

RESOLUTION NO. 2021-43-TEDC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, APPROVING A PROJECT OF THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION UNDER TEXAS LOCAL GOVERNMENT CODE SECTION 505.158.

* * * * *

WHEREAS, the City Council of the City of Tomball, Texas (the “Council”) finds that Tomball Economic Development Corporation (the “TEDC”) is a duly-formed organization in the State of Texas and that its purpose is to enhance the economic well being of the City of Tomball (the “City”) and its citizens; and

WHEREAS, the Council finds that the TEDC’s proposed project that includes the TEDC’s provision of land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements to the Friends of Tomball Community Library would promote new or expanded business development (the “Project”) in and around the City, with a description of the Project being included in the Performance Agreement attached to this Resolution as “Exhibit A”; and **NOW THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TOMBALL:

THAT the City Council of the City of Tomball hereby finds and approves the Tomball Economic Development Corporation’s project, as such project is described in the Performance Agreement attached to this Resolution as “Exhibit A”.

PASSED, APPROVED, and RESOLVED on first reading on _____.

PASSED, APPROVED, and RESOLVED on second reading on _____.

GRETCHEN FAGAN, MAYOR

ATTEST:

Doris Speer, City Secretary

EXHIBIT A

**PERFORMANCE AGREEMENT – TEDC & FRIENDS OF
TOMBALL COMMUNITY LIBRARY**

TOMBALL ECONOMIC DEVELOPMENT CORPORATION PROJECT AGREEMENT

This Project Agreement (this “Agreement”) is made by and between the Tomball Economic Development Corporation, a State of Texas Type B Economic Development Corporation (the “TEDC”), and Friends of Tomball Community Library, a 501c3 nonprofit organization (the “Organization”) and is entered into by the Parties on the date of execution below (the “Effective Date”).

RECITALS

WHEREAS, the TEDC’s Board of Directors (the “Board”), at its meeting on September 14, 2021, after conducting a public hearing that was published on September 10, 2021, found that a project that included the TEDC’s provision of land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements to the Lone Star College- Tomball Community Library would promote new or expanded business development (the “Project”); and

WHEREAS, through the Project, the TEDC will assist the Organization in promoting and expanding business development in the City of Tomball, Texas (the “City”) by providing \$47,614.00 to the Organization to remodel and refurnish a youth space and for the purchase of Technology Programs and Equipment (the “Equipment”), with a description of the Equipment being attached to this Agreement as “Exhibit B”; and

WHEREAS, the Organization, in partnership with the Lone Star College–Tomball, a branch of the Lone Star College System, a State of Texas public community college (the “College”), the Harris County Public Library (the “HCPL”), and Harris County Precinct 4 (the “Precinct”), will use the Equipment to provide improved access to advanced technology, resources, educational opportunities and other relevant services to promote educational and job training opportunities for the College and the HCPL as well as residents of the City and the Precinct (the “Training”); and

WHEREAS, in addition to the Training, the City and the Precinct will use the Equipment at an Young Adults Space at the HCPL that will be open to the public and be focused on promoting and expanding business development in the City and the Precinct (the “Lab”), with a more detailed description of the Training and the space being attached to this Agreement as “Exhibit A”; and

WHEREAS, as consideration for the TEDC’s provision of funding to the Organization for the Improvements and Equipment through the Project, the Organization has agreed to satisfy and comply with certain terms and conditions provided in this Agreement; and

NOW, THEREFORE, in consideration of mutual benefits and obligations set forth herein, including the recitals set forth above, the TEDC and the Organization agree as follows:

AGREEMENT

Section 1. Term.

This Agreement shall become enforceable upon the Effective Date and shall remain in effect for five (5) years, unless terminated or cancelled earlier (the “Term”). The Term may be extended through a written amendment to this Agreement executed by the Parties.

Section 2. Organization Obligations.

A. Continued Operation. The Library hereby covenants and agrees that it will continue to operate and develop its Young Adult Space in the City throughout the Term.

Section 3. TEDC Obligations.

A. Project Payment. In consideration of the Organization representations, promises, and covenants, the TEDC agrees to grant to the Organization \$47,614.00 to remodel and refurnish the space and for the purchase of Technology Programs and Equipment (the “Equipment”), with a description of the Equipment being attached to this Agreement as “Exhibit B”.

B. Additional Incentive Payment. To the extent allowed by law, the Board may amend this Agreement to allow for additional provisions of land, buildings, equipment, facilities, expenditures, targeted infrastructure, or improvements to the Library that would promote new or expanded business development.

C. Contingency. The Parties understand and acknowledge that the funding of this Agreement is contained in the TEDC’s annual budget and is subject to the approval of the Board in each fiscal year. The Parties further agree that should the Board fail to approve a budget which includes sufficient funds for the continuance of this Agreement, or should the Board fail to certify funds for any reason, then and upon the occurrence of such event, this Agreement shall terminate as to the TEDC and the TEDC shall then have no further obligation to the other Party. When the funds budgeted or certified during any fiscal year by the TEDC to discharge its obligations under this Agreement are expended, the library’s sole and exclusive remedy shall be to terminate this Agreement.

Section 4. Termination.

A. This Agreement shall terminate upon the expiration of the Term, unless terminated earlier as the result of a default by the Organization under one of the following provisions:

1. General Default. Either Party may terminate this Agreement during the Term as provided in this paragraph if the other Party is in default by failing to comply with the obligations of this Agreement. The Party alleging the default will give the other Party notice of the default in writing. If the Party in default fails to cure the default within sixty (60) days of the date of the notice, then the Party giving the notice may terminate this Agreement by written notice to the other Party, specifying the date of termination. However, neither Party may be deemed to be in default of this Agreement if performance of this Agreement is delayed, disrupted, or becomes impossible because of any act of God, war, earthquake, fire, strike, accident, civil commotion, epidemic, act of government, its agencies or offices, or any other cause beyond the control of the Parties (the “force majeure”) during the Term, but only for so long as the event of force majeure reasonable prevents performance.

2. Funding Agreement Default. In the event Organization enters into any type of funding agreement with the City and such funding agreement terminates because of default of the Organization, then this Agreement shall terminate.

3. Undocumented Worker Employment Default. According to Chapter 2264 of the Texas Government Code (the “Code”), the Library will not knowingly employ an individual who, at the time of employment: (i) is an undocumented workers as that term is defined in the Code; and, (ii) is not lawfully admitted for permanent residence to the United States or, is not authorized under the law to be employed in that manner in the United States. Additionally, if the is convicted of a violation under 8 U.S.C. Section 1324a(f), then the conviction is a breach of this Agreement and the TEDC will send the Library written notice that the Library has violated this paragraph and that the Agreement terminates thirty (30) days from the date of the notice.

B. It is understood and agreed by the Parties that, in the event of a default by the TEDC on any of its obligations under this Agreement, the Library 's sole and exclusive remedy shall be limited to either the termination of this Agreement, or a suit for specific performance.

Section 5. Reimbursement For Default.

If this Agreement terminates because of the Organizations' default, then the Organization shall reimburse the TEDC for all expenses that the TEDC has made to the Organization related to this Agreement, excluding any previous reimbursement payments made by the Organization under this Agreement (the "Reimbursement"). The Reimbursement shall be in accordance with the following provisions:

1. The Reimbursement shall be made for all direct expenses paid by the TEDC to the Organization along with interest at the rate equal to the 90-day Treasury Bill plus one-half percent (½ %) per annum, within one hundred twenty (120) days after the TEDC notifies the Organization of the default;
2. The Reimbursement shall include any and all reasonable attorney's fees and costs incurred by the TEDC as a result of any action required to enter into this Agreement and to obtain the Reimbursement; and,
3. The Reimbursement obligation survives termination of this Agreement.

Section 6. Miscellaneous.

A. Liability. To the extent permitted by law, no director, officer, employee, or agent of the TEDC, and no officer, employee, or agent of the City, shall be personally responsible for any liability arising under or related to this Agreement.

B. Assignability. This Agreement may not be assigned by the Organization to any other person or entity unless the TEDC consents in writing to such assignment.

C. Jurisdiction and Venue. This Agreement shall be performable and enforceable in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas.

D. Amendment. Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment, or modification only in writing, and by the signatures and mutual consent of the Parties.

E. Notice. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by: (i) depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid, registered or certified mail, return receipt requested; (ii) by delivering the same in person to such Party; (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or, (iv) by facsimile or other electronic transmission; provided a copy of such notice is sent within one (1) day thereafter by another method provided above. The initial addresses of the Parties for the purpose of notice under this Agreement shall be as follows:

To the TEDC:
Tomball Economic Development Corporation
Attn: President, Board of Directors
401 West Market Street
Tomball, Texas 77375

Friends of Tomball Community Library:
Friends of Tomball Community Library
Attn: Lain Hopwood

F. No Waiver. The failure of either Party to insist in any one or more instances on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance. However, the TEDC hereby reserves and retains any and governmental immunities that it might now have or possess in the future.

G. Severability. In the event any one or more words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement, or the application thereof to any person, firm, corporation, or circumstance, shall be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, then the application, invalidity, or unconstitutionality of such words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement shall be deemed to be independent of and severable from the remainder of this Agreement, and the validity of the remaining parts of this Agreement shall not be affected thereby.

SIGNATURES

THIS AGREEMENT is hereby executed by the Parties on this _____ day of _____ 2021.

FOR: THE TEDC

**FOR: FRIENDS OF TOMBALL
COMMUNITY LIBRARY**

By: _____

By: _____

Name: Gretchen Fagan

Name: _____

Title: President, Board of Directors

Title: _____

ATTEST:

ATTEST:

By: _____

By: _____

Name: _____

Name: _____

Title: Secretary, Board of Directors

Title: _____

ACKNOWLEDGMENT – FOR THE ORGANIZATION

**THE STATE OF TEXAS §
COUNTY OF HARRIS §**

This instrument was acknowledged before me on the _____ day of _____ 2021,
by _____, _____ of _____,
Name Position/Title Entity Name
for and on behalf of said Entity.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

ACKNOWLEDGMENT – FOR THE TEDC

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____ 2021,
Day Month
by Gretchen Fagan, President of the Board of Directors of the Tomball Economic Development Corporation, for and on behalf of said Corporation.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

EXHIBIT A – TRAINING PROGRAM & INNOVATION LAB DESCRIPTION

The Young Adult (YA) space reorganization represents Phase 2 of the Tomball Innovation Lab initiative that started in 2019 and had its grand opening on January 28, 2020. This initiative was supported by the Tomball Chamber of Commerce, the Tomball Economic Development Corporation, Tomball ISD, HCA-Houston Healthcare Tomball and the city of Tomball.

The YA space will provide educational opportunities for teens, job preparation and career development, technological literacy, social literacy and leadership experiences.

Teen-Focused Furniture:

It is essential to provide teens with appealing décor, age-appropriate furniture and specialized librarian services. To this end we have researched furniture that is appealing, mobile and encourages project collaboration and ease of use for YA Space resources.

- Minimalistic service desk
 - Specialized, non-invasive or intimidating young adult librarian presence in the young adult space
 - Increases young adult reference and guidance for technology use
 - Librarians can supervise the YA Space, secure YA Space technology while not appearing invasive
- Modern furniture
 - Multi-functional furniture
 - Mobile chairs and tables are easily arranged for focused programming as well as casual collaboration and socialization
 - Chairs with power sources for charging wireless devices, moveable footstools with storage for backpacks and textbooks, mobile side tables for holding devices and books
 - Dividers in order to section off the room for programs while still allowing access to the YA space for casual use.

Estimated Cost for space remodel and refurnish: \$17,674

EXHIBIT B – DESCRIPTION OF EQUIPMENT

Featured Technology and Related Programs/Activities:

- Digital Table – an interactive smart table with a touch screen interface. It has access to the internet and multiple activities via downloadable applications on several topics (I.e., education prep – Acellus Student; resume building – Resume Maker Professional 20; language learning – DuoLingo, art – Sketchbook Pro, Animation Desk Classic, Adobe Creative Cloud; design and drawing CorelCAD, Inkscape; and others). The table is compatible with multiple devices. Planned programs to use the digital table include Teen Tech Tuesdays, Career Workshops, and Robotics/Engineering Challenges.
- Digital Wall - a large screen display on one of the space's walls. (I.e., hosting virtual visits from local to international guests, virtual seminars, public speaking and presentations opportunities, collaborative learning and gaming) Planned programs to use the digital wall include special virtual events, Teen Anime Club, and Teen Advisory Group.
- Virtual reality headsets – wireless with realistic virtual experiences through downloadable apps or via Internet connection (cognitive and well-being applications – VRHealth Portal, Appility; interactive interview practice – VirtualSpeech Training; education - virtual tours of worldwide historical locations and museums; health – Human Anatomy VR to explore the human body) Planned programs to use virtual reality include special Quest, Focus on Art, and Teen Tech Tuesday.

Estimated Cost for Technology and Equipment: \$29,940