

CITY OF ANNA, TEXAS

RESOLUTION NO. 2017-13-389

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANNA APPROVING AND AUTHORIZING AN AMENDMENT TO A PROJECT AND RELATED INCENTIVE AGREEMENT FOR NEW ECONOMIC DEVELOPMENT WITH Q SEMINOLE ANNA TOWN CENTER, L.P., THE ANNA COMMUNITY DEVELOPMENT CORPORATION, AND THE ANNA ECONOMIC DEVELOPMENT CORPORATION AND AUTHORIZING THE DISBURSEMENT OF FUNDS UNDER SAID AGREEMENT**

**WHEREAS**, the Anna Community Development Corporation (the "CDC") and the Anna Economic Development Corporation ("EDC") previously approved a resolution that authorized the disbursement of funds in support of an economic development project (the "Project") that will create and retain new jobs, and that will result in new capital investment within the corporate limits of the City of Anna, Texas ("City"); and

**WHEREAS**, there has been a change in the collection of Sales Tax revenue resulting in a need for an amendment to recognize the reallocation of sales tax revenue and remove the EDC's liability of payment; and

**WHEREAS**, the CDC and EDC have found that the Project will promote new or expanded business development and that the expenditures of funds under the Agreement are required or suitable for infrastructure and site improvements necessary to promote or develop new or expanded business enterprises;

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

**Section 1. Recitals Incorporated**

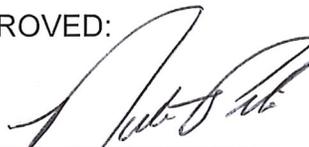
The recitals set forth above are incorporated herein for all purposes as if set forth in full.

**Section 2. Authority for Project, Agreement, and Expenditure**

The City of Anna City Council hereby authorizes and approves the amendment to the Project, and further authorizes the CDC and EDC's Board of Directors, subject to approval of the form and content by the CDC and EDC's legal counsel, to enter into an amended Incentive Agreement for New Economic Development with Q Seminole Anna Town Center, L.P. ("Amendment") attached hereto as EXHIBIT A, incorporated herein for all purposes. The City Council further authorizes the Mayor to execute said Amendment to bind the City for the limited purposes expressly stated therein.

PASSED AND APPROVED by the City Council of the City of Anna this 12<sup>th</sup> day of December, 2017.

APPROVED:



Nate Pike, Mayor

ATTEST:



Carrie L. Smith, City Secretary



ANNA COMMUNITY DEVELOPMENT CORPORATION

RESOLUTION NO. 2017-12-20 (CDC)

**A RESOLUTION OF THE ANNA COMMUNITY DEVELOPMENT CORPORATION APPROVING AN AMENDMENT TO A PROJECT AND RELATED INCENTIVE AGREEMENT FOR NEW ECONOMIC DEVELOPMENT WITH Q SEMINOLE ANNA TOWN CENTER, L.P., ANNA COMMUNITY DEVELOPMENT CORPORATION, AND ANNA ECONOMIC DEVELOPMENT CORPORATION**

**WHEREAS**, the Anna Community Development Corporation (the "CDC") desires to disburse funds in support of a Community development project that will create and retain new jobs, and that has resulted in new capital investment within the corporate limits of the City of Anna, Texas ("City"); and

**WHEREAS**, the CDC has found that the Project will promote new or expanded business development and that the expenditures of CDC funds under the Agreement are required or suitable for infrastructure and site improvements necessary to promote or develop new or expanded business enterprises; and

**WHEREAS**, there has been a change in the collection of Sales Tax revenue resulting in a need for an amendment to recognize the reallocation of sales tax revenue and remove the EDC's liability of payment;

**NOW, THEREFORE, BE IT RESOLVED BY THE ANNA COMMUNITY DEVELOPMENT CORPORATION THAT:**

**Section 1. Recitals Incorporated**

The recitals set forth above are incorporated herein for all purposes as if set forth in full.

**Section 2. Approval of Project and Agreement**

The CDC hereby approves the amendment to the Incentive Agreement for New Community Development with Q Seminole Anna Town Center, L.P., the Anna Community Development Corporation, and the Anna Economic Development Corporation ("Amendment") attached hereto as EXHIBIT A, incorporated herein for all purposes, and authorizes the CDC President to execute same on its behalf, subject to approval as to form by legal counsel for the CDC and final content by the CDC Chief Administrative Officer, said Agreement to be effective upon approval by the City of Anna City Council and as set forth in said Amendment.

**Section 3. Approval of Funding**

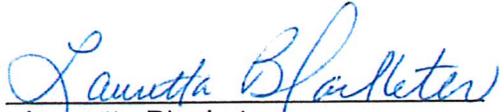
The CDC hereby authorizes the Chief Administrative Officer to disburse funds as a reimbursement in accordance with the Agreement.

PASSED AND APPROVED by the Anna Community Development Corporation on this 7<sup>th</sup>, day of December 2017.

ATTEST:

  
\_\_\_\_\_  
Alonzo Tutson  
CDC President

APPROVED:

  
\_\_\_\_\_  
Laretta Blacketer  
CDC Secretary

ANNA ECONOMIC DEVELOPMENT CORPORATION

RESOLUTION NO. 2017-12-27 (EDC)

A RESOLUTION OF THE ANNA ECONOMIC DEVELOPMENT CORPORATION APPROVING AN AMENDMENT TO A PROJECT AND RELATED INCENTIVE AGREEMENT FOR NEW ECONOMIC DEVELOPMENT WITH Q SEMINOLE ANNA TOWN CENTER, L.P., THE ANNA COMMUNITY DEVELOPMENT CORPORATION, AND THE ANNA ECONOMIC DEVELOPMENT CORPORATION

WHEREAS, the EDC was party to an economic development agreement and the attached amendment releases the EDC of all obligations due to a change in sales tax revenue collection;

NOW, THEREFORE, BE IT RESOLVED BY THE ANNA ECONOMIC DEVELOPMENT CORPORATION THAT:

**Section 1. Recitals Incorporated**

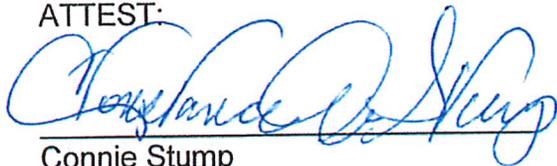
The recitals set forth above are incorporated herein for all purposes as if set forth in full.

**Section 2. Approval of Project and Agreement**

The EDC hereby approves the amendment to the Incentive Agreement for New Economic Development with Q Seminole Anna Town Center, L.P., the Anna Economic Development Corporation, and the City of Anna ("Amendment") attached hereto as EXHIBIT A, incorporated herein for all purposes, and authorizes the EDC President to execute same on its behalf, subject to approval as to form by legal counsel for the EDC and final content by the EDC Chief Administrative Officer, said Amendment to be effective upon approval by the City of Anna City Council and as set forth in said Amendment.

PASSED AND APPROVED by the Anna Economic Development Corporation on this 7<sup>th</sup>, day of December 2017.

ATTEST:

  
\_\_\_\_\_  
Connie Stump  
EDC President

APPROVED:

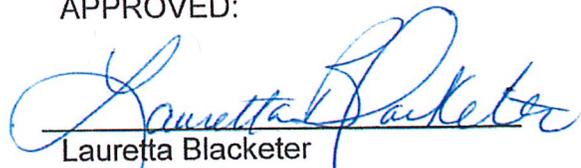
  
\_\_\_\_\_  
Laurretta Blacketer  
EDC Secretary

Exhibit A

**FIRST AMENDMENT TO INCENTIVE AGREEMENT FOR NEW ECONOMIC DEVELOPMENT**

This First Amendment to Incentive Agreement for New Economic Development (this "Amendment") is entered into between and among the Anna Economic Development Corporation, a Texas Type A development corporation ("AEDC"), the Anna Community Development Corporation, a Texas Type B development corporation ("ACDC") (collectively, the "Corporations"), and Q Seminole Anna Town Center, L.P., a Texas limited partnership ("Developer"; together with the Corporations, the "Parties").

WHEREAS, the Corporations and Developer entered into that certain Incentive Agreement for New Economic Development executed on or about April 16, 2015 (the "Agreement"), relating to the development of the "Phase I Development" as defined therein (capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement);

WHEREAS, Developer completed the improvements comprising Phase I Development, the Infrastructure Improvements, and the Public Improvements in accordance with the terms of the Agreement and otherwise satisfied the conditions precedent under the Agreement to Developer's receipt of payments from the Corporations under the Agreement;

WHEREAS, the Walmart Store completed within the Phase I Development exceeded 170,000 square feet;

WHEREAS, on November 8, 2016, a majority of the qualified voters in the City approved a ballot measure permitted under Chapter 504 of the Texas Local Government Code to increase the sales and use tax imposed by ACDC to three-quarters of one percent and to eliminate the sales and use tax imposed by AEDC effective as of April 1, 2017; and

WHEREAS, the Parties desire to modify the Agreement to (i) to memorialize the satisfaction of the conditions precedent to Developer's receipt of the payments under the Agreement; (ii) acknowledge that there will be no reduction in Project Funds or the Combined Maximum Amount with respect to a reduction in floor space of the Walmart Store; (iii) remove AEDC as a party to the Agreement; and (iv) revise the definition of Project Funds to reflect the new sales and use tax rate imposed by ACDC as of April 1, 2017.

NOW, THEREFORE, in consideration of the covenants, promises, and conditions stated in this Amendment, the AEDC, the ACDC, and Developer agree as follows:

**Section 1. Effective Date.**

The Effective Date of this Amendment shall be the date that the last of the following events have occurred: (1) the AEDC Board has duly resolved to enter into this Amendment; (2) the ACDC Board has duly resolved to enter into this Amendment; (3) the Parties to this Amendment have duly executed this Amendment; and (4) the City of Anna, Texas City Council ("City Council") has duly adopted a resolution approving this Amendment.

## **Section 2. AEDC Non-Party Status.**

Effective as of April 1, 2017, AEDC shall have no obligations under the Agreement other than to pay the portion of the Project Funds due to Developer under the terms of the Agreement from sales and use tax revenue collected by AEDC prior to April 1, 2017. The Parties agree that upon the full discharge by AEDC of any obligations arising or accruing under the Agreement prior to April 1, 2017, AEDC shall no longer be a party to the Agreement and the Agreement shall be deemed terminated solely as to AEDC. For clarification purposes, effective as of the Effective Date: (1) references to the "Corporations" in the Agreement shall be deemed to solely include the ACDC; (2) references to the "Parties" in the Agreement shall be deemed to exclude the AEDC; and (3) notice shall not be required to be delivered to AEDC under the Agreement.

## **Section 3. Completion of the Phase I Development, Public Improvements, and Infrastructure Improvements.**

The Corporations hereby acknowledge and agree that the Developer has completed the improvements comprising the Phase I Development, the Public Improvements, and the Infrastructure Improvements and has satisfied all of the other conditions precedent to receipt of payments under Section 5.01 of the Agreement.

## **Section 4. Amendment of Definition of Project Funds.**

The definition of "Project Funds" in Section 3.03 of the Agreement is hereby deleted in its entirety and replaced with the following:

"Project Funds" means a portion of the Sales and Use Tax that is actually received by the ACDC as set forth below until the earlier of: (1) expiration of the term of the Agreement; or (2) the date that the cumulative annual payments to the developer equal the Combined Maximum Amount. For years one (1) through five (5) of the payment period for the annual payments to be made to Developer under Section 5 of this Agreement ("Five-Year Payment Period"), Project Funds shall be an amount equivalent to 90% of the Sales and Use Tax that is actually received by the ACDC during the Five-Year Payment Period. For years six (6) through fifteen (15) of the payment period for the annual payments to be made to Developer under Section 5 of this Agreement ("Ten-Year Payment Period"), Project Funds shall be an amount equivalent to 80% of the Sales and Use Tax that is actually received by the ACDC during the Ten-Year Payment Period.

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**Section 5. Amendment of Definition of Sales and Use Tax.**

The definition of "Sales and Use Tax" in Section 3.03 of the Agreement is deleted and replaced with the following:

"Sales and Use Tax" means the three-quarters of one percent sales and use tax allocated to the ACDC and that is attributable to sales and use by Retailers in the Phase I Development.

**Section 6. Amendment of Section 5.01.**

Section 5.01 of the Agreement is hereby deleted in its entirety and replaced with the following:

5.01. Payment. To assist with the costs of the Public Improvements and Infrastructure Improvements, and in consideration for the other obligations undertaken by Developer in this Agreement, ACDC will make biannual (2 times a year) payments to Developer during the term of this Agreement that when combined shall be equal to \$1,633,012 plus the Cost of Infrastructure Improvements plus the actual Cost of Traffic Signal, up to a combined maximum not-to-exceed amount of \$2,934,001 ("Combined Maximum Amount"), subject to Section 5.05 and 5.06 of this Agreement. Said payments will be funded solely from Project Funds, which the ACDC must deposit into and maintain in one or more interest-bearing accounts until the biannual payment is due. At the time that each payment is due, the full amount of Project Funds on deposit in said accounts shall be paid to Developer. The first payment shall be due on or before the expiration of 30 days after the anniversary of the ACDCs first actual receipt of Sales and Use Tax. Thereafter, payments of Project Funds are due and payable biannually on or before the expiration of the same month during which said first payment was made.

**Section 7. Deletion of Section 5.011.**

Section 5.011 (Payment Reduction) is hereby deleted in its entirety.

**Section 8. Amendment of Section 5.02.**

Section 5.02 of the Agreement is deleted and replaced with the following:

5.02. Reallocation or Refund. If at any time the State Comptroller takes any action that results in a Reallocation or Refund of Sales and Use Tax, the Parties agree to reconcile the corresponding previous payments of Project Funds in the following manner during the respective payment periods.

(a) During the Five-Year Payment Period:

- i. If the result is an increase of Sales and Use Tax to the ACDC, then 90% of such increase will be deemed to be Project Funds that are due and payable to Developer within 30 days of the ACDC's actual receipt of the revenue representing the increase.
- ii. If the result is a decrease of Sales and Use Tax to the ACDC or if the ACDC must refund any Sales and Use Tax, then 90% of such decrease or refund will be deemed to be an amount owed to the ACDC by Developer and such amount is due and payable within 30 days after the ACDC has provided written notice to Developer that the ACDC has incurred the decrease or made the refund; provided, however, the ACDC, at its sole option, may—instead of requesting payment from the Developer—subtract the amount of the decrease or refund from one or more future annual payments of Project Funds that would otherwise be due to be paid to Developer, and if the ACDC so opts, its will provide written notice to Developer of its intent to do so.

(b) During the Ten-Year Payment Period:

- i. If the result is an increase of Sales and Use Tax to the ACDC, then 80% of such increase will be deemed to be Project Funds that are due and payable to Developer within 30 days of the ACDC's actual receipt of the revenue representing the increase.
- ii. If the result is a decrease of Sales and Use Tax to the ACDC or if the ACDC must refund any Sales and Use Tax, then 80% of such decrease or refund will be deemed to be an amount owed to the ACDC by Developer and such amount is due and payable within 30 days after the ACDC has provided written notice to Developer that the ACDC has incurred the decrease or made the refund; provided, however, the ACDC, at its sole option, may—instead of requesting payment from the Developer—subtract the amount of the decrease or refund from one or more future annual payments of Project Funds that would otherwise be due to be paid to Developer, and if the ACDC so opts, it will provide written notice to Developer of its intent to do so.

**Section 9. New Developer's Notice Address.**

From and after the effective date of this Amendment, the Corporations shall send all notices, statements, and/or payments that are to be sent to Developer under the Agreement to the following addresses:

2017-13-389

Q Seminole Anna Town Center, L.P.  
c/o Chief Partners, LP  
8111 Westchester Drive, Suite 800  
Dallas, Texas 75225

With a copy to:

Munsch Hardt Kopf & Harr, P.C.,  
500 N. Akard Street, Suite 3800  
Dallas, Texas 75201  
Attn: David Coligado

**Section 10. Miscellaneous.**

10.01 Sole Agreement. All provisions of the Agreement that are not modified by this Amendment shall continue to 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, and are hereby ratified in all respects. The Agreement, as amended by this Amendment, constitutes the sole agreement between ACDC and Developer. Any prior Agreements, promises, negotiations, or representations, verbal or otherwise, not expressly stated in the Agreement, as amended by this Amendment are of no force and effect.

10.02. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and the binding agreement of each Party to the terms herein, but all of which together will constitute one and the same instrument.

10.03. Recording. The parties agree that this Amendment shall not be recorded.

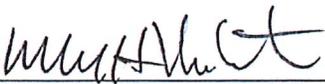
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2017-13-389

EXECUTED BY THE PARTIES:

**Q SEMINOLE ANNA TOWN CENTER, L.P., a Texas limited partnership**

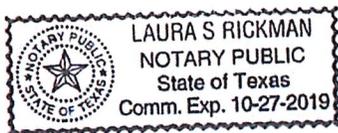
By: ANNA TC GP, LLC, its general partner

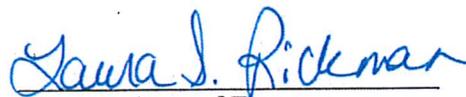
By:   
William H. Vanderstraaten, its Manager

State of Texas  
County of Collin

Before me, on this day personally appeared William H. Vanderstraaten, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his capacity as Manager of Anna TC GP, LLC, general partner for Q Seminole Anna Town Center, L.P., for the purposes and consideration therein expressed.

Given under my hand and seal of office this 5<sup>th</sup> day of December 2017.



  
Notary – State of Texas

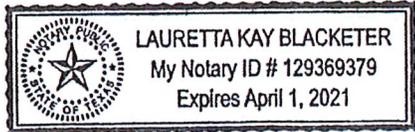
**ANNA ECONOMIC DEVELOPMENT CORPORATION,**  
a Texas Type A development corporation

By: *Constance Ann Stump*  
Constance Ann Stump, its President

State of Texas  
County of Collin

Before me, on this day personally appeared Constance Ann Stump, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same in her capacity as President of Anna Economic Development Corporation for the purposes and consideration therein expressed.

Given under my hand and seal of office this 7<sup>th</sup> day of December 2017.



*Laretta Kay Blacketer*  
Notary – State of Texas

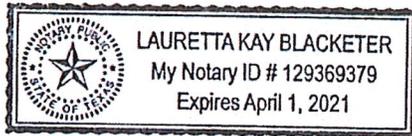
ANNA COMMUNITY DEVELOPMENT CORPORATION,  
a Texas Type B development corporation

By: *Alonzo Tutson*, its President

State of Texas  
County of Collin

Before me, on this day personally appeared, *Alonzo Tutson*, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his capacity as President of Anna Economic Development Corporation for the purposes and consideration therein expressed.

Given under my hand and seal of office this *7th* day of *December* 2017.



*Laretta Kay Blacketer*  
Notary – State of Texas