CITY OF SEABROOK
RESOLUTION NO. 2016-11

DESIGNATION OF "SEABROOK FAÇADE IMPROVEMENT INCENTIVE PROGRAM" FOR AUTHORIZED ECONOMIC INCENTIVES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEABROOK, TEXAS, CONFIRMING THE "SEABROOK FAÇADE IMPROVEMENT INCENTIVE PROGRAM" AS AN AUTHORIZED PROJECT OF THE SEABROOK ECONOMIC DEVELOPMENT CORPORATION, INCLUDING THE "ECONOMIC DEVELOPMENT AGREEMENT" WITH BURKE'S OUTLET STORES, LLC

WHEREAS, on January 18, 1992, the voters of the City of Seabrook authorized the City of Seabrook to adopt a one-half cent sales and use tax to pay for the costs of projects authorized by Section 4B of Article 5190.6, V.T.C.S., as amended, and to pay for the principal and interest of bonds or other obligations issued to pay the costs of such designated projects; and

WHEREAS, the Seabrook Economic Development Corporation ("EDC") was established to oversee the expenditures of tax monies, and bylaws were established for the operation of the EDC; and

WHEREAS, the EDC has analyzed potential projects that will meet the enabling legislation's purposes and assist it in attracting new businesses, expanding existing businesses, creating jobs, and assisting in other statutorily authorized economic development programs; and

WHEREAS, the EDC has determined that the creation of economic incentives for the Project, as delineated in the "Seabrook Façade Improvement Incentive Program," specifically including the "Economic Development Agreement," ("Agreement"), with Burke's Outlet Stores, LLC, a copy of which is attached hereto as Exhibit A, is authorized under Texas Local Government Code Sections 505.151, 505.152, 505.155, 505.158, and 505.302, and is being used for the purpose of promoting new and expanded business enterprises in or near the City of Seabrook that create or retain primary jobs; and

WHEREAS, the EDC met on March 10, 2015, and at that time took formal action to support and approve funding of a proposed "Store Front Façade Improvements Incentive Project", in relation to Burke's Outlet Stores, LLC with contemplated expenditures to exceed $10,000, to assist the eligible property owner, within a specified amount, with EDC grants not to exceed $40,000 for this Agreement as part of the Seabrook Façade Improvement Incentive Program, ("Project"); and

WHEREAS, the City Council of the City of Seabrook conducted a public hearing on September 15, 2015 and approved a budget for the EDC of $1,297,340.00, and approved $690,000 for projects, including this Project: and

WHEREAS, the EDC has determined to proceed with the subject Project, subject to City Council approval of same in accordance with law; and

WHEREAS, the City Council (the "City") desires to encourage the development or redevelopment within the city limits of the City of Seabrook, by specifically including the Seabrook Façade Improvement Incentive Program ("Project") as described in the Seabrook Façade Improvement Incentive Program , attached hereto as Exhibit B; and

WHEREAS, the City Council finds that the incentives by the EDC, as provided herein will be reasonably likely to contribute to new or expanded business enterprises and the potential of the creation or retention of primary jobs, as provided by Chapters 501 and 505 of the Texas Local Government Code;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEABROOK, STATE OF TEXAS:

Section 1. That the facts and matters set forth in the preamble of this Resolution are hereby found to be true and correct.

Section 2. That the Seabrook Façade Improvement Incentive Program, "Project" attached hereto as Exhibit B, and the incentive to Burke's Outlet Stores, LLC made thereunder in the "Agreement", attached hereto as Exhibit A, as approved by the Seabrook Economic Development Corporation ("EDC") pursuant to the Project guidelines is hereby approved by the City Council of the City of Seabrook .

ADOPTED AND APPROVED this the 5th day of April, 2016.

PASSED, APPROVED, AND ADOPTED on second and final reading this 19th day of April, 2016.

CITY OF SEABROOK, TEXAS

BY:_____
Glenn Royal, Mayor

ATTEST:

_____
Robin Hicks, TRMC
City Secretary

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of April 19, 2016, by and between the **Seabrook Economic Development Corporation**, situated in Harris County, Texas ("SEDC"), and **Burke's Outlet Stores, LLC., a** Texas limited liability corporation, with principal office located at 1806 38th Ave. East, Bradenton, FL 34208, and registered office located at 211 E. 7th Street Suite 620, Austin, TX 78701, ("Owner" or "Developer"), collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, Developer/Owner proposes to make store site improvements at its location in the Miramar Shopping Center, operating under the name of Burke's Outlet, at 2136 Bayport Blvd Seabrook, TX 77586, located in the tract as referenced in Exhibit "B" and made a part hereof, hereinafter referred to as ("Project Facilities"); and

WHEREAS, Developer has proposed Project Facilities site improvements and submitted a Project Summary and budget to SEDC requesting a 50% match for façade improvements/exterior sign with a total cost represented to be $84,250 for Burke's Outlet, and has applied for incentives from the SEDC under the Seabrook Façade Improvement Incentive Program ("Program"); and

WHEREAS, upon completion of such construction, Developer proposes to occupy and use the 16,000 square foot building of the Project Facilities as a ~~shoe~~ Fashion outlet store, ("Project"), collectively employing a minimum of 15-20 full time and part time employees; and

WHEREAS, Developer/Owner has applied to SEDC for a business incentive grant under the Program to help defray a portion of the costs of construction referred to above, a copy of which application, including project summary, and budget, (the "Application") is attached hereto and made a part hereof as Exhibit "A," the representations contained therein which the SEDC is specifically relying upon as true and correct in considering Owner's/Developer's Application for the Project; and

WHEREAS, pursuant to the Texas Local Government Code, Chapters 501 and 505 together with related authority, Economic Development Corporations of municipalities are authorized to establish programs to promote the creation or retention of jobs or that promote or develop new or expanded business enterprises in the municipality; and

WHEREAS, in accordance with such enabling laws, SEDC has adopted a "Seabrook Façade Improvement Incentive Program," (the "Program"); and

WHEREAS, SEDC hereby finds and determines that Developer's/Owner's proposed Project, together with the proposed Project Facilities, as set forth in the Application and related correspondence, meets the minimum eligibility requirements for an economic incentive grant pursuant to the Program; and

WHEREAS, SEDC hereby finds and determines that the Project, as depicted by Developer/Owner in the Application and related correspondence, encourages the creation or retention of jobs and/or promotes or develops new or expanded business enterprises in the municipality and can be reasonably anticipated to act as a catalyst for further economic development in the City of Seabrook; and

WHEREAS, SEDC, in reliance upon Developer's/Owner's representations desires to provide an economic development incentive grant under the Program to induce Developer/Owner to proceed with the implementation of the Project; now therefore,

FOR AND IN CONSIDERATION of the mutual promises, covenants, and agreements herein, the Parties agree as follows:

I. **Inducement by SEDC.** Conditioned upon Developer's/Owner's representations as being true and correct, pursuant to the guidelines of the Seabrook Façade Improvement Incentive Program ("Program"), final approval of façade expenses by SEDC, compliance with the City Code of Ordinances, this Agreement and approval by the Seabrook City Council, SEDC will provide, in the form of a reimbursement to Developer/Owner, an economic incentive grant ("Grant"), payable within thirty (30) days following issuance to the Developer/Owner of a required certificate of occupancy applicable to the Project. The final reimbursement amount of the economic incentive grant shall be determined and based on the actual amounts paid by Developer/Owner, limited to the façade improvements approved by the SEDC in accordance with the Program and Project, (which correlate to lines 15 -17 in the proposed budget submitted in the Application), in an amount not to exceed $40,000.

II. Performance by Developer.

A. Improvements to Project Facilities. Developer/Owner shall provide for the construction and build-out of the Project Facilities as set forth in the Application. Construction shall be substantially complete on or before June 3, 2016.

B. Employment. Business occupants of the Project shall, within 30 days following the date of issuance of Grant funds, collectively employ not less than 15 full and part-time employees.

III. Recapture for Default. Grant funds provided hereunder by SEDC shall be contingent on compliance with the provisions of Sections I and II above. In the event of default on any of such requirements, and failure to completely cure any such default within thirty (30) days following written notice thereof by SEDC to Developer/Owner, Developer/Owner shall refund to SEDC the full amount of Grant funds provided hereunder.

Any required refund payment shall be remitted to SEDC within thirty (30) days following the expiration of the cure period set forth above, and any delinquent payment shall bear interest at the maximum rate allowed by law.

IV. Jurisdiction. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue for any action arising out of this Agreement shall be exclusively in Harris County, Texas.

V. Notices. Any notice hereunder shall be given in writing to the party for whom it is intended, in person or by certified mail, at the following addresses or such future addresses as may be designated in writing:

If to Owner/Developer:

Burke's Outlet Stores, LLC
James Simpson, Vice President
1806 38th Ave. East
Bradenton, FL 34208

If to SEDC:

City Manager
City of Seabrook
1700 First St.
Seabrook , Texas 77586

Notice shall be deemed received upon actual receipt or upon refusal of receipt.

VI. Assignment and Succession. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and assigns of the respective parties. All rights hereunder may be assigned by Developer/Owner without restriction to any wholly owned subsidiary or affiliate of Developer/Owner or other entity controlled by Developer/Owner or by a subsidiary or affiliate of Developer/Owner, provided that notice of each assignment shall be given in writing to SEDC, but no other assignment shall be effective without the SEDC's written approval and consent. Provided further, no assignment hereunder shall be effective without the written acknowledgment and acceptance by the assignee of the duties and obligations of Developer/Owner set forth in this Agreement. Such approval shall not be unreasonably withheld.

VII. Time of Essence. Time is of the essence of this Agreement. However, in the event the date specified or computed under this Agreement for the performance of an obligation by any party, or for the occurrence of any event provided herein, shall be a Saturday, Sunday or "legal holiday" (defined for purposes hereof as any holiday observed by the County), then the date of such performance or occurrence shall automatically be extended to the next calendar day that is not a Saturday, Sunday or legal holiday.

VIII. Modification/Entire Agreement Expressed. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated, and signed by the Parties. This Agreement constitutes the entire agreement between the parties. No party shall be bound by any term, conditions, statement, or representations, oral or written, not herein contained.

IX. Severability. If any term or provision of this Agreement is held to be illegal, invalid, or unenforceable, the legality, validity, or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby; and in lieu of such illegal, invalid, or unenforceable term or provision, there shall be added automatically to this Agreement, a legal, valid, or enforceable term or provision, as similar as possible to the term or provision declared illegal, invalid, or unenforceable.

X. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraph contained herein.

XI. Operations. It is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business in the Project Facilities. The SEDC and Developer/Owner acknowledge and agree that Developer/Owner may, at its sole discretion and at any time cease the operation of its business in the Project Facilities, and SEDC hereby waives any legal action for damages or for equitable relief which might be available because of such cessation of business activity by Developer/Owner except for the recapture of Grant funds as specifically set forth in this Agreement. Provided, however, if Developer/Owner fails to construct the improvements to the Project Facilities as set forth herein, Developer/Owner agrees to reimburse SEDC for all costs expended by SEDC or for which it is legally obligated to expend, as a result of its performance of this Agreement. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, or other entity between SEDC and Developer/Owner, with regard to the Project, and SEDC shall have no right hereunder to control the operation of Developer/Owner or the Project. Provided, however, nothing contained herein shall be construed as waiving or limiting the power and authority of SEDC or the City of Seabrook to exercise its police powers, or exempt Developer/Owner from complying with lawfully adopted rules, regulations, ordinances, or laws of the State of Texas or SEDC.

XII. Agreement Product of Negotiation. The Parties agree that this Agreement is the product of negotiation, that each Party has been represented by counsel of their own choosing, that each has freely entered into this Agreement after consulting with their counsel, and that this Agreement contains the terms and conditions requested and required by each. This Agreement shall be construed as having been drafted by all Parties and no term or provision shall be construed either in favor of or against a party on the basis that a party did or did not author this Agreement.

XIII. Limit Of Appropriation. Prior to the execution of this Agreement, Owner/Developer has been advised by the SEDC and Owner/Developer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the SEDC shall have available as a condition for payment, only those sums as expressly provided for under this Agreement for this fiscal year to discharge any and all liabilities which may be incurred by the SEDC. The total compensation that Owner/Developer may become entitled to hereunder and the total sum that the SEDC shall become liable to pay

to Owner/Developer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

The Parties specifically acknowledge that the funds allocated for payment to Owner/Developer by S EDC are derived from sales tax revenues, and that S EDC has only estimated the anticipated tax revenues to be collected during the term of this Agreement in its budget for Fiscal Year 2015-16, and that no estimates have been made of tax revenues for future fiscal years. Owner/Developer further understands, acknowledges, and agrees that if the tax revenues actually collected in any fiscal year are estimated to be or are actually less than the estimated tax revenues anticipated to be collected during the term of this Agreement, SEDC shall be under no obligation to reimburse Owner/Developer for the amount set forth in Section I. Owner/Developer further acknowledges that this Agreement could be anticipated to extend into future fiscal years, and funds may not be available or budgeted in future fiscal years, and that any anticipation of extension may not be enforceable under the Constitution and laws of the State of Texas.

IN WITNESS WHEREOF, and as authorized respectively by the SEDC and City Council of Seabrook and _____, the parties have executed this Agreement effective the day and year first written above.

SEABROOK ECONOMIC DEVELOPMENT CORPORATION

_____

BY: Paul Dunphey,
Board President

DATE: 3/21/16, 2016

ATTEST:

Ernie Davis

Ernie Davis,
Board Secretary

CITY OF SEABROOK, TEXAS

_____
Glenn R. Royal
Mayor

DATE: 3-15, 2016

ATTEST:

_____
Robin Hicks, TRMC
City Secretary

BURKE'S OUTLET STORES, LLC

_____
James Simpson, Vice President

DATE: 3/24/16, 2016

SEABROOK
ECONOMIC DEVELOPMENT CORPORATION

Seabrook Façade Improvement Incentive Program

Program Goal and Description

The City of Seabrook has established a Façade Improvement Incentive Program to help strengthen the revitalization of the business community along NASA Parkway, State Highway 146 and Old Seabrook. The Program offers grant funds and design assistance to property and business owners to be matched by their equal or greater investment of private funds for the purpose of restoring/renovating commercial storefronts and replacing deteriorated or poor quality commercial signs and awnings. A Program Committee will evaluate applications to determine eligibility and, based on a set of criteria (generally listed below), recommend grant awards to those proposed projects that are determined will have the greatest impact on enhancing the targeted area by promoting/developing new or expanded business enterprises and/or creates/retains primary jobs.

Specific Objectives in Targeted Area:

- Encourage private investment in the visual improvement of storefronts, signs and awnings
- Enhance the appearance of the streetscape
- Reduce vacancies in storefronts and upper floors
- Expand worker and shopper populations in the community
- Strengthen or restore the original character of historic buildings
- Provide a catalyst for others to improve their buildings, signs and awnings

Program Funding

The Façade Improvement Program is funded through the City of Seabrook's Economic Development Corporation (EDC). Grants for storefront façade improvement will be funded on a case by case basis as determined by the EDC. Applicants should provide a detailed cost analysis of the project and be prepared to present their proposals to the Seabrook Economic Development Corporation Board.

Grant funds are to be used for authorized construction including all architectural and engineering fees. Eligible construction activity includes storefront improvements, awnings, canopies, entries, signage, and lighting.

Funds will be distributed at the completion of the project. Final invoices for the project should be submitted no later than 30 days after final inspection.

Eligibility for Façade Improvement Program

Eligible projects should be located in areas zoned for commercial and mixed use activities including, but not limited to locations on NASA Parkway, State Highway 146, and in Old Seabrook. Façade improvements shall be limited to street view façade only.

- The grant applicant must be a building owner or business owner leasing a storefront;
- If applicant is not the building owner, Tenant must have the property owner's signed approval for proposed project;
- For sign and awning projects, tenant must have at least two years remaining in lease at location of proposed project and/or option to renew for at least two years;
- Each applicant may be awarded only one Façade Program grant;
- Building projects must be designed by a qualified engineering / architectural firm and signs must be produced by a professional sign maker;
- The project applicant must owe no outstanding property taxes, fees, judgments, code violations or liens and have no outstanding judgments, foreclosure notices, or tax liens against the subject property.

Ineligible Activities

- Interior repairs not integral to the exterior façade improvement
- New building construction
- Parking lots
- Apartments, townhomes
- Purchase of property/equipment

To Apply

It is important to schedule a meeting about the project with city staff as soon as possible to discuss the procedure and necessary documentation required for review.

Businesses that wish to be considered for the program should submit the following documents by the 15th of the month for review and possible consideration by the EDC board the following month:

- Artistic renderings of the improvements
- Engineering / architect drawings
- Project budget
- Title reports reflecting all liens / encumbrances on property

Review Criteria

The Façade Improvement Program Committee (composed of the EDC Director, Planning Director, City Manager and one member of the EDC) will evaluate applications for eligibility and how effectively they meet the program criteria. Funding will be provided as determined by the EDC and City Council until the grant funds are exhausted.

A project application will be scored on how well it meets each of the program criteria using a rating scale of **1** (below criteria), **2** (meets criteria) and **3** (exceeds criteria). A total point score will be based on the sum of the ratings, with due consideration to the determination of the project's potential of promoting/developing new or expanded business enterprises and/or creating/retaining primary jobs.

The criteria are as follows:

A. Degree of visual improvement the proposed project will bring to the storefront and the streetscape.

B. Design consistency/compatibility with the City's standards/guidelines. These guidelines address building alterations as well as signs and awnings. Copies of these guidelines are available at City Hall in the Planning Department. For assistance, please contact Sean Landis, Deputy City Manager (281-291-5705).

C. Visual prominence of the project building and its location.

D. All required documents presented.

Given limited program resources, additional points will be given to applications in which the private investment will be greater than 50% of the project budget.

Reimbursement Procedure

Once final inspection has been made by the city's code enforcement officer, all related invoices should be submitted to the EDC Director. Please note that grant funds will not pay for expenses incurred prior to the grant award or prior to Program Committee approval of invoices. Payment – once approved – is usually processed 30 days after invoice submission.

For additional information and to schedule a preliminary project discussion, please contact:

Paul M. Chavez, Economic Development Director
281-291-5730 or pchavez@seabrooktx.gov

This policy to remain active until further notice.