



AGENDA

PANTEGO ECONOMIC DEVELOPMENT CORPORATION

JUNE 3, 2015

TOWN COUNCIL CHAMBER
1614 S. BOWEN ROAD
SPECIAL MEETING 7:00 P.M.

CALL TO ORDER

SPECIAL SESSION

1. Discuss, direct and consider action on an assignment of the Performance Agreement with Tanya Terrell Weideman, dba Cookie Machine, to Perna Johnson.

SCHEDULED EXECUTIVE SESSION

The PEDC may convene in the City Manager's Office pursuant to the Texas Government Code for an executive session as follows:

- Pursuant to Government Code Section 551.087 to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations. Cookie Machine.

Following the Scheduled Executive Session, the PEDC will reconvene in public session and may take any and all action necessary concerning the Executive Session.

ADJOURNMENT

CERTIFICATION

Prepared and posted in accordance with Chapter 551 of the Texas Government Code. I, the undersigned authority, do hereby certify that this Notice of Meeting was posted on the outside window of a display cabinet at the Town Hall of the Town of Pantego, Texas, a place of convenience and readily accessible to the general public at all times, and said Notice was posted by the following date and time: Sunday, May 31, 2015 at 5:00 p.m., and remained so posted at least 72 hours before said meeting convened.


Julie Arrington, City Secretary

Auxiliary aids and services are available to a person when necessary to afford an equal opportunity to participate in Town functions and activities. Auxiliary aids and services or accommodations should be requested forty-eight (48) hours prior to the scheduled starting time by calling the City Secretary's Office at (817) 548-5852

Complete PEDC Agenda and background information are available for review at the City Secretary's Office and on the Town's website: www.townofpantego.com



**NOTICE
of
POTENTIAL QUORUM**

NOTICE IS HEREBY GIVEN THAT A POTENTIAL QUORUM OF THE TOWN COUNCIL OF THE TOWN OF PANTEGO MAY BE PRESENT DURING THE SPECIAL MEETING OF THE PANTEGO ECONOMIC DEVELOPMENT CORPORATION.

JUNE 3, 2015

**TOWN COUNCIL CHAMBER
1614 SOUTH BOWEN ROAD
PANTEGO, TEXAS**

BEGINNING AT 7:00 P.M.

Prepared and posted in accordance with Chapter 551 of the Texas Government Code. I, the undersigned authority, do hereby certify that this Notice of Meeting was posted on the outside window of a display cabinet at the Town Hall of the Town of Pantego, Texas, a place of convenience and readily accessible to the general public at all times, and said Notice was posted by the following date and time: Sunday, May 31, 2015 and remained so posted at least 72 hours before said meeting convened.



Julie Arrington, City Secretary





PANTEGO ECONOMIC DEVELOPMENT CORPORATION

To: President Bill Brown and PEDC Board Members

From: Matt Fielder, Executive Director

Date: 6/3/2015

Re: Discuss, direct and consider action on an assignment of the Performance Agreement with Tanya Terrell Weideman, DBA Cookie Machine, to Perna Johnson.

Ms. Tanya Weideman is in the process of selling her business, Cookie Machine, to Ms. Perna Johnson. The performance agreement Ms. Weideman entered into with the PEDC in 2012 stipulates that any assignment (transfer of ownership) of the business must be approved in writing by both parties. In addition, the new party must agree to take on the responsibilities outlined in the agreement. The document presented here for the Board's consideration would accomplish this. Timing is an issue for both parties, as the agreement is necessary for the sale of the business to be concluded. Ms. Perna has agreed to provide a biography and statement on her business plans on Monday. This document will be forwarded to the Board when received. In addition, an executive session has been included on the agenda, should it be needed.

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("this Assignment") is entered into by and between TANYA TERRELL WEIDEMAN, doing business as Cookie Machine ("Original Developer"), PERNA JOHNSON ("New Developer"), and the PANTEGO ECONOMIC DEVELOPMENT CORPORATION ("EDC") as follows:

RECITALS

A. On or about March 3, 2012, Original Developer and EDC entered into a Performance Agreement, a true copy of which is attached hereto as Exhibit A.

B. Pursuant to the Performance Agreement, EDC provided financial assistance to Original Developer in consideration of a promise by Original Developer to operate the business known as Cookie Machine in Pantego, Texas throughout the term of the Performance Agreement, which extended until April 1, 2017.

C. Original Developer has now entered into an agreement to sell the business known as Cookie Machine to New Developer and New Developer has agreed to assume all obligations of Original Developer under the Performance Agreement.

D. By reason of New Developer's agreement to assume the obligations of Original Developer under the Performance Agreement, EDC has agreed to the assignment of the Performance Agreement to New Developer and the release of Original Developer from such obligations.

NOW, THEREFORE, in consideration of these premises, the mutual covenants contained in this Assignment and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. **Assignment and Assumption of Obligations.** New Developer covenants, promises, and agrees that New Developer will unconditionally assume and be bound by all terms, provisions, and covenants of the Performance Agreement as if New Developer had been the Original Developer under the Performance Agreement. Original Developer assigns all her rights, duties and obligations under the Performance Agreement to New Developer.

2. **EDC's Consent.** Pursuant to Section 9(c) of the Performance Agreement, EDC consents to the assignment by Original Developer to New Developer of all obligations of Original Developer under the Performance Agreement. EDC accepts New Developer's assumption of the Performance Agreement and releases Original Developer of all further obligations.

3. **Miscellaneous.**

(a) This Assignment will be binding upon and will inure to the benefit of the parties to the Assignment and their respective heirs, successors, and permitted assigns.

(b) Except as expressly modified by this Assignment, the Performance Agreement will be unchanged and remain in full force and effect, and is hereby expressly approved, ratified, and confirmed by New Developer.

(c) This Assignment may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

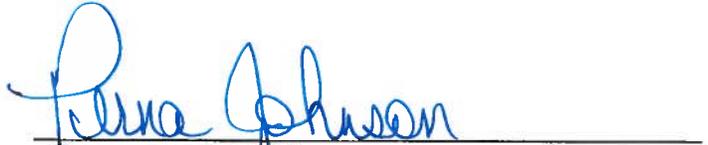
(d) This Assignment may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same document.

EXECUTED this _____ day of June, 2015.

Original Developer:


TANYA TERRELL WEIDEMAN
doing business as
COOKIE MACHINE

New Developer:


PERNA JOHNSON

EDC

PANTEGO ECONOMIC DEVELOPMENT
CORPORATION

BY: _____

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** between **TANYA TERRELL WEIDEMAN**, doing business as **Cookie Machine** (hereinafter referred to as "Developer"), and the **PANTEGO ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation, is made and executed on the following recitals, terms and conditions.

WHEREAS, the Pantego Economic Development Corporation (hereinafter referred to as the "EDC") is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: (A) manufacturing and industrial facilities; (B) research and development facilities; (C) military facilities, including closed or realigned military bases; . . . (F) recycling facilities; . . . (I) distribution centers; (J) small warehouse facilities capable of serving as decentralized storage and distribution centers; (K) primary job training facilities for use by institutions of higher education; or (L) regional or national corporate headquarters facilities"; and

WHEREAS, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . ."; and

WHEREAS, Section 501.158 of the Texas Local Government Code prohibits the provision of a direct incentive unless EDC enters into an Agreement with Developer providing at a minimum a schedule of additional payroll or jobs to be created or retained by EDC's investment; a schedule of capital investments to be made as consideration for any direct incentives provided by EDC to Developer; and a provision specifying the terms and conditions upon which repayment must be made should Developer fail to meet the agreed to performance requirements specified in this Agreement; and

WHEREAS, Developer has applied to EDC for financial assistance necessary to relocate and operate the **Cookie Machine** manufacturing facility to be generally located at 2304 W. Park Row # 21, in the Town of Pantego, Texas; and

WHEREAS, EDC approved financial assistance to Developer at its February 22, 2012, Board of Directors' meeting which would provide Developer the necessary financial assistance for the Developer's manufacturing facility located on the Developer's property generally located at 2304 W. Park Row # 21, in the Town of Pantego, Texas; and



WHEREAS, the EDC's Board of Directors have determined the financial assistance provided to Developer is consistent and meets the definition of "project" as that term is defined in Sections 501.101, and 501.103 of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code; and

WHEREAS, Section 501.073(a) of the Texas Local Government Code requires the Town Council of the Town of Pantego, Texas, to approve all programs and expenditures of the EDC, and pursuant to this statutory provision the Town Council for the Town of Pantego, Texas, approved this project at a Town Council meeting held on February 27, 2012.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the EDC and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date as defined herein, and shall continue thereafter until all obligations of Developer to EDC have been performed in full, or on April 01, 2017, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word "Act" means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word "Agreement" means this Performance Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (c) **Developer.** The words "Developer" mean *TANYA TERRELL WEIDEMAN*, her heirs, successors and assigns, whose address for the purposes of this Agreement is 1414 W. Lavender Lane, Arlington, Texas 76013.
- (d) **EDC.** The word "EDC" means the *PANTEGO ECONOMIC DEVELOPMENT CORPORATION*, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 1614 S. Bowen Road, Pantego,

Texas 76013.

- (e) **Effective Date.** The words "Effective Date" mean the date of the later to execute this Agreement by and between the Developer and the EDC.
- (f) **Event of Default.** The words "Event of Default" mean and include any of the Events of Default set forth below in the section entitled "Events of Default."
- (g) **Property.** The word "Property" means the Cookie Machine manufacturing facility to be located at 2304 W. Park Row # 21, Pantego, Texas, 76013.
- (h) **Qualified Expenditures.** The words "Qualified Expenditures" mean those costs associated with the construction and relocation costs as described in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes, and which otherwise meet the definition of "project" as that term is defined in Sections 501.101 and 501.103 of the Act, and meet the definition of "cost" as that term is defined in Section 501.152 of the Act. EDC shall reimburse said Qualified Expenditures in amounts not to exceed the amounts listed in *Exhibit A*, and consistent with the terms of this Agreement.
- (i) **Related Documents.** The words "Related Documents" mean and include without limitation all promissory notes, loan agreements, and all other instruments and documents, whether now or hereafter existing, executed in connection with this Agreement.
- (j) **Term.** The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. AFFIRMATIVE COVENANTS.

Each party covenants and agrees with the other party that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Reimbursement.** The Developer shall be entitled to reimbursement from EDC in the amount not to exceed **Nineteen Thousand One Hundred Fifteen and No/100 Dollars (\$19,115.00)** for Qualified Expenditures made to the Property. Developer covenants and agrees to submit to the EDC invoices, receipts, or other documentation of the Qualified Expenditures in a form acceptable to the EDC prior to any reimbursement. Developer covenants and agrees to provide to the EDC said invoices, receipts, or other documentation by **May 01, 2012**. The EDC covenants and agrees to submit financial assistance to the Developer in an amount not to exceed the lesser of **Nineteen Thousand One Hundred Fifteen and No/100 Dollars (\$19,115.00)** or the aggregate amount of said invoices, receipts, or other documentation submitted by the Developer to the EDC within thirty (30) days of receipt of said documentation.

- (b) **Operate Facility.** Developer agrees to maintain and operate the Cookie Machine manufacturing facility located on the Property during the Term of this Agreement.
- (c) **Collateral.** Developer covenants and agrees to grant to EDC a lien and security interest in the Qualified Expenditures and Developer's furniture, fixtures, and equipment consistent with Section 9(j) of this Agreement.
- (d) **Performance Conditions.** Developer agrees to make, execute and deliver to EDC such other promissory notes, instruments, documents and other agreements as EDC or its attorneys may reasonably request to evidence this Agreement.
- (e) **Performance.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Developer and EDC.

SECTION 5. CESSATION OF ADVANCES.

If the EDC has made any commitment to provide any financial assistance to Developer, whether under this Agreement or under any other agreement, the EDC shall have no obligation to advance or disburse the financial assistance if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 6. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **Reimbursement for Qualified Expenditures.** Failure of Developer to submit to the EDC invoices, receipts, or other documentation which is in a form acceptable to the EDC consistent with Section 4(a) of this Agreement is an Event of Default. Further, the failure of the EDC to reimburse Developer for Qualified Expenditures within thirty (30) days of receipt of invoices, receipts, or other documentation consistent with Section 4(a) of this Agreement is an Event of Default.
- (b) **Operate Facility.** The failure of the Developer to maintain and operate the facility consistent with Section 4(b) of this Agreement is an Event of Default.
- (c) **Collateral.** The failure of the Developer to provide to EDC a lien and security interest in the Qualified Expenditures, and Developer's furniture, fixtures, and equipment, consistent with Sections 4(c) and 9(j) of this Agreement is an Event of Default.
- (d) **False Statements.** Any warranty, representation, or statement made or furnished to the EDC by or on behalf of Developer under this Agreement or the Related Documents that is

false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.

- (e) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.
- (f) **Other Defaults.** Failure of Developer or the EDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents, or failure of Developer or the EDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement between the EDC and Developer is an Event of Default.

SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 6 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement. In the event, Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by the EDC to Developer pursuant to Section 4(a) of this Agreement shall become immediately due and payable by Developer to the EDC.

SECTION 8. INDEMNIFICATION.

Developer shall indemnify, save, and hold harmless EDC, its directors, officers, agents, attorneys, and employees (collectively, the "Indemnitees") from and against: (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnatee if the claim, demand, action or cause of action directly or indirectly relates to tortious interference with contract or business interference, or wrongful or negligent use of EDC's financial incentive by Developer or its agents and employees; (ii) any administrative or investigative proceeding by any governmental authority directly or indirectly related, to a claim, demand, action or cause of action in which EDC is a disinterested party; (iii) any claim, demand, action or cause of action which directly or indirectly contests or challenges the legal authority of EDC or Developer to enter into this Agreement; and (iv) any and all liabilities, losses, costs, or expenses (including reasonable attorneys' fees and disbursements) that any Indemnatee suffers or incurs as a result of any of the foregoing; provided, however, that Developer shall have no obligation under this Section to EDC with respect to any of the foregoing arising out of the gross negligence or willful misconduct of EDC or the breach by EDC of this Agreement. If any claim, demand, action or cause of action is asserted against any Indemnatee, such Indemnatee shall promptly notify

Developer, but the failure to so promptly notify Developer shall not affect Developer's obligations under this Section unless such failure materially prejudices Developer's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. If requested by Developer in writing, as so long as no Default or Event of Default shall have occurred and be continuing, such Indemnitee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Developer to participate in such contest. Any Indemnitee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Developer may be liable for payment of indemnity hereunder shall give Developer written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Developer's concurrence thereto.

SECTION 9. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Tarrant County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Tarrant County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Developer warrants and represents that the individual or individuals executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. EDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same

document.

- (g) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown in Section 3 of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Developer agrees to keep EDC informed at all times of Developer's current address.
- (h) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (i) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (j) **UCC.** The Developer authorizes EDC to file, with or without the signature of Developer, a Uniform Commercial Code financing statement regarding this Agreement and Related Documents, as may be necessary or desirable to perfect the lien of EDC's security interest in the Qualified Expenditures and furniture, fixtures, and equipment of the Developer. Developer further authorizes EDC to file, with or without any additional signature from Developer, as EDC may elect, such amendments and continuation statements as EDC may deem necessary or desirable from time to time to perfect or continue the lien of EDC's security interest in said Qualified Expenditures and furniture, fixtures, and equipment of the Developer.
- (k) **Undocumented Workers.** Developer certifies that the Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of eight percent (8%), not later than the 120th day after the date the EDC notifies Developer of the violation.

[The Remainder of this Page Intentionally Left Blank]

DEVELOPER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS PERFORMANCE AGREEMENT, AND DEVELOPER AGREES TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS IS PROVIDED HEREIN.

DEVELOPER:

TANYA TERRELL WEIDEMAN

By: Tanya Terrell Weideman
Date Signed: 3-2-12

EDC:

**PANTEGO ECONOMIC DEVELOPMENT
CORPORATION,**
a Texas non-profit corporation

By: William A. Brown President EDC
Name: William A. Brown
President
Date Signed: 2/2/2012

Exhibit A

Qualified Expenditures

Fryer, Griddle & Installation	\$1,565.00
Relocating Walk-in Cooler	\$1,500.00
Reinstallation of ice machine	\$150.00
Upgrade cash register with kitchen printer	\$1,900.00
Electrical Work as required by Health Dept.	\$2,000.00
Advertising of new location	\$1,000.00
Flooring, paint, remodel, décor	\$11,000.00

EDC shall reimburse consistent with this Agreement and in amounts not exceed the amounts listed above in this Exhibit.