

RESOLUTION NO. 20-R-115

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING AN ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT BETWEEN THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION AND PHELAN-BENNETT LLC; AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City of Schertz Economic Development Corporation (“SEDC”) is a non-profit industrial development corporation duly established under 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”);

WHEREAS, all of the powers of the corporation are vested in the SEDC Board of Directors (the “Board”) appointed by the governing body of the corporation’s authorizing unit; and

WHEREAS, the Act authorizes a development corporation to fund certain projects as defined by the Act and request 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 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, Phelan-Bennett, LLC. (the “Company”) desires to construct a warehousing and distribution facility creating new ad valorem value of \$5,000,000 in Schertz, Texas; and

WHEREAS, the SEDC desires to offer an incentive to enable the Company to relocate and expand its investment pursuant to the Agreement in substantial conformity with the Schertz Incentive Policy and the Act; and

WHEREAS, Section 505.159 of the Act requires that a corporation hold at least one public hearing on the proposed project before spending money to undertake the project and the public hearing was held on September 24, 2020; and

WHEREAS, following the public hearing, the Board approved the Economic Development Performance Agreement for the Company as set forth in Exhibit A attached hereto and incorporated herein (the "Agreement") between the SEDC and the Company, pursuant to the Act; and,

WHEREAS, Said Agreement shall be effective upon approval by the Schertz City Council as required by Section 501.073 of the Act requiring approval of all programs and expenditures by the authorizing unit.

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

Section 1. The Schertz City Council hereby approves the program and expenditure of the Schertz Economic Development Corporation set forth in the Economic Development Performance Agreement attached hereto as Exhibit A and authorizes the President to execute and deliver in the substantial form as attached.

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 Schertz 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 board 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 10th day of November, 2020.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

Exhibit A

**ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT
PHELAN-BENNETT LLC**

[SEE ATTACHED]