

**Office of the City Manager**

City of Richland Hills, Texas

## Memorandum

**To:** Honorable Mayor Bill Agan and members of the Richland Hills City Council  
**From:** Curtis E. Hawk, City Manager  
**Date:** May 7, 2013  
**Subject:** Amendment to Economic Development Incentive Agreement with Buyers  
Barricades, Inc.

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### **City Council Action Requested:**

Consider Amendment to Economic Development Incentive Agreement with Buyers Barricades, Inc., and authorize the City Manager to prepare and execute the amendment as set out below.

### **Background Information:**

City Council approved the Economic Development Incentive Agreement with Buyers Barricades, Inc. on September 13, 2011. Section C of the Agreement provides that “this Agreement shall begin on the Commencement Date,” and Section B defines the Commencement Date as the later of (1) when the improvements are completed and accepted by the City, (2) when a certificate of occupancy is issued , or (3) the date when business operation commences on the property. Section G of the Agreement, outlines the duties of the City insofar as the granting of specific economic development incentive, provides in Subsection G (c ) as follows:

Rebate to the Company an amount equal to the amount paid by the Company for the 1/8 cent sales tax assessed by the Richland Hills Development Corporation. Such rebate shall be issued in January of each calendar year beginning January, 2013, and shall only apply to the amounts paid by the Company for the years 2012 through 2014.

The agreement as written and approved in 2011 apparently assumed that the Commencement Date, when the terms of the Agreement would take effect, would have occurred by 2012. The Commencement Date will occur sometime in 2013 (likely in

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August/September), thus Section G (c ) would appropriately kick in at that time. It appears that the original agreement envisioned that the company would receive a rebate of the 1/8 RHDC sales tax for three years, to begin in January following the year in which the company began operations. If this is the case, **Section G (c )** of the agreement should be amended to provide that as follows:

**Rebate to the Company an amount equal to the amount paid by the Company for the 1/8 cent sales tax assessed by the Richland Hills Development Corporation. Such rebate shall be issued in January of each calendar year beginning January, 2015, and shall only apply to the amounts paid by the Company for the years 2014 through 2016.**

**Board/Citizen Input:**

N/A

**Financial Impact:**

Will not change previously approved commitment

**Staff Contacts:**

Curtis E. Hawk, City Manager  
817-616-3806  
[chawk@richlandhills.com](mailto:chawk@richlandhills.com)

Attachment: Buyers Barricade EDI Agreement approved September 13, 2011

## **ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

This Economic Development Incentive Agreement (“Agreement”) is entered into pursuant to Chapter 380 of the Texas Local Government Code by and between the City of Richland Hills, Texas, a home rule municipality located in Tarrant County, Texas (“City”), acting by and through James Quin, its duly authorized City Manager, and Buyers Barricades, Inc. (“Company”). For convenience, the City and the Company may be referred to in this Agreement collectively as “parties” and individually as a “party.”

### **A. RECITALS**

WHEREAS, the Company intends to purchase the Premises and to construct the Improvements on the Premises, and to operate safety equipment and signs sales and service business on the Premises; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to purchase the Premises, construct the Improvements and operate as provided herein is an agreement by the City to provide an economic development grant to the Company to fund a portion of the construction costs of the Improvements and associated costs; and

WHEREAS, the City is authorized by Chapter 380 of the Texas Local Government Code; to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has adopted the Program for the purpose of promoting economic development within the City; and

WHEREAS, the City has determined that substantial economic benefit, including the generation of additional sales and property taxes and the creation of new opportunities of employment, will accrue to the City as a result of the Company’s purchase of the Premises, the construction of the Improvements on the Premises, and the development and operation of the Company’s business on the Premises, and

WHEREAS, the City has further determined that this Program will increase the taxable value of the Premises and directly and indirectly result in creation of additional jobs throughout the City, and that the value of the benefits obtained by the City from the Program will outweigh the amount of funds the City is to provide to the Company under this Agreement; and

WHEREAS, the City desires to enter into this Agreement in order promote local commercial economic development and to stimulate business and commercial activity and to expand the employment base of the City to the long-term interest and benefit of the City and its citizens and residents in accordance with Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City Council finds the contemplated use of the Premises, and the other terms of this Agreement, are consistent with the Program and all applicable laws.

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the parties, for good and valuable consideration, which includes the grants and incentives set forth herein below, do hereby contract, covenant and agree as follows:

**B.  
DEFINITIONS**

1. "Business Operations" means the Company's business of selling and servicing safety equipment and signs.
2. "City" means the City of Richland Hills, in Tarrant County, Texas.
3. "Commencement Date" means the later of the following: (1) the completion and acceptance by the City's Building Official of the Improvements; (2) the issuance of a certificate of occupancy to the Company for such Improvements; or (3) the date of the commencement of the Business Operations on the Premises.
4. "Company" means Buyers Barricades, Inc., a corporation organized under the laws of the State of Texas, with its principal offices currently located at 3705 E. 1st St., Fort Worth, Texas, 76111.
5. "Effective Date" means the date on which this Agreement is signed by both parties.
6. "Expiration Date" means five (5) years after the date of the Commencement Date.
7. "Force majeure" means a contingency or cause beyond the reasonable control of the parties, including acts of God or a public enemy, war, riot, civil commotion, insurrection, strike (unless caused by acts or omissions of the obligated party), governmental or de facto governmental action (unless caused by acts or omissions of the obligated party), fire, explosion, flood, or other natural catastrophe.
8. "Improvements" means a new, permanent industrial building approximately 20,000 square feet in size and valued on the property tax rolls of the Tarrant Appraisal District at a sum of at least \$1,400,000.00, not including the value of the Premises or any personal property located thereon.
9. "Premises" means the real property generally described as Block 86, Lots 3R1, 3R2, 3R3, & 3R4, Richland Hills Addition to the City of Richland Hills, Tarrant County, Texas.

10. "Program" means the economic development program set forth in this Agreement and adopted by the City Council on September 13, 2011.

**C.**

**TERM OF AGREEMENT AND CONDITION PRECEDENT**

1. The term of this Agreement shall begin on the Commencement Date and continue until the Expiration Date.
2. The Company and the City agree that all obligations stated in this Agreement shall be contingent upon the Company's acquisition of fee simple title to the Premises.

**D.**

**DUTIES OF THE COMPANY**

1. The Company shall purchase fee title to the Premises, construct the Improvements, apply for and obtain a certificate of occupancy from the City, and commence Business Operations on the Premises on or before the December 31, 2012 and continue such operations until the Expiration Date, all in compliance with all applicable federal, state and local laws and regulations. The deadline stated above may be extended upon request by the Company as may be required: (1) in the event of force majeure, or (2) if, for reason other than force majeure, the Company is unable to comply with the deadlines set forth herein (with allowed extensions), but, in the sole opinion of the City Council, substantial progress toward completion of the Company's obligations hereunder are being made, and the Company is diligently pursuing completion. The Company's agreements and covenants as agreed herein constitutes a material part of the consideration provided by the Company in return for the City's acceptance of this Agreement.
2. The Company and the Company's assignees will grant the City and its agents and employees reasonable right of access to the Premises to inspect all the Improvements, and all plans, specifications and blueprints, in order to insure compliance with this Agreement, and all applicable federal, state and local laws and regulations.
3. While this Agreement is in effect, the Company shall, upon request of the City Council, certify to the City whether the Company is in compliance with each applicable term of this Agreement. The Company agrees to provide the City with any documentation the City may reasonably require or request to substantiate the Company's compliance with this Agreement.
4. The Company agrees to make reasonable efforts to cooperate and assist the City to obtain any grants available to allow the City to recover some or all of the funds expended for the grants provided by the City pursuant to this Agreement, and agrees that the City shall have no obligation to share any such grant with the Company.

5. The Company's duties, restrictions, burdens, and charges set forth in this Agreement shall exist at all times as long as this Agreement is in effect, may be recorded in the deed records of Tarrant County, and shall run with and be a burden on the land for the term of this Agreement.

**E.**  
**BREACH AND RECAPTURE**

1. In the event that:

- (a) The Company fails to comply with the Company's obligations under this Agreement within the time limits specified in this Agreement (together with any extensions allowed under this Agreement); or
- (b) The Company becomes delinquent in its obligation to pay all ad valorem real or personal property taxes or sales taxes when due (provided that the Company retains the right to timely and properly protest such taxes as allowed by law); or
- (c) The Company violates any of the other terms or conditions of this Agreement;

then the Company shall be in default of this Agreement. In the event that the Company defaults, the City shall give the Company written notice of such default. Such notice shall be in writing as provided below. If the Company has not cured such default or obtained a waiver of such default from the City within (30) days of the Company's receipt of such notice, the Company will be in breach of this Agreement. If, in the sole discretion and judgment of the City Council, the Company has commenced to cure such default within said thirty-day period and if, in the sole discretion and judgment of the City Council, the Company thereafter diligently proceeds with the Company's efforts to cure the same, the City Council, may, but is not required to, grant the Company additional time to cure such default. No action or inaction on the part of the City shall be deemed a waiver of the right of the City to declare a breach of this Agreement in the event of default by the Company except an express written waiver, and no such express written waiver by the City shall be deemed a waiver of the right to declare a breach of this Agreement in the event of further or subsequent default by the Company, even if such default is of the same kind or character as the waived default. The granting of additional time by the City for completion of any of the Company's obligations hereunder must be in writing to be valid.

2. In the event of breach of this Agreement by the Company at any time during the term of this Agreement, the Company shall pay the City as liquidated damages within thirty (30) days after receiving written demand, an amount equal to the total of all grants paid by the City hereunder to the Company, plus interest at the rate of ten percent (10%) per annum, compounded annually.

3. The parties acknowledge and agree that actual damages in the event of default would be speculative and difficult to determine, and agree that the liquidated damages provided for herein are a fair and reasonable estimate of the damages that would be suffered by the City in the event of breach by the Company, and do not constitute a penalty.

4. Nothing contained herein shall be construed to be an acceptance or approval by the City of any aspect of any of the Improvements on the Premises or waiver of or compliance with any governmental or municipal regulation, including but not limited to compliance with zoning, platting, or building codes. All aspects of the Premises and the Company's Business Operations shall remain subject to the approval of and regulation by the City as if this Agreement did not exist. Additionally, nothing contained herein shall be construed to affect the Company's liabilities or obligations created by law or other agreement, including the Company's liability for ad valorem and/or sales taxes, or to limit the authority of the City or any person or agent of the City to enforce the laws and ordinances of the City or other regulatory entity, to collect taxes, or to place a lien for taxes against the Premises as allowed by applicable law.

#### F. INDEMNIFICATION

1. The Company in performing its obligations under this Agreement is acting independently, and not as part of a joint venture with the City, and not as an agent of the City, and the City shall have no responsibility or liability to third parties in connection with the Project, the Premises, the construction of the Improvements or the Company's Business Operations.

**2. THE COMPANY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, THEIR OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES (COLLECTIVELY REFERRED TO HEREIN AS "THE INDEMNITEES") FROM AND AGAINST CLAIMS SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND ATTORNEY'S FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR PHYSICAL DAMAGE TO PERSONAL OR REAL PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, SAVE AND EXCEPT FOR THE ACTUAL GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF ONE OR MORE OF THE INDEMNITEES, IN WHICH CASE ONLY THE INDEMNITEE COMMITTING ACTUAL NEGLIGENCE SHALL BE EXEMPTED FROM THE SCOPE OF THIS INDEMNITY AGREEMENT. THE COMPANY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT**

**SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.**

3. The Company's indemnification obligations include the payment of reasonable attorney's fees and expenses incurred by any of the above-named or described indemnitees in connection with the claims, suits, or causes of action.

4. The Company agrees to maintain casualty and liability insurance, workers' compensation insurance, and all other insurance as is deemed reasonably necessary by the City, in such amounts as is deemed reasonably necessary by the City, in order to protect the City's financial contributions made pursuant to this Agreement.

**G.  
DUTIES OF THE CITY**

1. Upon the Company's receipt of a certificate of occupancy from the City for the construction of the Improvements, the City agrees to provide to the Company, either directly or through the Richland Hills Development Corporation, an economic development grant sufficient to do the following:

a. Rebate to the Company the sum of \$5,000.00 for part of the Company's cost to construct the Austin Stone facade to the Improvements; and

b. Rebate to the Company all construction permit fees up to the sum of \$10,000.00; and

c. Rebate to the Company an amount equal to the amount paid by the Company for the 1/8 cent sales tax assessed by the Richland Hills Development Corporation. Such rebate shall be issued in January of each calendar year beginning January, 2013, and shall only apply to the amounts paid by the Company for the years 2012 through 2014.

2. The City represents that it currently has available sufficient funds necessary to fund the grants described above, and agrees to set aside those funds to satisfy the City's obligations under this Agreement. The parties recognize, however, that the City's authority to commit funds is subject to various legal limitations, and that the City's obligation to make the grants authorized herein is subject to such legal limitations. Therefore, the grants authorized herein shall be paid solely from funds which are lawfully available for such use. Under no circumstances shall the City's obligations hereunder be paid from the proceeds of bonds or other obligations of the City payable from ad valorem taxes, nor shall such obligations create any debt which would be invalid pursuant to any constitutional or statutory provisions. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any portion of the grants referred to herein until and unless lawfully available funds are available and

appropriated to make such payment during the budget year in which such grants are payable. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution, and any attempted pledge or encumbrance by the Company of the City's obligations hereunder to any third party, or any third party action to involuntarily assign such obligation to a third party, shall constitute a default by the Company under this Agreement, and shall render the City's obligations under this Agreement void.

3. Upon the Company's completion of its obligations hereunder, the City agrees to execute a Release of the Company acknowledging that the Company has fully complied with its obligations hereunder, and providing that this Agreement will thereafter impose no burden on the Premises, or impose any further obligation on any holder of any portion of the Premises.

## **H. GENERAL PROVISIONS**

1. **Notice.** Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

Notice address for the City:

City of Richland Hills  
Attention: City Manager  
3200 Diana Drive  
Richland Hills, Texas 76118

Notice address for the Company:

Buyers Barricades, Inc.  
3705 E. 1st. Street  
Fort Worth, Texas 76111

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

2. **No ownership by City officer.** It is the belief of both parties that no part of the Premises is owned or leased by a member of the City Council or by a member of the City Planning and Zoning Commission, or any other board or commission of the City having responsibility for approval of this Agreement.

3. **Compliance with law.** The Company shall comply with all applicable federal, state and local rules, regulations, ordinances, and laws in the construction of the Improvements and in the operation of the Business Operations.

4. **Assignment.** The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. The Company may not transfer or assign its obligations under this Agreement except with the prior written consent of the City after the City has been provided with information sufficient to establish, in the City's sole discretion, that the proposed transferee or assignee will comply with the Company's obligations hereunder, or otherwise adequately protect the City's respective interests, including the economic development interests of the City. Any such assignment of any portion of the Company's obligations hereunder shall not relieve the Company of liability for such obligations except upon the express agreement of the City to release the Company in writing, which approval shall be at the sole discretion of the City Council, based upon the creditworthiness and the financial ability of the assignee and such other factors as the City Council may deem relevant.

5. **Place of Performance and Venue.** This Agreement shall be construed under the substantive laws of the State of Texas, without reference to its choice of law provisions. It is to be performed in Tarrant County, Texas, and venue for any action arising under state law under this Agreement shall be the District Courts of Tarrant County, Texas. If any action relating to this Agreement is not properly brought in state court, venue shall be the United States District Court for the Northern District of Texas.

6. **Severability.** In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In such event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

7. **Independent Parties.** Nothing herein shall be construed as creating a partnership or joint enterprise between the City and the Company. Furthermore, the parties hereto acknowledge and agree that the doctrine of respondeat superior shall not apply between the City and the Company, nor between the City and any officer, director, member, agent, employee, contractor, subcontractor, licensee, or invitee of the Company.

8. **Authority of the City.** This Agreement was authorized by the City Council at its regular meeting on September 13, 2011.

9. **Authority of the Company.** The Company hereby warrants and represents to the City that the Company is duly authorized to entered into this Agreement, that it has taken all necessary steps to authorize this Agreement and that it has authorized Shelba Buyers, its President, to execute this Agreement on behalf of the Company.

10. **Section or Other Headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

11. **Attorney's Fees.** In the event any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its necessary and reasonable attorney's fees and expenses incurred by reason of such action.

12. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein.

13. **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by the parties to such amendment.

14. **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for nor against any party.

15. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

16. **Recording.** It is contemplated and agreed that this Agreement may be recorded in the deed records of Tarrant County, Texas.

17. **No Third Party Beneficiaries.** Except as expressly provided herein, nothing herein will be construed to confer upon any person other than the parties hereto any rights, benefits or remedies under or because of this Agreement.

18. **Covenants Run with the Property.** The provisions of this Agreement are hereby declared covenants running with the Premises and are fully binding on the Company and each and every subsequent owner or leasee, of the Premises, but only to the extent of such party's interest in the Premises. No assignment, sale, lease, or other transfer of all or any part of the Premises shall relieve the Company of the Company's liabilities and obligations hereunder except as provided in paragraph H.4. above.

19. **Mutual Assistance.** The parties hereto agree to take all reasonable measures which are

Signed this 13 day of September, 2011.

Buyers Barricades, Inc.

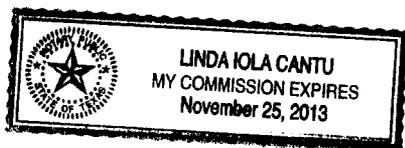
By: Shelba Buyers  
Name: Shelba Buyers  
Title: President

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF TARRANT   §

Before me, the undersigned authority, on this day personally appeared Shelba Buyers, who after first being by me duly sworn, acknowledged and stated the witness has executed the above and foregoing document for the purposes and consideration therein expressed, and in the capacity therein expressed, and with full authority to so act, on this, the 13 day of September, 2011.

Linda Cantu  
Notary Public in and for the State of Texas  
My commission expires: 11-25-2013

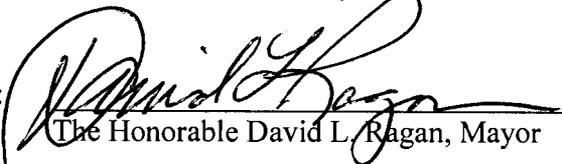


necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

20. **Recitals.** The recitals in this Agreement are incorporated into this Agreement and are intended to aid in the interpretation of this Agreement.

Signed this 13 day of September, 2011.

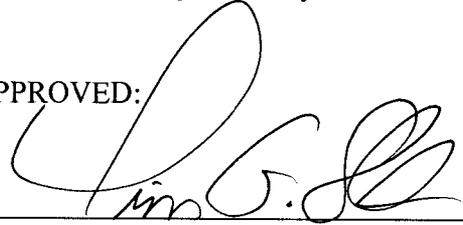
CITY OF RICHLAND HILLS, TEXAS

By:   
The Honorable David L. Ragan, Mayor

ATTEST:

  
Linda Cantu, City Secretary

APPROVED:

  
Tim G. Sralla, City Attorney

