

**NOTICE OF SPECIAL MEETING OF BOARD OF DIRECTORS OF BASTROP ECONOMIC DEVELOPMENT CORPORATION (BEDC)**

**Monday, March 7, 2022 – 4:00 P.M.**

**Bastrop City Hall, 1311 Chestnut Street, Bastrop, Texas**

**1. CALL TO ORDER**

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The Bastrop EDC Board reserves the right to convene into Executive Session at any time during the meeting regarding any agenda item in compliance with the Texas Open Meetings Act, Chapter 551 Government Code.  
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**2. PUBLIC COMMENT(S)**

**3. REGULAR BUSINESS & PRESENTATIONS**

- 3.1. Discussion and possible action on an update on the Gummy Bears Project (aka Howard Designs, LLC) regarding their performance agreement with the BEDC. **(page 2)**
- 3.2. Discussion and possible action on engaging a consultant to assist the BEDC in alignment with the City of Bastrop’s economic development policy. **(page 20)**
- 3.3. Discussion and possible action on the roles and responsibilities of BEDC sub-committee members. **(page 21)**
- 3.4. Discussion and possible action on paying off the remaining loan balance associated with the 921 Main Street building. **(page 22)**

**4. EXECUTIVE SESSION**

- 4.1. The Bastrop EDC Board of Directors will meet in a closed/executive session pursuant to the Texas Government Code, Chapter 551, to discuss the following:
  - (1) **Section 551.074** Personnel Matters – Discussion on Chief Executive Officer Position.
- 4.2. The Bastrop EDC Board of Directors will reconvene into open session to discuss, consider, and take any action necessary related to the executive sessions noted herein.

**5. ADJOURNMENT**

**CERTIFICATE**

I, Angela Ryan, Operations Manager of the Bastrop Economic Development Corporation (Bastrop EDC), certify that this Notice of Meeting was posted at Bastrop City Hall, 1311 Chestnut Street, and on the Bastrop EDC’s website on this the 4<sup>th</sup> of March 2022 at 4:00 p.m. Copies of this agenda have been provided to those members of the media requesting such information.

Angela Ryan  
Angela Ryan, BEDC Operations Manager

THE BASTROP ECONOMIC DEVELOPMENT CORPORATION IS COMMITTED TO COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT. REASONABLE MODIFICATIONS AND EQUAL ACCESS WILL BE PROVIDED UPON REQUEST. PLEASE CALL 512-303-9700.

## Agenda Item: 3.1

# AGENDA MEMORANDUM

Meeting Date: March 7, 2022

Agenda Item: Discussion and possible action on an update on the Gummy Bears Project (aka Howard Designs, LLC) regarding their performance agreement with the BEDC.

Prepared by: BEDC Staff

Board Chair Spencer requested that this item be included for an update and possible action.

History:

September 21, 2020 – Board approved the Gummy Bears Project via Resolution R-2020-0024

October 13, 2020 – Bastrop City Council approved the project, Resolution No. R-2020-93

Project Summary:

910 Water Street	\$ 175,000	(A) \$175,000 for construction costs to upgrade the Locations at Chestnut and Water Street, and to be used specifically for HVAC, electrical, plumbing, structural construction and improvements;	
292 Industrial Blvd	\$ 40,000	(B) An amount not to exceed \$40,000 for improvements and upgrades to the existing facility located at 292 Industrial Blvd to retrofit that facility for woodwork and cabinetry business expansion of Water Street Millworks;	Paid 6/7/21
All three locations	\$ 30,000	(C) An amount not to exceed \$30,000 for costs associated with moving all equipment and installing the machinery at the three Locations; and,	Paid 6/7/21
402 Technology Drive	\$ 150,000	(D) \$150,000 for construction costs to design and construct classroom space, parking, and accessibility in compliance with city, state and federal law at 402 Technology Drive, as well as to make all necessary HVAC, electrical, plumbing, and structural construction and inspections for the Property located at 402 Technology Drive.	Paid 1/26/21
402 Technology - Classroom space	\$ 205,000	(E) BEDC shall pay a lump sum payment of \$205,000 as an incentive to the Company to lease, maintain and operate classroom and workshop space for BEDC, as well as to provide workforce development and training in accordance the Lease Agreement for a minimum of 10 years at a rate of no more than Si per year for the first 10 years.	Paid 10/23/20

Attachment:

Economic Development Performance Agreement between BEDC and Howard Designs, LLC

**Recommendation** – Staff has no recommendation.

**[RECOMMENDED MOTION]** – None.



## **ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT**

This Performance Agreement (“Agreement”) is entered into to be effective as of the Effective Date (as defined in Article III below), by and between the Bastrop Economic Development Corporation, located in Bastrop County, Texas (hereinafter called “BEDC”), a Texas non-profit industrial development corporation under the Development Corporation Act and governed by TEX. LOC. GOV. CODE chapters 501, 502 and 505 and the Texas Non-Profit Corporation Act and Howard Designs, LLC, a Texas for profit entity (hereinafter called “Company”), otherwise known as the “Parties” to this Agreement.

### **RECITALS**

**WHEREAS**, the Development Corporation Act of 1979, as amended (Section 501.001 et seq., Texas Local Government Code, formerly the Development Corporation Act of 1979) (the “Act”) authorizes a development corporation to fund certain projects as defined by the Act and requires development corporations to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

**WHEREAS**, Section 501.158 of the Act requires a performance agreement to provide at a minimum for a schedule of additional payroll or jobs to be created or retained, capital investment, and workforce training and development are all factors to consider for any direct incentives provided or expenditures made by the BEDC under the agreement and to specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement; and

**WHEREAS**, Company desires to develop a co-workforce development space, as well as substantial capital improvements at three separate locations within both Bastrop Business & Industrial Park and Historic Bastrop, Texas, which are both target areas for development for the BEDC; and

**WHEREAS**, the locations of and improvements made to the three buildings and locations, as proposed, will contribute to the infrastructure needs and economic development of the City of Bastrop by creating new jobs and increased employment, developing and providing workforce training and development classroom and curriculum, promoting and developing expanded business enterprises, increased development, increased real property value and tax revenue for the City of Bastrop, and will have both a direct and indirect positive overall improvement/stimulus in the local and state economy; and

**WHEREAS**, the BEDC desires to offer an incentive to Company to enable Company to develop additional operations and business enterprises, and to expand its operations within the City pursuant to this Agreement in substantial conformity with the Act; and

**WHEREAS**, the Parties are executing and entering into this Agreement to set forth certain terms and obligations of the Parties with respect to such matters; and

**WHEREAS**, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof; and

**WHEREAS**, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings, if any, have been conducted in accordance with Texas law; and

**WHEREAS**, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties.

**NOW, THEREFORE**, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, the Parties agree as follows:

#### **ARTICLE I RECITALS**

1. Recitals. The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement.

#### **ARTICLE II AUTHORITY AND TERM**

1. Authority. The BEDC's execution of this Agreement is authorized by the Act and constitutes a valid and binding obligation of the BEDC. The BEDC acknowledges that Company is acting in reliance upon the BEDC's performance of its obligations under this Agreement in making the decision to commit substantial resources to the establishment of the Project, hereinafter established.

2. Term. This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date, hereinafter established, unless terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.

3. Purpose. The purpose of this Agreement is to formalize the agreements between the Company and the BEDC for the granting of funds to cover certain costs associated with the Project and specifically state the covenants, representations of the Parties, and the incentives associated with Company's commitment to abide by the provisions of the Act and to abide by the terms of this Agreement, which has been approved by the BEDC and the Company as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single agreement. A failure to perform any obligation by the Company beyond applicable notice and cure periods detailed herein may constitute a breach of the entire Agreement and terminate any further commitments (if any) by the BEDC unless an alternative penalty or remedy is provided for herein.

4. **Administration of Agreement.** Upon the Effective Date, the BEDC delegates the administration and oversight of this Agreement to the Executive Director of the BEDC, or its designee. Any proposed amendments to the Agreement shall require the approval of the Board of Directors of the BEDC.

### **ARTICLE III DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

“Anniversary/Year” - Performance and incentive calculations based upon years and anniversaries as used in this Agreement shall be calculated with the year and date zero beginning on the date the Company receives its first Incentive Payment (as defined herein) and the first year and first anniversary is twelve (12) months from that date, and so on with each year and anniversary from that date forward.

“Bankruptcy” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Buildings/Properties/Locations” these terms, interchangeably, mean the following three parcels of land with physical addresses of: 402 Technology Drive, corner of Chestnut & Water Streets, and 292 Industrial Blvd, all in Bastrop, Texas.

“Certificate of Occupancy” shall mean the signed certificate issued by the City of Bastrop Planning & Development Department granting the Company the right to occupy a Building under this Project and confirming that the entire work covered by the permit and plans are in place.

“Commencement Date” means the date the first Incentive is paid and transferred from the BEDC to the Company.

“Default”, unless otherwise specifically defined or limited by this Agreement, shall mean failure by any Party to timely and substantially comply with any performance requirement, duty, or covenant.

“Effective Date” shall be the date the Bastrop City Council approves of the project with signatures of all parties to this Agreement.

“Expiration Date” shall mean the earlier of:

1. The first anniversary of the date upon which the Company received a certificate of occupancy at the last of the three Locations; or

2. The date of termination, provided for under Article VII of this Agreement.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party, including, without limitation, acts of God or the public enemy, war riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of a party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Improvements” means the infrastructure, utilities, drainage, telecommunications and capital improvements the Company is making to the Locations in an amount to exceed \$2.05M.

“Incentive Payments” mean the maximum available funds of \$600,000.00 the BEDC is making available to the Company in the payment schedule below and to be paid as an incentive to conduct the minimum \$2.05M in capital expenditures and Improvements herein and to provide Workforce Training & Development (as defined herein).

“Lease Agreement” means the lease to be entered into as part of this Performance Agreement by and between Company and BEDC as outlined in Articles IV and V.

“Project” shall mean the Improvements made to the three Locations in return for the Incentive Payments being paid for the creation of new jobs; and, for developing and providing workforce training and development classrooms, collaboration with Austin Community College and the Art Institute for curriculum and certifications, equipment purchases and shared-uses, as well as promoting and developing expanded business enterprises in Historic Bastrop and increasing the real property value and tax revenue for the City of Bastrop and Bastrop ISD.

#### ARTICLE IV BEDC OBLIGATION

##### 1. Capital Improvement & Investment Incentives.

BEDC shall pay five payments (A) – (E) for Capital Improvement and Investments for the Locations, as follows:

- (A) \$175,000 for construction costs to upgrade the Locations at Chestnut and Water Street, and to be used specifically for HVAC, electrical, plumbing, and structural construction and improvements;
- (B) An amount not to exceed \$40,000 for improvements and upgrades to the existing facility located at 292 Industrial Blvd in ~~the Industrial Park~~ to retrofit that facility for woodwork and cabinetry business expansion of Water Street Millworks;
- (C) An amount not to exceed \$30,000 for costs associated with moving all equipment and installing the machinery at the three Locations; and,
- (D) \$150,000 for construction costs to design and construct classroom space, parking, and accessibility in compliance with city, state and federal law at 402 Technology Drive, as well as to make all necessary HVAC, electrical, plumbing, and structural construction and inspections for the Property located at 402 Technology Drive.

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ck

2. Workforce Development & Career Training Incentives.

(E) BEDC shall pay a lump sum payment of \$205,000 as an incentive to the Company to lease, maintain and operate classroom and workshop space for BEDC, as well as to provide workforce development and training in accordance the Lease Agreement for a minimum of 10 years at a rate of no more than \$1 per year for the first 10 years.

3. Timing of Incentive Payments. To ensure proper performance of this agreement, BEDC shall pay the above incentives in Article IV Section 1 as follows:

- i) Art. IV Sec. 1 (A) to be paid within ten business (10) days of the building permit and development plan being approved by City of Bastrop for construction at the Location at Chestnut and Water Street;
- ii) Art. IV Sec. 1 (B) to be paid within ten business (10) days of the date Company closes on the purchase of the Property at ~~this location and title transfers ownership~~, as well as provides BEDC with cost estimate, bid, and/or receipts for these expenses; → Art. IV Sec. 1 (A)
- iii) Art. IV Sec. 1 (C) to be paid within ten business (10) days of the date Company closes on the purchase of the Property at this location and title transfers ownership, as well as provides BEDC with cost estimate, bid, and/or receipts for these expenses; and,
- iv) Art. IV Sec. 1 (D) to be paid within ten business (10) days of Company closing on the purchase of the 402 Technology Drive Property.
- v) Art. IV Sec. 2 to be paid within ten business (10) days of the Effective Date of this Agreement.

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4. Confidentiality. The BEDC agrees to the extent allowed by law to keep all tax information and documentation received, pursuant to this Agreement hereof, confidential. In the event a request is made for such information, BEDC will not disclose the information unless required to do so by the Attorney General of Texas.

5. Current Revenue. The funds distributed hereunder shall be paid solely from lawfully available funds of the BEDC. Under no circumstances shall the obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

**ARTICLE V  
PERFORMANCE OBLIGATIONS OF COMPANY**

The obligation of the BEDC to pay funds in the form of a Capital Investment Rebate or Workforce Development and Career Training Incentives shall be conditioned upon Company's continued compliance with and satisfaction of each of the performance obligations set forth in this Agreement.

1. **Capital Improvement & Investment Obligations.**

- (a) Company shall perform the following capital improvements and investments:
- (1) 402 Technology Drive Location
    - (a) Within sixty (60) days of the Effective Date, Company shall purchase the Property located at 402 Technology Drive for business expansion of the Company's business known as The Foundry, as well as for the future expansion and use of additional equipment to increase Company's product output;
    - (b) Company shall provide for a workforce development and training center for the use and benefit of the BEDC and its partner agencies and organizations in accordance in the form of a Lease Agreement;
    - (c) Company shall complete all construction, finish out, and obtain a certificate of occupancy in accordance with the Lease Agreement for the 402 Technology Drive Location.
    - (d) Within one-year from the Effective Date, Company shall invest a minimum amount of \$1.15M for the purchase of and improvements to this Location, excluding Incentives.
  - (2) Chestnut & Water Street Location
    - (a) Within sixty (60) days of the Effective Date, Company shall purchase the Property located at the corner of Chestnut & Water Streets for business expansion of the Company's business known as The Foundry; specifically, to develop and construct an art gallery and retail show room.
    - (b) Company shall obtain a certificate of occupancy for this Location within one calendar year from the Effective Date.
    - (c) Within one-year from the Effective Date, Company shall invest a minimum amount of \$900,000.00 for the purchase of and improvements to this Location, excluding Incentives.
  - (3) 292 Industrial Blvd.
    - (a) Company shall retrofit, construct and improve the workshop at this Location for the business known as Water Street Millworks within 180 days of the Effective Date.
    - (b) Company shall provide BEDC with all expenses to be reimbursed in accordance with this Agreement for this Location.
- (b) Company shall maintain all records, contracts, agreements, purchase orders, invoices, receipts, and other costs associated with the expenditures in this Section. BEDC shall be entitled to receive copies of these records at the cost of the Company within 10 business days of such a request.

2. **Workforce Development & Career Training.** As additional consideration of this Agreement, Company is receiving \$205,000.00 incentive for Company to enter into the Lease Agreement and to provide at 402 Technology Drive the following:

- (a) For a minimum of at least 10 years at a rate of \$1.00 per year, Company shall provide for a maximum of 1,000 square feet of combined classroom and workshop space to accommodate up to 18 computers and desks, with approximately 500 sq/ft for classroom



- and 500 sq/ft for workshop and shared workspace and equipment use, training and development;
- (b) Company is to allow for BEDC to develop curriculum at this Location in coordination with Austin Community College, the Art Institute, Bastrop ISD, Texas Workforce Solutions and/or another source of higher education and workforce training who may become a partner with the BEDC (collectively "BEDC Partners");
  - (c) Company is to allow the designated classroom space to be used at the times necessary for BEDC Partners; however, the shared workshop space and equipment will be utilized at times mutually agreeable to the parties in the Lease Agreement; and,
  - (d) Company will work BEDC Partners to obtain additional grants for the purchase of equipment and/or development of additional curriculum and training courses, which includes any grant matching of Company funds needed to apply for and receive any such grants.
3. **Payment of Legal Fees.** Company commits to reimburse the BEDC for the necessary legal fees in the preparation of any amendment to this Agreement requested by Company. Timely payment shall be made within sixty (60) days of submittal of invoice to Company by the BEDC or its assigns. Each Party shall bear its own legal fees in connection with the negotiation of this Agreement.
4. **Extension beyond Term.** In recognition of the fact that the verification of Company's compliance hereunder is, by necessity, verified in the calendar year following the Company's obligations herein, the Expiration Date of this Agreement will be extended until any and all verification of Performance Obligations and covenants have been satisfied. The Parties hereto agree that the BEDC's right to the Recapture Amount shall survive the Expiration Date of this Agreement.

## ARTICLE VI COVENANTS AND DUTIES

1. **Company's Covenants and Duties.** Company makes the following covenants and warranties to the BEDC and agrees to timely and fully perform the obligations and duties contained in Article V of this Agreement. Any materially false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Company.
- (a) Company is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.
  - (b) The execution of this Agreement has been duly authorized by Company's authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Company's by-laws, or of any agreement or instrument to which Company is a party to or by which it may be bound.

- (c) Company is not a party to any Bankruptcy proceedings currently pending or contemplated, and Company has not been informed of any potential involuntary Bankruptcy proceedings.
- (d) To its current, actual knowledge, and subject to the Certificate of Occupancy (or other approvals and permits to be obtained under subpart (f) immediately below), Company has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City of Bastrop and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.
- (e) Company shall timely and fully comply with all of the terms and conditions of this Agreement.
- (f) Company agrees to obtain, or cause to be obtained, all necessary permits and approvals from the City of Bastrop and/or all other governmental agencies having jurisdiction over the construction of any improvements to the Locations.
- (g) Company shall be responsible for paying, or causing to be paid, to the City of Bastrop and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project. Company agrees to develop the Project in accordance with the ordinances, rules, and regulations of the City of Bastrop in effect on the date the Project was designated, unless specified otherwise in this Agreement. Company, in its sole discretion, may choose to comply with any or all City of Bastrop rules promulgated after the Effective Date of this Agreement.
- (h) Company agrees to commence and complete the Project in strict accordance with the Agreement.
- (i) Company shall cooperate with the BEDC in providing all necessary information to assist them in complying with this Agreement.
- (j) During the term of this Agreement, Company agrees to not knowingly employ any undocumented workers as part of the Project, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), Company shall be in Default (subject to the obligations in Article V and the remedies in Article VIII). Company is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts; provided, however, that identical federal law requirements provided for herein shall be included as part of any agreement or contract which Company enters into with any subsidiary, assignee, affiliate, or franchisee for which funds provided herein will be used.
- (k) Company shall not be in arrears and shall be current in the payment of all City taxes and fees.

- (l) BEDC has the right to periodically (and with reasonable advance notice) verify the terms and conditions of this Agreement.
2. **BEDCs' Covenants and Duties.** BEDC agrees to timely and fully perform the obligations and duties contained in Article IV of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the BEDC.
3. **Compliance and Default.** Failure by Company to timely comply with any performance requirement, duty, or covenant beyond any applicable notice and cure periods detailed herein shall be considered an act of Default and shall give the BEDC the right to terminate this Agreement and collect the Recapture Amount, as determined by the Board of Directors of the BEDC.

## **ARTICLE VII TERMINATION**

1. **Termination.** This Agreement shall terminate upon the earliest occurrence of any one or more of the following:
- (a) The written agreement of the Parties;
  - (b) The Agreement's Expiration Date;
  - (c) The continuance of an Event of Default by Company (at the option of the BEDC).

## **ARTICLE VIII DEFAULT**

1. **Company Events of Default.**
- (a) Failure of Company to perform any term, covenant or agreement contained in Article V within fifteen (15) days of written notice thereof from BEDC; provided however, that if such failure cannot be reasonably cured within fifteen (15) days, it shall not be an Event of Default hereunder if Company commences to cure within such fifteen (15) day period and diligently pursues such cure to completion; or
  - (b) BEDC determines that any representation or warranty contained herein or in any financial statement, certificate, report or opinion submitted to BEDC in connection with or pursuant to the requirements of this Agreement was incorrect or misleading in any material respect when made; or
  - (c) Any judgment is assessed against Company or any attachment or other levy against the property of Company with respect to a claim remains unpaid, unstayed on appeal, undischarged, not bonded or not dismissed for a period of thirty (30) days; or
  - (d) Company makes an assignment for the benefit of creditors; admits in writing its inability to pay its debts generally as they become due; files a petition in bankruptcy; is adjudicated

insolvent or bankrupt; petitions or applies to any tribunal for any receiver or any trustee of Company or any substantial part of its property, commences any action relating to Company under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect; or if there is commenced against Company any such action and such action remains undismissed or unanswerd for a period of sixty (60) days from such filing, or Company by any act indicates its consent to or approval of any trustee of Company or any substantial part of its property; or suffers any such receivership or trustee to and such appointment remains unvacated for a period of sixty (60) days; or

- (e) Company does not enter into the Lease Agreement or an Event of Default by Company has occurred and is continuing under the Lease Agreement; or
- (f) Company changes the general character of business as conducted at the date hereof, or engages in any type of business not reasonably related to its business as presently and normally conducted.

2. BEDC Events of Default.

- (a) BEDC materially fails to fulfill an obligation set forth within Article IV.

3. Remedies for Default.

- (a) Company's sole remedy under this Agreement is specific performance for BEDC's default of its obligation under Section IV of this Agreement, and only in the event Company has met all obligations satisfactory to BEDC.
- (b) In the event of Default by the Company and subject to subsection (c) below, the BEDC shall, as its sole and exclusive remedy for Default hereunder, have the right to terminate this Agreement and to recapture one hundred percent (100%) of the Capital Investment and Workforce Development & Training Center Creation Incentives paid in Article IV (the "Recapture Amount") for the applicable Location if the Default occurs on or prior to the termination date. The Recaptured Amount shall be paid by the Company within one hundred twenty (120) days after the date Company is notified by the BEDC of such Default (the "Payment Date"). In the event the Recaptured Amount is not repaid by the applicable Payment Date, the unpaid portion thereof shall accrue interest at the rate of two percent (2.00%) per annum from the Effective Date until paid in full. Company shall immediately execute an owelty and property lien upon the Property that allows the BEDC's right of first refusal and Recapture Amounts to be secured. The lien shall be in the amount demanded by the BEDC be repaid by the Company in the case that the Company does not meet the performance requirements herein, plus the interest required from the date the money was provided.
- (c) The "Recapture Amount" shall at all times in this Agreement be limited to those amounts paid per Location under Article IV Sections 1, 2, and 3 collectively; meaning, that for each Location requiring obligations of Company, the BEDC's Recapture Amount is

limited to and only applicable to that location and the Incentives provided for that Location's certificate of occupancy deadlines and Project requirements. For example, should Company not purchase and/or not obtain the certificate of occupancy for the Location at Water & Chestnut Street, then the "Recapture Amount" for that breach is the amounts paid solely in Article IV Section 3 (i) and (ii) as Incentives for that Location.

4. **Limitation on Use of Funds & Property in the Event of Default.**

- (a) Company will not use Incentives for any purpose outside of the activities described in this Agreement and for the Improvements at the Locations herein.
- (b) Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against the City of Bastrop or the BEDC.

**ARTICLE IX  
MISCELLANEOUS**

1. **Binding Agreement.** The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. The undersigned CEO or Board Chair of the BEDC shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the BEDC, on behalf of the Parties related thereto. Notwithstanding any other provision of this Agreement to the contrary, performance of either Party under this Agreement is specifically contingent on Company obtaining a Certificate of Occupancy from the City of Bastrop at the Locations under the terms of this Agreement.
2. **Mutual Assistance.** The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.
3. **Representations and Warranties.** The BEDC represents and warrants to Company that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Company represents and warrants to the BEDC that it has the requisite authority to enter into this Agreement.
4. **Assignment.** Company shall have the right to assign all of its rights, duties, and obligations under this Agreement to a duly qualified third party with prior written approval of the BEDC. Any assignment provided for herein shall not serve to enlarge or diminish the obligations and requirements of this Agreement, nor shall they relieve Company of any liability to the BEDC, including any required indemnity in the event that any Assignee hereof shall at any time be in Default of the terms of this Agreement. The BEDC may demand and receive adequate assurance of performance including the deposit or provision of financial security by any proposed Assignee prior to its approval of an assignment.
5. **Independent Contractors.**

- (a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Company at no time will be acting as an agent of the BEDC and that all consultants or contractors engaged by Company respectively will be independent contractors of Company; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that the BEDC will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by Company respectively under this Agreement, unless any such claims are due to the fault of the BEDC.
- (b) By entering into this Agreement, except as specifically set forth herein, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the BEDC with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.
- (c) No employee of the BEDC, or any board member, or agent of the BEDC, shall be personally responsible for any liability arising under or growing out of this Agreement.
6. **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, or on the first business day after depositing the same in the hands of a reputable overnight courier (such as United States Postal Service, FedEx or UPS) and addressed to the Party at the address set forth below:

**If intended for BEDC:**

Bastrop Economic Development BEDC  
 Attention: Cameron Cox  
 301 Highway 71 W, Suite 214  
 Bastrop TX 78602

**With a copy to:**

Denton, Navarro, Rocha, Bernal, & Zech PC  
 Attention: Charles E. Zech  
 2517 North Main Avenue  
 San Antonio, TX 78212

**If to the Company:**

Howard Designs, LLC  
 405 South Jackson  
 Bastrop, Texas 78602

Any Party may designate a different address at any time upon written notice to the other Parties.

7. **Governmental Records.** All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10.
  - (a) **Governing Law.** The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement (subject to the dispute resolution mechanisms of Article VIII above) shall be in the Courts of Bastrop County. The Parties agree to submit to the personal and subject matter jurisdiction of said court.
  - (b) **Amendment.** This Agreement may be amended by mutual written agreement of the Parties, as approved by the Board of Directors of the BEDC and paid for by the Company.
8. **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.
9. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in duly approved amendments to this Agreement, as approved by the Board of Directors of the BEDC.
10. **Future Agreement.** The Parties agree that Company seeks to expand further at the 402 Technology Drive Location and the BEDC agrees to discuss and work with the Company to provide the necessary land as an incentive for this expansion into the neighboring 10.5-acre tract. Company acknowledges the BEDC is looking to subdivide that 10.5-acre tract of land and will need to provide the Company's confirmation for growth into that tract before the Expiration Date of this Agreement. The Parties agree a separate Performance Agreement will need to be entered into for this transaction to be final under Texas Local Government Code.
11. **Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

12. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.
13. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.
14. Indemnification.

**COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE BEDC AND THE CITY OF BASTROP ("CITY"), AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO ANY OF THE FOLLOWING: ANY CLAIMS OR DEMANDS BY THE STATE OF TEXAS THAT THE COMPANY HAS BEEN ERRONEOUSLY OR OVER-PAID SALES AND USE TAX FOR ANY PERIOD DURING THE TERM OF THIS AGREEMENT AS A RESULT OF THE FAILURE OF COMPANY TO MAINTAIN A PLACE OF BUSINESS AT THE PROPERTY OR IN THE CITY OF BASTROP, OR AS A RESULT OF ANY ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY COMPANY UNDER THIS AGREEMENT EXCEPT THAT THE INDEMNITY PROVIDED HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE ACTION OR OMISSIONS OF THE BEDC OR CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY, IT BEING THE INTENTION OF THE PARTIES THAT COMPANY SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY FUNDS PAID AND PROPERTY GRANTED TO COMPANY HEREIN THAT INCLUDES CITY SALES TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WAS ERRONEOUSLY PAID, DISTRIBUTED OR ALLOCATED TO THE BEDC.**

15. Additional Instruments. The Parties agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.
16. Force Majeure. Whenever a period of time is herein prescribed for action to be taken by the Company, the Company shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to causes of any kind whatsoever which are caused by Force Majeure.

[SIGNATURE PAGE FOLLOWS]



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Executed on this 17 day of September, 2020

**HOWARD DESIGNS, LLC**

\_\_\_\_\_, a Texas Corporation

By: Clint Howard

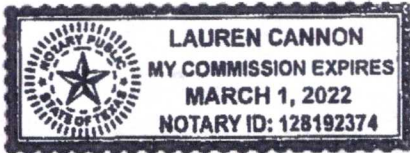
Name: Clint Howard

Title: President

STATE OF TEXAS }  
COUNTY OF Bastrop }

This information was acknowledged before me on this 17<sup>th</sup> day of September 2020, by Clint Howard for Howard Designs, LLC, a Texas Corporation, on behalf of said agency.

Lauren Cannon  
Notary Public, State of Texas

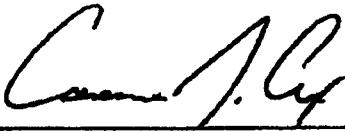


Lauren Cannon  
Notary's typed or printed name

March 1, 2022  
My commission expires

Executed on this 21st day of September, 2020.

**BASTROP ECONOMIC  
DEVELOPMENT CORPORATION**

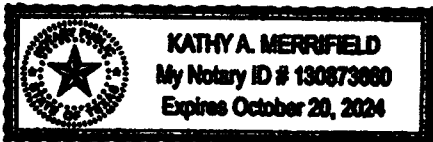
By: 

Name: Cameron Cox  
Title: CEO, Bastrop EDC

STATE OF TEXAS            }  
COUNTY OF BASTROP    }

This information was acknowledged before me on this 21st day of September, 2020, by Cameron Cox, CEO, for the Bastrop Economic Development Corporation, a Texas non-profit industrial development corporation, on behalf of said agency.

  
Notary Public, State of Texas



Kathy A. Merrifield  
Notary's typed or printed name  
10/20/2024  
My commission expires

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Robyn Katz, BEDC Counsel  
DNRB&Z P.C.



**Agenda Item: 3.2**

**AGENDA MEMORANDUM**

Meeting Date: March 7, 2022

Agenda Item: Discussion and possible action on engaging a consultant to assist the BEDC in alignment with the City of Bastrop’s economic development policy.

Prepared by: BEDC Staff

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Board Chair Spencer requested that this item be included for possible action by the Board.

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**Recommendation** – Staff has no recommendation.

**[RECOMMENDED MOTION]** – None.



## Agenda Item: 3.3

# AGENDA MEMORANDUM

Meeting Date: March 7, 2022

Agenda Item: Discussion and possible action on the roles and responsibilities of BEDC sub-committee members.

Prepared by: BEDC Staff

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Board Chair Spencer requested that this item be included for possible action.

Per Article III, Section 2 (Powers and Duties of the Chair) of the BEDC's Bylaws, the Chair of the Board shall:

- (d) Have the authority to appoint ad hoc committees of the Board, which may address issues of a temporary nature of concern or which have a temporary effect on the business of the Board.
- (e) Have the authority to appoint advisory committees to the Board to further the overall development plan of the Board.

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**Recommendation** – Staff has no recommendation.

**[RECOMMENDED MOTION]** – None.



## **AGENDA MEMORANDUM**

Meeting Date: March 7, 2022

Agenda Item: Discussion and possible action on paying off the remaining loan balance associated with the 921 Main Street building.

Prepared by: BEDC Staff

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Closing on the sale of the building at 921 Main Street occurred on Friday, March 4.

Board Secretary/Treasurer Bill Gossett has requested this agenda item for the Board to consider using a portion of the funds from the sale of the building to pay off the loan with Roscoe State Bank.

Summary:

June 2019 – BEDC Board approved a \$1.8 million loan, with \$377,072 of BEDC funds as a “down payment”

August 2019 – Resolution approved by Bastrop City Council

September 2019 – Loan paperwork finalized in the amount of \$1,420,000

Current balance – \$1,390,254.84

NOTE: This item may require a resolution which can be prepared in time for the board meeting.

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**Recommendation** – Approve the BEDC Secretary/Treasurer or BEDC Staff to close out the loan.

**[RECOMMENDED MOTION]** – I make a motion to approve the BEDC Secretary/Treasurer or BEDC Staff take the necessary action to close out the loan associated with 921 Main Street.

