

**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF JERSEY VILLAGE, TEXAS
AND
MRS Helios LLC**

This Chapter 380 Economic Development Agreement (this “Agreement”) is entered into between **MRS Helios LLC**, a Texas limited liability company (the “Owner”), and **CITY OF JERSEY VILLAGE, TEXAS**, a home rule city (“City”).

RECITALS

WHEREAS, City Council of City is authorized to make certain economic development grants to Owner in recognition of, conditioned upon and derived from the positive economic benefits which will accrue to City through Owner’s efforts to develop a regional headquarters facility (the “Property”); and

WHEREAS, Owner estimates the total Capital Investment in the Project (as defined herein) will be approximately four million eight-hundred thousand Dollars (\$4,800,000.00); and

WHEREAS, City recognizes that development of the Project in City represents an opportunity to provide significant economic benefit and opportunities for its citizens; and

WHEREAS, City finds that development of the Project will add significant new revenues to City’s tax base and will result in the creation of a minimum of sixty new full time jobs in the city, which will promote state and local economic development and stimulate business and commercial activity in City thereby enhancing the economic stability and growth of City; and

WHEREAS, City desires to offer incentives to Owner over a period of time to induce Owner to contribute its professional development services, skills and acumen to develop the Project in City and to enable Owner to develop the Project successfully in a manner that will be of lasting and significant benefit to City.

NOW, THEREFORE, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Owner agree as follows:

1. Authority

City’s execution of this Agreement is authorized by Chapter 380, Texas Local Government Code, as amended, and by the Resolution and constitutes a valid and binding obligation of City in accordance with the terms and conditions hereof. Owner’s execution and performance of this Agreement constitutes a valid and binding obligation of Owner in accordance with the terms and conditions hereof. City acknowledges that Owner will act in reliance upon City’s performance of its obligations under this Agreement in deciding whether to commit substantial resources and money to develop the Property. Owner acknowledges that City is acting in reliance upon Owner’s performance of its obligations under this Agreement in agreeing to commit substantial resources to the Project on the terms described herein.

2. Definitions

As used in this Agreement, the following words or phrases shall have the following meanings:

2.1 “Act of Default” or “Default” means failure to timely, fully, and completely comply with one or more requirements, obligations, performance criteria, duties, terms, conditions or warranties, as stated in this Agreement.

2.2 “Capital Investment” means the investment in the Project made by or on behalf of Owner to construct and equip the Project.

2.3 “Certificate of Occupancy” shall mean that document entitled “Certificate of Occupancy” (or other similar title) issued by City upon substantial completion of certain portions of the Project in accordance with all applicable codes, regulations, and ordinances of City. A Certificate of Occupancy shall not include a certificate issued in error, mistake or misrepresentation of facts, or any temporary certificate of occupancy.

2.4 “Chapter 380 Payment(s)” means the amount(s) paid by City to Owner under Section 5 of this Agreement, which amounts may be paid from any lawful source other than Ad Valorem Tax Revenue.

2.5 “City of Jersey Village” or “City” means the governing municipal corporation, the area that is within the city limits of City of Jersey Village and which is located within Harris County, Texas.

2.6 “Commence Construction” means (i) plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; (ii) all necessary permits for construction pursuant to the plans therefor have been issued by all applicable governmental authorities; and (iii) a notice to proceed has been issued to the contractor.

2.7 “Completion” means, with respect to the Project issuance of Certificates of Occupancy for the improvements for which Certificates of Occupancy may be issued.

2.8 “Compliance” means timely, fully and completely performing or meeting each and every term, requirement, obligation, performance criteria, duty, condition or warranty as stated in this Agreement. Compliance shall not mean Substantial Compliance or anything less than full Compliance.

2.9 “Development Fees” means any and all fees imposed by City upon Owner (including but not limited to Owner’s affiliates, assigns, successors, related parties, contractors and subcontractors) in any way related to Owner’s platting, zoning, permitting, designing, building, constructing or developing the Project. Development Fees shall include but not be limited to impact fees, permitting/approval fees, inspection fees and supervision fees.

2.10 “Down Times” means temporary cessation of operation of areas or all or substantially all of a facility for, and only for, limited periods of time for the limited purpose

of, and only for the limited purpose of, one or more of the following circumstances for the applicable period specified below:

(a) during the period following any fire or other casualty or condemnation or other exercise by a governmental authority of the power of eminent domain, to the extent, and only to the extent, necessary to adjust the claim and take other actions related to the repair and restoration of the facility;

(b) during any period required by applicable law, to the extent, and only to the extent, that the necessity of compliance is not the result of Owner's failure to timely fulfill its obligations under this Agreement;

provided, however, that during the Down Times described in the clauses above Owner shall use its commercially reasonable efforts to minimize the disruption of such Down Time.

2.11 "Economic Development Grant" means the Chapter 380 Payments.

2.12 "Effective Date" The effective date of this Agreement shall be the date of the later to sign this Agreement by Owner and City.

2.13 "Federal Bankruptcy Code" means Title 11, United States Code, as amended, and any successor statute.

2.14 "Force Majeure" means any act that (a) materially and adversely affects the affected Party's ability to perform the relevant obligations under this Agreement or delays such affected Party's ability to do so, (b) is beyond the reasonable control of the affected Party, (c) is not due to the affected Party's fault, negligence or willful misconduct and (d) could not be avoided by the Party who suffers it by the exercise of commercially reasonable efforts (provided that such commercially reasonable efforts shall not require such Party to expend a material amount of money to avoid the act giving rise to a Force Majeure). Subject to the satisfaction of the conditions set forth in (a) through (d) above, Force Majeure shall include but not be limited to: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disruption, whether by ocean, rail, land or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (v) fires; (vi) the unavailability of necessary and essential equipment and supplies; (vii) a breach by the City of this Agreement or any other actions, omissions of or delays by a Governmental Authority (including the actions of City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach or noncompliance by the affected Party of its obligations under this Agreement or any applicable law; and (viii) failure of the other Party to perform any of its obligations under this Agreement within the time or by the date required pursuant to the terms of this Agreement for the performance thereof; provided, however, that under no circumstances shall Force Majeure include any of the following events: (A) economic hardship; (B) changes in market condition; or (C) weather conditions which could reasonably be anticipated by experienced contractors operating at the relevant location.

2.15 “Incentive Period” means the period beginning upon the Effective Date and concluding at the end of the Term.

2.16 “Insolvent” means failure to timely pay debts in the ordinary course of business or failure to pay all debts when and as they become due, or insolvent within the meaning of the Federal Bankruptcy Code.

2.17 “Notice” has the meaning assigned to such term in Section 10.10.

2.18 “Owner” means MRS Helios, a Texas LLC whose principal place of business is in Pflugerville, Texas.

2.19 “Program” means the economic development program established by City under the Resolution, as authorized by Chapter 380, Texas Local Government Code, as amended, to promote local economic development and stimulate business and commercial activity within City.

2.20 “Project” means Owner’s planned development of the Property, all of which shall meet or exceed City Standards set forth in Section 4 herein.

2.21 “Substantial Compliance” pertains solely to acts of Owner under the performance criteria described in Section 4, being less than full and complete Compliance and being ninety percent (90%) or more of full Compliance.

2.22 “Term” means the period defined in Section 3 of this Agreement.

3. Term

The term of this Agreement (the “Term”) will be for two (2) years from the Effective Date of the Agreement.

4. Owner’s Performance Criteria

4.1 Owner’s Performance. In consideration of City’s agreements hereunder, Owner agrees that, if Owner proceeds with the Project, the following performance requirements must be met in order to qualify for the Chapter 380 Payments related to such Project:

4.1.1 Construction of Project. Unless Owner terminates this Agreement pursuant to Section 9.9 hereof, Owner contracts and agrees that it will Commence Construction, subject to extension for Force Majeure, of Project on or before June 1, 2022 and will diligently pursue such construction until Completion thereof on or before December 31, 2023, subject to extension for Force Majeure.

4.1.2 Compliance with City Standards. Owner agrees that development of the Project will comply with all applicable City codes and ordinances. For any development requirements not covered in this Section or in the remainder of the Agreement, the applicable City code and ordinance provisions shall control.

5. City's Performance Criteria

5.1 Economic Development Grant

5.1.1 Economic Development Grant Calculation and Funding. City is obligated to pay to Owner one or more payments in the amounts indicated by applying the calculations referenced in Sections 5.2 from any lawful source other than Ad Valorem Tax Revenues subject to the satisfaction of Owner's Performance Criteria and Owner's timely and full compliance with all applicable terms and conditions contained in this Agreement. The portion of the Economic Development Grant to be paid, and the timing in which it is to be paid to Owner is defined in Section 5.2.

5.2 Development Fees. City shall pay to Owner (as part of the Economic Development Grant) an amount equal to 100% of the Development Fees paid by Owner pertaining to the Project. Owner shall be paid for Development Fees attributable to the Project within thirty (30) days after Completion of the Project.

5.3 Amendments or Adjustments to the Economic Development Grant. Nothing in this Agreement prevents the Parties from agreeing in writing to adjust or amend all or a portion of the Economic Development Grant payment schedule or percentages provided in this Section 5.

6. Owner's Covenants, Warranties, Obligations and Duties

6.1 Covenants and Duties. Owner makes the following covenants and warranties to City, and agrees to timely and fully perform the following obligations and duties. Any false or substantially misleading statement contained herein or failure to timely and fully perform as required in this Agreement shall be an Act of Default by Owner. Failure to comply with any one covenant or warranty shall constitute an Act of Default by Owner.

6.1.1 Authorized to do Business. Owner is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.

6.1.2 Execution. The execution of this Agreement has been duly authorized by Owner and Owner's representative signing this Agreement is empowered to execute such Agreement and bind Owner, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of Owner's partnership agreement or instrument to which Owner is a party or by which it may be bound.

6.1.3 Enforceability. Owner has the full right, power and authority to execute, deliver and perform the terms and obligations of this Agreement and this Agreement constitutes the legal, valid and binding obligation of Owner, is enforceable in accordance with its terms and does not require the consent of any other party to be so enforceable.

6.1.4 Litigation. No litigation or governmental proceeding is pending or, to the knowledge of Owner or Owner's officers, threatened against or affecting Owner or the

Property that may result in any material adverse change in Owner's business, properties or operation.

6.1.5 Untrue Statements. To the best of its knowledge, no certificate or statement delivered by Owner to City in connection herewith, or in connection with any transaction contemplated hereby, contains any untrue statement or fails to state any fact necessary to keep the statements contained therein from being misleading.

6.1.6 Bankruptcy. There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Owner has not been informed of any potential involuntary bankruptcy proceedings.

6.1.7 Licenses and Authority. To the best of its knowledge, Owner or Operator has acquired and maintained all necessary rights, licenses, permits and authority to carry on its business in Jersey Village, Texas, and will continue to use its best efforts to maintain all necessary rights, licenses, permits and authority.

6.1.8 Payment of Taxes. Owner shall timely pay all taxes due and owing by it to all taxing authorities having jurisdiction. In addition, Owner shall timely pay all employment, income, franchise, and all other taxes due and owing by it to all local, state, and federal entities.

6.1.9 Timely Commencement. Owner shall timely begin and complete the Project in accordance with the requirements of this Agreement.

6.1.10 Timely Compliance. Owner shall timely and fully comply with all of the terms and conditions of this Agreement.

6.1.11 Management Changes. Owner shall notify City in writing of substantial changes in management within seven (7) days. Substantial changes mean changes in Chairman of the Board, President, or C.E.O.

6.1.12 Civil Rights Acts. Owner agrees that, as to all of the programs and activities arising out of this Agreement, it shall comply fully with all Civil Rights Acts and specifically will not discriminate against any person on the basis of race, color, national origin, sex, or by reason of being disabled.

6.1.13 Payment of Ad Valorem Taxes. All Ad Valorem Taxes shall be paid by January 31 of each tax year by the owner, unless being protested in accordance with Texas law. For clarity, Ad Valorem Taxes which are not being protested shall still be paid by January 31. Payment will not be required only for the portion of Ad Valorem Taxes which are being protested in accordance with Texas law.

6.1.14 Reporting of Audits. The Owner shall notify the City of any audit conducted or being conducted regarding the Owner of the Texas State Comptroller if such audit changes or affects, or could change or affect, the amounts set forth in the schedule filed with the City. Such notification shall be made as soon as practicable, but in no event later than sixty (60) days after the audit.

7. City's Covenants, Warranties, Obligations and Duties

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

8. TERMINATION OF AGREEMENT WITHOUT DEFAULT.

8.1 Either Party may terminate this Agreement without an event of default effective immediately if (i) any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including case law holding that a Chapter 380 Economic Development Agreement such as this Agreement is an unconstitutional debt.

8.2 Termination of this Agreement under this subsection of the Agreement shall render this Agreement null and void from that point forward with each Party having no further rights against each other under this Agreement or at law; provided, however, save and except those rights and obligations accruing on the part of either Party prior to such termination including entitlement for receipt of Program Grant Payments from City to Owner, and including the obligation for repayment of Program Grant Payments by Owner to City. In the event that any act of the Legislature or any law, order, rule or regulation of any state or federal administration or judicial entity, shall nullify the terms of this Agreement, or otherwise preclude the performance of this Agreement by either party, or if this Agreement is frustrated by reasons other than the breach of the Agreement by a party, then the City shall require the Owner to refund, reimburse or repay to the City any portion of the Program Grant Payment that the City may be ordered to refund, reimburse or repay to the State or that may be ordered offset or withheld from future City revenues.

8.3 Termination of this Agreement under this subsection of the Agreement shall render this Agreement null and void from that point forward with each Party having no further rights against each other under this Agreement or at law provided, however, save and except those rights and obligations accruing on the part of either Party prior to such termination including entitlement for receipt of Program Grant Payments from City to Owner, and including the obligation for repayment of Program Grant Payments by Owner to City.

9. REPRESENTATIONS AND WARRANTIES.

9.1 Owner represents and warrants to City that to Owner's actual current knowledge as of the Effective Date:

9.2 The Owner is not relying upon any representation or warranty of the City regarding the City's power or authority to enter into this Agreement under the provisions of the Act and Chapter 380, Texas Local Government Code, or the appropriate determination of the tax situs of transactions contemplated by this Agreement.

9.3 The Owner knows of no litigation, proceedings, initiative, referendum, investigation or the threat of any of the same, contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to the City.

9.4 Owner represents and warrants that it is a Limited Liability Company organized and existing under and by virtue of the laws of the State of Texas and is qualified to conduct business and enter into this Agreement pursuant and by virtue of the laws of the State of Texas, and has the power and authority to carry on the business as presently conducted and as represented in this Agreement.

9.5 City represents and warrants to Owner that to City's actual current knowledge as of the Effective Date:

9.6 City is a home rule municipality exercising governmental functions and powers and is organized and existing under the State of Texas and has taken all actions required by law to approve the execution of this Agreement.

9.7 City has the legal right, power and authority to enter this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement has been duly authorized and no other action by City is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

9.8 City is not aware of any pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of City's obligations under this Agreement.

9.9 If Owner elects not to proceed with the development of the Project as contemplated by this Agreement, Owner will notify City in writing, and this Agreement and the obligations of both parties will be deemed terminated and of no further force or effect as of the date of such notice.

10. MISCELLANEOUS PROVISIONS.

10.1 The following miscellaneous provisions are a part of this Agreement:

10.2 Amendments. This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

10.3 Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Harris County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Harris County, Texas.

10.4 Assignment. This Agreement may not be assigned without the express written consent of the other party.

10.5 Binding Obligation. This Agreement shall become a binding obligation on the Parties upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Owner warrants and represents that the individual executing this Agreement on Owner's behalf has full authority to execute this Agreement and bind it to the same.

10.6 Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

10.7 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

10.8 Effective Date. The effective date (the "Effective Date") of this Agreement shall be the date of the later to sign this Agreement by Owner and City.

10.9 Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

10.10 Notices. Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Owner: MRS Helios LLC Attn: John Garrett 2148 Park Place Cir Round Rock, TX 78681	If to the City: The City of Jersey Village Attn: City Manager 16501 Jersey Drive. Jersey Village, Texas 77040
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10.11 Record Retention and Accessibility of Records. Owner shall maintain and make available to City upon request all records and supporting documentation relating to the performance of this Agreement, Employment Positions, ad valorem payments and contests, and other matters relating to performance under this Agreement. Owner shall retain such records, and any supporting documentation for the greater of (1) five (5) years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

10.12 Severability. The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall

be enforced as if the invalid provision had never been included to the extent it does not frustrate the intent of this Agreement.

10.13 Time is of the Essence. Time is of the essence in the performance of this Agreement.

10.14 In the Agreement the Owner hereby certifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates comply with and agree to abide by the requirements of the Texas Government Code: Chapter 2264 regarding undocumented workers; Chapter 2270 relating to the boycott of Israel; Section 2252.152 regarding Iran, Sudan, and foreign terrorist organizations; and, Chapter 2274 regarding other various prohibitions.

EXECUTED and to be effective the later date on which this Agreement is signed by Owner and City.

<p>CITY OF JERSEY VILLAGE, TEXAS, a home-rule municipal corporation</p> <p>DocuSigned by: <i>Austin Bless</i> Austin Bless, City Manager</p> <p>Date: <u>January 4, 2022</u></p>	<p>MRS Helios LLC, a Texas limited liability corporation</p> <p>DocuSigned by: <i>John Garrett</i> By: <u>John Garrett, Manager</u></p> <p>Date: <u>January 4, 2022</u></p>
<p>Attest:</p> <p>DocuSigned by: <i>Lorri Coody</i> Lorri Coody, City Secretary</p>	