

## **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 Tracking Point, Inc., a Texas Corporation ("Tracking Point").

### **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 TRACKING POINT in expanding its operations located within the City and generally described on Exhibit "A" attached hereto (the "TRACKING POINT Facilities"). TRACKING POINT has determined that it is in TRACKING POINT's best interests to expand its operations at the TRACKING POINT Facilities. PCDC has determined that the expansion and retention of the TRACKING POINT Facilities within the City will provide significant economic benefits and will further economic development in the City. The economic benefits of the TRACKING POINT 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 TRACKING POINT Facilities, and the maintenance of permanent full-time jobs within the City at the TRACKING POINT Facilities.

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

### **AGREEMENT**

#### **I.**

#### **Performance Agreement**

1. This Agreement serves as a performance agreement by the parties hereto.
2. TRACKING POINT hereby agrees to: (i) Maintain its Corporate Headquarters at the location described in Exhibit B within the City Limits of Pflugerville for a term no shorter than 5 years. (Facilities Requirement) (ii) Pay full time employees an average of at least \$100,000 annually for all positions within the City Limits of Pflugerville, (iii) provide health and dental benefits to all full time employees.

3. TRACKING POINT hereby agrees to continue to employ at least 62 full time employees paid an average of at least \$100,000 annually with health and dental benefits from September 1, 2013 until August 30, 2018 at TRACKING POINT Facilities.
4. TRACKING POINT hereby agrees to employ at least 82 full time employees paid an average of at least \$100,000 annually with health and dental benefits from September 1, 2015 until August 30, 2018 at TRACKING POINT Facilities.
5. TRACKING POINT hereby agrees to continue to employ at least 100 full time employees paid an average of at least \$100,000 annually with health and dental benefits from September 1, 2016 until August 30, 2018 at TRACKING POINT Facilities.

## **II.** **Benefit**

1. In consideration for TRACKING POINT's agreement to satisfy the above mentioned performance agreement, PCDC shall reduce TRACKING POINT's rent 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.
2. PCDC shall be allowed to review the number of TRACKING POINT's full time employees periodically and shall reduce Tracking Points rent in accordance with this agreement to TRACKING POINT no later than 30 days following September 1, 2013, 2014, 2015, 2016, 2017 and 2018.
3. PCDC shall sublet approximately 48,000 square feet of office/corporate headquarter/manufacturing space to TRACKING POINT 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 lease agreement labeled Exhibit B.
4. PCDC shall lease approximately 20 acres identified as lot 3d in the Pflugerville Renewable Energy Park aka One Thirty Commerce Center on the attached Exhibit A for the construction of a ballistics laboratory. The terms of the lease shall be in the attached Land Lease Agreement labeled Exhibit C.
5. PCDC shall extend an option to Tracking Point to purchase Lot 3d as further described in Exhibit C, in the Pflugerville Renewable Energy Park aka One Thirty Commerce Center for a price \$1.50 per square foot for 5 years from the execution of this agreement.

6. Notwithstanding anything to contrary in this agreement PCDC's total reduction in rent to TRACKING POINT shall be capped at \$750,000.
7. All Exhibits attached herewith shall be incorporated by reference for all purposes as if written and copied herein.

### **III. PENALTY**

In the event that (i) TRACKING POINT fails to fulfill the Facilities Requirement, or (ii) TRACKING POINT 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) TRACKING POINT 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 TRACKING POINT, then in any such event, TRACKING POINT will immediately pay to PCDC the amount of the Benefit.

### **IV. MISCELLANEOUS**

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

*Mutual Assistance.* PCDC and TRACKING POINT 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.

*Representations and Warranties by TRACKING POINT.* TRACKING POINT 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 TRACKING POINT has been duly authorized to act for and bind TRACKING POINT. TRACKING POINT 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 TRACKING POINT 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. TRACKING POINT 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.* TRACKING POINT agrees that any payments owing to TRACKING POINT under an agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that TRACKING POINT 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.* TRACKING POINT hereby certifies that 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 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 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 TRACKING POINT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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). If the Council fails to approve this agreement, then PCDC shall issue written notice to TRACKING POINT and PCDC may terminate the Agreement without further duty or obligation hereunder. TRACKING POINT acknowledges that the approval of this document is beyond the control of PCDC.

*Undocumented Workers.* Pursuant to Chapter 2264 of the Texas Government Code, TRACKING POINT certifies that they will not knowingly employ any undocumented workers. TRACKING POINT 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), TRACKING POINT 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 \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Tracking Point, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION  
A Texas Economic Development Corporation

By: \_\_\_\_\_  
Name: Omar Pena  
Title: President

STATE OF TEXAS,

COUNTY OF TRAVIS.

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of Tracking Point, Inc. \_\_\_\_\_, a \_\_\_\_\_ 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 \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
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 \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas