

STATE OF TEXAS §

COUNTY OF BRAZOS §

**FIRST AMENDMENT TO**  
**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT**  
**BETWEEN THE CITY OF BRYAN, TEXAS AND SMITTY'S OUTDOORS, LLC.**

This First Amendment ("Amendment") is entered into by and between the City and Smitty's, the parties to that Chapter 380 Economic Development Agreement Between the City of Bryan, Texas and Smitty's Outdoors, LLC ("Agreement") on the 19<sup>th</sup> day of March, 2020.

WHEREAS, the City and Smitty's entered into the Agreement to incentivize the redevelopment of the Property to remove a chronic nuisance, encourage the redevelopment of the Midtown area, and to encourage sustainable job growth in the City; and

WHEREAS, the parties believe that those goals are still being furthered by the Agreement, however due to the COVID-19 pandemic, the pace of construction has slowed; and

WHEREAS, in light of Smitty's demonstrated commitment thus far, the City Council finds that it is in the best interests of the community to continue to support this project by agreeing to provide an additional six (6) months for Smitty's to meet its obligations; and

WHEREAS, as consideration for the extension, Smitty's agrees to not only complete the redevelopment of the Property but open to the public for business within six (6) months as well; and

NOW, THEREFORE, City and Smitty's agree as follows:

**A. Amended Terms**

1. Smitty's obligation under Section A(3) of the Agreement, to complete the redevelopment of 1600A within twelve months (12) months of the effective date of the Agreement, is extended by six (6) months to September 18, 2021.
2. Smitty's further agrees to be open for business to the public by September 18, 2021.
3. Subsection C(7)(d) of the Agreement is amended to state that it is a breach if Smitty's fails to obtain a certificate of occupancy for 1600A and/or open for business to the public by September 18, 2021 and/or fails to provide documentation of \$750,000 of investment as required by section B(5)(b) of the Agreement.
4. Upon execution by both parties, this Amendment shall be effective as of March 19<sup>th</sup>, 2021

**B. Survival of Terms**

1. All capitalized terms used herein shall have the definition provided in the Agreement.
2. All terms of the Agreement remain in full force and effect except as expressly modified herein.

Executed by the last party to sign on this the 14<sup>th</sup> day of April, 2021. March mls

mls

**CITY OF BRYAN:**

Andrew Nelson  
Andrew Nelson, Mayor



**ATTEST:**

Mary L. Stratta  
Mary Lynne Stratta, City Secretary

**APPROVED AS TO FORM:**

Thomas Leeper  
Janis K. Hampton, City Attorney

**SMITTY'S OUTDOORS, LLC:**

Mr. Jason Smith, President

STATE OF TEXAS §

COUNTY OF BRAZOS §

**CHAPTER 380 DEVELOPMENT AGREEMENT**  
**BETWEEN THE CITY OF BRYAN, TEXAS AND SMITTY'S OUTDOORS, LLC.**

This Agreement is made to be effective on this the 19th day of March, 2020 by and between the City of Bryan, Texas, a home-rule municipal corporation ("City") and Smitty's Outdoors, LLC, a limited liability company operating pursuant to the laws of the State of Texas ("Smitty's").

WHEREAS, the Texas Constitution prohibits any City, or other political subdivision, from lending its credit or granting public money to any individual, association or corporation whatsoever without a valid public purpose for doing so; and

WHEREAS, the Texas Constitution specifically states that economic development programs created pursuant to Chapter 380 of the Texas Local Government Code serve the public purpose of alleviating poverty, joblessness, economic blight, and provide other intangible benefits incidental to the development of the local economy; and

WHEREAS, Smitty's has purchased and/or has under contract to purchase 1600 South College Avenue, which consists of two parcels that have been operated as a night club and a convenience store/gas station, respectively (individually referred to as "1600A" for the night club and "1600B" for the convenience store and collectively referred to as the "Property"); and

WHEREAS, the City has received numerous complaints about excessive noise and other public nuisances associated with the Property and believes there is a public interest in the redevelopment of the Property; and

WHEREAS, the City is currently undergoing a movement to redevelop and reinvigorate the Bryan Midtown area, and a pillar of that project is the clean-up and redevelopment of properties along College Avenue; and

WHEREAS, Smitty's is willing to invest substantial amounts to redevelop the Property, including \$750,000 in improvements to 1600A and the redevelopment of 1600B as part of a long-term master plan; and

WHEREAS, the City Council finds that supporting this project will encourage sustainable job growth in the City, remove blighted properties, abate nuisances, and otherwise substantially aid in the redevelopment of this corridor; and

NOW, THEREFORE, City and Smitty's agree as follows:

**A. Smitty's Obligations**

1. Smitty's will complete the purchase of 1600B within sixty (60) days of the effective date of this Agreement. During the term of this Agreement, Smitty's will keep the Property in good condition, which for the purposes of this Agreement means that the Property will be kept free of public nuisances and/or will respond promptly when notified of same by the City. Smitty's shall keep the

ad valorem taxes assessed on the Property (including real and personal property) from becoming delinquent.

2. Smitty's agrees to invest at least \$750,000 in the redevelopment of the Property, including improvements to 1600A and 1600B. Smitty's agrees to keep the Property free of public nuisances as required by City Ordinances.
3. Smitty's agrees to complete the redevelopment of 1600A within twelve months (12) months of the effective date of this agreement. For the purposes of this Agreement, completion of the redevelopment means that a Certificate of Occupancy has been issued by the City. Smitty's agrees to provide documentation of invoices paid as verification of the \$750,000 in investment within ninety (90) days of issuance of the certificate of occupancy.

#### **B. City's Obligations**

4. The City agrees to fast track the development process and will waive all construction permit fees (building, electrical, mechanical, plumbing). Fees associated with connection to water, sewer, and electric utilities are not included within this waiver.
5. Subject to annual appropriation by the City Council for same, the City agrees to grant Smitty's \$100,000 in accordance with the following terms:
  - a. The City agrees to grant Smitty's \$50,000, upon request, at Closing of 1600B Property. To receive payment, Smitty's shall provide two (2) weeks' notice of the scheduled date of Closing, and will instruct the title company to provide the City with evidence that the deed was recorded in the Official Records of Brazos County, Texas. Upon receipt of such documentation a check will be tendered to Smitty's.
  - b. The City agrees to grant Smitty's an additional \$50,000, upon request, within thirty days (30) days of receiving a certificate of occupancy for 1600A. To receive payment, Smitty's shall submit a written request for payment along with proof of certificate of occupancy.
6. If Smitty's fails to timely submit a request for payment under section B(5) of this Agreement, the right to the applicable portion of the grant shall be forfeited.

#### **C. Breach, & Recapture**

7. It is a breach of this Agreement if:
  - a. 1600B has not been purchased within sixty (60) days of the effective date of this Agreement;
  - b. the taxes become delinquent on the Property;
  - c. Smitty's, or its assigns, violates a State law or City Ordinance and such violation is not promptly remedied; or
  - d. Smitty's fails to obtain a certificate of occupancy for 1600A within twelve (12) months of the effective date of this Agreement and/or fails to provide documentation of \$750,000 of investment as required by section B(5)(b).
8. To qualify as a breach of this Agreement, a violation of State law or City Ordinance must result in a conviction or deferred adjudication, however the date of the breach shall be the date of the violation itself.

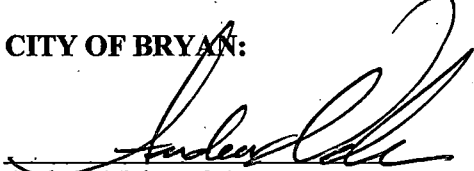


Bryan, Texas 77801

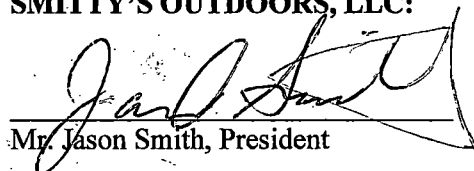
14. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
15. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
16. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.
17. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
18. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
19. No Waiver. City's failure to take action to enforce this Agreement in the event of Smitty's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.
20. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
21. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
22. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.
23. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.
24. Interpretive Rules. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise. Days shall mean calendar days unless otherwise expressly stated. If any deadline falls on a weekend or holiday, the deadline shall be extended to the next business day.

Executed and effective on this the 19<sup>th</sup> day of March, 2020.

**CITY OF BRYAN:**

  
Andrew Nelson, Mayor

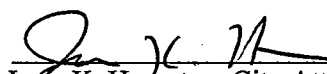
**SMITTY'S OUTDOORS, LLC:**

  
Mr. Jason Smith, President

**ATTEST:**

  
Mary Lynne Stratta, City Secretary

**APPROVED AS TO FORM:**

  
Janis K. Hampton, City Attorney