

**ECONOMIC DEVELOPMENT AGREEMENT
BY AND BETWEEN
PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION AND
FOOTBALL FIT PFLUGERVILLE, LLC**

This Economic Development Agreement (this "EDA") is by and between Pflugerville Community Development Corporation, a Texas Type B economic development corporation ("PCDC") and Football Fit Pflugerville, LLC, a Texas limited liability company, its successors and assigns ("PFIT") and is made and executed on the following recitals, terms, and conditions. PCDC and PFIT may be referred to singularly as "Party" and collectively as the "Parties."

WHEREAS, the PCDC is a Texas Type B economic development corporation operating pursuant to the applicable provisions of the Texas Local Government Code and the Texas Non-Profit Corporation Act, each as amended; and

WHEREAS, PFIT intends to lease and occupy approximately 45,000 square feet of office and operations space in the City of Pflugerville ("City") and to make a capital investment of ten million dollars (\$10,000,000.00) in development of the site, equipment, and tenant finish out, and to relocate; and

WHEREAS, PFIT has requested assistance from PCDC for reimbursement of marketing, marketing staff, and advertising costs (the "Project"); and

WHEREAS, the PCDC Board finds that the Project is eligible for funding as a promotional project (the "Project") and such funding will not exceed the 10% limitations set out in Section 505.103 of the Texas Local Government Code, as amended; and

WHEREAS, the PCDC Board determines that granting to PFIT reimbursement for marketing and advertising expenses and PFIT's commitment to advertise and market its business in conjunction with advertising and promoting the City of Pflugerville provides a valuable economic benefit to the City and will in turn attract other businesses to the City; and

NOW, THEREFORE, for and in consideration of the terms and covenants of this EDA, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PCDC and PFIT agree as follows:

SECTION 1 – RECITALS INCORPORATED

The foregoing recitals are hereby incorporated into the body of this EDA and shall be considered mutual covenants incorporated within its terms and conditions.

SECTION 2 - TERM

This EDA shall become effective on October 1, 2020, and shall continue in effect for five years (the "Term") and shall terminate on September 30, 2025.

SECTION 3 – PFIT PERFORMANCE REQUIREMENTS

PFIT agrees to:

- (a) On or before October 1, 2021, enter into a ten (10) year lease for an office and operations facility in the City and invest at a minimum the sum of Ten Million Dollars (\$10,000,000.00) in development of the site, equipment, and tenant finish out.
- (b) Incur a minimum of 50k per year in marketing and advertising during the first three years of this EDA to promote their business in conjunction with promotion of the City of Pflugerville. In particular Pfit shall advertise and market the Pflugerville location in connection with Cowboys Fit Pflugerville trademark depicted in Attachment “A”, attached hereto and incorporated herein. The name of the business to be located in the City shall be “COWBOYS Fit Pflugerville”.
- (c) Provide discounted rates for City residents, veterans, and military personnel of 10% and City employees of 20%.
- (d) Maintain its fitness business in the City of Pflugerville for a minimum of five (5) years.

PFIT acknowledges that it is not entitled to any reimbursement payments from PCDC until it has provided PCDC with reasonably satisfactory documentary evidence of investment, 10 year lease, marketing and advertising costs meeting the requirements provided in Section 3 and 4.

SECTION 4 – INCENTIVES

PCDC agrees to:

- (a) Provide PFIT with reimbursement of eligible marketing and advertising costs for three consecutive years not to exceed fifty thousand dollars (\$50,000.00), per year, and not to exceed one hundred fifty thousand dollars (\$150,000.00) over the three-year period. Reimbursement shall be conditioned on the following:
 - 1. Receipts and documentation of PFIT’s marketing and advertising must demonstrate joint marketing and advertising of the City of Pflugerville in conjunction with the marketing of PFIT’s business (“eligible receipts”).
 - 2. Documentation shall be submitted to PCDC for review and approval a minimum of 30 days prior to the date that PCDC is required to submit reimbursement payments.
 - 3. PCDC’s first reimbursement payment shall be due PFIT on or before October 1, 2021, conditioned on PFIT demonstrating that the requirements set out in Section 3(a) have been completed and upon satisfactory submittal of receipts in accordance with subsection (4) of this Section. In Fiscal years 22 and 23 PCDC shall have the

discretion to reimburse PFIT on or before September 30 of each fiscal year and conditioned on PFIT demonstrating that the requirements of this Agreement have been met.

4. In the event that PFIT does not submit eligible receipts or documentation totaling 50k, PCDC's reimbursement obligation shall be limited to the actual amount of eligible receipts submitted and approved by PCDC. In the event that eligible receipts are less than 50k for the year, the shortage shall not carry over to any following years.
- (b) Provide PFIT with a one-year executive membership in the Pflugerville Chamber of Commerce at no cost to PFIT.
 - (c) Provide free job fair, screening and other assistance in the hiring process from the Workforce Solutions Capital Area Board.
 - (d) Provide one free health and wellness seminar provided by Baylor Scott and White Hospital.

SECTION 5 – DEFAULT AND REPAYMENT

Pursuant to Section 501.158, Texas Local Government Code, in the event PFIT does not maintain a place of business in the City of Pflugerville for the term of this EDA, PFIT shall be obligated to reimburse the PCDC for its marketing and advertising payments prorated based on the number of years that the business was located in the City of Pflugerville against the 5 year term of the EDA. In way of an example, if PFIT is located in the City of Pflugerville for 4 years, then the reimbursement to PCDC would be 20% of the total amount of eligible advertising and marketing expenses previously paid to PFIT by PCDC. In the event that the documentation and receipts received from PFIT do not demonstrate joint marketing with the City of Pflugerville, PCDC shall have no obligation to reimburse PFIT for its marketing and advertising expenses related to such receipts or documentation.

SECTION 6 – ADDITIONAL PROVISIONS

Authority. PCDC hereby represents and warrants to PFIT that this EDA is within its authority and that PCDC has been duly authorized and empowered to enter into this EDA. PFIT hereby represents and warrants to PCDC that this EDA is within its authority and that PFIT has been duly authorized and empowered to enter into this EDA. PFIT acknowledges that the EDA may be terminated and payment may be withheld if this certification is inaccurate.

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

Successor and Assigns. This EDA shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the Parties. Except as

expressly permitted herein, neither Party hereto may assign this EDA without the prior written consent of the other Party hereto.

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

Survival. Any portion of the agreement necessary to enforce the repayment of an incentive or reimbursement made by PCDC to PFIT as required in Section 6, 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.

Governing Law. This EDA 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 EDA 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.

Amendments. This EDA 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 EDA.

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.

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 PFIT:

Football Fit Pflugerville, LLC
Attention: Johnny De La Valdene
5 COWBOYS Way
Frisco, Texas 75034

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

Counterpart Execution. This EDA 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 EDA.

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

Force Majeure. 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 the Party), fires, explosions or floods, strikes, slowdowns or work stoppage. In the circumstance of a Force Majeure event, PCDC agrees to free both parties from performing its obligations set forth in Section 3 of the agreement throughout the duration of the event.

Undocumented Workers. Pursuant to Chapter 2264 of the Texas Government Code, PFIT certifies that it will not knowingly employ any undocumented workers. PFIT 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), PFIT shall repay the amount of the public subsidy with interest, at the rate of ten percent (10%) per annum from the date this EDA 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.

AGREED, ENTERED, and DATED this 19th day of August, 2020.

**PFLUGERVILLE COMMUNITY
DEVELOPMENT CORPORATION**



Ken D'Alfonso, President

ATTEST: 

Jeff Coleman, Secretary

**FOOTBALL FIT PFLUGERVILLE,
LLC**



Kim Funk, Vice President of Operations

ATTACHMENT A

COWBOYS FIT PFLUGERVILLE LOGO



PFLUGERVILLE