

RESOLUTION NO. 12042

**A RESOLUTION APPROVING A GRANT TO KILGORE
CONSTRUCTION, L.L.C. FOR EXTERIOR RENOVATION
TO THE PROPERTY LOCATED AT 1347 PROCTER
STREET UNDER THE OPERATION DOWNTOWN SITE
IMPROVEMENT GRANT PROGRAM**

WHEREAS, on May 9, 2009, a ballot proposition was presented to and approved by the qualified voters in the City of Port Arthur, Texas (the "City") for the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to utilize Section 4A sales and use tax funds for "the cost of demolition of dilapidated structures and infrastructure limited to streets and roads, rail spurs, water and sewer utilities, electric and gas utilities, drainage, site improvements and related improvements necessary to promote or develop new or expanded business enterprises within a project area from 7th Street to the Intracoastal Canal and from Martin Luther King, Jr. Drive to Lake Charles Avenue within the City"; said authority limited to the PAEDC's expenditure of not more than \$750,000 per year for said projects (the "Ballot Proposition"); and

WHEREAS, Kilgore Construction, L.L.C., has submitted an application for funding of exterior renovations to a building located at 1347 Procter Street in accordance with the application attached hereto as **Exhibit "A"** (the "Application") and made a part hereof for all purposes; and

WHEREAS, on January 10, 2012, the Board of Directors of the PAEDC considered and approved funding the Application of Kilgore Construction, L.L.C. in the amount of \$34,400 for the purpose of exterior renovations as outlined in the Application; and

WHEREAS, funds are available during fiscal year 2011-2012 from the funds allocated in the Ballot Proposition for improvements outlined in the Application.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF PORT ARTHUR:**

Section 1. That the facts and opinions in the preamble are true and correct.

Section 2. That the PAEDC is hereby authorized to allocate \$34,400 of funds from the Ballot Proposition for fiscal year 2011-2012 to fund the exterior renovations under the Application submitted by Kilgore Construction, L.L.C. for the property located at 1347 Procter Street.

Section 3. That a copy of this Resolution shall be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 26th day of Jan A.D., 2012,
at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor

Councilmembers

Prince; Mayor Pro Tem Alvaud;
Scott, Segler, Albright, Beare,
Williamson, Freeman and
Thomas.

NOES:

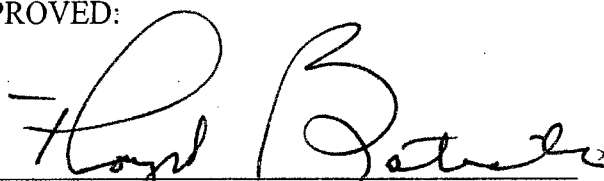
None

ATTEST:

Sherri Bellard
Sherri Bellard, City Secretary

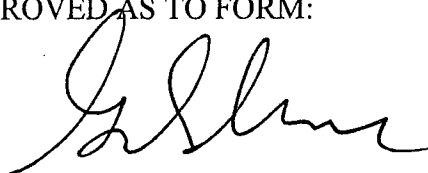
Deloris Prince
Deloris "Bobbie" Prince, Mayor

APPROVED:



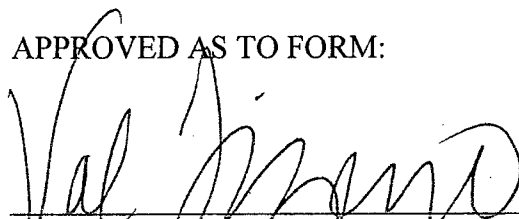
Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:



Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:



Valecia R. Tizeno, City Attorney

Exhibit “A”

RECEIVED DEC 23 2011

OPERATION DOWNTOWN
Site Improvement Grant Program
Application

APPLICANT INFORMATION

Is the applicant a: Corporation Partnership Proprietorship Individual

Name of Applicant: d/b/a

Kilgore Construction LLC, dba Kilgore Industrial

Mailing Address:

P.O. Box 30015 Lumberton, TX 77657 / 1347 Procter St. Pt Arthur

Contact Name: Sean McKenzie Title: Director of Operations

Telephone: Work Home 409-673-2898 Email: sean@kilgoreindustrial.com

Type of Business: Industrial Support, Construction, Staffing, Procurement

PROPERTY INFORMATION

The Port Arthur Downtown Revitalization Target Area:

Street address of property to be improved: 1347 Procter St.

Legal Description: Lot Block Tax Account No Blk 123 Lot 12

Does the applicant own or lease the property. own

If leasing, please include copy of lease agreement and letter of approval from owner.

Is the property currently: occupied X vacant if vacant, when will property be occupied (date) upon completion of improvements

What is the current and proposed use of the property?

Corporate office

How many full time employees, if any, does the business currently employ?

20

Do you anticipate hiring additional employees after the proposed improvements are complete? Yes X No

If so, how many more? 5-10 full time many part time

PROJECT INFORMATION

Description of Site Improvements and related improvements including improvements to facade:

Replace/Repair all glass; prep & paint frames, cornice & side front; repair/paint facade; repair/replace signage (attached & unattached); repair broken tile; broken awnings; install security cameras (recordable); alarm system; external & internal monitoring, etc.; ext lighting parking lot; decking & exterior doors, etc.

Estimated total cost of project: \$ 137601.64 (Attach Project Budget form)

Grant funds are available up to \$250,000 per eligible property.

When does the project need to begin? ASAP Estimated time to complete (Date)

job? 3-6 mos
(# of days)

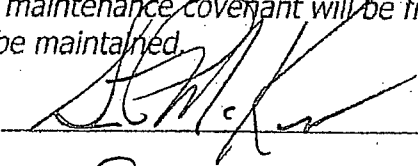
NOTE: Work must not start prior to contract execution.

Attach:

1. Recent photos of the property **(required)**
2. Budget and supporting estimates **(required)**
3. Copy of lease and/or letter from property owner granting approval or copy of warranty deed (if applicable)
4. Proof of funds for 75% of the total cost of the project **(required)**
5. Drawings or renderings that convey concept (if available)
6. Paint chips, color board or other samples (if available)

I certify that work has not started nor have I entered into any contract with any contractor for work to be covered under this grant application. I also understand that I will have to sign an agreement with the City of Port Arthur Economic Development Corporation to be approved by the City of Port Arthur regarding this grant award; a maintenance covenant will be filed to insure that the improvements will be maintained.

Applicant signature



Date 12-23-11

Applicant printed name

Sean McKenzie

City of Port Arthur Section 4A Economic Development Corporation
OPERATION DOWNTOWN
Infrastructure Grant Agreement
(Small Project)

This Infrastructure Grant Agreement (the "Grant Agreement") is executed as of this ____ day of _____, 2012 (the "Effective Date") between the **City of Port Arthur Section 4A Economic Development Corporation**, a Texas economic development corporation authorized to do business in the State of Texas under Section 504, Texas Local Government Code and as authorized by Resolution No. ____, City Council of the City of Port Arthur, 4173 39th Street, Port Arthur, Texas 77642 (the "PAEDC" or "Grantor") and the **Kilgore Construction, LLC**, a Texas limited liability company (the "Grantee").

RECITALS

- A.** Grantor through a ballot proposition and an election held May 9, 2009 (the "Election"), has allocated funds in certain fiscal years of the PAEDC for "**specific infrastructural improvements necessary to promote or develop new or expanded business enterprises**" in a designated area in downtown Port Arthur, Texas
- B.** Grantor through the authorization received from the Election has established **Operation Downtown**, a downtown improvement program of the PAEDC for site improvements and related improvements necessary to promote or develop new or expanded business enterprises together with **Guidelines** identifying eligible projects and a procedure for applications for funds.
- C.** Grantee has submitted an application for a site improvement grant to Grantor providing for a project more fully identified in the application which Grantor has approved and is attached hereto and is incorporated herein for all purposes as **Exhibit "A"** (the "Application").
- D.** Grantor has received and approved the Application of Grantee and authorized a grant to Grantee in the total amount of Thirty Four Thousand Four Hundred and 41/100 (\$34,400.41) Dollars (the "Grant") which Grantor will distribute to Grantee pursuant to this Grant Agreement.
- E.** The Grant will be used by the Grantee solely to finance the costs of eligible infrastructure improvements (the "Project").
- F.** Grantor shall comply with the Operation Downtown improvement program regulations (the "Guidelines") attached hereto as **Exhibit "B"**.

NOW, THEREFORE, IN CONSIDERATION of the RECITALS which are incorporated in this Grant Agreement as fully set forth below and for other good and valuable consideration of the receipt and sufficiency is hereby acknowledged, PAEDC and Grantee agree to the following conditions and procedures for the grant:

- 1) Grant Amount and Approved Infrastructure Improvements.** PAEDC has agreed to provide a grant in the maximum amount of \$34,400.41 (the "Grant Amount") to Grantee to fund qualified infrastructure improvements as set forth in the Application (the "Cost Estimate"). Any costs

in excess of the Cost Estimate shall be solely borne by Grantee unless a supplemental grant is approved by PAEDC. If the final Project amount is less than the Cost Estimate, PAEDC shall only advance an amount equivalent to 25% of the final cost expended in the Project.

2) **Payment Procedures.** Reimbursement of the Grant Amount will be paid to Grantee upon completion of the Project. The Project will be considered complete when all of the following have been satisfied:

- a) PAEDC determines that all improvements set forth in the Cost Estimate attached as **Exhibit "C"** to this Grant Agreement have been completed;
- b) PAEDC determines that there is no unresolved permit or compliance issues with the City of Port Arthur related to the Project;
- c) PAEDC has received from Grantee a copy of the certificate of occupancy for the Project;
- d) PAEDC receives the following documentation from Grantee;
 - (i) copies of all signed contracts or work orders from all contractors, subcontractors and material suppliers that completed Project-related work;
 - (ii) copy of all paid invoices for Project-related work within invoices marked paid or signed and dated by the contractor with all Project expenditures having been paid by check by Grantee;
 - (iii) copy of certified payroll for all employees, contracts, labor or independent contractors providing any and all labor on the Project; and
 - (iv) copy of lien waivers from all contractors, subcontractors and material suppliers that completed Project-related work.

3) **Timeline.** The Project shall begin only after the execution of this Grant Agreement. The Project shall be completed as set forth in the Application within 60 days from the later of (i) execution of this Grant Agreement or (ii) the issuance of a Notice to Proceed by Grantor to its contractor. PAEDC must receive from Grantee a written request for time extension prior to the expiration of the period set forth in the preceding sentence if any unforeseen delays occur. Granting an extension is at the sole discretion of PAEDC.

4) **Project Changes.** As stated herein, Grantee may make revisions to the Project, but may not make any improvements that result in changes to infrastructure improvements heretofore approved by PAEDC without PAEDC's approval. Grantee retains the right to expand the Project at its sole cost and expense with additional improvements or costs to be solely borne by Grantee.

5) **Representations and Warranties of Grantee.** Grantee represents and warrants as follows:

- a) **Organization.** Grantee is a Texas limited liability company duly organized and existing under the laws of the State of Texas.
- b) **Due Authorization.** Grantee has the full power and authority to enter into this Grant Agreement and consummate the transaction contemplated by the Grant Documents, to

accept the Grant as contemplated hereby, to execute and deliver all of the Grant Documents to which it is a party and to comply with the terms set forth in all of the Grant Documents, all of which have been duly authorized by any and all necessary action of the Grantee. No approval of any other person or public authority or regulatory body is required as a condition to the validity of any of the Grant Documents, or, if required, the approval has been obtained.

- c) Validity of Grant Documents. All of the Grant Documents have been properly executed and will:
 - (i) Not violate any Laws;
 - ii) Not violate any provision, or result in a breach, of any document or agreement binding on the Grantee or affecting its property; and
 - iii) Constitute the valid and legally binding obligations of the Grantee, fully enforceable against the Grantee, in accordance with their terms.
- d) Legal Actions. There is no: (1) claim pending or, to the best of the Grantee's knowledge threatened, in any court or before any governmental agency; or (2) investigation by or before any governmental authority, that:
 - (i) Questions the validity or enforceability of any of the Grant Documents, or any action taken, or to be taken, under any of them;
 - (ii) Is likely to result in any material adverse change in the authority, properties, assets, liabilities, or conditions (financial or otherwise) of the Grantee that would materially impair the Grantee's ability to perform any of its obligations under all of the Grant Documents; or
 - (iii) Affects the Project.
- e) Grant Document Defaults. There is no event of default (including a Default) on the part of the Grantee under any of the Grant Documents, and no event has occurred or is continuing that, with notice, or the passage of time, or both, would constitute an event of default (including a Default) under any of the Grant Documents.
- f) Compliance With Laws. Upon Grantee's knowledge, information and belief, the Grantee has complied with all Laws.
- g) Approvals. Grantee has obtained, or expects to obtain prior to the commencement of the Project, all approvals from and reviews by all Governmental Authorities required by all Laws applicable to the Project.
- h) Project Budget. The Project Budget sets forth all of the expected costs of, and sources of funds for, the Project, and has been approved by the Grantor.
- i) Resolution. A resolution has been duly adopted as an official act of the Grantee's governing body, authorizing the execution and delivery of all of the Grant Documents by the Grantee and authorizing and directing the person executing the Grant Documents to do so on behalf of the Grantee.

- j) Taxes. All taxes imposed upon the Grantee and its properties have been paid prior to the date when any interest or penalty would accrue for nonpayment, except for those taxes being contested in good faith and by appropriate proceedings.
- 6) Covenants of Grantee. The Grantee shall:
 - a) Performance. Promptly perform all of its obligations in the manner provided in the Grant Documents.
 - b) Use of Grant Proceeds. Use the Grant for Eligible Project Costs, as set forth in the Project Budget, and in further compliance with the following: (i) an adjustment in the use of the Grant within an existing category set forth in the Project Budget shall not require an amendment to this Grant Agreement if the adjustment is consistent with the purpose of the Grant as set forth in the Application; (ii) an adjustment in the use of the Grant between existing categories set forth in the "Budget Overview" section of the Project Budget in an amount not to exceed ten percent (10%) of the category from which the Grant proceeds are to be deducted shall not require an amendment to this Grant Agreement if the adjustment is consistent with the purpose of the Grant as set forth in the Application; and (iii) no other adjustments to the Project Budget shall be permitted without the advance written authorization of the Grantor, as evidenced by an amendment to this Grant Agreement.
 - c) Completion. Use its best efforts to cause the Project to be completed by the Completion Date.
 - d) Existence. Maintain its existence as a Texas limited liability corporation. The corporate existence of Grantee shall not be changed without the prior written consent of Grantor.
 - e) Compliance with Laws. Comply with all Laws applicable to the Project.
 - f) Fair Practices. Certify that it complies with all laws prohibiting discrimination in employment or otherwise on the basis of political or religious opinion or affiliation, marital status, sexual orientation, genetic information, race, color, creed or national origin, sex, age, or the physical or mental disability of a qualified individual with a disability; and will submit to the Grantor, upon request, information relating to Grantee's operations with regard to political or religious opinion or affiliation, marital status, sexual orientation, genetic information, physical or mental disability, race, color, creed, national origin, sex or age, on a form to be prescribed by the Grantor.
 - g) Records. Keep, in accordance with generally accepted accounting principles, any books, records, and other documents as may be reasonably necessary to fully account for the amount and disposition of the Grant, the costs incurred to perform the Project, and the source of all funds expended towards the costs of the Project ("Project Records"). All Project Records shall be maintained at the offices of the Grantee, and Grantee shall make Project Records available to Grantor or its duly authorized representative for inspection, copying, audit and examination during normal business hours. All Project Records shall be maintained until three years after discharge of all duties owed to Grantor or longer if required by Grantee's document retention policies.

h) **Indemnification.** Grantee agrees to and shall indemnify and hold harmless and defend Grantor, its officers, agents, and employees from and against any and all claims, Losses, damages, causes of action, suits, and liability of every kind, including all reasonable expenses of litigation, court costs, and reasonable attorney's fees, for injury to or death of any person, for damage to any property, or its failure to abide by all applicable environmental laws, rules and regulations arising out of or in connection with Grantee's operation and construction of improvements contemplated by this Grant Agreement on Grantee's site.

i) **Project and Financial Reports.** During the construction of the Project and following its substantial completion:

(i) Grantee shall submit to the Grantor any and all information or reports requested to verify that the Grantee has met all obligations as specified herein. Grantee shall submit to the Grantor a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen and subcontractors have been released, and that there are no claims pending of which the Grantee has been notified. The submission of these reports and information shall be the responsibility of Grantee and shall be signed by the duly authorized representative of Grantee.

(ii) Grantee shall submit the information and/or reports required herein on or before the day that is ten days after the earlier of (i) the date of issuance of the Certificate of Occupancy and the Grantee opens for business; or (ii) the date on which they are requested by the Grantor. If Grantee fails, within thirty (30) days after receipt of written notice from the Grantor, to submit the information and/or reports, then Grantor's obligations.

(iii) All submittals in this Grant Agreement shall be to the Grantor.

(j) **Taxes and Claims.** Pay all applicable taxes, assessments and claims as they become due, except for those being contested in good faith by appropriate proceedings.

7) **Release of Claims.** Grantee releases, relinquishes and discharges the Grantor, its officers, agents and employees from all claims, demands and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of, any person (whether they be either of the parties hereto, their employees or other third parties) and any loss of or damage to property (whether property of either of the parties hereto, their employees, or of third parties) or their respective failure to abide by all applicable environmental laws, rules and regulations that is caused by or alleged to be caused by, arising out of, or in connection with Grantee's operation of or construction of improvements contemplated by this Grant Agreement on Grantee's site.

By entering into this Grant Agreement, Grantor does not consent to suit, waive its governmental immunity or the limitations as to damages contained in the Texas Tort Claims Act.

8) **Certifications.** By signing below, Grantee makes the following certifications:

a) All information provided in connection with Grantee's Application is true and correct to the best of Grantee's knowledge.

- b) Any misrepresentation or false statement made by Grantee, or an authorized agent of Grantee, in connection with Grantee's Application, whether intentional or not, will constitute grounds for denial of the Application and/or revocation of the Grant.
- c) Grantee does not and will not knowingly employ an undocumented worker who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States. Grantee understands that if, after receiving a grant, Grantee is convicted of a violation under 8 U.S.C. §1324a(f), Grantee shall repay the amount of the Grant with interest, at the rate and according to the other terms provided by an agreement under §2264.053 of the Texas Government Code, not later than the 120th day after the date of the public agency, state or local taxing jurisdiction, or Grantor notifies Grantee of the violation.

9) **Defaults and Remedies.** The following events shall constitute a Default under this Grant Agreement:

- a) Any Grant proceeds are used for any purpose other than Eligible Project Costs.
- b) The Grantee breaches any covenant, representation, warranty or other provision of this Agreement, which breach is not cured within 30 calendar days from the date of receipt of written notice (as provided below) of the breach from the Grantor.
- c) The Grantee breaches any covenant, representation, warranty, or other provision in any other Grant Document, which breach continues beyond any applicable grace or cure period.
- d) Any statement made in any certificate, report or opinion (including legal opinions), financial statement, or other document furnished in connection with the Grant was incorrect in any material respect when made.
- e) The Grantee fails to comply with any requirement imposed by any Governmental Authority in connection with the Project within 30 days after written notice of the requirement is made or within any other time period set by the Governmental Authority; or if any proceeding is commenced or action taken to enforce any remedy for a violation of any requirement of a Governmental Authority in connection with the Project.
- f) The Project is not completed by the Completion Date as required by this Agreement.
- g) A permanent or preliminary injunction, excluding an ex parte injunction, is issued by a court of competent jurisdiction that lasts for more than 90 days and prohibits the Grantee from carrying out any of its Obligations as set forth herein.
- h) Without the prior written consent of the Grantor, the Grantee is dissolved by operation of law or in any other manner.
- i) Any court of competent jurisdiction makes a final order: (i) adjudicating the Grantee a bankrupt, (ii) appointing a trustee or receiver of a substantial part of the property of the Grantee, (iii) approving a petition for, or affecting an arrangement in, bankruptcy, a

reorganization pursuant to federal bankruptcy law, or any other judicial modification or alterations of the rights of the Grantor or of creditors of the Grantee, (iv) assuming custody or sequestering any substantial part of the property of the Grantee; or (v) attaching or garnishing any substantial part of the property of the Grantee; or if the Grantee (a) files such petition; (b) takes or consents to any other actions seeking any such judicial order; (c) makes an assignment for the benefit of creditors; (d) fails to pay debts generally as they become due; or (e) makes an admission in writing of inability to pay debts generally as they become due.

The following events shall constitute a Remedy under this Grant Agreement:

- a) Upon the occurrence of any Default, the Grantor may:
 - (i) Require the immediate repayment of the entire outstanding amount of the Grant and immediate payment of any Obligations;
 - (ii) At any time proceed to protect and enforce all rights and remedies available to the Grantor under this Agreement or by Law, by any other proceedings, whether for specific performance of any agreement contained in this Agreement, damages, or other relief;
 - (iii) Suspend or terminate the Grantee's authority to receive any undisbursed Grant proceeds at any time by written notice to the Grantee; and
 - (iv) Exercise any of its rights and remedies under any of the Grant Documents.
- b) All remedies provided for in this Agreement or by Law are cumulative and are in addition to any other rights and remedies available to the Grantor under any Law. The exercise of any right or remedy by the Grantor shall not constitute a cure or waiver of any Default, nor invalidate any act done pursuant to any notice of Default, nor prejudice the Grantor in the exercise of those rights.
- c) The failure of the Grantor to insist upon performance of any term of this Agreement shall not constitute a waiver of any term of this Agreement. No act of the Grantor shall be construed as an election to proceed under any one provision in this Agreement to the exclusion of any other provision.
- d) If the Grantor suspends or terminates this Agreement, the rights and remedies available to the Grantor shall survive the suspension or termination.
- e) In no event shall Grantee's total liability to Grantor be greater than the actual amount of funds disbursed by Grantor to Grantee for the Project under this Agreement.

10) PAEDC Promotional Activities. Grantee agrees to participate in the following promotional activities to showcase the renovations and the improvements:

- a) allow PAEDC to place a temporary sign on the property prior to and for a period of not to exceed 3 months after completion of the Project; the sign shall denote the assistance of PAEDC and the completion of the Project;

- b) allow PAEDC to place before and after pictures of the Project on the PAEDC website including the amount of assistance provided (total Project costs may also be included with the agreement of Grantee);
- c) reference the PAEDC as a recipient of a PAEDC Operation Downtown Site Improvement Grant information materials including the amount of assistance provided (total Project costs may also be included with the agreement of Grantee);
- d) participate in other promotional activities as deemed appropriate and agreed upon by PAEDC and Grantee;

11) **Insurance.** Grantee shall maintain and keep in force during the term of the Project and at its expense casualty and liability insurance with a limit of liability no less than \$1 million and shall deliver evidence of the insurance naming the PAEDC as an additional named insured prior to the execution of this Grant Agreement.

12) **Notices.**

- (a) All communications between Grantor and Grantee made pursuant to this Agreement shall be in writing.
- (b) All communications shall: (1) when mailed, be effective three business days after deposit in the mails; (2) when sent for next day delivery by a reputable overnight courier service, be effective one business day after dispatch; and (3) when sent by fax, be effective when faxed and receipt of the communication is confirmed by a fax receipt. Communications shall be delivered to the office of the addressee, as follows:

- (i) Communications to the Grantor shall be sent to:

City of Port Arthur Section 4A Economic Development Corporation
P.O. Box 3934
Port Arthur, Texas 77642
Attn: Mr. Floyd Batiste
(409) 963-0579
fbatiste@paedc.org

With a copy to Counsel for the Grantor:

Guy N. Goodson
Germer Gertz, L.L.P.
550 Fannin, Suite 400
Beaumont, Texas 77701
(409) 654-6730
ggoodson@germer.com

- (ii) Communication to the Grantee shall be mailed to:

Kilgore Construction, LLC
1347 Proctor Street

Port Arthur, Texas 77640
Attn: Heather or Jeff Kilgore
(409) 291-8528

With a copy to Counsel for Grantee:

Stuart C. Yoes
The Yoes Law Firm, L.L.P.
3535 Calder Avenue, Suite 235
Beaumont, Texas 77702
scy@voeslawfirm.com

- (c) The parties may change their notice addresses by sending written notice to the other parties.

13) **Assignability.** The rights and liabilities under this Agreement shall not be assigned by Grantee in whole or in part without the prior written consent of the PAEDC.

14) **Law and Ordinances.** Grantee shall be responsible to compliance with all applicable laws, regulations and ordinances including building and zoning codes and for obtaining all necessary building permits required for the Project.

15) **Disclaimer of Relationships.** The Grantee acknowledges that the obligation of the Grantor is limited to making the Grant on the terms set forth in this Agreement. Nothing in this Agreement, and no act of the parties or any one or more of them, shall be deemed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other relationship between the Grantor and the Grantee.

16) **Governing Law.** This Grant Agreement shall be governed under the laws of the State of Texas, and venue for any matters arising under this Grant Agreement shall be in the courts of competent jurisdiction in Jefferson County, Texas.

17) **Illegality.** If performance of any Obligation would require the performing party to violate the Law, then the performance shall be reduced to the level permitted by Law, and if any provision of this Agreement is determined to be illegal or invalid by a court of competent jurisdiction, then such provision only shall be void as though not set forth in this Agreement, and the remainder of this Agreement shall remain in full force and effect.

18) **Force Majeure.** Neither party is liable for failure or delay in performing any of its obligations under this Agreement if the failure or delay is required in order to comply with any governmental regulation, request or order, or necessitated by other circumstances beyond the reasonable control of the party so failing or delaying, including but not limited to Acts of God, war (declared or undeclared), insurrection, fire, flood, accident, labor strikes, work stoppage or slowdown (whether or not such labor event is within the reasonable control of the parties), or inability to obtain raw materials, supplies, power or equipment necessary to enable a party to perform its obligations. Each party will: (a) promptly notify the other party in writing of an event of force majeure, the expected duration of the event and its anticipated effect on the ability of the party to perform its obligations; and (b) make reasonable efforts to remedy the event of force majeure.

19) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which, when taken together, shall constitute one document.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused this Agreement to be executed and delivered as of the date first above written.

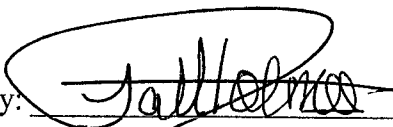
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AGREEMENT EXECUTION

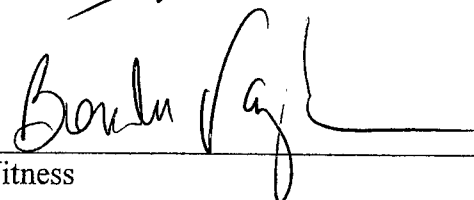
**CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION**

SIGNED AND AGREED TO on the _____ day of _____, 2012.

By: _____
President

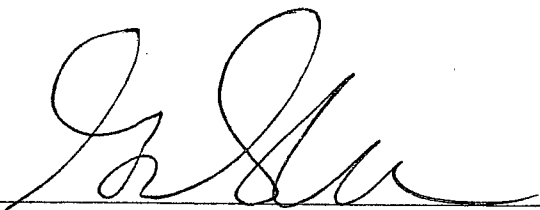
By:  _____
Secretary

Witness

 _____
Witness

ATTORNEY APPROVALS

APPROVED AS TO FORM:

 _____
Guy N. Goodson
General Counsel for PAEDC

VERIFIED AS CONSISTENT
WITH CITY COUNCIL RESOLUTION:

Resolution Number: _____

Valecia R. Tizeno, City Attorney

KILGORE CONSTRUCTION, LLC

SIGNED AND AGREED TO on the _____ day of _____, 2012.

By: _____

Witness

Exhibit “B”

OPERATION DOWNTOWN

A Downtown Improvement Program of the City of Port Arthur Economic Development Corporation for Site Improvements and Related Improvements necessary to promote or develop new or expanded business enterprises

A key element of a revitalization effort is the return of activity to a business corridor. These first few steps can be the spark to ignite interest and spur new business excitement. Operation Downtown provides a catalyst for these first steps. New site improvements and related improvements such as fresh paint, new awnings or complete façade rehabilitation all signal that something positive is happening. Operation Downtown is a conditional grant program available for site improvements and related improvements to business buildings located in Port Arthur Downtown Revitalization target areas (see attached map for target area boundaries). Projects will be granted up to \$250,000 to be matched by private or other source funds. For every three dollars of investment by private source funds into an Operation Downtown project Port Arthur Economic Development Corporation (PAEDC) will invest one dollar, not to exceed \$250,000 of public dollar investment.

The purpose of Operation Downtown is to promote or develop new or expanded business enterprises in the designated downtown area as per the proposition approved by the voters in the May 2009 Special Election for site improvements and related improvements necessary to promote or develop new or expanded business enterprises which will also do the following:

- Reverse the deterioration of business structures in the targeted areas.
- Enhance efforts to market vacant space and attract new businesses.
- Stimulate new, private investment and economic growth.
- Promote consistency in design and create a fresh and aesthetically pleasing environment.
- Assist property owners with the appropriate exterior rehabilitation of their buildings and bring them up to code.
- Reduce the perception of crime.
- Invest in historic preservation and rehabilitation.

This package contains other documents detailing the application process and information to assist you in completing the application. The package includes:

- This cover letter
- Basic Procedures and list of eligible projects
- Blank Application
- Map

For more information, contact:
Port Arthur Downtown Revitalization Program
4173 39th Street
Port Arthur, TX 77642
409-963-0579

ELIGIBLE PROJECTS

Project Description

A conditional loan forgivable over five years may be provided to owners of eligible properties to undertake site improvements and related improvements which can include comprehensive exterior repair and façade upgrades or renovations, and infrastructure improvements including sidewalk repairs and landscaping in and adjacent to the public right-of-way. Conditional loan will be forgiven over a three year period at a rate of one third per year that the property is occupied, upon approval by the Board of Directors of PAEDC. The conditional loan assistance is provided to the property owner on a reimbursement basis as the renovation project progresses. All conditional loans shall be secured by private sector matching investment of three to one dollar from the property owner or a financial institution. The conditional loan shall be secured by a mortgage on the improved real estate.

Eligible Properties

Applications may be submitted for business properties, either owner or tenant occupied within the Port Arthur Downtown Revitalization target areas. Owners of vacant buildings are encouraged to apply and improve property as a catalyst for future occupancy. Mixed use buildings with retail/commercial in the storefront are also encouraged.

Non Eligible Properties

Properties used primarily as residences are not eligible for Operation Downtown.

Eligible Applicants

Business property and business owners located in eligible areas may apply for assistance. Tenants must have a signed lease and the property owner's approval. The City Council of the City of Port Arthur may also apply for assistance.

Exceptions

The Port Arthur City Council and the PAEDC Board of Directors are each allowed a one time grant with no match up to \$250,000 to be used within the three year period of the Program dependent on availability of funds.

Eligible Improvements

Operation Downtown will fund site improvement and related improvement projects. All improvements must be permanent or fixed. Eligible improvements may include, but are not limited to:

- complete facade and site rehabilitation;
- replacement of broken window panes, aluminum or wood windows and broken store front glass;
- scraping, priming, and painting of window frames, cornice and store front;
- painting of brick facade and sites where brick has been previously painted;
- repair or replace deteriorating signage and brackets when attached to the building;
- repair or replace missing or broken tile;
- repair or replace worn awnings or canopies;
- removal of metal slipcovers to expose original materials;
- certain types of security elements or security recommendations;
- rehabilitation of the upper facade and site and display areas or side walls of a building may also be eligible if street level improvements are approved;
- roof repair when incidental to overall facade and site improvements.
- Restore old historical facades
- Other site improvements as authorized by the proposition approved by the voters in the May 2009 Special Election

Other minor repairs when incidental to overall façade improvements such as:

- ✓ exterior lighting;
- ✓ certain types of security elements or security recommendations;
- ✓ roof repair;
- ✓ repair of sidewalk, ADA accessibility;
- ✓ detached signage;
- ✓ new construction;
- ✓ parking lots;
- ✓ landscaping;
- ✓ other improvements as approved by the EDC

In addition, professional, architectural, and City permit fees may be included in the total improvement costs.

Ineligible Improvements

The following improvements are not eligible for funding:

- burglar bars;
- fencing;

BASIC PROCEDURE

Step 1 - Applicant Eligibility

- Business or property owners are eligible to apply for Operation Downtown funds if the business is 1 - located within a Port Arthur Downtown Revitalization target area; and 2 - utilized primarily for business purpose (this does NOT include residences or apartments).
- For information for Port Arthur Downtown Revitalization target area boundaries see map included herein or contact the Operation Downtown Coordinator or Port Arthur Downtown Revitalization Coordinator or the EDC CEO.
- If needed, a meeting at the site with the applicant, their contractor and Port Arthur Downtown Revitalization staff can be arranged to discuss the application process, area design guidelines and/or to develop a preliminary design concept.

Step 2 – Complete The Application

- The application (enclosed herein) is to be completed by the applicant (business owner, property owner or tenant). A completed application must contain information for all three parts: applicant information, property information and project information. Incomplete applications may result in delays in processing.
- Design assistance or preliminary project discussion meetings may be arranged if the applicant is uncertain what improvements are needed or would like suggestion. Inquires may be made to the Operation Downtown Coordinator at 409-963-0579.
- A completed application should be submitted to:
Port Arthur Downtown Revitalization Program
Port Arthur Economic Development Corporation
ATTN: Floyd Batiste, CEO
4173 39th Street, Port Arthur, TX 77642
- Once an application is received, the Operation Downtown Coordinator will confirm eligibility of the site and the proposed scope of work, notify the applicant that the application has been received and is under review, and arrange a Project Review meeting.

- Projects that are eligible for funding will be considered on a first come, first served basis. There is no deadline; applications are accepted year round. However, projects may be limited due to budget constraints and funding availability. All approved projects must be completed within 18 months of contract date.

Step 3 - Project Review & Contract Execution

- A Project Review meeting is required to be conducted prior to contract execution and construction beginning.
- A Design Review Team (Sub committee from PAEDC Board) will conduct the Project Review meeting with the applicant to review the application. A site visit may also be helpful but is not required.
- The Design Review Team will discuss the merits of the project and form a **recommendation** to either fund the project, or require the applicant to make changes and re-submit.
- The Design Review Team recommendation is presented to the PAEDC Board of Directors.
- If the recommendation is accepted by the EDC Board of Directors, the Design Review Team recommendation will be presented to the applicant to accept or withdraw.
- If approved, a Grant Agreement (contract) will be prepared by the EDC and affiliated attorneys or by the City Attorney and then forwarded to the EDC Board of Directors and to the City Council for approval
- The applicant and the EDC will sign the Grant Agreement. A fully executed Grant Agreement will be returned to the applicant. An Affirmative Covenant of Maintenance document is also signed and filed with the County Clerk's Office. **Start of the construction prior to the date of contract signing will void the grant.**

Step 4 – Construction

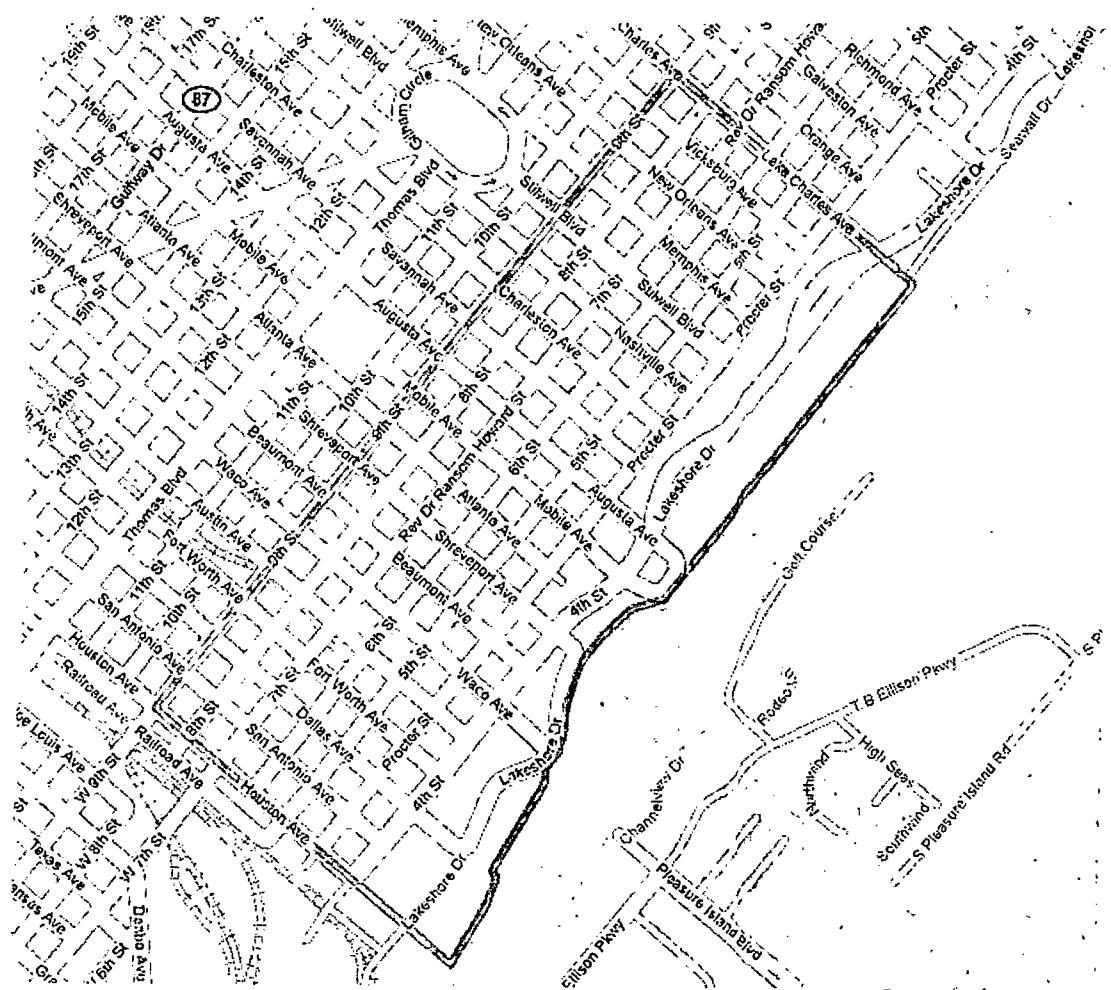
- A Pre-Construction Meeting will be held to go over construction scope of work, change orders, as well as other procedures. This meeting will usually be held on site, prior to construction but after the contract is signed. It is helpful if the applicants as well as contractors are present.
- If the improvements require a building permit, or approval from the Texas Historic Design and Review Commission, the applicant must comply. The City of Port Arthur Planning staff may be able to assist in the process on the applicant's behalf.
- A Sub committee from Board or City staff may monitor the progress and make periodic inspections during the project.

Step 5 – Reimbursement

- Funds will be provided on a reimbursement basis ONLY.
- Reimbursement will be processed at 90% rate with 10% retained until completion of the work.

- Applicant will contact the PAEDC or City staff to conduct a final inspection. If all parties are satisfied with the work, the PAEDC and applicant will sign off on completion of the improvement.
- The applicant will complete the Project Completion form and submit it along with copies of invoices, canceled checks, asking for final reimbursement of applicable costs.
- When **all** work and documentation is received, the PAEDC staff will request payment. A final check will be sent to the applicant.

Downtown Revitalization Target Area Map



The boundaries of the Downtown Revitalization Target area are Lakeshore Drive to the south, Houston Avenue to the west, 9th Street to the north and Lake Charles Avenue to the East. Properties on both sides of the right-of-way of the boundary roads will be considered for Operation Downtown funding.

OPERATION DOWNTOWN
Site Improvement Grant Program
Application

APPLICANT INFORMATION

Is the applicant a: Corporation Partnership Proprietorship Individual
Name of Applicant: d/b/a _____

Mailing Address: _____

Contact Name: _____ Title: _____
Telephone: Work Home _____ Email: _____
Type of Business: _____

PROPERTY INFORMATION

The Port Arthur Downtown Revitalization Target Area: _____

Street address of property to be improved: _____

Legal Description: Lot Block Tax Account No _____

Does the applicant own or lease the property. _____

If leasing, please include copy of lease agreement and letter of approval from owner.

Is the property currently: occupied _____ vacant _____ if vacant, when will property be occupied (date) _____

What is the current and proposed use of the property?

How many **full time** employees, if any, does the business currently employ?

Do you anticipate hiring additional employees after the proposed improvements are complete? Yes _____ No _____

If so, how many more?

PROJECT INFORMATION

Description of Site Improvements and related improvements including improvements to facade:

Estimated total cost of project: \$ _____ (Attach Project Budget form)

Grant funds are available up to **\$250,000** per eligible property.

When does the project need to begin? _____ Estimated time to complete
(Date)

job? _____
(# of days)

NOTE: Work must not start prior to contract execution.

Attach:

1. Recent photos of the property **(required)**
2. Budget and supporting estimates **(required)**
3. Copy of lease and/or letter from property owner granting approval or copy of warranty deed (if applicable)
4. Proof of funds for 75% of the total cost of the project **(required)**
5. Drawings or renderings that convey concept (if available)
6. Paint chips, color board or other samples (if available)

I certify that work has not started nor have I entered into any contract with any contractor for work to be covered under this grant application. I also understand that I will have to sign an agreement with the City of Port Arthur Economic Development Corporation to be approved by the City of Port Arthur regarding this grant award; a maintenance covenant will be filed to insure that the improvements will be maintained.

Applicant signature _____ Date _____

Applicant printed name _____

Exhibit “C”

Proposed Project Budget Form

137,661.64
Complete facade and site rehabilitation ~~142,314.51~~ TOTAL ESTIMATED COST

Replacement of broken window panes, broken wood windows and broken store front glass 8773.32

Scraping, priming and painting of window frames, cornice and store front 9600.00

Painting of the brick façade 4500.00

Repair or replace deteriorating signage and brackets when attached to the building 4000.00

Repair or replace broken tile 900.00

Repair or replace worn awnings or canopies 4108.34

Certain types of security elements or security recommendations 14,990.00

Rehabilitation of the upper façade and site and display areas or side walls of building 5800.00

~~Roof repair when incidental to overall façade and site improvements~~ 4712.87

Repair exterior lighting 746.73

Repair of sidewalk and ADA accessibility features 4132.00

Repair detached signage 30,000.00

Parking lots 29,982.00

Landscaping 9437.00

New construction 5000.00

Site Preparation and equipment 5632.25