Elgin TEXAS
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Elgin Economic Development Corporation

Agenda – EDC Special Meeting

Tuesday, August 29, 2017 at 6:30 p.m.

**City Hall Annex, 310 North Main Street,
Elgin, Texas 78621**

Board Members:
Jeff Carter - President, Bryan Bracewell – Vice President, S.H. McShan - Secretary,
Molly Alexander, Jessica Bega, Sue Brashar & Cody Mauck

I. Call to Order

II. Approval of Minutes from the August 15, 2017 EDC Meeting

III. Public Comments - No discussion or action will occur beyond what is allowed by Texas Open Meetings Act

IV. Discussion and possible action to consider approving the proposed 2017/2018 EDC budget

V. Discussion and possible action to consider approving an Economic Development Agreement with BFB Elgin Retail Partners, LLC to construct approximately 47,000 square feet of new retail space on approximately 5.4 acres of land.

VI. Executive Session - The Elgin Economic Development Corporation Board of Directors will meet in a closed/executive session pursuant to the Texas Government Code, Chapter 551, to discuss the following: Section 551.072 - Deliberation about real property and/or potential sales, acquisitions, exchanges, leases, dispositions, incentives or values of real property. Section 551.074 Personnel Matters.

VII. Reconvene - The Elgin Economic Development Corporation Board of Directors will reconvene into Open Session to discuss, consider and/or take any action necessary related to the executive session noted herein, or regular agenda items, noted above, and/or related items.

VIII. Announcements.

IX. Adjournment

CERTIFICATION

I certify that the above notice for an Elgin EDC meeting was posted on the bulletin board at the City Hall of Elgin, Texas on or before, 5pm, Friday, August 11th, 2017

Renée L. Anderson

Renee Anderson, Executive Assistant

NOTICE OF ASSISTANCE AT A PUBLIC MEETING
The City of Elgin is committed to compliance with the Americans with Disability Act. The Council Chambers are wheelchair accessible and special marked parking is available in front of the building. Persons with disabilities who plan to attend this meeting and who may need assistance are requested to contact the City Secretary's Office at (512) 281-5724. Please provide forty-eight (48) hours notice when feasible.

EDC Regular Meeting Minutes

Tuesday, August 15, 2017 at 6:30 p.m.

City Hall Annex, 310 North Main Street,
Elgin, Texas 78621

Board Members:

Jeff Carter - President, Bryan Bracewell - Vice President, S.H. McShan - Secretary, Molly Alexander, Jessica Bega, Sue Brashar & Cody Mauck

Attending: Jeff Carter, Molly Alexander, Sue Brashar, S.H. McShan, Jessica Bega, Cody Mauck, Bryan Bracewell

Absent: None

Staff: Owen Rock, Renee Anderson, Sue Beckwith

I. **Call to Order** The meeting was called to order at 6:30pm by Jeff Carter.

II. **Approval of Minutes from the July 25, 2017 EDC Board Meeting** Sue Brashar moved to approve the minutes, seconded by S.H. McShan, passed unanimously.

III. **Public Comments** - No discussion or action will occur beyond what is allowed by Texas Open Meetings Act.

IV. **Financial Report** The Financial Report was presented by Owen Rock.

V. **Directors Report** The Director's Report was presented by Owen Rock.

VI. **Discussion of proposed 2017/2018 budget** – City Departments continue to work on their individual budgets. The EDC Budget will be finalized and presented at the next EDC meeting.

VII. **Discussion and possible action to consider approving an amendment to the Contract for the sale of 1.176 acres of land in the Elgin Business park to Michael and Penelope Strack in the amount of $30,000.** Molly Alexander motioned to approve an amendment to the Contract for the sale of 1.176 acres of land in the Elgin Business Park to Michael and Penelope Strack in the amount of $30,000, seconded by Cody Mauck, passed unanimously.

VIII. **Discussion and possible action to consider approving funding for the Elgin Local Foods project** – The Board moved into Executive Session to discuss considering approving funding for the Elgin Local Foods Project.

The Board moved into Executive Session at 6:45pm.

IX. **Executive Session - The Elgin Economic Development Corporation Board of Directors will meet in a closed/executive session pursuant to the Texas Government Code, Chapter 551, to discuss the following: Section 551.072 - Deliberation about real property and/or potential sales, acquisitions, exchanges, leases, dispositions, incentives or values of real property. Section 551.074 Personnel Matters.**

X. **Reconvene - The Elgin Economic Development Corporation Board of Directors will reconvene into Open Session to discuss, consider and/or take any action necessary related to the executive session noted herein, or regular agenda items, noted above, and/or related items.**

The Board reconvened into regular session at 7:41 pm.

No Action was taken.

XI. **Announcements.**

No announcements

XII. **Adjournment**

The meeting was adjourned at 7:42pm.

ATTEST:

S.H. McShan, Secretary

APPROVED:

Jeff Carter, President

CITY OF ELGIN ECONOMIC DEVELOPMENT CORPORATION
REVENUE & EXPENDITURE DETAIL

**FY17-18 Annual Budget as proposed by the Director of Economic Development and approved/recommended by the EDC Board of Directors

REVENUE	FY2014-15 Actual	FY2015-16 Actual	FY2016-17 Projected	FY2017-18 Proposed	FY2018-19 Projected	FY2016-17 Budget	7/25/17 Actual
TAXES							
Sales Tax	581,900	644,569	656,776	647,000	672,880	615,000	547,313
Interest Income	1,972	2,512	3,594	0	0	1,600	2,995
Subtotal	$583,872	$647,081	$660,370	$647,000	$672,880	$616,600	$550,308
MISCELLANEOUS							
Lease Revenue	100	100	100	100	104	100	100
Land Sales	0	0	76,650	0	0	0	76,650
Other	0	0	0	0	0	0	0
Subtotal	$100	$100	$76,750	$100	$104	$100	$76,750
FUND BALANCE	$ -	$ -	$ -	$ -	$ -	$ 951,140	$ -
TOTALS	$583,972	$647,181	$737,120	$647,100	$672,984	$1,567,840	$627,058
EXPENDITURES	**FY2014-15 Actual**	**FY2015-16 Actual**	**FY2016-17 Projected**	**FY2017-18 Proposed**	**FY2018-19 Projected**	**FY2016-17 Budget**	**7/25/17 Actual**
SALARIES AND BENEFITS							
Base Salaries	0	0	124,125	138,413	143,950	138,413	103,438
Performance Bonus	n/a	n/a	0	5,000	0	0	0
Market Maint Adjustment	n/a	n/a	n/a	0	n/a	n/a	n/a
Merit Increase	n/a	n/a	n/a	0	n/a	n/a	n/a
Social Security	0	0	9,401	11,195	11,643	11,195	7,834
Municipal Retirement System	0	0	18,956	20,517	21,338	20,517	15,797
Worker's Compensation	0	0	787	623	648	623	656
Medical Insurance	0	0	10,391	12,587	13,091	12,587	8,659
Unemployment Insurance	0	0	519	342	356	342	432
Longevity Pay	0	0	876	250	260	730	730
Car Allowance	0	0	6,964	7,200	7,488	7,200	5,804
Other	0	0	0	0	0	0	0
Subtotal	$0	$0	$172,020	$196,128	$198,773	$191,608	$143,350
SUPPLIES AND MATERIALS							
Minor Supplies	1,598	3,064	1,023	1,000	1,040	1,600	853
Postage	0	0	0	400	416	450	0
Printing	196	1,145	1,473	2,000	2,080	1,500	1,227
Subtotal	$1,794	$4,210	$2,496	$3,400	$3,536	$3,550	$2,080
SERVICES & OTHER CHARGES							
Marketing/Advertising	21,644	31,262	23,643	40,000	41,600	40,000	19,702
Professional Services	397	28,381	33,132	65,000	67,600	95,000	27,610
Business Assistance	341,107	107,877	200,000	230,345	239,559	200,000	67,872
Business Park Maintenance	3,293	1,296	1,224	1,500	1,560	1,500	1,020
Utilities	0	185	0	10,500	10,920	700	0
Information Technology	3,259	4,285	192	7,800	8,112	6,500	160
Engineering	7,500	3,650	2,921	10,000	10,400	2,500	2,434
Legal Services	288	162	0	2,000	2,080	2,000	0
Travel & Training	5,734	7,904	821	8,000	8,320	7,000	684
Dues & Memberships	1,697	2,323	2,299	5,000	5,200	5,000	1,916
Depreciation Expense	0	276,929	0	0	0	0	0
Other	493	3,363	0	251	261	250	0
Subtotal	$385,412	$467,616	$264,232	$380,396	$395,612	$360,450	$121,398
CAPITAL OUTLAY	$ -	$ -	$ -	$ -	$ -	$ -	$ -
DEBT SERVICE	$ 38,008	$ 26,255	$ 167,063	$ 67,176	$ 67,176	$ 167,063	$ 39,609
TRANSFERS OUT	$ 196,842	$ 165,902	$ -	$ -	$ -	$ -	$ -
TOTALS	$622,057	$663,984	$605,810	$647,100	$665,097	$722,671	$306,437
Beginning Fund Balance						$ 951,140	
OPERATING SURPLUS/(DEFICIT)	$ (38,084)	$ (16,803)	$ 131,310	$ (0)	$ 7,887	$ (105,971)	$ 320,622
Ending Fund Balance						$ 845,169	

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement ("Agreement") is made by and between the Elgin Economic Development Corporation, a Texas non-profit corporation created under Article 5190.6, Vernon's Texas Civil Statutes,, (the "EDC") and BFB Elgin Retail Partners, LLC ("Developer").

RECITALS:

WHEREAS, Developer desires to construct and develop approximately 47,000 square feet of commercial and/or retail tracts within approximately 5.4 acres of land, as shown on the existing preliminary plan, attached hereto as Exhibit "A", attached hereto and incorporated herein (the "Property"), and

WHEREAS, the Aqua Water Supply Corporation ("Aqua") holds the Certificate of Convenience and Necessity to supply water within the Property; and

WHEREAS, Developer has advised the EDC that a contributing factor that would induce Developer to develop the Project would be an agreement with the EDC to provide a performance based economic development grant to Developer to defray a portion of the costs to be incurred by Developer as a consequence of developing the Property, and

WHEREAS, the EDC has found and determined that development of the Property will further the public interest and welfare and the potential economic benefits that will accrue to the EDC are consistent with the EDC's economic development objectives to increase sales and use tax revenues accruing to the City of Elgin (the "City") and attract additional jobs, and is necessary to promote or develop new business enterprises, and

WHEREAS, the EDC is authorized by Chapter 501 et. seq. of the Texas Local Government Code to establish economic development programs, and

WHEREAS, the EDC and Developer desire to set forth in this Agreement the terms and conditions of the performance based economic development payments to be made to Developer, its successors and assigns.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
PURPOSE AND INTERPRETATION

Objectives. Developer hereby agrees to fund certain costs associated with the development of the Property and to comply with the terms and conditions of this Agreement.

Concept and Structure. As authorized by Chapter 501 of the Texas Local Government Code, as amended, the EDC will make certain performance-based economic development grant payments as set forth in Article III of this Agreement to Developer for the purpose of reimbursing the Project Costs incurred by Developer for the development of the Property.

ARTICLE II
DEFINITIONS

"Agreement" shall mean this agreement and all attachments hereto between the EDC and Developer.

"Available EDC Sales Tax" shall have the meaning given to such term in Article III.B of this Agreement.

"City Council" shall mean the City Council of Elgin, Texas.

"Developer" shall mean BFB Elgin Retail Partners, LLC or any successor thereto or assignee thereof under this Agreement.

"EDC" shall mean the Elgin Economic Development Corporation of Elgin, Texas.

"Project Costs" shall mean (i) Water Main Costs, as defined below; (ii) Water Pressure Costs, as defined below; and (iii) Sewer Costs, as defined below.

. "Property" shall mean the property described on Exhibit A attached hereto.

"Sales Tax Fund" shall mean the fund established by the EDC pursuant to Article III. D of this Agreement.

"Sales Tax Grant Payments" shall mean the performance based economic development grant payments made by the EDC from its sales tax revenues as set forth in Article III. C of this Agreement.

"Sewer Costs" are those costs related to the installation of an off-site sewer extension in an amount not to exceed $50,000.

"State" shall mean the State of Texas.

."Water Main Costs" are those costs related to the installation of the required twelve inch (12") water main extension in an amount not to exceed $40,000.

"Water Pressure Costs" are those costs related to the installation of water pump required for water pressure in an amount not to exceed $60,000.

ARTICLE III
EDC'S DUTY TO MAKE SALES TAX GRANT PAYMENTS

A. **General Statement**. The duty of the EDC to make Sales Tax Grant Payments to Developer for any purpose under this Agreement is limited in its entirety by the provisions of this Agreement. Sales Tax Grant Payments to be made by the EDC pursuant to this Agreement shall be made pursuant to Chapter 501 of the Texas Local Government Code, as amended; and any other economic development or financing program authorized by applicable State law, solely from annual sales taxes received by the EDC as described by this Article. No Sales Tax Grant Payments shall be made if Developer fails to materially comply with any terms and conditions of this Agreement, after being afforded an opportunity to cure, as stated herein.

B. **Available EDC Sales Tax**. The EDC represents that the current aggregate sales tax rate in the City is eight and one quarter percent (8.25%), of which one-half of one percent (.5%) is the EDCs share that is herein designated as the Available EDC Sales Tax (the "Available EDC Sales Tax").

C. **Sales Tax Grant Payment**. The EDC hereby agrees to make Sales Tax Grant Payments to the extent now or hereafter permitted by law to Developer from the Sales Tax Fund in an amount:

Year 1 - equal to seventy percent (70%)

Year 2 – equal to sixty percent (60%)

Year 3 – equal to fifty percent (50%)

Year 4 – equal to forty percent (40%)

of the sum of the Available EDC Sales Tax revenues collected by the City within the Property. Subject to the compliance with the terms and conditions of this Agreement, all Sales Tax Grants Payments shall continue until the earlier of (i) four (4) years after the date the 47,000 square foot building receives its first Certificate of Occupancy or (ii) payment in full of all Project Costs. In order to make the Sales Tax Grant Payments, Developer shall include copies of all invoices and copies of paid invoices for the Project Costs stated above.

D. **<u>Sales Tax Fund</u>**. The EDC will provide for the payment of Sales Tax Grant Payments to be made pursuant to this Article by establishing a separate account in the EDC into which all sales tax receipts contemplated by Section III. C above shall be deposited (the "Sales Tax Fund"). During the term of this Agreement, the EDC will pay to Developer on a quarterly basis on the first business day of each quarter, all monies then available in the Sales Tax Fund as Sales Tax Grant Payments pursuant to this Agreement upon receipt of evidence of payment of Project Costs paid by Developer and subject to the provisions of Section C, above, and other terms and conditions of this Agreement. Developer shall submit in advance of any Sales Tax Grant Payments all invoices which reflect actual Project Costs, which are subject to review and approval by the EDC, said approval to not be unreasonably withheld. The Developer covenants and agrees to sign, or cause to be signed, any documentation necessary to authorize the Texas State Comptroller's Office to release and disclose to the EDC any and all sales tax information relating to any businesses generating sales and use tax within the Property. The EDC is unable to and will not make Sales Tax Grant Payments <u>without this release being on file with the Comptroller</u>. Irrespective of the above, the EDC shall not be obligated to make retroactive payments from sales taxes collected for prior years unless the failure to collect said sales taxes is due to clerical error or unless said sales taxes are delinquent sales taxes collected within the Property.

Limitation of Source of Payment. The obligation of the EDC to Developer under this Agreement is limited to the Sales Tax Grant Payments as described in this Article. This Agreement shall create no obligation of the EDC which is payable from any other moneys received by the EDC other than the sales tax receipts contemplated by Section III C above which are actually collected by the EDC.

E. **<u>Condition to Receipt of Sales Tax Grant Payments</u>**, No Sales Tax Grant Payments shall be made until and unless all terms and conditions as stated in this Agreement have been materially complied with in full after Developer has been afforded the opportunity to cure, as stated herein.

ARTICLE IV
SALES TAX FUND INVESTMENT AND ACCOUNTING

A. **<u>Investment</u>**. Moneys in the Sales Tax Fund may be invested and reinvested by the EDC only in investments which would be eligible for investment pursuant to the provisions of the Public Funds Investment Act (Chapter 2256, Texas Government Code); provided that all such investments must mature at such times and in such amounts as necessary for all Sales Tax Grant Payments to be made to the Developer as required by Article III of this Agreement. Moneys on deposit in the Sales Tax Fund will be secured by the depository bank in the same manner as EDC funds are required to be secured at the EDC depository.

B. **Accounting**. Complete books and records shall be maintained showing deposits to and disbursements from the Sales Tax Fund which books and records shall be deemed complete if kept in accordance with Generally Accepted Accounting Principles as applied to State municipalities and in accordance with the provisions of the State law. Such books and records shall be available for examination by the duly authorized officers or agents of Developer during normal business hours upon request made not less than five (5) business days prior to the date of such examination. Such books and records shall be maintained throughout the term of this Agreement and for four (4) years thereafter.

ARTICLE V.
DEVELOPER OBLIGATIONS

A. **General Statement.** The Sales Tax Grant Payments are specifically conditioned upon Developer materially complying with all the terms and conditions of this Agreement subject to an opportunity to cure, as stated herein If Developer is in default regarding any term or condition of this Agreement, and has failed to cure any default as required herein, the EDC is relieved of any obligation to make Sales Tax Grant Payments. In addition, the EDC may utilize any and all other remedies available in laws or equity.

B. **Retail Space**. The Developer shall design and construct approximately 47,000 square feet of retail space.

C. **Construction Schedule and First Sales Tax Grant Payments**. The Developer shall have the development under construction within six (6) months of date of closing on the property. The development shall be completed within twelve (12) months from the date construction begins. The Sales Tax Grant Payments will not begin until after the first Certificate of Occupancy has been issued after the completion of construction of the 47,000 square foot building, as required in Section B., above.

ARTICLE VI.
PERSONAL LIABILITY OF PUBLIC OFFICIALS

To the extent permitted by State law, no employee of the EDC, or any board member or agent of the EDC, shall be personally responsible for any liability arising under or growing out of this Agreement.

ARTICLE VII
LAW TO BE OBSERVED

The Developer at all times shall observe and comply with all federal and state laws, local laws, ordinances, orders, and regulations of the federal, state, county, or City governments.

ARTICLE VIII
INFORMATION

The Developer shall, at such times and in such form as EDC may require, furnish periodic information concerning the status of the Developer, and the performance of its obligations under this Agreement, and such other statements, certificates and approvals relative to the Developer as may be requested in writing by the EDC.

ARTICLE IX
ADDRESS AND NOTICE

Any and all notices and communications under this Agreement shall be mailed by first-class mail, or delivered, to Developer at the following address:

BFB Elgin Retail Partners, LLC
C/O Brett Butler
2727 Paces Ferry Road SE
Suite 1-255
Atlanta, GA 30339

With a copy to:

Marks & Williams LLC
Attn: Charlie M. Hamby
7390 McGinnis Ferry Road, Suite 200
Suwanee, GA 30024

Any and all notices and communications under this Agreement shall be mailed by first-class mail, or delivered, to the EDC at the following address:

Owen Rock
Elgin Economic Development Corporation
P.O. Box 591
Elgin, Texas 78621

With a copy to:

Charles Crossfield
Sheets & Crossfield, PC
309 East Main Street
Round Rock, Texas 78664

ARTICLE X.
APPLICABLE LAWS

THIS AGREEMENT IS MADE SUBJECT TO THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS AND IS PERFORMABLE BASTROP COUNTY, TEXAS. VENUE SHALL BE IN BASTROP COUNTY, TEXAS.

ARTICLE XI.
CAPTIONS

The captions at the beginning of the Articles of this Agreement are guides and labels to assist in locating and reading such Articles and, therefore, will be given no effect in construing this Agreement and shall not be restrictive of the subject matter of any Article, Section, or part of this Agreement.

ARTICLE XII.
SUCCESSORS AND ASSIGNS

This Agreement shall bind and benefit the respective parties and their legal successors, and shall be assignable by Developer, in whole or in part to any party, upon written notice to the EDC.

ARTICLE XIII.
TERM

This Agreement shall become effective, and its initial term shall begin, upon the issuance of the first Certification of Occupancy after the completion of construction of the 47,000 square foot building on the Property and shall end, subject to the Article III, upon the earlier of (i) four (4) years after the issuance of the first Certification of Occupancy for the Property or (ii) until all the Project Costs have been paid in full.

ARTICLE XIV.
AMENDMENT OR MODIFICATIONS

Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment, or modification only by the mutual written consent of the parties hereto.

ARTICLE XV.
COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same instrument.

ARTICLE XVI
DEFAULT

A. Notice and Opportunity to Cure If either party defaults in its obligations under this Agreement, the other party must, prior to exercising a remedy available to that party due to the default, give written notice to the defaulting party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting party at least thirty (30) days from receipt of the notice to cure the default,

B. Remedies for Default. If either party defaults under this Agreement and fails to cure the default within the applicable cure period, the non-defaulting party will have all rights and remedies available under this Agreement, including the right to institute legal action to cure any default, to enjoin any threatened or attempted violation of this Agreement or to enforce the defaulting party's obligations under this Agreement by specific performance or writ of mandamus. In the event of default by the Developer, in addition to the other remedies stated herein the EDC may not make the Sales Tax Grant Payments as referenced herein. In the event of a default by the EDC, Developer will be entitled to seek a writ of mandamus, in addition to seeking any other available equitable remedies. All equitable remedies available to a party will be cumulative and the pursuit of one remedy will not constitute an election of remedies or a waiver of the right to pursue any other equitable remedy.

C. <u>Sales Tax Grant Payments Recapture</u>. In the event the EDC terminates this Agreement as a result of Developer's default, the EDC may recapture and collect from Developer any or all Sales Tax Grant Payments previously paid to Developer (Recapture Liability). Developer shall pay to the EDC the Recapture liability within thirty (30) days after the EDC makes demand for same. Notwithstanding anything to the contrary, such recapture Liability shall not exceed, in the aggregate, an amount equal to all Sales Tax grant payments that were paid pursuant to this Agreement from the effective date to the date of termination. The EDC shall have all the remedies for the collection of the recapture Liability as provided generally in the Tax Code for the collection of delinquent sales and/or property taxes.

[EXECUTION PAGE FOLLOWS]

DATED as of the _______ day of _____________, 2017.

ELGIN ECONOMIC DEVELOPMENT CORPORATION

By: ______________________________________
Jeff Carter, President

BFP ELGIN RETAIL PARTNERSHIP, LLC

By: ______________________________________
Brett Butler, Manager

EXHIBIT A