

CHAPTER 380 PLACE BASED ENHANCEMENT PROGRAM AGREEMENT

Category PBE-2: Community Impact

BETWEEN THE CITY OF AUSTIN AND BALANCE DANCE STUDIOS

This Economic Development Agreement ("Agreement") is made and entered into as of _____, 2025 ("Effective Date") by and between Balance Dance Studios ("Company"), a Limited Liability Corporation, with its principal place of business in Austin, Texas, USA, and the City of Austin, a home-rule municipal corporation situated in Hays, Travis and Williamson Counties, Texas ("City").

RECITALS

The City is authorized by Chapter 380 of the Texas Local Government Code to create programs for grants of public money to promote state and local economic development and to stimulate local business and commercial activity in the City.

The City has authorized the creation of a Place Based Enhancement Program under Chapter 380 of the Texas Local Government Code, which authorizes the City to make grants of money to the Company to (i) make capital investments known as Balance Studios Expansion and (ii) provide other community benefits ((i), and (ii), together are the "Project").

The City may negotiate with the Company upon credible evidence that the incentive will fill a gap that creates desirable outcomes for the City.

The Project will further state and local economic development and stimulate business and commercial activity in Austin. The Company accepts the City's grant and agrees to accomplish the Project, the terms of which are the subject of this Agreement.

WHEREAS

The Company provides credible evidence that the incentive, if received, will either fill a gap that creates desirable outcomes for the City of Austin or address one or more of the following Council objectives:

Commercial affordability for tenants of commercial space with the intention of alleviating both short- and long-term financial challenges (such as rent and new pathways for revenue generation) with particular focus on local small business, legacy businesses, non-profits, cooperatives, and those in the creative sector;

Financial challenges faced by owners of commercial spaces by providing access to capital financing to deliver community benefits, such as affordable and public spaces, creative spaces, new goods, and services, and to preserve neighborhood identity;

Participation in the development process of new developments, including mixed-use commercial, to deliver a variety of benefits directly to the adjacent community (for example, affordable space, transportation solutions, socially beneficial real estate, sustainable development, and equitable access to opportunity) while representing and serving a diverse range of industry, users, and resident populations;

Opportunities for developing partnerships with existing developments to alleviate barriers to expansion and renovation to advance the quality, affordability, and uses of existing locations within the city of Austin and to preserve the business and cultural community;

Specific market needs, such as the delivery of goods, services, and transportation solutions to underinvested areas that yield benefits to the community beyond local tax base contribution; and,

Opportunities for alleviating and offsetting burdens of the city regulatory environment as it relates to business preservation, growth and development.

AGREEMENT

The City and the Company agree as follows:

1. Company's Obligations

1.1 Compliance with Minimum Requirements:

1.1.01 Compliance with all Laws: In their application to participate in the City's Chapter 380 Placed Based Enhancement Program, Company certified that it is in compliance with all federal, state and local laws, rules and regulations. Company shall re-certify annually that it has complied and will continue to comply with all federal, state and local laws, rules and regulations. Evidence of noncompliance may be grounds for terminating the Agreement.

1.1.02 Compliance with City Regulations.

- a. For the construction of the Company's Balance Studios Expansion, or the construction or remodeling of any future facilities in the Project boundary during the term of this Agreement, the Company will comply with all City Code regulations, including water quality regulations in effect at the time any site plan application is filed, unless the Company has negotiated an agreement with the City to comply with overall impervious cover limits and provide the currently required water quality controls. This means the Company will not assert possible vested rights defined in Chapter 245 of the Texas Local Government Code to avoid compliance with water quality regulations during the term of this Agreement. If, during the term of this Agreement, a development does not comply with water quality regulations in effect at the time any site plan application is filed for such development, the City may terminate this Agreement under section 3.11(b).
- b. If the Company is cited with a City Code environmental violation for the subject of the agreed incentivized project during the term of the Agreement, the City of Austin reserves the right to negotiate a cure period in which payment of the incentive will be withheld and, failure to cure the violation results in termination of the incentive agreement in accordance with Section 3.07.

1.1.03 Compliance with the City of Austin's Minority-Owned Business Enterprise and Women-Owned Business Enterprise Procurement Program.

- a. GENERAL. The Company shall comply with the applicable standards and principles of Chapters 2-9A (Construction), 2-9B (Professional Services), 2-9C (Nonprofessional Services) and 2-9D (Commodities) of the City Code and the Program Rules for Minority-Owned Business Enterprise and Women-Owned Business Enterprise Procurement Program ("MBE/WBE Program") in its contracting for the Project. It is the Company's responsibility to contact the City's Small and Minority Business Resources Department ("SMBR") to ensure the Company is complying with the current and applicable ordinances and rules.
- b. INFORMATIONAL MEETING. Prior to the Company expending money subject to the requirements of this Section 1.103, or no later than 90 days from the Effective Date, the local representatives of each party will meet to discuss the requirements for compliance with the MBE/WBE Program and the City will advise the Company of all available resources to assist with compliance.
- c. SUPPLIES/NONPROFESSIONAL SERVICES. In an effort to further stimulate and positively impact the local economy, the Company shall provide MBE/WBEs an equal opportunity to participate as suppliers for materials and nonprofessional services (excluding professional services defined by Chapter 2254 of the Texas Government Code, construction and construction related expenditures which is subject to subsection 1.103(d) below) purchased by the Company exclusively for use at its Project. To assist in recruiting efforts, the Company is required to contact SMBR for a list of available City certified MBE/WBEs prior to procuring supplies. Prior to advertising a bid for commodities exceeding the threshold amount described in subsection 1.103(c)2 below, the Company shall submit to SMBR a copy of the proposed solicitation for a single purchase or anticipated cumulative purchases to be made. SMBR shall supply the Company with an availability list of certified MBE/WBEs within seven business days upon receipt of the request. The Company shall perform good faith efforts as described in subsection 1.103(f) below and report to SMBR its firm selection with appropriate documentation of good faith efforts.
 1. SUPPLIER DIVERSITY POLICY. Within 90 days after the Effective Date, the Company shall submit to the City a reasonable supplier diversity policy, which will not conflict with the MBE/WBE Program, regarding the Company's procurement of materials and services to be used exclusively at the Project which may be reasonably modified from time to time by the Company, provided the policy and all modifications receive prior approval from SMBR.
 2. PROCUREMENT THRESHOLD AMOUNT. The Company agrees to adhere to this policy for the procurement of materials and services for which the cost is more than the purchasing authority established for the City Manager on an annual basis pursuant to Article VII (Finance) §15 (Purchase Procedure) of the City Charter, and for which there are

qualified local certified MBE/WBE suppliers, providing competitive prices and with sufficient financial resources in light of the particular materials and services to be supplied. The City Manager's purchasing authority is \$75,000.00 for the City's fiscal year 2024-2025, and may increase or decrease per the formula in the Charter. The City shall advise the Company annually of any changes to this threshold amount, or the Company may contact the City at any time for such information.

3. **EXISTING CONTRACTS.** This Section shall not apply to valid contracts the Company had in existence on the Effective Date of this Agreement for the goods, services, and materials described in subsections 1.103(c) and (d). A list of contracts in existence on the Effective Date of this Agreement is attached as Exhibit "E".
- d. **DESIGN AND CONSTRUCTION.** The Company shall comply with the applicable standards and principles of the MBE/WBE Program in the design and construction of its Project, including leasehold improvements, in effect at the time of solicitation for the particular scope of work to be completed. It is the Company's responsibility to contact SMBR to ensure the Company is complying with the current and applicable ordinances and rules.
 1. With respect to any design or construction projects for the Company's Project, including but not limited to leasehold improvements, the Company, the architect, engineer and the general contractor shall meet the gender and ethnic-specific participation goals or subgoals, as determined by the Director of SMBR in accordance with the MBE/WBE Program for each year in which design or construction occurs or submit documentation demonstrating good faith efforts as further described in subsection 1.103(f), below.
 2. Prior to advertising a bid for any portion of the design or construction work, the Company shall submit to SMBR a copy of a proposed solicitation for the City to determine the gender and ethnic-specific participation goals or subgoals for the project. The determination by the Director shall be based on the proposed size, type and scope of work to be undertaken by the Company and described in the bid documents, and the availability of each group of MBE/WBEs to perform elements of the work. The City may utilize either the cumulative MBE/WBE goal or the subgoals for each group of minority persons in the proposed solicitation, or set project MBE/WBE participation goals as provided in Section [2-9A-19](#) (*Establishment of MBE/WBE Participation Levels for Individual Contracts in Construction*), or as may subsequently be amended. The Director shall have 10 business days from receipt of a bid package from the Company in order to evaluate and determine the required level for utilization of MBE/WBE project or phase-specific goals or subgoals, if any, and shall notify the Company in writing of the Director's determination and provide an availability list.

- e. OUTREACH. In an effort to meet the gender and ethnic-specific M/WBE utilization goals, the Company shall implement an outreach program designed to solicit participation of M/WBEs. These outreach efforts should also target small businesses generally. The Company may seek the assistance of SMBR in these outreach efforts as described in paragraph (g) below.
- f. GOOD FAITH EFFORTS. For any year in which the Company, or the Company's or landlord's architect, engineer or general contractor, fails to meet each of the goals or subgoals established by the Director for expenditures described in subsections 1.103(c) and (d), the Company, or the Company's or landlord's architect, engineer, or general contractor, must demonstrate good faith efforts to meet the goals as described in the City's MBE/WBE Program Ordinance and Rules. The Company shall submit documentation demonstrating its own and the architect's, engineer's and/or general contractor's good faith efforts to meet the goals as is required under the following paragraph (i). If the Company provides documentation to SMBR evidencing its own or its landlord's architect's, engineer's and/or general contractor's good faith efforts, the Company shall be deemed in compliance with these paragraphs (e), (f) and (g). Failure of the Company, its or its landlord's architect, engineer or general contractor, to perform this obligation shall be considered a material breach of this Agreement. The City acknowledges that this obligation does not require the Company to modify, nullify or abrogate any contracts that the Company has entered into prior to the Effective Date of this Agreement and shown on Exhibit "E".
- g. The Company shall apprise SMBR when the Company desires assistance from SMBR in its efforts to meet the gender and ethnic specific MBE/WBE utilization goals established for the purchase of commodities and supplies procured by and for the Project, and design and construction of improvements. This assistance may include providing a list of certified MBE/WBEs from which the Company may solicit or cause the architect or its general contractor to solicit participation in the design and construction of any improvements, identifying potential scopes of work, establishing the bid packages, scheduling and hosting outreach meetings, and assisting the Company, its architect, or general contractor in soliciting MBE/WBEs to provide bids. The Company is not required to solicit participation during a period in which the Company is not engaged in designing and/or constructing its Project, but rather, the Company is required to incorporate the standards and principles of the City's MBE/WBE Program, including the MBE/WBE utilization goals established by the Director into its development process as and when such process exists in connection with the Project.
- h. MONTHLY REPORTS. The Company shall provide monthly reports to SMBR no later than the 10th day of each month to track (i) the utilization on a percentage basis of MBE/WBE firms in the design and construction of the improvements; (ii) the utilization on a percentage basis of MBE/WBE firms in the purchase of commodities and/or supplies by and for the Project; and (iii) a summary of the Company's efforts to implement the standards and principles of the City's MBE/WBE Program. SMBR

shall provide the forms to be used by the Company in submitting such reports.

- i. Within 30 days of receipt of the Company's final monthly report (as is required under paragraph (h) above for the preceding year, January 1st through December 31st (the "SMBR Compliance Period"), SMBR shall determine whether the Company is in compliance with the requirements of this Section. Should SMBR determine that the Company (or its landlord, architect, engineer or general contractor), has not complied with the obligations of this Section, the Company will forfeit the next anticipated Chapter 380 Payment. For example, if the Company (or its landlord, architect, engineer or general contractor) fails to comply with its obligations under this Section for one year, the Company will be required to forfeit one Chapter 380 Payment. If the Company fails to comply with the obligations for two years, the Company will be required to forfeit two Chapter 380 Payments, and so on.
- j. NON-COMPLIANCE. Failure to comply with this Section shall be considered a breach of this Agreement. Should SMBR determine that the Company has failed to satisfy its obligation under this Section, the Company will forfeit the next anticipated Chapter 380 Payment as described in paragraph (i). With respect to any individual procurement of materials or services for which the cost is less than the amount established in subsection 1.103(c)(2) above, the Company is encouraged, but not required, to adhere to the requirements of this Section. The Company shall maintain and provide documentation of meeting the goals or performing Good Faith Efforts to comply with this paragraph to SMBR as part of its monthly reports required under subsection 1.103(h) above.

1.1.04 Construction Worker Requirements for Projects with Capital Expenditures in the form of Construction:

- a. Any Employer that submits an offer to the City seeking award of a City contract shall comply with the requirements of Austin City Code, Chapter 4-22 Wage Theft. (Ordinance No. 20221201-031 | Code of Ordinances | Austin, TX | Municode Library).
 - 1. Any Employer that submits an Offer to the City is required to provide certification that they have not been adjudicated for certain offenses related to Wage Theft (Exhibit "F", Employer Wage Theft Certification Form).
 - 2. All Employers must complete the City of Austin Wage Theft Training within 30 days of being awarded a contract with the City.
- b. The Company agrees to pay and shall require its landlord, contractors and subcontractors to pay workers retained for any construction on the Project the higher wage of:
 - 1. Prevailing wages, as defined by Exhibit "G", Wage Rates and Payroll Reporting (see subsection (c) below); or

2. City Living Wage, currently \$22.05 per hour as of the 2026 Budget year, or as may be subsequently amended annually by the City.
- c. Prevailing Wage Rates Defined. The City has adopted prevailing wage rates by ordinance as the wage specified by the Department of Labor (DOL) published wage determination for a particular construction trade in Travis County (Davis Bacon Wage Rates), as may be amended by DOL, or as may subsequently be adopted by the City as the result of a City wage survey conducted according to DOL established methodology.
- d. Company's Responsibilities. Prior to commencement of and during construction of the Project, it is the Company's responsibility to:
 1. Contact the City's Procurement Programs division of the Financial Services Department, or successor department, and obtain the current prevailing wage rates in effect for Building Construction Type (BC) and Heavy Highway Construction (HH) for the construction workers performing work on the particular scope of work to be completed for all or part of the Project;
 2. Maintain certified weekly payrolls on-site for every contractor and subcontractor performing work on the Project. Certified weekly payrolls must contain the name, address and occupation of each worker employed by the Company, its landlord, its contractor or subcontractor, and the actual per diem wages paid to each worker;
 3. Employee Certification. The Company and its contractor or subcontractor shall identify in writing the classification agreed to by each worker, and pay the higher of the specified prevailing wage rate or Living Wage. A form designating the worker's classification and wage rate shall be signed by each worker, and if work performed by the worker is different than the rate or trade classification agreed upon, the worker shall be paid for the work completed no less than the minimum prevailing wage rate for that specified trade or Living Wage, whichever is higher.
 4. Payroll Deduction Authorization Form. The Company or its contractor or subcontractor shall prepare for each worker's signature a payroll deduction authorization form identifying all payroll deductions excluding those required by law, such as federal income taxes, Medicare and Social Security.
 5. A statement of Compliance shall be signed and dated by the party responsible for supervising the payment of persons employed or contracted by the Company, or its landlord, contractor or subcontractor, and identify the name of the signatory party and title, name of project, payroll period and name of contractor or subcontractor. The statement shall attest that the payroll complies with the terms of this Agreement and the applicable provisions of title 29 of the Code of Federal Regulations (Labor).

6. Designate and advise the City of a single point of contact responsible for monitoring and enforcing the Company's construction process.
 7. Erect and maintain a wage rate postings board in English and Spanish (form posting available from the City) displaying the wage rate per worker classification that may be working on the site, placed in a conspicuous place at the Project site accessible for all workers to view.
 8. Coordinate with city staff or its authorized representatives.
- e. The Company shall allow City staff and third-party representatives retained by the City to:
1. Present at Company's pre-bid and pre-construction meetings,
 2. Access the Project site,
 3. Audit documents related to construction worker wages paid to determine wage compliance,
 4. Interview workers,
 5. Conduct on-site observations related to wage compliance, and
 6. Review all construction-related certified payroll reports on-site once a month or as requested by the City.
- f. Wage Rate Infraction. The City shall notify the Company of any wage rate issues identified by the City or complaints received by the City. The 90-day opportunity to cure of Section 3.07 (Event of Default) shall not apply to individual wage rate infractions in this section. Depending on the severity of the infraction, the Company shall or require its landlord, contractors or subcontractors to correct and remediate any wage rate issues identified within the timeframe specified in the notice provided by the City, not to exceed 30 days. The parties may agree to shorten or extend the time period for the Company, its landlord, its contractor or subcontractor to comply depending on the type and severity of the wage rate infraction.
- g. The Company shall ensure that all construction workers working on the Project are provided workers' compensation insurance and OSHA 10-hour safety training.
- 1.1.05 Anti-Harassment and Anti-Discrimination Practices. Company's written anti-harassment and anti-discrimination practices for its business operations and work environment in Austin are attached as Exhibit "C". Company shall re-certify annually that it has complied with these practices and will continue to adhere to them. Evidence of noncompliance may be grounds for terminating the Agreement.

1.1.06 City of Austin Living Wage.

- a. Throughout the term of this Agreement, the Company shall ensure that all full-time employees and contract employees working in the City of Austin are paid no less than the City Living Wage, which is currently \$22.05 per hour as of the 2026 Budget year, or as may be subsequently amended annually by the City.
- b. The City shall notify the Company whenever the City Living Wage rate is amended by City Council. The Company shall begin paying its Austin-Based Employees no less than the amended Living Wage within 30 calendar days of either the effective date of the amended Living Wage or the date the City notified the Company of the amended Living Wage, whichever is later.
- c. For alternative compliance with this provision, the Company may submit, with their annual Certificate of Compliance, a signed statement affirming the completion of a labor peace agreement with a labor organization that represented the employees working at the Company throughout the prior year. The filing of Unfair Labor Practices against the recipient will be grounds for suspension of incentive payments. This alternative compliance is not available for any construction work on the Project.

1.1.07 Health Benefits.

- a. Throughout the term of this Agreement, the Company shall:
 1. Provide health insurance benefits to all employees in full-time jobs and extend benefits to spouses and domestic partners of its employees in full-time jobs and dependents of those spouses and domestic partners; or
 2. Facilitate access to health insurance coverage, such as providing a stipend to purchase insurance on the healthcare exchanges, for its employees in full-time jobs and their spouses and domestic partners and dependents of those spouses and domestic partners.
- b. Benefits extended to employees' domestic partners and their dependents shall be the same benefits extended in the same manner as benefits extended to employees' spouses and their dependents.

1.1.08 Texas Government Code Chapter 2264. In accordance with Chapter 2264 of the Texas Government Code, the Company agrees not to knowingly employ any person who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("Undocumented Worker").

- a. During the term of this Agreement, the Company shall notify City of any complaint brought against the Company alleging that the Company has employed Undocumented Workers.

- b. If the Company, or a branch, division or department of the Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the total amount of economic development grants it has received, together with interest at the rate of five percent (5%) from the date of each payment of an economic development grant, shall be repaid by the Company to the City not later than the 120th day after the date the City notifies the Company of the violation.
 - c. The City shall recover court costs and reasonable attorney's fees incurred if it prevails in an action brought pursuant hereto to recover past economic development grants and interest. The Company shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom the Company contracts.
- 1.1.09 Property Tax Protests. If the Company or an Affiliate protests the value of the real or business personal property comprising the Project, and the property valuation is reduced as a result of a successful property tax protest, then the Project shall be re-evaluated to determine whether it is still revenue-positive for the City. If it is determined that the Project is no longer revenue-positive for the City, then the City may adjust the amount of the incentive to make the Project revenue positive. Protests merely for reasons to correct information, such as clerical or typographical errors, are permitted and not prohibited by this subsection.
- 1.1.10 Certificate of Compliance and Inspection.
- a. Beginning January 31, 2027, and continuing each year thereafter during the term of this Agreement, the Company shall deliver to the City, on or before January 31 of each year, a Certificate of Compliance utilizing the form attached as Exhibit "D".
 - b. In the Certificate of Compliance, the Company shall warrant to the City that it is in full compliance with each of its obligations under this Agreement.
 - c. If at the time the Company delivers its Certificate of Compliance to the City, the value of any property comprising the Project is contested, the Company shall inform the City which property parcel(s) are contested. If the Company fails to notify the City and the City learns that the value of any property parcel comprising the Project was contested at the time the property taxes were paid, this Agreement will terminate immediately, and the Company will not be eligible for any further Chapter 380 incentives under this Agreement.
 - d. The City, and/or its representative(s), including third-parties contracted by the City, has the right to inspect all relevant records of the Company as are reasonably necessary to verify compliance with all requirements of this Agreement. Inspections shall be preceded by at least two weeks' notice in writing to the Company.

1.2 Project Specifications

1.2.01 Capital Investment Schedule. The Company shall develop its expansion to 4544 South Lamar Boulevard, Austin, TX 78745.

- a. The Company shall ensure that after the Effective Date of this Agreement, and before December 31, 2026, the Company has invested at least \$10,221,000 in real property improvements; and
- b. The Company shall ensure that after the Effective Date of this Agreement and before December 31, 2026, the Company has invested at least \$302,000 in the purchase and installation of business personal property at the Balance Studios Expansion to be used at the Balance Studios Expansion to support the operations of the Project.
- c. The Company's investment in real property improvements and business personal property shall be made according to the following schedule:
 1. At least \$10,221,000 in real property improvements plus at least \$302,000 in business personal property, for a cumulative investment of at least \$10,523,000 by December 31, 2026.
- d. If the Company fails to make the required investment in any year, the deadline to make the investment shall be extended to March 31 of the following year. If the Company does not make the required investment by March 31, the Company shall not be eligible to receive a Chapter 380 payment for the year during which the investment was required.

1.3 **Compliance with Additional Obligations.** The Company shall demonstrate compliance annually with each of the following requirements:

1.3.01 Prioritizing creative space and/or legacy business or nonprofit tenants.

2 City's Obligations

2.1 Economic Development Incentive. Subject to Section 3.02 (Payments Subject to Future Appropriations), during the Term of this Agreement, provided the Company has demonstrated compliance with its obligations under this Agreement, City shall pay to the Company annual Chapter 380 payments as prescribed in this section 2. For the purposes of this Agreement, "Eligible City Property Taxes" is defined as the portion of the ad valorem tax rate dedicated to Maintenance and Operation, after deducting the portion of the ad valorem rate dedicated for the transfer to the Austin Transit Partnership of the incremental increase in value over the Baseline Real Property Value. The ad valorem tax rate used to determine the Eligible City Property Taxes shall be adjusted annually.

2.1.01 For the Company's annual obligations under this Agreement, performed after the Effective Date of this Agreement and continuing through December 31, 2036, by October 31 of the following year, the City shall pay the Company the lesser of:

An amount equal to the sum of:

1. 100% of the Eligible City Property Taxes levied on the increase of real property taxable valuation after the Effective Date of this Agreement for the Balance Studios Expansion located in Austin, Texas and improvements thereon which are owned or leased by the Company; plus
 2. 100% of the Eligible City Property Taxes levied on all personal property acquired after the Effective Date of this Agreement that is installed in the Company's Balance Studios Expansion located in Austin, Texas plus
 3. The City of Austin sales taxes collected by the Company for sales of tickets and merchandise at the Balance Studios Expansion.
- 2.1.02 Baseline. The Baseline Real Property Value for purposes of calculating the increase under Section 2.2.01 shall be the appraised value of the improvements for tax year 2025.
- 2.1.04 New Improvements and New Equipment and Machinery.
- a. New Improvements means new real property improvements constructed at the Balance Studios Expansion, by or for the Company after the Effective Date of this Agreement.
 - b. New Equipment and Machinery means new business personal property acquired after the Effective Date of this Agreement that is installed in the Company's Balance Studios Expansion located in Austin, Texas.
- 2.1.05 Replacements of existing personal property must be New Equipment and Machinery in order to be eligible for a Chapter 380 Payment under this Agreement. Taxes on the value of personal property acquired prior to the Effective Date of this Agreement and real property improvements existing prior to the Effective Date of this Agreement are not included in the amount eligible for Chapter 380 Payments.
- 2.1.06 Coordination with Travis Central Appraisal District (TCAD). In order to properly identify property which is eligible for Chapter 380 Payments, the Company shall work with TCAD to create separate TCAD accounts for New Improvements and New Equipment and Machinery.
- 2.1.07 With respect to the Chapter 380 Payments described in Section 2.3.01 above, on or before January 31st of each year during the term of this Agreement:
- a. If the value of the New Improvements and/or New Equipment and Machinery is not contested, the Company shall provide evidence to the City of the amount of the Eligible City Property Taxes paid by the Company to the Travis County tax collector or its successor (the "Property Tax Notice"). The Chapter 380 Payments shall be based on the amount stated in the Property Tax Notice.

b. If the value of any of the Company's New Improvements and/or New Equipment and Machinery is contested:

1. The Company shall notify the City in writing that the value of the property is contested, identifying the Parcel ID of each contested parcel containing New Improvements or New Equipment and Machinery.
2. The City will conduct its compliance review to determine whether the Company complied with the other terms of this Agreement during the Applicable Year, and if the Company is found to be in compliance with those terms, the review will be suspended until the value of the New Improvements and New Equipment and Machinery is no longer contested, at which time the Company shall provide evidence of the settled value of the New Improvements and/or New Equipment and Machinery to the City. The review will continue following the City's receipt of such evidence.

2.2 Schedule for Incentive Payments. Provided the Company has demonstrated compliance with the terms of this Agreement, and the prior year value of no Project property parcel was contested as of January 31 of the year following the applicable year, a Chapter 380 Payment shall be paid to the Company by the City on an annual basis for the preceding year, on or before October 31st. The first Chapter 380 Payment shall be based on taxes paid for the calendar year 2026, and shall be paid on or before October 31, 2027, provided the Company has demonstrated compliance with the terms of this Agreement, and the Year 1 value of no Project property parcel was contested as of January 31, 2027. The last Chapter 380 Payment shall be based on taxes paid for the calendar year 2036, and shall be paid on or before October 31, 2037, provided the Company has demonstrated compliance with the terms of this Agreement, and the 2036 value of no Project property parcel was contested as of January 31, 2037.

3. General Terms

3.01 Term. This Agreement shall become enforceable upon execution by the City and the Company. Unless this Agreement is terminated earlier in accordance with Section 3.07 or 3.11, or the Company is engaged with the City to demonstrate the Company's compliance under this Agreement, or the value of any Project property parcel is contested as of December 31, 2036, the Company's obligations to perform under this Agreement shall be completed on December 31, 2036 and the City shall make its final payment to the Company under this Agreement on or before October 31, 2037, provided the Company has demonstrated compliance with the terms of this Agreement. If, as of December 31, 2036, the value of any Project property is contested, the Project will be evaluated after the value of all Project property has been settled. If the City finds that the Project is still revenue-positive to the City, the City's final payment will be made after compliance during 2036 has been demonstrated by the Company.

3.02 Payments Subject to Future Appropriation. This Agreement shall not be construed as a commitment, issue, pledge or obligation of any specific taxes or tax revenues for payment to the Company.

- a. All payments or expenditures made by the City under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.
 - b. The payment(s) to be made to the Company, or other expenditure(s) under this Agreement, if paid, shall be made solely from annual appropriations of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution, Chapter 380 of the Texas Local Government Code, or any other economic development or financing program authorized by statute or home-rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements.
 - c. In the event the City does not appropriate funds in a given fiscal year for payments due or expenditures under this Agreement, the City shall not be liable to the Company for such payments or expenditures unless and until appropriation of the necessary funds is made; provided, however, that the Company, in its sole discretion, shall have the right, but not the obligation, to terminate this Agreement and shall have no obligations under this Agreement for the year in which the City does not appropriate the necessary funds and the remainder of the Term.
 - d. To the extent there is a conflict between this Section and any other language or covenant in this Agreement, this Section shall control.
- 3.03 Offset for Taxes Owed. The Company acknowledges that the City has provided notice of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person who is in arrears to City of Austin for taxes, and of § 2-8-3 of the Austin City Code concerning the right of City of Austin to offset indebtedness owed City of Austin.
- 3.04 Right to Audit. The Company agrees that the representatives of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine, or reproduce, any and all records of the Company related to the performance under this Agreement. The Company shall retain all such records for a period of three years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of the Company are resolved, whichever is longer. The Company agrees to refund to the City any overpayments disclosed by any such audit. The Company shall include this section in all subcontractor agreements entered into in connection with this Agreement.
- 3.05 Representations and Warranties. The City represents and warrants to the Company that the economic development program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the economic development program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. The Company represents and warrants to the City that it has the requisite corporate authority to enter into this Agreement.
- 3.06 INDEMNIFICATION, HOLD HARMLESS, AND DUTY TO DEFEND.
- a. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:

1. "INDEMNIFIED PARTY" IS THE CITY AND THE CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.
 2. "INDEMNIFYING PARTY" IS THE COMPANY, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
- b. THE INDEMNIFYING PARTY SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE INDEMNIFIED PARTY AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES, INCLUDING PROFESSIONAL FEES AND ATTORNEYS' FEES, THAT ARE INCURRED BY THE INDEMNIFIED PARTY ARISING OUT OF ANY DIRECT OR THIRD PARTY CLAIM OF:
1. BREACH OR NON-FULFILLMENT OF ANY PROVISION OF THIS AGREEMENT BY THE INDEMNIFYING PARTY;
 2. ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE INDEMNIFYING PARTY IN THIS AGREEMENT OR IN THE INDEMNIFYING PARTY'S PROPOSAL/RESPONSE LEADING TO THIS AGREEMENT;
 3. ANY NEGLIGENT OR MORE CULPABLE ACT OR OMISSION OF THE INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT, RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT;
 4. BODILY INJURY; DEATH OF ANY PERSON; OCCUPATIONAL ILLNESS OR DISEASE; LOSS OF SERVICES, WAGES, OR INCOME; OR DAMAGE TO REAL OR PERSONAL PROPERTY CAUSED BY THE NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT; OR
 5. ANY FAILURE OF THE INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, OR CODES RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR MORE CULPABLE ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT.

- c. THE INDEMNIFIED PARTY SHALL GIVE THE INDEMNIFYING PARTY WRITTEN NOTICE (A "CLAIM NOTICE") OF ANY CLAIM RECEIVED RELATED TO THIS AGREEMENT. THE INDEMNIFYING PARTY'S DUTY TO DEFEND APPLIES IMMEDIATELY. THE INDEMNIFIED PARTY'S FAILURE TO PROVIDE A CLAIM NOTICE TO THE INDEMNIFYING PARTY DOES NOT RELIEVE THE INDEMNIFYING PARTY OF ITS DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTY.

- d. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:
 - 1. REIMBURSE THE INDEMNIFIED PARTY FOR ITS COSTS AND ATTORNEY'S FEES IMMEDIATELY UPON REQUEST, AS THEY ARE INCURRED, AND
 - 2. REMAIN RESPONSIBLE TO THE INDEMNIFIED PARTY FOR ANY LOSSES INDEMNIFIED UNDER THIS SECTION.
 - e. THE INDEMNIFYING PARTY SHALL GIVE PROMPT, WRITTEN NOTICE TO THE INDEMNIFIED PARTY OF ANY PROPOSED SETTLEMENT OF A CLAIM THAT IS INDEMNIFIABLE UNDER THIS SECTION. THE INDEMNIFYING PARTY MAY NOT, WITHOUT THE INDEMNIFIED PARTY'S PRIOR, WRITTEN CONSENT, SETTLE OR COMPROMISE ANY CLAIM OR CONSENT TO THE ENTRY OF ANY JUDGMENT REGARDING WHICH INDEMNIFICATION IS BEING SOUGHT UNDER THIS SECTION.
 - f. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS AGREEMENT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.
- 3.07 Event of Default. If either the City or the Company should fail in the performance of any of its obligations under this Agreement, such failure or omission to perform shall constitute an "Event of Default" under this Agreement. Except as otherwise provided in this Agreement, when an Event of Default occurs, the non-defaulting party shall provide the defaulting party with written notice of the alleged Event of Default (pursuant to Section 3.13, below), and allow the defaulting party a minimum period of 90 calendar days after the receipt of this notice to cure such Event of Default, prior to terminating this Agreement, instituting an action for breach of contract or pursuing any other remedy for the event of default.
- 3.08 Entire Agreement. This Agreement contains the entire agreement between the Parties. All prior negotiations, discussions, correspondence, and preliminary understandings between the parties and others relating to the Parties' obligations are superseded by this Agreement. This Agreement may only be modified, altered or revoked by written amendment signed by the City and the Company.
- 3.09 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns.
- 3.10 Assignment. Except as provided below, the Company may not assign its rights or obligations under this Agreement to a third party without prior written approval of the City. The City's approval of the assignment shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary, the Company may assign all or part of its rights and obligations under this Agreement without the prior consent of the City to an affiliate of the Company in which the Company owns at least a fifty percent (50%) interest, or to a third party lender advancing funds for the acquisition, construction or operation of the Company's Balance Studios Expansion. The Company shall use best efforts to notify the City of any pending assignments

when an assignment under this section is imminent and immediately upon completion or closing of such an assignment.

3.11 Termination.

- a. Termination by the Company for convenience. In the event the Company elects not to proceed with the Project as contemplated by this Agreement, the Company shall notify the City in writing, and this Agreement and the obligations on the part of both Parties shall be deemed terminated and of no further force or effect.
- b. Termination for Cause. If either Party to this Agreement fails to meet its obligations under this Agreement, and the non-defaulting party provides notice of the Event of Default as set forth in Section 3.07, above, and the Event of Default is not cured within the 90 calendar day cure period, this Agreement may be terminated by the non-defaulting party after expiration of the 90 calendar day cure period.

3.12 Force Majeure. No party shall be liable or responsible to the other, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from the following force majeure events ("Force Majeure Events"): (a) flood, fire, earthquake, hurricane, tornado, or other 'acts of God'; (b) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (c) national or regional emergency; (d) other similar events beyond the control of the party impacted by the Force Majeure Event (the "Impacted Party"). The Impacted Party shall give notice, by email or telephone, confirmed promptly in writing, within five business days of the Force Majeure Event to the other party, stating how long the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of the Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable. In the event that the Impacted Party's failure or delay remains uncured for a period of 90 days, the other party may terminate this Agreement upon 15 days' written notice.

3.13 Notice. Any notice and/or statement required or permitted to be delivered shall be deemed delivered by actual delivery, by facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

To the Company:

Balance Dance Studios
Attn: Stuart Dupuy, Chief Financial Officer
4544 S Lamar Blvd #350
Austin, TX 78745
Phone: 512-879-7509
Email: Stuart.dupuy@mbfagency.com
Re: Chapter 380 Place Based Enhancement Program Agreement

To the City:

City of Austin
Attn: City Manager

301 West 2nd Street
Austin, Texas 78701
(P.O. Box 1088, Austin, Texas 78767)
Phone: (512) 974-2200
Fax: (512) 974-2833

with copies to:

City of Austin
Attn: Director, Economic Development Department
5202 E. Ben White Blvd, Suite 300
Austin, Texas 78741
Phone: (512) 974-2156
Fax: (512) 974-7825

City of Austin
Attn: City Attorney, Law Department
301 West 2nd Street, 4th Floor
Austin, Texas 78701
Phone: (512) 974-2268
Fax: (512) 974-2894

Either party may designate a different address at any time upon written notice to the other party.

- 3.14 Attorney's Fees. In consideration of the award and execution of this Agreement and in consideration of the City's waiver of its right to attorney's fees, the Company knowingly and intentionally waives its right to attorney's fees under Section 271.153 of the Texas Local Government Code in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Agreement.
- 3.15 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties, or otherwise.
- 3.16 Election of Remedies; No Waiver. Neither the exercise of nor the failure to exercise a right or to give notice of a claim under this Agreement shall constitute an election or waiver of remedies or limit a party in any manner in the enforcement of any other remedies that may be available to the party, whether at law or in equity.
- 3.17 Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall be interpreted as being drafted by both Parties in conjunction with the other, neither more strongly for, nor against any party.
- 3.18 Applicable Law and Venue. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas. Venue for any dispute arising under this Agreement shall lie in the state courts of Travis County, Texas.

- 3.19 Change in Law. Any alterations, additions, or deletions to the terms of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment, and shall become effective on the date designated by such law or regulation.
- 3.20 Severability. In the event any provision(s) of this Agreement is deemed illegal, invalid or unenforceable under present or future law(s) by a court of competent jurisdiction, it is the intention of the Parties that the remainder of this Agreement shall not be affected. It is also the intention of the Parties that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision will be substituted by written amendment to this Agreement which is legal, valid or enforceable and similar in terms to the provision deemed to be illegal, invalid or unenforceable.
- 3.21 Survival of Obligations. All provisions of this Agreement that impose continuing obligations on the parties, including but not limited to warranty, indemnification, limitation of liability, and confidentiality, shall survive the expiration or termination of this Agreement.
- 3.22 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
- 3.23 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 3.24 Independent Contractor. The parties intend that the Company is and shall be an independent contractor. The parties do not intend for this Agreement to create an employer/employee relationship, a partnership, joint enterprise, or a joint venture. The parties intend that this Agreement does not provide the Company or its employees with any benefits, rights, or privileges afforded to City employees and that the Company is responsible for paying its own taxes.
- 3.25 No Joint Venture. It is acknowledged and agreed by the Parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, current and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with the Balance Studios Expansion or the design, construction or operation of any portion thereof.
- 3.26 Public and Confidential Information. All records and information provided to the City and its representatives to verify compliance with this Agreement, including monthly and annual reports shall be considered public information, and shall be available for public inspection, and may be posted on the City's website without further advance notice to the Company. Other information provided by or on behalf of the Company under or pursuant to this Agreement that the Company considers as proprietary shall be maintained as confidential to the extent allowed by law. If proprietary financial or trade secret information is requested under the Texas Public Information Act, the City shall follow the standards set out in the Act and under the Texas Attorney General's procedures for such requests, and the Company shall be responsible for defending the confidentiality of such information.

- 3.27 Required Anti-Boycott Israel Provision. Pursuant to *Amawi v. Pflugerville Independent School District*, 373 F.Supp.3d 717 (W.D. Texas 2019), the State of Texas is preliminarily enjoined from enforcing this provision. However, if that injunction is lifted, this provision will apply to the Agreement:
- a. Pursuant to §2270.002, Texas Government Code, the City is prohibited from entering a contract with a value of \$100,000 or more with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract.
 - 1. “Boycotting Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business with Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
 - 2. A “company” means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit and have 10 or more full-time employees. Sole proprietorships are excluded from this definition.
 - b. Pursuant to this statutory requirement, the Company provides this written verification that, if the Company is a company as defined above, it does not boycott Israel and will not boycott Israel for the term of this Agreement.
 - c. The Company’s obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Agreement.
- 3.28 Electronic Signatures. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the Texas Uniform Electronic Transactions Act, Tex. Bus. & Com. Code §322.001 *et seq.*
- 3.29 Counterparts. This Agreement may be executed in several identical counterparts by the Parties on separate counterparts, and each counterpart, when so executed and delivered, shall constitute an original instrument, and all such separate counterparts combined shall constitute one (1) original agreement.

EXECUTED by the authorized representatives of the Parties on the dates indicated below.

Balance Dance Studios
a Limited Liability Corporation

By: _____
Stuart Dupuy
Chief Financial Officer

Date: _____, 2025

CITY OF AUSTIN,
a home-rule municipal corporation

By: _____
T.C. Broadnax
City Manager

Date: _____, 2025

Approved as to form and substance:

«CityLawyerName», Assistant City Attorney

EXHIBITS:

- Exhibit "A": Chapter 380 Place Based Enhancement Program Guidelines
- Exhibit "B": Chapter 380 Placed Based Enhancement Program Definitions
- Exhibit "C": Anti-Harassment and Anti-Discrimination Practices
- Exhibit "D": Certificate of Compliance
- Exhibit "E": Existing Contracts
- Exhibit "F": Employer Wage Theft Certification Form
- Exhibit "G": Wage Rates and Payroll Reporting