

**ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT
BY AND BETWEEN
PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION AND
WALKER ENGINEERING, INC.**

This Economic Development Performance Agreement (EDPA) is by and between the Pflugerville Community Development Corporation, a Texas Type B Economic Development Corporation ("PCDC") and Walker Engineering, Inc., a Texas corporation ("Walker") and is made and executed on the following recitals, terms, and conditions. The PCDC and WALKER may be referred to singularly as "Party" and collectively as the "Parties."

WHEREAS, the PCDC is a Texas B Economic Development Corporation operating pursuant to the applicable provisions of Texas Local Government Code, as amended, and the Texas Non-Profit Corporation Act, as amended; and

WHEREAS, Walker intends to lease a building in the City of Pflugerville suitable for its operations ("the Facility"), to invest one million eight hundred fifty dollars (\$1,850,000.00) in capital/tenant improvements and equipment expenses in year one of this EDPA and to bring a minimum of fifty (50) jobs to the facility in year one with total average wage of \$49,000 plus medical benefits ("the Project"); and

WHEREAS, the PCDC Board finds that Project as herein described and carried out is an "Authorized Project" as that term is defined in Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, the PCDC Board finds that the payment of the incentives described herein are paid as permissible "Project Costs" as that term is defined in Chapters 501 and 505 of the Texas Local Government Code, as amended; and

WHEREAS, the PCDC Board requires that at least one public hearing to be conducted on this Project prior to spending funds in accordance with Section 505.159 of the Texas Local Government Code, as amended; and

WHEREAS, the PCDC Board finds that this EDPA is conditional in the event the City of Pflugerville, Texas (City) receives a petition no later than the 60th day after the date notice of this Project was published, which is duly certified and accepted by the City Council, from more than 10% of the registered voters of the City of Pflugerville, Texas, requesting that an election be held before the Project is undertaken in accordance with Section 505.160 of the Texas Local Government Code, as amended; and,

WHEREAS, the PCDC Board finds that Section 501.158 of the Texas Local Government Code, as amended, requires an EDPA with Walker providing a schedule of additional payroll or jobs to be created or retained by Walker's investment, a schedule of capital investments to be made as consideration for the incentives provided by PCDC in the EDPA, and a provision specifying the terms and conditions upon which repayment must be made should Walker fail to meet the agreed to performance terms in this EDPA; and,

WHEREAS, the PCDC Board finds that this EDPA benefits PCDC in accordance with Section 501.156 of the Texas Local Government Code, as amended.

WHEREAS, the PCDC Board finds that the terms, conditions, and obligations made by PCDC and accepted by Walker are conditional upon the authority granted by Section 501.073(a) of the Texas Local Government Code (requiring the City Council to approve all programs and expenditures of the PCDC), and accordingly this EDPA is not effective until the City Council has approved this Project in accordance with Texas law.

NOW, THEREFORE, for and in consideration of the EDPA, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PCDC and Walker agree as follows:

SECTION 1— RECITALS INCORPORATED

The foregoing recitals are hereby incorporated into the body of this EDPA and shall be considered mutual covenants that are part of and which are incorporated within the terms and conditions that are relied upon and bind the Parties.

SECTION 2—EFFECTIVENESS AND TERM

(a) This EDPA shall be effective upon the completion of all of the following:

1. Approval of this EDPA by the PCDC Board;
2. Approval of this EDPA by Walker;
3. Approval of this EDPA by the City Council of the City of Pflugerville, Texas; in accordance with Texas law; and
4. All other legal requirements are met in accordance with Texas law as described in the recitals.
5. This EDPA shall have a term of five years and shall terminate at midnight on the day marking the last day of Year Five as provided hereafter.
6. Year One of the term shall commence on the date of issuance of the Certificate of Occupancy described below and each successive year of the Term shall commence on the anniversary date thereof one year later.

SECTION 3—DEFINITIONS

“CAPITAL/TENANT IMPROVEMENTS” shall mean costs incurred by Walker in the transfer and relocation of employees to the Facility from other locations, the establishment of suitable working stations, offices, and similar locations in which its employees will be located, and such improvements that are reasonably necessary for Walker to conduct its operations.

“EQUIPMENT EXPENSES” shall mean the cost of personal property necessary to conduct operations and to provide employees with the tools necessary for the accomplishment of their jobs.

“PRIMARY JOB” shall mean a job, as that term is defined in Section 501.002(12), Texas Local Government Code, that becomes available at Walker during the term of this Agreement at which each employee holding such job works a minimum of thirty (30) hours per week, or one thousand five hundred sixty (1,560) hours per year with an average gross salary of at least forty-nine thousand dollars (\$49,000.00) per year plus medical benefits.

SECTION 4—WALKER PERFORMANCE REQUIREMENTS

- (a) WALKER covenants and agrees that while this EDPA is in effect, it shall be obligated to comply with all the terms and conditions of the EDPA and in addition, perform the following obligations:
- (b) During each year of the Term, Walker shall accomplish the following:
 - 1. Year One:
 - (i) Walker shall invest one million eight hundred fifty dollars (\$1,850,000.00) in Capital improvements, personal property, and five-year lease;;
 - (ii) Relocate or create a minimum of fifty (50) jobs with total average wage of forty-nine thousand dollars (\$49,000.00) plus medical benefits;
 - (iii) Enter into a lease of a suitable building in the City (“the Facility”) with a minimum term of five (5) years;
 - (iv) Obtain a Certificate of Occupancy from the City for the Facility;
 - (v) Meet all City rules for permitting and occupancy; and
 - (vi) Provide PCDC with proof of its capital investment of one million eight hundred fifty dollars (\$1,850,000.00);
 - 2. Year Two:
 - (i) Maintain residency and the lease agreement for the Facility;
 - (ii) Maintain fifty (50) FTEs relocated or created in Year One and hire an additional twenty (20) FTEs with a total average wage of forty-nine thousand dollars (\$49,000.00) plus medical benefits;
 - 3. Year Three:
 - (i) Maintain residency and the lease agreement for the Facility;
 - (ii) Maintain seventy (70) FTEs already established and hire additional twenty (20) FTEs with total average wage of forty-nine thousand dollars (\$49,000.00) plus medical benefits
 - 4. Year Four:
 - (i) Maintain residency and the lease agreement for the Facility;
 - (ii) Maintain ninety (90) FTEs and hire additional twenty (20) FTEs with total average wage of forty-nine thousand dollars (\$49,000.00) plus medical benefits
 - 5. Year Five:
 - (i) Maintain residency and the lease agreement for the Facility;
 - (ii) Maintain one hundred ten (110) FTEs and hire additional twenty (20) FTEs with total average wage of forty-nine thousand dollars (\$49,000.00) plus medical benefits.

- (c) Annually during each year for the first four years of the term of this EDPA, Walker shall provide Payroll Records and an Employment Certification (the “**Compliance Information**”) in substantially the form attached hereto as Exhibit “A” to PCDC showing compliance with this Section 4 during the preceding year, and thereafter shall provide the Compliance Information on each subsequent anniversary of the expiration date of each subsequent year, provided, however, that Walker shall not be required to provide any Payroll Records following the fifth anniversary and shall only be required to provide the Employment Certification.
- (d) In the event that Walker fails to maintain the number or type of Primary Jobs required in this Section during some or all of any year due to circumstances beyond its control related to attrition or unavailability of qualified employees, Walker shall include the following with the annual report for that year: (i) An explanation of the reasons for failure to meet the primary job requirements; and (ii) Copies of all documents reflecting Walker’s good faith efforts to attract sufficient employees to fill such primary jobs.
- (e) All job creation requirements must be met (100 %) or exceeded; provided, however, that should COMPANY fail to meet said requirements but has met at least eighty percent (80%) of such requirements, the Board may, at its sole discretion, refrain from enforcing any breach of contract and/or clawback provisions provided within the EDPA.

SECTION 5—PCDC PERFORMANCE REQUIREMENTS

- (a) The PCDC covenants and agrees that while this EDPA is in effect and so long as Walker is in full compliance with its obligations thereunder, the PCEC shall perform or accomplish the following:
 - 1. Upon Walker’s satisfactory performance of its obligations for Year One, PCDC shall provide Walker with a Relocation Grant of forty thousand dollars (\$40,000.00) to be paid out in four (4) equal payments of \$10,000 at the end of each Year so long as Walker meets the performance guarantees as stated in Section 4 above;
 - 2. PCDC shall coordinate with Texas Workforce Solutions to host job fairs for Walker as needed;
 - 3. PCDC will assist Walker in obtaining skill development funds and other state workforce grants to train new workforce;
 - 4. Upon request from Walker, PCDC will provide a health and wellness seminar administered by Baylor Scott & White Hospital;
 - 5. PCDC will provide Walker a one-year, Executive Membership in the Pflugerville Chamber of Commerce
- (b) All incentives are due and payable each year on or before September 30, provided that Walker has timely furnished proof of compliance and reports due hereunder.

SECTION 6--REPAYMENT

- (a) Pursuant to Section 501.158 of the Texas Local Government Code, this EDPA must contain terms under which repayment must be made to the PCDC if Walker does not meet its Performance

Requirements and obligations in this EDPA. Therefore, in the event that the items listed below as Section 6 (a) (1)-(4) occur, PCDC shall have no obligation to advance, disburse, or pay any financial assistance to Walker and Walker shall reimburse PCDC any and all past advances, disbursements, and any other financial assistance provided to Walker by PCDC, within thirty (30) days of demand, to include interest at ten percent (10%) per annum from the date Walker receives financial assistance, and any and all costs to recover, including attorney's and any expert fees, as provided by law:

- (1) WALKER becomes insolvent, files a petition in bankruptcy (voluntarily or involuntarily) or any similar proceedings, or is adjudged bankrupt;
- (2) WALKER fails to provide PCDC with sufficient documentation to support any individual incentive within ten (10) days of demand by PCDC;
- (3) WALKER fails to perform any of the obligations, terms, or conditions required under this EDPA;
- (4) WALKER fails to meet any time requirement under this EDPA.

SECTION 8 — ADDITIONAL PROVISIONS

(a) *Authority to Execute.* PCDC hereby represents and warrants to WALKER that this EDPA is within its authority and that PCDC has been duly authorized and empowered to enter into this EDPA. WALKER hereby represents and warrants to PCDC that this EDPA is within its authority and that WALKER has been duly authorized and empowered to enter into this EDPA. WALKER acknowledges that the EDPA may be terminated and payment may be withheld if this certification is inaccurate.

(b) *Mutual Assistance.* PCDC and WALKER will each do all things reasonably necessary and appropriate to carry out the terms and provisions of this EDPA.

(c) *Access to Financial Information.* WALKER agrees to make its corporate financial information available to PCDC on request, on an annual basis. Financial Information shall include balance sheet, profit and loss reports and all filed Federal Income Tax Returns for the 12 months prior to the date of the request. Any information provided will be reviewed pursuant to a confidentiality agreement to ensure WALKER's confidentiality is preserved.

(d) *Successors and Assigns.* This EDPA shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the Parties. Neither Party hereto may assign this EDPA without the prior written consent of the other Party hereto.

(d) *Payment of Debt or Delinquency to the Local or State Government.* WALKER agrees that any payments owing to WALKER under any agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that WALKER owes the State of Texas, Travis County, Williamson County, the City of Pflugerville or any other political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

(e) *Severability.* If any portion of this EDPA is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this EDPA shall be given the intent manifested by the portion held invalid or inoperative. The failure by either Party to enforce against the other any term or provision of this EDPA shall be deemed not to be a waiver of such Party's right to enforce against the other Party the same or any other such term or provision.

(f) *Survival.* Any portion of the agreement necessary to enforce the repayment of an incentive (whether a direct payment or third-party grant) shall survive termination of the agreement for the limited purpose of enforcement of the agreement to recover any payment made by PCDC, in accordance with Texas law.

(f) *Governing Law.* This EDPA shall be governed, construed, applied, and enforced in accordance with the laws of the State of Texas, and shall be performable with venue in a district court in Travis County, Texas.

(h) *Third Party Beneficiaries.* This EDPA is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third-party beneficiary, unless specifically stated.

(i) *Amendments.* This EDPA may be amended or supplemented only by an instrument in writing executed by the Party against whom enforcement is sought.

(j) *Time.* Time is of the essence in the performance of this EDPA.

(k) *Attorney's Fees.* Should any Party employ attorneys to enforce any of the provisions hereof, the Party losing in any final judgment agrees to pay the prevailing Party all reasonable costs, charges and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.

(l) *Notice and Payments.* All notices hereunder must be in writing and shall be deemed delivered on the day personally delivered on the third day from the day sent by registered mail or certified mail, return receipt requested with the U.S. Postal Service, or on the day after the day sent by national overnight courier, to the Parties at the following addresses, or at such other addresses as shall be specified by notice.

If notice to PCDC:

Pflugerville Community Development
Corporation
Attention: Executive Director
3801 Helios Way, Suite 130
Pflugerville, Texas 78660

If notice to WALKER:

Walker Engineering Inc.
Attention: Eric Lugger
18919 Heatherwilde Blvd., Bldg. 3, Suite 155
Pflugerville, Texas 78660

m) *Construction.* The Parties acknowledge that the Parties and their counsel have reviewed and revised this EDPA and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this EDPA or any exhibits or amendments hereto.

(n) *Counterpart Execution.* This EDPA may be executed in any number of counterparts, each of who

shall be deemed to be an original, and all such counterparts shall constitute one EDPA.


(o) *Performance.* Performance by PCDC under the EDPA is dependent upon the approval of the City Council of the City of Pflugerville (Council). If the Council fails to approve this EDPA, then PCDC shall issue written notice to WALKER and PCDC may terminate the EDPA without further duty or obligation hereunder. WALKER acknowledges that the approval of this document is beyond the control of PCDC.

(p) *Undocumented Workers.* Pursuant to Chapter 2264 of the Texas Government Code, WALKER certifies that it will not knowingly employ any undocumented workers. WALKER further agrees that if the business, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), WALKER shall repay the amount of the public subsidy with interest, at the rate of ten percent (10%) per annum from the date this EDPA is entered into, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the business of the violation.

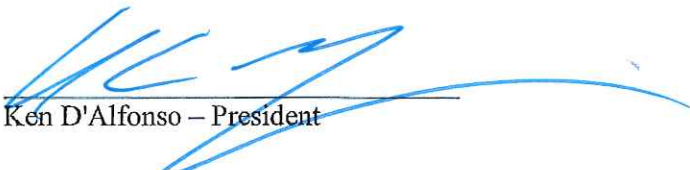
(q) *Information Establishing Compliance.* WALKER shall provide all information requested by PCDC establishing compliance with this EDPA within thirty (30) days of PCDC's written request.

DATED this 16th day of December 2020.

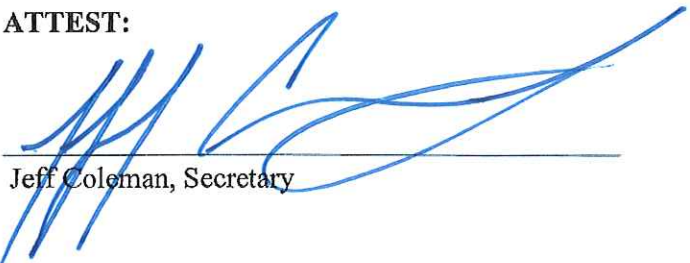
WALKER ENGINEERING, INC.:


Eric Lugg – Vice President - General Counsel
Date Executed: December 11, 2020

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION


Ken D'Alfonso – President
Date Executed: _____

ATTEST:


Jeff Coleman, Secretary

ORIGINAL

