

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: October 28, 2014		DATE SUBMITTED: October 17, 2014	
DEPARTMENT OF ORIGIN: Economic Development		SUBMITTED BY: Frank Clark	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input 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: Consideration to amend the "First Amended Interlocal Agreement" (ILA) that was executed on August 26, 2014, between the City of Bryan and Brazos County regarding the publically dedicated Louis Mikulin Road and the maintenance responsibilities of both Brazos County and the City of Bryan. The resulting ILA, if approved, will be the "Second Amended ILA."			
SUMMARY STATEMENT: The public dedication and road improvements to Louis Mikulin Road were required for Axis Pipe and Tube, Inc. (Axis), to purchase property in the Texas Triangle Park. On August 12, 2014, Resolution 3566 was authorized to rededicate Louis Mikulin Road to the public as well as amending the ILA with new metes and bounds descriptions for a new configuration of the road.			
<p>Under the terms of the first amended ILA between the City of Bryan (City) and Brazos County (County), the County will accept the road as a public road and be responsible for maintenance of the road for a period of ten (10) years. At the end of ten years, the City of Bryan will annex the road, and Axis's 183 acre site, and assume responsibility for maintenance of Louis Mikulin Road. This proposed improved section of road enhances a private drive used and maintained by the Bryan Texas Utilities (BTU). Once the improvements are complete, this section will have public access and BTU will no longer be required to maintain the road.</p> <p>As a condition for Louis Mikulin Road to be improved as a "heavy haul" road, a new rail crossing is required by Union Pacific Railroad. Before work can begin on the new rail crossing, Union Pacific requires an agreement with Brazos County for the maintenance of the new rail crossing on Louis Mikulin Road. Union Pacific's contract requirements do not allow for provisions in their agreement with Brazos County that would allow the maintenance of the rail crossing to pass to the City of Bryan when the annexation takes place in ten years. This amendment to the ILA adds language (paragraph 5 in the ILA) where the City agrees all work performed on the rail crossing at Mikulin Road by Union Pacific shall be at the City's sole cost and expense when annexation takes place in approximately ten (10) years.</p>			
STAFF ANALYSIS AND RECOMMENDATION: Staff recommends approving the amendment to the "First Amended ILA" between the City of Bryan (City) and Brazos County (County). Once the ILA is amended, the construction of the rail crossing can begin on Louis Mikulin Road.			
OPTIONS (In Suggested Order of Staff Preference):			
<ol style="list-style-type: none"> 1. Approve the "Second Amended ILA" 2. Do not approve the "Second Amended ILA" and provide direction to staff. 			

ATTACHMENTS: (Attachments #2 and #3 are in a separate pdf file)

1. Second Amended Interlocal Agreement (See First Amended Interlocal Agreement for Exhibit A)
2. Executed First Amended Interlocal Agreement with Exhibits
3. At-Grade Crossing Agreement

FUNDING SOURCE: N/A

APPROVALS: Hugh R. Walker, 10/20/2014

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 10-20-2014

APPROVED FOR SUBMITTAL: CITY ATTORNEY Lauren Crawford (for J. Hampton), 10-20-2014

Revised 05/2013

STATE OF TEXAS §

COUNTY OF BRAZOS §

SECOND AMENDED INTERLOCAL AGREEMENT

This Second Amended Interlocal Agreement ("Agreement") is entered into by and between the City of Bryan ("City"), a Texas home rule municipal corporation and Brazos County ("County"), a political subdivision of the State of Texas.

WHEREAS, the respective participating governments (the "Parties") are authorized by the Interlocal Cooperation Act, Texas Government Code, Chapter 791, to enter into a joint agreement for the performance of governmental functions; and

WHEREAS, the Parties both maintain and operate streets, easements, and other public rights of way within their respective jurisdictions; and

WHEREAS, the Parties are cooperating with the management of the City of Bryan Brazos County Economic Development Foundation, Inc., specifically with regards to the marketing, sale, and management of land in the Texas Triangle Park and Inland Port ("Park"); and

WHEREAS, as a condition of a sale of property within the Park, the City agreed to dedicate land that was previously used as a private drive for a public street ("Mikulin Road"); and

WHEREAS, the City dedicated land described by metes and bounds, but subsequently it was determined that the road needed to be realigned and a new metes and bounds description was prepared, which is attached and incorporated herein as **Exhibit A**; and

WHEREAS, the County is agreeing to temporarily take over responsibility for maintenance of the re-designed Mikulin Road in exchange for the City's promise to take such maintenance responsibility back by annexing Mikulin Road along with the adjacent property which is subject to a 10 year non-annexation agreement effective July, 2013; and

WHEREAS, the Parties have determined that it is in the best interests of their citizens that the re-designed Mikulin Road become public and serve the Park as well as the surrounding area; and

WHEREAS, the Parties entered into an Interlocal Agreement regarding this road on July 9, 2013 ("Interlocal Agreement"); and

WHEREAS, the Parties amended the Interlocal Agreement by entering into the First Amended Interlocal Agreement on August 26, 2014 ("First Amended Interlocal Agreement");

NOW, THEREFORE, the Parties, in consideration of the mutual covenants and conditions contained herein, agree as follows:

1. The recitals and exhibits are incorporated by reference as if fully set forth herein.
2. The City has dedicated Mikulin Road, which is more particularly described in Exhibit A, for the use and benefit of the general public through **Resolution No. ___** which, is adopted contemporaneously with this Agreement. The City has reserved the fee simple interest over a portion of the road, which is described as Tract 3 in Exhibit A, and has conveyed to the public an access easement across the spur.
3. The County agrees to accept Mikulin Road into the County Road System and agrees to be responsible for maintenance of Mikulin Road in accordance with the terms of this Agreement. It is understood that the maintenance and repair of the private rail spur is the responsibility of the City or its successors, assigns, or licensees.
4. The City agrees that Mikulin Road will be annexed into the City's jurisdictional limits at the conclusion of the 10-year non-annexation agreement, effective July 2013, between the City and Axis Pipe and Tube, Inc., the purchaser of the property adjacent to Mikulin Road.
5. The City further agrees, upon its annexation of Mikulin Road, to contemporaneously enter into an agreement, the same or similar to the Public Highway At-Grade Crossing Improvement Agreement, attached hereto as **Exhibit "B"**, with Union Pacific Railroad Company ("Railroad"), whereby the City agrees that all work performed on the rail crossing at Mikulin Road by the Railroad shall be at the City's sole cost and expense.
6. Successors and Assigns. This Agreement shall 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. Neither Party may assign this Agreement without prior written authorization of the other Party.
7. 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.
8. 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.

9. 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. This Agreement repeals and replaces the prior agreements of the Parties regarding substantially the same subject matter, which was executed in the Interlocal Agreement on or about July 9, 2013, and amended in the First Amended Interlocal Agreement on or about August 26, 2014.
10. 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.
11. 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.
12. No Waiver. A Party's failure to take action to enforce this Agreement in the event of default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent the party from taking action to enforce this Agreement on subsequent occasions.

Executed and effective on this the ___ day of _____, 2014

CITY OF BRYAN

Jason P. Bienski, Mayor

ATTEST

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM

Janis K. Hampton, City Attorney

BRAZOS COUNTY



Judge Duane Peters

APPROVED AS TO FORM



Bill Ballard, Assistant County Attorney