

CITY OF LEAGUE CITY

COUNTY OF GALVESTON

STATE OF TEXAS

CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVES GRANT AGREEMENT

This Chapter 380 Economic Development Incentives Grant Agreement (“Agreement”) is made by and between the City of League City, Texas (“City”), a home rule Municipal Corporation of the State of Texas, located at 300 West Walker Street, League City, Texas, 77573, and Jimmy Changas, Incorporated (the “Grantee”), located at 2601 Underwood Road, La Porte, Texas, 77571.

RECITALS:

WHEREAS, the City is authorized, pursuant to Chapter 380 of the Texas Local Government Code, to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money, to promote state or local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the Grantee proposes to develop a restaurant of approximately 10,000 square feet within the city limits of the City of League City, on a portion of an approximately 2.2 acre site generally located along Town Center Drive and more specifically described as Lot D-7B of Victory Lakes Commercial Section 1 Unrestricted Reserve D as noted in Exhibit “A” to this Agreement, which is attached hereto and incorporated by reference; and

WHEREAS, the City desires to offer incentives to the Grantee over a period of time which will enable the Grantee to develop the Property defined herein; and

WHEREAS, the City believes the development contemplated by Grantee will contribute to the economic development of the City by generating employment and other economic benefits to the City; and

WHEREAS, the City is authorized under Chapter 114 of the Code of Ordinances of the City of League City, Texas to assess and collect a capital recovery fee in order to provide for the cost to the City for the construction, design, inspection and other related expenses of the portion of general benefit facilities necessary to provide water and wastewater facilities to a person’s development and to assess and collect the cost against a benefited property owner of utility extensions and improvements which the City may elect to design, engineer, and construct in areas within the City.

WHEREAS, the City is authorized under Chapters 102 and 114 of the Code of Ordinances of the City of League City, Texas to assess and collect fees associated with the review and processing of plat submittals and construction plans and specifications review, issuance of building permits, inspection and other related expenses of the portion of general benefit facilities necessary to provide water and wastewater facilities to a person's development and to assess and collect the cost against a benefited property owner of utility extensions and improvements which the City may elect to design, engineer, and construct in areas within the City.

WHEREAS, the City is authorized under Chapter 321 of the Texas Tax Code to assess and collect a sales tax on the receipts from the sale at retail of taxable items within the City.

WHEREAS, it is anticipated that the Grantee will be required to pay to the City a capital recovery fee in the approximate sum of \$77,050.00, as well as the approximate sum of \$9,650.00 as a condition for the City's plat approval or issuance of building permits.

WHEREAS, to encourage the Grantee to develop the subject Improvements to the Property in the City in a manner that establishes the area as a regional destination, and to promote local economic development and to stimulate business and commercial activity in the City, the City desires to grant to the Grantee, under the terms and conditions set forth in this Agreement, a certain amount of public money equal to a full reimbursement of water and wastewater capital recovery fees and all additional fees associated with plat approval or issuance of a building permit at this location.

WHEREAS, to further encourage the Grantee to develop the subject Improvements to the Property in the City in a manner that establishes the area as a regional destination, and to promote local economic development and to stimulate business and commercial activity in the City, the City desires to grant to the Grantee, under the terms and conditions set forth in this Agreement, a certain amount of public money consisting of a sum equal to a partial reimbursement of local sales tax based upon the volume of annual sales at this location.

NOW, THEREFORE, in consideration of the mutual benefits and premises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Authorization

The City has concluded that it is authorized to enter into this Agreement pursuant to Section 380.001, et seq. of the Texas Local Government Code and that the obligations of the City are valid and binding, subject to the conditions precedent as stated herein. The Grantee's execution and performance of this Agreement constitutes a valid and binding obligation of Grantee. The City acknowledges that

the Grantee is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to commit substantial resources and money, and Grantee acknowledges that City is acting in reliance upon Grantee's full and complete performance of its obligations under this Agreement in making its decision to commit substantial resources to the development of the Property.

2. Definitions

"Calendar Year" means the period beginning January 1 and ending December 31.

"Certificate of Occupancy" means that final document issued by the City of League City, Texas, entitled "Certificate of Occupancy," indicating that all applicable codes, regulations, and ordinances enforced by the City of League City have been unconditionally, fully and completely complied with in all respects. A Certificate of Occupancy shall not include a certificate issued in error, mistake or misrepresentation of facts, nor any temporary or conditional document authorizing temporary or conditional occupancy.

"Chapter 380 Payment(s)" means the amount(s) paid by the City to the Grantee under this Agreement.

"Effective Date" means the date this Agreement has been signed by all Parties.

"Force Majeure" means any event in which any Party shall be delayed, hindered in or prevented from the performance of any act required under this Agreement by reason of casualty, fire, flood, windstorm, earthquake, explosion, lightning, or other act of God; strikes, lockouts, riots, wars, or other civil disturbances; or similar accident not reasonably within the Party's control which materially impairs the Party's ability to perform any act required under this Agreement.

"Improvements" means the following specific real property improvements that Grantee proposes to have constructed or installed on the Property, consisting of a building containing approximately 10,000 square feet of enclosed area, as more particularly described in paragraph 3 of this Agreement.

"Sales Tax Revenues" means the amount of sales taxes collected by the City from retail sales generated from and within the Improvements, a portion of which will be repaid to Grantee in the form of Chapter 380 payments, as defined herein.

"The Property" means that certain tract of real property located in League City, Galveston County, Texas consisting of approximately 2.2 acres, more or less, and generally located along Town Center Drive and more specifically described as Lot D-7B of Victory Lakes Commercial Section 1 Unrestricted Reserve D as noted in Exhibit "A" to this Agreement, which is attached hereto and incorporated by reference.

3. Term

This Agreement will become enforceable upon the Effective Date and will terminate on the first to occur of: (a) December 31, 2017 (which date is the end of the five year payment period for the Chapter 380 payments provided for under paragraph 6 below or (b) termination of this Agreement by the City as provided herein. In recognition of the fact that the Chapter 380 payments provided for under paragraph 6 are, by necessity, calculated and paid after taxes have been collected by the City and, therefore, will always be paid in arrears, the Term of this Agreement will be deemed extended until any such Chapter 380 payments have been paid by the City to the Grantee.

4. Grantee's New Investment and Design Commitments

(a) The Grantee understands that the City is entering into this Agreement based upon the following understanding of the Grantee's new investment in the City and in consideration of the Grantee's adherence to the conditions set forth in subsections (d) through (g) of this paragraph 4, and the Grantee represents and warrants that as of the date of this Agreement and the Grantee's agreement thereto, the following fairly describes its proposed undertaking on the Property.

One regional dining establishment containing approximately 10,000 sq. ft. of enclosed area, including adjoining space for parking intended to serve the users of such facility and their guests.

(b) The value of the new investment by the Grantee shall be generally consistent with that represented in the Economic Impact Statement dated October 5, 2011 that the Grantee has submitted to the City, a true and correct copy of which is attached to this Agreement as Exhibit "B," and made a part hereof.

(c) The number of new full time jobs to be created by the proposed development shall be generally consistent with that represented in the Economic Impact Statement dated October 5, 2011 that the Grantee has submitted to the City, a true and correct copy of which is attached to this Agreement as Exhibit "B," and made a part hereof.

(d) The orientation and primary access point of the Improvements shall face Town Center Drive.

(e) The architecture, building materials and landscaping materials to be incorporated into the Improvements shall meet or exceed the quality of architecture, building materials and landscaping materials of the existing Jimmy Changas location at 5144 Center Street, Pasadena, Texas 77505.

(f) Parking to be located along Town Center Drive shall be apportioned such that an amount deemed satisfactory to the City shall consist of diagonal or “pull in”/perpendicular.

(g) Grantee shall permit use of the existing on-site access point to the Interstate 45 feeder road for purposes of a roadway connecting to Walker Street.

5. Chapter 380 Payments – Capital Recovery Fees, Plat and Building Permit Fees

(a) The City agrees to grant a sum equal to reimbursement to the Grantee of the total amount of capital recovery fees in an approximate sum not to exceed \$77,050.00. If, due to capacity and unit calculations, the reimbursement sum falls below the \$ 77,050.00 estimated sum, then the lower amount is the total reimbursement sum the City is required to pay. The reimbursement sum, however, shall not exceed the sum of \$77,050.00. The City further agrees to grant a sum equal to the reimbursement to the Grantee of the total amount of fees associated with plat approval and issuance of building permits in an approximate sum not to exceed \$9,650.00. The City and the Grantee further expressly understand and agree that this grant is expressly conditioned upon (1) delivery to the City of documentation, including but not limited to paid invoices, bills paid, affidavits and lien releases, evidencing that the construction cost of the improvements is equal to or greater than the value of the new investment represented by the Grantee in the Economic Impact Statement dated October 5, 2011 that the Grantee has submitted to the City and (2) the creation of new full time jobs in an amount equal to or greater than the number of full time jobs as represented in the Economic Impact Statement dated October 5, 2011 that the Grantee has submitted to the City.

(b) The City agrees that payment of the grant consisting of a sum equal to the reimbursement of capital recovery fees and fees associated with plat approval and issuance of building permits to the Grantee shall take place no later than ninety (90) days from the date upon which a Certificate of Occupancy is issued for the improvements, provided that the conditions outlined in paragraph 5(a)(1) and (2) above have been satisfied at the time of such payment.

6. Chapter 380 Payments – Sales Tax Calculus

Beginning January 1, 2013, and annually thereafter for the Term of this Agreement, the City shall pay Grantee a sum equal to 15% of that portion of Sales Tax Revenues generated on all sales which, for the applicable calendar year are not less than \$3,000,000.00 but do not exceed \$4,500,000.00 during the applicable calendar year. In the event Sales Tax Revenues generated on sales for the applicable calendar year exceed \$4,500,000.00 but do not exceed \$6,000,000.00, the City shall pay Grantee a sum equal to 25% of that portion of Sales Tax Revenues generated on all sales during the applicable calendar year. In the event Sales Tax Revenues generated on sales for the applicable calendar year

exceed \$6,000,000.00, the City shall pay Grantee a sum equal to 35% of that portion of Sales Tax Revenues generated on all sales during the applicable calendar year until (i) final payment has been made by the City to Grantee as provided hereunder for the fifth year of the Term of this Agreement or (ii) termination of this Agreement by City as provided herein, whichever occurs first. It is understood that in the event Sales Tax Revenues generated on sales during the applicable calendar year shall be less than \$3,000,000.00, City shall not pay to Grantee a sum equal to any percentage of that portion of Sales Tax Revenues generated on sales during the applicable calendar year. Grantee shall submit a request for payment for the period from January 1 through June 30 and another request for payment for the period from July 1 through December 31 of each applicable year. The Owner's request for payment shall be accompanied by a true and correct copy of the Texas Sales and Use Tax Return filed with the Comptroller of Public Accounts for the corresponding reimbursement period from which the City can confirm the amount of Sales Tax Revenues for the period. The City shall make its payments to Grantee within 90 days of Grantee's delivery to the City of a request for payment.

7. Default

(a) If either party should default (the "Defaulting Party") with respect to any of its obligations under this Agreement and should fail, within sixty days after delivery of written notice of such default from the other party (the "Complaining Party") to cure such default, the Complaining Party, by action or proceeding at law or in equity, may be awarded its damages, if any, for such default.

(b) If, within 90 days from the date upon which a Certificate of Occupancy is issued for the Improvements, the Grantee fails to deliver to the City documentation, including but not limited to paid invoices, bills paid, affidavits and lien releases, evidencing that the construction cost of the improvements which are the subject of this agreement is equal to or greater than the value of the new investment represented by the Grantee in the Economic Impact Statement dated October 5, 2011 submitted to the City and/or the number of new full time jobs are not created as represented in the Economic Impact Statement dated October 5, 2011 submitted to the City, then all of the grants to be provided by the City to the Grantee under this Agreement shall be considered revoked and this Agreement shall be considered of no further force and effect.

8. Changes in Law

If during the term of this Agreement state law applicable to sales and use taxes changes and, as a result, the Chapter 380 Payments differ from the amount which would have been paid to the Grantee under the laws in effect as of the Effective Date, then the City, in its sole discretion, may adjust the Chapter 380 Payments utilizing whatever discretionary taxes and revenues are legally available to the City to be allocated to the Chapter 380 Payments. The foregoing does not require

the City to use funds from sources which are not within the City's discretion to allocate to the Agreement in order to achieve the same economic benefits to both Parties, which would have resulted if the law had not changed.

9. Mutual Assistance

The City and the Grantee shall take all reasonable measures which are necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

10. Representations and Warranties

The City represents and warrants to the Grantee that this Agreement is within the scope of its authority and the provisions of its charter and that it is duly authorized and empowered to enter into this Agreement. The Grantee represents and warrants to the City that it has the requisite authority to enter into this Agreement.

11. No Obligation by the Grantee to Commence Construction

In the event that the Grantee elects to not undertake the Improvements which are the subject of this agreement, this Agreement shall not create or impose any obligations upon the Grantee or City.

12. Attorney's Fees

In the event any legal action or proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action.

13. Statutes and Ordinances

Nothing in this Agreement shall alter the Grantee's obligation to comply with all state statutes, local ordinances, rules and regulations, covering the construction and operation of its development.

14. Section Names, Other Headings, and Construction

Section names or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All references to the singular shall include the plural, and to the plural the singular.

15. Severability

If for any reason any provision of this Agreement is held to be invalid by a court of competent jurisdiction, such holding shall not affect, impair or invalidate the remainder of the Agreement but shall be confined in its operation to the specific provision of this Agreement held invalid. The invalidity of any provision of this Agreement in any one or more instances shall not affect or prejudice in any way the validity of this Agreement in any other instance.

16. Amendment

This Agreement may only be amended, altered, or revoked by written instrument signed by both the Grantee and the City.

17. Successors and Assigns

This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

18. Notice

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

Grantee: Jimmy Changas Incorporated
2601 Underwood Road
La Porte, Texas 77571

City: City Manager of the City of League City
City Hall
300 West Walker Street
League City, Texas 77573

19. 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.

20. Applicable Law

This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and venue of any cause of action to enforce this agreement shall lie in Galveston County, Texas.

21. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

EXECUTED this 4th day of December, 201~~1~~¹².

CITY OF LEAGUE CITY, TEXAS



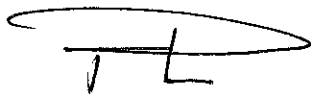
Mike Loftin, City Manager

ATTEST:



Diana Stapp, City Secretary

JIMMY CHANGAS INCORPORATED

BY: 

Russell Ybarra, President/CEO

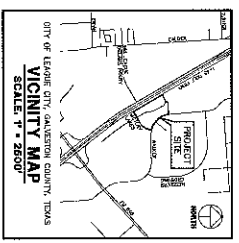
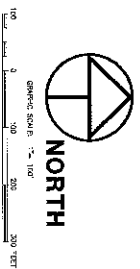
Project #11-001

Exhibit A

Jimmy Changas

CURVE CHART

CHORD	BEARING	DELTA	ARC	BEARING	CHORD
C1	S 89° 00' 00" W	90° 00' 00"	100.0000	N 0° 00' 00" E	100.0000
C2	S 89° 00' 00" W	90° 00' 00"	100.0000	N 0° 00' 00" E	100.0000
C3	S 89° 00' 00" W	90° 00' 00"	100.0000	N 0° 00' 00" E	100.0000
C4	S 89° 00' 00" W	90° 00' 00"	100.0000	N 0° 00' 00" E	100.0000
C5	S 89° 00' 00" W	90° 00' 00"	100.0000	N 0° 00' 00" E	100.0000
C6	S 89° 00' 00" W	90° 00' 00"	100.0000	N 0° 00' 00" E	100.0000
C7	S 89° 00' 00" W	90° 00' 00"	100.0000	N 0° 00' 00" E	100.0000
C8	S 89° 00' 00" W	90° 00' 00"	100.0000	N 0° 00' 00" E	100.0000
C9	S 89° 00' 00" W	90° 00' 00"	100.0000	N 0° 00' 00" E	100.0000
C10	S 89° 00' 00" W	90° 00' 00"	100.0000	N 0° 00' 00" E	100.0000
C11	S 89° 00' 00" W	90° 00' 00"	100.0000	N 0° 00' 00" E	100.0000
C12	S 89° 00' 00" W	90° 00' 00"	100.0000	N 0° 00' 00" E	100.0000
C13	S 89° 00' 00" W	90° 00' 00"	100.0000	N 0° 00' 00" E	100.0000
C14	S 89° 00' 00" W	90° 00' 00"	100.0000	N 0° 00' 00" E	100.0000
C15	S 89° 00' 00" W	90° 00' 00"	100.0000	N 0° 00' 00" E	100.0000



REVISED PRELIMINARY PLAT #4

VICTORY LAKES COMMERCIAL

SECTION 1, UNRESTRICTED RESERVE "D"

LOTS D-7A, D-7B, D-7C, D-8A, D-8B AND D-9

28.4673 ACRES OR 1,240,000 SQUARE FEET OF LAND
 BEING A SUBDIVISION OF
 UNRESTRICTED RESERVE "D" OF
 VICTORY LAKES COMMERCIAL SECTION 1
 OF THE GALVESTON COUNTY MAP AND TRACTS
 STEPHEN F. AUSTIN LEAGUE ABSTRACT NO. 3
 GALVESTON COUNTY, TEXAS

DATE: 08/18/2011

Owners / Developers
 RSM School Holding Company, Inc.
 4000 Westwood, Suite 400
 Dallas, Texas 75244
 Phone: (214) 343-1811

Saddle Creek Ranch, Ltd.
 4000 Westwood, Suite 400
 Dallas, Texas 75244
 Phone: (214) 343-1811

Surveyor
 Henderson Land Services, Inc.
 2001 Hubbard Co., Dallas, TX
 75201
 Phone: (972) 448-4422 Fax: (972) 448-0751

Professional Development Consultants
 and Computer Aided Mapping Development Services

- GENERAL NOTES**
1. RESERVE ZONE AND LOT ON THE TEXAS STATE PLAT INSTRUMENT SYSTEM, 2008.
 2. ASSUMING TO THE RESERVE ZONE, THE PROPERTY IS SUBJECT TO THE CITY OF DALLAS CITY LIMITS.
 3. THE PLAT LIES WITHIN THE CITY OF DALLAS CITY LIMITS.
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Project # 11 – 001 (Exhibit B)

Jimmy Changas

Economic Impact Statement & Proposed Incentives

Date: October 5, 2011

Project Summary

Jimmie Changas, a regional dining establishment is proposing to locate a **10,000** square foot facility in the "Entertainment District" located along Interstate 45 on remaining commercial property adjacent to Victory Lakes. The facility will be one of two businesses proposing to locate in the area in the near term that are expected to spur additional and similar development that, when finished, will provide League City residents and guests with a desirable entertainment destination.

The establishment is proposed to be complete in the first half of 2012. The establishment is anticipated to generate approximately **\$6,000,000** in annual sales. If the City is successful in marketing and developing this area as a destination, both annual sales and the long term performance of the site will likely be higher.

Facts Related to the Proposed Project

Total Site (in acres): **2.2 acres**

Size of Structure: **9,500 square feet**

Activity: Regional dining establishment

Assessed value of Site prior to Construction: **\$288,010** (estimated)

Value of Improvements: **\$3,500,000**

Total value of Investment: **\$5,000,000**

Anticipated Employment: **80 Full Time, 40 Part Time employees**

Anticipated Payroll: **\$1,440,000**

Relationship to the Vision for Economic Development in League City: Jimmy Changas is locating in one of four "districts" that League City is promoting as destinations for residents, employees and guests. The developer has agreed to follow specific design criteria intended to bolster the success of the Entertainment District.

Revenue (assuming current tax rates and fee schedule)

Property Taxes

City of League City:	\$24,400
Galveston County:	\$24,792
Road and Flood:	\$360
Clear Creek ISD:	\$54,400

City of League City Sales Tax: **\$105,000**
Permits **\$9,650**
Capital Recovery Fees: **\$77,050**
Annual League City Revenue: \$129,000

Proposed Economic Development Incentives

380 Development Agreement Grant

- A Sum Equal to Reimbursement of Cost of Permits and Capital Recovery Fees
- 5 Year Sales Tax Incentives
 - Below \$3 million in annual sales: no incentive
 - \$3 - \$4.5 million: a sum equal to 15% of League City sales tax revenue for site
 - \$4.5 - \$6 million: a sum equal to 25% of League City sales tax revenue for site
 - Greater than \$6 million: a sum equal to 35% of League City sales tax revenue for site

Grant Conditions

- Orientation and primary access point of the building to be facing Town Center Drive
- Design package in terms of landscaping and building materials that meets or exceeds the quality of the existing Jimmy Chargas located in Pasadena, Texas (as well as the development regulations of the City of League City, in the event that our regulations exceed standards applied to the existing site)
- A portion of parking to be located along Town Center Drive to be either diagonal or “pull in”/perpendicular
- Use of the “curb cut” along the I-45 feeder road for purposes of development of a roadway proposed by City staff to connect to Walker Street

Estimated Revenue after Incentives

- 5 Years: \$440,607
- 10 Years: \$1,087,607