

ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT KELLUM REAL ESTATE, LLC

This Performance Agreement (“Agreement”) is entered into to be effective 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 “SEDC”) created by, and for the benefit of the City of Schertz, Texas (hereinafter the called the “City”) Kellum Real Estate, LLC., a Texas Limited Liability Company, its associated entities, successors or assigns (hereinafter called “Company”), the SEDC 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 501.103 authorizes expenditures for certain infrastructure improvement projects that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises; 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 has purchased the Schertz Medical Center Land (as defined below), as more precisely described on Exhibit A (attached hereto and incorporated herein); and

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

WHEREAS, the SEDC desires to offer an Infrastructure Grant to the Company to enable the development the Schertz Medical Center Land pursuant to this Agreement in substantial conformity with the Schertz Incentive Policy and the Act; and

WHEREAS, the location of the Schertz Medical Center Land and the Facilities, 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 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; 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

1. 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 SEDC's execution of this Agreement is authorized by the Act and constitutes a valid and binding obligation of the SEDC. The SEDC acknowledges that the Company is acting in reliance upon the SEDC'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, 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 SEDC 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 SEDC 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 SEDC delegates the administration and oversight of this Agreement to the Executive Director of the SEDC. Any proposed amendments to the Agreement shall require the approval of the Board of Directors of the SEDC.

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.

"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 Inspections Division confirming that the entire work covered by the permit and plans are in place. The Certificate of Occupancy shall be used to document the Company's Capital Investment.

"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.

"Effective Date" shall be the date of the last signing by a party to the agreement.

"Expiration Date" shall mean the earlier of:

1. 10 years from the Effective Date; or
2. The date of termination, provided for under Article VII of this Agreement.

"Facilities" shall mean the three proposed office buildings described in elevations submitted to the City of Schertz as of September 15, 2020 constructed on the Schertz Medical Center Land wherein Company intends to attract and expand office opportunities and jobs.

“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.

“Infrastructure Grant” shall have the meaning set forth in Article IV, Section 1.

“Infrastructure Improvements” shall mean those items set forth in Article V Section 1.

“Letter of Acceptance” shall mean a signed letter issued by the City of Schertz accepting the Infrastructure Improvements.

“New Jobs” shall mean jobs that are created as a result of the construction of the Facilities and shall exclude any job relocated from any other location of Company within the City of Schertz.

“Project” shall mean the construction of the Infrastructure Improvements.

“Project Costs” shall mean the actual construction costs incurred by Company for the completion of the Infrastructure Improvements, and shall specifically include the sewer line impact fee, sewer line extension and connections, water main re-locate, and road infrastructure and exclude any management fee for Company or its developer and tree mitigation fee.

“Schertz Medical Center Land” shall mean the approximately 5.403 acres located within the City of Schertz, Texas as approximately shown on Exhibit A.

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

ARTICLE IV SEDC OBLIGATION

1. Infrastructure Grant. Subject to the satisfaction of all the terms and conditions of this Agreement and the obligation of the Company to repay the Infrastructure Grant pursuant to Article V hereof, the SEDC shall pay the Company, for the actual construction costs of the Infrastructure Improvements, an amount not to exceed THREE HUNDRED FIFTY THOUSAND DOLLARS and NO/100 (\$350,000.00) (the “Infrastructure Grant”).

2. Current Revenue. The Infrastructure Grant shall be paid solely from lawfully available funds of the SEDC. Under no circumstances shall the obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The SEDC represents and warrants that it has funds available for distribution sufficient to fully and timely pay the full Infrastructure Grant, will reserve such funds solely for such purpose, and will not make any special or general allocations of the SEDC’s current and future funds that would render the SEDC unable to timely make the full Infrastructure 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 SEDC 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, SEDC 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 SEDC to pay funds from the Infrastructure 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. Infrastructure Improvements. The Company will construct the following Infrastructure Improvements upon the Schertz Medical Center Land, as depicted on Exhibit B:

- (a) Construct and pay all sewer line extensions, connections and impact fees associated with the approximate development depicted in Exhibit B.
- (b) Construct and pay all water line extensions, relocation, and impact fees associated with the approximate development depicted in Exhibit B.
- (e) Construct all roadway infrastructure associated with the approximate development depicted in Exhibit B.
- (f) All improvements must be constructed to the City specifications as identified in the City of Schertz Public Works Design Specifications as evidenced by a Letter of Acceptance issued by the City of Schertz.
- (g) Allow access by the SEDC to all construction documents related to the Infrastructure Improvements during the term of the Agreement.
- (h) Commence within ninety (90) days from the Effective Date and complete Infrastructure Improvements within three-hundred sixty-five (365) days from the Effective Date.

2. Facility Size and Capital Investment. The Company shall construct the Facilities on the Schertz Medical Center Land with the following size and minimum capital investment which shall be verified by the Company through the receipt of the Certificate of Occupancy;

- (a) Facility One shall be at least TWENTY-THREE THOUSAND (23,000) square feet and have a minimum capital investment of FIVE MILLION NINE HUNDRED NINETY-FIVE THOUSAND EIGHT HUNDRED NINETY-NINE DOLLARS AND NO/100 (\$5,995,899.00)

(b) Facility Two shall be at least FOUR THOUSAND (4,000) square feet and have a minimum capital investment of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO/100 (\$1,500,000.00)

(c) Facility Three shall be at least TWELVE THOUSAND (12,000) square feet and have a minimum capital investment of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO/100 (\$3,500,000.00)

3. New Job and Annual Payroll Creation. The Company’s capital investment will result in the creation of New Jobs and Annual Payroll within the Schertz Medical Center Land which will be reported through conditions imposed by lease agreements and as reported to the Texas Workforce Commission for each year according to the following schedule:

Performance Year	New Jobs	Total Jobs	Payroll	Annual Report
2021	50	50	\$ 2,200,000.00	February 15, 2022
2022	30	80	\$ 3,500,000.00	February 15, 2023
2023	10	90	\$ 4,800,000.00	February 15, 2024
2024	30	120	\$ 5,300,000.00	February 15, 2025
2025	25	145	\$ 6,600,000.00	February 15, 2026
2026	25	170	\$ 7,700,000.00	February 15, 2027
2027	15	185	\$ 8,800,000.00	February 15, 2028
2028	15	200	\$ 9,400,000.00	February 15, 2029
2029	15	215	\$10,560,000.00	February 15, 2030
2030	10	225	\$11,000,000.00	February 15, 2031

4. Annual Report. The Company shall submit an Annual Report for the preceding Calendar Year to the Executive Director of the SEDC each year not later than February 15th. The Annual Report should substantially conform to the Annual Report Form attached as Exhibit C to this Agreement. The first Annual Report will be due February 15th, 2021.

5. 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 SEDC for the necessary legal fees in the preparation of any amendment to this Agreement, if and when such amendment is requested by the Company. Timely payment shall be made within sixty (60) days of submittal of invoice to the Company by the SEDC or its assigns.

ARTICLE VI COVENANTS AND DUTIES

1. The Company Covenants and Duties. The Company makes the following covenants and warranties to the SEDC 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 entity. 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 having jurisdiction over the construction of Infrastructure Improvements and Facilities within the Schertz Medical Center Land.

(f) The Company shall be responsible for paying, or causing to be paid, to the City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project. The Company agrees to develop the Project in accordance with the ordinances, rules, and regulations of the City in effect on the date the Project was designed, unless specified otherwise in this Agreement. 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 SEDC in providing all necessary information to assist them in complying with this Agreement. Cooperation shall include, but not be limited to, providing evidence and copies of construction contracts, payments for construction, permits, construction supply purchases, and any other documentation deemed necessary by SEDC to substantiate the reported Project Costs.

(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 Operations Grant and Annual Grant provided herein will be used.

(j) Company shall not be in arrears and shall be current in the payment of all City taxes and fees as to the Schertz Medical Center Land.

2. SEDC's Covenants and Duties.

(a) Infrastructure Grant. The SEDC is obligated to pay the Company an Infrastructure Grant in the amount of up to THREE HUNDRED FIFTY THOUSAND DOLLARS AND NO/100 (\$350,000.00) in accordance with Article IV, Section 1 within forty-five (45) days after the Company provides the SEDC written notice and sufficient documentation evidencing:

- i. the completion of construction of the Infrastructure Improvements in accordance with Article V, Section 1;
- ii. issuance of certificates of occupancy for Facility One and Facility Two per Article V, Section 2;
 1. for purposes of compliance with Article V, Section 2, copies of Certificates of Occupancy issued by the City of Schertz indicating the valuation and square footage of the completed facilities shall constitute sufficient documentation.
- iii. if applicable, compliance with the New Job and Annual Payroll Creation requirements of Article V, Section 3.

(b) The SEDC 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.

(c) SEDC shall cooperate with the Company in providing all necessary information and documentation to assist them in complying with this Agreement.

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 SEDC the right to terminate this Agreement and collect the Recapture Amount (as defined below), as determined by the Board of Directors of the SEDC.

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;

- (b) The Company satisfying all of the Performance and Obligations set forth in Article V, (1) and (2);
- (c) The Agreement's Expiration Date;
- (d) 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; or
- (b) SEDC determines that any representation or warranty contained herein or in any financial statement, certificate, report or opinion prepared and submitted to SEDC in connection with or pursuant to the requirements of this Agreement was incorrect or misleading in any material respect when made; or
- (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; or
- (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 or any substantial part of the Schertz Medical Center Land; 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;
- (e) The Company changes its present ownership more than fifty-one (51%) without written notification to SEDC within thirty (30) days of such change; or

2. SEDC Events of Default. SEDC 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 SEDC's Default of its obligations under section IV of this Agreement.
- (b) In the event of Default by the Company, the SEDC shall provide the Company written notice of Default, and a minimum period of ninety (90) days after the receipt of said notice to cure such default. If the Company fails to cure

such default or fails to take significant action to cure such default, the SEDC shall, as its sole and exclusive remedy for Default hereunder, have the right to terminate this Agreement and recapture one hundred percent (100%) of the funds distributed from the Infrastructure Grant to Company plus interest at the rate of five percent (5%) per annum from the Effective Date until paid in full if the Default occurs on or prior to the Expiration Date (the "Recapture Amount"). The Recaptured Amount shall be paid by Company within thirty (30) days after the date Company is notified by the SEDC of such Default (the "Payment Date").

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 SEDC.

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 SEDC shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the SEDC, 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 of its rights, duties, and obligations under this Agreement to a duly qualified third party with prior written approval of the SEDC, 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 SEDC 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 SEDC 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 SEDC 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 SEDC 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 SEDC.

(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 SEDC 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 SEDC, or any board member, or agent of the SEDC, 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: T.Daniel Santee
2517 North Main Avenue
San Antonio, TX 78212

If to Company: Kellum Real Estate, LLC
Attention: Daniel Kellum
3401 Roy Richard Drive
Schertz, TX 78154

With a copy to:

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 SEDC.

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 SEDC.

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 SEDC 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 SEDC 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 IMDEMNITY PROVIDED HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE ACTION OR OMISSIONS OF THE SEDC 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 SEDC.

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 23 day of September, 2020

COMPANY:

Kellum Real Estate, LLC.
A Texas Corporation

By: Kellum Real Estate, LLC

By: [Signature]
Name, Daniel Kellum
Title, President

STATE OF TEXAS X
COUNTY OF Spang X

This information was acknowledged before me on this 23 day of September, 2020 by Daniel Kellum as Manager of Kellum Real Estate, LLC., on behalf of said company.



[Signature]
Notary Public, State of Texas

Mindy Paxton
Notary's typed or printed name

01/25/2022
My commission expires

Executed on this _____ day of _____, 20__

**CITY OF SCHERTZ ECONOMIC
DEVELOPMENT CORPORATION**

By: _____

Name: Paul Macaluso

Title: Board President

STATE OF TEXAS X
COUNTY OF GUADALUPE X

This information was acknowledged before me on this _____ day of _____, _____
by _____, _____ for 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

SCHERTZ FAMILY MEDICAL CENTER LAND LEGAL DESCRIPTION

Lot 3, Block 1, Cal Stone Subdivision Replat, Guadalupe County, Texas.

Lot 4, Block 1, Cal Stone Subdivision Replat, Guadalupe County, Texas.

EXHIBIT B

SCHERTZ FAMILY MEDICAL CENTER LAND INFRASTRUCTURE IMPROVEMENTS

Sewer line impact fee City of Schertz \$172,777.18

Sewer line extension and connections \$128,222.11

Water main re-location \$161,069.55

Road Infrastructure/safety work \$211,907.48

Proposed Infrastructure

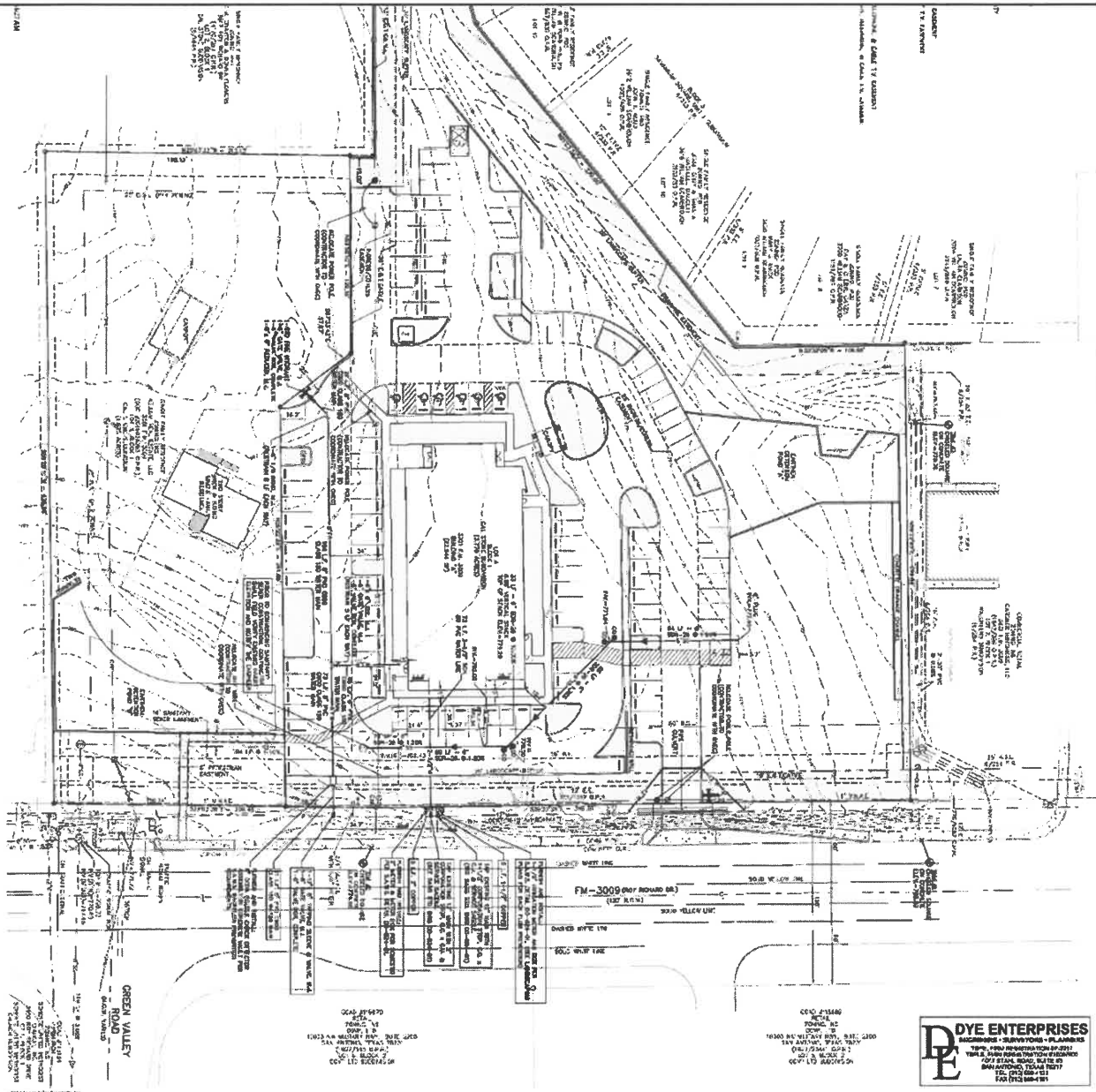


EXHIBIT C
ANNUAL REPORT

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 Kellum Real Estate, LLC., is due on **February 15, 20__**. Please sign and return the Annual Certification Report form with accompanying narrative.

I. PROJECT INFORMATION

Project Information:

Company's legal name: _____

Project address subject to incentive: _____

Company 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 New Jobs created at the Schertz Medical Center during the calendar year? _____

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

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 part-time employees: _____

Total annual payroll: _____

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

