

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> May 12, 2015		<b>DATE SUBMITTED:</b> April 30, 2015	
<b>DEPARTMENT OF ORIGIN:</b> CMO		<b>SUBMITTED BY:</b> Joey Dunn	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>	<b>STRATEGIC INITIATIVE:</b>
<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 type="checkbox"/> STATUTORY		<input type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input checked="" type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
<b>AGENDA ITEM DESCRIPTION:</b> Consideration of a resolution establishing a program providing for the placement of private donor engraved recognition bricks in designated areas of the public rights-of-way in Downtown Bryan, and finding that the Downtown Bryan Association (DBA) and its "Save the Queen" historic renovation project satisfy the requirements of the program.			
<b>SUMMARY STATEMENT:</b> At the City Council workshop session on March 10, 2015, representatives of the DBA presented a proposal for an engraved brick fundraising campaign for the Queen Theatre. The proposed resolution creates a program (attached as Exhibit "A" to the resolution) for qualifying non-profit organizations that serve a civic purpose to apply to the City for the replacement of bricks along designated existing sidewalks within public rights-of-way in Downtown Bryan with private donor engraved recognition bricks, for the promotion of historic renovation projects in Downtown Bryan or other areas where grandfathered buildings of great historical significance are located immediately adjacent to public rights-of-way. The resolution makes findings that the DBA's "Save the Queen" historic project satisfies all requirements of the program. As outlined in the attached "Brick Paver Fundraiser to benefit The Queen" summary document, DBA requests approval to conduct their brick paver fundraising campaign along the sidewalk in front of The Queen, as well as the center median within Main Street from 26 <sup>th</sup> Street to 27 <sup>th</sup> Street. <b>In accordance with direction received from City Council, this initial approval allows DBA to conduct their initial phase of the brick paver fundraising campaign only along the portion of sidewalk in the right-of-way of Main Street directly in front of the Queen Theatre.</b> DBA will be allowed to replace existing bricks with engraved bricks installed at the direction and discretion of the City Manager or his designee, who will approve the specific location of the bricks, the number of bricks to be installed in each location, types of engraved bricks and vendors to be used, brick colors, allowable brick design, content and dimensions of engraved lettering on the bricks, brick removal method, brick installation method, and final inspection of reinstalled bricks to ensure pedestrian safety.			
<b>STAFF ANALYSIS AND RECOMMENDATION:</b> Staff recommends approval of the brick paver program to allow DBA to conduct this fundraiser on behalf of the "Save the Queen" renovation project. The historic Queen Theatre was built in 1939, and is often referred to as the "crown jewel of Downtown Bryan." The Queen is a building of great historical significance to the City of Bryan and has served as a major catalyst to the revitalization of Downtown Bryan. This program allows for the replacement of existing "ribbon" brick courses with new engraved bricks reinstalled at the direction and discretion of the City.			
<b>OPTIONS (In Suggested Order of Staff Preference):</b>			
1. Approve resolution			
2. Modify and then approve the resolution, which may require consideration at a future City Council meeting			

3. Deny resolution

**ATTACHMENTS:**

1. Proposed resolution
2. Exhibit "A": Program for the Placement of Private Donor Recognition Bricks in Public Right-of-Way for Non-Profit Historic Renovation Projects. Exhibit "B": Indemnification and Release Agreement.
3. Proposal Summary from DBA ("Brick Paver Fundraiser to benefit The Queen") (separate pdf file)

**FUNDING SOURCE:** Costs associated with the program will be paid for by the DBA.

**APPROVALS:**

**APPROVED FOR SUBMITTAL: CITY MANAGER** Kean Register, 05-04-2015

**APPROVED FOR SUBMITTAL: CITY ATTORNEY** Janis K. Hampton, 05-05-2015

Revised 05/2013

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE BRYAN CITY COUNCIL ESTABLISHING A PROGRAM PROVIDING FOR THE PLACEMENT OF ENGRAVED PRIVATE DONOR RECOGNITION BRICKS AT THE DIRECTION OF THE CITY IN DESIGNATED AREAS OF THE PUBLIC RIGHTS-OF-WAY AND ON PUBLIC PROPERTY IN DOWNTOWN BRYAN AND IN OTHER SIMILARLY SITUATED AREAS OF THE CITY, FOR THE PURPOSE OF PROMOTING THE REVITALIZATION OF DOWNTOWN BRYAN AND THE PRESERVATION OF HISTORICALLY SIGNIFICANT BUILDINGS AND STRUCTURES WITHIN THE CITY BY RECOGNIZING THE DONORS TO QUALIFYING HISTORIC RENOVATION PROJECTS ; ESTABLISHING THE CRITERIA AND PROCEDURES FOR THE PROGRAM; FINDING THE DOWNTOWN BRYAN ASSOCIATION'S "SAVE THE QUEEN" HISTORIC RENOVATION PROJECT IS A QUALIFYING PROJECT; APPROVING THE LOCATION AND NUMBER OF DONOR RECOGNITION BRICKS REQUESTED BY THE DBA; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, it is a goal of the City Council to encourage historic preservation and to promote the economic and social vitality of Historic Downtown Bryan; and

**WHEREAS**, Downtown Bryan is unique in that legally non-conforming, historically significant buildings are constructed on the property line immediately adjacent to the public rights-of-way; and

**WHEREAS**, it is the intent of the City Council in creating this program to encourage and promote the revitalization of downtown Bryan and the preservation of historically significant buildings in downtown , and in other similarly situated areas of the City, by recognizing the historic renovation projects of qualifying non-profit organizations and the donors of the projects through the placement of engraved private donor recognition bricks, in designated areas of the public rights-of-way and on public property, as directed by the City. The donor recognition bricks shall be paid for by the non-profit organization from private donations to the project received by the organization through its own brick paver fundraising campaign; and

**WHEREAS**, the program is designed to stimulate improvements to existing historically significant buildings in Historic Downtown Bryan and in other similarly situated areas of the City, to promote tourism, to enhance the physical appearance and the economic vitality of Downtown Bryan, and to promote historical revitalization efforts; and

**WHEREAS**, the City Council finds the program provides a public benefit to the City and serves a governmental purpose by supporting community efforts to preserve our historic and cultural resources and ensure the long-term viability of the downtown area as a center of commerce, a source of civic activity and pride, and a resource to attract new businesses, residents and tourists to the City; and

**WHEREAS**, the Bryan City Council finds that the Downtown Bryan Association is a non-profit organization that serves a civic purpose; and

**WHEREAS**, the Bryan City Council finds that the Queen Theater, built in 1939 and currently owned by the Downtown Bryan Association, is a building of great historical significance to the City of Bryan; and

**WHEREAS**, the Queen Theater has been a catalyst to the redevelopment of Historic Downtown Bryan.

**NOW THEREFORE, BE IT RESOLVED** by the City of Bryan City Council that:

1. The foregoing recitals are incorporated into this Resolution by reference as findings of fact as if expressly set forth herein.

2. The City Council of the City of Bryan, Texas approves and adopts the program, attached hereto as Exhibit "A" ( hereinafter "the Program"), for the placement of engraved, private donor recognition bricks in designated areas of the public rights-of-way and on public property at the direction and discretion of the City for the promotion of historic renovation projects of qualifying non-profit organizations in the Downtown North (DT-N), Downtown South (DT-S), and in all other zoning districts where legally non-conforming buildings of great historical significance are constructed on the property line immediately adjacent to the public rights-of-way.

3. The City Council finds the Downtown Bryan Association's "Save the Queen" historic renovation project and fundraising campaign is a qualifying project under the Program.

4. The City Council approves the placement of engraved donor recognition bricks in the area in front of the Queen Theater and immediately adjacent to the roadway, and authorizes the City Manager to enter into an agreement with the DBA, in a form approved by the City Attorney, for the removal of the existing bricks and the installation of the new, donor recognition bricks under the terms of the Program.

5. This resolution shall become effective immediately upon adoption.

Approved and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**ATTEST:**

**CITY OF BRYAN:**

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

\_\_\_\_\_  
Jason P. Bienski, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Janis K. Hampton, City Attorney

## **EXHIBIT “A”**

### **Program For The Placement of Private Donor Recognition Bricks In Public Rights-of –Way and on Public Property for Qualifying Historic Renovation Projects By Non-Profit Organizations.**

#### **Qualifying Entities.**

1. Only non-profit organizations that serve a civic purpose are eligible to participate in the program.
2. The building to be renovated must have historical significance either from an architectural point of view or a historical use or event that would tend to attract tourists to the buildings location.
3. The building must be located in either the (DT-N) Downtown North or (DT-S) Downtown South zoning districts, and may be allowed in all other zoning districts where a legally non-conforming building of great historic significance to the city, as determined by the city council, is constructed on the property line immediately adjacent to the public right-of-way.
4. The non-profit organization must offer the donor recognition bricks pursuant to a fundraising campaign open to the public for the purpose of raising funds for the renovation of a building owned by the non-profit organization and that is determined by the City Council to be of great historic significance to the City of Bryan.
5. The placement of private donor recognition bricks in the public rights-of-way and on private property shall be allowed only at the direction of the City.

#### **Program Guidelines and Procedures.**

Approved qualifying non-profit organizations wishing to participate in the program must sign an agreement consenting to and agreeing to comply with the following terms of the program:

1. The non-profit organization will be responsible for 100% of the costs of the bricks and would be allowed to engrave the bricks with (i) the name of the historic building which is the subject of the preservation project and may include the historic building’s logo or (ii) the name of the fundraising event for the preservation project (subject to approval by the City), and (iii) the name of the donor. For the purposes of this Program, a donor is an individual or legal entity who acts as a benefactor by making a monetary contribution to the fundraising campaign. Donations may be made in the name of third parties. No advertising or promotion of a commercial business, or other statements or sentiments will be allowed.
2. The City will administer the program and shall approve the types of bricks, the vendor, the number of bricks, color, size, the allowable design, engraving dimensions for the bricks and shall ensure the content is limited to names, only. Bricks must be appropriate to Downtown motif. The non-profit agency shall be responsible for purchasing the bricks from the approved vendor and supplying the bricks to the City, and removing existing bricks and installing the new donor recognition bricks.
3. The non-profit organization shall submit a written request to the Planning Department identifying the building and its historic significance, along with a description or diagram of the proposed location for brick placement and whether there are currently bricks installed at that location, the proposed number of donor recognition bricks to be installed, color, vendor, engraving dimensions

and proposed layout.

4. City Council approval of the applicant's proposal is required for the project to be included in the Program. The number of bricks to be installed and location where the bricks will be installed must be approved by the city council by Resolution. The City shall direct the placement of the bricks, or may determine no appropriate location is available, at its sole discretion.
5. The Non-profit organization will be responsible for the removal of existing bricks and the installation of the donor recognition bricks. If the non-profit organization intends to perform any of the work itself, it will be required to maintain general liability insurance in an amount of \$500,000 per incident. The City shall be named as an additional insured on the policy. If work is performed on the sidewalks within the public rights-of-way, all abutting property owners within the stretch of sidewalk affected shall also be named as additional insureds. If the non-profit organization contracts the work, the contractor must satisfy the same insurance requirements and must provide proof of insurance coverage to the city. Any contractor retained by the non-profit organization to perform work on public property or in the public rights-of-way must be approved by the city manager.
6. The City of Bryan may remove the donor recognition bricks at any time and for any reason, and shall not be responsible for reimbursing the nonprofit organization or the donor for the cost of the engraved bricks. The bricks become the property of the city once the bricks are installed. Brick location is not guaranteed.
7. The non-profit organization is required to notify all potential donors that brick location is not guaranteed, if the City planning vision or infrastructure needs dictate removal. All potential donors must be notified in writing by the non-profit organization, that the city, at any time and for any reason may remove the donor bricks. The City may relocate the donor bricks, but shall not be required to do so, and in the event the donor's brick is removed by the City, the donor shall not be entitled to a reimbursement of its donation or a reimbursement of the cost of the engraved brick.
8. The City may replace any damaged or missing bricks with an ordinary brick. The cost of an engraved replacement brick will be the sole expense of the non-profit organization.
9. The non-profit organization will be solely responsible for the engraving and the correctly spelling of the names on the bricks.
10. The non-profit organization shall acknowledge full responsibility for any liabilities arising from its use of the public rights-of-way and public property and shall execute a release, indemnification and hold harmless agreement in favor of the City, its officials, officers, in the form attached hereto as Exhibit "B".
11. All proceeds received by the non-profit organization from the offer of the donor recognition bricks shall be used solely for the historic renovation project, to include the design, engineering costs, materials, labor and other costs of the construction of the renovation project.
12. The placement of the bricks in the public rights-of way and on public property must comply with all federal and state regulations. No donor recognition bricks may be placed within a Texas Department of Transportation (TxDOT) right-of-way unless express permission is obtained from that authority.
13. The non-profit organization agrees to allow the City's internal auditor access to the non-profit organization's books and records upon reasonable notice during ordinary business hours to

determine whether all proceeds received from the offer of the donor recognition bricks have gone to the renovation of the historic building or structure, as required by the terms of the program.

14. The program is subject to termination by the City at any time and for any reason.

**EXHIBIT "B"**

**RELEASE, INDEMNIFICATION AND HOLD HARMLESS AGREEMENT**

\_\_\_\_\_ (hereinafter referred to as the "Releasor") does hereby release and shall defend, indemnify and hold harmless the City of Bryan, its respective council members, officials, employees, contractors, and agents and its successors, and assigns (collectively referred to as the "Indemnitees") from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising (whether before or after termination of the Program) out of or in connection with the performance of its duties under this program to remove and install bricks in the public rights-of-way permit or on public property, or the acts or omissions of the Releasor or any of its suppliers, contractors or subcontractors, the directors, officers, employees, and agents of each of the foregoing, or anyone acting on the Releasor's behalf in connection with its removal and installation of bricks in the public rights-of-way and on public property. To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless shall apply regardless of any act, omission, fault, negligence or strict liability of the Indemnities; provided, however, that the Releasor shall not be required to so indemnify any Indemnatee(s) against any claim, loss, cost, liability, damage or expense to the extent the same is caused by or results from the negligence of any Indemnatee(s). The City of Bryan is willing to grant its permission only in consideration of and in reliance upon such release, indemnity and hold harmless. Consequently, such release, indemnity and hold harmless shall be construed broadly in favor of the Indemnitees.

DATED THIS DAY OF \_\_\_\_\_, 20\_\_ .

\_\_\_\_\_  
SIGNATURE OF AUTHORIZED REPRESENTATIVE  
OF THE NON-PROFIT ORGANIZATION.

STATE OF TEXAS }  
COUNTY OF BRAZOS }

On this day personally appeared before me \_\_\_\_\_, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that \_\_\_\_\_ signed the same as a free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS,

MY COMMISSION EXPIRES: