

# SCHERTZ

ECONOMIC DEVELOPMENT CORPORATION

## NOTICE OF MEETING

### AGENDA

AUGUST 24, 2023

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The City of Schertz Economic Development Corporation (SEDC) Board of Directors will hold a regular monthly meeting on Thursday, AUGUST 24, 2023 at 6:00 p.m. at the Hal Baldwin Municipal Complex, Council Chambers Conference Room, Building No. 4, 1400 Schertz Parkway, Schertz, Texas. This is an open meeting, subject to the open meeting laws of the State of Texas.

#### Call To Order

1. Roll call, recognition of visitors, and review of meeting instructions for effective Board interaction and public participation.

#### Hearing of Residents

2. *This time is set aside for any person who wishes to address the Board. Presentations should be limited to no more than 3 minutes. The presiding officer will call on those persons who have signed up to speak.*

#### Minutes

3. Approval of the minutes for the Board of Directors Regular Monthly Meeting held on Thursday, June 29, 2023. (T. Miller/S. Wayman)

#### Presentations

4. Staff briefing on SEDC monthly financial statements for the months of June and July, 2023. (S. Wayman/J. Walters)

#### Discussion Items

5. **Resolution 2023-9** - Briefing and possible action on recommending approval by the City Council for the proposed Schertz Economic Development Corporation FY 2023-24 Budget and Reserves. (S. Wayman)
6. Discussion and possible action to appoint a new SEDC Board Treasurer. (S. Wayman)
7. **Resolution 2023-6** - Discussion and possible action on authorizing the funding for I-35 NEX Project: Schertz Parkway Bridge Signage. (S. Wayman)

#### Closed Session

8. Called in accordance with Section 551.087 of the Texas Government Code, Deliberation Regarding Economic Development Negotiations; Closed Meeting. The governmental body is not required to conduct an open meeting (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) the deliberate the offer of a financial or other incentive to a business prospect.

• E-038

• E-80

• E-81

• E-92

• E-051

• E-84

• E-91

• E-93

## Reconvene to regular session

9. Take any action based on discussion held in closed session under Agenda Item No. 8.
10. **Resolution 2023-7** - Discussion and action on authorizing an amendment to the Performance Agreement Schertz 312 Phase I, Titan, Schertz 35 Business Park, located on Tejas Way south of Doerr Ln. (S. Wayman)
11. **Resolution 2023-8** - Discussion and action on authorizing the amendment and restatement of the Performance Agreement Schertz 312 Phase II, Titan, Schertz 35 Business Parkway, located on Tejas Way south of Doerr Ln. (S. Wayman)
12. **Resolution 2023-10** - Discussion and action authorizing the Executive Director of the Schertz Economic Development Corporation to enter into a Performance Agreement with Boomerang-Lovett. (S. Wayman)
13. **Resolution 2023-11** - Discussion and action authorizing the Executive Director of the Schertz Economic Development Corporation to enter into a Performance Agreement with Core5 Industrial Partners. (S. Wayman)

## Requests and Announcements

Announcements by staff:

- Office closed for Labor Day - September 4, 2023
- Recommending Special Meeting - September 14, 2023
- Next Board Meeting - September 28, 2023
- Lauren Shrum, Parks and Recreation Director, will present September 2023

Request by Board Members to place items on a future SEDC Board Meeting agenda.

## Adjournment

### CERTIFICATION

I, Tracy Miller, Administrative Assistant, of the City of Schertz Economic Development Corporation, do hereby certify that the above agenda was posted on the official bulletin boards on this the 18th day of August, 2023, at 4:00 p.m., which is a place readily accessible to the public at all times and that said notice was posted in accordance with chapter 551, Texas Government Code.

\_\_\_\_\_  
Administrative Assistant

I certify that the attached notice and agenda of items to be considered by the Schertz Economic Development Corporation Board of Directors was removed from the official bulletin board on \_\_\_\_ day of \_\_\_\_\_, 2023.  
Name/Title: \_\_\_\_\_

*This facility is accessible in accordance with the Americans with Disabilities Act. Handicapped parking spaces are available. If you require special assistance or have a request for sign interpretative services or other services, please call 210-619-1070.*

**The Economic Development Corporation Board of Directors reserves the right to adjourn into closed session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by the Texas Open Meetings Act.**

**Closed Sessions Authorized: This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Closed Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.**

**SEDC MEMORANDUM**

**SEDC**  
**Board Meeting:** 08/24/2023  
**Department:** Economic Development Corporation  
**Subject:** Approval of the minutes for the Board of Directors Regular Monthly Meeting held on Thursday, June 29, 2023. (T. Miller/S. Wayman)

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**BACKGROUND**

**COMMUNITY BENEFIT**

**FISCAL IMPACT**

**SUMMARY OF RECOMMENDED ACTION**

Approval of the minutes for the Board of Directors Regular Monthly Meeting held on Thursday, June 29, 2023.

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**Attachments**

06-29-2023 Minutes

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# SCHERTZ

ECONOMIC DEVELOPMENT CORPORATION

## MINUTES

Thursday, June 29, 2023

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The City of Schertz Economic Development Corporation (SEDC) Board of Directors met for a Regular Monthly Meeting on Thursday, June 29, 2023. at 6:00 p.m. at the Hal Baldwin Municipal Complex, Council Chambers Conference Room, Building No. 4, 1400 Schertz Parkway, Schertz, Texas. This was an open meeting, subject to the open meeting laws of the State of Texas.

### Call To Order

1. Roll call, recognition of visitors, and review of meeting instructions for effective Board interaction and public participation.

Board President Paul Macaluso presided over the meeting and called it to order at 6:00 p.m.

#### Board of Directors Present:

Paul Macaluso, Board President  
Sammi Morrill, Board Secretary  
Bryan Snowden, Treasurer  
Roy Richard, Board Member  
Bill Dixon, Board Member

#### Staff Present:

Scott Wayman, Executive Director  
Ashley Ritchey, Business Engagement Manager  
Tracy Miller, Administrative Assistant  
Brian James, Deputy City Manager  
John Nowak, Engineer

#### Board of Directors Absent:

Jesse Hamilton, Vice Present  
Mark Moody, Board Member

#### Others Present:

Tim Brown, Mayor Pro-Tem, City Council Liaison

### Hearing of Residents

2. *This time is set aside for any person who wishes to address the Board. Presentations should be limited to no more than 3 minutes. The presiding officer will call on those persons who have signed up to speak.*

No residents were present.

### Minutes

3. Approval of the minutes for the Board of Directors Regular Monthly Meetings held on Thursday, May 25, 2023. (T.Miller/S.Wayman)

Board President Macaluso asked for a motion to approve the Minutes of the Board of Directors Regular Monthly Meeting held on Thursday, May 25, 2023.

Moved by Board Member Roy Richard, seconded by Board Member Bill Dixon.

AYE: Board President Paul Macaluso, Board Secretary Sammi Morrill, Treasurer Bryan Snowden, Board Member Bill Dixon, Board Member Roy Richard.

## **Presentations**

4. Staff briefing on SEDC monthly financial statement for the month of May 2023. (J. Walters/S. Wayman)

Mr. Wayman provided an update on the financials for the month. May sales tax received was \$587,554, a 7.7% increase over the year prior. The 12-month rolling average is 10.3% still trending up. Notable expenditures include Town Creek Sewer Capacity and TxEDC Patron Investor. Total Cash & Investments figure at the end of May was \$29.1 million.

## **Discussion Items**

5. Discussion and direction concerning SEDC Res.No.2022-7 and Lookout Rd. design and engineering. (S. Wayman)

Mr. Wayman provided the history of SEDC Res. No. 2022-7 authorizing and approving up to \$770,000 for the design of the Lookout Road project. Mr. Wayman wanted to affirm the action that was taken by the Board at the September 2022 meeting to approve the design work.

The Board approved to go forward the project.

Board President Paul Macaluso recessed Open Session to Closed Session at 6:11 p.m.

## **Closed Session**

6. Called in accordance with Section 551.087 of the Texas Government Code, Deliberation Regarding Economic Development Negotiations; Closed Meeting. The governmental body is not required to conduct an open meeting (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) the deliberate the offer of a financial or other incentive to a business prospect.

- E-80
- E-81
- E-84

Start time: 6:12 p.m.

End time: 6:38 p.m.

Board President Paul Macaluso reconvened to open session at 6:38 p.m.

## **Reconvene to regular session**

No action was taken based on discussion in closed session.

7. Take any actions based on discussion held in closed session under Agenda Item No.6

No action was taken based on discussion in closed session.

## **Requests and Announcements**

- Announcements by staff:
  - Set date for Board Workshop - No date was set for Board Workshop
  - Ashley Ritchey update on Chicago Mission Trip with Team Texas - Ashley Ritchey gave an update on Team Texas trip.
  - Update on Breakfast Club presentation - Scott Wayman gave an update on the Breakfast Club meeting
  - Offices closed for 4th of July - July 3-4, 2023
  - Next Board Meeting - July 27, 2023

- Requests by Board Members to place items on a future SEDC Board Meeting agenda.
  - No request were made.

**Adjournment**

Board President Paul Macaluso adjourned the meeting at 6:43 p.m.

**MINUTES PASSED AND APPROVED THIS \_\_\_ DAY \_\_\_\_ 2023.**

\_\_\_\_\_  
Paul Macaluso  
Board President

\_\_\_\_\_  
Sammi Morrill  
Board Secretary

**SEDC MEMORANDUM**

**SEDC**  
**Board Meeting:** 08/24/2023  
**Department:** Economic Development Corporation  
**Subject:** Staff briefing on SEDC monthly financial statements for the months of June and July, 2023. (S. Wayman/J. Walters)

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**BACKGROUND**

Staff briefing on SEDC monthly financial statements for the months of June and July, 2023. (S. Wayman/J. Walters)

**COMMUNITY BENEFIT**

**FISCAL IMPACT**

**SUMMARY OF RECOMMENDED ACTION**

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**Attachments**

June Financials  
July Financials

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**CITY OF SCHERTZ**  
 REVENUE AND EXPENSE REPORT (UNAUDITED)  
 AS OF: JUNE 30th, 2023

\*\*\*\*\* 2022 - 2023 \*\*\*\*\*

**620-SED CORPORATION**  
 FINANCIAL SUMMARY

OVERVIEW

Revenues

Sales Tax	\$	567,014.80	Payment Received in June
		17.0%	Annual Increase
		9.5%	12-Month Rolling Average

Expenses

OnPeak - Conrad Hotel	\$	4,946.18
Catherine Collier	\$	1,640.00
RWLV - Conrad Hotel	\$	1,512.80
Hilton Grand Vacations	\$	1,101.70

Year-to-Date

Total Revenue	\$	5,775,865.90	
Total Expenses	\$	<u>829,366.39</u>	
Over/Under			<u>\$ 4,946,499.51</u>

Cash & Investments

Cash	\$	320,818.05	
Investments	\$	<u>29,491,609.05</u>	
Total			<u>\$ 29,812,427.10</u>

**CITY OF SCHERTZ**  
 REVENUE AND EXPENSE REPORT (UNAUDITED)  
 AS OF: JUNE 30th, 2023

<b>620-SED CORPORATION</b>	***** 2022-2023 *****						
<b>FINANCIAL SUMMARY</b>	CURRENT BUDGET	CURRENT PERIOD	PRIOR YEAR Y-T-D ACTUAL	CURRENT Y-T-D ACTUAL	Y-T-D ENCUMBR	BUDGET BALANCE	75% OF BUDGET
<b>REVENUE SUMMARY</b>							
Taxes	6,548,000	574,699.11	4,385,297.32	4,910,727.84	-	1,637,272.16	75.00%
Miscellaneous	182,000	116,348.17	72,808.89	865,138.06	-	(683,138.06)	475.35%
<b>TOTAL REVENUES</b>	<b>6,730,000</b>	<b>691,047.28</b>	<b>4,458,106.21</b>	<b>5,775,865.90</b>	<b>-</b>	<b>954,134.10</b>	<b>85.82%</b>
<b>EXPENDITURE SUMMARY</b>							
<b>NONDEPARTMENTAL</b>							
City Assistance	3,000,079	-	-	81,944.29	-	2,918,134.71	2.73%
Fund Charges/Transfer	5,750,000	-	-	-	-	5,750,000.00	0.00%
<b>TOTAL NONDEPARTMENTAL</b>	<b>8,750,079</b>	<b>-</b>	<b>-</b>	<b>81,944.29</b>	<b>-</b>	<b>8,668,134.71</b>	<b>0.94%</b>
<b>ECONOMIC DEVELOPMENT</b>							
Supplies	1,000	36.20	931.13	352.96	-	647.04	35.30%
City Support Services	20,000	2,066.01	3,969.77	8,742.53	96.12	11,161.35	44.19%
Utility Services	2,975	-	1,964.48	93.30	-	2,881.70	3.14%
Operations Support	437,610	11,042.22	138,376.87	98,158.83	9,558.55	329,892.62	24.61%
Staff Support	25,775	1,554.46	11,674.53	11,750.93	690.78	13,333.29	48.27%
City Assistance	205,000	-	-	42,115.94	-	162,884.06	20.54%
Professional Services	61,300	312.00	15,833.97	43,695.50	-	17,604.50	71.28%
Fund Charges/Transfers	542,221	-	506,984.00	542,221.00	-	-	100.00%
Operating Equipment	5,000	-	3,959.76	291.11	-	4,708.89	5.82%
<b>TOTAL ECONO DEVELOPMENT</b>	<b>1,300,881</b>	<b>15,010.89</b>	<b>683,694.51</b>	<b>747,422.10</b>	<b>10,345.45</b>	<b>543,113.45</b>	<b>58.25%</b>
<b>TOTAL EXPENDITURES</b>	<b>10,050,960</b>	<b>15,010.89</b>	<b>683,694.51</b>	<b>829,366.39</b>	<b>10,345.45</b>	<b>9,211,248.16</b>	<b>8.35%</b>
<b>** REVENUE OVER(UNDER) EXPEND</b>	<b>(3,320,960)</b>	<b>676,036.39</b>	<b>3,774,412</b>	<b>4,946,500</b>	<b>(10,345.45)</b>	<b>(8,257,114.06)</b>	

# CITY OF SCHERTZ

## REVENUE REPORT (UNAUDITED)

AS OF: JUNE 30th, 2023

		***** 2022-2023 *****						
<b>620-SED CORPORATION</b>		CURRENT	CURRENT	PRIOR YEAR	CURRENT	Y-T-D	BUDGET	75% OF
REVENUES		BUDGET	PERIOD	Y-T-D ACTUAL	Y-T-D ACTUAL	ENCUMBR	BALANCE	BUDGET
<u>Taxes</u>								
000-411500	Sales Tax Revenue (4B)	6,548,000	574,699.11	4,385,297.32	4,910,727.84	-	1,637,272.16	75.00%
<b>TOTAL Taxes</b>		<b>6,548,000</b>	<b>574,699.11</b>	<b>4,385,297.32</b>	<b>4,910,727.84</b>	<b>-</b>	<b>1,637,272.16</b>	<b>75.00%</b>
<u>Miscellaneous</u>								
000-491000	Interest Earned	2,000	321.70	535.42	8,339.18	-	(6,339.18)	416.96%
000-491200	Investment Earnings	180,000	116,026.47	72,273.47	856,798.88	-	(676,798.88)	476.00%
<b>TOTAL Miscellaneous</b>		<b>182,000</b>	<b>116,348.17</b>	<b>72,808.89</b>	<b>865,138.06</b>	<b>-</b>	<b>(683,138.06)</b>	<b>475.35%</b>
<b>TOTAL REVENUES</b>		<b>6,730,000</b>	<b>691,047.28</b>	<b>4,458,106.21</b>	<b>5,775,865.90</b>	<b>-</b>	<b>954,134.10</b>	<b>85.82%</b>

**SED CORPORATION**  
**CASH IN BANK AND INVESTMENTS**

AS OF: JUNE 30th, 2023

Cash in Bank

Claim on Operating Cash Pool-Checking	\$ 320,818.05
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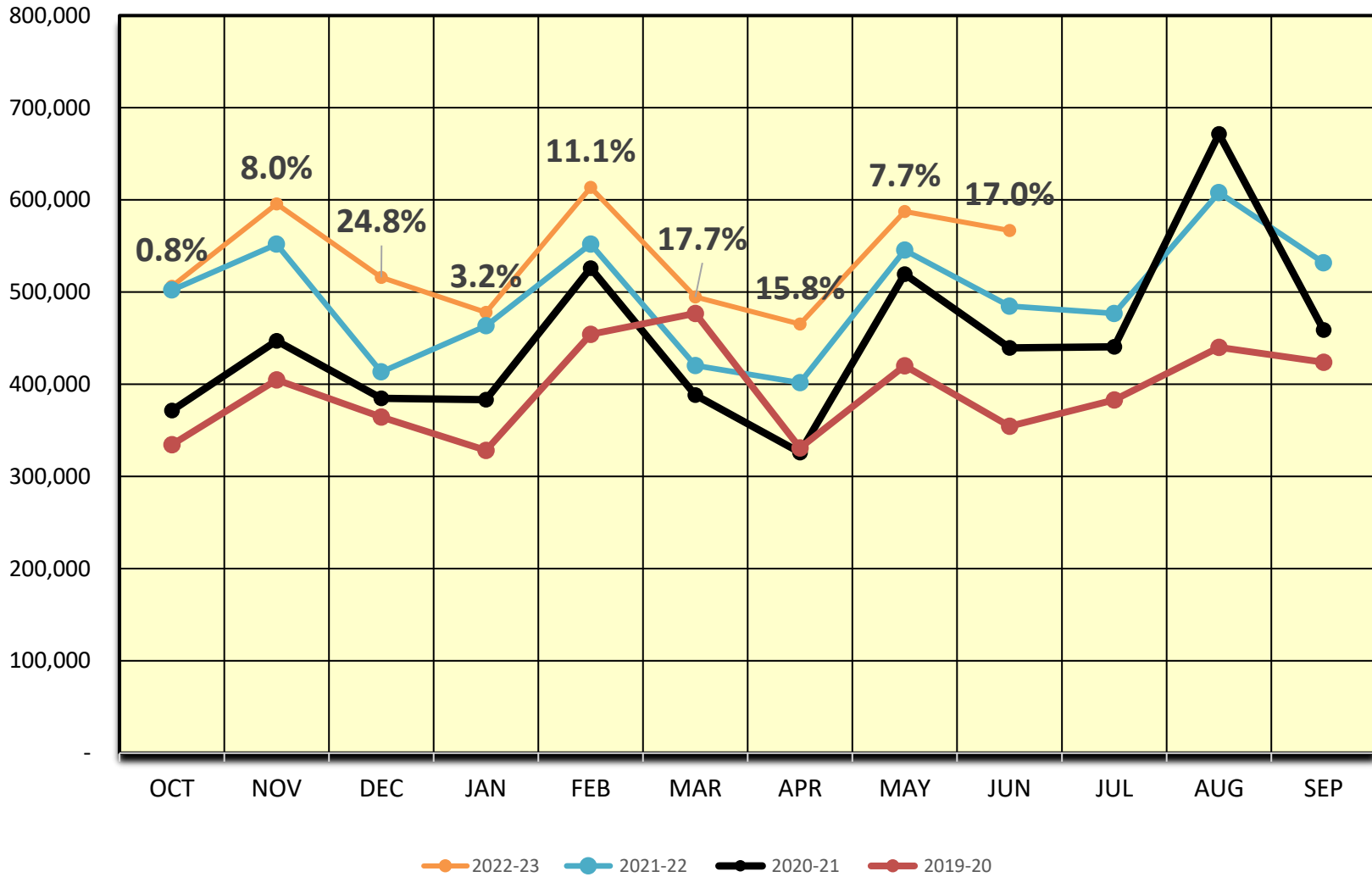
Cash in Investments

Texas Class Investment-Economic Development Corp	27,248,655.85
Schertz Bank & Trust-Certificate of Deposit	1,099,538.79
Schertz Bank & Trust-Certificate of Deposit	<u>1,143,414.41</u>

<b>Total Cash in Bank &amp; Investments</b>	<b><u>\$ 29,812,427.10</u></b>
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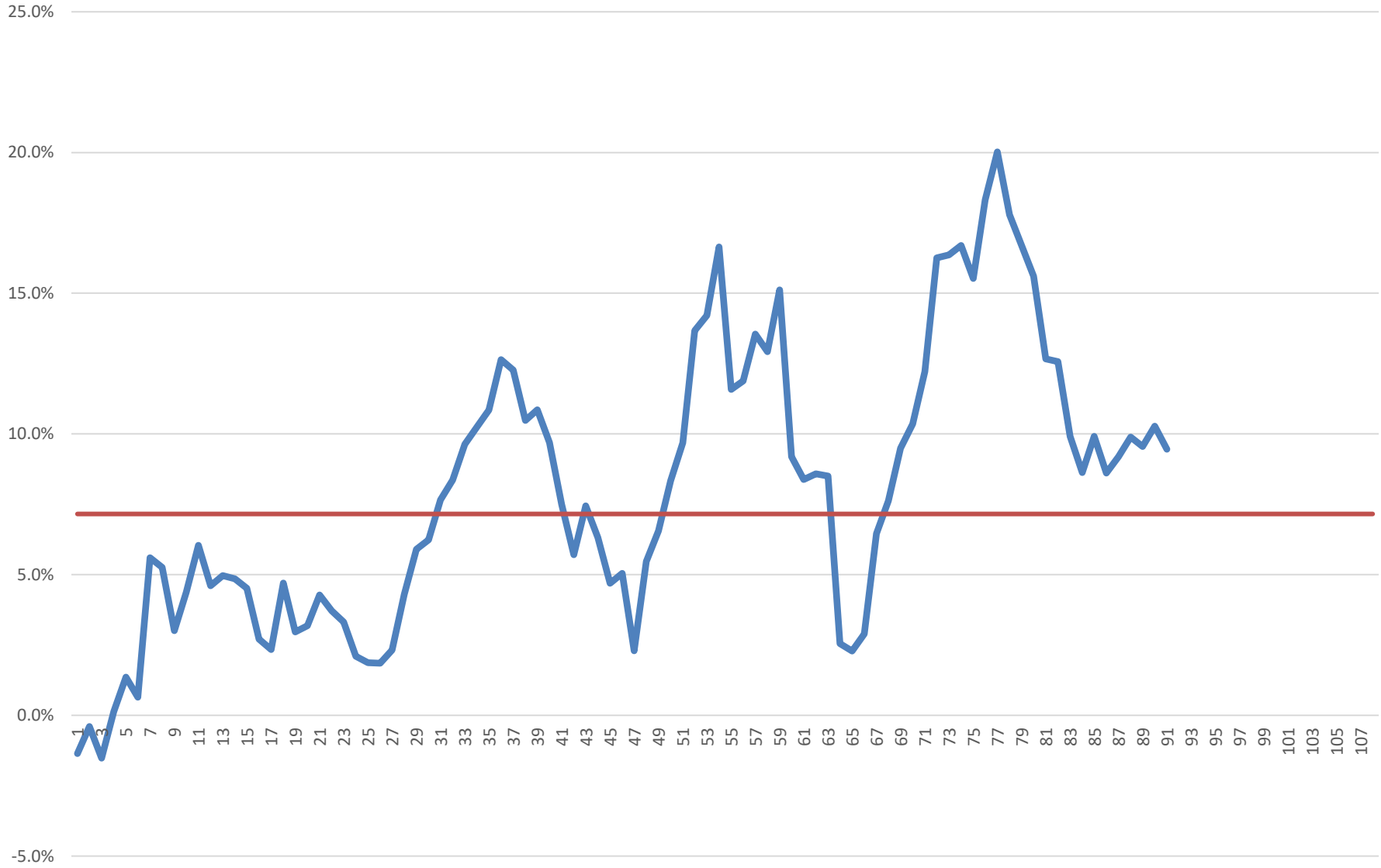
# 4B SALES TAX

## By Collection Month



# 12 Month Rolling Average Oct 2014 - Present

Rolling 12 Month Average      Long Term Average



**JUNE 2023 PAYABLES REPORT**

FUND	VENDOR NAME	DESCRIPTION	AMOUNT
Economic Development	SED CORPORATION	UBEO	Monthly Copier Charges 276.55
		ALLISON HEYWARD	Meals for ICSC 38.45
		CYNTHIA SIMMONS	NEP Luncheon - ED 40.00
		AMAZON CAPITAL SERVICES INC.	Promotional Items 64.25
		HOLLY MALISH	Per Diem-TEDC Conference 132.00
		SCOTT WAYMAN	Per Diem - Dallas 347.64
		PAUL MACALUSO	ICSC Transportation 84.30
		ASHLEY RITCHEY	Per Diem - Chicago 276.50
		CATHERINE COLLIER	Catherine Collier 1,640.00
		CITY OF CIBOLO	City of Cibolo 92.59
		DENTON, NAVARRO,	Legal Services May 2023 312.00
		CITIBANK	Cab Fare - S Williams 4.50
			SA Airport Parking 80.00
			Cab Fare - ICSC 38.09
			OnPeak - Conrad Hotel 4,946.18
			Southwest Airlines 813.91
			Hilton Grand Vacations 1,101.70
			RWLV - Conrad Hotel 1,512.80
			Meals 318.04
			Big Papas Pizza 68.00
			Walmart 239.47
			ICSC Transportation 121.04
			Mailchimp 42.11
			ICSC - Membership Dues 250.00
			ICSC-Las Vegas Registration 975.00
			Adobe 29.99
			Bisnow SA State of Market 125.00
			Houston St Parking Lot 32.48
			TEDC 425.00
			Las Pinchanchas #2 44.75
			SAMA Luncheon 50.00
			Dollar Tree 10.00
			City Tower Garage 2.00
			ICSC 125.00
			Subway 69.90
			Jimmy Johns 14.26
			Transportation Cost 4.50
			Hotel Paso Del Norte 269.08
		STEVE WILLIAMS	Reimbursement -9.19
		CITY OF SCHERTZ	Postage <u>3.00</u>
			<b>SUBTOTAL:</b> 15,010.89
			<b>TOTAL:</b> \$15,010.89

**CITY OF SCHERTZ**  
 REVENUE AND EXPENSE REPORT (UNAUDITED)  
 AS OF: JULY 31st, 2023

\*\*\*\*\* 2022 - 2023 \*\*\*\*\*

**620-SED CORPORATION**  
 FINANCIAL SUMMARY

OVERVIEW

Revenues

Sales Tax	\$	513,174.88	Payment Received in July
			7.6% Annual Increase
			9.4% 12-Month Rolling Average

Expenses

Licenses for Guru Prof	\$	6,270.00
Marketing Services	\$	6,000.00
Annual License-JOBS EQ	\$	5,000.00
Doubletree Chicago	\$	1,408.81

Year-to-Date

Total Revenue	\$	6,443,843.93	
Total Expenses	\$	<u>851,545.48</u>	
Over/Under			<u>\$ 5,592,298.45</u>

Cash & Investments

Cash	\$	314,972.93	
Investments	\$	<u>30,115,536.15</u>	
Total			<u>\$ 30,430,509.08</u>

**CITY OF SCHERTZ**  
**REVENUE AND EXPENSE REPORT (UNAUDITED)**  
AS OF: JULY 31st, 2023

<b>620-SED CORPORATION</b>	***** 2022-2023 *****						
<b>FINANCIAL SUMMARY</b>	CURRENT BUDGET	CURRENT PERIOD	PRIOR YEAR Y-T-D ACTUAL	CURRENT Y-T-D ACTUAL	Y-T-D ENCUMBR	BUDGET BALANCE	83.33% OF BUDGET
<b>REVENUE SUMMARY</b>							
Taxes	6,548,000	519,133.06	4,919,207.09	5,453,900.91	-	1,094,099.09	83.29%
Miscellaneous	182,000	124,804.96	103,604.84	989,943.02	-	(807,943.02)	543.92%
<b>TOTAL REVENUES</b>	<b>6,730,000</b>	<b>643,938.02</b>	<b>5,022,811.93</b>	<b>6,443,843.93</b>	<b>-</b>	<b>286,156.07</b>	<b>95.75%</b>
<b>EXPENDITURE SUMMARY</b>							
<b>NONDEPARTMENTAL</b>							
City Assistance	3,000,079	-	-	81,944.29	-	2,918,134.71	2.73%
Fund Charges/Transfer	5,750,000	-	-	-	-	5,750,000.00	0.00%
<b>TOTAL NONDEPARTMENTAL</b>	<b>8,750,079</b>	<b>-</b>	<b>-</b>	<b>81,944.29</b>	<b>-</b>	<b>8,668,134.71</b>	<b>0.94%</b>
<b>ECONOMIC DEVELOPMENT</b>							
Supplies	1,000	13.81	981.59	366.77	-	633.23	36.68%
City Support Services	20,000	89.00	3,990.43	8,831.53	1,975.82	9,192.65	54.04%
Utility Services	2,975	46.39	2,100.93	139.69	-	2,835.31	4.70%
Operations Support	437,610	20,598.89	143,187.91	118,757.72	2,203.00	316,649.28	27.64%
Staff Support	25,775	1,144.83	14,412.07	12,895.76	987.00	11,892.24	53.86%
City Assistance	205,000	-	-	42,115.94	-	162,884.06	20.54%
Professional Services	61,300	-	15,833.97	43,695.50	351.00	17,253.50	71.85%
Fund Charges/Transfers	542,221	-	506,984.00	542,221.00	-	-	100.00%
Operating Equipment	5,000	286.17	3,959.76	577.28	37.99	4,384.73	12.31%
<b>TOTAL ECONO DEVELOPMENT</b>	<b>1,300,881</b>	<b>22,179.09</b>	<b>691,450.66</b>	<b>769,601.19</b>	<b>5,554.81</b>	<b>525,725.00</b>	<b>59.59%</b>
<b>TOTAL EXPENDITURES</b>	<b>10,050,960</b>	<b>22,179.09</b>	<b>691,450.66</b>	<b>851,545.48</b>	<b>5,554.81</b>	<b>9,193,859.71</b>	<b>8.53%</b>
<b>** REVENUE OVER(UNDER) EXPEND</b>	<b>(3,320,960)</b>	<b>621,758.93</b>	<b>4,331,361</b>	<b>5,592,298</b>	<b>(5,554.81)</b>	<b>(8,907,703.64)</b>	

# CITY OF SCHERTZ

## REVENUE REPORT (UNAUDITED)

AS OF: JULY 31st, 2023

		***** 2022-2023 *****						
<b>620-SED CORPORATION</b>		CURRENT	CURRENT	PRIOR YEAR	CURRENT	Y-T-D	BUDGET	83.33% OF
REVENUES		BUDGET	PERIOD	Y-T-D ACTUAL	Y-T-D ACTUAL	ENCUMBR	BALANCE	BUDGET
<u>Taxes</u>								
000-411500	Sales Tax Revenue (4B)	6,548,000	519,133.06	4,919,207.09	5,453,900.91	-	1,094,099.09	83.29%
<b>TOTAL Taxes</b>		<b>6,548,000</b>	<b>519,133.06</b>	<b>4,919,207.09</b>	<b>5,453,900.91</b>	<b>-</b>	<b>1,094,099.09</b>	<b>83.29%</b>
<u>Miscellaneous</u>								
000-491000	Interest Earned	2,000	877.86	733.64	9,217.04	-	(7,217.04)	460.85%
000-491200	Investment Earnings	180,000	123,927.10	102,871.20	980,725.98	-	(800,725.98)	544.85%
<b>TOTAL Miscellaneous</b>		<b>182,000</b>	<b>124,804.96</b>	<b>103,604.84</b>	<b>989,943.02</b>	<b>-</b>	<b>(807,943.02)</b>	<b>543.92%</b>
<b>TOTAL REVENUES</b>		<b>6,730,000</b>	<b>643,938.02</b>	<b>5,022,811.93</b>	<b>6,443,843.93</b>	<b>-</b>	<b>286,156.07</b>	<b>95.75%</b>

**SED CORPORATION**  
**CASH IN BANK AND INVESTMENTS**

AS OF: JULY 31st, 2023

Cash in Bank

Claim on Operating Cash Pool-Checking	\$ 314,972.93
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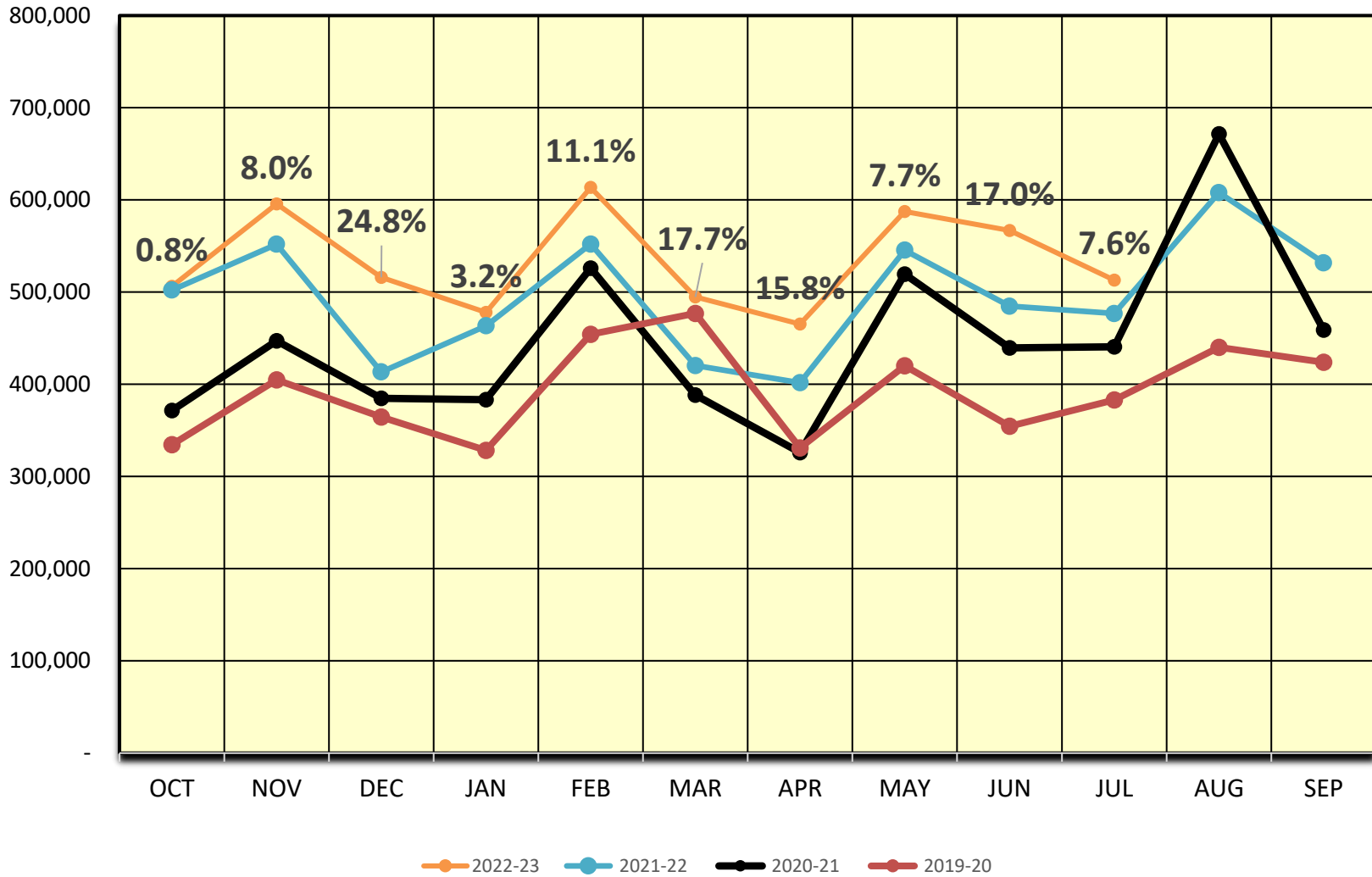
Cash in Investments

Texas Class Investment-Economic Development Corp	27,872,582.95
Schertz Bank & Trust-Certificate of Deposit	1,099,538.79
Schertz Bank & Trust-Certificate of Deposit	<u>1,143,414.41</u>

<b>Total Cash in Bank &amp; Investments</b>	<b><u>\$ 30,430,509.08</u></b>
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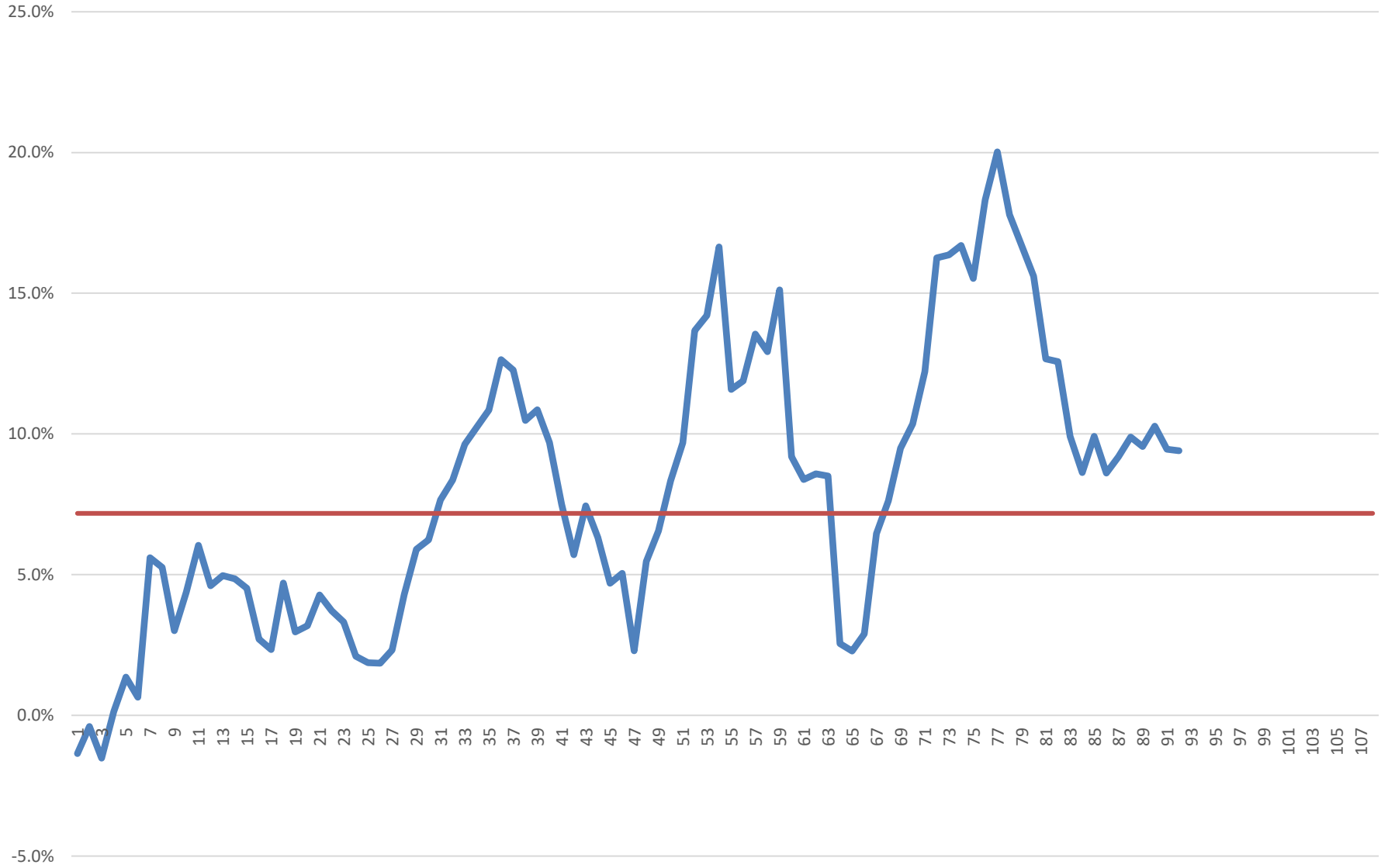
# 4B SALES TAX

## By Collection Month



# 12 Month Rolling Average Oct 2014 - Present

Rolling 12 Month Average    Long Term Average



**JULY 2023 PAYABLES REPORT**

FUND	VENDOR NAME	DESCRIPTION	AMOUNT
Economic Development	SED CORPORATION	UBEO	276.55
		CHMURA ECONOMICS	5,000.00
		WEX BANK	46.39
		AMAZON CAPITAL SERVICES INC.	286.17
			13.81
		THE RETAIL COACH, LLC	6,000.00
		HOLLY MALISH	569.65
		GIS WEBTECH LLC	6,270.00
		ANDREW TAYLOR VINCENT DBA	500.00
		ASHLEY RITCHEY	67.38
		CITIBANK	20.00
			51.25
			-42.27
			1,408.81
			-7.12
			12.00
			373.72
			10.66
			750.00
			119.05
			99.00
			42.11
			29.99
			50.54
			31.87
			99.00
			96.12
	CITY OF SCHERTZ		<u>4.41</u>
			22,179.09
		<b>SUBTOTAL:</b>	22,179.09
		<b>TOTAL:</b>	\$22,179.09

**SEDC MEMORANDUM**

**SEDC Board Meeting:** 08/24/2023  
**Department:** Economic Development Corporation  
**Subject:** Resolution 2023-9 - Briefing and possible action on recommending approval by the City Council for the proposed Schertz Economic Development Corporation FY 2023-24 Budget and Reserves. (S. Wayman)

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**BACKGROUND**

Typically the budget is presented during the month of June or July. With July meeting's postponement, we are providing the presentation today with the findings and presentation from staff. Pending no urgent modifications from the board, the budget will accompany the city's budget on the evening of September 5th.

Our SEDC Bylaws state that, "Prior to the commencement of each fiscal year of the corporation the board shall adopt a proposed budget and expected revenues from sources set out in Section 4.5 of this article and proposed expenditures for the next ensuing fiscal year. The budget shall contain such classifications and shall be in such form as may be prescribed from time to time by council. The budget shall not be effective until it has been approved by the council."

**COMMUNITY BENEFIT**

**FISCAL IMPACT**

Presented this evening will be a budget not unlike the budget we are currently working under. We have adjusted our Total Revenue because of increased tax receipts and interest gained on the funding that we have currently.

Our overall revenue from sales taxes were raised 15% this year to \$7,540,000. Accordingly, our Miscellaneous revenues which is primarily our interest off of our investment portfolio also increased dramatically to \$1,315,000. Together this makes our total projected revenues for next fiscal year \$8,855,000.

Some of the projects we see revenues going towards this coming year are a final phase for Schertz 312. Ace Mart, Sysco, and Caterpillar. Performance Agreements are in place for all of these and we anticipate the funding being provided this year. There are other projects underway, but most of our money paid out are operational grants when they complete their development and get certificates of occupancy, or when they are assessed their taxes during the next year. These projects are underway and if we do choose to enter into a performance agreement with them, it is likely we won't see the impact in the coming year.

Everything else is business as usual. Personnel costs will follow the city's lead this year. Most everything else, Advertising, Marketing, Utility services, Support services, Professional fees have all stayed pretty constant.

**SUMMARY OF RECOMMENDED ACTION**

Recommend the SEDC Board pass Resolution 2023-9 providing a recommendation to the City Council for the SEDC Fiscal Year 2023-24 Budget.

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**Attachments**

Res. 2023-9

FY 2023-2024 Budget

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**SEDC RESOLUTION NO. 2023-9**

**A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION, TEXAS PROVIDING A RECOMMENDATION TO THE CITY COUNCIL FOR THE SEDC FISCAL YEAR 2023-24 BUDGET, 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, according to the Act, the authorizing unit for the SEDC shall mean the City of Schertz City Council (“City Council”); and

WHEREAS, all of the powers of the SEDC are vested in the SEDC Board of Directors (the “Board”) appointed by the City Council; and

WHEREAS, Section 501.073 of the Act requires the City Council to approve all programs and expenditures.

WHEREAS, the Executive Director of the SEDC submitted a budget proposal, hereto attached as Exhibit A, and in said budget proposal set forth the established revenues and expenditures and made the detailed classifications as required by the Act; and

WHEREAS, after consideration, the Board is of the opinion that the proposed budget should be submitted to the City Council for approval and adoption.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION THAT:

Section 1. The Board hereby recommends the City Council consider approving the SEDC Fiscal Year 2023-24 Budget in substantially the form set forth on Exhibit A.

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 Board.

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 \_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF SCHERTZ ECONOMIC  
DEVELOPMENT CORPORATION

\_\_\_\_\_  
Paul Macaluso, SEDC Board President

ATTEST:

\_\_\_\_\_  
Sammi Morrill, SEDC Board Secretary

**EXHIBIT A**

**SEDC FISCAL YEAR 2023-24 BUDGET**

## ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT	2020-21 Actual	2021-22 Actual	2022-23 Estimate	2023-24 Budget
Executive Director	1	1	1	1
Deputy Director (reclassified Analyst position 2021)	0	1	1	1
Economic Development Analyst	1	0	0	0
Business Retention Manager	1	1	1	1
Executive Assistant	1	1	1	1
<b>TOTAL POSITIONS</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>

## PERFORMANCE INDICATORS

Workload/Output	2020-21 Actual	2021-22 Actual	2022-23 Estimate	2023-24 Budget
Number of inquiries	94	121	155	164
Number of Schertz BRE visits	7	18	40	21
Number of recruitment events	6	8	12	14
Number of new prospects	15	35	45	43
Number of active performance agreements	14	15	18	17

Budget	2020-21 Actual	2021-22 Actual	2022-23 Estimate	2023-24 Budget
<i>Revenue</i>				
Taxes	\$5,615,928	\$6,025,703	\$6,650,000	\$7,092,000
Miscellaneous	56,144	201,279	1,042,500	1,315,000
<i>Total</i>	<b>\$5,672,073</b>	<b>\$6,226,982</b>	<b>\$7,692,500</b>	<b>\$8,407,000</b>
<i>Expenses</i>				
Supplies	\$577	\$1,011	\$600	\$1,000

## ECONOMIC DEVELOPMENT

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City Support Services	3,322	7,311	19,834	21,200
Utility Services	1,836	2,212	2,600	975
Operations Support	68,826	186,417	362,410	441,610
Staff Support	7,077	21,350	24,150	24,575
City Assistance	0	0	203,000	205,000
Professional Services	21,267	20,752	61,000	61,300
Fund Charges/Transfers	504,669	506,984	542,221	546,883
Operating Equipment	2,508	4,047	4,000	5,000
<i>Total Economic Development</i>	<i>\$610,082</i>	<i>\$750,084</i>	<i>\$1,219,815</i>	<i>\$1,307,543</i>
<i>Annual and Infrastructure Grants</i>	<i>\$4,274,385</i>	<i>\$1,240,000</i>	<i>\$8,750,079</i>	<i>\$11,677,510</i>
<i>Total Schertz Economic Development</i>	<i>\$4,884,467</i>	<i>\$1,990,084</i>	<i>\$9,969,894</i>	<i>\$12,985,053</i>
<i>Over/-Under</i>	<i>\$787,606</i>	<i>\$4,236,898</i>	<i>-\$2,277,394</i>	<i>-\$4,578,053</i>

## PROGRAM JUSTIFICATION AND ANALYSIS

**Revenues:** The SEDC receives one-half of one percent of all sales and use tax generated within the City of Schertz. The revenue for FY 2023-24 is projected to increase by 9.3% from the FY 2022-23 year-end estimate. The increase is reflective of an increase in sales tax revenue of 7% and additional Investment Income makes up the remainder.

**Expenses:** The SEDC funds are restricted to those expenses authorized by the Texas Local Government Code sections 501 and 505. The expenses for FY 2023-24 are projected to increase 7.2% to utilize the maximum allowed Marketing and Promotion dollars. Unspent Marketing and Promotion dollars may be carried forward per State statute for Marketing and Promotion purposes.

**Project Expenses:** The SEDC is funding improvements to Lookout Rd, signalization, and upsizing of wastewater facilities in FY 2023-24.

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CITY OF SCHERTZ  
 PROPOSED BUDGET WORKSHEET  
 AS OF: JULY 31ST, 2023

620-SED CORPORATION

FINANCIAL SUMMARY

	(----- 2022-2023 -----) (----- 2023-2024 -----)						
	2020-2021	2021-2022	CURRENT	Y-T-D	PROJECTED	CITY ADMIN.	ADOPTED
	ACTUAL	ACTUAL	BUDGET	ACTUAL	YEAR END	RECOMMENDED	BUDGET
<u>REVENUE SUMMARY</u>							
Taxes	5,615,928	6,025,703	6,548,000	5,453,901	6,650,000	7,092,000	=====
Fund Transfers	0	0	3,320,960	0	0	0	=====
Miscellaneous	<u>56,144</u>	<u>201,279</u>	<u>182,000</u>	<u>866,016</u>	<u>1,042,500</u>	<u>1,315,000</u>	=====
TOTAL REVENUES	5,672,073	6,226,982	10,050,960	6,319,917	7,692,500	8,407,000	
<u>EXPENDITURE SUMMARY</u>							
<u>GENERAL GOVERNMENT</u>							
NON DEPARTMENTAL	<u>4,274,385</u>	<u>1,240,000</u>	<u>8,750,079</u>	<u>81,944</u>	<u>8,750,079</u>	<u>11,677,510</u>	=====
TOTAL GENERAL GOVERNMENT	4,274,385	1,240,000	8,750,079	81,944	8,750,079	11,677,510	
<u>MISC &amp; PROJECTS</u>							
ECONOMIC DEVELOPMENT	<u>610,082</u>	<u>750,084</u>	<u>1,300,881</u>	<u>769,601</u>	<u>1,219,815</u>	<u>1,307,543</u>	=====
TOTAL MISC & PROJECTS	<u>610,082</u>	<u>750,084</u>	<u>1,300,881</u>	<u>769,601</u>	<u>1,219,815</u>	<u>1,307,543</u>	=====
TOTAL EXPENDITURES	4,884,467	1,990,084	10,050,960	851,545	9,969,894	12,985,053	
REVENUE OVER/(UNDER) EXPENDITURES	<u>787,606</u>	<u>4,236,898</u>	<u>0</u>	<u>5,468,371</u>	<u>( 2,277,394)</u>	<u>( 4,578,053)</u>	=====

CITY OF SCHERTZ  
 PROPOSED BUDGET WORKSHEET  
 AS OF: JULY 31ST, 2023

620-SED CORPORATION

REVENUES

	(----- 2022-2023 -----)				(----- 2023-2024 -----)		
	2020-2021	2021-2022	CURRENT	Y-T-D	PROJECTED	CITY ADMIN.	ADOPTED
	ACTUAL	ACTUAL	BUDGET	ACTUAL	YEAR END	RECOMMENDED	BUDGET
<b>Taxes</b>							
000-411500 Sales Tax Revenue (4B)	<u>5,615,928</u>	<u>6,025,703</u>	<u>6,548,000</u>	<u>5,453,901</u>	<u>6,650,000</u>	<u>7,092,000</u>	=====
TOTAL Taxes	5,615,928	6,025,703	6,548,000	5,453,901	6,650,000	7,092,000	
<b>Fund Transfers</b>							
000-486010 Transfer In-Reserves	<u>0</u>	<u>0</u>	<u>3,320,960</u>	<u>0</u>	<u>0</u>	<u>0</u>	=====
TOTAL Fund Transfers	0	0	3,320,960	0	0	0	
<b>Miscellaneous</b>							
000-491000 Interest Earned-Bank	431	1,438	2,000	9,217	12,500	15,000	=====
000-491200 Investment Income	<u>55,713</u>	<u>199,841</u>	<u>180,000</u>	<u>856,799</u>	<u>1,030,000</u>	<u>1,300,000</u>	=====
TOTAL Miscellaneous	<u>56,144</u>	<u>201,279</u>	<u>182,000</u>	<u>866,016</u>	<u>1,042,500</u>	<u>1,315,000</u>	=====
TOTAL REVENUES	<u>5,672,073</u>	<u>6,226,982</u>	<u>10,050,960</u>	<u>6,319,917</u>	<u>7,692,500</u>	<u>8,407,000</u>	=====

620-SED CORPORATION

GENERAL GOVERNMENT  
 EXPENDITURES

	2020-2021 ACTUAL	2021-2022 ACTUAL	2022-2023			2023-2024	
			CURRENT BUDGET	Y-T-D ACTUAL	PROJECTED YEAR END	CITY ADMIN. RECOMMENDED	ADOPTED BUDGET
<b>NON DEPARTMENTAL</b>							
=====							
Supplies							
Utility Services							
Operations Support							
City Assistance							
101-537600 Development Incentive Fund	224,385	0	3,000,079	81,944	3,000,079	3,027,510	
TOTAL City Assistance	224,385	0	3,000,079	81,944	3,000,079	3,027,510	
Professional Services							
Fund Charges/Transfers							
101-548000 Contributions	4,050,000	1,240,000	5,750,000	0	5,750,000	8,650,000	
TOTAL Fund Charges/Transfers	4,050,000	1,240,000	5,750,000	0	5,750,000	8,650,000	
Maintenance Services							
Debt Service							
Rental/Leasing							
Operating Equipment							
Capital Outlay							
<b>TOTAL NON DEPARTMENTAL</b>	<b>4,274,385</b>	<b>1,240,000</b>	<b>8,750,079</b>	<b>81,944</b>	<b>8,750,079</b>	<b>11,677,510</b>	

620-SED CORPORATION

GENERAL GOVERNMENT  
 EXPENDITURES

	2020-2021 ACTUAL	2021-2022 ACTUAL	2022-2023		2023-2024		
			CURRENT BUDGET	Y-T-D ACTUAL	PROJECTED YEAR END	CITY ADMIN. RECOMMENDED	ADOPTED BUDGET
BUILDING 6-8 MAINTENANCE =====							
<u>Personnel Services</u>							
<u>Supplies</u>							
<u>City Support Services</u>							
<u>Utility Services</u>							
<u>Operations Support</u>							
<u>Staff Support</u>							
<u>Professional Services</u>							
TOTAL GENERAL GOVERNMENT	4,274,385	1,240,000	8,750,079	81,944	8,750,079	11,677,510	



CITY OF SCHERTZ  
 PROPOSED BUDGET WORKSHEET  
 AS OF: JULY 31ST, 2023

620-SED CORPORATION

MISC & PROJECTS

EXPENDITURES (----- 2022-2023 -----) (----- 2023-2024 -----)

	2020-2021 ACTUAL	2021-2022 ACTUAL	CURRENT BUDGET	Y-T-D ACTUAL	PROJECTED YEAR END	CITY ADMIN. RECOMMENDED	ADOPTED BUDGET
<b>ECONOMIC DEVELOPMENT</b>							
<b>Personnel Services</b>							
<b>Supplies</b>							
966-521100 Office Supplies	577	1,011	1,000	367	600	1,000	
TOTAL Supplies	577	1,011	1,000	367	600	1,000	
<b>Human Services</b>							
<b>City Support Services</b>							
966-532500 City Insurance-Commercial	1,469	1,461	1,700	1,534	1,534	1,700	
966-532800 Promotional Events	1,853	5,850	9,500	7,297	9,500	9,500	
966-532900 Contingencies	0	0	8,800	0	8,800	10,000	
TOTAL City Support Services	3,322	7,311	20,000	8,832	19,834	21,200	
<b>Utility Services</b>							
966-533310 Telephone/Cell Phones	1,660	1,780	2,000	0	2,000	0	
966-533500 Vehicle Fuel	119	432	750	91	400	750	
966-533550 Vehicle Maintenance	57	0	225	49	200	225	
TOTAL Utility Services	1,836	2,212	2,975	140	2,600	975	
<b>Operations Support</b>							
966-534000 Postage	75	71	500	19	100	500	
966-534100 Advertising	5,718	77,076	315,850	37,120	240,000	315,850	
966-534105 Goodwill	995	1,795	1,750	1,461	1,750	1,750	
966-534190 Recruitment Events	13,484	27,963	35,000	23,548	35,000	35,000	
966-534200 Printing & Binding	1,054	878	1,500	43	1,500	1,500	
966-534300 Equipment Maintenance-Copier	3,323	3,448	3,500	2,212	4,000	3,500	
966-534400 Computer Licenses-Software	29,903	45,802	50,675	30,769	50,675	54,675	
966-534500 Memberships-Organization	14,275	29,385	28,835	23,585	29,385	28,835	
TOTAL Operations Support	68,826	186,417	437,610	118,758	362,410	441,610	
<b>Staff Support</b>							
966-535100 Uniforms	643	676	800	345	300	800	
966-535210 Employee Recognition-Morale	1,514	547	1,800	896	950	600	
966-535300 Memberships-Staff Support	0	0	2,525	1,775	2,250	2,525	
966-535400 Publications	230	0	800	43	800	800	
966-535500 Training/Travel	2,413	16,269	12,000	6,295	12,000	12,000	
966-535510 Meeting Expenses-EDC Board	2,278	3,858	7,850	3,542	7,850	7,850	
TOTAL Staff Support	7,077	21,350	25,775	12,896	24,150	24,575	

CITY OF SCHERTZ  
 PROPOSED BUDGET WORKSHEET  
 AS OF: JULY 31ST, 2023

620-SED CORPORATION

MISC & PROJECTS  
 EXPENDITURES

			(----- 2022-2023 -----)			(----- 2023-2024 -----)	
	2020-2021	2021-2022	CURRENT	Y-T-D	PROJECTED	CITY ADMIN.	ADOPTED
	ACTUAL	ACTUAL	BUDGET	ACTUAL	YEAR END	RECOMMENDED	BUDGET
<u>City Assistance</u>							
966-537615 Small Business Grant Fund	0	0	200,000	40,000	200,000	200,000	
966-537650 Prospect Services	<u>0</u>	<u>0</u>	<u>5,000</u>	<u>2,116</u>	<u>3,000</u>	<u>5,000</u>	
TOTAL City Assistance	0	0	205,000	42,116	203,000	205,000	
<u>Professional Services</u>							
966-541200 Legal Svcs	12,920	9,770	15,000	6,396	15,000	15,000	
966-541400 Auditor/Accounting Service	6,000	6,000	6,300	6,000	6,000	6,300	
966-541450 Consulting Services	<u>2,348</u>	<u>4,982</u>	<u>40,000</u>	<u>31,300</u>	<u>40,000</u>	<u>40,000</u>	
TOTAL Professional Services	21,267	20,752	61,300	43,696	61,000	61,300	
<u>Fund Charges/Transfers</u>							
966-548600 Interfund Charges-Admin	<u>504,669</u>	<u>506,984</u>	<u>542,221</u>	<u>542,221</u>	<u>542,221</u>	<u>546,883</u>	
TOTAL Fund Charges/Transfers	504,669	506,984	542,221	542,221	542,221	546,883	
<u>Fund Replenish</u>							
<u>Maintenance Services</u>							
<u>Debt Service</u>							
<u>Operating Equipment</u>							
966-571100 Furniture & Fixtures	2,145	2,180	2,500	537	2,000	2,500	
966-571300 Computer & Periphe < \$5000	<u>362</u>	<u>1,867</u>	<u>2,500</u>	<u>40</u>	<u>2,000</u>	<u>2,500</u>	
TOTAL Operating Equipment	2,508	4,047	5,000	577	4,000	5,000	
<u>Capital Outlay</u>							
TOTAL ECONOMIC DEVELOPMENT	610,082	750,084	1,300,881	769,601	1,219,815	1,307,543	

620-SED CORPORATION

MISC & PROJECTS  
EXPENDITURES

(----- 2022-2023 -----) (----- 2023-2024 -----)

2020-2021 ACTUAL	2021-2022 ACTUAL	CURRENT BUDGET	Y-T-D ACTUAL	PROJECTED YEAR END	CITY ADMIN. RECOMMENDED	ADOPTED BUDGET
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PUB SAFETY PARKING AREA  
=====

Capital Outlay

CITY OF SCHERTZ  
PROPOSED BUDGET WORKSHEET  
AS OF: JULY 31ST, 2023

620-SED CORPORATION

MISC & PROJECTS  
EXPENDITURES

(----- 2022-2023 -----) (----- 2023-2024 -----)

2020-2021 ACTUAL	2021-2022 ACTUAL	CURRENT BUDGET	Y-T-D ACTUAL	PROJECTED YEAR END	CITY ADMIN. RECOMMENDED	ADOPTED BUDGET
---------------------	---------------------	-------------------	-----------------	-----------------------	----------------------------	-------------------

FOUR OAKS LANE  
=====

Professional Services

CITY OF SCHERTZ  
PROPOSED BUDGET WORKSHEET  
AS OF: JULY 31ST, 2023

620-SED CORPORATION

MISC & PROJECTS  
EXPENDITURES

			(----- 2022-2023 -----)			(----- 2023-2024 -----)	
	2020-2021 ACTUAL	2021-2022 ACTUAL	CURRENT BUDGET	Y-T-D ACTUAL	PROJECTED YEAR END	CITY ADMIN. RECOMMENDED	ADOPTED BUDGET
ENTERPRISE PARK PROJECT =====							
Professional Services							
Fund Charges/Transfers							

620-SED CORPORATION

MISC & PROJECTS  
EXPENDITURES

	(----- 2022-2023 -----)				(----- 2023-2024 -----)	
2020-2021 ACTUAL	2021-2022 ACTUAL	CURRENT BUDGET	Y-T-D ACTUAL	PROJECTED YEAR END	CITY ADMIN. RECOMMENDED	ADOPTED BUDGET

PD SAFETY GLASS PROJECT  
=====

Maintenance Services

CITY OF SCHEERTZ  
PROPOSED BUDGET WORKSHEET  
AS OF: JULY 31ST, 2023

620-SED CORPORATION

MISC & PROJECTS  
EXPENDITURES

2020-2021 ACTUAL	2021-2022 ACTUAL	2022-2023			2023-2024	
		CURRENT BUDGET	Y-T-D ACTUAL	PROJECTED YEAR END	CITY ADMIN. RECOMMENDED	ADOPTED BUDGET

FM3009 RD&BRIDGE EXPNSN  
=====

Maintenance Services

CITY OF SCHERTZ  
PROPOSED BUDGET WORKSHEET  
AS OF: JULY 31ST, 2023

620-SED CORPORATION

MISC & PROJECTS

EXPENDITURES

			(----- 2022-2023 -----)		(----- 2023-2024 -----)		
	2020-2021 ACTUAL	2021-2022 ACTUAL	CURRENT BUDGET	Y-T-D ACTUAL	PROJECTED YEAR END	CITY ADMIN. RECOMMENDED	ADOPTED BUDGET
SCHWAB RD PROJECT =====							
Maintenance Services							
TOTAL MISC & PROJECTS	610,082	750,084	1,300,881	769,601	1,219,815	1,307,543	
TOTAL EXPENDITURES	4,884,467 =====	1,990,084 =====	10,050,960 =====	851,545 =====	9,969,894 =====	12,985,053 =====	=====

**SEDC MEMORANDUM**

**SEDC Board Meeting:** 08/24/2023  
**Department:** Economic Development Corporation  
**Subject:** Resolution 2023-6 - Discussion and possible action on authorizing the funding for I-35 NEX Project: Schertz Parkway Bridge Signage. (S. Wayman)

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**BACKGROUND**

In December of 2022, when anticipating the 2023 budget, this item was brought to the SEDC Board for discussion. The SEDC has provided discussion that they would like to look at this project, and the item was budgeted in the marketing fund for \$40,000. The attached supporting information shows, however, that the cost of the project is much more than anticipated.

There was much discussion at Staff Level about the options for which to choose. As a result, the Recessed Letters in Raised Concrete Portions at the Rail is the option chosen by staff. There are several similar samples on IH 35 in the Kyle area and staff really liked the appearance of that example.

In addition, TXDOT estimates 10% for the cost of lane closure. This will be a third-party contractor who will be selected by TXDOT and this amount will be finalized at the time of the project. SEDC staff are asking for an amount not to exceed \$145,000 and this funding will come from the SEDC Marketing and Promotional Account. This account has \$254,000 existing and is only 24% spent for the year.

**COMMUNITY BENEFIT**

**FISCAL IMPACT**

SEDC FY 2022-2023 Adopted Annual Budget has Marketing and Promotional accounts of \$315,850. At current, they have \$254,000 remaining which is 76% remaining with only 25% left of the fiscal year.

**SUMMARY OF RECOMMENDED ACTION**

Staff recommends approval of attached SEDC Resolution 2023-06.

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**Attachments**

Res. 2023-6

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**SEDC RESOLUTION NO. 2023-6**

**A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION, TEXAS AUTHORIZING THE FUNDING FOR I-35 NEX PROJECT: SCHERTZ PARKWAY BRIDGE SIGNAGE; AND OTHER MATTERS IN CONNECTION**

**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

**WHEREAS**, Section.505.103 authorizes Type B corporations to spend funding not to exceed 10% of the corporate revenues for promotional purposes; and

**WHEREAS**, the Board hereby finds that the expenditure of promotional funds in support of the City of Schertz’s branding efforts reflected in the Schertz Parkway Bridge Signage as component of the Texas Department of Transportation’s Northeast Expansion Project is an authorized expenditure; and,

**WHEREAS**, the Board hereby finds that the role of a funding partner to the City of Schertz is the most appropriate role and use of SEDC financial resources and personnel time; 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;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION THAT:**

**Section 1.** The Board hereby recommends the approval of Funding to the City of Schertz, not to exceed \$145,000, as a promotional expenditure in support of the Schertz Parkway Bridge Signage component of the Texas Department of Transportation’s Northeast Expansion Project. (I35 NEX)

**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 Board.

**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 \_\_\_ day of \_\_\_\_\_, 2023.**

**CITY OF SCHERTZ ECONOMIC  
DEVELOPMENT CORPORATION**

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**Paul Macaluso, SEDC Board President**

**ATTEST:**

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**Sammi Morrill, SEDC Board Secretary**

**SEDC MEMORANDUM**

**SEDC Board Meeting:** 08/24/2023  
**Department:** Economic Development Corporation  
**Subject:** Resolution 2023-7 - Discussion and action on authorizing an amendment to the Performance Agreement Schertz 312 Phase I, Titan, Schertz 35 Business Park, located on Tejas Way south of Doerr Ln. (S. Wayman)

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**BACKGROUND**

In May 2018, the City of Schertz Economic Development Corporation ("SEDC") approved an Economic Development Performance Agreement (the "Agreement") with Schertz 312 LLC ("Schertz 312"). Under the Agreement, Schertz 312 agreed to construct infrastructure improvements necessary for a future million square foot user. In consideration, the SEDC agreed to provide up to \$4 million for the actual costs associated with the infrastructure. Since that time, the SEDC, approved by council, has provided four amendments. Amendments in February 2019, July 2019, April 2020, and August 2020 have all made substantive changes to the requirements to this agreement.

The substantive change to the agreement request deals with the requirement of the development reserving the northernmost property in the development for a 1 million square foot user. They are requesting for the requirement for reserving the unit as well as the requirement for a 1 million square foot user and allowing for the aggregate of the development to be 1 million square total. They are asking that their restrictive covenants be filed to reflect this as well as the maintaining of the Capital Recovery fees for the development. The SEDC board contemplated the request for the capital recovery fee.

**COMMUNITY BENEFIT**

Titan has a large presence in the city already. They have an attractive development that provides us with numerous jobs as well as property taxes. The roadway that was provided as part of this Phase I is a good looking roadway with sidewalks, curb and gutter and has held up very nicely in spite of not being used extensively.

**FISCAL IMPACT**

This allowance for the amendment will allow the developer to continue planning and constructing the development.

**SUMMARY OF RECOMMENDED ACTION**

On August 24, 2023, the SEDC Board of Directors will vote unanimously to approve the SEDC Resolution No. 2023-7 - authorizing the Fifth Amendment to the Development Performance Agreement with Schertz 312 LLC.

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**Attachments**

Res. 2023-7

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## **SEDC RESOLUTION 2023-7**

### **A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION, AUTHORIZING THE FIFTH AMENDMENT TO THE ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT BETWEEN THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION AND WITH SCHERTZ 312; 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 powers of the corporation are vested in the SEDC Board of Directors (the “Board”) appointed by the governing body of the corporation’s authorizing unity; 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, The Parties entered into that Economic Development Performance agreement – Schertz 312 dated May 7, 2018, amended by that First Amendment to Economic Development Performance Agreement – Schertz 312 dated February 28, 2019, as amended by that Second Amendment to Economic Development Performance Agreement – Schertz 312 dated July 25, 2019, as amended by that Third Amendment to Economic Development Performance Agreement – Schertz 312 dated April 23, 2020, as amended by that Letter Agreement dated August 10, 2020 (collectively, the “Agreement”) for the purpose of, and for such terms and conditions, as set forth therein;

WHEREAS, the Agreement provides that Schertz 312 received FOUR MILLION DOLLARS (\$4,000,000) for infrastructure; and

WHEREAS, the Parties desire to amend the Agreement; and

WHEREAS, Section 501.073 of the Act requires the SEDC’s authorizing unit to approve all programs and expenditures, City Council had previously authorized this expenditure.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION THAT:

Section 1. The Schertz Economic Development Board hereby approve the Economic Development Performance Agreement amendment 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 Board.

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 \_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF SCHERTZ ECONOMIC  
DEVELOPMENT CORPORATION

\_\_\_\_\_  
Paul Macaluso, SEDC Board President

ATTEST:

\_\_\_\_\_  
Sammi Morrill, SEDC Board Secretary

## **EXHIBIT A**

### **FIFTH AMENDMENT TO THE ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT SCHERTZ 312**

THIS FIFTH AMENDMENT TO ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT – SCHERTZ 312 (“Fifth Amendment”) is entered into this \_\_\_\_ day of January, 2023 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 (“Corporation”) created by, and for the benefit of the City of Schertz, Texas (“City”) and Schertz 312, LLC, a Texas limited liability company, its successors or assigns (“Schertz 312”), the Corporation and Schertz 312 collectively known as the “Parties” to this Agreement.

**WHEREAS**, The Parties entered into that Economic Development Performance Agreement – Schertz 312 dated May 7, 2018, as amended by that First Amendment to Economic Development Performance Agreement – Schertz 312 dated February 28, 2019, as amended by that Second Amendment to Economic Development Performance Agreement – Schertz 312 dated July 25, 2019, as amended by that Third Amendment to Economic Development Performance Agreement – Schertz 312 dated April 23, 2020, as amended by that Letter Agreement dated August 10, 2020 (collectively, the “Agreement”) for the purpose of, and for such terms and conditions, as set forth therein;

**WHEREAS**, the Parties hereto wish to amend the Agreement as more fully set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of

which are hereby acknowledged, the Parties agree as follows:

1. The definition of Primary Facility in Article III of the Agreement shall be replaced with the following definition of Qualifying Construction and all references to “Primary Facility” throughout the Agreement shall be replaced with “Qualifying Construction”:

“Qualifying Construction” shall mean (i) the completion of construction of a single building, or two or more buildings for a single campus user, totaling one million (1,000,000) square feet, or (ii) completion of construction of any other building(s) that have a similar contemplated economic benefit as reasonably determined by the Corporation, for industrial or other similar operations on the Northern Tract.

2. Article V, Section 3 of the Agreement shall be deleted in its entirety and replaced with the following:

“Reservation of Northern Tract. During the term of this Agreement, unless released pursuant to the provisions of Article V, Section 5 below, Schertz 312 shall reserve sufficient portions of the Northern Tract for the completion of the Qualifying Construction pursuant to Article VI, Section 1(j). Schertz 312 may develop all other portions of the Real Estate in any manner it determines in its sole discretion.”

3. Article VI, Section 1(l) of the Agreement shall be deleted in its entirety and replaced with the following:

“(l) The parties have filed of record that Declaration of Restrictive Covenants, on July 30, 2019, as Document No. 20190602616, Official Public records, Comal County, Texas (“Declaration”). Concurrent with the execution of this Fifth Amendment, the parties shall record an amended Declaration in the form attached hereto as Exhibit “A”.”

4. Article VI, Section 2(c) of the Agreement is hereby amended to read as follows:

“(l) Capital Recovery Fees. Corporation shall, on behalf of Schertz 312, work with the City to determine what, if any, Capital Recovery Fees or Capital Recovery Credits are due or have been earned toward the Project, and/or future site development by the construction of the Infrastructure Improvements. Any Capital Recovery Fees or Capital Recovery Credits may be used or applied by Schertz 312 for any building or facility constructed by Schertz 312 within the Real Property during the term of the Agreement. Corporation cannot guarantee that the amount of credits applied as set forth herein will be sufficient to cover the Capital Recovery Fees assessed at the time an application for a building permit is made. Schertz 312

shall be responsible for any Capital Recovery Fees that exceed the credits applied to the site by the Corporation.”

5. Article VII, Section 1(b) of the Agreement is deleted in its entirety and replaced with the following:

“(b) The receipt of a Certificate of Occupancy for a building that, along with all other Qualifying Construction previously completed, results in the Qualifying Construction having been completed.”

6. All terms not defined in this Fifth Amendment shall have the meaning ascribed to them in the Agreement.

7. The remaining provisions of the Agreement shall remain in full force and effect.

8. This Fifth Amendment may be executed in multiple counterparts, which collectively, will be construed as an original.

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment to Economic Development Performance Agreement – Schertz 312 on the date set forth above.

**SCHERTZ 312, LLC**  
a Texas limited liability company

By: Schertz 312 Management, LLC  
its Manager

By: Titan Lone Star, LLC  
its Manager

By: \_\_\_\_\_  
Ben F. Spencer, Manager

STATE OF NEW MEXICO            )  
  ) ss.  
COUNTY OF BERNALILLO        )

This information was acknowledged before me on this \_\_\_\_ day of January, 2023 by Ben F. Spencer, as Manager of Titan Lone Star, LLC, as manager of Schertz 312 Management, LLC, manager of Schertz 312, LLC, on behalf of said company.

\_\_\_\_\_  
Notary Public, State of New Mexico

\_\_\_\_\_  
Notary’s typed or printed name

\_\_\_\_\_  
My commission expires



**EXHIBIT “B”**

**Form of Amended Declaration of Restrictive Covenants**

[see attached]

**SEDC MEMORANDUM**

**SEDC Board Meeting:** 08/24/2023  
**Department:** Economic Development Corporation  
**Subject:** Resolution 2023-8 - Discussion and action on authorizing the amendment and restatement of the Performance Agreement Schertz 312 Phase II, Titan, Schertz 35 Business Parkway, located on Tejas Way south of Doerr Ln. (S. Wayman)

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**BACKGROUND**

The SEDC and Schertz 312 entered into the Economic Development Performance Agreement - Schertz 312 for its Phase I infrastructure and on May 7, 2018, for the design engineering and construction of certain Infrastructure Improvements for their Phase II development. Phase II is the second portion of the roadway extension of Tejas Way. A requirement of the city is that the development have two entry points. The SEDC staff, at the time, provided an alternative to where the EDC would provide support for the development to apply for some TEDC grants for bridge infrastructure over top of the Union Pacific Railroad that is at the location of their planned second entrance. Our plan was to utilize EDC funding to provide the match for the grant but the cost for not only for obtaining the grant, but maintaining and managing the grant funding, coupled with the lead it would take to pursue the grant got in the way of everybody and they now wish to take every mention of Grant, Bridge Infrastructure and Union Pacific Railroad out of this agreement. The developer has since mad arrangements with a neighboring property owner to allo managed access across their property to provide this second emergency access point. The only discussion this evening was that intially, the roadway improvements were \$2,250,000 and the RR crossing was \$250,000 making the grant amount \$2,500,000. The developer paid more than the asking for the mention of the crossing of the railroad be omitted from the agreement and the entire amount of \$2,500,000 be remitted to them when they reach their performance standard. The SEDC board contemplated the request for the capital recovery fees.

**COMMUNITY BENEFIT**

The SEDC board has declared that infrastructure and jobs are its highest priority, as set aside in their incentive plan. Titan has a large presence in the city already. They have an attractive development that provides us with numerous jobs as well as property and person property taxes. The roadway that was provided as part of this phase I is a good-looking roadway with sidewalks, curb and gutter and has held up very nicely in spite of not being used extensively.

**FISCAL IMPACT**

This allowance for the amendment and restatement will allow the developer to continue planning and constructing development.

**SUMMARY OF RECOMMENDED ACTION**

On August 24, 2023, the SEDC Board of Directors votes unanimously to approve the SEDC Resolution No. 2023-8 authorizing the Amendment and Restatement to the Development Performance Agreement with Schertz 312 LLC. Phase II.



**SEDC RESOLUTION 2023-8**

**A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING THE AMENDMENT AND RESTATEMENT OF THE PERFORMANCE AGREEMENT SCHERTZ 312 - PHASE II; 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 powers of the corporation are vested in the SEDC Board of Directors (the “Board”) appointed by the governing body of the corporation’s authorizing unity; 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, The Parties entered into that Economic Development Performance Agreement – Schertz 312 Phase II on April 22<sup>nd</sup>, 2019; and

WHEREAS, the agreement provides that Schertz 312 Phase II will receive TWO MILLION FIVE HUNDRED THOUSAND, (\$2,500,000) for infrastructure; and

WHEREAS, the parties agree to amend and restate the original agreement, and

WHEREAS, Section 501.073 of the Act requires the SEDC’s authorization unit to approve all programs and expenditures, City Council had previously authorized this expenditure.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION THAT:

Section 1. The Schertz Economic Development Board hereby approve the Economic Development Performance Agreement amendment attached hereto as ATTACHMENT 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 Board.

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 \_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF SCHERTZ ECONOMIC  
DEVELOPMENT CORPORATION

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Paul Macaluso, SEDC Board President

ATTEST:

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Sammi Morrill, SEDC Board Secretary

**ATTACHMENT A**  
**AMENDED AND RESTATED**  
**ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT**  
**SCHERTZ 312 – PHASE II**

THIS AMENDED AND RESTATED ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT – SCHERTZ 312 – PHASE II (“Agreement”) dated \_\_\_\_\_, 2023 amends, replaces and supersedes that Economic Development Performance Agreement Schertz 312 – Phase II entered into by and between the Parties hereto dated effective April 22, 2019.

This Agreement is entered into 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 “Corporation”) created by and for the benefit of the City of Schertz, Texas (hereinafter the called the “City”), and Schertz 312, LLC, a Texas limited liability company, its successors or assigns (hereinafter called “Company”), the Corporation 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 is owner of that certain real property containing approximately 312 acres of land located in Comal County, Schertz, Texas (“Property”), as more fully described on **Exhibit “A”** and as approximately depicted on **Exhibit “B”**, each attached hereto and incorporated herein by reference;

WHEREAS, the Parties entered into that Economic Development Performance Agreement

- Schertz 312 made effective May 7, 2018 for the design, engineering and construction of certain Infrastructure Improvements (as defined therein) upon the Schertz Land, as subsequently amended by that First Amendment to Economic Development Performance Agreement – Schertz 312 dated February 28, 2019, that Second Amendment to Economic Development Performance Agreement – Schertz 312 dated July 25, 2019, that Third Amendment to Economic Development Performance Agreement – Schertz 312 dated April 23, 2020, and that City of Schertz letter dated August 10, 2020 regarding the Economic Development Performance Agreement – Schertz 312 (collectively, “Phase I PA”) which Infrastructure Improvements have been completed pursuant to the terms of the Phase I PA;

WHEREAS, the Road Infrastructure (as defined herein) is a continuation of the Infrastructure Improvements set forth in the Phase I PA;

WHEREAS, the Company desires to further develop the Property and extend the Infrastructure Improvements by installing and constructing the Road Infrastructure (as defined below) as more fully set forth herein;

WHEREAS, the Company and the Corporation agree to not pursue the development of a bridge or bridge infrastructure and any grants or assistance from other entities for the provision thereof and wishes to omit any provisions from the original agreement providing for same; and

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

WHEREAS, the Corporation desires to offer a Road Infrastructure Grant to the Company to enable it to develop the Property pursuant to this Agreement in substantial conformity with the Schertz Incentive Policy and the Act; and

WHEREAS, the construction of the Road Infrastructure will contribute to the economic development of the City 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 herein; 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**

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 Corporation's execution of this Agreement is authorized by the Act and constitutes a valid and binding obligation of the Corporation. The Corporation acknowledges that the Company is acting in reliance upon the Corporation'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 (as defined below), 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 Corporation 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 Corporation and the Company as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction. 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 Corporation delegates the administration and oversight of this Agreement to the Executive Director of the Corporation. Any proposed amendments to the Agreement shall require the approval of the Board of Directors of the Corporation.

### **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 Inspection Division confirming that the entire work covered by the building permit and plans are in place for the Facility or Facilities.

“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 set forth in this Agreement.

“Effective Date” shall be the date upon which the last party hereto executes this Agreement.

“Expiration Date” shall mean the earlier of:

1. December 31, 2036; or
2. The date of termination provided for under Article VII of this Agreement.

“Facility or Facilities” shall mean one or more vertical commercial or industrial improvements constructed on the Property by Company, its affiliates, successors or assigns.

“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.

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

“Project” shall mean the design, engineering and construction of the Road Infrastructure.

“Project Costs” shall mean all hard and soft costs incurred by Company for the design, engineering and construction of the Road Infrastructure and shall specifically include, but not be

limited to, due diligence costs, engineering, surveying, permitting, financing, planning, and construction, but exclude any management fee for Company.

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

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

#### **ARTICLE IV CORPORATION OBLIGATION**

1. Road Infrastructure Grant. Subject to the satisfaction of all the terms and conditions of this Agreement and the obligation of the Company to repay the Road Infrastructure Grant pursuant to Article VIII hereof, the Corporation shall pay the Company, for the Project, the Project Costs incurred by the Company to design, engineer and construct the Road Infrastructure, in an amount not to exceed Two Million Five Hundred Thousand Dollars and 00/100 (\$2,500,000.00), (the “Road Infrastructure Grant”). The Corporation shall pay the Company the Road Infrastructure Grant as follows, each instance of payment being concurrent with, or independent of, each other:

(a) Upon receipt of a construction permit for the Road Infrastructure and Company having paid One Hundred Percent (100%) of the design and permit fees for the Road Infrastructure, the amount of all Project Costs expended by Company up to the time of issuance of construction permit. Payment shall be made by the Corporation to Company within thirty (30) days of request for payment by Company;

(b) The remaining amount of the Road Infrastructure Grant for the construction of the Road Infrastructure upon receipt of the Letter of Acceptance of the same and confirmation that the Company has paid One Hundred Percent (100%) of all costs associated thereto.

2. Current Revenue. The Road Infrastructure Grant shall be paid solely from lawfully available funds of the Corporation. Under no circumstances shall the obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Corporation represents and warrants that it has funds available for distribution sufficient to fully and timely pay the full Road Infrastructure Grant will reserve such funds solely for such purpose, and will not make any special or general allocations of the Corporation’s current and future funds that would render the Corporation unable to timely make the full Road 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 Corporation 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, Corporation 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 Corporation to pay funds from the Road 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. Road Infrastructure. The Company will perform the following upon the Property:
  - (a) Construct a road, drainage, utilities and related improvements thereto ("Road Infrastructure") from the existing Tejas Way to the location approximately depicted in Exhibit "B" and as set forth in the plans and specifications for such improvements ("Road Plan Set") as submitted and to be approved by the City.
  - (b) The Company shall (i) Construct the Road Infrastructure in accordance with City of Schertz Public Works Design Specifications, as applicable, (ii) competitively bid the Road Infrastructure, (iii) allow access by the Corporation to all construction documents related to the Road Infrastructure during the term of the Agreement, and (iv) dedicate all right-of-way upon which the Road Infrastructure is constructed per the Road Plan Set to the City without additional compensation.
  - (c) Complete the Road Infrastructure on or before the Expiration Date.
  
2. 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 Corporation for the necessary legal fees in the preparation of any amendments to this Agreement, if and when such amendment is required by the Company. Timely payment shall be made within sixty (60) days of submittal of invoice to the Company by the Corporation or its assigns.
  
4. Jobs Created. The Company's capital investment will result in the initial creation of a minimum Zero (0) jobs at business enterprises operating within the Property on or before the Expiration Date.
  
5. Capital Investment. A minimum capital investment of NINE MILLION DOLLARS and NO/100 (\$9,000,000.00), on or before December 31, 2036, in the form of the development and construction of any Facility or Facilities, the totality of which satisfies the aforementioned capital investment requirement, (commenced as of the Effective Date herein evidenced by issued building permit for the Facility or Facilities, as the case may be) by Company, its affiliates, successors or assigns, upon the Property and verified through the receipt of a signed Certificate of Occupancy for said Facility or Facilities confirming that the entire work covered by the building permit and plans are in place for said Facility or Facilities, issued by the City of Schertz Inspections Division before the Expiration Date of the Agreement.

**ARTICLE VI  
COVENANTS AND DUTIES**

1. The Company's Covenants and Duties. The Company makes the following covenants and warranties to the Corporation, 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 Company. 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 or private authorities having jurisdiction over the construction of the Road Infrastructure.

(f) The Company shall be responsible for paying, or causing to be paid, to the City and all other governmental agencies or private authorities the cost of all applicable permit fees and licenses required for construction of the Road Infrastructure. The Company agrees to construct the Road Infrastructure in accordance with the ordinances, rules, and regulations of the City in effect on the date the Road Plan Set is approved by the City. 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 Corporation in providing all necessary information to assist them in complying with this Agreement.

(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 Road Infrastructure Grant provided herein will be used.

(j) Company shall not be in arrears and shall be current in the payment of all taxes and fees as to the Property.

(k) Company acknowledges that except a sales tax incentive, if applicable, or as otherwise agreed to by the City on a case-by-case basis, no other economic development incentives will be given to a subsequent successor or assign of the Property and Company will market the Property accordingly.

2. Corporation's Covenants and Duties.

(a) The Corporation is obligated to pay the Company the Road Infrastructure Grant. Each installment of the Road Infrastructure Grant shall be paid as provided herein and in accordance with Article IV, Section 1 within thirty (30) days after receiving written notice from the Company.

(b) The Corporation and City shall assist the Company with UPRC or other governmental entity requirements.

(c) The Corporation 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.

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

(e) Corporation shall assist the Company, where applicable, in securing other applicable incentives from Comal County or the State of Texas in connection with any end user of any facility constructed within Property.

(f) Corporation shall assist the Company, where applicable, in securing applicable Sales Tax Incentives from the Corporation, the City of Schertz, and

Comal County in connection with the end user of any facility constructed within the Property.

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 Corporation the right to terminate this Agreement and collect the Recapture Amount (as defined below), if applicable.

## **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, or their affiliates, successors or assigns;
- (b) The Company, its affiliates, successors or assigns satisfying the performance obligations set forth in Article V;
- (c) The Agreement's Expiration Date; or
- (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;
- (b) The Corporation determines that any representation or warranty contained herein or in any financial statement, certificate, report or opinion prepared and submitted to Corporation in connection with or pursuant to the requirements of this Agreement was incorrect or misleading in any material respect when made;
- (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;
- (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 Property; 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; or

(e) The Company changes its present ownership more than fifty-one (51%) without written notification to the Corporation within thirty (30) days of such change.

2. Corporation Events of Default. The Corporation 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 Corporation's Default of its obligations under Section IV of this Agreement.

(b) In the event of Default by the Company, the Corporation 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 Corporation shall, as its sole and exclusive remedy for Default hereunder, have the right to terminate this Agreement, and (i) not make the Road Infrastructure Grant payment(s) if distribution in accordance with Article IV, Section 1 has not yet occurred, or (ii) recapture one hundred percent (100%) of the funds actually distributed from the Road Infrastructure Grant to Company if payment(s) under Article IV, Section 1 has already been distributed (the "Recapture Amount"). The Recaptured Amount shall be paid by Company within thirty (30) days after the date Company is notified by the Corporation 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 three percent (3%) per annum from the Effective Date until paid in full.

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 Corporation.

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

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

If to Company: Schertz 312, LLC  
Attention: Joe Iannacone  
4903 Woodrow Ave., Bldg. A  
Austin, TX 78756

With a copy to: Titan Development  
Attn: Aimeé González  
6300 Riverside Plaza Ln., NW, Suite 200  
Albuquerque, NM 87120

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 Comal 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 Corporation.

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 Corporation.

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 CORPORATION 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 CORPORATION 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 CORPORATION 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 CORPORATION.**

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 \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**CITY OF SCHERTZ ECONOMIC  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS                    )  
  )  
COUNTY OF \_\_\_\_\_ )

This information was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by \_\_\_\_\_, as President of the City of Schertz Economic Development Corporation, a Texas non-profit industrial development corporation, on behalf of said agency.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
My commission expires

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
\_\_\_\_\_, SEDC Attorney

**EXHIBIT "A"**

**REAL ESTATE LEGAL DESCRIPTION**

311.98 acres of land located in the George M. Dolson Survey Number 96, Abstract No. 120 and the Vincente Micheli Survey No. 114, Abstract No. 383, Comal County, Texas and being a portion of that certain called 17.717 acres conveyed to Schertz 312, LLC, as described in Document No. 201806024952, Official Public Records of Comal County, Texas; all of that called 30.204 acres conveyed to Schertz 312, LLC, as described in Document No. 201806024954, Official Public Records of Comal County, Texas; all of that called 38.449 acres conveyed to Schertz 312, LLC, as described in Document No. 201806024969, Official Public Records of Comal County, Texas, all of that called 83.514 acres conveyed to Schertz 312, LLC, as described in Document No. 201806024955, all of that called 142.096 acres conveyed to Schertz 312, LLC, as described in Document No. 201806024987, Official Public Records of Comal County, Texas and a portion of Royal Manufacturing Subdivision, according to the map or plat thereof recorded in Volume 15, Page 224, Plat Records of Comal County, Texas and conveyed to Royal Axel Schertz, LLC, as described in Document No. 201806011741, Official Public Records of Comal County, Texas; said 311.980 acres being partially located with the City of Schertz and more particularly described as follows:

COMMENCING, at a found ½ inch iron rod located in the southeasterly right of way line of the Missouri Pacific Railroad and marking the most northerly corner of the said 17.717 acres, same being the most westerly corner of said Royal Manufacturing Subdivision;

THENCE, South 67deg 33' 52" West, along the northwesterly line of the said 17.717 acres, a distance of 113.85 feet, to a set ½ inch iron rod with "CUDE" cap, for the POINT OF BEGINNING of the herein described land;

THENCE, into the said 17.717 acres, the following courses:

South 30deg 30' 25" East, a distance of 817.51 feet, to a set ½ inch iron rod with "CUDE" cap;

Northeasterly, along the arc of a curve to the right having a radius of 450.00 feet, a central angle of 14deg 30' 24", an arc length of 113.94 feet and a chord bearing: N52deg 14' 23" E, 113.63 feet, to a set ½ inch iron rod with "CUDE" cap located in the common boundary line between the said 17.717 acres and the said Royal Manufacturing Subdivision;

THENCE, North 59deg 29' 35" East, crossing the said Royal Manufacturing Subdivision, a distance of 719.68 feet, to a set ½ inch iron rod with "CUDE" cap located in the southwesterly right of way line of Doerr Lane;

THENCE, South 31deg 09' 12" East, along the southwesterly right of way line of Doerr Lane, a distance of 175.82 feet, to a found ½ inch iron rod marking the most easterly corner of said Royal Manufacturing Subdivision;

THENCE, South 67deg 28' 45" West, leaving the southwesterly right of way line of Doerr Lane and along the southeasterly line of the said Royal Manufacturing Subdivision, a distance of 728.73

feet, to a found ½ inch iron rod located in the northeasterly line of the said 17.717 acres and marking the most southerly corner of said Royal Manufacturing Subdivision;

THENCE, South 30deg30' 25" East, along the northeasterly line of the said 17.717 acres, a distance of 1844.02 feet, to a set ½ inch iron rod with "CUDE" cap; located in the northwesterly right of way line of the Union Pacific Railroad;

THENCE, along the northwesterly right of way line of the said Union Pacific Railroad, the following courses:

South 61deg53'07" West, a distance of 2,689.96 feet, to a found ½ inch iron rod;  
South 61deg 54' 35" West, a distance of 2,601.87 feet, to a set ½ inch iron rod with "CUDE" cap marking the most southerly corner of the said 142.096 acres;

THENCE, leaving the northwesterly right of way line of the Union Pacific Railroad and along the boundary lines of the said 142.096 acres, the following courses:

North 30deg 20' 49" West, a distance of 1,843.02 feet, to a set ½ inch iron rod with "CUDE" cap;  
North 59deg 35' 59" East, a distance of 1,074.50 feet, to a set ½ inch iron rod with "CUDE" cap;  
North 29deg 38' 06" West, a distance of 817.74 feet, to a set ½ inch iron rod with "CUDE" cap located in the southeasterly right of way line of the Missouri Pacific Railroad;

THENCE, along the southeasterly right of way line of the said Missouri Pacific Railroad, the following courses: North 60deg06' 45" East, a distance of 2,168.02 feet, to a found ½ inch iron rod;

North 60deg05' 13" East, a distance of 494.85 feet, to a found ½ inch iron rod;  
North 60deg55' 11" East, a distance of 179.77 feet, to a found ½ inch iron rod;  
Northeasterly, along the arc of a curve to the right having a radius of 5,679.58 feet, a central angle of 06deg 04' 33", an arc length of 602.29 feet and a chord bearing: N 63deg 05' 06" E, 602.01feet, to a found ½ inch iron rod;  
North 67deg15' 54" East, a distance of 472.65 feet, to a found ½ inch iron rod;  
North 67deg33' 52" East, a distance of 172.50feet;

to the POINT OF BEGINNING and containing 311.980 acres of land, more or less.

**EXHIBIT “B”**  
**DEPICTION OR PROPERTY**  
**AND ROAD INFRASTRUCTURE IMPROVEMENTS**

[see attached]

**SEDC MEMORANDUM**

**SEDC Board Meeting:** 08/24/2023  
**Department:** Economic Development Corporation  
**Subject:** Resolution 2023-10 - Discussion and action authorizing the Executive Director of the Schertz Economic Development Corporation to enter into a Performance Agreement with Boomerang-Lovett. (S. Wayman)

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**BACKGROUND**

On August 24, 2023, the Executive Director is requesting authorization to enter an Economic Development Performance Agreement (the "Agreement") with Boomerang and Lovett. Under the Agreement, Boomerang-Lovett agreed to construct wastewater infrastructure improvements, to be reimbursed by the SEDC when the development performs. The cost of the infrastructure is \$2,500,000 with a portion of this agreement dedicated to easement acquisition. Boomerang's development is slated to be a 300,00 square foot cold storage and warehouse facility, situated on 25.13 acres on FM 2252 with a minimum appraisal district assessed value of \$40,000,000. Lovett's development is planned as a 500,000 square foot warehouse project, multiple buildings situated on 43 acres of land with a minimum appraisal district assessed value of \$35,000,000.

The easement acquisition portion is estimated to cost the developer \$365,972. They are down to only one easement left to acquire. If the unlikely event that the developer can't obtain the easement, and the city or SEDC chooses not to engage in eminent domain to get the easement, the developer will be paid what money he is out with acquiring the easement and the developer will transfer the easements acquired to the city. That is the only way that the developer will be paid without completing the sewer line. The incentive in its entirety is performance based and will not be paid until the development is in completion. Payable in two installments 55% when a certificate of occupancy for one shell building is completed and 45% when a lease is signed for an aggregate of 75% of the project.

**COMMUNITY BENEFIT**

This is a complex project. The property taxes on the two developments alone will be approximately \$300,000.00 annually. Depending upon the use, the jobs will be in the neighborhood of 1 per 2,250 square feet, making it approximately 350 jobs on the low end. There will also be personal property taxes on F&E when businesses go in along with inventory. The filling in of a large portion of our city with wastewater availability. Two years ago, the EDC paid for a study by Kimly Horn to look at this wastewater shed. This is the region that will gravity feed the undeveloped portions of the city north of IH-35. The line, once completed will be the tail end of the Town Creek Sanitary Sewer main, and will fill in a large portion of wastewater shed to allow for an entire region of the city to open up to Sanitary Sewer.

The SEDC has identified job creation and infrastructure as their highest priority in their Incentive Policy.

**FISCAL IMPACT**

The expenditures associated with this action will be \$2,500,000 paid from available SEDC funds.

**SUMMARY OF RECOMMENDED ACTION**

On August 24, 2023, the SEDC Board of Directors will vote unanimously to approve the SEDC Resolution No. 2023-10 authorizing the Performance Agreement with Boomerang and Lovett.

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**Attachments**

Res. 2023-10

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**SEDC RESOLUTION 2023-10**

**A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION, TEXAS AUTHORIZING THE EXECUTIVE DIRECTOR OF THE SCHERTZ ECONOMIC DEVELOPMENT CORPORATION TO ENTER INTO A PERFORMANCE AGREEMENT WITH BOOMERANG-LOVETT; 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 powers of the corporation are vested in the SEDC Board of Directors (the “Board”) appointed by the governing body of the corporation’s authorizing unity; 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, Boomerang intends to construct a minimum of 300,000 square foot cold storage facility that will result in a minimum assessed value of the Boomerang Property of \$40,000,000.00 as determined by the Comal County Appraisal District and the proposed development plan; and

WHEREAS, Lovett intends to construct a minimum of 500,000 square feet across multiple buildings on the Lovett Property that will result in a minimum assessed value of the Lovett Property of \$35,000,000.00 as determined by the Comal County Appraisal District and the proposed development plan; and

WHEREAS, Developers have requested the assistance of the City and SEDC to ensure a path to securing wastewater service and alleviate costs associated with extending wastewater from the Properties to the nearest connection point located near Abbey Rd; and

WHEREAS, the agreement provides that Boomerang-Lovett will receive not more than TWO MILLION FIVE HUNDRED THOUSAND DOLLARS, (2,500,000.00) for Public Improvements; and

WHEREAS, Sections 501, 502, and 505 of the Texas Local Government Code (“Texas LGC”) authorizes the SEDC to fund certain projects as defined therein and 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 501.073 of the Act requires the SEDC's authorization unit to approve all programs and expenditures.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION THAT:

Section 1. The Schertz Economic Development Board hereby approve the Economic Development Performance Agreement attached hereto as ATTACHMENT 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 Board.

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 \_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF SCHERTZ ECONOMIC  
DEVELOPMENT CORPORATION

\_\_\_\_\_  
Paul Macaluso, SEDC Board President

ATTEST:

\_\_\_\_\_  
Sammi Morrill, SEDC Board Secretary

**BOOMERANG-LOVETT  
ECONOMIC DEVELOPMENT AGREEMENT**

THIS BOOMERANG-LOVETT ECONOMIC DEVELOPMENT AGREEMENT (“Agreement”) by and among Boomerang Interests, LLC, a Texas limited liability company (“Boomerang”), LI Acquisitions, LLC, a Texas limited liability company (“Lovett” and, together with Boomerang, the “Developers”), the City of Schertz, Texas (“City”), a Texas home rule municipal corporation, and the Schertz Economic Development Corporation (“SEDC”), a Texas non-profit industrial development corporation (City, SEDC and Developers are collectively referred to as the “Parties” and sometimes individually as a “Party”), is made and entered into effective as of \_\_\_\_\_, 2023 (the “Effective Date”).

WHEREAS, Boomerang is the indirect owner of approximately 25.13 acres shown as Parcel ID 81088 in the records of the Comal County Appraisal District, and located on FM 2252, said property being more particularly described as set forth in **Exhibit “A”** (the “Boomerang Property”); and

WHEREAS, Boomerang intends to construct a minimum of 300,000 square foot cold storage facility that will result in a minimum assessed value of the Boomerang Property of \$40,000,000.00 as determined by the Comal County Appraisal District and the proposed development plan is illustrated as set forth in **Exhibit “B”** (the “Boomerang Project”); and

WHEREAS, Lovett is under contract to purchase approximately 43 total acres made up of Parcel ID 378449 and Parcel ID 379114 located on FM 2252, said property being more particularly described as set forth in **Exhibit “C”** (the “Lovett Property” and, together with the Boomerang Property, the “Properties”); and,

WHEREAS, Lovett intends to construct a minimum of 500,000 square feet across multiple buildings on the Lovett Property that will result in a minimum assessed value of the Lovett Property of \$35,000,000.00 as determined by the Comal County Appraisal District and the proposed development plan is illustrated as set forth in **Exhibit “D”** (the “Lovett Project” and, together with the Boomerang Project, the “Projects”); and,

WHEREAS, Developers have requested the assistance of the City and SEDC to ensure a path to securing wastewater service and alleviate costs associated with extending wastewater from the Properties to the nearest connection point located near Abbey Rd. as set forth in **Exhibit “E-1”** (the “Public Improvements”); and,

WHEREAS, **Exhibit “F”** sets forth the proposed scope of work and associated costs for Phase One (as more fully described below); and

WHEREAS, Sections 501, 502, and 505 of the Texas Local Government Code (“Texas LGC”) authorizes the SEDC to fund certain projects as defined therein and 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 505.105 of the Texas LGC limits the use of eminent domain by SEDC to those instances specifically authorized by the governing body of the City and in accordance with, and subject to the laws applicable to the City; and

WHEREAS, Developers, in exchange and as consideration for the contemplated funding by SEDC, wish to satisfy and comply with certain terms and conditions, including the construction of the Public Improvements (as more fully defined below); and

WHEREAS, the Parties believe that the provisions of this Agreement substantially advance a legitimate interest of the City and SEDC by providing public infrastructure, expanding the tax base of the City, increasing employment and promoting economic development.

NOW, THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the Parties hereby 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 City, by its execution of this Agreement, represents to other Parties that the City's execution of this Agreement is authorized by Chapter 380, 501 and 505 of the Texas LGC. The SEDC, by its execution of this Agreement, represents to other Parties that the SEDC's execution of this Agreement is authorized by Chapter 501 and 505 of the Texas LGC. The City and SEDC acknowledge that the Developers are acting in reliance upon the SEDC's performance of its obligations under this Agreement in making their decision to commit substantial resources and money to the establishment of the Projects hereinafter set forth. The involvement of the City is limited in scope to the non-financial assistance in acquiring public utility easements, inspection of installed public utilities, and staff level professional support.

2. Term. This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date (as defined below), unless terminated sooner in accordance with the terms of this Agreement.

## **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.

“Actual Total Improvement Costs” means the actual cost of the Public Improvements including, but not limited to, Easement Acquisition Costs (as defined below), architectural,

engineering, legal fees, construction, labor, materials, and the costs to “carry” the foregoing, as substantiated with receipts and invoices.

“Bankruptcy” or “Insolvency” means 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.

“Easement Acquisition Costs” means all costs borne by Developers associated with acquiring easements (including costs of the easements themselves) necessary to construct the Public Improvements.

“Expiration Date” means the earlier to occur of:

1. The SEDC’s reimbursement of the Maximum Grant Amount to Developers;
2. Five (5) years from the Effective Date of this Agreement, however, the Agreement may be renewed by the Developers in their sole discretion for an additional five (5) year period if Developers have not yet received the Maximum Grant Amount; and
3. The date of termination provided for under Article VIII of this Agreement.

“Force Majeure” means 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, pandemic, epidemic, infectious disease outbreak, strikes, slowdowns or work stoppages.

“Fiscal Year” means October 1st of any given calendar year through September 30th of any given following calendar year.

“Developer Escrow Account” means each escrow account as established by Lovett and Boomerang, separately, and which each online escrow account transfer information will be delivered by each Developer to SEDC. The purpose of each Developer Escrow Account is for the receipt of Grant Payments (as defined below) from the SEDC under the terms of this Agreement for distribution to the particular Developer under the terms and conditions of this Agreement. Boomerang’s Developer Escrow Account may be referred to as “Boomerang’s Escrow Account” and Lovett’s Developer Escrow Account may be referred to as “Lovett’s Escrow Account”.

“Maximum Grant Amount” means an amount not to exceed TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00); provided, however, than any Developer-incurred costs and expenses related to the Public Improvements that exceed the Maximum Grant Amount shall be addressed in pro rata agreements to be entered into by and between each Developer and the City.

“Projects” shall have the meaning as ascribed to such term in the recitals as set forth above.

“Properties” shall have the meaning as ascribed to such term in the recitals as set forth above.

“Public Improvements” means the improvements constructed by the Developers for the purpose of extending a wastewater line to serve the Developers’ Property as more particularly depicted in **Exhibit “E-1”**.

“Texas Comptroller” means the Texas Comptroller of Public Accounts, or its successor.

#### **ARTICLE IV ECONOMIC DEVELOPMENT GRANTS**

1. Grants

a. SEDC’s Funding

In consideration of the Developers’ pursuit of the construction of the Projects and Public Improvements, the SEDC agrees to participate in the funding of the Actual Total Improvements Cost of the Public Improvements as set forth in **Exhibit “E-1”** in an amount not to exceed the Maximum Grant Amount. Actual Total Improvement Costs shall be verified by the SEDC via documentation of receipts and invoices. Notwithstanding the foregoing, the SEDC hereby agrees that the tasks set forth in **Exhibit “F”** are reasonable and necessary to Phase One (as defined below) and hereby approves such costs and expenses associated with such tasks and agrees to make Grant Payments to the Developers for such Phase One costs and expenses in accordance with the terms of this Agreement. The Developers will make reasonable attempts to provide the SEDC with detailed proposals related to the work described in **Exhibit “F”** for the SEDC’s review and approval, subject to the terms of Article X, Section 11 herein, prior to commencing work.

b. Reimbursement Basis

SEDC’s grant payments shall be funded to the applicable Developer Escrow Account in two (2) separate installments (each installment, a “Grant Payment,” and together, the “Grant Payments”). SEDC shall cause the first Grant Payment of not more than 55% of the Maximum Grant Amount to be paid to the associated Developer Escrow Account within thirty (30) days of submission of a letter of acceptance from the City for the Public Improvements and Certificate of Completion (building shell complete) for a Project. SEDC shall cause the second Grant Payment of up to the remaining 45% of the Maximum Grant Amount to be paid to the associated Developer Escrow Account upon the later of (x) thirty (30) days after submission of documentation by a Developer evidencing leases covering 75% of the aggregate square footage of either Project and (y) the records of the Guadalupe County Tax Appraiser reflecting the minimum appraised value set forth in the recitals of this Agreement for the applicable Project.

c. Failure by One Party

If Lovett fails to complete the purchase of the Lovett Property or, following Lovett's purchase of the Lovett Property, either Boomerang or Lovett notify all Parties in writing to this Agreement that such Party is unable to develop the Boomerang Project or the Lovett Project, as the case may be, the Maximum Grant Amount shall not be reduced, and this Agreement shall remain in full force and effect. The remaining Developer, either Boomerang or Lovett, as the case may be, shall be entitled to construct the Public Improvements and develop and lease their individual Project, and all of the provisions of this Agreement and the reimbursement rights hereunder shall remain in full force and effect, including but not limited to the Grant Payments to be made by the SEDC up to the Maximum Grant Amount. In addition, if Lovett fails to complete the purchase of the Lovett Property or is unable to develop the Lovett Property, the wastewater route shall be as set forth in Exhibit "E-2. For clarification, the Maximum Grant Amount shall not be decreased for any reason.

d. Current Revenue.

The Grant Payments made hereunder shall be paid solely from lawfully available funds that have been appropriated by the SEDC. Under no circumstances shall the SEDC's obligations hereunder be deemed to create any debt of the City within the meaning of any constitutional or statutory provision. SEDC shall not be obligated to pay any commercial bank lender or similar institution for any loan or credit agreement made by Developers, nor shall any of the SEDC's obligations under this Agreement be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

**ARTICLE V  
CONDITIONS TO ECONOMIC DEVELOPMENT GRANTS**

The obligation of the SEDC to pay each Grant Payment shall be conditioned upon Developers' compliance with and satisfaction of each of the conditions set forth in this Agreement.

**A. PHASE ONE**

1. Shall consist of public utility easement acquisition by Developers, at their sole cost and expense. **Exhibit "F"**, which is attached and incorporated herein, sets forth the Phase One tasks which the SEDC hereby pre-approves.

a. Developers shall utilize Stateside Right of Way Services, LLC as right of way acquisition consultants, which has previously been agreed to by SEDC.

b. Developers shall diligently pursue the acquisition of all easements required for the installation of the proposed wastewater line and shall have the right to request the assistance of the SEDC and City for the acquisition of necessary easements.

c. Developers shall be responsible for the cost of acquisition of the necessary easements and will pay all costs and expenses necessary to acquire any easements, however, any costs incurred by Developers on behalf of the SEDC or City shall be reimbursed to Developers in accordance with the terms of this Agreement.

d. The Parties agree that should the SEDC and/or the City be unable to assist the Developers in acquiring the necessary easements during Phase One, either or both Developers, in such Developer's sole and absolute discretion, may terminate this Agreement without further obligations other than such obligations expressly set forth in this Agreement that survive the Agreement's termination or expiration. Either Developer may terminate its obligations under this Agreement by sending written notice thirty (30) days in advance to the SEDC and the City (each a "Developer's Termination Notice") and included in the Developer's Termination Notice shall be such Developer's demand for reimbursement for their actual costs and expenses incurred, which the City and SEDC shall have thirty (30) days after receipt of Developer's Termination Notice to reimburse the Developer. SEDC will reimburse the Developers for their actual costs and expenses in furtherance of the Projects, including but not limited to hiring third party consultants and easement acquisition costs, up to \$365,972.00. and this obligation shall survive termination of the Agreement. The easements that have been acquired up to that time shall be transferred by Developers to the City.

e. The City has previously acquired certain easements that are beneficial and necessary to the Developers' construction of the Public Improvements. The City and SEDC hereby acknowledge and agree that such easements, copies of which have been provided to or obtained by Developers, have been obtained in furtherance of the City's and SEDC's master wastewater plan and the easements may be accessed and utilized by Developers for design and construction of the Public Improvements. Furthermore, the City and SEDC hereby affirm the easements previously acquired are sufficient for the design and construction of the Public Improvements contemplated hereby.

## **B. PHASE TWO**

1. Shall consist of construction of the Projects as set forth in **Exhibit "B"** and **Exhibit "D"** and the Public Improvements as set forth in **Exhibit "E-1"**.

## **ARTICLE VI COVENANTS AND DUTIES**

1. Developer's Covenants and Duties. Each Developer individually and not jointly makes the covenants and warranties to the City 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, subject to all applicable notice and cure periods, shall be an act of Default by the Developer who made the false or misleading statement.

(a) Developer is authorized to do business with the Texas Comptroller and is in good standing in with the Texas Secretary of State and shall remain in good standing in with the Texas Secretary of State during the term of this Agreement.

(b) The execution of this Agreement has been duly authorized by Developer'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 Developer's governing documents, or of any agreement or instrument to which Developer is a party to or by which it may be bound.

(c) To its current, actual knowledge, Developer is not a party to any bankruptcy proceedings currently pending or contemplated, and Developer has not been informed of any potential involuntary bankruptcy proceedings.

(d) To its current, actual knowledge, Developer has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City and will continue to use reasonable efforts to maintain all necessary rights, licenses, permits, and authority.

(e) Developer shall timely and fully, subject to any applicable notice and cure periods, comply with all of the terms and conditions of this Agreement.

(f) Developer agrees to use reasonable efforts to complete, or cause to be completed, the Public Improvements described herein at its sole cost and expense, subject to SEDC's funding of the Developer Escrow Account.

(g) Developer's project will not be obligated to directly create or retain any jobs and will result in a minimum assessed value of a capital investment, including land, of at least FORTY MILLION AND NO/100 DOLLARS (\$40,000,000) for Boomerang's development and THIRTY-FIVE MILLION AND NO/100 DOLLARS for Lovett. Notwithstanding the foregoing, should a disagreement arise over the calculation of the total capital investment, then the full assessed property value, land plus all improvements, as determined by Comal County Appraisal District shall govern.

(h) Developer agrees to use reasonable efforts 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 Public Improvements to the Properties.

(i) To the extent not already attached to this Agreement as **Exhibit "E-1,"** Developer agrees to prepare, or cause to be prepared, plans and specifications for the Public Improvements prior to starting any construction.

(j) Developer agrees to supervise the construction of the Project and cause the construction to be performed substantially in accordance with the Public Improvements approved by the City in accordance with federal, state, and local laws and ordinances and this Agreement.

(k) Contingent upon Developer receiving disbursements from the Developer Escrow Account, Developer shall be responsible for paying, or causing to be paid, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project. Developer agrees to develop the Project in accordance with the ordinances, rules, and regulations of the City in effect on the date the Project was designated, unless specified otherwise in this Agreement. Developer, in its sole discretion, may choose to comply with any or all City rules promulgated after the Effective Date of this Agreement.

(l) Developer, at the City's and SEDC's expense, shall dedicate, convey and transfer all easements and public utilities to the City within ninety (90) days after Developers' receipt of the second payment for reimbursement as set forth in Article IV.

(m) Developer shall cooperate with SEDC in providing all necessary information to assist City in complying with this Agreement.

(n) The cost of the Public Improvements and all other improvement expenses associated with the Project shall be funded through the use of Developer's own capital or through credit secured solely by the Developer.

(o) In accordance with Texas Government Code Section 2264.051, Developer will not knowingly employ an undocumented worker, as that term is defined in the section.

(p) [Intentionally Left Blank]

2. SEDC's Covenants and Duties.

(a) SEDC Grant Payment. The SEDC is obligated to pay Developers an amount not to exceed the Maximum Grant Amount from sources contemplated by this Agreement, subject to Developers' timely and full satisfaction of all applicable terms and conditions of this Agreement. Further, SEDC's obligations to pay Developer shall cease upon the earlier of: (1) payment in full of the Maximum Grant Amount and payment of any remaining Actual Total Improvement Costs through allocations and reimbursements from a pro rata agreement between the City and the Developers; (2) reaching the Agreement's Expiration Date; or (3) Default by Developer in accordance with the terms of this Agreement.

(b) Substantial Compliance and Default. Failure by either Party to timely and substantially comply with any performance requirement, duty, or covenant shall be considered an act of default if uncured within sixty (60) days of receiving written notice from the non-defaulting Party. Failure of Developer to timely and substantially cure a default will give the SEDC the right to terminate this Agreement, as reasonably determined by the SEDC's Board of Directors, however, if Developer completes the required curative action prior to SEDC's termination then Developer will no longer be in default and SEDC will no longer have the option to terminate this Agreement for that specific default by Developer. Notwithstanding the foregoing, if the SEDC terminates this Agreement in accordance with this provision, the SEDC's obligation to fund the Grant Payment and any other reimbursement obligation that was otherwise due and payable as of the date of termination shall not survive termination. .

**ARTICLE VII  
DEVELOPMENT STANDARDS**

1. Plan. The Projects shall be developed in substantial accordance with the Boomerang Project and the Lovett Project as depicted in **Exhibits “B” and “D”**.

## **ARTICLE VIII TERMINATION**

1. Termination. This Agreement, or the rights and obligations with respect to a Developer, may be terminated upon any one or more of the following:

- (a) A written agreement of termination signed by all Parties;
- (b) By Lovett, in its sole and absolute discretion, if Lovett does not acquire the Lovett Property;
- (c) Upon thirty (30) days written notice from either Developer to SEDC and City, if (i) either Boomerang or Lovett are unable to acquire, in either Boomerang or Lovett’s sole and absolute discretion, the necessary easements during Phase One, regardless of the SEDC or the City’s assistance or (ii) either Boomerang or Lovett are unable to construct the Projects or the Public Improvements, in either Boomerang or Lovett’s sole and absolute discretion;
- (d) On the Expiration Date in accordance with the terms of this Agreement; or
- (e) Default by Developer, subject to all applicable notice and cure provisions.

## **ARTICLE IX DISPUTE RESOLUTION**

1. Mediation. If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association, San Antonio, Texas, before resorting to litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiations among the Parties. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. Alternate dispute resolution (“ADR”) and all costs related to ADR shall be assessed equally between the SEDC and Developer with each Party bearing their own costs for attorneys’ fees, experts, and other costs of ADR and any ensuing litigation, if any.

2. During the term of this Agreement, if Developer files and/or pursues an adversarial proceeding against the SEDC and/or City regarding this Agreement without first engaging in good faith mediation of the dispute, then, at the SEDC’s option, all access to the Maximum Grant Amount provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest bearing account until the resolution of such adversarial proceeding.

3. Under no circumstances will the Grant Payments 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 SEDC or City.

## **ARTICLE X MISCELLANEOUS**

1. Binding Agreement. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the SEDC, City, Developers, and their respective successors and assigns. Steve Williams, ICMA-CM, MPA, CGFO (the “City Manager”), his designee, or the City shall be responsible for the administration of this Agreement and shall have the authority to execute any instrument, duly approved by the SEDC Board of Directors and City Council of the City of Schertz, Texas, on behalf of the SEDC and City 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, including but not limited to the execution of any agreement or filing of a document that is reasonably related to this Agreement and is not in direct contradiction of any terms contained herein.

3. Representations and Warranties. SEDC and City represent and warrant to Developers that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement.

4. Assignment. Developers 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 and City, such approval not to be unreasonably conditioned, delayed, or withheld. Notwithstanding the foregoing or anything else in this Agreement, each Developer shall be permitted, without consent from any other Party, to assign, transfer, and convey all of such Developer’s rights, title and interest under this Agreement to an affiliate of such Developer, but must provide written notice to all other Parties of such assignment. An “affiliate” as referenced in the previous sentence, must be in good standing with the Texas Secretary of State as of the effective date of the assignment of any Developer’s right, title and interest under this Agreement. Additionally, notwithstanding the foregoing, in the event of a sale of either Lovett Property or Boomerang Property to an unrelated third-party, Lovett or Boomerang shall be permitted, subject to approval from SEDC and any other Party, such approval to not be unreasonably conditioned, delayed, or withheld, to assign, transfer, and convey their respective rights, title and interest under this Agreement as it relates to the Grant Payments from the SEDC, and must provide written notice to all other Parties of such assignment. Any assignment provided for herein shall not serve to enlarge or diminish the obligations and requirements of this Agreement, nor shall they relieve Developers 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, such approval to not be unreasonably conditioned, delayed, or withheld.

5. Independent Contractors.

(a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Developers at no time will be acting as an agent of the SEDC or City and that all consultants, contractors, or third-parties engaged by Developers respectively will be independent contractors of Developers; 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 SEDC and City will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by Developers respectively under this Agreement, unless any such claims are due to the fault or negligence of the SEDC or City.

(b) By entering into this Agreement, 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 City 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 City, or any board member of SEDC or councilmember or agent of City, shall be personally responsible for any liability arising under or growing out of this Agreement, unless such person's act was fraudulent.

6. Notice. Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, sent by recognized regional or national overnight delivery service, facsimile with receipt confirmation, or by depositing the same in the United States Mail, postage prepaid and certified with return receipt requested, addressed to the Party at the address set forth below:

If intended for City: City of Schertz  
1400 Schertz Pkwy  
Schertz, Texas 78154  
Attention: Steven Williams, ICMA-CM, MPA, CGFO, City Manager

With a copy to: Denton, Navarro, Rocha, Bernal & Zech, PC  
2517 North Main Avenue  
San Antonio, Texas 78212  
Attention: T. Daniel Santee

If to the Developers: Boomerang Interests, LLC  
1885 St. James Place, Suite 1260  
Houston, Texas 77056  
Attention: Andrew N. Cyrus, Managing Partner  
Email: acyrus@boomeranginterests.com

and

LI Acquisitions, LLC  
c/o Lovett Industrial, LLC

401 Franklin St., Suite 2555  
Houston, Texas 77002  
Attention: Seth Flechsig, Senior Managing Director  
Email: seth.flechsig@lovettindustrial.com

With a copy to: Lovett Industrial, LLC  
401 Franklin St., Suite 2555  
Houston, Texas 77002  
Attention: Legal Department  
Email: LI-Legal@lovettindustrial.com

Either Party may designate a different address at any time upon written notice to the other Party and shall only be effective upon actual receipt by the intended Party.

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

8. 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 Guadalupe County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

9. Amendment. This Agreement may be amended by mutual written agreement of all Parties, as approved by the SEDC and City Council of the City of Schertz, Texas.

10. 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. Time is and shall be of the essence in this Agreement.

11. 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. Any approval by the SEDC or the City as required by this Agreement shall be construed as such approval shall not be unreasonably withheld, conditioned, or delayed by the SEDC or the City. Further, any proposal by the Developers submitted for approval by the SEDC and/or the City shall be deemed approved if the approving authority, either the SEDC or the City, fails to respond to within ten (10) business days of delivery of such proposal.

12. 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 SEDC and City Council of the City of Schertz, Texas.

13. 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.

14. Counterparts. This Agreement may be executed in multiple counterparts. Each of the counterparts shall be deemed an original instrument, and all of the counterparts together shall constitute one and the same instrument. Signatures provided by facsimile or electronic transmission shall have the same force and effect as original signatures and shall be binding upon the Parties.

15. Exhibits. Any Exhibits attached hereto are incorporated by reference for all purposes.

16. 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.

17. Employment of Undocumented Workers. During the term of this Agreement, Boomerang and Lovett, each separately and independent of the other, agree to not knowingly employ any undocumented workers, and, if such Developer is found in violation of 8 U.S.C. Section 1324a(1) by a court of competent jurisdiction, then only the Developer that is found to have violated 8 U.S.C. Section 1324a(1), shall be in default under this Agreement and repay the amount of the Grant Payments and any other funds received by the defaulting Developer from the City or the SEDC as of the date of such violation within one hundred twenty (120) days after the date such Developer is found to have violated 8 U.S.C. Section 1324a(1) by a court of competent jurisdiction, plus interest at the rate of six percent (6.00%) compounded annually from the date of the violation until paid in full. Developer is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Developer or by a person with whom Developer contracts for goods or services related to the Public Improvements, provided, however, that each Developer will use reasonable efforts to inform any subsidiary, assignee, affiliate, or franchisee of Developer that may receive funds from Grant Payments received by Developer of 8 U.S.C. Section 1324a(1).

18. Indemnification.

**EACH DEVELOPER, SEPARATELY AND INDIVIDUALLY, AGREES TO ONLY DEFEND, INDEMNIFY AND HOLD THE SEDC, CITY, AND THEIR RESPECTIVE OFFICERS, REPRESENTATIVES, AGENTS, AND EMPLOYEES (COLLECTIVELY THE "CITY REPRESENTATIVE PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY'S FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES EACH DEVELOPER, SEPARATE AND INDIVIDUALLY, TO ANY WILLFUL ACT OR GROSS NEGLIGENCE BY THE DEVELOPER DETERMINED TO HAVE ACTED WILLFULLY OR GROSSLY NEGLIGENT UNDER THIS AGREEMENT, SAVE AND EXCEPT THAT THE DEVELOPERS' INDEMNITY PROVIDED HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM ANY ACT OR OMISSION, OR NEGLIGENCE OF THE SEDC OR CITY. NOTWITHSTANDING THE FOREGOING, THE SEDC AND CITY EXPRESSLY WAIVE ANY AND ALL RIGHTS TO RECOVER OR SEEK INDEMNIFICATION FROM**

**DEVELOPERS ANY SPECIAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES ARISING UNDER THIS AGREEMENT AND INCURRED BY SEDC OR THE CITY. THE DEVELOPER'S INDEMNITY OBLIGATION SHALL ONLY APPLY TO CLAIMS MADE DIRECTLY BY THE CITY OR SEDC AND SHALL NOT INCLUDE ANY CLAIMS MADE BY THIRD PARTIES BY OR THROUGH THE CITY OR SEDC. EACH DEVELOPER'S LIABILITY AND OBLIGATION AS SET FORTH IN THIS SECTION SHALL BE PROPORTIONAL TO EACH PARTIES' RESPONSIBILITY FOR THE INDEMNIFICATION CLAIM'S PRECIPITATING ACT OR OMISSION. 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. THIS PROVISION SHALL SURVIVE FOR SIX (6) MONTHS FROM THE DATE OF TERMINATION OR EXPIRATION OF THIS AGREEMENT.**

19. 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.

20. Future permits. Developers acknowledge that the inclusion of the Public Improvements, as set forth in **Exhibit "E-1"** herein, in no way infers the approval, though such approvals shall not be unreasonably conditioned, delayed, or withheld, of any aspect of the proposed Project; but rather, such exhibits represent certain requirements for Developer's eligibility to receive Grant Payments under this Agreement. All aspects of the Project must comply with applicable provisions of the City's Code of Ordinances, Unified Development Code, and other codes as may have been adopted by the City, in order to obtain necessary approvals of officers or staff of the city under the review processes set out in such codes.

21. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. Each developer represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas LGC, Conflicts of Interest Questionnaire and Chapter 2252 of the Texas Government Code, Form 1295 Certificate of interested Parties online filing with the Texas Ethics Commission.

22. Boycott Israel requirement. Pursuant to State law, the Contractor recognizes that ESD#1 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). As such, the Contractor 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 Contractor 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.

*[signature page to follow]*

Executed on this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

CITY OF SCHERTZ, TEXAS

SEDC

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Board President

ATTEST:

ATTEST:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Board Secretary

\_\_\_\_\_  
Mr. Andrew N. Cyrus  
Managing Partner Boomerang Interests, LLC

LI ACQUISITIONS, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Name: Charles F. Meyer, Jr.  
Title: President

## EXHIBITS

Exhibit "A"	Legal Description of the Boomerang Property
Exhibit "B"	Depiction of the Boomerang Project
Exhibit "C"	Legal Description of the Lovett Property
Exhibit "D"	Depiction of the Lovett Project
Exhibit "E-1"	Depiction of the Public Improvements
Exhibit "E-2"	Depiction of the Public Improvements minus Lovett Property
Exhibit "F"	Phase One Tasks – Costs and Expenses

Exhibit "A"

**Legal Description of the Boomerang Property**

*[to be attached]*



410 N. Seguin Ave.  
New Braunfels, TX 78130  
HMTNB.COM  
830.625.8555 • FAX:830.625.8556  
TBPLS FIRM 10153600

### METES AND BOUNDS DESCRIPTION FOR A 25.134 ACRE TRACT

Being 25.134 acres of land located in the Edwin Woodruff Survey, Abstract 671, Comal County, Texas, remainder of a Called 68.14 acre tract, recorded in Document No. 201006004237, Map and Plat Records, Comal County, Texas. Said tract being more particularly described as follows:

BEGINNING at a 1/2" iron pin found for the Northeast corner of said 68.14 acre tract and the East corner of a called 10.000 acre tract as described in Volume 300, Page 183, Deed Records, Comal County, Texas, and being the Northeast corner of the herein described tract;

THENCE along the Southwest right-of-way line of F.M. 2252, South 30°28'00" East, a distance of 869.10 feet to a 1/2" iron pin found for a Northeast corner of a 10.01 acre tract as described in Document No. 201206025110, Official Public Records, Comal County, Texas, and the East corner of the herein described tract;

THENCE leaving said right-of-way line, along a Northwest line of said 10.01 acre tract, South 59°32'57" West, at a distance of 1,253.32 feet to 1/2" iron pin w/ "KSC" cap found for a corner of said 10.01 acre tract and the South corner of the herein described tract;

THENCE along a Northeast line of said 10.01 acre tract, North 30°24'19" West, a distance of 878.63 feet to a 1/2" iron pin found for a Northwest corner of aforementioned 68.14 acre tract and the South corner of aforementioned 10.000 acre tract, and being the West corner of the herein described tract;

THENCE along the Southeast line of said 10.000 acre tract, North 59°59'07" East, a distance of 1,252.42 feet to the POINT OF BEGINNING and containing 25.134 acres of land in Comal County, Texas.

Bearings are based upon the Texas State Plane Coordinate System, South Central Zone (4204) NAD83.

Surveyed this the 26th day of June, 2018.

Reference survey of said 25.134 acre tract of land prepared this same date.

  
Dorothy J. Taylor  
Registered Professional Land Surveyor No.6295  
Job No. 073.014



Exhibit "B"

**Depiction of the Boomerang Project**

*[to be attached]*

# STX Frio

+/- 300,000 sf cold storage facility

## Legend



-  City of Schertz Fire Station 2
-  STX Frio Development



Exhibit "C"

**Legal Description of the Lovett Property**

*[to be attached]*



# WINDROSE

LAND SURVEYING | PLATTING

## DESCRIPTION OF 42.98 ACRE OR 1,872,287 SQ. FT.

A TRACT OR PARCEL CONTAINING 42.98 ACRE OR 1,872,287 SQUARE FEET OF LAND SITUATED IN THE EDWIN WOODRUFF SURVEY NO. 95, ABSTRACT NO. 671, COMAL COUNTY, TEXAS, BEING ALL OF A CALLED 33.00 ACRE TRACT, CONVEYED TO LARRY KRIPPENDORF, AS RECORDED UNDER DOC. NO. 201206033847, OF THE OFFICIAL PUBLIC RECORDS OF COMAL COUNTY, TEXAS (O.P.R.C.C.T.) AND ALL OF A CALLED 10.01 ACRE TRACT, CONVEYED TO KIPPCO ENTERPRISES, INC., AS RECORDED UNDER DOC. NO. 201206025110, O.P.R.C.C.T., WITH SAID 42.98 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, WITH ALL BEARINGS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE (NAD 83):

**BEGINNING** AT A CAPPED 5/8 INCH IRON ROD FOUND ON THE WEST RIGHT-OF-WAY (R.O.W.) LINE OF F.M. 2252, BEING THE SOUTHEAST CORNER OF A CALLED 25.134 ACRE TRACT, CONVEYED TO STX FRIO I INVESTMENTS, LLC, AS RECORDED UNDER DOC. NO. 202206039386, O.P.R.C.C.T., BEING A NORTH CORNER OF SAID 10.01 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

**THENCE**, SOUTH 30 DEG. 28 MIN. 26 SEC. EAST (CALLED SOUTH 30 DEG. 28 MIN. 19 SEC. EAST 120.71 FEET), WITH THE LINE COMMON TO SAID 10.01 ACRE TRACT AND THE WEST R.O.W. LINE OF SAID F.M. 2252, A DISTANCE OF 120.71 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR THE MOST EASTERLY CORNER OF SAID 10.01 ACRE TRACT, BEING A NORTH CORNER OF SAID 33.00 ACRE TRACT AND AN ANGLE POINT OF THE HEREIN DESCRIBED TRACT;

**THENCE**, SOUTH 30 DEG. 28 MIN. 19 SEC. EAST (CALLED SOUTH 30 DEG. 28 MIN. 19 SEC. EAST 20.37 FEET), WITH THE LINE COMMON TO SAID 33.00 ACRE TRACT AND THE WEST R.O.W. LINE OF SAID F.M. 2252, A DISTANCE OF 20.37 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR AN ANGLE POINT OF THE HEREIN DESCRIBED TRACT;

**THENCE**, SOUTH 30 DEG. 04 MIN. 18 SEC. EAST (CALLED SOUTH 30 DEG. 04 MIN. 18 SEC. EAST 279.63 FEET), CONTINUING WITH THE LINE COMMON TO SAID 33.00 ACRE TRACT AND THE WEST R.O.W. LINE OF SAID F.M. 2252, A DISTANCE OF 279.63 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR THE MOST EASTERLY CORNER OF SAID 33.00 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

**THENCE**, SOUTH 59 DEG. 10 MIN. 07 SEC. WEST (CALLED SOUTH 59 DEG. 05 MIN. 58 SEC. WEST 592.08 FEET), WITH THE SOUTH LINE OF SAID 33.00 ACRE TRACT, A DISTANCE OF 591.76 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR AN ANGLE POINT OF THE HEREIN DESCRIBED TRACT;

**THENCE**, SOUTH 58 DEG. 40 MIN. 54 SEC. WEST (CALLED SOUTH 58 DEG. 40 MIN. 54 SEC. WEST 867.47 FEET), CONTINUING WITH THE SOUTH LINE OF SAID 33.00 ACRE TRACT, A DISTANCE OF 867.47 FEET TO A CAPPED 1/2 INCH IRON ROD FOUND FOR AN ANGLE POINT OF THE HEREIN DESCRIBED TRACT;

**THENCE**, SOUTH 58 DEG. 42 MIN. 30 SEC. WEST (CALLED SOUTH 58 DEG. 43 MIN. 34 SEC. WEST 1,040.72 FEET), WITH THE LINE COMMON TO SAID 33.00 ACRE TRACT AND A CALLED 7.475 ACRE TRACT, CONVEYED TO LOCK AWAY STORAGE SCHERTZ, LLC, AS RECORDED UNDER DOC. NO. 201406042727, O.P.R.C.C.T., DISTANCE OF 1,040.50 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE SOUTHEAST CORNER OF A LOT 2, BLOCK 1, REPLAT OF LOT 1, STONE CREEK R.V. PARK, AS RECORDED IN VOL. 7, PG. 537, OF THE MAP AND PLAT RECORDS COMAL COUNTY, TEXAS, (M.P.R.C.C.T.), BEING THE SOUTH CORNER OF SAID 33.00 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

**THENCE**, NORTH 29 DEG. 51 MIN. 15 SEC. WEST (CALLED NORTH 29 DEG. 51 MIN. 15 SEC. WEST 1,077.66 FEET), WITH THE LINE COMMON TO SAID LOT 2 AND SAID 33.00 ACRE TRACT, A DISTANCE OF 1,077.27 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR THE SOUTHWEST CORNER A CALLED 69.8 ACRE TRACT, CONVEYED TO STANLEY E. STEHLE & SUSAN LORILLARD STEHLE, AS RECORDED IN VOL. 122, PG. 553, OF THE COMAL COUNTY DEED RECORDS (C.C.D.R.), BEING THE MOST WESTERLY CORNER OF SAID 33.00 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

**THENCE**, NORTH 58 DEG. 42 MIN. 01 SEC. EAST (CALLED NORTH 58 DEG. 42 MIN. 01 SEC. EAST 857.00 FEET), WITH THE LINE COMMON TO SAID 69.8 ACRE TRACT AND SAID 33.00 ACRE TRACT, A DISTANCE OF 856.47 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR THE COMMON NORTH CORNER OF SAID 33.00 ACRE TRACT AND AFORESAID 10.01 ACRE TRACT AND AN ANGLE POINT OF THE HEREIN DESCRIBED TRACT;

**THENCE**, NORTH 58 DEG. 37 MIN. 50 SEC. EAST (CALLED NORTH 58 DEG. 42 MIN. 01 SEC. EAST 379.62 FEET), WITH THE LINE COMMON TO SAID 69.8 ACRE TRACT AND SAID 10.01 ACRE TRACT, A DISTANCE OF 380.20 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET ON THE WEST LINE OF AFORESAID 25.134 ACRE TRACT, BEING THE NORTH CORNER OF SAID 10.01 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

**THENCE**, SOUTH 30 DEG. 28 MIN. 19 SEC. EAST (CALLED SOUTH 30 DEG. 28 MIN. 19 SEC. EAST 642.95 FEET), WITH THE LINE COMMON TO SAID 10.01 ACRE TRACT AND SAID 25.134 ACRE TRACT, A DISTANCE OF 642.95 FEET TO A CAPPED 5/8 INCH IRON ROD FOUND BEING THE SOUTH CORNER OF SAID 25.134 ACRE TRACT, BEING AN INTERIOR CORNER OF SAID 10.01 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT;

**THENCE**, NORTH 59 DEG. 32 MIN. 59 SEC. EAST (CALLED NORTH 59 DEG. 31 MIN. 41 SEC. EAST 1,253.89 FEET), CONTINUING WITH THE LINE COMMON TO SAID 10.01 ACRE TRACT AND SAID 25.134 ACRE TRACT, A DISTANCE OF 1,253.32 FEET TO THE **POINT OF BEGINNING** AND CONTAINING 42.98 ACRES OR 1,872,287 SQUARE FEET OF LAND, AS SHOWN ON JOB NO. 58161, PREPARED BY WINDROSE LAND SERVICES.

Exhibit “D”

**Depiction of the Lovett Project**

*[to be attached]*

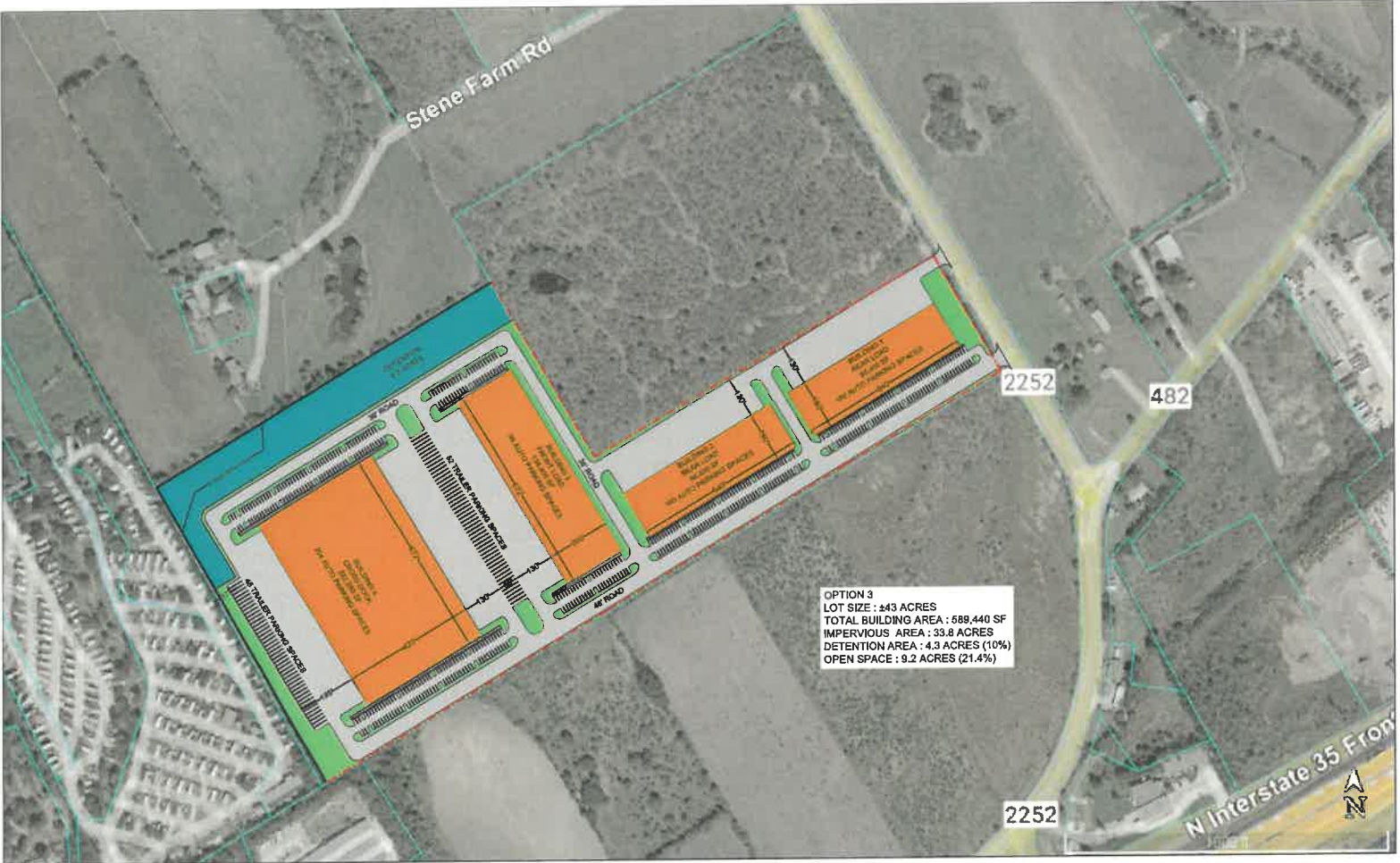
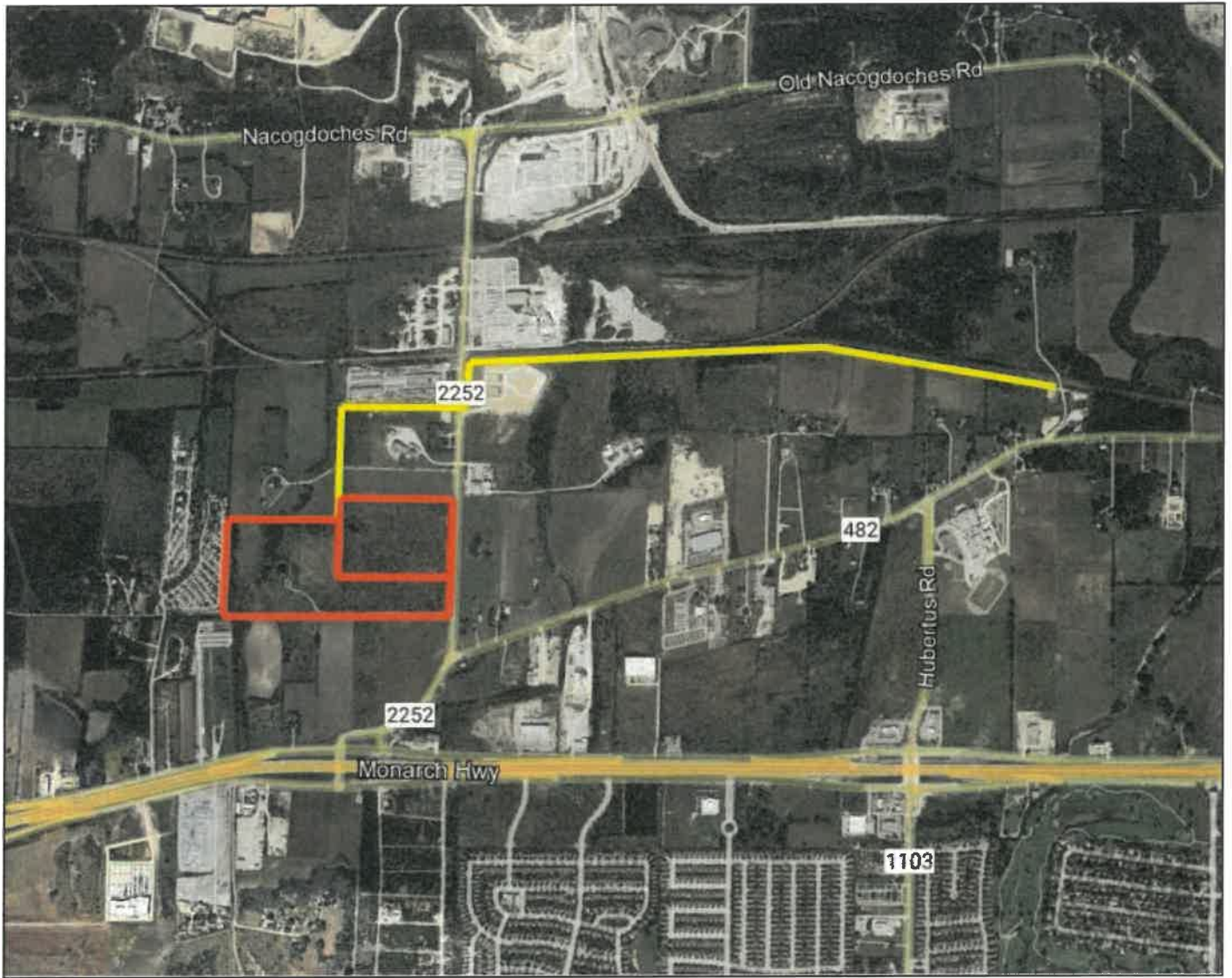


Exhibit "E"

**Depiction of the Public Improvements**

*[to be attached]*



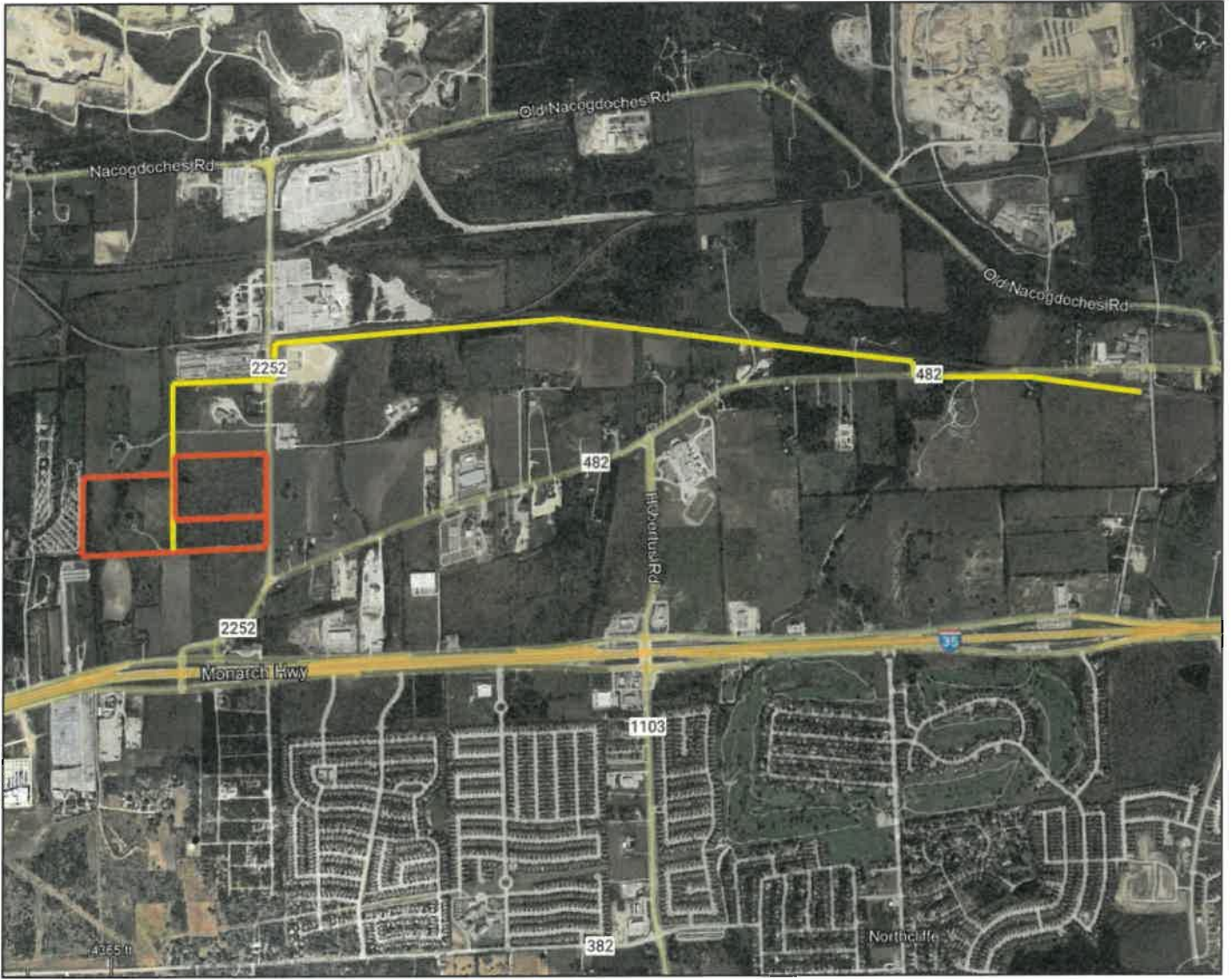


Exhibit "F"

**Phase One Tasks – Costs and Expenses**

*[to be attached]*

Exhibit F	
Phase One Tasks - Costs and Expenses	
<b>Stateside Right-of-Way</b>	
Project Management	\$4,200
File Setup	3,200
Title Research	6,600
Acquisition (Right of Entry)	30,000
<b>Total ROW - Acquisition/Negotiation<sup>(1)</sup></b>	<b>\$44,000</b>
<b>Civil Engineering</b>	
Civil Coordination	\$16,500
Offsite WW Utility Design	62,500
<b>Total Civil Costs</b>	<b>\$79,000</b>
<b>Survey</b>	
Boundary Verification	\$5,585
Topographic & Utility Survey	8,375
Prepare Exhibits & Legal Descriptions	1,500
Survey Civil Coordination	4,200
<b>Total Survey Costs</b>	<b>\$19,660</b>
<b>Appraisals</b>	
Appraisal 1	\$3,800
Appraisal 2	3,800
<b>Total Appraisal Costs</b>	<b>\$7,600</b>
<b>Easements</b>	
Easement Acquisition 1	\$56,644
Easement Acquisition 2	91,641
<b>Total Easement Acquisition Costs</b>	<b>\$148,284</b>
Legal Costs	\$25,000
Misc. Costs	\$25,000
Contingency Costs (5%)	\$17,427
<b>Total Phase One Costs</b>	<b>\$365,972</b>

(1) Assumes eminent domain proceedings are not necessary.

**SEDC MEMORANDUM**

**SEDC Board Meeting:** 08/24/2023  
**Department:** Economic Development Corporation  
**Subject:** Resolution 2023-11 - Discussion and action authorizing the Executive Director of the Schertz Economic Development Corporation to enter into a Performance Agreement with Core5 Industrial Partners. (S. Wayman)

---

**BACKGROUND**

This project was brought to us very recently and due to its minor nature and the magnitude of the project, we are hopeful that we can take action to ratify it at this meeting after we go back into open session. Core5 Industrial Partners LLC owns a 136-acre tract in south Schertz near the intersection of Loop 1604 and IH-10. The project has been underway, and the owners have plans for four spec warehouse/fulfillment center developments. They have been working with the city separately for several months and the development is underway. At a certain point, they were made aware of a requirement of the city to where the city requires pilot channels in their drainage channels. The area where the facility is has a large amount under flood plain and there is extensive work being done to channelize stormwater. As a result of the city's requirement, the group are being forced to pay an additional \$350,000.00 that they did not have in their plan. I received a request to reach out to Core5 and did so. They submitted an application, and we are before you all at this meeting to see if you all would like to enter into a performance agreement with them to provide this funding, for only the amount of the cost of the channelized stormwater channels, not to exceed \$350,000.00, when they receive their Certificate of Occupancy for one of the four buildings. They will front the construction and the SEDC will reimburse them actual costs not to exceed the maximum amount.

**COMMUNITY BENEFIT**

This development is an expansive office park on a piece of property that has a lot of floodplains, along with some street's issues, being shared between us and San Antonio. Brian James has worked with the developer to overcome a great many of these issues, making the portion that the SEDC is being asked to pay for very small in the scope of the project. Anticipated to equal a \$144 million dollar project that could potentially employ 1600 employees.

**FISCAL IMPACT**

Not to exceed \$350,000 paid out in an Operational Grant at the time of their Certificate of Occupancy for one of their buildings.

**SUMMARY OF RECOMMENDED ACTION**

This is an extraordinary project that is already underway. Tremendous benefits to the city for what we are being asked to contribute and what we will be funding is a benefit to stormwater runoff in an area that has extensive flood plain. Staff would recommend approval.

---

**Attachments**

Res. 2023-11

---

**SEDC RESOLUTION 2023-11**

**A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION, TEXAS AUTHORIZING THE EXECUTIVE DIRECTOR OF THE SCHERTZ ECONOMIC DEVELOPMENT CORPORATION TO ENTER INTO A PERFORMANCE AGREEMENT WITH CORE5 INDUSTRIAL PARTNERS; 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”); and

WHEREAS, all powers of the corporation are vested in the SEDC Board of Directors (the “Board”) appointed by the governing body of the corporation’s authorizing unity; 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, the agreement provides that CORE FIVE INDUSTRIAL PARTNERS will receive THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$350,000) as an operational grant;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION THAT:

Section 1. The Schertz Economic Development Board hereby approve the Economic Development Performance Agreement amendment attached hereto as ATTACHMENT 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 Board.

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 \_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF SCHERTZ ECONOMIC  
DEVELOPMENT CORPORATION

\_\_\_\_\_  
Paul Macaluso, SEDC Board President

ATTEST:

\_\_\_\_\_  
Sammi Morrill, SEDC Board Secretary

# ATTACHMENT A

**CORE5 INDUSTRIAL PARTNERS, LLC  
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

---

This Economic Development Incentive Agreement (“Agreement”) is entered into to be effective as of \_\_\_\_\_, by and between the Schertz Economic Development Corporation, located in Guadalupe County, Texas (hereinafter called “Corporation”), 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, C5LC at Interstate 10, LLC, a Limited Liability Corporation authorized to do business in Texas (hereinafter called “Company”), otherwise 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 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**, Company desires to construct its operations within the City of Schertz, located at 10260, 10264, 10268 and 10272 Viewpoint Ridge, Schertz, Bexar County, Texas 78154; and

**WHEREAS**, Corporation intends to provide an infrastructure grant of THREE HUNDRED AND FIFTY THOUSAND DOLLARS AND NO/100 (\$350,000.00), as set forth in this Agreement; and

**WHEREAS**, the expansion of the Company, as proposed, will contribute to the economic development of the City of Schertz by ultimately 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;

**WHEREAS**, the Corporation desires to offer incentives to Company to enable Company to expand the Facility pursuant to this Agreement in substantial conformity with the City of Schertz Economic Development Incentive Policy and 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 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 Corporation's execution of this Agreement is authorized by the Act and constitutes a valid and binding obligation of the Corporation. The Corporation acknowledges that Company is acting in reliance upon the Corporation'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 in the manner provided for herein.

3. Purpose. The purpose of this Agreement is to formalize the agreements between the Company and the Corporation for the granting of funds in the form of an infrastructure grant associated with Company's Project and 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 Corporation 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 Corporation unless an alternative penalty or remedy is provided for herein.

4. Administration of Agreement. Upon the Effective Date, the Corporation delegates the administration and oversight of this Agreement to the Executive Director of the Corporation. Any proposed amendments to the Agreement shall require the approval of the Board of Directors of the Corporation.

### **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.

“Actual Total Improvement Costs” means the actual cost of the Public Improvements including, but not limited to, verified easement acquisition costs, architectural, engineering, legal fees, construction, labor, materials, and the costs to “carry” the foregoing, as substantiated with receipts and invoices.

“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.

“Certificate of Occupancy” shall mean the signed certificate issued by the City of Schertz Inspections Division 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” shall mean failure by any Party to timely and substantially comply with any performance requirement, duty, or covenant if uncured within sixty (60) days of receiving written notice from any other Party.

“Effective Date” shall be the date of the last signature authorizing this agreement.

“Expiration Date” shall mean the earlier of:

1. \_\_\_\_\_; or
2. Completion of the Project; or
3. The date of termination, provided for under Article VII of this Agreement.

“Facility” shall mean the property and improvements that house the Project and being located at 10260, 10264, 10268 and 10272 Viewpoint Ridge, Schertz, Bexar County, Texas 78154.

“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.

"Maximum Infrastructure Grant Amount" shall mean the cash payment from Corporation upon Company receiving their Certificate of Occupancy and commencing operations in Schertz in the amount of THREE HUNDRED AND FIFTY THOUSAND AND NO/100 DOLLARS (\$350,000.00).

"Project" shall mean the design and construction of pilot channels for drainage improvements at the Company's Schertz Facility.

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

#### **ARTICLE IV ECONOMIC DEVELOPMENT INCENTIVE TERMS AND CONDITIONS**

Incentive. In consideration of the Developers' construction of the Projects and Drainage Channel Improvements, the SEDC agrees to participate in the funding of the Actual Total Improvement Cost of the Drainage Channel Improvements as set forth in **Exhibit "B"** in an amount not to exceed the Maximum Infrastructure Grant Amount. Subject to the satisfaction of all the terms and conditions of this Agreement and the obligation of Company to repay the Grant pursuant to Article V hereof, the Corporation agrees to provide Company with the following economic development incentives:

1. The Corporation shall grant the Maximum Infrastructure Amount to the Company upon Company receiving their Certificate of Occupancy (or jurisdictional equivalent) of one of the four buildings in Schertz provided that all conditions precedent have been satisfied.

2. Current Revenue. The funds distributed hereunder shall be paid solely from lawfully available funds to the Corporation. 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 Corporation agrees to the extent allowed by law, to keep all tax information and documentation received, pursuant to this Agreement hereof, confidential. In the event a request is made for such information pursuant to the Texas Public Information Act, Corporation will not disclose the information unless required to do so by the Attorney General of Texas under the provisions of the applicable statutes.

4. Conditions Precedent. The obligation of the Corporation to pay funds in the form of a Grant shall be conditioned upon Company's continued compliance with and satisfaction of each of the conditions set forth in this Agreement. Company's Project will not directly create or retain any jobs and will result in a capital investment of at least ONE HUNDRED AND FORTY FOUR MILLION AND NO/100 DOLLARS (\$144,000,000.00) to be eligible for the Maximum

Infrastructure Grant Amount pursuant to the adopted incentive guidelines of the Corporation. Company must complete the Project as detailed in Exhibit B, complete the construction of one building and obtain a Certificate of Occupancy prior to any grant payments.

## **ARTICLE V COVENANTS AND DUTIES**

1. Company's Covenants and Duties. Company makes the covenants and warranties to the Corporation and 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 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 and the United States of America during any term of this Agreement and shall timely and fully comply with all of the terms and conditions of this Agreement to commence and complete the Project in accordance with the Agreement.

(b) The execution of this Agreement has been duly authorized by 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 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 agrees to obtain or cause to be obtained, all necessary permits and approvals from City of Schertz and/or all other governmental agencies having jurisdiction over the construction of any improvements to the Facility and shall be responsible for paying, or causing to be paid, to City of Schertz and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project.

Company shall cooperate with the Corporation in providing all necessary information to assist them in complying with this Agreement.

(f) 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 Grant provided herein will be used.

(g) Maintain and prepare financial statements in accordance with generally accepted accounting principles in the United States of America as established by the Financial Accounting Standards Board and permit Corporation to visit, examine, audit, inspect, and make and take away copies or reproductions of Company's book of accounts and other records at mutually agreed upon times (provided, Corporation shall pay the reasonable fees and disbursements of any accountants or other agents of Corporation, selected by Corporation, for the foregoing purposes).

(h) Grant Corporation 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 12 months, the total expenses attributable to training and employing those employees, and the cumulative payroll for Company's Schertz operation.

2. Corporation's Covenants and Duties. The Corporation is obligated to pay Company a Grant in the form of an Infrastructure Grant as outlined this agreement. The Grant shall be paid within sixty (60) days after receipt of a copy of the Annual Report reflecting that the applicable performance period objectives have been met as set forth in this Agreement.

3. Substantial Compliance and Default. Failure by any Party to timely and substantially comply with any performance requirement, duty, or covenant shall be considered an act of Default if uncured within sixty (60) days of receiving written notice from any other Party. Failure of Company to timely and substantially cure a default will give the Corporation the right to terminate this Agreement, as reasonably determined by the Board of Directors of the Corporation.

4. Recapture. In the event of Default by the Company, and solely in the event of Default by the Company, the Corporation shall as its sole and exclusive remedy for Default hereunder, after providing Company notice and an opportunity to cure, have the right to discontinue all future Grant payments and recapture all amounts previously paid under this Agreement (as applicable, the "Recaptured Amount").

The Recaptured Amount shall be paid by the Company within one hundred twenty (120) days after the date Company is notified by the Corporation of such Default (the "Payment Date") provided said Default was not cured. 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.

## **ARTICLE VI 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 Corporation).

Notwithstanding anything to contrary contained in this Agreement, in the event the Agreement terminates pursuant to Article VI, Section 1 (a) or 1(b) above, the Corporation shall not be entitled to exercise the recapture rights granted herein.

## **ARTICLE VII DISPUTE RESOLUTION**

1. Mediation. If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, San Antonio, Texas, before resorting to litigation; provided that a Party may not invoke mediation unless it has provided the other Party with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All actual costs of negotiation and mediation collectively known as alternate dispute resolution ("ADR") shall be assessed equally between the Parties with each party bearing their own costs for attorneys' fees, experts, and other reasonable costs of ADR actually incurred and any ensuing litigation.

2. During the term of this Agreement, if Company files and/or pursues an adversarial proceeding against the Corporation regarding this Agreement without first engaging in good faith mediation of the dispute, then, at the Corporation's option, all access to the funds provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest bearing account until the resolution of such adversarial proceeding.

3. 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 either the Corporation or the City of Schertz.

**ARTICLE VIII  
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 Corporation shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments duly approved by the Corporation, on behalf of the Parties related thereto. Notwithstanding any other provision of this Agreement to the contrary, performance of either Party under this Agreement is specifically contingent on Company obtaining a Certificate of Occupancy from the City of Schertz and commencing operations at the Facility under the terms of this Agreement.

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 Corporation 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 Corporation 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 Corporation. 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 Corporation 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 Corporation 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.

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 Corporation 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 Corporation 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 Corporation.

(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 Corporation 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 Corporation, or any board member, or agent of the Corporation, 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: Exec. Dir. of Economic Development  
1400 Schertz Parkway  
Schertz, TX 78154

With a copy to:  
Denton, Navarro, Rocha, & Bernal, PC  
Attention: T. Daniel Santee  
2517 North Main Avenue  
San Antonio, TX 78212

If to the Company: C5LC at Interstate 10, LLC  
1230 Peachtree Street NE, Suite 1000  
Atlanta, GA 30309  
Attention: General Counsel

With a copy to:  
c/o Core5 Industrial Partners  
15660 North Dallas Parkway, Suite 200  
Dallas, TX 75248  
Attn: John Leinbaugh

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

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

8. 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.

9. Amendment. This Agreement may be amended by mutual written agreement of the Parties, as approved by the Board of Directors of the Corporation.

10. 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.

11. Payment of Legal Fees. Company commits to reimburse the Corporation for the necessary legal fees in the preparation of any amendment to this Agreement requested by Company. Timely payment shall be made within 60 days of submittal of invoice to Company by the Corporation or its assigns. Each Party shall bear its own attorney's fees in connection with the negotiation of this Agreement.

12. 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.

13. 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 Corporation.

14. 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.

15. 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.

16. Exhibits. Any Exhibits attached hereto are incorporated by reference for all purposes.

17. 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.

18. Indemnification.

**COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CORPORATION AND CITY, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, REASONABLE 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 CORPORATION 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 CORPORATION 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 ANNUAL GRANTS 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 CORPORATION.**

19. 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.

20. 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.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

**SCHERTZ ECONOMIC DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Paul Macaluso, SEDC Board President

**ATTEST:**

By: \_\_\_\_\_  
Sammi Morrill, SEDC Board Secretary

**Executed** on this \_\_\_\_\_ day of \_\_\_\_\_, 2023

**COMPANY**

**C5LC AT INTERSTATE 10, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: Linda D. Booker

Title: Secretary and Chief Financial Officer

Exhibit A

**COST OF THE DRAINAGE CHANNEL IMPROVEMENTS**

[SEE ATTACHED]