

**FIRST AMENDMENT TO CHAPTER 380
ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BRYAN, TEXAS AND CALJO, INC.**

This First Amendment to the Chapter 380 Economic Development Agreement (“**First Amendment**”) is made and entered into on this the 14 day of July, 2016, by and between the City of Bryan, Texas (“**City**”), and CALJO, Inc. d/b/a Callaway-Jones Funeral Home and Crematory, a Texas corporation (“**Developer**”). This First Amendment incorporates all definitions, terms and provisions of the Original Agreement, as defined below, unless the Original Agreement is in express conflict with any provisions of this First Amendment, in which case, this First Amendment shall control. This Amendment shall be effective on the date which this Amendment is finally executed by both parties, unless further modified or amended by the parties.

RECITALS

WHEREAS, City and Developer entered into that certain Chapter 380 Economic Development Agreement dated March 12, 2015 (“**Original Agreement**”); and

WHEREAS, the local area experienced multiple occurrences of inclement weather after the Effective Date of the Original Agreement and during Developer’s efforts to construct the Facility; and

WHEREAS, the inclement weather was unexpected and beyond the parties’ control, constituting a force majeure, and caused and resulted in delays beyond Developer’s control in Developer’s construction of the Facility; and

WHEREAS, the ultimate purposes and goals of the Original Agreement for encouraging economic development within the City and to assist with rehabilitation and renovation of the Properties can still be accomplished, but an extension of the deadlines is warranted to adjust for the force majeure; and

WHEREAS, clarification of certain terms and provisions of the Original Agreement will enable better administration of the grant therein made by the City to Developer; and

WHEREAS, City and Developer both desire to enter into this First Amendment to implement amended deadlines for Developer’s compliance with certain conditions and to clarify certain provisions;

NOW THEREFORE the Parties agree as follows:

1. Article II.2. of the Original Agreement is amended as follows:

Term. This Agreement shall become enforceable upon the Effective Date as established in the Original Agreement, and shall continue until the Expiration

Date, unless terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.

2. Article III.6. of the Original Agreement is amended to state:

“Expiration Date” means the earlier to occur of (i) December 31, 2021 or (ii) the day the total amount of Chapter 380 Payments received by Developer has reached the Maximum Grant Amount, as defined herein. In recognition of the fact that the Chapter 380 Payments by necessity are calculated and paid after taxes have been assessed and paid to the City, and therefore always run in arrears, the term of this Agreement shall be deemed to be extended for the time necessary to make any payments otherwise due and payable to Developer which extend beyond the original term of the Agreement.

3. Article III of the Original Agreement is amended to add the following subsections:

12. “Maximum Grant Amount” means an amount equal to one-half (½) the Increased Value of the Properties, as determined by the BCAD appraised value, in the first year in which the Minimum Increased Value is attained.

13. “Tax Revenues” shall mean the City of Bryan’s portion only of any ad valorem taxes collected on the Properties.

14. “Chapter 380 Payment(s)” or “Cash Incentives” shall mean that amount paid as a grant under Texas Local Government Code, Chapter 380, by City to Developer in an amount equal to 100 percent of Tax Revenues collected and attributable to the Increased Value of the Properties in the calendar year immediately preceding the year in which a Chapter 380 Payment is requested. Such amount shall be calculated based upon the Increased Value of the Properties for each year of the Agreement, unless otherwise provided herein.

4. Article IV. 1. Is restated in its entirety to state as follows:

1. **Payment of Cash Incentives.**

a. Subject to continued satisfaction of all the terms and conditions of this Agreement, City agrees to pay to Developer annually an amount equal to one hundred percent (100%) of the Tax Revenues collected by the City on the Increased Value of the Properties for the preceding calendar year by the Developer in accordance with the terms of this Agreement, provided that the total amount of Chapter 380 Payments paid to Developer under this Agreement shall not exceed the Maximum Grant Amount. The Chapter 380 Payments shall continue to apply to Tax Revenues collected through taxes assessed for 2021, unless the Agreement is terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.

b. In no event will the Chapter 380 Payment paid in connection with a tax year exceed the amount of Tax Revenues attributable to the Increased Value of the Properties which are actually collected by the City on the Property by July 1 for such tax year.

c. The City's obligation to make the Chapter 380 Payment(s) hereunder is subject to annual appropriation by the Bryan City Council, which the City agrees to use good faith efforts to appropriate such funds each year during the Term of this Agreement. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

5. Article IV.3. is amended to substitute the term "Chapter 380 Payments" for "Reimbursement payments" and "reimbursement" wherever such terms appear in Article IV.3.

6. Article V.1. of the Original Agreement is amended to provide that Developer shall complete construction of the Facility on the Properties by December 31, 2016.

7. Article V.2. of the Original Agreement is amended to provide that Developer shall create two permanent, full-time positions at the Facility to be paid a minimum of \$80,000 annually, combined, by January 1, 2017, which positions shall remain in place for at least the term of the Agreement.

8. Article VI.1. of the Original Agreement is amended to add new subsections (l) and (m) as follows:

(l) Developer shall be responsible for maintaining all records evidencing compliance with all Developer obligations required under this Agreement. Developer shall maintain such records for a period of five (5) years after termination of this Agreement.

(m) Developer shall allow City reasonable access, during normal business hours, to review and audit its records and books and all other relevant records related to the Agreement upon five (5) business days' prior written notice to the Developer.


9. Article VI.2. is amended to state: "City is obligated to pay Developer an amount equal to the Maximum Grant Amount over the duration of this Agreement according to Article IV.1."

10. Developer acknowledges City is in compliance with all its obligations under the Agreement.

11. All other terms and conditions of the original agreement remain in full force and effect.


EXECUTED on this 14th day of July 2016.

CITY OF BRYAN, TEXAS



Jason P. Bienski, Mayor

DEVELOPER

By: 

Printed Name: Cody D. Jones
Title: President
Date: 6/28/16

ATTEST:

By: 

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

By: 

Jarvis Hampton, City Attorney

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT ("Agreement") by and between the CITY OF BRYAN, TEXAS, a Texas home-rule municipal corporation ("City"); and CALJO, Inc., D/B/A Calloway-Jones Funeral Home and Crematory, a Texas corporation ("Developer") (City and Developer collectively referred to as the "Parties" and sometimes individually as a "Party"), is entered into upon the "Effective Date," as more clearly defined herein.

WHEREAS, Developer owns or controls five properties along and near South College Avenue, located at 3001 S. College Ave., 3003 S. College Ave., 3005 S. College Ave., 3007 S. College Ave., and 103 Dellwood, more fully described in Exhibit "A" ("Properties"); and

WHEREAS, the Properties are located on South College Avenue, a corridor of the City that is the focus of a long-term comprehensive development effort, focused on restoring the prominence of this historic area of the City; and

WHEREAS, Developer is a 100% locally-owned business with a sixty-four year history at their location on the City's South College corridor; and

WHEREAS, the Developer has gained control or ownership of said properties in order to build a new facility at their current location, with an expected increased appraised ad valorem tax value of at least \$1 million; and

WHEREAS, Developer will invest significant resources in the site and the new facility at the current location, creating both a beautiful new facility and many local jobs and other benefits in the design and construction process; and

WHEREAS, Developer has further proposed to add new permanent payroll to the City at the new facility;

WHEREAS, Chapter 380 of the Texas Local Government Code permits a city to create a program that will expend funds in the form of grants or loans for the purpose of stimulating economic development within the limits of the city; and

WHEREAS, Developer has agreed, in exchange and as consideration for conveyance of the Property, to satisfy and comply with certain terms and conditions, including the construction of the new facility (as more fully defined below); and

WHEREAS the City Council finds that the contemplated use of the Properties, the contemplated improvements to the Properties, and the other terms set forth in this Agreement are consistent with encouraging economic development within the City and it is in the City's best interest to enter into this agreement with the Developer for the purpose of assisting with the rehabilitation and renovation of the Properties.

NOW, THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the Parties hereby agree as follows:

ARTICLE I RECITALS

1. **Recitals.** The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement.

ARTICLE II AUTHORITY AND TERM

1. **Authority.** The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and constitutes a valid and binding obligation of the City. The City acknowledges that Developer is acting in reliance upon the City's performance of its obligations under this Agreement in making the decision to commit substantial resources and money to the establishment of the Project, hereinafter established.

2. **Term.** This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date, hereinafter established as the date five (5) years from the Effective Date, unless terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.

ARTICLE III DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

1. "Bankruptcy" or "Insolvency" shall mean the dissolution or termination of a Party's existence as a going business, insolvency, appointment of receiver for any party of such Party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.
2. "Base value" shall mean the appraised value of the Properties as set by the Brazos County Appraisal District (BCAD) on the Effective Date of this Agreement.
3. "City Council" shall mean the elected city council of Bryan, Texas.
4. "Code" shall mean the Code of Ordinances for the City of Bryan, Texas.
5. "Effective Date" shall mean the date on which this Agreement is finally executed by both Parties.
6. "Expiration Date" shall mean the date five (5) years from the Effective Date.
7. "Facility" shall mean the new facility to be constructed under the terms of this Agreement.

8. "Increased Value" shall mean the value reached when the Base Value is subtracted from the current appraised value.
9. "Project" shall mean the construction of the new facility on South College.
10. "Properties" shall mean the real property described in **Exhibit "A"**.
11. "Related Agreement" shall mean any other agreement by and between the City and the Developer, or any of its affiliated or related entities, relating to the Project.

ARTICLE IV ECONOMIC DEVELOPMENT GRANTS

1. **Abatement of ad valorem value added at current project location.** Subject to continued satisfaction of all the terms and conditions of this Agreement the City hereby agrees to reimburse the Developer fifty percent (50%) of the cost of the rehabilitation and renovation of the Properties, conditioned upon an increase in the appraised value of the Properties. The reimbursement payments are made on an annual basis, and will be equal to fifty percent (50%) of the City ad valorem tax collected on the Increased Value in the Properties, as determined by the Brazos County Appraisal District ("BCAD"). For the purposes of this Agreement, the appraisal by BCAD is binding. The abatement shall continue for five (5) years from the Effective Date of this Agreement, unless the Agreement is terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.

2. **Current appraised value of Properties.** As of the Effective Date of this Agreement, and as shown in Exhibit "B," the Properties' cumulative appraised value is \$251,000.00 ("Base Value").

3. **Minimum Increased Value required.** Reimbursement payments under this Agreement shall not be made unless the Increased Value is at least \$1,000,000.00 (i.e. the Properties are appraised for a cumulative value of at least \$1,251,000.00). Upon a determination by the Brazos County Appraisal District that the required increase in value has occurred, the Developer is eligible for reimbursement. Each year, the Developer will submit a request for reimbursement along with copies of tax receipts showing that taxes have been paid and also showing the then current appraised value of the Properties. Reimbursement payments can be made within thirty days following receipt of the request.

4. **Prohibition on outstanding City taxes or liens.** The City shall not make any payments to Developer if there are any outstanding taxes owed to the City for the preceding year's taxes or if there are any outstanding liens on the Properties in the City's favor.

5. **Payments dependent upon appropriations.** Payments to Developer are contingent upon annual appropriation for same in the City's budget.

6. **Delinquency in City ad valorem taxes and assessments prohibited.** Developer agrees to pay all ad valorem taxes and assessments owed to City prior to such taxes and/or assessments becoming delinquent. Developer shall have the right to contest in good faith the validity or application of any such tax or assessment and shall not be considered in default hereunder so long as such contest is diligently pursued to completion. In the event that Developer contests such tax or assessment, all uncontested taxes and assessments shall be promptly paid to City prior to delinquency. If Developer undertakes any such contest, it shall notify City and keep City apprised of the status of such contest. Should Developer be unsuccessful in any such contest, Developer shall promptly pay all taxes, penalties and interest resulting therefrom.

**ARTICLE V
CONDITIONS TO ECONOMIC DEVELOPMENT GRANT**

Developer shall, as a condition to the reimbursement of any ad valorem taxes, comply with the following:

1. **Construction of Facility.** Within nine (9) months of the execution of this Agreement, Developer shall complete construction of the Facility on the Properties in accordance with applicable City building codes and planning and development standards. Developer shall provide access to and permit inspection of the Facility by City staff in order to ensure compliance with the Agreement.
2. **Payroll creation within the City.** Within twelve (12) months of the execution of this Agreement, Developer shall create two permanent, full-time positions at the Facility to be paid a minimum of \$80,000.00 annually, combined. These positions shall remain in place at least for the term of the Agreement.
3. **Facility use.** The Facility and Properties shall be used in a manner consistent with the City's development goals for the South College Avenue Corridor for the term of the Agreement.
4. **Annual certification of compliance.** Developer shall annually certify to the City that it is in compliance with the terms of the Agreement through a certified letter addressed to the Development Services Director or his designee.

**ARTICLE VI
COVENANTS AND DUTIES**

1. **Developer's Covenants and Duties.** Developer makes the covenants and warranties to the City and agrees to timely and fully perform the obligations and duties contained in Article V of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Developer. Developer further covenants and warranties to the City the following:
 - (a) Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.
 - (b) The execution of this Agreement has been duly authorized by Developer's authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Developer's by-laws, or of any agreement or instrument to which Developer is a party to or by which it may be bound.
 - (c) Developer is not a party to any bankruptcy proceedings currently pending or contemplated, and Developer has not been informed of any potential involuntary bankruptcy proceedings.
 - (d) To its current, actual knowledge, Developer has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.

- (e) Developer shall timely and fully comply with all of the terms and conditions of this Agreement.
- (f) Developer agrees to complete, or cause to be completed, the improvements to the Properties and construction of the Facility, described herein, at its sole cost and expense. Developer also agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the improvements to the Properties and construction of the Facility.
- (g) Developer agrees to supervise the construction of the Facility and cause the construction to be performed substantially in accordance with federal, state and local laws and ordinances and this Agreement.
- (h) Developer shall be responsible for paying, or causing to be paid, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Facility.
- (i) Developer shall cooperate with City in providing all necessary information to assist City in complying with this Agreement.
- (j) Developer shall pay, or cause to be paid, monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by Developer in regard to the development of the Facility, the Properties for all areas owned by Developer during construction of the Facility, and for so long as Developer owns those areas.
- (k) **Developer Bears Risk of Reimbursement.** Developer represents that it understands that any contributions made by Developer in anticipation of reimbursement from Grant Funds shall not be, nor shall be construed to be, financial obligations of the City. Developer shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of Grant funds, changes in tax rates or tax collections, changes in state law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, default by tenants, unanticipated effects covered under legal doctrine of force majeure, and/or other unanticipated factors.

2. **City's Covenants and Duties.**

- (a) **Grant Payment.** The City is obligated to pay Developer annually an amount equal to fifty percent (50%) of the Increased Value of the Properties, for the duration of the Agreement.

3. **Substantial Compliance and Default.** Failure by either Party to timely and substantially comply with any performance requirement, duty, or covenant shall be considered an act of Default if uncured within thirty (30) days of receiving written notice from the other Party. Failure of Developer to timely and substantially cure a default will give the City the right to terminate this Agreement, as reasonably determined by City Council.

ARTICLE VII TERMINATION

1. **Termination.** This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

- (a) The written agreement of the Parties;
- (b) The Agreement's Expiration Date; or
- (c) Failure to timely and substantially cure a Default, as provided for in Article VI, Section 3, in which case all funds provided to Developer as part of this Agreement shall be refunded to the City within ninety (90) days of the date of Default.

ARTICLE IX MISCELLANEOUS

1. **Binding Agreement.** The terms and conditions of this Agreement shall be binding on and inure to the benefit of the City, Developer, and their respective successors and assigns. The City Manager shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the City Council of the City of Bryan, Texas, on behalf of the City related thereto.

2. **Mutual Assistance.** City and Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

3. **Representations and Warranties.** City represents and warrants to Developer that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Developer represents and warrants to the City that it has the requisite authority to enter into this Agreement.

4. **Assignment.** Developer shall not its rights, duties, and obligations under this Agreement with prior written approval of City Council.

5. **Independent Contractors.**

- (a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Developer at no time will be acting as an agent of the City and that all consultants or contractors engaged by Developer respectively will be independent contractors of Developer; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that City will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by Developer respectively under this Agreement, unless any such claims are due to the fault of the City.
- (b) By entering into this Agreement, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have,

including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the City with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

- (c) No employee of City, or any councilmember or agent of City, shall be personally responsible for any liability arising under or growing out of this Agreement.

6. **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, facsimile with receipt confirmation, or by depositing the same in the United States Mail, postage prepaid and certified with return receipt requested, addressed to the Party at the address set forth below:

If intended for City: City of Bryan
Attention: Kean Register, City Manager
P.O. Box 1000
Bryan , Texas 77803

With a copy to: Bryan City Attorney's Office
City of Bryan
P.O. Box 1000
Bryan, Texas 77803

If to the Developer: Cody D. Jones
Callaway-Jones Funeral Home and Crematory
3001 S. College Ave.
Bryan, TX 77801

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

7. **Governmental Records.** All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10.

8. **Governing Law.** The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement shall be in Brazos County, Texas. The Parties agree that this Agreement is performable in said County and to submit to the personal and subject matter jurisdiction of said court.

9. **Amendment.** This Agreement may be amended by mutual written agreement of the Parties, as approved by City Council.

10. **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

11. **Gender.** The gender of the wording throughout this Agreement shall always be interpreted to mean either sex, and where the context requires, the plural of any word shall include the singular.

12. **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, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

13. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by City Council.

14. **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.

15. **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

16. **Exhibits.** Any Exhibits attached hereto are incorporated by reference for all purposes.

17. **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

18. **Employment of Undocumented Workers.** In accordance with Texas Government Code section 2264.051 Developer certifies that it, and all branches, divisions or departments of Developer do not and will not knowingly employ an undocumented worker, as that term is defined in the section. Further, during the term of this Agreement, Developer agrees if convicted of a violation under 8 U.S.C. Section 1324a(1), Developer shall be in Default and repay the Value of the Grants and any other funds received by Developer from the City as of the date of such violation within one hundred twenty (120) days after the date Developer is notified by the City of such violation, plus interest at the rate of six percent (6.00%) compounded annually from the date of the violation until paid in full. Developer is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Developer or by a person with whom Developer contracts provided however that identical federal law requirements provided for herein shall be included as part of any agreement or contract which Developer enters into with any subsidiary, assignee, affiliate, or franchisee for which Grants provided herein will be used.

19. **Indemnification.**

DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUSTMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO ANY OF THE FOLLOWING: (1) ANY CLAIMS OR DEMANDS BY THE STATE

OF TEXAS THAT THE CITY HAS ERRONEOUSLY ENTERED INTO THIS AGREEMENT AND OR ERRONEOUSLY MADE A GRANT UNDER TEXAS LOCAL GOVERNMENT CODE CHAPTER 380; OR (2) AS A RESULT OF ANY CLAIM OF ANY KIND, MADE BY ANY PARTY, WHO IS NOT A PARTY TO THIS AGREEMENT, WHEN THE BASIS OF SUCH CLAIM, IN WHOLE OR PART, IS AN ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY DEVELOPER UNDER THIS AGREEMENT, EXCEPT THAT THE INDEMNITY PROVIDED UNDER SUBSECTION (2) HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE ACTIONS OR OMISSIONS OF THE CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

20. **Additional Instruments.** City and Developer agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

21. **Future permits.** Developer acknowledges that the inclusion of the any site plans, building plans, or other plans with this Agreement in no way infers the City's approval of any aspect of the proposed Project; but, rather, such exhibits represent certain requirements for Developer's eligibility to receive the benefit of the Grant under this Agreement. All aspects of the Project must comply with applicable provisions of the City's Code of Ordinances, and other codes as may have been adopted by the City, in order to obtain necessary approvals of officers or staff of the City under the review processes set out in such codes.

EXECUTED on this 12th day of March 2015.

CITY OF BRYAN, TEXAS:


DEVELOPER:



Jason P. Bienski, Mayor

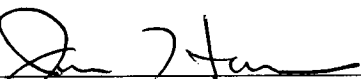
By: _____
Printed Name: _____
Title: _____
Date: _____

ATTEST:

By: 

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

By: 

Janis Hampton, City Attorney


21. **Future permits.** Developer acknowledges that the inclusion of the any site plans, building plans, or other plans with this Agreement in no way infers the City's approval of any aspect of the proposed Project; but, rather, such exhibits represent certain requirements for Developer's eligibility to receive the benefit of the Grant under this Agreement. All aspects of the Project must comply with applicable provisions of the City's Code of Ordinances, and other codes as may have been adopted by the City, in order to obtain necessary approvals of officers or staff of the City under the review processes set out in such codes.

EXECUTED on this _____ day of _____ 201__.

CITY OF BRYAN, TEXAS

DEVELOPER

Jason P. Bienski, Mayor

By: 
Printed Name: CORY D. JONES
Title: PRESIDENT/OWNER
Date: 3/12/2015

ATTEST:

By: _____
Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

By: _____
Janis Hampton, City Attorney

Exhibit "A"

Property Description

**METES AND BOUNDS DESCRIPTION
OF A
1.601 ACRE TRACT
ZENO PHILLIPS LEAGUE, A-45
BRYAN, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OF LAND LYING AND BEING SITUATED IN THE ZENO PHILLIPS LEAGUE, ABSTRACT NO. 45, BRYAN, BRAZOS COUNTY, TEXAS, SAID TRACT BEING ALL OF LOTS 1-5, 8-10, AND PART OF LOT 7, BLOCK 4, AND THE ADJOINING 12' ALLEY, DELLWOOD PARK, ACCORDING TO THE PLAT RECORDED IN VOLUME 70, PAGE 247 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS, AND THE LAND ADJOINING SAID LOT 5 AS DESCRIBED IN VOLUME 106, PAGE 589, AND VOLUME 119, PAGE 551 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS AND VOLUME 1574, PAGE 162 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, SAID TRACT BEING CURRENTLY OWNED BY CODY JONES ACCORDING TO THE BRAZOS COUNTY APPRAISAL DISTRICT RECORDS.

Said tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron pipe found at the intersection of the northeast line of South College Avenue (variable width R.O.W.) and the southeast line of Dellwood Street (50' R.O.W.) marking the west corner of said Lot 1;

THENCE: N 56° 04' 58" E along the southeast line of Dellwood Street for a distance of 250.00 feet to a 1/2 inch iron rod found on the southwest line of First Street (50' R.O.W.) marking the north corner of said Lot 10;

THENCE: S 36° 41' 10" E along the southwest line of First Street for a distance of 187.05 feet to a point for corner, said point lying on the northeast line of said Lot 7;

THENCE: S 53° 41' 51" W through the interior of said Lot 7 for a distance of 103.07 feet to a point for corner; said point lying on the southwest line of said Lot 7, same being the northeast line of the said 12' alley;

THENCE: S 36° 50' 05" E along the said northeast line of the 12' alley for a distance of 59.96 feet to a point for corner; said point lying on the common line of Lot 6, Block 4, Dellwood Park and a called 0.1371 acre tract as described by a deed to Tomasz Styblinski recorded in Volume 9574, Page 118 of the Official Public Records of Brazos County, Texas;

THENCE: S 53° 44' 30" W along the said common line of said Lot 6 and said 0.1371 acre tract for a distance of 15.38 feet to a 5/8 inch iron rod found marking the west corner of said 0.1371 acre tract;

THENCE: S 38° 35' 18" E along the common line of said 0.1371 acre tract, a called 0.33 acre tract as described by a deed to Pamela Sue Bateman recorded in Volume 9436, Page 55 of the Official Public Records of Brazos County, Texas, and said adjoining Jones tract described in Volume 1574, Page 162 for a distance of 101.40 feet to a 1/2 inch iron rod set marking the east corner of said Jones tract (1574/162);

THENCE: S 56° 10' 28" W along the common line of said Jones tract (1574/162) and a called tract of land currently owned by AAA Animal Clinic for a distance of 134.04 feet to a 1/2 inch iron rod found on the northeast line of South College Avenue marking the south corner of this herein described tract;

THENCE: N 36° 50' 04" W along the northeast line of South College Avenue for a distance of 352.94 feet to the POINT OF BEGINNING containing 1.601 acres of land, more or less.

Exhibit "B"

Current Value of Property

Block 4, Lot 1R,	\$252,710.00
<u>TOTAL BCAD VALUE</u>	<u>\$252710.00</u>