

## ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement ("Agreement") is effective as of the 27<sup>th</sup> day of April, 2021 ("Effective Date"), by and between Cimarron Meadows Development Corporation, a corporation ("Developer"), and the CITY OF ABILENE, a Texas a home-rule city and municipal corporation ("City"), for the purposes and considerations stated below.

### RECITALS

WHEREAS, Developer owns and is developing the Cimarron Meadows Additions, consisting of approximately 58.81 acres, located in Taylor County, Texas, said 58.81 acres being more particularly described as follows in Exhibit A attached hereto and incorporated herein for all purposes, on which Developer intends to develop, construct, and subdivide approximately 268 residential lots; and

WHEREAS, the Project will require Developer to construct onsite and offsite public improvements and Infrastructure to serve the Project at an estimated total cost of approximately \$4,129,697.25; and

WHEREAS, Developer has advised the City that a contributing factor that would induce the Developer to proceed with the Project and construction of the Infrastructure would be an agreement by the City to advance funds to Developer to cover a portion of Developer's up-front cost to construct the Infrastructure, subject to Developer's repayment of a portion of the advanced funds in equal payments as a lot fee upon the sale of each subdivided lot; and

WHEREAS, it is anticipated that the Project is expected to generate an estimated \$165,474.00 in annual property taxes, with an estimated annual increase of \$55,158.00 until build out in year 3 of the Project, and producing an estimated \$3,555,933 in maintenance and operations property taxes over a 20 year period assuming a 1.5% value escalation per year after year 3 of the Project, resulting in a direct and positive economic benefit to the City; and

WHEREAS, the City has established a program, in accordance with Article III, Chapter 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") pursuant to which the City has authority to enter into this Agreement, and has authority to use public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, the City hereby finds that this Agreement embodies an eligible project and clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and is in the best interests of the City; and

WHEREAS, in consideration of the design, timely construction, and development of the Project, which will bring additional ad valorem tax revenues and sales and use tax revenues to the City as well as additional jobs resulting from the construction of the Project, the City desires to enter into this Agreement pursuant to Chapter 380 and other applicable laws as an economic incentive for Developer to develop, finance and construct the Project; and



WHEREAS, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Chapter 380 and other laws, Developer has agreed that its receipt of such benefits shall be conditioned upon its satisfaction of certain conditions enumerated herein, including performance conditions relating to the construction of the Project; and

WHEREAS, to induce Developer to develop and finance the construction of the Project for the public purposes of developing and diversifying the economy of the state, to create jobs, and to operate the Project in accordance with the performance measures set forth herein, which will generate sales and use tax revenues and increased ad valorem property tax revenues for the City, the City agrees to advance to Developer the Economic Development Payment as provided herein to cover a portion of Developer's up-front cost to design and construct the Infrastructure, subject to Developer's repayment of a portion of the advanced funds as provided herein;

NOW THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **I. DEFINITIONS**

The following words shall have the following meanings when used in this Agreement:

"Agreement" means this Economic Development Agreement, together with all exhibits attached hereto from time to time, if any.

"City" means the City of Abilene, a Texas a home-rule city and municipal corporation.

"Bankruptcy or Insolvency" means the dissolution or termination of Developer's existence, insolvency, employment of receiver for any part of Developer'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 proceedings under any bankruptcy or insolvency laws by or against Developer and such proceedings are not dismissed within ninety (90) days after the filing thereof.

"Commencement of Construction" means the date on which (i) the plans have been prepared and all zoning and other approvals required by applicable governmental authorities have been obtained for construction of the Project, or the Infrastructure, as the case may be, on the Land; (ii) all necessary permits for the construction of the Project or Infrastructure, as the case may be, on the Land, pursuant to the Construction Plans, therefore having been issued by all applicable governmental authorities; and (iii) grading of the Land for the construction of the Project or the Infrastructure, and/or construction of the vertical elements of the Project or Infrastructure, as the case may be, has commenced.

"Completion of Construction" means the date on which the construction of the Project or the Infrastructure, as the case may be, on the Land has been substantially completed.

"Construction Plans" means the plans and specifications for the design and construction of the Project and Infrastructure as approved by the City.

"Developer" means Cimarron Meadows Development Corporation, a Texas corporation.

"Economic Development Payment" means the sum of \$253,038.00 which, subject to the terms of this Agreement, the City will advance to Developer to be applied to Developer's up-front cost to design and construct the Infrastructure.

"Expiration Date" shall mean the date which is twenty (20) years from the date on which Developer receives the first advance of the Economic Development Payment from City or the date on which the Total Developer Repayment is paid to City, whichever is sooner.

"Force Majeure" means any contingency or cause beyond the reasonable control of a party, as applicable, including, without limitations, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action or inaction (unless caused by negligence or omissions of such party), fires, explosions, floods, strikes, slowdowns or work stoppages, shortage of materials and labor.

"Infrastructure" means onsite and offsite public improvements and infrastructure necessary for the development of the Project, as determined by the City, including without limitation streets, alleys, water, sewer and electric utilities, gas utilities, drainage and related public improvements, sidewalks, lighting, streetscape, and other project costs, and including public improvements and infrastructure stubbed into the Adjoining Tract.

"Land" means the real property collectively described as the Cimarron Meadows Additions as described in Exhibit A.

"Project" means the design and construction of a residential subdivision on the Land consisting of approximately 268 lots and other related improvements and Infrastructure to be constructed on the Land.

"Public Improvements" means those improvements which are part of the Infrastructure and intended and designated for public use according to the Construction Plans.

## **II. TERM**

The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

## **III. CONSTRUCTION OF THE PROJECT**

### **3.01 Obligations of Developer.**

(a) Upon Commencement of Construction, Developer shall construct the Public Improvements and Infrastructure at Developer's expense in accordance with the Construction



Plans and all applicable laws and regulations. Construction of the Public Improvements and Infrastructure shall be completed by Developer within two (2) years from the Commencement of Construction.

(b) Simultaneous with Developer's acceptance of the first advance of the Economic Development Payment from City, Developer shall execute the Deed of Trust (defined below), which shall secure the Land as collateral for repayment of the Economic Development Payment ("Total Developer Repayment").

(c) Developer shall obtain at Developer's expense all necessary permits and approvals required by the City and any applicable governmental authorities to be issued for the construction of the Project. Developer shall be responsible for the design, inspection, and supervision of the construction of the Project, subject to City's approval of the Construction Plans.

(d) Upon Completion of Construction of the Public Improvements and Infrastructure, and after City's inspection and approval of same, Developer shall dedicate to the City the Public Improvements and Infrastructure.

### **3.02 Obligations of City.**

(a) City shall pay the Economic Development Payment to Developer in multiple advances upon Developer's execution of the Deed of Trust and City's receipt and approval of a written draw request from Developer for each advance. Each such advance shall be based on the percentage of the total Economic Development Payment amount equivalent to the percentage of work completed on the Public Improvements and Infrastructure, less the total of all previous advances, to be disbursed according to the following schedule (the "Advance Schedule"):

<u>Advances</u>	<u>Percentage of Construction Completed</u>
1	20%
2	40%
3	60%
4	80%
5	100%

(b) City shall promptly review the Construction Plans and any written draw requests upon submission and shall not unreasonably withhold their approval. City shall not unreasonably withhold any other permits or approvals necessary for the construction of the Project, nor shall City unreasonably interfere with Developer's construction of the Project to the extent that such construction is in conformance with the approved Construction Plans.

(c) City shall, after inspection and approval in its sole discretion, accept dedication of the Public Improvements upon Completion of Construction and dedication by Developer.

#### **IV. RECAPTURE**

4.01 Developer agrees to pay the City the total sum of \$146,060.00 as repayment for the Economic Development Payment ("Total Developer Repayment") on or before the Expiration Date. Developer shall pay the Total Developer Repayment to City in installments of \$545.00 upon the sale of each lot within the Project ("Lot Fee") until such time as the Total Developer Payment is fully paid. Developer shall also have the option at any time to make additional lump sum installments toward all or part the Total Developer Repayment which remains unpaid.

4.02 In the event that the Total Developer Repayment sum of \$146,060.00 has not be repaid in full by Developer to City by the Expiration Date, Developer shall pay to City, within 30 days from the Expiration Date, a lump sum in an amount necessary to fully repay the Total Developer Repayment amount ("One-time Payment").

4.03 Simultaneous with and as a condition to City's obligation to advance any part of the Economic Development Payment, Developer shall execute a deed of trust which secures the Land as collateral for the Total Developer Repayment ("Deed of Trust") in a form substantially similar to the deed of trust form contained in the State Bar of Texas Real Estate Forms Manual.

4.04 City shall promptly execute and deliver to Developer a partial release of the Deed of Trust lien in recordable form as to each lot within the Project sold by Developer upon Developer's payment of the requisite Lot Fee to City.

4.05 City shall promptly execute and deliver to Developer a full release of the Deed of Trust lien in recordable form upon Developer's full and final payment the Total Developer Repayment;

#### **V. DEFAULT**

5.01 The following shall constitute an Event of Default by Developer under this Agreement:

(a) Developer's failure to cause Commencement of Construction of the Project and Infrastructure within thirty (30) days of receiving all necessary permits and approvals required by the City, and any applicable governmental authorities to be issued for the construction of the Project, except to the extent such failure is caused by any act or failure to act on the part of the City as described specified in Section 3.02, or Force Majeure.

(b) An event of Bankruptcy or Insolvency suffered by Developer.

(c) Failure of the Developer to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or any Related Agreement.

5.02 The following shall constitute an Event of Default by City under this Agreement:

(a) City's failure to make any advances of the Economic Development Payment to Developer as provided in Section 3.02(a) above.



(b) Failure of the City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or any Related Agreement.

5.03 In the event of a default by any party ("Defaulting Party"), the other party ("Complaining Party") shall provide written notice of the default to the Defaulting Party and shall reasonably include the actions required to cure such default. If the Defaulting Party cures the default within thirty (30) days after notice of default is received ("Cure Period"), or commences to cure default within said thirty (30) days and diligently pursues the cure to its conclusion, then this Agreement shall continue as if no default occurred. Notwithstanding the above notice provisions, City shall not be required to provide written notice to Developer if Developer fails to pay a Lot Fee, or fails to pay the One-Time Payment.

5.04 In the event that the Defaulting Party fails to cure the default as required by Section 5.03 above, and provided the Complaining Party is not otherwise in default, the Complaining Party may, by action or proceeding at law or in equity, be awarded damages and/or specific performance for such default, including reasonable attorney's fees and costs.

5.05 In addition to any other remedy available to the City, and in the event of a default by Developer, City shall have all rights afforded it pursuant to the terms of the Deed of Trust.

## **VI. REPRESENTATIONS AND WARRANTIES**

6.01 Developer represents that:

(a) Developer is a Texas corporation and has the power to enter into and has taken all actions to date required to authorize this Agreement; and

(b) Developer has the authority to perform and comply with all of the terms, covenants and conditions to be performed and complied with by Developer in this Agreement.

6.02 City represents that:

(a) City is home-rule city and Texas municipal corporation and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations hereunder.

(b) City has the authority to perform and comply with all of the terms, covenants and conditions to be performed and complied with by Developer in this Agreement.

(c) City knows of no law, order, rule or regulation applicable to the City or to the City's governing documents that would be contravened by or conflict with the execution and delivery of this Agreement.

## **VII. GENERAL PROVISIONS**

**7.01 DEVELOPER COVENANTS AND AGREES TO AND DOES HEREBY FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM ALL CLAIMS, SUITS OR CAUSES OF ACTION OF ANY NATURE WHATSOEVER WHETHER REAL OR ASSERTED, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES TO PERSONS OR PROPERTY, INCLUDING DEATH, RESULTING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE CONSTRUCTION OF THE PUBLIC IMPROVEMENTS. IN ADDITION, DEVELOPER COVENANTS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS OR CAUSES OF ACTION OF ANY NATURE WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF INJURIES OR DAMAGES TO PERSONS OR PROPERTY, INCLUDING DEATH, RESULTING FROM THE FAILURE OF DEVELOPER OR ITS CONTRACTORS AND SUBCONTRACTORS TO PROPERLY SAFEGUARD THE WORK, ON ACCOUNT OF ANY ACTS, INTENTIONAL OR OTHERWISE, NEGLIGENCE OR MISCONDUCT OF DEVELOPER, ITS CONTRACTORS, SUBCONTRACTORS, AGENTS, SERVANTS OR EMPLOYEES.**

7.02 This Agreement, together with all exhibits attached hereto from time to time, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the signatories hereto or their respective heirs, successors and assigns.

7.03 Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render any of said parties liable for the debts or obligations of any other of said parties.

7.04 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Taylor County, Texas. Exclusive venue for any action arising under this Agreement shall lie in Taylor County, Texas.

7.05 If any provision of this Agreement, or a portion thereof, or the application thereof to any person or circumstances shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby. It shall not be deemed that any such invalid provision affects the consideration for this Agreement, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

7.06 Time is of the essence in the performance of this Agreement.

7.07 All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving formal written

notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

If intended for Developer to:

Cimarron Meadows Development  
Corporation  
13209 Villa Montana Way  
Austin, TX 78732

With a copy to:

Tal Fillingim  
Jacob & Martin, LLC  
3465 Curry Lane  
Abilene, TX 79606

If intended for City to:

City Manager  
PO Box 60  
Abilene, Texas 79604

With a copy to:

City Attorney  
PO Box 60  
Abilene, Texas 79604

7.08 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

7.09 Developer may not assign its rights and obligations under this Agreement without the written approval of the City; however the Developer shall not be released from its obligations upon any approved assignment unless City executes an express release incident to any approved assignment. Notwithstanding the foregoing, Developer may assign its rights and obligations under this Agreement to any parent, subsidiary or other affiliate of Developer without the approval of the City.

7.10 Each party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

7.11 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.

EXECUTED on the dates of acknowledgment below to be effective as of the Effective Date first written above.

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Signature pages follow)*



CITY OF ABILENE

By: Robert Hanna  
Robert Hanna, City Manager

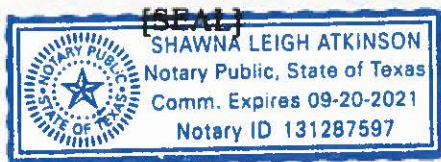
APPROVED AS TO FORM:

[Signature]  
Stanley Smith, City Attorney

STATE OF TEXAS §

COUNTY OF TAYLOR §

This instrument was acknowledged before me on this 27<sup>th</sup> day of April, 2021 by Robert Hanna, as City Manager of the City of Abilene, a Texas a home-rule city and municipal corporation, on behalf of said city and municipal corporation.



[Signature]  
Notary Public, State of Texas

**CIMARRON MEADOWS  
DEVELOPMENT CORPORATION**

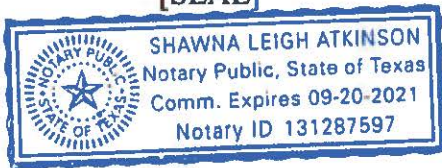
By:   
Aaron Waldrop, President


STATE OF TEXAS       §

COUNTY OF TAYLOR   §

This instrument was acknowledged before me on this 27<sup>th</sup> day of April, 2021  
by Aaron Waldrop, President of Cimarron Meadows Development Corporation, a Texas  
corporation, on behalf of said corporation.

[SEAL]



  
Notary Public, State of Texas



## Legal Description

[illegible]

