update its contact information by notice to the other. Routine business and technical correspondence must be in English, and may be in electronic form. The contact information for each Party is as follows:

CITY:

City of Bryan, Texas
Attn: City Manager
P.O. Box 1000
Bryan, Texas 77805-1000
Telephone: (979) 209-5100
Facsimile: (979) 209-5003

DEVELOPER:

EPMC Group, LLC
Attn: Kenneth Goodman
3304 Longmire Drive
College Station, Texas 77845
Telephone: (979) 680-8530

13.08 **Applicable Law and Venue**. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in State courts located in Brazos County, Texas. Venue for any matters in federal court will be in the United States District Court for the Southern District of Texas, Houston Division.

13.09 **Severability**. In the event any provision of this Agreement is illegal, invalid, or unenforceable under the applicable present or future laws, then, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or 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 to be illegal, invalid or unenforceable.

13.10 **Third Parties**. The City and Developer intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the City and Developer or permitted assignees of the City and Developer, except that the indemnification and hold harmless obligations by Developer provided for in this Agreement shall inure to the benefit of the indemnitees named herein.

13.11 **No Joint Venture**. 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. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

13.12 **Employment of Undocumented Workers.** During the term of this Agreement, Developer agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Developer shall repay to City all Cash Incentives received under this Agreement as of the date of such violation within 120 days after the date Developer is notified by City of such violation, plus interest at the rate of five percent (5%) simple interest from the date of Developer's receipt of the Cash Incentives until repaid.

13.13 **Basic Safeguarding of Developer Information Systems.**

(a) Developer shall apply basic safeguarding requirements and procedures to protect Developer's information systems whenever the information systems store, process or transmit any information, not intended for public release, which is provided by or generated for the City of Bryan ("City"). This requirement does not include information provided by City to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

(b) Developer shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

13.14 **No Personal Liability.** No elected official of the City, officer or employee of City shall be personally liable to the Developer or any successor in interest of Developer, in the event of any default or breach by the City, or for any amount which may become due to Developer or to its successor in interest, or for breach of any obligation under the terms of this Agreement.

13.15 **Right of Offset.** The City may deduct from any Chapter 380 payments, as an offset, any delinquent and unpaid utility charges, or other unpaid fees, charges, or taxes assessed and other sums of money owed to, or for the benefit of, the City by Developer; provided that, before offsetting such sums, the City must provide Developer with (a) advance notice of such offset, (b) sixty days to take action to remedy the situation giving rise to the offset, and/or (c) reasonable opportunity, at its own expense, to contest such offset.

13.16 **Independent Contractor**. Developer shall at all times during the Term of this Agreement remain an independent contractor.

13.17 **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

EXECUTED in duplicate originals to be effective as of the Effective Date.

CITY OF BRYAN, TEXAS:

Andrew Nelson, Mayor

Date: 2-23-2021

EPMC Group, LLC

Date: 2/23/2021

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

EXHIBIT "A"

Boundary Survey

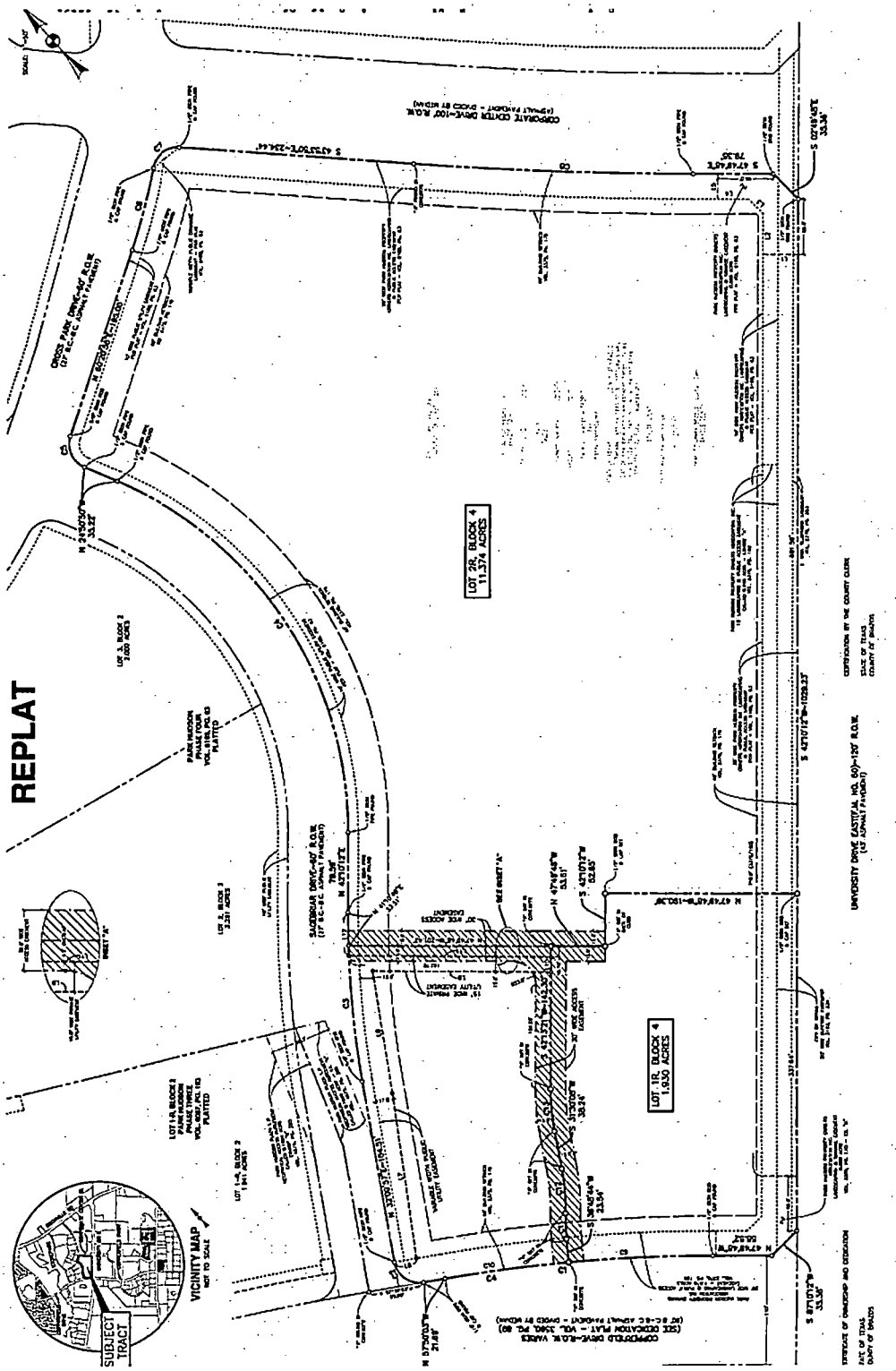

EXHIBIT "B"

Concept Plan

EXHIBIT "C"

INSURANCE REQUIREMENTS FOR STANDARD CONTRACTS

The Contractor agrees to maintain the minimum insurance coverage and comply with each condition set forth below during the duration of this contract with the City/BTU. All parties to this contract hereby agree that the Contractor's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance.

Contractor must deliver to City/BTU a certificate(s) of insurance evidencing such policies are in full force and effect within 10 business days of notification of the City/BTU's intent to award a Contract. No contract shall be effective until the required certificate(s) have been received and approved by the City/BTU. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within 10 business days **may cause the contract to be rejected**.

The City/BTU reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.

A. **Workers' Compensation Insurance & Employers Liability Insurance** - Contractor shall maintain Workers' Compensation insurance for statutory limits and Employers Liability insurance with limits not less than $500,000 each accident for bodily injury by accident or $500,000 each employee for bodily injury by disease. Contractor shall provide Waiver of Subrogation in favor of the City/BTU and its agents, officers, officials, and employees.

B. **Commercial General Liability Insurance** - Contractor shall maintain Commercial General Liability (CGL) with a limit of not less than $1,000,000 per occurrence and an annual aggregate of at least $2,000,000. CGL shall be written on a standard ISO "occurrence" form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City/BTU. The City/BTU and its agents, officers, officials, and employee shall be listed as an additional insured.

C. **Business Automobile Liability Insurance** - Contractor shall maintain Business Automobile Liability insurance with a limit of not less than $1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Contractor shall provide Waiver of Subrogation in favor of the City/BTU and its agents, officers, officials, and employees.

D. **Policy Limits** - Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. Contractor agrees to endorse City/BTU and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.

E. **Deductibles, Coinsurance Penalties & Self-Insured Retention** - Contractor may maintain reasonable and customary deductibles, subject to approval by the City/BTU. Contractor shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.

F. **Subcontractors** - If the Contractor's insurance does not afford coverage on behalf of any Subcontractor(s) hired by the Contractor, the Subcontractor(s) shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City/BTU accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

G. **Acceptability of Insurers** - Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-:VI or better by AM Best Insurance Rating.

H. **Evidence of Insurance** – A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City/BTU within 10 business days by the successful Contractor's insurance agent or insurance company after contract award. Endorsements must be submitted with the certificate. No contract shall be effective until the required certificates have been received and approved by the City/BTU.

Renewal certificates shall be sent a minimum of 10 days prior to coverage expiration.

Upon request, Contractor shall furnish the City/BTU with certified copies of all insurance policies.

The certificate of insurance and all notices shall be sent to:
City/BTU of Bryan
Contract Administrator name and title
PO Box _____
Bryan, TX 77805
Emailed to: _____
Faxed to: _____

Failure of the City/BTU to demand evidence of full compliance with these insurance requirements or failure of the City/BTU to identify a deficiency shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

I. **Notice of Cancellation, Non-renewal, Material Change, Exhaustion of limits** – Contractor must provide minimum 30 days prior written notice to the City/BTU of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If City/BTU is notified a required insurance coverage will cancel or non-renew during the contract period, the Contractor shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City/BTU reserves the right to withhold payment to Contractor until coverage is reinstated.

J. **Contractor's Failure to Maintain Insurance** – If the Contractor fails to maintain the required

insurance, the City/BTU shall have the right, but not the obligation, to withhold payment to Contractor until coverage is reinstated or to terminate the Contract.

K. **No Representation of Coverage Adequacy** - The requirements as to types and limits, as well as the City/BTU's review or acceptance of insurance coverage to be maintained by Contractor, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Contract.

EXHIBIT "D"

STATE OF TEXAS §
CITY OF BRAZOS §

ECONOMIC DEVELOPMENT AGREEMENT
ANNUAL CERTIFICATION FORM

REPORTING YEAR 20__

I, the authorized representative and officer of the EPMC Group, LLC do hereby certify to the City Council of the City of Bryan, Texas ("City") that EPMC Group, LLC is in full compliance with the terms of the Chapter 380 Economic Development Agreement with the City, entered into on the __ day of _____, 2021.

Signed this _____ day of _____, 20__.

_____ _____ _____
Print Name **Signature** **Title**

ACKNOWLEDGMENT

This instrument was acknowledged before me on the _____ day _____, 20__, by _____, as the _____ of EPMC Group, LLC on behalf of said company.

_____
Notary Public, State of Texas