

STATE OF TEXAS           §  
  §  
COUNTY OF LUBBOCK    §

**PERFORMANCE AGREEMENT**

This Performance Agreement (the “Agreement”) is made effective Oct 24, 2018, (the “Effective Date”) by and among LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC., a Texas nonprofit corporation (hereinafter referred to as “LEDA”) and W.L. PLASTICS CORPORATION (hereinafter referred to as “W.L. Plastics” or “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, Texas Local Government Code, formerly Sec 5190.6, VACS.) The parties hereto covenant and agree to comply with the terms of the Act as set forth in 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. W.L. Plastics is proposing a new Project (as such term is defined in the Act) which shall include an expansion project located in the Lubbock Railport. The Project is anticipated to result in 40 new Primary Jobs (as such term is defined in the Act) in the City of Lubbock, with a Target Annual Compensation of \$2,160,000 in the aggregate or a total of \$10,800,000 over five (5) years. Total capital investment cost estimate, which excludes Target Annual Compensation, is \$17,000,000.
  
- C. W.L. Plastics is a foreign for-profit corporation authorized to do business in Texas.

**3. Purpose:** The purpose for this Agreement is to formalize the agreements among LEDA and W.L. Plastics for the conveyance of certain real property and the payment of certain costs associated with W.L. Plastics’ Project, a recruitment grant, and a rail usage agreement, and specifically state the covenants, representations of the parties, and the incentives associated with W.L. Plastics’ 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 W.L. Plastics, as applicable, may constitute a breach of this Agreement, with the consequence of such breach being governed by Section 11 herein.

4. **Definitions:**

- A. The “Act” shall refer to the Development Corporation Act of 1979, as amended, as Sec. 501.001 *et seq*, Texas 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. “W.L. Plastics” or “Recipient” shall refer to W.L. Plastics Corporation, a foreign 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. “Full-Time Equivalent Employee” shall include individuals employed by W.L. Plastics in the City of Lubbock 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 W.L. Plastics.
- F. “Target Job Positions” means the 40 new Primary Jobs to be created or retained by W.L. Plastics in connection with the Project.
- G. “Term,” as used herein, shall begin on the Effective Date, and end five (5) years after the date of the issuance of a Certificate of Occupancy for the Property, unless earlier terminated in connection with W.L. Plastics’ failure to comply with the terms of this Agreement.
- H. “Payback Provision” shall mean W.L. Plastics’ repayment obligations as described in Section 11 herein.
- I. “Project Cost Incentives” shall mean the Construction Incentive and the Recruitment Grant.

5. **Representations of W.L. Plastics:**

- A. Recipient represents that it will utilize the Property (defined below) provided for the Project as contemplated herein.
- B. Recipient represents that it is authorized to do business in Texas and has the authority to enter into this Agreement.
- 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, (including the Payback Provisions).

- E. 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.
- F. Recipient agrees to participate in any LEDA sponsored wage benefit surveys, as well as any marketing materials that focus on economic development for the City of Lubbock, provided that such participation does not require any monetary expenditure by Recipient.

**6. Representations by LEDA:**

- A. LEDA represents that it is established as an Industrial Development Corporation under the Act and further represents that Recipient's Project, the grant and conveyance of the Property for no monetary consideration, and the Construction Incentive and Recruitment Grant applied toward Recipient's Project as stated in this Agreement have been found by the Board of Directors of LEDA sitting as fact finders 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.
- C. LEDA represents that the grant and conveyance of the Property for no monetary consideration and the application of the Construction Incentive and the Reimbursement Grant towards Recipient's Project are lawful and enforceable transactions under all applicable laws.

**7. Conveyance of Real Property:**

- A. LEDA shall grant and convey to Recipient by Special Warranty Deed, subject to Permitted Encumbrances and Reservations as defined in the Purchase and Sale Agreement, a copy of which is attached hereto as Exhibit 1, twenty (20) acres of land, more or less, known as Lots H, I, & J, Lubbock Railport Addition to the City of Lubbock, Lubbock County, Texas (the "Property"). The Property includes ten (10) acres of rail served land. The rail remains the Property of LEDA. The obligations and rights of Recipient under this Agreement shall be conditioned upon the Parties closing the transaction under the Purchase and Sale Agreement and executing a Rail Usage Agreement in a form acceptable to Recipient. The grant and conveyance of the Property excludes the rights to the mineral estate. LEDA shall advocate before the City Council in support of Recipient's position regarding denial of a required permit for the drilling of oil or gas wells on Recipient's property. Should the mineral estate revert to LEDA or its assigns, neither LEDA nor its assigns shall take any action with regard to said mineral estate to interfere with the rights of the surface estate owner of the Property. The actual Project site location is

subject to Recipient's approval. The Property will be conveyed as is without warranty except that LEDA will warrant title by Special Warranty Deed to the Property, subject only to Permitted Encumbrances and Reservations as defined in the Purchase and Sale Agreement. LEDA further warrants and agrees that utilities (water, gas, electric, sewer, fiber optics, telephone, etc.) in quantity sufficient to support Recipient's business operations are or will be provided adjacent to the Property to allow the extension of the utilities onto the Property no later than the date that Recipient commences installing the utility laterals to serve the facilities on the Property. LEDA further warrants and agrees that all of the public roads providing access to the Property from and to the main public street/road arterials are or will be completed on or before the construction of the facilities on the Property is substantially complete. The grant and conveyance of the Property shall occur between two (2) and ten (10) business days before Recipient is scheduled to begin site work toward the construction of the facilities.

- B. Should the Property be granted and conveyed as contemplated herein, Recipient shall attain the following milestones: (a) the site work portion of construction shall commence within twelve (12) months from date of LEDA's grant and conveyance of the Property to Recipient (subject to Force Majeure), (b) construction of the facilities shall commence within six (6) months of Recipient commencing site work (subject to Force Majeure), and (c) Recipient shall meet the requirements of the City of Lubbock to obtain a Certificate of Occupancy and substantial completion of the Project within three (3) years from the date of LEDA's grant and conveyance of the Property to Recipient. If the foregoing milestones are not met (subject to Force Majeure) the Property shall be re-conveyed to LEDA for no consideration within 30 days after a written demand is provided to Recipient by LEDA at the sole discretion of LEDA. Upon completion of the foregoing milestones, the grant and conveyance of the Property shall be absolute, and no re-conveyance of the Property shall occur for any reason. The Property will be conveyed subject to the covenants, restrictions, and rules of the Lubbock Railport recorded at Document No. 2007034660 of the Official Public Record of Lubbock County, Texas ("Restrictions of Lubbock Railport"). Recipient and its successors in interest, if any, in their respective capacities, shall comply with such Restrictions of Lubbock Railport in respect of their use and enjoyment of the Property.
- C. The value of the Property at the time of conveyance from LEDA to Recipient for 10 acres of rail served land is stipulated to be \$675,180 (\$67,518 for each full acre) and for 10 acres non-rail land is stipulated to be \$609,840 (\$60,984 for each full acre), for a total value of \$1,285,020. It is acknowledged and agreed that no purchase price shall be required to be paid for the Property and the Property will be granted and conveyed to Recipient for no monetary consideration.
- D. It is agreed that Recipient shall have the first right of refusal on the grant and conveyance of Lots E, F, & G, Lubbock Railport Addition to the City of Lubbock, Lubbock County, Texas (as depicted on Exhibit 2 attached hereto), to be purchased by Recipient at fair market value.

- E. LEDA agrees to deliver to Recipient, within ten (10) days of the date of this Agreement, copies of surveys, title reports and policies, of any kind or nature relating to the Property that LEDA has in its possession.
- F. Recipient's obligations under this Agreement (and the acquisition of the Property) shall be expressly conditioned upon the provisions in the Purchase and Sale Agreement. In the event the grant and conveyance of the Property contemplated in the Purchase and Sale Agreement is not completed, this Agreement shall automatically terminate and the rights and obligations of the parties hereunder shall cease.
- G. **AS IS PROVISION.** The deed to the Property shall include the following "as is" provision:

THIS CONVEYANCE IS AN ARMS-LENGTH CONVEYANCE BETWEEN THE PARTIES. THE CONVEYANCE WAS BARGAINED ON THE BASIS OF AN AS IS, WHERE IS TRANSACTION AND REFLECTS THE AGREEMENT OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS, DISCLOSURES, OR EXPRESS OR IMPLIED WARRANTIES, EXCEPT FOR THE SPECIAL WARRANTY OF TITLE TO THE REAL PROPERTY STATED IN THIS DEED AND LEDA'S REPRESENTATIONS AND WARRANTIES SET FORTH IN THE PERFORMANCE AGREEMENT BETWEEN THE PARTIES ("PERFORMANCE AGREEMENT").

EXCEPT FOR THE SPECIAL WARRANTY OF TITLE TO THE REAL PROPERTY STATED IN THIS DEED AND LEDA'S REPRESENTATIONS AND WARRANTIES SET FORTH IN THE PERFORMANCE AGREEMENT, THE PROPERTY IS CONVEYED TO GRANTEE IN AN AS IS, WHERE IS CONDITION, WITH ALL FAULTS. ALL WARRANTIES ARE DISCLAIMED, EXCEPT THE SPECIAL WARRANTY OF TITLE TO THE REAL PROPERTY IN THIS DEED AND LEDA'S REPRESENTATIONS AND WARRANTIES SET FORTH IN THE PERFORMANCE AGREEMENT.

GRANTEE SPECIFICALLY ACKNOWLEDGES THAT BY ACQUIRING THE PROPERTY, GRANTEE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM LEDA, ITS AGENTS, OR BROKERS AS TO ANY MATTERS CONCERNING THE PROPERTY, OTHER THAN THOSE SET FORTH IN THE PERFORMANCE AGREEMENT.

## 8. **Capital Incentive to be Awarded and Terms of Award**

- A. LEDA hereby grants to Recipient a potential incentive for construction of \$225,000 (the "Construction Incentive") with payments to be expressly made under the following terms and conditions.
  - 1. LEDA agrees to pay Recipient \$112,500 to assist with the construction of a 60,000 square foot manufacturing facility and a 10 – 15 acre storage yard, payable in one lump sum to the Recipient as reimbursement upon Recipient's pulling permits to begin construction. LEDA agrees to pay Recipient an additional \$112,500 when Recipient provides to LEDA its Certificate of Occupancy.

- B. LEDA will award a recruitment grant of \$50,000 (the "Recruitment Grant") to assist with any recruitment efforts or relocation needs of current or future employees to Lubbock payable as follows:
1. \$25,000 will be awarded upon Recipient's announcement of Lubbock's location for the facility at Railport; and
  2. the balance of \$25,000 will be awarded after the hiring of the twentieth (20<sup>th</sup>) Full-Time Equivalent Employee which will equate to approximately \$1,250 incentive per employee for recruitment/training.
- C. Measurement for job creation recruitment will be based upon Recipient providing LEDA's accountants with proof of 20 Full-Time Equivalent Employee hirings as follows:

Recipient agrees to establish a Baseline Employment Level and Census and shall timely provide such information to LEDA or its designated accounting representative when requested; the parties agree that the Baseline Employment Level is zero since the Project is new construction. 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 additional Recruitment Grant, as offered by LEDA. Recipient shall earn the \$25,000 as stated above in subparagraph 8.B.2. upon the hiring of the 20<sup>th</sup> employee. Such earned amount shall be paid within fifteen (15) days after LEDA's board review and approval of the designated accounting representative's review. LEDA and its representative agree to maintain confidentiality of all of Recipient's records and to return all such records unless other mutually agreeable arrangements are made regarding record retention by Recipient or inspection access to LEDA.

**9. Conditions for Payment of Incentives:** It is specifically agreed and understood by and between the parties that LEDA has agreed to make the Project Cost Incentives, which includes the Construction Incentive and the Recruitment Grant available strictly upon the following terms and conditions:

- A. During the Term, Recipient must maintain a business location in the City of Lubbock or Lubbock County and must maintain its legal status under federal and state law such that it remained qualified to do business in the State of Texas.
- B. During the Term, the operations or activities of Recipient and its employees shall be performed and conducted in a businesslike manner and shall be in keeping (in all material respects) with federal and state laws and regulations, and any ordinances of the City of Lubbock and/or governmental entities which have jurisdiction over Recipient's operations and activities.
- C. Recipient certifies that it 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), the party so convicted shall repay 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 the party so convicted of the violation, all in accordance with Chapter 2264 of the Texas Government Code.

10. **Rail Usage Agreement:** The terms of this Agreement shall be conditioned upon the parties executing a rail usage agreement (the "Rail Usage Agreement") in a form acceptable to the parties that allows access to the rail spur adjacent to the Property. In the event the Rail Usage Agreement is not executed, this Agreement shall automatically terminate and the rights and obligations of the parties hereunder shall cease.

11. **Payback Provisions and Events of Default:** Recipient acknowledges that LEDA and Recipient are required to remain in conformance with the statutory provision of the Act. The parties hereto agree that in the event Recipient fails to comply with the material provisions of this Agreement, including but not limited to Paragraphs 5B and 9A, 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. Further, if Recipient fails to meet the requirements to acquire a Certificate of Occupancy within three (3) years from LEDA's conveyance of the Property to Recipient, Recipient shall repay LEDA the \$112,500 Construction Incentive. Additionally, if Recipient abandons the Project for any reason, except for the sale of the Project and continuation of operations by a third party, within five years of obtaining its Certificate of Occupancy, Recipient shall repay all or a portion of the Construction Incentive with the following conditions:

- (a) If within the first two years of operations – 100%
- (b) If within the third year of operations – 75%
- (c) If within the fourth year – 50%
- (d) If within the fifth year – 25%

12. **Assignment, Merger, and Termination Due to Merger, Etc.:** Except as set forth below, 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. Notwithstanding the foregoing, but subject to the terms of the Purchase and Sale Agreement, Recipient may freely sell or otherwise transfer the Property. Additionally, Recipient may assign its rights and obligations under this Agreement in connection with any merger transaction, sale of assets, sale of business unit, corporate reorganization (including assignment to an affiliate of or successor to Recipient) or similar transaction.

13. **No Joint Venture:** It is specifically agreed that there shall be no 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.

14. **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.

15. **Publicity:** Any use of a party's name for publicity in connection with the Project must be approved in advance by such party. It is understood that with prior written notice to Recipient, LEDA may make known its contributions to Recipient in whatever public manner as may be required by law.

16. **Status of Information Provided to LEDA:** Any information obtained by LEDA or its agents or assigns during negotiations leading up to the execution of the Agreement or otherwise about the Project, 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 under applicable law, if any. Such information shall be considered confidential and beyond the scope of any open records request or other similar method of disclosure of information at the request of the general public as proprietary information.

17. **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:

To LEDA:

(1) John Osborne  
CEO and President  
Lubbock Economic Development Alliance, Inc.  
1500 Broadway, 6<sup>th</sup> Floor  
Lubbock, TX 79401

(2) With a copy to:

Ann Manning  
Underwood Law Firm, P.C.  
1111 W. Loop 289  
Lubbock, TX 79416

To W.L. Plastics:

(1) W.L. Plastics Corporation  
3575 Lone Star Circle, Suite 400  
Fort Worth, Texas 76177  
Attn: Mark Wason, CEO



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. 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
- C. 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.
- D. Binding Effect: This Agreement shall be binding upon the undersigned, their successors and assigns, subject to the express terms of this Agreement concerning assignment.
- E. 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, act of the elements, 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 ("Force Majeure").
- F. 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, effective as of the Effective Date.

**LUBBOCK ECONOMIC DEVELOPMENT  
ALLIANCE, INC.**

By:   
John Osborne, CEO and President

ATTEST:



**W.L. PLASTICS CORPORATION**

By:   
Mark Wason, CEO MARK WASON