

**CHAPTER 380 DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BRYAN, TEXAS AND
BRYAN BUSINESS COUNCIL, INC.**

This Agreement is made by and between the City of Bryan, Texas, a home-rule municipal corporation (“City”) and Bryan Business Council, Inc., a Texas non-profit corporation (“BBC”).

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, article III, section 52–a of the Texas Constitution (“**52-a**”) expands the constitutional definition of public purpose to include economic development and diversification, elimination of unemployment and underemployment, stimulation and growth of agriculture, and the expansion of state transportation and commerce; and

WHEREAS, Chapter 380 of the Texas Local Government Code (“**Chapter 380**”) was passed to implement the provisions of 52-a; accordingly Chapter 380 permits the governing body of a municipality to establish and provide for the administration of one or more programs, to promote state or local economic development and to stimulate business and commercial activity within the city limits of the municipality (“**Permitted Area**”); and

WHEREAS, Chapter 380 gives to the governing body of a municipality the authority to contract with a nonprofit organization, or any other entity for the administration of a Chapter 380 program; and

WHEREAS, the BBC has title to real property located within the Permitted Area (“**Property**”), and holds liquid assets derived from the sale or development of Property (“**BBC Assets**”); and

WHEREAS, the City desires for the BBC to administer a program for the redevelopment of selected geographic areas within the Permitted Area so as to promote local economic development and to stimulate business and commercial activity in the City (“**BBC Program**”); and

WHEREAS, the City finds that the BBC Program will use public funds and resources for the direct accomplishment of a public purpose; and

WHEREAS, the City finds that the BBC has a long history of managing BBC Assets for the accomplishment of a public purpose, and the BBC has an organizational structure with a board of directors and assistance of City staff that will ensure that BBC Program contains sufficient controls to ensure that the public purpose is carried out.

NOW, THEREFORE, City and BBC agree as follows:

A. BBC Program

1. The BBC will use the BBC Assets to continue, advance, administer and manage the BBC Program, and in doing so the BBC will have authority to perform, approve and conduct actions, contracts and transactions including, but not limited to the follow:

- a. Buy, sell or trade real estate on a prudent person standard;
 - b. Plat, subdivide, and develop real estate;
 - c. Contract for construction, development or improvement on or related to real estate for the purpose of advancing the BBC Program using a prudent person standard.
2. Any contracts, agreements or programs that have been initiated by the BBC prior to the effective date of this Agreement have been reviewed by the City and are ratified and approved by the City as if approved in advance by this Agreement.

B. Guidelines

3. The BBC Program must promote state or local economic development and to stimulate business and commercial activity within the city limits of the City.
4. The board of directors of the BBC will prepare an annual report for presentation to the city council of the City summarizing the key components of the BBC Program. The City anticipates that all or portions of the annual report will include confidential information that is appropriately reviewed by the city council in executive session.
5. The City and the BBC are committed to the promotion of high quality development in all parts of the City and to an ongoing improvement in the quality of life for its citizens. The City has previously initiated economic development programs and incentives designed to encourage high quality business, commercial, retail and manufacturing interested in locating, remaining, and expanding in the City of Bryan. The BBC has been a part of these efforts since 1982, and the City is contracting with the BBC to administer, manage and enhance its economic development efforts to acquire and re-invest in in properties along key major corridors.
6. Acquisitions of real estate must facilitate an anticipated positive fiscal impact when taking into consideration potential increases in ad valorem taxes on real and personal property along with potential sales taxes generated by the area of economic development.
7. The BBC Program is being established in an effort to develop and expand the local economy by promoting and encouraging development and redevelopment projects that enhance the City's economic base and improve areas that have been slow to redevelop without public incentives.
8. For properties to be eligible for consideration for acquisition, they must be underutilized, under-performing, in need of major renovation or revitalization, or needed to assist in the consolidation of other similar properties. The resulting project must create high visibility for the business and the City such that the project is deemed to serve as a catalyst to draw other projects to the targeted or high visibility area, thus promoting the public purpose of the BBC Program.
9. Agreements made between BBC and third parties pursuant to the BBC Program shall contain clear performance benchmarks for the third parties and adequate recapture provisions for the incentives to the third parties to address missed benchmarks. Benchmarks will contain one or more goals for increasing ad valorem tax and/or sales tax revenues, creation of new full-time equivalent jobs, increase in wages and similar goals. Benchmarks are subject to City approval.

C. Term

10. The term of this Agreement shall begin upon execution by both parties and shall be for an initial term of 2 years, unless sooner terminated by requirement of law or resolution of the City of Bryan, with optional 1 year renewal terms if agreed to in writing by both parties.

D. Audit, Breach, & Recapture

11. It shall be a breach of this agreement if any portion of the BBC Program is determined by the City to be outside the direct accomplishment of a public purpose.
12. In the event of a breach, BBC shall be notified in writing that it is in breach. BBC will have 180 days in which to cure the breach. In the event the breach is uncured, this agreement may be terminated and the City is entitled to reimbursement by BBC of any funds or value of any property provided by City to BBC under this Agreement.

E. Miscellaneous

13. 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. BBC shall not assign this Agreement without the written approval of the City Manager, such consent not to be unreasonably withheld.
14. Notices. Any notices sent under this Agreement shall be deemed served when delivered via certified mail, return receipt requested to the addresses designated herein or as may be designated in writing by the parties. Notice shall be given to the following:

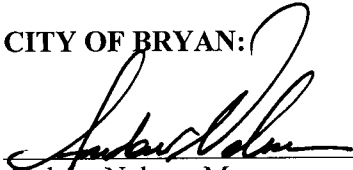
If to City: City Manager
 City of Bryan
 P.O. Box 1000
 Bryan, Texas 77805


If to BBC: BBC Board President
 City of Bryan
 P.O. Box 1000
 Bryan, Texas 77805

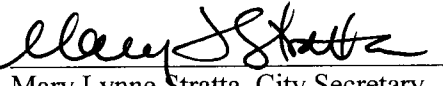
15. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining 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.
16. 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.

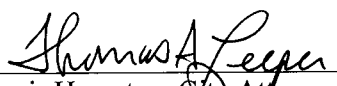
17. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.
18. Amendments. No amendment, modification or alteration 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.
19. 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.
20. No Waiver. City's failure to take action to enforce this Agreement in the event of BBC'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 City from taking action to enforce this Agreement on subsequent occasions.
21. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
22. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.
23. Employment of Undocumented Workers. During the term of this Agreement, BBC agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), BBC shall repay to City all Incentives received under this Agreement as of the date of such violation within 120 days after the date BBC is notified by City of such violation, plus interest at the rate of 5% simple interest from the date of BBC's receipt of the Incentive until repaid.

Executed and effective on this the 14th day of September, 2018.

CITY OF BRYAN:

Andrew Nelson, Mayor

Bryan Business Council, Inc.:

Steve Mobley, President

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

for Janis Hampton, City Attorney