

**FUNDING AGREEMENT
BETWEEN BRAZOS COUNTY AND
BRAZOS VALLEY ECONOMIC DEVELOPMENT CORPORATION**

THIS FUNDING AGREEMENT ("Agreement") is effective October 1, 2022 by and between **BRAZOS COUNTY, TEXAS**, a body corporate and politic under the laws of the State of Texas, (hereinafter referred to as "County"), and the **BRAZOS VALLEY ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as "BVEDC").

RECITALS:

WHEREAS, the Commissioners Court of Brazos County desires to stimulate business and commercial activity in the County; and

WHEREAS, the County wishes to contract with BVEDC as its agent pursuant to TEX. LOC. GOV'T CODE ANN. §381.004 to administer the County's program for local economic development (herein the Brazos County Economic Development Program); and

WHEREAS, the County desires to diversify its economy, increase and broaden its tax base, provide more and better employment opportunities for its citizens and promote the general public welfare; and

WHEREAS, it is important to the County to attract and expand business, commercial and industrial enterprise in order to accomplish this purpose; and

WHEREAS, BVEDC is an agency with specific expertise in the field of economic development and administering governmental economic development guidelines; and

WHEREAS, the County has determined that this Agreement is for the personal or professional services and therefore exempt from competitive bidding under Chapter 262, Local Government Code.

THEREFORE, in consideration of the mutual understandings and agreements set forth, the County and BVEDC agree as follows:

AGREEMENT:

**ARTICLE 1
Qualifications of the BVEDC**

1.1 The BVEDC represents that:



- (a) The BVEDC is a non-profit entity that is authorized and experienced in the administration and furtherance of economic development programs in all or a portion of the County;
- (b) The BVEDC has expertise and skills to attract new businesses to the County, to encourage the expansion of existing businesses in the County, or to retain existing businesses in the County, pursuant to the County's economic development guidelines and Chapters 311, 312 and Sections 381.003 and 381.004 of the Texas Local Government Code;
- (c) The BVEDC shall cooperate with and use the services of the Texas Department of Economic Development.

ARTICLE 2

Definitions

2.1 "Economic Development Guidelines" means the County's financial criteria on file used to determine qualification for receiving Incentive Funds.

2.2 "Project Performance Standards" means individual performance terms and requirements established by agreement between the County and any employer/business to receive Incentive Funds.

2.3 "Program Projects" means uses of the Incentive Funds, or a portion thereof, as approved by the County, to provide incentives or assistance to businesses/employers which results in the public purpose of economic development, diversification, expansion, and employment being served, pursuant to the County's Economic Development Guidelines.

2.4 "Program Standards" means standards that an employer/business must meet in order to qualify for Incentive Funds.

ARTICLE 3

Term

3.1 The term of this Agreement is for one (1) year, being effective as of October 1, 2022, and ending on September 30, 2023, (the "Present Term"), unless earlier terminated as provided herein.

3.2 Either party may terminate this Agreement on sixty (60) days prior written notice to the others.

3.3 Upon receipt of any termination, the County agrees to continue funding a program project that had been previously approved by the County.

ARTICLE 4 Administration Services

4.1 BVEDC agrees to provide all administrative services necessary to administer the County's Economic Development Program and program standards set forth herein.

4.2 Pursuant to the authority granted in Chapter 381 of the Texas Local Government Code, the administrative services to be provided include, but are not limited to:

- (a) corresponding with and negotiating with potential or existing business/employers for Program Projects that will develop, diversify and/or expand the Brazos County economy, develop or expand transportation or commerce in the State, and/or serve the purpose of eliminating unemployment in Brazos County.
- (b) establishing Project Performance Standards for each Program Project that are consistent with the Program Standards set out in the County's Economic Development Program and herein;
- (c) obtaining contracts between the County and businesses/employers for Program Projects whereby the business/employer agrees to meet the County's Project Performance Standards, and which provide assurances that the County's Project Performance Standards will be met; and
- (d) compliance with all requirements of this Agreement.

4.3 The BVEDC shall receive the sum of Three Hundred Fifty Thousand and No/100 Dollars **(\$350,000.00)** as compensation for the administrative services to be provided hereunder (herein the "Administration Funds"). County shall pay such sum on a monthly basis by paying the BVEDC one-twelfth (1/12) of the total sum referenced above.

ARTICLE 5 Incentive Funding

5.1 County has appropriated One Hundred Nineteen Thousand and No/100 Dollars **(\$119,000.00)** ("Incentive Funds") for the purpose of funding Economic Development Grants entered into by the County under its Economic Development Program. The Incentive Funds shall be divided and designated as follows:

\$119,000.00 of the Incentive Funds shall be appropriated as new cash incentives, which may be used to promote future local economic development and stimulate commercial activity in the County.



Incentive Funds have been budgeted for the current fiscal year and are payable out of current revenues.

5.2 Payments of Incentive Funds shall be made as approved and directed by the County to the qualifying business/employer under approved Program Projects.

5.3 The County Incentive Funds provided for in this Agreement shall be used only in accordance with the Brazos County Economic Development Guidelines and program standards.

ARTICLE 6

Use of Incentive Funding

6.1 The County's Program administered by the BVEDC hereunder consists of the use of the County's Incentive Funds to develop and diversify the Brazos County economy, to eliminate unemployment or under-employment, and to expand the local economy, pursuant to Standards and Guidelines set forth in the Brazos County Economic Development Guidelines.

6.2 Program Standards. The BVEDC shall not recommend to the County that an applicant business/employer receive Incentive Funds unless the applicant business/employer meets or exceeds the following standards:

- (a) is authorized to do business in the State of Texas;
- (b) is current and in good standing on all state, local and federal taxes, assessments and/or fees;
- (c) is not in bankruptcy;
- (d) is an Equal Employment Opportunity Employer with policies in place and practiced which prohibit discrimination in employment based on race, sex, age, national origin, creed, religion, or disability (unless based on bona fide occupational reason or a reason exempted or approved by the Americans With Disabilities Act and the regulations promulgated thereunder);
- (e) agrees by written contract directly with the County to meet performance criteria established by the County in accordance with the County's Program Standards (hereinafter "Project Performance Standards") as to the establishment, expansion, or improvement of business operations in Brazos County, Texas and/or the employment of residents of the County.
- (f) complies with the current County Economic Development Guidelines for financial assistance, including the grant to the County of the right to review and verify the applicant business/employer's financial statements prior to the grant of any incentive and to review the financial condition of the project during the term of any incentive, including the right to send representatives



from the County Appraisal District to inspect any facilities of the applicant business/employer to verify the accuracy of information provided for the economic incentive. Provisions to this effect shall be incorporated in every agreement between the applicant business/employer and the County;

- (g) if the proposed program project does not meet the specific job retention/creation requirements set forth in (f) above, other positive effects on the local economy of the proposed program project may be taken into consideration and approved by the County, as recommended by BVEDC, in determining whether to pursue funding of a program project. These include:
 - (i) the impact of the Program Project on economically disadvantaged individuals. An economically disadvantaged individual is an individual who:
 - (1) was unemployed for at least three (3) months before obtaining employment with the qualified business;
 - (2) receives public assistance benefits, including welfare payments or food stamps, based on need and intended to alleviate poverty;
 - (3) is an economically disadvantaged individual, as defined by Section 4(8), Job Training Partnership Act (29 U.S.C. Section 1503(8));
 - (4) is an individual with handicaps, as defined by 29 U.S.C. Section 706(8);
 - (5) is an inmate, as defined by Section 498.001 of the Government Code;
 - (6) is entering the workplace after being confined in a facility operated by the institutional division of the Texas Department of Criminal Justice or under contract with the Texas Department of Criminal Justice;
 - (7) has been released by the Texas Youth Commission and is on parole, if state law provides for such a person to be on parole; or
 - (8) meets the current low income or moderate-income limits developed under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 14376, et seq.).



- (ii) the need for the product/service provided by the business/employer in the local area;
- (iii) the estimated multiplier effect on the local economy of the Program Project either due to the level of wages paid or the injection of outside funds into the local economy (i.e., tourism, capital expenditures, purchasing or materials from local businesses, etc.); and
- (iv) the creation of part-time positions, and/or
- (v) capital expenditures which have a material and direct positive impact upon the local economy by providing the following benefits:
 - 1. increases in the local tax base;
 - 2. creation of ancillary jobs and/or jobs for economically disadvantaged individuals;
 - 3. attraction of other businesses;
 - 4. creation of new sales tax revenues;
 - 5. commercial development of new and existing areas;
 - 6. defining, enhancing and/or redefining job skill level of locally available work force.

If such considerations indicate that the benefit to the local economy meets or exceeds that which would be gained by the business/employer employing and/or retaining the number of employees required for the level of funding under subsection (e) above, the BVEDC may consider such business as qualifying and therefore recommend such business/employer to the County upon the approval of the Board of Directors by a 75% or more favorable vote (9 of 12).

(h) All contracts for Program Projects must be in a form approved by the County and County's legal counsel. The contract must include, but is not limited to, provisions:

(i) containing the Program Project Performance Standards applicable to the business/employer, and the business/employer's agreement to comply therewith in a set timeframe;

(ii) requiring periodic documentation of the business/employer's compliance with the Project Performance Standards, and giving the BVEDC and the County the right to inspect its operations and books to confirm the business/employer's compliance with the Program Project Performance Standards;

(iii) requiring the repayment directly to the County within sixty (60) days of demand of the funds appropriated to the Program Project by the County if the applicant business/employer fails to meet the County's Project Performance Standards or otherwise is in material breach of its Agreement with the County, and giving the County the right to sue the applicant business/employer to enforce the contract between the



County and the business/employer, and to recover all attorney's fees and costs incurred in doing so;

(iv) requiring the business/employer to make draw requests for the funding from the County, which requests must show in detail how the money and/or property will be applied/used, or for what the reimbursement is sought, and which contain such documentation as is required by the County; and

(vi) requiring compliance with all applicable laws regarding the provision of equal employment opportunities.

ARTICLE 7

Accounting

7.1 BVEDC agrees that Brazos County, or its designated representative, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. BVEDC agrees to maintain such records for possible audit for a minimum of three (3) years after the termination date of this Agreement, unless a longer period of records retention is stipulated. BVEDC agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. BVEDC agrees that Brazos County, or its designated representative, shall further have the right to review and to copy any records and supporting documentation for prior years in which Brazos County provided funds to BVEDC under prior Agreements.

Brazos County Commissioners Court may, in its sole discretion, require that an independent financial audit be performed on the records of BVEDC. If an independent financial audit is performed, a management letter will be prepared by the auditor as part of the process and a copy of said management letter shall be delivered to the Brazos County Commissioners Court. The management letter shall identify issues that might not otherwise require disclosure in the BVEDC annual financial report, but which are of concern to or under the suggestion of the auditor. If the Brazos County Commissioners Court determines that the audit will be conducted by an independent third party, all costs and expenses associated with said audit will be solely paid for by the BVEDC.

Annual financial statements (audited if available) are due to Brazos County within six (6) months of completion.

ARTICLE 8

Miscellaneous Terms

8.1 Notice. Notices or correspondence under this Agreement to either party from the other may be personally delivered or sent by First Class Mail, or other reliable courier.

Notice to the County shall be sent to:

Duane Peters, County Judge
Brazos County Administration Bldg.
200 So. Texas Ave., Suite 332
Bryan, Texas 77803

Notice to the BVEDC shall be sent to:

Brazos Valley Economic Development Corp.
1716 Briarcrest Dr. Suite 714
Bryan, Texas 77802

8.2 Severability. In the event that any provisions or portion of this Agreement is held to be unenforceable or invalid, the validity and enforceability of the remaining provisions or portions shall not be affected.

8.3 Amendment. During the term of this Agreement, if certain areas need further clarification or revision, the parties will work in good faith to arrive at written memorandums or understandings regarding those areas. Any amendment of this Agreement must be in writing and executed by a duly authorized representative of each party.

8.4 Assignment. This Agreement cannot be assigned or performed by subcontractors except with the written consent of both parties.

8.5 Not Joint Venture: Independent Contractor. The parties agree that this is not a joint venture, partnership or employee-employer relationship and that neither party shall have the authority to bind or incur liability to the other without the other's prior written permission. Furthermore, the BVEDC shall be considered an independent contractor agent for the sole and limited purpose only of administering the County's economic development guidelines and program project standards pursuant to the grants of authority given the County under Chapter 311, 312 and 381 of the Texas Local Government Code.

8.6 Applicability of Texas Law. The laws of the State of Texas shall govern this Agreement, except where clearly superseded by federal law.

8.7 Venue. The place of performance of this Agreement is Brazos County, Texas, and all consideration payable hereunder and things to be done pursuant hereto



shall be deemed to be payable and performable in Brazos County, Texas. Venue of any dispute arising out of this Agreement or performance hereunder shall be fixed for all purposes in Brazos County, Texas.

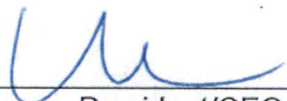
8.8 Entire Agreement and Binding Authority. This Agreement supersedes and constitutes a merger of all prior oral and/or written agreements and understandings of the parties on the subject matter of this Agreement and is binding on the parties and their successors, agents and assigns.

8.9 Waiver. No waiver by either party of any provision of this Agreement shall be effective unless in writing, and such waiver shall not be construed as or implied to be a subsequent waiver of that provision or any other provision. The signatories hereto have the authority and have been given any approvals necessary to bind by this Agreement the respective parties for which they sign.

BRAZOS COUNTY, TEXAS

**Brazos Valley Economic Development
Corp., a Texas non-profit corporation**

By: _____
Duane Peters, County Judge

By:  _____
President/CEO

Attest:

By: _____
Karen McQueen, County Clerk

Legislative Certifications

Brazos County is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS, <https://www.sam.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.

The undersigned affirms the non-debarment statement above, that they are duly authorized execute this contract.

The company representative below further affirms, that the company submitting this proposal, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:

1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.

Pursuant to Section 2270.001, and 2274.002 Texas Government Code:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made or ordinary business purposes; and
2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.
3. If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that Respondent does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the certification is not required.

Company Name: Brazos Valley Economic Development Corporation

Authorized Company Representative: Matt Prochaska

Address: 17116 Briarcrest Dr., Ste 714
Bryan, TX 77802

Signature: 

Date: 9/15/2022

Contract #: _____