

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> November 12, 2013		<b>DATE SUBMITTED:</b> October 25, 2013	
<b>DEPARTMENT OF ORIGIN:</b> Eco Development		<b>SUBMITTED BY:</b> Kevin Russell	
<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 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
<b>AGENDA ITEM DESCRIPTION:</b> Consider approving a first amended reimbursement agreement between the City of Bryan Brazos County Economic Development Foundation, Inc. (BBCEDF) and the City of Bryan.			
<b>SUMMARY STATEMENT:</b> This proposed agreement is an amendment to the original reimbursement agreement that more clearly identifies all expenses incurred by the City on the BBCEDF's behalf, outlining the plan to incorporate those expenses in the sale price for future prospects, and identifying a trigger for when the City must be reimbursed. The City is agreeing to contribute funds for certain infrastructure projects to enable the Texas Triangle Park to achieve a "development ready" status. These infrastructure projects include:			
<ol style="list-style-type: none"> <li>1. construction of a sewer line extension at a cost of up to \$173,740.00, based on actual invoices from the contractor;</li> <li>2. construction of the rail spur serving the Park, limited to the estimated \$246,215.51 difference between the bid price for cost of construction and the available grant/match funds;</li> <li>3. construction of the two driveways providing the Gunler tract with access to Texas State Highway 6 (feeder road); not to exceed \$49,000.00, which will be amended to reflect actual invoiced costs from the contractor;</li> <li>4. agreement with Atmos Energy to provide natural gas service to the Park; \$305,256.00;</li> <li>5. contribute up to \$1,200,000.00 to the Foundation as Development Credits (as that term is defined in the Economic Development Agreement between the Foundation and Axis).</li> </ol>			
<p>The BBCEDF is agreeing to engage an engineering firm to calculate the price per square foot that future land must be sold in order to ensure that the past and future expenses of the BBCEDF are paid off. The BBCEDF is further agreeing that when the City incurs expenses (i.e. makes payments) on its behalf, the City can submit invoices along with a request for reimbursement. Obligations of the BBCEDF will be paid in the order in which they are incurred, so an order of priority is established based on the age of the obligation. The City will be paid back as funds are available, however, when two-thirds of the property in Texas Triangle Park has been sold (specifically 610.75 out of the 916.13 acres in the Wheeler and Diebel tracts) the obligations under this agreement must be repaid regardless. The deadline will be ninety (90) days following approval of the BBCEDF's next fiscal year's budget. During the creation of the next fiscal year's BBCEDF budget, the BBCEDF will request that the City and the County each contribute funds equal to their one-half of the outstanding obligations of the BBCEDF under this Agreement.</p>			
The BBCEDF and Brazos County also will consider approval of this amended agreement in November.			
<b>STAFF ANALYSIS AND RECOMMENDATION:</b> Staff recommends approval of this amended agreement as it sets a benchmark where the City of Bryan will be paid back for initial expenses incurred for development of the			

Texas Triangle Park. Future sales of land in the Texas Triangle Park will be priced at a level to include an amount that will allow the BBCEDF the ability to reimburse the City of Bryan from future land sales proceeds.

**OPTIONS (In Suggested Order of Staff Preference):**

- Approve amended agreement
- Modify amended agreement, which may require future City Council action and negotiation with Brazos County
- Deny amended agreement

**ATTACHMENTS:** Proposed amended agreement

**FUNDING SOURCE:** General Fund, Water Fund, Sewer Fund

**APPROVALS:** Joey Dunn, 10-29-13; Hugh R. Walker, 10/30/2013

**APPROVED FOR SUBMITTAL: CITY MANAGER** Kean Register, 10-31-2013

**APPROVED FOR SUBMITTAL: CITY ATTORNEY**

Revised 05/2013

STATE OF TEXAS §

COUNTY OF BRAZOS §

**FIRST AMENDED REIMBURSEMENT AGREEMENT BETWEEN  
CITY OF BRYAN AND BRAZOS COUNTY ECONOMIC DEVELOPMENT FOUNDATION,  
BRAZOS COUNTY, AND THE CITY OF BRYAN, TEXAS**

This First Amended Reimbursement Agreement (“Agreement”) is entered into on this the \_\_ day of \_\_\_\_\_, 2013, by and between the City of Bryan Brazos County Economic Development Foundation, Inc. (“Foundation”) a Texas Transportation Code local government corporation and the City of Bryan, Texas (“City”) a Texas home-rule municipality, and Brazos County (“County”) a political subdivision of the State of Texas.

**WHEREAS**, the Foundation owns property in the extraterritorial jurisdiction of the City which is part of the Texas Triangle Park and Inland Port “Park”, and industrial park that is being established as part of an economic development program benefitting the City and the surrounding community; and

**WHEREAS**, the City has been cooperating with the Foundation in the construction, or facilitation of construction, of infrastructure that will service the park, including but not limited to rail, water, electrical, gas, and sewer service; and

**WHEREAS**, as a part of the financing arrangement for the beginning of the Park, the City agreed to provide \$1,000,000.00 in matching funds as part of a U.S. Economic Development Administration grant, which will provide an additional \$1,500,000.00 for the construction of the rail spur and a water line and the cost of the rail spur has exceeded the available grant and matching funds; and

**WHEREAS**, the Foundation has sold property within the Park to Gunler, Inc. for the construction of a food-oil bottling and paper processing plant, and the Foundation agreed to provide Gunler with sewer service, driveway access to State Highway 6, access to a rail spur, and access to natural gas; and

**WHEREAS**, the Foundation is in the process of selling property within the Park to Axis Pipe and Tube, Inc. (“Axis”) for the construction of a manufacturing plant that constructs galvanized steel piping for energy products, and the Foundation has entered into an Economic Development Agreement to provide \$7,150,000.00 in Development Credits for construction of certain infrastructure projects but the funds from the sale of the property will not cover that obligation and the Foundation would like the City to contribute up to \$1,200,000.00 in exchange for reimbursement at a future date; and

**WHEREAS**, the Foundation does not have sufficient revenue from current land sales to meet the above obligations and the City is willing to cover the costs in the interim in exchange for an agreement to reimburse the City as funds become available; and

**WHEREAS**, on December 13, 2012 the Foundation and the City entered into the first Agreement for Reimbursement covering some of the above costs and the parties desire to amend the agreement to add new costs and revise the conditions for repayment; and

**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**, the City Council has adopted a resolution creating a Chapter 380 program to enable the City to enter into this agreement, and the City Council determines that it is in the best interests of the citizens of Bryan to facilitate the continued growth and expansion of the Texas Triangle Park; and

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

1. The City hereby agrees to continue to finance and direct the construction of the sewer line extension to serve the Gunler tract. The estimated cost of construction is \$173,740.00 based on actual invoices from the contractor.
2. The City hereby agrees to continue to finance and direct the construction of the rail spur serving the Park. This includes the \$246,215.51 difference between the bid price for cost of construction and the available grant/match funds. This amount will be amended to reflect actual invoiced costs from the contractor.
3. The City hereby agrees to continue to finance and direct the construction of the two driveways providing the Gunler tract with access to Texas State Highway 6 (feeder road). This includes a not to exceed amount of \$49,000.00 which will be amended to reflect actual invoiced costs from the contractor.
4. The City hereby agrees to continue to work with Atmos Energy pursuant to their agreement to provide natural gas service to the Park, and specifically to the Gunler tract, in exchange for reimbursement of the \$305,256.00 cost to Atmos Energy.
5. The City hereby agrees to contribute up to \$1,200,000.00 to the Foundation as Development Credits (as that term is defined in the Economic Development Agreement between the Foundation and Axis). This amount will be amended to reflect actual amounts required to cover the difference between demands for Development Credits and funds available from the Foundation. The Foundation agrees that it will not request funds from the City under this section until it has exhausted revenue from other sources.
6. The Foundation agrees to reimburse the City for the above enumerated costs, as amended if applicable. The Foundation further agrees that the above enumerated costs will be built into the model for determining the sales price for the land. When revenue becomes available, the City may request reimbursement as outlined below. With regards to availability of revenue, the Foundation agrees to reimburse the City and/or County in order of priority based on the age of the obligation being reimbursed. The age of the obligation is based on the date that the City or County expended the funds that are being reimbursed.

7. The City agrees to request payment by submitting sufficient documentation, as reasonably determined by the Foundation, of the actual costs associated with the construction and payment for same. Documentation includes excerpts of relevant portions of contracts, change orders, invoices, etc.
8. The parties agree that when two-thirds of the overall property in Texas Triangle Park has been sold (more specifically 610.75 acres out of the 916.13 acres in the Wheeler and Diebel tracts) the obligations under this agreement must be repaid by the Foundation within ninety (90) days following approval of the Foundation's next fiscal year's budget. If the Foundation does not have sufficient funds to repay the obligations, then during the creation of the Foundation's budget for the subsequent year, the Foundation will request that the City and the County each contribute funds equal to their one-half of the outstanding obligations of the Foundation under this Agreement.
9. 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.
10. 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.
11. Sole Agreement. This Agreement repeals and replaces the original agreement entered into between the parties on December 13, 2012. 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.
12. 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.
13. 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.
14. No Waiver. A party's failure to take action to enforce this Agreement in the event of the other party'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 the non-breaching party from taking action to enforce this Agreement on subsequent occasions.
15. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

**CITY OF BRYAN:**

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

Attest:

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

Approved as to form:

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

**FOUNDATION**

\_\_\_\_\_  
Jason P. Bienski, President

**BRAZOS COUNTY:**

\_\_\_\_\_  
Duane Peters, County Judge

Approved as to Form:

\_\_\_\_\_  
Bill Ballard, County Attorney