

THE STATE OF TEXAS     §  
  §  
COUNTY OF BELL         §

### **Letter of Agreement**

This Agreement is between the City of Killeen, Texas, a home-rule municipal corporation (“City”), acting herein by and through its duly authorized City Manager, Kent Cagle, and the Killeen Economic Development Corporation (“KEDC”), a non-profit corporation, acting herein by and through its duly authorized President of the Board of Directors, Randy Sutton, collectively the “Parties”.

**WHEREAS**, the City of Killeen wishes to promote the economic development of the City of Killeen by attracting new businesses and expanding existing businesses within the City; and

**WHEREAS**, the existence, development, and expansion of business, commerce, and industry are essential to the economic growth of the City and to the full employment, welfare, and prosperity of its citizens; and

**WHEREAS**, by Resolution No. 90-65, passed and approved on August 14, 1990, the City of Killeen City Council, hereinafter “City Council”, authorized and approved the creation of KEDC; and

**WHEREAS**, KEDC has expressed its specific intent to use all funds which come into its control to promote and encourage the economic development of the City; and

**WHEREAS**, the actions authorized in this agreement will further that objective and ensure aggressive and positive economic development activity in the City;

NOW THEREFORE, in consideration of the promises and covenants herein contained, the City and KEDC agree as follows:

1.     **Formation.** City does hereby employ, engage, and hire KEDC to promote the economic development of the City and to render the services herein contained, and KEDC does hereby agree to accept such hiring, engagement, and employment and to discharge such duties in accordance with the terms and conditions herein set forth.

2.     **Independent Contractor.** KEDC is hired and engaged as an independent contractor and is not an officer, agent or employee of the City regarding the operations and actions of KEDC. KEDC shall select and employ such persons as it may deem necessary to fulfill its obligations and responsibilities under this agreement. Said persons shall be at all times employees of KEDC and shall not be officers, agents or employees of the City. The power to hire, manage, supervise, direct and discharge such employees shall be vested solely and exclusively with the KEDC. The City shall not manage, direct, supervise or discharge said persons or direct them in the performance of their duties for KEDC under this agreement.

3. **Indemnification.** KEDC agrees to indemnify, save harmless and defend the City of Killeen from any and all claims, causes of action and damages of every kind arising from the operations of KEDC, its officers, agents and employees, carried out in furtherance of this agreement. KEDC shall carry or cause to be carried public liability, bodily injury insurance on all automobiles used in the operations embraced by this agreement in the amount of two hundred fifty thousand dollars (\$250,000) for each person and five hundred thousand dollars (\$500,000) for each occurrence, and property damage liability insurance in the amount of one hundred thousand dollars (\$100,000) for each occurrence, or a combined single limit of six hundred thousand dollars (\$600,000), the cost of said insurance policies to be an expense of KEDC for which funding shall be provided by the City pursuant to paragraph 5 below.

Said policies of insurance must be approved by the City and must be written by companies acceptable to the City. Said insurance policies shall name the City of Killeen as an additional insured. Said policies, or duplicate originals thereof, must be filed with the City Secretary or her designated representative before any operations contemplated by this agreement are begun.

4. **Operation.** KEDC shall encourage and further the economic development of the City of Killeen. KEDC shall perform, among others, the following functions:

- a. Encourage and promote the economic development of the City of Killeen;
- b. Recommend to the City projects and programs to encourage and further the economic development of the City of Killeen; and
- c. Appoint annually a Board of Directors whose members and composition shall be determined by KEDC.

5. **Permitted Use of Funds.** It is expressly understood and agreed to by the Parties that all funds received from the City that are paid to KEDC shall be used solely for the purposes of encouraging and promoting the economic development of the City of Killeen, by way of performing those acts and conducting those activities authorized by Chapter 501 of the Texas Local Government Code as that statute provides at the time of execution of this agreement and as said statute or any amendment or successor statute thereto shall hereafter provide.

The funds may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses and other administrative costs of KEDC, only if said administrative costs are incurred directly in the promotion of economic development for the City. However, funds may not be spent for travel for a person to attend an event or conduct an activity the primary purpose of which is not directly related to the promotion of economic development or to the performance of the person's job in an efficient and professional manner.

Within thirty (30) days of the effective date of this agreement, KEDC will provide a budget detailing the anticipated use of the City's contribution.

Notwithstanding the provision above, it is specifically understood between the Parties hereto that KEDC shall have the authority to commit and spend funds received from the City for

the following types of projects without the necessity of securing the prior approval of the City Council, provided that expenditures contribute directly to the creation of new jobs or retention of existing jobs in the City of Killeen:

- a. Improvement of infrastructure, such as streets, roads, drainage structures, utility and sewer lines and connections, bridges, and other construction projects.
- b. Extensions of existing roads.
- c. Water and sewer treatment and improvement projects.
- d. Business, industrial or commercial expansion grants.
- e. Any amounts of money required to be committed for securing State or Federal matching grant funds for economic development.
- f. Construction of buildings and structures to attract business, commerce and industry.
- g. Purchase or acquisition of other interests in land for present or future business, commercial or industrial expansion.
- h. Professional services, such as architectural, engineering, economic or other studies, whether contracted for by KEDC itself or on behalf of businesses or industries which are potential employers in the City of Killeen, and legal services necessitated by any of the items or activities listed in this Paragraph 5.
- i. Professional services and/or expenses associated with the creation and/or retention of military and/or civilian jobs.
- j. Insurance to secure KEDC's interest in any such projects, as well as liability insurance for the officers, directors, and executive director of KEDC against claims of damage based on the actions of said persons in furtherance of their positions and duties regarding KEDC as authorized under Section 8.01(K) of the KEDC Bylaws.
- k. Any and all requirements, whether by law or contract, for the posting of any bond.

6. **Prohibited Use of Funds.** In accordance with state law, no funds received from the City may be used for any political activity or political advertising, including, but not limited to, activities or advertising to further the election, for the support or defeat of any candidate for public office, or any activity undertaken to advocate passage or defeat of a measure.

7. **City Council Approval Required.** As to acts or activities not specifically listed in Paragraph 5 above, prior to any such expenditure or commitment, KEDC must obtain approval by the City Council for any such acts or activities that KEDC may undertake that are consistent with its Articles of Incorporation, its Bylaws, and applicable statutes that call or require the expenditure or commitment of funds transferred by the City to KEDC.

8. **Standards of Performance.** The standards for measuring KEDC's fulfillment of its obligations and responsibilities under this agreement based on the following criteria:

- a. Location of new business enterprises, commerce, and industries in the City of Killeen;
- b. Accurate and timely flow of information to the City Council;
- c. Operating within the City of Killeen's Economic Development Policy;
- d. Operating the economic, business, commercial and industrial development function within the scope of the budget, work program and standards of performance;
- e. Coordination of various community groups involved with economic, business, commercial and industrial development effort;
- f. Citizen satisfaction with the economic, business, commercial and industrial development effort;
- g. Stable relations with the City Council, citizen groups, economic development allies and business, commercial and industrial prospects; and
- h. Such other standards as may from time to time be established by mutual agreement of the Parties to this agreement.

9. **Financial Records.** KEDC shall maintain complete and accurate financial records of each expenditure made by KEDC and on request of the City Council, the City Manager, or other person, shall make the records available for inspection and review by the City Council or other person. The City Council may, upon reasonable notice, audit all books and records of KEDC pertaining to the funding.

10. **Reporting.** KEDC shall report quarterly to the City Council on the amount and nature of expenditures or commitments made of funds received from the City and KEDC's progress and plans in promoting the economic development of the City of Killeen.

11. **Confidentiality.** It is specifically agreed and understood between the parties that in KEDC's negotiations and discussions with potential employers in the City of Killeen that require confidentiality in the identity of the potential employer and the nature of the matters under negotiation. It is agreed and understood between the Parties that, to the extent consistent with the Texas Open Meetings Act and the Texas Open Records Act (V.T.C.A., Government Code, Chapters 551 and 552, respectively), and any other applicable statute or regulation, KEDC may freely conduct such confidential discussions or negotiations without prior or subsequent notice to the City Council, unless and until some public action by KEDC or the City is required, or unless and until the release of such information to the City Council is approved by the potential employer.

12. **Term.** The term of this contract shall be for two (2) years effective October 1, 2022, and shall automatically terminate on September 30, 2024, unless terminated sooner

pursuant to Paragraph 14 or extended in writing by City on an annual basis during the City's budget process.

13. **Funding.** It is expressly understood between the Parties that the City Council has committed itself to funding the activities of KEDC for fiscal year 2023 in an amount not to exceed a total of seven hundred twenty-five thousand fifty-four Dollars (\$725,054). The determination to continue City funding beyond that time will depend directly on the effectiveness of KEDC's management of City-transferred funds during fiscal year 2023, within the guidelines expressed in this agreement. Unless the Agreement is terminated in accordance with Paragraph 14, the City agrees to pay KEDC payments not to exceed a total of seven hundred twenty-five thousand fifty-four dollars (\$725,054.00) for fiscal year 2024. Payments to KEDC shall be made quarterly.

14. **Termination.** It is understood and agreed that either party may terminate this Agreement by giving to the other party notice in writing at least thirty (30) days in advance of the first day of a calendar quarterly period, and such termination shall become effective at the end of the calendar quarterly period following such notice.

Upon termination of this agreement, KEDC shall deliver to the City any and all remaining City funds appropriated for KEDC that it may have and all removable property that may have been purchased with said funds.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF KILLEEN

KILLEEN ECONOMIC DEVELOPMENT CORP.

\_\_\_\_\_  
Kent Cagle  
City Manager

\_\_\_\_\_  
Scott Connell  
President

ATTEST:

\_\_\_\_\_  
Laura J. Calcote  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Holli C. Clements  
City Attorney