



**NOTICE OF SPECIAL MEETING AGENDA  
LANCASTER CITY COUNCIL  
MUNICIPAL CENTER CITY COUNCIL CHAMBERS  
211 N. HENRY STREET, LANCASTER, TEXAS**

**Tuesday, January 19, 2021 - 5:30 PM**



**While the Mayor may be physically present at City Hall, the other Councilmembers will attend via video or audio link due to the COVID-19 emergency situation.**

**IMPORTANT NOTICE: Due to the COVID-19 (coronavirus) state of emergency and consistent with the Governor's Order regarding modifications to the Texas Open Meetings Act ("TOMA"), and executive orders, the public will not be admitted to the physical meeting location.**

**Please click the link below for forms:**

<https://www.lancaster-tx.com/1413/Notice-Regarding-Public-Participation>

**Please click the link below to join the webinar:**

<https://us02web.zoom.us/meeting/register/tZwvc-Chqz8qHtGTO3ilVn7hBC1ej1u5YRy>

**The meeting will be broadcast live via video at the following address:**

<http://www.lancaster-tx.com/324/Watch-Meetings>

## **CALL TO ORDER**

### **PUBLIC TESTIMONY:**

At this time citizens who have pre-registered before the call to order will be allowed to speak on consent or action item on the agenda, with the exception of public hearings, for a length of time not to exceed three minutes. Anyone desiring to speak on an item scheduled for a public hearing is requested to hold their comments until the public hearing on that item.

### **ACTION:**

1. Discuss and consider a resolution ratifying the terms and conditions of an incentive agreement by and between a major retailer and the Lancaster Economic Development Corporation (LEDC).

2. Discuss and consider a resolution ratifying the terms and conditions of an incentive grant by and between a major retailer and the Lancaster Economic Development Corporation (LEDC).
3. Discuss and consider a resolution approving a Chapter 380 Economic Development Agreement by and between the City of Lancaster, Texas and a major retailer, and authorizing the City Manager to execute the agreement, and providing an effective date.
4. Discuss and consider a resolution approving a Chapter 380 Economic Development Agreement by and between the City of Lancaster, Texas and a major retailer and authorizing the City Manager to execute the agreement and providing an effective date.
5. Discuss and consider a resolution approving a Chapter 380 Economic Development Agreement by and between the City of Lancaster, Texas and MSW Prime - Lancaster L.P. and authorizing the City Manager to execute the agreement and provide an effective date.
6. Discuss and consider a resolution approving a Chapter 380 Economic Development Agreement by and between the City of Lancaster, Texas and 255PRL, LP and authorizing the City Manager to execute the agreement and providing an effective date.

## **ADJOURNMENT**

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EXECUTIVE SESSION: The City Council reserve the right to convene into executive session on any posted agenda item pursuant to Section 551.071(2) of the Texas Government Code to seek legal advice concerning such subject.

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ACCESSIBILITY STATEMENT: Meetings of the City Council are held in municipal facilities and are wheelchair-accessible. For sign interpretive services, call the City Secretary's office, 972-218-1311, or TDD 1-800-735-2989, at least 72 hours prior to the meeting. Reasonable accommodation will be made to assist your needs.

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PURSUANT TO SECTION 30.06 PENAL CODE (TRESPASS BY HOLDER WITH A CONCEALED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A CONCEALED HANDGUN.

CONFORME A LA SECCION 30.06 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO 411, CODIGO DEL GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO OCULTADA.

PURSUANT TO SECTION 30.07 PENAL CODE (TRESPASS BY HOLDER WITH AN OPENLY CARRIED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A HANDGUN THAT IS CARRIED OPENLY.

CONFORME A LA SECCION 30.07 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO AL AIRE LIBRE CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO H, CAPITULO 411, CODIGO DE GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO AL AIRE LIBRE.

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**Certificate**

**I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on January 15, 2021 @ 2:45 p.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.**

A handwritten signature in blue ink that reads "Carey D. Neal, Jr." with a stylized flourish at the end.

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**Carey D. Neal, Jr.**  
**Assistant City Manager**

# LANCASTER CITY COUNCIL

## City Council Special Meeting

1.

**Meeting Date:** 01/19/2021

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):** Financially Sound City Government  
Quality Development

**Submitted by:** Shane Shepard, Economic Development Director

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### **Agenda Caption:**

Discuss and consider a resolution ratifying the terms and conditions of an incentive agreement by and between a major retailer and the Lancaster Economic Development Corporation (LEDC).

### **Background:**

The retailer is contracted to purchase a 162-acre parcel located at the southwest corner of East Pleasant Run Road and Cornell Road ('Project Peak'). The company plans to invest a total of eight hundred million dollars (\$800,000,000) in two facilities located in Lancaster. The Project Peak facility will allow the addition of a minimum of 300 new jobs. The company is also planning a new facility located at the southwest corner of East Belt Line Road and Sunset Road (Project Valley).

The company is committing to eight hundred million dollars (\$800,000,000) in Real and Business Personal Property valuation combined between the two locations.

The maximum grant amount for both projects (Peak and Valley) combined is described below:

- Eight hundred thousand dollars (\$800,000) for a Workforce Development/Site Development Grant. The funds may be used to reimburse for employee training costs, and employee recruitment efforts. Of the eight hundred thousand dollars (\$800,000), a portion, not to exceed two hundred fifty thousand dollars (\$250,000) may be utilized to rebate equipment costs. The total of eight hundred thousand dollars (\$800,000) may be used for these purposes for both facilities (Peak and Valley) combined; and
- One million two hundred thousand dollars (\$1,200,000) for reimbursement of permit fees and development costs. This includes reimbursement for permit fees and development costs as supported by evidence of payment up to the total amount for both facilities combined. In no case, will grant expenditures for both projects combined exceed two million dollars (\$2,000,000).

**Operational Considerations:**

The retailer will submit to the LEDC copies of all information required under this agreement in order to exercise the grant. Within 60 days of verification of compliance with all terms of the Agreement, the Lancaster Economic Development Corporation will remit payment. The agreement requires completion of both facilities and a certificate of occupancy to exercise the grant.

**Legal Considerations:**

The City Attorney has reviewed and approved the resolution and agreement as to form.

**Public Information Considerations:**

This item is being considered at a Special Meeting of the City Council noticed and held in accordance with the Texas Open Meetings Act.

**Fiscal Impact:**

The total incentive cost for both projects (Peak and Valley) will not exceed two million dollars (\$2,000,000) and must be fully exercised within four (4) years.

**Options/Alternatives:**

1. The City Council may approve the resolution, as presented.
2. The City Council may deny the resolution.

**Recommendation:**

Staff recommends ratification of the agreement as presented.

**Attachments**

Resolution

Exhibit A - Performance Agreement

Property Description

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**RESOLUTION NO.**

**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 A MAJOR RETAILER AND AUTHORIZING THE LEDC TO ENTER INTO A FORMAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** The retailer seeks to purchase approximately 162-acres of land and construct an industrial/warehouse facility where a minimum of three hundred (300) people will be employed within three (3) years of completion, which was known in the pre-public phase of the project as "Project Peak;" and

**WHEREAS,** The Board of Directors of Lancaster Economic Development Corporation (hereinafter "LEDC") passed and approved Resolution 2021-01-02, on the 19th of January, 2021, offering an incentive grant to the retailer for this project; 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 January 19, 2021 actions of the Board of Directors of the LEDC approving a Grant Agreement by and between a major retailer for Project Peak 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 the retailer.

**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 19th day of January, 2021.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

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Clyde C. Hairston, Mayor

**APPROVED AS TO FORM:**

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David T. Ritter, City Attorney

## **EXHIBIT A PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** by and between **WALMART INC.**<sup>1</sup> a Delaware corporation, (“Walmart,” and together with its affiliates, and their successors, the “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 501.103 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . .”; 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 additional payroll or jobs to be created or retained by LEDC’s investment; 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**, Developer has applied to LEDC for financial assistance necessary occupy and commence operations at its distribution center to be constructed within the city limits of the

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<sup>1</sup> During the pre-public phase of this economic development agreement, this project was assigned the name “Project PEAK,” and any references to Project PEAK in other City of Lancaster or Lancaster Economic Development Corporation documents refer to this economic development project.

City of Lancaster, Texas; (“the Facility”) on real property owned by the Developer (“the Property”) and

**WHEREAS**, the LEDC’s Board of Directors have determined the financial assistance provided to Developer for Facility operations located on the Property is consistent with and meets the definition of “project” as that term is defined in Sections 501.101 and 501.103 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 that this Agreement is for the mutual benefit of the parties; 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 Agreement 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, as defined herein, and shall continue thereafter until **December 31, 2041**, 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) **Affiliate.** The word “Affiliate” means a directly- or indirectly-held subsidiary of Walmart, that is owned at least 50% by Walmart, and/or the successor-in-interest to an affiliate of Walmart, which meets the definition of an affiliate.
- (c) **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.

- (d) **Certificate of Occupancy.** The words “Certificate of Occupancy” mean a certificate of occupancy (or its local equivalent) for the shell improvements at the Facility.
- (e) **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.
- (f) **Combined Capital Investment.** The words “Combined Capital Investment” means investment on real property and business personal property related to the Facility and Property and the Project Valley Facility and Project Valley Property, as measured by appraised value. To qualify for the annual incentives under this Agreement, the combined Project Peak and Project Valley investments must be valued at no less than three hundred million dollars (\$300,000,000.00) in real property value, and five hundred million dollars (\$500,000,000.00) in business personal property as appraised by Dallas Central Appraisal District.
- (g) **Developer.** The word “Developer” means Walmart, whose address for the purposes of this Agreement is 702 SW8<sup>th</sup> Street, Bentonville, Arkansas and its affiliates who will participate in the purchase, development, and operation of facilities and services covered by this Agreement, including but not limited to Wal-Mart Stores East, LP, Wal-Mart Associates, Inc., and their successors.
- (h) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the Developer and LEDC, following approval by their respective Council and Board.
- (i) **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.”
- (j) **Facility.** The word Facility means the building to be constructed on the Property. The Facility shall be a minimum 700,000 square foot distribution center located on the Property. In order to qualify as the “Facility” under this Agreement, the facility must meet all of the following criteria: (1) be located within the City; and (2) no later than January 1, 2026, obtain a Certificate of Occupancy for the Facility.
- (k) **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 P.O. Box 940, Lancaster, Texas 75146.
- (l) **Pooled Grant Funds.** The words “Pooled Grant Funds” include those grant funds that can be apportioned, at Developer’s option, between this project and the Project Valley project.

These are the Workforce Development Grant/Site Development Grant in Section 5(a) (with a total pooled grant fund maximum of \$800,000.00); and the Permit Fee and Development Cost Grant in Section 5(b) (with a total pooled grant fund maximum of \$1,200,000.00). These fund maximums are a unified total fund pool for both this project and Project Valley, and are not per-project maximums. The total, aggregate maximum amount available for all Pooled Grant Fund expenditures for the project and Project Valley is \$2,000,000.00.

- (m) **Property.** The word “Property” means Developer’s ± 163.351 acre tract of land located in the City of Lancaster, Dallas County, Texas, commonly known as tract located in the Samuel Keller Survey, Abstract No. 720 and more particularly described and/or depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes.
- (n) **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) **Occupation of Facility.** Developer covenants and agrees to occupy the Facility by **January 1, 2026.**
- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained a Certificate of Occupancy from the City for the Facility located on the Property by January 1, 2026.
- (c) **Operation of Facility.** Developer covenants and agrees to maintain and actively operate the Facility located on the Property beginning January 1, 2026 and during the remainder of the Term of this Agreement.
- (d) **Job Creation.** In order to be eligible to receive LEDC funds under this Agreement, within three (3) years of obtaining a Certificate of Occupancy for the Facility, Developer must employ not less than three hundred (300) employees at the Facility at competitive wage rates.
- (e) **Combined Capital Investment.** In order to be eligible to receive LEDC funds under this Agreement, Developer must produce to LEDC for the first tax year after obtaining a Certificate of Occupancy for the Facility, receipts, tax receipts, and/or other documentation reasonably acceptable to LEDC to show a total Combined Capital Investment of not less than eight hundred million dollars (**\$800,000,000.00**).

- (f) **Payment of City Fees.** Developer covenants and agrees to pay to the City all City-related development fees for the development of the Property, construction of the Facility and for Facility Operations. Those fees include (but may not be limited to) the following: special use permit fees, building permit fees, sign permit fees, plan review fees, plumbing, heating and electrical permit fees, grading permit fees, architectural review fees, variance application fees, and zoning change fees. Further, Developer covenants and agrees to submit to the LEDC invoices, receipts, or other documentation indicating the amount of City-related development fees paid for the development of the Property in a reimbursable amount (as defined below in Section 5(b)), by **December 31, 2027**.
- (g) **Definition of and Documentation of Development Costs.** Developer covenants and agrees to obtain accurate invoices, receipts, and other written documentation regarding the amount of infrastructure costs actually incurred and paid for the development of the Property and construction of the Facility. Those costs include the following: actual paid and incurred costs for planning, engineering, architectural, surveying, environmental services, and construction of the Facility and street, sewer and water improvements to the Property in support of the Facility. Further Developer covenants and agrees to submit to the LEDC invoices, receipts, or other documentation indicating the amount of City-related development fees paid for the development of the Property in a reimbursable amount (as defined below in Section 5(b)) by **December 31, 2027**.
- (h) **City Fees.** Developer covenants and agrees to pay all applicable City fees associated with the construction and development of the Property, including, (without limitation) water and wastewater (sewer) impact fees, inspection fees, and permit fees at the then-current rates applicable to developments in the City, and to keep accurate records and receipts of the fees incurred and actually paid to the City.
- (i) **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 and between Developer and City.

## **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) **Workforce Development Grant/Site Development Grant.** LEDC covenants and agrees to provide Workforce Development Grant/Site Development Grant funds of up to an aggregate total of **Eight Hundred Thousand and No/100 Dollars (\$800,000.00)**. The funds may be used (1) to reimburse employee training costs actually paid and incurred by Developer, or by Project Valley, pursuant to the separate but related Performance Agreement; (2) for recruitment efforts for employee positions at Developer's or Project

Valley Facilities. Up to **Two Hundred Fifty Thousand and no/100 dollars (\$250,000.00)** of the aggregate total Workforce Development Grant/Site Development Grant funds may be used to rebate equipment costs actually paid and incurred by Developer, or by Project Valley, for use at their respective Facilities. Training must happen at the Cedar Valley Campus of Dallas College, onsite at Developer's or Project Valley Facility/Facilities, or at any other physical location within City limits. Developer must submit all requests for funding, supporting documentation, and receipts to LEDC no later than December 31, 2027, and will submit a joint statement in writing with Project Valley declaring the division of the aggregate total funds between Project Valley and Developer. This is a Pooled Grant Fund, and Developer expressly acknowledges that the Workforce Development Grant/Site Development Grant funds in this Section 5(a), and in the corresponding Project Valley Performance Agreement, consists of one (1) unified aggregate total funding source in an amount of up to \$800,000.00 to be split between Project Peak and Project Valley, and not two (2) separate \$800,000.00 funding sources.

- (b) **Reimbursement for Permit Fees and Development Costs.** LEDC covenants and agrees that within sixty (60) days of submission of Developer's invoices, receipts, and other documentation indicating the amount of permit fees and development costs paid in accordance with Sections 4(f) and (g) of this Agreement and acceptance by LEDC of the documentation, such submittal to occur no later than December 31, 2027, that LEDC will reimburse Developer for permit fees and development costs for the Property and/or Facility actually incurred and paid, up to a maximum aggregate amount of **One Million Two Hundred Thousand and no/100 dollars (\$1,200,000.00)**. As with the Workforce Development Grant/Site Development Grant funds, the Permit Fee/Development Cost grant may be apportioned between Developer and Project Valley. This is a Pooled Grant Fund, and Developer expressly acknowledges that the Permit Fee and Development Cost Grant funds in this Section 5(b), and in the corresponding Project Valley Performance Agreement, consists of one (1) unified aggregate total funding source in an amount of up to \$1,200,000.00 to be split between Developer and Project Valley, and not two (2) separate \$1,200,000.00 funding sources.

- (c) **Maximum LEDC Payment under this Agreement and Project Valley Agreement.** The Parties agree that, notwithstanding anything to the contrary in this Agreement or any other Agreement involving the Facility and/or Property, or any other Agreement with Project Valley, LEDC's maximum payment to Developer and/or Project Valley under the terms provided for hereunder (provided all conditions precedent to payment set forth herein are met) shall be **Two Million and no/100 dollars (\$2,000,000.00)**.

## **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) Walmart becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs and is not cured within the time period provided in Section 8.

## **SECTION 7. EVENTS OF DEFAULT.**

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

- (a) **Insufficient Capital Expenditures or Jobs.** Failure of Developer to comply with or to perform those acts or requirements set forth in Sections 4(a)-4(d) and Section 4(f) is an Event of Default.
- (b) **Failure to Make Payments.** Failure of the LEDC to comply with or to perform those acts or requirements set forth in section 5 is an Event of Default.
- (c) **False Statements.** Any warranty, representation, or statement made or furnished in writing to the LEDC by Developer to establish Developer's satisfaction of the requirements of this Agreement that is materially false or misleading at the time made or furnished is an Event of Default.
- (d) **Insolvency.** Walmart's insolvency, appointment of receiver for any part of Walmart's property, any assignment for the benefit of creditors of Walmart any type of creditor workout for Walmart, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Walmart is an Event of Default.
- (e) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and fails to cure such failure (by paying the taxes) within thirty (30) days after written notice thereof from LEDC and/or Dallas County Central Appraisal District is an Event of Default.
- (f) **Cross Default.** The parties expressly agree that an "event of default" (as such term is defined in the Project VALLEY agreement) by either party under the Project VALLEY agreement shall constitute an Event of Default by such defaulting party under this Agreement.

## **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 ninety (90) days to cure a 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, 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. In a cause of action for damages maintained by LEDC, LEDC's damages shall not exceed recovery, to the extent provided under this Agreement, of the amounts LEDC paid Developer, statutory interest, if any, with respect to such payments, and LEDC's reasonable attorneys' fees.

## **SECTION 9. INDEMNIFICATION.**

**TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT.**

## **SECTION 10. 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; provided, however, that Developer may assign this Agreement to any affiliate or affiliate's successor without first obtaining the consent of the City. Developer will forward City written notice of any assignment under this subsection 9(c) to the City

within thirty (30) days of the transaction.

- (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, epidemic or pandemic, 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. The parties agree to keep the other party or parties informed of their address at all times during the Term of this Agreement. The Notices shall be addressed as follows:

if to Developer:	Walmart Inc. 702 SW 8 <sup>th</sup> Street Bentonville, AR 72716
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if to LEDC:	Lancaster Economic Development Corporation P.O. Box 940 Lancaster, Texas 75146
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- (i) **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.

- (j) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (k) **Undocumented Workers.** 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 six percent (6%), not later than the 120<sup>th</sup> day after the date LEDC notifies Developer of the violation.
- (l) In accordance with Section 2270.002 of the Texas Government Code (as added by Tex. H.B. 89, 85<sup>th</sup> Leg., R.S. (2017)), the Developer verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (m) In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S.B. 252, 85<sup>th</sup> Leg., R.S. (2017)), the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- (n) **Estoppel Certificate.** Upon written request by Developer to LEDC, LEDC will provide Developer with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Developer is in breach of this Agreement, the nature of the breach, and (ii) a statement as to whether this Agreement has been amended and, if so, the identity and substance of each amendment.
- (o) Developer is a party to certain other agreements, listed on **Exhibit B** with City and with LEDC. LEDC agrees that program payments, rebates, payments, grants, and other benefits ("Benefits") provided by these agreements are not duplicative, and that Benefits provided under one agreement may not offset or otherwise reduce Benefits to which Developer is entitled under any other agreement.

**[The Remainder of this Page Intentionally Left Blank]**



*Performance Agreement*  
*Lancaster Economic Development Corporation – Walmart Inc. (Project Peak)*

**LEDC:**

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

By: \_\_\_\_\_

Name: Ted Burk

President

Date Signed: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Shane Shepard, Assistant LEDC Board Secretary

**STATE OF TEXAS**

§

§

**COUNTY OF DALLAS**

§

This instrument was acknowledged before me on the \_\_\_\_ day of January 2021, by Ted Burk, President of the Lancaster Economic Development Corporation, a Texas non-profit corporation, on behalf of said Texas corporation.

\_\_\_\_\_  
Notary Public, State of Texas

***Exhibit A***

[Legal Description and/or Depiction of Property]

***Exhibit B***

1. That certain CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT made and entered into by and between the CITY and WALMART, pertaining to Project Peak.
2. That certain CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT made and entered into by and between the CITY and WALMART, pertaining to Project Valley.
3. That certain PERFORMANCE AGREEMENT by and between WALMART and the LEDC, pertaining to Project Valley.

**SCHEDULE 1**  
**LEGAL DESCRIPTION**

BEING a 163.351 acre tract of land located in the Samuel Keller Survey, Abstract No. 720, in the City of Lancaster, Dallas County, Texas, being part of that called 255.320 acre parcel described in Special Warranty Deed with Vendor's Lien to 255 PRL LP, as recorded in Instrument No. 201700211697, Official Public Records Dallas County Texas (OPRDCT), said 163.351 acres being more particularly described by metes and bounds as follow:

COMMENCING at a found PK nail on the called southern right of way line for Pleasant Run Road (called 60' right of way as established by Volume 1963, Page 2, Deed Records Dallas County, Texas, same being the northeast corner of that called 23.082 acre tract described in Instrument No. 201200175128, OPRDCT, and being located N 89°24'35" E, 150.00 from the northeast corner of Eastside Acres, an Addition to the City of Lancaster as recorded in Volume 9, Page 85, Map Records Dallas County Texas, being the northwest corner of that called 3.905 acre parcel described in Dedication Right of Way Deed as recorded in Instrument No. 201800131364, OPRDCT;

THENCE S 00°33'34" E with the east line of said 23.082 acre tract, a distance of 69.40 feet to the POINT OF BEGINNING, on the south right of way line of Belt Line Road;

THENCE N 89°27'21" E with said south right of way line for Pleasant Run Road, a distance of 2,415.66 feet to the intersection of said right of way line and the centerline of Cornell Road (a prescriptive roadway);

THENCE S 00°22'09" E leaving the right of way line for Pleasant Run Road and with the center of Cornell Road, a distance of 3,001.24 feet to a found MAG NAIL for the intersection of said centerline and a north line of the aforesaid 23.082 acre tract, from which a found nail for the centerline intersection of Cornell Road and Green Road bears S 00°21'18" E, 100.0 feet;

THENCE west and north with the line common to said 23.082 acre tract and the herein described tract as follows:

S 89°25'46" W, a distance of 1,655.56 feet to a found 5/8-inch iron rod for the beginning of a curve; Along the arc of said curve to the right, having a central angle of 90°00'39", a radius of 750.00 feet, an arc length of 1,178.24 feet, and a chord of N 45°33'53" W, 1,060.76 feet to a set 5/8-inch iron rod with yellow cap marked ADAMS SURVEYING COMPANY, LLC. (hereafter called CIRS) for the end of said curve;

N 00°33'34" W, a distance of 2,252.18 feet to the POINT OF BEGINNING and containing 163.351 acres of land, more or less.

## LANCASTER CITY COUNCIL

### City Council Special Meeting

2.

**Meeting Date:** 01/19/2021

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):** Financially Sound City Government  
Quality Development

**Submitted by:** Opal Mauldin-Jones, City Manager

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### **Agenda Caption:**

Discuss and consider a resolution ratifying the terms and conditions of an incentive grant by and between a major retailer and the Lancaster Economic Development Corporation (LEDC).

### **Background:**

The retailer is contracted to purchase a 292-acre parcel located at the southwest corner of East Belt Line Road and Sunrise Road ('Project Valley'). The company plans to invest a total of eight hundred million dollars (\$800,000,000) in two new facilities in Lancaster. The Project Valley facility will allow the addition of a minimum of one thousand (1,000) new jobs within three (3) years after completion. The company is also planning a second facility to be located at East Pleasant Run Road and Cornell Road ('Project Peak'). Project Peak is a 162-acre parcel that will allow for the creation of 300 new jobs. The grant request will be considered separately for each project, however, maximum grant amounts will be set for both projects (Peak and Valley) as described below.

The company is committing to eight hundred million dollars (\$800,000,000) in Real and Business Personal Property valuation between the two (2) facility locations.

The maximum grant amount for both projects (Peak and Valley) combined is described below:

- Eight hundred thousand dollars (\$800,000) for a Workforce Development/Site Development Grant. The funds may be used to reimburse employee training costs, and employee recruitment efforts. Of the eight hundred thousand dollars (\$800,000), a portion, not to exceed two hundred and fifty thousand dollars (\$250,000) may be utilized to rebate equipment cost. The total of eight hundred thousand dollars (\$800,000) may be used for these purposes for both facilities (Peak and Valley) combined; and
- One million two hundred thousand dollars (\$1,200,000) for reimbursement of permit fees and development costs. This includes reimbursement for permit fees and development costs as supported by evidence of payment. In no case, will grant expenditures for both projects combined exceed two million dollars (\$2,000,000).

**Operational Considerations:**

The retailer will submit to the LEDC copies of all information required under this agreement in order to exercise the grant. Within 60 days of verification of compliance with all terms of the agreement, the Lancaster Economic Development Corporation will remit payment. The agreement requires completion of both facilities and a certificate of occupancy to exercise the grant.

**Legal Considerations:**

The City Attorney has reviewed and approved the resolution and agreement as to form.

**Public Information Considerations:**

This item is being considered at a Special Meeting of the City Council, noticed and held in accordance with the Texas Open Meetings Act.

**Fiscal Impact:**

The grant, if fully exercised, would not exceed two million dollars (\$2,000,000) and must be fully exercised within four (4) years.

**Options/Alternatives:**

1. City Council may approve the resolution as presented
2. City Council may deny the resolution.

**Recommendation:**

Staff recommends ratification of the agreement as presented.

**Attachments**

Resolution

Exhibit A - Performance Agreement

Property Description

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**RESOLUTION NO.**

**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 A MAJOR RETAILER FOR PROJECT VALLEY AND AUTHORIZING THE LEDC TO ENTER INTO A FORMAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, The retailer seeks to purchase approximately 292-acres of land and construct an industrial/warehouse facility where a minimum of one thousand (1,000) people will be employed within three (3) years of completion, which was known in the pre-public phase as "Project Valley"; and

**WHEREAS**, The Board of Directors of Lancaster Economic Development Corporation (hereinafter "LEDC") passed and approved Resolution 2021-01-01, on the 19th of January, 2021, offering an incentive grant to the retailer for this project; 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 January 19, 2021 actions of the Board of Directors of the LEDC approving a Grant Agreement by and between the retailer and the LEDC, 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 the retailer for Project Valley.

**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 19th day of January, 2021

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

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Clyde C. Hairston, Mayor

**APPROVED AS TO FORM:**

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David T. Ritter, City Attorney



## **EXHIBIT A PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** by and between **WALMART INC.**<sup>1</sup> a Delaware corporation, (“Walmart,” and together with its affiliates, and their successors, the “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 501.103 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . .”; 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 additional payroll or jobs to be created or retained by LEDC’s investment; 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**, Developer has applied to LEDC for financial assistance necessary occupy and commence operations at its distribution center to be constructed within the city limits of the

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<sup>1</sup> During the pre-public phase of this economic development agreement, this project was assigned the name “Project Valley,” and any references to Project Valley in other City of Lancaster or Lancaster Economic Development Corporation documents refer to this economic development project.

City of Lancaster, Texas; (“the Facility”) on real property owned by the Developer (“the Property”) and

**WHEREAS**, the LEDC’s Board of Directors have determined the financial assistance provided to Developer for Facility operations located on the Property is consistent with and meets the definition of “project” as that term is defined in Sections 501.101 and 501.103 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 that this Agreement is for the mutual benefit of the parties; 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 Agreement 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, as defined herein, and shall continue thereafter until **December 31, 2041**, 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) **Affiliate.** The word “Affiliate” means a directly- or indirectly-held subsidiary of Walmart, that is owned at least 50% by Walmart, and/or the successor-in-interest to an affiliate of Walmart, which meets the definition of an affiliate.
- (c) **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.

- (d) **Certificate of Occupancy.** The words “Certificate of Occupancy” mean a certificate of occupancy (or its local equivalent) for the shell improvements at the Facility.
- (e) **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.
- (f) **Combined Capital Investment.** The words “Combined Capital Investment” means investment on real property and business personal property related to the Facility and Property and the Project Peak Facility and Project Peak Property, as measured by appraised value. To qualify for the annual incentives under this Agreement, the combined Project Peak and Project Valley investments must be valued at no less than three hundred million dollars (\$300,000,000.00) in real property value, and five hundred million dollars (\$500,000,000.00) in business personal property as appraised by Dallas Central Appraisal District.
- (g) **Developer.** The word “Developer” means Walmart, whose address for the purposes of this Agreement is 702 SW 8<sup>th</sup> Street, Bentonville, Arkansas and its affiliates who will participate in the purchase, development, and operation of facilities and services covered by this Agreement, including but not limited to Walmart.com USA, LLC, Walmart Fulfillment Services, LLC, Wal-Mart Associates, Inc., and their successors.
- (h) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the Developer and LEDC, following approval by their respective Council and Board.
- (i) **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.”
- (j) **Facility.** The word Facility means the building to be constructed on the Property. The Facility shall be a minimum 1.5 million square foot distribution center located on the Property. In order to qualify as the “Facility” under this Agreement, the facility must meet all of the following criteria: (1) be located within the City; and (2) no later than January 1, 2026, obtain a Certificate of Occupancy for the Facility.
- (k) **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 P.O. Box 940, Lancaster, Texas 75146.
- (l) **Pooled Grant Funds.** The words “Pooled Grant Funds” include those grant funds that can be apportioned, at Developer’s option, between this project and the Project Peak project.

These are the Workforce Development Grant/Site Development Grant in Section 5(a) (with a total pooled grant fund maximum of \$800,000.00); and the Permit Fee and Development Cost Grant in Section 5(b) (with a total pooled grant fund maximum of \$1,200,000.00). These fund maximums are a unified total fund pool for both this project and Project Peak, and are not per-project maximums. The total, aggregate maximum amount available for all Pooled Grant Fund expenditures for the project and Project Peak is \$2,000,000.00.

- (m) **Property.** The word “Property” means Developer’s ± 292.081 acre tract of land located in the City of Lancaster, Dallas County, Texas, contained in the Samuel A. Dowdy Survey, Abstract No. 388, the ML Swing Survey, Abstract No. 1444, and the M. Lavender Survey, Abstract No. 766 and more particularly described and/or depicted in ***Exhibit A*** of this Agreement, which is attached hereto and incorporated herein for all purposes.
- (n) **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) **Occupation of Facility.** Developer covenants and agrees to occupy the Facility by **January 1, 2026.**
- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained a Certificate of Occupancy from the City for the Facility located on the Property by January 1, 2026.
- (c) **Operation of Facility.** Developer covenants and agrees to maintain and actively operate the Facility located on the Property beginning January 1, 2026 and during the remainder of the Term of this Agreement.
- (d) **Job Creation.** In order to be eligible to receive LEDC funds under this Agreement, within three (3) years of obtaining a Certificate of Occupancy for the Facility, Developer must employ not less than one thousand (1,000) employees at the Facility at competitive wage rates.
- (e) **Combined Capital Investment.** In order to be eligible to receive LEDC funds under this Agreement, Developer must produce to LEDC for the first tax year after obtaining a Certificate of Occupancy for the Facility, receipts, tax receipts, and/or other documentation reasonably acceptable to LEDC to show a total Combined Capital Investment of not less than eight hundred million dollars (**\$800,000,000.00**).

- (f) **Payment of City Fees.** Developer covenants and agrees to pay to the City all City-related development fees for the development of the Property, construction of the Facility and for Facility Operations. Those fees include (but may not be limited to) the following: special use permit fees, building permit fees, sign permit fees, plan review fees, plumbing, heating and electrical permit fees, grading permit fees, architectural review fees, variance application fees, and zoning change fees. Further, Developer covenants and agrees to submit to the LEDC invoices, receipts, or other documentation indicating the amount of City-related development fees paid for the development of the Property in a reimbursable amount (as defined below in Section 5(b)), by **December 31, 2027**.
- (g) **Definition of and Documentation of Development Costs.** Developer covenants and agrees to obtain accurate invoices, receipts, and other written documentation regarding the amount of infrastructure costs actually incurred and paid for the development of the Property and construction of the Facility. Those costs include the following: actual paid and incurred costs for planning, engineering, architectural, surveying, environmental services, and construction of the Facility and street, sewer and water improvements to the Property in support of the Facility. Further Developer covenants and agrees to submit to the LEDC invoices, receipts, or other documentation indicating the amount of City-related development fees paid for the development of the Property in a reimbursable amount (as defined below in Section 5(b)) by **December 31, 2027**.
- (h) **City Fees.** Developer covenants and agrees to pay all applicable City fees associated with the construction and development of the Property, including, (without limitation) water and wastewater (sewer) impact fees, inspection fees, and permit fees at the then-current rates applicable to developments in the City, and to keep accurate records and receipts of the fees incurred and actually paid to the City.
- (i) **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 and between Developer and City.

## **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) **Workforce Development Grant/Site Development Grant.** LEDC covenants and agrees to provide Workforce Development Grant/Site Development Grant funds of up to an aggregate total of **Eight Hundred Thousand and No/100 Dollars (\$800,000.00)**. The funds may be used (1) to reimburse employee training costs actually paid and incurred by Developer, or by Project Peak, pursuant to the separate but related Performance

Agreement; (2) for recruitment efforts for employee positions at Developer's or Project Peak Facilities. Up to **Two Hundred Fifty Thousand and no/100 dollars (\$250,000.00)** of the aggregate total Workforce Development Grant/Site Development Grant funds may be used to rebate equipment costs actually paid and incurred by Developer, or by Project Peak, for use at their respective Facilities. Training must happen at the Cedar Valley Campus of Dallas College, onsite at Developer's or Project Peak Facility/Facilities, or at any other physical location within City limits. Developer must submit all requests for funding, supporting documentation, and receipts to LEDC no later than December 31, 2027, and will submit a joint statement in writing with Project Peak declaring the division of the aggregate total funds between Project Peak and Developer. This is a Pooled Grant Fund, and Developer expressly acknowledges that the Workforce Development Grant/Site Development Grant funds in this Section 5(a), and in the corresponding Project Peak Performance Agreement, consists of one (1) unified aggregate total funding source in an amount of up to \$800,000.00 to be split between Project Peak and Project Valley, and not two (2) separate \$800,000.00 funding sources.

- (b) **Reimbursement for Permit Fees and Development Costs.** LEDC covenants and agrees that within sixty (60) days of submission of Developer's invoices, receipts, and other documentation indicating the amount of permit fees and development costs paid in accordance with Sections 4(f) and (g) of this Agreement and acceptance by LEDC of the documentation, such submittal to occur no later than December 31, 2027, that LEDC will reimburse Developer for permit fees and development costs for the Property and/or Facility actually incurred and paid, up to a maximum aggregate amount of **One Million Two Hundred Thousand and no/100 dollars (\$1,200,000.00)**. As with the Workforce Development Grant/Site Development Grant funds, the Permit Fee/Development Cost grant may be apportioned between Developer and Project Peak. This is a Pooled Grant Fund, and Developer expressly acknowledges that the Permit Fee and Development Cost Grant funds in this Section 5(b), and in the corresponding Project Peak Performance Agreement, consists of one (1) unified aggregate total funding source in an amount of up to \$1,200,000.00 to be split between Developer and Project Peak, and not two (2) separate \$1,200,000.00 funding sources.

- (c) **Maximum LEDC Payment under this Agreement and Project Peak Agreement.** The Parties agree that, notwithstanding anything to the contrary in this Agreement or any other Agreement involving the Facility and/or Property, or any other Agreement with Project Peak, LEDC's maximum payment to Developer and/or Project Peak under the terms provided for hereunder (provided all conditions precedent to payment set forth herein are met) shall be **Two Million and no/100 dollars (\$2,000,000.00)**.

## **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) Walmart becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs and is not cured within the time period provided in Section 8.

## **SECTION 7. EVENTS OF DEFAULT.**

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

- (a) **Insufficient Capital Expenditures or Jobs.** Failure of Developer to comply with or to perform those acts or requirements set forth in Sections 4(a)-4(d) and Section 4(f) is an Event of Default.
- (b) **Failure to Make Payments.** Failure of the LEDC to comply with or to perform those acts or requirements set forth in section 5 is an Event of Default.
- (c) **False Statements.** Any warranty, representation, or statement made or furnished in writing to the LEDC by Developer to establish Developer's satisfaction of the requirements of this Agreement that is materially false or misleading at the time made or furnished is an Event of Default.
- (d) **Insolvency.** Walmart's insolvency, appointment of receiver for any part of Walmart's property, any assignment for the benefit of creditors of Walmart any type of creditor workout for Walmart, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Walmart is an Event of Default.
- (e) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and fails to cure such failure (by paying the taxes) within thirty (30) days after written notice thereof from LEDC and/or Dallas County Central Appraisal District is an Event of Default.
- (f) **Cross Default.** The parties expressly agree that an "event of default" (as such term is defined in the Project Peak agreement) by either party under the Project Peak agreement shall constitute an Event of Default by such defaulting party under this Agreement.

## **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 ninety (90) days to cure a 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, 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. In a cause of action for damages maintained by LEDC, LEDC's damages shall not exceed recovery, to the extent provided under this Agreement, of the amounts LEDC paid Developer, statutory interest, if any, with respect to such payments, and LEDC's reasonable attorneys' fees.

## **SECTION 9. INDEMNIFICATION.**

**TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT.**

## **SECTION 10. 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; provided, however, that Developer may assign this Agreement to any affiliate or affiliate's successor without first obtaining the consent of the City. Developer will forward City written notice of any assignment under this subsection 9(c) to the City



within thirty (30) days of the transaction.

- (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, epidemic or pandemic, 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. The parties agree to keep the other party or parties informed of their address at all times during the Term of this Agreement. The Notices shall be addressed as follows:

if to Developer:	Walmart Inc. 702 SW 8 <sup>th</sup> Street Bentonville, AR 72716
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if to LEDC:	Lancaster Economic Development Corporation P.O. Box 940 Lancaster, Texas 75146
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- (i) **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.

- (j) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (k) **Undocumented Workers.** 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 six percent (6%), not later than the 120<sup>th</sup> day after the date LEDC notifies Developer of the violation.
- (l) In accordance with Section 2270.002 of the Texas Government Code (as added by Tex. H.B. 89, 85<sup>th</sup> Leg., R.S. (2017)), the Developer verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (m) In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S.B. 252, 85<sup>th</sup> Leg., R.S. (2017)), the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- (n) **Estoppel Certificate.** Upon written request by Developer to LEDC, LEDC will provide Developer with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Developer is in breach of this Agreement, the nature of the breach, and (ii) a statement as to whether this Agreement has been amended and, if so, the identity and substance of each amendment.
- (o) Developer is a party to certain other agreements, listed on **Exhibit B** with City and with LEDC. LEDC agrees that program payments, rebates, payments, grants, and other benefits ("Benefits") provided by these agreements are not duplicative, and that Benefits provided under one agreement may not offset or otherwise reduce Benefits to which Developer is entitled under any other agreement.

**[The Remainder of this Page Intentionally Left Blank]**

*Lancaster Economic Development Corporation – Walmart Inc. (Project Valley)*

**LEDC:**

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

By: \_\_\_\_\_

Name: Ted Burk

President

Date Signed: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Shane Shepard, Assistant LEDC Board Secretary

**STATE OF TEXAS**

§

§

**COUNTY OF DALLAS**

§

This instrument was acknowledged before me on the \_\_\_\_ day of January 2021, by Ted Burk, President of the Lancaster Economic Development Corporation, a Texas non-profit corporation, on behalf of said Texas corporation.

\_\_\_\_\_  
Notary Public, State of Texas

***Exhibit A***

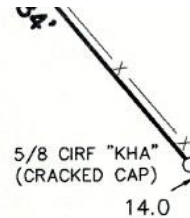
[Legal Description and/or Depiction of Property]

***Exhibit B***

1. That certain CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT made and entered into by and between the CITY and WALMART, pertaining to Project Peak.
  2. That certain CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT made and entered into by and between the CITY and WALMART, pertaining to Project Valley.
- That certain PERFORMANCE AGREEMENT by and between WALMART and the LEDC,  
pertaining to Project Peak.

## LEGAL DESCRIPTION

BEING a 292.081 acre tract contained within the A. Dowdy Survey, Abstract No. 388, the ML Swing Survey, Abstract No. 1444, and the M. Lavender Survey, Abstract No. 766, and being all of that tract described by Special Warranty Deed to MSW Prime-Lancaster L.P., as recorded in Instrument Number 201800235768 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.) and being all of that tract described by Special Warranty Deed to WHL Dallas 45 LLC, as recorded in Instrument Number 201100339298 of the O.P.R.D.C.T., being more particularly described as follows:



BEGINNING at a to a 5/8-inch iron rod found, in the southerly right-of-way line of E. Belt Line Road (variable width roadway), for the northeasterly corner of that remaining tract as described to Roddy Brothers as recorded in Volume 889, Page 504, Deed Records of Dallas County, Texas (D.R.D.C.T.), and the northwest corner of the herein described tract;

THENCE with the southerly right-of-way line of said E. Belt Line Road the following nine (9) calls:

South 85 degrees 42 minutes 54 seconds East, a distance of 211.66 feet to the beginning of a tangent curve to the left, from with a 5/8-inch iron rod found bears North 76 degrees 09 minutes East, 0.4 feet;

With said curve to the left, having a radius of 5,779.65 feet, a central angle of 05 degrees 09 minutes 53 seconds, an arc length of 521.00 feet, and a chord of South 88 degrees 17 minutes 51 seconds East, 520.82 feet, to a 5/8-inch iron rod found;

North 89 degrees 07 minutes 36 seconds East, a distance of 1,081.80 feet, for the beginning of a tangent curve to the right, from which a 5/8-inch iron rod bears North 70 degrees 42 minutes East, 0.6 feet;

With said curve to the right, having a radius of 1,860.08 feet, a central angle of 14 degrees 39 minutes 44 seconds, an arc length of 476.00 feet, and a chord of South 83 degrees 32 minutes 16 seconds East, 474.70 feet, to a set 5/8-inch capped iron rod stamped ADAMS SURVEYING COMPANY LLC" (CIRS);

South 76 degrees 12 minutes 24 seconds East, a distance of 331.30 feet to the beginning of a curve to the left, from which a 5/8-inch iron rod found bears North 46 degrees 06 minutes East, 0.2 feet;

With said curve to the left, having a radius of 1,960.08 feet, a central angle of 13 degrees 00 minutes 28 seconds, an arc length of 445.00 feet, and a chord of South 84 degrees 07 minutes 07 seconds East, 444.04 feet, from which a 5/8-inch iron rod bears North 34 minutes 04 seconds East, 0.5 feet;

North 89 degrees 22 minutes 36 seconds East, a distance 135.32 feet to a 5/8-inch iron rod found, for the common northerly corner of said MSW Prime and WHL Dallas tracts;

North 89 degrees 02 seconds 25 minutes East, a distance of 976.99 feet to a 5/8-inch iron rod found for the beginning of a tangent curve to the left;

With said curve to the left, having a radius of 1,960.08 feet, a central angle of 09 degrees 35 minutes 16 seconds, an arc length of 328.00 feet, and a chord of North 84 degrees 14 minutes 50 seconds East, 327.62 feet to a 5/8-inch iron rod found in the beginning of a corner clip of Sunrise Road (a 40' right-of-way);

THENCE South 65 degrees 28 minutes 05 seconds East, with said corner clip of Sunrise Road, a distance of 168.00 feet to a 1/2-inch capped iron rod stamped "KHA" found;

THENCE South 30 degrees 42 minutes 35 seconds East, with said Sunrise Road, a distance of 731.53 feet to a CIRS, being the common easterly corner of said MSW Prime-Lancaster L.P. and WHL DALLAS 45 LLC tracts;

THENCE South 31 degrees 17 minutes 15 seconds East, continuing with said Sunrise Road, a distance of 1,166.11 feet to a CIRS, being the northeasterly corner of that tract described by Special Warranty Deed to Schlachter Reality LTD, as recorded in Instrument Number 201300000170, O.P.R.D.C.T., from which a capped iron rod found bears South 70 degrees 37 minutes West, 17.5 feet;

THENCE South 58 degrees 46 minutes 59 seconds West, with the northerly property line of said Schlachter Reality LTD, at a distance of 734.77 feet passing a 5/8-inch iron rod found, being the northeasterly corner of that tract described by Warranty Deed with Vendor's Lien to David A. Schlachter as recorded in Volume 81079, Page 1085, Deed Records of Dallas County, Texas, continuing a total distance of 3,751.10 feet to a CIRS, being in the easterly line of Block A, Lancaster Airport Addition, an Addition to the City of Lancaster as recorded in Volume 97173, Page 5853, D.R.D.C.T.;

THENCE the following three (3) calls with the easterly line of said Block A:

North 30 degrees 50 minutes 55 seconds West, a distance of 2,502.10 feet to a 1/2-inch capped iron rod stamped "KHA" found;

South 60 degrees 09 minutes 56 seconds West, a distance of 424.85 feet to a 1/2-inch capped iron rod stamped "KHA" found;

North 40 degrees 14 minutes 23 seconds West, a distance of 1,172.84 feet to a 1/2-inch capped iron rod stamped "KHA" found, being the southerly corner of that remaining tract as described to Roddy Brothers as recorded in Volume 889, Page 504, D.R.D.C.T.;

THENCE North 00 degrees 00 minutes 19 seconds East, a distance of 946.78 feet to the POINT OF BEGINNING, containing 292.081 acres of land, more or less.

## LANCASTER CITY COUNCIL

### City Council Special Meeting

3.

**Meeting Date:** 01/19/2021

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):** Financially Sound City Government  
Quality Development

**Submitted by:** Shane Shepard, Economic Development Director

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#### **Agenda Caption:**

Discuss and consider a resolution approving a Chapter 380 Economic Development Agreement by and between the City of Lancaster, Texas and a major retailer, and authorizing the City Manager to execute the agreement, and providing an effective date.

#### **Background:**

The retailer is contracted to purchase a 162-acre parcel located at the southwest corner of East Pleasant Run Road and Cornell Road. The retailer plans to invest approximately three hundred eighty million dollars (\$380,000,000) to four hundred twenty million dollars (\$420,000,000) in a new facility at the site. The new facility will allow the addition of a minimum of 300 new jobs.

The retailer is committing to eight hundred million dollars (\$800,000,000) in Real and Business Personal Property valuation combined between two locations. The second facility will be located at the southwest corner of East Beltline Road and Sunrise Road. The company has applied for a real property and business personal property incentive grant in compliance with the City's Incentive Policy.

This agreement requires the developer to occupy the facility within five years of the execution of the agreement and maintain occupancy for the term of the agreement. A minimum of three hundred (300) new full-time employees are required to be hired at this location within three years of obtaining a Certificate of Occupancy. In total, both projects are required to increase the value of real and business personal property by eight hundred million dollars (\$800,000,000), in order to receive the maximum amount of benefits.

Based on the developer fulfilling the terms of the agreement, the City will:

1) During construction if the retailer occupies temporary space in the City of Lancaster, we will rebate fifty percent (50%) of the Business and Personal Property Taxes for the initial year, and declining in 5% increments in subsequent years up to a maximum of five years.

2) In the year following receipt of a certificate of occupancy, the City of Lancaster will rebate sixty-five percent (65%) of real property taxes for a period of 15 years as long as the two properties combined maintain a taxable valuation of eight hundred million dollars



(\$800,000,000).

3) In the years following receipt of a certificate of occupancy, the City of Lancaster will rebate sixty-five percent (65%) of Business Personal Property taxes for a period of 15 years as long as the two properties combined maintain a taxable valuation of eight hundred million dollars (\$800,000,000).

4) During construction, all taxable goods and services utilized on the two projects, purchased within the City of Lancaster, will rebate fifty percent (50%) of the City's one percent (1%) sales tax back to the retailer for a period not to exceed five (5) years.

5) The City will rebate fifty percent (50%) of the City's one percent (1%) of sales tax received for Material Handling Equipment utilized within the two projects and sourced from the city of Lancaster for a period of five (5) years.

6) The City will rebate fifty percent (50%) of the City's one percent (1%) of sales taxes for consumer goods fulfilled or shipped from the facility and taxes sourced to the City of Lancaster under Chapter 321 of the Texas Tax Code.

**Operational Considerations:**

The major retailer will annually submit receipts for real property and business personal property tax payments in order to exercise the grant. Within sixty (60) days of verification of payment, the City will remit sixty-five percent (65%) of the Business & Personal and Real Property Tax payment to the company for a period of fifteen (15) years, provided that all contractual contingencies, including maintaining a taxable valuation of at least eight hundred million dollars (\$800,000,000) between the two projects, are satisfied.

**Legal Considerations:**

The City Attorney has reviewed and approved the resolution and agreement as to form.

**Public Information Considerations:**

This item is being considered at a Special Meeting of the City Council noticed and held in accordance with the Texas Open Meetings Act.

**Fiscal Impact:**

Based on the estimated value added capital investment submitted by the company and in consideration of the tax rebates, the total benefit of both projects will represent approximately two million two hundred ninety-six thousand dollars (\$2,296,000) annually or a total of thirty-four million four hundred forty thousand dollars (\$34,440,000) over the fifteen (15) year period in new revenue to the City. Thereafter, annual tax revenue from Real and Business Personal Property will be six million five hundred sixty thousand dollars (\$6,560,000) annually.

**Options/Alternatives:**

1. City Council may approve the resolution, as presented.
2. City Council may deny the resolution.

**Recommendation:**

Staff recommends approval of the resolution as presented.

**Attachments**

Resolution

Exhibit A - 380 Agreement

Property Description

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER, TEXAS AND A MAJOR RETAILER, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the major retailer seeks to purchase approximately 162-acres of land and construct a distribution/warehouse facility where a minimum of three hundred (300) people will be employed within three (3) years of completion.

**WHEREAS**, the City of Lancaster ("City") recognizes the importance of business and community development to the vitality and growth of Lancaster; and

**WHEREAS**, the City desires to grant certain economic development incentives to the major retailer for the purpose of constructing the distribution facility within the City of Lancaster; and

**WHEREAS**, the City has adopted programs for promoting economic development, and an Economic Development Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

**WHEREAS**, the City is authorized by Chapter 380 of the Texas Local Government Code to issue grants in order to promote local economic development by stimulating the local economy; and

**WHEREAS**, the Agreement containing the terms of the grant of incentives from the City 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 approves a Chapter 380 Economic Development Incentive Agreement by and between the City of Lancaster and a major retailer, attached as Exhibit "A" and incorporated herein.

**SECTION 2.** The City Council authorizes the City Manager to execute the Chapter 380 Economic Development Program and Agreement between the City of Lancaster the major retailer.

**SECTION 3.** This Resolution shall take effect immediately from and after the date of passage and is provided by law.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of January 2021

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

\_\_\_\_\_  
Clyde C. Hairston, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, City Attorney

**EXHIBIT A  
CITY OF LANCASTER, TEXAS  
AND  
WALMART INC.<sup>1</sup>**

**CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AND AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (hereinafter referred to as the “Agreement”) is made and entered into by and between the **CITY OF LANCASTER, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the “City”), and **WALMART INC.**, a Delaware corporation (“Walmart,” and together with its affiliates, and their successors, the “Developer”), for the purposes and considerations stated below:

**WHEREAS**, the Developer desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code an incentive to Developer to develop the Property as defined below; and

**WHEREAS**, the City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to expend public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of Lancaster, Texas; and

**WHEREAS**, the City has determined that a grant of funds to the Developer will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, will eliminate unemployment and underemployment in the State and City, and will enhance business and commercial activity within the City of Lancaster, Texas; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development, and stimulates business and commercial activity, in the City of Lancaster, Texas, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and the Developer; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Lancaster, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

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<sup>1</sup> During the pre-public phase of this economic development agreement, this project was assigned the name “Project PEAK,” and any references to Project PEAK in other City of Lancaster or Lancaster Economic Development Corporation documents refer to this economic development project.

**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, the City 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 of this Agreement, as defined herein, and shall continue thereafter until **December 31, 2041**, unless terminated sooner under the provisions hereof.

## **SECTION 3. DEFINITIONS.**

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

- (a) **Affiliate.** The word “Affiliate” means a directly- or indirectly-held subsidiary of Walmart that is owned at least 50% by Walmart and /or the successor-in-interest to an affiliate of Walmart which meets the definition of an affiliate.
- (b) **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program and Agreement, authorized by Chapter 380 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (c) **Certificate of Occupancy.** The words “Certificate of Occupancy” mean a certificate of occupancy (or its local equivalent) for the Facility.
- (d) **City.** The word “City” means the City of Lancaster, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City’s address is P.O. Box 940, Lancaster, Texas 75146.
- (e) **Combined Capital Investment.** The words “Combined Capital Investment” means investment on real property and business personal property related to the Facility and Property and the Project Valley Facility and Project Valley Property, as measured by appraised value. To qualify for the annual incentives under this Agreement, the combined Project Peak and Project Valley investments must be valued at no less than three hundred million dollars (\$300,000,000.00) in real property value, and five hundred million dollars (\$500,000,000.00) in business personal property as appraised by Dallas Central Appraisal District.
- (f) **Developer.** The word “Developer” means Walmart, whose address for the purposes of this Agreement is 702 SW 8<sup>th</sup> Street, Bentonville, Arkansas and its affiliates who will

participate in the purchase, development and operation of facilities and services covered by this Agreement, including but not limited to Wal-Mart Stores East, LP, Wal-Mart Associates, Inc., and their successors.

- (g) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the City and Developer, following approval by their respective Council and Board.
- (h) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth in the section entitled “Events of Default” in this Agreement.
- (i) **Facility.** The word “Facility” means the building to be constructed on the Property. The Facility shall be a minimum 700,000 square foot distribution center. In order to qualify as the “Facility” under this Agreement, the facility must meet the following criteria: (1) be located within the City; (2) no later than January 1, 2026, obtain a Certificate of Occupancy for the Facility; and (3) once a Certificate of Occupancy has been obtained, continue to meet the qualifications required for such Certificate of Occupancy to be maintained with respect to the Facility throughout the remaining Term of this Agreement.
- (j) **Full-Time Equivalent Employment Positions.** The words “Full-Time Equivalent Employment Position(s)” mean a job requiring a minimum of One Thousand Seven Hundred Sixteen (1,716) hours of work averaged over a twelve-month period with such hours also to include any vacation and sick leave.
- (k) **Program Payment.** The words “Program Payment” mean the economic development funds provided by the City to Developer in accordance with this Agreement. Program Payments will be made in the form of tax rebates as described in more detail in Section 5(a) of this Agreement.
- (l) **Project Valley Facility.** The words “Project Valley Facility” means the facility as defined in that certain Chapter 380 Economic Development Agreement between the City of Lancaster, Texas and Walmart. and referred to as the Project VALLEY agreement.
- (m) **Project Valley Property.** The words “Project Valley Property” means the property as defined in that certain Chapter 380 Economic Development Agreement between the City of Lancaster, Texas and Walmart and referred to as the Project VALLEY agreement.
- (n) **Property.** The word “Property” means Developer’s ± 163.351 acre tract of land located in the City of Lancaster, Dallas County, Texas, commonly known as a tract located in the Samuel Keller Survey, Abstract No 720 and more particularly described and or depicted in ***Exhibit A*** of this Agreement, which is attached hereto and incorporated herein for all purposes.
- (o) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

#### **SECTION 4. AFFIRMATIVE OBLIGATIONS OF DEVELOPER.**

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

- (a) **Occupation of Facility.** Developer covenants and agrees to commence occupying the Facility no later than January 1, 2026, and continuing throughout the term of this Agreement.
- (b) **Temporary Operations.** During the period after the Effective Date of this Agreement and prior to Developer's securing a Certificate of Occupancy for the Facility, the Developer may conduct temporary operations which would be conducted at the Facility, during the construction of the Facility, which qualify for the Section 5(a)(1) incentives, so long as: the operations are based within the City and the physical location of the temporary operations, including all BPP, is located within the City limits.
- (c) **Certificate of Occupancy.** Developer covenants and agrees to obtain or maintain a City Certificate of Occupancy for the Facility located on the Property during the term of this Agreement, and no later than January 1, 2026.
- (d) **Operation of Facility.** Developer covenants and agrees to maintain and actively operate the Facility during the Term of this Agreement.
- (e) **Performance.** Developer covenants and agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the City and Developer, and to stay current with all applicable taxes levied by the Dallas County Tax Assessor.
- (f) **Full-Time Equivalent Employment Positions.** Developer covenants and agrees to establish not fewer than three hundred (300) new Full-Time Equivalent Employment positions at the Facility within five (5) years of the Effective Date of this Agreement, such positions to be maintained throughout the Term of this Agreement.
- (g) **Combined Capital Investment.** In order to be eligible to receive City funds under this Agreement, Developer must produce to City for the first year for which appraisal values are available after obtaining Certificate of Occupancy for the Facilities, and for each year thereafter, Dallas Central Appraisal District records showing a total Combined Capital Investment of not less than eight hundred million dollars (**\$800,000,000.00**), of which not less than three hundred million dollars in real estate value, and not less than five hundred million dollars in business personal property value.

## SECTION 5. AFFIRMATIVE OBLIGATIONS OF THE CITY.

City covenants and agrees with Developer that, while this Agreement is in effect, and all applicable Section 4 obligations of Developer are fulfilled, it shall comply with the following terms and conditions:

(a) **Program Payments.**

- (1) **Business Personal Property Tax – During Temporary Operation.** The City shall make Program Payments to Developer for ad valorem taxes paid by or on behalf of the Developer to the City for Business Personal Property located at the Property while the Facility is being constructed, provided that the period for such Program Payments shall not exceed five (5) years. The first year of the Program Payments pursuant to this Section 5(a)(1) of this Agreement shall be the tax year starting January 1, 2022. The Program Payments shall be based upon the following percentages:

<b>Tax Years 1-5</b>	<b>Percentage of City BPP Taxes Reimbursed</b>
<b>Year 1</b>	<b>50%</b>
<b>Year 2</b>	<b>45%</b>
<b>Year 3</b>	<b>40%</b>
<b>Year 4</b>	<b>35%</b>
<b>Year 5</b>	<b>30%</b>

- (2) **Business Personal Property and Real Property Tax – During Facility Operation.** For each year that the Developer has satisfied the minimum Combined Capital Investment requirements, City shall make Program Payments to Developer for the ad valorem taxes paid by the Developer to the City for: (1) Real Property; and (2) Business Personal Property located at the Property for fifteen (15) years while the Facility is being occupied and operated after obtaining a Certificate of Occupancy. Failure to satisfy the Combined Capital Investment requirements for one year will not disqualify Developer from receiving subsequent year Program Payments, as long as the eligibility is regained. The first year of the Program Payments pursuant to this Section 5(a)(2) of this Agreement shall be the first full tax year after a Certificate of Occupancy has been issued for the Facility. The Program Payments shall be based upon the following percentages:

<b>Tax Years 1-15</b>	<b>Percentage of City BPP and Real Property Taxes Reimbursed</b>
<b>Year 1-15</b>	<b>65%</b>



(3) **Sales Tax Rebate for Construction.** For the first five (5) years after the Effective Date of this Agreement, the City will rebate fifty percent (50%) of the City's one percent (1%) general funds portion of sales tax paid to and received by the City; being a point five percent (.5%) portion of sales and use tax for services and materials used in the construction of the Facility. Reports will be given to the City on an annual basis, and rebates will be made within one (1) year after both Project Peak and Project Valley receive Certificates of Occupancy from the City. Reports with respect to such rebates must be submitted by December 31, 2026. In addition, pursuant to Texas law, Developer shall have the right to seek to obtain a Direct Pay Permit, which would establish first use within the City. If the Developer obtains such a Direct Pay Permit, Developer shall use diligent and good faith efforts to manage all relevant qualified costs at the Facility to maximize, to the extent practicable and reasonable for Developer, the amount of sales and use tax collection by the City in accordance with applicable law.

(4) **Sales Tax Rebate for Material Handling Equipment.** For the first five (5) years after the Effective Date of This Agreement, the City will rebate fifty percent (50%) of the City's one percent (1%) general funds portion of sales tax; being a point five percent (.5%) portion of sales and use tax for material handling equipment installed at the Facility. Reports will be given to the City on an annual basis, and rebates will be made within one (1) year after both Project Peak and Project Valley receive Certificates of Occupancy from the City. Reports with respect to such rebates must be submitted by December 31, 2026. In addition, pursuant to Texas law, Developer shall have the right to seek to obtain a Direct Pay Permit, which would establish first use within the City. If the Developer obtains such a Direct Pay Permit, Developer shall use diligent and good faith efforts to manage all relevant qualified costs at the Facility to maximize, to the extent practicable and reasonable for Developer, the amount of sales and use tax collection by the City in accordance with applicable law.

(b) **Valuation of Real Property and Business Personal Property.** The Real Property valuations in this Section 5 are the final valuations agreed upon by Developer and Dallas Central Appraisal District ("DCAD") and the constituent taxing authorities or, if applicable, by final judicial determination. This Agreement shall in no way restrict Developer's ability to protest DCAD's valuations of Developer's Real and Business Personal Property as permitted by applicable law. The valuations of Developer's Real and Business Personal Property may be deemed final by written, joint agreement between the parties at any point prior to protest or during the protest process.

## **SECTION 6. CESSATION OF ADVANCES.**

City shall have no obligation to advance or disburse future Program Payment after: (a) Walmart becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged

bankrupt; or (b) with respect to Program Payments that relate to a period after an Event of Default occurs, an Event of Default in Section 7(a) occurs and is not cured within the time period provided in Section 8.

## **SECTION 7. EVENTS OF DEFAULT.**

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

- (a) **Insufficient Capital Expenditures or Jobs.** Failure of Developer to comply with or to perform those acts or requirements set forth in sections 4(a), 4(c)-(d), and (f) is an Event of Default. The failure to meet annual Combined Capital Investment requirements under 4(g) is not an Event of Default, but will disqualify Developer from receiving the Program Payment under Section 5(a)(2) for the applicable tax year.
- (b) **Failure to Make Program Payments.** Failure of City to comply with or to perform those acts or requirements set forth in section 5(a) is an Event of Default.
- (c) **False Statements.** Any warranty, representation, or statement made or furnished in writing to the City by Developer to establish Developer's satisfaction of the requirements of this Agreement that is materially false or misleading at the time made or furnished is an Event of Default.
- (d) **Insolvency.** Walmart's insolvency, appointment of receiver for any part of Walmart's property, any assignment for the benefit of creditors of Walmart, any type of creditor workout for Walmart, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Walmart is an Event of Default.
- (e) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and fails to cure (by paying the taxes) such failure within thirty (30) days after written notice thereof from City and/or Dallas County Central Appraisal District is an Event of Default.
- (f) **Cross Default.** The parties expressly agree that an "event of default" (as such term is defined in the Project VALLEY agreement) by either party under the Project VALLEY agreement shall constitute an Event of Default by such defaulting party under this Agreement.

## **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 ninety (90) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, the non-defaulting party shall have the right to terminate this Agreement or maintain a cause of action for damages caused by the event(s) of default. In a cause of action for damages maintained by the

City, the City's damages shall not exceed recovery, to the extent provided under this Agreement, of the amounts the City paid Developer, statutory interest, if any, with respect to such payments, and the City's reasonable attorneys' fees.

## **SECTION 9. INDEMNITY.**

**TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT. NOTHING HEREIN SHALL BE INTERPRETED AS A WAIVER OF CITY'S GOVERNMENTAL IMMUNITY FROM SUIT OR DAMAGES.**

## **SECTION 10. 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 of Dallas County, Texas.
- (c) **Assignment.** This Agreement may be assigned by Developer only with the prior written permission of City; provided, however, that Developer may assign this Agreement to any affiliate or affiliate's successor without first obtaining the consent of the City. Developer will forward notice of any assignment under this subsection to the City within thirty (30) days of the transaction.
- (d) **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.

- (e) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Developer 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.
- (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) **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.
- (h) **Entire Agreement.** This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.
- (i) **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, epidemic or pandemic, 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. The Term of the Agreement will be extended, if necessary, to provide Developer with the same number of years of Program Payments as provided for in Section 5(a).
- (j) **No Interpretation Against Drafter.** Developer and City 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.
- (k) **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 by nationally recognized next business day delivery service 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. The parties agree to keep the other party or parties informed of their address at all times during the Term of this Agreement. The Notices shall be addressed as follows:

If to the City: City of Lancaster, Texas  
Attn: Opal Mauldin-Jones, City Manager  
P.O. Box 940  
Lancaster, Texas 75146  
Telephone: (972) 218-1302

If to the Developer: Walmart Inc.  
702 SW 8<sup>th</sup> Street  
Bentonville, Arkansas 72716

- (l) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.
- (m) **Survival.** All warranties, representations, and covenants made by either party in this Agreement shall be considered to have been relied upon by the receiving party and will survive the termination of this Agreement by operation of time.
- (n) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (o) **Undocumented Workers.** The Developer certifies that 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 any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120<sup>th</sup> day after the date the City notifies Developer of the violation.
- (p) In accordance with Section 2270.002 of the Texas Government Code (as amended by Tex. H.B. 793, 86<sup>th</sup> Leg., R.S. (2019)), the Developer verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (q) In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S. B. 252, 85<sup>th</sup> Leg., R.S. (2017)), the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- (r) **Estoppel Certificate.** Upon written request by Developer to City, City will provide Developer with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Developer is in breach of this Agreement, the nature of the breach, and (ii) a statement as to whether this Agreement has been amended and, if so, the identity and substance of each amendment.

- (s) Developer is a party to certain other agreements, listed on ***Exhibit B*** with City and with the Lancaster Economic Development Corporation. Unless expressly listed as Pooled Grant Funds in the applicable exhibit, City agrees that the Program Payments, rebates, payments, grants, and other benefits (“Benefits”) provided by these agreements are not duplicative, and that Benefits provided under one agreement may not offset or otherwise reduce Benefits to which Developer is entitled under any other agreement.

**[The Remainder of this Page Intentionally Left Blank]**

**THE INCENTIVES IN THIS AGREEMENT SHALL BE NULL AND VOID IF NOT SIGNED BY DEVELOPER AND RETURNED TO THE CITY WITHIN THIRTY (30) WORKING DAYS OF THE DATE LISTED HEREIN: JANUARY 19, 2021**

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

**CITY:**

**CITY OF LANCASTER, TEXAS,**  
a Texas home-rule municipality

By: \_\_\_\_\_  
Opal Mauldin-Jones, City Manager

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, City Attorney

**STATE OF TEXAS** §  
§  
**COUNTY OF DALLAS** §

This instrument was acknowledged before me on the \_\_\_\_ day of January, 2021, by Opal Mauldin-Jones, City Manager of the City of Lancaster, Texas, a Texas home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas

**DEVELOPER:**

**WALMART INC.**  
a Delaware corporation

By: \_\_\_\_\_  
Hunter Hart, VP – Real Estate

Date: \_\_\_\_\_

**STATE OF TEXAS**

§  
§  
§

**COUNTY OF \_\_\_\_\_**

This instrument was acknowledged before me on the \_\_\_\_ day of January, 2021, by Hunter Hart, Vice-President – Real Estate of Walmart Inc. a Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, County of \_\_\_\_\_, TX



***Exhibit A***

Legal Description and/or Depiction  
of the Property

***Exhibit B***

1. That certain PERFORMANCE AGREEMENT by and between WALMART and the LEDC, pertaining to Project Valley.
2. That certain CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT made and entered into by and between the CITY and WALMART, pertaining to Project Valley.
3. That certain PERFORMANCE AGREEMENT by and between WALMART and the LEDC, pertaining to Project Peak.

**SCHEDULE 1**  
**LEGAL DESCRIPTION**

BEING a 163.351 acre tract of land located in the Samuel Keller Survey, Abstract No. 720, in the City of Lancaster, Dallas County, Texas, being part of that called 255.320 acre parcel described in Special Warranty Deed with Vendor's Lien to 255 PRL LP, as recorded in Instrument No. 201700211697, Official Public Records Dallas County Texas (OPRDCT), said 163.351 acres being more particularly described by metes and bounds as follow:

COMMENCING at a found PK nail on the called southern right of way line for Pleasant Run Road (called 60' right of way as established by Volume 1963, Page 2, Deed Records Dallas County, Texas, same being the northeast corner of that called 23.082 acre tract described in Instrument No. 201200175128, OPRDCT, and being located N 89°24'35" E, 150.00 from the northeast corner of Eastside Acres, an Addition to the City of Lancaster as recorded in Volume 9, Page 85, Map Records Dallas County Texas, being the northwest corner of that called 3.905 acre parcel described in Dedication Right of Way Deed as recorded in Instrument No. 201800131364, OPRDCT;

THENCE S 00°33'34" E with the east line of said 23.082 acre tract, a distance of 69.40 feet to the POINT OF BEGINNING, on the south right of way line of Belt Line Road;

THENCE N 89°27'21" E with said south right of way line for Pleasant Run Road, a distance of 2,415.66 feet to the intersection of said right of way line and the centerline of Cornell Road (a prescriptive roadway);

THENCE S 00°22'09" E leaving the right of way line for Pleasant Run Road and with the center of Cornell Road, a distance of 3,001.24 feet to a found MAG NAIL for the intersection of said centerline and a north line of the aforesaid 23.082 acre tract, from which a found nail for the centerline intersection of Cornell Road and Green Road bears S 00°21'18" E, 100.0 feet;

THENCE west and north with the line common to said 23.082 acre tract and the herein described tract as follows:

S 89°25'46" W, a distance of 1,655.56 feet to a found 5/8-inch iron rod for the beginning of a curve; Along the arc of said curve to the right, having a central angle of 90°00'39", a radius of 750.00 feet, an arc length of 1,178.24 feet, and a chord of N 45°33'53" W, 1,060.76 feet to a set 5/8-inch iron rod with yellow cap marked ADAMS SURVEYING COMPANY, LLC. (hereafter called CIRS) for the end of said curve;

N 00°33'34" W, a distance of 2,252.18 feet to the POINT OF BEGINNING and containing 163.351 acres of land, more or less.

## LANCASTER CITY COUNCIL

### City Council Special Meeting

4.

**Meeting Date:** 01/19/2021

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):** Financially Sound City Government  
Quality Development

**Submitted by:** Shane Shepard, Economic Development Director

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#### **Agenda Caption:**

Discuss and consider a resolution approving a Chapter 380 Economic Development Agreement by and between the City of Lancaster, Texas and a major retailer and authorizing the City Manager to execute the agreement and providing an effective date.

#### **Background:**

The retailer is contracted to purchase a 292-acre parcel located at the southwest corner of East Belt Line Road and Sunrise Road ('Project Valley'). The new facility will allow the addition of a minimum of one thousand (1,000) new jobs within three (3) years. The company is also planning a second facility to be located at East Pleasant Run Road and Cornell Road.

The company is committing to eight hundred million dollars (\$800,000,000) in Real and Business Personal Property valuation combined between two locations. The second facility will be located at the southwest corner of East Beltline Road and Sunrise Road. The company has applied for a real property and business personal property incentive grant in compliance with the City's Incentive Policy.

This agreement requires the developer to occupy the facility within five years of the execution of the agreement and maintain occupancy for the term of the agreement. A minimum of one thousand (1,000) new full-time employees are required to be hired within three years of obtaining a Certificate of Occupancy. In total, both projects are required to increase the value of real and business personal property by eight hundred million dollars (\$800,000,000), in order to receive the maximum amount of benefits.

Based on the developer fulfilling the terms of the agreement, the City will:

1) During construction if the retailer occupies temporary space in the City of Lancaster, we will rebate fifty percent (50%) of the Business and Personal Property Taxes for the initial year, and declining in 5% increments in subsequent years up to a maximum of five years.

2) In the year following receipt of a certificate of occupancy, the City of Lancaster will rebate sixty-five percent (65%) of real property taxes for a period of 15 years as long as the two properties combined maintain a taxable valuation of eight hundred million dollars

(\$800,000,000).

3) In the years following receipt of a certificate of occupancy, the City of Lancaster will rebate sixty-five percent (65%) of Business Personal Property taxes for a period of 15 years as long as the two properties combined maintain a taxable valuation of eight hundred million (\$800,000,000).

4) During construction, all taxable goods and services utilized on the two projects, purchased within the City of Lancaster, will rebate fifty percent (50%) of the City's one percent (1%) sales tax back to the retailer for a period not to exceed five (5) years.

5) The City will rebate fifty percent (50%) of the City's one percent (1%) of sales tax received for Material Handling Equipment utilized within the two projects and sourced from the city of Lancaster for a period of five (5) years.

**Operational Considerations:**

The major retailer will annually submit receipts for real property and business personal property tax payments in order to exercise the grant. Within sixty (60) days of verification of payment, the City will remit sixty-five percent (65%) of the Business & Personal and Real Property Tax payment to the company for a period of fifteen (15) years, provided that all contractual contingencies, including maintaining a taxable valuation of at least eight hundred million dollars (\$800,000,000) between the two projects, are satisfied.

**Legal Considerations:**

The City Attorney has reviewed and approved the resolution and agreement as to form.

**Public Information Considerations:**

This item is being considered at a Special Meeting of the City Council noticed and held in accordance with the Texas Open Meetings Act.

**Fiscal Impact:**

Based on the estimated value added capital investment submitted by the company and in consideration of the tax rebates, the project will represent approximately two million two hundred ninety-six thousand dollars (\$2,296,000) annually or a total of thirty-four million four hundred forty thousand dollars (\$34,440,000) over term of the agreement in new revenue to the City. Thereafter, projected annual revenue will be six million five hundred sixty thousand dollars (\$6,560,000) annually.

**Options/Alternatives:**

1. The City Council may approve the resolution, as presented.
2. The City Council may deny the resolution.

**Recommendation:**

Staff recommends approval of the resolution as presented.

**Attachments**

Resolution

Exhibit A - 380 Agreement

## Property Description

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER, TEXAS AND A MAJOR RETAILER AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the retailer seeks to purchase approximately 292-acres of land and construct a distribution/warehouse facility where a minimum of one thousand (1,000) people will be employed within three (3) years of completion, which was known in the pre-public phase as "Project Valley"; and

**WHEREAS**, the City of Lancaster ("City") recognizes the importance of business and community development to the vitality and growth of Lancaster; and

**WHEREAS**, the City desires to grant certain incentives to the retailer for Project Valley for the purpose of constructing a distribution facility within the City of Lancaster; and

**WHEREAS**, the City has adopted programs for promoting economic development, and an Economic Development Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

**WHEREAS**, the City is authorized by Chapter 380 of the Texas Local Government Code to issue grants in order to promote local economic development by stimulating the local economy; and

**WHEREAS**, the Agreement containing the terms of the grant of incentives from the City 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 approves a Chapter 380 Economic Development Incentive Agreement by and between the City of Lancaster and the retailer for Project Valley attached as Exhibit "A" and incorporated herein.

**SECTION 2.** The City Council authorizes the City Manager to execute the Chapter 380 Economic Development Program and Agreement between the City of Lancaster and the retailer for Project Valley.

**SECTION 3.** This Resolution shall take effect immediately from and after the date of passage and is provided by law.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of January, 2021

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

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Clyde C. Hairston, Mayor

**APPROVED AS TO FORM:**

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David T. Ritter, City Attorney

**EXHIBIT A  
CITY OF LANCASTER, TEXAS  
AND  
WALMART INC.<sup>1</sup>**

**CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AND AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (hereinafter referred to as the “Agreement”) is made and entered into by and between the **CITY OF LANCASTER, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the “City”), and **WALMART INC.**, a Delaware corporation (“Walmart,” and together with its affiliates, and their successors, the “Developer”), for the purposes and considerations stated below:

**WHEREAS**, the Developer desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code an incentive to Developer to develop the Property as defined below; and

**WHEREAS**, the City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to expend public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of Lancaster, Texas; and

**WHEREAS**, the City has determined that a grant of funds to the Developer will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, will eliminate unemployment and underemployment in the State and City, and will enhance business and commercial activity within the City of Lancaster, Texas; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development, and stimulates business and commercial activity, in the City of Lancaster, Texas, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and the Developer; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Lancaster, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

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<sup>1</sup> During the pre-public phase of this economic development agreement, this project was assigned the name “Project VALLEY,” and any references to Project VALLEY in other City of Lancaster or Lancaster Economic Development Corporation documents refer to this economic development project.



**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, the City 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 of this Agreement, as defined herein, and shall continue thereafter until **December 31, 2041**, unless terminated sooner under the provisions hereof.

## **SECTION 3. DEFINITIONS.**

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

- (a) **Affiliate.** The word “Affiliate” means a directly- or indirectly-held subsidiary of Walmart that is owned at least 50% by Walmart and/or the successor-in-interest to an affiliate of Walmart which meets the definition of an affiliate.
- (b) **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program and Agreement, authorized by Chapter 380 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (c) **Certificate of Occupancy.** The words “Certificate of Occupancy” mean a certificate of occupancy (or its local equivalent) for the Facility.
- (d) **City.** The word “City” means the City of Lancaster, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City’s address is P.O. Box 940, Lancaster, Texas 75146.
- (e) **Combined Capital Investment.** The words “Combined Capital Investment” means investment on real property and business personal property related to the Facility and Property and the Project Peak Facility and Project Peak Property, as measured by appraised value. To qualify for the annual incentives under this Agreement, the combined Project Peak and Project Valley investments must be valued at no less than three hundred million dollars (\$300,000,000.00) in real property value, and five hundred million dollars (\$500,000,000.00) in business personal property as appraised by Dallas Central Appraisal District.
- (f) **Developer.** The word “Developer” means Walmart, whose address for the purposes of this Agreement is 702 SW 8<sup>th</sup> Street, Bentonville, Arkansas, and its affiliates who will

participate in the purchase, development and operation of facilities and services covered by this Agreement, including but not limited to Walmart.com USA, LLC, Walmart Fulfillment Services, LLC, Wal-Mart Associates, Inc., and their successors.

- (g) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the City and Developer, following approval by their respective Council and Board.
- (h) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth in the section entitled “Events of Default” in this Agreement.
- (i) **Facility.** The word “Facility” means the building to be constructed on the Property. The Facility shall be a minimum 1.5 million square foot distribution center. In order to qualify as the “Facility” under this Agreement, the facility must meet the following criteria: (1) be located within the City; (2) no later than January 1, 2026, obtain a Certificate of Occupancy for the Facility; and (3) once a Certificate of Occupancy has been obtained, continue to meet the qualifications required for such Certificate of Occupancy to be maintained with respect to the Facility throughout the remaining Term of this Agreement.
- (j) **Full-Time Equivalent Employment Positions.** The words “Full-Time Equivalent Employment Position(s)” mean a job requiring a minimum of One Thousand Seven Hundred Sixteen (1,716) hours of work averaged over a twelve-month period with such hours also to include any vacation and sick leave.
- (k) **Program Payment.** The words “Program Payment” mean the economic development funds provided by the City to Developer in accordance with this Agreement. Program Payments will be made in the form of tax rebates as described in more detail in Section 5(a) of this Agreement.
- (l) **Project Peak Facility.** The words “Project Peak Facility” means the facility as defined in that certain Chapter 380 Economic Development Agreement between the City of Lancaster, Texas and Walmart and referred to as the Project PEAK agreement.
- (m) **Project Peak Property.** The words “Project Peak Property” means the property as defined in that certain Chapter 380 Economic Development Agreement between the City of Lancaster, Texas and Walmart and referred to as the Project PEAK agreement.
- (n) **Property.** The word “Property” means Developer’s ± 292.081 acre tract of land located in the City of Lancaster, Dallas County, Texas, commonly known as contained in the Samuel A. Dowdy Survey, Abstract No. 388, the ML Swing Survey, Abstract No. 1444, and the M. Lavender Survey, Abstract No. 766 and more particularly described and or depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes.

- (o) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

#### **SECTION 4. AFFIRMATIVE OBLIGATIONS OF DEVELOPER.**

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

- (a) **Occupation of Facility.** Developer covenants and agrees to commence occupying the Facility no later than January 1, 2026, and continuing throughout the term of this Agreement.
- (b) **Temporary Operations.** During the period after the Effective Date of this Agreement and prior to Developer’s securing a Certificate of Occupancy for the Facility, the Developer may conduct temporary operations which would be conducted at the Facility, during the construction of the Facility, which qualify for the Section 5(a)(1) incentives, so long as: the operations are based within the City and the physical location of the temporary operations, including all BPP, is located within the City limits.
- (c) **Certificate of Occupancy.** Developer covenants and agrees to obtain or maintain a City Certificate of Occupancy for the Facility located on the Property during the term of this Agreement, and no later than January 1, 2026.
- (d) **Operation of Facility.** Developer covenants and agrees to maintain and actively operate the Facility during the Term of this Agreement.
- (e) **Performance.** Developer covenants and agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the City and Developer, and to stay current with all applicable taxes levied by the Dallas County Tax Assessor.
- (f) **Full-Time Equivalent Employment Positions.** Developer covenants and agrees to establish not fewer than one thousand (1000) new Full-Time Equivalent Employment positions at the Facility within five (5) years of the Effective Date of this Agreement, such positions to be maintained throughout the Term of this Agreement.
- (g) **Combined Capital Investment.** In order to be eligible to receive City funds under this Agreement, Developer must produce to City for the first year for which appraisal values are available after obtaining Certificate of Occupancy for the Facilities, and for each year thereafter, Dallas Central Appraisal District records showing a total Combined Capital Investment of not less than eight hundred million dollars (**\$800,000,000.00**), of which not less than three hundred million dollars in real estate value, and not less than five hundred million dollars in business personal property value.

## **SECTION 5. AFFIRMATIVE OBLIGATIONS OF THE CITY.**

City covenants and agrees with Developer that, while this Agreement is in effect, and all applicable Section 4 obligations of Developer are fulfilled, it shall comply with the following terms and conditions:

**(a) Program Payments.**

- (1) Business Personal Property Tax – During Temporary Operation.** The City shall make Program Payments to Developer for ad valorem taxes paid by or on behalf of the Developer to the City for Business Personal Property located at the Property while the Facility is being constructed, provided that the period for such Program Payments shall not exceed five (5) years. The first year of the Program Payments pursuant to this Section 5(a)(1) of this Agreement shall be the tax year starting January 1, 2022. The Program Payments shall be based upon the following percentages:

<b>Tax Years 1-5</b>	<b>Percentage of City BPP Taxes Reimbursed</b>
<b>Year 1</b>	<b>50%</b>
<b>Year 2</b>	<b>45%</b>
<b>Year 3</b>	<b>40%</b>
<b>Year 4</b>	<b>35%</b>
<b>Year 5</b>	<b>30%</b>

- (2) **Business Personal Property and Real Property Tax – During Facility Operation.** For each year that the Developer has satisfied the minimum Combined Capital Investment requirements, City shall make Program Payments to Developer for the ad valorem taxes paid by the Developer to the City for: (1) Real Property; and (2) Business Personal Property located at the Property for fifteen (15) years while the Facility is being occupied and operated after obtaining a Certificate of Occupancy. Failure to satisfy the Combined Capital Investment requirements for one year will not disqualify Developer from receiving subsequent year Program Payments, as long as the eligibility is regained. The first year of the Program Payments pursuant to this Section 5(a)(2) of this Agreement shall be the first full tax year after a Certificate of Occupancy has been issued for the Facility. The Program Payments shall be based upon the following percentages:

<b>Tax Years 1-15</b>	<b>Percentage of City BPP and Real Property Taxes Reimbursed</b>
<b>Year 1-15</b>	<b>65%</b>

- (3) **Sales Tax Rebate for Construction.** For the first five (5) years after the Effective Date of this Agreement, the City will rebate fifty percent (50%) of the City's one percent (1%) general funds portion of sales tax paid to and received by the City; being a point five percent (.5%) portion of sales and use tax for services and materials used in the construction of the Facility. Reports will be given to the City on an annual basis, and rebates will be made within one (1) year after both Project Peak and Project Valley receive Certificates of Occupancy from the City. Reports with respect to such rebates must be submitted by December 31, 2026. In addition, pursuant to Texas law, Developer shall have the right to seek to obtain a Direct Pay Permit, which would establish first use within the City. If the Developer obtains such a Direct Pay Permit, Developer shall use diligent and good faith efforts to manage all relevant qualified costs at the Facility to maximize, to the extent practicable and reasonable for Developer, the amount of sales and use tax collection by the City in accordance with applicable law.
- (4) **Sales Tax Rebate for Material Handling Equipment.** For the first five (5) years after the Effective Date of This Agreement, the City will rebate fifty percent (50%) of the City's one percent (1%) general funds portion of sales tax; being a point five percent (.5%) portion of sales and use tax for material handling equipment installed at the Facility. Reports will be given to the City on an annual basis, and rebates will be made within one (1) year after both Project Peak and Project Valley receive Certificates of Occupancy from the City. Reports with respect to such rebates must be submitted by December 31, 2026. In addition, pursuant to Texas law, Developer shall have the right to seek to obtain a Direct Pay Permit, which would establish first use within the City. If the Developer obtains such a Direct Pay Permit, Developer shall use diligent and good faith efforts to manage all relevant qualified costs at the Facility to maximize, to the extent practicable and reasonable for

Developer, the amount of sales and use tax collection by the City in accordance with applicable law.

- (5) **Sales Tax Rebate for Consumer Goods Sold.** For fifteen (15) years from the date the Facility and the Project Peak Facility both receive a Certificate of Occupancy from the City, the City will rebate fifty percent (50%) of the City's one percent (1%) general funds portion of sales tax (being a point five percent (.5%) portion of sales tax) imposed on sales of consumer goods fulfilled or shipped from the Facility and sourced to the City of Lancaster under Chapter 321 of the Texas Tax Code. Reports will be given to the City on an annual basis detailing the amounts of such sales tax, and the City will make a rebate payment based on such reports within ninety (90) days of the receipt and acceptance of the report. Nothing in this Agreement requires Developer to source any sales to the City of Lancaster.
- (b) **Valuation of Real Property and Business Personal Property.** The Real Property valuations in this Section 5 are the final valuations agreed upon by Developer and Dallas Central Appraisal District ("DCAD") and the constituent taxing authorities or, if applicable, by final judicial determination. This Agreement shall in no way restrict Developer's ability to protest DCAD's valuations of Developer's Real and Business Personal Property as permitted by applicable law. The valuations of Developer's Real and Business Personal Property may be deemed final by written, joint agreement between the parties at any point prior to protest or during the protest process.

## **SECTION 6. CESSATION OF ADVANCES.**

City shall have no obligation to advance or disburse future Program Payment after: (a) Walmart becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (b) with respect to Program Payments that relate to a period after an Event of Default occurs, an Event of Default in Section 7(a) occurs and is not cured within the time period provided in Section 8.

## **SECTION 7. EVENTS OF DEFAULT.**

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

- (a) **Insufficient Capital Expenditures or Jobs.** Failure of Developer to comply with or to perform those acts or requirements set forth in sections 4(a), 4(c)-(d), and (f) is an Event of Default. The failure to meet annual Combined Capital Investment requirements under 4(g) is not an Event of Default, but will disqualify Developer from receiving the Program Payment under Section 5(a)(2) for the applicable tax year.
- (b) **Failure to Make Program Payments.** Failure of City to comply with or to perform those acts or requirements set forth in section 5(a) is an Event of Default.
- (c) **False Statements.** Any warranty, representation, or statement made or furnished in writing

to the City by Developer to establish Developer's satisfaction of the requirements of this Agreement that is materially false or misleading at the time made or furnished is an Event of Default.

- (d) **Insolvency.** Walmart's insolvency, appointment of receiver for any part of Walmart's property, any assignment for the benefit of creditors of Walmart, any type of creditor workout for Walmart, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Walmart is an Event of Default.
- (e) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and fails to cure (by paying the taxes) such failure within thirty (30) days after written notice thereof from City and/or Dallas County Central Appraisal District is an Event of Default.
- (f) **Cross Default.** The parties expressly agree that an "event of default" (as such term is defined in the Project PEAK agreement) by either party under the Project PEAK agreement shall constitute an Event of Default by such defaulting party under this Agreement.

#### **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 ninety (90) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, the non-defaulting party shall have the right to terminate this Agreement or maintain a cause of action for damages caused by the event(s) of default. In a cause of action for damages maintained by the City, the City's damages shall not exceed recovery, to the extent provided under this Agreement, of the amounts the City paid Developer, statutory interest, if any, with respect to such payments, and the City's reasonable attorneys' fees.

#### **SECTION 9. INDEMNITY.**

**TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT. NOTHING HEREIN SHALL BE INTERPRETED AS A WAIVER OF CITY'S**

## GOVERNMENTAL IMMUNITY FROM SUIT OR DAMAGES.

### SECTION 10. 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 of Dallas County, Texas.
- (c) **Assignment.** This Agreement may be assigned by Developer only with the prior written permission of City; provided, however, that Developer may assign this Agreement to any affiliate or affiliate's successor without first obtaining the consent of the City. Developer will forward notice of any assignment under this subsection to the City within thirty (30) days of the transaction.
- (d) **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.
- (e) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Developer 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.
- (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) **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.



- (h) **Entire Agreement.** This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.
- (i) **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, epidemic or pandemic, 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. The Term of the Agreement will be extended, if necessary, to provide Developer with the same number of years of Program Payments as provided for in Section 5(a).
- (j) **No Interpretation Against Drafter.** Developer and City 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.
- (k) **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 by nationally recognized next business day delivery service 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. The parties agree to keep the other party or parties informed of their address at all times during the Term of this Agreement. The Notices shall be addressed as follows:
- If to the City:                      City of Lancaster, Texas  
   Attn: Opal Mauldin-Jones, City Manager  
   P.O. Box 940  
   Lancaster, Texas 75146  
   Telephone: (972) 218-1302
- If to the Developer:      Walmart Inc.  
   702 SW 8<sup>th</sup> Street  
   Bentonville, Arkansas 72716
- (l) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

- (m) **Survival.** All warranties, representations, and covenants made by either party in this Agreement shall be considered to have been relied upon by the receiving party and will survive the termination of this Agreement by operation of time.
- (n) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (o) **Undocumented Workers.** The Developer certifies that 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 any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120<sup>th</sup> day after the date the City notifies Developer of the violation.
- (p) In accordance with Section 2270.002 of the Texas Government Code (as amended by Tex. H.B. 793, 86<sup>th</sup> Leg., R.S. (2019)), the Developer verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (q) In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S. B. 252, 85<sup>th</sup> Leg., R.S. (2017)), the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- (r) **Estoppel Certificate.** Upon written request by Developer to City, City will provide Developer with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Developer is in breach of this Agreement, the nature of the breach, and (ii) a statement as to whether this Agreement has been amended and, if so, the identity and substance of each amendment.
- (s) Developer is a party to certain other agreements, listed on **Exhibit B** with City and with the Lancaster Economic Development Corporation. Unless expressly listed as Pooled Grant Funds in the applicable exhibit, City agrees that the Program Payments, rebates, payments, grants, and other benefits ("Benefits") provided by these agreements are not duplicative, and that Benefits provided under one agreement may not offset or otherwise reduce Benefits to which Developer is entitled under any other agreement.

**[The Remainder of this Page Intentionally Left Blank]**

**THE INCENTIVES IN THIS AGREEMENT SHALL BE NULL AND VOID IF NOT SIGNED BY DEVELOPER AND RETURNED TO THE CITY WITHIN THIRTY (30) WORKING DAYS OF THE DATE LISTED HEREIN: JANUARY 19, 2021.**

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

**CITY:**

**CITY OF LANCASTER, TEXAS,**  
a Texas home-rule municipality

By: \_\_\_\_\_  
Opal Mauldin-Jones, City Manager

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, City Attorney

**STATE OF TEXAS** §  
§  
**COUNTY OF DALLAS** §

This instrument was acknowledged before me on the \_\_\_\_ day of January, 2021, by Opal Mauldin-Jones, City Manager of the City of Lancaster, Texas, a Texas home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas

**DEVELOPER:**

**WALMART INC.**  
a Delaware corporation

By: \_\_\_\_\_  
Hunter Hart, VP – Real Estate

Date: \_\_\_\_\_

**STATE OF TEXAS**

§

§

**COUNTY OF \_\_\_\_\_**

§

This instrument was acknowledged before me on the \_\_\_\_ day of January, 2021, by Hunter Hart, Vice-President – Real Estate of Walmart Inc. a Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, County of \_\_\_\_\_, TX

***Exhibit A***

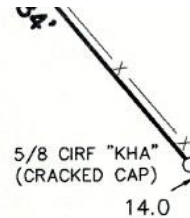
Legal Description and/or Depiction  
of the Property

***Exhibit B***

1. That certain PERFORMANCE AGREEMENT by and between WALMART and the LEDC, pertaining to Project Peak.
2. That certain CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT made and entered into by and between the CITY and WALMART, pertaining to Project Peak.
3. That certain PERFORMANCE AGREEMENT by and between WALMART and the LEDC, pertaining to Project Valley.

## LEGAL DESCRIPTION

BEING a 292.081 acre tract contained within the A. Dowdy Survey, Abstract No. 388, the ML Swing Survey, Abstract No. 1444, and the M. Lavender Survey, Abstract No. 766, and being all of that tract described by Special Warranty Deed to MSW Prime-Lancaster L.P., as recorded in Instrument Number 201800235768 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.) and being all of that tract described by Special Warranty Deed to WHL Dallas 45 LLC, as recorded in Instrument Number 201100339298 of the O.P.R.D.C.T., being more particularly described as follows:



BEGINNING at a to a 5/8-inch iron rod found, in the southerly right-of-way line of E. Belt Line Road (variable width roadway), for the northeasterly corner of that remaining tract as described to Roddy Brothers as recorded in Volume 889, Page 504, Deed Records of Dallas County, Texas (D.R.D.C.T.), and the northwest corner of the herein described tract;

THENCE with the southerly right-of-way line of said E. Belt Line Road the following nine (9) calls:

South 85 degrees 42 minutes 54 seconds East, a distance of 211.66 feet to the beginning of a tangent curve to the left, from with a 5/8-inch iron rod found bears North 76 degrees 09 minutes East, 0.4 feet;

With said curve to the left, having a radius of 5,779.65 feet, a central angle of 05 degrees 09 minutes 53 seconds, an arc length of 521.00 feet, and a chord of South 88 degrees 17 minutes 51 seconds East, 520.82 feet, to a 5/8-inch iron rod found;

North 89 degrees 07 minutes 36 seconds East, a distance of 1,081.80 feet, for the beginning of a tangent curve to the right, from which a 5/8-inch iron rod bears North 70 degrees 42 minutes East, 0.6 feet;

With said curve to the right, having a radius of 1,860.08 feet, a central angle of 14 degrees 39 minutes 44 seconds, an arc length of 476.00 feet, and a chord of South 83 degrees 32 minutes 16 seconds East, 474.70 feet, to a set 5/8-inch capped iron rod stamped ADAMS SURVEYING COMPANY LLC" (CIRS);

South 76 degrees 12 minutes 24 seconds East, a distance of 331.30 feet to the beginning of a curve to the left, from which a 5/8-inch iron rod found bears North 46 degrees 06 minutes East, 0.2 feet;

With said curve to the left, having a radius of 1,960.08 feet, a central angle of 13 degrees 00 minutes 28 seconds, an arc length of 445.00 feet, and a chord of South 84 degrees 07 minutes 07 seconds East, 444.04 feet, from which a 5/8-inch iron rod bears North 34 minutes 04 seconds East, 0.5 feet;

North 89 degrees 22 minutes 36 seconds East, a distance 135.32 feet to a 5/8-inch iron rod found, for the common northerly corner of said MSW Prime and WHL Dallas tracts;

North 89 degrees 02 seconds 25 minutes East, a distance of 976.99 feet to a 5/8-inch iron rod found for the beginning of a tangent curve to the left;

With said curve to the left, having a radius of 1,960.08 feet, a central angle of 09 degrees 35 minutes 16 seconds, an arc length of 328.00 feet, and a chord of North 84 degrees 14 minutes 50 seconds East, 327.62 feet to a 5/8-inch iron rod found in the beginning of a corner clip of Sunrise Road (a 40' right-of-way);

THENCE South 65 degrees 28 minutes 05 seconds East, with said corner clip of Sunrise Road, a distance of 168.00 feet to a 1/2-inch capped iron rod stamped "KHA" found;

THENCE South 30 degrees 42 minutes 35 seconds East, with said Sunrise Road, a distance of 731.53 feet to a CIRS, being the common easterly corner of said MSW Prime-Lancaster L.P. and WHL DALLAS 45 LLC tracts;

THENCE South 31 degrees 17 minutes 15 seconds East, continuing with said Sunrise Road, a distance of 1,166.11 feet to a CIRS, being the northeasterly corner of that tract described by Special Warranty Deed to Schlachter Reality LTD, as recorded in Instrument Number 201300000170, O.P.R.D.C.T., from which a capped iron rod found bears South 70 degrees 37 minutes West, 17.5 feet;

THENCE South 58 degrees 46 minutes 59 seconds West, with the northerly property line of said Schlachter Reality LTD, at a distance of 734.77 feet passing a 5/8-inch iron rod found, being the northeasterly corner of that tract described by Warranty Deed with Vendor's Lien to David A. Schlachter as recorded in Volume 81079, Page 1085, Deed Records of Dallas County, Texas, continuing a total distance of 3,751.10 feet to a CIRS, being in the easterly line of Block A, Lancaster Airport Addition, an Addition to the City of Lancaster as recorded in Volume 97173, Page 5853, D.R.D.C.T.;

THENCE the following three (3) calls with the easterly line of said Block A:

North 30 degrees 50 minutes 55 seconds West, a distance of 2,502.10 feet to a 1/2-inch capped iron rod stamped "KHA" found;

South 60 degrees 09 minutes 56 seconds West, a distance of 424.85 feet to a 1/2-inch capped iron rod stamped "KHA" found;

North 40 degrees 14 minutes 23 seconds West, a distance of 1,172.84 feet to a 1/2-inch capped iron rod stamped "KHA" found, being the southerly corner of that remaining tract as described to Roddy Brothers as recorded in Volume 889, Page 504, D.R.D.C.T.;

THENCE North 00 degrees 00 minutes 19 seconds East, a distance of 946.78 feet to the POINT OF BEGINNING, containing 292.081 acres of land, more or less.

## LANCASTER CITY COUNCIL

### City Council Special Meeting

5.

**Meeting Date:** 01/19/2021

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):** Financially Sound City Government  
Quality Development

**Submitted by:** Shane Shepard, Economic Development Director

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#### **Agenda Caption:**

Discuss and consider a resolution approving a Chapter 380 Economic Development Agreement by and between the City of Lancaster, Texas and MSW Prime - Lancaster L.P. and authorizing the City Manager to execute the agreement and provide an effective date.

#### **Background:**

A developer submitted plans for a one hundred sixty two (162) acre parcel located at the southeast corner of East Belt Line Road and Sunrise Road. The developer intends to develop this site for a major retailer.

Currently the water and wastewater infrastructure does not extend to the area allowing for connection to the system.

A twelve-inch (12") waterline and a twelve-inch (12") wastewater line is needed to serve this project and will open the area for additional future development. The current property owner will install the waterline and wastewater line in accordance with City of Lancaster development standards. The agreement will allow the City to reimburse the developer an amount not to exceed one million six hundred thirty one thousand dollars (\$1,631,000) for expenditures related to the design, construction and completion of a twelve-inch (12") waterline and twelve-inch (12") wastewater line.

Upon completion, inspection, and acceptance by the City, the developer may submit documentation for expenditures for reimbursement.

The project is eligible under state statutes to be funded utilizing water impact fees and wastewater impact fees.

#### **Legal Considerations:**

The City Attorney has reviewed and approved the resolution and agreement as to form.



**Public Information Considerations:**

This item is being considered at a Special Meeting of the Lancaster City Council and is noticed and held in accordance with the Texas Open Meetings Act.

**Fiscal Impact:**

The total project will not exceed one million six hundred thirty-one thousand dollars (\$1,631,000) for expenditures related to the twelve-inch water line and twelve-inch wastewater line.

**Options/Alternatives:**

The City Council may approve the resolution, as presented.  
The City Council may deny the resolution.

**Recommendation:**

Staff recommends approval as presented.

**Attachments**

Resolution

Exhibit A - 380 Agreement

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER, TEXAS AND MSW PRIME – LANCASTER, L.P. AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, MSW Prime – Lancaster, L.P. agrees to purchase and install a twelve-inch water line and a twelve-inch wastewater line, at a cost of approximately one million six hundred thirty-one thousand dollars (\$1,631,000), in support of the City of Lancaster/Lancaster Economic Development Corporation (LEDC) incentives to a major retailer, and shall dedicate the infrastructure to the City of Lancaster upon completion and acceptance; and

**WHEREAS**, the City of Lancaster ("City") recognizes the importance of business and community development to the vitality and growth of the City; and

**WHEREAS**, the City desires to grant certain incentives to MSW Prime – Lancaster, L.P. for the purpose of building infrastructure needed to allow the development of a major retailer within the City of Lancaster; and

**WHEREAS**, the City has adopted programs for promoting economic development, and a Lancaster Economic Development Corporation (LEDC) Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

**WHEREAS**, the City is authorized by Chapter 380 of the Texas Local Government Code to issue grants in order to promote local economic development by stimulating the local economy; and

**WHEREAS**, the Agreement containing the terms of the grant of incentives from the City 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 approves a Chapter 380 Economic Development Incentive Agreement by and between the City of Lancaster and MSW Prime – Lancaster, L.P., attached as Exhibit "A" and incorporated herein.

**SECTION 2.** The City Council authorizes the City Manager to execute the Chapter 380 Economic Development Agreement between the City of Lancaster and MSW Prime – Lancaster, L.P.

**SECTION 3.** This Resolution shall take effect immediately from and after the date of passage and is provided by law.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of January 2021.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

---

Clyde C. Hairston, Mayor

**APPROVED AS TO FORM:**

---

David T. Ritter, City Attorney

**EXHIBIT A**  
**CITY OF LANCASTER, TEXAS**  
**AND**  
**MSW PRIME – LANCASTER, L.P.**

**CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AND AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (hereinafter referred to as the “Agreement”) is made and entered into by and between the **CITY OF LANCASTER, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the “City”), and **MSW PRIME – LANCASTER, L.P.** a Texas limited partnership (hereinafter referred to as the “Developer”), for the purposes and considerations stated below:

**WHEREAS**, the Developer desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code an incentive to Developer to develop the Property as defined below; and

**WHEREAS**, the City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to expend public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of Lancaster, Texas; and

**WHEREAS**, the City has determined that a grant of funds to the Developer will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, will eliminate unemployment and underemployment in the State and City, and will enhance business and commercial activity within the City of Lancaster, Texas; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Lancaster, Texas, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and the Developer; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Lancaster, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

**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, the City 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 of this Agreement, as defined herein, and shall continue thereafter until **December 31, 2026**, unless terminated sooner under the provisions hereof.

## **SECTION 3. DEFINITIONS.**

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

- (a) **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program and Agreement, authorized by Chapter 380 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (b) **Certificate of Occupancy.** The words “Certificate of Occupancy” mean a certificate of occupancy (or its local equivalent) for the Facility.
- (c) **City.** The word “City” means the City of Lancaster, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City’s address is P.O. Box 940, Lancaster, Texas 75146.
- (d) **Developer.** The word “Developer” means MSW PRIME – LANCASTER, L.P., a Texas limited partnership whose address for the purposes of this Agreement is P.O. Box 249, Colleyville, Texas 76034.
- (e) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the City and Developer, following approval by their respective Council and Board.
- (f) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth in the section entitled “Events of Default” in this Agreement.
- (g) **Facility.** The word “Facility” refers to the Project Valley facility to be constructed on its Property. In order to qualify as the “Facility” under this Agreement, the facility must meet all of the following criteria: (1) be located within the City; and (2) a Certificate of

Occupancy be obtained no later than January 1, 2025 and be maintained throughout the Term of this Agreement.

- (h) **Infrastructure.** The word “Infrastructure” means the offsite utility (water, wastewater, and associated) lines and associated physical assets which Developer is required to install per this Agreement connecting to ~~on~~ the boundary of the Property, and more especially identified in **Exhibit B**, which are attached hereto and incorporated herein.
- (i) **Program Payment.** The words “Program Payment” mean the economic development funds provided by the City to Developer in accordance with this Agreement. Program Payments will be made in the form of tax rebates as described in more detail in Section 5(a) of this Agreement.
- (j) **Property.** The word “Property” means Project Valley’s tract of land located in the City of Lancaster, Dallas County, Texas, commonly known as 1720 E Beltline – 37.92 acres, 2300 W Beltline – 106.2 acres, 2300 W Beltline – 47.853 acres, 900 Sunrise – 100 acres, and more particularly described and or depicted in **Exhibit A** of this Agreement, which are attached hereto and incorporated herein for all purposes.
- (k) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

#### **SECTION 4. AFFIRMATIVE OBLIGATIONS OF DEVELOPER AND CONDITIONS PRECEDENT TO PAYMENT**

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

- (a) **Installation of Infrastructure.** Developer covenants and agrees to purchase and install the following Infrastructure to City standards in support of Project Peak, consisting of: a minimum 12” PVC water line, gate valve, fire hydrant, connection to existing water line; and installation of a minimum 12” PVC wastewater line, and other quantities shown on the attached **Exhibit B** and to be installed to connect the Property and Facilities located thereon to City water and wastewater utilities. Developer shall bear all construction, permitting, mobilization, professional services, and other fees associated with the installation of the Infrastructure, and shall dedicate the infrastructure to the City, subject to City’s approval and acceptance. Once dedicated to the City, the City shall the have the right, (but not the obligation) to allow other utility users to connect to the Infrastructure and to charge such fees to do so as established by the City Council. The Parties agree that the estimated cost amounts associated with **Exhibit B** are estimates only and are not guarantees of the actual cost (when undertaken) that Developer may incur.
- (b) **Provision of Receipts.** Developer covenants and agrees to provide to City all receipts, purchase orders, funds transfers, checks, charges, and all other supporting documentation that City may request to demonstrate the costs incurred and paid by Developer related to

the Installation of the Infrastructure under this Agreement. Developer will provide all receipts and supporting documentation to City within ninety (90) days of the completion of the Infrastructure installation.

The Developer and City agree that, while the events below may not be direct responsibilities of Developer, or conditions over which Developer has direct control, they are conditions precedent to the City issuing payment under Section 5 of this Agreement:

- (c) **Certificate of Occupancy.** Project Valley must obtain a City Certificate of Occupancy for its Facilities located on the Property during the term of this Agreement, and no later than January 1, 2025.
- (d) **Satisfaction of all Project Valley Contract Terms.** Project Valley must successfully satisfy all terms of the Economic Development Agreements with the City and with the Lancaster Economic Development Corporation (“LEDC”) up to the time that their Facilities are issued a Certificate of Occupancy.

## **SECTION 5. AFFIRMATIVE OBLIGATIONS OF THE CITY.**

City covenants and agrees with Developer that, while this Agreement is in effect, and all applicable Section 4 obligations of Developer are fulfilled, it shall comply with the following terms and conditions:

- (a) **Program Payments.**

**Infrastructure Reimbursements.** Upon the issuance of a City Certificate of Occupancy for Project Valley Facilities, provision of all required receipts and documentation and satisfaction of all other Section 4(a)-(c) obligations and conditions precedent the City will reimburse Developer for up to **One Million Six Hundred Thirty-One Thousand, and no/100 dollars (\$1,631,000.00)** in funds actually paid and incurred by Developer to purchase and install the Infrastructure. Payment will be issued within ninety (90) days of satisfaction of all Section 4(a)-(c) conditions and obligations.

## **SECTION 6. CESSATION OF ADVANCES.**

If City has made any commitment to provide any Program Payment to Developer, whether under this Agreement or under any other agreement, the City shall have no obligation to advance or disburse future Program Payment after: (a) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (b) an Event of Default occurs and is not cured within the time period provided in Section 8.

## **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 City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and City is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the City 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.
- (d) **Ad Valorem Taxes.** Developer allows any ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from City and/or Dallas County Central Appraisal District 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, the non-defaulting party shall have the right to 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 the Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the Program Payments provided by the City to Developer pursuant to Section 5(a) of this Agreement, shall become immediately due and payable by the Developer to the City.

## **SECTION 9. INDEMNITY.**

**TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS**

**LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT. NOTHING HEREIN SHALL BE INTERPRETED AS A WAIVER OF CITY'S GOVERNMENTAL IMMUNITY FROM SUIT OR DAMAGES.**

## **SECTION 10. 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 of Dallas County, Texas.
- (c) **Assignment.** This Agreement may be assigned by Developer only with the prior written permission of City.
- (d) **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.
- (e) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Developer 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.
- (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) **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.



- (h) **Entire Agreement.** This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.
- (i) **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.
- (j) **No Interpretation Against Drafter.** Developer and City 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.
- (k) **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 by nationally recognized next business day delivery service 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. The parties agree to keep the other party or parties informed of their address at all times during the Term of this Agreement. The Notices shall be addressed as follows:
- If to the City:                      City of Lancaster, Texas  
   Attn: Opal Mauldin-Jones, City Manager  
   P.O. Box 940  
   Lancaster, Texas 75146  
   Telephone: (972) 218-1302
- If to the Developer:      MSW PRIME – LANCASTER, L.P.  
   P.O. Box 249  
   Colleyville, Texas 76034  
   Telephone: 817-310-5595
- (l) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.
- (m) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.

- (n) **Survival.** All warranties, representations, and covenants made by Developer in this Agreement or in any certificate or other instrument delivered by Developer to City under this Agreement shall be considered to have been relied upon by the City and will survive the payment of any Program Payments under this Agreement regardless of any investigation made by the City or on City's behalf.
- (o) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (p) **Undocumented Workers.** The Developer certifies that 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 any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120<sup>th</sup> day after the date the City notifies Developer of the violation.
- (q) In accordance with Section 2270.002 of the Texas Government Code (as amended by Tex. H.B. 793, 86<sup>th</sup> Leg., R.S. (2019)), the Developer verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (r) In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S. B. 252, 85<sup>th</sup> Leg., R.S. (2017)), the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- (s) **Estoppel Certificate.** Upon written request by Developer to City, City will provide Developer with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Developer is in breach of this Agreement, the nature of the breach, and (ii) a statement as to whether this Agreement has been amended and, if so, the identity and substance of each amendment.

**[The Remainder of this Page Intentionally Left Blank]**

**THE INCENTIVES IN THIS AGREEMENT SHALL BE NULL AND VOID IF NOT SIGNED BY DEVELOPER AND RETURNED TO THE CITY WITHIN THIRTY (30) WORKING DAYS OF THE DATE LISTED HEREIN: JANUARY 25, 2021.**

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

**CITY:**

**CITY OF LANCASTER, TEXAS,**  
a Texas home-rule municipality

By: \_\_\_\_\_  
Opal Mauldin-Jones, City Manager

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, City Attorney

**STATE OF TEXAS** §  
§  
**COUNTY OF DALLAS** §

This instrument was acknowledged before me on the \_\_\_\_ day of January, 2021, by Opal Mauldin-Jones, City Manager of the City of Lancaster, Texas, a Texas home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas

**DEVELOPER:**

**MSW PRIME – LANCASTER, L.P.**

a Texas limited partnership

By: MSW PRIME – LANCASTER GP, LLC

its sole general partner

By: PRIME RAIL INTERESTS, LLC

a Texas limited liability company

By: \_\_\_\_\_

Michael E Rader, Manager

Date: \_\_\_\_\_

**STATE OF TEXAS**

§

§

**COUNTY OF \_\_\_\_\_**

§

This instrument was acknowledged before me on the \_\_\_\_ day of January, 2021, by Michael E Rader, manager of PRIME RAIL INTERESTS, LLC, member of MSW PRIME – LANCASTER GP, LLC, sole general partner of MSW-PRIME – LANCASTER, L.P., on behalf of said entity.

\_\_\_\_\_  
Notary Public, County of \_\_\_\_\_, TX

***Exhibit A***

Legal Description and/or Depiction  
of the Project Valley Property

***Exhibit B***

Infrastructure – Project Valley

## LANCASTER CITY COUNCIL

### City Council Special Meeting

6.

**Meeting Date:** 01/19/2021

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):** Financially Sound City Government  
Quality Development

**Submitted by:** Shane Shepard, Economic Development Director

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#### **Agenda Caption:**

Discuss and consider a resolution approving a Chapter 380 Economic Development Agreement by and between the City of Lancaster, Texas and 255PRL, LP and authorizing the City Manager to execute the agreement and providing an effective date.

#### **Background:**

A developer submitted plans for a two hundred ninety two (292) acre parcel located at the southeast corner of East Belt Line Road and Sunrise Road. The developer intends to develop this site for a major retailer.

Currently the water and wastewater infrastructure does not extend to the area allowing for connection to the system.

A twelve-inch (12") waterline and a twelve-inch (12") wastewater line is needed to serve this project and will open the area for additional future development. The current property owner will install the waterline and wastewater line in accordance with City of Lancaster development standards. The agreement will allow the City to reimburse the developer an amount not to exceed nine hundred sixty-six thousand dollars (\$966,000) for expenditures related to the design, construction and completion of a twelve-inch (12") waterline and a twelve-inch (12") wastewater line.

Upon completion, inspection, and acceptance by the City, the developer may submit documentation for expenditures for reimbursement.

The project is eligible under state statutes to be funded utilizing water impact fees and wastewater impact fees.

#### **Legal Considerations:**

The City Attorney has reviewed and approved the resolution and agreement as to form.

**Public Information Considerations:**

This item is being considered at a Special Meeting of City Council noticed and held in accordance with the Texas Open Meetings Act.

**Fiscal Impact:**

The total cost of this project will not exceed nine hundred sixty-six thousand dollars (\$966,000) for expenditures related to the twelve inch (12") waterline and twelve-inch (12") wastewater line.

**Options/Alternatives:**

1. City Council may approve the resolution, as presented.
2. City Council may deny the resolution.

**Recommendation:**

Staff recommends approval of the resolution as presented.

**Attachments**

Resolution

Exhibit A - 380 Agreement

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER, TEXAS AND 255PRL, LP AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, 255PRL LP agrees to purchase and install, at the cost of approximately nine hundred sixty-six thousand dollars (\$966,000), a twelve-inch water line and twelve-inch waste water line in support of City of Lancaster and Lancaster Economic Development Corporation (LEDC) incentives to a major retailer, and shall dedicate the infrastructure to the City of Lancaster upon completion and acceptance; and

**WHEREAS**, the City of Lancaster ("City") recognizes the importance of business and community development to the vitality and growth of Lancaster; and

**WHEREAS**, the City desires to grant certain incentives to 255PRL LP, a limited partnership, for the purpose of building infrastructure needed to allow the development of Project Valley within the City of Lancaster; and

**WHEREAS**, the City has adopted programs for promoting economic development, and an Economic Development Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

**WHEREAS**, the City is authorized by Chapter 380 of the Texas Local Government Code to issue grants in order to promote local economic development by stimulating the local economy; and

**WHEREAS**, the Agreement containing the terms of the grant of incentives from the City 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 approves a Chapter 380 Economic Development Incentive Agreement by and between the City of Lancaster and 255PRL LP, attached as Exhibit "A" and incorporated herein.

**SECTION 2.** The City Council authorizes the City Manager to execute the Chapter 380 Economic Development.

**SECTION 3.** This Resolution shall take effect immediately from and after the date of passage and is provided by law.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of January 2021.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

---

Clyde C. Hairston, Mayor

**APPROVED AS TO FORM:**

---

David T. Ritter, City Attorney

**EXHIBIT A**  
**CITY OF LANCASTER, TEXAS**  
**AND**  
**255PRL, LP**

**CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AND AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into by and between the **CITY OF LANCASTER, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the "City"), and **255PRL LP**, a Texas limited partnership (hereinafter referred to as the "Developer"), for the purposes and considerations stated below:

**WHEREAS**, the Developer desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code an incentive to Developer to develop the Property as defined below; and

**WHEREAS**, the City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to expend public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of Lancaster, Texas; and

**WHEREAS**, the City has determined that a grant of funds to the Developer will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, will eliminate unemployment and underemployment in the State and City, and will enhance business and commercial activity within the City of Lancaster, Texas; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Lancaster, Texas, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and the Developer; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Lancaster, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

**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, the City 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 of this Agreement, as defined herein, and shall continue thereafter until **December 31, 2026**, unless terminated sooner under the provisions hereof.

## **SECTION 3. DEFINITIONS.**

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

- (a) **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program and Agreement, authorized by Chapter 380 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (b) **Certificate of Occupancy.** The words “Certificate of Occupancy” mean a certificate of occupancy (or its local equivalent) for the Facility.
- (c) **City.** The word “City” means the City of Lancaster, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City’s address is P.O. Box 940, Lancaster, Texas 75146.
- (d) **Developer.** The word “Developer” means 255PRL LP, a Texas limited partnership whose address for the purposes of this Agreement is P.O. Box 249, Colleyville, Texas 76034.
- (e) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the City and Developer, following approval by their respective Council and Board.
- (f) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth in the section entitled “Events of Default” in this Agreement.
- (g) **Facility.** The word “Facility” refers to the Project Peak facility to be constructed on its Property. In order to qualify as the “Facility” under this Agreement, the facility must meet all of the following criteria: (1) be located within the City; and (2) a Certificate of Occupancy be obtained no later than January 1, 2025 and be maintained throughout the Term of this Agreement.

- (h) **Infrastructure.** The word “Infrastructure” means the offsite utility (water, wastewater, and associated) lines and associated physical assets which Developer is required to install per this Agreement connecting to ~~on~~ the boundary of the Property, and more especially identified in ***Exhibit B***, which is attached hereto and incorporated herein.
- (i) **Program Payment.** The words “Program Payment” mean the economic development funds provided by the City to Developer in accordance with this Agreement. Program Payments will be made in the form of tax rebates as described in more detail in Section 5(a) of this Agreement.
- (j) **Property.** The word “Property” means Project Peak’s tract of land located in the City of Lancaster, Dallas County, Texas, commonly known as 901 Greene Road and more particularly described and or depicted in ***Exhibit A*** of this Agreement, which is attached hereto and incorporated herein for all purposes.
- (k) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

#### **SECTION 4. AFFIRMATIVE OBLIGATIONS OF DEVELOPER AND CONDITIONS PRECEDENT TO PAYMENT**

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

- (a) **Installation of Infrastructure.** Developer covenants and agrees to purchase and install the following Infrastructure to City standards in support of Project Peak: a minimum 12” PVC wastewater line, associated manhole, connection to existing wastewater line, and pavement replacement allowance; shown on the attached ***Exhibit B***, and to be installed to connect the Property and Facilities located thereon to City water and wastewater utilities. Developer shall bear all construction, permitting, mobilization, professional services, and other fees associated with the installation of the Infrastructure, and shall dedicate the infrastructure to the City, subject to City’s approval and acceptance. Once dedicated to the City, the City shall have the right, (but not the obligation) to allow other utility users to connect to the Infrastructure and to charge such fees to do so as established by the City Council. The Parties agree that the estimated cost amounts associated with ***Exhibit B*** are estimates only and are not guarantees of the actual cost (when undertaken) that Developer may incur.
- (b) **Provision of Receipts.** Developer covenants and agrees to provide to City all receipts, purchase orders, funds transfers, checks, charges, and all other supporting documentation that City may request to demonstrate the costs incurred and paid by Developer related to the Installation of the Infrastructure under this Agreement. Developer will provide all receipts and supporting documentation to City within ninety (90) days of the completion of the Infrastructure installation.

The Developer and City agree that, while the events below may not be direct responsibilities of Developer, or conditions over which Developer has direct control, they are conditions precedent to the City issuing payment under Section 5 of this Agreement:

- (c) **Certificate of Occupancy.** Project Peak must obtain a City Certificate of Occupancy for their respective Facilities located on the Property during the term of this Agreement, and no later than January 1, 2025.
- (d) **Satisfaction of all Project Peak and Project Valley Contract Terms.** Project Peak must successfully satisfy all terms of the Economic Development Agreements with the City and with the Lancaster Economic Development Corporation (“LEDC”) up to the time that their respective Facilities are issued a Certificate of Occupancy.

## **SECTION 5. AFFIRMATIVE OBLIGATIONS OF THE CITY.**

City covenants and agrees with Developer that, while this Agreement is in effect, and all applicable Section 4 obligations of Developer are fulfilled, it shall comply with the following terms and conditions:

- (a) **Program Payments.**

**Infrastructure Reimbursements.** Upon the issuance of a City Certificate of Occupancy for Project Peak Facilities, provision of all required receipts and documentation and satisfaction of all other Section 4(a)-(c) obligations and conditions precedent, the City will reimburse Developer for up to **Nine Hundred Sixty-Six Thousand, and no/100 dollars (\$966,000.00)** in funds actually paid and incurred by Developer to purchase and install the Infrastructure. Payment will be issued within ninety (90) days of satisfaction of all Section 4(a)-(c) conditions and obligations.

## **SECTION 6. CESSATION OF ADVANCES.**

If City has made any commitment to provide any Program Payment to Developer, whether under this Agreement or under any other agreement, the City shall have no obligation to advance or disburse future Program Payment after: (a) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (b) an Event of Default occurs and is not cured within the time period provided in Section 8.

## **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 City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and City is an Event

of Default.

- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the City 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.
- (d) **Ad Valorem Taxes.** Developer allows any ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from City and/or Dallas County Central Appraisal District 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, the non-defaulting party shall have the right to 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 the Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the Program Payments provided by the City to Developer pursuant to Section 5(a) of this Agreement, shall become immediately due and payable by the Developer to the City.

## **SECTION 9. INDEMNITY.**

**TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT. NOTHING HEREIN SHALL BE INTERPRETED AS A WAIVER OF CITY'S GOVERNMENTAL IMMUNITY FROM SUIT OR DAMAGES.**

## SECTION 10. 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 of Dallas County, Texas.
- (c) **Assignment.** This Agreement may be assigned by Developer only with the prior written permission of City.
- (d) **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.
- (e) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Developer 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.
- (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) **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.
- (h) **Entire Agreement.** This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or

subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

- (i) **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.
- (j) **No Interpretation Against Drafter.** Developer and City 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.
- (k) **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 by nationally recognized next business day delivery service 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. The parties agree to keep the other party or parties informed of their address at all times during the Term of this Agreement. The Notices shall be addressed as follows:
  - If to the City:                      City of Lancaster, Texas  
   Attn: Opal Mauldin-Jones, City Manager  
   P.O. Box 940  
   Lancaster, Texas 75146  
   Telephone: (972) 218-1302
  - If to the Developer:    255 PRL LP  
   P.O. Box 249  
   Colleyville, Texas 76034  
   Telephone: 817-310-5595
- (l) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.
- (m) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.



- (n) **Survival.** All warranties, representations, and covenants made by Developer in this Agreement or in any certificate or other instrument delivered by Developer to City under this Agreement shall be considered to have been relied upon by the City and will survive the payment of any Program Payments under this Agreement regardless of any investigation made by the City or on City's behalf.
- (o) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (p) **Undocumented Workers.** The Developer certifies that 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 any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120<sup>th</sup> day after the date the City notifies Developer of the violation.
- (q) In accordance with Section 2270.002 of the Texas Government Code (as amended by Tex. H.B. 793, 86<sup>th</sup> Leg., R.S. (2019)), the Developer verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (r) In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S. B. 252, 85<sup>th</sup> Leg., R.S. (2017)), the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- (s) **Estoppel Certificate.** Upon written request by Developer to City, City will provide Developer with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Developer is in breach of this Agreement, the nature of the breach, and (ii) a statement as to whether this Agreement has been amended and, if so, the identity and substance of each amendment.

**[The Remainder of this Page Intentionally Left Blank]**

**THE INCENTIVES IN THIS AGREEMENT SHALL BE NULL AND VOID IF NOT SIGNED BY DEVELOPER AND RETURNED TO THE CITY WITHIN THIRTY (30) WORKING DAYS OF THE DATE LISTED HEREIN: JANUARY 25, 2021.**

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

**CITY:**

**CITY OF LANCASTER, TEXAS,**  
a Texas home-rule municipality

By: \_\_\_\_\_  
Opal Mauldin-Jones, City Manager

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, City Attorney

**STATE OF TEXAS** §  
§  
**COUNTY OF DALLAS** §

This instrument was acknowledged before me on the \_\_\_\_ day of January, 2021, by Opal Mauldin-Jones, City Manager of the City of Lancaster, Texas, a Texas home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas

**DEVELOPER:**

**255 PRL, LP**  
a Texas limited partnership

By: 255 Prime LLC  
its General Partner

By: \_\_\_\_\_  
Michael E Rader, Manager

Date: \_\_\_\_\_

**STATE OF TEXAS** §  
§  
**COUNTY OF** \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of January, 2021, by Michael E Rader, manager of 255 Prime LLC, as general partner of 255 PRL, LP, a Texas limited partnership.

\_\_\_\_\_  
Notary Public, County of \_\_\_\_\_, TX

***Exhibit A***

Legal Description and/or Depiction  
of the Project Peak Property

***Exhibit B***

Infrastructure – Project Peak