

RESOLUTION NO. 2021-01-08

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

WHEREAS, the Cedar Valley College branch of the Dallas College, as successor-in-interest to Dallas Community College District, desires to construct and finish out a Mobile Training Unit to be used to increase educational and training opportunities in the community; and

WHEREAS, pursuant to Lancaster Economic Development Corporation (hereinafter "LEDC") Resolution 2020-12-01, which was passed and approved on the 8th day of December, 2020 by the Board of Directors of the LEDC, offering an incentive grant to Dallas College; and

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

WHEREAS, the City of Lancaster and LEDC are authorized by state law to issue grants in order to promote local economic development by stimulating the local economy; and

WHEREAS, an Economic Development Grant Agreement containing the terms of the grant of incentives from the LEDC is appropriate.

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 December 8, 2020 actions of the Board of Directors of the LEDC approving a Grant Agreement by and between Dallas College and the Economic Development Corporation, as set forth in and incorporated by reference as Exhibit A.

SECTION 2. The City Council authorizes the LEDC to enter into a Grant Agreement with Dallas College.

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of January 2021.

ATTEST:



Sorangel O. Arenas, City Secretary

APPROVED:



Clyde C. Hairston, Mayor

APPROVED AS TO FORM:



David T. Ritter, City Attorney

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

Recipient: ***DALLAS COLLEGE, CEDAR VALLEY CAMPUS***
3030 N. Dallas Avenue
Lancaster, TX 75134-3799

Grantor: ***LANCASTER ECONOMIC DEVELOPMENT CORPORATION***
211 N. Henry Street
Lancaster, TX 75146

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT ("Agreement") between ***DALLAS COLLEGE***, a Texas political subdivision of higher education ("Recipient"); and ***LANCASTER ECONOMIC DEVELOPMENT CORPORATION*** ("LEDC"), a Texas Type-A special purpose (economic development) corporation ("Grantor") is made and executed on the following recitals, terms and conditions.

WHEREAS, Recipient is a public institution of higher education, with a campus located in the City of Lancaster, Texas, ("Cedar Valley Campus"); and

WHEREAS, Recipient has applied to Grantor for financial accommodations to enable it to locate a mobile training unit ("MTU"), in locations in Dallas County, Texas, including the City of Lancaster, Texas ("City") to provide community awareness of Dallas College, including the Cedar Valley Campus, and in-demand industry training programs in the automotive/diesel/HVAC/logistics and mechatronics technology fields in Dallas County. The incentives applied for include those incentives which are described in this Agreement and those which may be described on any exhibit or schedule attached to this Agreement; and

WHEREAS, LEDC approved certain financial incentives to Recipient at its December 8, 2020 Board meeting, and City approved this Agreement at its January 11, 2021 City Council meeting which would allow Recipient to fund its MTU Program; and

WHEREAS, Recipient understands and agrees that: (a) in granting, renewing, or extending any financial incentives, Grantor is relying upon Recipient's representations, warranties, and agreements, as set forth and provided for in this Agreement; (b) the granting, renewing, or extending of any incentive by Grantor at all times shall be subject to Grantor's sole judgment and discretion; and (c) all such incentives shall be and shall remain subject to the terms and conditions as set forth in this Agreement.

SECTION 1. TERM.

This Agreement shall be effective as of January 1, 2021 (the "Effective Date") and subject to prior termination or revocation, shall continue thereafter until all

obligations of Recipient to Grantor have been performed in full and the parties terminate this Agreement in writing, or on January 1, 2025. **This Agreement will terminate if not executed by all parties within fourteen (14) days of the approval of the Agreement by the latter of the City Council and the EDC Board.**

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Texas Uniform Commercial Code.

- a. **Agreement.** The word "Agreement" means this Economic Development Incentive Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- b. **City.** The word "City" means the City of Lancaster, Dallas County, Texas.
- c. **Effective Date.** The words "Effective Date" means January 1, 2021.
- d. **Event of Default.** The words "Event of Default" mean and include any of the Events of Default set forth below in the section entitled "Events of Default."
- e. **Facility.** The word "Facility" means Recipient's new Mobile Training Unit vehicle, and the associated program ("MTU").
- f. **Incentive Payment.** The words "Incentive Payment" mean any financial payment, benefit, reimbursement, or refund made by LEDC to Recipient under this Agreement.
- g. **Grantor.** The word "Grantor" means the **LANCASTER ECONOMIC DEVELOPMENT CORPORATION**, a Texas Type-A economic development corporation,
- h. **LEDC.** The word "LEDC" means Lancaster Economic Development corporation, a non-profit corporation formed for the purpose of advancing economic development in the City of Lancaster, Texas.
- i. **Recipient.** The word "Recipient" means **DALLAS COLLEGE**, a Texas institution of higher learning with a campus located in the City of Lancaster, Texas.

SECTION 3. INCENTIVE PAYMENTS.

a. **Grant Payment.**

Grantor will provide up to Fifty Thousand One and no/100 dollars (\$50,001) to Recipient in grant payments to be used by Recipient to fund the Facility and its operations. The funds will be available after the signing and Effective Date of this Agreement until January 31, 2023, and are payable per the schedule set forth in Section 3(b).

b. **Payment Timing**

Of the total maximum fifty thousand one and no/100 dollars (\$50,001) in grant payments, ten thousand dollars (\$10,000) will be payable upon execution and approval of the Agreement by the respective parties and their governing bodies; fifteen thousand dollars (\$15,000) will be paid upon receipt and acceptance of the first annual report required under Section 4(a)(8), and 4(b) and the remaining twenty-five thousand one dollars (\$25,001) will be payable upon receipt and acceptance of the second annual report required under Section 4(a)(8) and 4(b).

SECTION 4. RECIPIENT OBLIGATIONS

a. Recipient shall comply with the following terms and satisfy the following obligations to be eligible for the Incentive Payments above:

- (1) **Grant Payment Drawdown.** Recipient shall draw down the funds made available by Grantor no later than January 31, 2023.
- (2) **MTU Program Inception.** Recipient shall complete the MTU vehicle and begin instruction or training no later than January 31, 2021.
- (3) **Lancaster Resident Training.** During the first three (3) years of MTU program operation, Recipient will use the MTU program to provide training to at least twenty-five (5) City of Lancaster, Texas residents and/or persons employed within the City of Lancaster, Texas in work fields that pay at least \$45,000 annually, as determined by U.S. Department of Labor statistics or other metrics acceptable to Grantor.
- (4) **Lancaster Site Visits.** During the first three (3) years of MTU program operation, Recipient will use the MTU program to visit at least fifteen (15) industrial, distribution, or other commercial sites within the City of Lancaster to offer training and/or marketing of the MTU program.
- (5) **Lancaster Resident Contact.** Recipient will make contact with at

least 1,000 Lancaster residents annually regarding the program. Contact may be done through direct mailing, targeted social media, advertising, resident training, site visits, and special events.

- (6) **Special Events.** Recipient will participate in, or host at least five (5) special events during each calendar year. The special events can be City-sponsored events such as parades, National Night Out, etc., or a standalone event hosted by Recipient.
- (7) **LISD Outreach Program.** Recipient will conduct at least two (2) annual outreach programs using the MTU in conjunction with LISD.
- (8) **Annual Reports.** Recipient will provide City with an Annual Report within thirty (30) days of the first two (2) years of the anniversary of the Effective Date of this Agreement, containing the following information:
 - (a) Total number of outreach events (and number conducted in the City of Lancaster;
 - (b) Total number of participants in the program and number of participants who are City residents and who are employed in the City;
 - (c) Total number of participants enrolled in MTU programs, including breakdowns showing number of Lancaster residents and workers; and
 - (d) Total number of participants completing a program or certificate, including breakdowns showing number of Lancaster residents and workers.
- (9) **Marketing.** Recipient agrees to include favorable mentions of the City in its MTU-related Facebook, Twitter, website, and other social media marketing efforts and agrees that the City of Lancaster logo or other marketing will be the most prominent marketing on the MTU.

b. **Compliance Certificates and Reports.** Recipient shall provide Grantor with compliance certificates when requested or required hereunder, such certificates or reports specifying or reflecting:

- (1) A list of trainees who qualify as Lancaster residents or persons employed in the City pursuant to Section 4(a)(3);
- (2) A report of sites visited showing dates, location, and activity to show compliance with Section 4(a)(4).

- (3) The Annual Reports will be given to the City for the first two years of the Term of this Agreement showing the year's progress towards fulfilling the Recipient obligations.
- c. **Performance.** Recipient agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Recipient and Grantor.

SECTION 5. CESSATION OF INCENTIVE PAYMENTS.

If Grantor has made any commitment to make any Incentive Payment to Recipient, whether under this Agreement or under any other agreement, Grantor shall have no obligation to advance or disburse Incentive Payment funds if:

- a. Recipient becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or
- b. during the pendency of an Event of Default.

SECTION 6. EVENTS OF DEFAULT.

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

- a. **Recipient Obligations.** Failure of Recipient to complete any recipient obligations set forth in Section 4.
- b. **False Statements.** Any warranty, representation or statement made or furnished to Grantor by or on behalf of Recipient under this Agreement or any related document (including but not limit to any applications for economic development funds) that is false or misleading in any material respect, either now or at the time made or furnished.
- c. **Insolvency.** Recipient's insolvency, appointment of receiver for any part of Recipient's property, any assignment for the benefit of creditors of Recipient, any type of creditor workout for Recipient, or the commencement of any proceeding under any bankruptcy or insolvency laws by Recipient or against Recipient and not dismissed within sixty (60) days of filing thereof.
- d. **Ad Valorem Taxes.** Failure of Recipient to pay, prior to delinquency, all taxes and assessments levied or assessed upon Recipient's real property improvements or business personal property.
- e. **Undocumented workers.** Recipient certifies that Recipient does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Recipient is convicted of a violation under 8 U.S.C. § 1324a(f), Recipient shall be in default hereunder.
- f. **Other Defaults.** Failure of Recipient after written notice and thirty (30) days opportunity to cure, to comply with or to perform any other term, obligation,

covenant or condition contained in this Agreement or in any of related document, or failure of Recipient to comply with or to perform any other term, obligation, covenant or condition contained in any other obligation, covenant or condition contained in this Agreement or in any of related document, or failure of Recipient to comply with or to perform any other term, obligation, covenant or condition contained in any other written agreement between Grantor and Recipient, and specifically, should Recipient sublet or assign any of its interest in any portion of the Facility to any unrelated or unaffiliated entity without Grantor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

If any Event of Default shall occur and upon thirty (30) days written notice and opportunity to cure Recipient has not cured such Event of Default within 30 days of written notice, then all commitments of Grantor under this Agreement immediately shall terminate (including any obligation to make Incentive Payments), **and all amounts previously disbursed as Incentive Payments, not otherwise forgiven by action of the LEDC Board or City Council, as applicable, will become immediately due and payable**, all without notice of any kind to Recipient, at the option of Grantor, except for an Event of Default described in the "Insolvency" subsection above, in which case such acceleration shall be automatic and not optional. Any Default which may be cured by the payment of money shall not extend beyond the 30-day period referenced herein.

SECTION 8. INDEMNIFICATION.

SOLELY TO THE EXTENT PERMITTED BY TEXAS LAW, AND WITHOUT WAVING, ANY IMMUNITIES TO WHICH IT IS ENTITLED, RECIPIENT SHALL INDEMNIFY, SAVE, AND HOLD HARMLESS GRANTOR, ITS DIRECTORS, OFFICERS, AGENTS, ATTORNEYS, AND EMPLOYEES (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST:

- A. ANY AND ALL CLAIMS, DEMANDS, ACTIONS OR CAUSES OF ACTION THAT ARE ASSERTED AGAINST ANY INDEMNITEE IF THE CLAIM, DEMAND, ACTION OR CAUSE OF ACTION RELATES TO TORTIOUS INTERFERENCE WITH CONTRACT OR BUSINESS INTERFERENCE, OR WRONGFUL OR NEGLIGENT USE OF GRANTOR'S INCENTIVE PAYMENTS BY RECIPIENT OR ITS AGENTS AND EMPLOYEES;**
- B. ANY ADMINISTRATIVE OR INVESTIGATIVE PROCEEDING BY ANY GOVERNMENTAL AUTHORITY RELATED TO A CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IN WHICH GRANTOR IS A DISINTERESTED PARTY;**
- C. ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION WHICH CONTESTS OR CHALLENGES THE LEGAL AUTHORITY OF**

GRANTOR OR RECIPIENT TO ENTER INTO THIS AGREEMENT;
AND

- D. ANY AND ALL LIABILITIES, LOSSES, COSTS, OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS) THAT ANY INDEMNITEE SUFFERS OR INCURS AS A RESULT OF ANY OF THE FOREGOING; PROVIDED, HOWEVER, THAT RECIPIENT SHALL HAVE NO OBLIGATION UNDER THIS SECTION TO GRANTOR WITH RESPECT TO ANY OF THE FOREGOING TO THE EXTENT THAT SUCH CLAIMS OR LIABILITIES ARISE OUT OF THE NEGLIGENCE OR WILLFUL MISCONDUCT OF GRANTOR OR THE BREACH BY GRANTOR OF THIS AGREEMENT.

IF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS ASSERTED AGAINST ANY INDEMNITEE, SUCH INDEMNITEE SHALL PROMPTLY NOTIFY RECIPIENT, BUT THE FAILURE TO SO PROMPTLY NOTIFY RECIPIENT SHALL NOT AFFECT RECIPIENT'S OBLIGATIONS UNDER THIS SECTION UNLESS SUCH FAILURE MATERIALLY PREJUDICES RECIPIENT'S RIGHT TO PARTICIPATE IN THE CONTEST OF SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION, AS HEREINAFTER PROVIDED. IF REQUESTED BY RECIPIENT IN WRITING, AS SO LONG AS NO DEFAULT OR EVENT OF DEFAULT SHALL HAVE OCCURRED AND BE CONTINUING, SUCH INDEMNITEE SHALL IN GOOD FAITH CONTEST THE VALIDITY, APPLICABILITY AND AMOUNT OF SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION AND SHALL PERMIT RECIPIENT TO PARTICIPATE IN SUCH CONTEST. ANY INDEMNITEE THAT PROPOSES TO SETTLE OR COMPROMISE ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION OR PROCEEDING FOR WHICH RECIPIENT MAY BE LIABLE FOR PAYMENT OF INDEMNITY HEREUNDER SHALL GIVE RECIPIENT WRITTEN NOTICE OF THE TERMS OF SUCH PROPOSED SETTLEMENT OR COMPROMISE REASONABLY IN ADVANCE OF SETTLING OR COMPROMISING SUCH CLAIM OR PROCEEDING AND SHALL OBTAIN RECIPIENT'S CONCURRENCE THERETO.

SECTION 9. RECIPIENT'S REPRESENTATIONS.

By execution hereof, the signatories warrant and represent that they have the requisite authority to execute this Agreement and any related documents and that the representations made herein, and in the related documents, are true and accurate in all respects.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- a. **Amendments.** This Agreement, together with any related documents, 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 has been delivered to Grantor and accepted by Grantor in the State of Texas. Recipient agrees to submit to the jurisdiction of the courts of Dallas County, State of Texas, and that venue is proper in said County. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and applicable federal laws.
- c. **Employee Hiring, Materials and Supplies Purchase.** Although not an Event of Default or a condition to any disbursement or advance of the Loan or any portion thereof, Grantor requests that Recipient use good faith efforts to satisfy its need for all additional employees from City residents and purchase all materials, supplies and services necessary to affect the construction and subsequent occupancy of the Property from City merchants and businesses.
- d. **Community Involvement.** Although not an Event of Default or a condition to any disbursement or advance of the Loan or any portion thereof, Recipient agrees to use good faith efforts to actively participate in community and charitable organizations and/or activities, the purpose of which are to improve the quality of life in City, and to actively encourage its employees to be involved in such organizations and/or activities.
- e. **Recipient Audit.** Recipient agrees to allow Grantor, at a time mutually acceptable to Grantor and Recipient, to audit at Grantor's expense all of Recipient's records, documents, agreements and other instruments in furtherance of the following purposes: (i) to ensure Recipient's compliance with the affirmative covenants and duties set forth in Sections 3 and 4 herein; (ii) to determine the existence of an Event of Default set forth in Section 6 herein; and (iii) to ensure compliance with any other term or condition of this Agreement or any related document.
- f. **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.
- g. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Recipient agrees to keep Grantor informed at all times of Recipient's current address.

- h. **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.
- i. **Survival.** All warranties, representations, and covenants made by Recipient in this Agreement or in any certificate or other instrument delivered by Recipient to Grantor under this Agreement shall be considered to have been relied upon by Grantor and will survive the payment of any Incentive Payments under this Agreement regardless of any investigation made by Grantor or on Grantor's behalf.
- j. **Attorneys' Fees and Costs.** In the event of any action at law or in equity between the parties to enforce any of the provisions hereof, to the extent allowed by law any unsuccessful party to such litigation shall pay to the successful party all costs and expenses, including reasonable attorneys' fees (including costs and expenses incurred in connection with all appeals) incurred by the successful party, and these costs, expenses and attorneys' fees may be included in and as part of the judgment. A successful party shall be any party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment.
- k. **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- l. **Counterparts.** This Agreement may be executed in counterparts, and such counterparts together shall constitute but one original of the Agreement. Each counterpart shall be equally admissible in evidence, and each original shall fully bind each party who has executed it.
- m. **Waiver.** No failure or delay by a party to insist upon the strict performance of any term, condition or covenant of this Agreement, or to exercise any right, power or remedy hereunder shall constitute a waiver of the same or any other term of this Agreement or preclude such party from enforcing or exercising the same or any such other term, conditions, covenant, right, power or remedy at any later time.
- n. **No Interpretation Against Drafter.** Recipient and Grantor have participated in negotiating and drafting this Agreement, and agree that the Agreement is to be construed as if drafted jointly. The parties agree that the Agreement will not be interpreted or construed against either party should a need for interpretation or resolution of any ambiguity arise.

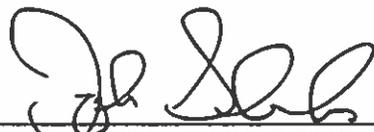
- o. **Assignment.** Assignment of any benefit or obligation under this Agreement may not be made without prior written consent of the City.

RECIPIENT ACKNOWLEDGES HAVING READ ALL OF THE PROVISIONS OF THIS LOAN AGREEMENT, AND RECIPIENT AGREES TO ITS TERMS.

THIS AGREEMENT SHALL BE EFFECTIVE AS OF NOVEMBER 1, 2020.

RECIPIENT:

**DALLAS COLLEGE,
CEDAR VALLEY CAMPUS**
a Texas institution of higher learning

By: 

Dr. JOSEPH SEABROOKS
President, Cedar Valley Campus

Date Signed: January 12, 2021

GRANTOR:

**LANCASTER ECONOMIC DEVELOPMENT
CORPORATION**
a Texas Type-A economic development
corporation

By: _____
TED BURK
President

Date Signed: _____

PREPARED IN THE OFFICES OF:

BROWN & HOFMEISTER, L.L.P.
740 E. Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 Fax

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**DALLAS COLLEGE,
CEDAR VALLEY CAMPUS**
a Texas institution of higher learning

By: _____
Dr. JOSEPH SEABROOKS
President, Cedar Valley Campus

Date Signed: _____

GRANTOR:

**LANCASTER ECONOMIC DEVELOPMENT
CORPORATION**
a Texas Type-A economic development
corporation

By: Jed Burk
TED BURK
President

Date Signed: 2/11/2021

PREPARED IN THE OFFICES OF:

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