

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 Complete Energy Systems, Inc. a Texas corporation (“CES”).

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 CES in moving its office and operations to new facilities located within the City and generally described on Exhibit “A” attached hereto (the “CES Facilities”). CES has determined that it is in CES’ best interests to move its office and operations to the CES Facilities. PCDC has determined that the addition of the CES Facilities within the City will provide significant economic benefits and will further economic development in the City. The economic benefits of the CES 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 CES Facilities, and the maintenance of permanent full-time jobs within the City at the CES Facilities.

PCDC and CES have agreed to enter into this Agreement in connection with CES move to the CES Facilities to provide for certain incentives to CES and to further define certain obligations of the parties to this Agreement with respect to CES’ 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. CES hereby agrees that within 90 days of the completion of construction of CES’ Facility in the Pflugerville Renewable Energy Park, CES shall begin its operations at the Facility to include its corporate headquarters, manufacturing and assembly operations. The completion of construction of the CES Facilities shall be evidenced by the issuance of a certificate of occupancy from the City of Pflugerville. The foregoing shall be considered the “Facilities Requirement”.

3. CES hereby agrees to hire at least 100 full time employees by January 1, 2013 and at least 200 full time employees by January 1, 2014.
4. CES agrees to maintain its operations in the City of Pflugerville for at least 5 years at its Pflugerville Facilities and shall provide PCDC with a copy of the lease/purchase agreement within 7 days of written request.
5. CES agrees to pay an average wage of \$50,000 and full medical benefits for its full time employees working at the Pflugerville Facility.

II. **Benefit**

1. In consideration for CES' agreement to satisfy the above mentioned performance agreement, PCDC hereby agrees to give CES \$3000 per job created and maintained annually in compliance with Article I. Section 3 of this agreement up to 250 new jobs. In the event CES reduces the number of employees during the term of this agreement CES shall not be paid for additional new employees until such time as the number of new employees exceeds the number of employees prior to the reduction in workforce.
2. PCDC's payments to CES shall not exceed \$750,000.
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. CES 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) CES fails to fulfill the Facilities Requirement, or (ii) CES 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 CES, then in any such event, CES 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 CES that this Agreement is within its authority and that PCDC has been duly authorized and empowered to enter into this Agreement. CES hereby represents and warrants to PCDC that this Agreement is within its authority and that CES has been duly authorized and empowered to enter into this Agreement. CES acknowledges that the agreement may be terminated and payment may be withheld if this certification is inaccurate.

Mutual Assistance. PCDC and CES 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 CES. If CES is a corporation or a limited liability company, CES 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 CES has been duly authorized to act for and bind CES. CES 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 CES 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. CES 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. CES agrees that any payments owing to CES under an agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that CES 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. CES 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: Executive Director
203 West Main Street, Suite C
P.O. BOX 1160
Pflugerville, Texas 78691

If notice to CES:

with copy to:

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

Pflugerville Community Development Corporation
Attention: Executive 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 CES and PCDC may terminate the Agreement without further duty or obligation hereunder. CES acknowledges that the approval of this document is beyond the control of PCDC.

Undocumented Workers. Pursuant to Chapter 2264 of the Texas Government Code, CES certifies that they will not knowingly employ any undocumented workers. CES 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), CES 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.

CES
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 CES, 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