

**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 \_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Bryan, Texas (“**City**”), and CALJO, Inc. d/b/a Calloway-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 \_\_\_\_ day of \_\_\_\_\_ 2016.

**CITY OF BRYAN, TEXAS**

**DEVELOPER**

\_\_\_\_\_  
Jason P. Bienski, Mayor

By: \_\_\_\_\_  
Printed Name: Cory D. Jones  
Title: President  
Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Mary Lynne Stratta, City Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Janis Hampton, City Attorney

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