



# BAYTOWN MUNICIPAL DEVELOPMENT DISTRICT

## NOTICE OF MEETING

### BAYTOWN MUNICIPAL DEVELOPMENT DISTRICT REGULAR MEETING

THURSDAY, DECEMBER 2, 2021

4:30 P.M.

COUNCIL CHAMBER, CITY HALL

2401 MARKET STREET, BAYTOWN, TEXAS 77520

## AGENDA

### CALL TO ORDER AND ANNOUNCEMENT OF QUORUM

#### 1. PROPOSED RESOLUTIONS

- a. Consider a resolution authorizing the Economic Development Contract with Baytown Area/West Chambers County Economic Development Foundation.
- b. Consider a resolution authorizing an Interlocal Agreement with the City of Baytown for funding the construction of the Citizen's Bank Building Renovation Project.

#### 2. MANAGER'S REPORT

- a. The next Baytown Municipal Development District meeting is scheduled for Thursday, January 6, 2022, at 4:30 p.m., in the Council Chamber located at City Hall, 2401 Market Street, Baytown, Texas, 77520.

#### 3. ADJOURN

PUBLIC NOTICE IS GIVEN THAT IN ADDITION TO ANY EXECUTIVE SESSION LISTED ABOVE, THE DISTRICT RESERVES THE RIGHT TO ADJOURN INTO EXECUTIVE SESSION AT ANY TIME AS AUTHORIZED BY THE TEXAS GOVERNMENT CODE SECTIONS 551.071 - 551.090 TO DISCUSS ANY OF THE MATTERS LISTED ABOVE.

THE DISTRICT IS COMMITTED TO COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT. REASONABLE ACCOMMODATIONS AND EQUAL ACCESS TO COMMUNICATIONS WILL BE PROVIDED UPON REQUEST. FOR ASSISTANCE PLEASE CALL 281-420-6522, FAX 281-420-6586, OR CONTACT 281-420-6522 VIA RELAY TEXAS AT 711 OR 1-800-735-2988 FOR TTY SERVICES. FOR MORE INFORMATION CONCERNING RELAY TEXAS, PLEASE VISIT: [HTTP://RELAYTEXAS.COM](http://RELAYTEXAS.COM).

Approved for posting:

  
Rick Davis, General Manager

Posted by:

  
Raquel Martinez, Deputy Assistant Secretary  
(SEAL)

Posted this 24th day of November, 2021, at 5:00 P.M.





## **BAYTOWN MUNICIPAL DEVELOPMENT DISTRICT**

**1. a.**

**Meeting Date:** 12/02/2021

**Subject:** Consider Authorizing an Economic Development Contract with Baytown/West Chambers County EDF

**Prepared for:** Rick Davis, City Management

**Prepared by:** Karen Horner, Legal

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### **Information**

#### **ITEM**

Consider a resolution authorizing the Economic Development Contract with Baytown Area/West Chambers County Economic Development Foundation.

#### **PREFACE**

This proposed resolution authorizes the Economic Development Contract with Baytown Area/West Chambers County Economic Development Foundation for an amount not to exceed \$350,000. The contract combines the Economic Development Contract and the Economic Development Special Services Contract that the MDD enters into with the EDF annually and is similar to previous contracts for these services. The planned special projects are:

<b>Description</b>	<b>Amount Not to Exceed</b>
City-wide Redevelopment Assistance	
Marketing and Recruitment Activities	
Incubator without Walls	
Public Policy	
Cooperation with Other Entities	
Data Analytics & Clearinghouse	\$250,000*
Workforce Development & Talent Attraction	
New Market Tax Credits, EB-5 & Qualified Zone Program Research, Development and Implementation	
Trade Shows	\$10,000
Hotel & Conference Center Development	\$10,000
Strategic Economic Vitality Program	\$10,000
Phase III Research	\$55,000
Economic Development Symposia	\$10,000
Marketing Program Implementation	\$5,000
<b>Total Amount Not to Exceed</b>	<b>\$ 350,000.00</b>

\*Lump sum paid quarterly.

#### **RECOMMENDATION**

Staff recommends approval.

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**Fiscal Impact**

**Fiscal Year:** FY2022  
**Acct Code:** 21501-74021  
**Source of Funds (Operating/Capital/Bonds):** Operating  
**Funds Budgeted Y/N:** Y  
**Amount Needed:** \$350,000

**Fiscal Impact (Additional Information):**

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**Attachments**

Resolution - EDF Economic Development Contract  
Exhibit A - EDF Economic Development Contract

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A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BAYTOWN MUNICIPAL DEVELOPMENT DISTRICT AUTHORIZING THE GENERAL MANAGER TO EXECUTE AND THE ASSISTANT SECRETARY TO ATTEST TO AN ECONOMIC DEVELOPMENT CONTRACT WITH THE BAYTOWN AREA/WEST CHAMBERS COUNTY ECONOMIC DEVELOPMENT FOUNDATION FOR ECONOMIC DEVELOPMENT SERVICES; AUTHORIZING PAYMENT IN AN AMOUNT NOT TO EXCEED THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$350,000.00); MAKING OTHER PROVISIONS RELATED THERETO; AND PROVIDING FOR THE EFFECTIVE DATE THEREOF.

\*\*\*\*\*

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BAYTOWN MUNICIPAL DEVELOPMENT DISTRICT:

Section 1: That the Board of Directors of the Baytown Municipal Development District hereby finds that the expenditures authorized herein are for improvements, which satisfy the purposes for which the funds can be expended pursuant to Chapter 377 of the Texas Local Government Code and/or Section 3888.102 of the Special District Local Laws Code. All required findings pursuant thereto are hereby declared to have been made and adopted as findings of the Board of Directors.

Section 2: That the Board of Directors of the Baytown Municipal Development District hereby authorizes the General Manager to execute and the Assistant Secretary to attest to an Economic Development Contract between the Baytown Area/West Chambers County Economic Development Foundation and the Baytown Municipal Development District for economic development services. A copy of the agreement is attached hereto as Exhibit "A," and made a part hereof for all intents and purposes.

Section 3: That the Board of Directors of the Baytown Municipal Development District hereby authorizes the payment of an amount not to exceed THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$350,000.00) to the Baytown Area/West Chambers County Economic Development Foundation in accordance with the agreement referenced in Section 2 hereof.

Section 4: This resolution shall take effect immediately from and after its passage by the Board of Directors of the Baytown Municipal Development District.

INTRODUCED, READ and PASSED by the affirmative vote of the Board of Directors of the Baytown Municipal Development District, this the 2<sup>nd</sup> day of December, 2021.

\_\_\_\_\_  
BRANDON CAPETILLO, President

ATTEST:

\_\_\_\_\_  
ANGELA JACKSON, Assistant Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
KAREN L. HORNER, General Counsel

## Exhibit "A"

# ECONOMIC DEVELOPMENT CONTRACT

STATE OF TEXAS               §  
  §  
COUNTY OF HARRIS       §

This Economic Development Contract (the "Contract") is effective as of the 1<sup>st</sup> day of October, 2021, by and between the **BAYTOWN MUNICIPAL DEVELOPMENT DISTRICT**, a political subdivision of the State of Texas, and the City of Baytown, hereinafter called "District," and **THE BAYTOWN AREA/WEST CHAMBERS COUNTY ECONOMIC DEVELOPMENT FOUNDATION**, hereinafter called "Foundation."

### WITNESSETH:

WHEREAS, the District desires to investigate and undertake ways and means of promoting prosperous development of business, industry and commerce within Baytown, and further desires to promote the location and development of new businesses and industries in Baytown as well as the maintenance and expansion of existing businesses; and

WHEREAS, the Foundation was formed for the purposes, among others, of promoting and encouraging, or causing to be promoted and encouraged, the formation of new businesses and the expansion of existing businesses, the relocation of existing businesses, and the general diversification of the economy of and in Baytown and West Chambers County; and

WHEREAS, the District desires to contract with the Foundation to provide, or cause to be provided, economic development services herein described in the Baytown area; and

WHEREAS, the Foundation is willing, in exchange for the consideration herein provided, to provide, or cause to be provided, the economic development services desired by the District which are intended to expand the tax base and the employment base of Baytown and the surrounding area; and

WHEREAS, the formation of new businesses and the expansion of existing businesses in Baytown would benefit the District by the resultant expansion of both the tax base of the District and the employment base; and

WHEREAS, the District and the Foundation agree that in order to foster and promote competition, to assure the integrity of the competitive process, and to protect proprietary or innovative business strategies and concepts, information and data developed, generated or received by the Foundation should remain privileged and confidential except as herein provided;

NOW THEREFORE, for and in consideration of the premises and mutual covenants herein contained, it is agreed as follows:

### **Section 1. Representations and Warranties of Foundation.**

Foundation hereby represents and warrants as follows:

- a. The Foundation is engaged in an ongoing effort to attract new businesses to the Baytown/West Chambers County area and to encourage the retention and expansion of existing businesses in the Baytown/West Chambers County area.

- b. The Foundation covenants that it shall actively work to productively coordinate its activities with City of Baytown staff and area economic development organizations in an effort to optimize services.
- c. The Foundation represents and warrants that it is a non-profit economic development organization, the principal purpose of which is the promotion of economic development in the Baytown/West Chambers County area and certain unincorporated areas of Harris County.

## **Section 2. Services to be Provided.**

The Foundation shall provide the following economic development services; provided such services are designed (i) to promote or develop new or expanded business enterprises that create or retain primary jobs and/or required or suitable for entertainment and/or tourist purposes or (ii) to promote new or expanded business development in the District consistent with Section 3888.102 of the Texas Special Districts Code:

- a. City-wide Redevelopment Assistance. The Foundation shall provide assistance and guidance in developing programs designed to assist and promote the efforts of local businesses and entrepreneurs to form new business ventures or to expand existing business ventures. The Foundation staff will provide assistance and guidance in the City's acquisition of land in targeted areas.
- b. Marketing and Recruitment Activities. The Foundation shall provide assistance and guidance in organizing and conducting a coordinated marketing program to positively influence the attitudes of local, national, and international business decision makers by drawing attention to the Baytown area's strengths and potential. The marketing program shall target groups and senior executives most likely to result in business relocations and expansions in the Baytown area. Additionally, the Foundation shall provide assistance and guidance in developing programs designed to encourage the dissemination on a national and international level of accurate and detailed information on business opportunities in the Baytown area. Work items include:
  - 1. Formulating a strategy designed to effectively reach targeted companies to educate them about the potential of locating in Baytown;
  - 2. Developing and facilitating an incentive framework that attracts and assists targeted companies locating in specific areas of the City and extraterritorial jurisdiction (ETJ);
  - 3. Preparing and distributing the material that concisely conveys the facts regarding the potential in Baytown;
  - 4. Traveling to meet with decision makers to discuss Baytown; and
  - 5. Implementing elements of the Strategic Economic Vitality Program.
- c. Incubator without Walls ("IWOW"). The Foundation will provide assistance to start-up, minority-owned, women-owned, and disadvantaged business enterprises through the coordination and application of existing programs from multiple sources. The IWOW will be interoperable with City of Baytown business development programming.
- d. Public Policy. The Foundation shall develop and provide advice on public policy and programs for action by the State of Texas, Harris County, the City of Baytown, and other agencies that would facilitate and encourage economic growth. The Foundation may develop advice on policy and budgetary priorities, tax abatement, desirable regulatory changes, and incentives likely to result in business relocations and expansions in the Baytown area.

- e. Cooperation with Other Entities. The Foundation shall agree to participate in joint projects of mutual benefit with or supply appropriate information requested by other economic development organizations.
- f. Data Analytics and Clearinghouse. The Foundation shall act as a clearinghouse for up-to-date statistical, economic, government, educational, labor/workforce information. This work item shall include funding for upgrades in technical capabilities.
- g. Work Force Development and Talent Attraction. Post-COVID-19, the combination of an aging workforce, decreasing working-age population and an increase in local and national demand for skilled employees served to set a high priority on this work item. Post-COVID-19, the urgency of identifying, developing, and sustaining an appropriate workforce is heightened and shared by the City of Baytown, area school districts, Lee College, Harris and Chambers Counties and area businesses and industries. Because of this, the Foundation is facilitating workforce preparedness partnerships, the Economic Development Human Resource Network (EDHRN) comprised of members from all stakeholders mentioned above and continuing its focus on Early Childhood Education.
- h. New Market Tax Credits, EB-5, and Qualified Opportunity Zone Program Research, Development, and Implementation. The Foundation shall conduct ongoing analyses of the benefits, processes, and requirements of these programs. This will be done with a focus on encouraging targeted redevelopment and new development in qualified sections of Baytown and certain areas in the Baytown ETJ.
- i. Trade Shows. The Foundation shall participate in trade shows promoting one or more of the following targeted industries:
  - 1. Manufacturing,
  - 2. Retail/Shopping Centers,
  - 3. Petrochemicals/Energy, and
  - 4. Logistics/Distribution Centers.
- j. Hotel and Conference Center Development. Continuing and building upon efforts in previous years, the Foundation will engage the services of professional resources to assist in development complementary to the new Hyatt Regency Hotel and Convention Center at Bayland Island. The goal is to provide staff with the appropriate guidance and support necessary to effectuate desired development.
- k. Strategic Economic Vitality Program. The Foundation engaged the services of Avalanche Consulting in 2017 to prepare a comprehensive Strategic Economic Vitality Program (EVP) that contains specific economic development goals, strategies, target industries, niche sectors and implementation foci for the next decade. The Foundation will timely access the necessary resources to implement remaining elements of the EVP.
- l. Phase III Research. Continuing and building upon previous studies, the Foundation will engage the services of consultants and/or acquire appropriate analytics platforms to further define the assets and deficiencies of the area in terms of attracting new residential, commercial, retail development, and workforce development, with special focus on talent retention and attraction and early childhood education. The goal of this research is to provide the staff with the database, tools, and real-time capacity necessary to effectuate desired development.

- m. Economic Development Symposia. In light of COVID-19 impacts on the ongoing expansion of the Baytown/West Chambers County Petrochemical Cluster, the Foundation will co-sponsor and/or participate in symposia to highlight related challenges and opportunities vis-à-vis supply chain, logistics, transportation, public safety, infrastructure, workforce planning, and economic development.
- n. Marketing Program Implementation. In as much as the marketing program will include elements that will be utilized in the attraction of both primary and service sector jobs, funding of this program will be allocated in such a manner as to ensure the District's funds are used only in the preparation of basic material and attraction of primary jobs. Funding for non-District eligible activities will be funded with other Foundation monies. Work tasks shall include:
- formulation of a strategy targeting companies that most clearly align with the Baytown EVP, local socio/economic profile, and regional assets;
  - developing incentive plans and evergreen collateral materials;
  - traveling to meet decision makers and site selection consultants; and
  - the ongoing redesign of the Foundation's website.

In this section, the term "primary job" means a job that is:

- a. available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets infusing new dollars into the local economy; and
- b. included in one of the following sectors of the North American Industry Classification System (NAICS):

NAICS Sector #	Description
111	Crop Production
112	Animal Production
113	Forestry and Logging
11411	Commercial Fishing
115	Support Activities for Agriculture and Forestry
211-213	Mining
221	Utilities
311-339	Manufacturing
42	Wholesale Trade
48-49	Transportation and Warehousing
51 (excluding 512131 and 512132)	Information (excluding movie theaters and drive-in theaters)
523-525	Securities, Commodity Contracts, and other Financial Investments and Related Activities; Insurance Carriers and Related Activities; Funds, Trusts, and Other Financial Vehicles
5413, 5415, 5416, 5417, and 5419	Scientific Research and Development Services
551	Management of Companies and Enterprises
922140	Correctional Institutions



### Section 3. Foundation Reports.

The Foundation shall prepare and submit to the District after the end of each calendar quarter during the term of this contract a verbal or brief written report describing the services performed by the Foundation pursuant to this contract during the previous quarter.

The Foundation shall prepare and submit to the District, as soon as practicable after the end of the Foundation's fiscal year, a written report describing in detail the services performed by the Foundation pursuant to this contract during the preceding fiscal year.

### Section 4. Fees.

For and in consideration of the services to be performed by the Foundation and compliance with the terms of this contract and subject to the other provisions of this section, the District agrees to pay to the Foundation an amount not to exceed THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$350,000.00) based upon the following:

Section 2, Subsection	Date of Service	Due Date	Amount
a – h (lump sum payments)	October 1, 2021 - December 31, 2021	December 31, 2021	\$ 62,500
	January 1, 2022 - March 31, 2022	January 31, 2022	\$ 62,500
	April 1, 2022 - June 30, 2022	April 30, 2022	\$ 62,500
	July 1, 2022 - September 30, 2022	July 31, 2022	\$ 62,500
Section 2, Subsection	Description of Service	Due Date	Amount Not to Exceed
i	Trade Shows – Attend and booth space	30 days after receipt of service or receipt of invoice, whichever is later	\$ 10,000
j	Hotel and Conference Center Development		\$ 10,000
k	Strategic Economic Vitality Program		\$ 10,000
l	Phase III Research		\$ 55,000
m	Economic Development Symposia		\$ 10,000
n	Marketing Program Implementation		\$ 5,000

### Section 5. Allocated Funds.

Payments by the District to the Foundation are subject to funds being appropriated by the District for the purpose of purchasing the services provided in this contract.

### Section 6. Term.

This contract shall be effective for the period from October 1, 2021, to September 30, 2022. It is specifically agreed that the Foundation shall not be obligated to perform any services under or pursuant to this contract and the District shall not be obligated to make any payments for services performed after the expiration of that period.

## **Section 7. Termination for Cause.**

A party may terminate its performance under this contract only upon default by the other party. Default by a party shall occur if the party fails to perform or observe any of the terms and conditions of this contract required to be performed or observed by that party. Should such a default occur, the party against whom the default has occurred shall have the right to terminate all or part of its duties under this contract as of the 30<sup>th</sup> day following the receipt by the defaulting party of a notice describing such default and intended termination, provided: (1) such termination shall be ineffective if within said 30-day period the defaulting party cures the default, or (2) such termination may be stayed, at the sole option of the party against whom the default has occurred, pending cure of the default.

## **Section 8. Independent Contractor.**

The relationship of the Foundation to the District shall be that of an independent contractor. The District shall have no authority to direct the day-to-day activities of any of the Foundation's personnel decisions, and shall have no other rights to internal working papers or other information or data than the District would have to any other independent contractor providing specific services (e.g. museum services, weed cutting, legal services, auditors).

Without in any way limiting the generality of the foregoing, it is specifically acknowledged and agreed that Foundation has bargained for the confidentiality of all internal information and data that it generates, other than that required to be submitted to the District pursuant to sections 3 and 13 of this contract, in order to foster and promote competition, to assure the integrity of the competitive process, and to protect proprietary or innovative business strategies and concepts.

## **Section 9. Parties in Interest.**

This contract shall bind and benefit the District and the Foundation and shall not bestow any rights upon any third parties.

## **Section 10. Non-waiver.**

Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing thereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce, by an appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

## **Section 11. Applicable Laws.**

This contract is subject to and shall be construed in accordance with the laws of the State of Texas, the laws of the federal government of the United States of America and all rules and regulations of any regulatory body or officer having jurisdiction. This contract is performable in Harris County, Texas.

## **Section 12. Notices.**

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address described below or at such other address as the receiving party may have theretofore prescribed by notice to the sending party:

FOUNDATION

Baytown Area/West Chambers County Economic Development Foundation

Attn: President / CEO

1300 Rollingbrook, Suite 505

Baytown, Texas 77521

Fax: (281) 422-7682

DISTRICT

Baytown Municipal Development District

Attn: General Manager

P. O. Box 424

Baytown, Texas 77522-0424

Fax: (281) 420-6586

**Section 13. Audits.**

The Foundation shall provide to the District, within ninety (90) days of the close of the Foundation's fiscal year, its audited annual financial statements.

**Section 14. Ambiguities.**

In the event of any ambiguity in any of the terms of this contract, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

**Section 15. Entire Agreement.**

This Contract contains all the agreements of the parties relating to the subject matter hereof and is the full and final expression of the agreement between the parties.

**Section 16. Assignment or Transfer of Rights or Obligations.**

The Foundation shall not sell, assign, or transfer any of its rights or obligations under this contract in whole or in part without prior written consent of District, nor shall the Foundation assign any monies due or to become due to it hereunder without the previous consent of the District.

**Section 17. Severability.**

All parties agree that should any provision of this contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this contract, which shall continue in full force and effect.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have made and executed this contract in multiple copies, each of which shall be an original, on this the \_\_\_\_ day of December, 2021.

**BAYTOWN MUNICIPAL DEVELOPMENT  
DISTRICT**

**BAYTOWN AREA/WEST CHAMBERS  
COUNTY ECONOMIC DEVELOPMENT  
FOUNDATION**

\_\_\_\_\_  
RICHARD L. DAVIS, General Manager

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

ATTEST:

ATTEST:

\_\_\_\_\_  
ANGELA JACKSON, Assistant Secretary

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

APPROVED AS TO FORM:

\_\_\_\_\_  
KAREN L. HORNER, General Counsel

APPROVED AS TO FUNDING AVAILABILITY:

\_\_\_\_\_  
VICTOR BROWNLEES, Director of Finance



## **BAYTOWN MUNICIPAL DEVELOPMENT DISTRICT**

**1. b.**

**Meeting Date:** 12/02/2021

**Subject:** Interlocal Agreement with the City of Baytown for funding the construction of the Citizen's Bank Building Renovation Project

**Prepared for:** Frank Simoneaux, Public Works/Engineering/BAWA

**Prepared by:** Trevor Fanning, Legal

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### **Information**

#### **ITEM**

Consider a resolution authorizing an Interlocal Agreement with the City of Baytown for funding the construction of the Citizen's Bank Building Renovation Project.

#### **PREFACE**

This proposed resolution authorizes an Interlocal Agreement with the City of Baytown for funding the construction of the Citizen's Bank Building Renovation Project in an amount not to exceed \$1,400,000.

The existing building was once the Citizens Bank, which has been vacant for a number of years and has suffered from neglect and decay. The City's Texas Avenue revival initiative places importance on complete block faces and sought to preserve this building for the integrity of the Downtown Arts District. The existing Utility Billing offices are in an older building, which is very small and lacks privacy for billing customers. The staff has outgrown the space of the building causing cramped working conditions.

The existing Citizen's Bank building will be renovated and a portion rebuilt to house the City's Utility Billing Division of the Finance Department. This will include saving the exterior facade and adding a new roof and a new internal and external envelope construction, ensuring structural integrity of the new building. The interior build out will include a lobby area, expanded area for customer service stations, public and employee restrooms, management/supervisor offices, collections and billing specialist offices, a conference room, an employee break room, meter operations, technician offices and a meter testing area.

#### **RECOMMENDATION**

Staff recommends approval.

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### **Fiscal Impact**

**Fiscal Year:**

FY 21-22

**Acct Code:**

21501-74021

**Source of Funds (Operating/Capital/Bonds):** Operating

**Funds Budgeted Y/N:** Y

**Amount Needed:** \$1,400,000.00

**Fiscal Impact (Additional Information):**

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**Attachments**

Resolution - Interlocal for Citizens Bank

Exhibit A - Interlocal Agreement

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A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BAYTOWN MUNICIPAL DEVELOPMENT DISTRICT AUTHORIZING THE PRESIDENT TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE CITY OF BAYTOWN FOR FUNDING THE CONSTRUCTION OF THE CITIZENS BANK BUILDING RENOVATION PROJECT; AUTHORIZING PAYMENT OF AN AMOUNT NOT TO EXCEED ONE MILLION FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,400,000.00); MAKING OTHER PROVISIONS RELATED THERETO; AND PROVIDING FOR THE EFFECTIVE DATE THEREOF.

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BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BAYTOWN MUNICIPAL DEVELOPMENT DISTRICT:

Section 1: That the Board of Directors of the Baytown Municipal Development District hereby finds that the expenditures authorized herein are for improvements, which satisfy the purposes for which the funds can be expended pursuant to Chapter 377 of the Texas Local Government Code and/or Section 3888.102 of the Special District Local Laws Code. All required findings pursuant thereto are hereby declared to have been made and adopted as findings of the Board of Directors.

Section 2: That the Board of Directors of the Baytown Municipal Development District hereby authorizes the President to execute the Interlocal Agreement with the City of Baytown for funding the construction of the Citizens Bank Building Renovation Project. A copy of said agreement is attached hereto as Exhibit "A," and incorporated herein for all intents and purposes.

Section 3: That the Board of Directors of the Baytown Municipal Development District hereby authorizes the payment of an amount not to exceed ONE MILLION FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,400,000.00) to the City of Baytown in accordance with the agreement referenced in Section 2 hereof.

Section 4: This resolution shall take effect immediately from and after its passage by the Board of Directors of the Baytown Municipal Development District.

INTRODUCED, READ and PASSED by the affirmative vote of the Board of Directors of the Baytown Municipal Development District, this the 2<sup>nd</sup> day of December, 2021.

\_\_\_\_\_  
BRANDON CAPETILLO, President

ATTEST:

\_\_\_\_\_  
ANGELA JACKSON, Assistant Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
KAREN L. HORNER, General Counsel

## EXHIBIT "A"

# AGREEMENT FOR FUNDING THE CONSTRUCTION OF THE CITIZEN'S BANK BUILDING RENOVATION PROJECT

STATE OF TEXAS                   §  
   §  
COUNTY OF HARRIS           §

This Agreement for Funding the construction of the Citizen's Bank Building Renovation Project (the "Agreement") is made by and between the CITY OF BAYTOWN, a municipal corporation located in Harris and Chambers Counties, Texas, (the "City") and the BAYTOWN MUNICIPAL DEVELOPMENT DISTRICT, created under Chapter 377 of the Texas Local Government Code, as amended, (the "Act") and located in Harris County, Texas, (the "District"). For and in consideration of the mutual covenants herein contained, it is agreed as follows:

### Section 1. Representations and Warranties of District.

- a) The District is engaged in an ongoing effort to provide new resources to plan, acquire, establish, develop, construct and/or renovate one or more development projects beneficial to the District, which includes the incorporated limits of the City lying within Harris County.
- b) The District covenants that it shall actively work to productively coordinate its activities with the City in an effort to reduce duplication of services.
- c) The District represents and warrants that it has been properly created and is duly authorized pursuant to the Act to enter into this Agreement.

### Section 2. Description of Program.

The City, with the assistance of the District as herein specified, agrees to renovate the existing Citizen's Bank building to house the City's Utility Billing Division of the Finance Department (the "Project"). The Project will include saving the exterior façade and adding a new roof and a new internal and external envelop construction, ensuring structural integrity of the new building, The interior build-out will include a lobby area, expanded area for customer service stations, public and employee restrooms, management/supervisor, collections and billing specialist offices, a conference room, an employee break room, meter operations and technician offices, and meter testing area.

### Section 3. Reports.

The City shall prepare and submit to the District within 120 days after the end of each fiscal year during the term of this Agreement a verbal or brief written report describing the services performed by the City pursuant to this Agreement during the previous year along with a summary of expenditures for the previous fiscal year.

### Section 4. Approvals.

The District understands, hereby directs and authorizes the City to make any Project clarifications and/or modifications as may be necessary as determined by the City in its sole discretion.

### Section 5. Funds to be provided by the District.

For and in consideration of the services to be provided by the City in furtherance of this Agreement, the District shall tender funds to the City in an amount not to exceed ONE MILLION FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,400,000.00). All payments required to be made herein shall be payable on or before 30 days after the District receives an invoice therefor from the City.



**Section 6. Term.**

This Agreement shall be effective on the date signed by the City Manager, and shall expire thirty (30) days after final completion and acceptance of the Project by the City, unless sooner terminated by either party hereto pursuant to the terms hereof.

**Section 7. Termination for Cause.**

A party may terminate its performance under this Agreement only upon default by the other party. Default by a party shall occur if the party fails to perform or observe any of the terms and conditions of this Agreement required to be performed or observed by that party. Should such a default occur, the party against whom the default has occurred shall have the right to terminate all or part of its obligations under this Agreement as of the 30<sup>th</sup> day following the receipt by the defaulting party of a notice describing such default and intended termination, provided: (1) such termination shall be ineffective if within said 30-day period the defaulting party cures or has commenced the cure of the default, or (2) such termination may be stayed, at the sole option of the party against whom the default has occurred, pending cure of the default.

Upon the termination of this Agreement, both parties shall be relieved of their respective obligations herein stated, except for those referenced in Section 9 hereinbelow. This Agreement shall not be subject to termination for convenience.

**Section 8. Force Majeure.**

Any prevention, delay, nonperformance, or stoppage due to any of the following causes shall excuse nonperformance for the period of any such prevention, delay, nonperformance, or stoppage, except the obligations imposed by this Agreement for the payment of funds allocated for the District's programs. The causes referred to above are strikes, lockouts, labor disputes, failure of power, acts of God, acts of public enemies of this State or of the United States, riots, insurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either, governmental restrictions or regulations or controls, casualties or other causes beyond the reasonable control of the party obligated to perform.

**Section 9. Refund and Payment upon Termination.**

Upon termination of this Agreement pursuant to Section 7 hereof due to an uncured default by the City, the City hereby agrees to refund all unexpended, unappropriated monies previously paid by the District to the City pursuant to this Agreement. If at the time of termination the District owes the City monies, the District shall remit to the City the appropriate amount computed as of the effective date of the termination.

Upon termination of this Agreement pursuant to Section 7 hereof due to an uncured default by the District, the District hereby agrees to pay the total amount committed in Section 5 hereof on or before the effective date of the termination.

**Section 10. Parties in Interest.**

This Agreement shall bind and benefit the City and the District and shall not bestow any rights upon any third parties.

**Section 11. Non-waiver.**

Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing thereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce, by an appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

**Section 12. Compliance with Applicable Laws.**

The parties hereto shall comply with all rules, regulations, and laws of the United States of America, the State of Texas, and all laws, regulations, and ordinances of the City of Baytown as they now exist or may hereafter be enacted or amended.

**Section 13. Choice of Law; Venue.**

This Agreement is subject to and shall be construed in accordance with the laws of the State of Texas, the laws of the federal government of the United States of America and all rules and regulations of any regulatory body or officer having jurisdiction. This Agreement is performable in Harris County, Texas.

**Section 14. Notices.**

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address described below or at such other address as the receiving party may have theretofore prescribed by notice to the sending party:

District  
Baytown Municipal Development District  
Attn: President, Board of Directors  
P.O. Box 424  
Baytown, Texas 77522-0424  
Fax: (281) 420-6586

City  
City of Baytown  
Attn: City Manager  
P.O. Box 424  
Baytown, Texas 77522-0424  
Fax: (281) 420-6586

**Section 15. Audits.**

The City and the District may, at any reasonable time, conduct or cause to be conducted an audit of the other party's records and financial transactions. The cost of said audit will be borne by the entity requesting the audit. The City and the District shall make available all of its records in support of the audit.

**Section 16. Ambiguities.**

In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

**Section 17. Captions.**

The captions of the sections and subsections, if any, of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement or of any part or parts of this Agreement.

**Section 18. Entire Agreement.**

This Agreement contains all the agreements of the parties relating to the subject matter hereof and is the full and final expression of the agreement between the parties. Any oral representations or modifications concerning this instrument are of no force or effect excepting a subsequent modification in writing signed by all the parties hereto.

**Section 19. Assignment or Transfer of Rights or Obligations.**

The City shall not sell, assign, or transfer any of its rights or obligations under this Agreement in whole or in part without prior written consent of the District.

**Section 20. Severability.**

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

**Section 21. Authority.**

The officers executing this Agreement on behalf of the parties hereby represent that such officers have full authority to execute this Agreement and to bind the party he/she represents.

IN WITNESS WHEREOF, the parties have made and executed this Agreement in multiple copies, each of which shall be an original and effective on the \_\_\_\_ day of December, 2021, the date signed by the City Manager.

**CITY OF BAYTOWN**

**BAYTOWN MUNICIPAL  
DEVELOPMENT DISTRICT**

\_\_\_\_\_  
RICHARD L. DAVIS  
City Manager

\_\_\_\_\_  
BRANDON CAPETILLO  
President

ATTEST:

ATTEST:

\_\_\_\_\_  
ANGELA JACKSON  
City Clerk

\_\_\_\_\_  
ANGELA JACKSON  
Assistant Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
KAREN L. HORNER  
City Attorney

\_\_\_\_\_  
KAREN L. HORNER  
General Counsel