

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: October 13, 2015		DATE SUBMITTED: September 25, 2015	
DEPARTMENT OF ORIGIN: Economic Dev		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 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 an Interlocal Agreement (ILA) between the City of Bryan, Brazos County, and the City of Bryan-Brazos County Economic Development Foundation (BBCEDF) that provides funding in the not-to-exceed amount of \$3,000,000 from the City of Bryan for operational costs and purchase of property in Fiscal Year 2016.			
SUMMARY STATEMENT: The BBCEDF is the entity responsible for the Texas Triangle Park (TTP). The TTP has two phases. Phase I consists of 191 acres of the Wheeler Property of which the BBCEDF owns. The BBCEDF has sold 25 acres out of Phase I leaving 166 acres available for development. Phase II consists of 724 acres of the Diebel tract. The BBCEDF has sold 272 acres in Phase II. The BBCEDF does not own all of Phase II at this time but does have an option to purchase the remainder of the land in Phase II. The remaining acreage in Phase II under option is 452 acres out of 724 acres. The total acreage remaining in the TTP, including both Phase I and Phase II, is 618 acres.			
<p>The City of Bryan's adopted Fiscal Year 2016 budget includes funding in a not to exceed amount of \$3,000,000.00 for the BBCEDF. Below is a breakdown of how the funds will be used:</p> <ul style="list-style-type: none"> • \$80,150.00 will be used for the operation budget • \$5,385.63 will be used to pay the October monthly payment for the Wheeler note (Phase I) • \$559,404.68 will be used to pay off the seller financed purchase of the Wheeler note • \$2,012,591.00 will be used to purchase the remainder of the Phase II property • \$342,468.69 will be allocated for closing costs associated with the purchase of the Phase II property. Only actual costs will be paid from actual invoices. 			
<p>Brazos County has approved \$3,200,000.00 to fund the BBCEDF. Below is a breakdown of how the funds will be used:</p> <ul style="list-style-type: none"> • \$80,150.00 will be used for the operation budget • \$7,538.84 will be used for the October monthly note for the Wheeler Tract (Phase I) • \$783,059.15 will be used for the pay off the seller financed purchase of the Wheeler note • \$2,012,591.00 will be used to purchase the remainder of the Phase II property • \$316,661.01 will be allocated for closing costs associated with the purchase of the Phase II property. Only actual costs will be paid from actual invoices. 			
<p>This is the sixth year the City of Bryan and Brazos County have allocated dollars for the operating budget. The operating money will be used for expenses related to the Texas Triangle Park. These expenses include auditing, accounting, marketing, signage, and insurance. The non-operational portion of the budget will be used to pay off the owner financed purchase of the Wheeler property and purchase the remainder of the Diebel property. The BBCEDF</p>			

Board approved their budget for FY2016 earlier this year.

The BBCEDF Board is comprised of the City of Bryan's Mayor, Brazos County Judge, three (3) members appointed by the Bryan City Council, three (3) members appointed by Brazos County, and one (1) member appointed by the Twin City Endowment.

STAFF ANALYSIS AND RECOMMENDATION: While the funds are budgeted for the purchase of the TTP, these dollars could be used for other needs in the city. However, by approving the ILA the BBCEDF will become the sole owner of the vacant property located in the Texas Triangle Park. This acquisition will allow the BBCEDF to continue assisting in the City of Bryan's economic development interests and allows for the continuation of the development of Texas Triangle Park. Staff recommends the City Council approve the ILA that funds the BBCEDF to further the City of Bryan's economic development interests. The BBCEDF Board approved the FY2016 budget earlier this year.

OPTIONS (In Suggested Order of Staff Preference):

1. Approve the ILA that provides funding for the BBCEDF's Fiscal Year 2016 Annual Budget contingent of Brazos County approving their portion.
2. Do not approve the ILA that provides funding for the BBCEDF and provide direction to staff.

ATTACHMENTS:

1. Interlocal Agreement that provides funding for FY2016 to the BBCEDF (attached to this CAF)
2. FY2016 BBCEDF Budget, including historical and forecasting information (Excel spreadsheet)

FUNDING SOURCE: General Fund (as budgeted)

APPROVALS: Joey Dunn, 9-30-15; Hugh R. Walker, 09/30/2015

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 10-01-2015

APPROVED FOR SUBMITTAL: CITY ATTORNEY

STATE OF TEXAS §

COUNTY OF BRAZOS §

**INTERLOCAL AGREEMENT BETWEEN
CITY OF BRYAN, TEXAS
BRAZOS COUNTY, TEXAS; AND
CITY OF BRYAN AND BRAZOS COUNTY ECONOMIC DEVELOPMENT FOUNDATION,
INC.**

THIS INTERLOCAL AGREEMENT is entered into by and between the City of Bryan (“City”), a Texas home-rule municipal corporation, Brazos County (“County”), a political subdivision of the State of Texas, and the City of Bryan and Brazos County Economic Development Foundation, Inc. (“BBCEDF”), a Texas Transportation Code local government corporation (“Agreement”), and is effective for all purposes as of October 1, 2015 (“Effective Date”).

WHEREAS, the respective participating governments (the “Parties”) are authorized by the Interlocal Cooperation Act, LOC. GOV’T CODE ANN. § 791, to enter into an agreement to administer a program for local economic development; and

WHEREAS, in 2009, the City coordinated with the County with regards to the creation of the BBCEDF for the purpose of promoting the development of an industrial park in an unincorporated area of Brazos County, just outside the city limits; and

WHEREAS, the City and the County have shared equally in the responsibilities associated with the formation, operation, and funding of the BBCEDF; and

WHEREAS, the BBCEDF entered into several contracts for the purchase of real estate that will be developed, marketed, and governed as the Texas Triangle Industrial Park and Inland Port (“Park”); and

WHEREAS, the County wishes to contract with BBCEDF as its agent pursuant to TEX. LOC. GOV’T CODE ANN. § 381.004 to administer the County’s program for local economic development in the Park; and

WHEREAS, the City wishes to contract with BBCEDF as its agent pursuant to TEX. LOC. GOV’T CODE ANN. § 380.001 to administer the City’s program for local economic development in the Park; and

WHEREAS, the BBCEDF has contracted with various vendors to provide services related to the development, marketing, and sale of the land in the Park, and has incurred other operational expenses set forth in its annual budget; and

WHEREAS, the City and the County have determined that it is in the best interests of their citizens that the BBCEDF be supported in the development of the Park because the economic impact of new jobs, increased property value, and additional utility revenue will benefit the local economy.

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

A. Annual Budget

1. BBCEDF adopts an annual budget showing reasonably anticipated revenue and expenses for each year. The annual budget is subdivided into an operational component and a real property purchase component.
2. Once a budget has been approved by the BBCEDF Board of directors it will be submitted to the Brazos County Commissioner's Court and the Bryan City Council for review and approval. The City and County agree to make an annual lump sum payment sufficient to cover respective portions of the Operational Costs from the annual budget within thirty (30) days following approval of the budget by both governing bodies. Each governmental entity's obligation to make a payment is conditional upon the approval of the budget by the governing body of each governmental entity.

B. Funding

3. The City agrees to loan an amount not to exceed \$3,000,000.00 and the County agrees to loan an amount not to exceed \$3,200,000.00 to satisfy their respective obligations under this Agreement.

C. Operational Costs

4. The BBCEDF budget will include the operational costs associated with the maintenance, development, and marketing of the Park. The operational budget may be offset by any grants, gifts, interest income, or other unencumbered revenue received by the BBCEDF. The operational cost budget for the 2015-2016 Fiscal year totals \$160,300.
5. The City and the County will each be required to pay fifty percent (50%) of the operational costs of the BBCEDF which are not offset by grants, gifts, interest income, or other unencumbered revenue. The City and the County will tender this payment within thirty (30) days of the execution of this Agreement by all parties.

D. Real Property Purchase and Financing Costs

6. The BBCEDF budget will include \$1,342,463.83 associated with the payoff of the seller financed purchase of the real property that constitutes Phase I of the Park, also known as the Wheeler tract. The amount is split per the original terms of the Wheeler note, with the City paying forty-one and sixty-seven hundredths percent (41.67%) which is \$559,404.68 and County paying fifty-eight and thirty-three hundredths percent (58.33%) which is \$783,059.15. In order to avoid a monthly payment due in November of 2015, the City and the County will tender this payment within five (5) business days of execution of this Agreement by all parties, so that the BBCEDF can pay off the Wheeler note in October of 2015. In addition to the foregoing, a monthly payment of \$12,924.47 is due on October 15, 2015. The City will pay \$5,385.63 and the County will pay \$7,538.84 in time for the BBCEDF to make that payment.
7. The budget will also include approximately \$4,020,956.66, depending on the final amount of acreage, associated with the purchase of the real property that constitutes Phase II of the Park, also known as the Diebel tract, which is split between the City and the County evenly which would be \$2,010,478.33 each. In addition, the City and the County will need to pay fifty percent (50%) each of the costs of closing, which will include costs of surveys, title insurance, filing fees, etc. The City and the County will tender a payment covering the purchase price and closing costs in time for the closing of the purchase of the Diebel tract. The BBCEDF Treasurer will inform the City and the County of the exact amount owed (split evenly between both entities) as well as the date and time of the closing

on the Diebel tract. Notice should be provided not less than ten (10) days prior to such closing so that the City and the County can transfer funds for their respective portions to the BBCEDF.

E. Reimbursement to City

8. The BBCEDF owes the City \$407,416.80 pursuant to the Reimbursement Agreement dated December 19, 2013. The City and the County agree to be responsible for fifty percent (50%) of that debt. The County will pay \$203,708.40 to the BBCEDF, and the BBCEDF will in turn pay that same amount to the City. The City will deem its portion paid upon receipt for the payment from the BBCEDF and the obligations of the Reimbursement Agreement shall be satisfied.

F. Repayment Terms

9. The amounts funded by the City and the County to the BBCEDF constitute a loan of funds to be repaid by the unencumbered proceeds of future land sales (or other revenue of the BBCEDF). In accordance with the terms of the BBCEDF By-laws, the entities that created the BBCEDF are entitled to an equal share of the revenue of the BBCEDF. The BBCEDF agrees that with the exception of the Axis Pipe and Tube, Inc. Development Agreement (which encumbers future revenue as Development Credits) there shall be no further encumbrance of future revenues without getting the express approval of the governing bodies of the City and the County.

G. Miscellaneous

10. Term. This Agreement shall continue in force for one (1) year from the Effective Date, or until the real property constituting the Park has been sold or transferred to another entity, the debts and obligations of the BBCEDF have been paid, and the BBCEDF dissolves pursuant to its governing documents and state law, whichever occurs first.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.

16. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
17. Interpretation. The parties acknowledge that each has had the assistance of counsel in the review of this agreement, no one party is to be deemed the author of the agreement, and ambiguities shall not be resolved against any party. The caption headings of this Agreement are for reference only and shall not affect its interpretation. This Agreement is entered into for the exclusive benefit of the parties hereto and not for any other third parties. Nothing in this Agreement, expressed or implied, is intended to confer upon any person or entity not a party to this Agreement any rights or remedies under this Agreement.
18. 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.

Signatures to follow

Executed this ____ day of _____, 2015.

CITY OF BRYAN:

ATTEST:

Jason P. Bienski, Mayor

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

BRAZOS COUNTY:

APPROVED AS TO FORM:

Duane Peters, County Judge

Bill Ballard, Asst. County Attorney

BRYAN-BRAZOS COUNTY ECONOMIC DEVELOPMENT FOUNDATION, INC.:

D. Mark Conlee, Vice- President