STATE OF TEXAS §

COUNTY OF BRAZOS §

BAGGS VETERINARY CLINIC
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This Chapter 380 Economic Development Agreement ("Agreement") is entered into by and between the **City of Bryan, Texas**, a Texas home-rule municipal corporation, ("City"), and **5J Land and Development LLC**, a Texas limited liability company ("Developer").

WHEREAS, the Texas Constitution prohibits any city, or other political subdivision, from lending its credit or granting public money to any individual, association or corporation whatsoever without a valid public purpose for doing so; and

WHEREAS, the Texas Constitution specifically states that economic development programs created pursuant to Chapter 380 of the Texas Local Government Code serve the public purpose of alleviating poverty, joblessness, economic blight, and provide other intangible benefits incidental to the development of the local economy; and

WHEREAS, Developer is under contract to acquire the approximately 9.15 acres of property ("Contract") identified by the Brazos Central Appraisal District ("BCAD") as Parcel 82889, which is more fully described in the boundary description which is attached to this Agreement as **Exhibit "A"** ("Property"); and

WHEREAS, the Property is an undeveloped tract of land located along FM 2818/Harvey Mitchell Parkway, a thoroughfare for which the City is interested in protecting and promoting high-quality development; and

WHEREAS, the topography and other characteristics of the Property and adjacent land unduly hinder the layout and construction of sanitary sewer utilities causing development of the Property and adjacent land to be economically infeasible; and

WHEREAS, Developer desires to develop the Property by subdividing the tract to allow the construction of a veterinary clinic plus additional commercial, office or professional structures, but requires certain infrastructure, specifically including the construction of an 8-inch sanitary sewer line across topographically challenging terrain; and

WHEREAS, pursuant to the Contract, at or prior to the closing of the purchase of the Property by Developer, the seller under the Contract must procure an easement from property owners of property over which the sanitary sewer line is to be constructed, and Developer must reimburse the seller for 100% of the acquisition costs incurred by seller for procuring such easements as reflected on the settlement statement at the closing of Developer's purchase of the Property ("Acquisition Costs"); and

WHEREAS, the City has determined that development of the Property and adjacent land is beneficial to the City by allowing the productive use of vacant land, meeting development needs of the City, facilitating the creation of jobs and increasing economic activity and the City's tax base; and

WHEREAS, the City has determined that it is in the best interests of the City to continue to develop the area around FM 2818/Harvey Mitchell Parkway to spur further growth and that the project planned by Developer will be beneficial to the citizens of this City at large; and

NOW, THEREFORE, for and in consideration of the premises and mutual agreements and covenants set forth herein, the City and the Developer agree as follows:

ARTICLE I
SANITARY SEWER LINE

1. Developer will be responsible for engaging a contractor to design and construct a 8-inch sanitary sewer line from the exisiting main located on Clear Leaf Road to the northern property line of the Property. It is contemplated by Developer's engineer and the City that the 8-inch sanitary sewer line has sufficient capacity to serve the intended commercial uses of the Property, including, without limiation, a 10,000 sq. ft. or more veterinary clinic and additional lots capable of supporting office or retail structures. Developer shall have the sanitary sewer line designed and constructed at its own expense, subject to the possible reimbursement of all or a portion of such expense per paragraph 6 below.

2. As of the date hereof, Developer's engineer has provided to the City Engineer for the design plans for the sanitary sewer line contemplated hereunder, and such design plans have been approved by the City Engineer. Prior to commencing work, Developer will obtain the necessary permits to conduct the contemplated construction, including for work within City right of way if any, including obtaining bonds, insurance, and meeting other requirements related thereto.

ARTICLE II
DEVELOPMENT OBLIGATIONS

3. Developer shall construct a veterinary clinic of at least 10,000 sq. ft. on a portion of the Property (the "Clinic").

4. Developer must obtain a building permit for the Clinic no later than 180 days after the effective date of this Agreement.

5. Developer must complete construction and obtain a certificate of occupany for the fully built-out Clinic no later than September 30, 2022, subject to reasonable extension for any delays caused by force majeure events such as natural disasters, pandemic, widespread labor shortages, and any other delay out of the reasonable control of Developer. To claim a force majeure delay, Developer must provide written notice and explanation to the City Engineer at least fourteen (14) calendar days prior to any deadline which will be missed and must specify a replacement deadline date for the missed deadline; provided, however, that if the force majeure event occurs within fourteen (14) days of a deadline, the required notice shall be required within fourteen (14) days of such force majeure event.

ARTICLE III
CHAPTER 380 GRANT

6. City will provide a Chapter 380 Economic Development grant equal to the lesser of (i) $100,000.00 or (ii) the sum of Developer's actual hard costs for construction of the sanitary sewer line defined in paragraph 1 above, and the Acquisition Costs (the "Grant"). In this Agreement, "hard costs" means labor and materials directly related to construction of the sanitary sewer line, and excluding overhead, design and engineering costs. The Grant will be paid in a single lump sum pursuant to the conditions of paragraph 8 below.

7. Developer must have met the conditions set forth below in order to be eligible for the payment of the Grant:

a. Developer must not be in breach of this Agreement;
b. An approved final Plat must be filed for the Property;
c. City must have accepted all required public infrastructure;
d. A final certificate of occupancy must have been issued for a building or buildings comprising at least 10,000 square feet of the Clinic; and
e. All then-due ad valorem taxes for the Property shall have been paid.

8. When Developer has achieved the conditions set forth in paragraph 7 above, Developer must present a written request for payment of the Grant to City, along with copies of invoices from the contractor showing actual amounts paid, a redacted settlement statement showing payment of the Acquisition Costs or other proof of payment of the Acquisition Costs, and a receipt from the Brazos County Tax Office showing that there are no due, unpaid taxes for the Proeprty. Upon receipt of such written request and the evidence described above, City shall tender payment of the Grant within thirty (30) days of receiving a complete written request.

9. The City's obligations under this Agreement are conditioned upon annual appropriation for same by the City Council.

ARTICLE III
TERM

10. The term of this Agreement shall be from the effective date, which shall be the date subscribed below, and shall terminate upon the occurrence of one of the following:

a. Developer has received a combined total of $100,000 in grant payments; or
b. Two (2) years have passed following the effective date of this Agreement without Developer claiming an extension for force majeure delays or otherwise making the written request for the Grant pursuant to paragraph 8.

ARTICLE IV
MISCELLANEOUS

11. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, trustees, receivers, legal representatives, successors, and permitted assigns. Developer shall not assign this Agreement without the written approval of the City. An assignment to a subsidiary or affiliate company of Developer shall not be prohibited under the section. If Developer assigns this Agreement without written approval of the City, this Agreement shall terminate immediately and the grant provided for herein shall cease from the date such unauthorized assignment occurred.

12. Government Code Provisions. Developer hereby verifies that it complies with the following requirements:

(a) Pursuant to Texas Government Code 2252.152, contracts with companies engaged in business with Iran, Sudan, or foreign terrorist organizations are prohibited, a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Government Code Sections 806.051, 807.051, or 2252.153.

(b) Pursuant to Texas Government Code 2271.002, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification the company that it: (i) does not boycott Israel, and (ii) will not boycott Israel during the term of the contract.

(c) In accordance with Chapter 2264 of the Texas Government Code, Developer agrees not to employ any person who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("Undocumented Worker"). During the term of this Agreement, Developer shall notify City of any complaint brought against Developer alleging that Developer has employed Undocumented Workers. If Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), the total amount of economic development grants it has received pursuant to this Agreement, together with interest at the rate of 5% per annum from the date of each payment of an economic development grant, shall be repaid by Developer to the City not later than the 120th day after the date the City notifies Developer of the violation. Developer shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom Developer contracts.

13. **Indemnification. DEVELOPER DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY THE ERROR, OMISSION, OR NEGLIGENT ACT OF DEVELOPER, ITS OFFICERS, AGENTS, OR EMPLOYEES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, AND DEVELOPER WILL AT ITS OWN COST AND EXPENSE DEFEND AND PROTECT THE CITY FROM ANY AND ALL SUCH CLAIMS AND DEMANDS. THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE DEVELOPER OR ANY CONTRACTOR OR SUBCONTRACTOR UNDER WORKMAN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.**

14. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

15. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.

16. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.

17. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

18. No Waiver. City's failure to take action to enforce this Agreement in the event of Developer's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.

19. Notices. City and Developer hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

CITY	**DEVELOPER**
City of Bryan	5J Land and Development LLC
City Manager	Attn: Dr. James Baggs
P.O. Box 1000	1531 W. Villa Maria Rd.
Bryan, Texas 77805-1000	Bryan, Texas 77807-2387

20. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

21. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

22. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.

23. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.

24. No Special Relationship Created. Nothing contained herein, nor any acts of the parties in connection herewith, shall be deemed or construed by the parties hereto or by third parties as creating the relationship of (a) principal and agent, (b) a partnership, or (c) a joint venture, as between the parties hereto. No third party shall obtain any rights as a result of this Agreement.

25. Time is of the Essence. Time is of the essence in all matters pertaining to the performance of this Agreement.

Executed to be effective this ___ day of _____, 20__.

ATTEST:

_____
Mary Lynne Stratta, City Secretary

CITY OF BRYAN, TEXAS

_____
Andrew Nelson, Mayor

APPROVED AS TO FORM:

_____
Janis K. Hampton, City Attorney

DEVELOPER
5J Land and Development LLC

By: _____
Dr. James Baggs, Member