

**RESOLUTION NO. 266-2024**

**AMEND RESOLUTION 192-2023 OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, APPROVING THE BIG COUNTRY BUILDER MEMBERSHIP CRITERIA WITHIN THE ELIGIBILITY REQUIREMENTS FOR THE PROGRAM**

**WHEREAS**, the City of Abilene adopted Resolution 49-2016 and Resolution 129-2023 creating an Economic Development Program authorized by Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, the City has adopted Resolution No. 78-2018 which created the Abilene Neighborhood Empowerment Zone No. 1; and

**WHEREAS**, the City has adopted Resolution No. 203-2021 which amended and expanded the Abilene Neighborhood Empowerment Zone No. 1, and also created Zone No. 2; and

**WHEREAS**, the City has adopted Resolution No. 109-2022 which further amended the boundaries of the Abilene Neighborhood Empowerment Zone No. 1; and

**WHEREAS**, the City desires to create the Rebuild ABI economic development program to incentives residential construction and major renovations in the Abilene Neighborhood Empowerment Zones and other areas approved by the City Council; and

**WHEREAS**, incentives through the Rebuild ABI economic development program shall be granted through Chapter 380 Agreements individually approved by the City Council.

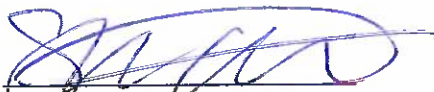
**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ABILENE TEXAS:**

**PART 1:** That the City of Abilene approves the Big Country Home Builders Association Builder membership criteria as an approved eligibility requirement.

**PART 2:** That this Resolution becomes effective immediately upon adoption.


**ADOPTED on the 21st day of November, 2024**

**ATTEST:**

  
Shawna Atkinson, City Secretary

**APPROVED:**

  
Weldon Hurt, Mayor

  
Stanley Smith, City Attorney





October 17, 2024

To Whom It May Concern:

Thank you for your interest in the Rebuild ABI residential infill development program.

The purpose of this program is to promote and encourage the construction and renovation of quality, affordable single-family housing in areas designated by the City of Abilene as eligible for the program. To accomplish this mission, the City has created several incentives and partnered with local financial institutions to create an environment where a public-private partnership can succeed in a space the City has historically enjoyed limited success.

There are two categories to this program. The first category is new construction. The second category is major renovation. We will discuss new construction first.

#### I. New Construction

To be eligible to participate in the new construction category of Rebuild ABI, an individual must meet the following criteria:

- (1) be a Builder member of the Big Country Home Builder's Association; and
- (2) construct an affordable single-family home in target areas designated by the City of Abilene, or as otherwise approved by the City of Abilene; and
- (3) purchase all building materials from a business located within the corporate boundaries of the City of Abilene; and (4) all new construction must meet all applicable building codes and residential energy efficiency standards as determined by the building official; and
- (5) the final buyer of the new home must sign an affidavit (Attachment D) that they intend to occupy the home as their own homestead for purposes of ad valorem taxation, and the selling price of the new home must be equal to or less than two hundred three thousand dollars (\$203,000.00) and no cents.

In exchange for meeting the above criteria, the city and its partner financial institutions are pleased to offer the following incentives:

- (1) Subject to approval by a partner financial institution, 90% loan to value financing with interest only payments for twelve months, with one six-month interest only extension if necessary; and,

{2} Payable at the time of closing of the interim construction financing to the participating lenders, a ten (10%) percent equity contribution of the total interim financing needed for the construction of the affordable single-family dwelling. The City of Abilene shall file a second lien on the real property for the value of the 10% equity contribution. In addition, the City of Abilene will pay an additional 5% completion payment based upon the sales price to the builder at the time of closing to the buyer; or,

{3} If an individual is funding the improvements outside of the City's chosen financial partners, the city may provide an incentive payment equal to 15% of the final sales price of the affordable single-family dwelling payable at the time of closing to the buyer.

(4) In addition to the equity contribution or incentive payment authorized above, the City of Abilene may provide the following incentives:

- a. waiver of city charged development related permit, platting, zoning, water, and sewer tap fees; and,
- b. city provided utility taps (if needed); and,
- c. city provided mil-off containers **with two free tips**; and,
- d. city provided sidewalks as may be required; and,
- e. demolition of existing structures as may be required.

For example, Joe wants to build a new 1,200 square foot, 3 bedroom and 2 bath home in one of the City's designated target areas. Joe uses one of the city's partner banks to finance the project. The home costs \$190,000 to build, and the city makes the equity payment for the interim construction loan directly to the bank on Joe's behalf. In addition, the city waives permit fees, demolishes the existing structure, provides roll offs with two free tips, installs new sidewalks, and provides new utility taps, all free of charge.

In this example, upon final sale of the home to a buyer for \$203,000, Joe stands to receive incentives totaling:

10% equity payment*	\$ 19,000 - Cash to builder at final settlement by City
5% completion payment-	<u>\$ 10,150</u> - Cash to builder at final settlement by City
Total Cash to Builder at closing	\$ 29,150

Waived Permits & Fees	\$ 1,075	Cost avoidance
New Sidewalk (SO LF)	\$ 2,500	Cost avoidance
20-yard open top with 2 tips	\$ 1,200	Cost avoidance
Demolition	<u>\$ 8,000</u>	Cost avoidance
Total cash and cost avoidance	\$ 41,925	

### Agreement Required

These incentives will be approved by the City Council through a Chapter 380 Economic Development Agreement. In the agreement, the City will commit to fund the incentives in exchange for the builder committing to build the improvements. The agreement will articulate all of the terms and conditions necessary to receive the incentives. The agreement must be approved before construction may begin on the project. The model agreement is attached to this letter as Attachment A.

### Minimum Home Requirements

The minimum new building requirements include:

- (1) 1,000 square feet or more
- (2) 3 bedrooms and 1 bath minimum
- (3) medium grade/architectural asphaltic shingle
- (4) 1 car garage or larger
- (5) 4' wood privacy fence or 4' chain-link fence and metal posts minimum
- (6) Front and rear lawn sodded (alternative landscaping designs may be considered)
- (7) Concrete driveway
- (8) Brick or fiber cement siding
- (9) Meet or exceed current adopted residential building and energy code requirements

### Neighborhood Empowerment Zones and Neighborhood Initiatives

The City has established two Neighborhood Empowerment Zones (NEZ) and a Neighborhood Initiatives area for the redevelopment of the City's historic neighborhoods. These areas are the primary focus of the Rebuild ABI program. The NEZ and Initiatives areas are attached as Attachment C.

### Lots North of South 27<sup>th</sup> Street

On a case-by-case basis as determined by the City Manager, the City of Abilene may allow the Rebuild ABI program to be accessed for a redevelopment project outside of the City's established Neighborhood Empowerment Zone (NEZ). A project located outside the NEZ must adhere to the same requirements as projects located within the NEZ.

### Financial Institutions

The City has partnered with Clear Fork Bank, First Financial Bank, Coleman County State Bank, and Prosperity Bank to provide favorable financing terms for both the builder and the buyer. While there is no obligation to use these financial institutions to participate in the program, the City will not make an equity payment for interim financing to another financial institution.

## **II. Major Renovation**

To be eligible to participate in the major renovation category of Rebuild ABI, an individual must meet the following criteria:

- (1) be a Builder member of the Big Country Home Builder's Association; and renovate an existing single-family home in target areas designated by the City of Abilene, or as otherwise approved by the City of Abilene; and
- (2) purchase all building materials from a business located within the corporate boundaries of the City of Abilene; and
- (3) all construction must meet all applicable building codes and current residential energy efficiency standards

- for new construction as determined by the building official; and
- (4) the final buyer of the renovated home must sign an affidavit (Attachment D) that they intend to occupy the home for their own homestead for purposes of ad valorem taxation, and the selling price of the renovated home must be equal to or less than two hundred three thousand dollars (\$203,000.00) and no cents.

In exchange for meeting the above criteria, the city is pleased to offer the following incentives:

{1} The city may provide an incentive payment of \$20,000 for the completion of an affordable single-family dwelling to the seller payable at the time of closing.

(2) In addition to the payment authorized above, the City of Abilene may provide the following incentives:

- a. waiver of city charged development related permit, platting, zoning, water, and sewer tap fees; and,
- b. city provided utility taps (if needed); and,
- c. city provided roll-off containers with two free tips; and,
- d. city provided sidewalks as may be required; and,
- e. demolition of existing structures as may be required.

For example, Mark wants to renovate an existing 1,100 square foot home in one of the City's designated target areas. Mark meets the program requirements, completes the renovations as required and sells the home to a buyer who intends to live in the home as their homestead.

In this example, upon final sale of the home to a buyer for \$185,000, Joe stands to receive incentives totaling:

10% incentive payment -	<u>\$ 20,000</u> - Cash to builder at final settlement by City
Total Cash to Builder at closing -	\$ 20,000
Waived Permits & Fees	\$ 1,075 -Cost avoidance
New Sidewalk (50 LF)	\$ 2,500 -Cost avoidance
20-yard open top with 2 tips	<u>\$ 1,200</u> -Cost avoidance
Total cash or cost avoidance	\$23,275

Agreement Required

These incentives will be approved by the City Council through a Chapter 380 Economic Development Agreement. In the agreement, the City will commit to fund the incentives in exchange for the builder committing to renovate the existing home. The agreement will articulate all of the terms and conditions necessary to receive the incentives. The agreement must be approved **before** construction may begin on the project. The model agreement is attached to this letter as Attachment B.

Minimum Home Requirements

The minimum major renovation requirements include, but are not limited to:

- (1) Replacement of all major mechanical, electrical, and plumbing systems two years or older or as may be

required by the City

- (2) Replacement of roofing system with a medium grade/architectural asphalt shingle on house and any accessory building
- (3) Replacement of all windows
- (4) Brick or fiber cement siding
- (5) 4' wood privacy fence or 4' chain-link fence with metal posts.
- (6) Front and rear lawn sodded (alternative landscaping designs may be considered)
- (7) Concrete driveway
- (8) Meet or exceed current residential building and energy code requirements

#### Neighborhood Empowerment Zones

The City has established two Neighborhood Empowerment Zones (NEZ) for the redevelopment of the City's historic neighborhoods. These areas are the primary focus of the Rebuild ABI program. The NEZ areas are attached as Attachment C.

#### Lots North of South 27<sup>th</sup> Street

On a case-by-case basis as determined by the City Manager, the City of Abilene may allow the Rebuild ABI program to be accessed for a redevelopment project outside of the City's established Neighborhood Empowerment Zone (NEZ). A project located outside the NEZ must adhere to the same requirements as projects located within the NEZ.

#### Financial Institutions

The City's partner Financial Institutions are not financing major renovations at this time.

#### III. Now What?

Now that you've read the program, you likely have questions. This program is currently being administered in the Planning and Development Department. Tim Littlejohn, our Director of Planning and Development, is ready and available to assist you with any questions.

Remember, you need to receive approval before you are eligible to receive funds. Use the appropriate Chapter 380 Agreement for your project (New Construction or Major Renovation) and submit the agreement to Planning and Development for review. Once the City Council approves your agreement, we will notify you in writing that you may safely proceed.

The City of Abilene looks forward to working with you as we Rebuild ABI!

Respectfully,

Robert Hanna  
City Manager



**ATTACHMENT A- REBUILD ABI NEW CONSTRUCTION AGREEMENT**

**NEW CONSTRUCTION ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF ABILENE AND**

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This Economic Development Agreement ("Agreement") is effective as of the \_\_\_\_ day of \_\_\_\_\_, 2024 ("Effective Date"), by and between \_\_\_\_\_ ("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 Developer has acquired, fee simple ownership of \_\_\_\_\_ in Abilene, Taylor County, Texas (the "Project Area"); and

**WHEREAS**, the governing body of the City of Abilene adopted Resolution 49-2016 and Resolution 129-2023 creating an Economic Development Program authorized by Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, the governing body of the City of Abilene adopted Resolution \_\_\_\_\_ and has created Rebuild ABI as an infill development incentive for new residential construction in certain target areas throughout the City; and

**WHEREAS**, the City desires to enter into this Agreement with the Developer in order to implement the Rebuild ABI 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**, it is anticipated that the development of the Project Area will have a direct and positive economic benefit to 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

**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

- 1.01 The Agreement is authorized by state law, including but not limited 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 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 Agreement.

## 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 \_\_\_\_\_, its successors or assigns.

## III. TERM

- 3.01 This Agreement shall be effective as of the date of execution of both parties. This Agreement shall remain in full force and effect until the earlier of: (A) each party hereto has completed their respective obligations hereunder; or (B) eighteen months from the Effective Date ("**Term**").

## IV. ECONOMIC DEVELOPMENT PROGRAM

- 4.01 Upon Developer's completion of its obligations and duties set forth in this Agreement, the City shall pay the Developer the following incentives:
  - a. Payable at the time of closing of the interim construction financing to the participating eligible lender, on behalf of the Developer, a ten (10%) percent equity contribution of the total interim financing needed for the single-family construction. Lender eligibility is based solely on City accepting the lender into the Rebuild ABI program.

- b. Payable at the time of closing of the final buyer, a five (5%) percent completion grant will be paid to the Developer, such grant being equal to five(5%) percent of the amount of the sales price of the home, and the home sales price shall not exceed a maximum price of \$203,000.00,
  - c. In addition to the equity contribution and completion grant authorized above, the City shall provide without cost to the Developer, at the sole discretion of the City, one or more the following: (1) waiver of construction-related City permits and fees, (2) utility taps, (3) sidewalks, (4) roll-off containers and two tips, and (4) demolition of existing structures.
- 4.02 In the event the Developer chooses not to use a participating eligible lender, the Developer is eligible to receive a fifteen (15%) percent incentive, payable at the time of closing of the final buyer. Additionally, the Developer is eligible to receive the incentives listed in 4.01(c).

#### *V. DEVELOPER'S OBLIGATIONS AND DUTIES*

The Developer shall perform or cause to be performed, the construction of the improvements set forth in **Exhibit A- "Public and Private Improvements"** on or before the expiration of this agreement. Additionally::

- 5.01 The Developer shall be a Builder member of the Big Country Home Builder's Association as of the effective date of this Agreement, and during the term of this Agreement.
- 5.02 The Developer shall construct, at its expense, the improvements identified on **Exhibit A - "Public and Private Improvements"** in accordance with all applicable laws and regulations, including but not limited to the City's current residential building code and residential energy code.
- 5.03 The Developer shall purchase all building materials from a business located within the corporate boundaries of the City of Abilene, and pay all applicable local sales and use taxes to the City of Abilene. Upon request of the City, Developer shall promptly provide written documentation of compliance with this requirement, such written documentation being receipts or other documentation as agreed to by the City.
- 5.04 The Developer shall require the final buyer of the residence to sign an affidavit at closing that the buyer intends to occupy the residence as their legal homestead in the State of Texas and that it shall serve as their primary residence for a period of Two years following closing.

- 5.05 The Developer shall construct the new construction within the existing Neighborhood Empowerment Zones of the City, or shall receive written approval from the City Manager, or his or her designee to build the home on a specific lot north of South 27<sup>th</sup> Street.

*VI. CITY OBLIGATIONS AND DUTIES*

- 6.01 Pay the Economic Incentives to Developer pursuant to the terms and conditions of this Agreement.

*VII. DEFAULT*

- 7.01 If any party should default upon any terms or obligations with respect to this 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 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 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 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.
- 8.03 This 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 Agreement without the express written consent of the City.
- 8.05 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.
- 8.06 Except as otherwise expressly provided herein, this Agreement may only be amended, modified or terminated by a declaration in writing, executed and acknowledged by all the parties to this Agreement.
- 8.07 This 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.
- 8:08 This 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 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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AGREED:

DEVELOPER

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By (signature): \_\_\_\_\_

Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF ABILENE

*ATTEST:*

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Secretary

*APPROVED AS TO FORM:*

\_\_\_\_\_  
City Attorney

## **Exhibit "A" - Public and Private Improvements**

**Project:**

See attachment - building plans and building permit submittal requirements.



**ATTACHMENT B – REBUILD ABI MAJOR RENOVATION AGREEMENT**



**MAJOR RENOVATION ECONOMIC DEVELOPMENT AGREEMENT BETWEEN  
THE CITY OF ABILENE AND**

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This Economic Development Agreement ("Agreement") is effective as of the \_\_\_ day of \_\_\_\_\_, 2024 ("Effective Date"), by and between \_\_\_\_\_, ("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 Developer has acquired, fee simple Ownership of \_\_\_\_\_ in Abilene, Taylor County, Texas (the "Project Area"); and

**WHEREAS**, the governing body of the City of Abilene adopted Resolution 49-2016 and Resolution 129-2023 creating an Economic Development Program authorized by Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, the governing body of the City of Abilene adopted Resolution \_\_\_\_\_ and has created Rebuild ABI as an infill development incentive for major renovation to an existing home in certain target areas throughout the City; and

**WHEREAS**, the City desires to enter into this Agreement with the Developer in order to implement the Rebuild ABI 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**, it is anticipated that the redevelopment of the Project Area will have a direct and positive economic benefit to 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

**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

- 1.01 The Agreement is authorized by state law, including but not limited 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 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 Agreement.

## 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 \_\_\_\_\_, its successors or assigns.

## III. TERM

- 3.01 This Agreement shall be effective as of the date of execution of both parties. This Agreement shall remain in full force and effect until the earlier of: (A) each party hereto has completed their respective obligations hereunder; or (B) eighteen months from the Effective Date ("Term").

## IV. ECONOMIC DEVELOPMENT PROGRAM

- 4.01 Upon Developer's completion of its obligations and duties set forth in this Agreement, the City shall pay the Developer the following incentives:
  - a. Payable at the time of closing of the final buyer, a \$20,000.00 completion grant will be paid to the Developer, and the home sales shall price not exceed a maximum price of \$203,000.00.
  - b. In addition to the completion grant authorized above, the City shall provide without cost to the Developer, at the sole discretion of the City, one or more of the following:

- (1) waiver of construction related City permits and fees, (2) utility taps, (3) sidewalks, (4) roll-off containers and two tips, and (4) demolition of existing structures.

## V. DEVELOPER'S OBLIGATIONS AND DUTIES

The Developer shall perform, or cause to be performed the construction of the improvements set forth in **Exhibit A - "Public and Private Improvements"** on or before the expiration of this agreement. Additionally:

5.01 The Developer shall be a member of the Big Country Home Builder's Association as of the effective date of this Agreement, and during the term of this Agreement.

5.02 The Developer shall reconstruct, at its expense, the improvements identified on **Exhibit A - "Public and Private Improvements"** in accordance with all applicable laws and regulations, including but not limited to the City's current residential building code and residential energy code.

5.03 The Developer shall purchase all building materials from a business located within the corporate boundaries of the City of Abilene, and pay all applicable local sales and use taxes to the City of Abilene. Upon request of the City, Developer shall promptly provide written documentation of compliance with this requirement, such written documentation being receipts or other documentation as agreed to by the City.

5.04 The Developer shall require the final buyer of the residence to sign an affidavit at closing that the buyer intends to occupy the residence as their legal homestead in the State of Texas and that it shall serve as their primary residence for a period of two years following closing.

5.05 The Developer shall reconstruct the home within the existing Neighborhood Empowerment Zones of the City, or shall receive written approval from the City Manager, or his or her designee to reconstruct the home on a specific lot north of South 27<sup>th</sup> Street.

## VI. CITY OBLIGATIONS AND DUTIES

6.01 Pay the Economic Incentives to Developer pursuant to the terms and conditions of this Agreement.

## VII. DEFAULT

- 7.01 If any party should default upon any terms or obligations with respect to this 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 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 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 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.

- 8.03 This 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 Agreement without the express written consent of the City.
- 8.05 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.
- 8.06 Except as otherwise expressly provided herein, this Agreement may only be amended, modified or terminated by a declaration in writing, executed and acknowledged by all the parties to this Agreement.
- &.07 This 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.
- 8.08 This 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 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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AGREED AND EXECUTED:

**DEVELOPER**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By (signature): \_\_\_\_\_

Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF ABILENE**

**ATTEST:**

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

Exhibit "A" - Public and Private Improvements

**Project:**

See attachment - building plans and building permit submittal requirements.