

**ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN THE  
CITY OF McALLEN  
AND  
GRAND RAPIDS FOAM-SOUTH TEXAS, INC.**

**WHEREAS**, the Constitution under Article 3, Section 52A authorizes the state legislature to enable political subdivisions to implement programs for purposes of economic development under which such political subdivisions may make loans or grant public monies, etc., for the purposes of stimulating local economic development and business and commercial activity; and

**WHEREAS**, the City of McAllen (hereinafter "McALLEN" or "CITY"), a home-rule city, is a political subdivision of the State of Texas, and has established a program to provide incentives for the recruitment of new employers to be located in the City of McAllen, Texas, for the purposes of increasing employment and promoting local economic development; and

**WHEREAS**, Section 380.001 of the Local Government Code authorizes McALLEN's governing body to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the CITY, to promote local economic development and to stimulate business and commercial activities in the CITY; and

**WHEREAS**, Grand Rapids Foam-South Texas, Inc. (hereinafter, "COMPANY") is a privately held corporation with headquarters in Wyoming, Michigan, and is a leading manufacturer of custom molded polyurethanes and related products used in home/ office/ contract furniture, mass transportation, automotive, medical, arena/ theater seating, packaging, technical, and myriad other industries; and

**WHEREAS**, COMPANY is considering opening a facility in the City of McAllen to manufacture of custom molded polyurethane and related products for the aforementioned industries, and more specifically, beginning with automotive and office furniture; and

**WHEREAS**, COMPANY recently leased an approximately 50,000 square foot facility (hereinafter, "Facility") with an initial investment of approximately \$2.5 to \$3 Million for the start up of the McAllen operation, including employee compensation and move expenses, office furniture, manufacturing equipment, and other operational expenses; and

**WHEREAS**, the Board of Commissioners of the City of McAllen has considered a program for the purpose of assisting COMPANY in its aforementioned plans, which would provide for increased economic activity, job opportunities for citizens of McALLEN, and other business and commercial activity in such area; and

**WHEREAS**, the Board of Commissioners of the City of McAllen deems it in the best interests of McALLEN to establish this program for the purposes of assisting COMPANY in establishing and maintaining operations in the City of McAllen,

**NOW, THEREFORE**, in mutual consideration of the agreements, covenants and promises set forth herein, and for other good and valuable consideration, McALLEN and COMPANY agree as follows:

#### **ARTICLE I. DEFINITIONS**

For the purpose of this agreement (hereinafter, "Agreement") the following definitions will control:

- A. "*Commencement*" means the day COMPANY obtains the Facility's Certificate of Occupancy and all its applicable permits and licenses. Unless otherwise agreed to in writing by the parties, The parties agree that Commencement occurred on July 7, 2012, 2012 and that COMPANY thus qualifies the Incentives covered by this Agreement.
- B. "*Employee*" means a person (which may include any replacement for that person) employed by or for COMPANY and that works at the Facility full-time (based on a 40 hour work week, 52 weeks per year).
- C. "*Employment records*" means records reasonably necessary to verify employment and compensation levels during any Operational Year. These records include, but are not limited to, Employer's Quarterly Federal Tax Returns (IRS Form 941), Texas Employment Commission Employer's Quarterly Reports, Employer's Annual Federal Unemployment (FUTS) Tax Returns (IRS Form 940-EZ), employee list, employment status, etc. COMPANY will not be required to disclose any performance review records or any other materials that are subject to non-disclosure requirements.
- D. "*Facility*" means the approximately 50,000 square foot facility that the COMPANY

leases in McALLEN, in which COMPANY shall manufacture custom molded polyurethane and related products, or such facility's equivalent replacement.

- E. "*First Operational Year*" means the period encompassed from Commencement through December 31, 2013.
- F. "*Hire*" means the COMPANY's offer of employment at the Facility to a qualified person and that person's acceptance of that offer and his or her commencement of performance of duties at the Facility on a full-time basis, deriving wages.
- G. "*Incentives*" include any "Grant" or "Employment Creation and Maintenance Incentive," and any Property Tax Reimbursement.
- H. "*Incentive Period*" means the period of time beginning on Commencement and ending at the conclusion of the contemplated Five (5) Operational Years, during which period COMPANY shall qualify for the economic development Incentives being offered by CITY in this Agreement.
- I. "*Maintain*" has the meaning as elaborated in Article II.B.4, *below*.
- J. "*Operate*", "*Operational*", "*Operation*" or "*Operations*" means the use of the Facility for its intended uses. For purposes of this Agreement, a paid vacation day shall be considered a working day and the Facility shall be considered operational on a vacation day.
- K. "*Operational Year*" means any one of the Five (5) Years, including the First Operational Year, and calendar years 2014, 2015, 2016 and 2017, during which COMPANY shall be in Operation.

## ARTICLE II. COMPANY COMMITMENT

COMPANY agrees to the following:

- A. **Facility:** The Facility is currently under lease and the Company intends to invest approximately \$2.5 to \$3 Million, including employee compensation and move expenses, office furniture, manufacturing equipment, and other operational expenses. COMPANY's Facility shall remain in Operation continuously throughout the

Incentive Period with the minimum number of Employees and other requirements as set out in this Agreement.

B. **Jobs:** COMPANY shall engage in its Operations uninterruptedly at the Facility as of Commencement and continuously throughout the Incentive Period. By the end of the Fifth Operational Year COMPANY shall have Hired and Maintained a minimum of One Hundred and Fifty (150) full-time jobs at the Facility, based on a Forty (40) hour work week, as per the following schedule:

1. **First Operational Year.** By December 31, 2013 COMPANY shall Hire Fifty (50) Employees.
2. **Second through Fifth Operational Year.** COMPANY shall expand its work force by hiring up to Twenty-Five (25) additional Employees per Operational Year.
3. **Fifth Operational Year.** By December 31, 2017 COMPANY shall expand its work force by hiring as many additional Employees as necessary to reach a work force of at least One Hundred and Fifty (150) Employees at the Facility.
4. **In this Agreement:**
  - i. A new Employee "*hired*" during the First Operational Year shall be considered to have been "*maintained*" during such First Operational Year if such Employee remained continuously on COMPANY payroll for at least Fifty-Two (52) weeks during that First Operational Year.
  - ii. A new Employee "*hired*" during any subsequent Operational Year shall be considered "*maintained*" during the Operational Year of "*hire*" if such Employee remained on COMPANY payroll for at least Thirty-Nine (39) weeks during the Operational Year "*hired*".
  - iii. An Employee "*hired*" in any prior Operational Year shall be considered "*maintained*" by the end of any subsequent Operational Year if, as of December 31 of such subsequent Operational Year such Employee remained continuously on COMPANY payroll during the full length of the applicable subsequent Operational Year.

- C. **Wages and Salaries.** To pay to Employees working at the Facility average hourly wages of not less than Ten Dollars (\$10.00), and to offer all of its Employees a competitive benefits package which may include health insurance (medical, dental, etc.), a 401(k) retirement plan, paid vacation, paid holidays, tuition reimbursement, paid sick days, and other benefits. COMPANY shall also offer employees training to enhance technical, supervisory, and leadership skills. For purposes of this sub-article, “*average hourly wages*” shall be calculated as follows: total gross wages paid to all Facility non-specialist, non-supervisory, and non-management Employees divided by total hours worked by all such Employees in the measurement period.
- D. **By the end of the Second Operational Year:** COMPANY will Hire at the Facility, and Maintain during the balance of the Incentive Period, a total of at least Fifteen (15) full-time specialist, supervisory, and management personnel earning annual salaries in the \$35,000.00 to \$120,000.00 range. These jobs are to be included in the calculation of overall jobs created, must comply with the job retention requirements of this Agreement, and shall count toward the full-time jobs to be created, filled and Maintained for any applicable Operational Year. As per Article II.C., *above*, these wages and salaries shall not be included in the calculation of “*average hourly wages*”
- E. **Training.** To provide training for Facility Employees.
- F. **Local Hires.** To use its commercially reasonable efforts to Hire residents of the City of McAllen.
- G. **Local Providers.** To use its commercially reasonable efforts to procure goods and services from local providers to the extent economically and logistically feasible.
- H. **Liaison with Local Colleges.** To work closely with local colleges and higher education institutions, offering internships and job placement.
- I. **Documentation.** To provide statistical data to McALLEN that are mutually acceptable to the parties, relating to the training, wages, employment and residency obligations as set out above.

### **ARTICLE III. McALLEN COMMITMENT**

McALLEN agrees to the following Incentives, conditioned as specified herein:

A. **Employment Creation and Maintenance Incentive.** To pay COMPANY a grant (“Grant”) of no more than One Hundred and Fifty Thousand Dollars (\$150,000.00), representing One Thousand Dollars (\$1,000.00) for each of up to the One Hundred and Fifty (150) new full-time Employees the COMPANY is committed to Hire and Maintain at the Facility, as specified in Article II, *above*. Grant installments shall be payable as follows:

1. **Advance.** Thirty Thousand Dollars (\$30,000.00) payable within Thirty (30) Days of the full execution of this Agreement, as an advance on the payment to be made after CITY’s review of the Award Affidavit to be submitted by COMPANY after December 31, 2013, and which advance shall be subject to any necessary adjustments following any review during the effectiveness of this Agreement.
2. **Balance.** The balance of the Employment Creation and Maintenance Incentive shall be payable in installments during the effectiveness of this Agreement, upon COMPANY’s submission of the Award Affidavits required hereunder, which payments shall be made no later than Thirty (30) Days after submission of each Award Affidavit, or Thirty (30) Days after submission by COMPANY of any such supplemental or additional information and documentation as CITY may reasonably require, as is conditioned in Article III. D., *below*, whichever is later. CITY shall request from COMPANY any such supplemental or additional information and documentation no later than fourteen days after CITY’s receipt of COMPANY’s submitted Award Affidavit. For the Second, Third, Fourth and Fifth Operational Years the Employment Creation and Maintenance Incentive shall be earned in installments on the basis of qualifying jobs actually created, as scheduled under Article II.B, *above*, as may be demonstrated after CITY’s review of the required Award Affidavits.
3. **Default in Employment Creation and Maintenance Targets.** To the extent COMPANY does not adequately demonstrate to CITY’s reasonable satisfaction that it is in compliance with the scheduled employment targets in Article II.B,

above, COMPANY shall pro-rata reimburse to CITY, no later than Thirty (30) Days after written notice from CITY, that portion of any Employment Creation grant it has received representing One Thousand Dollars (\$1,000.00) for each required full-time job not created and filled as is scheduled herein, and Maintained as required. In any event, COMPANY's liability under this Agreement for failure to create, fill and Maintain full-time jobs under this Agreement shall be no greater than the amount of the Grant received with respect to employees not hired and Maintained.

**B. Property Tax Reimbursement.**

1. **Reimbursement Schedule.** At the end of each of the Five (5) Operational Years, CITY will reimburse McALLEN property taxes paid by COMPANY on all *newly created value* at the Facility, to the extent that such increased value is reflected on the tax rolls of the Hidalgo County Appraisal District (the "Tax Rolls") in each such year, which tax abatement shall be in the following percentages:

- |   |      |
|---|------|
| i. First Operational Year (2013 Tax Year)   | 100% |
| ii. Second Operational Year (2014 Tax Year) | 80%  |
| iii. Third Year Operational (2015 Tax Year) | 60%  |
| iv. Fourth Year Operational (2016 Tax Year) | 40%  |
| v. Fifth Year Operational (2017 Tax Year)   | 20%  |

CITY will make tax abatement payments to COMPANY within Thirty (30) Days after the delivery by COMPANY to CITY of the corresponding Operational Year's paid tax receipt and the Award Affidavit as specified in Article III.D, below.

2. **Default in Facility Operation.** Should COMPANY in any Operational Year fail to fulfill the operational requirements hereunder, then CITY's tax reimbursement payment for that Operational Year shall be reduced proportionately to the number of working days in the Operational Year during which the COMPANY was in default.

- C. **CITY Assistance.** CITY will provide assistance to COMPANY in its application for training assistance from the Texas Workforce Commission, Workforce Solutions, and South Texas College.
- D. **Requirement of Award Affidavits.** To obtain any of the Incentives contemplated herein, except for the Advance Grant under Article III.A.1, COMPANY shall submit to CITY for any Operational Year, and no later than by the end of February following the end of the Operational Year in question, an Award Affidavit signed and affirmed by a qualified and authorized COMPANY officer, stating to the best of COMPANY's knowledge with regard to the Operational Year in question: (i) the number of Employees Hired and Employees Maintained at the Facility, their wages or salaries, and dates of Hire and of termination, if applicable, as well as a summary of Employee benefits; (ii) COMPANY's intent to ultimately maintain at least One Hundred and Fifty (150) Employees at the Facility in accordance with the terms of this Agreement; (iii) the square footage of the Facility being Operated; (iv) the days Facility was not Operational and reasons for same; (v) that COMPANY's representations and warranties contained in Article IV. B., *below*, continue to be true and correct as of the date of execution of the Award Affidavit, and (vi) that reasonable backup documentation exists to substantiate COMPANY's representations and its calculations of the number of Employees Hired and Employees Maintained as set forth in the Award Affidavit. Any award shall be conditioned upon submission by COMPANY of such documentation as may be reasonably requested by CITY, which documentation shall be verified by the appropriate officer of COMPANY.

#### **ARTICLE IV. REPRESENTATIONS AND WARRANTIES**

- A. McALLEN represents and warrants to COMPANY that it is duly authorized and empowered to establish an Economic Development Program and enter into this Agreement.
- B. COMPANY represents and warrants to McALLEN that:
1. it is authorized to do business in the State of Texas and has the requisite power and authority, corporate or otherwise, to conduct its business, to own its present

- assets, and to perform all of its obligations under this Agreement;
2. the execution, delivery and performance of its obligations under this Agreement have been duly authorized by all necessary corporate actions and do not violate any provision of the existing law, rule, regulation, or contract by which COMPANY or its property or assets are bound or affected;
  3. to COMPANY's best knowledge, it is not a voluntary or involuntary debtor in an existing bankruptcy or other debtor relief or insolvency proceeding, nor is any such proceeding contemplated, pending or being filed; and
  4. to COMPANY's best knowledge, it is not delinquent in the payment to CITY or others of any material impositions (as that term is hereinafter defined) due and owing from COMPANY (if any) related to the Facility, except those contested by COMPANY by appropriate proceedings promptly initiated and diligently conducted, which proceedings COMPANY shall specifically identify. As used herein, "*impositions*" means (i) real estate and personal property taxes, (ii) water, sewer, (iii) electricity and other utilities, and (iv) all other taxes, charges and assessments and any interest, cost or penalties with respect thereto, of any kind or nature, levied or imposed upon the COMPANY's Facility or against any income therefrom, or based on the ownership, use, or occupancy thereof.

#### ARTICLE V. DEFAULT

Except as may otherwise be provided herein, if either party should default in performing any obligation under this Agreement, the other party shall provide such defaulting party written notice of default and provide the defaulting party 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 one or more remedies for a default are applicable, they may be pursued jointly or alternatively and the forbearance to enforce any remedy provided for herein upon an event of default shall not be deemed or construed to constitute a waiver of such default. In addition to any other events of default identified elsewhere in this Agreement, the following events shall be deemed to be events of default by COMPANY under this Agreement:

- A. It is an event of default if COMPANY fails to commence Operations of the Facility

as required, and COMPANY shall not be entitled to any portion of the Grant. To the extent that any portion of the Grant has been paid to COMPANY the same shall be returned immediately upon demand and Company shall have no further liability with respect to such default.

- B. It is an event of default if COMPANY fails to submit to CITY any required certificate or Award Affidavit at the time and in the manner required in this Agreement. The Company's sole liability in such instance shall be the repayment of any incentive received by it that relates to the submission of an Award Affidavit. In such instance it shall be presumed that the Employees were not Maintained during the period covered by the Award Affidavit that was not submitted.
- C. To the extent permitted by law, a bankruptcy or insolvency proceeding commenced by or against COMPANY is an event of default.
- D. It is an event of default if any warranty, affirmation or representation made to CITY by or on behalf of COMPANY (including but not limited to those required to be made in the certificate or any Award Affidavit) proves to have been false in any material respect when made.

#### ARTICLE VI. AUDIT

Upon McALLEN's request, reasonably in advance, it shall have the right to audit COMPANY's employment related and other records at reasonable times, to the extent necessary for CITY to determine COMPANY's compliance with this Agreement and its entitlement to any Incentive. Any such review of COMPANY records shall be subject to a mutually acceptable confidentiality agreement. COMPANY's failure to reasonably cooperate with CITY in its exercise of this right to audit shall be an event of default.

#### ARTICLE VII. SURVIVAL

The covenants and agreements contained herein or in any document certificate or other instrument delivered under or pursuant to this Agreement, shall survive the execution and delivery hereof, the consummation of this Agreement, and shall continue to survive thereafter for the applicable statute of limitations to the extent required or necessary to ensure full

performance hereof and full recourse for nonperformance by either party.

**ARTICLE VIII. ATTORNEY'S FEES**

In the event any legal action or proceeding is commenced between McALLEN and COMPANY to enforce the provisions of this Agreement or recover damages for breach hereof, the prevailing party in such legal action shall be entitled to recover its reasonable attorneys fees and expenses incurred by reason of such action or proceeding.

**ARTICLE IX. ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties with respect to the transactions and matters contemplated herein. This Agreement may be amended, altered, or revoked only by written instrument signed by COMPANY and McALLEN.

**ARTICLE X. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. COMPANY may not assign all or any part of its rights hereunder without the express, prior, written consent of McALLEN, except if to (1) any party affiliated with COMPANY by reason of controlling, being controlled by or being under common control with the partners or ultimate beneficial owners of COMPANY, or (2) any third-party as long as COMPANY, retains a majority ownership interest, or (3) a third party acquiring all or substantially all of the assets of COMPANY.

**ARTICLE XI. NOTICE**

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

**COMPANY:**

Ben Amann  
Grand Rapids Foam Technologies, Inc.

2788 Remico Street  
Wyoming, MI 49519

With a copy to:

Peter J. Lozicki  
Rhoades McKee PC  
161 Ottawa Ave., N.W., Ste. 600  
Grand Rapids, MI 49503

**CITY:**

Mike R. Pérez, City Manager  
City of McAllen  
1300 Houston Avenue  
McAllen, Texas 78501

With a copy to:

Kevin D. Pagan, City Attorney  
City of McAllen  
1300 Houston Avenue  
McAllen, Texas 78501

Either party may change the address to which notices are to be sent it by giving the other party notice of the new address in the manner provided in this Article XI.

**ARTICLE XII. INTERPRETATION**

The parties acknowledge that both have 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 over its meaning or application, be interpreted without reference to the principle of construction favoring the party who did not draft the agreement under construction.

**ARTICLE XIII. APPLICABLE LAW; VENUE**

This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Hidalgo County, Texas.

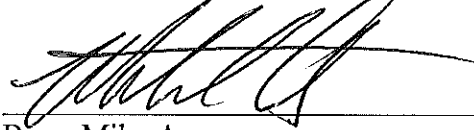
**CITY OF McALLEN**

\* As approved by the McAllen Board  
of Commissioners on \_\_\_\_\_.

\_\_\_\_\_  
By: Mike R. Pérez  
City Manager

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

**GRAND RAPIDS  
FOAM-SOUTH TEXAS, INC.**

  
\_\_\_\_\_  
By: Mike Amann  
Treasurer

Date: 12/27/2012

ATTEST:

\_\_\_\_\_  
Annette Villarreal  
McAllen City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Ignacio Pérez, Deputy City Attorney