

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO FINALIZE, EXECUTE, AND ADMINISTER A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (“AGREEMENT”) FOR SUCH PURPOSES BY AND BETWEEN THE CITY OF MESQUITE (“CITY”) AND PETER PIPER, LLC, AN ARIZONA LIMITED LIABILITY COMPANY (“COMPANY”), AND GRANTING TO THE COMPANY CERTAIN ECONOMIC DEVELOPMENT INCENTIVES; AND AUTHORIZING THE CITY MANAGER TO TAKE SUCH ACTIONS AND EXECUTE SUCH DOCUMENTS AS ARE NECESSARY OR ADVISABLE TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, AND ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas (“**City**”), and other municipalities to establish and provide for the administration of programs that promote local economic development and stimulate business and commercial activity; and

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to Peter Piper, LLC, an Arizona limited liability company (“**Company**”), for the lease and occupation of approximately 11,000 square feet at property located at 5550 South Buckner Boulevard, Suite 300, Mesquite, Dallas County, Texas 75149 (“**Property**”), a copy of said agreement being attached hereto as EXHIBIT 1 and incorporated herein by reference (“**Agreement**”); and

WHEREAS, the Company, which is in the business of operating a family-oriented pizza restaurant with indoor games and party areas, has agreed to: (i) make a minimum of \$2,400,000 in capital improvements to the leased Property; (ii) make a minimum of \$2,000,000 annually in taxable sales; (iii) lease the Property and operate their business at the Property for at least six years starting no later than August 31, 2026; and (iv) hire and employ a minimum of 30 people to work in their business at the Property; and

WHEREAS, the City would like to encourage the lease and occupation of the Property by granting certain economic development incentives to the Company in an amount not to exceed \$250,000.00; and

WHEREAS, the lease and occupation of the Property as well as the Company’s capital expenditures at the Property for the operation of their business will increase the taxable value of the Property thereby adding value to the City’s tax rolls and increasing the ad valorem property taxes to be collected by the City, along with increasing employment opportunities in the City; and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement will assist in implementing a program whereby local economic development will be promoted, and business and commercial activity will be stimulated in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council finds that the terms of the proposed Agreement by and between the City and the Company, a copy of which is attached hereto as EXHIBIT 1 and incorporated herein by reference, will benefit the City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 2. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Developer and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement.

SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 4. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents necessary to consummate the transactions contemplated by the Agreement.

SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$100,000; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

SECTION 6. That the sections, paragraphs, sentences, clauses, and phrases of this Resolution are severable and, if any phrase, clause, sentence, paragraph, or section of this Resolution should be declared invalid, illegal, or unenforceable by the final judgment or decree of

any court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect the validity, legality, or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal, or unenforceable provision had never been included in this Resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 3rd day of November 2025.

Daniel Alemán, Jr.
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

Sonja Land
City Secretary

David L. Paschall
City Attorney

EXHIBIT 1

ECONOMIC DEVELOPMENT

CHAPTER 380 PROGRAM AGREEMENT

BETWEEN

THE CITY OF MESQUITE

AND

PETER PIPER, LLC

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement (“**Agreement**”) is made and entered into by and between the City of Mesquite, a Texas home rule municipality (“**City**”), and Peter Piper, LLC, an Arizona limited liability company (“**Company**”), for the purposes and considerations stated below:

RECITALS:

WHEREAS, all capitalized terms used herein shall have the meanings set forth in this Agreement; and

WHEREAS, the Company is in the business of operating a family-oriented pizza restaurant with indoor games and party areas described and depicted in more detail on Company’s website, <https://www.peterpiperpizza.com> (“**Company’s Business**”); and

WHEREAS, the Company has or will be leasing the real property commonly known as 5550 S. Buckner Blvd., Ste. 300, Mesquite, Texas 75149, with Ste. 300 being approximately 11,000 square feet (“**Property**”); and

WHEREAS, the Company has agreed to make a minimum of \$2,400,000 in Capital Improvements to the Property; and

WHEREAS, the Company has agreed to generate a minimum of \$2,000,000 annually in taxable sales by operation of Company’s Business at the Property; and

WHEREAS, the Company has agreed to hire and employ a minimum of 30 persons to work in Company’s Business at the Property; and

WHEREAS, the Company has agreed to operate the Company’s Business at the Property for a period of at least six (6) years starting no later than August 31, 2026; and

WHEREAS, the Company’s capital expenditures at the Property for the operation of the Company’s Business will add value to the City’s tax rolls thereby increasing the ad valorem real and personal property taxes assessed and collected by the City; and

WHEREAS, the operation of the Company’s Business at the Property will create new employment opportunities in the City and will increase the sales/use taxes assessed and collected by the City; and

WHEREAS, the Company has advised the City that a contributing factor inducing the Company to make the Capital Improvements, and to commit to operate the Company’s Business at the Property for at least six (6) years is the agreement by the City to provide the Economic Development Incentives more fully set forth in this Agreement upon the terms and subject to the conditions more fully set forth in this Agreement; and

WHEREAS, the City has established an Economic Development Program pursuant to § 380.001 of the Texas Local Government Code (“**Program**”) and authorizes this Agreement as part of the Program; and

WHEREAS, the Company desires to participate in the Program by entering into this Agreement; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company's performance of its obligations set forth in this Agreement will increase the amount of ad valorem taxes and local sales/use taxes paid to and collected by the City, promote employment, promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its citizens.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Parties agree as follows.

ARTICLE I

Incorporation of Recitals and Exhibits

The foregoing recitals ("**Recitals**") and all referenced exhibits in are hereby incorporated into the body of this Agreement and shall be considered a part of the mutual covenants, consideration and promises that bind the Parties.

ARTICLE II

Definitions

As used herein, the following terms shall have the following meanings, to-wit:

"Additional Municipal Sales/Use Taxes" shall mean all sales and use taxes now and hereafter authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to § 321.101(b) of the Texas Tax Code, as amended and/or replaced, and shall specifically include all Type B Sales/Use Taxes, Property Tax Relief Taxes and all sales and use taxes now and hereafter prohibited by law from being used for payment of economic development incentives.

"Agreement" shall mean this agreement together with all exhibits attached hereto.

"Annual Sales Minimum" shall have the meaning set forth in Article VI Section 6 of this Agreement.

"Capital Improvements" shall mean any redevelopment, renovations, replacements, upgrades and other alterations, changes, modifications, additions and/or physical improvements to the Property commenced after the Effective Date and completed on or before August 31, 2026. The term Capital Improvements will not include (1) routine maintenance, costing less than \$10,000.00, and performed as part of a single project, (2) land acquisition costs, or (3) business personal property including, but not limited to, furniture, fixtures and equipment.

"Capital Improvements Certificate" shall have the meaning set forth in Article VI, Section 3 of this Agreement.

"Certificate of Compliance" shall mean a certificate in such form as is reasonably acceptable to the City executed on behalf of the Company by a duly authorized Company Representative certifying to the City: (i) that to the knowledge of the Company all applicable Conditions Precedent at the time of presentation of the Certificate of Compliance, have been satisfied and are continuing and (ii) that to the knowledge of the Company no default then exists by the Company under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a default by

the Company under the terms of this Agreement. As used in this paragraph the terms “knowledge” or “knowingly” means the actual, then-current knowledge of any officer or employee of the Company.

“Certificate of Occupancy” or “CO” shall mean a final certificate of occupancy issued to the Company by the City authorizing the Company to operate the Company’s Business at the Property.

“City” shall mean the City of Mesquite, a Texas home rule municipality.

“City Council” shall mean the governing body of the City.

“City Default” shall have the meaning set forth in Article IX Section 4 of this Agreement.

“City Sales/Use Tax” and “City Sales/Use Taxes” shall mean the municipal sales and use taxes collected by or on behalf of the City for general fund purposes authorized pursuant to § 321.101(a) of the Texas Tax Code, as amended and/or replaced, and currently at the rate of one percent (1.0%) pursuant to § 321.103(a) of the Texas Tax Code and specifically does not include the State of Texas Sales/Use Taxes and any Additional Municipal Sales/Use Taxes.

“City’s Sales/Use Tax Account” shall have the meaning set forth in Article VII, Section 3 of this Agreement.

“Company” shall mean Peter Piper, LLC, an Arizona limited liability company, its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

“Company Default” shall have the meaning set forth in Article IX Section 1 of this Agreement.

“Company Representative” shall mean the general partner or any other duly authorized officer or agent of the Company acting on behalf of the Company.

“Company’s Business” shall have the meaning set forth in the Recitals to this Agreement.

“Condition Precedent” and “Conditions Precedent” shall have the meanings set forth in Article VII of this Agreement.

“Disclosure Statute” shall mean § 321.3022 of the Texas Tax Code, as amended and/or replaced.

“Economic Development Incentive Grant” shall have the meaning set forth in Article VIII, Section 1.

“Effective Date” shall mean the date the Company and the City execute this Agreement if both Parties execute this Agreement on the same date. If the Company and the City execute this Agreement on different dates, any reference to the “Effective Date” shall mean the later of the dates this Agreement is executed by the Company and the City.

“Employee” means a full-time or part-time employee of the Company working at the Property. “Employee” shall include any replacement of a former Employee whose employment is terminated for any reason, with such original Employee and any replacement employee counting as one Employee for purposes of the calculations in this Agreement.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of a receiver for any part of such 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 voluntary commencement of any proceeding under any bankruptcy or insolvency laws by any Party, or the involuntary commencement of any proceeding against any Party under any bankruptcy or insolvency laws and such involuntary proceeding is not dismissed within ninety (90) days after the filing thereof.

“Event of Force Majeure” shall mean a major unforeseeable act or event that: (i) prevents a Party from performing its obligations under this Agreement (**“Non-Performing Party”**); (ii) is beyond the reasonable control of the Non-Performing Party; (iii) is not caused by any act or omission on the part of the Non-Performing Party or the Non-Performing Party’s officers, agents, representatives, employees, contractors, customers or invitees; and (iv) could not have been prevented or avoided by the exercise by the Non-Performing Party of such reasonable diligence and reasonable care as would be exercised by a prudent person under similar circumstances. An Event of Force Majeure must satisfy each of the above requirements and includes but is not necessarily limited to the following, to-wit: lightning, floods, ice storms, hurricanes, tornadoes, earthquakes, natural disasters, acts of God, explosions, fires, war, terrorism, civil disturbance, temporary work stoppages due to strikes by employees and material shortages due to the inability of the Company to obtain materials from the Company’s suppliers for reasons other than the cost of the materials. Notwithstanding the foregoing, an Event of Force Majeure does not include any financial or economic hardship, changes in market or economic conditions, or insufficiency of funds and does not excuse the performance by the Company if the Company could have prevented or avoided the event or impact on this Agreement, or if the Company contributed to or caused the event by any act or omission.

“Federal Holidays” shall mean public holidays as established by Federal law, 5 U.S.C. § 6103, as may be amended.

“Incentive Payment(s)” shall mean the payment owed by the City to the Company resulting from Company’s performance of this Agreement and as provided in Article VIII of this Agreement.

“Incentive Period” shall mean the period commencing with January 1, 2027, and continuing through and concluding on December 31, 2031. For purposes of clarity, there are five (5) separate calendar years included in the Incentive Period and an Incentive Payment may be earned by Company for each such calendar year within the Incentive Period for its compliance with this Agreement.

“Lease” shall have the meaning set forth in Article VII Section 1 of this Agreement.

“Maximum Incentive Amount” shall mean the maximum amount of Economic Development Incentives payable under the terms of this Agreement, which is the collective sum of TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000.00).

“Maximum Lawful Rate” shall mean the maximum lawful rate of non-usurious interest that may be contracted for, charged, taken, received or reserved by the City in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits the City to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law).

“Minimum Net City Sales Taxes” means \$20,000 for each of the five calendar years in the Incentive Period.

“Net City Sales/Use Taxes” means the City Sales/Use Taxes collected by or on behalf of the City arising from sales of Taxable Items at or from or on the Property less the collection fee retained by the State Comptroller (currently two percent (2%) and less any credits for returned items (it being expressly understood that the Net City Sales/Use Taxes is being used only as a measurement for the City’s participation through the use of lawfully available funds).

“Non-Performing Party” shall have the meaning set forth in the definition of Event of Force Majeure.

“Party” shall mean either the Company or the City.

“Parties” shall mean both the Company and the City.

“Payment Request(s)” shall mean written request(s) executed by a duly authorized Company Representative requesting an Incentive Payment.

“Person” or “Persons” shall mean one or more individual(s) or corporation(s), general or limited partnership(s), limited liability company(s), trust(s), estate(s), unincorporated business(es), organization(s), association(s) or any other entity(s) of any kind.

“Program” shall have the meaning set forth in the Recitals to this Agreement.

“Property” shall have the meaning set forth in the Recitals to this Agreement.

“Property Tax Relief Taxes” shall mean the municipal sales and use taxes authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to § 321.101(b) of the Texas Tax Code, as amended and/or replaced, currently at the rate of one-half of one percent to be used to reduce the property tax rate of the City.

“State Comptroller” shall mean the Office of the Texas Comptroller of Public Accounts, or any successor agency.

“State of Texas Sales/Use Taxes” shall mean the State of Texas sales and use taxes, currently at the rate of six and one-quarter percent (6.25%), authorized, adopted, imposed and/or collected pursuant to § 151.051 of the Texas Tax Code, as amended and/or replaced, and all other sales and use taxes now and hereafter authorized, adopted, imposed and/or collected by or on behalf of the State of Texas.

“Taxable Item” shall have the same meaning assigned by §§ 151.010 and 151.0101 of the Texas Tax Code, as may be amended.

“Temporary Periods” as used herein shall mean one or more periods of time when the Company’s continuous operation of the Company’s Business from the Property is prevented by an Event of Force Majeure provided, however, in no event will any such period exceed one hundred and eighty (180) days.

“Term” shall have the meaning set forth in Article IV of this Agreement.

“Type B Sales/Use Taxes” shall mean the municipal sales and use taxes authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to § 321.101(b) of the Texas Tax Code, as amended and/or replaced, currently at the rate of one-half of one percent, for use by the Mesquite Quality of Life Corporation, a Type B economic development corporation, operating pursuant to Chapter 505 of

the Texas Local Government Code, as amended and/or replaced, and shall also include any other sales and use taxes now or hereafter authorized, adopted, imposed and/or collected by or on behalf of the City for use by any other Type B economic development corporation hereafter created by or on behalf of the City.

“Unconfirmed Sales/Use Tax Payment” shall have the meaning set forth in Article VIII, Section 4 of this Agreement.

“Undocumented Workers” shall mean individuals who, at the time of employment with the Company, are not: (i) lawfully admitted for permanent residence to the United States or are not authorized under law to be employed in that manner in the United States; and (ii) such other Persons as are included within the definition of undocumented workers pursuant to 8 U.S.C. § 1324a (f) or any other applicable law or regulation.

ARTICLE III

Authority for Agreement and Available Funds

1. Authority. This Agreement is authorized by Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code. The City Council finds and determines that substantial economic benefit will accrue to the City as a result of the renovation and redevelopment of the Property because, among other things, such renovation and redevelopment will: (i) increase the amount of ad valorem and sales/use taxes assessed and collected by the City; (ii) result in employment opportunities being created in the City; (iii) promote local economic development in the City, stimulate business and commercial activity in the City; and (iv) benefit the City and its citizens.

2. Funds Available for Incentive Payment. The Incentive Payments payable by the City to the Company as more fully set forth in this Agreement are not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. Any Incentive Payment payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380. Each Incentive Payment shall be subject to the City’s appropriation of funds for such purpose to be paid in the budget year for which the Incentive Payment(s) is to be made.

ARTICLE IV

Term

The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) **August 31, 2032**; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein (“**Term**”). Notwithstanding the foregoing, in the event this Agreement is not fully executed within sixty (60) days after approval by the City Council, then this Agreement shall be null and void and shall have no effect on either Party. Additionally, the Parties agree that this Agreement may be terminated by the City if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement, or any part thereof, invalid, illegal or unenforceable.

ARTICLE V

Company’s Covenant Not to Employ Undocumented Workers

1. Covenant Not to Employ Undocumented Workers. The Company hereby certifies that the Company and each branch, division, and department of the Company does not employ any Undocumented

Workers and the Company hereby covenants and agrees that the Company and each branch, division and department of the Company will not knowingly employ any Undocumented Workers during the Term of this Agreement.

2. Covenant to Notify City of Conviction for Undocumented Workers. The Company further hereby covenants and agrees to provide the City with written notice of any conviction of the Company, or any branch, division or department of the Company, of a violation under 8 U.S.C. § 1324a (f) within thirty (30) days from the date of such conviction.

3. Repayment of Economic Development Incentives in Event of Conviction for Employing Undocumented Workers. If, after receiving any Economic Development Incentives under the terms of this Agreement, the Company, or a branch, division or department of the Company, is convicted of a violation under 8 U.S.C. § 1324a (f), the Company shall pay to the City, not later than the 120th day after the date the City notifies the Company of the violation, an amount equal to the total amount of the Incentive Payments previously paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on each Incentive Payment being recaptured from the date each Incentive Payment was paid by the City to the Company until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.

4. Limitation on Economic Development Incentives. The City shall have no obligation to pay any Economic Development Incentives to the Company if the Company, or any branch, division or department of the Company is convicted of a violation under 8 U.S.C. § 1324a (f).

5. Remedies. The City shall have the right to exercise all remedies available by law to collect any sums due by the Company to the City pursuant to this Article V including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

6. Limitation. The Company is not liable for a violation of Article V of this Agreement by a subsidiary, affiliate, or franchisee of the Company, or by a person with whom the Company contracts.

7. Survival. The terms, provisions, covenants, agreements and obligations of the Company and the rights and remedies of the City set forth in Article V of this Agreement shall expressly survive the expiration or termination of this Agreement.

ARTICLE VI

Company's Additional Covenants

In consideration of the City's agreement to grant the Economic Development Incentives to the Company upon the terms and subject to the Conditions Precedent and limitations more fully set forth herein, the Company covenants and agrees to comply with each and every one of the following covenants during the Term of this Agreement, to-wit:

1. Lease of Property. The Company shall enter into a lease legally allowing the Company to both operate the Company's Business and occupy one hundred percent (100%) of the Property for a primary term commencing no later than August 31, 2026, and terminating no earlier than August 31, 2032 ("**Lease**"), and the Lease must be in effect through and at the time of each Payment Request.

2. Copy of Lease. The Company shall deliver to the City a copy of the Lease satisfying the requirements herein, on or before August 31, 2026.

3. Capital Improvements. Prior to August 31, 2026, the Company will make Capital Improvement in the amount of at least TWO MILLION FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,400,000.00). Within sixty (60) days thereafter, the Company shall submit to the City a certificate in such form as is reasonably acceptable to the City executed by a Company Representative certifying the dollar amount expended by the Company in connection with the Capital Improvements as of August 31, 2026 (“**Capital Improvements Certificate**”). No expenditure shall be included as part of the Capital Improvements requirement unless the expenditure is capitalized as a capital asset on the books of the Company in accordance with generally accepted accounting principles.

4. Certificate of Occupancy. The Company shall complete the Capital Improvements and obtain a Certificate of Occupancy to operate the Company’s Business at the Property on or before August 31, 2026.

5. Operation of Company’s Business at the Property. The Company shall commence the operation of the Company’s Business on or before August 31, 2026, and shall operate the Company’s Business continuously thereafter for a minimum period of six (6) years, for a minimum of seven (7) days a week, ten (10) hours per day, except for: (i) Temporary Periods; or (ii) during Federal Holidays.

6. Annual Sales Minimum. The Company shall make a minimum of TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) in taxable sales to its customers at the Property that results in the payment by the Company to the City of City Sales/Use Tax during each calendar year of the Incentive Period (“**Annual Sales Minimum**”). Failure to meet the Annual Sales Minimum during a calendar year of the Incentive Period results in Company’s forfeiture of an Incentive Payment for that particular calendar year, but shall not bar the Company from obtaining subsequent Incentive Payments during subsequent calendar years of the Incentive Period where the Company is in full compliance with this Agreement, including having generated the Annual Sales Minimum for the subsequent calendar year, provided this Agreement has not been terminated.

7. Required Jobs. The Company shall employ and maintain employed a minimum of thirty (30) Employees at the Property during the Term of this Agreement. Company shall provide to City for City to verify this requirement W-2 Forms and/or the Company’s Texas Employers Quarterly Reports filed with the Texas Workforce and/or Company’s federal employer payroll tax form 941 or form 940.

8. Records and Reports. The Company shall deliver to the City within sixty (60) days after written request, copies of records, reports and other documentation as the City may reasonably request to confirm compliance by the Company with this Agreement.

9. Inspection. The Company shall provide the City, its agents and employees with access to the Property at such times as the City may reasonably request to conduct such inspections as the City deems necessary in order to confirm compliance by the Company with the representations, covenants and agreements of the Company as set forth in this Agreement provided the City has given the Company at least seventy-two (72) hours prior written notice of such inspection.

10. Representative of Company to Accompany Inspections. The Company shall provide a representative of the Company to accompany the City during all inspections of the Property conducted by the City under this Agreement.

11. Timely Payment of Taxes. The Company [or the owner of the Property] shall timely pay all ad valorem property taxes assessed against the Property during the Term of this Agreement prior to the date such taxes become delinquent. The Company shall timely pay all ad valorem property taxes assessed against the Company's business personal property at the Property during the Term of this Agreement prior to the date such taxes become delinquent.

11. Maintenance Obligations. The Company shall comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City, and shall maintain the Property in good repair, at all times during the Term of this Agreement.

12. Compliance with Laws. The Company shall comply with all federal, state and local laws, ordinances and regulations relating to the operation of the Company's Business at the Property during the Term of this Agreement.

13. Performance of Agreement. The Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement.

14. Performance of Other Agreements. The Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of all other agreements, if any, now or hereafter existing between the Company and the City.

ARTICLE VII

Conditions Precedent to Payment of Economic Development Incentive

The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay each Incentive Payment under the terms of this Agreement is expressly conditioned upon the satisfaction of each and every one of the following conditions precedent (sometimes referred to singularly herein as a "**Condition Precedent**" and sometimes collectively referred to as the "**Conditions Precedent**") which represent material obligations of this Agreement that must have timely occurred and, if applicable, be then existing:

1. Performance of this Agreement. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement and no Company Default shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement.

2. Minimum Net City Sales Taxes. The Minimum Net City Sales Taxes shall have been generated by Company and collected by the City for the applicable calendar year of the Incentive Period. The City shall have obtained from the State Comptroller a confidential information report confirming at a minimum the total amount of sales and use taxes paid by Company to the State Comptroller relating only to taxable sales from Company's location at the Property during the previous calendar year of the Incentive Period, and the City shall have verified that it has received payment in full of all City Sales/Use Taxes payable by Company relating to taxable sales from Company's location at the Property for the calendar year of the Incentive Period for which the Payment Request is submitted. Notwithstanding the foregoing, pursuant to the Disclosure Statute, the State Comptroller is to disclose the sales and use taxes paid during the current or prior year without disclosing individual sales tax account information. However, if there are fewer than three (3) sales tax accounts at the Property, the State Comptroller will

not disclose information regarding the actual sales taxes paid by Company without Company's permission. As such, the Company covenants and agrees to provide a release to the City that will allow the State Comptroller, if so required by the Disclosure Statute, to disclose to the City aggregated sales tax information relating to Company's Business generating sales tax at the Property for any calendar year of the Incentive Period during the Term. The Parties agree that no Incentive Payment shall be due or payable for any calendar year of the Incentive Period during the Term if the Company fails to provide written permission from the Company allowing the State Comptroller to provide the City with applicable information relating to the amount of City Sales/Use Taxes paid by Company to the City during such calendar year of the Incentive Period and such information is not separately made available to the City by the State Comptroller.

3. Annual Filings for Payment of Incentive Payment. The Company shall have submitted to the City the following documents in connection with each and every Payment Request to the City for an Incentive Payment: (a) a written Payment Request; and (b) a Certificate of Compliance. If Company submits a Payment Request more than one hundred twenty (120) days after the calendar year of the Incentive Period for which an Incentive Payment is earned by Company, Company agrees it is an irrevocable waiver of Company's right to request said Incentive Payment and the City shall not be obligated to pay the untimely Payment Request. Any obligation of City to pay a timely submitted and valid Payment Request shall expressly survive the Term.

4. Payment Request. On or before one hundred twenty (120) days after each calendar year of the Incentive Period, the Company shall submit a Payment Request to the City for each Incentive Payment payable pursuant to this Agreement. Each Payment Request shall include, at a minimum, the following information:

- a. the Company's sales/use tax number under which the sales/use tax was remitted;
- b. the calendar year that the sales/use tax payments were made by the Company;
- c. the amount of taxable sales made by the Company to its customers at the Property during the calendar year covered by the Payment Request, with sufficient supporting documentation in the judgment of the City to confirm the amount of taxable sales made by the Company attributable solely to sales at the Property;
- d. the amount of City Sales/Use Taxes paid by the Company to the City during the calendar year covered by the Payment Request that are attributable solely to sales made by the Company to its customers at the Property; and
- e. documentation satisfactory to the City that local sales/use taxes attributable solely to taxable sale transactions made in connection with Company's Business at the Property have been deposited to the City's Sales/Use Tax Account, State Comptroller of Public Account's Local Authority Code 2057039 ("**City's Sales/Use Tax Account**").

5. Verification of City Sales Tax. The City and the Company agree that reports received by the City from the State Comptroller, if requested, reflecting City Sales/Use Taxes paid by Company from Company's Business at the Property are accurate and definitive for purposes of this Agreement, and the City shall have no right to review or audit records of the Company. The Company acknowledges that sales tax information, records and reports are confidential under the laws of the State of Texas and accordingly, the Company agrees that it shall have no right to review or audit any sales tax information, records or reports in the possession of the City including, without limitation, any confidential information reports obtained by the City pursuant to this Agreement and the Disclosure Statute. In the event the Disclosure Statute is hereafter amended or a new law is enacted requiring additional consents and/or information to obtain any information necessary for the City to calculate the amount of any Incentive Payment payable under this Agreement, no sums payable shall be due or payable unless and until the

Company provides the City with such additional consents and/or information; provided, (a) that the City will pay such amounts as it may be able to determine from the information so provided, with the balance to be paid in accordance with this Agreement when such additional consents and/or information is provided, and (b) any change in law shall not impact the City's obligation to make payment of any Incentive Payments previously earned and owed by the City to the extent not prohibited by applicable law.

Notwithstanding anything contained herein to the contrary, the Parties acknowledge that the City's obligation to pay any Incentive Payment due under the terms of this Agreement shall be deferred if the State Comptroller fails, after written request by the City, to provide the City with the information necessary to: (i) verify the amount of City Sales/Use Tax paid by Company relating to taxable sales made from Company's Business at the Property; and (ii) calculate the amount of such Incentive Payment; provided, that (A) the City will continue to use diligent, good faith efforts to cause the State Comptroller to provide the City the necessary information, (B) the City will provide updates to the Company upon request of the status of obtaining the necessary information, (C) the City will pay any portion of the applicable Incentive Payment for which it has received the necessary information, and (D) the due date for payment to the Company of the applicable Incentive Payment (or the balance thereof if a portion has been paid under the previously clause (C)) shall be extended until such time as the necessary information is received by the City, at which point the payment will be made in accordance with the other terms of this Agreement, and this obligation shall survive the expiration of this Agreement.

6. Deposit to City's Sales/Use Tax Account. The City has verified the amount of local sales/use taxes deposited to the City's Sales/Use Tax Account that are attributable solely to sale transactions made in connection with the Company's Business at the Property.

7. Confirmation of Receipt of Sales/Use Tax Payments. The City has confirmed that it has received the City's portion of all City Sales/Use tax payment(s) for which the Payment Request is being requested.

ARTICLE VIII

Economic Development Incentives

1. Economic Development Incentive Grant. Provided all applicable Conditions Precedent have been satisfied and are then continuing and Company has complied with all obligations under this Agreement, then for each calendar year of the Incentive Period during the Term, the City agrees to provide Company with an annual Incentive Payment that pays to Company an amount equal to the Net City Sales Taxes generated by operation of Company's Business at the Property ("**Economic Development Incentive Grant**"). The total and cumulative amount of the Incentive Payments is capped at and shall not exceed the Maximum Incentive Amount.

2. Incentive Payments. Provided all applicable Conditions Precedent have been satisfied and are then continuing and subject to Company's compliance with all obligations under this Agreement, the City shall, following the end of each calendar year during the Incentive Period and within thirty (30) days after receiving a timely Payment Request from Company, make a request to the State Comptroller pursuant to Subsection (b) of the Disclosure Statute, and will use diligent, good faith efforts to cause the State Comptroller to promptly provide the City Sales/Use Tax information, and within seventy-five (75) days after receiving such information will calculate and, provided all Conditions Precedent are satisfied and then continuing, pay to the Company the Incentive Payment for such calendar year of the Incentive Period.

3. Verification of City Sales Tax. The City and the Company agree that reports received by

the City from the State Comptroller, if requested, reflecting City Sales/Use Taxes paid by Company relating to taxable sales made from the Property are accurate and definitive for purposes of this Agreement, and the City shall have no right to review or audit records of the Company or its successors, assigns or Tenants. The Company acknowledges that sales tax information, records and reports are confidential under the laws of the State of Texas and accordingly, the Company agrees that it shall have no right to review or audit any sales tax information, records or reports in the possession of the City including, without limitation, any confidential information reports obtained by the City pursuant to this Agreement and the Disclosure Statute. In the event the Disclosure Statute is hereafter amended or a new law is enacted requiring additional consents and/or information to obtain any information necessary for the City to calculate the amount of any Incentive Payment payable pursuant to this Agreement, no sums payable pursuant to this Agreement shall be due or payable unless and until the Company provides the City with such additional consents and/or information; provided, (a) that the City will pay such amounts as it may be able to determine from the information so provided, with the balance to be paid in accordance with this Agreement when such additional consents and/or information is provided, and (b) any change in law shall not impact the City's obligation to pay any Incentive Payments previously earned and owed by the City to the extent not prohibited by applicable law.

Notwithstanding anything contained herein to the contrary, the Parties acknowledge that the City's obligation to pay any Incentive Payment due under the terms of this Agreement shall be deferred if the State Comptroller fails, after written request by the City, to provide the City with the information necessary to: (i) verify the amount of sales taxes paid by the Company relating to taxable sales made from the Property; and (ii) calculate the amount of such Incentive Payment; provided, that (A) the City will continue to use diligent, good faith efforts to cause the State Comptroller to provide the City the necessary information, (B) the City will provide updates to the Company upon request of the status of obtaining the necessary information, (C) the City will pay any portion of the applicable Incentive Payment for which it has received the necessary information, and (D) the due date for payment to the Company of the applicable Incentive Payment (or the balance thereof if a portion has been paid under the previously clause (C)) shall be extended until such time as the necessary information is received by the City, at which point the payment will be made in accordance with the other terms of this Agreement, and this obligation shall survive the expiration of this Agreement.

4. Reduction of Payment Request. Notwithstanding anything contained in this Agreement to the contrary, in the event the City is not able to confirm receipt of any sales/use tax payment(s) of the Company by comparing the amounts included on the Company's Payment Request to the State Comptroller's detailed confidentiality report listing each tax receipt by month (individually an **"Unconfirmed Sales/Use Tax Payment"** and collectively the **"Unconfirmed Sales/Use Tax Payments"**), then the City shall have the right to deny the portion of the Payment Request relating to all Unconfirmed Sales/Use Tax Payments and in such event, the Payment Request shall automatically be reduced by the amount attributed to the Unconfirmed Sales/Use Tax Payments and the Incentive Payment made to the Company in connection with such Payment Request shall not include the payment of any portion of any sales/use tax claimed to have been paid to the City in connection with such Unconfirmed Sales/Use Tax Payments.

5. Supplemental Payment Request. In the event the City denies any portion of a Payment Request pursuant to Article VIII, Section 4 above, the Company may, within thirty (30) days after such denial, submit a supplemental Payment Request for the portion of the Payment Request that was denied along with documentation evidencing that one or more Unconfirmed Sales/Use Tax Payments were indeed received by the City. If the documentation provided by the Company to the City pursuant is satisfactory to the City and the City is able to confirm receipt of such previously Unconfirmed Sales/Use Tax Payment(s), the City will pay the Company an amount equal to the Net City Sales/Use Taxes paid

to the City in connection with such Unconfirmed Sales/Use Tax Payment(s) within thirty (30) days after the City confirms receipt of the Unconfirmed Sales/Use Tax Payment(s).

6. Limitation on Economic Development Incentive Grant. Notwithstanding anything contained in this Agreement to the contrary, (i) no Incentive Payment shall be due and payable for any period not included in the Incentive Period, being any time prior to January 1, 2027, or any time after December 31, 2031.

7. Revenue Sharing Agreement. The Parties designate this Agreement as a revenue sharing agreement, thereby entitling the City to request sales tax information from the State Comptroller, pursuant to § 321.3022 of the Texas Tax Code, as amended and/or replaced. Notwithstanding anything contained herein to the contrary, the Parties acknowledge that the City shall have no obligation to pay any Incentive Payment due under the terms of this Agreement if the State Comptroller fails, after written request by the City, to provide the City with the information necessary to: (i) verify the amount of sales taxes paid by the Company to the City relating solely to taxable sales made by the Company at the Property; and (ii) calculate the amount of such Incentive Payment.

8. Legislative or Judicial Changes. In the event of any legislative or judicial interpretation that limits or restricts the City's ability to pay the Economic Development Incentive Grant or otherwise extracts or imposes any penalty or other restriction upon the payment of the same, the Economic Development Incentive Grant will cease as of the effective date of such limitation or restriction and be of no further force or effect in which event the City shall be under no further obligation to pay any Incentive Payments to the Company as of the effective date of such limitation or restriction.

9. Erroneously Paid City Sales/Use Tax. In the event the State Comptroller determines, for any reason, that any sales and use taxes were erroneously paid to the City from the sales provided for herein and the City shall be required to rebate or repay any portion of such taxes, the amount of such rebate or repayment shall be deducted from the next Incentive Payment payable by the City to the Company pursuant to this Agreement.

10. Maximum Incentive Amount. Notwithstanding anything else in this Agreement to the contrary, the Company and the City agree that the City's total and cumulative amount of Incentive Payments shall never exceed the Maximum Incentive Amount which is two hundred fifty thousand dollars (\$250,000.00).

11. Survival. All terms, provisions, covenants, agreements, obligations, rights and remedies of each Party pursuant to this Article shall expressly survive the expiration or termination of this Agreement.

ARTICLE IX Defaults and Remedies

1. Company Default. The Company shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the Company; or (ii) if the Company fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the Company under the terms of this Agreement and such failure continues for thirty (30) days after written notice by the City to the Company (each a "**Company Default**").

2. City Remedies. In the event of a Company Default that continues uncured beyond any

applicable grace or cure period, the City shall have no obligation to pay any then-owed or future Incentive Payment to the Company and the City shall have the right to: (i) recapture the Incentive Payment most recently paid by the City to the Company as more fully set forth below; and (ii) terminate this Agreement by written notice to the Company in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement. Notwithstanding anything to the contrary contained herein, in no event will the City be entitled to the recovery of any damages at law or in equity, attorneys' fees (except in the event of the exercise of the City of the remedies set forth in Chapter 2264 of the Texas Government Code) or consequential, punitive, exemplary or speculative damages.

3. Recapture of Economic Development Incentives. In the event of a Company Default of this Agreement that has continued uncured beyond any applicable grace or cure period, the Company shall immediately pay to the City, at the City's address set forth in Article X of this Agreement, or such other address as the City may hereafter notify the Company in writing, the amount equal to one hundred percent (100%) of the last Incentive Payment previously paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on the Incentive Payment being recaptured from the date the Incentive Payment was paid by the City to the Company until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. In the event the Company fails to timely pay any sums due by the Company to the City pursuant to this Article, the Company shall be in breach of this Agreement and the City shall have the right, without further notice to the Company, to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas to collect such sums. The City's rights under this section shall survive termination or expiration of this Agreement.

4. City Default. The City shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the City; or (ii) if the City fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the City under the terms of this Agreement and such failure continues for thirty (30) days after written notice by the Company to the City (a "**City Default**").

5. Company Remedies. Upon the occurrence of a City Default, the Company shall have the right to terminate this Agreement by written notice to the City. The City and the Company acknowledge and agree that this Agreement is not a contract for goods or services and the City's immunity from suit is not waived pursuant to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. Notwithstanding anything to the contrary contained herein, in no event will the Company be entitled to the recovery of any damages at law or in equity, attorneys' fees or consequential, punitive, exemplary or speculative damages. Alternatively, if and only in the event a court of competent jurisdiction determines the City's immunity from suit is waived under Subchapter I of Chapter 271, V.T.C.A., Local Government Code, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement:

- (i) the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount not to exceed TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00);
- (ii) the recovery of damages against the City shall not include consequential, punitive, exemplary, or speculative damages;
- (iii) the Parties shall not recover attorney's fees or court costs; and

(iv) the Company shall not be entitled to specific performance or injunctive relief against the City.

6. Survival. All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of each Party pursuant to this Article shall expressly survive the expiration or termination of this Agreement.

ARTICLE X

Miscellaneous Provisions

1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of the Company hereunder may not be assigned or transferred by the Company to any Person without the prior written consent of the City which may be withheld in the City's sole discretion. In the event the Company is a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the shares of the Company or the sale, transfer or assignment of a controlling interest in the membership interests of the Company shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares or membership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. In the event the Company is a partnership, the sale, transfer or assignment of a controlling interest in the shares of a corporation or the membership interests of a limited liability company or the partnership interests of a partnership that is the Company's general or managing partner shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares, membership interests or partnership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. Furthermore, neither the Company, nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company or any approved assignee under this Agreement, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any consent by the City to any assignment of this Agreement shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. Every assignee shall be subject to and be bound by all the provisions, covenants, and conditions of this Agreement and shall be required to obtain the prior written consent of the City with respect to any future or further assignment. Any attempted assignment in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement by the Company and in the event the Company attempts to assign this Agreement in violation of this Article X, Section 1, the City shall have the right to immediately terminate this Agreement by written notice to the Company without any written notice notwithstanding anything to the contrary in this Agreement.

2. Notices. All notices required or permitted to be given to any Party hereto shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Parties at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective one (1) business day after deposit in the

United States mail. Notices sent by a nationally recognized courier service as set forth above shall be effective one (1) business day after deposit with the nationally recognized courier service. Notices given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

COMPANY: Peter Piper, LLC
1707 Market Place Blvd., Ste. 200
Irving, Texas 75063-8049
Attention: Tax Department

With a copy to: Peter Piper, LLC
1707 Market Place Blvd., Ste. 200
Irving, Texas 75063-8049
Attention: Legal Department

CITY: City of Mesquite
1515 N. Galloway Avenue
Mesquite, TX 75149
Attention: City Manager

With a copy to: City Attorney
City of Mesquite
1515 N. Galloway Ave.
Mesquite, Texas 75149

3. Right to Offset. The City shall have the right to offset any amounts due and payable by the City under this Agreement against any delinquent debt (including taxes) lawfully due and owing by the Company to the City, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

4. Remedies Cumulative. Except as expressly limited herein, each right and remedy of the Parties provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas shall be cumulative and concurrent and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas.

5. Captions. The descriptive captions of this Agreement are for convenience of reference only and shall in no way define, describe, limit, expand or affect the scope, terms, conditions, or intent of this Agreement.

6. Modification. This Agreement may only be revised, modified or amended by a written document signed by the City and the Company. Oral revisions, modifications or amendments are not permitted.

7. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

8. Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a Company Default or City Default of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.

9. Governing Law; Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas (without giving effect to any conflict of law principles that would result in the application of the laws of any state other than Texas). The Parties agree that venue of any suit to construe or enforce this Agreement shall lie exclusively in state courts in Dallas County, Texas and agree to submit to the personal and subject matter jurisdiction of such courts.

10. **WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES.** THE COMPANY AND THE CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS. THIS SUBSECTION SHALL EXPRESSLY SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

11. Severability. The sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable and, if any phrase, clause, sentence, paragraph, or section of this Agreement should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect the validity or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid provision had never been included in the Agreement.

12. No Partnership or Joint Venture. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership or joint venture between the Parties.

13. No Third Party Beneficiaries. The Parties to this Agreement do not intend to create any third party beneficiaries of the contract rights contained herein. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No Person who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third party beneficiary.

14. Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

15. Counterparts. This Agreement may be executed in any number of original, facsimile or electronically scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument.

16. Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the

execution of this Agreement. There are no oral agreements between the Parties.

17. Authority. The Company represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. The Company represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of the Company has the authority to sign this Agreement on behalf of the Company.

18. City Council Authorization. This Agreement is authorized by resolution of the City Council approved at a City Council meeting.

19. Statutory Verifications. Company makes the following representation and covenants to enable the City to comply with Chapters 2252, 2271, 2274, and 2276, Texas Government Code, as heretofore amended (the “**Government Code**”), in entering into this Agreement. As used in such verifications, “affiliate” means an entity that controls, is controlled by, or is under common control with the Company within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the Term of this Agreement shall survive until barred by the applicable statute of limitations and shall not be liquidated or otherwise limited by any provision of this Agreement, notwithstanding anything in this Agreement to the contrary.

a. Not a Sanctioned Company. Company represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the State Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Government Code. The foregoing representation excludes the Company and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanction’s regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

b. No Boycott of Israel. Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. As used in the foregoing verification, “boycott Israel” has the meaning provided in Section 2271.001, Government Code.

c. No Discrimination Against Firearm Entities. Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” has the meaning provided in Section 2274.001(3), Government Code.

d. No Boycott of Energy Companies. Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. As used in the foregoing verification, “boycott energy companies” has the meaning provided in Section 2276.001(1), Government Code.

20. Usury Savings Clause. The Company and City intend to conform strictly to all applicable usury laws. All agreements of the City and the Company are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no event shall any interest contracted for, charged, received, paid or collected under the terms of this Agreement exceed the Maximum Lawful Rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under applicable law. If, from any possible development of any document, interest would otherwise be payable to City in excess of the Maximum Lawful Rate, any such construction shall be subject to the provisions of this Section 9.19 and such document shall be automatically reformed and the interest payable to the City shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. If the City shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Lawful Rate, an amount equal to the amount which would have been excessive interest shall at the option of the City be refunded to Company or applied to the reduction of the principal amount owing under this Agreement or such document in the inverse order of its maturity and not to the payment of interest. The right to accelerate any indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and City does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the City shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Lawful Rate.

21. Non-Collusion. The Company represents and warrants that neither Company nor anyone on the Company's behalf has given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any employee, agent, representative or official of the City as an inducement to or in order to obtain the benefits to be provided by the City under this Agreement

22. Execution of Agreement by Parties. If this Agreement is not executed by the Company and the City on or before 60 days after approval by the Mesquite City Council, this Agreement will be null and void and of no force or effect.

23. Form 1295 Certificate. Company represents that it has completed a Texas Ethics Commission ("TEC") Form 1295 ("**Form 1295**") generated by the TEC's electronic filing application in accordance with the provisions of Texas Government Code § 2252.908 and the rules promulgated by the TEC. The Parties agree that, with the exception of the information identifying the City and the contract identification number, the City is not responsible for the information contained in the Form 1295. The information contained in Form 1295 has been provided solely by the Company and the City has not verified such information. City agrees to acknowledge receipt of Form 1295 on the Texas Ethics Commission website within 30 days of receipt of Form 1295 from Company.

24. No Acceleration. All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.

25. Reservation of Legislative Authority. Notwithstanding any provision in this Agreement, this Agreement does not control, waive, limit or supplant the City Council's legislative authority or discretion.

26. Sovereign Immunity. No Party hereto waives any statutory or common law right to sovereign or governmental immunity by virtue of its execution hereof.

27. Date for Performance. If a deadline or date falls on a Saturday, Sunday, legal or City holiday, then such time period shall be automatically extended through the close of the next business day.

28. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

29. No Permit. This Agreement does not constitute a permit pursuant to Chapter 245 of the Texas Local Government Code and or any City code or regulation and does not vest any rights to the Company pursuant thereto. The City does not, by entering into this Agreement, concede or agree that there are any developer rights or obligations arising under Chapter 245 of the Texas Local Government Code and the City reserves all rights and defenses against any such assertion.

30. Report Agreement to State Comptroller's Office. City agrees to report this Agreement to the State Comptroller's office within fourteen (14) days of the Effective Date of this Agreement, in accordance with § 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021).

31. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents, officers and/or officials on the dates set forth below.

ATTEST:

CITY:
City of Mesquite,
a Texas home rule municipality

By: _____
Sonja Property
City Secretary

By: _____
Cliff Keheley
City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:
David L. Paschall, City Attorney

By: _____
David L. Paschall
City Attorney

COMPANY:

Peter Piper, LLC
An Arizona limited liability company

By: _____
Title: _____

Date: _____

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on _____, 2025, by
_____, the _____ of Peter Piper, LLC, an Arizona limited liability company.

Notary Public, State of Texas