

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: February 25, 2014		DATE SUBMITTED: February 10, 2014	
DEPARTMENT OF ORIGIN: Economic Dev't		SUBMITTED BY: Kevin Russell	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consider approving a Chapter 380 Economic Development Program Agreement, pursuant to Chapter 380 of the Texas Local Government Code, with Dynacon, Inc. and authorizing the City Manager to execute the agreement providing for a reimbursement of a not to exceed amount of \$35,625.00 for the extension of a waterline that will supply water to a fire hydrant.			
SUMMARY STATEMENT: The developer, Dynacon, Inc., is expanding their business, which will include constructing new buildings and proposing to hire twenty-five (25) new employees. The City will benefit from the expansion of this facility in terms of property value, as well as from the increase in employment positions at that location. To encourage the safe and orderly expansion of this facility, a fire hydrant and the waterline necessary to supply it are needed to provide sufficient fire protection at this site and allow for the new buildings.			
STAFF ANALYSIS AND RECOMMENDATION: Staff recommends approval of the Dynacon Economic Development Program pursuant to Chapter 380 of the Texas Local Government Code allowing for the reimbursement of the hard costs associated with this infrastructure. This proposed agreement implements the Dynacon Economic Development Program and meets the strategic initiatives of creating new jobs and helping existing business to expand. This project will allow a business that has thrived and outgrown its current building space the opportunity to expand and invest in the community. In addition, the City of Bryan is given the opportunity to retain a business that – without this type of assistance – could possibly be hindered in its growth in terms of new employment positions and expanded facilities. Approval of the proposed agreement, and authorizing the City Manager to execute it, will not only aid in the creation of 25 new jobs at an existing business, but also encourage investment within the Brazos County Industrial Park.			
OPTIONS (In Suggested Order of Staff Preference):			
<ol style="list-style-type: none"> 1. Approve the agreement. 2. Modify the agreement, which may require consideration at a future City Council meeting. 3. Deny the agreement and provide direction to City staff. 			
ATTACHMENTS:			
<ol style="list-style-type: none"> 1. Proposed agreement. 			
FUNDING SOURCE: Water Funds			

APPROVALS: Joey Dunn, 2-12-14; Hugh R. Walker, 02/14/2014

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 2/14/2014

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 2/17/2014

Revised 05/2013

STATE OF TEXAS §

COUNTY OF BRAZOS §

**CHAPTER 380 DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BRYAN, TEXAS AND DYNACON, INC.**

This Agreement is made by and between the City of Bryan, Texas, a home-rule municipal corporation (“City”) and Dynacon, Inc., a corporation operating pursuant to the laws of the State of Texas (“Dynacon”).

WHEREAS, the Texas Constitution prohibits any City, or other political subdivision, from lending its credit or granting public money to any individual, association or corporation whatsoever without a valid public purpose for doing so; and

WHEREAS, the Texas Constitution specifically states that economic development programs created pursuant to Chapter 380 of the Texas Local Government Code serve the public purpose of alleviating poverty, joblessness, economic blight, and provide other intangible benefits incidental to the development of the local economy; and

WHEREAS, Dynacon is the owner of a parcel of property at 831 Industrial Boulevard, Bryan, Brazos County, Texas and it is seeking to expand an existing manufacturing facility to add new employees, facilities, and infrastructure; and

WHEREAS, the City requires that a fire hydrant be installed adjacent to the new facility, and that will require the installation of a 8-inch water line to serve the new hydrant; and

WHEREAS, Dynacon is willing to construct the fire hydrant and the waterline that will support it at its own cost, but requests that the City reimburse a portion of the hard costs associated with that construction; and

WHEREAS, in order to facilitate this expansion project and encourage further job growth in the City of Bryan, it is in the best interest of the citizens of Bryan to support the project by offsetting some of the costs related to these health and safety improvements requested by the City; and

WHEREAS, the City Council finds that supporting this expansion project will encourage sustainable job growth in the City; and

WHEREAS, the City Council further finds that the citizens benefit more when economic development assistance is provided to companies with a proven record of success in our community; and

NOW, THEREFORE, City and Dynacon agree as follows:

A. Dynacon’s Obligations

1. As a part of, or related to, Dynacon’s expansion project, Dynacon will construct a fire hydrant to service some of the new buildings being constructed. The cost of said project is estimated to cost no more than \$47,500.00. Dynacon will also construct the waterline that will feed water to the fire hydrant. Upon completion of construction, Dynacon will submit a request for reimbursement to the City and will provide documentation of the actual hard costs incurred. If reasonably

necessary, the City may request additional documentation to support the request for reimbursement.

2. Dynacon agrees and acknowledges that the twenty-five (25) new employee positions that are contemplated by this expansion are a necessary incentive that justifies the City's support of this project. Dynacon agrees to maintain these employment positions for two (2) years following completion of construction.

B. City's Obligations

1. The City agrees to seventy-five percent (75%) of the documented hard costs described above, or up to \$35,625.00, whichever is less. Upon receipt of a request for reimbursement as well as the documentation of the hard costs incurred (including any additional documentation requested by the City as provided above), the City will tender a payment within thirty (30) days. Requests for reimbursement shall be sent to the Economic Development Director.
2. This Agreement is subject to annual appropriation for same by the City Council.

C. Audit, Breach, & Recapture

1. Following payment of the reimbursement by the City, Dynacon shall provide the City with bi-annual reports documenting the creation of the twenty-five (25) new employment positions. The first report is required within seven (7) months following completion of construction and must show that Dynacon has created and filled the twenty-five (25) positions. For the next three reports, the twenty-five (25) new employment positions shall be established by a review of payroll records to determine the average number of employees who worked each pay period during the preceding six (6) month period. Any employee who is on paid sick leave, worker's compensation leave, or other paid leave shall be counted towards the number of new employment positions. Bi-annual reports shall be sent to the Economic Development Director.
2. After the expiration of twenty-four (24) months following completion of construction, the City may request an inspection of Dynacon's records, and Dynacon shall allow the City Auditor, or other authorized representative, to verify compliance with the requirement to create and maintain the twenty-five (25) new employment positions for two (2) years.
3. If a bi-annual report shows that Dynacon has not created and/or maintained the required employment positions, Dynacon shall be in breach of this Agreement. In the event of a breach, Dynacon has ninety (90) days to cure the breach by hiring new employees, and providing documentation that those employment positions have been filled.
4. In the event that the final inspection of Dynacon's records shows that they were unable to cure any breaches and therefore failed to maintain the required twenty-five (25) employment positions, the City is entitled to a return of the reimbursement. Dynacon shall repay the City within ten (10) days of receiving a written demand.

D. Miscellaneous

1. Notices. Any notices sent under this Agreement shall be deemed served when delivered via certified mail, return receipt requested to the addresses designated herein or as may be designated in writing by the parties. Notice shall be given to the following:

If to City: Economic Development Director
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

If to Dynacon: Dennis Brunson
Dynacon, Inc.
831 Industrial Boulevard
Bryan, Texas 77803

2. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
3. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
4. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.
5. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
6. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
7. No Waiver. City's failure to take action to enforce this Agreement in the event of Dynacon's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.
8. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
9. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
10. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.

11. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.
12. Gender and Number. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise

Executed and effective on this the ____ day of _____, 2014.

CITY OF BRYAN:

DYNACON:

Kean Register, City Manager

Dennis Brunson, Director of Operations

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney