

## **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 codified as Section 501 Texas Local Government Code (the “Act”), and The City of Pflugerville, a Texas municipal corporation (“PD”).

### **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 PD in helping to establish a safe environment for the Citizens and Businesses in Pflugerville. PCDC has determined that an additional 911 dispatch console for the Pflugerville Police Department will add the needed security and response times that the Citizens of Pflugerville have come to expect from our public safety employees and first responders. The addition of these public safety improvements will provide significant economic benefits and will further economic development in the City. The economic benefits of the 911 dispatch console will include, without limitation, the continued rapid response from emergency personnel to residential, retail, office and industrial sites within the city will continue to allow Pflugerville residents and the Pflugerville workforce continue to be one of the safest communities in Texas ensure industries that build in Pflugerville will be protected.

PCDC and the PD have agreed to enter into this Agreement in connection with PD’s support of a 911 Dispatch Console to the PD and to further define certain obligations of the parties to this Agreement with respect to the vocational programs 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. PD hereby agrees that within 1 year of the execution of this agreement PD shall use 100% of the funds from PCDC to fund the “911 Dispatch Console” contemplated in this agreement.
3. PD hereby agrees that no PCDC funds shall be utilized to fund any operations or programs at PD other than the “911 Dispatch Console” contemplated under this agreement.

**II.**  
**Benefit**

In consideration for PD's agreement to satisfy the above mentioned performance agreement, PCDC hereby agrees to grant PD \$100,000 (Benefit). This payment shall be paid within 30 days of the approval of this agreement by the Pflugerville City Council or within 30 days of the submission of invoices by the PD. PCDC's payments to PD shall not exceed \$100,000.

**III.**  
**PENALTY**

In the event that (i) PD fails to purchase and install the 911 Dispatch Console or (ii) PD 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 PD, then in any such event, PD 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 PD that this Agreement is within its authority and that PCDC has been duly authorized and empowered to enter into this Agreement. PD hereby represents and warrants to PCDC that this Agreement is within its authority and that PD has been duly authorized and empowered to enter into this Agreement. PD acknowledges that the agreement may be terminated and payment may be withheld if this certification is inaccurate.

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

*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 both parties.

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

*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 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 the PD:

Pflugerville Police Department  
Attention: Chief of Police  
1611 E. Pfennig  
Pflugerville, Texas 78660

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

*Undocumented Workers.* Pursuant to Chapter 2264 of the Texas Government Code, PD certifies that they will not knowingly employ any undocumented workers. PD 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), PD 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 \_\_\_\_\_, 2012.

CITY OF PFLUGERVILLE  
A Texas Municipal Corporation

By: \_\_\_\_\_  
Name: Brandon Wade  
Title: City Manager

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 City of Pflugerville, a Texas Municipal 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 \_\_\_\_\_, 2012.

\_\_\_\_\_  
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 \_\_\_\_\_, 2012.

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