

RESOLUTION 25-08

A RESOLUTION ADOPTING AN AGREEMENT BETWEEN THE MOUNT VERNON ECONOMIC DEVELOPMENT CORPORATION, MOUNT VERNON CITY COUNCIL, AND SAMANTHA DEAN, OWNER OF INFINITY TANS MT VERNON AN AGREEMENT TO FUND EXISTING BUSINESS STRUCTURE INCENTIVE ASSISTANCE FOR THE PROPERTY LOCATED AT 102 JACKSON STREET, SUITE 2 MT VERNON, TEXAS.

WHEREAS, the City of Mount vernon is a Type B economic development corporation as adopted by the citizens of Mount Vernon by election in 1994;

WHEREAS, the Council of the City of Mount Vernon provides oversight to the Mount Vernon Economic Development Corporation: and

WHEREAS, the City of Mount Vernon desire to assist in enhancement and upgrade with the improvement to commercial property in the community;

WHREEAS, the City of Mount Vernon desire to enter into and approve a funding agreement with Mount Vernon Economic Development Corporation and SAMANTHA DEAN, OWNER OF INFINITY TANS MT VERNON, located at 102 Jackson Street, Suite 2 Mt. Vernon, Texas:

Now, therefore BE IT RESOLVED BY THE CITY OF MOUNT VERNON, TEXAS THAT:

The City Council adopts and approve the agreement with SAMANTHA DEAN, OWNER OF INFINITY TANS MT VERNON, located at 102 Jackson Street, Suite 2 Mt. Vernon, Texas.

- **The EDC will make reimbursement payments, in the amount not to exceed \$12,000.00 Existing Business Incentive Assistance for purchase of a tanning unit and installation renovations.**

PASSED, APPROVED, AND ADOPTED this the 12th day of May, 2025.

Brad Hyman, Mayor

ATTEST:

Kathy Lovier Johnson, City Secretary

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This **ECONOMIC DEVELOPMENT PROGRAM AGREEMENT** ("**Agreement**") is entered into by and between the **CITY OF MOUNT VERNON ECONOMIC DEVELOPMENT CORPORATION**, an economic development corporation organized under the laws of the State of Texas, specifically, but not limited to Chapter 505 of the Texas Local Government Code (the "**MVEDC**"), and Samantha Dean, doing business as Infinity Tans Mt Vernon (the "**Grantee**"). The MVEDC and Grantee are collectively referred to as the "**Parties**".

RECITALS

The MVEDC and Grantee hereby agree that the following statements are true and correct and constitute the basis upon which the MVEDC and Grantee have entered into this Agreement:

A. Grantee leases and will operate a business in an existing building located at 102 Jackson Street, Mount Vernon, Texas (the "**Property**"), as a full service tanning spa.

B. In order to maximize the economic benefits that the Eligible Improvements can bring to the City of Mount Vernon, the MVEDC and Grantee desire to enter into this Agreement which will provide economic incentives for the creation of full-time employment of individuals at the Property.

C. In accordance with Res 14-03, attached hereto as Exhibit "A" and hereby made a part of this Agreement for all purposes, the MVEDC has established an economic development incentive policy and program pursuant to which the MVEDC will, on a case-by-case basis, offer economic incentive packages authorized by , Article III, Section 52-a of the Texas Constitution, Chapters 501, 502 and 505 of the Texas Local Government Code, and other applicable laws, that include monetary reimbursements and grants of public money for full-time employment of individuals at the Property (the "**Program**").

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

The MVEDC has found at a duly-called and legally-noticed public meeting that the recitals set forth above are incorporated herein and true and correct and form the basis upon which the Parties have entered into this Agreement.

2. DEFINITIONS.

In addition to terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

Affiliate means all entities, incorporated or otherwise, under common control with, controlled by or controlling Grantee. For purposes of this definition, "control" means fifty percent (50%) or more of the ownership determined by either value or vote.

Director means the director of the City of Mount Vernon Economic Development Corporation .

Effective Date has the meaning ascribed to it in Section 3.

Program has the meaning ascribed to it in Recital C.

Program Grant means the economic development grants paid by the MVEDC to Grantee in accordance with this Agreement and as part of the Program, not to exceed twelve thousand dollars (\$12,000) in purchasing a tanning unit and installation renovation reimbursement for Existing Business Structure Assistance.

Program Source Funds means an amount of MVEDC funds available for inclusion in the Program Grant that is payable pursuant to this Agreement, not to exceed twelve thousand dollars (\$12,000) in purchasing a tanning unit and installation renovation reimbursement for Existing Business Structure Assistance.

Property has the meaning ascribed to it in the Recital A.

Monthly Expense Report has the meaning ascribed to in Section 5.1

Monthly Payment has the meaning ascribed to it in Section 5.1.2.

Term has the meaning ascribed to it in Section 3.

3. **TERM.**

This Agreement shall be effective as of the later of the date of execution by the Parties or May 12, 2025 (the "**Effective Date**") and, unless terminated earlier in accordance with this Agreement, shall expire on the date as of which the MVEDC has paid all Program Grants required, or May 12, 2030, whichever occurs first (the "**Term**").

4. **OBLIGATIONS OF GRANTEE.**

4.1. **Establish and Maintain a Business at the Property**

In accordance with the terms and conditions of this Agreement, Grantee shall establish and maintain a business at the Property through the Term in order to receive all, or any portion, of the Program Grant.

4.1.1 Business Recruitment Incentive

a. On the Effective Date the MVEDC will grant to the Grantee the following: reimbursement for purchasing a tanning unit and installation renovation reimbursement for Existing Business Structure Assistance expenses encumbered or paid not to exceed a cumulative total of \$12,000.

4.1.2 Retention of Business throughout Term of Agreement

a. The entity must remain open to the public and continue generating taxable sales for the duration of the term or until it can be demonstrated that the business has generated revenues for the City and MVEDC equal to or greater than the total amount of incentives awarded, whichever is sooner. The Grantee may submit a report of City and MVEDC taxes paid at any time during the term of the agreement to indicate a return realized by the City and MVEDC. If the business is to cease operations or discontinue generating taxable sales, the owner must repay the amount of the incentives less the amount of revenue generated by taxable sales prior to closure.

5. CITY OBLIGATIONS.

5.1. Issuance of Program Grant for Jobs

The City will make payment of the Program Source Funds on the Effective Date for equipment and/or renovation expenses previously encumbered or paid. Thereafter, at the end of each month until 18 months following the Effective Date, the Grantee shall submit a new expense report to the Director showing all rental, equipment, and renovation expenses to date for which a reimbursement is requested, (the "**Monthly Expense Report**"). Each Monthly Expense Report shall become a supplemental part of this Agreement. The Director may request, and the Grantee shall produce, any information reasonably necessary to determine and verify that expenses have been encumbered or paid pursuant to the terms and conditions of this Agreement. The payment of Program Source Funds to Grantee shall be as follows:

5.1.1. On the Effective Date, the MVEDC shall pay to Grantee the amount shown in Section 4.1.1.a for each eligible expense shown to exist as shown on Exhibit "B";

5.1.2. Upon receipt of the Monthly Expense Report for the period ending May, 2027, the MVEDC will, within fifteen (15) days, pay to Grantee the amounts shown in Section 4.1.1.a. for each eligible expense (the "**Monthly Payment**").

5.1.3. Upon receipt of the Monthly Expense Report for each subsequent month of the agreement, the MVEDC will, within fifteen (15) days, pay to Grantee the amounts shown in Section 4.1.1.a. for each eligible expense added since the prior Monthly Payment.

6. **DEFAULT, TERMINATION AND FAILURE BY GRANTEE TO MEET VARIOUS DEADLINES AND COMMITMENTS.**

6.1 **Failure to Pay City of Mount Vernon, Texas Taxes.**

An event of default shall occur under this Agreement if any legally-imposed City of Mount Vernon, Texas ("City") taxes owed on the Property by Grantee or an Affiliate or arising on account of Grantee or an Affiliate's operations on the Property become delinquent and Grantee or the Affiliate does not either pay such taxes or follow the legal procedures for protest and/or contest of any such taxes. In this event, the MVEDC shall notify Grantee in writing and Grantee shall have sixty (60) calendar days to cure such default. If the default has not been fully cured by such time, the MVEDC shall have the right to terminate this Agreement immediately by providing written notice to Grantee and shall have all other rights and remedies that may be available to it under the law or in equity.

6.3. **Violations of City Code, State or Federal Law.**

An event of default shall occur under this Agreement if any written citation is issued to Grantee or an Affiliate due to the occurrence of a violation of a material provision of the City Code on the Property or on or within the Eligible Improvements (including, without limitation, any violation of the City's Building or Fire Codes and any other City Code violations related to the environmental condition of the Property; the environmental condition of other land or waters which is attributable to operations on the Property; or to matters concerning the public health, safety or welfare) and such citation is not paid or the recipient of such citation does not properly follow the legal procedures for protest and/or contest of any such citation. An event of default shall occur under this Agreement if the City is notified by a governmental agency or unit with appropriate jurisdiction that Grantee or an Affiliate, or any successor in interest thereto, any third party with access to the Property pursuant to the express or implied permission of Grantee or an Affiliate, or any a successor in interest thereto, or the City (on account of the Improvements or the act or omission of any party other than the City on or after the effective date of this Agreement) is in violation of any material state or federal law, rule or regulation on account of the Property, improvements on the Property or any operations thereon (including, without limitation, any violations related to the environmental condition of the Property; the environmental condition of other land or waters which is attributable to operations on the Property; or to matters concerning the public health, safety or welfare). Upon the occurrence of such default, the MVEDC shall notify Grantee in writing and Grantee shall have (i) thirty (30) calendar days to cure such default, or such shorter period of time if the MVEDC determines there to be an urgent

public necessity, or (ii) if Grantee has diligently pursued cure of the default but such default is not reasonably curable within thirty (30) calendar days, then such amount of time that the City reasonably agrees is necessary to cure such default. If the default has not been fully cured by such time, the MVEDC shall have the right to terminate this Agreement immediately by providing written notice to Grantee and shall have all other rights and remedies that may be available to under the law or in equity.

6.4. Knowing Employment of Undocumented Workers.

Grantee acknowledges that effective September 1, 2007, the MVEDC is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. The following requirements shall only apply to the Property and Eligible Improvements that are directly the subject of the Program Grant contained herein, and not otherwise. Grantee *hereby certifies that Grantee, and any branches, divisions, or departments of Grantee, does not and will not knowingly employ an undocumented worker, as that term is defined by Section 2264.001(4) of the Texas Government Code. In the event that Grantee, or any branch, division, or department of Grantee, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens):*

- *if such conviction occurs during the Term of this Agreement, this Agreement shall terminate contemporaneously upon such conviction (subject to any appellate rights that may lawfully be available to and exercised by Grantee) and Grantee shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the MVEDC, the aggregate amount of the Program Grants received by Grantee hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum; or*
- *if such conviction occurs after expiration or termination of this Agreement, subject to any appellate rights that may lawfully be available to and exercised by Grantee, Grantee shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the MVEDC, the aggregate amount of the Program Grants received by Grantee hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum.*

For the purposes of Section 6.4, "**Simple Interest**" is defined as a rate of interest applied to the aggregate amount of the Program Grants. This Section 6.4 does not apply to convictions of any subsidiary or affiliate entity of Grantee, by any franchisees of Grantee, or by a person or entity with whom Grantee contracts. Notwithstanding anything to the contrary herein, this Section 6.4 shall survive the expiration or termination of this Agreement.

6.5. General Breach.

Unless stated elsewhere in this Agreement, Grantee shall be in default under this Agreement if Grantee breaches any term or condition of this Agreement, including but

not limited to the provision of Section 4.1.2. In the event that such breach remains uncured after thirty (30) calendar days following receipt of written notice from the MVEDC referencing this Agreement (or, if Grantee has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than thirty (30) calendar days to cure, then such additional amount of time as is reasonably necessary to effect cure, as determined by both parties mutually and in good faith), the MVEDC shall have the right to terminate this Agreement immediately by providing written notice to Grantee.

7. **NO INDEPENDENT CONTRACTOR OR AGENCY RELATIONSHIP.**

It is expressly understood and agreed that Grantee shall not operate as an independent contractor or as an agent, representative or employee of the MVEDC. Grantee shall have the exclusive right to control all details and day-to-day operations relative to the Eligible Improvements, Property and any improvements thereon and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. Grantee acknowledges that the doctrine of *respondeat superior* will not apply as between the MVEDC and Grantee, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Grantee further agrees that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the MVEDC and Grantee.

8. **INDEMNIFICATION.**

GRANTEE, AT NO COST TO THE MVEDC, AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS ELECTED AND APPOINTED OFFICIALS, OFFICERS, ATTORNEYS, AGENTS SERVANTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO GRANTEE'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) GRANTEE BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT; OR (ii) ANY ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF GRANTEE, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS DUE OR RELATED TO OR ARISING FROM THE ELIGIBLE IMPROVEMENTS AND ANY OPERATIONS AND ACTIVITIES, INCLUDING EMPLOYMENT, ON THE PROPERTY OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT.

9. **NOTICES.**

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid, or by hand delivery:

CITY:

**City of Mount Vernon Economic
Development Corporation**

Attn: Economic Development Director
109 North Kaufman
P.O. Box 597
Mount Vernon, Texas 75457

GRANTEE:

**Samantha Dean, dba as
Infinity Tans Mt Vernon**

Address:
102 Jackson St Suite 2
P O Box 836
Mount Vernon, Texas 75457

**With Copies to (which shall not
constitute notice):**

Boyle & Lowry, L.L.P.
Attn: L. Stanton Lowry
4201 Wingren Dr., Suite 108
Irving, Texas 75062

10. ASSIGNMENT AND SUCCESSORS.

Grantee may assign, transfer or otherwise convey any of its rights or obligations under this Agreement to an Affiliate only upon the express written approval of the MVEDC and the Grantee, the Affiliate and the MVEDC first execute an agreement approved by the MVEDC Attorney under which the Affiliate agrees to assume and be bound by all covenants and obligations of Grantee under this Agreement. Grantee may also assign its rights and obligations under this agreement to a financial institution or other lender for purposes of granting a security interest in the Eligible Improvements and/or Property, provided that such financial institution or other lender first executes a written agreement with the MVEDC governing the rights and obligations of the MVEDC, Grantee and the financial institution or other lender with respect to such security interest approved by the MVEDC Attorney. Otherwise, Grantee may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the prior consent of the MVEDC, which consent may be withheld in the sole discretion of the MVEDC. Any attempted assignment without the MVEDC's prior consent shall constitute a breach and be grounds for termination of this Agreement and following receipt of written notice from the MVEDC to Grantee. Any lawful assignee or successor in interest of Grantee of all rights under this Agreement shall be deemed "Grantee" for all purposes under this Agreement.

11. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the City's codes and ordinances, as amended.

12. GOVERNMENTAL POWERS.

It is understood that by execution of this Agreement, the MVEDC does not waive or surrender any of its governmental powers or immunities that are outside of the terms, obligations, and conditions of this Agreement.

13. NO WAIVER.

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

14. VENUE AND JURISDICTION.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Franklin County, Texas or the United States District Court for the Eastern District of Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.

15. NO THIRD PARTY RIGHTS.

The provisions and conditions of this Agreement are solely for the benefit of the MVEDC and Grantee, and any lawful assign or successor of Grantee, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

16. FORCE MAJEURE.

It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, or other circumstances which are reasonably beyond the control or knowledge of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such requirement shall be extended for a period of time equal to the period such party was delayed.

17. INTERPRETATION.

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

18. SEVERABILITY CLAUSE. It is hereby declared to be the intention of the Parties that sections, paragraphs, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph or section of this Agreement shall be declared unconstitutional or illegal by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Agreement since the same would have been executed by the Parties without the incorporation in this Agreement of any such unconstitutional phrase, clause, sentence, paragraph or section. It is the intent of the Parties to provide the economic incentives contained in this Agreement by all lawful means.

19. CAPTIONS.

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

20. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Grantee, and any lawful assign and successor of Grantee, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both parties and approved by the MVEDC in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

21. 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.

EXECUTED as of the last date indicated below:

MVEDC:

GRANTEE: Infinity Tans Mt Vernon:

By: _____
Mark Sachse
Board President, MVEDC

By: _____
Samantha Dean, Owner

Date: _____

Date: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

SWORN TO AND SUBSCRIBED BEFORE ME on the _____ day of _____, 2025, by _____, _____ on behalf of Infinity Tans Mt Vernon.

Notary Public in and for the State of Texas

**MOUNT VERNON ECONOMIC
DEVELOPMENT CORPORATION**

By: _____
President
Mount Vernon Economic
Development Corporation

Date: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
L. Stanton Lowry
MVEDC Attorney

EXHIBITS

“A” – City of Mount Vernon Resolution No. 14-03, establishing the Program

“B” – Application

“C” – City of Mount Vernon Resolution No. 16-03, approving this Economic Development Program Agreement