

**PERFORMANCE AGREEMENT**  
**Between**  
**Wylie Economic Development Corporation**  
**And**  
**CLF II LI Wylie Owner, LLC**

This Performance Agreement (the "Agreement") is made and entered into by and between the **Wylie Economic Development Corporation** ("WEDC"), a Texas corporation organized and existing under Chapter 501 of the Texas Local Government Code, known as the Development Corporation Act, as amended from time to time (the "Act") and **CLF II LI Wylie Owner, LLC**, a Texas limited liability company ("Company").

RECITALS

WHEREAS, Company owns a certain tract of property located within the corporate limits of the City of Wylie, Texas (the "City"), being Lots 1-3, Block A, LI 78 Logistics Center, in the City of Wylie, Collin County, Texas, as more fully described in the attached **Exhibit A** (the "Property"); and

WHEREAS, the Company desires to construct an industrial and/or warehouse facility containing approximately 274,416 square feet of space on the Property with an estimated capital investment of \$30,000,000.00 (the "Facility") in accordance with the site plan attached hereto and incorporated herein as **Exhibit B**; and

WHEREAS, Company has requested financial and/or economic assistance from the WEDC to plan and construct certain infrastructure improvements to assist in the development of the Property, consisting of economic assistance for all hard and soft costs relating to the construction of public infrastructure and site improvements on or adjacent to the Property; and

WHEREAS, Company has executed the statement attached hereto as **Exhibit D**; and

WHEREAS, Section 501.103 of the Act states that the WEDC may provide funding for 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 streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements (the "Qualified Infrastructure"); and

WHEREAS, Company proposes to use the economic incentive for the construction of the Qualified Infrastructure which will include approved public infrastructure improvements and site improvements as may be amended from time to time, necessary for the development of the Property, as generally described in the attached **Exhibit C**; and

WHEREAS, the WEDC has found that the Qualified Infrastructure is necessary to promote or develop new or expanded business enterprises in the City and the WEDC has concluded that, (i) the Qualified Infrastructure constitutes a "project", as that term is defined in the Act, (ii) WEDC is willing to provide Company with economic assistance as hereinafter set forth on the terms and

subject to the conditions as stated herein, and (iii) Company is willing to accept the same subject to all terms and conditions contained in this Agreement; and

WHEREAS, the WEDC has determined that it is in the best interest of the City, and promotes the purposes authorized by the voters of the City of Wylie for which the WEDC was established, to encourage the development and use of commercial properties within the City; and

WHEREAS, the WEDC is willing to provide the Company with economic assistance hereinafter set forth on the terms and subject to the conditions as stated herein and Company is willing to accept the same subject to all terms and conditions contained in this Agreement.

NOW, THEREFORE, for and in consideration of the above recitals and the terms, conditions and requirements hereinafter set forth, the parties hereto agree as follows:

1. **Economic Assistance.** Subject to the terms of this Agreement and provided Company is not in default, the WEDC will provide Company economic assistance in the form of performance reimbursement incentives (the "Reimbursement Incentives") upon completion of the Performance Criteria set forth below. The total amount of economic assistance and/or incentives to be paid to the Company by WEDC, including the Reimbursement Incentives, shall not exceed the cumulative sum of One Million Three Hundred Thousand Dollars (\$1,300,000.00).

2. **Performance Obligations.** The WEDC's obligation to pay Company the Reimbursement Incentives stipulated above is expressly contingent upon Company completing the following items (the "Performance Criteria") by the due dates set forth below:

A. **Incentive One.** A maximum Reimbursement Incentive of Six Hundred Fifty Thousand Dollars (\$650,000.00) will be paid to the Company by WEDC upon completion of the following Performance Criteria for Incentive One:

i. Company shall construct or cause to be constructed on the Property the Facility, as evidenced by a Certificate of Completion or letter from the City's Chief Building Official (a "Certificate of Completion") for the Facility, no later than eighteen (18) months after the Effective Date, as extended for the duration of any event of force majeure (the "Facility CC Deadline"). The issuance date of the Certificate of Completion for the Facility will become the "Facility Completion Date." For purposes of this paragraph, "force majeure" include without limitation of the generality thereof, acts of nature, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas, or any civil or military authority, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, and any other event causing delay of performance in meeting the Facility Completion Date, whether similar to those enumerated or otherwise, which are not within the control of the Company, and which Company could not have avoided by the exercise of due diligence and care;

ii. Company shall supply documentation to the WEDC that the Qualified Infrastructure has been completed and accepted by the City and that the hard and soft costs of constructing the Qualified Infrastructure was at least One Million Three Hundred Thousand Dollars (\$1,300,000.00) no later than the Facility CC Deadline;

iii. Company shall be current on all ad valorem taxes on the Property and provide written notice and evidence of such payment to WEDC in a form satisfactory to WEDC; and

B. **Incentive Two.** A maximum Reimbursement Incentive of Six Hundred Fifty Thousand Dollars (\$650,000.00) will be paid to the Company upon completion of the following Performance Criteria for Incentive Two:

i. Company shall be current on all ad valorem taxes due on the Property and provide written notice and evidence of such payment to WEDC in a form satisfactory to WEDC.

ii. Company shall provide to WEDC documentation acceptable to WEDC confirming either (A) that Company has maintained continuous ownership of the Property from the Effective Date through the first (1<sup>st</sup>) anniversary of the Facility Completion Date or (B) that Company conveyed ownership of the Property to a third party, naming the third party and setting forth the date on which the conveyance occurred, and that such third party has owned the Property through the first (1<sup>st</sup>) anniversary of the Facility Completion Date. If Company has conveyed title to the Property prior to the first (1<sup>st</sup>) anniversary of the Facility Completion Date, Company shall have notified WEDC of such conveyance in advance and, if the new owner of the Property is a permitted assignee under Section 7(c) below, Company shall have provided notice of whether this Agreement has been assigned to the new owner.

3. **WEDC Payment of Reimbursement Incentives.** Subject to the terms and conditions of this Agreement, including Company's satisfaction of the applicable Performance Criteria for a Reimbursement Incentives payment, payment shall be made by WEDC to the Company within thirty (30) days after the applicable documentation for achievement of the Performance Criteria for such Reimbursement Incentives payment has been provided to WEDC.

4. **Default.** The WEDC's obligation to make a payment of the Reimbursement Incentives to Company will terminate or be reduced if Company defaults by not completing the Performance Criteria applicable to such Reimbursement Incentives payment as set forth in Section 2 of this Agreement and Company does not cure such default within 30 days after written notice from WEDC. In the event Company fails to meet any of the Performance Criteria for Incentive One in Section 2 of this Agreement, the Reimbursement Incentives shall not be paid to the

Company and WEDC shall have the right, but not the obligation, in WEDC's sole discretion, to terminate this Agreement.

If during the Term of this Agreement, Company, or a branch, division or department of Company, is convicted of a violation under 8 U.S.C. §1324a(f), Company shall repay the amount of the Reimbursement Incentives provided under this Agreement to Company plus three percent (3.0%) simple interest, not later than the 120<sup>th</sup> day after the date the City notifies Owner of the violation

**5. Termination of Agreement.** This Agreement may be terminated by mutual written consent of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth in this Agreement and the other failing to cure such failure within thirty (30) days after a notice of the failure to fulfill the obligation provided by the other party, or as otherwise provided in this Agreement.

**6. Economic Assistance Termination.** Notwithstanding the terms of this Agreement, to the extent this Agreement is not earlier terminated, the WEDC's obligation to pay a portion or all of the Reimbursement Incentives to Company will expire upon the earlier of (i) the full payment of the Reimbursement Incentives, (ii) thirty (30) days after the first (1st) anniversary of the Facility Completion Date if Company has not by such time provided documentation to WEDC that it has met the Performance Requirements for Incentive Two, or (iii) December 31, 2025.

**7. Miscellaneous.**

a. This Agreement shall be construed according to the laws of the State of Texas and is subject to all provisions of the Act, which are incorporated herein by reference for all purposes. In the event any provision of the Agreement is in conflict with the Act, the Act shall prevail.

b. This Agreement shall be governed by the laws of the State of Texas and is specifically performable in Collin County, Texas.

c. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. This Agreement shall not be assignable by Company without the prior written consent of the WEDC, which consent will be at the sole but reasonable discretion of the WEDC.

d. Any notice required or permitted to be given under this Agreement shall be deemed delivered by hand delivery or depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other address as any party hereto might specify in writing:

WEDC: Mr. Jason Greiner  
Executive Director  
Wylie Economic Development Corporation

250 South Highway 78  
Wylie, TX 75098

With copy to: Abernathy, Roeder, Boyd & Hullett, P.C.  
1700 Redbud Blvd., Suite 300  
McKinney, Texas 75069  
Attn: Chris Zillmer

COMPANY: CLF II LI Wylie JV, LLC  
1902 Washington Avenue  
Suite A  
Houston, TX 77007  
Attn: Sara Bloom

With copy to: Jackson Walker L.L.P.  
2323 Doss Avenue, Suite 600  
Dallas, Texas 75201  
Attn: William Dahlstrom

e. This Agreement contains the entire agreement of the parties regarding the within subject matter and may only be amended or revoked by the written agreement executed by all the parties hereto.

f. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

g. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

h. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

i. Time is of the essence in this Agreement.

j. The parties agree this Agreement has been drafted jointly by the parties and their legal representatives.

By the execution hereof, each signatory hereto represents and affirms that he is acting on behalf of the party indicated, that such party has taken all action necessary to authorize the execution and delivery of the Agreement and that the same is a binding obligation on such party.

[SIGNATURE PAGE FOLLOWS]

WEDC Board approved this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the “Effective Date”).

**WEDC:**

WYLIE ECONOMIC DEVELOPMENT CORPORATION, a Texas Corporation

By: \_\_\_\_\_  
Jason Greiner, Executive Director

**COMPANY:**

CLF II LI WYLIE OWNER, LLC, a Delaware limited liability company

By: CLF II LI Wylie JV, LLC, a Delaware limited liability company, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibits:

- Exhibit A - Legal Description of the Property
- Exhibit B - Site Plan of the Facility
- Exhibit C - The Qualified Infrastructure
- Exhibit D - Statement Regarding Undocumented Workers

**EXHIBIT A**

**Description of the Property**

Lots 1-3, Block A, LI 78 Logistics Center, an addition to the City of Wylie, Collin County, Texas, according to the Final Plat thereof recorded October 21, 2022, in Volume 2022, Page 760, Plat Records, Collin County, Texas.

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**EXHIBIT B**

**Site Plan of the Facility**

[SEE ATTACHED]

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**EXHIBIT C**

**The Qualified Infrastructure OPCC & Exhibit**



General Contractor	TBD
Date	11-Oct-22

Project Name	Lovett Wylie
City	Wylie
State	TX

		1	2	3	4	5	
01-100-	<b>GENERAL CONDITIONS</b>	Units	Anson Parkway (Remove & Replace)	Right Hand Turn Lane to Anson Pkwy	TxDOT Turn Lanes	Wylie East Drive Median Cut	Gas Main Extension
	General Conditions		8,242.92	7,743.71	4,946.43	2,385.60	none
	<b>Sub Total</b>		<b>8,242.92</b>	<b>7,743.71</b>	<b>4,946.43</b>	<b>2,385.60</b>	<b>-</b>
02-000-	<b>SITE WORK COMPLETE</b>						
	Survey						
	Termite						
	Traffic Control		22,943.63	5,736.00	10,070.00		
	Demolition & Haul Off						
	Stabilization						
	Site Grading and Fill/ Stabilization		72,400.00	45,600.00	50,100.00	47,000.00	
	Building Pad						
	Temp Access Drives and Staging/ Ring Road						
	Spills Removal						
	Erosion Control/ SWPPP						
	Utilities - Sanitary						
	Utilities - Fire & Water						
	Utilities - Storm			64,370.00			
	Detention						
	Site Electric						
	Site Sleeves						
	Site Concrete, Paving, Curbs, Walks		179,000.00	59,000.00	108,000.00	31,000.00	
	Asphalt Paving						
	Screenwall						
	Striping and Signage		15,900.00	6,000.00	6,000.00	6,000.00	
	Traffic Signals			91,960.00			
	Landscape and Irrigation						
	<b>Sub Total</b>		<b>290,243.63</b>	<b>272,666.00</b>	<b>174,170.00</b>	<b>84,000.00</b>	<b>-</b>
03-000-	Concrete						
04-000-	MASONRY AND STONE WORK						
05-000-	STEEL SUPPLY AND ERECTION						
06-000-	INTERIOR FINISHES						
07-000-	THERMAL AND MOISTURE						
08-000-	DOORS METAL / WOOD / AUTOMATIC						
08-500-	STOREFRONT GLASS, DOORS AND WINDOWS						
09-000-	EXTERIOR FINISHES						
10-000-	PURCHASES						
11-000-	EQUIPMENT						
15-000-	Gas Main Extension (by Atmos)						
	6" gas main parallel to Wylie East	720.00	-	-	-	-	108,000.00
	4" gas main extension onto industrial site	680.00	-	-	-	-	68,000.00
	2" gas main lateral service to retail & warehouse	674.00	-	-	-	-	48,750.00
	<b>Sub Total</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>224,750.00</b>
15-400-	Plumbing						
15-700-	HVAC						
16-000-	ELECTRICAL						
	<b>SUB-TOTAL</b>		<b>298,486.55</b>	<b>280,409.71</b>	<b>179,116.43</b>	<b>86,385.60</b>	<b>224,750.00</b>
	Builders Risk Insurance	0.15%	447.73	420.61	268.67	129.58	-
	Insurance	1.15%	3,432.60	3,224.71	2,059.84	993.43	-
	Fee	3.50%	10,582.84	9,941.93	6,350.57	3,062.80	-
	Sales Tax	0.00%	Included	Included	Included	Included	-
	P&P Bond	3.0%	8,954.60			2,591.57	-
	<b>TOTAL</b>		<b>321,904.31</b>	<b>293,996.97</b>	<b>187,795.51</b>	<b>93,162.98</b>	<b>224,750.00</b>

Total Improvements						1,121,610
Testing on Items 1-4 (Direct Cost & GC's Only)	3.0%		844,398			25,332
Contingency on Items 1-5 plus testing	15.0%		1,146,942			172,041
Total Reimbursable Costs						<b>1,318,983</b>

**EXHIBIT C (Continued)**

**The Qualified Infrastructure OPCC & Exhibit**

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**EXHIBIT D**

**Statement Regarding Undocumented Workers**

[SEE ATTACHED]

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Statement Regarding Hiring of Undocumented Workers

The undersigned certifies to the best of his or her knowledge and belief, that:

- \_\_\_\_\_ (the "Business") or a branch, division, or department of the business, certifies does not and will not knowingly employ undocumented workers. For purposes of this verification, "Undocumented worker" means an individual who, at the time of employment, is not:
  - lawfully admitted for permanent residence to the United State; or
  - authorized under law to be employed in that manner in the United States.
- If, after receiving one or more Public Subsidies (defined below), the Business or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), the Business shall repay the amount of the Public Subsidy with interest, at the rate and according to the terms provided in the agreement for public subsidies per V.T.C.A. Government Code § 2264.053 (Vernon 2007), not later than the 120th day after the date the City notifies the Business of the violation. "Public Subsidies" means grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers or rebates, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates, or tax abatements.

This statement is made pursuant to Texas. Government Code §2264.

BUSINESS:

\_\_\_\_\_

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

Title \_\_\_\_\_