

**RESOLUTION NO. R-13-12-19-G3**

**WHEREAS**, South Education - Texas LLC ("South") plans to locate an educational facility in the City which will provide jobs and additional tax base ("Facility"); and

**WHEREAS**, the purpose of this Resolution is to approve an economic development agreement as contemplated by Chapter 380 of the Texas Local Government Code whereby South will expend significant sums to install improvements to and equip the Facility and lease, occupy, and operate the Facility in conformance with the City's development approvals for the Facility, Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the Mayor is hereby authorized and directed to execute on behalf of the City, an Economic Development Program Agreement with South Education - Texas LLC, a copy of same being attached hereto as Exhibit "A" and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted

**RESOLVED** this 19th day of December, 2013.



ALAN MCGRAW, Mayor  
City of Round Rock, Texas

ATTEST:



SARA L. WHITE, City Clerk

## ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement ("Agreement") is entered into this 19<sup>th</sup> day of December, 2013, by and between the City of Round Rock, Texas, a Texas home rule municipal corporation ("City"), and South Education – Texas LLC, a Texas limited liability company ("South").

WHEREAS, the City has adopted Resolution No. R-13-12-19-G2, attached as Exhibit A ("City Resolution"), establishing an economic development program (the "Program") and authorizing the Mayor to enter into this Agreement with South in recognition of the positive economic benefits to the City through South's leasing space in a new building to be constructed by DAC Texas I LLC at La Frontera in the City and locating one of South's educational facilities ("Facility") in said lease space; and

WHEREAS, South will employ at least thirty-eight (38) employees when the Facility is complete, and will employ at least seventeen (17) more over the term of this Agreement; and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby South will expend significant sums to install improvements to and equip the Facility and lease, occupy, and operate the Facility in conformance with the City's development approvals for the Facility; and

WHEREAS, the City agrees to provide performance based economic development grants to South to defray a portion of South's expenses;

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and South agree as follows:

1. **Authority.** The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code, and the City Resolution, and constitutes a valid and binding obligation of the City in the event South proceeds with the lease and occupation of the Facility. The City acknowledges that South is acting in reliance upon the City's performance of its obligations under this Agreement in making South's decision to commit substantial resources and money to lease, improve and occupy the Facility.

### 2. Definitions.

2.1 "Economic Incentive Payment(s)" ("EIPs") means the amount paid by the City to South under the Program.

2.2 "Effective Date" is the date this Agreement is executed to be effective by the City and South.

2.3 "Facility" means the lease space located in the La Frontera, Round Rock, Texas.

- 2.4 **“Improvements”** means the finish out of and additions to the Facility, and personal property and equipment with a minimum cost of three million dollars (\$3,000,000.00).
- 2.5 **“Program”** means the economic development program established by the City pursuant to Chapter 380 of the Texas Local Government Code and under the City Resolution to promote local economic development and stimulate business and commercial activity within the City.
- 2.6 **“Recapture Liability”** means the total amount of all EIP’s that are paid as result of this Agreement that are subject to recapture by the City from South in the event of a South default.
3. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, 2018.

4. **Rights and Obligations of South.**

- 4.1 Lease of Facility. South agrees to provide City with documentation showing that it has leased the Facility until at least December 31, 2018.
- 4.2 Improvements. South agrees to spend at least three million dollars (\$3,000,000.00) to construct and/or install the Improvements. South agrees to provide City with documentation showing that this obligation has been satisfied. City shall have the right to audit South’s records to verify that this obligation has been satisfied.
- 4.3 Jobs.
- 4.3.1 Job Creation. Within thirty (30) days after the City issues a Certificate of Occupancy the Facility, South agrees to employ in the Facility at least thirty-eight (38) full-time employees at an average annual salary of \$52,000, plus an industry standard benefit package. In addition, South agrees to retain these employees and to add new employees in accordance with the following schedule:

| <u>Date</u>          | <u>Retain</u> | <u>New</u> | <u>Total</u> |
|----------------------|---------------|------------|--------------|
| On December 31, 2014 | 0             | 38         | 38           |
| On December 31, 2015 | 38            | 6          | 44           |
| On December 31, 2016 | 44            | 6          | 50           |
| On December 31, 2017 | 50            | 5          | 55           |
| On December 31, 2018 | 55            | 0          | 55           |

- 4.3.2 Salaries and Benefits. South agrees that the full-time jobs will have an average annual salary of at least \$52,000 plus industry standard benefits.

- 4.3.3 Job Compliance Affidavit. South agrees to provide to the City an annual Job Compliance Affidavit within sixty (60) days following the end of each calendar year during the term of this Agreement. A copy of the Job Compliance Affidavit form is attached hereto as Exhibit B. City shall have the right to audit South's records to verify that this obligation has been satisfied.
- 4.4 Compliance with regulations. South agrees that it will comply with the City's development approval processes and shall lease the Facility and construct and install the Improvements and occupy and operate the Facility consistent with City ordinances, development regulations and requirements.
- 4.6 Continuous operation. South agrees that it will continuously operate the Facility and employ the number of employees set out in section 4.3.1 during the term of this Agreement, including any extensions.

**5. Rights and Obligations of the City.**

In consideration of South's compliance with this Agreement, the City agrees as follows:

5.1 Economic Incentive Payment ("EIP").

5.1.1 EIP. City shall, after it issues a Certificate of Occupancy for the Facility, and subject to South's satisfaction of its obligation to execute a lease for the building, and to employ the initial 38 employees set forth in Section 4 above, make an EIP to South in the amount of seventy-five thousand dollars (\$75,000). This EIP shall be made within thirty (30) days after South has executed a lease for the Facility, provided the documentation required by Section 4.1 above, and provided the City with a Job Compliance Affidavit (see Exhibit B) showing that it has employed at least 38 employees.

5.1.2 EIP Subject to Future Appropriations. This Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to South. The EIP by the City under this Agreement is subject to the City's appropriation of funds for such payments in the budget year for which they are made. The EIP to be made to South, if paid, shall be made solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that the City does not appropriate funds in any fiscal year for the EIP due under this Agreement, such failure shall not be considered a default under Section 7.3, and the City shall not be liable to South for such EIP, however, the City shall extend this Agreement for another year(s). In addition, South shall have the right but not the obligation to rescind this Agreement. To the extent there is a conflict between

this paragraph and any other language or covenant in this Agreement, this paragraph shall control.

6. **EIP Recapture.** In the event that South is in default of this Agreement, the City may recapture and collect from South the Recapture Liability after providing South written notice and a minimum period of thirty (30) days to cure such default, and the default has not been cured within said time. In the event South does not so cure, South shall pay to the City the Recapture Liability within thirty (30) days after the City makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which South may be entitled. The City shall have all remedies for the collection of the Recapture Liability as provided generally in the Tax Code for the collection of delinquent property taxes.

7. **Miscellaneous.**

7.1 **Mutual Assistance.** The City and South will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.

7.2 **Representations and Warranties.** The City represents and warrants to South that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. South represents and warrants to the City that it has the requisite authority to enter into this Agreement.

7.3 **Default.** If either the City or South should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If the City remains in default after notice and opportunity to cure, South shall have the right to pursue any remedy at law or in equity for the City's breach. If South remains in default after notice and opportunity to cure, City shall have the right to pursue any remedy at law or in equity for South's breach, in addition to the right of EIP recapture set forth above.

7.4 **Attorney's Fees.** In the event any legal action or proceeding is commenced in a court of competent jurisdiction between the City and South to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

7.5 **Entire Agreement.** This Agreement contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by the City and South.

7.6 **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

- 7.7 Assignment. South may not assign all or part of its rights and obligations to a third party without the express written consent of the City provided, however, that this Agreement may be assigned by either party without the consent of the other to an affiliate or to any third party who succeeds to substantially all of its business or assets.
- 7.8 Amendment. This Agreement may be amended by the mutual written agreement of the parties.
- 7.9 Termination. In the event South elects not to lease the building as contemplated by this Agreement, South shall notify the City in writing, and this Agreement and the obligations on the part of both parties shall be deemed terminated and of no further force or effect.
- 7.10 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to City: City of Round Rock  
221 E. Main Street  
Round Rock, TX 78664  
Attn: City Manager  
Phone: (512) 218-5400  
Email: [snorwood@roundrocktexas.gov](mailto:snorwood@roundrocktexas.gov)

With a required copy to:

Sheets & Crossfield  
309 E. Main Street  
Round Rock, TX 78664  
Attn: Stephan L. Sheets  
Phone: (512) 255-8877  
Email: [steve@scrrlaw.com](mailto:steve@scrrlaw.com)

If to South: South Education – Texas LLC  
c/o Education Management LLC  
210 Sixth Avenue, 33<sup>rd</sup> Floor  
Pittsburgh, PA 15222  
Attn: Chad Thompson  
Phone: (412) 995-7643  
Email: [cthompson@edmc.edu](mailto:cthompson@edmc.edu)

With required copies to:

South Education – Texas LLC  
200 Stephenson Avenue, Suite 201  
Savannah, GA 31405  
Attn: Chancellor  
Phone: (912) 201-8101  
Email: john.south@southuniversity.edu

Either party may designate a different address at any time upon written notice to the other party.

- 7.11 Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.
- 7.12 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.
- 7.13 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- 7.14 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
- 7.15 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 7.16 Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (a "force majeure event"). A *force majeure* event for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay. Except as otherwise expressly provided, herein,

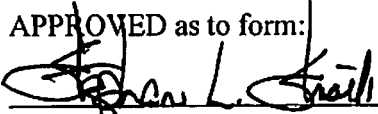
there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*.

7.17 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Facility or the design, construction or operation of any portion of the Facility.

EXECUTED to be effective as of the 9<sup>th</sup> day of December, 2013 (the "Effective Date").

CITY OF ROUND ROCK, TEXAS,

By:   
Alan McGraw, Mayor

APPROVED as to form:  
  
Stephan L. Sheets, City Attorney

**SOUTH EDUCATION – TEXAS LLC**

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

Its: \_\_\_\_\_

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



there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*.

7.17 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Facility or the design, construction or operation of any portion of the Facility.

EXECUTED to be effective as of the 19<sup>th</sup> day of Dec., 2013 (the "Effective Date").


**CITY OF ROUND ROCK, TEXAS,**

By: \_\_\_\_\_  
Alan McGraw, Mayor

APPROVED as to form:

\_\_\_\_\_  
Stephan L. Sheets, City Attorney

**SOUTH EDUCATION - TEXAS LLC**

By:   
John T. South, III

Its: President

Date: December 19, 2013

**RESOLUTION NO. R-13-12-19-G2**

**WHEREAS**, South Education - Texas LLC ("South") has expressed to the City of Round Rock ("City") its desire to locate an educational facility in the City which will provide jobs and additional tax base to the City, and

**WHEREAS**, §380.001 Local Government Code provides that a municipality may establish an economic development program ("Program") to promote local economic development and to stimulate business and commercial activity in the municipality, and

**WHEREAS**, the City Council has determined that the Program described in Exhibit "A" will meet the goals set forth in said §380.001 and will be of mutual benefit to both parties, Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the City offers to South a §380.001 Program in exchange for South locating an educational facility in the City, and

**BE IT FURTHER RESOLVED**

That the offer of the Program shall be as generally outlined in Exhibit "A" attached hereto and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.



**RESOLVED** this 19th day of December, 2013.



\_\_\_\_\_  
ALAN MCGRAW, Mayor  
City of Round Rock, Texas

ATTEST:



\_\_\_\_\_  
SARA L. WHITE, City Clerk

## **EXHIBIT A**

### **ECONOMIC DEVELOPMENT PROGRAM**

The terms of the §380.001 Economic Development Program to be offered to South Education – Texas LLC (“South”) in exchange for South's locating an educational facility to the City of Round Rock are as generally outlined below:

**1. South's obligations:**

- 1.1. South agrees to lease and occupy a building located at La Frontera, Round Rock, Texas, (the “Facility”).**
- 1.2 South agrees to invest at least \$3,000,000.00 in Facility improvements and personal property.**
- 1.3 South agrees to employ at least 38 initial full-time equivalent employees and to employ an additional 17 employees over the term of the term of this Program.**

**2. City's obligations:**

- 2.1 City shall, subject to South's satisfaction of its obligation to execute a lease for the building and to employ the initial 38 employees, make an EIP to South in the amount of seventy-five thousand dollars (\$75,000). This initial EIP shall be made within thirty (30) days after South has executed a lease for the Facility, and provided the City with a Job Compliance Affidavit showing that it has employed at least 38 employees.**

- 3. The terms and provisions of this Program will be set out in more detail in the Economic Development Program Agreement of even date herewith.**



|       |       |          |
|-------|-------|----------|
| _____ | _____ | \$ _____ |
| _____ | _____ | \$ _____ |
| _____ | _____ | \$ _____ |
| _____ | _____ | \$ _____ |
| _____ | _____ | \$ _____ |

TOTAL JOBS \_\_\_\_\_ AVG. SALARY \$ \_\_\_\_\_

4. "IN ADDITION TO THE SALARY, ALL FULL TIME JOBS INCLUDED INDUSTRY STANDARD EMPLOYEE BENEFITS.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
 (PRINTED NAME)

\_\_\_\_\_  
 (TITLE)

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
 NOTARY PUBLIC, STATE OF TEXAS