

RESOLUTION NO. 11-07-2023M

**A RESOLUTION APPROVING THE ACTIONS OF THE
GAINESVILLE ECONOMIC DEVELOPMENT
CORPORATION, WHICH VOTED TO APPROVE A
PERFORMANCE AGREEMENT WITH MESA REAL ESTATE
PARTNERS, LP.**

WHEREAS, The Board of Directors of the Gainesville Economic Development Corporation (GEDC), meeting in accordance with section 4B(n) of the Development Corporation Act of 1979, met on October 23, 2023; and

WHEREAS, The Board of Directors of the Gainesville Economic Development Corporation voted to approve the Performance Agreement with Mesa Real Estate Partners, LP to expend economic development funds for manufacturing and industrial facility creation incentives; and

WHEREAS, the City Council of the City of Gainesville is required to approve GEDC actions; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS, MEETING IN REGULAR SESSION ON NOVEMBER 7, 2023:

Section 1. That the City Council of the City of Gainesville hereby approves the actions of the GEDC, which voted to approve the Performance Agreement with Mesa Real Estate Partners, LP to expend economic development funds for manufacturing and industrial facility creation incentives up to \$167,500.00.

PASSED AND APPROVED THIS THE 7th DAY OF NOVEMBER 2023, BY FOLLOWING VOTE:

7 AYES, 0 NAYS, 0 ABSENT, 0 ABSTENTIONS



TOMMY MOORE, MAYOR

ATTEST:



DIANA ALCALA, CITY SECRETARY



RESOLUTION NO. GEDC 10-23-2023-B

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION, A TYPE B ECONOMIC DEVELOPMENT CORPORATION, APPROVING A PERFORMANCE AGREEMENT WITH MESA REAL ESTATE PARTNERS LP.

WHEREAS, the Gainesville Economic Development Corporation (hereinafter referred to as the "GEDC") is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS the Board of Directors of the GEDC held a public hearing on Monday, October 23, 2023 at 12:00 P.M. at Gainesville Civic Center located at 311 South Weaver, Gainesville, Texas, to consider and take action upon the following project: provide financial assistance to Mesa Real Estate Partners, LP in an amount not to exceed \$167,500.00; and

WHEREAS the Board of Directors of the GEDC does hereby approve a performance agreement with Mesa Real Estate Partners, LP., a copy of which is attached hereto as *Exhibit A*.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION OF THE CITY OF GAINESVILLE, TEXAS MEETING IN REGULAR SESSION ON OCTOBER 23RD, 2023:

Section 1. The Board of Directors of the Gainesville Economic Development Corporation hereby approves to a Performance Agreement, attached hereto as *Exhibit A*, with Mesa Real Estate Partners, LP to expend economic development funds for manufacturing and industrial facility creation incentives up to \$167,500.00; Authorizing the President and Executive Director to execute said Performance Agreement and any and all related documents; and providing for an effective date.

PASSED AND APPROVED THIS 23RD DAY OF OCTOBER 2023, BY THE FOLLOWING VOTES:

5 AYES, 0 NAYS, 2 ABSENT, 0 ABSTENTIONS



RYAN MORRIS, PRESIDENT

ATTEST:



WILLIAM MYERS, EXECUTIVE DIRECTOR

Exhibit A

[Performance Agreement]

**GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION
DEVELOPER INCENTIVE AGREEMENT**

This Developer Incentive Agreement (the "**Agreement**") made and entered into by and between the GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION, a Texas non-profit corporation (the "**GEDC**") and MESA REAL ESTATE PARTNERS, LP, a Delaware Limited Partnership (the "**Developer**").

WITNESSETH:

WHEREAS, the GEDC a Type B economic development corporation operating pursuant to Chapter 505 of the Texas Local Government Code. GEDC exists for the purpose of encouraging and assisting qualified entities in the creation of jobs and investment in the Gainesville, Texas area.

WHEREAS, the Developer owns a 5± acre, industrial zoned property at TBD Corporate Drive a.k.a. Loadmaster Circle in Gainesville (the "**Subject Property**") and is making investments in planning and preparation to potentially develop the site and construct two new facilities at 25,000 square feet ("Building One") and 22,500 square feet ("Building Two") with the facilities (the "Mesa Facilities") and site (the "Mesa Industrial Facilities") collectively known as (the "Mesa Industrial Project"); and

WHEREAS, the Developer represents the multi-phase project investment (the "Project Investment") will constitute an approximate investment of Seven Million One Hundred and Twenty-Five Thousand dollars (\$7,125,000.00) in Mesa Industrial Project over the Term of Agreement; and

WHEREAS, the GEDC believes that the presence of this Project Investment in the City of Gainesville, Texas (known as "**Gainesville**") will benefit the economy of Gainesville and surrounding area by increasing opportunities for industrial recruitment, employment, real property tax and sales tax revenue, and encouraging growth in other related businesses, all of which serve the purposes and goals of the GEDC; and

WHEREAS, the GEDC finds and determines the Developer is planning "manufacturing and industrial facilities" as that term is defined in Section 501.101(2) of the Texas Local Government Code, and this investment increases opportunities for "primary job" creation as that term is defined in Section 501.002(12), and find and determine this "project" and Agreement is authorized by Sections 501.101 and 501.103 of the Texas Local Government Code; and

WHEREAS, to encourage Developer, the GEDC will offer Developer Incentives to Developer payable as a Design and Bidding Incentive, Marketing Incentive, and Construction Incentive as a cash payment for planning and construction of two facilities created by Developer upon terms more fully set forth below.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained the parties hereto agree as follows:

GENERAL PROVISIONS

1. Developer represents that it owns the Subject Property and contemplates development of the Mesa Industrial Project on the Subject Property.
2. The Subject Property is not owned or leased by any member of the GEDC.

Developer acknowledges and agrees, beginning on the date of the execution of this Agreement and continuing during the Term of this Agreement, that the Developer, or an affiliate wholly-owned, directly or indirectly, by the Developer or one of its constituent parties or a related entity owned or under the common control of the Developer, shall, subject only to events of Force Majeure, continuously own and occupy the Subject Property, and shall continuously operate and maintain the Subject Property as a manufacturing, distribution, and retail facility; provided, however, the Developer may earlier sell the Subject Property on the condition that this Agreement will early terminate upon such sale, but Developer will be permitted to retain all prior proceeds paid out prior to such sale date.

DEFINITIONS

3. Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:
 - A. “Annual Report” means calendar year reporting, to request payment of Businesses Incentives, including Mesa Industrial Project Investment Totals, Occupancy Rates, and Lease Terms. Annual Reports are due by March 1st.
 - B. “Development Incentives” means the combined Design and Bidding, Marketing, and Construction Incentives.
 - C. “Effective Date” means the last date of acknowledgment of the signatures set forth on the signature page below.
 - D. “Force Majeure” means any delay caused by reason of war, civil commotion, acts of God, strike, inclement weather, shortages or unavailability of labor, supplies or materials (including but not limited to circumstances related to declared national emergencies such as but not limited to COVID-19) or other circumstances which are beyond the reasonable control and are without the fault or negligence of the obligated party, regardless of whether any such circumstance is similar to any of those enumerated or not, the obligated party shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such requirement and any applicable completion deadline shall be extended for a period of time equal to the period the obligated party was delayed. Force Majeure will not mean nor include delays caused by the Developer’s lack of, or inability to obtain, funding.

- E. “Improvements” collectively means all planning, site and real property investments Developer creates, develops, constructs, and installs through the Project Investment all which shall be located on the Subject Property. This includes the planning and preparation to develop the site and construct two new facilities at 25,000 square feet and 22,500 square feet each with a minimum twenty-eight (28) foot clear height.
- F. “Design and Bidding Incentive” means the reimbursement of fifty percent (50%) (not to exceed \$65,000) of the costs for design and engineering to create a complete set of construction documents and subsequent bidding services (“Phase One”). Each includes: Architectural Services, Structural Engineering, MEP Engineering, Civil Engineering, Geotechnical Engineering, TAS Review, Hydrology, and additional services, direct expenses, fees, permits, etc.
- G. “Marketing Incentive” means the reimbursement fifty percent (50%) of direct marketing costs (not to exceed \$7,500) based on receipts submitted to GEDC (“Phase Two”).
- H. “Construction Incentive” means the reimbursement up to two percent (2%) of the Construction Costs (not to exceed \$50,000 for Building One and \$45,000 for Building Two each totaling \$95,000) upon completion of Construction (“Phase Three”).
- I. “Periodic Report” means reports accompanying reimbursement requests which should include paid invoices, receipts, revised projections, tenant leads, tenant commitments, and tenant lease terms during the term of this Agreement.
- J. “Subject Property” shall have the same meaning set forth in the recitals above and any Improvements.
- K. “Term of Agreement” means the period from the Effective Date until December 31, 2026.

GEDC COMMITMENTS

- 4. GEDC hereby commits the sum of up to a maximum of One Hundred Sixty-Seven Thousand Five Hundred and No/100 Dollars (\$167,500.00) over the Term of Agreement, cash payment amount, as a Design and Bidding Incentive, Marketing Incentive, and Construction Incentive to be paid to Developer for new facilities designed and created by Developer over the Term of Agreement from the Effective Date.
- 5. GEDC will pay the Developer Incentive on monthly basis within thirty (30) days of receiving a complete, current Periodic Report from Developer.

DEVELOPER COMMITMENTS

6. Developer agrees that to receive the Developer Incentives identified above, Developer must meet the following requirements:
 - A Developer will complete Phase One within Term of Agreement. If Developer elects to move forward with Phase Two and Phase Three, then the Developer and the GEDC will meet and negotiate in good faith to extend the Term of the Agreement as necessary for the completion of Phase Two and Phase Three. For the avoidance of doubt, this Agreement does not require Developer to complete any phases hereunder, and the election to move forward with any phase shall be made in the Developer's sole discretion. If Developer elects to move forward with Phase Two and/or Phase Three within Term of Agreement, then the Developer will provide thirty (30) days written notice to the GEDC of the intent to proceed. The GEDC will acknowledge receipt of Developer intent to proceed in writing with no further GEDC action necessary.
 - B Developer will provide an Annual Report due to the GEDC by March 31st each calendar year, including a partial year for 2023, during the term of this Agreement. Annual Reports shall commence beginning with calendar year 2024, due on or before March 31, 2024, and continue annually for the Term of Agreement with the final Annual Report due by March 31, 2027. At GEDC sole discretion, Annual Reports not received by March 31st of each calendar year may be deemed delinquent with any related Developer Incentive being forfeited by Developer.
 - C All requirements set forth in Definitions section and in Developer Commitments section must be met within the Term of Agreement for all the Developer Incentives to be claimed. For purposes of clarity, the Developer is not required to claim all Developer Incentives, and the Developer may claim the Developer Incentives in part if only a portion of the Developer Commitments are achieved. The Developer Incentives will be paid in accordance with which phase(s) of milestones have been achieved.
 - D Developer will provide Periodic Reports to the GEDC.
 - E Developer will own all building plans, bid documents, and exhibits. Developer will provide these for GEDC, and allow GEDC to reproduce, transmit, and use these documents in marketing, lead generation, prospect negotiation efforts, comparable project analysis, and other GEDC activities.
 - F Developer will remain in good standing with all Texas local or state taxing entities and with City of Gainesville Codes and Ordinances.

TERMINATION

7. This Agreement shall terminate on the earlier of (i) December 31, 2026, (ii) if Developer misses two (2) consecutive Annual Report deadlines, or (iii) the sale of the Subject Property to an entity that is not an affiliate of the Developer.

AUTHORITY

8. Each individual executing this Agreement hereby represents and warrants that he/she is authorized to execute and deliver this Agreement and bind any and all entities, persons or individuals presently having an interest in the Developer and Subject Property, as well as heirs, successors and assigns of the parties.

SUCCESSORS, ASSIGNS AND RECORDATION

9. This Agreement and any addenda hereto shall be binding upon and inure to the benefit of the heirs, successors, agents, representatives and assigns of the parties hereto.

COUNTERPARTS

10. The Parties acknowledge and agree that a facsimile copy or scan of this Agreement with a Party's signature is as legally valid and binding as the original Agreement with an original signature. The parties agree that this Agreement can be signed in counterpart with the same legal force and effect as if not signed in counterpart.

NOTICE

11. All notices required by this Agreement shall be in writing and 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.

If to the GEDC:

Gainesville Economic Development Corporation
Attn: Ryan Morris, President
311 S Weaver St
Gainesville, TX 76240

If to the Developer:

Mesa Real Estate Partners, LP
Attn: Steve Schmitz
PO BOX 170
Gainesville, TX 76240

SEVERABILITY

12. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement, shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word. If any subsequent federal or state

legislation or any decision of a court of competent jurisdiction declares or renders this Agreement or any part hereof invalid or illegal, the parties agree to terminate (or if feasible, modify) this Agreement and to negotiate in good faith a remedy that preserves the intent of the parties hereunder as much as reasonably possible.

GOVERNING LAW

13. The Parties agree that this Agreement shall be governed by the laws of the State of Texas without regard to conflicts of laws or principles which may otherwise be applicable, and that venue shall be in Cooke County, Texas.

CONSTRUCTION OF AGREEMENT

14. This Agreement shall not be construed either for or against either party, but shall be interpreted, construed, and enforced in accordance with the mutual intent of the parties ascertainable from the language of the Agreement.

COUNTERPARTS

15. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. Any adjustment over the terms of this Agreement are subject to the mutual written assent of all parties.

ENTIRE AGREEMENT

16. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement. The parties agree this Agreement has been drafted jointly by the parties and their legal representatives.

UNDOCUMENTED WORKER PROVISION

17. Developer certifies that the Developer 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, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of eight percent (8%), not later than the 120th day after the date GEDC notifies Developer of the violation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

GEDC:

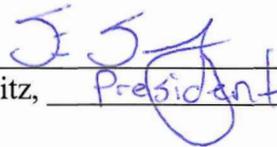
GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION
a Texas non-profit corporation

By: 
Ryan Morris, GEDC Board President

Date: 11/08/23

DEVELOPER:

MESA REAL ESTATE PARTNERS, LP
a Delaware Limited Partnership

By: 
Steve Schmitz, President

Date: 11/08/23