

RESOLUTION NO. R21-018

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH AMERICAN TRAILER WORLD CORP.; FINDING THAT SUCH AGREEMENT AND GRANT CONSTITUTES A PROGRAM TO MAKE GRANTS AND LOANS OF PUBLIC MONEY PURSUANT TO SECTION 380.001 OF THE TEXAS LOCAL GOVERNMENT CODE TO PROMOTE ECONOMIC DEVELOPMENT AND TO STIMULATE BUSINESS AND COMMERCIAL ACTIVITY WITHIN THE TOWN; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the “City”) is a home rule city operating under and pursuant to Article 11, Section 5 of the Texas Constitution and its Home Rule Charter; and

WHEREAS, the City Council of the Town of Addison is authorized and empowered pursuant to Section 380.001 of the Texas Local Government Code to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the City, to promote state or local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, Addison has established a program under and pursuant to Section 380.001 of the Texas Local Government Code for making a grant of public money, and such program is established to promote economic development within the City and to stimulate business and commercial activity in the City; and

WHEREAS, the City Council has determined and hereby determines that making an economic development grant to the Company in accordance with this Agreement will further the objectives of the City, will benefit the City and the City’s inhabitants, and will promote local economic development and stimulate business and commercial activity in the City.

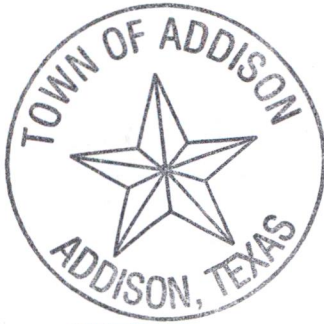
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. The Economic Development Program Grant Agreement between the Town of Addison and American Trailer World Corp., attached hereto as **Exhibit A** and incorporated herein, is hereby approved. The City Manager is authorized and empowered to execute the said Agreement on behalf of the City and to take all steps necessary to carry out the terms thereof.

SECTION 3. This Resolution shall take effect from and after its date of adoption.


DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the **13th** day of **APRIL** 2021.



TOWN OF ADDISON, TEXAS


Lee Chow, Mayor

ATTEST:


Irma Parker, City Secretary

APPROVED AS TO FORM:

Brenda N. McDonald, City Attorney

ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT

This Economic Development Program Grant Agreement ("Agreement") is made and entered into by and between American Trailer World Corp., a Delaware corporation ("ATW" or "Company"), and the Town of Addison, Texas ("Addison" or the "City"), a Texas home rule municipality, for the purposes and consideration stated below (ATW and the City are sometimes referred to herein together as the "Parties" and individually as a "Party").

WHEREAS, ATW manufactures and sells, among other things, professional grade trailers and truck beds and consumer grade trailers, as well as enclosed trailers; and

WHEREAS, ATW desires to relocate its administrative headquarters to Addison in approximately 26,000 square feet of space at 14131 Midway Road (the "Premises"); and

WHEREAS, ATW intends to spend an estimated \$2,200,000.00 in tenant improvements and other office space expenditures within the Premises; and

WHEREAS, during the term of this Agreement and as set forth herein, ATW intends to and will use the Premises as its administrative headquarters location ("Headquarters"); and

WHEREAS, ATW anticipates that, from and after the date of occupation of the Premises, and at all times thereafter relevant to, this Agreement, it will employ at least 60 full time equivalent employment positions with an average annual wage of \$125,250.00 whose home base for work is the Premises; and

WHEREAS, in connection with its lease and occupancy of the Premises, ATW has asked the City to provide an economic development grant that will help it defray a portion of the costs it will incur in commencing the improvement and occupancy of Premises; and

WHEREAS, the City is authorized by Section 380.001, Tex. Loc. Gov. Code, to establish and provide for the administration of programs for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City, and this Agreement constitutes such a program for promoting and retaining economic development within the City; and

WHEREAS, the City has determined that making an economic development grant to ATW in accordance with this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants, and will promote local economic development and stimulate business and commercial activity within the City.

NOW, THEREFORE, for and in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the City and ATW do hereby agree as follows:

Section 1. Findings. The findings set forth above are incorporated as if fully set forth herein.

Economic Development Program Grant Agreement
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Section 2. Term.

This Agreement shall be effective as of the last date of execution hereof as evidenced by the date next to each signature to this Agreement (the "Effective Date") and will continue in effect from the Effective Date through the date that represents the fifth anniversary of the date ATW obtains a final certificate of occupancy for the Premises; subject, however, to the earlier termination of this Agreement in accordance with the terms of this Agreement (the "Term").

Section 3. Program Grant.

Subject to ATW's satisfaction of and compliance with all of the terms and conditions of this Agreement, including without limitation the requirements set forth in Section 4 below, the City agrees to pay to ATW a Program Grant in the maximum amount of Seventy-Six Thousand and NO/100 Dollars (\$76,000.00) to be paid in three installments as provided in Section 4 below.

The Grant payments made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grant unless the City appropriates funds to make such payment during the budget year in which the Grant is payable; provided that during the Term of this Agreement the City agrees that it will take such steps as are within its power to appropriate funds each year estimated to equal the amount of Grants to be paid the Company for the ensuing fiscal year. 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.

Section 4. Conditions to Grant Payments.

The City's obligation to make the Grant payments shall be conditioned upon ATW's compliance with and satisfaction of all of the terms and conditions of this Agreement, including without limitation, each of the conditions set forth below:

(a) First Grant Payment: The First Grant Payment of Twenty-five Thousand, Three Hundred Thirty-Three and 33/100 Dollars (\$25,333.33) shall be paid by the City to ATW within 30 days after the submission of a request for payment and the delivery to the City of all of the following to the reasonable satisfaction of the City:

1. An executed copy of the lease by ATW for the approximately twenty-six thousand (26,000) square feet of space at the Premises; and
2. A copy of a certificate of occupancy issued by the Town of Addison for the Premises; and

3. An executed affidavit in a form reasonably approved by the City attesting that the Company is occupying the Premises and has made a capital investment (including furniture, fixtures, and equipment) of a minimum of Two Million, Two Hundred Thousand and NO/100s Dollars (\$2,200,000.00) on and/or within the Premises; and
 4. A copy of an official employee report submitted to the Texas Workforce Commission demonstrating that the Company currently employs 60 employees with an average annual wage of \$125,000 whose home base for work is the Premises.
- (b) Second Grant Payment: The Second Grant Payment of Twenty-Five Thousand, Three Hundred, Thirty-Three and 33/100 Dollars (\$25,333.33) shall be paid by the City to ATW within 30 days after the submission of a request for payment and the delivery to the City of all of the following to the reasonable satisfaction of the City:
1. An executive affidavit in a form reasonably approved by the City attesting that the Company has occupied the Premises for at least twelve (12) consecutive months; and
 2. A copy of an official employee report submitted to the Texas Workforce Commission demonstrating that the Company currently employs 60 employees with an average annual wage of \$125,000 whose home base for work is the Premises.
- (c) Third Grant Payment: The Third Grant Payment of Twenty-Five Thousand, Three Hundred, Thirty-Three and 33/100 Dollars (\$25,333.33) shall be paid by the City to ATW within 30 days after the submission of a request for payment and the delivery to the City of all of the following to the reasonable satisfaction of the City:
1. An executive affidavit in a form reasonably approved by the City attesting that the Company has occupied the Premises for at least twenty-four (24) consecutive months; and
 2. A copy of an official employee report submitted to the Texas Workforce Commission demonstrating that the Company currently employs 60 employees with an average annual wage of \$125,000 whose home base for work is the Premises.

Notwithstanding anything contained herein to the contrary or any other provision of this Agreement, the Program Grant payment (and/or any portions thereof) shall not be due and payable, and this Agreement may be terminated by the City (that is, without any opportunity for cure by ATW), if ATW fails to timely comply with and satisfy to the City's reasonable satisfaction any of the conditions to each of the Program Grant payments (and/or any portions thereof) as set forth in this Section 4, above. The City's fiscal year begins October 1st and ends September 30th.

Therefore, the Company shall submit written requests for economic development grant payments accrued during that time not later than August 31st of each year. In any year, if the Company fails to request the Program Grant payments as set forth above, the City shall have no obligation to make such payment to the Company and the Company will have forever forfeited the right to receive such payment.

Section 5. Default.

(a) **Event of Default by the Company.** If, during the Term of this Agreement the Company breaches any of the terms or conditions of this Agreement or fails to maintain any conditions of the Grant payments, then the Company shall be in default ("Event of Default"). In the event the Company defaults in its performance, then the City shall give the Company written notice of such default, and if the Company has not cured any default within sixty (60) days of said written notice (provided that if such default cannot reasonably be cured in 60 days, then the Company shall have a reasonable time to cure such default so long as it has commenced to cure within such 60 days and is diligently pursuing the cure of the same), this Agreement may be terminated by the City. In the event of default by the Company and the continuation of such default for sixty (60) days (provided that if such default cannot reasonably be cured in 60 days, then the Company shall have a reasonable time to cure such default so long as it has commenced to cure within such 60 days and is diligently pursuing the cure of the same) after the written notice set forth above, the City shall solely have the following remedy:

(i) to nullify Section 3 of this Agreement and immediately seek reimbursement of any and all Grant Payments paid to the Company.

(b) **Event of Default by the City.** Upon the occurrence of default by the City, the Company shall give written notice of such default, and if City has not cured the default within thirty (30) days within said written notice (provided that if such default cannot reasonably be cured in 60 days, then the City shall have a reasonable time to cure such default so long as it has commenced to cure within such 60 days and is diligently pursuing the cure of the same), this Agreement may be terminated by the Company and the Company shall have the right to seek specific performance of this Agreement as its sole and exclusive remedy (with any termination of this Agreement not terminating the City's obligations for which the Company seeks specific performance).

Section 6. Termination; Reimbursement.

This Agreement shall terminate without notice or demand upon the occurrence of any one of the following:

(a) the execution by both Parties of a written agreement terminating this Agreement; or

- (b) as otherwise provided for in this Agreement, including as set forth in Section 5, above; or
- (c) the expiration of the Term; or
- (d) at the option of either party (the "non-breaching party") in the event the other party (the "breaching party") breaches or fails to comply with any term, condition, or provision of this Agreement and such breach or failure is not cured or remedied to the reasonable satisfaction of the non-breaching party within sixty (60) days after written notice thereof (provided that if such default cannot reasonably be cured in 60 days, then such party shall have a reasonable time to cure such default so long as it has commenced to cure within such 60 days and is diligently pursuing the cure of the same), from the non-breaching party to the breaching party;
- (e) if ATW suffers an Event of Bankruptcy or Insolvency which is not dismissed within 90 days; or
- (f) at the City's option, if any taxes or fees, owed by ATW to the City or the State of Texas shall become delinquent after all notice and cure periods provided above (provided, however, that ATW retains the right to timely and properly protest and contest any such taxes or fees, and the City's right to terminate this Agreement shall be suspended during such protest and contest period).

If this Agreement is terminated pursuant to subsection (d), subsection (e), or subsection (f) of this Section, ATW shall promptly (but in any event within thirty (30) days of the date of termination) reimburse and repay to the City a sum equal amount of Grant payment made by the City up to the date of termination.

Section 7. Representations by the City.

The City represents that the City is a home rule Texas municipal corporation and it has the power to enter into this Agreement and to carry out its obligations hereunder. However, notwithstanding any other provision of this Agreement, it is understood and expressly agreed by ATW that the City does not warrant or guarantee that the Program Grant payment (and any part thereof) as described herein will be upheld as valid, lawful, enforceable or constitutional in the event the statutory or other authority for the same or the City's use thereof is challenged by court action or other action or proceeding (including any action or proceeding involving the Texas Attorney General). In the event such court or other action or proceeding related to the legality of this Agreement and the providing of the Program Grant (or any part thereof) is instituted, the Parties shall defend or respond to such action or proceeding at their respective expense. Should such litigation, action or other proceeding result in a determination that this Agreement or the payment of the Program Grant (or any part thereof) was or is prohibited under federal, state or local law (including any constitutional or charter provision), rule or regulation, and so result in the loss of the Program Grant as provided herein, ATW shall have no recourse against the City or any

of its officials, officers, employees, agents, or volunteers, past or present, and ATW shall promptly repay to the City the Program Grant payment previously made to ATW by the City.

Section 8. Representations and Warranties by ATW

ATW represents and warrants, as of the date hereof that:

- (a) ATW is a corporation organized and validly existing under the laws of the State of Delaware and is qualified to do business in the State of Texas, has the legal capacity and the authority to enter into and perform its obligations under this Agreement, and the same shall be true and accurate at all times in connection with this Agreement;
- (b) The execution and delivery of this Agreement and the performance and observance of its terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement, and this Agreement is not in contravention of ATW's articles of formation or regulations, or any agreement or instrument to which ATW is a party or by which it may be bound as of the date hereof;
- (c) ATW has the necessary legal ability to perform its obligations under this Agreement;
- (d) No litigation or governmental proceeding is pending, against ATW which may result in a material adverse change in ATW's business, properties or operations sufficient to jeopardize ATW as a going concern; and
- (e) This Agreement constitutes a valid and binding obligation of ATW, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

Section 9. Entire Agreement; Changes and Amendments.

This Agreement represents the entire and integrated agreement between the City and ATW with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of each of the City and ATW.

Section 10. Successors and Assigns; No Third Party Beneficiaries.

ATW shall not, and has no authority to, assign, sell, pledge, transfer, encumber, or otherwise convey (any of the foregoing, and the occurrence of any of the foregoing, a "Conveyance") in any manner or form whatsoever (including by operation of law, by merger, or otherwise) all or part of its rights and obligations hereunder without the prior written approval of the City, which may be withheld in the City's sole discretion. Any Conveyance of any kind or by any method without the

City's prior written consent shall be null and void. Notwithstanding anything to the contrary, a merger or sale of substantially all of ATW's assets to an entity who continues to operate at the Headquarters in compliance with this Agreement is permitted and shall not require the City's consent; however, ATW shall give prompt notice of any such occurrence.

Any Conveyance approved by the City shall be expressly subject to all of the terms, conditions and provisions of this Agreement. In the event of any such Conveyance approved by the City, ATW shall obtain a written agreement (the "Assumption Agreement") from each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed whereby each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed agrees to be bound by the terms and provisions of this Agreement.

This Agreement shall be binding on and inure to the benefit of the Parties, their respective permitted successors and permitted assigns. This Agreement and all of its provisions are solely for the benefit of the Parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Section 11. Notice.

Any notice, statement and/or report required or permitted to be given or delivered shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the third business day following the date of mailing. Addresses for any such notice, statement and/or report hereunder are as follows:

To the City:

Town of Addison, Texas
5300 Belt Line Road
Dallas, Texas 75254
Attention: City Manager

To American Trailer World Corp:

ATW
14131 Midway Road
Addison, Texas 75001
Attention: Pramod Raju, EVP and CFO

And to:
ATW Legal Department
950 I-30 East
Mt. Pleasant, Texas 75455

Section 12. Applicable Law; Venue.

This Agreement is subject to the provisions of the Charter and ordinances of the City, as amended or modified. This Agreement shall be construed under, governed by and is subject to the laws (including the constitution) of the State of Texas, without regard to choice of law rules, and all obligations of ATW and the City created by this Agreement are performable in Dallas County, Texas. Venue for any suit, action or proceeding under this Agreement shall lie exclusively in Dallas County, Texas. Each party hereby submits to the exclusive jurisdiction of the courts in Dallas County, Texas for purposes of any such suit, action, or proceeding hereunder. Each party waives any claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that proceeding is improper.

Section 13. Legal Construction/Partial Invalidity of Agreement.

The terms, conditions and provisions of this Agreement are severable, and in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

Section 14. Miscellaneous.

- (a) The Recitals to this Agreement are incorporated into this Agreement and made a part hereof for all purposes.
- (b) Pursuant to Texas Government Code, Chapter 2264 (entitled "Restrictions on Use of Certain Public Subsidies"), ATW certifies that neither ATW, nor any branch, division, or department of ATW, knowingly employs, or will knowingly employ, an undocumented worker (as the term "undocumented worker" is defined in Section 2264.001 of the said Chapter 2264, Tex. Gov. Code) in connection with the Premises, the Services provided by ATW at the Premises, or this Agreement. ATW agrees that if, during the term of this agreement and after it receives any payment or funds from the City pursuant to this Agreement, ATW, or a branch, division, or department of ATW, is convicted of a violation under 8 U.S.C. Section 1324a(f), ATW shall repay the amount of all Grant funds paid by the City to ATW not later than the 120th day after the date the City notifies ATW of the violation.
- (c) Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

(d) Except as set forth in or otherwise limited by this Agreement, the remedies and rights set forth in this Agreement: (a) are and shall be in addition to any and all other remedies and rights either party may have at law, in equity, or otherwise, (b) shall be cumulative, and (c) may be pursued successively or concurrently as either party may elect. The exercise of any remedy or right by either party shall not be deemed an election of remedies or rights or preclude that party from exercising any other remedies or rights in the future. All waivers must be in writing and signed by the waiving party, and the City's waiver of any right, or of ATW's breach, on one or more occasions will not be deemed a waiver on any other occasion. The City's failure to enforce or pursue any of its rights under or any provision of this Agreement shall not be or constitute a waiver of its rights or provision and shall not prevent the City from enforcing or pursuing that right or provision or any other right under or provision of this Agreement in the future. No custom or practice arising during the administration of this Agreement will waive, or diminish, the City's rights hereunder or to diminish the City's right to insist upon strict compliance by ATW with this Agreement.

(e) This Agreement is not confidential information and may be disclosed to the public.

(f) Any of the representations, covenants, and obligations of the Parties hereto, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration.

(g) It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership, joint venture, joint enterprise, or other relationship between or among the Parties.

(h) The undersigned officers and/or agents of the Parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

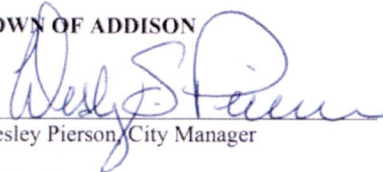
(i) The City agrees that with respect to this Agreement, no liability shall arise in favor of the City against any officer, director, member, agent or employee of ATW, but the City shall look solely to the assets of ATW for satisfaction of ATW's duties, obligations and liabilities arising under or in connection with the Agreement.

(SIGNATURES ON NEXT PAGES)

EXECUTED this 14th day of APRIL, 2021.

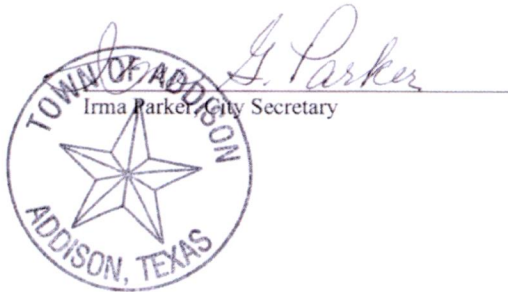
TOWN OF ADDISON

Resolution No. R21-018
April 13, 2021


Wesley Pierson, City Manager

ATTEST:

APPROVED AS TO FORM:



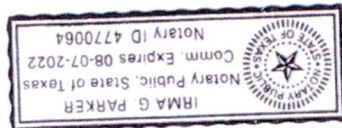
Brenda N. McDonald, City Attorney


STATE OF TEXAS

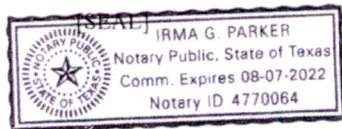
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COUNTY OF DALLAS

This instrument was acknowledged before me on the 14th day of APRIL, 2021, by Wesley S. Pierson, City Manager of the Town of Addison, Texas, on behalf of the Town.




Notary Public, State of Texas



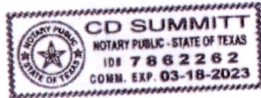
EXECUTED this 8th day of April, 2021.

American Trailer World Corp., a Delaware corporation

By: [Signature]
Name Printed: Pranod Raju
Title: CFO

STATE OF TEXAS §
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COUNTY OF DALLAS §

This instrument was acknowledged before me on the 8th day of APRIL 2021,
by PRANOD RAJU CFO of American Trailer World Corp. on
behalf of the corporation.



[Signature]
Notary Public, State of Texas

[SEAL]