

STATE OF TEXAS §

COUNTY OF BRAZOS §

**INTERLOCAL AGREEMENT BETWEEN
CITY OF BRYAN, TEXAS AND BBCEDF, INC.
REIMBURSEMENT OF WATERLINE COSTS**

THIS INTERLOCAL AGREEMENT (“Agreement”) is entered into by and between the City of Bryan, Texas (“City”), a home-rule municipal corporation, and the City of Bryan and Brazos County Economic Development Foundation, Inc. (“BBCEDF”), a Texas Transportation Code local government corporation on the ____ day of _____, 2024.

WHEREAS, the parties are authorized by the Interlocal Cooperation Act, Texas Government Code Chapter 791, to enter into an agreement to perform certain governmental functions; and

WHEREAS, the BBCEDF entered into an agreement with a development project, now a property owner in the Texas Triangle Park and Inland Port, Phase II, CertainTeed, LLC, which requires the BBCEDF to provide water to the site, requiring an extension of the City’s water system; and

WHEREAS, the City is willing to publicly bid, manage, and pay for the construction of the waterline (“Project”) in exchange for the BBCEDF’s willingness to reimburse the City for the cost of same and BBCEDF has determined this is the most efficient means of fulfilling its obligations to CertainTeed, LLC; and

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

A. Project

1. The City agrees to comply with the public notice and bidding rules applicable to the BBCEDF, in soliciting and awarding the contract for the Project. The City further agrees to comply with all state and federal laws applicable to the Project.
2. The City will be responsible for the oversight and management of the Project, including but not limited to obtaining insurance, indemnification and warranties from the contractor. In the event of any breach of such warranties or other claim or cause related to same, the City will assert its rights and claims in order to ensure the Project meets the needs of the Texas Triangle Park.
3. The City will be responsible for paying the contractor, pursuant to the terms of its agreement, and will retain records of such payments as required by law.

B. Reimbursement

1. BBCEDF agrees to reimburse the City for the Cost of the Project in an amount not to exceed \$1,711,143.00, except in the event of a duly authorized change order approved by the BBCEDF. BBCEDF shall not unreasonably withhold, delay, or condition its approval of any change order.
2. Upon completion of the final payment, including retainage, the City shall submit an invoice to the BBCEDF including documentation of the total amounts paid. Within thirty (30) days of receiving an invoice and the required documentation, the BBCEDF will tender payment to the City.

3. In the event of a dispute between the City and the contractor regarding the Project, the City may request a partial reimbursement of any amounts already paid to the contractor which are not in dispute. The City will tender an invoice and documentation of the amounts paid that are not in dispute. The City may request reimbursement of the remaining amount, up to the amount authorized in section B.1. of this Agreement.

C. Miscellaneous

1. 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.
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.
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.
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.
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. 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.
7. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
8. 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.

9. 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.

Executed this ____ day of _____, 2024.

CITY OF BRYAN

ATTEST

Bobby Gutierrez, Mayor

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM

Thomas A. Leeper, City Attorney

BRYAN-BRAZOS COUNTY ECONOMIC DEVELOPMENT FOUNDATION, INC.



Duane Peters, Secretary/Treasurer