

ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT Phelan-Bennett, 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 (hereinafter called “SEDC”), 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 and Phelan-Bennett LLC, a Texas Limited Liability Company (hereinafter called “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 501.158 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 the SEDC 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, Company desires to construct a Facility as defined below, to locate Class A warehousing and distribution facility in Schertz, Texas; and

WHEREAS, the location of the Company, as proposed, will contribute to the economic development of the City of Schertz 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 of Schertz, and will have both a direct and indirect positive overall improvement/stimulus in the local and state economy; and

WHEREAS, the SEDC desires to offer an incentive to Company to enable Company to locate and expand its operations pursuant to this Agreement in substantial conformity with the Act; 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 matter herein; and

JEB

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 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 establishment of the Project, hereinafter 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 mutual agreement of the Parties, or 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 property and funds to cover certain costs associated with the Project, as well as to specifically state the covenants, representations of the Parties, and the incentives associated with 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 Company may constitute a breach of the entire Agreement and terminate any further commitments (if any) by the SEDC 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, or his designee. Any proposed amendments to the Agreement shall require the approval of the Board of Directors of the SEDC.

JEB

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.

“Appraisal Sunset Date” shall mean August 1, 2023.

“Bankruptcy” shall mean the dissolution or termination of a Party’s existence as an ongoing business, insolvency, appointment of receiver for any part 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.

“Capital improvements” shall mean the “facility” and items eligible for “project reimbursements” as defined herein, but shall not include, taxable personal property or inventory of Company or any tenant of Company.

“Certificate of Occupancy” shall mean the signed certificate issued by the City of Schertz Planning & Development Department granting the Company the right to occupy the Facility and confirming that the entire work covered by the permit and plans are in place.

“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. July 31, 2024; or
2. The date of termination provided for under Article VII of this Agreement.

“Facility” shall mean the approximate 170,000 square foot Class A warehouse and distribution facility to be constructed on the Real 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, pandemics, 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.

“Project” shall mean the Company’s commitment to construct the Facility and the corresponding infrastructure improvements by May 1, 2022 resulting in not less than FIVE MILLION DOLLARS AND NO CENTS \$5,000,000 in capital improvements to the site as assessed by the Guadalupe County Appraisal District, no later than the Appraisal Sunset Date.

“Project Reimbursement” shall mean up to the engineering and construction costs associated with the relocation of public sanitary sewer relocation; sanitary sewer extension along Four Oaks; and the sidewalk extension along Four Oaks; and estimated to be FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00).

“Real Property” shall mean 17670 Four Oaks Lane, Schertz, Texas 78602, [Four Oaks Commercial Plat] a 9.598 acre tract of land.

**ARTICLE IV
SEDC OBLIGATION**

1. Infrastructure Reimbursement Grant. Subject to the satisfaction of all the terms and conditions of this Agreement and the obligation of Company to repay the Infrastructure Reimbursement Grant pursuant to Article V hereof, the SEDC agrees to provide Company with an Infrastructure Reimbursement Grant up to and not exceeding the amount of FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00) payable upon:
 - (a) Submission of reporting for each year of the proposed incentive period, beginning as follows:

Reporting Date	Report	Supporting Documentation
April 1, 2021	Certification that project has started construction	City of Schertz Building Permit and copy of plans submitted to the City.
May 1, 2022	Building Completion	Certificate of Occupancy
Appraisal Sunset Date	Real Property Value	Real Property Assessment per Guadalupe Appraisal District

- (b) Submission of documentation reflecting total actual costs of improvements to the site that are eligible as Project Reimbursements. Acceptable documentation includes bill of sale, executed contracts, or estimated values submitted as required by permitting process and proof of payment for such improvements. The Infrastructure Reimbursement Grant shall be in the amount qualifying as Project Reimbursements, up to and not exceeding the maximum set forth above, and shall be payable no sooner than the 60th day after receipt of the supporting documentation stated herein; and

- (c) Receipt of a Certificate of Occupancy issued by the City of Schertz
 - (d) Confirmation by SEDC staff of new capital improvements to the site resulting in improvement value of FIVE MILLION DOLLARS AND NO CENTS (\$5,000,000.00) as assessed by the Guadalupe County Appraisal District, no later than the Appraisal Sunset Date.
 - (e) However, if Company's new capital improvements result in less than FIVE MILLION DOLLARS AND NO CENTS (\$5,000,000.00) as assessed by the Guadalupe County Appraisal District by the Appraisal Sunset Date, SEDCs Obligations under the Infrastructure Reimbursement Grant shall be reduced on a pro-rata basis. For example, if the assessment is for FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS \$4,500,000.00 rather than FIVE MILLION DOLLARS AND NO CENTS (\$5,000,000.00) (90% of projected), the total amount of the grant would be FORTY FIVE THOUSAND DOLLARS AND NO CENTS \$45,000.00 (90% of the expected grant).
2. Current Revenue. The funds distributed hereunder 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. 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 the extent allowed by law, to keep information and documentation received, pursuant to this Agreement hereof, confidential. In the event a request is made for such information, SEDC will not disclose the information unless required to do so by the Attorney General of Texas pursuant to the requirements of the Texas Public Information Act.

ARTICLE V
PERFORMANCE OBLIGATIONS OF COMPANY

The obligation of the SEDC to pay funds in the form of a Reimbursable Infrastructure Grant shall be conditioned upon Company's continued compliance with and satisfaction of each of the performance obligations set forth in this Agreement.

1. Capital Investment.
- (a) Company shall begin construction of the Project before April 1, 2021. For purposes of compliance under the terms of this Agreement, obtaining a permit from the City of Schertz to begin construction related activity on the Real Property associated with the Project shall constitute the beginning of construction.
 - (b) Complete construction of the Project on the Real Property such that the improvements contemplated by the Project add no less than FIVE MILLION DOLLARS AND NO

CENTS (\$5,000,000.00) in improvements as assessed by the Guadalupe County Appraisal District reported to the SEDC no later than the Appraisal Sunset Date.

- (c) Submission of documentation reflecting total actual costs of improvements to the site that are eligible as Project Reimbursements. Acceptable documentation includes bill of sale, executed contracts, or estimated values submitted as required by permitting process and proof of payment for such improvements. The Infrastructure Reimbursement Grant shall be in the amount qualifying as Project Reimbursements, up to and not exceeding the maximum set forth above, and shall be payable by SEDC no sooner than the 60th day after receipt of the supporting documentation stated herein.
- (d) Company understands and acknowledges that if the new capital improvements result in less than FIVE MILLION DOLLARS AND NO CENTS (\$5,000,000.00) as assessed by the Guadalupe County Appraisal District by the Appraisal Sunset Date, SEDCs Obligations under the Infrastructure Reimbursement Grant shall be reduced on a pro-rata basis. For example, if the assessment is for FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS \$4,500,000.00 rather than FIVE MILLION DOLLARS AND NO CENTS (\$5,000,000.00) (90% of projected), the total amount of the grant would be FORTY FIVE THOUSAND DOLLARS AND NO CENTS \$45,000.00 (90% of the expected grant).

- 2. Job Creation. No jobs are scheduled to be created or associated with this Agreement.
- 3. Annual Report. The Company shall submit an Annual Certification Report (an “Annual Report”) for the preceding Year to the Executive Director of the SEDC each year not later than February 15th beginning with the first report not later than February 15, 2022 and concluding with the last report not later than February 15, 2024. The Annual Report should substantially conform to the Annual Report Form attached as Exhibit “B” to this Agreement.
- 4. Extension beyond Term. In recognition of the fact that the verification of Company’s compliance hereunder is, by necessity, verified in the calendar year following the Company’s obligations herein, the Expiration Date of this Agreement will be extended until any and all verification of Performance Obligations and covenants have been satisfied. The Parties hereto agree that the SEDC’s right to the Recapture Amount shall survive the Expiration Date of this Agreement.

ARTICLE VI COVENANTS AND DUTIES

- 1. Company’s Covenants and Duties. Company makes the following covenants and warranties to the SEDC and agrees to timely and fully perform the obligations and duties contained in Articles 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) 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, with the Texas Comptroller of Public Accounts, and the United States of America during any term of this Agreement.
- (b) The execution of this Agreement has been duly authorized by Company's authorized governing body, 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 Company's by-laws, or of any agreement or instrument to which Company is a party to or by which it may be bound.
- (c) Company is not a party to any Bankruptcy proceedings currently pending or contemplated, and Company has not been informed of any potential involuntary Bankruptcy proceedings.
- (d) To its current, actual knowledge, and subject to the Certificate of Occupancy (or other approvals and permits to be obtained under subpart (f) immediately below, Company has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City of Schertz and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.
- (e) Company shall timely and fully comply with all of the terms and conditions of this Agreement.
- (f) Company agrees to obtain, or cause to be obtained, all necessary permits and approvals from the City of Schertz and/or all other governmental agencies having jurisdiction over the construction of any improvements to the Facility.
- (g) Company shall be responsible for paying, or causing to be paid, to the City of Schertz and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project. Company agrees to develop the Project in accordance with the ordinances, rules, and regulations of the City of Schertz in effect on the date the Project was designated, unless specified otherwise in this Agreement. Company, in its sole discretion, may choose to comply with any or all City of Schertz rules promulgated after the Effective Date of this Agreement.
- (h) Company agrees to commence and complete the Project in strict accordance with the Agreement.
- (i) Company shall cooperate with the SEDC in providing all necessary information to assist them in complying with this Agreement.
- (j) 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 funds provided herein will be used.

- (k) Company shall not be in arrears and shall be current in the payment of all City and State taxes and fees.
- (l) SEDC has the right to periodically (and with reasonable advance notice) verify the terms and conditions of this Agreement including, but not limited to, the number of persons employed by Company as a result of the assistance provided hereunder, the addresses of those persons, the number of hours each employee worked during the previous forty-eight (48) months, the total expenses attributable to training and employing those employees, and the cumulative payroll for Company's Schertz operation.
- (m) Under Texas Law, the SEDC may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it; (i) does not boycott Israel; and (ii) will not boycott Israel during the term of the contract. (Texas Government Code, Chapter 2270.002) by accepting this rider, the Company hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as that term is defined in the Texas Government Code, Section 808.001, as amended. Further, the Company hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organization.

- 2. SEDCs' Covenants and Duties. SEDC agrees to timely and fully perform the obligations and duties contained in Article IV 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 SEDC.
- 3. Compliance and Default. Failure by 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.

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 Agreement's Expiration Date;
 - (c) Default by Company (at the option of the SEDC).



**ARTICLE VIII
DEFAULT & REMEDIES**

1. Company Events of Default.

- (a) Failure of Company to perform any term, covenant or agreement contained in Articles V and VI.
- (b) Any representation or warranty contained herein or in any financial statement, certificate, report or opinion 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 Company or any attachment or other levy against the property of Company with respect to a claim remains unpaid, unstayed on appeal, undischarged, not bonded or not dismissed for a period of sixty (60) days; or
- (d) Company makes an assignment for the benefit of creditors; admits in writing its inability to pay its debts generally as they become due; files a petition in bankruptcy; is adjudicated insolvent or bankrupt; petitions or applies to any tribunal for any receiver or any trustee of Company or any substantial part of its property, commences any action relating to 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 Company any such action and such action remains undismissed or unanswered for a period of sixty (60) days from such filing, or Company by any act indicates its consent to or approval of any trustee of Company or any substantial part of its property; or suffers any such receivership or trustee to and such appointment remains unvacated for a period of sixty (60) days; or
- (e) Company substantially changes its present ownership without written notification to SEDC within thirty (30) days of such change, provided however, Company may cure such failure by providing the requisite written notification prior to SEDC exercising its right to terminate this Agreement
- (f) Company materially changes the general character of business as conducted at the date hereof or engages in any type of business not reasonably related to its business as presently and normally conducted.

2. SEDC Events of Default.

- (a) SEDC materially fails to fulfill an obligation set forth within Article IV.

3. Remedies for Default.

- (a) For any Company defaults under Article V Section 1(a)-(c) SEDC shall have the right to recapture one hundred percent (100%) of the Infrastructure Reimbursement Grant that was paid (the "Recapture Amount") if the Default occurs on or prior to the Termination Date. The Recaptured Amount shall be paid by the Company within one hundred twenty

(120) days after the date Company is notified by the SEDC 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 two percent (2.00%) per annum from the Effective Date until paid in full.

- (b) Company’s sole remedy under this Agreement is specific performance for SEDC’s default of its obligation under Section IV of this Agreement.

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. Representations and Warranties. The SEDC represents and warrants to 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. Company represents and warrants to the SEDC that it has the requisite authority to enter into this Agreement.
4. Assignment. 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 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 reasonable financial security by any proposed Assignee prior to its approval of an assignment.
5. 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.
6. 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: Schertz Economic Development Corporation
Attention: Executive Director
1400 Schertz Parkway, Building 2
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 the Company: Phelan-Bennett Development
Attention: Justin E. Bennett
1403 Maryland Street
Unit A
Houston, Texas 77005

With a copy to: John R. Jones, PC
Attention: John R. Jones
123 North Post Oak Lane
Suite 400
Houston, Texas 77024

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

968

7. 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.
 - (a) Governing Law. The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement (subject to the dispute resolution mechanisms of Article VIII above) shall be in the Courts of Guadalupe County. The Parties agree to submit to the personal and subject matter jurisdiction of said court.
 - (b) Amendment. This Agreement may be amended by mutual written agreement of the Parties, as approved by the Board of Directors of the SEDC and paid for by the Company if requested by Company.
8. 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.

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.

9. 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.
10. 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.
11. 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.
12. Exhibits. Any Exhibits attached hereto are incorporated by reference for all purposes.
13. 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.

14. Indemnification.

COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE SEDC AND THE CITY OF SCHERTZ (“CITY”), AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, 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 BY COMPANY UNDER THIS AGREEMENTS. 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 AND PROPERTY GRANTED 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.

15. 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.

16. Force Majeure. Whenever a period of time is herein prescribed for action to be taken by the Company, the 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.

[SIGNATURE PAGE FOLLOWS]



Executed on this 17 day of September, 2020.

COMPANY

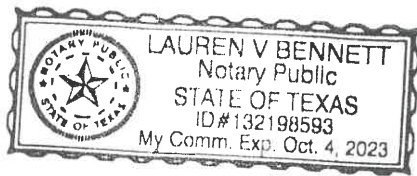
Phelan-Bennett, LLC,
a Texas limited liability company

By: JEB TX Investments, LLC,
a Texas limited liability company,
Its Manager

By: [Signature]
Justin E. Bennett, Manager

STATE OF TEXAS }
COUNTY OF HARRIS }

This information was acknowledged before me on this 17 day of September, 2020, by Justin E. Bennett for Phelan-Bennett, LLC, a Texas limited liability company, on behalf of said entity.



[Signature]
Notary Public, State of Texas

LAUREN BENNETT
Notary's typed or printed name

10/4/2023
My commission expires

[Handwritten initials]

Executed on this _____ day of _____, 20____.

**SCHERTZ ECONOMIC
DEVELOPMENT CORPORATION**

By: _____

Name: Paul Macaluso

Title: Board President

STATE OF TEXAS }
COUNTY OF SCHERTZ }

This information was acknowledged before me on this _____ day of _____, _____, by Paul Macaluso, President of the 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: _____
T. Daniel Santee, SEDC Counsel
DNRB&Z P.C.

Exhibit A
Project Site Plan

[SEE ATTACHED]

gls

Performance Agreement
Exhibit B

SAMPLE ANNUAL CERTIFICATION REPORT FORM

[SEE ATTACHED]

gls

Annual Certification Report

Reporting Period: _____ to _____ 20__

The Annual Certification Report for the Economic Development Performance Agreement between the Schertz Economic Development Corporation and _____, is due on _____ 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

Investment Information:

What taxable ad valorem value for Real Property (excluding land) 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)

None

948

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 _____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 _____.

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 _____, a Texas SEDC, 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 _____ 15, 20___. Please send an original to the following address:

**Attention: Executive Director
City of Schertz Economic Development Corporation
1400 Schertz Parkway, Building 2
Schertz TX 78154**