

STATE OF TEXAS §

COUNTY OF BRAZOS §

CIMARRON, LLC CHAPTER 380
ECONOMIC DEVELOPMENT AGREEMENT

This Chapter 380 Economic Development Agreement (“Agreement”) is entered into on this the ____ day of _____, 2023 by and between the City of Bryan, Texas (“City”) a home-rule municipal corporation and Cimarron,, LLC, (“Developer”) a Texas limited liability company.

WHEREAS, Chapter 380 of the Texas Local Government Code implements Chapter 52-a of the Texas Constitution, which provides that economic development and diversification, elimination of unemployment and underemployment, stimulation and growth of agriculture, and the expansion of state transportation and commerce is a public purpose for which cities are permitted to make loans or grants of public funds; and

WHEREAS, Developer is the owner of approximately 102.33 acres of property (“Property”) being developed as two (2) adjoining subdivisions located within the City’s geographical limits, including a residential subdivision with approximately 259 lots averaging 7,000 s.f. and a commercial subdivision with approximately forty-three (43) lots averaging 32,000 s.f. substantially as shown on **Exhibit A**; and

WHEREAS, Developer anticipates selling finished lots to builders (259 residential lots and forty-three (43) commercial lots) generating at least \$60,000,000 in increased taxable ad valorem property value over the course of five (5) years from the effective date of this Agreement; and

WHEREAS, among the infrastructure costs is a lift station, which is needed in order to connect the Property to the existing sanitary sewer system, which the City has requested the Developer build to a capacity sufficient to serve the surrounding properties as well; and

WHEREAS, as an incentive to build and develop the Property in a timely manner, and oversizing the lift station that will connect to the College Station sanitary sewer system so that it will serve surrounding properties, the City is agreeing to provide an economic development grant, in stages, up to a total amount of \$815,000.00; and

WHEREAS, the City Council finds that it is in the best interests of the citizens of this community to spur economic development in this area by supporting this project and by financing the grant out of increased ad valorem tax revenue, the City’s economic development objectives are met while adding no additional burden to the existing taxpayers.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

A. Definitions

1. BCAD – means the Brazos Central Appraisal District.

2. BCAD Value – means the taxable appraised value, which excludes value that is not taxable, e.g. exempt property, homestead caps, or agricultural land.
3. City – means the City of Bryan, Texas, acting by and through its governing body the City Council, or its designee.
4. Completion of Construction – means acceptance of the Lift Station by College Station.
5. Developer – means Cimarron, LLC., as well as its permitted representatives, successors, and assigns.
6. Force Majeure – means any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such Party), fires, explosions or floods, strikes, slowdowns or work stoppages. In no event shall Force Majeure include Developer's financial inability to perform or Developer's inability to perform as a result of changes in market conditions.
7. Lift Station – means the planned sanitary sewer lift station to be constructed with materials, and related costs, as described in **Exhibit B**.
8. Property – means the 102.33 acre parcel of Property Described in **Exhibit A**.
9. Tax Year – means the value of the Property as appraised by BCAD, as of January 1 of a given year, which value is disclosed in March and becomes final in July. As used herein, the term is subject to any valid challenges raised by taxpayers as a part of the appraisal review process.

B. Construction

1. Developer will be responsible for design and construction of the Lift Station. The Developer shall be solely responsible for selecting, supervising and paying the construction contractor(s) or subcontractors and for complying with all applicable laws, including but not limited to all requirements concerning workers compensation and construction retainage. The parties agree and understand that all contractors, employees, volunteers and personnel furnished or used by the Developer in the construction of the Lift Station shall be the responsibility of the Developer and shall not be deemed employees or agents of the City for any purpose.
2. Developer agrees to construct the Lift Station in compliance with plans and specifications approved in advance by the City Engineer, or his or her designee. The plans and specifications must comply with City of College Station and City of Bryan codes and ordinances as well as State law, as applicable. During Construction the City Engineer may conduct periodic inspections to ensure satisfactory completion of the work. Notwithstanding the provisions of paragraph 1, the City reserves the right to object to any work that does not satisfy this paragraph.

3. Developer must Complete Construction within twelve (12) months following execution of this Agreement, subject to events of Force Majeure. Developer shall provide the City with a warranty for one (1) year following Completion of Construction, guaranteeing the workmanship and quality of the Lift Station meets the required standards.
4. **No Waiver of Immunity.** The City's execution of and performance under the Agreement will not act as a waiver of any immunity of the City to suit or liability under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.
5. **INDEMNITY AND RELEASE.** DEVELOPER AGREES TO AND SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, EXPERT FEES AND ATTORNEYS' FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGES TO ANY PROPERTY, OR FOR BREACH OF CONTRACT, ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY DEVELOPER, ITS OFFICERS, EMPLOYEES, AGENTS, AND CONTRACTORS, UNDER THE AGREEMENT.
6. **Release.** The Developer assumes full responsibility for the work to be performed hereunder, and releases, relinquishes and discharges the City, its officers, agents and employees, from all claims, demands, and causes of action of every kind and character, including the cost of defense therefore, for any injury to or death of any persons and any loss of or damage to any property that is caused by, alleged to be caused by, arising out of, or in connection with, the Developer's work to be performed hereunder. Notwithstanding the foregoing, the release granted by the Developer to the City is limited to claims, demands, and causes of action arising from the work performed by Developer pursuant to this Agreement. The City acknowledges and agrees that the City shall be solely responsible for maintenance and repair of the public infrastructure constructed by Developer at all times after the warranty expires on the first anniversary of the date of acceptance of such public infrastructure by the City and its conveyance to the City by Developer pursuant to this Agreement.

C. Economic Development Grant & Benchmarks

1. *Benchmarks.* As a condition of this Agreement, Developer agrees that the Property will achieve the following benchmarks for BCAD value, which must be maintained through the end of the Term:

<i>Tax Year</i>	<i>Minimum BCAD value</i>
2025	\$12,000,000.00.
2026	\$24,000,000.00.
2027	\$36,000,000.00.
2028	\$48,000,000.00

2029

\$60,000,000.00

2. *Economic Development Grant.* As an incentive to encourage the development of the Property and the attendant increase in ad valorem property value, as well as in consideration for increasing the capacity of the Lift Station, the City offers an economic development grant in an amount not to exceed \$815,000, in the aggregate.
3. *Initial Grant Payment.* Upon Completion of Construction the Developer shall tender a request for \$200,000.00. The request shall be accompanied by documentation demonstrating acceptance of the Lift Station by the City of College Station. The City reserves the right to withhold payment if any work is incomplete, insufficient, or substandard. Provided that Developer is not in breach of this Agreement, the City will tender payment within thirty (30) days.
4. *Additional Grant Payments.* The remaining \$615,000.00 of the Economic Development Grant is to be paid in annual installments, beginning in 2025, provided that the following conditions are met
 - a. To be eligible for payment the benchmarks listed above must be met and Developer may not be in breach of this Agreement.
 - b. Each year during this Agreement, beginning in 2025, no sooner than October and no later than December, Developer shall tender a written request for payment to the City at the address provided herein. Annual payments will equal up to fifty percent (50%) of the City's share of ad valorem property tax revenue generated by the Property and collected by the City.
 - c. The City will pay within thirty (30) days of receiving confirmation from the Brazos County Tax Office of the amounts paid to the City, from the Property.
 - d. Payments can be made annually until the aggregate total of payments received equals \$615,000.00, the Agreement is terminated, or the Term of this Agreement expires, whichever occurs sooner.
 - e. An annual payment is waived if the Property fails to achieve the benchmark for a given year and/or if Developer fails to timely make a request for annual payment.
 - f. The obligations of the City are not a debt within the meaning of the Texas Constitution. All obligations herein are subject to annual appropriation for same by the City Council.

D. Term

1. The term of this Agreement is from the Effective Date, which is the date signed by the City after Developer executes first, and terminates December 31, 2029, unless extended as provided below, or terminated sooner due to breach.
2. If an event of Force Majeure impacts Developer's ability to meet the deadlines and/or benchmarks contained herein, the City and Developer may agree to an extension of same, and/or an extension of the Term, for an amount of time equal to the underlying event.

E. Breach, Default, Termination, & Recapture

1. It is a breach of this Agreement for Developer to

- a. fail to meet any of its obligations set forth herein;
 - b. be convicted, or receive deferred disposition, for a violation of any City codes or ordinances;
 - c. become insolvent and/or declare bankruptcy; or
 - d. fail to meet the ad valorem benchmark set out above in two (2) or more years.
2. In the event of a breach by Developer, the City will give thirty (30) days written notice and, if feasible, an opportunity to cure the breach. If the breach is not cured within that time, Developer shall be in default of this Agreement. Upon an event of default, the City may terminate this Agreement and have no further obligations under same.
 3. In the event that the Agreement is terminated due to Default, Developer shall immediately be obligated to repay any portion of the \$815,000 paid by the City. This obligation shall be immediately due and owing without the requirement of demand or notice from the City.

F. Miscellaneous

1. *Disclosure of Interested Parties.* Per Section 2252.908 of the Texas Government Code, Developer must fill out a conflict of interest form (“Disclosure of Interested Parties”) at the time the Agreement is signed. For further information please go to the Texas Ethics Commission website via the following link [https://www.ethics.state.tx.us/filinginfo/1295/Comply with city codes](https://www.ethics.state.tx.us/filinginfo/1295/Comply%20with%20city%20codes)
2. *Boycotts Israel.* Developer represents and warrants that it is a Company that does not Boycott Israel, as those terms are defined by Texas Government Code Chapter 2271, at the time of the execution of this Agreement and that, except to the extent otherwise required by applicable federal law, will not Boycott Israel during the term of this Agreement.
3. *Employment of Undocumented Workers.* During the term of this Agreement, Developer agrees not to knowingly employ any Undocumented Workers and if convicted of a violation under 8 U.S.C. Section 1324a (t), Developer shall repay the amount of any Public Subsidy conferred by this Agreement, within 120 days after the date Developer is notified by the City of such violation, plus interest at the rate of five percent (5%) compounded annually from the date of violation until paid. Developer is not liable for a violation of this section by a subsidiary, affiliate, or franchisee, or by a person with whom Developer contracts. The terms Undocumented Worker and Public Subsidy shall have the meaning assigned by Texas Government Code section 2264.001.
4. *Government Code Chapter 2252 Subchapter F.* Developer represents and warrants that it is not a Company with which the City is barred from entering into a Governmental Contract pursuant to Texas Government Code sections 2252.152 and/or 2252.153 as those terms are defined in section 2252.151.
5. *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, legal representatives, successors, and permitted assigns. Developer shall not assign this Agreement without the written approval of the

City Council. An assignment to a subsidiary or affiliate company of Developer shall not be prohibited under the section.

6. *Severability.* If any provision of this Agreement is held by a court of competent jurisdiction 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.
7. *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.
8. *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.
9. *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.
10. *Rights and Remedies Cumulative.* The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
11. *No Waiver.* Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.
12. *Incorporation of Recitals.* The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
13. *Incorporation of Exhibits.* All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

14. *Legal Construction.* The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise. Each party to this Agreement has had an opportunity to review the terms contained herein with counsel and therefore neither party shall be deemed to be the author and any ambiguities contained herein shall not be construed more or less favorably between the parties by reason of authorship or origin of language.
15. *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.
16. *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.

EXECUTED TO BE EFFECTIVE THIS _____ DAY OF _____, 2023.

CITY OF BRYAN, TEXAS

CIMARRON, LLC

Bobby Gutierrez, Mayor



Carey Smith, Manager

ATTEST

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM

Thomas A. Leeper, City Attorney