

RESOLUTION NO. 01-16-2024B

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS, APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF GAINESVILLE AND SELECT WATER SOLUTIONS, LLC; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Gainesville, Texas (hereinafter referred to as “City”) is a Home Rule Municipality acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the Constitution and laws of the State of Texas, including Chapter 380 of the Local Government Code, authorize the City to enter into economic development incentive agreements with corporations like Select Water Solutions, LLC, a Delaware limited liability company (hereinafter referred to as “Company”); and

WHEREAS, the City adopted the Chapter 380 Economic Development Program Policies and Procedures by Resolution No. 03-152022 (the “380 Agreement Policy”), which outlines the purpose of and the policies governing economic development incentive agreements in the City; and

WHEREAS, the City Council finds that the Agreement complies with the City’s 380 Agreement Policy; and

WHEREAS, the City has determined this Agreement will bring benefit to the City consistent with the General Statement and Purpose of the City’s 380 Agreement Policy; and

WHEREAS, the City has determined this Agreement will enhance the City’s fiscal ability to provide high quality municipal services for the safety, comfort, and enjoyment of Gainesville residents; and

WHEREAS, the City finds the passage of this Resolution is in the best interest of the citizens of Gainesville.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS MEETING IN REGULAR SESSION ON JANUARY 16, 2024:

SECTION 1: The above recitals are true and correct and are hereby incorporated into the body of this Resolution as if fully set forth herein.

SECTION 2: The Chapter 380 Economic Development Incentive Agreement (the “Agreement”) attached hereto as **Exhibit A** is approved.

SECTION 3: The Mayor is authorized to execute this Agreement on behalf of the City.

SECTION 4: This Resolution is in full force and effect upon its adoption.

PASSED AND APPROVED THIS 16th DAY OF JANUARY 2024 BY THE FOLLOWING VOTES:

6 AYES, 0 NAYS, 1 ABSENT, 0 ABSTENTIONS



TOMMY MOORE, MAYOR

ATTEST:



DIANA ALCALA, CITY SECRETARY



1

**CHAPTER 380 ECONOMIC
DEVELOPMENT AGREEMENT FOR SALES
TAX REBATE BETWEEN THE CITY OF
GAINESVILLE AND SELECT WATER
SOLUTIONS, LLC**

THIS AGREEMENT made and entered into this 16th day of January, 2024 by and between CITY OF GAINESVILLE, "CITY", and Select Water Solutions, LLC, a Delaware limited liability company, hereinafter called "COMPANY", WITNESSETH:

WHEREAS, COMPANY is a provider of sustainable water and chemical solutions to the energy industry, and

WHEREAS, COMPANY'S operational headquarters is in Gainesville, Texas and has locations throughout Texas as well as the United States, and

WHEREAS, the CITY believes that the presence of COMPANY in CITY benefits the economy of CITY and surrounding area by providing employment, increasing sales tax revenue and encouraging growth in other oil and gas related businesses, all of which benefit the residences of the CITY, and

WHEREAS, CITY desires to encourage COMPANY to organize operations whereby orders are accepted in CITY, and/or purchases are stored and/or used in CITY, which would require CITY taxes to be paid to the Texas Comptroller of Public Accounts ("State"). In return, the CITY will provide an incentive payment equal to a percentage of the CITY taxes paid to the State by COMPANY on COMPANY's Texas Sales & Use Tax Return and/or Texas Direct Pay Tax Return.

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained the parties hereto agree as follows:

COMMITMENT OF PAYMENT: CITY hereby commits to provide an incentive payment to COMPANY equal to forty percent (40%) of the CITY sales and use tax reported and paid by COMPANY on COMPANY's Texas Sales and Use Tax Return (the "Incentive Payment"). The Incentive Payment shall be due and payable commencing in respect of sales and use taxes paid beginning November 1, 2023 through the period ending October 31, 2028 with the final Incentive Payment being due in respect of sales and use taxes paid by Company for the month ending October 31, 2028.

TIME OF PAYMENT: COMPANY will provide the CITY proof of payment of the CITY sales and use taxes paid to the State on the COMPANY's Texas Sales and Use Tax Return within a thirty (30) day period after the end of each quarter. Within 30 days of receipt of sales tax by the CITY, the CITY will make the Incentive Payment to the COMPANY and thereafter for each quarter for a period of five (5) years until final payments have been made for all periods through October 31, 2028.

CLAWBACK: If the State of Texas, at any time, reduces the amount of sales and use tax received by the CITY and the CITY paid COMPANY an Incentive Payment based on the original sales and use tax associated with this reduction, COMPANY agrees to refund

the associated portion of Incentive Payment back to the CITY.

AUTHORITY: Each Party executing this Agreement hereby represents and warrants that he/she is authorized to execute and deliver this Agreement and bind any and all entities persons or individuals presently having an interest in COMPANY, as well as heirs, successors and assigns of the parties.

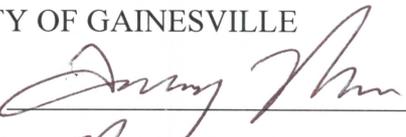
SUCCESSORS, ASSIGNS AND RECORDATION: This Agreement and any addenda hereto shall be binding upon and inure to the benefit of the heirs, successors, agents, representatives and assigns of the parties hereto.

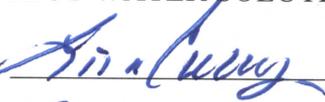
COUNTERPARTS: The Parties acknowledge and agree that a facsimile copy of this Agreement with a Party's signature is as legally valid and binding as the original Agreement with an original signature. The Parties agree that this Agreement can be signed in counterpart with the same legal force and effect as if not signed in counterpart.

GOVERNING LAW: The Parties agree that this Agreement shall be governed by the laws of the State of Texas without regard to conflicts of laws principles, which may otherwise be applicable.

CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed either for or against either Party, but shall be interpreted, construed and enforced in accordance with the mutual intent of the Parties ascertainable from the language of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF GAINESVILLE
By: 
Title: Mayor
Date: 2/2/2024

SELECT WATER SOLUTIONS, LLC
By: 
Title: SENIOR TEL DIRECTOR
Date: 1/24/2024

ATTEST:
BY: 
Title: City Secretary
Date: 2/2/2024

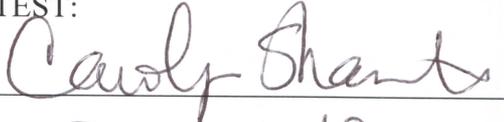
ATTEST:
By: 
Title: EXEC VIP
Date: 1/24/2024

Exhibit A
Chapter 380 Economic Development Program
Policies and Procedures

I. General Statement of Purpose and Policy

The City of Gainesville is committed to the promotion of high quality development in all parts of the City and to an ongoing improvement in the quality of life for its citizens. These Policies and Procedures are established 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, create developable property by the removal of blight or increasing the capacity of city infrastructure, increase occupation buildings that have not had an occupant in several years, or encourage projects that create additional revenue for the city. The ultimate goal and public purpose of programs established hereunder is to protect and enhance the City's fiscal ability to provide high quality municipal services for the safety, comfort and enjoyment of Gainesville residents. Insofar as the enhancement and expansion of the local economy generally serve these objectives, the City of Gainesville will, on a case-by-case basis, give consideration of economic incentives to applicants in accordance with these Policies and Procedures as authorized by Chapter 380 of the Texas Local Government Code, as amended from time to time.

Nothing in this document is intended to imply or suggest that the City of Gainesville is under any obligation to provide economic incentives to any applicant. The decision to approve or deny economic incentives shall be at the discretion of the City Council. Each applicant granted economic incentives as a Chapter 380 Economic Development Program (also referred to as "Program") under these Policies and Procedures must enter into an agreement with the City of Gainesville containing all terms required by these Policies and Procedures and by state law to protect the public interest of receiving a public benefit in exchange for public funds, assets, and services.

II. Program Requirements

To be considered for incentives as a Chapter 380 Economic Development Program under these Policies and Procedures, a project must at least fulfill one of the following minimum requirements:

1. The project will:
 - a. Result in a minimum increased taxable value for the City of Ten Million Dollars (\$10,000,000) in real and/or business personal property; or
 - b. Result in a minimum increased taxable value to the City of \$400,000 in real and business personal property (excluding inventory and supplies) in the Central Area Commercial District as defined in the City's Zoning Code; or

- c. Generate an amount of municipal sales tax with a single location that, on an annual basis, ranks the facility in the top 10 sales tax generators in the City as determined by the most recently available sales tax report; or
 - d. Provide employment opportunities for City residents where a majority of the available positions are offered at an average hourly wage that is at least \$40,000 per year; or
 - e. Is specifically determined by resolution of the City Council to bring benefit to the City consistent with the General Statement of Purpose and Policy as stated in Paragraph I above.
2. In addition, the City Council shall determine in the Resolution adopting the Agreement that the project:
 - a. Will make a unique or unequalled contribution to development or redevelopment efforts in the City of Gainesville, due to its magnitude, significance to the community, or aesthetic quality; or
 - b. Makes a significant contribution to the City of Gainesville's Goals that are adopted on an annual basis; or
 - c. Will enhance the City's fiscal ability to provide high quality municipal services for the safety, comfort, and enjoyment of Gainesville residents.
 3. A Project shall not be eligible for incentives under these Policies and Procedures if a building permit has been issued for the project prior to making application in accordance with these Policies and Procedures.
 4. Incentives provided in accordance with these Policies and Procedures will be provided only to the extent that the revenue realized by the City and attributable to a project exceeds a minimum amount established by the Agreement. The public benefit or amount of revenue realized by the City and attributable to the project must be commensurate with the value of any incentives granted under this program.

III. Additional Considerations

Additional factors that can be considered by the City Council in determining whether to authorize an Agreement for incentives as a Chapter 380 Economic Development Program are:

1. The number and types of jobs to be created or retained;
2. The financial capacity of the applicant to undertake and complete the proposed project;
3. The extent to which the project constructs public infrastructure;
4. The funding is based on a reimbursement from increased sales and/or property taxes.
5. Other incentives programs for which the applicant has applied or is qualified;
6. The market conditions and growth potential for the business activity;
7. The project's contribution of a service of good that will decrease the likelihood that citizens will travel to other communities to purchase that service or good;
8. The Project's contribution to the diversification of the Gainesville economy;
9. Whether the project makes a financial contribution beyond minimally established requirements that fulfills a strategic priority as determined by the City Council;

10. Any other factors that City Council finds helpful or relevant to accomplishing the City's economic development objects.

IV. Application Process

1. An application for consideration as a Program shall be made on forms supplied by the City. An applicant may be required to provide additional information to show compliance with minimum Program requirements. If City staff determines minimum Program requirements have been met, City staff may prepare and present a proposed Agreement with the application to the City Council.
2. The City Council may consider the proposed Agreement and may take action on the proposal as it deems appropriate. Nothing in these Policies and Procedures and nothing in the application from and process shall create any property, contract, or other legal right in any person to have the City Council consider or grant incentives.

V. Agreement Terms

An Agreement established for a program must include:

1. A timetable and list of the kind of improvements or development that the Program will include and conditions to assure that the Program meets or exceeds the City's requirements pertaining to property values and revenues, which in no event shall be less than the minimum Program requirements established in Paragraph II above;
2. A complete description of the location of the proposed Program or projects included in the Program;
3. A timetable and list of the kind and amount of property values, revenues, incomes, or other public benefits that the proposed Program will provide;
4. A provision establishing the duration of the Agreement;
5. A provision detailing a limit on the value of any rebates and/or grants of funds for the duration of the Agreement;
6. A provision identifying the method for calculating and sourcing the funding for any grant, loan, or other incentives provided in the Agreement;
7. A provision providing a tangible means for measuring whether the applicant and other responsible parties have met their obligations under the Agreement;
8. A provision providing for access to and authorizing inspection of the property and applicant's pertinent business records by municipal employees in order to determine compliance with the Agreement;
9. A provision detailing monitoring and reporting requirements of the Owner;
10. A provision for cancellation of the Agreement and/or nonpayment of incentives if the Program is determined to not be in compliance with the Agreement;
11. A provision for recapturing City funds granted or loaned, or for recapturing the value of other public assets granted or loaned, if the applicant does not meet its duties and obligations under the terms of the Agreement;

12. A provision that allows assignment of the Agreement with prior written approval of the City Council, or without the prior written approval of the City Council provided that:
 - a. All rights, duties, obligations and liability's under the Agreement are assigned from the assignor to the assignee; and
 - b. The assignment is made subject and subordinate to the Agreement and the Chapter 380 Economic Development Program Policies and Procedures; and
 - c. The assignment document is in a form and contain content acceptable to the City Attorney's Office.
13. Provisions relating to administration, delinquent taxes, and indemnification; and
14. A provision that the Agreement may be amended by the parties to the Agreement by using the same procedure for approval as is required for entering into the Agreement; and
15. Such other provisions as the City Council shall deem appropriate.