

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 , Bison Logistics Inc., a Texas corporation ("Bison Logistics").

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 Bison Logistics in moving its office and operations to new facilities located within the City and generally described on Exhibit "A" attached hereto (the "Bison Logistics Facilities"). Bison Logistics has determined that it is in Bison Logistics' best interests to move its office and operations to the Bison Logistics Facilities instead of the alternate locations of its existing facilities in Arlington or its proposed site in Oklahoma City. PCDC has determined that the addition of the Bison Logistics Facilities within the City will provide significant economic benefits and will further economic development in the City. The economic benefits of the Bison Logistics 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 Bison Logistics Facilities, and the maintenance of permanent full-time jobs within the City at the Bison Logistics Facilities.

PCDC and Bison Logistics have agreed to enter into this Agreement in connection with Bison Logistics move to the Bison Logistics Facilities to provide for certain incentives to Bison Logistics and to further define certain obligations of the parties to this Agreement with respect to Bison Logistics' move 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. Bison Logistics hereby agrees, on or before October 1, 2011 the "Begin Operations Date"), to : (i) complete the finish out of the Bison Logistics Facilities, as evidenced by the issuance of a certificate of occupancy from the City of Pflugerville "Completion"), (ii) move its office and operations to the Bison Logistics Facilities, (the foregoing is referenced to as the "Facilities Requirement"). (iii)

- Employ at least 15 full time employees, non-drivers (“Eligible Employees”) at the Pflugerville Facility.
3. Provide the PCDC with 941 forms that indicate the number of Eligible Employees employed by Bison on the date the Agreement is approved.
 4. Bison Logistics hereby agrees to allow PCDC to place PCDC/City non-permanent promotional messages on up to 25 of Bison’s semi-trailers. Design, installation and removal of promotional messages will be done at PCDC’s sole expense. PCDC/City promotional messages will be a design mutually agreeable to the parties and will incorporate Bison’s branding if it covers more than 60% of the side of the trailer being used.
 5. Bison Logistics agrees to execute a lease for at least 10 years for its Pflugerville Facilities and shall provide PCDC with a copy of the lease agreement to view upon request.
 6. Bison agrees to pay an average wage of \$45,000 and offer medical benefits for its full time employees working at the Pflugerville Facility.

II. **Benefit**

1. In consideration for Bison Logistics’ agreement to satisfy the above mentioned performance agreement, PCDC hereby agrees to give Bison Logistics \$1,000.00 per Eligible Employee created and maintained after the date the Agreement is approved annually in compliance with Article I. Section 2(iii) of this agreement.
2. PCDC’s payments to Bison Logistics shall not exceed \$150,000.
3. All benefit payments shall be made annually on the anniversary date of the execution of this agreement. No payments shall be made after the 5th anniversary date of the execution of this document.
4. Bison Logistics shall provide PCDC with a copy of Internal Revenue Service Form 941 for each quarter covered by this agreement. Benefit will be paid based on the number of employees averaged over the previous two quarters.

III. **PENALTY**

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

IV. MICELLANEOUS

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

Mutual Assistance. PCDC and Bison Logistics 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 Bison Logistics. If Bison Logistics is a corporation or a limited liability company, Bison Logistics 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 Bison Logistics has been duly authorized to act for and bind Bison Logistics. Bison Logistics 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 Bison Logistics 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. Bison Logistics 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. Bison Logistics agrees that any payments owing to Bison Logistics under an agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that Bison Logistics 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. Bison Logistics 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.

Attorneys 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.

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 C
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 Bison Logistics:

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 C
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 Bison Logistics and PCDC may terminate the Agreement without further duty or obligation hereunder. Bison Logistics acknowledges that the approval of this document is beyond the control of PCDC.

Undocumented Workers. Pursuant to Chapter 2264 of the Texas Government Code, Bison Logistics certifies that they will not knowingly employ any

undocumented workers. Bison Logistics 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), Bison Logistics 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 _____, 2011.

BISON LOGISTICS
A Texas Corporation

By: _____
Name: _____
Title: _____

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION
A Texas Economic Development Corporation

By: _____
Name: David R. Clay
Title: President

STATE OF TEXAS,

COUNTY OF TRAVIS.

BEFORE ME, the undersigned authority, on this day personally appeared _____, _____ of Bison Logistics, a Texas 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 _____, 2011.

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 David Clay, 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 _____, 2011.

Notary Public in and for
The State of Texas