

RESOLUTION NO. 24-R-58

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ TEXAS AUTHORIZING AN ECONOMIC DEVELOPMENT FUNDING AGREEMENT BETWEEN THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION AND CITY OF SCHERTZ, TEXAS AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City of Schertz Economic Development Corporation (“SEDC”) is a non-profit industrial development corporation duly established under the Development Corporation Act of 1979, as amended (Section 501.001 et seq. Texas Local Government Code, formerly the Development Corporation Act of 1979) (the “Act”);

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

WHEREAS, Section 505.152 in addition, authorizes expenditures that are found by the board of directors to be required or suitable for the funding and coordination of Recreational or Community Facilities and Improvements to be required or suitable for use of amateur sports, including children’s sports, athletic, entertainment, tourism and Public Park Purposes; and

WHEREAS, the Schertz Economic Development Corporation and the City of Schertz are partnering to fund Soccer Field Lights for 10 of the 12 City Owned Soccer Fields located at the Schertz Soccer Complex at 75 Maske Rd, Schertz, Texas; and

WHEREAS, The SEDC held a public hearing at its May 23, 2024 meeting and the Board approved SEDC Resolution 2024-7 authorizing a Funding Agreement between the City of Schertz Economic Development Corporation and City of Schertz, Texas to fund Parks Capital Improvement Plan subject to the City Council’s authorization; and

WHEREAS, Section 501.073 of the Act requires the SEDC’s authorizing unit to approve all programs and expenditures.

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

Section 1. The City of Schertz City Council hereby authorizes the expenditure reflected in the Economic Development Funding Agreement attached hereto as ATTACHMENT 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resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.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 _____, 2024.

CITY OF SCHERTZ

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

ATTACHMENT A

FUNDING AGREEMENT

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

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

WHEREAS, Section 505.152 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of the items described by this section"; and

WHEREAS, Section 505.152 in addition, authorizes expenditures that are found by the board of directors to be required or suitable for the funding and coordination of Recreational or Community Facilities and Improvements to be required or suitable for use for amateur sports, including children's sports, athletic, entertainment, tourism and Public Park Purposes

WHEREAS, the SEDC and City of Schertz are partnering to fund Soccer Field Lights for 10 of the 12 the City Owned Soccer Fields located at the Schertz Soccer Complex at 75 Maske Rd, Schertz TX (hereinafter referred to as the "Project"); and

WHEREAS, the SEDC's Board of Directors have determined the financial assistance provided to City is consistent and meets the definition of "project" as that term is defined in Section 505.152 of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code; and

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

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

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, as defined herein, and shall continue thereafter until October 1st, 2026, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

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

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Performance Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (c) **City.** The words “City” means the City of Schertz, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 1400 Schertz Parkway Schertz, Texas 78154.
- (d) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the City and the SEDC.
- (e) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (f) **SEDC.** The term “SEDC” means the Schertz Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 1400 Schertz Parkway Schertz, Texas 78154.
- (g) **Project.** The word “Project” means placement of lighting fixtures and poles on 10 of the 12 soccer playing fields at the Schertz Soccer Complex located at 75 Maske Rd, Schertz, Texas.
- (h) **Qualified Expenditures.** The words “Qualified Expenditures” mean those costs associated with planning and placement of Soccer Field Lighting poles and lights at the Schertz Soccer Complex, and which meet the definition of “project” as that term is defined in Section 505.152 of the Act, and meet the definition of “cost” as that term is defined in Section 501.152 of the Act.
- (i) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. AFFIRMATIVE COVENANTS OF THE CITY.

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

- (a) **Funding.** The City shall be entitled to funding from SEDC in the amount not to exceed ONE MILLION, SEVEN HUNDRED THOUSAND DOLLARS (\$1,700,000) for Qualified Expenditures. City covenants and agrees to submit to the SEDC invoices, receipts, or other documentation of the Qualified Expenditures in a form acceptable to the SEDC prior to Project acceptance.
- (b) **Public Purpose.** City agrees that the Project contemplated herein represents a public purpose for which the proposed funds are authorized to be used.
- (c) **Performance Conditions.** City agrees to provide, make, execute and deliver to SEDC such other documents and other agreements as SEDC or its attorneys may reasonably request to evidence the use of the funds for the Project.
- (d) **Performance.** City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between City and SEDC.

SECTION 5. AFFIRMATIVE COVENANTS OF SEDC.

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

- (a) **Financial Assistance for Qualified Expenditures.** SEDC covenants and agrees to provide funding in advance or by reimbursement for Qualified Expenditures made by the City pursuant to Section 4(a) of this Agreement, in an amount not to exceed the lesser of ONE MILLION, SEVEN HUNDRED THOUSAND DOLLARS (\$1,700,000) or the aggregate amount of said invoices, receipts, or other documentation submitted by the City to SEDC within thirty (30) days of receipt of said documentation.
- (b) **Performance.** SEDC agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the City and SEDC.

SECTION 6. EVENTS OF DEFAULT.

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

- (a) **General Event of Default.** Failure of City or SEDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of City or SEDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between City and SEDC is an Event of Default.

- (b) **False Statements.** Any warranty, representation, or statement made or furnished to SEDC by or on behalf of City under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.

SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 6 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement. In the event, City defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by the SEDC to City pursuant to Section 5(a) of this Agreement shall become immediately due and payable by City to the SEDC.

SECTION 8. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Guadalupe County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Guadalupe County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual or individuals executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. SEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

- (g) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown in Section 3 of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, City agrees to keep SEDC informed at all times of City's current address.

- (h) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

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

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

CITY:

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

By: _____
City Manager
Date Signed: _____

ATTEST:

City Secretary

SEDC:

SCHERTZ ECONOMIC DEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: Samu Morall
SEDC Board President
Date Signed: 23 May 2024

ATTEST:

[Signature]
SEDC Board Secretary

The project will provide poles and lighting fixtures to Fields 3 – 12 of the City of Schertz Soccer complex at 75 Maske Rd, Schertz, TX 78154

