

SCHERTZ

ECONOMIC DEVELOPMENT CORPORATION

NOTICE OF MEETING

AGENDA

JULY 25, 2024

6:00 P.M.

The City of Schertz Economic Development Corporation (SEDC) Board of Directors will hold a regular monthly meeting on Thursday, JULY 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 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, June 27, 2024. (T.Miller)

Presentations

4. Staff briefing on SEDC monthly financial statement for the month of June 2024 and Reserve Fund model. (S.Wayman)
5. Staff update on Schertz Station. (S.Wayman)
6. Presentation by Bob Stein with NAI Signage Solutions. (S.Wayman)
7. Presentation by Daryl John with Las Palapas. (S.Wayman)

Public Hearing

8. **Resolution 2024-8** - Authorizing an Incentive Agreement between the City of Schertz Economic Development Corporation and NAI Signage Solutions. (S.Wayman)
9. **Resolution 2024-9** - Authorizing an Incentive Agreement between the City of Schertz Economic Development Corporation and Las Palapas Schertz. (S.Wayman)

Discussion Items

10. **Resolution 2024-10** - Approving authorization by the Executive Director to execute a Consent to Security Agreement and Collateral Assignment with Ripps Kreuzler LLC.

Closed Session

11. 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-95
- Project E-96

Reconvene to Regular Session

12. Take any actions based on discussion held in closed session under Agenda Item No. 11.

Requests and Announcements

- Announcements by staff:
 - Next Regular Board Meeting - August 22, 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 18th day of July, 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:** 07/25/2024
Department: Economic Development Corporation
Subject: Approval of the minutes for the Board of Directors Regular Monthly Meeting held Thursday, June 27, 2024. (T.Miller)

SUBJECT:

Approval of the minutes for the Board of Directors Regular Monthly Meeting held Thursday, June 27, 2024. (T.Miller)

Attachments

June 27, 2024 Minutes

SCHERTZ

ECONOMIC DEVELOPMENT CORPORATION

MINUTES
Thursday, June 27, 2024

The City of Schertz Economic Development Corporation (SEDC) Board of Directors met for a Regular Monthly Meeting on Thursday, June 27, 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 6:02 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

Staff Present:

Scott Wayman, Executive Director
Tracy Miller, Administrative Assistant
Brian James, Deputy City Manager

Board of Directors Absent:

Bill Dixon, Board Vice President
Reynaldo "Ray" Chavez, Board Member

Others Present:

Tim Brown, Councilmember City Council EDC Liaison
Will Henry, Legacy Commercial Real Estate

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.

Members of the Parks and Recreation Board were present and presented a gift of appreciation to the EDC Board of Directors.

1. Cassie Paddock, Parks Recreation Manager - Thanked the Board for their support in approving the funding for the parks projects and presented the Board with a gift basket.
2. William Bosch, Parks Board Member - No comments were made.
3. Johnie McDow, Parks Board Member - Thanked the Board for giving their time and effort in giving consideration for the quality of life issues in our city. Also, for helping with the funding for the installation of lights, Hilltop Park and their support of the Parks and Rec's initiatives.
4. Robert Sheridan, Parks Board Member - Thanked the Board for doing this initiative. This will help to improve and expand our tournaments to bring more money to the city.

Board President Sammi Morrill thanked the Parks Board for their leadership, thoughtful planning and organization.

Minutes

3. Approval of the minutes for the Board of Director Regular Monthly Meeting held Thursday, May 23, 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, May 23, 2024.

Moved by Board Member Eryn McElroy, seconded by Board Treasurer Donna Steward.

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

Unanimous affirmative vote - Motion carries.

Presentations

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

Scott Wayman, Executive Director provided a summary and overview of the SEDC Financial Report for the month of May 2024.

May 2024 sales tax reviewed was \$618,806.21, expenses were \$4,888.39, a 5.3% increase over the years prior. As the Federal Reserves has delayed rate drops, investment income has remained strong and is poised to come higher than projected by year-end. The 12-month rolling average is 3.7% and no notable expenditures for May 2024. Total Cash and Investments figure at the end of May was \$36,038,192.30.

5. Staff briefing on Annual Report of Schertz Economic Development Corporation Year 2023. (S.Wayman)

Scott Wayman, Executive Director gave a brief overview of the Schertz Economic Development Corporation Annual Report for fiscal year 2023 and stated it is located on the SEDC website.

Board President Sammi Morrill recessed Open Session to Closed Session at 6:15 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.

- Project E-95
- Project E-80
- Project E-84
- Project E-96

Start time: 6:16 p.m.

End time: 6:46 p.m.

Board President Sammi Morrill reconvened to Open Session at 6:46 p.m.

Reconvene to Regular 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:
 - Office closed July 4-5, 2024 - Independence Day
 - SEDC Workshop - July 18, 2024
 - Workshop postponed until after EDC Deputy Director is hired.
 - Next SEDC Regular Meeting - July 25, 2024
- Requests by Board Members to place items on a future SEDC Board Meeting agenda.
 - Board President Sammi Morrill requested an update on Schertz Station.
 - Board Treasurer Donna Steward requested a quarterly update on the Reserve Fund model.

Adjournment

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

Moved by Board Secretary 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.

Unanimous affirmative vote - Motion carries.

Board President Sammi Morrill adjourned the meeting at 6:49 p.m.

MINUTES PASSED AND APPROVED THIS _____ DAY _____ 2024.

Sammi Morrill
Board President

Henry Hayes
Board Secretary

SEDC MEMORANDUM

**SEDC
Board Meeting:** 07/25/2024
Department: Economic Development Corporation
Subject: Staff briefing on SEDC monthly financial statement for the month of June 2024 and Reserve Fund model. (S.Wayman)

SUBJECT:

Staff briefing on SEDC monthly financial statement for the month of June 2024 and Reserve Fund model. (S.Wayman)

Attachments

June Financials

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

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

620-SED CORPORATION
 FINANCIAL SUMMARY

OVERVIEW

Revenues

Sales Tax	\$	599,266.27	Payment Received in June*
		5.7%	Annual Increase
		3.1%	12-Month Rolling Average

Expenses

Auditor/Financial Statement	\$	6,000.00
TEDC Annual Dues	\$	5,000.00
Postcards and Socks-ICSC	\$	3,409.83
FY2023 Annual Report	\$	3,200.00

Year-to-Date

Total Revenue	\$	6,678,297.72	
Total Expenses	\$	<u>853,061.56</u>	
Over/Under			<u>\$ 5,825,236.16</u>

Cash & Investments

Cash	\$	326,332.14	
Investments	\$	<u>37,210,839.54</u>	
Total			<u>\$ 37,537,171.68</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: June 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	532,865.49	4,934,767.85	5,113,783.76	-	1,978,216.24	72.11%
Fund Transfers	-	-	-	190,391.66	-	(190,392)	0.00%
Miscellaneous	1,315,000	153,103.34	865,138.06	1,374,122.30	-	(59,122.30)	104.50%
TOTAL REVENUES	8,407,000	685,968.83	5,799,905.91	6,678,297.72	-	1,728,702.28	79.44%
<u>EXPENDITURE SUMMARY</u>							
<u>NONDEPARTMENTAL</u>							
City Supported Services	11,677,510	-	81,944.29	58,984.70	-	11,618,525.30	0.51%
TOTAL NONDEPARTMENTAL	11,677,510	-	81,944	58,984.70	-	11,618,525.30	0.51%
<u>ECONOMIC DEVELOPMENT</u>							
Personnel Services	24,575	1,980.50	11,750.93	11,561.14	-	13,013.86	47.04%
Supplies & Equipment	61,175	795.89	19,887.53	14,547.99	-	46,627.01	23.78%
City Supported Services	214,500	30.57	49,324.13	3,687.46	-	210,812.54	1.72%
Utility Services	975	-	93.30	137.09	-	837.91	14.06%
Operating Expense	398,135	13,529.73	80,449.71	208,970.18	-	189,164.82	52.49%
Professional Services	61,300	6,253.00	43,695.50	8,290.00	-	53,010.00	13.52%
Fund Charges/Transfers	546,883	-	542,221.00	546,883.00	-	-	100.00%
TOTAL ECONO DEVELOPMENT	1,307,543	22,589.69	747,422.10	794,076.86	-	513,466.14	60.73%
TOTAL EXPENDITURES	12,985,053	22,589.69	829,366.39	853,061.56	-	12,131,991.44	6.57%
** REVENUE OVER(UNDER) EXPEND	(4,578,053)	663,379.14	4,970,540	5,825,236			

CITY OF SCHERTZ

REVENUE REPORT (UNAUDITED)

AS OF: June 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	532,865.49	4,934,767.85	5,113,783.76	-	1,978,216.24	72.11%
TOTAL Taxes	7,092,000	532,865.49	4,934,767.85	5,113,783.76	-	1,978,216.24	72.11%
<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	636.81	8,339.18	9,139.01	-	5,860.99	60.93%
000-491200 Investment Earnings	1,300,000	152,466.53	856,798.88	1,364,983.29	-	(64,983.29)	105.00%
TOTAL Miscellaneous	1,315,000	153,103.34	865,138.06	1,374,122.30	-	(59,122.30)	104.50%
TOTAL REVENUES	8,407,000	685,968.83	5,799,905.91	6,678,297.72	-	1,728,702.28	79.44%

SED CORPORATION
CASH IN BANK AND INVESTMENTS

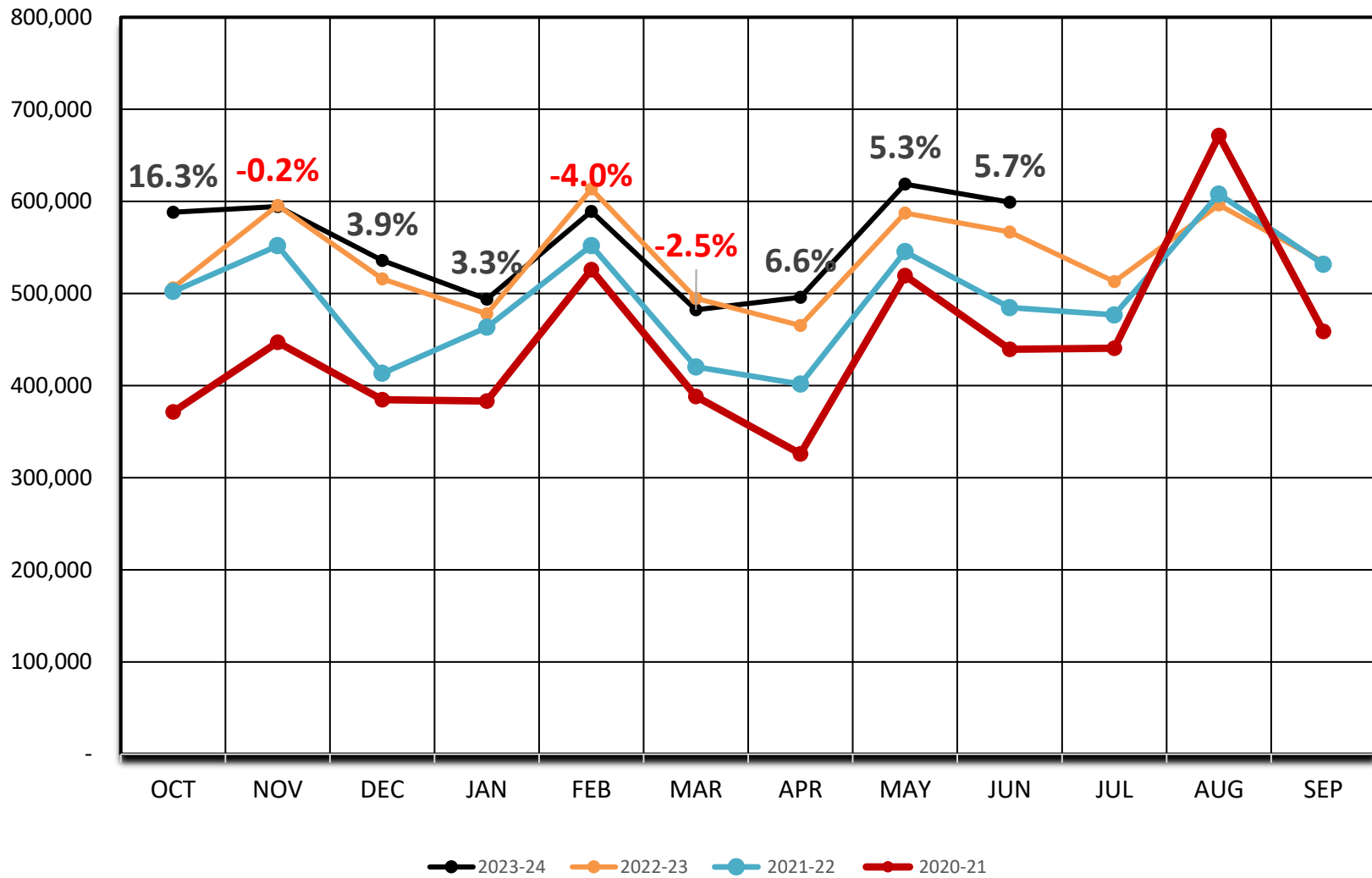
AS OF: June 30th, 2024

Cash in Bank	Investment Type	Yield	Maturity	Amount
Claim on Operating Cash Pool-Checking	Bank	5.37	-	\$ 326,332.14
Cash in Investments				
Texas Class Investment-Economic Development Corp	Pool*	5.43	-	34,891,603.53
Schertz Bank & Trust-Certificate of Deposit 1 Year	CD	3.75	5/10/2025	1,183,962.21
Schertz Bank & Trust-Certificate of Deposit 1 Year	CD	3.50	1/5/2025	1,135,273.80
Total Cash in Bank & Investments				<u>\$ 37,537,171.68</u>

*Local Government Investment Pool, most comparable to a Money Market Mutual Fund

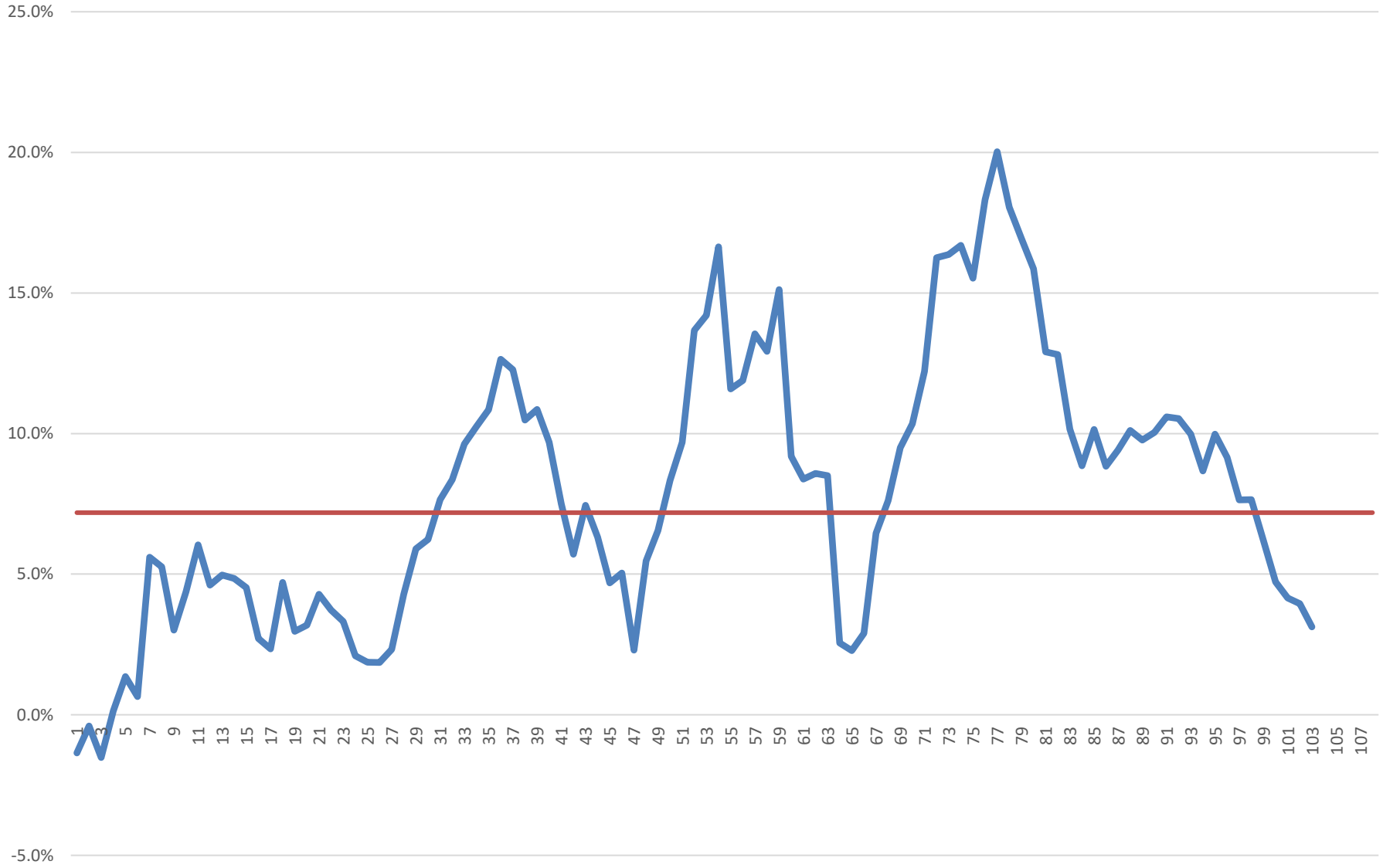
4B SALES TAX

By Collection Month



12 Month Rolling Average Oct 2014 - Present

Rolling 12 Month Average Long Term Average



JUNE 2024 PAYABLES REPORT

VENDOR NAME	DESCRIPTION	AMOUNT	
SED CORPORATION	SCOTT WAYMAN	Per Diem TCMA Annual Conference	100.50
		ICSC Transportation	34.91
	CITIBANK	TEDC 2024 ED Courses	800.00
		Form Assembly- monthly sub.	198.00
		Adobe-monthly sub.	29.99
		Office Chair	299.00
		Coffee	12.01
		SAMA July Luncheon	25.00
		NEP Luncheon 3 Seats	60.00
		SAMA Associate Annual Membership	750.00
		ICSC Paris Las Vegas Hotel	494.17
		Lucky Cab ICSC	19.28
		Paris Las Vegas Hotel Deposit	644.00
		Curb LV Taxi ICSC	34.91
		Monorail 2024 ISCSC Las Vegas	32.00
	P.F. Pettibone & Co	Minute Paper-500 sheets	102.98
	AMAZON CAPITAL SERVICES INC.	Office Supplies	85.93
		Desk Lamp	79.99
	ASHLEY RITCHEY	Supplies-Regional Job Fair	30.57
		SelectUSA Investment Summit	340.50
	LIANE GARRET	Postcards and Socks-ICSC	3,409.83
	Drew Vincent Creative	FY2023 Annual Report	3,200.00
	UBEO, LLC	Monthly Copier Charge	553.12
	Texas Economic Development Corporation	TEDC Annual Dues	5,000.00
	Patillo, Brown, and Hill	Auditor/Financial Statement	6,000.00
	Denton, Navarro, Rodriguez Bernal Santee & Zech	May 2024 Legal	<u>253.00</u>
		TOTAL:	\$22,589.69

SEDC MEMORANDUM

SEDC
Board Meeting: 07/25/2024
Department: Economic Development Corporation
Subject: Resolution 2024-8 - Authorizing an Incentive Agreement between the City of Schertz Economic Development Corporation and NAI Signage Solutions. (S.Wayman)

SUBJECT:

Resolution 2024-8 - Authorizing an Incentive Agreement between the City of Schertz Economic Development Corporation and NAI Signage Solutions. (S.Wayman)

Attachments

Res. 2024-8

SEDC RESOLUTION 2024-8

A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION, TEXAS AUTHORIZING THE EXECUTIVE DIRECTOR OF THE SCHERTZ ECONOMIC DEVELOPMENT CORPORATION TO ENTER INTO AN INCENTIVE AGREEMENT WITH NAI SIGNAGE SOLUTIONS 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, 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 an Incentive 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 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 of develop new or expanded business enterprises; and

WHEREAS, Company desires to develop a 78,000 square feet manufacturing facility located in Schertz, Texas, on property more particularly described as 17680 Four Oaks Dr., Schertz, Texas; and

WHEREAS, Company desires to construct and extend Public Infrastructure Improvements including water line extension and relocation of approximately 493 feet, sewer line extension of approximately 560 feet and would provide roadway to enhance the future thoroughfare plan of the city approximately 535 feet of complete roadway width and improvements, at 17680 Four Oaks Dr., in Schertz, Texas; and

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

WHEREAS, the construction of the Company, as proposed, will contribute to the economic development of the City of Schertz by 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 improvements stimulus in the local and state economy.

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 Incentive Agreement attached hereto as ATTACHMENT A and authorizes the President to execute and deliver in the substantial form as attached upon approval of the expenditure by the City Council.

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

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

NAI Signs

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 NAI Signage Solutions, a Texas 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, for purposes of the Act 501.101, the “project” includes equipment, facilities, expenditures, targeted infrastructure, and improvements that are for the creation or retention of primary jobs and found by the SEDC board of directors to be required or suitable for the development or expansion of manufacturing and industrial facilities; 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, 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, Company desires to develop a 78,000 square feet manufacturing facility located in Schertz, Texas, on the property more particularly described as 17680 Four Oaks Dr., Schertz, Texas; and

WHEREAS, the Company desires to construct and extend Public Infrastructure Improvements, including water line extension and relocation of approximately 493 feet, sewer line extension of approximately 560 feet and would provide roadway to enhance the future thoroughfare plan of the city approximately 535 feet of complete roadway width and improvements, at 17680 Four Oaks Dr., in Schertz, Texas, more clearly described on Attachment “B” attached hereto; and

WHEREAS, the construction and business planned in conjunction with the Project, as proposed, will contribute to the economic development of the City of Schertz (“City”) by creating new jobs

and increased employment, 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 Corporation desires to offer incentives to Company to enable Company to construct the Project pursuant to this Agreement in substantial conformity with the City 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. 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 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.

“Business Condition” shall mean a manufacturing facility obtains a Certificate of Occupancy and opens for business at the Project Property and facility with staffing deemed appropriate by the business for its operation.

“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 _____, 2024.

“Expiration Date” shall mean the earlier of:

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

“Facility” shall mean the manufacturing facility and associated improvements that house a signage manufacturing business of 78,000 square feet and being located at 17680 Four Oaks Dr, Schertz, Texas.

“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.

“Reimbursement Grant” shall mean the two cash payments from Corporation to Company for public infrastructure extension on the project site at Company’s Schertz location, not to exceed Maximum Reimbursement Amount.

“Maximum Reimbursement Amount” shall mean not to exceed FOUR HUNDRED AND SEVENTY TWO THOUSAND, SIX HUNDRED AND TWENTY FIVE. (\$472,625)

“Project” shall mean Public Infrastructure Improvements (“the Project”), including water line extension and relocation of approximately 493 feet, sewer line extension of approximately 560 feet and would provide roadway and connectivity to enhance the future thoroughfare plan of the city approximately 535 feet of complete roadway width, at 17680 Four Oaks Drive in the Schertz, Texas, more clearly described on Attachment “B”.

“Public Improvements” means the improvements constructed by the Company for the purpose of extending and relocating a water line, sewer line and public roadway to serve the Company’s Property, as described in Attachment “B”.

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

ARTICLE IV ECONOMIC DEVELOPMENT INCENTIVE TERMS AND CONDITIONS

1. Incentive.

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:

Phase I. Corporation will provide a reimbursement Grant to Company of up to one half of the Actual Total Improvement costs of public improvements described in Attachment “B” at the time the public improvements are accepted by the city. Company agrees to provide Corporation receipts of total costs, and the Reimbursement Grant shall be paid within sixty (60) days after receipt of acceptance letter and proof of receipts.

Phase II. At the time of Certificate of Occupancy for a manufacturing facility at the location and staffed deemed appropriate by the manufacturer for its operation, satisfying the Business Condition, Corporation will provide the remaining 50% of the Total Improvement Cost. The amount paid by the Corporation to Company will not exceed the Maximum Reimbursement Amount and all payments will be substantiated by receipts. The Reimbursement Grant shall be paid within sixty (60) days after receipt of Certificate of Occupancy and information establishing a sign manufacturing facility and met the requirements of Business Condition.

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.

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 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.

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

(g) 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.

(h) 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). Unless written notice of another location is given to Corporation, Company's books and records will be located at Four Oaks Dr, Schertz, Comal County, Texas 78154.

(i) 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 Reimbursement Grant not to exceed the Maximum Grant Amount from sources contemplated by this agreement, subject to Company's timely and full satisfaction of all applicable terms and conditions of this agreement. Further, the Corporation's obligations to pay Company shall cease after the earlier of: 1) payment in full of Maximum Grant amount; 2) reaching the Agreement's Expiration Date; or 3) Default by Company in accordance with the terms of this

Agreement. The Grant payments shall be paid in conformance with Article IV Section 1 of 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, or if the manufacturing facility ceases operations, 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 the amount paid to Company for improvements paid in accordance with the table below: (as applicable, the "Recaptured Amount").

If Manufacture Operation ceases	% recapture of Total Public Improvements
Year 1	90%
Year 2	80%
Year 3	70%
Year 4	60%
Year 5	50%

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).

**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 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 costs of ADR 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, Rodriguez, Bernal, Santee & Zech
Attention: T. Daniel Santee
2517 North Main Avenue
San Antonio, TX 78212

If to the Company:

Nationwide Applications LLC (NAI Signs)
Attention: _____
17680 Four Oaks Dr.
Schertz, TX 78154

With a copy to:

Attention: _____

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, 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 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 _____ 2024.

SCHERTZ ECONOMIC DEVELOPMENT CORPORATION

By: _____

ATTEST:

By: _____

Executed on this _____ day of _____, 2024

COMPANY

Nationwide Applications LLC (NAI Signs)

By: _____

Name:

Title:

Attachment A

SAMPLE ANNUAL CERTIFICATION REPORT FORM

[SEE ATTACHED]

Annual Certification Report

Reporting Period: January 1 to December 31, 20__

The Annual Certification Report for the Economic Development Incentive Agreement between the City of Schertz Economic Development Corporation and _____, is due on **February 15, 20__**. Please sign and return the Annual Certification Report form with accompanying narrative.

I. PROJECT INFORMATION

Project Information:

Company's legal name: _____

Project address subject to incentive: _____

Company primary contact: _____ Title: _____

Phone number: _____ E-mail address: _____

II. REPORTING INFORMATION

Employment and Wage Information:

Has the Company employed undocumented workers? Yes No

What is the total number of Full-time Employees located at the Schertz facility during the calendar year? _____

What is the total Annual Payroll for the Schertz facility during the calendar year? _____

Investment Information:

What is the 20__ appraised ad valorem tax value for Tangible Personal Property? _____

Narrative:

A brief narrative explaining the current year's activities and/or any potential defaults has been provided? Yes No

III. ADDITIONAL INFORMATION (VOLUNTARY)

Employment:

Total full-time employees: _____

Total annual payroll: _____

Number of full-time jobs added in past year: _____

Number of employees that live in Schertz, Texas: _____

Interested in being contacted about workforce training opportunities? Yes No

Interested in being contacted for assistance with City permits? Yes No

IV. CERTIFICATION

I certify that, to the best of my knowledge and belief, the information and attachments provided herein are true and accurate and in compliance with the terms of Economic Development Incentive Agreement.

I further certify that the representations and warranties contained within the Agreement remain true and correct as of the date of this Certification, and XXX Corporation. remakes those representations and warranties as of the date hereof.

I further certify that the employment and wage information provided is true and accurate to the best of my knowledge and I can provide documentation from the Texas Workforce Commission to support my claim if so requested.

I understand that this Certificate is being relied upon by the SEDC in connection with the expenditure of public funds.

I have the legal and express authority to sign this Certificate on behalf of [Company Name] Corporation.

Name of Certifying Officer

Certifying Officer's Title

Phone Number

E-Mail Address

Signature of Certifying Officer

Date

STATE OF TEXAS X
COUNTY OF GUADALUPE X

This information was acknowledged before me on this _____ day of _____, _____ by [first and last name], [title] for XX Corporation, a Texas corporation, on behalf of said agency.

Notary Public, State of Texas

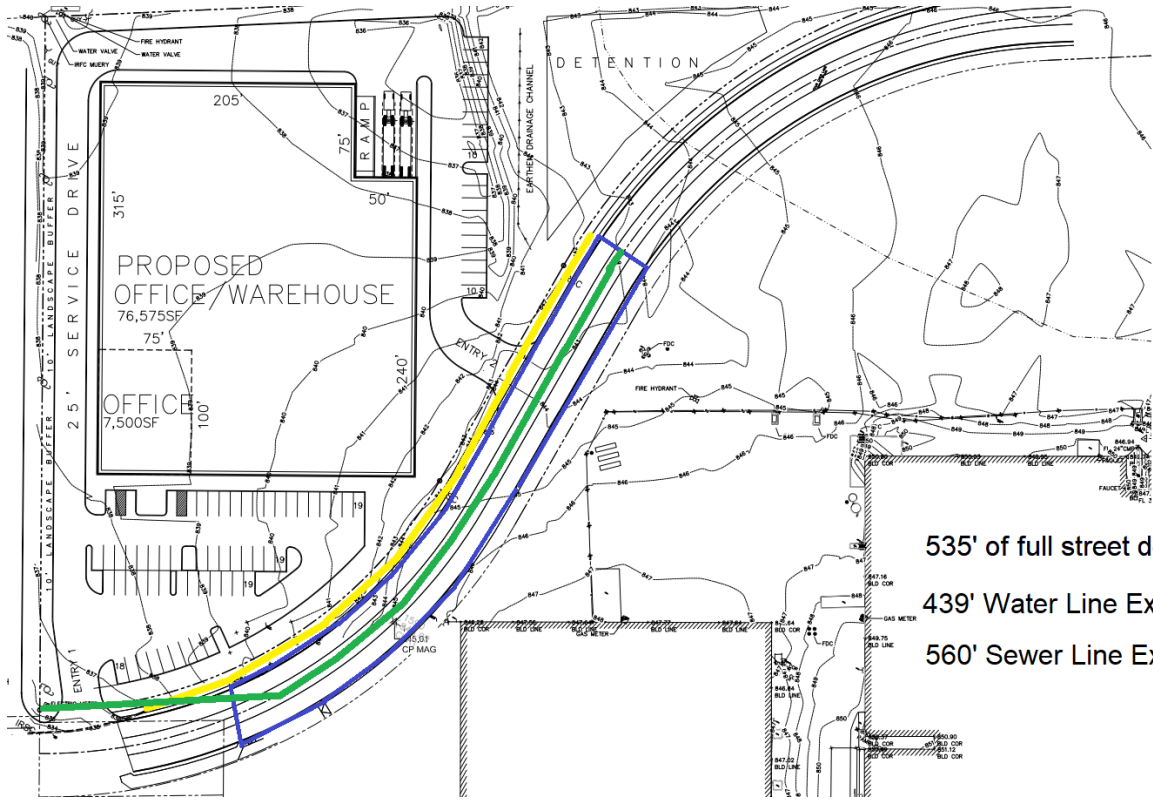
Notary's typed or printed name

My commission expires

The Annual Certification Report is to be completed, signed and returned on or before February 15, 20__.
Please send an original to the following address:

**Attention: Executive Director
City of Schertz Economic Development Corporation
1400 Schertz Parkway, Bldg. No. 2
Schertz, TX 78154**

Attachment B



535' of full street design
439' Water Line Extension
560' Sewer Line Extension

SEDC MEMORANDUM

SEDC
Board Meeting: 07/25/2024
Department: Economic Development Corporation
Subject: Resolution 2024-9 - Authorizing an Incentive Agreement between the City of Schertz Economic Development Corporation and Las Palapas Schertz. (S.Wayman)

SUBJECT:

Resolution 2024-9 - Authorizing an Incentive Agreement between the City of Schertz Economic Development Corporation and Las Palapas Schertz. (S.Wayman)

Attachments

Res. 2024-9

SEDC RESOLUTION 2024-9

A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION, TEXAS AUTHORIZING THE EXECUTIVE DIRECTOR OF THE SCHERTZ ECONOMIC DEVELOPMENT CORPORATION TO ENTER INTO AN INCENTIVE AGREEMENT WITH LAS PALAPAS SCHERTZ 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, 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 an Incentive 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 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, Company desires to develop a 5,900 square foot restaurant located in Schertz, Texas 78154, on the property more particularly described as 16842 IH 35 North; and

WHEREAS, Company desires to construct and extend water infrastructure approximately, 712 feet, and additional public infrastructure to include sewer, drainage as well as associated roadway connection and driveway approach upgrades in Schertz, Texas; 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 of develop new or expanded business enterprises; and

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

WHEREAS, the construction of the Company, as proposed, will contribute to the economic development of the City of Schertz by 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 improvements stimulus in the local and state economy.

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 Incentive Agreement attached hereto as ATTACHMENT A and authorizes the President to execute and deliver in the substantial form as attached upon approval of the expenditure by the City Council.

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

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

Las Palapas Schertz

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 Las Palapas Schertz, a Texas 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 501.103 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 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 develop a 5,900 square feet restaurant improvements located in Schertz, Texas, on the property more particularly described as 16842 IH 35 North; and

WHEREAS, Company desires to construct and extend water infrastructure approximately, 712 feet, and additional public infrastructure to include sewer, drainage as well as associated roadway connection and driveway approach upgrades in Schertz, Texas, and

WHEREAS, the water line extension is approximately 712 feet (“the Project”) and would provide inter-connections as well as looping connections, to improve the Schertz Municipal Water System as well as provides reliability and fire suppression improvements more particularly described on Attachment B attached hereto; and

WHEREAS, the construction of the Project, as proposed, will contribute to the economic development of the City of Schertz (“City”) by creating new jobs and increased employment, promoting and developing expanded business enterprises, increased development, increased real property value and property and sales 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 Corporation desires to offer incentives to Company to enable Company to construct the Project pursuant to this Agreement in substantial conformity with the City 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. 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, engineering, legal fees, construction, labor, materials, and the costs to “carry” the foregoing, as substantiated with receipts and invoices.

“Adjoining Properties” shall mean the properties (Properties A and C) on both sides of the project property (Property B) to be subject to water line extension described on **Attachment “B”**, in which certain principals, or affiliates are partners.

“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 _____, 2024.

“Expiration Date” shall mean the earlier of:

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

“Facility” shall mean the property and improvements that house a restaurant of at least 5,900 square feet and being located at 16842 IH 35 North.

“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.

“Reimbursement Grant” shall mean the two cash payments from Corporation to Company. The first payment in the form of 100% of the cost of water infrastructure extension on adjoining site (Properties A and C) at Company’s Schertz location. The second payment in the form of 100% payment for the water infrastructure extension on the project site (Property B) and not to exceed Maximum Reimbursement Amount.

“Maximum Reimbursement Amount” shall mean not to exceed ONE HUNDRED FIFTY-FOUR THOUSAND, ONE HUNDRED DOLLARS (\$154,100)

“Project” shall mean the provision of water infrastructure across Properties A, B and C, as described in **Attachment “B”** and generally located at 16842 IH 35 North and adjoining properties.

“Project Property” shall mean the property described as 16842 IH 35 North and described in **Attachment “B”**.

“Public Improvements” means the improvements constructed by the Company for the purpose of extending a water line to serve the Developers’ Property, as well as the adjoining properties and more particularly depicted in **Attachment “B”**.

“Restaurant condition” shall mean a restaurant obtains a Certificate of Occupancy and opens for business at the Project Property and facility with staffing deemed appropriate by the Restaurant for its operation.

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

“Tangible Personal Property” shall mean tangible personal property, equipment, machinery, fixtures and inventory owned or leased by Company that is added to the Project subsequent to the execution of this Agreement and is accounted on the tax rolls by the Comal County Appraisal District.

ARTICLE IV ECONOMIC DEVELOPMENT INCENTIVE TERMS AND CONDITIONS

1. Incentive.

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:

Phase I. Corporation will provide a Reimbursement Grant to Company for the Actual Total Improvement costs for section A and C as depicted in Attachment "B" at the time the entire water line (Sections A, B and C) is constructed and accepted by the city. Company agrees to provide Corporation receipts of total costs, and the Reimbursement Grant shall be paid within sixty (60) days after receipt of acceptance letter and proof of receipts.

Phase II. At the time of Certificate of Occupancy for a Restaurant and conditions met to satisfy the Restaurant Condition at the Project Location with no less than 5,900 square feet and staffing deemed appropriate by the restaurant for its operation, Corporation will provide Company a reimbursement grant of the remainder of the Total Improvement Cost for Segment B of the project and depicted in Attachment "B". The amount paid by the Corporation to Company will not exceed the Maximum Reimbursement Amount and all payments will be substantiated by receipts. The reimbursement Grant shall be paid within sixty (60) days after receipt of Certificate of Occupancy and information establishing restaurant meeting operational staffing.

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.

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 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.
- (f) Company shall cooperate with the Corporation in providing all necessary information to assist them in complying with this Agreement.
- (g) 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.
- (h) 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). Unless written notice of another location is given to Corporation, Company's books and records will be located at 16842 IH 35 North Schertz, Guadalupe County, Texas 78154.
- (i) 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 Reimbursement Grant not to exceed the Maximum Grant Amount from sources contemplated by this agreement, subject to Company’s timely and full satisfaction of all applicable terms and conditions of this agreement. Further, the Corporation’s obligations to pay Company shall cease after the earlier of: 1) payment in full of Maximum Grant amount; 2) reaching the Agreement’s Expiration Date; or 3) Default by Company in accordance with the terms of this Agreement. The Grant payments shall be paid within sixty (60) days after receipt of 1) copy of acceptance letter by the city and proof of receipts for costs of Segments A and C, as depicted in **Attachment “B”** and 2) within sixty (60) days of receipt of copy of Certificate of occupancy and proof of restaurant obtaining Restaurant Condition.

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, or if the restaurant ceases operations, 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 the amount paid to Company for improvements paid for Segment B, as depicted in Attachment “B” of this agreement, in accordance with the table below: (as applicable, the “Recaptured Amount”).

If Restaurant ceases operation	% recapture of Segment B
Year 1	90%
Year 2	80%
Year 3	70%
Year 4	60%
Year 5	50%

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).

**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 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 costs of ADR 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, Rodriguez, Bernal, Santee & Zech
Attention: T. Daniel Santee
2517 North Main Avenue
San Antonio, TX 78212

If to the Company: Las Palapas Schertz
Attention: Daryl John
XXX

With a copy to:

Attention: _____

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, 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 IMDEMUNITY 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 _____ 2024.

SCHERTZ ECONOMIC DEVELOPMENT CORPORATION

By: _____

ATTEST:

By: _____

Executed on this _____ day of _____, 2024

COMPANY

Las Palapas Schertz

By: _____

Name:

Title:

Attachment A

SAMPLE ANNUAL CERTIFICATION REPORT FORM

[SEE ATTACHED]

Annual Certification Report

Reporting Period: January 1 to December 31, 20__

The Annual Certification Report for the Economic Development Incentive Agreement between the City of Schertz Economic Development Corporation and _____, is due on **February 15, 20__**. Please sign and return the Annual Certification Report form with accompanying narrative.

I. PROJECT INFORMATION

Project Information:

Company's legal name: _____

Project address subject to incentive: _____

Company primary contact: _____ Title: _____

Phone number: _____ E-mail address: _____

II. REPORTING INFORMATION

Employment and Wage Information:

Has the Company employed undocumented workers? Yes No

What is the total number of Full-time Employees located at the Schertz facility during the calendar year? _____

What is the total Annual Payroll for the Schertz facility during the calendar year? _____

Investment Information:

What is the 20__ appraised ad valorem tax value for Tangible Personal Property? _____

Narrative:

A brief narrative explaining the current year's activities and/or any potential defaults has been provided? Yes No

III. ADDITIONAL INFORMATION (VOLUNTARY)

Employment:

Total full-time employees: _____

Total annual payroll: _____

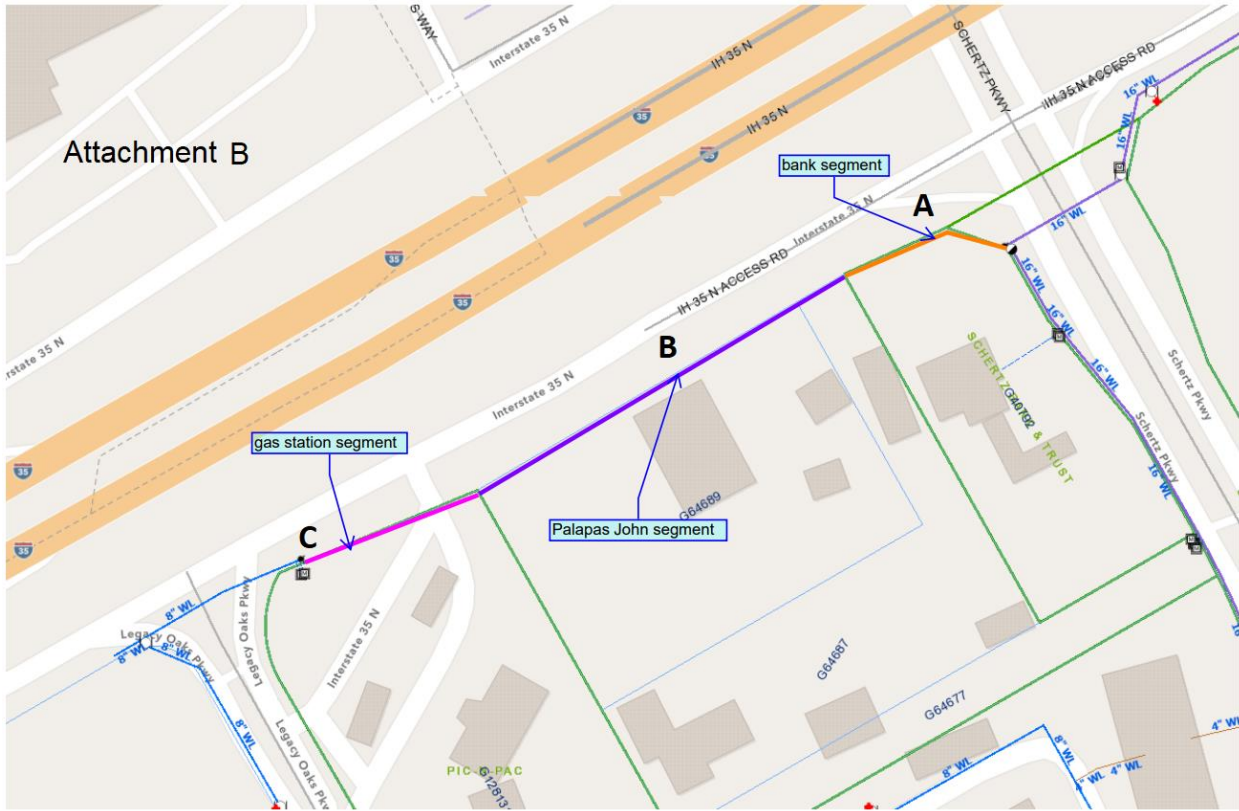
Number of full-time jobs added in past year: _____

Number of employees that live in Schertz, Texas: _____

Interested in being contacted about workforce training opportunities? Yes No

Interested in being contacted for assistance with City permits? Yes No

Attachment B



A (Bank) – 160 feet (approx. 23% of total) B (John property) – 366 feet (approx. 51%) C (gas station) – 186 feet (approx. 26%)

SEDC MEMORANDUM

SEDC
Board Meeting: 07/25/2024
Department: Economic Development Corporation
Subject: Resolution 2024-10 - Approving authorization by the Executive Director to execute a Consent to Security Agreement and Collateral Assignment with Ripps Kreusler LLC.

SUBJECT:

Resolution 2024-10 - Approving authorization by the Executive Director to execute a Consent to Security Agreement and Collateral Assignment with Ripps Kreusler LLC.

Attachments

Res. 2024-10

SEDC RESOLUTION NO. 2024-10

A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION, TEXAS, APPROVING AUTHORIZATION BY THE EXECUTIVE DIRECTOR TO EXECUTE A CONSENT TO SECURITY AGREEMENT AND COLLATERAL ASSIGNMENT WITH RIPPS KREUSLER LLC 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 Development Corporation Act of 1979) (the “Act”); and

WHEREAS, pursuant to the terms of the existing Development Agreement, the Schertz EDC has agreed to pay Ripps Kreusler LLC (Borrower) \$4,000,000.00 at such time the 0.44 mile extension of Ripps Kreusler Road as described in the Development Agreement is complete;

WHEREAS, Vantage Bank Texas (Lender) has agreed to make Borrower a loan to fund the cost of constructing and completing portions of the public infrastructure constructed by Borrower in connection with the Project and other costs incurred in connection with the development of its Property.

WHEREAS, the Loan will be secured by a Deed of Trust covering the 18.709 acre tract of Land being developed; and

WHEREAS, Lender and Borrower have executed a Security Agreement and Collateral Assignment of Payment Right, pursuant to which Borrower has granted a security interest in and collateral assigned to Lender Borrower’s right, title and interest in and to \$3,600,000.00 of the Initial Payment under the Development Agreement, as additional collateral for the Loan;

WHEREAS, the Board of Directors of the Corporation desires to give authorization to the Executive Director to execute a Consent to Security Agreement and Collateral Assignment Agreement with Ripps Kreusler, LLC by which the Corporation shall be governed and the requirements for an action to be taken by the Board; and

WHEREAS, this limited assignment shall not serve to enlarge or diminish the obligations and requirements of Borrower under their agreement with the SEDC, which is not being assigned, nor shall they relieve Borrower of any liability to the Corporation

including any required indemnity in the event that any time be in Default of the terms of the Agreement.

WHEREAS, the Board of Directors hereby finds and determines that the adoption of this Resolution is in the best interests of the citizens of the City.

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

Section 1. The Board of Directors hereby authorizes the Executive Director to execute a Consent to Security Agreement and Collateral Assignment Agreement with Ripps Kreusler, LLC in substantially the same form as that attached as 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 ordinances and 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, as amended, Texas Government Code.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so ordered.

PASSED AND ADOPTED, this ____ day of _____ 2024.

CITY OF SCHERTZ
ECONOMIC
DEVELOPMENT
CORPORATION

Sammi Morrill, SEDC Board President

ATTEST:

Henry Hayes, SEDC Board Secretary

EXHIBIT "A"

**CONSENT TO SECURITY AGREEMENT AND COLLATERAL ASSIGNMENT AND
AGREEMENT**

This Consent to Security Agreement and Collateral Assignment and Agreement (the “Consent Agreement” or “Agreement”) is made and entered into effective this ____ day of July, 2024, by and between the **SCHERTZ ECONOMIC DEVELOPMENT CORPORATION** (the “Schertz EDC”), **RIPPS KREUSLER, LTD.**, a Texas limited partnership (the “Borrower”) and **VANTAGE BANK TEXAS**, a Texas state bank (the “Lender”).

WITNESSETH:

WHEREAS, Borrower owns one or more commercial tracts of land in Schertz, Texas, which Borrower is in the process of developing into a commercial development (the “Project”);

WHEREAS, as part of such Project, Borrower has entered in an Economic Development Incentive Agreement (the “Development Agreement”) dated February 15, 2024 between Borrower and the Schertz Economic Development Corporation (the “Schertz EDC”);

WHEREAS, pursuant to the terms of the Development Agreement, the Schertz EDC has agreed to pay Borrower \$4,000,000.00 (the “Initial Payment”) at such time the 0.44 mile extension of Ripps Kreisler Road as described in the Development Agreement is complete (the “Ripps Kreisler Road Extension Project”);

WHEREAS, the Bank has agreed to make Borrower a loan (the “Loan”) to fund the cost of constructing and completing portions of the public infrastructure constructed by Borrower in connection with the Project and other costs incurred in connection with the development of its Property.

WHEREAS, the Loan will be secured by a Deed of Trust covering the 18.709 acre tract of Land described on Exhibit “A” attached hereto; and

WHEREAS, Lender and Borrower have executed a Security Agreement and Collateral Assignment of Payment Right dated of even date (the “Security and Assignment Agreement”), pursuant to which Borrower has granted a security interest in and collateral assigned to Lender Borrower’s right, title and interest in and to \$3,600,000.00 of the Initial Payment under the Development Agreement, as additional collateral for the Loan;

NOW, THEREFORE, Borrower, Lender and the Schertz EDC are executing this Consent Agreement to evidence and confirm certain agreements and understandings the parties have reached concerning the Development Agreement and the Security and Assignment Agreement.

- 1) Borrower has previously provided Lender with a fully executed copy of the Development Agreement. There are no other oral or written agreements or understandings between Borrower and the Schertz EDC concerning the Development Agreement, other than as set forth in the Development Agreement.
- 2) Borrower and the Schertz EDC agree that Lender will not be bound by any subsequent material amendment to the terms and provisions of the Development Agreement affecting the Initial Payment, unless Lender has consented in writing to any such amendment or change, such consent not to be unreasonably withheld, conditioned, or delayed.
- 3) The Schertz EDC hereby consents to Borrower collaterally assigning and pledging to Lender all of Borrower's right, title and interest in and to said \$3,600,000.00 portion of the Initial Payment under the Development Agreement, including, but not limited to, Borrower's right to receive such payment due Borrower under the Development Agreement, and agrees that Borrower's pledge of its interest in the such payment shall not constitute an event of default or breach of Borrower's obligations under the Development Agreement.
- 4) In the event of any default by Borrower of its obligations under the Development Agreement prior to the payment of the Initial Payment, the Schertz EDC will simultaneously provide Lender with a copy of the same notice of default that the Schertz EDC mails or delivers to Borrower specifying that Borrower is in default of its obligations under the Development Agreement. Lender shall have the same period of time, as given to Borrower, to cure any such default. Until the expiration of the applicable cure period, the Schertz EDC agrees it will not exercise any rights and remedies available to the Schertz EDC as a consequence of such default.
- 5) All notices or other communications required or permitted to be given pursuant to this Consent Agreement shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee, or (iv) by facsimile or email to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service;

notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received by the intended addressee.

If to Schertz EDC: Schertz Economic Development Corporation
Attn: Exec. Dir. of Economic Development
1400 Schertz Parkway
Schertz, Texas 78154

If to Borrower: For notices and other communications that are sent by means other than overnight delivery or commercial delivery:

Ripps Kreuzler, Ltd.
4040 Broadway, Suite 600
San Antonio, Texas 78279
Attn: James W. Collins, Jr.
Email: will@meritcre.com

For notices and other communications that are sent by overnight delivery or commercial delivery:

Ripps Kreuzler, Ltd.
4040 Broadway, Suite 600
San Antonio, Texas 78279
Attn: James W. Collins, Jr.
Email: will@meritcre.com

If to Lender: Vantage Bank Texas
1800 S. Second Street
McAllen, Texas 78503
Attn: Brian Disque
E-mail: brian.disque@Vantage.Bank

With a copy to: Walsh McGurk Cordova Nixon, PLLC
1506 S. Lone Star Way, Suite 10
Edinburg, Texas 78539
Attn: C. Wesley Kittleman
E-mail: wkittleman@wmcnlaw.com

- 6) This Agreement supersedes any and all prior agreements and understandings of the parties hereto, whether written or oral, concerning the matters addressed herein and this Agreement represents the entire agreement of the parties with regard to these matters. The terms and provisions of this Agreement may not be amended except by written instrument signed by all parties hereto. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors and assigns. This Agreement shall be governed by the laws of the State of Texas. This Agreement may be executed in multiple identical counterparts, all of which will be deemed an original, but together constitute one and the same instrument.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGES TO FOLLOW]*

EXECUTED as of the date first above written.

SCHERTZ EDC:

SCHERTZ ECONOMIC
DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

EXECUTED as of the date first above written.

BORROWER:

RIPPS KREUSLER, LTD.,
a Texas limited partnership

By: RIPPS KREUSLER GP, LLC,
a Texas limited liability company

Its: General Partner

By: _____
James W. Collins, Jr., Manager

EXECUTED as of the date first above written.

LENDER:

VANTAGE BANK TEXAS, a Texas state bank

By: _____
Brian Disque, Senior Vice-President

EXHIBIT "A"

Property

TRACT 1 (Fee Estate):

BEING a 18.709 acre (814,960 square feet) tract of land situated in the J.F. Walker Survey No. 113, Abstract No. 244, Schertz EDC of Schertz, Guadalupe County, Texas; and being portion of that certain 200.198 acre tract described in instrument to San Antonio One, Limited Partnership and San Antonio Three Limited Partnership, recorded in Volume 979, Page 475 of the Official Public Records of Guadalupe County; and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod (with plastic cap stamped "KHA") set marking the west corner of Lot 1 of Wiederstein Ranch, plat of which is recorded in Document No. 201899009566 of the Official Public Records of Guadalupe County;

THENCE, along the southwesterly boundary of said Lot 1 the following four (4) courses and distances:

1. South 45°52'46" East, 60.01 feet to a point for corner marking the POINT OF BEGINNING of the herein described tract;
2. South 45°52'46" East, 42.37 feet to a 1/2 inch iron rod (with plastic cap stamped "KEW") found for corner;
3. South 31°11'29" East, 62.78 feet to a 1/2 inch iron rod (with plastic cap stamped "KEW") found for corner;
4. South 31°11'25" East, 659.74 feet to a 1/2 inch iron rod (with illegible plastic cap) found for corner;

THENCE, crossing aforesaid 200.198 acre tract, the following eleven (11) courses and distances:

1. South 31°13'29" East, 24.55 feet to a point for corner;
2. in a southwesterly direction along a non-tangent curve to the left, having a radius of 870.00 feet, a chord South 37°59'25" West, 216.14 feet, a central angle of 14°16'16", and an arc length of 216.70 feet to a point of reverse curvature;
3. in a southwesterly direction along a reverse tangent curve to the right, having a radius of 720.00 feet, a chord South 60°51'48" West, 720.18 feet, a central angle of 60°01'01", and an arc length of 754.20 feet to a point of reverse curvature;
4. in a westerly direction along a reverse tangent curve to the left, having a radius of 800.00 feet, a chord South 83°20'44" West, 209.57 feet, a central angle of 15°03'10", and an arc length of 210.17 feet to a point of reverse curvature;
5. in a westerly direction along a reverse tangent curve to the right, having a radius of 15.00 feet, a chord North 67°42'38" West, 17.83 feet, a central angle of 72°56'26", and an arc length of 19.10 feet to a point for corner;
6. North 31°14'25" West, 347.26 feet to a point of curvature;
7. in a northerly direction along a tangent curve to the right, having a radius of 100.00 feet, a chord of North 05°19'11" East, 119.13 feet, a central angle of 73°07'11", and an arc length of 127.62 feet to a point for corner;
8. North 41°52'46" East, 326.56 feet to a point for corner;
9. North 42°44'43" East, 665.63 feet to a point for corner;

10. South 48°07'14" East, 10.00 feet to a point for corner;
11. North 42°44'43" East, 90.24 feet to the POINT OF BEGINNING, and containing 18.709 acres of land more or less in Guadalupe County, Texas.

TRACT 2 (Easement Estate):

Nonexclusive easement for ingress and egress created by Shared Access Easement Agreement recorded November 17, 2023, under Document No. 202399028276, Official Public Records, Guadalupe County, Texas.

TRACT 3 (Easement Estate):

Nonexclusive easement for temporary construction created by Temporary Construction Easement Agreement recorded November 17, 2023, under Document No. 202399028274, Official Records, Guadalupe County, Texas.

TRACT 4 (Easement Estate):

Nonexclusive easement for ingress and egress created by Easement Agreement recorded May 4, 2018, under Document No. 201899009532, Official Public Records, Guadalupe County, Texas; as amended in First Amendment to Easement Agreement recorded November 17, 2023, under Document No. 202399028269, Official Public Records, Guadalupe County, Texas.