

PERFORMANCE AGREEMENT

This Performance Agreement (this "Agreement") is entered into by and between Pflugerville Community Development Corporation (the "PCDC"), a Section 4B corporation incorporated under the Development Corporation Act of 1979 (the "Act"), and TrackingPoint, Inc., a Delaware Corporation ("TrackingPoint").

RECITALS

PCDC has determined that it is in the best interests of PCDC and the City of Pflugerville, a Texas Home Rule City in Travis County Texas (the "City"), to facilitate TrackingPoint in expanding its operations located within the City and generally described on Exhibit "A" attached hereto (the "TrackingPointFacilities"). TrackingPoint has determined that it is in TrackingPoint's best interests to expand its operations at the TrackingPoint Facilities. PCDC has determined that the expansion and retention of the TrackingPoint Facilities within the City will provide significant economic benefits and will further economic development in the City. The economic benefits of the TrackingPoint Facilities to the City will include, without limitation, the proceeds received by the City from the ad valorem taxes levied upon the premises and equipment of the TrackingPoint Facilities, and the maintenance of permanent full-time jobs within the City at the TrackingPoint Facilities.

PCDC and TrackingPoint have agreed to enter into this Agreement in connection with TrackingPoint remaining at the TrackingPoint Facilities to provide for certain incentives to TrackingPoint and to further define certain obligations of the parties to this Agreement with respect to TrackingPoint's expansion and such incentives. This Agreement is required pursuant to Section 40 of the Act.

Concurrently with the execution and delivery of this Agreement, PCDC is entering into a Sublease with TrackingPoint whereby PCDC is subleasing to TrackingPoint approximately 48,000 square feet of office/corporate headquarter/manufacturing space located in 130 Commerce Center L.L.C., Building 1, Lot 4, Pflugerville Renewable Energy Park, aka One Thirty Commerce Center and further described in the attached Commercial Sublease attached hereto as Exhibit "B" (the "Sublease").

AGREEMENT

I.

Performance Agreement

1. This Agreement serves as a performance agreement by the parties hereto.

2. TrackingPoint hereby agrees to: (i) Maintain its Corporate Headquarters at the location described in Exhibit B or such other location if those are not available within the City Limits of Pflugerville (the "TrackingPoint Facilities") for a term of at least 5 years commencing prior to December 31, 2013 (the "Facilities Requirement") (ii) during such period, pay a certain number of full time employees an average of at least \$100,000 annually for positions within the City limits of Pflugerville, and (iii) provide health and dental benefits to all full time employees.
3. TrackingPoint hereby agrees to employ at least 62 full time employees who are paid an average of at least \$100,000 annually with health and dental benefits from the commencement of the Sublease until the date that is five (5) years thereafter (approximately, September 1, 2013 until August 30, 2018) at the TrackingPoint Facilities.
4. TrackingPoint hereby agrees to employ at least 82 full time employees who are paid an average of at least \$100,000 annually with health and dental benefits from the date that is two (2) years from the commencement of the Sublease until the date that is five (5) years after the commencement date of the Sublease at the TrackingPoint Facilities.
5. TrackingPoint hereby agrees to employ at least 100 full time employees who are paid an average of at least \$100,000 annually with health and dental benefits from the date that is three (3) years from the commencement of the Sublease until the date that is five (5) years after the commencement date of the Sublease at the TrackingPoint Facilities.

II.

Benefit

1. In consideration for TrackingPoint's agreement to satisfy the above mentioned performance standard, PCDC shall reduce TrackingPoint's rent payable under the Sublease in an amount equal to \$5,000 per full-time job created in the City Limits of Pflugerville up to 150 total qualifying employees, provided however, that the jobs shall pay an average of at least \$100,000 annually, have health and dental benefits and are maintained in the City limits of Pflugerville for at least 2 years. The rent reduction specified herein shall be fully utilized by TrackingPoint before any rent shall be due and payable by TrackingPoint in cash.
2. Notwithstanding any other provision herein, if TrackingPoint continues to employ up to the number of qualifying employees set forth in Section 1 above within the City Limits of Pflugerville during the term of this Agreement, and the average salary for such

- employees totals less than \$100,000 annually, but greater than \$50,000 annually (with health and dental benefits), then TrackingPoint shall be entitled to receive a reduction in rent of \$3,000 per qualifying full-time job (as opposed to \$5,000 per qualifying full-time job) up to 150 employees as provided herein.
3. Except as expressly set forth herein, no backward looking adjustment shall be made to any benefit previously received by TrackingPoint. If the average salary is determined to fall below the \$100,000 threshold, the reduction in benefits shall only be to those employees added since the prior years analysis.
 4. On the commencement date of the Sublease and on each annual anniversary thereafter, PCDC shall be allowed to review the number of TrackingPoint's full time employees and the annual salaries of such full-time employees. On the commencement date of the Sublease, if TrackingPoint employees at least 62 full time employees with the average salaries described above and with health and dental benefits, the rent adjustment set forth above shall be made as of the commencement date. On each annual anniversary of the commencement date, if TrackingPoint employees more than 62 full time employees with the average salaries as provided above and with health and dental benefits, TrackingPoint shall receive the rent adjustment set forth above with respect to each employee that TrackingPoint has not previously received a rent reduction effective as of such annual anniversary of the commencement date of the Sublease. If on any annual anniversary of the commencement date of the Sublease, TrackingPoint does not employ at least 62 full time employees meeting the qualifications set forth above, then within thirty (30) days after such annual anniversary, TrackingPoint shall refund to PCDC on a prorata basis (based on deficiency of full time employees below 62) the rent reduction received for such employees.
 5. Concurrently with the execution and delivery of this Agreement, PCDC is entering into a Land Lease Agreement lease with TrackingPoint whereby PCDC is leasing approximately 20 acres of land identified as Lot 3d in the Pflugerville Renewable Energy Park aka One Thirty Commerce Center as more specifically described on Exhibit A attached hereto for the construction of a ballistics laboratory (the "Ground Lease"). The terms of the Ground Lease are further described in Exhibit C attached hereto.
 6. PCDC shall grant an option to TrackingPoint to purchase Lot 3d as further described in the Ground Lease for a price \$1.50 per square foot of land, exercisable by TrackingPoint at any time prior to the date that is 5 years after the date of this Agreement.

7. Notwithstanding anything to contrary in this Agreement, PCDC's total reduction in rent to TrackingPoint under this Agreement shall be capped at \$750,000.
8. All Exhibits attached herewith are hereby incorporated by reference for all purposes as if written and copied herein.

III. PENALTY

In the event that (i) TrackingPoint fails to fulfill the Facilities Requirement, or (ii) TrackingPoint fails to maintain at least 62 full time jobs with an average salary of \$100,000 per year with full medical and dental benefits for 5 years or (iii) TrackingPoint otherwise fails to comply with its obligations pursuant to this Agreement, and such failure is not cured within 30 days of written notice thereof from PCDC to TrackingPoint, then in any such event, as PCDC's sole and exclusive remedy, TrackingPoint will immediately pay to PCDC the pro-rata amount of the rent reduction previously received by TrackingPoint as provided in Section III.4 above.

IV. MISCELLANEOUS

Representations and Warranties. This Agreement is being entered into pursuant to Section 40 of the Act. PCDC hereby represents and warrants to TrackingPoint that this Agreement is within its authority and that PCDC has been duly authorized and empowered to enter into this Agreement. TrackingPoint hereby represents and warrants to PCDC that this Agreement is within its authority and that TrackingPoint has been duly authorized and empowered to enter into this Agreement. TrackingPoint acknowledges that the agreement may be terminated and payment may be withheld if this certification is inaccurate.

Mutual Assistance. PCDC and TrackingPoint will each do all things reasonably necessary and appropriate to carry out the terms and provisions of this Agreement.

Successor and Assigns. This Agreement 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 Agreement without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld.

Representations and Warranties by TrackingPoint. TrackingPoint warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of

Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of TrackingPoint has been duly authorized to act for and bind TrackingPoint. TrackingPoint acknowledges that the agreement may be terminated and payment may be withheld if this certification is inaccurate.

Franchise Tax Certification. A corporate or limited liability company TrackingPoint certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. TrackingPoint acknowledges that the agreement may be terminated and payment may be withheld if this certification is inaccurate.

Payment of Debt or Delinquency to the Local or State Government. TrackingPoint agrees that any payments owing to TrackingPoint under an agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that TrackingPoint 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.

Child Support Certification. TrackingPoint hereby certifies that as of the date hereof, none of the officers of the corporation are delinquent in their court ordered child support obligations and shall acknowledge that any agreement with the city may be terminated and payment may be withheld if this certification is inaccurate.

Severability. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement 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 Agreement 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.

Governing Law. This Agreement shall be governed, construed, applied, and enforced in accordance with the laws of the State of Texas, and shall be performable with venue in Travis County, Texas.

Third Party Beneficiaries. This Agreement 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.

Amendments. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

Time. Time is of the essence in the performance of this Agreement.

Notices and Payments. All notices hereunder must be in writing and shall be deemed delivered on the day personally delivered or 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 the PCDC:
Pflugerville Community Development Corporation
Attention: Director
203 West Main Street, Suite E
P.O. BOX 1160
Pflugerville, Texas 78691

With copy to:
Floyd Akers
City Attorney
P. O. Box 679
Pflugerville, Texas 78691-0679

If notice to TrackingPoint:

with copy to:

All payments to the PCDC required under this Agreement shall be made to:

Pflugerville Community Development Corporation
Attention: Director
203 West Main Street, Suite E
P.O. BOX 1160
Pflugerville, Texas 78691

Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement 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 Agreement or any exhibits or amendments hereto.

Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one Agreement.


Performance. Performance by PCDC under the Agreement is dependent upon the approval of the City Council of the City of Pflugerville (Council). PCDC shall notify TrackingPoint within 5 days after the Council's approval of this Agreement. If the Council fails to approve this Agreement on or before _____, 2013, then PCDC shall issue written notice to TrackingPoint and PCDC and/or TrackingPoint may terminate the Agreement without further duty or obligation hereunder. TrackingPoint acknowledges that the approval of this document is beyond the control of PCDC.

Undocumented Workers. Pursuant to Chapter 2264 of the Texas Government Code, TrackingPoint certifies that they will not knowingly employ any undocumented workers. TrackingPoint further agrees that if it is convicted of a violation under 8 U.S.C. Section 1324a(f), TrackingPoint shall repay the amount of the public subsidy with interest, at the rate of ten percent (10%) per annum from the date this agreement 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.

DATED this 13TH day of MAY, 2013.

TrackingPoint, Inc.

By:
Name:
Title:




Jani Darrin

CEO

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION
A Texas Economic Development Corporation

By:
Name:
Title:



Omar Pena

President

STATE OF TEXAS,
COUNTY OF TRAVIS.

BEFORE ME, the undersigned authority, on this day personally appeared San Decton of TrackingPoint, Inc.

, a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and sworn and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated and as the act and deed of the corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 14th day of May, 2013.

Guyanne Conley Nichols
Notary Public in and for
The State of Texas

STATE OF TEXAS,
COUNTY OF TRAVIS.



BEFORE ME, the undersigned authority, on this day personally appeared Omar Pena, President of the Pflugerville Community Development Corporation, a Section 4B corporation incorporated under the Development Corporation Act of 1979, known to me to be the person whose name is subscribed to the foregoing instrument, and swore and acknowledged to me that he executed the same for the purpose and consideration therein expressed, and in the capacity therein stated and as the act and deed of the Pflugerville Community Development Corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 21 day of May, 2013.

Christian Cade Kurtz
Notary Public in and for
The State of Texas

