

**ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT
BY AND BETWEEN
PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION AND
LIVE OAK-GOTTESMAN LLC**

This Economic Development Performance Agreement (this “EDPA”) is by and between Pflugerville Community Development Corporation, a Texas Type B economic development corporation (“PCDC”) and LIVE OAK-GOTTESMAN LLC, a Texas limited liability company, its successors and assigns (“LIVE OAK”) and is made and executed on the following recitals, terms, and conditions. PCDC and LIVE OAK 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, the PCDC Board finds that LIVE OAK is a registered limited liability company, doing business in the State of Texas; and

WHEREAS, LIVE OAK intends to construct a warehouse and office space facility with a minimum area of 240,000 square feet in the City of Pflugerville (“City”) to be leased to commercial or industrial tenants, and to make a capital investment of fourteen million dollars (\$14,000,000.00) in development of the site, which will thereafter attract primary jobs to the City (the “Project”); and

WHEREAS, LIVE OAK has requested assistance from PCDC for the infrastructure, in particular, reimbursement for the costs of wastewater facilities and procurement of service; and

WHEREAS, the PCDC Board finds that the Project is an “Authorized Project” as that term is defined in Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, the PCDC Board finds that the payment of the incentives described herein will be permissible “Project Costs” as that term is defined in Chapters 501 and 505, Texas Local Government Code; and

WHEREAS, the PCDC Board finds that Project includes expenditures that are required or suitable for infrastructure related to sewer and other utilities or improvements necessary to promote or develop new or expanded business enterprises, consistent with Sec. 501.103, Texas Local Government Code; and

WHEREAS, the PCDC Board determines that granting to LIVE OAK of an economic incentive to assist LIVE OAK to provide reimbursement for infrastructure costs for the Project will promote and develop business enterprises in the City and surrounding area, as authorized by Chapter 505, Texas Local Government Code; and

WHEREAS, the PCDC Board finds that notice of the Project was published and at least one public hearing was conducted on the proposition of this Project prior to spending funds to undertake this Project in accordance with Section 505.159 of the Texas Local Government Code, as amended; and

WHEREAS, the PCDC Board finds that its spending of funds for the Project may be conditioned on whether the City receives a petition no later than the 60th day after the date notice of this Project was published from more than 10% of the registered voters of the City requesting that an election be held before the Project is undertaken in accordance with Section 505.160 of the Texas Local Government Code; and,

WHEREAS, the PCDC Board finds that this EDPA benefits PCDC in accordance with Section 501.156 of the Texas Local Government Code; and

WHEREAS, the PCDC Board finds that the terms, conditions and obligations made by PCDC and accepted by LIVE OAK herein are conditioned upon the same being approved by the governing body of the City pursuant to Section 501.073(a), Texas Local Government Code;

NOW, THEREFORE, for and in consideration of the EDPA, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PCDC and LIVE OAK agree as follows:

SECTION 1 – RECITALS INCORPORATED

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

SECTION 2 - TERM

This EDPA shall become effective on January 18, 2018, and shall continue in effect for five years and shall terminate on September 30, 2023.

SECTION 3 – PERFORMANCE REQUIREMENTS

LIVE OAK has agreed to construct in the City three warehouse/office space buildings and related improvements, including installation and connection of water and wastewater facilities, with a minimum total area of 240,000 square feet as generally depicted in Exhibit A and Exhibit B attached hereto and incorporated herein, subject to minor modifications and any modifications required by the City (collectively, the “Improvements”). LIVE OAK shall be deemed to have earned, and PCDC shall pay, the financial incentives described in Section 4 below that are applicable to LIVE OAK’s completion of the following obligations during the term of this EDPA:

- (A) LIVE OAK shall commence construction of the Improvements on or before September 30, 2018. “Commence construction” shall be defined as one or more physical actions on the part of LIVE OAK for the purpose of erecting and installing the buildings

and related improvements, pursuant to formal architectural and/or engineering plans and designs, that are clearly intended to be the initial steps of an uninterrupted pattern of constructing such a building and improvements according to accepted industry standards.

(B) LIVE OAK shall make a capital investment of not less than fourteen million dollars (\$14,000,000.00), including both hard and soft costs of construction, to entitle, design and construct the Improvements, and shall provide PCDC with satisfactory evidence of fulfillment of this obligation with settlement statements, contracts, and invoices and/or receipts.

(C) LIVE OAK shall complete shell building construction of the Improvements no later than December 31, 2019, unless extended by mutual agreement of the Parties or delays caused by events constituting force majeure. Satisfactory evidence of fulfillment of this obligation is a Certificate of Occupancy for such shell buildings issued by the City.

(D) LIVE OAK shall have (i) made the capital investment described in (B) above, (ii) completed shell construction of the Improvements and (iii) obtained occupancy of no less than 216,000 square feet of space in the buildings, by no later than June 30, 2022.

LIVE OAK acknowledges that it is not entitled to any payments from PCDC until it has provided PCDC with reasonably satisfactory documentary evidence of completion of the related obligations for the payments provided in Section 4 below.

SECTION 4 – INCENTIVES

PCDC shall provide LIVE OAK with a financial incentive of not to exceed two hundred fifty thousand dollars (\$250,000.00), payable as provided below:

(A) \$125,000, to be paid no earlier than August 30, 2022, and payable within thirty (30) days after LIVE OAK has furnished PCDC with reasonably satisfactory documentation demonstrating timely completion of each of the performance requirements described in Sections 3(A) – (C).

(B) \$125,000, to be paid no earlier than August 30, 2023 and payable within thirty (30) days after LIVE OAK has furnished PCDC with reasonably satisfactory documentation demonstrating timely completion of the performance requirements described in Section 3(D).

(C) Under no circumstances shall LIVE OAK receive, nor PCDC be requested to provide, payment of more than \$125,000 in any single PCDC fiscal year (October 1 – September 30). LIVE OAK shall forfeit the first payment of \$125,000 if the performance requirements described in Sections 3 (A) and (C) are not met by the deadlines stated therein.

SECTION 5 – FINANCIAL RECORDS

PCDC shall have the right but not the obligation to request and obtain financial information such as financial statements, balance sheets, and profit and loss statements from LIVE OAK that accurately reflect its assets and liabilities and other relevant information, provided, however, that PCDC shall not disclose the content of such financial information to any party other than PCDC's financial analyst or consultant for the purpose of reviewing same, and shall not release any copy of a document containing such financial information unless required to do so by state law. In the event of a request from a third party for a copy of any such financial information that is in its possession, PCDC shall promptly notify LIVE OAK of the request and shall, within ten business days from receipt of the request, submit an inquiry to the Texas Attorney General to determine whether the information requested may be withheld. PCDC shall not request such financial information more often than once every twelve calendar months during the term of this EDPA.

SECTION 6 – DEFAULT AND REPAYMENT

Pursuant to Section 501.158, Texas Local Government Code, in the event LIVE OAK does not meet the performance requirements in Section 3 above, or does not complete one or more timely, then PCDC shall have no obligation to advance, disburse, reimburse, or pay any financial assistance to LIVE OAK not theretofore paid to LIVE OAK; provided, however, PCDC agrees that LIVE OAK shall have earned, and PCDC shall pay, the applicable incentive payment described in Section 4 for which LIVE OAK is able to furnish satisfactory documentation demonstrating timely completion of the applicable performance requirements for such payment in accordance with Section 4 above.

SECTION 7—ASSIGNMENT OR REORGANIZATION

PCDC recognizes that LIVE OAK may (i) reorganize, bring in new investors, change its name, or otherwise modify its legal framework during the term of this EDPA, and (ii) assign the EDPA or the rights to receive financial incentive payments hereunder to an affiliated entity holding title to the Improvements, and PCDC agrees that such actions by LIVE OAK shall be acceptable to PCDC without amendment of this EDPA or official action of the Board of PCDC, provided that LIVE OAK notifies PCDC of any such action in writing, describing the effect thereof, and PCDC is reasonably assured that LIVE OAK shall continue to be legally bound by the terms of this EDPA following such actions.

SECTION 8 – ADDITIONAL PROVISIONS

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

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

Successor and Assigns. This EDPA 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 EDPA without the prior written consent of the other Party hereto.

Severability. If any portion of this EDPA is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this EDPA 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 EDPA 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 (whether a direct payment or third-party grant) 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 EDPA 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 EDPA 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 EDPA 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 EDPA.

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
16225 Impact Way, Suite 2
Pflugerville, Texas 78660

With a copy to:

Akers & Akers, LLP
Attention: Monte Akers, Esq.
13625 Pond Springs Rd., Ste. 204
Austin, Texas 78729

If notice to LIVE OAK:

Live Oak – Gottesman LLC
Attention: President
2705 Bee Cave Road, Suite 230
Austin, Texas 78746

With a copy to:

Nick von Kreisler
Kuperman, Orr & Albers, P.C.
2500 Bee Cave Road
Building Two, Suite 150
Austin, Texas 78746

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

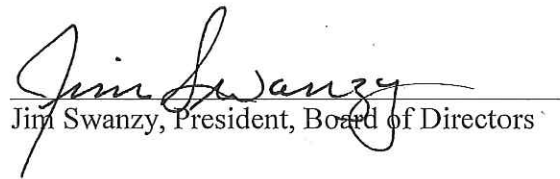
Counterpart Execution. This EDPA may be executed in any number of counterparts, each of who shall be deemed to be an original, and all such counterparts shall constitute one EDPA.


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

Undocumented Workers. Pursuant to Chapter 2264 of the Texas Government Code, LIVE OAK certifies that it will not knowingly employ any undocumented workers. LIVE OAK 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), LIVE OAK shall repay the amount of the public subsidy with interest, at the rate of ten percent (10%) per annum from the date this EDPA 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 26 day of January, 2018.

**PFLUGERVILLE COMMUNITY
DEVELOPMENT CORPORATION**



Jim Swanzy, President, Board of Directors

ATTEST: 
Jeff Thompson, Secretary
Pflugerville Economic Development Corporation

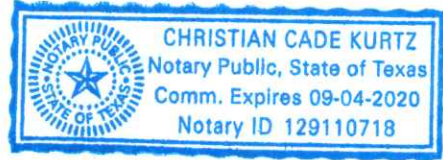
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Jim Swanzy, President of the Pflugerville Community Development Corporation, a Type B Economic Development Corporation, 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.

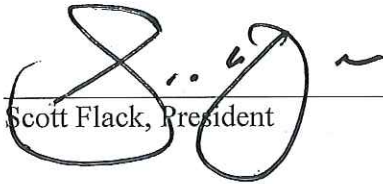
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 26 day of JANUARY, 2018.



Notary Public in and for
The State of Texas



LIVE OAK-GOTTESMAN LLC, a Texas
limited liability company




Scott Flack, President

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Scott Flack, President of **LIVE OAK—GOTTESMAN LLC**, a Texas limited liability company, 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 said company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 23rd day of January, 2018.



Notary Public in and for
The State of Texas

