

**ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN MESSER LLC AND CITY OF BRYAN, TEXAS**

This Economic Development Agreement (the “*Agreement*”) is entered by and between the CITY OF BRYAN, TEXAS, a home-rule municipal corporation organized under the laws of the State of Texas (hereinafter referred to as “*City*”), and MESSER LLC, a Delaware limited liability company and its Affiliates (hereinafter referred to as “*Messer*”). City and Messer may also be referred to collectively as the “*Parties*” or individually as a “*Party*.”

WHEREAS, the City has established an economic development program pursuant to Chapter 380 of the Texas Local Government Code which authorizes the City to make economic development loans and grants to encourage the promotion of local economic development and the stimulation of business and commercial activity and creation of jobs within the City; and

WHEREAS, City actively seeks economic development prospects in Bryan through participation in and establishment of an economic development program; and

WHEREAS, Messer intends to construct and operate a Liquid Air Separation Unit (“*LASU*”) facility on land within Bryan’s Reinvestment Zone # 34; and

WHEREAS, as an additional support to Messer’s project, City’s municipally owned electric utility Bryan Texas Utilities (“*BTU*”) is obtaining an easement from Enterprise Crude Pipeline LLC on nearby property to enable a 138kV electric feed to be placed to provide necessary power for Messer’s project; and

WHEREAS, the City Council finds given the incentives provided, Messer will realize a distinct benefit from proceeding with the Project based on the Project’s value; and

WHEREAS, City Council finds that Messer’s project satisfies the purposes of the established economic development program by the creation of jobs associated with the construction and operation of the LASU facility, the attraction of new businesses, and the increase in ad valorem taxes to City; and

WHEREAS, to ensure that the benefits City provides under this Agreement are utilized in a manner consistent with TEXAS LOCAL GOVERNMENT CODE, Chapter 380 and other law, Messer agrees to comply with certain conditions for receiving the monetary incentives contemplated herein, including conditions relating to property development, procurement, and compliance with all applicable city ordinances.

NOW, THEREFORE, for the reasons stated in these Recitals and in consideration of the mutual benefits to and promises of the Parties set forth below, the Parties are entering into this Agreement and agree to the terms and conditions set forth in this Agreement.

**ARTICLE I.  
DEFINITIONS**

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

***“Ad Valorem Tax Collections”*** means the City’s share of all ad valorem taxes assessed and collected by the Brazos County Tax Assessor-Collector on the Property which, for the purpose of this Agreement only, shall only include Improvements and Personal Property taxed by the City.

***“Affiliate”*** means any person or entity which directly or indirectly controls, is controlled by or is under common control with Messer, during the term of such control. A person or entity will be deemed to be “controlled” by any other person or entity if such other person or entity (a) possesses, directly or indirectly, power to direct or cause the direction of the management of such person or entity whether by contract or otherwise, (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity or (c) has direct or indirect ownership of at least fifty percent (50%) of the equity interests in the entity.

***“Bankruptcy or Insolvency”*** shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any portion of the Property owned by Messer or a material part of a Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, the filing of a voluntary petition for bankruptcy protection by a Party, or the commencement of an involuntary bankruptcy proceeding against such Party, and such proceeding is not dismissed within ninety (90) days after the filing thereof.

***“Base Year Ad Valorem Tax Collections”*** shall mean the Ad Valorem Tax Collections the City was owed or otherwise collected, whichever is greater, for the 2026 tax year as of the Effective Date of this Agreement.

***“Base Ad Valorem Tax Value”*** shall mean the final certified appraised value of the Property for tax year 2026 as of the Effective Date of this Agreement.

***“BCAD”*** means Brazos Central Appraisal District.

***“BTU”*** means Bryan Texas Utilities, a municipally owned electric utility owned and operated by the City, and which is a department of the City.

***“Certificate of Occupancy”*** means the certificate of occupancy issued by the City accordance with the development regulations of the City, which certificate shall not be unreasonably withheld, conditioned or delayed.

***“Commencement of Construction”*** or ***“Commence Construction”*** shall mean that: (a) construction plans have been prepared and all approvals thereof required by applicable Governmental Authorities have been obtained for construction of the Project; (b) all necessary permits for the construction of the Project, pursuant to the respective plans therefor have been issued by all applicable Governmental Authorities; and (c) construction of the facility foundation of the Project has commenced.

***“Completion of Construction”*** or ***“Complete Construction”*** shall mean the last to occur of: (i) the construction of the Improvements has been substantially completed; or (ii) a temporary or final certificate of occupancy has been issued by the City for the occupancy of the Improvements by Messer, and (iii) sufficient quantities of necessary utilities are operational on the Property to allow Messer to produce sufficient quantities of product to its customers on an on-going basis.

**“Economic Development Grant” or “Cash Incentive”** shall mean the City’s payment of money grants to Messer pursuant to this Agreement and as authorized by TEXAS LOCAL GOVERNMENT CODE, Chapter 380, which are derived from the public funds generated by fifty-five percent (55%) of the Maintenance and Operations (M&O) portion of Real Property taxes (excluding the Property) and Personal Property taxes collected by City and attributable to the Incremental Tax Value in the calendar year immediately preceding the year in which an Economic Development Grant payment is requested. Such amount shall be calculated based upon the Incremental Ad Valorem Tax Value for each year of the Agreement, unless otherwise provided herein.

**“Economic Development Grant Incentive Period”** means the five (5) year period commencing with the First Year of Economic Development Grant Incentive Period.

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

**“Enterprise”** shall mean Enterprise Crude Pipeline LLC and its successors and assigns.

**“Enterprise Easement”** shall mean the easement that is subject of the Utility Easement Agreement granted in 2026 by and between Enterprise Crude Pipeline LLC and BTU for electrical distribution lines and/or transmission lines, etc., on a 9.01 acre tract of land located in the Stephen F. Austin League, Number 10, Abstract No. 63, Brazos County, Texas, as further described in that certain Special Warranty Deed dated October 31, 2003 between Genesis Crude Oil, L.P. and Teppco Crude Pipeline, L.P., recorded in Volume 5806, Page 148, Deed Records of Brazos County, Texas.

**“First Year of the Economic Development Grant Incentive Period”** shall mean the first calendar year, beginning January 1, no earlier than 92 days after energization of a 138kV feed to the Messer substation on the Property but not later than January 1, 2029, in accordance with the example schedule to be attached hereto as Schedule 1 and incorporated herein by reference for all purposes within forty-five (45) days after the Effective Date.

**“Force Majeure”** shall mean any act that (a) materially and adversely affects the affected Party’s ability to perform the relevant obligations under this Agreement or delays such affected Party’s ability to do so; (b) is beyond the reasonable control of the affected Party; (c) is not due to the affected Party’s fault or negligence; and (d) could not be avoided by the Party who suffers it, by the exercise of commercially reasonable efforts, including the expenditure of any reasonable sum of money. Subject to the satisfaction of the conditions set forth in (a) through (d) above, Force Majeure shall include: natural phenomena such as storms, floods, lightning, tornadoes and earthquakes; wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; transportation disasters, whether by ocean, rail, land or air; strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; delays in obtaining necessary goods or services essential for the Project; pandemic; epidemic; fires; any Governmental Authority shutdown; and actions or omissions of a Governmental Authority that were not voluntarily induced or promoted by the affected Party or brought about by the breach of its obligations under this Agreement or any applicable law. Under no circumstances shall Force

Majeure include Messer's financial inability to perform as a result of economic hardship or changes in market conditions or any strike or labor dispute involving the employees of Messer or any Affiliate of Messer, other than industry or nationwide strikes or labor disputes..

**"Full Time Employee"** or **"FTE"** means any person who is an employee of Messer or an Affiliate (excluding temporary or seasonal employees) who is on the payroll in a budgeted position and who works with Messer in connection with the Project, has an officially scheduled work week of thirty-five (35) hours or more and who, according to Messer or Affiliate company policy, is entitled to full benefits as a full-time employee.

**"Governmental Authority(ies)"** shall mean any federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body whether legislative, judicial or executive (or a combination or permutation thereof).

**"Guaranteed Value"** shall mean the Taxable Value, as determined by BCAD, of Messer's Improvements and Personal Property (excluding the Property owned by Messer) located in Bryan's Reinvestment Zone #34.

**"Improvements"** shall have the meaning ascribed to it in Section 1.04 of the Texas Tax Code, as amended.

**"Incremental Ad Valorem Tax Collections"** shall mean the difference between the *Ad Valorem Tax Collections* attributable to Improvements and Personal Property and the *Base Year Ad Valorem Tax Collections* due as of January 1st for the tax year prior thereto.

**"Incremental Ad Valorem Tax Value"** shall mean the amount of certified assessed ad valorem tax value of new Improvements and Personal Property that exceeds the Base Ad Valorem Tax Value in any given tax year during the Economic Development Grant Incentive Period.

**"M&O"** means the component of the property tax rate that funds the maintenance and operations expenditures of the General Fund. This is contrasted with the I&S (interest and sinking) portion of the property tax rate, which funds the general obligation debt service requirements of the Debt Service Fund.

**"Payments in Lieu of Taxes"** or **"PILOT"** means the payments to be made by Messer to the City described in Article VII of this Agreement.

**"Payment Request"** means a written request from Messer to the City for payment of the annual Economic Development Grant payment accompanied by a report of all property ID numbers associated with the Property.

**"Payroll"** means the payroll numbers that Messer or an Affiliate report to the Texas Workforce Commission quarterly for FTEs added after the Effective Date for the four preceding consecutive calendar quarters ending on or prior to a date of measurement under this Agreement.

**"Personal Property"** shall have the meaning ascribed to it in Section 1.04 of the Texas Tax Code, as amended.

**"PILOT"** means both a payment in lieu of taxes and a refund to City of taxes rebated to Messer under this Agreement.

**“Project”** is Messer’s planned construction and operation of a LASU facility that will provide liquid nitrogen and liquid oxygen to industries, as depicted on the conceptual land plan attached hereto as Exhibit “B”.

**“Project Facility”** (or **“Project Facilities”**) shall mean a building, structure or other Project Improvements constructed on the Property.

**“Property”** means the real property depicted by the survey or legal description as described in Exhibit “A”.

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

**“Taxable Value”** means the appraised value as certified by the Brazos Central Appraisal District as of January 1st of a given calendar year.

**“Termination Date”** means the earlier to occur of (i) the expiration of thirty (30) years from the Effective Date or as extended by Option Term(s) in the Enterprise Easement, or (ii) at City’s option upon the expiration of eighteen (18) months from the Effective Date of this Agreement without the Commencement of Construction of the Project Facility; or (iii) at City’s option upon the failure to Complete Construction of the Project Facility on or before January 1, 2029, subject to (a) Force Majeure, (b) energization of the Property by January 1, 2029, and (c) the availability of all other Messer required utilities to the Property on or before January 1, 2029.

## **ARTICLE II. TERM**

2.1 The term of this Agreement shall begin on the Effective Date and shall continue until the Termination Date, unless sooner terminated as provided herein.

## **ARTICLE III. REPRESENTATIONS AND WARRANTIES OF MESSER AND CITY**

3.1 In order to induce City to enter into this Agreement, Messer represents and warrants as follows:

(a) Messer is a duly organized and validly existing limited liability company under the laws of the State of Delaware.

(b) Messer has the power and authority to execute, deliver and perform the terms and provisions of this Agreement and all other instruments or material agreements that may be executed by Messer in connection with its obligations hereunder. The execution, delivery, and performance by Messer of this Agreement have been duly authorized by all requisite action by Messer, and this Agreement is a valid and binding obligation of Messer enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors’ rights generally.

(c) Messer is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which Messer is a party or by which Messer or any of its property is bound that would have any material adverse effect on Messer's ability to perform under this Agreement.

(d) To its best knowledge, Messer is not a party to or otherwise bound by any material agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which could reasonably be expected to materially and adversely affect Messer's ability to perform its obligations under this Agreement.

(e) Messer fully intends, subject to the conditions set forth in this Agreement, to commence and complete, or cause to be completed, construction of the Project.

3.2 In order to induce Messer to enter into this Agreement, City represents and warrants as follows:

(a) City is a home rule city operating under the laws of the State of Texas and is authorized and empowered to enter into this Agreement.

(b) The City has created and provided for the administration of an economic development program which authorizes the conditions and obligations set forth in this Agreement.

(c) The City has the authority to levy, assess, and collect ad valorem taxes on the Property and to use the taxes collected by it from property within the City, including the Property, as provided in this Agreement.

#### **ARTICLE IV. CHAPTER 380 GRANT PROGRAM**

4.1 **Messer Performance.** In consideration of the incentives provided by City in this Agreement, Messer agrees to construct and operate the Project, and to provide the economic development benefits set forth in this Agreement, as follows:

(a) Messer will construct and operate the Project. Messer shall also equip the Project with taxable Personal Property.

(b) During the Economic Development Grant Incentive Period, Messer shall maintain the Taxable Value described in Section 4.2(a) herein and the Guaranteed Minimum Payroll.

4.2 **Economic Development Grant Payments.** The grant under this Agreement is authorized by Chapter 380 of the Local Government Code and in accordance with the program herein adopted by City Council.

(a) Subject to Messer's compliance with all of the terms and conditions set forth in this Agreement as a condition precedent, if the Guaranteed Value for the given year is achieved

and maintained, the City hereby grants Messer a Cash Incentive of the stated percentage of the Guaranteed Value of Property for the Economic Development Grant Incentive Period, which includes the First Year of the Economic Development Grant Incentive Period:

<u>Tax Year:</u>	<u>Guaranteed Value:</u>	<u>%:</u>
Year 1	\$52,500,000	55%
Year 2	\$47,500,000	55%
Year 3	\$47,500,000	55%
Year 4	\$47,500,000	55%
Year 5	\$42,500,000	55%

(b) Notwithstanding any provision of this Agreement to the contrary, all tax rebates on the value of the Improvements and the Personal Property as the result of this Agreement shall not exceed five (5) years. During the period of tax rebate herein authorized, Messer shall be subject to all applicable taxation, including but not limited to ad valorem taxation on Messer’s Property.

(c) The City will remit the annual Cash Incentive to Messer within 60 days of Messer’s written request for that year’s Cash Incentive, along with copies of tax receipts showing that Messer’s tax payments are current (“**Payment Request**”), each in accordance with the example schedule to be attached hereto as Schedule 2 and incorporated herein by reference for all purposes within forty-five (45) days after the Effective Date. Messer’s Payment Request shall be made no sooner than February 1 and no later than June 1 of a given year. **The failure by Messer to timely submit a Payment Request to the City’s City Manager will result in the forfeiture of the Economic Development Grant payment attributable to the applicable tax year.**

(d) The City’s obligation to make the Economic Development Grant payments(s) hereunder is subject to annual appropriation by the Bryan, Texas City Council, which the City agrees to use good faith efforts to appropriate such funds each year during the Term of this Agreement. Under no circumstances shall City’s obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the City’s obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

**ARTICLE V.  
EASEMENT AND LICENSE INCIDENT TO PROJECT**

5.1 **Enterprise Easement.** The City, as owner and operator of a municipally owned utility doing business as Bryan Texas Utilities or BTU, has or will obtain on or before March 18, 2026, from Enterprise, a non-exclusive 20' wide electric easement and right of way (being approximately 0.29 acre) on a 9.01 acre tract of land located in the Stephen F. Austin League, Number 10, Abstract No. 63, Brazos County, Texas, as further described in that certain Special Warranty Deed dated October 31, 2003, recorded in Volume 5806, Page 148, Deed Records of Brazos County, Texas, also described herein as the Enterprise Easement. The Enterprise Easement is obtained/being obtained to relocate certain BTU facilities from their current location to allow the construction and operation of a 138kV electric feed to be placed to serve Messer to provide necessary power for the Project. The Enterprise Easement has an initial term of thirty (30) years with options to extend in perpetuity additional ten (10) years terms (each, an "**Option Term**").

(a) Messer shall pay Enterprise, or shall reimburse BTU for its payments to Enterprise as the case may be, for annual payments for the Enterprise Easement in accordance with the Enterprise Easement (each, an "**Easement Payment**"). The Easement Payment to be paid pursuant to the Enterprise Easement is initially the sum of Ten Thousand Dollars (\$10,000.00), payable on the effective date of the Enterprise Easement. After ten (10) years, the Easement Payment will increase to Twelve Thousand Dollars (\$12,000.00) per year. After twenty (20) years, the Easement Payment will increase to Fourteen Thousand Dollars (\$14,000.00) per year. For each Option Term, the Easement Payment will increase by Two Thousand Dollars (\$2,000.00) per year over the Easement Payment paid in the previous decade. Messer and the City shall reasonably resist any request(s) to BTU by Enterprise to unilaterally impose additional monetary obligations on BTU for payments in excess of the applicable Easement Payment (defined herein) If the applicable Easement Payment is unilaterally increased by Enterprise despite the reasonable efforts of BTU, the City and Messer, Messer's obligation to pay or reimburse BTU for any such unilateral increase will be limited to two (2) times the amount of the then applicable Easement Payment. Each Easement Payment shall be made to Enterprise on each anniversary of the effective date of the Enterprise Agreement.

(b) In the event Enterprise requires BTU to move its infrastructure in the area of the Enterprise Easement (whether for removal or relocation to a new easement area), Messer shall reimburse BTU for the reasonable costs required to perform the removal/relocation. BTU may request interim reimbursement, no more frequently than ninety (90) days, as the removal/relocation project progresses. Messer shall pay reimbursement requests within ninety (90) days from BTU's presentment of a reimbursement payment request with documentation of its expenses.

(c) Notwithstanding anything in this Agreement to the contrary, in no event shall Messer be responsible for any costs incurred by BTU in connection with the Enterprise Easement that are due to the negligence of BTU, or any of its respective contractors, subcontractors, employees or agents.

5.2 **Boatcallie License.** The City grants Messer a thirty (30) year non-exclusive license (with options to extend in perpetuity for additional ten (10) year terms, each, a “**License Option Term**”) to place one private sanitary sewer line, not exceeding six inches (6”) in diameter, in the City’s right of way along Boatcallie Road (the “**License**”). As an additional grant under this Agreement, City waives any fee for this License. Messer shall be solely responsible for proper upkeep and maintenance of its private sanitary sewer line. Alternatively, and in lieu of a License Option Term, in the event the City constructs a public sewer line in the City’s right of way along Boatcallie Road or in a City right of way on another nearby street or road that is satisfactory to Messer in all material respects, at Messer’s request the City shall timely provide a connection to such alternate public sewer infrastructure line to Messer’s Property line, which such alternate public sewer infrastructure line shall be capable of servicing Messer’s then current sewer needs, at the City’s sole cost and expense (the “**Alternate Connection**”). In the event the City provides the Alternate Connection in accordance with the terms and conditions of this Section 5.2, (i) Messer will cap each end of the private sanitary sewer line covered by the License at Messer’s sole cost and expense and (ii) the License shall terminate.

Additionally, within thirty (30) days after the Effective Date, the City and Messer shall execute a License Agreement describing the License as detailed herein, along with a Memorandum of License Agreement (the “**Memorandum**”), which such Memorandum will be recorded in the Real Property Records of Brazos County, Texas.

## **ARTICLE VI. GUARANTEED MINIMUM PAYROLL**

6.1 Beginning when the First Year of the Economic Development Grant Incentive Period commences and continuing in each tax year of the Economic Development Grant Incentive Period, Messer shall maintain an annual minimum total payroll (excluding benefits) for at least sixteen (16) FTEs based at the Project Facility in the amount of no less than ONE MILLION THREE HUNDRED FIFTY THOUSAND DOLLARS (\$1,350,000.00) (the “**Guaranteed Minimum Payroll**”).

6.2 To establish a base year number of employees and total salaries in the City, Messer shall deliver to City the Texas Workforce Commission Quarterly Report for the previous quarter before the date of the Base Year Taxable Value. On or before August 1st of the First Year of the Economic Development Grant Incentive Period and then on or before August 1st of each year thereafter during the Economic Development Grant Incentive Period, Messer shall deliver to City documentation, including, but not limited to, Texas Workforce Commission quarterly reports, demonstrating that Messer met the payroll targets for the preceding calendar year, the year of the appraised value, each in accordance with the example schedule to be attached hereto as Schedule 3 and incorporated herein by reference for all purposes within forty-five (45) days after the Effective Date.

**ARTICLE VII.  
PILOT AND DEFICIT PAYMENTS**

7.1 **Quality of Life PILOT.** Messer shall make a PILOT each year of the Economic Development Grant Incentive Period to the City in an amount equal to five percent (5%) of City's M&O ad valorem taxes on the Incremental Taxable Value of the Property and the Personal Property owned by Messer located in Reinvestment Zone #34. The PILOT shall be paid no later than January 31st of the year following the year for which the Economic Development Grant payment is made. PILOT payments may be made by Messer or any Affiliate, each in accordance with the example schedule to be attached hereto as Schedule 4 and incorporated herein by reference for all purposes within forty-five (45) days after the Effective Date. The PILOT is used for quality of life of the City's citizens. The quality of life for which the PILOT may be used includes, but is not limited to, economic development programs, public safety, and infrastructure costs or programs for parks, recreation, exercise, library, aesthetic enhancements to public spaces, public education, senior citizen services, youth services, and/or healthy lifestyles.

7.2 **Deficit Payment.** If in any and every tax year during the Economic Development Grant Incentive Period, Messer's ad valorem tax liability to the City attributable to all taxable items (including, without limitation, Improvements, Personal Property, inventory and supplies located on the Property), is not at least THREE HUNDRED TWELVE THOUSAND DOLLARS (\$312,000.00) prior to the application of the Economic Development Grant, Messer agrees to pay City a deficit PILOT in an amount equal to the difference between the amount of Ad Valorem Taxes Collections for the given year and THREE HUNDRED TWELVE THOUSAND DOLLARS (\$312,000.00). Provided Messer timely pays (i) its ad valorem tax liability to the City and (ii) any deficit PILOT payment to the City, Messer shall remain eligible to receive Economic Development Grant payments during the Economic Development Grant Incentive Period as detailed in Section 4.2(a).

7.3 **Employee Deficit Payment.** If in any tax year in the Economic Development Grant Incentive Period, Messer does not achieve the annual Guaranteed Minimum Payroll obligation detailed in Section 6.1 above, Messer must pay City an employee deficit PILOT of \$7,500 for each employment position under the minimum 16 FTE for each year in which said obligation is not met.

**ARTICLE VIII.  
GENERAL REQUIREMENTS**

8.1. Messer agrees as good and valuable consideration for this Agreement that it will construct and operate the Project, and the Project such will be in accordance with all applicable federal, state and local laws, city codes, ordinances, rules and regulations.

8.2 This Agreement shall not constitute a waiver by the City of any codes, ordinances, rules and regulations. Further, Messer acknowledges that by executing this Agreement, no entitlement or agreement concerning zoning or land use shall arise, either implied or otherwise.

8.3 Construction plans for the Improvements constructed on the Property by Messer will be filed with City, which shall be deemed to be incorporated by reference herein and made a part hereof for all purposes.

8.4 Messer agrees to maintain the Improvements owned by it during the term of this Agreement in accordance with all applicable federal, state and local laws, city codes, ordinances, rules and regulations.

8.5 City, its agents and employees shall have the right of access to the Property during construction by Messer to inspect the Improvements at reasonable times and with reasonable notice to Messer, and in accordance with visitor access and security policies of Messer and Messer's tenants (if any), in order to ensure that the construction of the Improvements are in accordance with this Agreement and all applicable state and local laws and regulations (or valid waiver thereof).

## **ARTICLE IX. DEFAULT**

9.1 **Events of Default.** After the expiration of the applicable notice and right to cure period detailed herein, Messer shall be in default of this Agreement upon the occurrence of any of the following during the Term of this Agreement:

(a) Messer fails to reasonably comply with any of its obligations under this Agreement; or

(b) Messer fails to file any required report or statement or to give any required notice pursuant to this Agreement; or

(c) Messer fails to timely pay any ad valorem property taxes owed to the City or other taxing authority in Brazos County and fails to properly follow legal procedures for protest or contest of such taxes; or

(d) Messer fails to timely pay Enterprise, or to reimburse BTU, as applicable, for an Easement Payment for Enterprise Easement; or as otherwise required by Sections 5.1 (a) and (b) herein; or

(e) Messer ceases operation or closes the Project within ten (10) years after the Effective Date.

9.2 If Messer should default in the performance of any obligation of this Agreement, the City shall provide Messer written notice of the default, and a minimum period of ninety (90) days to cure such default, prior to pursuing any remedy for default.

9.3 If Messer remains in default after notice and opportunity to cure, City shall have the right, but not the obligation, to (i) suspend the Economic Development Grant payments; (ii) terminate the Agreement and the Economic Development Grant payments which have accrued after the date of default; (iii) recapture from Messer the grant payments made pursuant to this Agreement, less the amount of any PILOT that Messer has been paid if such default occurs within

the Economic Development Grant Incentive Period; and (iv) to exercise all available remedies at law and at equity.

## **ARTICLE X. EVENTS OF FORCE MAJEURE**

10.1 It is expressly understood and agreed by the Parties to this Agreement that if the performance by either Party of any obligation hereunder is delayed by reason of an event of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same for the time and to the extent necessary to allow the affected Party to overcome the event of Force Majeure and resume performance thereof. The Party claiming delay of performance as a result of an event of Force Majeure shall deliver written notice of the commencement of such delay to the other Party as soon as reasonably practicable after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of delay caused by a Force Majeure event, the claiming Party shall not be entitled to extend the time for performance as provided herein.

## **ARTICLE XI. TERMINATION**

- 11.1 This Agreement shall terminate upon any one or more of the following:
- (a) By mutual agreement of the Parties;
  - (b) According to the Termination Date;
  - (c) Messer's Bankruptcy or Insolvency;
  - (d) By City or Messer if the other Party suffers an uncured event of default pursuant to Section 9.2; or
  - (e) If Messer sells or otherwise conveys the Property or any portion of the Property to a third party, other than an Affiliate, without the prior written approval of City, which approval shall not be unreasonably delayed or withheld

## **ARTICLE XII. INDEMNIFICATION, WAIVER AND RELEASE**

12.1 **Messer does hereby agree to waive all claims, release, indemnify, defend and hold harmless the City, and all of their officials, officers, agents and employees, in both their public and private capacities, from and against any and all liability, claims, losses, damages, suits, demands or causes of action including all expenses of litigation and/or settlement, court costs and attorney fees which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property occasioned by the error, omission, or negligent act of Messer, its officers, agents, or employees arising out of or in connection with the performance of this Agreement, and Messer will at its own cost and expense defend and**

protect the City from any and all such claims and demands. The indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Messer or any contractor or subcontractor under workman's compensation or other employee benefit acts. Messer shall be entitled to approve the legal counsel chosen to defend the City.

12.2 The City does hereby agree to waive all claims, and release Messer, and all of its officers, agents and employees, in both their public and private capacities, from and against any and all liability, claims, losses, damages, suits, demands or causes of action including all expenses of litigation and/or settlement, court costs and attorney fees which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property occasioned by the error, omission, or negligent act of the City, its officers, agents, or employees arising out of or in connection with the performance of this Agreement.

### **ARTICLE XIII. REPORTING AND AUDITING**

13.1 **Compliance Certification.** Messer shall, before December 31 of each calendar year that the Agreement is in effect, certify in writing to City that it is in compliance with each term of the Agreement, using the certification in substantially the form attached hereto as Exhibit "C". The submission of these reports shall be the responsibility of Messer and shall be signed by an officer of Messer.

13.2 **Maintenance of Records.** Messer shall be responsible for maintaining records of all costs incurred and payments made for the Project, and all records evidencing compliance with all Messer obligations required under this Agreement. Messer shall maintain such records for a period of five (5) years after termination of this Agreement.

13.3 **Access to Records / Right to Audit.** Messer shall allow City reasonable access, during normal business hours, to review and audit its records and books and all other relevant records related to the Agreement upon thirty (30) business days' prior written notice to Messer.

### **ARTICLE XIV. MISCELLANEOUS**

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

14.2 **Entire Agreement.** This Agreement, including any exhibits hereto, and the Enterprise Easement, contain the entire agreement between the parties with respect to the transactions contemplated herein.

14.3 **Exhibits, Titles of Articles, Sections and Subsections.** The exhibits attached to this Agreement, if any, are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties

hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

**14.4 Amendments.** This Agreement may only be amended, altered, or voluntarily terminated by written instrument signed by all parties.

**14.5 Assignment.** Messer may not assign this Agreement without the prior written consent of the City Council, except that Messer may assign this Agreement in whole or in part to an Affiliate or in connection with any merger, reorganization, sale of all or substantially all of its assets or any similar transaction; provided that Messer provides the City Manager with written notice promptly after any such assignment. The Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and assigns.

**14.6 No Waiver.** Failure of any Party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either Party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived, or breach excused, unless the waiver shall be in writing and signed by the Party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

**14.7 Notices.** Notices under this Agreement are sufficient if given by nationally recognized overnight courier service, certified mail (return receipt requested), facsimile with electronic confirmation, or personal delivery to the other Party at the address below. If no address is listed for a Party, notice to such Party will be effective if given to the last known address. Notice is effective: (a) when delivered personally, (b) three business days after sending by certified mail, (c) on the business day after sending by a nationally recognized courier service, or (d) on the business day after sending by facsimile with electronic confirmation to the sender. Each Party may update its contact information by notice to the other. Routine business and technical correspondence must be in English and may be in electronic form. The contact information for each Party is as follows:

**CITY:**

City of Bryan, Texas  
Attn: City Manager  
300 S. Texas Ave.  
Bryan, Texas 77803  
Telephone: (979) 209-5100

**MESSER:**

MESSER LLC  
Attn: Legal & Compliance  
200 Somerset Corporate Blvd., Suite 7000  
Bridgewater, New Jersey 08807

WITH COPY TO:

City Attorney  
P.O. Box 1000  
Bryan, Texas 77805  
Email: CityAttorney@bryantx.gov

WITH COPY TO:

Messer LLC  
Attn: Tax Department  
200 Somerset Corporate Blvd., Suite 700  
Bridgewater, New Jersey 08807

**14.8 Applicable Law and Venue.** This Agreement is made and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in State courts located in Brazos County, Texas. Venue for any matters in federal court will be in the United States District Court for the Southern District of Texas, Houston Division.

**14.9 Severability.** In the event any provision of this Agreement is illegal, invalid, or unenforceable under the applicable present or future laws, then, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision to be illegal, invalid or unenforceable.

**14.10 Third Parties.** Except as provided in Section 5.1 of this Agreement, the City and Messer intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the City and Messer or permitted assignees of the City and Messer, except that the indemnification and hold harmless obligations by Messer provided for in this Agreement shall inure to the benefit of the indemnitees named herein.

**14.11 No Joint Venture.** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

**14.12 Employment of Undocumented Workers.** During the term of this Agreement, Messer agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Messer shall repay to City all Economic Development Grant payments received under this Agreement as of the date of such violation within 120 days after the date Messer is notified by City of such violation, plus interest at the rate of 5% simple interest from the date of Messer's receipt of the Economic Development Grant payments until repaid. Messer's obligation to repay any recapture amounts to the City due under this Section 13.12, and the City's right and authority to recover all of the Economic Development Grant payments made to Messer under this Agreement shall survive the termination of this Agreement.

**14.13 Government Code Provisions.** Messer hereby verifies that it complies with the following requirements: (a) Pursuant to Texas Government Code 2252.152, contracts with

companies engaged in business with Iran, Sudan, or foreign terrorist organizations are prohibited, a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Government Code Sections 806.051, 807.051, or 2252.153; (b) Pursuant to Texas Government Code 2271.002, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification from the company that it: (i) does not boycott Israel, and (ii) will not boycott Israel during the term of the contract.

#### 14.14 **Basic Safeguarding of Messer Information Systems.**

(a) Messer shall apply basic safeguarding requirements and procedures to protect Messer's information systems whenever the information systems store, process or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by City to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent businessperson would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

(b) Messer shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

14.15 **No Personal Liability.** No elected official of the City, officer or employee of City shall be personally liable to Messer or any successor in interest of Messer, in the event of any default or breach by the City, or for any amount which may become due to Messer or to its successor in interest, or for breach of any obligation under the terms of this Agreement.

14.16 **Right of Offset.** The City may deduct from any Economic Development Grant payment, as an offset, any delinquent and unpaid utility charges, or other unpaid fees, charges, or taxes assessed and other sums of money owed to, or for the benefit of, the City by Messer; provided that, before offsetting such sums, the City must provide Messer with (a) advance notice of such offset, (b) ninety (90) days to take action to remedy the situation giving rise to the offset, and/or (c) reasonable opportunity, at its own expense, to contest such offset.

14.17 **Independent Contractor.** Messer shall at all times during the Term of this Agreement remain an independent contractor.

14.18 **No Presumption Regarding Drafter.** The Parties hereto acknowledge and agree that: (i) each Party has participated in the drafting of this Agreement; (ii) each Party has had the opportunity to have this document reviewed by their respective legal counsel; (iii) the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be applied to the interpretation of this Agreement; and (iv) no inference in favor of, or against, any party shall be drawn from the fact that one party has drafted any portion hereof.

14.19 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

EXECUTED in duplicate originals to be effective as of the Effective Date.

**City:**

**CITY OF BRYAN, TEXAS:**

\_\_\_\_\_  
Bobby Gutierrez, Mayor

Date: March \_\_, 2026

**ATTEST:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Thomas A. Leeper, City Attorney

**Messer:**

**MESSER LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Rob Cappellman  
President, Global Electronics and Chief Commercial Officer/EVP

Date: March \_\_, 2026

## EXHIBIT "A"

### **Current Boundary Survey or Legal Description**

A field notes description of 14.73 acres lying in the STEPHEN F. AUSTIN LEAGUE NO. 10 SURVEY, ABSTRACT 63, in Brazos County, Texas, 2.40 acres being out of the remainder of a called 34.84 acre tract of land described in a Deed to GRT Interests, LLC recorded in Volume 11941, Page 227 of the Official Public Records of Brazos County, Texas (OPRBCT), and being all of a called 12.34 acre tract of land described in a Deed to GRT Interests, LLC recorded in Volume 12024, Page 282 (OPRBCT), measured to be 12.73 acres; said 14.73 acres being more particularly described by metes and bounds as follows:

Commencing at a 3/8 inch iron rod found on the Northwest line of the remainder of a called 51.00 acre tract of land described in a Deed to Gooseneck Trailer Manufacturing Company, Inc. recorded in Volume 229, Page 680 of the Deed Records of Brazos County, Texas (DRBCT), at the South corner of Lot 1, Block 10 of said Carrabba Industrial Park Phase 10A, same being the East corner of a called 4.14 acre tract of land described in a Deed to Rebecca Joan Crawford Russell recorded in Volume 11067, Page 152 (OPRBCT), from which a 1/2 inch iron rod with a plastic cap stamped 'Carlomagno' found in the Northeast right-of-way line of Boatcallie road (a variable width right-of-way, appears to be prescriptive in nature), at the South corner of said Russel tract bears S 41° 49' 51" W a distance of 662.25 feet;

Thence, with the Southwest line of said Carrabba Industrial Park Phase 10A, N 47° 54' 26" W, a distance of 637.55 feet to a 1/2 inch iron rod set (all rods set with blue plastic cap stamped 'Kerr Surveying') on the Northeast line of a called 4.14 acre tract of land described in a Deed as "Tract One" to Patricia Grace Crawford recorded in Volume 11067, Page 152 (OPRBCT), at the West corner of Lot 3, Block 10 of said Carrabba Industrial Park Phase 10A, same being the most Southerly corner of said remainder tract, for the Southeast corner and point of beginning hereof, from which the City of Bryan monument GPS-125 bears S 17° 31' 01" E, a distance of 3,542.89 feet;

Thence, with the Southwest line of said remainder tract, N 47° 54' 26" W, a distance of 174.18 feet to 1/2 inch iron rod with a plastic cap stamped 'SM Kling RPLS 2003' found in the Southwest line of said remainder tract, at the North corner of said Crawford tract, same being the East corner of said GRT 12.34 acre tract, for an interior ell corner hereof;

Thence, with the common line of said GRT 12.34 acre tract and said Crawford tract, S 41° 53' 39" W, a distance of 670.90 feet to a 1/2 inch iron rod with plastic cap stamped 'SM Kling RPLS 2003' found for the South common corner of said GRT 12.34 acre tract and said Crawford tract, lying on the Northeast right-of-way line of said Boatcallie road;

Thence, with the Southwest line of said GRT 12.34 acre tract, along the Northeast right-of-way line of said Boatcallie road, N 48° 34' 30" W, a distance of 791.90 feet to a 5/8 inch iron rod found at the West corner of said GRT 12.34 acre tract, same being the South corner of a called 2.66 acre tract of land described in a Deed to the City of Bryan recorded in Volume 7680, Page 223 (OPRBCT), for the most Westerly corner hereof;

Thence, with the Northwest line of said GRT 12.34 acre tract, N 41° 05' 03" E, at a distance of 340.18 feet passing a point from which a 3/4 inch iron pipe found for the East corner of said City tract, same being

the South corner of a called 9.037 acre tract of land described in a Deed to 5123 Trust recorded in Volume 7787, Page 163 (OPRBCT), bears S 48° 35' 52" E, a distance of 5.15 feet, said 5123 tract and said City tract both having an apparent overlap in Deed descriptions with said GRT 12.34 acre tract, and continuing for a total distance of 677.34 feet to a 1 inch iron pipe found on the Southwest line of a called 100 acre tract of land described in a Deed to Tony L. Marino recorded in Volume 154, Page 262 (DRBCT), for the North corner of said GRT 12.34 acre tract and the East corner of said 5123 tract, for the Northwest corner hereof;

Thence, with the common lines of said GRT tracts and said Marino tract, for the following two (2) bearings and distances:

1) S 48° 06' 52" E, a distance of 652.22 feet to a 6 inch cedar fence post found at the South corner of said Marino tract, same being the West corner of said remainder tract;

2) N 41° 40' 26" E, a distance of 322.89 feet to a calculated corner lying on the common line of said Marino tract and said remainder tract, for a Northerly corner hereof, from which a 3/8 inch iron rod found at the common North corner of said Marino and said remainder tract bears N 41° 40' 26" E, a distance of 1,266.36 feet;

Thence, departing said common line and severing said remainder tract, S 48° 42' 14" E, a distance of 295.59 feet to a calculated corner lying on the West side of the cul-de-sac of Roughneck drive (70' wide right-of-way per plat) of said Carrabba Industrial Park Phase 10A, said calculated corner marking the beginning of a non-tangent curve to the left;

Thence, around said cul-de-sac, with the Northerly lines of said Carrabba Industrial Park Phase 10A, for the following two (2) courses and distances:

1) With said curve to the right, having a radius of 80.00 feet, an arc length of 29.18 feet, a delta angle of 21° 27' 49", and a chord which bears S 21° 27' 49" E, a distance of 29.01 feet to a 1/2 inch iron rod set for the North corner of Lot 3, Block 10 of said Carrabba Industrial Park Phase 10A;

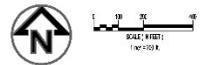
2) S 41° 19' 16" W, a distance of 313.56 feet to the point of beginning hereof and containing 14.73 acres, more or less.

# EXHIBIT "B"

## Concept Plan



C:\Users\johndoe\Documents\15012645-ZD-D-900-001\15012645-ZD-D-900-001.mxd



DOC: 05/09/25	LAYOUT REVISION
DOB: 05/09/25	LAYOUT REVISION
DOA: 05/09/25	FOR REVIEW AND COORDINATION
PROJECT: MESSER N.A.	PROJECT NO: 15012645
BRYAN ASU	
SITE PLOT PLAN	
DATE: 02/26/2025	BY: JPS
PROJECT: 15012645-ZD-D-900-001	00C
MIDDOUGH PROJECT: MLU2503	

**EXHIBIT "C"**

STATE OF TEXAS           §  
CITY OF BRAZOS           §

**ECONOMIC DEVELOPMENT AGREEMENT**  
**ANNUAL CERTIFICATION FORM**

**REPORTING YEAR 20\_\_**

I, the authorized representative and officer of MESSER LLC, do hereby certify to the City Council of the City of Bryan, Texas ("**City**") that MESSER LLC is in full compliance with the terms of the Economic Development Agreement with the City, entered into on the \_\_ day of March, 2026. I include herewith receipts or other written documentation verifying compliance (i) for ad valorem taxes paid to Brazos County, Texas for the Reporting Year and (ii) with quarterly Texas Work Force Commerce Reports evidencing payroll targets in the Reporting Year.

**Signed this** \_\_\_\_ **day of** \_\_\_\_\_, **20**\_\_.

**MESSER LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

This instrument was acknowledged before me on the \_\_\_\_ day \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as the \_\_\_\_\_ of MESSER LLC on behalf of said company.

\_\_\_\_\_  
Notary Public, State of New Jersey

**Schedule 1**

**First Year of the Economic Development Grant Incentive Period**

To be attached hereto within forty-five (45) days after the Effective Date

**Schedule 2**

**Payment Request**

To be attached hereto within forty-five (45) days after the Effective Date

**Schedule 3**

**Payroll**

To be attached hereto within forty-five (45) days after the Effective Date

**Schedule 4**

**PILOT**

To be attached hereto within forty-five (45) days after the Effective Date