

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SCHERTZ TEXAS AND THE SCHERTZ ECONOMIC DEVELOPMENT CORPORATION FOR THE FUNDING AND COORDINATION OF TARGETED INFRASTRUCTURE IMPROVEMENTS NECESSARY TO PROMOTE OR DEVELOP NEW OR EXPANDED BUSINESS ENTERPRISES

This Memorandum of Understanding between the City of Schertz Texas (City) and the Schertz Economic Development Corporation (SEDC), collectively (Parties), is entered into for the funding and coordination of targeted infrastructure improvements necessary to promote or develop new or expanded business enterprises.

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”); and,

WHEREAS, the City of Schertz is a Texas home rule municipality of the State of Texas and the SEDC's authorizing unit required to approve all programs and expenditures of the corporation and annually review any financial statements of the corporation; and,

WHEREAS, the SEDC has consistently partnered with the City of Schertz to prioritize funding for projects that fall within the scope and mission of the SEDC as a Type B Economic Development Corporation, such as expenditures 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, including streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; and,

WHEREAS, SEDC has shared with Schertz City Council the priorities for use of the SEDC Reserve Fund and has recently worked with the City Manager’s Office on projects such as investments in Main Street and Tri County Parkway improvements; and,

WHEREAS, in order to ensure the SEDC Board is provided all necessary information to prioritize and budget for current and future infrastructure funding requests, SEDC staff has coordinated with the City Manager’s Office to formalize a process for requesting funding from the SEDC, providing status reports, and project closing; and

WHEREAS, the formalization of these processes is to support administration of the SEDC Reserve Fund and prioritize mutually beneficial projects of the Parties.

NOW THEREFORE THE PARTIES HERETO AGREE TO THE FOLLOWING PROTOCOLS IN FURTHERANCE OF THE SHARED GOALS AND OBJECTIVES EXPRESSED HEREIN

I. SEDC Funding in Partnership with the City of Schertz

1.1 In coordination with the SEDC Board of Directors, SEDC staff may request of City prioritized capital improvement projects based on the mission of the SEDC through this process.

1.2 City/SEDC staff will provide a project overview to secure SEDC Board conceptual approval of project. SEDC will consider and act on funding for design of the project through allocation from existing budget or through a budget amendment taken before City Council.

1.3 Once design of the project is finalized the SEDC will review the final project scope and consider encumbrance of total project cost and consider adopting an Infrastructure Funding Agreement for approval by City Council for funding allocation. This agreement will be in substantially the same form as the attached Exhibit A.

1.4 Important considerations for the SEDC Board include that the City may request additional funding for any and all projects due to unforeseen costs, expanded scope, or other reasons.

1.5 Only those requested projects that are comprised of an expenditure that is required or suitable for the infrastructure necessary to promote or develop new or expanded business enterprise, limited to streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements, or telecommunications and internet improvements.

II. Funded Project Status Updates

2.1 SEDC will be provided information for status updates on the project no less than twice a year regarding allocated funds and more frequently if the project is delayed significantly, project costs or scope are significantly altered. In addition to a status narrative, this should include:

2.1.1 Total sources and uses of funds for the project to include balances of SEDC funding encumbered and drawn down for the project.

2.1.2 If project is over \$2,000,000 and City chooses to transfer a lump sum in this amount to City accounts, City will report and transfer any interest earned on those balances.

2.1.3 If project is delayed more than two years from the date the project is funded for design, the SEDC may act to unencumber dollars for other uses.

III. Project Closing

3.1 City will provide a memo from the City Manager providing a final project description and total costs with supporting documentation on proof of payment for all costs and final total sources and uses of funds.

3.1.1 This memo will affirm that all uses of funds fall within allowed uses under Section 505.152 of the Texas Local Government Code if the project results in a combination of qualifying and non-qualifying costs.

3.1.2 This memo will also indicate when any unexpended funds and or interest was or will be returned.


IV. Miscellaneous

- 4.1 Term; Timeliness. The initial term of this MOU shall begin on the Effective Date and shall continue until the end of the 2022-2023 fiscal year. Thereafter, provided that the Parties agree, the MOU shall renew on a fiscal year basis unless terminated by either party by providing written notice 60 days prior to the end of the fiscal year.
- 4.2 Severability. If any provision of this MOU is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this MOU shall not be affected thereby, and this MOU shall be construed as if such invalid provision had never been contained herein, and the remaining enforceable provisions of this MOU are expressly deemed severable for this purpose.
- 4.3 Cooperation. The Parties hereto agree to cooperate at all times in good faith to effectuate the purposes and intent of this MOU.
- 4.4 Entire Agreement. This MOU contains the entire agreement of the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.
- 4.5 Amendments. Any amendment to this MOU must be in writing and shall be effective only if signed by the authorized representatives of each Party to this MOU.
- 4.6 No Third-Party Beneficiaries. This MOU shall inure only to the benefit of the Parties and their successors and assigns as permitted by this MOU. No person or entity that is not a Party to this MOU shall be considered a third-party beneficiary of this MOU.
- 4.7 Effective Date. Effective this the ____ day of _____, 2022.

CITY:

CITY OF SCHERTZ ECONOMIC
DEVELOPMENT CORPORATION:

By: _____
Name: Dr. Mark Browne

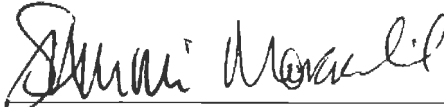
By: 
Name: Paul Macaluso

Title: City Manager

Title: SEDC Board President

Attest:

By: _____
Name: Brenda Dennis
Title: City Secretary

By: 
Name: Sammi Morrill
Title: SEDC Board Secretary

**EXHIBIT A:
FUNDING AGREEMENT**

This **FUNDING AGREEMENT** by and between the **SCHERTZ ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the "SEDC"), and the **CITY OF SCHERTZ, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the "City"), is made and executed on the following recitals, terms and conditions.

WHEREAS, the SEDC is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, Section 501.103 authorizes expenditures 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, such as streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; and

WHEREAS, the SEDC and City of Schertz are partnering to fund

_____ (hereinafter referred to as the "Project"); and

WHEREAS, the SEDC's Board of Directors have determined the financial assistance provided to City is consistent and meets the definition of "project" as that term is defined in Section _____ of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code; and

WHEREAS, City agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Schertz, Texas, to approve all programs and expenditures of the SEDC, and accordingly this Agreement is not effective until City Council has approved this project at a City Council meeting called and held for that purpose.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the SEDC and City agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, as defined herein, and shall continue thereafter until _____, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Performance Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (c) **City.** The words “City” means the City of Schertz, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 1400 Schertz Parkway Schertz, Texas 78154.
- (d) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the City and the SEDC.
- (e) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (f) **SEDC.** The term “SEDC” means the Schertz Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 1400 Schertz Parkway Schertz, Texas 78154.
- (g) **Project.** The word “Property” means _____.
- (h) **Qualified Expenditures.** The words “Qualified Expenditures” mean those costs associated with _____, and which meet the definition of “project” as that term is defined in Section 505.152 of the Act, and meet the definition of “cost” as that term is defined in Section 501.152 of the Act.
- (i) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. AFFIRMATIVE COVENANTS OF THE CITY.

City covenants and agrees with SEDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Funding.** The City shall be entitled to funding from SEDC in the amount not to exceed _____ for Qualified Expenditures. City covenants and agrees to submit to the SEDC invoices, receipts, or other documentation of the Qualified Expenditures in a form acceptable to the SEDC prior to Project acceptance.
- (b) **Public Purpose.** City agrees that the Project contemplated herein represents a public

purpose for which the propose funds are authorized to be used.

- (c) **Performance Conditions.** City agrees to provide, make, execute and deliver to SEDC such other documents and other agreements as SEDC or its attorneys may reasonably request to evidence the use of the funds for the Project.
- (d) **Performance.** City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between City and SEDC.

SECTION 5. AFFIRMATIVE COVENANTS OF SEDC.

SEDC covenants and agrees with City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Financial Assistance for Qualified Expenditures.** SEDC covenants and agrees to provide funding in advance or by reimbursement for Qualified Expenditures made by the City pursuant to Section 4(a) of this Agreement, in an amount not to exceed the lesser of _____ or the aggregate amount of said invoices, receipts, or other documentation submitted by the City to SEDC within thirty (30) days of receipt of said documentation.
- (b) **Performance.** SEDC agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the City and SEDC.

SECTION 6. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of City or SEDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of City or SEDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between City and SEDC is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to SEDC by or on behalf of City under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.

SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 6 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement. In the event, City

defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by the SEDC to City pursuant to Section 5(a) of this Agreement shall become immediately due and payable by City to the SEDC.

SECTION 8. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Guadalupe County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Guadalupe County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual or individuals executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. SEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown in Section 3 of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, City agrees to keep SEDC informed at all times of City's current address.
- (h) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If

feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

- (i) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

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THE PARTIES ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS PERFORMANCE AGREEMENT, AND THE PARTIES AGREE TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS IS PROVIDED HEREIN.

CITY:

CITY OF SCHERTZ, TEXAS,
a Texas home-rule municipality,

By: _____
City Manager
Date Signed: _____

ATTEST:

City Secretary

SEDC:

SCHERTZ ECONOMIC DEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____
SEDC Board President
Date Signed: _____

ATTEST:

SEDC Board Secretary