

RESOLUTION NO. 2018-11-92

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, RATIFYING THE TERMS AND CONDITIONS OF A GRANT BY AND BETWEEN CEDAR VALLEY COLLEGE AND THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING TO ENTER INTO A FORMAL AGREEMENT; PROVIDING AND EFFECTIVE DATE.

WHEREAS, pursuant to Lancaster Economic Development Corporation (hereinafter "LEDC") Resolution 2018-03 which was passed and approved on the 1st of November, 2018 by the Board of Directors of the Lancaster Economic Development Corporation (LEDC), offering an incentive grant to Cedar Valley College (CVC); and

WHEREAS, CVC is applying for a \$150,000 grant in order to develop a state-of-the-art Heating Ventilation Air Conditioning training facility requiring a matching grant of \$150,000; and

WHEREAS, CVC has requested a grant for assistance with the matching funds associated with the development of a new state-of-the-art HVAC training center in the amount of \$150,000; and

WHEREAS, the City of Lancaster recognizes how important skills development is to the vitality, growth, and economic development of Lancaster; and

WHEREAS, the City of Lancaster and LEDC recognize the importance of their continued role in economic development and skills development in the community of Lancaster; and

WHEREAS, pursuant to Texas Local Government Code, Chapter 501, et seq, as amended, LEDC, as a non-profit corporation, in accordance with the Act, shall promote development and redevelopment within the municipality and its vicinity and create new manufacturing and industrial facilities, distribution centers, warehouse facilities and related facilities, through the use of a sales tax, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future; and

WHEREAS, pursuant to the City's Charter, the Act and applicable Texas Statutes, the City has the authority to enter into agreements as the City considers necessary or convenient to implement economic development in Lancaster, Texas; and

WHEREAS, pursuant to the Act and the bylaws of the Lancaster Economic Development Corporation (LEDC) has authority to enter into agreements as LEDC considers necessary or convenient to implement economic development in Lancaster, Texas.

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

SECTION 1. The City Council ratifies the November 1, 2018 actions of the Board of Directors of the Lancaster Economic Development Corporation approving a grant to Cedar Valley College (CVC).

SECTION 2. The City Council authorizes Lancaster Economic Development Corporation (LEDC) to contribute \$150,000 for skill development provided by Cedar Valley College, which is attached hereto and incorporated herein as "Exhibit A".

SECTION 3. This resolution shall be effective from and after its passage as provided by law.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 12th day of November, 2018.

RESOLUTION NO. 2020-10-79

A RESOLUTION OF THE CITY COUNCIL OF LANCASTER TEXAS, (LEDC), RATIFYING THE TERMS AND CONDITIONS OF AN AMENDMENT TO A PERFORMANCE AGREEMENT BETWEEN LANCASTER ECONOMIC DEVELOPMENT CORPORATION OF LANCASTER TEXAS (LEDC) AND DALLAS COLLEGE, FORMERLY CEDAR VALLEY COLLEGE (CVC), IN SUPPORT OF A GRANT TO CVC FROM FUNDS COLLECTED FROM ½ OF 1 PERCENT ADDITIONAL SALES AND USE TAX FOR THE DEVELOPMENT OF NEW HEATING, VENTILATION, AIR CONDITIONING (HVAC) PROGRAM FROM SEPTEMBER 30, 2020 TO SEPTEMBER 30, 2021, AS AUTHORIZED BY STATE LAW.

WHEREAS, the City of Lancaster and the Lancaster Economic Development Corporation (LEDC) recognizes the importance of business and community development to the vitality and growth of Lancaster; and

WHEREAS, on November 1, 2018, the LEDC approved the terms of a Performance Agreement between the City of Lancaster and Cedar Valley College related to a grant to assist in the creation of an HVAC program at the school; and

WHEREAS, on November 12, 2018 the City Council ratified the terms of this Performance Agreement authorized the Lancaster Economic Development Corporation to enter into the agreement by Resolution No. 2018-11-91; and

WHEREAS, the creation of the program and completion of the building were delayed due to the COVID-19 pandemic and related social distancing guidelines adopted to help prevent the spread of the disease; and

WHEREAS, CVC is requesting to extend the term of the Performance Agreement related to the grant from September 30, 2020 to September 30, 2021 to allow completion of the facility and to amend the agreement with Dallas College (successor-in-interest to Cedar Valley College); and

WHEREAS, pursuant to Lancaster Economic Development Corporation Resolution 2020-09-01 which was passed and approved on the 24th of September 2020 by the Board of Directors of the LEDC, extending the completion deadline from September 30, 2020 to September 30, 2021; and

WHEREAS, the Board of Directors of LEDC are responsible for the review and evaluation of Type A incentive applications; and

WHEREAS, the board of LEDC is also responsible for recommending modifications of existing agreements to the Lancaster City Council for review and approval.

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

SECTION 1. The City Council of the City of Lancaster, Texas ratifies the September 24, 2020 actions of the Board of Directors of the LEDC an amendment to the Performance Agreement between CVC and the City of Lancaster related to creation of an HVAC program at CVC.

SECTION 2. The City Council authorizes LEDC to amend the Performance Agreement with CVC, wich is attached hereto and incorporated herein as Exhibit "A".

SECTION 3. That this resolution shall take effect immediately from and after its passage and it is so resolved.

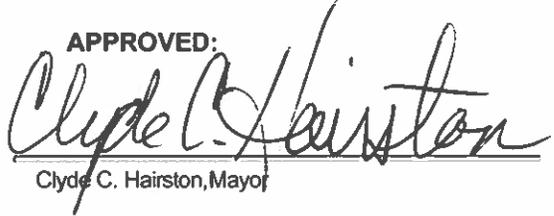
DULY PASSED and approved by the City Council of the City of Lancaster, Texas on this the 26th day of October, 2020.

ATTEST:



Sorangel O. Arenas, City Secretary

APPROVED:



Clyde C. Hairston, Mayor

APPROVED AS TO FORM:



David T. Ritter, City Attorney

RESOLUTION NO. 2020-10-79

ATTEST:



Sorangel O. Arenas, City Secretary

APPROVED:



Clyde C. Hairston, Mayor

APPROVED AS TO FORM:



David T. Ritter, City Attorney

RESOLUTION NO. 2018-03

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION OF LANCASTER TEXAS, (LEDC), IN SUPPORT OF A GRANT TO CEDAR VALLEY COLLEGE (CVC) FROM FUNDS COLLECTED FROM ¼ OF 1 PERCENT ADDITIONAL SALES AND USE TAX FOR THE DEVELOPMENT OF A NEW HEATING, VENTILATION, AIR CONDITION (HVAC) PROGRAM, AS AUTHORIZED BY STATE LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Lancaster Economic Development Corporation recognizes how important skills development is to the vitality, growth, and economic development of Lancaster; and

WHEREAS, CVC is applying for a \$150,000 grant to fund a state-of-the-art HVAC training center at their location adjacent to Lancaster; and

WHEREAS, CVC has requested a grant for assistance with the matching funds associated with the development of a new state-of-the-art HVAC training center in the amount of \$150,000; and

WHEREAS, the HVAC training facility will be operational within two years; and

WHEREAS, allocated funds may be used for the purchase of real and business personal property for the HVAC training facility;

WHEREAS, the Board of Directors of LEDC are responsible for the review and evaluation of Type A incentive applications; and

WHEREAS, the board of LEDC is also responsible for recommending Type A Grants to the Lancaster City Council for review and approval.

NOW, THEREFORE, BE IT RESOLVED BY THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION OF THE CITY OF LANCASTER, TEXAS:

SECTION 1. That the Board of Directors of the Lancaster Economic Development Corporation approves the resolution to contribute \$150,000 for the matching of a grant that will result in a \$4.8 million state-of-the-art HVAC training center at Cedar Valley College.

SECTION 2. That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

DULY PASSED and approved by the Board of Directors of the Lancaster Economic Development Corporation of the City of Lancaster, Texas, on this the 1st day of November, 2018.

ATTEST:



Mayra A. Ortiz, Board Secretary

APPROVED:



Ted Burk, President

APPROVED AS TO FORM:



David T. Ritter, City Attorney

**ECONOMIC DEVELOPMENT
PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** by and between **CEDAR VALLEY COLLEGE**, a component college of the Dallas County Community College District (hereinafter referred to as "Developer"), and the **LANCASTER ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the "LEDC"), is made and executed on the following recitals, terms and conditions.

WHEREAS, LEDC is a Type A economic development corporation operating pursuant to Chapter 504 of the Texas Local Government Code, as amended (also referred to as the "Act"), and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

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

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

WHEREAS, the LEDC's Board of Directors have determined the financial assistance provided to Developer for the Qualified Expenditures to be made to the Property is consistent with and meets the definition of "project" as that term is defined in Section 501.101 of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code; and

WHEREAS, Developer agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Lancaster, Texas, to approve all programs and expenditures of LEDC, and accordingly this Agreement is not effective until City Council has approved this project at a City Council meeting called and held for that purpose.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, LEDC and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, and shall continue thereafter until all obligations of Developer to LEDC have been performed in full, or on **September 30, 2020**, whichever is sooner, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

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

- (a) **Act.** The word "Act" means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word "Agreement" means this Performance Agreement, together with all exhibits and schedules attached to this Performance Agreement from time to time, if any.
- (c) **City.** The word "City" means the City of Lancaster, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 211 N. Henry Street, Lancaster, Texas 75146.
- (d) **Developer.** The words "Developer" means Cedar Valley College, a component college of the Dallas County Community College District, its successors and assigns, whose address for the purposes of this Agreement is 3030 N. Dallas Avenue, Lancaster, Texas 75134.
- (e) **Effective Date.** The words "Effective Date" means the date of the latter to execute this Agreement by and between the Developer and LEDC.
- (f) **Event of Default.** The words "Event of Default" means and include any of the Events of Default set forth below in the section entitled "Events of Default."
- (g) **LEDC.** The word "LEDC" means the Lancaster Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 211 N. Henry Street, Lancaster, Texas 75146.

- (h) **Property.** The word “Property” means the campus of Cedar Valley College, located at 3030 N. Dallas Avenue in Lancaster, Texas.
- (i) **Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures made by the Developer for the HVAC Training Program/Facilities located on the Property and as defined by Section 501.101 of the Act, and the definition of “cost” as that term is defined by Section 501.152 of the Act.
- (j) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. AFFIRMATIVE COVENANTS OF DEVELOPER.

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

- (a) **Fund Grant for Qualified Expenditures.** Upon execution and Effective Date of this Agreement, Developer shall be entitled to a grant from LEDC for Qualified Expenditures in an amount not to exceed **One Hundred and Fifty Thousand and No/100 Dollars (\$150,000.00)**. Developer covenants and agrees to submit to LEDC invoices, receipts, or other documentation of the Qualified Expenditures in a form acceptable to LEDC by September 30, 2020.
- (b) **Operate Program.** Developer covenants and agrees to plan, construct, and/or operate the HVAC Training Program/Facilities during the term of the Agreement.
- (c) **Performance.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between Developer and LEDC.

SECTION 5. AFFIRMATIVE COVENANTS OF LEDC.

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

- (a) **Fund Grant for Qualified Expenditures.** LEDC covenants and agrees to provide a grant for Qualified Expenditures made by the Developer pursuant to Section 4(a) of this Agreement, in an amount not to exceed **One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00)**.
- (b) **Performance.** LEDC agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Developer and LEDC.

SECTION 6. CESSATION OF ADVANCES.

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

SECTION 7. EVENTS OF DEFAULT.

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

- (a) **General Event of Default.** Failure of Developer or LEDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or LEDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and LEDC is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the LEDC by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default. In the event, Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by LEDC to Developer pursuant to Section 5 of this Agreement shall become immediately due and payable by Developer to the LEDC.

SECTION 9. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Dallas County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts or federal courts for Dallas County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Developer warrants and represents that the individual or individuals executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. LEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **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, fire or other casualty, or court injunction, 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 obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- (h) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally

delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Developer:

Cedar Valley College
3030 N. Dallas Avenue
Lancaster, Texas 75134
Attn: Dr. Joseph Seabrooks

if to LEDC:

Lancaster Economic Development Corporation
211 N. Henry Street
Lancaster, Texas 75146
Attn: Shane Shepard

- (j) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (k) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

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LEDC:

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

By: Ted Burk

Name: Ted Burk

Title: President

Date Signed: November 1, 2018

ATTEST:

Mayra A. Ortiz

Mayra A. Ortiz, Board Secretary

STATE OF TEXAS

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§

COUNTY OF DALLAS

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This instrument was acknowledged before me on the day of November 1, 2018, by Ted Burk, President of the Lancaster Economic Development Corporation, a Texas non-profit corporation, on behalf of said Texas corporation.

Deborah Shelby Bunton

Notary Public, State of Texas

