

**ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF NEW BRAUNFELS AND PRECINCT 3 LLC, D/B/A/  
WATER 2 WINE.**

This Economic Development Agreement (this “*Agreement*”) is entered into as of the Effective Date (defined below) by and among the City of New Braunfels, Texas, a home rule municipality (the “*City*”) and Precinct 3 LLC, d/b/a Water 2 Wine. (the “*Company*”). The City and Company are individually sometimes called a “*Party*” and are together called the “*Parties.*”

**Recitals**

WHEREAS, the City of New Braunfels Chapter 380 Economic Development Program (the “*Policy*”) was adopted in an effort to develop and expand the local economy by promoting and encouraging development and redevelopment projects that enhance the City’s economic base and a higher quality of life, diversify and expand job opportunities, or encourage projects that create additional revenue for the City without substantially increasing the demand on City services or infrastructure; and

WHEREAS, the global pandemic brought about by COVID-19 has resulted in federal, state and local emergency actions that have resulted in significant economic hardship for local businesses; and

WHEREAS, mandatory business closings, social distancing restrictions, and business occupancy restrictions have led to significant business interruptions and decreased revenue for local small businesses; and

WHEREAS, the City is authorized by chapter 380 of the Texas Local Government Code to make grants of public money; and

WHEREAS, the City Council finds that the COVID-19 Small Business Resource Grant Program will bring benefits to the City as it remains consistent with the Policy’s General Purpose of promoting high-quality development in the City, thereby improving the quality of life for its residents.

**NOW, THEREFORE**, in consideration of the promises and agreements herein set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties contract and agree as follows:

**1. Performance Conditions.**

- a. Company must be a for-profit business physically located within the corporate limits of the City of New Braunfels and must continue to operate within the corporate limits of the City of New Braunfels for at least ninety days from the execution of this Agreement.
- b. Company must employ fewer than fifty full-time equivalent employees at any single New Braunfels location as of December 31, 2019.

- c. Company must have been in operation before March 1, 2019.
- d. As of the date of the execution of this Agreement, Company must not currently be involved in any bankruptcy proceedings nor have any other proceedings pending or contemplated, and company must not be aware of any potential involuntary bankruptcy.
- e. As of the date of the execution of this Agreement, Company must be current on property tax payments and sales tax remittance, unless evidence satisfactory to City of a forbearance or payment agreement with State Comptroller's Office is provided.
- f. Company must have applied for an Economic Injury Disaster Loan or Paycheck Protection Program loan and provide evidence satisfactory to City of application to either loan.

**2. Payments to Company.**

- a. Upon City's confirmation that Company has satisfied the Performance Conditions of this Agreement, City will grant to Company the sum of \$10,000.
- b. Upon acceptance of payment of grant funds under this Agreement, Company agrees to maintain operations in its business physically located in New Braunfels for a period of at least ninety days and Company agrees to provide the City or City's designee with the right to audit the use of the grant funds through the Term of this Agreement.

**3. Use of Funds.** Funds granted to Company by City under this Agreement are limited to the following uses for the Company's for-profit business physically located within the corporate limits of the City of New Braunfels: lease payments, mortgage payments, utility payments, inventory purchases, and employee payroll for employees employed and working at the business.

**4. Term.** This Agreement shall be effective as of the date of execution of this Agreement and shall last for a term of six months.

**5. Representations and Covenants**

Company hereby represents and covenants as follows:

- a. Company is a duly authorized and existing for-profit corporation, created and operating in good standing under the laws of the State of Texas; and is authorized and in good standing to transact business in the State of Texas during the Term of this Agreement.
- b. Company has taken all necessary corporate action to authorize its execution and delivery of this Agreement and its performance of its obligations hereunder.
- c. Company will use its reasonable efforts to complete all of its obligations under this Agreement when and as set forth herein.

- d. Company has not entered into, and will not enter into, any agreement (written or otherwise) with any person or entity that would prohibit or limit Company from performing all of its obligations under this Agreement.
- e. As of the date of this Agreement, there is no litigation, claim, or proceeding pending of which Company has received written notice, nor to the actual knowledge of Company is there any litigation, claim or proceeding threatened that would prohibit or limits Company from performing all of its obligations under this Agreement.
- f. Company shall comply with the laws, ordinances, codes, rules, standards and regulations of the City of New Braunfels and State of Texas and shall remain in good standing with the City of New Braunfels with no outstanding balance owed to the City through the term of this Agreement.
- g. Company will not dissolve or take any action in furtherance thereof so long as it has not performed all of its obligations under this Agreement.

**6. Events of Default, Delay and Termination.**

- a. If Company fails to maintain continual operations within the corporate limits of the City of New Braunfels for a period of at least ninety days from the date of execution of this Agreement, Company will be in default of this Agreement and Company shall repay to City in full within six months of execution of this Agreement all funds granted to Company by City pursuant to this Agreement.
- b. Any Party's failure to comply with and adhere to their respective performance conditions or obligations hereunder, or under the terms of the Agreement, shall constitute an event of default under this Agreement.
- c. Before any failure of any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement such that another Party's remedies are available, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if such breach has been cured within sixty (60) days following the receipt of such notice; provided, however, if such breach is not reasonably curable within such 60-day period, and Company has commenced and is pursuing such remedies as shall be reasonably necessary to cure such breach, then Company shall have an additional ninety (90) days to cure such breach (the "*Cure Period*").
- d. In the event of a breach of this Agreement by Company beyond the applicable notice and Cure Period, the City may (i) terminate this Agreement by the delivery of written notice to Company; or (ii) suspend payment of the Grant Payment otherwise due to Company following the date of termination; and (iii) seek to recover from Company any legal expenses incurred by City to enforce Company's compliance with its obligations under the terms of this Agreement.

Notwithstanding the foregoing, in no event may the City terminate this Agreement solely for Company's failure to satisfy one or more of the Investment Conditions.

- e. In the event of a breach of this Agreement by the City beyond the applicable notice and Cure Period, Company, as its sole and exclusive remedies, may (i) seek to exercise its rights to enforce City's obligations hereunder in order to receive Grant Payments due to Company; (ii) seek to recover from City any legal expenses incurred by Company to enforce City's payment of monetary obligations under this Agreement; and/or (iii) terminate this Agreement by the delivery of written notice to the City.
- f. Time is of the essence in this Agreement. Notwithstanding the foregoing, any deadlines provided in this Agreement shall be subject to any event of Force Majeure. For purposes of this Agreement, "Force Majeure" shall mean any contingency or cause beyond the reasonable control of any Company, including without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action or inaction including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions, fire, earthquake, tornado, hurricane, explosions, floods, epidemics, strikes, slowdowns, work stoppages, unusually severe weather or global recessions; provided, however, that in no event shall any event of Force Majeure extend any deadline in this Agreement by more than three months.

**7. Authority.**

- a. The City hereby represents and warrants that the City has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, is enforceable in accordance with its terms and provisions and does not require the consent of any other governmental authority.
- b. Company hereby represents and warrants that it has full lawful right, power, and authority to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing have been or will be duly and validly authorized and approved by all necessary actions.

**8. Miscellaneous Provisions.** The following miscellaneous provisions are a part of this Agreement:

- a. Amendments. This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by all of the Parties hereto.

- b. Assignment. This Agreement cannot be assigned by Company without the prior written consent of the City, which consent may not be unreasonably denied, delayed, conditioned or withheld (it being understood that reasonable reasons for the City to deny such consent include, without limitation, the lack of financial viability of the assignee, the business reputation of the assignee, the assignee's engaging in a type of business that would reflect poorly on the City, the assignee's lack of compliance with City ordinances and laws, etc.).
- c. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Comal County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Comal County, Texas.
- d. Binding Obligation. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Each Party warrants and represents that the individual executing this Agreement on behalf of that individual's represented Party has full authority to execute this Agreement and bind the represented Party to the same.
- e. Severability. In the event any provision in this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- f. Notices. All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the Party to whom the notice is to be given at the addresses shown below. Any Party may change its address for notices under the Agreement by giving formal written notice to the other Parties, specifying that the purpose of the notice is to change the Party's address. For notice purposes, each Party agrees to keep the other informed at all times of its current address. The addresses of the Parties are:

If to City:

City of New Braunfels 550 Landa St.  
New Braunfels, Texas 78130 Attn:

If to Company:

Precinct 3 LLC, d/b/a Water 2 Wine  
185 S. Seguin Avenue  
New Braunfels, TX 78130

Notices, approvals and other communications provided for herein shall be deemed delivered upon actual delivery.

- g. Effective Date. The Effective Date of this Agreement shall be the last date indicated below reflecting the execution of this Agreement by each Party.
- h. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document. Company shall execute this Agreement prior to the City of New Braunfels.
- i. Personal liability of Public Officials. To the extent permitted by State law, no public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.
- j. No Joint Venture; No Third Party Beneficiaries. It is acknowledged and agreed to by the parties to this Agreement that the terms hereof are not intended to, and shall not constitute a partnership or joint venture between the parties. Further, this Agreement does not establish rights in any third parties. The City, and its respective officials, officers and agents, do not assume any responsibility or liability to any third parties in connection with the development of the Project.
- k. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.
- l. Indemnity. Company agrees to indemnify the City, and its officials and officers (in their capacities as officials and officers), from and against any claims, losses, damages, causes of action, suits and liabilities arising out of any negligence of Company in its operation of the Facility; provided that Company shall not be obligated to indemnify the City for claims arising out of the willful misconduct or gross negligence of the City or its agents.
- m. No waiver of immunity. No provision of this agreement shall affect or waive any sovereign or governmental immunity available to the City and/or its elected officials, officers, employees and agents under Federal or Texas law nor waive any defenses or remedies at law available to the City and/or its elected officials, officers, employees and agents under Federal or Texas law.

*[Signatures on Following Page]*

This Agreement to be effective on the last date executed by the respective Parties, below  
(the "*Effective Date*")

**PRECINCT 3 LLC, D/B/A/ WATER 2 WINE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF NEW BRAUNFELS, Texas,  
a home rule municipality**

By: \_\_\_\_\_

Robert Camareno, City Manager

Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
, City Secretary

\_\_\_\_\_  
Valeria M. Acevedo, City Attorney