

**AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF ABILENE AND ALL KIND ANIMAL INITIATIVE**

This Amendment to the Economic Development Agreement (“Agreement”) is effective as of the 13th day of July, 2023 (“Effective Date”), by and between All Kind Animal Initiative, a not for profit corporation of the State of Texas ("Developer"), and the CITY OF ABILENE, TEXAS, a home rule city and municipal corporation ("City"), for the purposes and considerations stated below.

RECITALS

WHEREAS, the City has acquired fee simple ownership of 610 ES 11th Street, Abilene, Taylor County, Texas; and

WHEREAS, the City Council, on July 28, 2022 by Resolution 118-2022, approved a Memorandum of Agreement (“MOA”) with All Kind Animal Initiative wherein, in part, the City committed to provide \$4,000,000 towards the construction of a new pet and animal resource center at 610 ES 11th Street (“Facility”); and

WHEREAS, the City, to effectuate the MOA with Developer, entered into an Economic Development Agreement with the Developer on September 22, 2022 for funding of the completion of the engineering and design work associated with the construction of the proposed pet and animal resource center; and

WHEREAS, the Developer, pursuant to the MOA and the September 22, 2022 Economic Development Agreement, has successfully completing its private fundraising campaign in the amount of \$5,500,000; and

WHEREAS, during the period of design and completion of fundraising by Developer, construction costs have continued to increase and additional funding is needed to construct the new pet animal resource center; and

WHEREAS, due to those increasing costs, the City desires to increase the amount it contributes towards the construction of a new pet and animal resource center at 610 ES 11th Street from \$4,000,000 to \$6,000,000; and

WHEREAS, the governing body of the City of Abilene adopted Resolution 49-2016 creating an Economic Development Program authorized by Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City desires to enter into this Amendment to the Economic Development Agreement with the Developer in order to implement the economic development program developed by the City to enhance and expand the City’s commercial economic and employment base to the long term interest and benefit of the City and the State of Texas; and

WHEREAS, the City hereby finds that this Amendment to the 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

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

I. AUTHORITY AND CONTROL

- 1.01 This Amendment to the Agreement is authorized by state law, including but not limited to Chapter 380 of the Texas Local Government Code, and is within the authority of the City and constitutes a legal and binding obligation of the City.
- 1.02 The Developer’s execution and performance of this Amendment to the Agreement constitutes a valid and binding obligation of the Developer.
- 1.03 The factual recitals and findings set forth above are found to be true and correct for all purposes, and are incorporated into this Amendment to the Agreement.
- 1.04 That certain Economic Development Agreement authorized by the City Council on or about September 22, 2022 is hereby amended in its entirety, and that the terms and conditions of this Amendment to the Agreement is controlling in all aspects of the City’s funding of the project..

II. DEFINITIONS

- 2.01. **Program** means the economic development program identified in Article IV herein and established by the City pursuant to this Agreement.
- 2.02. **Developer** means All Kind Animal Initiative, its successors or assigns.

III. TERM

- 3.01 This Amendment to the Agreement shall be effective as of the date of execution of both parties. This Amendment to the Agreement shall remain in full force and effect until the earlier of: (A) each party hereto has completed their respective obligations hereunder; or (B) thirty-six months from the date of the MOA (“**Term**”).

IV. ECONOMIC DEVELOPMENT PROGRAM

- 4.01 The City shall pay to the Developer payments (the “Design Payment”) in an amount equal to the invoiced amount of design professionals working to complete the engineering and design for the new pet and animal resource center, such design payments shall not exceed \$1,138,581.
- 4.02 Payment by the City of the Design Payment shall reduce the City’s commitment pursuant to the MOA to provide \$4,000,000 in original construction funds. The City shall provide to Developer \$2,100,000 in additional construction funds, for \$6,100,000 in total construction funds (the “Construction Funds”) for the new pet and animal resource center by the design payment amount.
- 4.02 The City Manager shall pay the remaining Construction Funds to the Developer upon written notice to the City, and upon review and verification of the funds required to build and construct a new pet and animal resource center at 610 ES 11th Street.

V. DEVELOPER’S OBLIGATIONS AND DUTIES

- 5.01 The Developer shall perform, or cause to be performed, the completion of the engineering and design needed to develop a set of construction documents necessary to build and construct a new pet and animal resource center at 610 ES 11th Street.
- 5.02 The Developer shall forward to the City all invoices from Tim Rice McClarty, AIA for work performed on the engineering and design associated with the development of construction drawings necessary to build and construct a new pet and animal resource center at 610 ES 11th Street with seven days of receipt of said invoices.
- 5.03 The Developer shall pay all invoices to Tim Rice McClarty, AIA for work performed on the engineering and design associated with the development of construction drawings necessary to build and construct a new pet and animal resource center at 610 ES 11th Street with seven days of receipt of the design payment from the City.
- 5.04 Upon written request made by the City, shall provide the City with a complete set of the construction documents necessary to build and construct a new pet and animal resource center at 610 ES 11th Street.
- 5.05 The Developer shall notify the City in writing upon completion of construction of the new pet and animal resource center at 610 ES 11th Street. Developer shall operate the Facility

on behalf of the City, and for the benefit of the citizens of the City of Abilene, Texas. Developer and City shall enter into a separate management agreement for the operation of the Facility.

- 5.06 In the event that Developer shall cease to operate the Facility as a pet and animal resource center, or upon the termination of a separate ground lease between the City and Developer, whichever occurs first, , Developer shall convey ownership of the new pet and animal resource center at 610 ES 11th Street to the City of Abilene.

VI. CITY OBLIGATIONS AND DUTIES

- 6.01 Review the engineering and design services invoices submitted by the Developer, accept the invoices if reasonably based on the proposed scope of work, and pay the Design Payment in the amount of \$1,138,581 to Developer pursuant to the terms and conditions of this Amendment to the Agreement.
- 6.02 Upon receipt and verification of the Developer's construction costs to build and construct a new pet and animal resource center at 610 ES 11st Street, the pay the Construction Funds in the amount of \$4,961,419 to Developer pursuant to the terms and conditions of this Amendment to the Agreement.
- 6.03 In no event shall the City be obligated to pay more than the sum of \$6,100,000 to Developer for the design and construction of the new pet and animal resource center at 610 ES 11th Street.

VII. DEFAULT

- 7.01 If any party should default upon any terms or obligations with respect to this Amendment to the Agreement ("**Defaulting Party**"), the other party ("**Complaining Party**") shall provide written notice of the default 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 Amendment to the Agreement shall continue as if no default occurred.
- 7.02 In the event that the Defaulting Party fails to cure the default as required by Section 7.01 above, 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.

VIII. GENERAL PROVISIONS

- 8.01 **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 AMENDMENT TO THE 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.**
- 8.02 If any provision of this Amendment to the 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 Amendment to the 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 Amendment to the Agreement, and each provision of this Amendment to the Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 8.03 This Amendment to the Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought under this Agreement shall be in Taylor County, Texas.
- 8.04 Developer shall not assign this Amendment to the Agreement without the express written consent of the City.

- 8.05 Nothing in this Amendment to the 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.
- 8.06 Except as otherwise expressly provided herein, this Amendment to the Agreement may only be amended, modified or terminated by a declaration in writing, executed and acknowledged by all the parties to this Amendment to the Agreement.
- 8.07 This Amendment to the Agreement constitutes the entire agreement of the parties with respect to the matters set forth herein, and supersedes all prior discussions and agreements between the parties. This Amendment to the Agreement does not amend or supersede the parties' Memorandum of Agreement.
- 8.08 This Amendment to the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.
- 8.09 In the event any legal proceeding is commenced to enforce or interpret provisions of this Amendment to the Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action.

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FOLLOWS.]

AGREED AND EXECUTED:

DEVELOPER

All Kind Animal Initiative
834 N. 3rd, Ste. B
Abilene, TX 79601

By: Andrea Robison

DocuSigned by:
Name: Andrea Robison
38469D171F38449...

Its: Board Chair

CITY OF ABILENE

DocuSigned by:
Robert Hanna
E27D700B84444EA...
Robert Hanna, City Manager

ATTEST:

DocuSigned by:
Shawna Atkinson
C9A687226196428...
Shawna Atkinson, City Secretary

APPROVED AS TO FORM:

DocuSigned by:
Stanley Smith
D47F7C82A7BE450...
Stanley Smith, City Attorney



Certificate Of Completion

Envelope Id: 7BC297F3A46D4961A1811195704975C1

Status: Completed

Subject: 380 Agreement Amendment

Source Envelope:

Document Pages: 8

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 0

Kristen Tusing

AutoNav: Enabled

Stamps: 1

555 Walnut St

Envelopel Stamping: Enabled

Abilene, TX 79601

Time Zone: (UTC-06:00) Central Time (US & Canada)

kristen.tusing@abilenetx.gov

IP Address: 66.76.21.2

Record Tracking

Status: Original

Holder: Kristen Tusing

Location: DocuSign

8/21/2023 4:02:52 PM

kristen.tusing@abilenetx.gov

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: City of Abilene

Location: DocuSign

Signer Events

Andrea Robison

andrea.allkindabilene@gmail.com

Board Chair

Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:

Andrea Robison

38469D171F38449...

Timestamp

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Viewed: 8/21/2023 4:38:23 PM

Signed: 8/21/2023 4:38:37 PM

Signature Adoption: Pre-selected Style

Using IP Address: 209.205.179.152

Signed using mobile

Electronic Record and Signature Disclosure:

Accepted: 9/26/2022 9:23:18 AM

ID: 8ce83f15-4240-4470-a868-a3aeb28b3c4d

Stanley Smith

stanley.smith@abilenetx.gov

City Attorney

City of Abilene

Security Level: Email, Account Authentication (None)

DocuSigned by:

Stanley Smith

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Signature Adoption: Pre-selected Style

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Electronic Record and Signature Disclosure:

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Robert Hanna

robert.hanna@abilenetx.gov

City Manager

City of Abilene

Security Level: Email, Account Authentication (None)

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Robert Hanna

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Signature Adoption: Pre-selected Style

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Signed using mobile

Electronic Record and Signature Disclosure:

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Signer Events	Signature	Timestamp
Shawna Atkinson shawna.atkinson@abilenetx.gov City Secretary City of Abilene Security Level: Email, Account Authentication (None)	<small>DocuSigned by:</small>  <small>C9A687226196428...</small> 	Sent: 8/22/2023 7:45:15 AM Viewed: 8/22/2023 7:45:27 AM Signed: 8/22/2023 7:45:34 AM

Signature Adoption: Pre-selected Style
Using IP Address: 66.76.21.2

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In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Kristen Tusing kristen.tusing@abilenetx.gov Security Level: Email, Account Authentication (None)	<div>VIEWED</div> <p>Using IP Address: 66.76.21.2</p>	Sent: 8/21/2023 4:10:54 PM Viewed: 8/21/2023 4:11:07 PM Completed: 8/21/2023 4:11:13 PM
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Electronic Record and Signature Disclosure:
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Shawna Atkinson shawna.atkinson@abilenetx.gov City Secretary City of Abilene Security Level: Email, Account Authentication (None)	<div>VIEWED</div> <p>Using IP Address: 66.76.21.2</p>	Sent: 8/21/2023 5:43:57 PM Viewed: 8/22/2023 7:44:47 AM Completed: 8/22/2023 7:45:15 AM
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Kaitlin Richardson kaitlin.richardson@abilenetx.gov Deputy City Secretary City of Abilene Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 8/22/2023 7:45:37 AM
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	8/21/2023 4:10:54 PM
Certified Delivered	Security Checked	8/22/2023 7:45:27 AM
Signing Complete	Security Checked	8/22/2023 7:45:34 AM

Envelope Summary Events	Status	Timestamps
Completed	Security Checked	8/22/2023 7:45:37 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

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You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: bobvw@abilenetx.gov

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To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at bobvw@abilenetx.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

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To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to bobvw@abilenetx.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Abilene

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- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to bobvw@abilenex.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

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- Until or unless you notify City of Abilene as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Abilene during the course of your relationship with City of Abilene.