



# City of Rowlett

## Official Copy

4000 Main Street  
Rowlett, TX 75088  
www.rowlett.com

Resolution: RES-024-20

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**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS, APPROVING AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT FOR PROPERTY LOCATED AT 3813 MAIN STREET; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON THE CITY'S BEHALF AND ANY NECESSARY DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City has adopted a vision for the redevelopment and economic revitalization of its downtown area (the "Downtown Strategic Plan") and has established and implemented a broad program to achieve this goal, which includes a revision of its Comprehensive Plan, the adoption of Form-Based Code to encourage development in accordance with New Urbanism principles, the opening of a light rail station by Dallas Area Rapid Transit (DART), the use of state grant funding for infrastructure and public amenity improvements, and the legislative creation of a Municipal Management District; and

**WHEREAS**, the City Council of the City of Rowlett, Texas has been presented a proposed Economic Development Program Agreement with BLC1, Inc., for a grant, and

**WHEREAS**, upon full review and consideration of the Agreement, and all matters related thereto, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, and that the City Manager should be authorized to execute said Economic Development Program Agreement on behalf of the City of Rowlett, Texas.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS:**

**SECTION 1:** That the Economic Development Program Agreement attached hereto as Exhibit A, having been reviewed by the City Council of the City of Rowlett, Texas is hereby approved.

**SECTION 2:** That the City Manager be and is hereby authorized to execute the Agreement on the City's behalf and any necessary documents conforming to this resolution.

**SECTION 3:** This resolution shall become effective immediately upon its passage.

At a meeting of the City Council on February 18, 2020 this Resolution be adopted. The motion carried by the following vote:

**Ayes: 5** Mayor Dana-Bashian, Mayor Pro Tem Brown, Deputy Mayor Pro Tem Grubisich, Councilmember Margolis, Councilmember Sherrill, and Councilmember Bell

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**Noes: 2** Councilmember Margolis and Councilmember Laning



Approved by Tommy Davis-Bashian  
Mayor

Date February 18, 2020

Approved to form by [Signature]  
City Attorney

Date February 18, 2020

Certified by Laura Hallmark  
City Secretary

Date February 18, 2020



STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

This Economic Development Incentive Agreement (this “Agreement”) is entered into on the Effective Date between the City of Rowlett, Texas (the “City”) and BLC1, Inc., d/b/a Barrocos Latin Cuisine (the “Developer”), each acting by and through its duly authorized representatives.

**RECITALS**

**WHEREAS**, the City has adopted a vision for the redevelopment and economic revitalization of its central downtown area and has established and implemented a broad program to achieve this goal, which includes a revision of its comprehensive plan, the adoption of form-based codes to encourage development in accordance with New Urbanism principles, the opening of a light rail station by Dallas Area Rapid Transit (DART), the use of state grant funding for infrastructure and public amenity improvements, and the legislative creation of a municipal management district; and

**WHEREAS**, the Developer owns and plans to operate, a restaurant facility named Barrocos Latin Cuisine located at 3813 Main Street in Rowlett (the “Project”); and

**WHEREAS**, the Project is situated within the City’s downtown district and within the boundaries of the Rowlett Downtown Management District (the “District”), a municipal management district established pursuant to chapter 3894, Texas of the Texas Special District Local Laws Code, in order to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the District; and

**WHEREAS**, the Developer, by this Agreement, seeks to include the Project and the entirety of the land on which the restaurant is situated, within the boundaries of the District, subject only to the approval of the District’s and City’s governing bodies; and

**WHEREAS**, the City, by this Agreement, intends to provide the Developer with a grant in the amount and under the conditions set forth hereinafter to encourage the development of the Project; and

**WHEREAS**, the City is authorized by Chapter 380 of the Texas Local Government Code to provide economic development grants to promote local economic development and to stimulate and promote local economic development and business and commercial activity in the City, and desires to make a grant to Developer to stimulate economic development; and

**WHEREAS**, the attraction of new and the expansion of existing business in the City will promote economic development, stimulate commercial activity, provide additional jobs and employment opportunities for the citizens of the City, generate additional tax revenue, and enhance the tax base and economic vitality of the City, which will promote the City's goals; and

**WHEREAS**, the City has determined that making economic development grants in accordance with this Agreement will further the objectives of the City and Developer, will benefit the City's inhabitants, and will promote local economic development and stimulate employment, business and commercial activity in the City;

**NOW THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the parties agree as follows:

### **ARTICLE 1 Certain Definitions**

**"Completion of Construction"** shall mean the date upon which a final certificate of occupancy is issued for the Project.

**"Event of Bankruptcy or Insolvency"** shall mean the dissolution or termination (other than a dissolution or termination by reason of a party merging with an affiliate) of a party's existence as an on-going business, insolvency, appointment of receiver for any part of a party's property and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against a party and in the event such proceeding is not voluntarily commenced by the party, such proceeding is not dismissed within ninety (90) business days after the filing thereof.

**"Force Majeure"** shall mean any delay beyond the control of the party due to acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; strikes, riots, changes in law, rules, or regulations outside the control of the affected party; national emergencies or insurrections; riots; acts of terrorism; unusual weather events; and unusual delays in obtaining governmental approvals of plats, permits, or other development approvals required to construct and operate the Project. If a party's obligations under this Agreement are delayed by an event of force majeure, that party shall provide written notice thereof to the other party within ten (10) days following the event, and the failure to provide such notice shall be a waiver of the ability to claim a force majeure delay.

**"Grant"** shall mean the Grant as defined in Section 2.1 below.

**"Project"** means the design, installation and construction of the Barrocos Latin Cuisine Restaurant at 3813 Main Street, consisting of approximately 1,800 +/- square feet.

**ARTICLE 2**  
**Economic Development Grant**

2.1. Grant. Subject to the terms, covenants and conditions of this Agreement, the City will make economic development grants to Developer from lawfully available funds in an aggregate amount not to exceed \$12,071.00 to assist in the interior finish-out including acquisition of furniture, fixtures and equipment incident to the Project. The grant shall be paid by the City in accordance with the provisions set forth hereinafter.

2.2. Tenant Improvements. The City shall remit to Developer an amount up to but not to exceed \$12,071.00 in reimbursement for interior finish-out including acquisition of furniture, fixtures and equipment for the Project, payable in one lump sum within thirty (30) days after submission to and approval by the City of satisfactory proof of expenditure by Developer, and after the issuance of a certificate of occupancy.

2.3. Grant Limitations. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Developer or an approved assignee. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution. The payment of the grant, or any part thereof, shall be subject to the City's funding abilities as well as to future budget appropriations.

**ARTICLE 3**  
**Performance Obligations**

3.1 **Performance Criteria**. The obligation of the City to make Grant payments in accordance with the foregoing, and the obligations assumed by Developer as conditions precedent and subsequent to the receipt of said Grant funds, are subject to the following:

a) Developer shall diligently pursue the development of the Project. Developer has applied for a building permit and shall be issued a certificate of occupancy within ninety (90) days of the effective date of this Agreement.

b) Developer shall have expended not less than \$120,712.00 for tenant improvements, including but not limited to furniture, fixtures and equipment for the Project adequate in design and capacity to accommodate the Project and constructed in accordance with all applicable state and City requirements, laws and regulations.

c) Developer or its approved successors or assigns shall continuously own or lease, and shall occupy and operate, the restaurant and Project site for a term of not less than two years after the issuance of a certificate of occupancy.

d) The Project shall not be used for any other purpose other than a retail establishment for the sale and on-site consumption of food and beverages and shall operate as such continuously.

e) For a period of two (2) years following the issuance of a certificate of occupancy, Developer shall not assign, sell or transfer ownership of the Project to any person without the prior written consent of the City, which consent shall not be unreasonably withheld.

#### **ARTICLE 4**

Developer, for itself and its successors and assigns, hereby irrevocably consents to the expansion of the District to encompass the entirety of the land on which the Project is situated immediately upon acceptance thereof by the Board of Directors of the District and approval of the City Council of the City of Rowlett, Texas. Developer will, promptly upon request, sign and execute any additional instruments as may be necessary or appropriate to effect the inclusion of the Project's land into the District.

#### **ARTICLE 5**

##### **Events of Default; Events of Termination; Recapture**

**5.1** Termination. This Agreement terminates upon any one of the following:

- a) by mutual written agreement of the City and Developer;
- b) by the City or Developer, respectively, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof by the non-breaching party;
- c) by the City if any taxes, fees or charges owed to the City, the County of Dallas, or the State of Texas by Developer or an approved assignee shall have become delinquent (provided, however, Developer retains the right to timely and properly protest and contest such taxes or fees);
- d) by the City if Developer or an approved assignee suffers an Event of Bankruptcy or Insolvency;
- e) by the City or by Developer, respectively, if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid or illegal; or
- f) by the City if insufficient funding is available in any future fiscal year to provide the grant, or any portion of the grant, contemplated herein.

**5.2** Recapture. In the event that this Agreement is terminated as to any party prior to payment of the Grant or any part thereof, the obligation of the City to fund said Grant (or any remaining portion thereof) shall cease immediately. In the event that this Agreement is terminated by the City based upon Developer's or an approved assignee's failure to meet any one or more of the Performance Criteria, or if this agreement is terminated in accordance with subparts (c), or (d) of this section, the City shall have no obligation to fund the Grant or any remaining part thereof, and if all or any portion of the Grant has been paid to Developer, then Developer or its assignee shall refund all Grant amounts previously paid.

**ARTICLE 6**  
**Covenants, Representations, and Warranties**

**6.1** Separated Contracts. In developing and constructing the Project, Developer will use reasonable efforts to encourage all contractors and vendors to use “separated contracts” (as that term is defined in Sec. 3.291 of the Texas Administrative Code), in order to maximize sales tax revenues.

**6.2** Existence; Authority.

a) Developer represents and warrants that it has sufficient legal authority to conduct business in the State of Texas; that it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this Agreement; and that the person or persons executing this Agreement on its behalf has been duly authorized to do so.

b) The City represents and warrants that it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this Agreement; and that the person or persons executing this Agreement on its behalf has been duly authorized to do so.

**6.3** Limitation of Liability. Except for the City’s obligations to pay the Grant proceeds as set forth in this Agreement, the City and its past, present and future officers, employees and agents assume no responsibilities or liabilities to Developer, or any third parties in connection with the development and improvement of the property and the Project, and Developer hereby holds harmless and waives any and all claims against the City for any losses, injury to persons or damage to property. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. Developer acknowledges and agrees that there shall be no personal recourse to the directors, officers, employees or agents of the City, who shall incur or assume no liability in respect of any claims based upon or relating to this Agreement.

**ARTICLE 7**  
**Miscellaneous**

**7.1** Recitals. The recitals in the preamble to this Agreement are hereby incorporated herein as part of this Agreement.

**7.2** No Third-Party Rights. By entering into this Agreement, the parties do not create any obligations express or implied other than those set forth herein; the terms of this Agreement are solely for the benefit of the City and the Developer; and this Agreement shall not create any rights in any parties other than the City and the Developer.

**7.3** No Waiver of Immunity. By entering into this Agreement, the City shall not be deemed or construed to waive any of its sovereign, governmental, official, legislative or other immunities, said immunities being hereby retained.



7.4 Binding Agreement; Assignment. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement shall not be assigned by Developer without the written consent of the City, which consent shall not be unreasonably withheld.

7.5 Governing Law. The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall lie exclusively in the state courts of appropriate jurisdiction in Dallas County, Texas.

7.6 Amendment. This Agreement may be amended only by the mutual written agreement of the parties hereto.

7.7 Severability. In the event 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 the other provisions hereof, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

7.8 Notices. All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be (notwithstanding lack of actual receipt by the addressee): (i) upon actual receipt or refusal by the addressee by hand, telecopier or other electronic transmission; or (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid; or (iii) one (1) business day after having been deposited with an expedited, overnight courier service (e.g. U.S. Express Mail or Federal Express) for one-day delivery, addressed to the party to whom notice is intended to be given at the following addresses:

If intended for City, to:

City of Rowlett, Texas  
Attn: City Manager  
4000 Main Street  
P.O. Box 99  
Rowlett, Texas 75088

With a copy to:

David M. Berman  
Nichols, Jackson, Dillard,  
Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard Street  
Dallas, Texas 75201

If intended for Developer, to:

Mirtha and Salvador Cardenas  
d/b/a Barrocos Latin Cuisine  
3813 Main Street  
Rowlett, Texas 75088

**7.9 Entire Agreement.** This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

**7.10 Waiver of Rights.** The failure of any party to exercise any of the rights set forth in this Agreement shall not be deemed a waiver that prevents that party from any future exercise of that or any other right set forth in this Agreement. The failure of a party to insist on the performance of any obligation by any other party shall not be deemed a waiver by that party of the right to insist or compel performance of that or any other obligation.

**7.11 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

**7.12 Effective Date.** This Agreement is effective, and the Effective Date hereof, is the last date affixed to the signatures of the parties.

**EXECUTED** in single or multiple originals.

**CITY OF ROWLETT, TEXAS**

A Texas municipality

By:   
Brian Funderburk, City Manager

Date: 2-19-2020

ATTEST:

By:   
Laura Hallmark, City Secretary

**BLC1, Inc., d/b/a Barrocos Latin Cuisine**

Date: 2-19-2020

By:   
Mirtha Cardenas, Director