

RESOLUTION NO. 19-R-80

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A PROGRAM AND EXPENDITURES AS PROVIDED FOR IN THE ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT BETWEEN THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION (THE "SEDC") AND NEXUS ENTERPRISES, LLC (THE "COMPANY"); AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the Development Corporation Act of 1979, as amended (Section 501.001 et seq, Texas Local Government Code, formerly the Development Corporation Act of 1979) (the "Act") authorizes a development corporation to fund certain projects as defined by the Act and requires development corporation to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

WHEREAS, Section 501.101 of the Act authorizes the use of Corporation funds for land, buildings, equipment, facilities, expenditures, targeted infrastructure and improvements for the creation or retention of primary jobs when found by the board of directors to be required or suitable for the development, retention, or expansion of manufacturing and industrial facilities; and

WHEREAS, Section 501.158 of the Act requires an incentive agreement to provide at a minimum for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives provided or expenditures made by the corporation under the agreement and to specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement; and

WHEREAS, Section 501.159 of the Act requires that a corporation hold at least one public hearing on the proposed project before spending money to undertake the project, the public hearing was held on June 20, 2019; and

WHEREAS, the SEDC Board of Directors approved SEDC Resolution 2019-13 which, subject to the authorization of funds by the City of Schertz City Council, approved the Economic Development Performance Agreement attached hereto as Exhibit A between the Corporation, and the Company, pursuant to the Act, and the SEDC's Board of Directors meeting on June 20, 2019; and

WHEREAS, Section 501.073 of the Act requires that the corporation's authorizing unit to approve all programs and expenditures of a corporation; and

WHEREAS, the SEDC has recommended that the City authorize the program and expenditures associated therewith; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the program and expenditures as provided for in the Economic Development Performance Agreement as set forth on Exhibit A.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this 25th day of June 2019.

CITY OF SCHERTZ, TEXAS

Michael Carpenter, Mayor

ATTEST:

Brenda Dennis, City Secretary

EXHIBIT A
ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT
NEXUS ENTERPRISES, LLC.

[SEE ATTACHED]

**ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT
NEXUS ENTERPRISES, LLC.**

THIS ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT – NEXUS ENTERPRISES, LLC., (“Agreement”) is entered into as of the Effective Date (as defined in Article III below), by and between the City of Schertz Economic Development Corporation, located in Guadalupe County, Texas, a Texas non-profit industrial development corporation under the Development Corporation Act and governed by TEX. LOC. GOV. CODE chapters 501, 502 and 505 and the Texas Non-Profit Corporation Act (hereinafter called “Corporation”) created by and for the benefit of the City of Schertz, Texas (hereinafter the called the “City”), and Nexus Enterprises, LLC., a Texas limited liability company, its successors or assigns (hereinafter called “Company”), the Corporation and the Company collectively known as the “Parties” to this Agreement.

RECITALS

WHEREAS, the Development Corporation Act of 1979, as amended (Section 501.001 *et seq.*, Texas Local Government Code, formerly the Development Corporation Act of 1979) (the “Act”) authorizes a development corporation to fund certain projects as defined by the Act and requires development corporations to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

WHEREAS, Section 501.101 of the Act authorizes the use of SEDC funds for land, buildings, equipment, facilities, expenditures, targeted infrastructure and improvements for the creation or retention of primary jobs when found by the board of directors to be required or suitable for the development, retention, or expansion of manufacturing and industrial facilities; and

WHEREAS, Section 501.158 of the Act requires a performance agreement to provide at a minimum for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives provided or expenditures made by a corporation under the agreement and to specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement; and

WHEREAS, the Company desires to relocate and expand its headquarters, management, scientific, and technical consulting services operations to the Facility located in Schertz, Texas; and

WHEREAS, prior to the execution of this Agreement, with the Corporation’s consent, the Company or its affiliates has entered into a ten year lease at the Facility that will be constructed on the Property for the specific use of the Company; and

WHEREAS, the Corporation adopted the Schertz Incentive Policy in May 2017 to guide and ensure consistency when providing incentives within the City to promote economic development; and

WHEREAS, the Corporation authorizes a variance from the Schertz Incentive Policy by acknowledging that the Company has executed its lease prior to the approval of this Agreement; and

WHEREAS, the location of the Company, as proposed, will contribute to the economic development of the City by creating new jobs and increased employment, promoting and developing expanded business enterprises, increased development, increased real and personal property value and tax revenue for the City, and will have both a direct and indirect positive overall improvement/stimulus in the local and state economy; and

WHEREAS, the Parties are executing and entering into this Agreement to set forth certain terms and obligations of the Parties with respect to such matters herein; and

WHEREAS, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof; and

WHEREAS, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings; if any, have been conducted in accordance with Texas law; and

WHEREAS, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, the Parties agree as follows:

ARTICLE I RECITALS

The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement.

ARTICLE II AUTHORITY AND TERM

1. Authority. The Corporation's execution of this Agreement is authorized by the Act and constitutes a valid and binding obligation of the Corporation. The Corporation acknowledges that the Company is acting in reliance upon the Corporation's performance of its obligations under

this Agreement in making the decision to commit substantial resources and money to the construction and establishment of the Project (as defined below), hereinafter constructed and established.

2. Term. This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date, hereinafter established, unless terminated sooner or extended by written mutual agreement of the Parties in the manner provided for herein.

3. Purpose. The purpose of this Agreement is to formalize the agreements between the Company and the Corporation for the granting of funds to cover certain costs associated with the Project and specifically state the covenants, representations of the Parties, and the incentives associated with the Company's commitment to abide by the provisions of the Act and to abide by the terms of this Agreement which has been approved by the Corporation and the Company as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation by the Parties may constitute a Default and shall terminate any further commitments (if any) by the non-defaulting Party unless an alternative penalty or remedy is provided for herein.

4. Administration of Agreement. Upon the Effective Date, the Corporation delegates the administration and oversight of this Agreement to the Executive Director of the Corporation. Any proposed amendments to the Agreement shall require the approval of the Board of Directors of the Corporation.

ARTICLE III DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

“Annual Payroll” shall mean the total wages paid during the calendar year, exclusive of employee benefits, to all Full-Time Employees working at or based out of the Facility.

“Bankruptcy” shall mean the dissolution or termination of a Party's existence as a going business, insolvency, appointment of receiver for any party of such Party's property and such appointment is not terminated within ninety (90) 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 such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Calendar Year” shall mean January 1 through December 31.

“Certificate of Occupancy” shall mean the signed certificate issued by the City of Schertz Inspection Division confirming that the entire work covered by the building permit and plans are in place for the Facility or Facilities.

“Default” unless otherwise specifically defined or limited by this Agreement shall mean failure by any Party to timely and substantially comply with any performance requirement, duty, or covenant set forth in this Agreement.

“Effective Date” shall be the date upon which the last party hereto executes this Agreement.

“Expiration Date” shall mean the earlier of:

1. December 31, 2023;
2. The date of termination provided for under Article VII of this Agreement.

“Facility” shall mean the approximate thirty-six thousand (36,000) square foot office building located on the Property.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party, including, without limitation, acts of God or the public enemy, war riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of a Party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Full Time Employee” or “Full Time Employees” shall mean: (1) an employee with a regular work schedule of at least 36 hours per week as reported to the Texas Employers Quarterly Wage Report from the Texas Workforce Commission, and (2) are entitled to at least the customary employer-sponsored employee benefits package afforded by the Company to its similarly situated employees at other locations.

“Primary Jobs” shall mean the definition established by Sec. 501.002 (12) of the Act.

“Project” shall mean the creation and retention of Primary Jobs at the Facility as demonstrated through the annual compliance to the Minimum Performance Criteria.

“Property” shall mean the approximate 4.167 acre tract of land located within the City of Schertz, Texas at the Verde Enterprise Business Park Unit #10A, Block 12, Lot 1 whereon the Facility will be constructed.

“State of Texas” shall mean the Office of the Texas Comptroller, or its successor.

“Personal Property” shall mean the total taxable personal property ad valorem tax value reported by the Guadalupe County Appraisal District.

ARTICLE IV CORPORATION OBLIGATION

1. Operation Grant. Subject to the satisfaction of all the terms and conditions of this Agreement and the obligation of the Company to repay the Operation Grant pursuant to Article VIII hereof, the Corporation shall pay the Company an Operations Grant in an amount not to exceed TWO HUNDRED THOUSAND and NO/100 (\$200,000.00), (the “Operation Grant”).

2. Current Revenue. The Operation Grant shall be paid solely from lawfully available funds of the Corporation. Under no circumstances shall the obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Corporation represents and warrants that it has funds available for distribution sufficient to fully and timely pay the full the Operation Grant, will reserve such funds solely for such purpose, and will not make any special or general allocations of the Corporation’s current and future funds that would render the Corporation unable to timely make the full Operation Grant along with its other obligations. None of the obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3. Confidentiality. The Corporation agrees to keep all information and documentation received pursuant to this Agreement confidential to the extent allowed under the Texas Public Information Act (TPIA). In the event a request is made for such information, Corporation will notify the Company and follow the process stated in the TPIA for determining what information must be released and what information should be withheld until seeking a ruling from the Attorney General of Texas.

**ARTICLE V
PERFORMANCE OBLIGATIONS OF COMPANY**

The obligation of the Corporation to pay funds from the Operations Grant shall be conditioned upon the Company’s continued compliance with and satisfaction of each of the performance obligations set forth in this Agreement.

1. Execution of Lease. Prior to the execution of this Agreement, the Company must have executed a Ten (10) year lease for the Facility. The Company shall provide access to the lease agreement to the Executive Director of the Corporation as proof of the satisfaction of this condition.

2. Promotion. Company must actively promote their operations at the Facility identifying the City of Schertz as a preferred location for office development, during the term of this Agreement.

3. Certificate of Occupancy. The Company must obtain a Certificate of Occupancy, for the Facility on or before December 31, 2020 and maintain operations at said Facility throughout the Term of this agreement.

4. Minimum Performance Criteria. Throughout the Term of the Agreement, the Company must create and maintain the following minimum Full Time Employees, Annual Payroll, and Personal Property.

| Time Period | Minimum Performance Criteria | | |
|---------------|------------------------------|----------------|-------------------|
| | Full-Time Employees | Annual Payroll | Personal Property |
| Year 0 – 2020 | 68 | Not Required | Not Required |
| Year 1 – 2021 | 87 | \$4,616,770 | \$475,000 |
| Year 2 – 2022 | 87 | \$4,616,770 | \$381,250 |
| Year 3 – 2023 | 87 | \$4,616,770 | \$310,250 |

5. Annual Certification Report. The Company shall submit an Annual Certification Report (an “Annual Report”) for the preceding Calendar Year to the Executive Director of the Corporation each year no later than February 15th. The Annual Report should substantially conform to the Annual Report Form attached as Exhibit A to this Agreement. The first Annual Report will be due February 15th, 2021.

6. Payment of Legal Fees. Each Party shall bear its own legal fees in connection with the negotiation of this Agreement. The Company commits to reimburse the Corporation for the necessary legal fees in the preparation of any amendments to this Agreement, if and when such amendment is required by the Company. Timely payment shall be made within sixty (60) days of submittal of invoice to the Company by the Corporation or its assigns.

ARTICLE VI COVENANTS AND DUTIES

1. The Company’s Covenants and Duties. The Company makes the following covenants and warranties to the Corporation, and agrees to timely and fully perform the obligations and duties contained in Article V of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Company.

(a) The Company is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during any Term of this Agreement.

(b) The execution of this Agreement has been duly authorized by the Company’s authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the Company. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of the Company’s operating agreement, or of any agreement or instrument to which the Company is a party to or by which it may be bound.

(c) The Company is not a party to any Bankruptcy proceedings currently pending or contemplated, and the Company has not been informed of any potential involuntary Bankruptcy proceedings.

(d) To its current, actual knowledge, the Company has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.

(e) The Company agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies or private authorities having jurisdiction over the construction of the Facility.

(f) The Company shall be responsible for paying, or causing to be paid, to the City and all other governmental agencies or private authorities the cost of all applicable permit fees and licenses required for construction of the Facility. The Company agrees to construct the Facility in accordance with the ordinances, rules, and regulations of the City in effect on the date the Road Plan Set is approved by the City. The Company, in its sole discretion, may choose to comply with any or all City rules promulgated after the Effective Date of this Agreement.

(g) The Company agrees to commence and complete the Project in strict accordance with this Agreement.

(h) The Company shall cooperate with the Corporation in providing all necessary information to assist them in complying with this Agreement.

(i) During the Term of this Agreement, Company agrees to not knowingly employ any undocumented workers as part of the Project, and, if convicted of a violation under 8 U.S.C. Section 1324a (1), Company shall be in Default (subject to the remedies in Article V above). Company is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts provided however that identical federal law requirements provided for herein shall be included as part of any agreement or contract which Company enters into with any subsidiary, assignee, affiliate, or franchisee for which the Operation Grant provided herein will be used.

(j) Company shall not be in arrears and shall be current in the payment of all taxes and fees.

2. Corporation's Covenants and Duties.

(a) The Corporation is obligated to pay the Company an Operations Grant in the amount not to exceed TWO HUNDRED THOUSAND and NO/100 (\$200,000.00). The Operations Grant shall be paid in accordance with Article IV, Section 1 within forty-five (45) days after receiving written notice from the Company that they have received a Certificate of Occupancy for the Facility.

(b) The Corporation represents and warrants to the Company that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction.

3. Compliance and Default. Failure by the Company to timely comply with any performance requirement, duty, or covenant shall be considered an act of Default and shall give the Corporation the right to terminate this Agreement and collect the Recapture Amount (as defined below), if applicable.

ARTICLE VII TERMINATION

1. Termination. This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

- (a) The written agreement of the Parties, or their affiliates, successors or assigns;
- (b) The Agreement's Expiration Date; or
- (c) Default by the Company of the terms and conditions set forth herein.

ARTICLE VIII DEFAULT

1. The Company's Events of Default. The following shall be considered an Event of Default by the Company:

- (a) Failure of the Company to perform any term, covenant or agreement contained in this Agreement;
- (b) The Corporation determines that any representation or warranty contained herein or in any financial statement, certificate, report or opinion prepared and submitted to Corporation in connection with or pursuant to the requirements of this Agreement was incorrect or misleading in any material respect when made;
- (c) Any judgment is assessed against the Company or any attachment or other levy against the property of the Company with respect to a claim remains unpaid, unstayed on appeal, not discharged, not bonded or not dismissed for a period of ninety (90) days;
- (d) The Company makes an assignment for the benefit of creditors; files a petition in bankruptcy; is adjudicated insolvent or bankrupt; petitions or applies to any tribunal for any receiver or any trustee of the Company; commences any action relating to the Company under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect; or if there is commenced against the Company any such action and such action remains undismissed or unanswered for a period of ninety (90) days from such filing; or
- (e) The Company changes its present ownership more than fifty-one (51%) without written notification to the Corporation within thirty (30) days of such change.

2. Corporation Events of Default. The Corporation fails to fulfill an obligation set forth within the terms and conditions of this Agreement.

3. Remedies for Default

(a) The Company's sole remedy under this Agreement is specific performance for Corporation's Default of its obligations under Section IV of this Agreement.

(b) In the event of Default by the Company the Corporation shall, as its sole and exclusive remedy for Default hereunder, have the right to terminate this Agreement and to recapture eighty-seven and one-half percent (87.5%) of the Operation Grant plus two percent (2.00%) annual interest (the "Recapture Amount"). The Recaptured Amount shall be paid by the Company within one hundred twenty (120) days after the date the Company is notified by the Corporation of such Default (the "Payment Date"). In the event the Recaptured Amount is not repaid by the applicable Payment Date, the unpaid portion thereof shall accrue interest at the rate of five percent (5.00%) per annum from the Effective Date until paid in full.

(c) In the event of Default is related to a failure to comply with Article V, (2), Promotion, the recapture amount stated in (b) above shall be 100% of the Operations Grant plus two percent (2.00%) annual interest. The Recaptured Amount shall be paid by the Company within one hundred twenty (120) days after the date the Company is notified by the Corporation of such Default (the "Payment Date"). In the event the Recaptured Amount is not repaid by the applicable Payment Date, the unpaid portion thereof shall accrue interest at the rate of five percent (5.00%) per annum from the Effective Date until paid in full.

4. Limitation on Use of Funds in the Event of Default. Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against the City or the Corporation.

**ARTICLE IX
MISCELLANEOUS**

1. Binding Agreement. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. The Executive Director of the Corporation shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the Corporation, on behalf of the Parties related thereto.

2. Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

3. Assignment. The Company shall have the right to assign all or part of its rights, duties, and obligations under this Agreement to a duly qualified third party with prior written approval of the Corporation, which approval shall not be unreasonably withheld, conditioned or delayed. Any assignment provided for herein shall not serve to enlarge or diminish the obligations and requirements of this Agreement, nor shall they relieve the Company of any liability to the

Corporation including any required indemnity in the event that any Assignee hereof shall at any time be in Default of the terms of this Agreement. The Corporation may demand and receive adequate assurance of performance including the deposit or provision of financial security by any proposed assignee prior to its approval of an assignment.

4. Independent Contractors.

(a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Company at no time will be acting as an agent of the Corporation and that all consultants or contractors engaged by Company respectively will be independent contractors of Company; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that the Corporation will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by Company respectively under this Agreement, unless any such claims are due to the fault of the Corporation.

(b) By entering into this Agreement, except as specifically set forth herein, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the Corporation with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

(c) No employee of the Corporation, or any board member, or agent of the Corporation, shall be personally responsible for any liability arising under or growing out of this Agreement.

5. Notice. Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, or on the first business day after depositing the same in the hands of a reputable overnight courier (such as United States Postal Service, FedEx or UPS) and addressed to the Party at the address set forth below:

If intended for SEDC: City of Schertz Economic Development Corporation
Attention: Exec. Dir. of Economic Development
1400 Schertz Parkway
Schertz, TX 78154

With a copy to:
Denton, Navarro, Rocha, Bernal, & Zech, PC
Attention: Charles E. Zech
2517 North Main Avenue
San Antonio, TX 78212

If to Company:

Nexus Enterprises, LLC.
Attention: Ed Bolton, President and Chief Executive Officer
1650 Independence Dr.
New Braunfels, TX 78132

Any Party may designate a different address at any time upon written notice to the other Parties.

6. Governmental Records. All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10.

7. Governing Law. The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement shall be in the Courts of Guadalupe County. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

8. Amendment. This Agreement may be amended by mutual written agreement of the Parties, as approved by the Board of Directors of the Corporation.

9. Legal Construction. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

10. 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, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

11. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the Board of Directors of the Corporation.

12. 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.

13. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

14. Exhibits. Any exhibits attached hereto are incorporated by reference for all purposes.

15. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

16. Indemnification. **COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CORPORATION AND THE CITY, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGEMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO ANY OF THE FOLLOWING: ANY CLAIMS OR DEMANDS BY THE STATE OF TEXAS THAT THE CORPORATION HAS BEEN ERRONEOUSLY OR OVER-PAID SALES AND USE TAX FOR ANY PERIOD DURING THE TERM OF THIS AGREEMENT AS A RESULT OF THE FAILURE OF COMPANY TO MAINTAIN A PLACE OF BUSINESS AT THE PROPERTY OR IN THE CITY OF SCHERTZ, OR AS A RESULT OF ANY ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY COMPANY UNDER THIS AGREEMENT EXCEPT THAT THE IMDEMUNITY PROVIDED HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE ACTION OR OMISSIONS OF THE CORPORATION OR CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT BEING THE INTENTION OF THE PARTIES THAT COMPANY SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY FUNDS PAID TO COMPANY HEREIN THAT INCLUDES CITY SALES TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WAS ERRONEOUSLY PAID, DISTRIBUTED OR ALLOCATED TO THE CORPORATION.**

17. Additional Instruments. The Parties agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

18. Force Majeure. Whenever a period of time is herein prescribed for action to be taken by Company, Company shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to causes of any kind whatsoever which are caused by Force Majeure.

19. Time Periods. Unless otherwise expressly provided herein, all periods for delivery or review and the like will be determined on a "calendar" day basis. If any date for performance, approval, delivery or Closing falls on a Saturday, Sunday or legal holiday (state or federal) in the State of Texas, the time therefor will be extended to the next day which is not a Saturday, Sunday or legal holiday.

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

Executed on this _____ day of _____, 2019.

COMPANY:

Nexus Enterprises, LLC.
a Texas limited liability company

By: _____
Larry Edward Bolton
President and Chief Executive
Officer

STATE OF TEXAS)
)
COUNTY OF COMAL)

This information was acknowledged before me on this _____ day of _____, 2019 by Larry Edward Bolton, as President and Chief Executive Officer Nexus Enterprises, LLC., a Texas limited liability company, on behalf of said company.

Notary Public, State of Texas

Notary's typed or printed name

My commission expires

Executed on this _____ day of _____, 2019.

**CITY OF SCHERTZ ECONOMIC
DEVELOPMENT CORPORATION**

By: _____

Name: Paul Macaluso

Title: President

STATE OF TEXAS)
)
COUNTY OF GUADALUPE)

This information was acknowledged before me on this _____ day of _____, 2019 by Paul Macaluso, as President of the City of Schertz Economic Development Corporation, a Texas non-profit industrial development corporation, on behalf of said agency.

Notary Public, State of Texas

Notary's typed or printed name

My commission expires

APPROVED AS TO FORM:

By: _____
_____, SEDC Attorney

EXHIBIT A
ANNUAL CERTIFICATION REPORT

(See Attached)

Annual Certification Report

Reporting Period: January 1 to December 31, 20__

The Annual Certification Report for the Economic Development Performance Agreement between the City of Schertz Economic Development Corporation and Nexus Enterprises, LLC., is due on **February 15, 20__**. Please sign and return the Annual Certification Report form with accompanying narrative.

I. PROJECT INFORMATION

Project Information:

The Company's legal name: _____

Project address subject to incentive: _____

The Company's primary contact: _____ Title: _____

Phone number: _____ E-mail address: _____

II. REPORTING INFORMATION

Employment and Wage Information:

Has the Company employed undocumented workers? Yes No

What is the total number of Full-Time Employees located at the Facility during the calendar year? _____

What is the total Annual Payroll for the Schertz Facility during the calendar year? _____

Investment Information:

What is the Company's Personal Property value for the reporting period? _____

Narrative:

Please attach a brief narrative explaining the current year's activities and/or comments relating to any potential defaults.

III. ADDITIONAL INFORMATION (VOLUNTARY)

Employment:

Total Full-Time Employees: _____ [Number of direct hires: _____ Number of contract employees: _____]

Total Annual Payroll: _____

Number of Full-Time Employees added in past year: _____

Number of employees that live in Schertz, Texas: _____

Interested in being contacted about workforce training opportunities? Yes No

Interested in being contacted for assistance with City permits? Yes No

IV. CERTIFICATION

I certify that, to the best of my knowledge and belief, the information and attachments provided herein are true and accurate and in compliance with the terms of Economic Development Performance Agreement.

I further certify that the representations and warranties contained within the Agreement remain true and correct as of the date of this Certification, and Nexus Enterprises, LLC., remakes those representations and warranties as of the date hereof.

I further certify that the employment and wage information provided is true and accurate to the best of my knowledge and I can provide documentation from the Texas Workforce Commission to support my claim if so requested.

I understand that this Certificate is being relied upon by the SEDC in connection with the expenditure of public funds.

I have the legal and express authority to sign this Certificate on behalf of Nexus Enterprises, LLC.

Name of Certifying Officer

Certifying Officer's Title

Phone Number

E-Mail Address

Signature of Certifying Officer

Date

STATE OF TEXAS X
COUNTY OF _____ X

This information was acknowledged before me on this _____ day of _____, _____ by _____, _____ for Nexus Enterprises, LLC., a Texas limited partnership, on behalf of said agency.

Notary Public, State of Texas

Notary's typed or printed name

My commission expires

The Annual Certification Report is to be completed, signed and returned on or before February 15, 20___. Please send an original to the following address:

**Attention: Executive Director
City of Schertz Economic Development Corporation
1400 Schertz Parkway, Bldg. No. 2
Schertz, TX 78154**