

## Western Athletic Conference

The Western Athletic Conference (WAC) is a non-profit NCAA Division I conference covering a broad expanse of the western United States with member institutions located in Arizona, California, Utah and Washington along with the Midwest state of Illinois and the six member institutions in the state of Texas, including the University of Texas at Arlington.

WAC is leasing approximately 5,000 square-foot of office space in north Arlington at 524 E. Lamar Street, which will serve as the new headquarters for their administrative operations team and allow for better access to member institutions and an attractive location to host conference championship events. The relocation will create a minimum of 10 new jobs in the City of Arlington and furthers the City's efforts in being a premier sports organization/headquarters city.

Once the conference obtains a certificate of occupancy, the City will issue an initial relocation grant in the amount of \$300,000 in return for the WAC maintaining its headquarters in the City for the 10-year term of the Agreement, plus an annual grant in the amount of \$100,000 for a period of four years after the C.O. was issued. Additionally, the WAC will hold two conference events within the first five (5) years of the agreement and up to five events throughout the life of the agreement, and in return for this will be paid an additional grant of \$16,000 for each conference championship event held in the city for a maximum of five (5) awards through the term of the agreement. The total grant amount is \$780,000.

Western Athletic Conference Chapter 380 Grant Agreement		
Maximum Authorization: \$ 780,000		
Grant	Amount	Payment Date
Initial Grant - Relocation Assistance	\$ 300,000.00	1/3/2022
FY23 - Year 1 Annual Grant	\$ 100,000.00	7/24/2023
FY23 - Championship Event Grant	\$ 16,000.00	7/24/2023

**Total Paid to Date: \$ 416,000.00**

*Remaining Authorization: \$ 364,000.00*

Agreement Year	Fiscal Year	Begins	Ends
1	FY23	9/2/2022	9/2/2023
2	FY24	9/2/2023	9/2/2024
3	FY25	9/2/2024	9/2/2025
4	FY26	9/2/2025	9/2/2026
5	FY27	9/2/2026	9/2/2027
6	FY28	9/2/2027	9/2/2028
7	FY29	9/2/2028	9/2/2029
8	FY30	9/2/2029	9/2/2030
9	FY31	9/2/2030	9/2/2031
10	FY32	9/2/2031	9/2/2032

# Staff Report



Western Athletic Conference - Chapter 380 Grant Agreement	
City Council Meeting Date: 08-23-2022	Document Being Considered: Resolution

## RECOMMENDATION

Approve a resolution authorizing the City Manager or his designee to execute a Chapter 380 Grant Agreement between the City of Arlington and the Western Athletic Conference.

## PRIOR BOARD OR COUNCIL ACTION

On June 7, 2022, the Economic Development Committee was briefed on this request.

On August 2, 2022, the Economic Development Committee received a briefing update on this request.

## ANALYSIS

The Western Athletic Conference is a non-profit NCAA Division I conference covering a broad expanse of the western United States with member institutions located in Arizona, California, Utah and Washington along with the Midwest state of Illinois and the six member institutions in the state of Texas, including the University of Texas at Arlington.

The conference plans to lease approximately 5,000 square-foot of office space in North Arlington located at 524 E. Lamar Street. The office will serve as the new headquarters for the Western Athletic Conference administrative operations team. It will also allow for better access to member institutions and an attractive location to host conference championship events.

This relocation will look to create a minimum of 10 new jobs in the City of Arlington. Within 30 days of obtaining a certificate of occupancy, the City will issue the initial relocation grant. The WAC will be required to maintain its headquarters in the City for the 10-year term of the Agreement, in addition to holding two conference events within the first five (5) years of the agreement and up to five events throughout the life of the agreement.

## FINANCIAL IMPACT

Per the terms of the agreement, the Western Athletic Conference will receive a initial grant in the amount of \$300,000 for relocation assistance, an annual grant in the amount of \$100,000 for a period of four (4) years, and in consideration of good faith efforts to bring events to Arlington facilities, an additional grant of \$16,000 for each conference championship event held in the city for a maximum of five (5) awards through the term of the agreement.

The funding source for the grant will be the Innovative Venture Capital Fund account number: CC910401-FD3098-SC0533.

## ADDITIONAL INFORMATION

Attached:  
Under separate cover:  
Available in the City Secretary's Office:

Resolution with agreement attached  
None  
None

## STAFF CONTACT(S)

Broderick Green  
Executive Director  
817-459-6432  
[Broderick.Green@arlingtontx.gov](mailto:Broderick.Green@arlingtontx.gov)

Bruce Payne  
Economic Development Director  
817-459-6114  
[Bruce.Payne@arlingtontx.gov](mailto:Bruce.Payne@arlingtontx.gov)

**Resolution No. 22-236**

**A resolution authorizing the execution of a Chapter 380  
Grant Agreement by and between the Western Athletic  
Conference and the City of Arlington, Texas relative to  
the relocation of its corporate headquarters**

WHEREAS, CITY has found that providing a program consisting of a grant of funds to The Western Athletic Conference (hereinafter referred to as "OWNER") in exchange for OWNER'S completion of the project proposed by OWNER will promote local economic development and stimulate business and commercial activity and create jobs within the City of Arlington (hereafter referred to as "PROGRAM"); and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; and

WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, the Arlington City Council has elected to participate in economic development incentives in accordance with V.T.C.A. Local Government Code, Chapter 380, and has adopted policy statements, guidelines, criteria and procedures for evaluating and considering applications and agreements for such incentives; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

**I.**

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

**II.**

That the City Manager or his designee is authorized to execute a Chapter 380 Grant Agreement with OWNER to provide certain economic incentives associated with the relocation of its headquarters in Arlington, Texas.

III.

In authorizing the execution of and in executing the referenced agreement, the City of Arlington, Texas, through its City Council and City officials, hereby exercises a governmental function in accordance with but not limited to Section 101.0215 of the Texas Civil Practices and Remedies Code.

IV.

A substantial copy of the Chapter 380 Grant Agreement is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 23rd day of August, 2022, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.



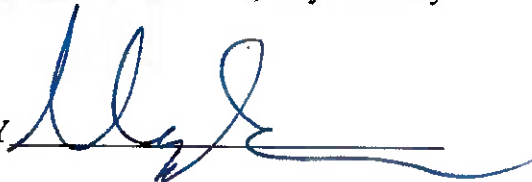
JIM R. ROSS, Mayor

ATTEST:



ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:  
MOLLY SHORTALL, City Attorney

BY 

**Exhibit “A”**

THE STATE OF TEXAS     §  
                                      §     **Chapter 380 Grant Agreement**  
COUNTY OF TARRANT   §

THIS agreement ("Agreement") is executed on \_\_\_\_\_, 2022, by and between **WESTERN ATHLETIC CONFERENCE**, a non-profit corporation duly authorized to do business in the State of Texas, acting by and through its authorized officer ("WAC"); and the **CITY OF ARLINGTON, TEXAS**, a home-rule city and municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee, (hereafter referred to as "**City**").

**W I T N E S S E T H:**

WHEREAS, City has found that providing a program of incentives to WAC in exchange for WAC locating and operating or causing its corporate headquarters and associated jobs to be moved to the State of Texas and the City, which will promote local economic development and stimulate business and commercial activity and retain jobs within the City (hereafter referred to as "**Program**"); and

WHEREAS, the City has determined that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in establishment and administration of the Program contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the Program provided herein.

NOW THEREFORE, The City and WAC, for and in consideration of the mutual premises and promises contained herein, do hereby agree, covenant, and contract as set forth below:

**I.**  
**Definitions**

- A. "**Job**" is defined as a permanent, full-time employment position which qualifies for full-time benefits, is issued an Internal Revenue Service W-2, and whose situs of employment is based at the Headquarters (as hereinafter defined) located inside the municipal boundaries of the City. A position that has flexibility for an employee to periodically work from home or remotely or that requires travel from time to time does qualify as a Job if the primary business address is at the Headquarters and the employee who fills such position resides in Dallas-Fort Worth-Arlington Metropolitan Statistical Area. Independent contractors and employees, whether permanent or temporary, part-time, transient or contract employees, and employees who work full-time from a location that is outside of the geographical boundaries of the Dallas-Fort Worth-Arlington Metropolitan Statistical Area shall not be

included in satisfying the Jobs related requirements under this Agreement.

## II. Conditions and Requirements

- A. WAC shall relocate its corporate headquarters (the **"Headquarters"**) to office space within the municipal boundaries of the City within one (1) year after the execution of this Agreement.
- B. WAC shall maintain at least five (5) Jobs at the Headquarters within one (1) year of executing this Agreement and a total of at least ten (10) Jobs at the Headquarters within two (2) years of executing this Agreement. The average salary of a Job shall be at a least \$70,000 annually. From and after the third (3<sup>rd</sup>) anniversary of the execution of this Agreement, WAC shall maintain not less than ten (10) Jobs that satisfy the annual salary requirement at the Headquarters in order to qualify for grant payments set forth in Section III(A)(2)(ii). If WAC does not satisfy the foregoing requirement in any year in which a grant under Section III(A)(2)(ii) is otherwise payable, WAC shall not be in default of this Agreement but the City may suspend payment of the grant for such year until such time as WAC complies with the requirement under this Section II(B); provided, however, that the City shall have no obligation to pay any unpaid grants under Section III(A)(2)(ii) after the expiration of the Compliance Period (as hereinafter defined). From and after the final grant is paid under Section III(A)(2)(ii), WAC shall no longer be obligated to maintain at least ten (10) Jobs within the City but shall be required to comply with the Section (II)(C) through (H) for the duration of the Compliance Period.
- C. WAC shall maintain its Headquarters within municipal boundaries of the City for a period of ten (10) years (the **"Compliance Period"**) following the satisfaction of its obligations in Section II(A); provided, however, WAC may permit employees to work fully remotely so long as it continues to represent that its headquarters is located within the municipal boundaries of the City. If WAC relocates its corporate headquarters outside of the municipal boundaries of the City at any time during the Compliance Period, City may terminate this Agreement and any grant payments paid to WAC under this Agreement shall be subject to recapture in full.
- D. WAC covenants and certifies that WAC does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.001(4) of the Texas Government Code. In accordance with section 2264.052 of the Texas Government Code, if WAC is convicted of a violation under 8 U.S.C. Section 1324(a)(1)(A), WAC shall repay to the City the full amount of the grant payments provided under Section III of this Agreement, plus 10% per annum from the date the grant payments were made. Repayment shall be paid within 120 days after the date following such conviction that WAC receives notice of violation from the City as provided by 2264.101(c) of the Texas Government Code. WAC shall not be liable for a violation by a subsidiary, affiliate, or franchisee of WAC or by a person with whom WAC contracts.



- E. During the Term of this Agreement WAC shall refer to its headquarters in all marketing and advertising efforts as being located in the City and shall not use any other proper geographic name (i.e. Dallas, Fort Worth, etc.) or informal geographic name (i.e. Metroplex, North Texas, etc.) to market or advertise the location without City's prior written permission.
- F. WAC shall make all reasonable efforts to attract or bring conference events (including meetings of the Board of Directors and media days) to facilities located within the City, including Choctaw Field, Globe Life Field, ATT Stadium or facilities owned and operated by the City or the Arlington Independent School District.

### **III. Grants**

- A. If the Conditions and Requirements set forth in Section II are met, City shall do the following:
  - 1. City will provide grants to WAC as calculated in Sections III(A)(2) below beginning in 2023 and ending in 2028, as such grants may be suspended in accordance with Section II(B)(2).
  - 2. The following grant payments shall be determined annually based upon the following:
    - i. Upon executing a lease for suitable office space, receiving a certificate of occupancy from the City, and satisfying the Jobs requirement set forth in Section II(B)(1), the City shall pay a grant of \$300,000. The grant payment that is payable under this Section III(A)(2)(i) shall be paid by the City to WAC within thirty (30) days after the City's verification that the conditions precedent for such grant payment have been satisfied.
    - ii. Annually each year after the first initial grant payment for a period of four (4) years, the City shall pay additional grant payments of \$100,000 per year. All grant payments that are payable under this Section III(A)(2)(ii) will be paid by City to WAC on or before June 30 of each year, provided the Conditions and Requirements contained in Section II have been met.
  - 3. In addition to the grants provided under Section III(A)(2) above, City shall pay up to five (5) additional one-time grants of \$16,000 each through the term of this Agreement for each championship event held in the City. Two (2) of the foregoing grants will be only available for events held within the first five (5) years after the effective date of this Agreement and the

remaining three (3) grants will be available at any time during the term of this Agreement. All grant payments payable under this Section III(A)(3) will be paid by City to WAC within thirty (30) days after the City's has verified that a championship event has been held in the City. As used herein, a "championship event" means a conference-wide championship tournament or event where a championship is intended to be awarded to a school that participates in a conference sport.

#### **IV.**

##### **Reports, Audits and Inspections**

- A. Additional Reports and Records - Throughout the term of this Agreement, WAC shall furnish City any additional records and information reasonably requested by the City to support the certifications required by this Agreement.
- B. Right to Audit Books and Records - City shall have the right during regular business hours at the WAC Headquarters to audit the books and records of WAC solely with respect to its compliance with the terms of this Agreement; provided, however, that Grantee or a representative of Grantee shall have the right to accompany City employees on any such inspection and such books and records shall be provided as requested on a "view only" basis without duplication and may be redacted or anonymized to protect sensitive, private or proprietary information gathered from WAC's members, employees, business partners, or other entities ("**Private Information**"). City shall notify WAC in advance in writing of their intent to audit in order to allow WAC adequate time to make such books and records available. Except as necessary to comply with the reporting requirements described in the Agreement, WAC shall take reasonable precautions to redact or eliminate providing Private Information to the City. To the extent any Private Information must be provided pursuant to this Agreement, WAC shall make every reasonable effort to minimize the Private Information provided. Where employee names must be provided, WAC shall use first name and first initial of the employee's last name to identify the employee. If any Private Information must be provided, such Private Information shall be clearly marked as "private information" or "confidential" and the City agrees to take appropriate precautions not to disclose Private Information except as provided in this Agreement, a subpoena, court order, search warrant, or other legal process or law.

#### **V.**

##### **Use of Premises**

The Headquarters at all times shall be used in a manner that is consistent with City's Unified Development Code and all other applicable federal, state, and local laws.

**VI.**  
**Breach and Recapture**

- A. Breach - A breach of this Agreement by WAC may result in termination of this Agreement and recapture by City of grant payments as further described below. The following conditions shall constitute a breach of this Agreement:
1. WAC fails to occupy its Headquarters in accordance with Section II(A);
  2. WAC relocates its Headquarters to any location outside the municipal boundaries of the City during the Compliance Period;
  3. WAC knowingly employs an undocumented worker as that term is defined by section 2264.001(4) of the Texas Government Code;
  4. WAC fails to compliance with its obligations set forth in Sections II(E) through (F); or
  5. WAC otherwise fails to comply with the terms of this Agreement.
- B. Notice and Cure of Breach - In the event that City makes a reasonable determination that WAC has breached this Agreement, then City shall give WAC written notice such breach. WAC has ninety (90) days following receipt of said written notice to cure such breach, WAC shall commence good faith actions to cure such breach. So long as WAC is diligently pursuing cure actions in good faith and provides City with monthly reports updating City on WAC's efforts to cure such default, City agrees to forbear and standstill on enforcement of its remedies under the terms of this Agreement solely with respect to such default. If City determines, in its reasonable discretion, that WAC has stopped good faith efforts to cure such breach or such breach is inherently not curable, the City may exercise the remedies set forth in subsection C.
- C. Termination and Recapture - If WAC fails to timely cure a breach of this Agreement in accordance with subsection B, City may terminate this Agreement and, except with respect to failure to comply with the covenant in Section II(B) and excluding grants paid under Section III(A)(3), recapture all grant payments (if any) that were made under this Agreement (for the purpose of clarity, in the event of a default under Section VI(A)(3) beyond any applicable notice and cure period, the entirety of all grants paid under this Agreement will be subject to recapture in accordance with Section II(D)). It shall be the duty of City to determine whether to require recapture of grant payments after termination of this Agreement and to demand payment of such. Repayment of grant payments shall become due ninety (90) days following receipt of such demand. The rights of City to require recapture and demand repayment of grant payments, and the obligation of WAC to pay such, shall survive termination of this Agreement. The City Attorney has the authority, on behalf of the City, to initiate any litigation necessary to pursue payment of recaptured grant payments pursuant to this Agreement.

**VII.**

## **Assignment**

The grant payments authorized by this Agreement shall not be assignable to any new entity, unless such assignment is approved in writing by the City with approval of the City Council, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, so long as WAC is in compliance with the terms of this Agreement, WAC may enter into one or more corporate mergers, acquisitions, consolidations, or other corporate combinations or conference realignments which may effectuate a transfer of this Agreement to a successor organization or consolidated conference without the approval of the City Council. WAC shall provide the City without notice of any corporate combination or conference consolidation within ten (10) days of the effectuation of such transaction.

## **VIII. Notice**

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail postage prepaid or by hand delivery:

WAC: Western Athletic Conference  
9250 E. Costilla Avenue, Suite 300  
Englewood, Colorado 80112  
Attn: Brian Thornton, Commissioner

With a copy to: Munsch Hardt Kopf & Harr, P.C.  
700 Milam Street, Suite 800  
Houston, Texas 7002  
Attn: Susan Sample

City: City of Arlington  
Attention: Economic Development Manager  
Post Office Box 90231  
Arlington, Texas 76004-3231

With a copy to: City Attorney  
101 South Mesquite  
Arlington, Texas 76010

## **IX. City Council Authorization**

This Agreement was authorized by resolution of the City Council authorizing the City Manager or his designee to execute this Chapter 380 Program Agreement for Economic Development Incentives on behalf of the City.

**X.  
Severability**

In the event any section, subsection, paragraph, sentence, phrase, or word is held invalid, illegal, or unconstitutional, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word.

**XI.  
Estoppel Certificate**

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to a subsequent purchaser or assignee of WAC, shall include, but not necessarily be limited to statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the grant payments in effect, and such other matters reasonably requested by the party(ies) to receive the certificates.

**XII.  
WAC's Standing**

WAC shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same, and WAC shall be entitled to intervene in said litigation.

**XIII.  
Applicable Law**

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

**XIV.  
Indemnification**

It is understood and agreed between the parties that the WAC, in performing obligations hereunder, are acting independently, and City assumes no responsibility or liability to third parties in connection therewith, and WAC agrees to indemnify and hold harmless City from any such responsibility or liability. It is further understood and agreed among the parties that City, in performing its obligations hereunder, is acting independently, and the WAC assume no responsibility or liability to third parties in connection therewith, and City agrees to the extent allowed by law to indemnify and hold harmless WAC from any such responsibility or liability.

**XV.**  
**Force Majeure**

It is expressly understood and agreed by the parties to this Agreement that the parties shall not be found in default of this Agreement and performance of such obligation shall be temporarily suspended for a reasonable period of time necessary to comply with the obligations under this Agreement if any party's failure to meet the requirements of this Agreement is delayed by reason of war, Act of God, fire, epidemic or pandemic, casualty, or any other contingency or cause beyond such party's reasonable control.

**XVI.**  
**No Other Agreement**

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by the parties.

**XVII.**  
**Procurement of Goods and Services from Arlington Businesses  
and/or Historically Underutilized Businesses**

In performing this Agreement, WAC agrees to use commercially reasonable diligent efforts to purchase all goods and services from Arlington or Tarrant County businesses whenever such goods and services are comparable in availability, quality and price.

As a matter of policy with respect to City projects and procurements, City also encourages the use, if applicable, of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor, or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers, or other persons or organizations proposed for work on this Agreement, the WAC agrees to consider this policy and to use their reasonable and best efforts to select and employ such companies and persons for work on this Agreement.

**XIII.**  
**Texas Public Information Act**

WAC understands that the City is required to comply with Texas Government Code, Chapter 552, commonly referred to as the Texas Public Information Act ("TPIA") as interpreted by judicial ruling and opinions of the Attorney General of the State of Texas ("OAG") when responding to records requests made under the TPIA. Upon the City's written request, WAC further agrees to make available to the City contracting information regarding the expenditure of public funds under this Agreement to the extent required under TPIA. Such information shall be promptly (but not later than three (3) business days of WAC's receipt of City's written request) provided to the City at no cost. WAC agrees to

mark or otherwise clearly identify documents and information provided in writing that it contends to be a trade secret, proprietary or confidential. If the City receives a request for information related to WAC or this Agreement, the City shall make a good faith attempt to notify WAC of its receipt of the request in accordance with the Act and provide a copy of such request, and WAC may seek a decision from the OAG that the information is confidential or otherwise protected from required disclosure. The parties acknowledge that to object to the release of records, TPIA requires WAC to submit a letter brief to the OAG explaining why the claimed exceptions apply to the information at issue. The City shall not be obligated to submit the brief supporting those claimed exceptions; instead, WAC shall be solely responsible for submitting the brief, identifying the appropriate applicable exceptions to the satisfaction of the OAG that the information is confidential or otherwise protected from disclosure, and providing a copy of the documents at issue to the OAG. The City shall only be responsible for providing such additional supporting information as requested by the OAG or if such information is in the sole possession of the City. If the OAG issues a determination indicating that all or part of the information must be disclosed, the City shall be required to disclose the information unless WAC files or intervenes in a suit against the OAG in accordance with Section 552.325 of the TPIA. Nothing in this Agreement shall require the City to fund, reimburse, institute or participate in any litigation relating to a request for information that WAC considers to be confidential. WAC agrees to comply with the TPIA, a subpoena, court order, search warrant, or other legal process. WAC acknowledges that the City cannot guarantee that any information it receives will be kept confidential, and this Agreement is not a basis to withhold information from required public disclosure under the TPIA. WAC agrees that City's compliance with the TPIA shall not constitute a breach of City's obligations pursuant to this Agreement.

#### **XIX. Headings**

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

#### **XX. Successors and Assigns**

The parties to this Agreement each bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement.

Subject to Section VII, no successor, executor, administrator, or assign is valid in the place of the parties to this Agreement without the written consent of City and such consent shall not be unreasonably withheld.

**XXI.**  
**Termination**

Unless expressly provided herein, this Agreement shall terminate after the expiration of the Compliance Period unless earlier terminated.

**XXII.**  
**Counterparts**

This Agreement may be executed in one or more counterparts, the combination of which shall be considered an original document.

[Signature Page to Follow]



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

WAC

**WESTERN ATHLETIC CONFERENCE**  
a non-profit corporation

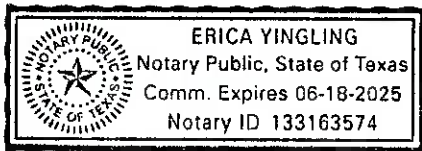
By: Brian Thornton  
Brian Thornton, Commissioner

Date: 8/25/2022

THE STATE OF Texas §  
COUNTY OF Tarrant §

**WESTERN ATHLETIC CONFERENCE**  
**Acknowledgment**

This instrument was acknowledged before me the 25 day of August, 2022, by Brian Thornton, Commissioner of Western Athletic Conference, a non-profit corporation, on behalf of said non-profit corporation.



My Commission Expires \_\_\_\_\_

Erica Yingling  
Notary Public in and for  
The State of TX

Erica Yingling  
Notary's Printed Name

CITY OF ARLINGTON, TEXAS

BY

Trey Yelverton  
City Manager

Date

9/2/2022

ATTEST:

Alex Busken  
ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:

MOLLY SHORTALL, City Attorney

BY

THE STATE OF TEXAS

§

COUNTY OF TARRANT

§

§

CITY OF ARLINGTON, TEXAS

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **Trey Yelverton**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 2nd day of September, 2022.



My Commission Expires

Stephanie Dimas

Notary Public in and for

The State of Texas

Stephanie Dimas

Notary's Printed Name

**Resolution No. 22-236**

**A resolution authorizing the execution of a Chapter 380  
Grant Agreement by and between the Western Athletic  
Conference and the City of Arlington, Texas relative to  
the relocation of its corporate headquarters**

WHEREAS, CITY has found that providing a program consisting of a grant of funds to The Western Athletic Conference (hereinafter referred to as "OWNER") in exchange for OWNER'S completion of the project proposed by OWNER will promote local economic development and stimulate business and commercial activity and create jobs within the City of Arlington (hereafter referred to as "PROGRAM"); and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; and

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WHEREAS, the Arlington City Council has elected to participate in economic development incentives in accordance with V.T.C.A. Local Government Code, Chapter 380, and has adopted policy statements, guidelines, criteria and procedures for evaluating and considering applications and agreements for such incentives; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

**I.**

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

**II.**

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PRESENTED AND PASSED on this the 23rd day of August, 2022, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.



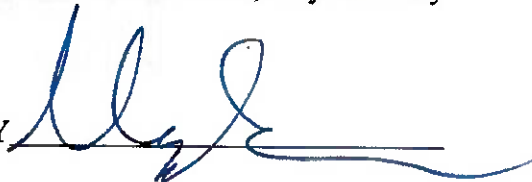
JIM R. ROSS, Mayor

ATTEST:



ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:  
MOLLY SHORTALL, City Attorney

BY 

**Exhibit “A”**

THE STATE OF TEXAS     §  
                                      §     **Chapter 380 Grant Agreement**  
COUNTY OF TARRANT   §

THIS agreement ("Agreement") is executed on September 2, 2022, by and between **WESTERN ATHLETIC CONFERENCE**, a non-profit corporation duly authorized to do business in the State of Texas, acting by and through its authorized officer ("WAC"); and the **CITY OF ARLINGTON, TEXAS**, a home-rule city and municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee, (hereafter referred to as "**City**").

**WITNESSETH:**

WHEREAS, City has found that providing a program of incentives to WAC in exchange for WAC locating and operating or causing its corporate headquarters and associated jobs to be moved to the State of Texas and the City, which will promote local economic development and stimulate business and commercial activity and retain jobs within the City (hereafter referred to as "**Program**"); and

WHEREAS, the City has determined that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in establishment and administration of the Program contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the Program provided herein.

NOW THEREFORE, The City and WAC, for and in consideration of the mutual premises and promises contained herein, do hereby agree, covenant, and contract as set forth below:

**I.  
Definitions**

- A. "**Job**" is defined as a permanent, full-time employment position which qualifies for full-time benefits, is issued an Internal Revenue Service W-2, and whose situs of employment is based at the Headquarters (as hereinafter defined) located inside the municipal boundaries of the City. A position that has flexibility for an employee to periodically work from home or remotely or that requires travel from time to time does qualify as a Job if the primary business address is at the Headquarters and the employee who fills such position resides in Dallas-Fort Worth-Arlington Metropolitan Statistical Area. Independent contractors and employees, whether permanent or temporary, part-time, transient or contract employees, and employees who work full-time from a location that is outside of the geographical boundaries of the Dallas-Fort Worth-Arlington Metropolitan Statistical Area shall not be

included in satisfying the Jobs related requirements under this Agreement.

## II. Conditions and Requirements

- A. WAC shall relocate its corporate headquarters (the **"Headquarters"**) to office space within the municipal boundaries of the City within one (1) year after the execution of this Agreement.
- B. WAC shall maintain at least five (5) Jobs at the Headquarters within one (1) year of executing this Agreement and a total of at least ten (10) Jobs at the Headquarters within two (2) years of executing this Agreement. The average salary of a Job shall be at a least \$70,000 annually. From and after the third (3<sup>rd</sup>) anniversary of the execution of this Agreement, WAC shall maintain not less than ten (10) Jobs that satisfy the annual salary requirement at the Headquarters in order to qualify for grant payments set forth in Section III(A)(2)(ii). If WAC does not satisfy the foregoing requirement in any year in which a grant under Section III(A)(2)(ii) is otherwise payable, WAC shall not be in default of this Agreement but the City may suspend payment of the grant for such year until such time as WAC complies with the requirement under this Section II(B); provided, however, that the City shall have no obligation to pay any unpaid grants under Section III(A)(2)(ii) after the expiration of the Compliance Period (as hereinafter defined). From and after the final grant is paid under Section III(A)(2)(ii), WAC shall no longer be obligated to maintain at least ten (10) Jobs within the City but shall be required to comply with the Section (II)(C) through (H) for the duration of the Compliance Period.
- C. WAC shall maintain its Headquarters within municipal boundaries of the City for a period of ten (10) years (the **"Compliance Period"**) following the satisfaction of its obligations in Section II(A); provided, however, WAC may permit employees to work fully remotely so long as it continues to represent that its headquarters is located within the municipal boundaries of the City. If WAC relocates its corporate headquarters outside of the municipal boundaries of the City at any time during the Compliance Period, City may terminate this Agreement and any grant payments paid to WAC under this Agreement shall be subject to recapture in full.
- D. WAC covenants and certifies that WAC does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.001(4) of the Texas Government Code. In accordance with section 2264.052 of the Texas Government Code, if WAC is convicted of a violation under 8 U.S.D. Section 132a(f), WAC shall repay to the City the full amount of the grant payments provided under Section III of this Agreement, plus 10% per annum from the date the grant payments were made. Repayment shall be paid within 120 days after the date following such conviction that WAC receives notice of violation from the City as provided by 2264.101(c) of the Texas Government Code. WAC shall not be liable for a violation by a subsidiary, affiliate, or franchisee of WAC or by a person with whom WAC contracts.

- E. During the Term of this Agreement WAC shall refer to its headquarters in all marketing and advertising efforts as being located in the City and shall not use any other proper geographic name (i.e. Dallas, Fort Worth, etc.) or informal geographic name (i.e. Metroplex, North Texas, etc.) to market or advertise the location without City's prior written permission.
- F. WAC shall make all reasonable efforts to attract or bring conference events (including meetings of the Board of Directors and media days) to facilities located within the City, including Choctaw Field, Globe Life Field, ATT Stadium or facilities owned and operated by the City or the Arlington Independent School District.

### **III. Grants**

- A. If the Conditions and Requirements set forth in Section II are met, City shall do the following:
  - 1. City will provide grants to WAC as calculated in Sections III(A)(2) below beginning in 2023 and ending in 2028, as such grants may be suspended in accordance with Section II(B)(2).
  - 2. The following grant payments shall be determined annually based upon the following:
    - i. Upon executing a lease for suitable office space, receiving a certificate of occupancy from the City, and satisfying the Jobs requirement set forth in Section II(B)(1), the City shall pay a grant of \$300,000. The grant payment that is payable under this Section III(A)(2)(i) shall be paid by the City to WAC within thirty (30) days after the City's verification that the conditions precedent for such grant payment have been satisfied.
    - ii. Annually each year after the first initial grant payment for a period of four (4) years, the City shall pay additional grant payments of \$100,000 per year. All grant payments that are payable under this Section III(A)(2)(ii) will be paid by City to WAC on or before June 30 of each year, provided the Conditions and Requirements contained in Section II have been met.
  - 3. In addition to the grants provided under Section III(A)(2) above, City shall pay up to five (5) additional one-time grants of \$16,000 each through the term of this Agreement for each championship event held in the City. Two (2) of the foregoing grants will be only available for events held within the first five (5) years after the effective date of this Agreement and the



remaining three (3) grants will be available at any time during the term of this Agreement. All grant payments payable under this Section III(A)(3) will be paid by City to WAC within thirty (30) days after the City's has verified that a championship event has been held in the City. As used herein, a "championship event" means a conference-wide championship tournament or event where a championship is intended to be awarded to a school that participates in a conference sport.

#### **IV.**

##### **Reports, Audits and Inspections**

- A. Additional Reports and Records - Throughout the term of this Agreement, WAC shall furnish City any additional records and information reasonably requested by the City to support the certifications required by this Agreement.
- B. Right to Audit Books and Records - City shall have the right during regular business hours at the WAC Headquarters to audit the books and records of WAC solely with respect to its compliance with the terms of this Agreement; provided, however, that Grantee or a representative of Grantee shall have the right to accompany City employees on any such inspection and such books and records shall be provided as requested on a "view only" basis without duplication and may be redacted or anonymized to protect sensitive, private or proprietary information gathered from WAC's members, employees, business partners, or other entities ("**Private Information**"). City shall notify WAC in advance in writing of their intent to audit in order to allow WAC adequate time to make such books and records available. Except as necessary to comply with the reporting requirements described in the Agreement, WAC shall take reasonable precautions to redact or eliminate providing Private Information to the City. To the extent any Private Information must be provided pursuant to this Agreement, WAC shall make every reasonable effort to minimize the Private Information provided. Where employee names must be provided, WAC shall use first name and first initial of the employee's last name to identify the employee. If any Private Information must be provided, such Private Information shall be clearly marked as "private information" or "confidential" and the City agrees to take appropriate precautions not to disclose Private Information except as provided in this Agreement, a subpoena, court order, search warrant, or other legal process or law.

#### **V.**

##### **Use of Premises**

The Headquarters at all times shall be used in a manner that is consistent with City's Unified Development Code and all other applicable federal, state, and local laws.

**VI.**  
**Breach and Recapture**

- A. Breach - A breach of this Agreement by WAC may result in termination of this Agreement and recapture by City of grant payments as further described below. The following conditions shall constitute a breach of this Agreement:
1. WAC fails to occupy its Headquarters in accordance with Section II(A);
  2. WAC relocates its Headquarters to any location outside the municipal boundaries of the City during the Compliance Period;
  3. WAC knowingly employs an undocumented worker as that term is defined by section 2264.001(4) of the Texas Government Code;
  4. WAC fails to compliance with its obligations set forth in Sections II(E) through (F); or
  5. WAC otherwise fails to comply with the terms of this Agreement.
- B. Notice and Cure of Breach - In the event that City makes a reasonable determination that WAC has breached this Agreement, then City shall give WAC written notice such breach. WAC has ninety (90) days following receipt of said written notice to cure such breach, WAC shall commence good faith actions to cure such breach. So long as WAC is diligently pursuing cure actions in good faith and provides City with monthly reports updating City on WAC's efforts to cure such default, City agrees to forbear and standstill on enforcement of its remedies under the terms of this Agreement solely with respect to such default. If City determines, in its reasonable discretion, that WAC has stopped good faith efforts to cure such breach or such breach is inherently not curable, the City may exercise the remedies set forth in subsection C.
- C. Termination and Recapture - If WAC fails to timely cure a breach of this Agreement in accordance with subsection B, City may terminate this Agreement and, except with respect to failure to comply with the covenant in Section II(B) and excluding grants paid under Section III(A)(3), recapture all grant payments (if any) that were made under this Agreement (for the purpose of clarity, in the event of a default under Section VI(A)(3) beyond any applicable notice and cure period, the entirety of all grants paid under this Agreement will be subject to recapture in accordance with Section II(D)). It shall be the duty of City to determine whether to require recapture of grant payments after termination of this Agreement and to demand payment of such. Repayment of grant payments shall become due ninety (90) days following receipt of such demand. The rights of City to require recapture and demand repayment of grant payments, and the obligation of WAC to pay such, shall survive termination of this Agreement. The City Attorney has the authority, on behalf of the City, to initiate any litigation necessary to pursue payment of recaptured grant payments pursuant to this Agreement.

**VII.**

## **Assignment**

The grant payments authorized by this Agreement shall not be assignable to any new entity, unless such assignment is approved in writing by the City with approval of the City Council, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, so long as WAC is in compliance with the terms of this Agreement, WAC may enter into one or more corporate mergers, acquisitions, consolidations, or other corporate combinations or conference realignments which may effectuate a transfer of this Agreement to a successor organization or consolidated conference without the approval of the City Council. WAC shall provide the City without notice of any corporate combination or conference consolidation within ten (10) days of the effectuation of such transaction.

## **VIII. Notice**

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail postage prepaid or by hand delivery:

WAC:                      Western Athletic Conference  
                                 9250 E. Costilla Avenue, Suite 300  
                                 Englewood, Colorado 80112  
                                 Attn: Brian Thornton, Commissioner

With a copy to:        Munsch Hardt Kopf & Harr, P.C.  
                                 700 Milam Street, Suite 800  
                                 Houston, Texas 7002  
                                 Attn: Susan Sample

City:                      City of Arlington  
                                 Attention: Economic Development Manager  
                                 Post Office Box 90231  
                                 Arlington, Texas 76004-3231

With a copy to:        City Attorney  
                                 101 South Mesquite  
                                 Arlington, Texas 76010

## **IX. City Council Authorization**

This Agreement was authorized by resolution of the City Council authorizing the City Manager or his designee to execute this Chapter 380 Program Agreement for Economic Development Incentives on behalf of the City.

**X.**  
**Severability**

In the event any section, subsection, paragraph, sentence, phrase, or word is held invalid, illegal, or unconstitutional, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word.

**XI.**  
**Estoppel Certificate**

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to a subsequent purchaser or assignee of WAC, shall include, but not necessarily be limited to statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the grant payments in effect, and such other matters reasonably requested by the party(ies) to receive the certificates.

**XII.**  
**WAC's Standing**

WAC shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same, and WAC shall be entitled to intervene in said litigation.

**XIII.**  
**Applicable Law**

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

**XIV.**  
**Indemnification**

It is understood and agreed between the parties that the WAC, in performing obligations hereunder, are acting independently, and City assumes no responsibility or liability to third parties in connection therewith, and WAC agrees to indemnify and hold harmless City from any such responsibility or liability. It is further understood and agreed among the parties that City, in performing its obligations hereunder, is acting independently, and the WAC assume no responsibility or liability to third parties in connection therewith, and City agrees to the extent allowed by law to indemnify and hold harmless WAC from any such responsibility or liability.

**XV.**  
**Force Majeure**

It is expressly understood and agreed by the parties to this Agreement that the parties shall not be found in default of this Agreement and performance of such obligation shall be temporarily suspended for a reasonable period of time necessary to comply with the obligations under this Agreement if any party's failure to meet the requirements of this Agreement is delayed by reason of war, Act of God, fire, epidemic or pandemic, casualty, or any other contingency or cause beyond such party's reasonable control.

**XVI.**  
**No Other Agreement**

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by the parties.

**XVII.**  
**Procurement of Goods and Services from Arlington Businesses  
and/or Historically Underutilized Businesses**

In performing this Agreement, WAC agrees to use commercially reasonable diligent efforts to purchase all goods and services from Arlington or Tarrant County businesses whenever such goods and services are comparable in availability, quality and price.

As a matter of policy with respect to City projects and procurements, City also encourages the use, if applicable, of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor, or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers, or other persons or organizations proposed for work on this Agreement, the WAC agrees to consider this policy and to use their reasonable and best efforts to select and employ such companies and persons for work on this Agreement.

**XIII.**  
**Texas Public Information Act**

WAC understands that the City is required to comply with Texas Government Code, Chapter 552, commonly referred to as the Texas Public Information Act ("TPIA") as interpreted by judicial ruling and opinions of the Attorney General of the State of Texas ("OAG") when responding to records requests made under the TPIA. Upon the City's written request, WAC further agrees to make available to the City contracting information regarding the expenditure of public funds under this Agreement to the extent required under TPIA. Such information shall be promptly (but not later than three (3) business days of WAC's receipt of City's written request) provided to the City at no cost. WAC agrees to

mark or otherwise clearly identify documents and information provided in writing that it contends to be a trade secret, proprietary or confidential. If the City receives a request for information related to WAC or this Agreement, the City shall make a good faith attempt to notify WAC of its receipt of the request in accordance with the Act and provide a copy of such request, and WAC may seek a decision from the OAG that the information is confidential or otherwise protected from required disclosure. The parties acknowledge that to object to the release of records, TPIA requires WAC to submit a letter brief to the OAG explaining why the claimed exceptions apply to the information at issue. The City shall not be obligated to submit the brief supporting those claimed exceptions; instead, WAC shall be solely responsible for submitting the brief, identifying the appropriate applicable exceptions to the satisfaction of the OAG that the information is confidential or otherwise protected from disclosure, and providing a copy of the documents at issue to the OAG. The City shall only be responsible for providing such additional supporting information as requested by the OAG or if such information is in the sole possession of the City. If the OAG issues a determination indicating that all or part of the information must be disclosed, the City shall be required to disclose the information unless WAC files or intervenes in a suit against the OAG in accordance with Section 552.325 of the TPIA. Nothing in this Agreement shall require the City to fund, reimburse, institute or participate in any litigation relating to a request for information that WAC considers to be confidential. WAC agrees to comply with the TPIA, a subpoena, court order, search warrant, or other legal process. WAC acknowledges that the City cannot guarantee that any information it receives will be kept confidential, and this Agreement is not a basis to withhold information from required public disclosure under the TPIA. WAC agrees that City's compliance with the TPIA shall not constitute a breach of City's obligations pursuant to this Agreement.

#### **XIX. Headings**

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

#### **XX. Successors and Assigns**

The parties to this Agreement each bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement.

Subject to Section VII, no successor, executor, administrator, or assign is valid in the place of the parties to this Agreement without the written consent of City and such consent shall not be unreasonably withheld.

**XXI.**  
**Termination**

Unless expressly provided herein, this Agreement shall terminate after the expiration of the Compliance Period unless earlier terminated.

**XXII.**  
**Counterparts**

This Agreement may be executed in one or more counterparts, the combination of which shall be considered an original document.

[Signature Page to Follow]

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

WAC

**WESTERN ATHLETIC CONFERENCE**  
a non-profit corporation

By: Brian Thornton

Brian Thornton, Commissioner

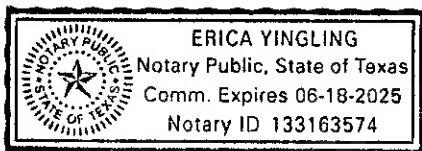
Date: 8/25/2022

THE STATE OF Texas §

COUNTY OF Tarrant §

**WESTERN ATHLETIC CONFERENCE**  
**Acknowledgment**

This instrument was acknowledged before me the 25 day of August, 2022, by Brian Thornton, Commissioner of Western Athletic Conference, a non-profit corporation, on behalf of said non-profit corporation.



My Commission Expires \_\_\_\_\_

Erica Yingling

Notary Public in and for

The State of TX

Erica Yingling

Notary's Printed Name



**CITY OF ARLINGTON, TEXAS**

BY

Trey Yelverton  
City Manager

Date

9/2/2022

ATTEST:

Alex Busken  
ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:

MOLLY SHORTALL, City Attorney

BY

THE STATE OF TEXAS

§

§

COUNTY OF TARRANT

§

**CITY OF ARLINGTON, TEXAS**

**Acknowledgment**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **Trey Yelverton**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 2<sup>nd</sup> day of September, 2022.



My Commission Expires

Stephanie Dimas

Notary Public in and for

The State of Texas

Stephanie Dimas

Notary's Printed Name