

AGENDA ITEM REQUEST FORM

Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

AGENDA ITEM

Executive Session pursuant to Sections 551.071 and 551.087 of the Texas Government Code: consultation with counsel and deliberation regarding economic development negotiations associated with Project Triangle. Possible action may follow in open Court.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
EXECUTIVE SESSION	October 22, 2013	

LINE ITEM NUMBER

AUDITOR USE ONLY

AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A

AUDITOR REVIEW: N/A

REQUESTED BY	SPONSOR	CO-SPONSOR
Ingalsbe	INGALSBE	N/A

SUMMARY

Summary to be provided in Executive Session.

FILED: 10 22 13
HAYS COUNTY COMMISSIONERS' COURT
Resolution # 28234 VOL V PG 207

CHAPTER 381 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

As of October 22, 2013 (the "*Effective Date*") this Chapter 381 Economic Development Incentive Agreement (the "*Agreement*") is entered into between Hays County, Texas, a political subdivision of the State of Texas (the "County"), and Triangle Pump Components, Inc., a Texas corporation ("*Triangle*"). The County and Triangle may also be referred to collectively as the "*Parties*" or individually as a "*Party*".

PART 1. RECITALS

Section 1.01. Triangle is a company that manufactures components for pumps. The company uses state-of-the-art systems and computer programs to address pump system problems that shorten the life of expendable parts and to ensure the continuing development of superior pump components in the future.

Section 1.02. Triangle proposes to relocate its headquarters and manufacturing operations from Odessa, Texas to the City of San Marcos, within Hays County.

Section 1.03. The County wishes to induce Triangle to relocate to Hays County, as doing so would benefit the County by creating new jobs and generating revenues for the County from the addition of personal property inventory and improvements to real property, each of which is subject to ad valorem tax assessment.

Section 1.04. The County is authorized under Chapter 381 of the Texas Local Government Code ("*Chapter 381*") to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity in the County.

Section 1.05. The County has determined that entering into and providing economic development incentives under this Agreement will promote local economic development and stimulate business and commercial activity in the County.

Section 1.06. For the reasons stated in these Recitals and in consideration of the mutual benefits to and promises of the Parties set forth below, the Parties want to enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE II DEFINITIONS

Section 2.01. “*Base Tax Year Value*” means the ad valorem tax value of the Land (as defined below) as established by the Hays County Tax Assessor-Collector’s Office for calendar year 2014.

Section 2.02. “*Business*” means the business activities of Triangle conducted in the City of San Marcos, Hays County, Texas on the Land (as defined below), including, but not limited to the manufacturing and distribution of reciprocal pump valve assemblies and assembly components.

Section 2.03. “*Grant Payments*” means the County’s payments to Triangle once per year of an amount equal to seventy percent (70%) of the Property Taxes generated by from the Land in each of the years 2015 through 2019.

Section 2.04. “*Job(s)*” means a permanent, full-time employment position resulting from the Project (defined below), that provides 2,000 annual full time hours of employment or equivalent, health and disability insurance, paid sick days, and annual paid vacation based on length of service and paid holidays. Any position not meeting such criteria does not qualify as a “Job” for purposes of this Agreement.

Section 2.05. “*Land*” means the real property within the jurisdictional limits of Hays County, Texas upon which the Project shall be executed. At such time as the location of the Land is established, a legal description for the Land, together with a map, plat or survey shall be attached as Exhibit “A” of this Agreement and made a part of this Agreement for all purposes.

Section 2.06. “*Personal Property*” means all, materials, supplies, equipment or other personal property attributable to the Business on the Land subject to ad valorem taxes.

Section 2.07. “*Property Taxes*” are the County’s share of the ad valorem taxes received from the Hays County Tax Assessor-Collector on the value of all Personal Property and Real Property Improvements on the Land in excess of the Base Tax Year Value.

Section 2.08. “*Project*” means the operation of the Business on the Land and the addition of Real Property Improvements (as defined below), Personal Property, and the creation of new Jobs.

Section 2.09. “*Real Property Improvements*” means an approximately 15,000 square foot building and related facilities on the Land and having an estimated value of at least \$750,000.00 to house and support the manufacturing and administrative functions of the Business .

Section 2.10. The “*Term*” of this Agreement shall commence on the Effective Date and continue until December 31, 2019 (unless terminated sooner as provided in this Agreement), except that Triangle’s obligation to submit a compliance certification for the year 2019 as provided under section 7.02 and the County’s obligation, if any, to complete the Grant Payments due under this Agreement for the year 2019 shall continue subject to the limitations of this Agreement.

**ARTICLE III
TRIANGLE'S OBLIGATIONS**

Section 3.01. Job Creation. On or before December 31, 2015 Triangle shall employ at least nineteen (19) persons in Jobs and keep such Jobs filled during the Term. While the titles or classification of Jobs may change, the total number of Jobs created shall be maintained through the end of the Term and shall, on average, meet or exceed the prevailing average wage rate in Hays County at the time of the Effective Date of this Agreement, which equals an annual salary of \$34,008.00. Triangle agrees to ensure that no discrimination will occur in the Creation of Jobs on the basis of race, creed, color, national origin, sex or disability.

(a) Local Residency Requirement. During the Term, at least twenty-five percent (25%) of the persons employed in a Job shall maintain their primary residence in the City of San Marcos. Primary residence shall be established by such things as obtaining a homestead exemption for owner-occupied residences or designating an address as a primary residence for voting purposes.

Section 3.02. Addition of Real Property Improvements. On or before August 1, 2014, Triangle shall cause the Real Property Improvements to be constructed. Completion of the Real Property Improvements shall be evidenced by a certificate of occupancy issued by the City of San Marcos.

Section 3.03. Operation of Business. Triangle shall begin operation of the Business on the Land on or before September 1, 2014, and shall continuously operate, maintain and manage the Business for the duration of the Term.

Section 3.04. Compliance with Laws. In performing its obligations under this Article, Triangle shall comply with all applicable laws, regulations and ordinances.

**ARTICLE IV
GRANT PAYMENTS FROM THE COUNTY**

Section 4.01. Grant Payments. Subject to the requirements and limitations of this Article, other terms and conditions of this Agreement and Triangle's compliance with this Agreement, the County will make Grant Payments to Triangle in the manner set forth in this Article.

Section 4.02. Five-Year Payment Period. Provided Triangle has timely completed construction of the Real Property Improvements and created at least nineteen (19) Jobs in accordance with Section 3.01, the County shall make an initial Grant Payment to Triangle of an amount equal to seventy percent (70%) of Property Taxes generated by the Business on the Land in the year 2015. Provided Triangle maintains at least the number of Jobs initially created and continuously operates the Business on the Land during the Term, the County will shall make additional Grant Payments to Triangle once per year for the four years remaining in the Term. The total Grant Payment in any single year shall not exceed \$6,651.00 and the cumulative amount of all Grant Payments over the Term of the Agreement shall not exceed \$33,255.00.

Section 4.03. Time for Payment. Grant Payments will be made by the County in the calendar year immediately following the full calendar year in which the Property Taxes upon which the Grant Payment amount is based are generated. The County shall not be required to make a Grant Payment during any applicable year unless and until:

- (a) Triangle has submitted all information required under this Agreement necessary to verify its compliance;
- (b) the Property Taxes for the prior year are received by the County from the Hays County Tax Assessor-Collector; and

(c) funds are appropriated by the Hays County Commissioners Court for the specific purpose of making a Grant Payment under this Agreement as part of the County's ordinary budget and appropriations approval process.

Provided the foregoing conditions have been satisfied and Triangle is, otherwise, in compliance with this Agreement, the County shall pay to Triangle any Grant Payments due within sixty (60) days after the last to occur of the events in subsections (a), (b) and (c) of this Section.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF TRIANGLE

As of the Effective Date, Triangle represents and warrants to the County, as follows:

Section 5.01. Organization. Triangle is a Texas Corporation duly organized, validly existing and in good standing under the laws of the State of Texas and authorized to conduct business in the State of Texas. The activities that Triangle proposes to carry on at the Land may lawfully be conducted by Triangle.

Section 5.02. Authority. The execution, delivery and performance by Triangle of this Agreement are within Triangle's powers and have been duly authorized.

Section 5.03. Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Triangle, enforceable against Triangle in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

Section 5.04. No Defaults. Triangle is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which Triangle is a party or by which Triangle or any of its property is bound that would have any material adverse effect on Triangle's ability to perform under this Agreement.

Section 5.05. Full Disclosure. Neither this Agreement nor any schedule or exhibit attached hereto in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to keep the statements contained herein or therein, in the light of the circumstances in which they were made, from being misleading.

**ARTICLE VI
PERSONAL LIABILITY OF PUBLIC OFFICIALS
AND LIMITATIONS ON COUNTY OBLIGATIONS**

Section 6.01. Personal Liability of Public Officials. No employee or elected official of the County shall be personally responsible for any liability arising under or growing out of this Agreement.

Section 6.02. Limitations on County Obligations. The Grant Payments made and any other financial obligation of the County hereunder shall be paid solely from lawfully available funds that have been budgeted and appropriated each year during the Term by the County as provided in this Agreement. Under no circumstances shall the County's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the County shall have no obligation or liability to pay any Grant Payments or other payments unless the County budgets and appropriates funds to make such payments during the County's fiscal year in which such Grant Payment(s) or other payments are payable under this Agreement. If the County fails to appropriate funds for a Grant Payment, Triangle may at its option terminate this Agreement effective upon written notice to the County, subject to any unpaid Grant Payment properly due to Triangle for which a lawful appropriation of funds has occurred.

Section 6.03. No Recourse. Triangle shall have no recourse against the County for the County's failure to budget and appropriate funds during any fiscal year to meet the purposes and satisfy its obligations under this Agreement.

ARTICLE VII INFORMATION

Section 7.01. Information. Triangle shall, at such times and in such form as the County may reasonably request from Triangle, provide information concerning the performance of Triangle's obligations under this Agreement.

Section 7.02. Annual Certification Related to Jobs and Compliance With Agreement. Beginning in the year 2016 and continuing each year thereafter during the Term, Triangle shall submit to the County, on or before January 30, a certified statement acceptable to the Hays County Auditor, signed by an authorized officer or employee of Triangle, providing the following information:

- (a) the total number of Jobs created in the preceding calendar year and cumulatively since the Effective Date;
- (b) verification that at least twenty percent (25%) of persons employed in a Job maintain primary residency in the City of San Marcos; and
- (c) a statement that it is in full compliance with its obligations under this Agreement or, if not in full compliance, a statement disclosing the nature of any non-compliance and any reasons therefor.

After receiving a timely submitted certified statement, the County shall have 60 calendar days to notify Triangle in writing of any questions that the County may have concerning any of the information provided by Triangle, and Triangle shall diligently work in good faith to respond to such questions to the County's reasonable satisfaction.

Section 7.03. Review of Triangle Records. Triangle agrees that the County will have the right to review the business records of Triangle that relate to the Project and Triangle's compliance with the terms of this Agreement at any reasonable time and upon at least seven days' prior notice to Triangle in order to determine compliance with this Agreement. To the extent reasonably possible, Triangle shall make all such records available in electronic form or otherwise available to be accessed through the internet.

ARTICLE VIII DEFAULT, TERMINATION AND REMEDIES

Section 8.01. Noncompliance with Jobs Obligations. If, at the end of any applicable year during the Term, Triangle is not in compliance with the obligations to create and maintain Jobs, as provided in this Agreement, including compliance with the residency requirements under Section 3.01(a), the County may withhold Grant Payments that would otherwise be due to Triangle for that year. If the County elects to withhold Grant Payments, the County will resume Grant Payments for any subsequent years during the Term in which Triangle is in compliance; however, any Grant Payments withheld by the County for any years during which Triangle is not in compliance shall be deemed forfeited by Triangle and the County shall at no time be liable for later payment of such Grant Payments.

Section 8.02. Failure to Operate Business. If Triangle fails to continuously operate and carry on the Business on the Land or other location within the city limits of the City of San Marcos and within the jurisdictional limits of Hays County until the end of the Term (subject, however, to any interruption for remodeling, repair, or an event of *force majeure* (defined below), which interruption shall not count against this operation obligation), then the County may give a notice of default under Section 8.03.

Section 8.03. Notice of Default. At any time during the Term of this Agreement that Triangle is not in compliance with its obligations under this Agreement other than its obligations to create Jobs, the County may send Triangle notice of such non-compliance. If such non-compliance is not cured within 60 days after Triangle's receipt of such notice or, if non-compliance is not reasonably susceptible to cure within 60 days, a cure is not begun within such 60-day period and thereafter continuously and diligently pursued to completion (in either event, a "*Cure*"), then the County may, at its option, terminate this Agreement or withhold Grant Payments until such Cure occurs. Except as provided under Section 8.01, upon a Cure by Triangle, the Grant Payments shall automatically and immediately resume except, any Grant Payments withheld by the County for any years during which Triangle is not in compliance shall be deemed forfeited by Triangle and the County shall at no time be liable for later payment of such Grant Payments. Except as to circumstances arising from an event of *force majeure*, the Term shall not be extended as a result of any cure period under this section.

Section 8.04. Remedies. Upon breach of any obligation under this Agreement, in addition to any other remedies expressly set forth in this Agreement with respect to such breach, the aggrieved party shall have such remedies as are available in law or equity for breach of contract; provided, however, that no party shall be liable to any other party for incidental or consequential damages. Notwithstanding the foregoing, the County, in entering this Agreement does not waive its immunity from suit or any other limitations on its liability, contractual or otherwise, as granted by the Texas Constitution or applicable laws of the State of Texas.

Section 8.05. Offset. The County may deduct from any Grant Payments, as an offset, any delinquent and unpaid fees, sums of money or other fees, charges or taxes assessed and owed to or for the benefit of the County.

Section 8.06. Force Majeure. An event of *force majeure* means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

Section 8.07. Indemnification. The County shall not be obligated to pay any indebtedness or obligations of Triangle. Triangle hereby agrees to indemnify and hold the County, and the County's elected officials and employees, harmless from and against (i) any indebtedness or obligations of Triangle, the Business, the Project and any improvements to the Land, or any other obligation of Triangle as provided herein, and (ii) breach of any representation, warranty, covenant or agreement of Triangle contained in this Agreement, without regard to any notice or cure provisions. Triangle's indemnification obligation hereunder shall include payment of the County's reasonable attorneys' fees, costs and expenses with respect thereto.

ARTICLE IX MISCELLANEOUS

Section 9.01. Entire Agreement. This Agreement, including any exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.

Section 9.02. Amendments. This Agreement may only be amended, altered, or terminated by written instrument signed by all parties.

Section 9.03. Assignment. Triangle may not assign any of its rights, or delegate or subcontract any of its duties under this Agreement, in whole or in part, without the prior written consent of the County.

Section 9.04. Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel.

Section 9.05. Notices. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, messenger, telecopy, or reputable overnight carrier, and shall be deemed delivered when received at the addresses of the parties set forth below, or at such other address furnished in writing to the other parties thereto:

Triangle: Triangle Pump Components Inc.,
Attn: Sam Kelton
1010 West University Blvd.
Odessa, TX 79764
Telephone: (432) 580-4908
Facsimile: (432) 580-5260

County: Hays County
111 E. San Antonio, Suite 300
San Marcos, Texas 78666
Attn: Hays County Judge
Telephone: (512) 393-2205
Facsimile: (512) 396-8416

Section 9.06. 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 proceedings shall lie in State courts located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

Section 9.07. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceability 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 enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

Section 9.08. Third Parties. The County and Triangle 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 Triangle or permitted assignees of the County and Triangle, except that the indemnification and hold harmless obligations by Triangle provided for in this Agreement shall inure to the benefit of the indemnitees named therein.


Section 9.09. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an 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.

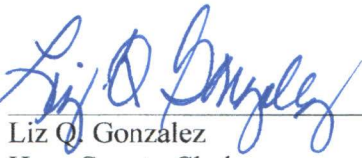
Section 9.10. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

THIS CHAPTER 381 AGREEMENT between Hays County and Triangle Pump Components, Inc. is HEREBY EXECUTED in duplicate originals to be effective as of the Effective Date.

HAYS COUNTY, TEXAS

By: 
Judge Bert Cobb, M.D.
Hays County Judge

Attest: 
Liz Q. Gonzalez
Hays County Clerk



TRIANGLE PUMP COMPONENTS, INC.


By: 
Sam Kelton, VP/GM

EXHIBIT "A"

(To be added at time of land acquisition)