

RESOLUTION NO. 14-447

A RESOLUTION APPROVING AN OPERATION DOWNTOWN GRANT AGREEMENT BETWEEN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION AND THE PORT ARTHUR ROTARY CLUB TO CONSTRUCT A MONUMENT DISPLAYING THE AMERICAN AND NUMEROUS FOREIGN FLAGS AT THE SEAWALL, IN THE NOT-TO-EXCEED AMOUNT OF \$110,500.00

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, the Port Arthur Rotary Club made presentations to the PAEDC Board of Directors requesting funding to construct a monument displaying the American and numerous foreign flags at the Seawall (the "Project"); and

WHEREAS, per Resolution 14-141, the City Council approved funding the project of the Port Arthur Rotary Club in the amount of \$110,500.00 to construct the monument; and

WHEREAS, the PAEDC Board of Directors approved to enter into the attached agreement at its regular Board meeting on September 9, 2014, as denoted in **Exhibit "A"**; and

WHEREAS, funds are available during fiscal year 2013-2014 from the funds allocated in the Ballot Proposition for the improvements.

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 enter into an Operation Downtown Grant Agreement with the Port Arthur Rotary Club to allocate \$110,500 of funds from the Ballot Proposition for fiscal year 2013-2014 to fund the construction of a monument displaying the American and numerous foreign flags at the Seawall, in substantially the same form as attached as Exhibit "A".

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

READ, ADOPTED AND APPROVED on this 27th day of Sept. A.D., 2014, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Prince; Mayor Pro Tem Freeman;

Councilmembers Scott, Hamilton, Mosely, Lewis,

Williamson and Frank.

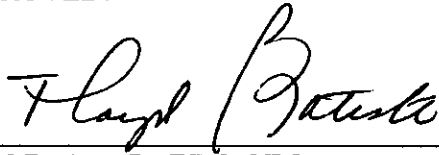
NOES: None.

ATTEST:

Deloris Prince
Deloris "Bobbie" Prince, Mayor

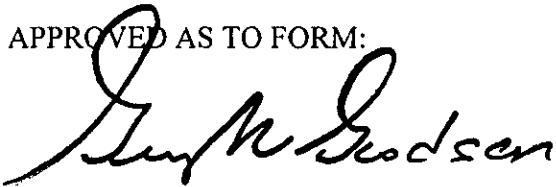
Sherrill Bellard
Sherri Bellard, City Secretary

APPROVED:



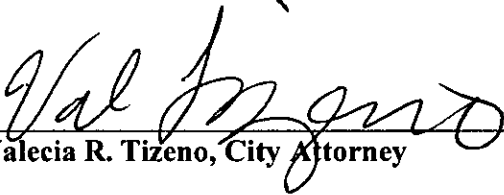
Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:



Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:



Valecia R. Tizeno, City Attorney

EXHIBIT "A"

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 _____, 2014 (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 **Port Arthur Rotary Club**, a Texas non-profit corporation, _____ Port Arthur, Texas 77642 (the "Grantee").

RECITALS

A. PAEDC administers funds under a downtown redevelopment initiative to provide specific infrastructure improvements necessary to promote and development new or expanding business enterprises in downtown Port Arthur, Texas ("Operation Downtown").

B. All grant funds provided under Operation Downtown shall be in accordance with Operation Downtown Site Improvement Grant Program as set forth in **Exhibit "A"** to this Grant Agreement.

C. PAEDC and Grantee agree that all reimbursements to Grantee are subject to the conditions, procedure and eligibility requirements specified in **Exhibit "A"** and as set forth in this Grant Agreement.

D. Grantee agrees that the grant to be provided by PAEDC shall be used solely to finance the cost to construct the international avenue of flags monument to be located at the Seawall (the "Project") as specified in its Application submitted under the Site Improvement Grant Program attached hereto as **Exhibit "B"** and made a part hereof for all purposes (the "Application").

E. Grantee agrees PAEDC will only fund approximately fifty (50%) percent of the eligible infrastructure improvements necessary to construct the international avenue of flags in an amount not to exceed \$110,500.00 and before PAEDC begins to disperse funds Grantee agrees to provide documentation evidencing the availability of funds necessary to complete the Project.

F. Grantee agrees to expend its best efforts to accomplish the infrastructure improvements described in the Application and as approved by PAEDC.

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 amount of \$110,500.00 (the "Grant Amount") to Grantee to fund qualified

infrastructure improvements as set forth in the Bid Proposal dated _____ attached hereto as **Exhibit "C"** and made a part hereof for all purposes (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.

2) **Payment Procedures.** PAEDC will only fund approximately fifty (50%) percent of the eligible infrastructure improvements necessary to construct the international avenue of flags in an amount not to exceed \$110,500.00. PAEDC will reimburse the Grant Amount to Grantee on a monthly basis after receiving and approving pay requests and corresponding documentation as set forth below:

- a) Grantee must provide PAEDC a project budget;
- b) Grantee must provide PAEDC documentation and assurances evidencing the availability of funds to complete the project before PAEDC approves a submitted pay request;
- c) Grantee must provide PAEDC a project schedule which includes estimated dates for completion of each division of work;
- d) Grantee must identify all contractors and subcontractors who will be performing the work;
- e) Grantee must present pay requests that are signed by the Grantee, contractor, engineer and/or architect (as appropriate) to PAEDC on a monthly basis in order to receive reimbursements for qualified infrastructure improvements;
- f) Grantee must provide PAEDC lien waivers from the contractor(s) and subcontractor(s) with the monthly pay requests (for the prior month's work);and
- g) PAEDC will submit payment to the Grantee only after PAEDC approves the submitted pay request and corresponding documentation.

PAEDC will only fund approximately fifty (50%) percent of each pay request submitted by Grantee. The remaining balance of the pay request must come from either the Grantee or another funding source.

PAEDC will only fund the construction of eligible infrastructure improvements in an amount not to exceed \$110,500.00.

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 _____ 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) **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 ___ 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;

6) **Operation Downtown Site Improvement Grant Program Eligibility.** The PAEDC requires at all times through the completion of funding of the grant that Grantee may ensure that all requirements of Operation Downtown including the matters as submitted in its Application are true and correct.

7) **Indemnification.** Grantee agrees to indemnify and hold PAEDC, its staff, officers and the City of Port Arthur, from any and all actions preceding claims, demands, costs, damages and expenses including reasonable attorneys' fees arising out of or related to the Project.

8) **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.

9) **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.

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

11) **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.

PORT ARTHUR HISTORICAL SOCIETY

SIGNED AND AGREED TO on the ____ day of _____, 2014.

PORT ARTHUR ROTARY CLUB

By: _____

Witness

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

SIGNED AND AGREED TO on the ____ day of _____, 2014.

President

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