

ECONOMIC DEVELOPMENT AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") by and between the City of Baytown, a Texas home-rule municipal corporation ("City"), and Buc-ee's, Ltd., a Texas limited partnership ("Developer"), is made and entered into on this 18th day of June, 2013 (the "Effective Date"). The City and Developer are sometimes collectively referred to herein as the "Parties".

WHEREAS, Developer is contemplating the purchase of a certain tract of land totaling approximately 17.9 acres within the City of Baytown, located as generally depicted on the aerial map marked as Exhibit "A" attached hereto and incorporated herein for all purposes ("Property"), for the purpose of developing a Buc-ee's retail store of at least 60,000 square feet; and

WHEREAS, in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Gov't Code, the City may establish and provide for the administration of a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, in accordance with Chapter 380, Texas Local Gov't Code, the City hereby establishes such a program to provide incentives and financial assistance to the Developer to encourage and promote the development of the Property thereby enhancing and stimulating business and commercial activity in the City; and

WHEREAS, as a material inducement to Developer purchasing and developing the Project (hereinafter defined) on the Property, the City has agreed to offer incentives to Developer, including, but not limited to, a sales tax rebate for a period of fifteen (15) years, which will enable Developer to develop the Project on the Property; and

WHEREAS, as a material inducement to Developer purchasing and developing the Project on the Property, the City has agreed to extend a sanitary sewer line to the Property (in a mutually acceptable location) sufficient for the full development and use of the Property for the Project, at the City's sole cost and expense; and

WHEREAS, the Developer has agreed, in exchange and as consideration for funding by the City to satisfy and comply with certain terms and conditions, including the construction of the Project as defined herein; and

WHEREAS, the City and Developer agree that the provisions of this Agreement substantially advance a legitimate interest of the City by expanding the sales tax base of the City, increasing employment and promoting economic development;

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and the promises and the mutual agreements set forth herein, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

ARTICLE I RECITALS

1. Recitals. The recitals set forth above are declared true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE II THE PROJECT

1. The Project. The Developer intends to construct or cause to be constructed a retail development of at least 60,000 square feet to be known as Buc-ee's #34 (the "Project"). The Project is to be constructed in substantial accordance with the "Conceptual Site Plan" attached as Exhibit "B".

2. Conveyance of Easements for Utilities. Developer shall, at no cost to the City, timely convey to the public (i) such permanent easements for the provision of water, wastewater and storm water services to the Project as shall be required to service the Project and (ii) such permanent easements for fire lanes as shall be required by the City's Fire Marshal. Such easements and rights-of-way shall be in form and content reasonably acceptable to Developer and the City and shall either (a) be reflected on a plat filed of record or (b) be evidenced by separate instrument from the Developer (or other party as the case may be) to the public.

3. Conveyance of Rights of Way for Public Streets. Developer shall, at no cost to the City, timely convey to the public such rights-of-way necessary to improve John Martin Road adjacent to the Project as shall be required by current or future roadway improvement projects up to a maximum of fifteen feet (15'-0") in width adjacent to and along the Property's frontage onto John Martin Road. Such rights-of-way shall be in form and content acceptable to Developer and the City and shall either (a) be reflected on a plat filed of record or (b) be evidenced by separate instrument from the Developer (or other party as the case may be) to the public.

4. Project Pole Sign. Developer shall construct, at Developer's expense, an illuminated pole sign in substantially the same form as set forth in Exhibit "C" attached hereto and incorporated herein (the "Pole Sign"). The Pole Sign shall not exceed a maximum height of 100 feet (100'-0"), the main sign shall not exceed 25 feet (25' 0") in diameter and an accessory, illuminated "Baytown" sign approximately 22 feet 6 inches wide and five feet tall shall be installed. Notwithstanding the restrictions and conditions imposed by the City's Ordinances, the City, as part of the consideration provided to Developer for entering into this Agreement, hereby approves the Pole Sign depicted in Exhibit "C", including, but not limited to the height, area (size) and illumination of the Pole Sign but excluding spectacular signs, provided that the Pole Sign is engineered and constructed pursuant to all federal, state and local structural building codes.

5. Tourist Information Space. As part of the consideration provided to the City for entering into this agreement, the Developer agrees to provide mutually agreed upon space for the display and dissemination of Baytown tourist information.

6. Public Purpose. The City finds that the benefits provided by the Developer and described in this Section 5 promote economic development in the City and stimulate business and commercial activity in the municipality. In consideration of the Economic Development Grant, the Developer agrees to provide the following:

a. Certain private utility infrastructure to serve the Project, including, but not limited to, water lines, drainage infrastructure, and sanitary sewer lines and related infrastructure, save and except a public sanitary sewer line to be extended to the Property (in a mutually acceptable location) and made available for connection to serve the Project by the City at no cost to Developer;

b. Permanent easements on the Property required by the City, if any, at no cost to the City, for utilities and fire lanes located on the Property, as required by City Code and approved by Developer; and

c. Commence construction of a Buc-ee's retail store with a minimum of 60,000 square feet no later than twelve (12) months following the extension of a sanitary sewer line to the Property in a mutually acceptable location and sufficient to serve the Project by the City, at the City's sole cost and expense; and

d. All sales tax revenues generated from the Project after payment of the Economic Development Grant.

ARTICLE III ECONOMIC INCENTIVES

1. Economic Development Grant. The City shall pay to the Developer an economic development grant in the form of periodic payments made solely from Sales Taxes Collected at the Project pursuant to Chapter 380 of the Texas Local Government Code. The Economic Development Grant is comprised exclusively of a City Payment as defined below, which grant expires fifteen (15) years from January 1 following the year the Project opens for business to the public on the Property, unless this Agreement is earlier terminated pursuant to the terms hereof. The Developer understands and agrees that the City is not certifying or otherwise encumbering any funds for the Economic Development Grant and does not have any monies for the same. The Developer agrees not to make any claims against the City for any monies other than those from the Sales Taxes Collected at the Project.

a. City Payment. The City will make payments to the Developer from sales tax revenues pursuant to Chapter 380 of the Texas Local Government Code to the Developer in the amount of the Sales Taxes Collected at the Project as defined below (the "Sales Taxes Collected at the Project"). The City Payment shall be paid in monthly installments beginning January 1 following the year the Project opens for business to the public on the

Property. If this Agreement is not terminated prior to its expiration, the final City Payment to the Developer shall be that portion of the Sales Taxes Collected at the Project as of the date of the expiration of this Agreement.

b. Sales Taxes Collected at the Project. The “Sales Taxes Collected at the Project” is defined as an amount equal to 1% of the taxable sales generated by the Project on the Property and received by the City during the Term, including those monies received after the collection period because of delinquency or protest.

2. Grant Limitation. The City’s obligation to pay the Economic Development Grant to the Developer shall be restricted to Sales Taxes Collected at the Project. The City shall not be obligated to pay the Economic Development Grant from ad valorem taxes or any other source of revenue. Furthermore, the Economic Development Grant shall expire fifteen (15) years following January 1 of the year following the year in which a certificate of occupancy is issued for the Project unless earlier terminated pursuant to the terms hereof. In recognition of the fact that the Economic Development Grant is calculated and paid after taxes have been paid to the City, and therefore always run in arrears, the Economic Development Grant shall be deemed to include Sales Taxes Collected at the Project during the Term of this Agreement but received by the City after the expiration thereof.

3. Extension of Sanitary Sewer to the Property. On or before 180 days following the Effective Date, the City shall extend, and make available for connection by Developer, a sanitary sewer line sufficient for the development and use of the Property for the Project to the boundary of the Property (in a mutually acceptable location) at the City’s sole cost and expense.

ARTICLE IV MISCELLANEOUS PROVISIONS

1. Default; Remedies. Any party to this Agreement that believes that the other party to this Agreement has defaulted in the performance of any condition, term, or obligation owed to that party under this Agreement shall within ten (10) business days after discovery of said default, give written notice of the default to the defaulting party, specifying in detail the provision or provisions of this Agreement that have allegedly been breached and what specific action must be taken to cure or correct the default.

A. Developer Event of Default. Developer shall be in default under this Agreement if it fails to comply with any term of this Agreement. The foregoing is referred to herein as a “Developer Event of Default.” The City may terminate this Agreement and recover from Developer all amounts expended pursuant to Article III, Section 3 hereinabove in the event of a Developer Event of Default, if after giving Developer ninety (90) days’ prior written notice of the occurrence of a Developer Event of Default, Developer fails to either cure the default within said ninety (90) day period or such longer period as may be allowed by the City.

B. City Event of Default. City shall be in default under this Agreement if the City fails to comply with any term of this Agreement. The foregoing is referred to herein as a “City

Event of Default.” Developer may take any action in law or equity in the event of a City Event of Default, if after giving the City ninety (90) days’ prior written notice of the occurrence of a City Event of Default, the City fails to cure the default within such ninety (90) day period or such longer period as may be allowed by the Developer.

2. No Waiver. Nothing contained in this Agreement shall be construed in any way to limit or to waive the City’s sovereign immunity. However, the parties agree that they have entered into this Agreement in good faith, intend to deal with each other in good faith, and intend for this Agreement to be enforceable as to its terms under Texas law.

3. Separate Status. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise.

4. Construction and Interpretation.

a. Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words “including,” “such as,” or words of similar import, when following any general term, statement or matter, shall not be construed to limit such statement, term or matter to specific terms, whether or not language of non-limitation, such as “without limitation,” or “but not limited to,” are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

b. The captions preceding the text of each article and section of this Agreement are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

c. This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one (1) complete document.

5. Assignability. The Developer may assign or transfer its rights (including the right to receive payments), duties and obligations under this Agreement to any person or entity only with prior written approval and consent by the City, which approval shall not be unreasonably withheld. However, the City hereby consents to an assignment of the Developer of its rights, (including the right to receive payments), duties and obligations under this Agreement to an affiliate, subsidiary or related party of the Developer; provided the City is given thirty (30) days’ advance written notice of such assignment.

6. Severability. If any provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

7. Complete Agreement. This Agreement represents the complete agreement of the parties with respect to the subject matter hereof and supersedes all prior written and oral matters related to this Agreement. Any amendment to this Agreement must be in writing and signed by all parties hereto or permitted or approved assignees.

8. Exhibits. All exhibits attached to this Agreement are incorporated herein by reference and expressly made part of this Agreement as if copied verbatim.

9. Notice. Any notice or demand, which any party is required to or may desire to serve upon the other, must be in writing, and shall be sufficiently served if (i) personally delivered, (ii) sent by registered or certified mail, postage prepaid, or (iii) sent by commercial overnight carrier, and addressed to:

If to the City:

City of Baytown
Attn: City Manager
P.O. Box 424
Baytown, TX 77522

With a copy to:

City of Baytown
Attn: City Attorney
P.O. Box 424
Baytown, TX 77522

If to the Developer:

Buc-ee's, Ltd.
Attn: Arch H. Aplin III
327 FM 2004
Lake Jackson, Texas 77566

With a copy to:

Midtown Interests LLC
Attn: Heather Chappell
P.O. Box 27364
Houston, Texas 77227

or such other address or addresses which any party may be notified in writing by any other party to this Agreement.

Such notice shall be deemed to have been served (a) four (4) business days after the date such notice is deposited and stamped by the U.S. Postal Service, except when lost, destroyed, improperly addressed or delayed by the U.S. Postal Service, or (b) upon receipt in the event of personal service, or (c) the first business day after the date of deposit with an overnight courier, except when lost, destroyed or improperly addressed; provided, however, that should such notice pertain to the change of address to either of the Parties hereto, such notice shall be deemed to have been served upon receipt thereof by the party to whom such notice is given.

10. Force Majeure. In the event any party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such party's giving notice and full particulars of such force majeure in writing to the other party as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other inability of either party, whether similar to those enumerated or otherwise and not within the control of the parties claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

11. Forum Selection. This Agreement and the relationship between the Parties shall be governed and interpreted under the laws of Texas without regard to any conflict of laws provision. Venue for any suit arising out of any relationship between the Parties shall exclusively be the appropriate court in Harris County, Texas. Developer specifically consents to and waives any objections to personal jurisdiction in Harris County, Texas.

12. Appointment of Representatives. To further the commitment of the Parties to cooperate in the implementation of this Agreement, the Parties shall designate and appoint a representative to act as a liaison between the Parties. The initial representative for the City shall be the City Manager or his designee (the "City Representative"), and the initial representative for Developer shall be Heather Chappell (the "Developer Representative"). The representatives shall be available at all reasonable times and places to discuss and review the performance of the Parties to this Agreement and the development of the Property pursuant to the Conceptual Site Plan.

13. Effective Date. This Agreement shall be binding and take effect only upon all Parties signatures hereto, attachment of all required exhibits, and receipt by the Parties of a fully executed copy hereof. For the purposes of timetables provided in this Agreement, the Effective Date shall be the date first above written.

14. Preamble. The findings of fact, recitations and provisions set forth in the preamble to this Agreement are true and are adopted and made a part of the body of this Agreement, binding the Parties hereto, as if the same were fully set forth herein.

15. Representation of Authority. The City represents and warrants to the Developer that it is duly authorized and empowered to enter into this Agreement, subject to the terms and conditions contained therein, and has the legal authority to make a grant to the Developer as provided in this Agreement. The Developer represents and warrants that such party is duly authorized and empowered to enter into this Agreement, subject to the terms and conditions contained herein, and is a proper party to this Agreement.

16. Signature Warranty Clause. The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the Parties, respectively.

17. Legal Contest. This Agreement is entered into in accordance with applicable law as understood by the Parties. In the event any part, provision or paragraph thereof shall become unenforceable by reason of judicial decree or determination the parties hereto mutually agree to the extent possible to ensure that all other provisions of the agreement including the intent of the Agreement be honored and performed.

18. Economic Incentives Constitute a Program. This Agreement constitutes an economic development program to promote state or local economic development and to stimulate business and commercial activity in the City and the area annexed for limited purposes pursuant to Article III, Sec. 52-a, Texas Constitution and Chapter 380, Texas Local Government Code.

19. Term. Unless earlier terminated pursuant to the terms hereof, this Agreement will remain in force and effect for fifteen (15) years from January 1 of the year following the year in which the Project opens for business to the public on the Property.

20. Public and Confidential Information. Information provided by or on behalf of Developer pursuant to this Agreement that Developer considers to be proprietary and marked as such shall be maintained by City as confidential to the extent allowed by law. If proprietary financial or trade secret information is requested under the Texas Public Information Act (the "Act"), City shall follow the standards set out in the Act and under the Texas Attorney General's procedures for such requests and Developer shall be responsible for defending the confidentiality of such information.

(Signature Pages Follow)

CITY:

By: Robert D. Leiper
ROBERT D. LEIPER, City Manager

ATTEST:

By: Leticia Brysch
LETICIA BRYSCH, City Clerk

The seal of the City of Dallas, Texas, is circular with a double-line border. The outer ring contains the text "CITY OF DALLAS" at the top and "TEXAS" at the bottom, separated by two stars. The inner circle features a five-pointed star in the center, with the words "SEAL" and "1856" on either side.

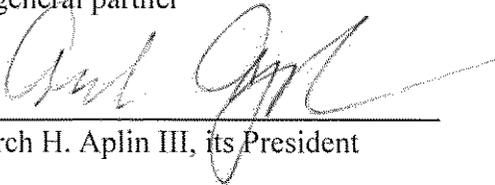
APPROVED AS TO FORM:

By: Ignacio Ramirez, Sr.
IGNACIO RAMIREZ, SR. City Attorney

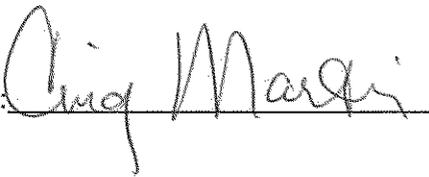
DEVELOPER:

BUC-EE'S, LTD.,
a Texas limited partnership

By: AHA-GP, L.C.,
a Texas limited liability company
a general partner

By: 
Arch H. Aplin III, its President

ATTEST:

By: 

LIST OF EXHIBITS

- Exhibit "A" - Depiction of Property
- Exhibit "B" - Conceptual Site Plan
- Exhibit "C" - Pole Sign

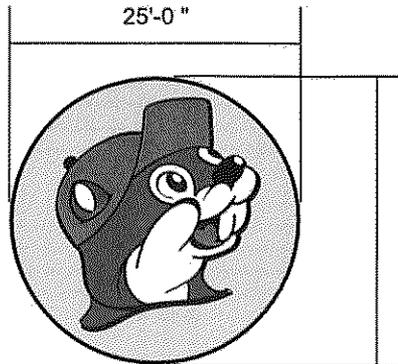
603.38 SQ FT

BUC-EE'S LOGO FACING LEFT



NOTE: OPPOSITE SIDE LOGO

BUC-EE'S LOGO FACING RIGHT



BAYTOWN

100'-0"

5'-0"

25'-0"

25'-0"

22'-6"

73'-0"



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PRESENTATION DRAWING

Client:

Buc-ee's

Client's Location:

BAYTOWN, TX

Sales Rep: Greg B.

Project Manager: JTB

PM Approval:

Date: 6.6.13

Drawn By: JTB

Revision:

Scale: 1/16" = 1'-0"

Work Order#

Sign Description:

Manufacture & install (1) ONE
D/F main ID.

Please note that actual steel
size will be determined by
structural engineer

Underwriters
Laboratories Inc. 

Primary wires provided by customer.
Sign voltage based upon 120v.

THIS IS AN ORIGINAL UN-PUBLISHED
DRAWING CREATED BY SWS SIGNS. IT
IS SUBMITTED FOR YOUR PERSONAL
USE IN CONJUNCTION WITH A PROJECT
BEING PLANNED FOR YOU BY SWS SIGNS.
IT IS NOT TO BE SHOWN TO ANYONE
OUTSIDE YOUR ORGANIZATION, NOR IT IS
TO BE USED, REPRODUCED, COPIED OR
EXHIBITED IN ANY FASHION.

Customer Approval:

← STREET SIDE

EXHIBIT C