

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 the signalization of the intersection of Schertz Parkway and Lookout Road (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 501.103 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 September 30, 2023, 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 “Project” means the design and construction of signalization of the intersection of the Schertz Parkway and Lookout Road.
- (h) **Qualified Expenditures.** The words “Qualified Expenditures” mean those costs associated with the design and engineering of the Project, 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 NINETY THOUSAND DOLLARS AND NO CENTS (\$90,000) 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.
- (b) **Public Purpose.** City agrees that the Project contemplated herein represents a public purpose for which the proposed 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 NINETY THOUSAND DOLLARS AND NO CENTS (\$90,000) 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.

**[The Remainder of this Page Intentionally Left Blank]**

**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: 9/22/22

**ATTEST:**

Sybil Morales  
SEDC Board Secretary