

**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF BRYAN
AND
UNITED WAY OF BRAZOS VALLEY, INC.**

This Chapter 380 Economic Development Agreement (“Agreement”) is effective as of the ____ day of March, 2020 (“Effective Date”), by and between the UNITED WAY OF BRAZOS VALLEY, INC., a 501(c)(3) nonprofit corporation (“United Way”), and the CITY OF BRYAN, a home-rule municipal corporation organized under the laws of the State of Texas (“City”), for the purposes and considerations stated below. City and United Way may be collectively referred to as “Parties” or individually as a “Party.”

RECITALS

WHEREAS, the United Way in partnership with the Community Foundation of the Brazos Valley, and with the financial assistance of other public and private sector community partners and donors, has launched the Brazos Valley COVID-19 Community Relief Fund for Brazos Valley residents and businesses facing economic hardship as the region continues to follow CDC guidelines, and state and local disaster declarations and orders designed to contain the spread of COVID-19; and

WHEREAS, the United Way will serve as the administrator of the Brazos Valley COVID-19 Community Relief Fund, and intends to provide (i) Nonprofit organization support - offering grants for programs supporting food, rent and utility assistance for those individuals impacted by COVID-19 response; and (ii) Small business relief - offering Small Business Payroll Grants for those business which have experienced severe interruption due to COVID-19 response; and

WHEREAS, the United Way is responding to the local disaster caused by the COVID-19 virus by providing much needed assistance and services to the residents and businesses of the City of Bryan; and

WHEREAS, the City desires to assist the United Way, and its partner agencies, with city resources and economic incentives as may be required in their response to the local disaster; and

WHEREAS, the State of Texas has authorized cities to create economic development programs in accordance with Article III, Chapter 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City desires to enter into a Chapter 380 Economic Development Agreement with United Way in order to implement the economic development program developed by the City to sustain the City's commercial, economic and employment base, build resilience to economic conditions resulting from COVID-19 pandemic, and to retain businesses in the City, for the long term interest and benefit of the City and the State of Texas; and

WHEREAS, the City desires to provide economic incentives in the form of periodic matching grant payments to the United Way up to a combined total amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) (the "Maximum Grant Amount") to assist in providing support to nonprofit organizations offering food, rent, utility, and medical care assistance for Bryan residents impacted by COVID-19 response, and payroll assistance grants to Bryan businesses which have experienced severe interruption due to COVID-19 pandemic response and local disaster declarations; and

WHEREAS, public health, safety and welfare is an intrinsic public infrastructure need, and the Chapter 380 economic development program will contribute to the public health, safety and welfare of the Bryan business community, and therefore is an essential public infrastructure component; and

WHEREAS, the City hereby finds that the Agreement clearly promotes economic development in the City and, as such, meets the requisite under Chapter 380 of the Texas Local Government Code and is in the best interests of the City; and

WHEREAS, the City Council hereby establishes a Chapter 380 economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development grant payments to United Way and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement; and

WHEREAS, the City Council has determined that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the Program contain controls likely to ensure that public purpose is accomplished; and

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

I. AUTHORITY

1.01 The Agreement is authorized by state law, including but not limited to Chapter 380 of the Texas Local Government Code, and is within the authority of the City and constitutes a legal and binding obligation of the City.

1.02 The United Way's execution and performance of this Agreement constitutes a valid and binding obligation of the United Way.

1.03 The factual recitals and findings set forth above are found to be true and correct for all purposes, and are incorporated into this Agreement.

II. DEFINITIONS

2.01 **Chapter 380 Payments.** The term "Chapter 380 Payments" means any and all payments made by the City to United Way under this Agreement.

2.02 **City of Bryan or City.** The term City of Bryan or City means the governing, home-rule municipal corporation; and shall mean the area that is within the city limits of the City of Bryan, located within Brazos County, Texas.

2.03 **Funding Request.** The term "Funding Request" shall have the meaning set forth in Section 4.2.

2.04 **Grant Plan.** The term "Grant Plan" shall mean the Appendix "A" requirements.

2.05 **Maximum Grant Amount.** The term "Maximum Grant Amount" shall have the meaning set forth in the seventh recital contained in the preamble to this Agreement.

2.05 **Program.** The term "Program" means the Chapter 380 economic development program established by the City as authorized by Chapter 380, Texas Local Government Code, to promote local economic development, sustain the City's commercial, economic and employment base, retain businesses, and build resilience to economic conditions resulting from COVID-19 pandemic.

III. TERM

3.01 This Agreement shall be effective as the Effective Date and shall remain in full force and effect until the earlier of: (i) City has paid the Maximum Grant Amount to United Way; or (ii) six (6) months from the Effective Date ("Term"), unless sooner terminated pursuant to Article 7 of this Agreement.

IV. CHAPTER 380 GRANT PAYMENT REQUEST AND DISBURSEMENT PROCEDURES

4.1 Chapter 380 Payments shall be paid by City to United Way in the form of periodic grant payments matching one to one private sector contributions to the Brazos Valley COVID-19 Community Relief Fund. The Chapter 380 Payments shall commence with a single initial payment of up to Two Hundred and Fifty Thousand Dollars (\$250,000.00) upon receipt by United Way of a one to one matching private sector contributions made to the Brazos Valley COVID-19 Community Relief Fund, to be followed by additional periodic Chapter 380 Payments subject to the terms of this Agreement, in a combined total amount not to exceed the Maximum Grant Amount.

4.2 United Way shall submit to the City, in the manner specified for notices pursuant to Article 10, a written request in substantially the form attached hereto as Appendix B (the "Funding Request") for each Chapter 380 Payment requested by United Way upon its receipt of private sector donations in an amount matching the amount of the Funding Request. The Funding Request shall include documentation, reasonably acceptable to the City, evidencing the private sector donation amount. Private sector donations may not be counted more than once for the purposes of making Funding Requests.

4.3 The City shall make periodic Chapter 380 Payments no more frequently than once each week during the Term of this Agreement. In no event shall the combined, total amount of Chapter 380 Payments hereunder exceed Five Hundred Thousand Dollars (\$500,000.00).

4.4 Upon receipt of a Chapter 380 Payment, United Way shall distribute the payment funds on an 80/20 split, with 80% of the Chapter 380 Payment going into a separately maintained fund to provide payroll assistance for businesses physically located within the jurisdictional boundaries of the City of Bryan which have experienced severe interruption due to COVID-19 response, and the remaining 20% of the Chapter 380 Payment shall go to provide financial support to nonprofit organizations offering grants for programs supporting food, rent, utility assistance, and medical care for Bryan residents impacted by COVID-19 response.

4.5 Any Funding Request that is submitted and is not approved by the City shall be returned by the City to United Way with a brief statement of the reason for the City's rejection of such Funding Request.

4.6 The City shall make all disbursements of Chapter 380 Payments pursuant to this Agreement by check payable to United Way, sent via U.S. mail in accordance with Article 10, unless the City otherwise agrees in writing, in its sole discretion.

V. CITY OBLIGATIONS AND DUTIES

5.01 City Agrees to provide Chapter 380 Payments to United Way during the Term of this Agreement in accordance with the terms and conditions set forth in the Agreement.

VI. UNITED WAY OBLIGATIONS AND DUTIES

6.01 United Way agrees to comply with all requirements of this Agreement and to use the Chapter 380 Payments only in accordance with the Grant Plan as set forth in Appendix A and for no other purpose.

6.02 United Way shall document in writing payroll assistance provided to Bryan businesses with funds received from the City, and shall document the number of Bryan residents that have received assistance from United Way non-profit agency partners as a result of funds received from this Program. On a monthly basis, the United Way shall provide the City with the written documentation required herein.

6.03 United Way shall implement the Grant Plan on the terms and conditions set forth in this Agreement. United Way shall not materially change the nature or scope of the Grant Plan during the term of this Agreement without the prior written consent of City. United Way shall cooperate in good faith with City in any review, evaluation, or monitoring activities conducted by City.

6.04 The Parties agree that United Way shall not limit or otherwise restrict the eligibility of any Bryan residents or businesses to receive assistance from other funds besides those funds provided in the Grant Plan. Notwithstanding, this shall not entitle any Bryan business to receive more than one payroll assistance grant.

VII. DEFAULT

7.01 If any party should default upon any terms or obligations with respect to this Agreement (“Defaulting Party”), the other party (“Complaining Party”) shall provide written notice of the default and shall reasonably include the actions required to cure such default. If the Defaulting Party cures the default within thirty (30) days after notice of default is received (“Cure Period”), or commences to cure default within said thirty (30) days and diligently pursues the cure to its conclusion, then this Agreement shall continue as if no default occurred.

7.02 In the event that the Defaulting Party fails to cure the default as required by Section 7.01 above, the Complaining Party may, by action or proceeding at law or in equity, be awarded damages and/or specific performance for such default, including reasonable attorney's fees and costs.

7.03 The City may terminate this Agreement upon performance review to be conducted by the City after the first, initial Chapter 380 Payment, at its sole discretion.

VIII. INDEMNIFICATION

8.01 UNITED WAY COVENANTS AND AGREES TO AND DOES HEREBY FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM ALL CLAIMS, SUITS OR CAUSES OF ACTION OF ANY NATURE WHATSOEVER WHETHER REAL OR ASSERTED, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES TO PERSONS OR PROPERTY, INCLUDING DEATH, RESULTING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. IN ADDITION, UNITED WAY COVENANTS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS OR CAUSES OF ACTION OF ANY NATURE WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF INJURIES OR DAMAGES TO PERSONS OR PROPERTY, INCLUDING DEATH, RESULTING FROM THE FAILURE OF UNITED WAY OR ITS MEMBERS TO PROPERLY SAFEGUARD THE WORK, ON ACCOUNT OF ANY ACTS, INTENTIONAL OR OTHERWISE, NEGLIGENCE OR MISCONDUCT OF THE UNITED WAY, ITS MEMBERS, AGENTS, SERVANTS OR EMPLOYEES.

IX. BOOKS AND RECORDS

9.01 United Way shall establish and maintain accurate files and records of all aspects of the Program and the matters funded in whole or in part with Grant Payments during the term of this Agreement. Without limiting the scope of the foregoing, United Way shall establish and maintain accurate financial books and accounting records relating to Chapter 380 Payments received and expended under this Agreement. United Way shall maintain all the files, records, books, invoices, documents, and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than five (5) years after final payment under this Agreement.

9.02 United Way shall make available to City, its employees and authorized representatives, during regular business hours with five (5) business days notice, all of the files, records, books, invoices, documents, and other data required to be established and maintained by United Way under Section. United Way shall permit City, its employees and authorized representatives to inspect, audit, examine and make

excerpts and transcripts from any of the foregoing. The rights of City pursuant to this Section shall remain in effect so long as United Way has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article

X. NOTICES

10.01 Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via email (if an email is provided below):

If to the City:
Att: City Manager
P.O. Box 1000
Bryan, Texas 7805

Funding Requests: Email: tmcdaniel@bryantx.gov

If to Grantee:
Att: Alison Prince
President & CEO, United Way of the Brazos Valley
1716 Briarcrest Drive, Suite 155
Bryan, TX 77802

10.02 All communications sent in accordance with Section 10.01 shall become effective on the date of receipt. Such date of receipt shall be determined by:(a) if mailed, the return receipt, completed by the U.S. postal service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the party to whom the notice was sent; or (c) if sent via facsimile, the date of telephonic confirmation of receipt by a duly authorized agent of the party to whom the notice was sent or, if such confirmation is not reasonably practicable, the date indicated in the facsimile machine transmission report of the party giving such notice; and (d) email is presumed received upon the date sent.

10.03 From time to time any party hereto may designate a new address for purposes of this Article by notice to the other party.

XI. MISCELLANEOUS PROVISIONS

11.01 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the matters set forth herein, and supersedes all prior discussions and agreements between the parties.

11.02 Binding Obligation. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

11.03 Invalidity. If any provision of this Agreement, or a portion thereof, or the application thereof to any person or circumstances shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby. It shall not be deemed that any such invalid provision affects the consideration for this Agreement, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11.04 Amendment. Except as otherwise expressly provided herein, this Agreement may only be amended, modified or terminated by a declaration in writing, executed and acknowledged by all the parties to this Agreement.

11.05 Applicable Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought under this Agreement shall be in Brazos County, Texas.

11.06 Assignment. United Way shall not assign this Agreement without the prior written consent of the City.

11.07 No Joint Venture. Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render any of said parties liable for the debts or obligations of any other of said parties.

[Signature Page To Follow]

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF THE PARTIES have executed this Agreement to be effective as of the Effective Date.

CITY OF BRYAN, TEXAS

UNITED WAY OF BRAZOS VALLEY, INC.

Andrew Nelson, Mayor

(Printed Name and Title)

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS }
 }
COUNTY OF BRAZOS }

This instrument was acknowledged before me on the ___ day of _____, 2020 by Alison Prince. President and CEO of United Way of Brazos Valley, Inc., a 501(c)(3) nonprofit corporation on behalf of said corporation.

Notary Public, State of Texas

My Commission expires:
