

**TAMU DOWNTOWN BRYAN
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT**

This Chapter 380 Economic Development Agreement (this "Agreement") is entered into by and between the CITY OF BRYAN, TEXAS, a home-rule municipal corporation organized under the laws of Texas (hereinafter referred to as "City"), and TEXAS A&M UNIVERSITY, for the benefit of its College of Architecture's Department of Visualization, Department of Landscape Architecture and Urban Planning, a member of The Texas A&M University System, an agency of the State of Texas (hereinafter referred to as "TAMU").

WHEREAS, the City of Bryan, Texas ("City") is a home rule municipality which is duly incorporated and chartered under the constitution and laws of Texas; 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 purposes of development and diversification of the economy, the elimination of unemployment or underemployment in the state ... or the development or expansion of transportation or commerce in the state by promoting state or local economic development and stimulating business and commercial activity in the municipality.

WHEREAS, the City and the community at large have gone through numerous efforts to restore Downtown Bryan and the vicinity in order to increase residential, retail and commercial activity, add property value to enhance tax revenue, and to improve the overall atmosphere of the City; and

WHEREAS, TAMU desires to enhance the learning opportunities and experience for its students and has determined that certain studies in its College of Architecture will benefit from the environment of the restored historic Downtown Bryan, and TAMU will benefit from a presence in Downtown Bryan; and

WHEREAS, the presence of students, faculty and staff in Downtown Bryan will stimulate business and commercial activity in the vicinity and will strengthen the bond between the community and the University; and

WHEREAS, the City Council determines that this Agreement will encourage similar development and removal of urban blight, thus raising property values and increasing the customer base for downtown stores and restaurants and finds that it is in the City's best interest to enter into this agreement to assist in the rehabilitation, renovation and adaptive reuse of the north end of downtown;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and promises hereinafter set forth, the Parties agree as follows:

Article I. Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Cash Incentive Payment(s)” or **“Cash Incentives”** **“Cash Incentive”** shall mean that amount of money to be paid under this agreement by CITY to TAMU as a grant paid in installments distributed at defined times.

“Downtown Bryan” shall mean the area within the Downtown Districts, ordinance 130-16.

“TAMU” shall mean Texas A&M University, including its College of Architecture’s Department of Visualization, Department of Landscape Architecture and Urban Planning, Department of Architecture, and Department of Construction Science.

“Effective Date” shall mean the date that this Agreement is fully executed by both the City and TAMU.

“Expiration Date” means the earlier to occur of (i) December 31, 2020 or (ii) the total amount of Cash Incentive Payments received by TAMU has reached the Maximum Incentive Amount, as defined herein.

“Full-time Equivalent Employee” means an employee in a budgeted position with an officially scheduled workweek of 40 hours or more.

“Maximum Incentive Amount” means an amount equal to the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00).

“Payment Request” means a written request from TAMU to the City for payment of a Cash Incentive installment accompanied by copies document showing student enrollment in classes or laboratories meeting at the Property.

“Property” means the real property located in Downtown Bryan to be leased by TAMU and used for educational purposes.

“Real Property” shall have the meaning ascribed to it in Section 1.04 of the Texas Tax Code, as amended.

“Student Contact Hour” shall mean a minimum of 50 minutes of meeting time between a student and an instructor occurring as a part of formal instruction leading to course credit.

“Year” means a twelve-month period corresponding the term of the real property lease in Section 2.1 of this Agreement. Year 1 will commence at the commencement of the lease.

Article II. TAMU Obligations

2.1 No later than January 1, 2019, TAMU will lease non-tax exempt commercial property in Downtown Bryan with sufficient space for studio teaching, seminar teaching, lab, gallery and student project workspace to accommodate the Student Contacts requirement of this agreement, office space for at least 3 faculty who are teaching courses and at least one staff person for managing the location. The lease space shall consist of a minimum 8,450 square feet as depicted in exhibit “A”.

2.2 TAMU shall enroll students in formalized instructor-guided activities in a sufficient number to cause 112 Student Contact Hours per week for each 15-week Fall and Spring semester. The 10-week Summer Semester sessions shall result in 37 Student Contact Hours per week.

2.3 TAMU shall host a minimum 6 exhibitions per calendar year at the Property.

2.4 TAMU shall assign a minimum 8 faculty members to conduct instruction, research, outreach or administrative activities at the Property resulting in the equivalent of each having at least 5 hours per week of assigned time at the Property during the Fall and Spring Semesters. During the Summer Semester TAMU shall assign at least 2 faculty members to conduct instruction, research, outreach or administrative activities at the Property resulting in the equivalent of each having at least 5 hours per week of assigned time at the Property.

2.5 TAMU shall place auxiliary offices for Department of Visualization's Visualization Laboratory Director, Graduate Programs Coordinator, and Department Head at the Property resulting in the minimum of 0.67 full-time equivalent department administrative presence during the Fall and Spring Semesters and 0.33 full-time equivalent department administrative presence during the Summer Semester.

2.6 TAMU shall staff the property with the minimum of 1.5 full-time equivalent staff employees during the Fall and Spring Semesters and by a minimum of 0.5 full-time equivalent staff employees during the Summer Semester.

2.7 TAMU will meet the following Reporting Requirements.

a. Upon the City's written request, TAMU will promptly provide to the City any information reasonably necessary for the City to determine if TAMU has complied with this Agreement.

b. TAMU will allow the City reasonable access to the Property during regular business hours to inspect the Property and Facility to verify that TAMU is complying with the terms of this Agreement.

Article III. City Obligations

3.1 The City's obligations under this Agreement are conditioned upon annual appropriation for same by the City Council.

3.2 The total amount of Cash Incentive will in no event exceed a cumulative total of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00), at which time City's obligation to grant Cash Incentives to TAMU ends.

3.3 City will remit the Year 1 Cash Incentive in the amount of \$100,000.00 to TAMU within 60 days of TAMU's written request for that year's Cash Incentive (Payment Request) subject to City's verification of TAMU's compliance with its requirements in Article II. TAMU's Payment Request for Year 1 shall be made no sooner than December 31, 2019. City will remit Year 2 Cash Incentive in the amount of \$100,000.00 to TAMU within 60 days of TAMU's written request for that year's Cash Incentive subject to City's verification of TAMU's compliance with its requirements in Article II. TAMU's Payment Request for Year 2 shall be made no sooner than December 31, 2020.

Article IV. Default and Termination

4.1 TAMU shall have committed a breach of this Agreement if it fails to fulfill its obligations in Article II.

4.2 Upon breach by TAMU of any obligations under this Agreement, the City shall notify TAMU in writing that TAMU has breached this Agreement and is in default. TAMU shall have thirty days from receipt of such notice of default in which to cure any such breach (the "Cure Period"). If the breach cannot reasonably be cured within a Cure Period, and the TAMU has diligently pursued such remedies as shall be reasonably necessary to cure such breach, then the City may extend the Cure Period as may be reasonably necessary for TAMU to cure such breach.

4.3 No Cash Incentive payments shall be made until any breach is cured. If the breach is not timely cured, the City may terminate this agreement.

4.4 The term of this Agreement shall be begin on the Effective Date and continue through the Expiration Date, unless one of the following occurs:

- a. TAMU receives notice of default and such default remains uncured after the Cure Period, as may be extended, and the City provides written notice to the TAMU that the Agreement is terminated;
- b. A party elects to terminate this Agreement (which may occur at any given time) by giving the other party at least sixty days written notice; or
- c. The end of TAMU's academic year in which TAMU has been paid the cumulative sum of \$200,000.00 in Cash Incentives by the City in accordance with the terms of this Agreement.

Article V. Recapture

5.1 If TAMU does not meet the required number of Student Contact Hours and assign the required faculty and staff to meet the assigned time at the Property expectations in either of the year covered by this agreement, TAMU agrees to reimburse City a pro rata amount of the Cash Incentives previously paid for that Year excluding any reimbursement payments previously made by TAMU.

5.2 If TAMU terminates the lease required in Section 2.1 in a given Year, TAMU shall reimburse City for that Year's Cash Incentive if such has already been paid to TAMU.

5.3 TAMU shall also reimburse the City for any and all reasonable costs incurred by the City as a result of any action required to obtain reimbursement of funds. Such reimbursement shall be due and payable 120 days after the TAMU receives written notice of default accompanied by copies of all applicable invoices.

Article VI. Miscellaneous

6.1 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective legal representatives, successors, and permitted assigns. TAMU shall not assign this Agreement without the written approval of the City Council. If TAMU assigns this Agreement without

written approval of the City Council, this Agreement shall terminate immediately and the Cash Incentives provided for herein shall cease from the date such unauthorized assignment occurred.

6.2 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.

6.3 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.

6.4 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.

6.5 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.

6.6 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.

6.7 No Waiver. City's failure to take action to enforce this Agreement in the event of TAMU'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.

6.8 Notices. City and TAMU hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

CITY
City of Bryan, City Manager
P.O. Box 1000
Bryan, Texas 77805-1000

TAMU
Department of Contract Administration
1182 TAMU
College Station, Texas 77843-1183

6.9 Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

6.10 Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.11 Duplicate Originals. The parties hereto have executed this Agreement in duplicate originals, each of equal dignity. Each party has stated the execution date below the signature of its authorized representative. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.

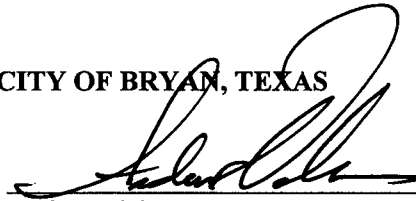
6.12 No Special Relationship Created. Nothing contained herein, nor any acts of the parties in connection herewith, shall be deemed or construed by the parties hereto or by third parties as creating the relationship of (a) principal and agent, (b) a partnership, or (c) a joint venture, as between the parties hereto. No third party shall obtain any rights as a result of this Agreement.

EXECUTED in duplicate originals on this ^{13 (Wed) Nov.} ~~28~~ day of ~~October~~, 2018.

ATTEST:


Mary Lynne Stratta, City Secretary

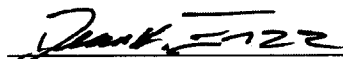
CITY OF BRYAN, TEXAS


Andrew Nelson, Mayor 11-13-18

APPROVED AS TO FORM:


Janis K. Hampton, City Attorney

TEXAS A&M UNIVERSITY,


Dean K. Endler
University Contracts Officer

