

STATE OF TEXAS §
 §
COUNTY OF BELL §

**LETTER OF AGREEMENT BETWEEN
THE CITY OF KILLEEN, TEXAS AND
KILLEEN ECONOMIC DEVELOPMENT CORPORATION**

THIS LETTER OF AGREEMENT, regarding the funding of KEDC (“Agreement”), is entered into by and between the City of Killeen, Texas, a home-rule municipal corporation (“City”), and Killeen Economic Development Corporation (“KEDC”), a non-profit corporation, collectively the “Parties”.

RECITALS

WHEREAS, the City 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 (“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;

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

WHEREAS, this Agreement is authorized by Texas Local Government Code Section 501.007(b).

AGREEMENTS

NOW THEREFORE, in consideration of the promises and covenants herein contained, the Parties 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.** The Parties agree and understand that KEDC is hired and engaged as an independent contractor and is not an officer, agent, or employee of the City. 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 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 and 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), with 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 Chapters 501 and 504 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.

Notwithstanding the provision above, it is specifically understood between the Parties 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. Business, industrial, or commercial expansion grants.
- d. Any amounts of money required to be committed for securing State or Federal matching grant funds for economic development.
- e. Construction of buildings and structures to attract business, commerce, and industry.
- f. Purchase or acquisition of other interests in land for present or future business, commercial or industrial expansion.
- g. 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.
- h. Professional services and/or expenses associated with the creation and/or retention of military and/or civilian jobs.
- i. 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.
- j. Any and all requirements, whether by law or contract, for the posting of any bond.

6. **Prohibited Use of Funds.** KEDC may not use more than 10% of the funds received by the City, as outlined in Paragraph 14, for promotional purposes. Additionally, no funds received from the City may be used for:

- a. Any political activity or advertising, including, but not limited to, activities or advertising to (i) further the election, for the support or defeat of any candidate for public office, or (ii) any activity undertaken to advocate passage or defeat of a measure.
- b. A project the primary purpose of which is to provide:
 - i. A transportation facility,
 - ii. A sewage facility,
 - iii. A solid waste disposal facility,
 - iv. A facility for furnishing water to the general public, or
 - v. A water or air pollution control facility.

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 accordance of 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.

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 provide a quarterly detailed report to the City Council on the amount and nature of all 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. At least fifteen (15) days prior to reporting to the City Council, KEDC shall provide a copy of the detailed report to the Executive Director of Development Services.

11. **Audit.** KEDC, at its sole expense, shall cause to be performed an annual audit for the previous fiscal year performed by an independent third-party. KEDC shall then provide a copy of the audit report to the Executive Director of Finance, or designee, no later than one hundred fifty (150) calendar days after the end of the fiscal year.

12. **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.

13. **Term.** This Agreement shall become effective on October 1, 2024 (“Effective Date”) and shall terminate on September 30, 2025 (“Initial Term”). Unless terminated in accordance with Paragraph 16, this Agreement shall automatically renew, for one subsequent one-year (1) term beginning October 1, 2025 and terminate on September 30, 2026 (“Additional Term”).

14. **Funding.** For those considerations described above, the City agrees to pay KEDC four (4) quarterly payments for a total amount not to exceed Eight Hundred Eighty-Five Thousand Dollars (\$885,000.00) for the Initial Term. Unless the Agreement is terminated in accordance with Paragraph 16, the City agrees to pay KEDC four (4) additional quarterly payments for a total amount not to exceed Eight Hundred Eighty-Five Thousand Dollars (\$885,000.00) during the Additional Term.

15. **Annual Budget.** In accordance with the City of Killeen Economic Development Policy, KEDC shall provide the Executive Director of Finance, or designee, with an annual budget detailing its anticipated expenditures for the fiscal year prior to receiving any funds. The budget for FY 2025 is attached hereto as Exhibit A. KEDC shall provide the City with the detailed budget for FY 2026 no later than June 1, 2025.

16. **Termination.** The Parties acknowledge that the Additional Term is subject to additional funding approval by the City Council. If the City Council does not approve said funding, the Agreement shall terminate automatically at the expiration of the Initial Term. It is further understood and agreed that either party may terminate this Agreement by giving to the other party written notice 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.

(signature page follows)

SIGNED and AGREED to this 31 day of October, 2024.

CITY OF KILLEEN

KILLEEN ECONOMIC DEVELOPMENT CORP.

Kent Cagle
City Manager



Scott Connell
President

ATTEST:

Laura Calcote
City Secretary

APPROVED AS TO FORM:

Holli Clements
City Attorney