

## AGENDA

Notice is hereby given of a meeting of the Board of Commissioners of Burkburnett to be held on **Monday, January 21, 2019 at 7:00 p.m.** at City Hall-Council Chambers, 501 Sheppard Road, Burkburnett, Texas for the purpose of considering the following agenda items. The Board of Commissioners may discuss and take action on any item on this agenda. The Board of Commissioners reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

The public may speak on items listed on the posted agenda. All persons desiring to address a specific agenda item must submit an "Appearance before the City Commissioners" form prior to the reading of the item to the City Clerk, Janelle Stahr. The Mayor will allow comments before each agenda item for which they have requested to be heard. Comments will be limited to three (3) minutes with a maximum two (2) minute extension following approval by a majority of the members of the Board of Commissioners.

**Item 1.** Mayor: Call meeting to order.

**Item 2.** Invocation- Ted Box, Church of Christ Minister.

**Item 3.** Pledge of Allegiance.

**Item 4. CONSENT AGENDA:**

A. Approval of Minutes from December 17, 2018, Regular Meeting

**Item 5.** Discuss and take any action necessary on Resolution Number 654.

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE BURKBURNETT DEVELOPMENT CORPORATION AND DOUG SMITH PROVIDING FOR THE PAYMENT OF ECONOMIC INCENTIVES IN RETURN FOR CONSTRUCTION AND OPERATION OF A CAR WASH WITHIN BURKBURNETT, TEXAS.

**Item 6.** Discuss and take any action necessary on Resolution Number 655.

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE BURKBURNETT DEVELOPMENT CORPORATION AND WHALEY PRODUCTS, INC. PROVIDING FOR THE PAYMENT OF ECONOMIC INCENTIVES IN RETURN FOR THE CREATION OF NEW JOBS WITHIN BURKBURNETT, TEXAS.

**Item 7.** Discuss and take any action necessary on Resolution Number 656.

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS, ORDERING A GENERAL ELECTION TO BE HELD ON MAY 4, 2019 TO ELECT THE MAYOR AND COMMISSIONERS FOR PLACE 1 AND PLACE 2; DESIGNATING THE POLLING PLACE AND PROVIDING DETAILS RELATING TO THE HOLDING OF SUCH ELECTION.

**Item 8.** Discuss and take any action necessary on appointing an alternate voting proxy for the Nortex Regional Planning Commission.

**Item 9.** Pursuant to the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, the Board of Commissioners may convene in Executive Session regarding the following matters:

- A. Section 551.074. Personnel Matters
  - a. Discuss and take any action regarding the retirement of Chief Stahr.
- B. Section 551.071 – Consultation with Attorney
  - a. Discuss and take any action necessary regarding instituting and implementing civil service in the Burkburnett Police Department.
  - b. Discuss and take any action necessary regarding possible tax laws affecting Texas municipalities.
  - c. Discuss and take any action necessary on Civil Action No. 7:18-cv-00081-O filed by Joshua S. Stimpson in the United States District Court in the Northern District of Texas.
- C. Section 551.072, Deliberation Regarding Real Property
  - a. Discuss and take any action necessary regarding utility easements located at 901 Sycamore.

**Item 10.** Reconvene to regular session and take action, if any, on matters discussed in Executive Session.

**Item 11.** Discuss and take any action regarding the process of hiring a Chief of Police.

**Item 12.** Public Comments.

The Board of Commissioners invites citizens to speak on any topic.

Please fill out an "Appearance Before City Commissioners" form in order to address the Commissioners and turn the form in prior to 7:00 p.m. to City Clerk, Janelle Stahr.

Public Comments are limited to five minutes. Time limits can be adjusted by the Mayor to accommodate more or fewer speakers.

Meetings Act to limit its response to a statement of specific factual information or reciting the City's existing policy on that issue.

**Item 13.** City Manager's report.

- Library Open House – January 26, 2019, 10:30 a.m. – 12:30 p.m.
- Polar Plunge with the North Texas Special Olympics – February 2, 2019, Boomtown Aquatic Center – Plunge 10:00 a.m.

**Item 14.** Commissioner's Comments.

Pursuant to Government Code Section 551.0415, City Commissioner Members may make a report about items of Community interest during a meeting of the governing body without having given notice of the report. Items of community interest include:

- \*Expressions of thanks, congratulations, or condolence;
- \*Information regarding holiday schedules;
- \*An honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in the status of the person's public office of public employment is not an honorary or salutary recognition for purposes of this subdivision;
- \*A reminder about an upcoming event organized or sponsored by the governing body;
- \*Information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; and
- \*Announcements involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

**Item 15.** Adjournment.

I, Janelle Stahr, City Clerk for the City of Burkburnett, Texas do hereby certify that I posted this agenda on the glass front door of the City Hall, facing the outside at 4:55 p.m. on January 18, 2019 in compliance with the Open Meeting Act Chapter 551.



Janelle Stahr, City Clerk

Posted 1/18/19 @ 4:55 p.m.

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodation or interpretive services must be made 72 hours prior to this meeting. Please contact the City Clerk's office at (940) 569-2263 for further information.

I certify that the attached notice of the Board of Commissioners was removed by me from the glass front door of City Hall on the \_\_\_\_\_ day \_\_\_\_\_ 2019.

\_\_\_\_\_  
Title: \_\_\_\_\_

## ***MINUTES***

### ***BOARD OF COMMISSIONERS***

The Board of Commissioners of the City of Burkburnett, Texas met in a regular meeting on Monday, December 17, 2018, at 7:00 p.m. in the Council Chambers of the City Hall, 501 Sheppard Road, Burkburnett, Texas. The meeting was open to the public with notice being given in compliance with the Open Meetings Act. The following Commissioners were present:

Carl Law	Mayor
Bill Lindenborn	Mayor Pro-Tem
Josh Andrajack	Commissioner
Randy Brewster	Commissioner
Jeremy Duff	Commissioner
Don Hardy	Commissioner
Marguerite Love	Commissioner

Others present: Lawrence Cutrone, City Manager; Trish Holley, Director of Administration; Mike Whaley, Director of Public Works; Richard Gordon, Executive Director of Burkburnett Development Corporation/Director of Planning; Janelle Stahr, City Clerk; and Ed Stahr, Chief of Police.

Item 1. Mayor Law called the meeting to order.

Item 2. Invocation was given by Commissioner Andrajack.

Item 3. The Pledge of Allegiance was led by Commissioner Duff.

Item 4. Consent Agenda.

- A. Approval of Minutes from November 19, 2018, Regular Scheduled Meeting and November 30, 2018, Special Called Meeting.

Motion was made by Commissioner Love seconded by Commissioners Duff to approve the Consent Agenda. Motion carried unanimously.

Item 5. Mike Whaley, Director of Public Works addressed the Mayor and Commissioners and stated last month the Board of Commissioners approved Resolution Number 652 which gave permission for NORTEX to submit the Texas Community Development Block Grant (TxCDBG) program application to the Texas Department of Agriculture for the Community Development Fund. There are new rules for the grant that requires the City to secure administration and engineering for the project prior to the grant being awarded. Mr. Whaley stated three (3) proposals for engineering services were received for the TxCDBG project. As required by the grant program, the proposals

were scored and ranked using the TxCDBG criteria sheets. Out of the three proposals submitted, Corlett, Probst, & Boyd scored the highest. Staff recommends securing Corlett, Probst, & Boyd to perform engineering services for the TxCDBG. The cost for engineering (covered by the grant) is \$32,000. Mr. Whaley stated this is contingent upon the City of Burkburnett being awarded the grant for the current funding cycle. The application will be submitted in Austin on February 5, 2019.

Motion was made by Commissioner Andrajack, seconded by Commissioner Hardy to award the engineering contract, pending receipt of the CDBG grant, to Corlett, Probst, & Boyd in the amount of \$32,000. Motion carried unanimously.

Item 6. Lawrence Cutrone, City Manager addressed the Mayor and Commissioners and stated Doug Green had been a citizen of Burkburnett for many years. As most know, Mr. Green played a big role in the children's lives of our community over many years as Santa. On December 5, 2018, at the Parks Board meeting there was a consensus of the board members to have a memorial plaque made to dedicate and name the playground equipment after Doug Green. The Parks Board is seeking permission from the Board of Commissioners to move forward with this request. Danny Cremeens, Park and Recreation Board Chairperson was available for questions from the Board. Mr. Cremeens stated he felt there was no better way to honor Mr. Green than dedicating the new playground to him.

Motion was made by Commissioner Lindenborn, seconded by Commissioner Duff to approve the Permian Park playground equipment be named and dedicated after Doug Green. Motion carried unanimously.

Item 7. Resolution Number 653 was presented in its entirety.

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ENTER INTO AN ANNUALLY RENEWABLE, NON-REVOLVING LINE OF CREDIT FOR THE PURPOSE OF PROVIDING CAPITAL IMPROVEMENTS FOR RIVER CREEK MUNICIPAL GOLF COURSE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

Mr. Cutrone addressed the Mayor and Commissioners and stated the River Creek Municipal Golf Course is in need of capital improvements. The City has reached out to Brandon Anderson with First Bank for reopening a line of credit that was previously settled. The line of credit is structured with a twelve-month maturity date, and it is backed by a CD. The current CD rate is set at 2.3%, and the interest rate of the line of credit would be placed at 3.3%. The City is proposing a line of credit set at \$166,000 with the payments conducted at annual maturity. Additionally, the City proposes annual payments of \$48,000 for the first three years, and then a final payment of \$35,305.89 to complete the transaction in the fourth year.

Motion was made by Commissioner Andrajack, seconded by Commissioner Duff to approve Resolution Number 653 as presented.

Ayes: Mayor Law; Commissioners Andrajack, Brewster, Duff, Lindenborn, and Love  
Abstained: Commissioner Hardy  
Motion carried.

Item 8. Resolution Number 654 was presented in its entirety, First Reading.

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE BURKBURNETT DEVELOPMENT CORPORATION AND DOUG SMITH PROVIDING FOR THE PAYMENT OF ECONOMIC INCENTIVES IN RETURN FOR CONSTRUCTION AND OPERATION OF A CAR WASH WITHIN BURKBURNETT, TEXAS.

Richard Gordon, Director of Planning, addressed the Mayor and Commissioners and stated Mr. Doug Smith, owner of Double D's and Scott's Shots in Burkburnett, has approached the Burkburnett Development Corporation (BDC) regarding financial incentives and proposed a development agreement in order to construct and operate a car wash located at 515 Sheppard Rd. Mr. Smith has requested funding in the amount of \$19,500 to remove the fuel storage tanks and remediate the site for new construction. This incentive payment would be secured in a performance agreement for two years based upon the execution and verification of the completed site work. Mr. Smith would be required to start construction of the car wash within a six-month time period following the site work completion date. The BDC board approved the incentive contract for submission to the Commissioners at the December 11, 2018 board meeting by a unanimous vote (5-0). Board members present and voting were Jones, Ellzey, Hopkins, Kwas, and McCleskey. Cremeens and Brantley were absent.

No action taken.

Item 9. Resolution Number 655 was presented in its entirety, First Reading.

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE BURKBURNETT DEVELOPMENT CORPORATION AND WHALEY PRODUCTS, INC. PROVIDING FOR THE PAYMENT OF ECONOMIC INCENTIVES IN RETURN FOR THE CREATION OF NEW JOBS WITHIN BURKBURNETT, TEXAS.

Mr. Gordon addressed the Mayor and Commissioners and stated Mr. Jay Whaley, President of the Whaley Products, LLC in Burkburnett has approached the BDC regarding financial incentives in order to construct a 10,000 square foot addition to their

manufacturing facility at 526 Charlotte Avenue. They plan to invest over \$1,000,000 into this expansion which will create 10-12 new full-time jobs. The total proposed incentive agreement amount is \$30,000 and requires the retention of 10 new employees for a two-year period and completion of the construction project. The BDC board approved the incentive contract for submission to the Commissioners at the December 11, 2018 board meeting by a unanimous vote (5-0). Board members present and voting were Ellzey, Jones, Kwas, Hopkins, and McCleskey. Cremeens and Brantley were absent.

No action taken.

Item 10. Mr. Cutrone addressed the Mayor and Commissioners and stated the City of Burkburnett Cemetery Board consists of seven (7) appointed members that serve two (2) year terms. Brenda Whaley and Paula Smith have terms that are ending. The Advisory Boards' volunteer application is on the City's Website under the Announcements section. The City did not receive any new applications related to these two positions. The staff has contacted Mrs. Whaley and Mrs. Smith, and both are willing to serve another term.

Motion was made by Commissioner Duff, seconded by Commissioner Andrajack to approve the reappointment of Paula Smith and Brenda Whaley to the Cemetery Board. Motion carried unanimously.

Item 11. Mr. Cutrone addressed the Mayor and Commissioners and stated the construction of the Burkburnett Justice Center is complete except for installation of the canopy signage. A punch list is currently being reviewed by Bundy Young Sims & Potter, Inc. Architects for the project closeout. The original contract amount for this project was \$4,062,000. There was a contingency of \$65,000 allotted for the project within the original contract. The contingency fund was expensed at the entire amount noted, and now a change order has been issued at \$19,756.49 for the remaining unpaid balance that is required for final approval and payout of the project.

Motion was made by Commissioner Lindenborn, seconded by Commissioner Hardy to approve the change order. Motion carried unanimously.

Item 12. No public comments.

Item 13. City Manager's report.

- City Manager -Meet & Greet -December 18, 2018, 5:00 – 7:00 p.m. @ City Hall Council Chambers
- City Hall Closed – December 24 & 25, 2018
- City Hall Closed – January 1, 2019
- Chamber of Commerce Banquet – January 19, 2019, @ 6:00 p.m. Community Center

Item 14. Commissioners Comments.

- Commissioner Andrajack asked that with the Burburnett Police Association seeking a petition for Civil Service he has asked the City Manager to help educate the Board of Commissioners to better understand what the Association is seeking and what it means to the citizens.
- Commissioner Andrajack stated that Governor Abbot is seeking new legislation that will significantly impact how cities, counties, and schools independently operate and limit the amount of property tax revenue cities can collect. He also stated he would like the Board of Commissioners to receive education on this from the city attorney, in addition to asking Representative James Frank to speak to the Board on this matter also.

Item 15. Motion was made by Commissioner Lindenborn, seconded by Commissioner Hardy to adjourn. Motion carried unanimously.

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Carl Law, Mayor

**ATTEST:**

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Janelle Stahr, City Clerk



**RESOLUTION NUMBER 654**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE BURKBURNETT DEVELOPMENT CORPORATION AND DOUG SMITH PROVIDING FOR THE PAYMENT OF ECONOMIC INCENTIVES IN RETURN FOR CONSTRUCTION AND OPERATION OF A CAR WASH WITHIN BURKBURNETT, TEXAS.**

**WHEREAS**, the Burkburnett Development Corporation (the “BDC”) is a Type B economic development corporation created by the City of Burkburnett, Texas (the “City”), a municipality with a population of less than 20,000;

**WHEREAS**, the BDC has proposed entering into an agreement with Doug Smith wherein the BDC will provide Doug Smith economic incentives as set forth in the Economic Development Agreement (the “Agreement”) attached to this resolution as Exhibit A for new business development;

**WHEREAS**, this resolution has been given two readings before the Board of Commissioners: one on December 17, 2018 and another on the date this resolution was approved; and

**WHEREAS**, this resolution was approved in a meeting which was open to the public and preceded by proper notice as required by Chapter 551 of the Texas Government Code.

**NOW, THEREFORE, BE IT RESOLVED** that the BDC is hereby authorized to provide economic incentives to Doug Smith as set forth in the Agreement.

**FURTHER RESOLVED** that the officers of the City are hereby authorized and directed to take such action as may be reasonably necessary to carry this Resolution into effect.

First reading on December 17, 2018

**APPROVED** on this 21st day January 2019.

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Carl Law, Mayor

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Janelle Stahr, City Clerk

**Performance Agreement between the Burkburnett Development Corp. and Doug Smith to Expand Business in Burkburnett, Texas**

This Performance Agreement (“Agreement”) is entered into on December \_\_, 2018, by and between **Doug Smith** (“Smith”) and **Burkburnett Development Corporation** (“BDC”).

WHEREAS, Smith currently owns and operates DD’s Convenience Store and Scott’s Shots in Burkburnett;

WHEREAS, Smith owns property at 515 Sheppard Road in Burkburnett (the “Property”) which currently contains remnants of a gas station, including a small building and fuel storage tanks;

WHEREAS, Smith desires to construct a car wash and will invest approximately \$400,000 in the Property;

WHEREAS, prior to construction and installation of the car wash equipment, Smith must remove fuel storage tanks from the Property (the “Project”);

WHEREAS, Smith has received a quote that the cost of such removal will be \$19,500;

WHEREAS, the BDC is a Type B economic development corporation;

WHEREAS, Type B economic development corporations can fund projects that include buildings and improvements that promote new business; and

WHEREAS, the BDC and Smith find that the construction and the installation of the car wash equipment will not occur unless Smith receives the support and investment from the City of Burkburnett and the use of economic development sales tax proceeds.

For the valuable consideration stated below, subject to the approval of the Burkburnett Board of Commissioners and the execution of this Agreement to memorialize and obligate funds provided hereunder in the form to be provided by the BDC, the parties agree as follows:

**1. Incentives:**

**Grant – BDC’s Total Maximum Obligation: \$19,500**

BDC agrees to provide to Smith up to \$19,500 to assist in the Project in the form of a grant. Smith must provide to the City a paid invoice showing payment by Smith for the removal of the fuel storage tanks from the Property and proof that the tanks have been removed. Within thirty (30) days of receipt of such paid invoice and proof of removal, BDC will reimburse Smith for the cost of the removal in an amount not to exceed \$19,500.

If Smith has not commenced construction of the car wash, not including the removal of the fuel tanks, within six (6) months of the date Smith receives of funds from the BDC under this Agreement, Smith will reimburse the BDC the full amount received within ten (10)

days of such six-month anniversary. In addition, if Smith sells the Property within two (2) years of the date Smith receives the funds from the BDC under this Agreement, Smith will reimburse the BDC the full amount received within ten (10) days of such sale.

2. **No Waiver.** No delay or omission by either party in exercising any right that may accrue to it pursuant to this Agreement will operate as a waiver of any other right that may accrue pursuant hereto.
3. **Disputes.** In the event of a dispute, (1) neither party will be entitled to attorney's fees incurred or paid in the enforcement of any provision of this Agreement, regardless of any provision authorizing attorney's fees in Texas Local Gov't Code § 271.153(a)(3) or other statute, and (2) sole venue for any action based on this Agreement or promise ancillary thereto shall be in Wichita County, Texas.
4. The BDC shall not be the guarantor of Company's success and shall not be liable for any failure to provide incentives not specifically set forth in this Agreement. Any representations by BDC and the City of Burkburnett concerning the availability of incentives hereunder are subject to the approval of the governing bodies entrusted by law to issue said incentives. Company has certified by the execution of the Agreement the truth of the representations by its representatives to the BDC and the City.
5. **Term.** The Term of this Agreement shall end upon the expiration of two (2) years following the date of that Smith receives the funds from the BDC for the fuel tank removal.
6. This Agreement and said attachments, if any, may only be amended, supplemented, modified or canceled by a duly executed written instrument agreed to by both parties.
7. **Notices.** All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof and confirmed by telephone by sender, (b) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (c) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

BDC:                                 Burkburnett Development Corporation  
  501 Sheppard Road  
  Burkburnett, Texas 76354

Company:                             Doug Smith  
  514 Sheppard Road  
  Burkburnett, Texas 76354

or addressed as such party may from time to time designate by written notice to the other parties.

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which commercial banks in the State of Texas are not open for business.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

**BURKBURNETT DEVELOPMENT CORP.**

**DOUG SMITH**

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

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

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**RESOLUTION NUMBER 655**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE BURKBURNETT DEVELOPMENT CORPORATION AND WHALEY PRODUCTS, INC. PROVIDING FOR THE PAYMENT OF ECONOMIC INCENTIVES IN RETURN FOR THE CREATION OF NEW JOBS WITHIN BURKBURNETT, TEXAS.**

**WHEREAS**, the Burkburnett Development Corporation (the “BDC”) is a Type B economic development corporation created by the City of Burkburnett, Texas (the “City”), a municipality with a population of less than 20,000;

**WHEREAS**, the BDC has proposed entering into an agreement with Whaley Products, Inc. wherein the BDC will provide Whaley Products, Inc economic incentives as set forth in the Economic Development Agreement (the “Agreement”) attached to this resolution as Exhibit A for the creation of ten (10) new jobs in Burkburnett;

**WHEREAS**, this resolution has been given two readings before the Board of Commissioners: one on December 17, 2018 and another on the date this resolution was approved; and

**WHEREAS**, this resolution was approved in a meeting which was open to the public and preceded by proper notice as required by Chapter 551 of the Texas Government Code.

**NOW, THEREFORE, BE IT RESOLVED** that the BDC is hereby authorized to provide economic incentives to Whaley Products, Inc as set forth in the Agreement.

**FURTHER RESOLVED** that the officers of the City are hereby authorized and directed to take such action as may be reasonably necessary to carry this Resolution into effect.

First reading on December 17, 2018

**APPROVED** on this 21st day January 2019.

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Carl Law, Mayor

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Janelle Stahr, City Clerk

**Performance Agreement between the Burkburnett Development Corp. and  
Whaley Products, Inc. to Expand Business in Burkburnett, Texas**

This Performance Agreement (“Agreement”) is entered into on December \_\_, 2018, by and between **Whaley Products, Inc.**, (“Company”), **Burkburnett Development Corporation** (“BDC”).

WHEREAS, Company currently operates a manufacturing facility at 526 Charlotte Avenue, Burkburnett, Texas (“Facility”);

WHEREAS, Company is in the process of expanding the Facility to increase its production capacity (“Project”);

WHEREAS, Company is investing over \$1,000,000 in the Project;

WHEREAS, through the Project, Company will create 10 to 12 new jobs in Burkburnett;

WHEREAS, the BDC is a Type B economic development corporation; and

WHEREAS, Type B economic development corporations can fund projects that include buildings and improvements that promote expanded business.

For the valuable consideration stated below, subject to the approval of the Burkburnett Board of Commissioners and the execution of this Agreement to memorialize and obligate funds provided hereunder in the form to be provided by the BDC, the parties agree as follows:

1. **Definitions.** As used in this Agreement, the following terms have the following meanings:

“Position” means a permanent, full-time employee working at least thirty-five hours per week at the Facility.

“Payroll Statement” means (i) a written statement setting forth the monthly, quarterly and annual (as applicable) payroll for each new Position created as a result of the Project and (ii) such other documentation as reasonably determined to be necessary by the BDC to verify the number of Positions created. The aforementioned documents may be redacted, modified, or summarized by Company as reasonably necessary to protect the privacy of individuals and prevent the disclosure of the Company’s confidential and/or proprietary information.

2. **Incentives:**

2.1. **Grant – BDC’s Total Maximum Obligation: \$30,000**

2.1.1. BDC agrees to provide to Company up to \$30,000 to assist in Project at Facility in the form of a grant if Company meets its obligations as set out below.

2.1.2. Upon presentation by Company to the BDC showing that Company has staffed new Positions as a result of the Project, the BDC will make a grant payment of \$3,000 per new Position of a maximum grant of \$30,000 to Company to be used toward the Project.

2.1.3. Documentation. Prior to receiving payment from the BDC pursuant to this Agreement, Company shall submit a Payroll Statement and other documentation as reasonably required by the BDC to verify and to adequately secure and document payments. Company will also provide the Payroll Statement at the one-year and two-year anniversaries of its receipt of any grant payment under this Agreement.

2.1.4. Maintenance and Operations. The BDC intends for any incentives in this Agreement to be used to ensure that Company continues to staff at least ten (10) of the new Positions in the City of Burkburnett for a period of at least two (2) years. If Company ceases to employ individuals to fill at least ten (10) of the new Positions or ceases operations at the Facility prior to two (2) years from the date of receipt of the incentive payment(s), Company shall, within thirty (30) days of such reduction or cessation of operation, repay the BDC the amount of the applicable incentive paid by the BDC to Company. The BDC will forgive \$1,500 per year per Position if Company maintains at least ten (10) of the new Positions at its Facility for a year. Company will repay to the BDC \$1,500 per Position per year for each new Position under ten (10) that is unstaffed. If Company ceases its operations in Burkburnett during the term of this Agreement, Company will repay the unforgiven amount. If Company staffs at least ten (10) new Positions for at least two years, the BDC will forgive the total grant amount. If, for example, Company staffs only eight new Positions at the one-year mark after receiving the grant payments, Company will owe City \$18,000 (\$1,5000 x 12 Positions).

### 3. **General Conditions:**

3.1. **Use of Proceeds.** BDC requires that Company agree to use all of the funds received from BDC pursuant to this Agreement for the Project, which includes training for each new Position.

3.2. **Compliance with Tex. Gov't Code § 2264.001.** BDC will require Company comply with Tex. Gov't Code §§ 2264.001 through 2264.101, Company does not and will not knowingly employ an undocumented worker during the term of this Agreement in violation of Texas or federal law. If, during the term of this Agreement, Company or a branch, division, or department of Company is convicted of a violation under 8 U.S.C. Section 1324a(f), Company shall repay the entire amount of the public subsidy with the addition of interest at the rate of 5% simple annual interest as required by Tex. Gov't Code § 2264.053, not later than the 120th day after the date the BDC notifies the business of the violation. This provision survives the expiration or other termination of this Agreement.

4. **No Waiver.** No delay or omission by either party in exercising any right that may accrue to it pursuant to this Agreement will operate as a waiver of any other right that may accrue pursuant hereto.
5. **Disputes.** In the event of a dispute, (1) neither party will be entitled to attorney's fees incurred or paid in the enforcement of any provision of this Agreement, regardless of any provision authorizing attorney's fees in Texas Local Gov't Code § 271.153(a)(3) or other statute, and (2) sole venue for any action based on this Agreement or promise ancillary thereto shall be in Wichita County, Texas.
6. The BDC shall not be the guarantor of Company's success and shall not be liable for any failure to provide incentives not specifically set forth in this Agreement. This Agreement represents the entire agreement between the parties.
7. **Term.** The Term of this Agreement shall end upon the expiration of the two (2) years as set forth in 2.1.4.
8. **Remedies.** Following the occurrence of any default during the Term of this Agreement, the obligations of non-defaulting party to the defaulting party shall terminate. Upon the occurrence of any default, non-defaulting party may by written notice to defaulting party provide defaulting party with 30 days to cure the default, and if defaulting party fails to cure the default within the 30 day period: (i) declare the entire amount of any obligation to the non-defaulting party then outstanding, together with interest (if any) then accrued thereon, to be immediately due and payable to the non-defaulting party, and/or (ii) terminate all obligations of non-defaulting party to the defaulting party unless and until non-defaulting party shall reinstate the same in writing; and/or (iii) reduce any claim to judgment; and/or (iv) exercise any and all rights and remedies allowed by law or equity.
9. This Agreement and said attachments, if any, may only be amended, supplemented, modified or canceled by a duly executed written instrument agreed to by both parties.
10. **Notices.** All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof and confirmed by telephone by sender, (b) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (c) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

BDC:                               Burkburnett Development Corporation  
501 Sheppard Road  
Burkburnett, Texas 76354

Company:                           Whaley Products, Inc.  
526 Charlotte  
Burkburnett, Texas 76354



or addressed as such party may from time to time designate by written notice to the other parties.

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which commercial banks in the State of Texas are not open for business.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

**BURKBURNETT DEVELOPMENT CORP.**

**WHALEY PRODUCTION, INC.**

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

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

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**RESOLUTION NUMBER 656**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS, ORDERING A GENERAL ELECTION TO BE HELD ON MAY 4, 2019 TO ELECT THE MAYOR AND COMMISSIONERS FOR PLACE 1 AND PLACE 2; DESIGNATING THE POLLING PLACE AND PROVIDING DETAILS RELATING TO THE HOLDING OF SUCH ELECTION.**

**WHEREAS**, in accordance with the Texas Election Code, a general election shall be held at the following place, in said City, and the following are hereby appointed officers for said election.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS, THAT:**

**SECTION 1.** A General Election be held on May 4, 2019, for which sufficient time elapses for the holding of an election after the passage of this Resolution. Said election shall be held to elect the Mayor and Commissioners for Place 1 and Place 2.

**SECTION 2.** The polling place for Precincts No. 205 and 206 will be held at the Burkburnett Community Center Building, 735 Davy, Burkburnett, Texas and shall be open from 7:00 a.m. to 7:00 p.m. on Election Day May 4, 2019 with Susan Morris as Presiding Judge and Kerry Bell as Alternate Presiding Judge, the said Presiding Judge shall appoint the necessary clerks to assist on Election Day.

**SECTION 3.** The Presiding Judge of said election shall serve as the Presiding Officer of the Early Voting Ballot Board in accordance with the Texas Election Code.

**SECTION 4.** Janelle Stahr, City Clerk, is hereby appointed the Early Voting Clerk and early voting shall be conducted at the City Clerk's office in City Hall, 501 Sheppard Road, Burkburnett, Texas in accordance with the Texas Election Code. Early voting shall begin on April 22, 2019, and end on April 30, 2019, and shall be conducted Monday through Friday during the regular business hours of the City Clerk's office which are from 8:00 a.m. to 5:00 p.m. with extended early voting hours on April 29, 2019 and April 30, 2019 from 7:00 a.m. to 7:00 p.m.

**SECTION 5.** Notice of posting and publishing of said election and the preparation of ballots for said election will be in accordance with the Texas Election Code.

**SECTION 6.** The Board of Commissioners of the City of Burkburnett shall canvass the election not earlier than the third day nor later than the eleventh day after said election in accordance with the Texas Election Code.

**PASSED AND APPROVED** on this 21<sup>st</sup> day of January 2019.

\_\_\_\_\_  
Carl Law, Mayor

**ATTEST:**

\_\_\_\_\_  
Janelle Stahr, City Clerk

**NORTEX REGIONAL PLANNING COMMISSION  
PROXY/ALTERNATE DESIGNATION  
2019**

These designations are the actions of our governing body.

Mayor Carl Law \_\_\_\_\_, is the designated representative from

The City of Burkburnett \_\_\_\_\_ (Membership/Entity).

Date: January 21, 2019 \_\_\_\_\_

In his/her absence, proxy is assigned as follows:

1. Lawrence Cutrone, City Manager \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Governing Body Signatures:

_____	_____
_____	_____
_____	_____
_____	_____

Please remit to:  
Jan Bowerman  
Nortex Regional Planning Commission  
P O Box 5144  
Wichita Falls, Texas 76307