

SCHERTZ

ECONOMIC DEVELOPMENT CORPORATION

NOTICE OF MEETING

AGENDA

MAY 23, 2024

6:00 P.M.

The City of Schertz Economic Development Corporation (SEDC) Board of Directors will hold a regular monthly meeting on Thursday, MAY 23, 2024, 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.

In accordance with provisions of the Texas Open Meetings Act, Chapter 551, Texas Government Code notice is hereby given that a Possible Quorum of the governing body of the City of Schertz, Texas may take place at this meeting.

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 Thursday, April 25, 2024. (T.Miller)

Presentations

4. Staff briefing on SEDC monthly financial statement for the month of April 2024. (S.Wayman)

Public Hearing

5. **Resolution 2024-7** - Authorizing a Funding Agreement between the City of Schertz Economic Development Corporation and the City of Schertz, Texas to fund Parks Capital Improvement Plan for the Soccer Field Lights. (S.Wayman)

Discussion Items

6. **Resolution 2024-6** - Authorizing a Memorandum Of Understanding between the City of Schertz Economic Development Corporation and the City of Schertz, Texas. (S.Wayman)
7. Discussion and possible action on scheduling a SEDC Workshop date. (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.

- Project E-94
- Project E-80
- Project E-84

Reconvene to Regular Session

9. Take any actions based on discussion held in closed session under Agenda Item No. 8.

Requests and Announcements

- Announcements by staff:
 - Holly Malish, Deputy Director's last day will be May 28, 2024
 - Offices closed May 27, 2024 - Memorial Day
 - Offices closed June 19, 2024 - Juneteenth
 - Next Regular Board Meeting - June 27, 2024
- Requests 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 20th day of May, 2024, at 5:00 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.

Tracy Miller
 Administrative Assistant- Economic
 Development

**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 _____, 2024.
 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: 05/23/2024
Department: Economic Development Corporation
Subject: Approval of the minutes for the Board of Directors Regular Monthly Meeting held Thursday, April 25, 2024. (T.Miller)

SUBJECT:

Approval of the minutes for the Board of Directors Regular Monthly Meeting held Thursday, April 25, 2024. (T.Miller)

Attachments

04-25-2024

SCHERTZ

ECONOMIC DEVELOPMENT CORPORATION

MINUTES

Thursday, April 25, 2024

The City of Schertz Economic Development Corporation (SEDC) Board of Directors met for a Regular Monthly Meeting on Thursday, April 25, 2024, 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.

In accordance with provisions of the Texas Open Meetings Act, Chapter 551, Texas Government Code notice is hereby given that a Possible Quorum of the governing body of the City of Schertz, Texas may take place at this meeting.

Call to Order

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

Board President Sammi Morrill presided over the meeting and called it to order at 6:01 p.m.

Board of Directors Present:

Sammi Morrill, Board President
Henry Hayes, Board Secretary
Donna Steward, Board Treasurer
Mark Moody, Board Member
Eryn McElroy, Board Member
Reynaldo "Ray" Chavez, Board Member

Staff Present:

Scott Wayman, Executive Director
Ashley Ritchey, Business Engagement Manager
Tracy Miller, Administrative Assistant
Sarah Gonzalez, Assistant City Manager

Board of Directors Absent:

Bill Dixon, Board Vice President

Others Present:

James Walters, Finance Director
Lauren Shrum, Parks and Recreation Director
Tim Brown, Councilmember City Council EDC Liaison
Kristy Taddonio, Mile Hi Foods
Jonathan Cribbs, Mile Hi Foods
Robert Mases, Mile Hi Foods
Cody Mullins, Four Square Group
Mike Falleroni, Ryan LLC
Megan McNulty, Ryan LLC
Liane Garrett, Madwomen Marketing

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.*
 1. Brandee Zukowski, Chamber Leadership Core
 2. Kaylin Mahar, Chamber Leadership Core

They are members of the Chamber Leadership Core and were present to observe the meeting.

Minutes

3. Approval of the minutes for the Board of Directors Regular Monthly Meeting held Thursday, March 28, 2024. (T.Miller)

Board President Sammi Morrill asked for a motion to approve the Minutes of the Board of Directors Regular Monthly Meeting held on Thursday, March 28, 2024.

Moved by Board Treasurer Donna Steward, seconded by Board Member Ray Chavez.

AYE: Board President Sammi Morrill, Board Secretary Henry Hayes, Board Treasurer Donna Steward, Board Member Mark Moody, Board Member Eryn McElroy, Board Member Ray Chavez.

Unanimous affirmative vote - Motion carries.

Presentations

4. Staff briefing on SEDC monthly financial statement for the month of March 2024. (S.Wayman)

James Walters, Finance Director provided a summary and overview of the SEDC Financial Statement for the month of March 2024.

March 2024 sales tax received was \$482,383.39, expenses were \$66,174.95, a 2.5% decrease over the year prior. The 12-month rolling average is 4.7%. Notable expenditures include incentive payments to Ace Mart Restaurant and Sysco Corporation. Total Cash & Investment figure at the end of March was \$35.6 million.

5. Presentation by CFO of Mile Hi San Antonio, LLC and Megan McNulty, Manager with Ryan. (S.Wayman)

Scott Wayman, Executive Director introduced Megan McNulty and Mike Falleroni of Ryan, LLC and Kristy Taddonio CFO of Mile Hi Foods.

Ms. Taddonio gave a brief overview of the company. Mile Hi Foods has had one core customer for the last 60 years. They are looking to expand in the City of Schertz in the next 24 months.

Mr. Falleroni gave a brief overview of the Titan site they are looking at to move forward with the project in Schertz. They are considering two other sites but narrowing it down to Schertz. They are looking to have the project completed by 4th quarter of 2025.

Board Member Ray Chavez inquired about employee training and their thoughts on the other locations they are looking at. Ms. Taddonio explained the in-house training process and they discussed the other locations they are interested in.

Board Secretary Henry Hayes inquired about them requesting any compliance waivers or exceptions asked for with this project. Mr. Falleroni stated he does not anticipate needing any waivers.

Board Treasurer Donna Steward inquired about tax abatement in addition to the incentive payment. Mr. Falleroni stated tax rebates will be requested.

Public Hearing

6. **Resolution 2024-5** - Authorizing an Economic Development Performance Agreement between the City of Schertz Economic Development Corporation and Mile Hi San Antonio, LLC. (S.Wayman)

Board President Sammi Morrill opened the public hearing at 6:30 p.m.

No public comments were made.

Board President Sammi Morrill closed the public hearing at 6:31 p.m.

Discussion Items

7. Briefing and discussion on Demographics Information. (S.Wayman/A.Ritchey)

Scott Wayman, Executive Director provided demographic information from the 4th quarter JobsEQ-Market Research:

- Population
- Economic
- Educational Attainment
- Housing
- Social

Board President Sammi Morrill provided comparison data on the percentage of people in San Antonio not having a high school diploma.

Mr. Wayman also provided information for the 4 leading sociographics profiles from ESRI Tapestry Segmentation:

- Workday Drive
- Up and Coming Families
- Old Residents and Newcomers
- Down the Road
- 25 percent of City of Schertz employees live in Schertz
- Schertz Industries
- Schertz Top Occupations

8. Briefing and discussion on Future Land Use. (S.Wayman)

Scott Wayman, Executive Director gave an overview of our future land use industrial hub and regional corridor categories. He also discussed the areas we have available for development.

9. Briefing and discussion on the Talent Pipeline. (A.Ritchey)

Ashley Ritchey, Business Engagement Manager gave an overview of the Talent Pipeline. She discussed workforce development and the different programs we are partnered with to facilitate acquiring skills and opportunities:

- Job Fairs - Next Job Fair May 20, 2024
- Greater SATX
- Workforce Solutions Alamo
- TX FAME
- Regional Workforce Effort
- Colleges/Universities - UTSA, Alamo Colleges, NE Lakeview
- Learning Center - Texas State Technical College
- K-12 - Manufacturing Day, CTE, STEM

10. Briefing and discussion on future funding of Parks Capital Improvement Plan(CIP). (S.Wayman)

Scott Wayman, Executive Director discussed the Reserve Funding Model, SEDC Reserves, and the timing of CIP projects. Future funding strategies were examined, to include the next two years. This year the soccer field lights were proposed. No action taken at this time.

11. **Resolution 2024-4** - Authorizing an amendment to the Economic Development Performance Agreement between the City of Schertz Economic Development Corporation and Closner Equipment Company, Inc. (S.Wayman)

Board President Sammi Morrill asked for a motion to approve SEDC Resolution 2024-4, a Resolution by the City of Schertz Economic Development Corporation, Texas authorizing an amendment to the Economic Development Performance Agreement between the City of Schertz Economic Development Corporation and Closner Equipment Company, Inc.

Moved by Board Secretary Henry Hayes, seconded by Board Member Ray Chavez.

AYE: Board President Sammi Morrill, Board Secretary Henry Hayes, Board Treasurer Donna Steward, Board Member Mark Moody, Board Member Eryn McElroy, Board Member Ray Chavez.

Unanimous affirmative vote - Motion carries.

Board President Sammi Morrill recessed Open Session to Closed Session at 7:45 p.m.

Closed Session

12. 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.

- Project E-94

Start time: 7:45 p.m.

End time: 7:59 p.m.

Board President Sammi Morrill reconvened to Open Session at 7:59 p.m.

Reconvene to Regular Session

13. Take any actions based on discussion held in closed session under Agenda Item No. 12.

Board President Sammi Morrill asked for a motion to approve Resolution 2024-5 authorizing an Economic Development Performance Agreement between the City of Schertz Economic Development Corporation and Mile Hi San Antonio, LLC.

Moved by Board Member Eryn McElroy, seconded by Board Member Ray Chavez.

AYE: Board President Sammi Morrill, Board Secretary Henry Hayes, Board Treasurer Donna Steward, Board Member Mark Moody, Board Member Eryn McElroy, Board Member Ray Chavez.

Unanimous affirmative vote - Motion carries.

Requests and Announcements

- Announcements by staff:
 - Next Regular Board Meeting - May 23, 2024
 - Offices closed May 27, 2024 - Memorial Day
- Requests by Board Members to place items on a future SEDC Board Meeting agenda.
 - SEDC Workshop date - Summer 2024
 - Review Compensation Plan
 - City establishing a CIP
 - Parks Master Plan
 - Park Surveys
 - Updated Maps

Adjournment

Board President Sammi Morrill asked for a motion to adjourn the meeting.

Moved by Board Treasurer Donna Steward, seconded by Board Member Mark Moody.

AYE: Board President Sammi Morrill, Board Secretary Henry Hayes, Board Treasurer Donna Steward, Board Member Mark Moody, Board Member Eryn McElroy, Board Member Ray Chavez.

Unanimous affirmative vote - Motion carries.

Board President Sammi Morrill adjourned the meeting at 8:05 p.m.

MINUTES PASSED AND APPROVED THIS _____ DAY _____ 2024.

Sammi Morrill
Board President

Henry Hayes
Board Secretary

SEDC MEMORANDUM

SEDC
Board Meeting: 05/23/2024
Department: Economic Development Corporation
Subject: Staff briefing on SEDC monthly financial statement for the month of April 2024. (S.Wayman)

SUBJECT:
Staff briefing on SEDC monthly financial statement for the month of April 2024. (S.Wayman)

Attachments

April Financials

CITY OF SCHERTZ
 REVENUE AND EXPENSE REPORT (UNAUDITED)
 AS OF: April 30th, 2024

***** 2023 - 2024 *****

620-SED CORPORATION
 FINANCIAL SUMMARY

OVERVIEW

Revenues

Sales Tax	\$ 495,916.01	Payment Received in April
	6.6%	Annual Increase
	3.9%	12-Month Rolling Average

Expenses

CITY OF SCHERTZ	\$ 273,441.50
IMPACT DATA SOURCE LLC	\$ 6,038.00

Year-to-Date

Total Revenue	\$ 5,097,629.12	
Total Expenses	<u>\$ 850,583.48</u>	
Over/Under		<u>\$ 4,247,045.64</u>

Cash & Investments

Cash	\$ 315,334.51	
Investments	<u>\$ 35,694,461.92</u>	
Total		<u>\$ 36,009,796.43</u>

*sales taxes are delayed 2 months from received to earned. Sales Taxes recognized in report are estimates and are adjusted to actual when payments are received.

CITY OF SCHERTZ
 REVENUE AND EXPENSE REPORT (UNAUDITED)
 AS OF: April 30th, 2024

620-SED CORPORATION	***** 2023-2024 *****						
FINANCIAL SUMMARY	CURRENT BUDGET	CURRENT PERIOD	PRIOR YEAR Y-T-D ACTUAL	CURRENT Y-T-D ACTUAL	Y-T-D ENCUMBR	BUDGET BALANCE	% OF BUDGET
<u>REVENUE SUMMARY</u>							
Taxes	7,092,000	528,152.68	3,737,986.88	3,840,676.57	-	3,251,323.43	54.16%
Fund Transfers	-	-	-	190,391.66	-	(190,392)	0.00%
Miscellaneous	1,315,000	147,366.05	631,256.22	1,066,560.89	-	248,439.11	81.11%
TOTAL REVENUES	8,407,000	675,518.73	4,369,243.10	5,097,629.12	-	3,309,370.88	60.64%
<u>EXPENDITURE SUMMARY</u>							
<u>NONDEPARTMENTAL</u>							
City Supported Services	11,677,510	-	81,944.29	83,984.70	-	11,593,525.30	0.72%
TOTAL NONDEPARTMENTAL	11,677,510	-	81,944	83,984.70	-	11,593,525.30	0.72%
<u>ECONOMIC DEVELOPMENT</u>							
Personnel Services	24,575	994.36	8,616.21	9,137.35	-	15,437.65	37.18%
Supplies & Equipment	61,175	6,523.83	19,602.73	13,571.82	-	47,603.18	22.19%
City Supported Services	214,500	-	47,001.85	2,871.12	-	211,628.88	1.34%
Utility Services	975	44.68	49.00	97.69	-	877.31	10.02%
Operating Expense	398,135	4,361.46	61,912.13	192,294.80	-	205,840.20	48.30%
Professional Services	61,300	294.00	37,280.50	1,743.00	-	59,557.00	2.84%
Fund Charges/Transfers	546,883	273,441.50	542,221.00	546,883.00	-	-	100.00%
TOTAL ECONO DEVELOPMENT	1,307,543	285,659.83	716,683.42	766,598.78	-	540,944.22	58.63%
TOTAL EXPENDITURES	12,985,053	285,659.83	798,627.71	850,583.48	-	12,134,469.52	6.55%
** REVENUE OVER(UNDER) EXPEND	(4,578,053)	389,858.90	3,570,615	4,247,046			

CITY OF SCHERTZ

REVENUE REPORT (UNAUDITED)

AS OF: April 30th, 2024

***** 2023-2024 *****							
620-SED CORPORATION REVENUES	CURRENT BUDGET	CURRENT PERIOD	PRIOR YEAR Y-T-D ACTUAL	CURRENT Y-T-D ACTUAL	Y-T-D ENCUMBR	BUDGET BALANCE	% OF BUDGET
<u>Taxes</u>							
000-411500 Sales Tax Revenue (4B)	7,092,000	528,152.68	3,737,986.88	3,840,676.57	-	3,251,323.43	54.16%
TOTAL Taxes	7,092,000	528,152.68	3,737,986.88	3,840,676.57	-	3,251,323.43	54.16%
<u>Fund Transfers</u>							
000-486000 Transfer In	-	-	-	190,391.66	-	(190,391.66)	0.00%
TOTAL Fund Transfers	-	-	-	190,391.66	-	(190,391.66)	0.00%
<u>Miscellaneous</u>							
000-491000 Interest Earned	15,000	448.55	7,684.34	7,936.50	-	7,063.50	52.91%
000-491200 Investment Earnings	1,300,000	146,917.50	623,571.88	1,058,624.39	-	241,375.61	81.43%
TOTAL Miscellaneous	1,315,000	147,366.05	631,256.22	1,066,560.89	-	248,439.11	81.11%
TOTAL REVENUES	8,407,000	675,518.73	4,369,243.10	5,097,629.12	-	3,309,370.88	60.64%

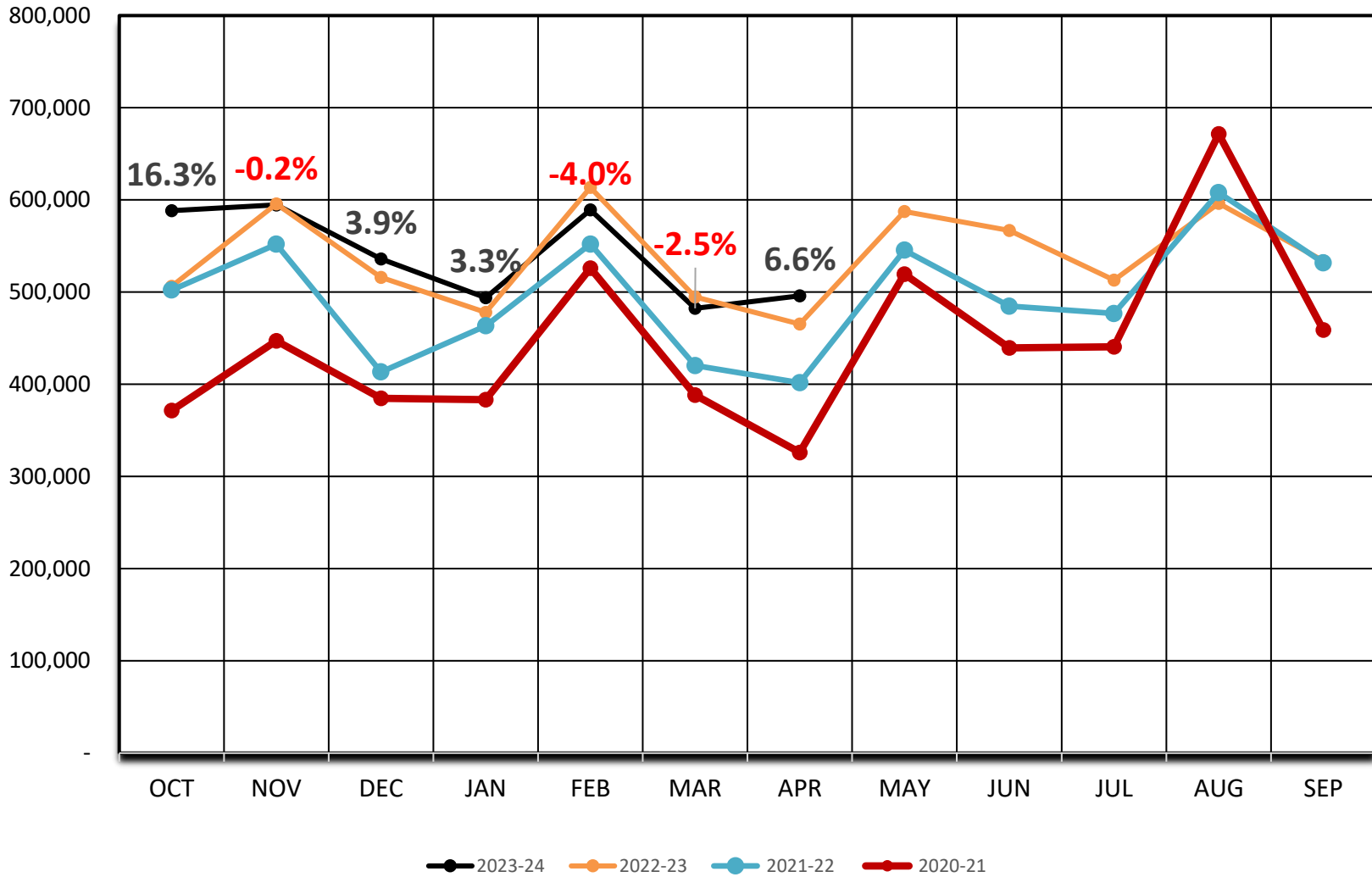
SED CORPORATION
CASH IN BANK AND INVESTMENTS

AS OF: April 30th, 2024

Cash in Bank	Investment Type	Yield	Maturity	Amount
Claim on Operating Cash Pool-Checking	Bank	5.37	-	\$ 315,334.51
Cash in Investments				
Texas Class Investment-Economic Development Corp	Pool*	5.43	-	33,385,244.63
Schertz Bank & Trust-Certificate of Deposit 1 Year	CD	3.75	5/10/2024	1,135,273.80
Schertz Bank & Trust-Certificate of Deposit 1 Year	CD	3.50	1/5/2025	<u>1,173,943.49</u>
Total Cash in Bank & Investments				<u>\$ 36,009,796.43</u>

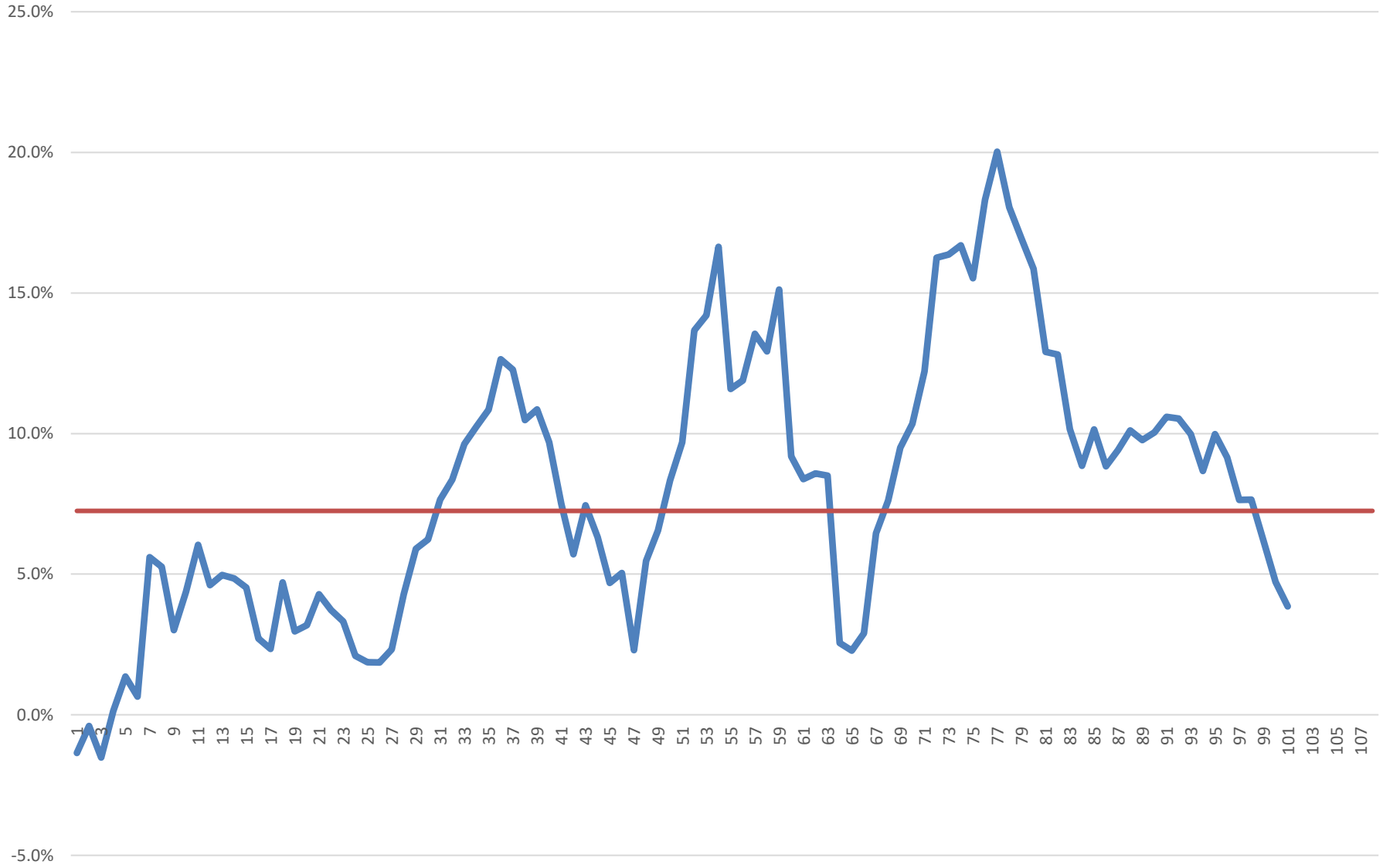
4B SALES TAX

By Collection Month



12 Month Rolling Average Oct 2014 - Present

Rolling 12 Month Average Long Term Average



APRIL 2024 PAYABLES REPORT

VENDOR NAME	DESCRIPTION	AMOUNT	
SED CORPORATION	SCOTT WAYMAN	TCMA Region 8 Luncheon	25.00
	HOLLY MALISH	Mileage Reimbursement	7.86
		FAM Tour Dinner	142.98
		Team Texas Chicago Per Diem	191.30
	ASHLEY RITCHEY	TEDC Mileage	33.18
		TEDC Per Diem	140.00
	IMPACT DATA SOURCE LLC	Annual Subscription Renewal	6,038.00
	WEX BANK	Vehicle Fuel	44.68
	UBEO	Monthly Copier Charge	276.55
	TEDC	Membership Renweal-Ashley Ritchey	550.00
	DENTON NAVARRO RODRIGUES BERNAL SANTEE	March 2024 Legal Services	294.00
	CITIBANK	Austin Marriott North TEDC Conferenc	351.90
		TML. S.Wayman TCMA Annual Conf	450.00
		Scott Wayman April 2024	42.44
		Scott Wayman April 2024	1,154.88
		Scott Wayman April 2024	50.00
		TEDC Webinar	79.00
		Parking-Greater SATX FAM Tour	15.00
		Jimmy John's Board Meeting	48.16
		Constant Contact Monthly Sub.	55.70
		FormAssembly Monthly Sub.	198.00
		Adobe Stock Monthly Sub.	29.99
		Mailchimp Monthly Sub.	38.25
		Shelf Return	-69.98
		Lowe's shelves for storage closet	233.87
		American Music City taxi	41.10
		Southwest Airlines- SSG Conf	633.96
		Uber Team Texas Chicago	50.54
		Southwest Airlines-Team TX Chicago	463.96
		Best Western-Greater SATX FAM Tou	608.01
	CITY OF SCHERTZ	Semi Annual Services Payment	<u>273,441.50</u>
		TOTAL:	\$285,659.83

SEDC MEMORANDUM

SEDC
Board Meeting: 05/23/2024
Department: Economic Development Corporation
Subject: Resolution 2024-7 - Authorizing a Funding Agreement between the City of Schertz Economic Development Corporation and the City of Schertz, Texas to fund Parks Capital Improvement Plan for the Soccer Field Lights. (S.Wayman)

SUBJECT:

Resolution 2024-7 - Authorizing a Funding Agreement between the City of Schertz Economic Development Corporation and the City of Schertz, Texas to fund Parks Capital Improvement Plan for the Soccer Field Lights. (S.Wayman)

Attachments

Res. 2024-7

SEDC RESOLUTION 2024-7

A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION, TEXAS AUTHORIZING A FUNDING AGREEMENT BETWEEN THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION AND THE CITY OF SCHERTZ, TEXAS TO FUND PARKS CAPITAL IMPROVEMENTS AND OTHER MATTERS IN CONNECTION THEREWITH

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 expenditures on behalf of a business enterprise under a project; 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 suitable for the 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 the 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 12 the City Owned Soccer Fields located at the Schertz Soccer Complex at 75 Maske Rd, Schertz, Texas; and

WHEREAS, the Schertz Economic Development Corporation 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 in Section 505.152 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 Schertz Economic Development Corporation, and accordingly this Agreement is not effective until City Council has approved the project at a City Council meeting called and held for that purpose; 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; and

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 Funding 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 _____, 2024.

CITY OF SCHERTZ ECONOMIC
DEVELOPMENT CORPORATION

Sammi Morrill, SEDC Board President

ATTEST:

Henry Hayes, SEDC Board Secretary

**ATTACHMENT A
FUNDING AGREEMENT**

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.

[The Remainder of this Page Intentionally Left Blank]

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

CITY:

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

By: _____

City Manager

Date Signed: _____

ATTEST:

City Secretary

SEDC:

SCHERTZ ECONOMIC DEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____

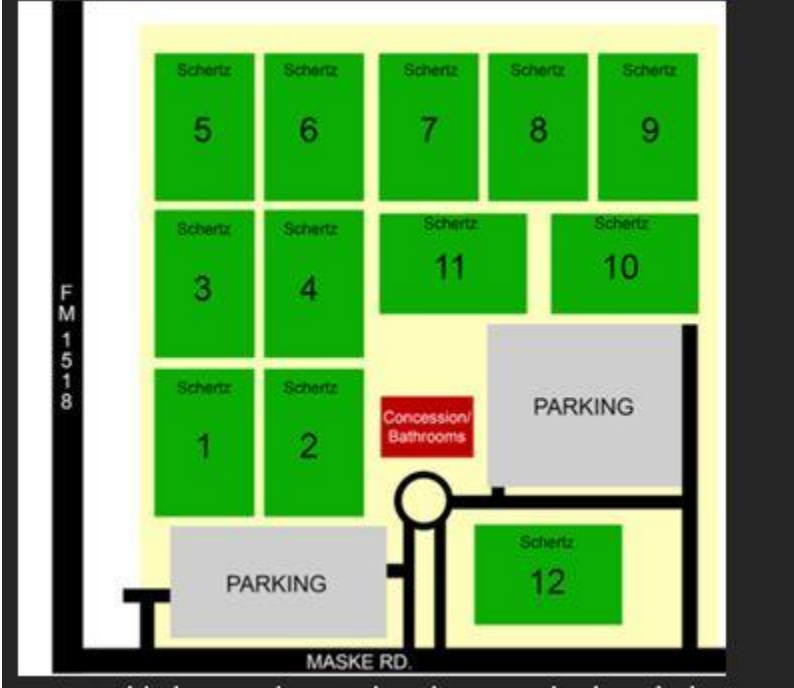
SEDC Board President

Date Signed: _____

ATTEST:

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



SEDC MEMORANDUM

SEDC
Board Meeting: 05/23/2024
Department: Economic Development Corporation
Subject: Resolution 2024-6 - Authorizing a Memorandum Of Understanding between the City of Schertz Economic Development Corporation and the City of Schertz, Texas. (S.Wayman)

SUBJECT:

Resolution 2024-6 - Authorizing a Memorandum Of Understanding between the City of Schertz Economic Development Corporation and the City of Schertz, Texas. (S.Wayman)

Attachments

Res. 2024-6

SEDC RESOLUTION NO. 2024-6

A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION, TEXAS AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION AND THE 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 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, Section 505.152 of the Texas Local Government Code, in addition also 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 found by the Board of Directors to be required or suitable for amateur sports, including children’s sports, athletic, entertainment, tourism and Public Park Purposes; and

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 the Memorandum of Understanding for Recreational or Community Facilities and Improvements Fundings and coordination between the SEDC and City and requests authorization by the City of Schertz City Council for the expenditures associated with the Memorandum of Understanding attached hereto as Exhibit A.

Section 2. Subject to the authorization of funds by the City of Schertz City Council, the Board hereby authorizes the President to execute the Memorandum of Understanding.

Section 3. 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 4. 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 5. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 6. 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 7. 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 8. 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 _____.

CITY OF SCHERTZ ECONOMIC
DEVELOPMENT CORPORATION

Sammi Morrill, SEDC Board President

ATTEST:

Henry Hayes, SEDC Board Secretary

EXHIBIT A
MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SCHERTZ TEXAS AND THE SCHERTZ ECONOMIC DEVELOPMENT CORPORATION FOR THE FUNDING AND COORDINATION OF RECREATIONAL OR COMMUNITY FACILITIES AND IMPROVEMENTS FOUND BY THE BOARD OF DIRECTORS TO BE REQUIRED OR SUITABLE FOR USE FOR AMATEUR SPORTS, INCLUDING CHILDREN’S SPORTS, ATHLETIC, ENTERTAINMENT, TOURISM AND PUBLIC PARK PURPOSES

This Memorandum of Understanding between the City of Schertz Texas (City) and the Schertz Economic Development Corporation (SEDC), collectively (Parties), is entered into for the funding and coordination of Recreational or Community Facilities and Improvements found by the Board of Directors to be required or suitable for use for amateur sports, including children’s sports, athletic, entertainment, tourism and Public Park Purposes.

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

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

WHEREAS, Section 505.152 of the Texas Local Government Code, in addition also 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 found by the Board of Directors to be required or suitable for use for amateur sports, including children’s sports, athletic, entertainment, tourism and Public Park Purposes; and,

WHEREAS, the SEDC has consistently partnered with the City to prioritize funding for projects that fall within the scope and mission of the SEDC as a Type B Economic Development Corporation, such as expenditures that are found by the board of directors to be required or suitable for the funding and coordination of recreational or community facilities and improvements found by the Board of Directors to be required or suitable for use for Amateur Sports, including Children’s Sports, Athletic, Entertainment, Tourism and Public Park purposes; and,

WHEREAS, SEDC has shared with Schertz City Council the priorities for use of the SEDC Reserve Fund and has recently worked with the City on projects and other improvements; and,

WHEREAS, the SEDC contemplated the support and usage of Corporation Funds and agreed to support the 10 year capital improvement projects totaling approximately \$12,000,000 of funding that has been prioritized by the Parks and Recreation Commission; and

WHEREAS, in order to ensure the SEDC Board is provided all necessary information to prioritize and budget for current and future Recreational or Community Facilities and Improvement funding

requests, SEDC staff has coordinated with the City Manager’s Office to formalize a process for requesting funding from the SEDC, providing status reports, and project closing; and

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

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

I. SEDC Funding in Partnership with the City of Schertz

1.1 The SEDC agree that the following projects have been presented as a group and the board has agreed to contemplate their funding within the 10 years of the Capital Improvement Plan established by the City of Schertz Parks and Recreation department:

Schertz Soccer Complex Field Lights	Approx. \$1,500,000
Hilltop Park Improvements	Approx. \$1,500,000
Community Circle	<u>Approx. \$9,000,000</u>
Total	Approx. \$12,000,000

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

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

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

1.5 Important considerations for the SEDC Board include that the City may request additional funding for any and all projects due to unforeseen costs, expanded scope, or other reasons, as well as timing for projects completion and funding installment payments.

1.6 Only those requested projects that are comprised of an expenditure that is required or suitable for the improvements necessary to fund or coordinate Recreational or Community Park facilities, limited to amateur sports, including children’s sports, athletic, entertainment, tourism and Public Park Purposes may be funded.

II. Funded Project Status Updates

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

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

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

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

III. Project Closing

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

3.1.1 This memo will affirm that all uses of funds fall within allowed uses under Section 505.152 of the Texas Local Government Code, to include land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable to include for amateur sports, including children's sports, athletic, entertainment, tourism and Public Park Purposes and if the project results in a combination of qualifying and non-qualifying costs.

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

IV. Miscellaneous

4.1 Term; Timeliness. The initial term of this MOU shall begin on the Effective Date and shall continue until the end of the 2027-2028 fiscal year. Thereafter, provided that the Parties agree, the MOU shall renew on a fiscal year basis unless terminated by either party by providing written notice 60 days prior to the end of the fiscal year.

4.2 Severability. If any provision of this MOU is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this MOU shall not be affected thereby, and this MOU shall be construed as if such invalid provision had never been contained herein, and the remaining enforceable provisions of this MOU are expressly deemed severable for this purpose.

4.3 Cooperation. The Parties hereto agree to cooperate at all times in good faith to effectuate the purposes and intent of this MOU.

- 4.4 Entire Agreement. This MOU contains the entire agreement of the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.
- 4.5 Amendments. Any amendment to this MOU must be in writing and shall be effective only if signed by the authorized representatives of each Party to this MOU.
- 4.6 No Third-Party Beneficiaries. This MOU shall insure only to the benefit of the Parties and their successors and assigns as permitted by this MOU. No person or entity that is not a Party to this MOU shall be considered a third-party beneficiary of this MOU.
- 4.7 Effective Date. Effective this the ____ day of _____, 2024.

CITY:

CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION:

By: _____
 Name: _____
 Title: City Manager

By: _____
 Name: _____
 Title: SEDC Board President

Attest:

By: _____
 Name: _____
 Title: City Secretary

By: _____
 Name: _____
 Title: SEDC Board Secretary

EXHIBIT A
FUNDING AGREEMENT

COMMUNITY FACILITY IMPROVEMENT 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 of the Texas Local Government Code, in addition also 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 found by the Board of Directors to be required or suitable for use for amateur sports, including children’s sports, athletic, entertainment, tourism and Public Park Purposes; and,

WHEREAS, the SEDC and City of Schertz are partnering to fund _____ (hereinafter referred to as the “Project”); and

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

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

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

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. TERM.

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

SECTION 3. DEFINITIONS.

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

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

SECTION 4. AFFIRMATIVE COVENANTS OF THE CITY.

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

- (a) **Funding.** The City shall be entitled to funding from SEDC in the amount not to exceed _____ for Qualified Expenditures. City covenants and agrees to submit to the SEDC invoices, receipts, or other documentation of the Qualified Expenditures in a form acceptable to the SEDC prior to Project acceptance.
- (b) **Public Purpose.** City agrees that the Project contemplated herein represents a public purpose for which the 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 _____ or the aggregate amount of said invoices, receipts, or other documentation submitted by the City to SEDC within thirty (30) days of receipt of said documentation.
- (b) **Performance.** SEDC agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the City and SEDC.

SECTION 6. EVENTS OF DEFAULT.

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

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

SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

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

SECTION 8. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

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

specifying that the purpose of the notice is to change the party's address. For notice purposes, City agrees to keep SEDC informed at all times of City's current address.

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

[The Remainder of this Page Intentionally Left Blank]

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

CITY:

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

By: _____

City Manager

Date Signed: _____

ATTEST:

City Secretary

SEDC:

SCHERTZ ECONOMIC DEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____

SEDC Board President

Date Signed: _____

ATTEST:

SEDC Board Secretary