

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: January 13, 2015		DATE SUBMITTED: January 5, 2015	
DEPARTMENT OF ORIGIN: Executive Services		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: Consider authorizing the Mayor or the Mayor Pro Tem to execute the conveyance of a non-exclusive reciprocal access easement to Axis Pipe and Tube, Inc. (Axis). This easement is 40 feet wide by approximately 1,914 feet long that runs perpendicular to Louis Mikulin Road thru City of Bryan (dba BTU) owned land up to the west end of the 100 acres to be purchased by Axis Pipe and Tube, Inc. from the City of Bryan Brazos County Economic Development Foundation (BBCEDF). This easement is located within the Texas Triangle Park.			
SUMMARY STATEMENT: This proposed easement will help satisfy the requirements of the lending institution that is providing financing for the Axis purchase of Tracts 1 and 3. The easement is non-exclusive allowing both Axis and the COB to reserve for itself and its heirs, successors, assigns, and business invitees, the right to use all or part of the easement in conjunction with any other party, subject to the terms of this agreement.			
Initial construction and perpetual maintenance of the road to be built within the easement shall be the responsibility of Axis Pipe and Tube, Inc. Axis is required to build the road to the typical standards for such roads as set forth in the Brazos County Subdivision regulations. Each party shall be responsible for construction and maintenance of driveways connecting their respective properties to the road to be built within the easement, and such driveways must be maintained at a level of appearance and utility consistent with the normal and usual industry standards then prevailing for similarly used common access easement in Brazos County, Texas.			
This access easement is comprised of Tract 2 as reflected on the attached survey and map, and covers a total of 1.7506 acres. The Tract 2 easement runs thru COB owned property.			
STAFF ANALYSIS AND RECOMMENDATION: Staff recommends approval of this item. This proposed easement is a condition for Axis to purchase the 100 acres and gives Axis more business options for future development that should result in additional jobs. When Axis builds the road along this proposed easement from Louis Mikulin Road to the 100 acres that they are purchasing, Axis will be providing infrastructure for future development of property owned by the COB within the Texas Triangle Park.			
OPTIONS (In Suggested Order of Staff Preference):			
<ol style="list-style-type: none"> 1. Approve the non-exclusive reciprocal access easement. 2. Do not approve the proposed agreement and provide direction to staff. This option will prevent the sale of the 100 acres to Axis Pipe and Tube, Inc. 			
ATTACHMENTS:			
<ol style="list-style-type: none"> 1. Non-Exclusive Reciprocal Access Easement 			

2. Map showing Texas Triangle Park (separate pdf)
3. Survey showing 100 acres to be purchase by Axis with the easements shown (separate pdf)

FUNDING SOURCE: No funding required.

APPROVALS: Hugh R. Walker, 01/06/2015

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 12-6-2015

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 01-06-2015

Revised 04/2013

Non-Exclusive Reciprocal Access Easement

STATE OF TEXAS §

COUNTY OF BRAZOS §

Date: _____, 2015

Grantor City of Bryan, a Texas home rule municipal corporation doing business as its municipally owned utility
Bryan Texas Utilities
205 East 28th Street
Bryan, Texas 77803

Grantee Axis Pipe & Tube Inc., a Delaware corporation legally authorized to do business in the State of Texas
1920 W Villa Maria, Suite 203
Bryan, Texas 77807

Grantor's Property:

100.805 acres as described in deed to The City of Bryan, recorded in Volume 296, Page 216, Deed Records of Brazos County, Texas AND 12.748 acres as described in deed to The City of Bryan dba Bryan Texas Utilities, recorded in Volume 11504, Page 293, Official Public Records of Brazos County, Texas (“O.P.R.B.C.”).

Grantee's Property:

100 acres conveyed to Grantee by the City of Bryan Brazos County Economic Development Foundation, Inc. as depicted on **Exhibit “A”**; a 159.047 acre tract of land described in the deed dated July 24, 2013, from the BBCEDF (City of Bryan and Brazos County Economic Development Foundation, Inc.) to the Grantee recorded at Volume 11505, Page 1, O.P.R.B.C.; and a 23.684 acre tract of land described in the deed dated July 24, 2013, from the City of Bryan, Texas to Grantee recorded at Volume 11505, Page 7, O.P.R.B.C.

The above properties are sometimes referred to herein collectively as the **“Properties.”**

Easement: As depicted on **Exhibit “B”**.

Easement Purpose: For providing free and uninterrupted pedestrian and vehicular ingress to, egress from, and access across the Easement shown on **Exhibit “B”**, and between Grantee’s Property and Louis E. Mikulin Road (**“Mikulin Road”**)

Consideration:

The sum of **\$10** and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties.

Grants of Easement:

Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee and Grantees heirs, successors, and assigns, an easement to, over, and across that portion of Grantor's Property as shown on **Exhibit "B"**, for the Easement Purpose and for the benefit of all or any portion of Grantee's Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the easement, rights, and appurtenances to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds itself and its heirs, successors, and assigns to warrant and forever defend the title to the easement, rights, and appurtenances in Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the easement, rights, or appurtenances, or any part thereof, except as to the Reservations from Conveyance and Exceptions to Warranty of, to the extent that such claim arises by, through, or under Grantor but not otherwise.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement is appurtenant to and runs with the Properties, and portions thereof, whether or not the Easement is referenced or described in any conveyance of the Properties, or any portion thereof. The Easement is for the benefit of the Parties and the heirs, successors, and assigns.
2. *Duration of Easement.* The duration of the Easement is perpetual unless otherwise limited or terminated by written instrument signed by all parties then having any right of use or ownership interest in any portion of the Easement.
3. *Non-exclusiveness of Easement.* The Easement is non-exclusive, and each of the Parties reserves for itself and its heirs, successors, assigns, and business invitees, the right to use all or part of the Easement in conjunction with any other party, subject to the terms of this agreement.
4. *Use and Location of Easement.* The Easement will provide the Parties ingress and egress to and from the Properties to and from Mikulin Road. The Parties may not use any part of the Easement for parking. Furthermore, the Parties will not unreasonably impair, interfere with or restrict direct pedestrian and vehicular access to the Easement.
5. *Construction and Maintenance of Easement Property.* Initial construction and perpetual maintenance of the road to be built within the Easement shall be the responsibility of Grantee. Grantee shall build the road to the typical standards for such roads as set forth in the Brazos County Subdivision regulations. Each party shall be responsible for construction and maintenance of driveways connecting their respective Properties to the road to be built within the Easement, and such driveways must be maintained at a level of appearance and utility consistent with the normal and usual industry standards then prevailing for similarly used common access Easement in Brazos County, Texas. Grantor covenants that if it sells or leases adjacent properties and grants an overlapping easement, license, or lease over the Easement, Grantor shall include provisions that ensure such grant shall not unreasonably interfere with Grantee's use of the road.
6. *Rights Reserved.* Each Party reserves for that Party and that Party's heirs, successors, and assigns the right to continue to use and enjoy the surface of the Properties for all purposes that do not unreasonably interfere with or interrupt the use or enjoyment of the portions of the Properties within the Easement. Either Party shall have a unilateral right within the Easement area to widen (but not narrow), alter, maintain, or reconstruct the driveway (or its surfacing material) provided such work (a) continuously

provides the other party with reasonable pedestrian and vehicular access, (b) is confined to the Easement area, and (c) complies with the requirements of this Agreement.

7. *Attorney's Fees.* If any Party retains an attorney to enforce this agreement, the Party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

8. *Binding Effect.* This agreement binds and inures to the benefit of the Parties and their respective families, employees, servants, guests, customers, business invitees, heirs, successors, and permitted assigns. In the event that all or a portion of the Easement is dedicated to the public and accepted by the city of Bryan, Brazos County, or the State of Texas to be part of such entity's system of roads/highways, this Agreement shall terminate with respect to that portion of the Easement.

9. *Choice of Law.* This agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any other jurisdiction. Venue is in Brazos County, Texas.

10. *Waiver of Default.* It is not a waiver of or consent to default if the nondefaulting Party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

11. *Integration.* This agreement contains the complete agreement of the Parties and cannot be varied except by written agreement of the Parties. The Parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.

12. *Legal Construction.* If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the Parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the Parties by reason of authorship or origin of language.

AXIS PIPE AND TUBE INC.
a Delaware corporation

By: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this the _____ day of _____, 2015,
by _____, _____ of Axis Pipe & Tube Inc., a Delaware, corporation.

Notary Public, State of _____

**CITY OF BRYAN
BRYAN TEXAS UTILITIES BOARD**

Carl L. Benner, Chairman BTU Board

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on this the _____ day of _____, 2015,
by Carl L. Benner, Chairman of the Bryan Texas Utilities Board.

Notary Public, State of Texas

CITY OF BRYAN:

Jason P. Bienski, Mayor

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on this the _____ day of _____, 2015,
by Jason P. Bienski, Mayor of the City of Bryan, Texas.

Notary Public, State of Texas

ATTEST:

APPROVED AS TO FORM:

Mary Lynne Stratta, City Secretary

Janis K. Hampton, City Attorney

Exhibit A

**STATE OF TEXAS
COUNTY OF BRAZOS
L. McLAUGHLIN SURVEY, ABSTRACT NO. 38**

TRACT 1

Being 98.8909 acres (4,307,686 square feet), more or less, lying and being situated in the L. McLaughlin Survey, Abstract No. 38, out of and a part of a called 725.31 acre tract or parcel of land, lying and being situated in the L. McLaughlin Survey, Abstract No. 38, in the W. S. Martin Survey, Abstract No. 35, in the O. Wilcox Survey, Abstract No. 234, in the M. Mitchell Survey, Abstract No. 181, and in the A. G. Gholson Survey, Abstract No. 123, Brazos County, Texas, as described in the Partition and Exchange Agreement by and between Esther Jane Grant McDougal, et vir, and Diebel Family Partners, Ltd, as recorded in Volume 2601, Page 98, of the Official Records of Brazos County, Texas

AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 1/2" IRON ROD WITH CAP MARKING THE MOST SOUTHERLY CORNER OF A CALLED 12.749 ACRE TRACT AS DESCRIBED IN DEED TO CITY OF BRYAN dba BRYAN TEXAS UTILITIES, RECORDED IN VOLUME 11504, PAGE 293, OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: NORTH 62 DEGREES 10 MINUTES 53 SECONDS EAST, WITH THE SOUTHEAST LINE OF THE SAID 12.749 ACRE TRACT, A DISTANCE OF 42.66 FEET TO A 1/2" IRON ROD WITH CAP SET FOR THE **POINT OF BEGINNING** AND THE MOST WESTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE: NORTH 62 DEGREES 10 MINUTES 53 SECONDS EAST, A DISTANCE OF 707.29 FEET TO A FOUND 1/2" IRON ROD WITH CAP MARKING THE MOST EASTERLY CORNER OF THE SAID 12.749 ACRE TRACT AND THE MOST SOUTHERLY CORNER OF A CALLED 159.047 ACRE TRACT AS DESCRIBED IN DEED TO AXIS PIPE AND TUBE, INC. RECORDED IN VOLUME 11505, PAGE 1, OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: NORTH 62 DEGREES 10 MINUTES 53 SECONDS EAST, WITH THE SOUTHEAST LINE OF THE SAID 159.047 ACRE TRACT, A DISTANCE OF 3110.67 FEET TO A FOUND 1/2" IRON ROD WITH CAP MARKING THE MOST EASTERLY CORNER OF THE SAID 159.047 ACRE TRACT IN THE SOUTHWEST LINE OF THE UNION PACIFIC RAILROAD 100' RIGHT OF WAY AND THE MOST NORTHERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE: SOUTH 48 DEGREES 24 MINUTES 53 SECONDS EAST, ALONG THE SOUTHWEST LINE OF THE UNION PACIFIC RAILROAD 100' RIGHT OF WAY A DISTANCE OF 1227.84 FEET TO A SET 1/2" IRON ROD WITH CAP FOR THE MOST EASTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE: SOUTH 62 DEGREES 27 MINUTES 02 SECONDS WEST, A DISTANCE OF 3784.53 FEET TO A SET 1/2" IRON ROD WITH CAP FOR THE MOST SOUTHERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE: NORTH 48 DEGREES 22 MINUTES 09 SECONDS WEST, A DISTANCE OF 846.44 FEET TO A SET 1/2" IRON ROD WITH CAP FOR ANGLE POINT;

THENCE: NORTH 48 DEGREES 08 MINUTES 56 SECONDS WEST, A DISTANCE OF 361.54 FEET TO THE **PLACE OF BEGINNING** AND CONTAINING WITHIN THESE CALLS 4,307,686 SQUARE FEET OR 98.8909 ACRES OF LAND.

**STATE OF TEXAS
COUNTY OF BRAZOS
L. McLAUGHLIN SURVEY, ABSTRACT NO. 38**

TRACT 3

Being 1.1091 acres (48,314 square feet), more or less, lying and being situated in the L. McLaughlin Survey, Abstract No. 38, out of and a part of a called 725.31 acre tract or parcel of land, lying and being situated in the L. McLaughlin Survey, Abstract No. 38, in the W. S. Martin Survey, Abstract No. 35, in the O. Wilcox Survey, Abstract No. 234, in the M. Mitchell Survey, Abstract No. 181, and in the A. G. Gholson Survey, Abstract No. 123, Brazos County, Texas, as described in the Partition and Exchange Agreement by and between Esther Jane Grant McDougal, et vir, and Diebel Family Partners, Ltd, as recorded in Volume 2601, Page 98, of the Official Records of Brazos County, Texas

AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND 1/2" IRON ROD WITH CAP MARKING THE MOST SOUTHERLY CORNER OF A CALLED 12.749 ACRE TRACT AS DESCRIBED IN DEED TO CITY OF BRYAN dba BRYAN TEXAS UTILITIES, RECORDED IN VOLUME 11504, PAGE 293, OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS AND THE MOST WESTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE: NORTH 62 DEGREES 10 MINUTES 53 SECONDS EAST, WITH THE SOUTHEAST LINE OF THE SAID 12.749 ACRE TRACT, A DISTANCE OF 42.66 FEET TO A SET 1/2" IRON ROD WITH CAP FOR THE MOST NORTHERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE: SOUTH 48 DEGREES 08 MINUTES 56 SECONDS EAST, A DISTANCE OF 361.54 FEET TO A SET 1/2" IRON ROD WITH CAP FOR ANGLE POINT;

THENCE: SOUTH 48 DEGREES 22 MINUTES 09 SECONDS EAST, A DISTANCE OF 846.44 FEET TO A SET 1/2" IRON ROD WITH CAP FOR THE MOST EASTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE: SOUTH 62 DEGREES 27 MINUTES 02 SECONDS WEST, A DISTANCE OF 42.80 FEET TO A SET 1/2" IRON ROD WITH CAP FOR THE MOST SOUTHERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE: NORTH 48 DEGREES 22 MINUTES 09 SECONDS WEST, ALONG A WESTERLY LIINE OF THE SAID 725.31 ACRE TRACT A DISTANCE OF 831.31 FEET TO A FOUND FENCE POST AND ANGLE POINT OF THE HEREIN DESCRIBED TRACT MARKING THE MOST NORTHERLY CORNER OF A CALLED 1.89 ACRE TRACT DESCRIBED IN DEED TO S.A. LUZA BRAGG RECORDED IN VOLUME 406, PAGE 842 DEED RECORDS BRAZOS COUNTY, TEXAS AND THE MOST EASTERLY CORNER OF A CALLED 133.016 ACRE TRACT DESCRIBED IN DEED

TO CITY OF BRYAN RECORDED IN VOLUME 291, PAGE 576 DEED RECORDS
BRAZOS COUNTY, TEXAS;

THENCE: NORTH 48 DEGREES 08 MINUTES 56 SECONDS WEST, ALONG THE
NORTHEAST LINE OF THE SAID 133.016 ACRE TRACT A DISTANCE OF 376.44
FEET TO THE **PLACE OF BEGINNING** AND CONTAINING WITHIN THESE CALLS
48,314 SQUARE FEET OR 1.1091 ACRES OF LAND.

**TRACTS 1 AND 3, COMPRISE THE FEE LANDS AND CONTAIN 100 ACRES OF
LAND.**

Exhibit B

**STATE OF TEXAS
COUNTY OF BRAZOS
L. McLAUGHLIN SURVEY, ABSTRACT NO. 38**

TRACT 2 (40 FOOT WIDE EASEMENT)

Being 1.7506 acres (76,255 square feet), more or less, out of and a part of the following tracts lying and being situated in the L. McLaughlin Survey, Abstract No. 38, Brazos County, Texas: 100.805 acres as described in deed to The City of Bryan, recorded in Volume 296, Page 216, Deed Records of Brazos County, Texas AND 12.748 acres as described in deed to The City of Bryan dba Bryan Texas Utilities, recorded in Volume 11504, Page 293, Official Records of Brazos County, Texas.

AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND 1/2" IRON ROD WITH CAP MARKING THE MOST SOUTHERLY CORNER OF THE SAID 12.748 ACRE TRACT AND THE MOST WESTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE: NORTH 48 DEGREES 08 MINUTES 56 SECONDS WEST, WITH THE NORTHWEST LINE OF THE SAID 12.748 ACRE TRACT, AT A DISTANCE OF 717.15 FEET PASS A FOUND 1/2" IRON ROD FOR THE MOST WESTERLY CORNER OF THE SAID 12.748 ACRE TRACT AND THE MOST SOUTHERLY CORNER OF THE SAID 100.805 ACRE TRACT AND CONTINUING FOR A TOTAL DISTANCE OF 1898.64 FEET TO A SET 1/2" IRON ROD WITH CAP FOR THE MOST WESTERLY CORNER OF THE HEREIN DESCRIBED TRACT SET IN THE SOUTHEAST LINE OF A 70' PRIVATE ACCESS EASEMENT RECORDED IN VOLUME 11505, PAGE 22 OFFICIAL RECORDS BRAZOS COUNTY, TEXAS;

THENCE: NORTH 40 DEGREES 55 MINUTES 11 SECONDS EAST, WITH THE SOUTHEAST LINE OF THE SAID 70' PRIVATE ACCESS EASEMENT, A DISTANCE OF 40.00 FEET TO A SET 1/2" IRON ROD WITH CAP FOR THE MOST NORTHERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE: SOUTH 48 DEGREES 08 MINUTES 56 SECONDS WEST, AT A DISTANCE OF 1182.11 FEET PASS A SET 1/2" IRON ROD WITH CAP IN THE COMMON LINE BETWEEN THE SAID 100.805 ACRE TRACT AND THE SAID 12.748 ACRE TRACT AND CONTINUING FOR A TOTAL DISTANCE OF 1914.12 FEET TO A SET 1/2" IRON ROD FOR THE MOST EASTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE: SOUTH 62 DEGREES 10 MINUTES 53 SECONDS WEST, A DISTANCE OF 42.66 FEET TO THE PLACE OF BEGINNING AND CONTAINING WITHIN THESE CALLS