



RESOLUTION NO. 20170926-19

**A RESOLUTION AUTHORIZING AN ECONOMIC DEVELOPMENT INCENTIVE
AGREEMENT WITH BOWIE COUNTY, TEXAS, AND AUTHORIZING THE EXECUTIVE
DIRECTOR TO EXECUTE SAID AGREEMENT**

WHEREAS, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

WHEREAS, TexAmericas Center has substantial needs for infrastructure improvements upon the properties it has acquired from the United States Department of Defense; and

WHEREAS, Bowie County, Texas, has developed a Chapter 381 Economic Development Program to promote economic growth and development, expand and diversify the tax base, and create new quality jobs within Bowie County, Texas; and

WHEREAS, TexAmericas Center and Bowie County, Texas, each desire to promote the economic growth and creation of new quality jobs upon the properties of TexAmericas Center in Bowie County, Texas;


NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. That TexAmericas Center enter into an Economic Development Incentive Agreement with Bowie County, Texas, upon the terms and conditions and considerations as set forth in that certain Economic Development Incentive Agreement attached to this Resolution; and
2. That Scott Norton, Executive Director/CEO of TexAmericas Center shall be and he is hereby authorized to execute the Economic Development Incentive Agreement in the form attached to this Resolution and to work with Bowie County, Texas, to implement the terms of the Agreement at the earliest possible date.

PASSED and APPROVED this 26th day of September, 2017.


Boyd Sartin, Chairman of the Board

ATTEST:


Ben King, Secretary

Attached: Economic Development Incentive Agreement

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (this "Agreement") is entered into by and between Bowie County, Texas, a political subdivision of the State of Texas (hereinafter referred to as "County"), and TexAmericas Center, a political subdivision of the State of Texas (hereinafter referred to as "TAC"). The County and TAC may also be referred to as the "Parties" or individually as a "Party".

RECITALS

WHEREAS, TAC was created by the Texas Legislature to take title to property located in Bowie County, Texas, formerly used as a federal military installation including (1) a portion of the property known as Red River Army Depot, said property being described as approximately 625 acres as conveyed by the United States of America to Red River Redevelopment Authority by Deed Without Warranty dated September 30, 1999, and recorded in Volume 3072, Page 161 of the Real Property Records of Bowie County, Texas, (2) a portion of the property formerly known as Lone Star Army Ammunition Plant, said property being described as approximately 8,867 acres as conveyed by the United States of America to Red River Redevelopment Authority by Deed Without Warranty dated September 1, 2010, and recorded in Volume 5898, Page 1 of the Real Property Records of Bowie County, Texas, (3) a portion of the property known as Red River Army Depot, said property being described as approximately 2,850.665 acres as conveyed by the United States of America to TexAmericas Center by Deed Without Warranty dated September 30, 2011, and recorded in Volume 6114, Page 1 of the Real Property Records of Bowie County, Texas, together with such other real property which has subsequently been, or may in the future, be conveyed by the United States of America to TAC (all of said property acquired by said Deeds Without Warranty and property which has subsequently been, or may in the future be, conveyed by the United States of America to Red River Redevelopment Authority and TexAmericas Center being herein referred to as the "TAC Property"); and

WHEREAS, TAC operates pursuant to the provisions of Chapter 3503 of the Texas Special District Local Laws Code; and

WHEREAS, County is a political subdivision of the State of Texas authorized under Chapter 381 of the Texas Local Government Code to offer certain economic development incentives for public purposes, including but not limited to the promotion of local economic development and the stimulation of business and commercial activity within the County; and

WHEREAS, County desires to stimulate business, increase the County's tax base, and create new jobs for its citizens; and

WHEREAS, the TAC Property constitutes the largest economic development project area in Northeast Texas, but requires substantial investments in the enhancement of and construction of new infrastructure such as roads, bridges, water and sewer utility lines, fiber optic lines, natural

gas lines, and other construction, including but not limited to demolition of old unusable military facilities, necessary to successfully redevelop said property; and

WHEREAS, TAC does not have the authority to assess and collect ad valorem taxes upon property located upon the TAC Property, nor does TAC have the authority to impose and collect a sales and use tax to fund its infrastructure needs; and

WHEREAS, Bowie County desires to make a major commitment to the economic development of Bowie County by assisting TexAmericas Center in the funding of the construction, expansion and enhancement of its infrastructure upon the TAC Property, and to provide incentives for private redevelopment of the TAC Property and job creation thereon.

NOW, THEREFORE, for the reasons stated in the 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 herein.

ARTICLE I. DEFINITIONS

“Ad Valorem Tax Revenues” means the amount of the real property taxes collected by the County on the TAC Property.

“Base Year Taxable Value” shall mean the Taxable Value of the Property as of January 1, 2016.

“Chapter 381 Payments” or “Cash Incentives” shall mean that amount paid as a grant under Texas Local Government Code, Chapter 381, by County to TAC in an amount equal to 70% of the Maintenance and Operations Rate portion of the real property taxes collected and attributable to the Increased Taxable Value in the calendar year immediately preceding the year in which a Chapter 381 payment is made pursuant to this Agreement. Such amount shall be calculated based on the increased taxable value for each year of the Agreement over the Base Year Taxable Value, unless otherwise provided herein.

“Effective Date” shall mean the date this Agreement is fully executed by both the County and TAC.

“Expiration Date” means December 31, 2018, or the date as extended pursuant to Article II. In recognition of the fact that Chapter 381 Payments by necessity are calculated and paid after taxes have been assessed and paid to the County, and therefore always run in arrears, the term of this Agreement shall be deemed to be extended for the time necessary to make any payments otherwise due and payable to TAC which extent beyond the original term of the Agreement, including such time necessary to collect delinquent taxes.

“Increased Taxable Value” means the Tax Value for the property as of January 1 of a given year less the Base Year Taxable Value.

“Maintenance and Operations Rate” means the component of the adopted tax rate of County that will impose the amount of taxes needed to fund maintenance and operation expenditures of the County for the following year.

“Real Property Taxes” are the County’s share of the ad valorem taxes received by the County from the Bowie Central Appraisal District, or its successor which collects ad valorem taxes for County, on the value of the TAC Property, which shall include land, improvements, and personal property taxed by the County.

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

ARTICLE II. TERM

2.01. The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein; provided, however, that the term shall automatically be extended for successive one (1) year terms [not to exceed nine (9) in number] unless and until either Party notifies the other Party of its decision not to extend for any extended term in writing not less than 180 days prior to the end of the then current term.

ARTICLE III. REPRESENTATIONS AND WARRANTIES OF TAC AND COUNTY

3.01. TAC Representations. In order to induce County to enter into this Agreement, TAC represents and warrants as follows:

(a) TAC is a political subdivision of the State of Texas created by the Texas Legislature for governmental purposes and is authorized and empowered to enter into this Agreement.

(b) TAC 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 TAC is a party or by which TAC or its property is bound that would have any material adverse effect on TAC’s ability to perform under this Agreement.

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

3.02. County Representations. In order to induce TAC to enter into this Agreement, County represents and warrants as follows:

(a) County is a political subdivision of the State of Texas and is authorized and empowered to enter into this Agreement.

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

ARTICLE IV. TAC'S OBLIGATIONS

4.01. In consideration of the County's participation in this Chapter 381 Agreement, TAC agrees to the following:

(a) TAC shall use the Chapter 381 Payments and Cash Incentives provided by County to construct, enhance, and expand the infrastructure of the TAC Property, including but not limited to roads, bridges, water and sewer utility lines, fiber optic lines, electric lines, natural gas lines, telecommunication services and lines, demolition of unusable facilities, other construction necessary to successfully redevelop said property, including professional fees for architectural, engineering, planning and legal services, and to provide incentives for private redevelopment of the TAC Property and job creation thereon.

(b) TAC agrees to use commercially reasonable efforts to pursue new commercial and industrial tenants and owners to add value to the TAC Property and create new jobs thereon.

(c) TAC shall provide to County an annual report showing the following:

(i) Chapter 381 Payments or cash incentives received from County during the preceding calendar year;

(ii) Expenditures made by TAC of Chapter 381 Payments and Cash Incentives during the previous calendar year showing the amounts expended and the purpose for which said expenditures were made; and

(iii) A report of new jobs created and retained on the TAC Property during the preceding calendar year.

ARTICLE V. COUNTY OBLIGATION

5.01. County's obligation is to make the Chapter 381 Payments provided for in Section VI.

ARTICLE VI. CHAPTER 381 PAYMENTS

6.01. 381 Payments. Subject to TAC's compliance with the terms and conditions of this Agreement, County agrees to pay to TAC annually, not later than March 31, an amount equal to 70% of the Maintenance and Operations Rate Portion of the real property taxes collected and attributable to the Increased Taxable Value of the property for the preceding tax year and delinquent taxes collected during said preceding tax year.

6.02. Subject to Appropriation. The County's obligation to make the Chapter 381 Payments hereunder is subject to annual appropriation by the Bowie County Commissioner's Court; the County agrees to use best efforts to appropriate such funds annually during the term of this Agreement. Under no circumstances shall County's obligations hereunder be deemed to create any debt within the meaning of any Constitutional or statutory provision.

ARTICLE VII. DEFAULT

7.01. Events of Default. TAC shall be in default of this Agreement upon the occurrence of any of the following during the term of this Agreement:

- (a) TAC fails to comply with any of its obligations under this Agreement; and
- (b) TAC fails to file any required report or statement or to give any required notice pursuant to this Agreement.

7.02. Notice of Default. If TAC should default in the performance of any obligation of this Agreement, the County shall provide TAC with written notice of the default, and a minimum period of thirty (30) days to cure such default prior to pursuing any remedy for default.

7.03. Remedies. If TAC remains in default after notice and opportunity to cure, County shall have the right to (i) suspend the Chapter 381 Payments or (ii) terminate the Agreement and recover the Chapter 381 Payments which have accrued after the date of default.

7.04. Survival of Remedies. The County's right and authority to pursue any default and to recover any Chapter 381 Payments made to TAC under this Agreement shall survive the termination of this Agreement.

ARTICLE VIII. MISCELLANEOUS

8.01. Incorporation of Recitals. The determinations recited and declared in the preamble of this Agreement are true and correct and are hereby incorporated herein as a part of this Agreement.

8.02. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated herein.

8.03. Amendments. This Agreement may only be amended, altered or terminated by written instrument signed by all Parties.

8.04. Assignment. TAC may not assign this Agreement without the prior written consent of the County. This Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and permitted assigns.

8.05. 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 thereof, or the right of any 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 a waiver of a breach will not consent to or waiver of or excuse of any other different or subsequent breach.

8.06. Notices. Notices under this Agreement are sufficient and 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. Notice is effective when delivered personally, three (3) business days after sending by certified mail, on the business day after sending by a nationally recognized courier service, or 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 may be in electronic form. Contact information for each Party is as follows:

COUNTY: Bowie County
Attn: County Judge
Bowie County Courthouse
710 James Bowie Drive
New Boston, Texas 75570

TAC: TexAmericas Center
Attn: Executive Director/CEO
107 Chapel Lane
New Boston, Texas 75570

8.07. 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 proceeding shall lie in the State Courts located in Bowie County, Texas. Venue for any matters in Federal Court will be in United States District Court for the Eastern District of Texas, Texarkana Division.

8.08. 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.

8.09. Third Parties. The County and TAC 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 County and TAC or permitted assignees of the County and/or TAC.

8.10. No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a Partnership or Joint Venture by the Parties, and any implication to the contrary is expressly disallowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as the 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.

8.11. Statutory Authority. County and TAC understand and agree that this Agreement is entered into pursuant to the authorities stated in Chapter 381 of the Texas Local Government Code and Chapter 791 of the Texas Government Code.

8.12. Multiple 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.

BOWIE COUNTY, TEXAS

By: 
James M. Carlow, County Judge

By: 
Sammy Stone, Precinct 1

By: 
Tom Whitten, Precinct 2

By: 
James Strain, Precinct 3

By: 
Mike Carter, Precinct 4

Date: 8-28-17

TEXAMERICAS CENTER

By: 
Name: Scott Norton
Title: Executive Director, CEO

Date: 9/26/17