

STATE OF TEXAS
COUNTY OF LUBBOCK

§
§
§

PERFORMANCE AGREEMENT

This Performance Agreement (the "Agreement") is made effective on August 20, 2014 by and between LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC., a Texas nonprofit corporation (hereinafter referred to as "LEDA") and NATIONAL PUMP COMPANY, foreign for-profit corporation, (hereinafter referred to as "Recipient"), by and through their duly authorized officers and affiliate organizations under the terms and conditions that follow.

1. **Applicable Law:** It is understood by and between the parties that the term "Act," as used herein, is intended to mean the Development Corporation Act of 1979, as amended. (Sec 501.001 et seq, Local Government Code, formerly Sec 5190.6, VACS.) The parties hereto covenant and agree to comply with the terms of the Act applicable to this Agreement.

2. **Parties:**

A. LEDA, a Texas non-profit corporation as well as a tax exempt 501(c) 4 entity, was created by the City of Lubbock, Texas, as an Industrial Development Corporation under the Act for the purpose of creating and retaining positions and encouraging new businesses to be established in Lubbock, Texas, to stimulate business and commercial activities, as well as all other purposes allowed by the Act.

B. Recipient is preparing a new "Project" which shall expand and combine their operations and relocate all manufacturing, office and headquarters in one facility located at 4229 Adrian, Lubbock, Texas (NAICS 33911) with projected employment of 32 new employees. Its business project is anticipated to result in 32 new Primary Jobs for the City of Lubbock, with a Target Annual Compensation as follows:

- (1) Year One: \$359,800.00 in the aggregate
- (2) Year Two: \$234,760.00 in the aggregate
- (3) Year Three: \$362,200.00 in the aggregate
- (4) Year Four: \$156,000.00 in the aggregate

or a total of \$3,023,880 over four years, of which 32 are new Primary Jobs (Target Annual Compensation of \$1,112,760 in the aggregate. Total capital investment is estimated to be \$4,300,000.

C. Recipient is a foreign for-profit corporation authorized to do business in Texas.

3. **Purpose:** The purpose for this Agreement is to formalize the agreements between LEDA and Recipient for the payment of certain costs associated with Recipient's Project and specifically state the covenants, representations of the parties, and the incentives associated with Recipient's commitment to abide by the provisions of the Act and to abide by the terms of this Agreement which has been approved by the Board of Directors of LEDA as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation by Recipient may constitute a breach of the entire Agreement and terminate any further commitments by LEDA.

4. **Definitions:**

- A. The "Act" shall refer to the Development Corporation Act of 1979, as amended, as Sec 501.001 et seq, Local Government Code, formerly Sec 5190.6, VACS.
- B. "LEDA" shall refer to Lubbock Economic Development Alliance, Inc., a Texas non-profit corporation, created by the City of Lubbock as an "Industrial Development Corporation," pursuant to the Act.
- C. "Recipient" shall refer to National Pump Company, a foreign for-profit corporation authorized to do business in Texas, and the recipient party to this Agreement.
- D. "Project" shall mean the project identified in Paragraph 2B, above.
- E. "Recipient Request" may include the identification of the cost of the project by Recipient to the facility or other purpose within Section 2(4) of the Act.
- F. "Full-Time Equivalent Employee" shall include individuals employed in "Primary Jobs" as defined by the Act, as well as contract or leased employees performing "Primary Jobs" in the City of Lubbock on behalf of Recipient.
- G. "Term", as used herein, shall begin with the Start Date of September 1st, 2014, and end on August 31st, 2018 (the "Termination Date") unless earlier breached by Recipient's failure to perform.
- H. "Payback Provisions" shall mean forfeiture of incentives due to default.
- I. "Baseline Employment Level" is defined to mean the employee census on the day preceding the Term of the contract.
- J. "Baseline Measurement Date" shall mean the day preceding the Start Date of the contract.
- K. "Operations Arm" shall mean the Recipient or its affiliate in charge of day to-day operations and hiring decisions (if different than Recipient).
- L. "Census" is defined as a compilation listing of the employee name, address, date of

hire, date of termination, position, base pay, and indication of full-time or part-time status. (Such information is preferred to be presented in Excel format) which shall be made available to the Accountant in performing the review.

- M. "Measurement Date" shall mean the date upon which the determination is made as to whether Recipient is in compliance with creating and/or maintaining the Primary Job positions represented by Recipient. Employees must be both employed and working on the measurement date. If an employee has been laid off but paid through the measurement date, their employment will not be counted. Measurement Dates shall be:

- (1) Year One: September 1, 2014 to August 31, 2015
- (2) Year Two: September 1, 2015 to August 31, 2016
- (3) Year Three: September 1, 2016 to August 31, 2017
- (4) Year Four: September 1, 2017 to August 31, 2018

- N. "Layoff" is defined as an event, due to adverse or changing business conditions, which results in the loss of employment. Employees meeting this definition shall have lost their jobs through no fault of their own.

5. Representations of Recipient:

- A. Recipient represents that it will utilize the incentive provided towards costs involved and associated with the Project.
- B. Recipient represents that it is authorized to do business in Texas and has authorization to enter into this Agreement on its behalf.
- C. Recipient represents that it has sought from LEDA economic assistance pursuing Recipient's Project.
- D. Recipient represents that it has conferred with attorneys of its own choosing and is fully knowledgeable of the terms of the Act and understands the reporting requirements of the Act, as well as all conditions precedent and subsequent as required to be eligible for the incentives offered by LEDA, including the Payback Provisions.
- E. Recipient represents that it acknowledges that its failure to perform any reporting requirements within a reasonable period of time after the request is made could result in payment adjustments.
- F. Recipient understands and agrees that any variations as to any term of this Agreement or any terms or conditions of the incentives as stated must be mutually agreed to in written supplements or addenda since no oral agreements, amendments, or representations will be binding on either party.
- G. Recipient certifies that all jobs for which incentives are being requested are new Primary Jobs and that none of the jobs are to fill positions that resulted from layoffs in Lubbock by Recipient during the 12 month period prior to the date of this Agreement.

- H. Recipient agrees to participate in any LEDA sponsored wage and benefit surveys, as well as any marketing materials that focus on economic development for the City of Lubbock.

6. **Representations by LEDA:**

- A. LEDA represents that it is established as an Industrial Development Corporation under the Act and further represents that the costs applied toward Recipient's Project as stated in this Agreement have been found by the Board of Directors of LEDA sitting as fact finders have determined the Project to be in compliance with the requirements and purposes of the Act, the provisions of LEDA's charter, as well as for the benefit of the City of Lubbock, Lubbock County, Texas, and trade area.
- B. LEDA represents that it has authority to enter into this Agreement. LEDA understands and agrees that any variation in terms of this Agreement or the incentives offered to Recipient or commitment by Recipient will only be binding if mutually agreed to in writing.

7. **Capital Incentive to be Awarded and Terms of Award**

Initial Capital Investment (exclusive of Real Property, if any):

LEDA hereby grants to Recipient a potential capital incentive of \$113,500.00, with payments to be expressly made under the following terms and conditions:

- A. LEDA agrees to pay Recipient the sum of \$113,500.00 payable in one (1) installment, becoming due upon Recipient's written confirmation and proof that all utility construction activities have been completed and paid for by Recipient.
- B. Recipient agrees to establish a Baseline Employment Level and Census (as defined herein) and shall, on the first measurement date noted in Section 4.M, timely provide LEDA or its designated accounting representative, material records which document the number of full-time job positions hired for the first measurement period. LEDA reserves the right to request these records for the next three measurement periods. Recipient agrees to maintain the Baseline Employment Level through the term of this Agreement and create and maintain the additional full-time job positions intended to qualify for the Project. The job creation over the five year period is projected as follows: Year 1 – 10 jobs; Year 2 – 8 jobs; Year 3 – 9 jobs; Year 4 – 5 jobs for a total of 32 Primary Jobs ("Target Positions").
- C. Recipient understands and agrees that in the event, other than as a result of a force majeure (as defined in Section 14.F below), there is a failure to meet its Target Annual Compensation in the aggregate or attain its Target Job Positions, then LEDA may have the option to give written notice of such default to Recipient.

- D. In evaluating Recipient's Request and pursuant to Section 40(b) of the Act, it is the intention of the parties that, assuming Recipient is successful in total completion of Recipient's Project, its total Target Job Positions of 32 in number would ultimately result in 32 new Primary Jobs for the City of Lubbock. Total capital investment costs estimate is \$4,300,000.00.

8. Conditions for Payment of Incentives:

It is specifically agreed and understood by and between the parties that LEDA has agreed to make the project payments strictly upon the following terms and conditions:

- A. Any use of LEDA's name for publicity in connection with Recipient's business or activities must be approved in advance by LEDA. It is understood that LEDA may make known its contributions to Recipient in whatever public manner LEDA deems appropriate.
- B. Recipient shall have delivered to LEDA a certified copy of the authorization by the President, authorizing the execution and performance of this Agreement, as well as timely delivery of all other information expressly called for in this Agreement.
- C. Recipient must maintain a business location in the City of Lubbock or Lubbock County and its legal status under federal and state law duly and remain qualified to do business in the State of Texas.
- D. The operations or activities of Recipient and its employees shall be performed and conducted in a professional and businesslike manner and shall be in keeping with federal and state laws and regulations, and any ordinances of the City of Lubbock and/or governmental entities which may have jurisdiction over operations and activities.
- E. LEDA shall verify the number of full-time job positions hired for the first measurement period, as attested by Recipient, and reserves the right to verify the number of full-time job positions hired for the next three measurement periods. If requested by LEDA, Recipient agrees to, in good faith, engage in a confidential review and examination of all material records by LEDA's accountants and the Parties mutually agreed that such review is necessary to insure compliance with the conditions of the incentive payments. Recipient agrees to timely provide to LEDA's accountants all information reasonably requested by the accountants. Should Recipient fail to provide to the accountants the information necessary to complete the review within six months from the measurement date, then LEDA may have the option to give written notice of default to Recipient.
- F. Recipient certifies that the Recipient does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Recipient is convicted of a

violation under 8 U.S.C. § 1324a(f), Recipient shall repay the amount of the public subsidy provided under this Agreement, with interest at the legal pre-judgment interest rate, with attorney's fees, not later than the 120th day after the date LEDA notifies Recipient of the violation.

- G. Any information obtained by LEDA or its agents or assigns during negotiations leading up to the execution of the Agreement or otherwise about the business, have or will be returned upon the execution of this Agreement, subject to a right to a continuing examination by LEDA in order to comply with LEDA's reporting obligations, if any. Such information shall be considered confidential and beyond the scope of any Open Records request as proprietary information.
- H. Recipient will notify LEDA in writing within three (3) business days of any lay-off or reduction in force greater than 20% of the existing workforce. The notification must include the number of employees being laid off, their job titles, the reasoning for the lay-off, and what the company is doing to assist the laid off employees. Likewise, if an announcement is made that the Recipient is closing its doors and ceasing business operations during the term of the agreement, LEDA, in its sole discretion, may elect to invoke payback provisions to Recipient.

9. **Payback Provisions and Events of Default:** Recipient acknowledges that LEDA and Recipient are required to remain in conformance with the statutory provisions of the Act. The parties hereto agree that in the event Recipient fails to comply with the provisions of this Agreement, including but not limited to Paragraphs 5E, 9C, 9D, 9E or 11, and after written notice and failure to cure the violation, then LEDA, in its sole discretion, may terminate this Agreement and permanently suspend all future payments to Recipient.

The Recipient has provided to LEDA a schedule by which Recipient projects to create 32 Primary Jobs, with a Target Annual Compensation of \$1,112,760.00 in the aggregate, or a total of \$3,023,880 over four years. LEDA based its decision to grant the incentive to Recipient partly upon such job creation. Should Recipient fail to attain the Target Job Positions on any Measurement Date, LEDA has the option to give written notice of such default to Recipient, and if Recipient fails to cure such default within sixty (60) days after such notice, LEDA reserves the right to demand the sum of \$3,546.88 for each job not timely created. Job creation shall be measured in Full Time Equivalent Employees.

10. **Assignment, Merger, and Termination Due to Merger, Etc.:** This Agreement shall not be assignable, either in whole or in part. Termination as the result of assignment or merger or change in business form shall not disqualify the remaining or new entity from applying to LEDA for new incentive consideration.

11. **Insurance/Hold Harmless:** Where real property has been conveyed as part of the incentive, Recipient covenants and agrees to provide, assign, and include LEDA as an additional named insured to all policies of liability insurance coverage and insurance policies regarding Recipient's ownership

and operations whereby LEDA is provided insurance coverage against all liability for injury or damages caused by Recipient's employees, customers, clients, patrons, visitors, or guests. Additionally, Recipient agrees to indemnify and hold LEDA harmless from all loss, cost, or expenses (including attorneys fees) arising out of the existence of this Performance Agreement or any interpretation, application, or performance thereunder.

12. No Privity of Endeavor Nor Joint Venture: It is specifically agreed that there shall be no privity of endeavor nor joint venture whatsoever between LEDA and Recipient and the sole connection between the parties is the contribution of the economic assistance by LEDA under the restricted conditions as set forth herein and that such contributions as stated herein are for the sole purposes as set forth herein and it shall in no way be construed as a continuing basis of financial support by LEDA to Recipient. The parties hereto have entered into this Agreement in an arms-length transaction. No agency relationship or fiduciary relationship is intended to be created by this Agreement and no such relationship shall be determined to exist.

13. Good Faith -Normal Business Operations: The parties agree that this Agreement has been entered into in good faith and that each party shall act in good faith in complying with its provisions. The parties further agree to transact all their business under and that which relates to this Agreement in accordance with their normal business operations.

14. Miscellaneous Provisions:

A. Notices:

For the purposes of any notices to be given, pursuant to the terms of this Agreement, the parties shall use the following addresses or any other address as may be changed by the parties, upon written notice to the other party, as follows:

(1) John Osborne
CEO and President
LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC.
1500 Broadway, 6th Floor
Lubbock, TX 79401

(2) With a copy to:

Ann Manning
UNDERWOOD LAW FIRM, P.C.
1111 West Loop 289
Lubbock, TX 79416

(3) With a copy to:

Allen Hobratchk, President
National Pump Company

7706 North 71st Avenue
Glendale, Arizona 85303

Notices shall be deemed to be given upon the placing in the United States Mail, Certified Mail, Return Receipt Requested, to the above-described addresses or as may be changed, pursuant to the terms and conditions hereof.

- B. Entire Agreement: This instrument constitutes the entire agreement between the parties hereto and neither this Agreement nor any of the Exhibits attached hereto, if any, can be altered, changed, or amended in any respect except by an instrument in writing duly executed by both parties.
- C. Governing Law and Performance: This Agreement shall be governed by the laws of the State of Texas and shall be deemed to be executed in and performance called for in Lubbock, Lubbock County, Texas.
- D. Partial Invalidity: In the event that any portion of this Agreement should be found or declared to be invalid for any reason, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties. The parties agree that it is their intent for this Agreement to be determined as being an indivisible obligation of the parties.
- E. Binding Effect: This Agreement shall be binding upon the undersigned, their successors and assigns, subject to the express terms of this Agreement concerning assignment.
- F. Force Majeure: If any default or performance of any other covenant or term of this Agreement is delayed by reason of strike, riots, shortages of labor, materials, supplies, or transportation, war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire, or other casualty, or any other circumstances beyond a signatory party's control, then the duty to do or perform the term or covenant, regardless of whether the circumstance is similar to any of those enumerated above or not, is excused during the delay period.
- G. Time is of the Essence: The parties agree that time is of the essence in the execution of this Agreement.

EXECUTED in multiple counterparts, each of which is an original, on this 21st day of January, 2014. 2015.

LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC.

[Signature]
John Osborne, CEO and President

ATTEST:
[Signature]

RECIPIENT:

NATIONAL PUMP COMPANY

By: [Signature]

Its: PRESIDENT

ATTEST:
[Signature]