

RESOLUTION NO. 22-096

**A RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT CONDITIONAL GRANT AGREEMENT BETWEEN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION AND THE BALLOON BARN FOR AN AMOUNT NOT TO EXCEED \$18,175.20; FUNDS AVAILABLE IN EDC ACCOUNT NO. 120-80-625-5478-00-00-000**

**WHEREAS**, the City Council deems it in the public interest to authorize the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") to enter into an Economic Development Conditional Grant Agreement (the "Agreement") with The Balloon Barn; and

**WHEREAS**, PAEDC has reviewed the application presented by The Balloon Barn and the proposal for infrastructure improvements for the construction of a party venue building with a splash pad and all utilities required for the developed site located at 7911 N. Twin City Hwy. in Port Arthur, Texas; and

**WHEREAS**, the PAEDC Board of Directors has concluded that the expenditures found for the infrastructure improvements will promote or develop new or expanded business enterprises as well as determined that The Balloon Barn has presented an application qualifying as a Section 4A Project as set forth in the Economic Development Act; and

**WHEREAS**, PAEDC at their Regular Board meeting of February 7, 2022, approved a conditional grant in the amount not to exceed \$18,175.20 for the purpose of making qualified infrastructure improvements to the property on Twin City Hwy. based upon findings of facts of economic benefit as to the development of the property; and

**WHEREAS**, PAEDC under the terms of the Agreement will not pay any funds to The Balloon Barn until the improvements to the property on Twin City Hwy. have been completed and Certificates of Occupancy for the property have been provided to PAEDC; and

**WHEREAS**, The Balloon Barn has reviewed and approved the Agreement attached hereto as **Exhibit "A"**.

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

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

**Section 2.** That PAEDC is herein authorized to enter into the Agreement with The Balloon Barn, and the President and Secretary of PAEDC are authorized to sign the Agreement in substantially the same form attached hereto as **Exhibit "A"**.

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

**READ, ADOPTED AND APPROVED** on this 1<sup>st</sup> day of March A.D., 2022, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: **AYES:**

Mayor Bartie;

Councilmembers Himes, Jones, Kinlan  
and Moses.

**NOES:** None.

  
**Thurman Bartie, Mayor**

ATTEST:



**Sherri Bellard, City Secretary**

APPROVED:



**George Davis, Interim PAEDC CEO**

APPROVED AS TO FORM:



**Frank Garza, PAEDC Attorney**

APPROVED AS TO FORM:



**Val Tizeno, City Attorney**

APPROVED AS TO AVAILABILITY OF FUNDS:



**Kandy Daniel, Interim Finance Director**

**ECONOMIC DEVELOPMENT CONDITIONAL GRANT AGREEMENT  
BETWEEN  
THE CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
AND THE BALLOON BARN**

**Executive Summary**

The City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") finds that the construction of infrastructure improvements located at 7911 N. Twin City Hwy., Port Arthur, Texas 77642, is beneficial for the development and expansion of new and existing business enterprises in the City. For the reason, based upon findings of economic development as set forth in this Economic Development Conditional Grant Agreement (the "Agreement"), PAEDC conditionally grants to **The Balloon Barn**, a sole proprietorship, the costs of qualifying infrastructure improvements in the amount of **\$18,175.20**.

The Balloon Barn, a sole proprietorship (the "Incentive Recipient") plans to construct infrastructure improvements (the "Improvements") for the construction of a party venue building with splash pad and all utilities required for the developed site to increase the amount of retail space and thereby increasing sales tax with the anticipated increase in consumers .

If Incentive Recipient breaches or defaults under this Agreement, then any funds granted by PAEDC will automatically convert to a loan for a period of three (3) years from the date of default, and an interest rate of ten percent (10%) per annum.

Incentive Recipient agrees to send PAEDC reports each quarter on the construction status of the Improvements and the proposed commercial development as outlined in the Performance Milestone Schedule of this Agreement.

Incentive Recipient has agreed to provide as collateral for the performance of its obligation under the Agreement a Letter of Credit.

**ECONOMIC DEVELOPMENT CONDITIONAL GRANT AGREEMENT BETWEEN  
THE CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
AND THE BALLOON BARN**

**RECITALS**

**WHEREAS**, The Balloon Barn, a sole proprietorship, desires to make improvements on its property (the "Property") located at 7911 N. Twin City Hwy., in Port Arthur, Texas for the construction of a party venue building with splash pad with concrete parking, driveways, and all utilities required for the developed site; and

**WHEREAS**, §501.103, Texas Local Government Code authorizes expenditures on infrastructure by the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") if the PAEDC Board finds the expenditure "to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises," and

**WHEREAS**, on February 7, 2022 following of facts contained in Exhibit "A," the PAEDC Board found that the facts reasonably support the finding that the infrastructure improvements for the construction of a building with concrete parking, driveways, and all utilities required for the developed site; and

**WHEREAS**, the PAEDC Board approved an economic development conditional grant to The Balloon Barn to redevelop and make necessary infrastructure improvements to the Property; and

**WHEREAS**, the PAEDC and The Balloon Barn desire to set forth in this Agreement the terms and conditions for PAEDC's conditional grant payments for the infrastructure improvements to the Property.

**NOW THEREFORE**, the parties agree as follows:

**AGREEMENT DATES**

**AGREEMENT START DATE**

1. This Economic Development Conditional Grant Agreement (the "Agreement") is entered into with an effective date of March 21, 2022, but in no case later than March 21, 2022, by and between the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") and Incentive Recipient.

**AGREEMENT END DATE**

2. This Agreement expires thirty (30) days after Incentive Recipient either performs fully (anticipated date of completion is 12-31-22) or breaches the Agreement, subject to earlier termination voluntary or involuntary, as provided per Section 31.

#### **PARTIES**

3. City of Port Arthur Section 4A Economic Development Corporation ("PAEDC"), located at 501 Procter Street, Port Arthur, Texas 77640, is a corporation. It is duly authorized to do business in the State of Texas under Chapter 501, 504 Texas Local Government Code (the "Act" or "Development Corporation Act") and duly authorized by Resolution of the City Council of the City of Port Arthur to enter into this Agreement. So authorized and as provided by the PAEDC bylaws, the President and Secretary of the PAEDC Board have the authority to execute this Agreement.
4. The Balloon Barn, a sole proprietorship located at 7911 N. Twin City Hwy., Port Arthur, Texas 77642. Michelle Barnette is the registered agent for The Balloon Barn located at 7911 N. Twin City Hwy., Port Arthur, Texas 77642.

#### **CONDITIONS PRECEDENT**

5. This Agreement has no legal consequences unless and until:
  - a. Both the PAEDC Board and the City of Port Arthur City Council approve the Agreement in its final form; and
  - b. Incentive Recipient delivers to PAEDC quarterly status reports reflecting the progress of construction improvements to the infrastructure and provides PAEDC evidence of completion of the qualifying infrastructure improvements no later than December 31, 2022.

#### **PROMISED PERFORMANCE**

6. The parties agree to perform as follows:
  - a. **Performance by PAEDC**
    - i. PAEDC shall conditionally grant Incentive Recipient an amount **not to exceed \$18,177.20** for the purpose of constructing a party venue building with splash pad and all utilities with concrete parking, driveways, and all utilities required for the developed site located on the Property;
    - ii. Incentive Recipient will provide PAEDC evidence of completion of the infrastructure improvements by obtaining a Certificate of Occupancy for the party venue building and all utilities with concrete parking, driveways, and all utilities required for the developed site by December 31, 2022 as set forth in **Exhibit "C."** In addition Incentive Recipient will also provide PAEDC a Certificate of Occupancy for other structure located at 7911 N. Twin City Hwy., Port Arthur, Texas 77642 by December 31, 2022 and

upon receipt of both Certificates of Occupancy, PAEDC will reimburse Incentive Recipient one hundred percent (100%) of the Conditional Grant;

These are PAEDC's only obligations and are not legally required to provide any other financial support.

**b. Performance by Incentive Recipient**

- i. Incentive Recipient shall make infrastructure improvements to the Property as outlined in the Grant Application referenced in **Exhibit "B."**
- ii. Incentive Recipient shall provide PAEDC with quarterly reports detailing the progress of the infrastructure improvements.
- iii. Incentive Recipient shall provide PAEDC certificate of occupancy for the the construction of a party venue building with splash pad in order to receive the reimbursable percentage.
- iv. Incentive Recipient will use its best efforts to ensure that Port Arthur, Texas residents are hired for the construction of the Building to the maximum extent feasible.
- v. On written demand by PAEDC and in response to Incentive Recipient's failure to achieve a performance milestone, Incentive Recipient shall provide PAEDC within 10 business days following receipt of such written demand with assurances that it has both the intention and capabilities to perform fully its Agreement dual obligations.

**INCENTIVE RECIPIENT'S PERFORMANCE MILESTONE SCHEDULE**

7. Although failure to achieve a performance milestone is not a breach of Agreement, a failure is grounds for PAEDC to demand reasonable assurances<sup>1</sup> from Incentive Recipient that it can and will fully perform its Contractual obligations. Failure to provide demanded assurances is a breach of Agreement.
8. Incentive Recipient's performance milestones are contained in **Exhibit "C."**

**PAEDC'S CONDITIONAL OBLIGATIONS AND LIMITED LIABILITY**

9. The PAEDC's sole liability/obligations, if any, shall be to Incentive Recipient and shall be limited to the conditional incentive obligations detailed in this Agreement. The PAEDC shall not be liable, in Agreement or otherwise, to Incentive Recipient, or to any person or entity claiming by or through Incentive Recipient., for any expense,

---

<sup>1</sup> Examples of reasonable assurances are copies of pending Agreement s and commitment letters.

expenditure or cost incurred by or on behalf of Incentive Recipient related to the construction of the Building made the basis of this Agreement.

**LIQUIDATED DAMAGES FOR BREACH OF AGREEMENT BY INCENTIVE RECIPIENT.**

10. In the event Incentive Recipient breaches this Agreement or does not fulfill its obligation to complete infrastructure improvements per Section 6 (b) in order to provide PAEDC certificates of occupancy, Incentive Recipient will not be reimbursed for costs incurred by them for infrastructure improvements and this Agreement shall be terminated.
11. It is expressly understood and agreed by the parties that any right or remedy shall not preclude the exercise of any other right or remedy under this Agreement or under any provision of law, nor shall any action taken in the exercise of any right or remedy by deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

**RECORDS/INSPECTION/PAEDC AUDIT**

12. Incentive Recipient shall maintain records as necessary to allow the PAEDC to audit in compliance with this Agreement and the representations and warranties contained herein and in Incentive Recipient's application.
13. Incentive Recipient shall give the PAEDC, or any of its duly authorized representatives, access to and right to examine all books, accounts, records, reports, files and other papers, things or property belonging to or in use by Incentive Recipient pertaining to this Agreement. Such rights to access shall continue as long as the records are maintained by Incentive Recipient. Incentive Recipient agrees to maintain such records in and accessible location. Driver's license information is appropriate for interim reporting of Port Arthur residents hired. The reporting objective is to include documentation necessary for PAEDC to verify Incentive Recipient's reports without further outside inquiry.
14. All records pertinent to this Agreement shall be retained by Incentive Recipient at least three (3) years following the date of termination of this Agreement, whether said termination is a result of default or whether said termination is a result of final submission of a close out report by Incentive Recipient detailing Incentive Recipient's compliance with its obligations provided herein. Further, in the event any litigation, claim or audit arising out of or related to this Agreement is instituted before the expiration of the three (3) year period and extends beyond the tree (3) year period, the records will be maintained until all litigation, claims, or audit findings involving this Agreement and the records made the basis of same has been resolved.
15. Upon written request, Incentive Recipient shall provide PAEDC with all reports reasonably necessary for PAEDC to comply with the Development Corporation Act.



16. It is expressly understood and agreed by the parties hereto that if Incentive Recipient fails to submit to PAEDC in a timely and satisfactory manner any report required by this Agreement, PAEDC, may at its sole discretion, demand assurances that Incentive Recipient can and will fully perform its Contractual obligations. If Incentive Recipient fails to provide adequate assurances in ten (10) business days then Incentive Recipient is in breach and PAEDC is not obligated to reimburse Incentive Recipient for expenses incurred for infrastructure improvements.
17. The PAEDC reserves the right, from time to time, to carry out field inspections/audits to ensure compliance with the requirements of this Agreement. After completion of any such audit, the PAEDC, at its option, may provide Incentive Recipient with a written report of the audit findings. If the audit report details deficiencies in Incentive Recipient performance under the terms and conditions of this Agreement, the PAEDC may establish requirements for the timely correction of any such deficiencies by Incentive Recipient.

#### **HOLD HARMLESS**

18. INCENTIVE RECIPIENT SHALL INDEMNIFY, DEFEND AND HOLD THE PAEDC AND THE CITY (TOGETHER THE "INDEMNIFIED PARTIES") HARMLESS FROM ALL INJURIES, CLAIMS, LIABILITIES, COSTS OR DAMAGES (INCLUDING COURT COSTS AND REASONABLE ATTORNEY'S FEES) SUSTAINED BY OR THREATENED AGAINST ANY OF THE INDEMNIFIED PARTIES FOR INJURY OR DEATH TO PERSONS OR PHYSICAL DAMAGE TO PROPERTY ARISING OUT OR RELATING TO THE PERFORMANCE BY INCENTIVE RECIPIENT OF ITS OBLIGATION UNDER THIS AGREEMENT.

#### **SUBCONTRACTORS**

19. Incentive Recipient may subcontract obligations under this Agreement; however, Incentive Recipient, in subcontracting for any performances described in this Agreement, expressly understands that PAEDC is in no way liable to Incentive Recipient's subcontractor(s).
20. Incentive Recipient is responsible for performances, as if such performances rendered were rendered by Incentive Recipient. PAEDC maintains any right of action which may exist or which may be subsequently accrue to PAEDC under this Agreement.
21. Incentive Recipient, as well as all of its subcontractors, shall comply with all applicable federal, state, and local laws, regulations, and ordinances relating to the operations and activities of the redevelopment of the Building.

#### **CONFLICT OF INTEREST/DISCLOSURE OBLIGATION**

22. Conflict of Interest: No employee, agent, officer or elected or appointed official of the City of Port Arthur or the PAEDC who has participated in a decision making process related to this Agreement (without recusing him/herself and executing a conflict affidavit) may obtain a personal or financial interest or benefit from an PAEDC assisted activity, or have an interest in any Agreement, subcontractors, or agreement (or proceeds thereof) with respect to an PAEDC assisted activity, during their tenure or for one (1) year thereafter. Incentive Recipient shall ensure compliance with applicable provisions of the Act and Chapter 171, Local Government Code.
23. Disclosure: In conjunction with execution of this Agreement, Incentive Recipient has fully disclosed to PAEDC all known and potential owners of interests in Incentive Recipient and its general partner (whether stockholder, manager, member or otherwise). In the event of any change in ownership or control of Incentive Recipient of five percent (5 %) or greater, Incentive Recipient shall notify PAEDC in writing. Further, Incentive Recipient shall be obligated to notify in writing the PAEDC in the event any time prior to, during or one (1) year after the term of this Agreement, any City or PAEDC employee or representative or any third party with a conflict of interest obtains or proposes to obtain a financial benefit, direct or indirect, from Incentive Recipient or its general partner. Failure to provide said notice immediately or no later than five (5) business days after receipt of information shall constitute a default herein.

#### **NONDISCRIMINATION/EMPLOYMENT/REPORTING**

24. Incentive Recipient shall ensure that no person shall on the grounds of race, color, religion, sex, handicap, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any construction activity. Additionally:
- a. To the greatest extent feasible, opportunities for training and employment arising in connection with the redevelopment of the Building will be given to Port Arthur residents;
  - b. To the greatest extent feasible, Agreements for work to be performed in connection with the construction of the Building will be awarded first to Port Arthur residents and businesses, then to the residents and businesses of the nine-county Southeast Texas Region; and
  - c. If Incentive Recipient advertises for workers in any media then it will advertise in the "Port Arthur News."

#### **LEGAL AUTHORITY**

25. Incentive Recipient assures and guarantees that Incentive Recipient possesses legal authority to enter into this Agreement, and to perform the services Incentive Recipient has obligated to perform hereunder and has provided, and will in the future provide, as requested by the PAEDC, such corporate resolutions necessary to evidence this authority.

26. The person or persons signing and executing this Agreement on behalf of Incentive Recipient, or representing themselves as signing and executing this Agreement on behalf of Incentive Recipient, do hereby warrant and guarantee that he, she or they have been duly authorized by Incentive Recipient to execute this Agreement on behalf of Incentive Recipient and to validly and legally bind Incentive Recipient to all terms, performances, and provisions herein set forth.

#### **NOTICE OF LEGAL OR REGULATORY CLAIMS AGAINST INCENTIVE RECIPIENT.**

27. Incentive Recipient shall give PAEDC immediate notice in writing of 1) any legal or regulatory action, including any proceeding before an administrative agency filed against Incentive Recipient, directly or indirectly; and 2) any material claim against Incentive Recipient or its general partner, which may impact continued operations. For purposes herein, "material" claims shall mean claims in excess of \$15,000. Except as otherwise directed by PAEDC, Incentive Recipient shall furnish immediately to PAEDC copies of all pertinent documentation of any kind received by Incentive Recipient with respect to such action or claim.

#### **CHANGES AND AMENDMENTS**

28. Except as specifically provided otherwise in this Agreement, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing and executed by all parties to this Agreement.
29. It is understood and agreed by the parties hereto that performances under this Agreement must be rendered in accordance with the Act, the regulations promulgated under the Act, the assurances and certifications made to PAEDC by Incentive Recipient, and the assurances and certifications made to the City of Port Arthur with regard to the construction of the infrastructure improvements. Based on these considerations, and in order to ensure the legal and effective performance of this Agreement by all parties, it is agreed by the parties hereto that the performances under this Agreement may be amended in the following manner: PAEDC may from time to time during the period of performance of this Agreement issue policy directives which serve to establish interpret or clarify performance requirements under this Agreement consistent with the intent of the parties. Such policy directives shall be promulgated by the PAEDC Board of Directors in the form of PAEDC issuances shall be approved by the City Council and shall have the effect of qualifying the terms of this Agreement and shall be binding upon Incentive Recipient, as if written herein.
30. Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in federal, state, or local law are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation. Incentive Recipient agrees to comply with all federal, state, and local laws whether existing or hereinafter enacted.

## **DEFAULT/TERMINATION**

31. In the event of default of any of the obligations of Incentive Recipient detailed herein or in the event of breach of any of the representations of or warranties of Incentive Recipient either detailed herein or in Incentive Recipient's application to the PAEDC, the PAEDC may, at its sole and exclusive option and remedy, terminate this Agreement, in whole or in part. In the event of such termination, but subject to the provisions hereof, in addition to (i) any other remedies available to the PAEDC as provided by the laws of the State of Texas or (ii) any other remedies available to the PAEDC as provided herein, the PAEDC may, at its sole option:

- a. Withhold and/or disallow further PAEDC grant payments or incentives to Incentive Recipient, including funds to be advanced to Incentive Recipient hereunder.

32. In addition to the foregoing, the parties agree that this Agreement may be terminated at any time when both parties agree, in writing, to the terms and conditions of any such voluntary termination.

## **INCENTIVE RECIPIENT AUDITS**

33. If directed by the PAEDC Board, Incentive Recipient shall arrange for a compliance audit by a certified public accountant to verify performances reported under this Agreement.

34. Incentive Recipient shall take all necessary actions to facilitate the performance of any and all such audits, whether annual, mandatory, or otherwise requested under this Agreement.

35. Subject to financial privacy requirements of Incentive Recipient and properly designated requests for non-disclosure due to proprietary reasons, all approved audit reports may be made available for public disclosure to the extent required by the Public Information Act.

## **ENVIRONMENTAL CLEARANCE REQUIREMENTS**

36. Incentive Recipient understands and agrees that by execution of this Agreement, Incentive Recipient shall be responsible for making all reasonable efforts in providing to PAEDC all information, concerning this PAEDC funded project, required for PAEDC to meet its responsibilities for environmental review, decision making, and other action which applies to PAEDC in accordance with and to the extent specified in federal, state, and local law. Incentive Recipient further understands and agrees that Incentive Recipient shall make all reasonable efforts to assist PAEDC in handling inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews covered by approved certifications.

## **ORAL AND WRITTEN CONTRACTS/PRIOR AGREEMENTS**

37. All oral and written contracts between the parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Contract have been reduced to writing and are contained in this Contract.
38. The documents listed below are hereby made a part of this Agreement for all purposes, and constitute promised performances by Incentive Recipient and/or PAEDC, as the case may be, in accordance with this Agreement:
- a. **Exhibit "A"** Findings of Fact for Infrastructure Improvements
  - b. **Exhibit "B"** The Balloon Barn Grant Application for PAEDC for funding
  - c. **Exhibit "C"** Performance Milestones
  - d. **Exhibit "D"** Certification Regarding Lobbying
  - e. **Exhibit "E"** Compliance Statement

#### **VENUE**

39. For purposes of litigation that may accrue under this Agreement, venue shall lie in Jefferson County, Texas where substantially all the performance will occur.

#### **ADDRESS OF NOTICE AND COMMUNICATIONS**

City of Port Arthur Section 4A Economic Development Corporation  
501 Procter Street  
Port Arthur, Texas 77640  
ATTN: Chief Executive Officer

The Balloon Barn  
Michelle Barnette  
7911 N. Twin City Hwy.  
Port Arthur, Texas 77642

#### **CAPTIONS**

40. This Agreement has been supplied with captions to serve only as a guide to the contents. The captions do not control the meaning of any paragraph or in any way determine its interpretation or application.

#### **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

41. Incentive Recipient shall comply with all federal, state, and local laws, statutes, ordinances, resolutions, rules, regulations, orders and decrees of any court or administrative body or tribunal related to Incentive Recipient's performance under this Agreement. Upon request by PAEDC or by the City of Port Arthur, Incentive Recipient shall furnish reasonable satisfactory proof of its compliance herewith including execution

of the Certification Regarding Lobbying attached hereto as **Exhibit "D"** and the Compliance Statement attached hereto as **Exhibit "E"**.

#### **ASSIGNMENT**

42. This Agreement may not be assigned by Incentive Recipient to another entity unless and until the PAEDC, by the action of the PAEDC Board, approves the assignment.

#### **SUPPLEMENTAL COVENANT**

43. Incentive Recipient and any branch, division or department of Incentive Recipient certifies that they have not and will not knowingly employ an "undocumented worker" which means "an individual 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."

44. Incentive Recipient acknowledges that it has reviewed Chapter 2264, Texas Government Code and hereby affirmatively agrees by execution of this Agreement to repay the amount of any incentive with interest at the rate of ten (10%) percent per annum not later than the 120<sup>th</sup> day after the date PAEDC notifies Incentive Recipient of a violation.

45. Incentive Recipient acknowledges PAEDC may bring a civil action or cover any amounts owed under this Chapter and further acknowledges that PAEDC may recover court costs and reasonable attorneys' fees incurred in an action brought under §2264.101(a). Incentive Recipient is not liable for a violation of this Chapter by a subsidiary, affiliate or franchisee of the Incentive Recipient or by a person with whom the Incentive Recipient contracts.

**ATTORNEY APPROVALS**

**APPROVED AS TO FORM:**

  
Frank Garza, General Counsel for PAEDC

**VERIFIED AS CONSISTANT  
WITH CITY COUNCIL RESOLUTION:**

**Resolution Number:** 22-096

  
Val Tizeno, City Attorney

**CONTRACT EXECUTION**

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

**SIGNED AND AGREED TO** on the 17 day of March, 2022.

By: \_\_\_\_\_

  
Jerry LaBove, President

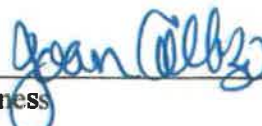
By: \_\_\_\_\_

  
Beverly Raymond, Secretary

Witness



Witness





## THE BALLOON BARN

SIGNED AND AGREED TO on the 21 day of March, 2022.

By: Michelle Barnette  
Michelle Barnette

Jean O'Leary  
Witness

## **EXHIBIT "A"**

### **FINDINGS OF FACT FOR INFRASTRUCTURE IMPROVEMENTS**

#### **Facts:**

- The Balloon Barn has requested an incentive agreement from the PAEDC for infrastructure improvements for the construction of for the construction of a party venue building with splash pad with concrete parking, driveways, and all utilities required for the developed site.
- The Balloon Barn wants to make infrastructure improvements in order to make it more accommodating for consumers visiting the Property.

#### **Findings:**

- The PAEDC Board of Directors has found that constructing infrastructure improvements at The Balloon Barn located at 7911 N. Twin City Hwy., Port Arthur, Texas 77642 would lead to the development of new and expanded business enterprises in the City of Port Arthur.
- The construction of the party venue building with splash pad with concrete parking, driveways, and all utilities required for the developed site is anticipated to increase sales tax revenues for the City of Port Arthur and add to the City ad valorem tax base.

**EXHIBIT “B”**

**THE BALLOON BARN Grant Application**

**City of Port Arthur Section 4A Economic Development Corporation  
Grant/Loan Incentive Application**

Date: 1-24-22

Please complete the following information and return along with the requested documents.  
We will review the information that you provide to determine if you are eligible for assistance  
from the PAEDC.

**SECTION A: BUSINESS INFORMATION**

Business Name: <u>The Balloon Barn SETX</u>	
Business Address: <u>7911 N. Twin City Hwy., Port Arthur 77642</u>	
Business Phone: <u>409-727-5555</u>	Business Fax: <u>409-721-6375</u>
Email and/or Website Information: <u>theballoonbarnsetx@gmail.com</u>	

Owners: Please list all owners with Five (5%) Percent or Greater Ownership of the Company

Name	SSN #	Date of Birth	Home Address	% Ownership
Michelle Barnette		11/28/68	630 22nd St. Beaumont, TX 77706	100%

Type of Business Organization:  
(Please Check One)

<input checked="" type="checkbox"/>	Not Established
<input type="checkbox"/>	Sole Proprietorship
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	S. Corp.
<input type="checkbox"/>	C. Corp.
<input type="checkbox"/>	LLC
<input type="checkbox"/>	HUB/MWBE
<input type="checkbox"/>	Non-Profit

 **SCANNED**

Please describe the type of business (product or service):

Party Venue w/ Splash Pad and Building  
for parties & events.

Date Business Established:

Dec, 2021

Federal Tax ID Number:

76-0609040

Has the business, or any principals of the business been involved in bankruptcy or insolvency proceedings?

☐ Yes

☒ No

If yes, please explain:

Are there any personal/business judgments, liens, unsettled lawsuits or major disputes?

☐ Yes

☒ No

If yes, please explain:

Do you have any outstanding debt to the City, PAEDC or any other local governmental entity? (Debt includes but not limited to taxes not on appeal or outstanding loans)

NO

Have you taken any business development classes?

☒ Yes

☐ No

Are you working with a counselor at the Small Business Development Center?

☐ Yes

☒ NO

Name of Counselor:

Phone Number:

Are you working with a counselor at the Service Corps or Retired Executive (SCORE)?

☐ Yes

☒ No

Name of Counselor:

Phone Number:

Have you completed a Business Plan?

☐ Yes

☒ No

If yes, when/by whom was the Business Plan prepared?

Name:

Phone Number:

Type of Business:  
(Please Check One)

- ☐ Industrial/Manufacturing (Fill Out Sections A-H)
- ☐ Recycling (Fill Out Sections A-I)
- ☐ Distribution (Fill Out Sections A-I)
- ☐ Warehouse (Fill Out Sections A-I)
- ☐ Commercial (Fill Out Sections A-I)
- ☒ Infrastructure (Fill Out Sections A-C & I)
- ☐ Land Purchase (Fill Out Section A Only)
- ☐ Training (Fill Out Sections A & C)

**SECTION B: GOODS AND SERVICES**

Please note that the following industrial complexes in our area are not within the City limits of Port Arthur and are therefore appropriately considered in the regional market: **TOTAL complex (including the BASF joint venture), Valero, Motiva, Chevron Phillips and Chevron USA, Golden Pass LNG, OxBow Calcining, BASF (W. Port Arthur Road) and Flint Hills Resources.**

Please indicate the percentage of services or goods sold or to be sold to persons or companies outside of the City or Port Arthur:

30 %

Please explain:

We believe about 30% of our business will be children and families coming into Port Arthur to rent our facility.

Please indicate the percentage of services or goods sold or to be sold to persons or companies outside of Jefferson County:

10 %

Please explain:

We believe about 10% of our sales will be families and children renting our facility outside of Jefferson County.

Please indicate the percentage of services or goods sold or to be sold to persons or companies outside of the Golden Triangle:

0 %

Please explain:

We believe nearly all of our services and goods will be to persons in or near the Golden Triangle.

Please indicate the NAICS (North American Industry Classification System) number that applies to your industry and the name given that number.

For assistance, please see

<http://www.census.gov/ipeds/data/naics02/naicodes02.htm>

NAICS Number:

71310, Water Park, Amusement

Example:

322222/Coated/Laminated Paper Manufacturing

**SECTION C: PROJECT COST****PROJECT**

Please, briefly describe your project:

We are opening a new business on the property of the clubhouse on Twin City Hwy. a splash bar, party venue, and party supplies will be the focus.

Total amount requested:

\$ 430,501.93

Project Cost

Please see details in project folder.

	AMOUNT	SOURCE OF FUNDS
LAND		
BUILDING/RENOVATIONS		
EQUIPMENT		
FURNITURE/FIXTURES		
INVENTORY		
JOB TRAINING		
INFRASTRUCTURE		
*OTHER (Please Specify)		
TOTAL:		

**\*WORKING CAPITAL IS NOT ELIGIBLE FOR FUNDING**

Personal cash available to invest in project: \$ 110,000

Source: Secured loan

What bank have you contacted for financing: MTCU - Christina

Name of Banker:

Christina Cousins

Phone Number:

409 626-0410

Please list all request and/or approvals of funds from other sources (e.g., banks, credit unions, governmental entities, etc.) together with dates of application, status and funding source contact information:

obtained a secured loan from MTCU for splash pad.



Percent of annual increase in the number of visitors

Average number of days that each visitor will stay in the community

Average daily taxable visitor spending, excluding lodging

Average number of nights that a typical visitor will stay in a local motel

**Out-of-Town Truckers Loading or Unloading at the Firm**

Number of out-of-town truckers expected to load or unload at the firm in the first year

Percent of annual increase in the number out-of-town truckers

Average daily taxable by a typical trucker

Percent of truckers who will stay one night in a local motel

**SECTION I: DOCUMENTATION**

Please submit the following information along with your application.

	Information Enclosed	Information Not Applicable
Business and Marketing Plan	<input type="text"/>	<input type="text"/>
Business Financial Statements for last 3 years	<input type="text"/>	<input type="text"/>
ProForma Financial Statement	<input type="text"/>	<input type="text"/>
<b>Existing Business:</b> At least one year profit/loss & cash flow on a monthly basis, but not less than the period covered by the grant.		
<b>Start-Up Business:</b> At least two years profit/loss & cash flow on a monthly basis, but not less than the period covered by the grant.		
Business Tax Returns for the last three years Must be signed and dated. If past April 15th, please include prior year copy of extension.	<input type="text"/>	<input type="text"/>
Interim Business Financial Statement Within the last 90 days.	<input type="text"/>	<input type="text"/>
Resumes on the principals of the business Owners with 20% ownership or greater	<input checked="" type="checkbox"/>	<input type="text"/>
Personal Financial Statements of the principals Owners with 20% ownership or greater	<input type="text"/>	<input type="text"/>



Personal Tax Return for each principal Owners with 20% ownership or greater for last 3 years	<input type="text"/>	<input type="text"/>
Anticipated Environmental Impact	<input type="text"/>	<input type="text"/>
Economic Impact Analysis	<input type="text"/>	<input type="text"/>
Certificates of Good Standing Secretary of State State Comptroller	<input type="text"/>	<input type="text"/>
Acknowledgement of Conflict of Interest Policy	<input type="text"/>	<input type="text"/>
Acknowledgement of Grant Incentive Policy & Procedures	<input type="text"/>	<input type="text"/>
Copies of all licenses and permits	<input type="text"/>	<input type="text"/>
Proof of Insurance Coverage	<input type="text"/>	<input type="text"/>
Dun & Bradstreet Report	<input type="text"/>	<input type="text"/>

## **Kimberly Michelle Barnette, M.Ed.**

1600 Tallowood, Nederland, TX 77627

(H) (409)549-2009; [the-clubhouse@hotmail.com](mailto:the-clubhouse@hotmail.com)

### **Education/Certification**

Doctorate in Education	Lamar University-Currently Enrolled (GPA 4.0)
M.Ed.	51 hours coursework completed, Dissertation Phase
B.S. Ed.	Education Leadership, Lamar University, Beaumont, TX, August, 2010 (GPA 4.0), Administration
Principal Certification	Elementary Education, Lamar University, Beaumont, TX, 1990
Teacher Certification	Texas Principal 068-Passed, Valid Certification
Mathematics Certification	1-6 Elementary Education, Texas
Health Certification	1-8 Mathematics, Texas
Physical Education Certification	EC-12 Health, Texas
Business Management Cert.	EC-12 PE, Texas
PD Specialist Certification	6-8, Texas
Child Care Director Certification	CDA Council Nationally Recognized
TTES Certification	Texas Department of Protective and Family Services
PDAS Certification	August 2015
ILD Certification	Completion date: February 17, 2010
Master Texas Registered Trainer	Completion date: February 5, 2010
Standards, Maintaining a Safe & Healthy Learning Environment)	Texas Trainer #1717 (Curriculum & Instruction, Texas Min.
CPR & First Aid Instructor	Certified Instructor - Lifetime
CDL License w/Passenger Endorsement – 15 years school bus driving experience (Valid)	
Texas Rising Star Provider	Four Star Certification

### **Administrative and Leadership Experience**

#### **Owner and Director of Licensed Early Childhood Center**

**Clubhouse Academy, 2780 Aero Drive, Port Arthur, 77640, 2012-Present**

- Operate a 200 student Early Childhood Center specializing in the education of children ages 6 weeks to 5 years
- Manage a staff of 18 teachers and support positions and ensuring compliance of Texas Standards
- Ensure building and surrounding facilities are safe, clean, and risk-free for students
- Provide opportunities for continuing education for all staff
- USDA Food Program, Texas Rising Star Certification, Texas School Ready Center

#### **Owner and Director of Licensed After School Center and Summer Camp,**

**The Clubhouse, 7911 N. Twin City Hwy., Port Arthur, Texas 77642, 1999-present**

- Operate a 235 student after school center and summer camp, pick up children from 22 schools in 4 cities and transport them to the center safely and efficiently
- Manage a staff of 25 teachers, including scheduling, and providing for continuing education experiences to satisfy licensing guidelines, staff evaluations
- Ensure building and surrounding facilities are safe, clean, and risk-free for students
- USDA Food Program, Texas Rising Star Certification, Texas School Ready Center

**Mathematics Chairperson,****Port Neches Groves Independent School District, Port Neches, TX 77651, 1996, 1997**

- Attended CAMT Conference in Dallas (1996) and Houston (1997) to learn new strategies of teaching mathematics to elementary students
- Planned and presented in-services to PNG elementary teachers using new methodology in teaching mathematics to elementary students

## **Experience**

**Texas Licensed Childcare Director – 1999-Current**

- The Clubhouse, 7911 N. Twin City Hwy., Port Arthur, TX 77642
- Clubhouse Academy Early Childhood Center, 2780 Aero Dr., Port Arthur, TX 77640

**Assistant Principal – Terrell Elementary – PAISD - 2015****Principal Internship, (180 Hours)****Stephen F. Austin Middle School, Port Arthur, TX Mar. 2009-May 2009**

- Supervised by Dr. Lisa Chambers, Principal

**Elementary Teacher, 1<sup>st</sup> & 2<sup>nd</sup> Grade****Taft Elementary, Groves, TX 1993-1999**

- Integrated a variety of teaching methods and instructional strategies to generate student interest
- Evaluated and tracked student progress and success by using a combination of evaluations and student work samples
- Maintained positive relationship with students and parents while holding students to a high standard of acceptable class work.

**Mathematics Teacher and Pre-Algebra Teacher, 7<sup>th</sup> & 8<sup>th</sup> Grade****Groves Middle School, Groves, TX 1992-1993**

- Integrated a variety of teaching methods and instructional strategies to generate student interest and success in mathematics
- Successfully piloted a program into an 8<sup>th</sup> grade mathematics class to find out if one half year of Pre-algebra would increase the success rate of ninth graders in Algebra I.
- Evaluated and tracked student progress in class by using a combination of evaluations and student work samples
- Worked cooperatively with a team of teachers within grade levels to create a successful behavior management system

**Elementary Teacher, 3<sup>rd</sup> Grade****Booker T. Washington, Port Arthur, TX 77640, 1990-1992**

- Integrated a variety of teaching methods and instructional strategies to generate student interest and success
- Increased standardized test scores by incorporating hands-on learning and cooperative learning groups through daily activities
- Compiled sample work from students to begin portfolio and show future teachers their mastery of skills in all subject areas

## **Additional Training/Professional Development**

July 2017-July 2018 - 120 Continuing Education hours/Education and Child Related  
 July 2016-July 2017 - 65 Continuing Education hours/Education and Child Related  
 July 2015-July 2016 - 148 Continuing Education hours/Education and Child Related  
 July 2014- July 2015 - 121 Continuing Education hours/Education and Child Related  
 July 2013- July 2014 - 164.5 Continuing Education hours/Education and Child Related  
 July 2012-July 2013 - 119 Continuing Education hours/Education and Child Related

#### **Additional Continuing Education**

"Lamar/Port Arthur Pilot Project," Lamar University, Beaumont, TX, 1990.  
 "Spindletop Center for Professional Development and Technology," Eagle Institute, Lamar University, Beaumont, TX, October, 1997.  
 "Gifted and Talented Training," PNGISD, Port Neches, TX, October 1997.  
 "Texas Association for the Improvement of Reading," TAIR Conference, Beaumont, TX, September 1997.  
 "Tough Kids," Region V Educational Service Center, Beaumont, TX, February 1998.  
 "Child Care Director's Training," Texas Department of Human Services, Beaumont, TX, June 1999.  
 "Society for Developmental Educational," Austin, TX, June 1999.  
 "South Jefferson County Child Care Conference," Texas Department of Protective Services, Beaumont, TX, July 2000.  
 "Our Children, Our Dream, Our Future," Houston, TX, August 2000.  
 "Beyond Discipline to Guidance," Dan Gartrell, September 2000.  
 "Managing the Problem Employee," Lynn Godkin, Beaumont, TX, October 2000.  
 "Understanding the Cause of Problem Employees," Lynn Godkin, Beaumont, TX, October 2000.  
 "Maximizing Feedback and Performance," Lynn Godkin, Beaumont, TX, October 2000.  
 "Hospitality Training," Carolyn Mott, Beaumont, TX, June 2001.  
 "In Our Hands-Future Tomorrows," Applebaum Institute, Houston, TX, September 2001.  
 "Staff Retention," Susan Hale, Beaumont, TX, November 2001.  
 "Controlling Quality in Training Presentations," Lamar University, Beaumont, TX, April 2002.  
 "Brain Development," National Network Force, July 2002.  
 "Heart to Heart, Hand to Hand," Appelbaum Institute, Houston, TX, September 2002.  
 "Shaken Baby, SIDS, Brain Development," Dawn Stanley, TDPRS, Beaumont, TX, February 2003.  
 "Psychogeometrics," Dr. Neusel, Beaumont, TX, May 2003.  
 "Too Blessed to be Stressed," Dianna Clayton, May 2003.  
 "Bottle Caries; Infant and Toddler Health," Dr. Neusel, Lamar Small Business Institute, Beaumont, TX, June 2003.  
 "Food for Kids, Off to a Good Start," Food For Kids, Inc., Houston, TX, January 2004.  
 "Instructional Leadership Development" - February 2010, ESC Region 5  
 Certified Professional Development and Appraisal System (PDAS) appraiser - February 2010

#### **Presentations/Grants**

Brown, M. (1990, April). *Student Teaching*. Presentation at Lamar University for Dr. Ken Briggs to a class of students in Foundations of Education, Beaumont, TX.  
 Brown, M. (1996). *Directions for the Quick Take Camera, Easy as ABC*. Presentation at PNGISD In-Service for Elementary Teachers K-3, Groves, TX.  
 Brown, M. (1996, December). *Learning Space*. Presentation at PNGISD Inservice for Eagle Project, Port Neches, TX.  
 Brown, M. (1998). *Gems on the Net*. Presentation at the Eagle Project Program, Groves, TX.  
 Rotary Club, Career Day Presenter for Education Occupation, Beaumont, February 2000, February 2009.  
 Texas Rising Star Grant Recipient - March 2010  
 Texas Rising Star Grant Recipient - April 2013, Oct. 2014, Jan. 2015

## **Honors/Awards**

"Leadership Lamar" Representative, Lamar University, Beaumont, September 1989.  
"Academic Excellence" Award Recipient, Lamar University, Beaumont, August 1990.  
"Spotlight on Excellence in Education" Award Recipient, PNGISD, April 1997.  
Pride Foundation Grant Recipient, PNGISD, Fall 1997.  
"Eagle" Teacher, Academics 2000 Grant Recipient, August 1996-1999.  
"Small Business Capitalization Initiative Grant" Recipient, Lamar Small Business Development Center, Beaumont, September 2006.

## **Professional Affiliations**

Beaumont Crime Stopper Board Member – 2015-Present  
Child Care Licensing Advisory Council Member for Regions 5 and 6 -2014-Present  
Kappa Delta Pi, An International Honor Society In Education, 1990-Present  
MACCA, Mid-County Association of Child Care Administrators, 2007-Present  
NAEYC, National Association for the Education of Young Children, 2009-Present  
Rotary Club Member – 2009 – Present  
National Association of Secondary School Principals, 2010-Present  
National Association of Elementary School Principals, 2010-Present

## **References**

SaraJo Murphy – PNGISD Principal – Supervisor  
Mr. Don Mott – PNGISD Principal - Supervisor  
Suzann Benson – PNGISD educator/Colleague  
Judge Courtney Burch-Arkeen – State of Texas District Judge, Orange  
Ms. Christine Harvey – Texas Department of Family and Protective Services, Houston  
Dr. Kathy Attaway- Lamar University, Beaumont/ PAISD Principal  
Dr. Ken Young – Lamar University, Beaumont  
Linda Brown – PNGISD educator/coach

## **EXHIBIT "C"**

### **PERFORMANCE MILESTONE SCHEDULE THE BALLOON BARN**

	<b>DATE</b>	<b>MILESTONE</b>
(a)	March 31, 2022	Review approved infrastructure plans by the City of Port Arthur and projected costs with PAEDC for the construction of the project at The Balloon Barn located at 7911 N. Twin City Hwy., Port Arthur, Texas 77642.
(b)	August 31, 2022	The Balloon Barn will issue a status report to PAEDC on Project construction at The Balloon Barn located at 7911 N. Twin City Hwy., Port Arthur, Texas 77642
(c)	December 31, 2022	Balloon will provide evidence of completion of the qualifying infrastructure improvements. PAEDC will issue 100% of Economic Incentive Grant with proof of Certificate of Occupancy for The Balloon Barn.
(d)	December 31, 2022	The Balloon Barn meets all of their contractual agreement. File is closed.

## **EXHIBIT "D"**

### **CERTIFICATION REGARDING LOBBYING**

**For Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his knowledge and belief, that:

1. No funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of the City or of the PAEDC in connection with the awarding of any contract, the making of any grant, the making of any loan, the entering into of any cooperative agreement, or modification of any contract, grant, loan, or cooperative agreement.
2. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all Subs shall certify and disclose accordingly.

This certification is material representation of fact which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction.

**THE BALLOON BARN**

Date: 3-21-2022

By: Michelle Barnett  
Michelle Barnette

**EXHIBIT "E"**  
**COMPLIANCE STATEMENT**

The Balloon Barn hereby certifies that it has fully complied with Local Government Code §176.006, as amended, which mandates the disclosure requirements for persons who contract or seek to contract with a local governmental entity.

**THE BALLOON BARN**

Date: 3-21-2022

By: Michelle Barnette  
Michelle Barnette