

**ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT
BY AND BETWEEN
PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION AND
ROSENDIN, INC.**

This Economic Development Performance Agreement (EDPA) is by and between the Pflugerville Community Development Corporation, a Texas Type B Economic Development Corporation ("PCDC") and Rosendin Electric, Inc., a California corporation doing business in Texas ("Rosendin"), and is made and executed on the following recitals, terms, and conditions. The PCDC and ROSENDIN may be referred to singularly as "Party" and collectively as the "Parties."

WHEREAS, the PCDC is a Texas B Economic Development Corporation operating pursuant to the applicable provisions of Texas Local Government Code, as amended, and the Texas Non-Profit Corporation Act, as amended; and

WHEREAS, ROSENDIN is an electrical construction and design contractor firm that does business in various states in the nation;

WHEREAS, the PCDC Board finds that Project as herein described and carried out 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 are paid as permissible "Project Costs" as that term is defined in Chapters 501 and 505 of the Texas Local Government Code, as amended; and

WHEREAS, the PCDC Board finds that Project includes the lease of commercial property, the purchase of equipment and other personal property, the creation of primary jobs and other expenditures and improvements that are found by the Board of Directors to be required or suitable for use to promote or develop new or expanded manufacturing and industrial facilities that create or retain primary jobs (defined as a job that is "available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national or international markets infusing new dollars into the local economy") in accordance with Chapters 501 and 505 of the Texas Local Government Code, as amended; and

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

WHEREAS, the PCDC Board finds that this EDPA is conditional in the event the City of Pflugerville, Texas (City) receives a petition no later than the 60th day after the date notice of this Project was published, which is duly certified and accepted by the City Council, from more than 10% of the registered voters of the City of Pflugerville, Texas, requesting that an election be held before the Project is undertaken in accordance with Section 505.160 of the Texas Local Government Code, as amended; and,

WHEREAS, the PCDC Board finds that Section 501.158 of the Texas Local Government Code, as amended, requires an EDPA with Rosendin providing a schedule of additional payroll or jobs to be created or retained by Rosendin's investment, a schedule of capital investments to be made as consideration for

the incentives provided by PCDC in the EDPA, and a provision specifying the terms and conditions upon which repayment must be made should Rosendin fail to meet the agreed to performance terms in this EDPA; and,

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

WHEREAS, the PCDC Board finds that the terms, conditions, and obligations made by PCDC and accepted by Rosendin are conditional upon the authority granted by Section 501.073(a) of the Texas Local Government Code (requiring the City Council to approve all programs and expenditures of the PCDC), and accordingly this EDPA is not effective until the City Council has approved this Project in accordance with Texas law.

NOW, THEREFORE, for and in consideration of the EDPA and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PCDC and Rosendin 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 that are part of, and which are incorporated within the terms and conditions that are relied upon and bind the Parties.

SECTION 2—EFFECTIVENESS AND TERM

(a) This EDPA shall be effective upon the completion of all of the following:

1. Approval of this EDPA by the PCDC Board;
2. Approval of this EDPA by Rosendin;
3. Approval of this EDPA by the City Council of the City of Pflugerville, Texas; in accordance with Texas law; and
4. All other legal requirements are met in accordance with Texas law as described in the recitals.
5. This EDPA shall have a term of seven years and shall terminate at midnight on the day marking the last day of Year Seven as provided hereafter.
6. Year One of the term shall commence on the date of issuance of the Certificate of Occupancy described below and each successive year of the Term shall commence on the anniversary date thereof one year later

SECTION 3—DEFINITIONS

“EMPLOYEE OR EQUIPMENT EXPENSES” shall mean costs incurred by Rosendin for the purpose of transferring personnel, personal property belonging to the company, and equipment from their current locations to the Rosendin place of operations in Pflugerville, and shall include the costs of preparation for travel, moving, unloading, and setup, but shall not include costs incurred by individual employees or members of their households for moving, securing places of residence, and similar expenses paid for by such employees or members of their household, even if reimbursed by Rosendin.

“FY 2019” shall mean the period of time from the effective date of this EDPA until midnight on September 30, 2019.

“FY 2020” shall mean the period of time from the end of FY 2019 until midnight on September 30, 2020.

“FY 2021” shall mean the period of time from the end of FY 2020 until midnight on September 30, 2021.

“FY 2022” shall mean the period of time from the end of FY 2020 until midnight on September 30, 2022.

“INCENTIVIZED JOB” shall mean a primary job created by Rosendin at its place of operations in Pflugerville during the time specified in the EDPA for which Rosendin will be entitled to a job credit. An incentivized job may be counted only one time for the purpose of payment of the job credit.

“JOB CREDIT” shall mean an entitlement for a payment of \$2000 by PCDC to Rosendin based on creation of an incentivized job as provided in this EDPA.

“PRIMARY JOB” shall mean a job as that term is defined in Section 501.002 (12), Texas Local Government Code that becomes available at Rosendin during the term of this Agreement at which each employee holding such job works a minimum of thirty (30) hours per week, or one thousand five hundred sixty (1,560) hours per year with an average gross salary of at least \$75,000.00 per year plus medical benefits.

“REMAINDER OF THE TERM” means that period of the Term from the end of FY 2022 until the end of the term of this EDPA.

SECTION 4—ROSENDIN PERFORMANCE REQUIREMENTS

ROSENDIN covenants and agrees that while this EDPA is in effect, it shall be obligated to comply with all the terms and conditions of the EDPA and in addition, perform the following obligations:

1. Rosendin shall locate and lease at least 50,000 square feet of adequate space in the City of Pflugerville for its operations (“the Property”) for a minimum of ten years and shall secure a Certificate of Occupancy from the City of Pflugerville, with occupancy and operations to commence by no later than July 1, 2019, such place of operations to be identified as Rosendin’s regional headquarters.
2. Rosendin shall, during the term of this EDPA, invest at least three million dollars (\$3,000,000) in tenant improvements and acquisition of personal property in or for the Property.
3. By no later than October 1, 2019, Rosendin will relocate or hire at least 54 employees with an average wage of \$75,000 plus medical benefits to be employed at the Property.
4. Beginning October 1, 2019, Rosendin shall become eligible for ten (10) new job credits, one for each new job created (in addition to the 54 relocated to Pflugerville).
5. Beginning October 1, 2020, Rosendin shall become eligible for ten (10) new job credits, one for each new job created (in addition to the 54 relocated to Pflugerville and the new jobs created during FY 2020).
6. Beginning October 1, 2021, Rosendin shall become eligible for ten (10) new job credits, one for each new job created (in addition to the 54 relocated to Pflugerville and the new jobs created during FY 2021).
7. During each year of the Term, Rosendin shall accomplish the following:

A. FY 2019:

- i. Secure and execute a lease agreement adequate for its operations in the City of Pflugerville;
- ii. Obtain a Certificate of Occupancy from the City of Pflugerville for such operations at the site of the leased premises;
- iii. Establish its place of operations in Pflugerville as Rosendin's regional headquarters;
- iv. Invest funds in tenant improvements and acquisition of personal property in or for the Property as provided above and provide receipts for same to PCDC;
- v. Relocate or hire at least 54 employees with an average wage of \$75,000 plus medical benefits to be employed at the Property.
- vi. Commence operations and continue operating thereafter as provided above;
- vii. Comply with all applicable City of Pflugerville ordinances and regulations;

B. FY 2020:

- i. Maintain residency in the same or similar leasehold in the City;
- ii. Maintain at least 54 primary jobs at the Property;
- iii. Create new incentivized jobs in the City;
- iv. Comply with all applicable City of Pflugerville ordinances and regulations; and
- v. Maintain its place of operations as Rosendin's regional headquarters.

C. FY 2021:

- i. Maintain residency in the same or similar leasehold in the City;
- ii. Maintain at least 54 primary jobs at the Property plus the number of incentivized jobs created during FY 2020;
- iii. Create new incentivized jobs in the City;
- iv. Comply with all applicable City of Pflugerville ordinances and regulations; and
- v. Maintain its place of operations as Rosendin's regional headquarters.

D. FY 2022:

- i. Maintain residency in the same or similar leasehold in the City;
- ii. Maintain at least 54 primary jobs at the Property plus the number of incentivized jobs created during FY 2020 and FY 2021;
- iii. Create new incentivized jobs in the City;
- iv. Comply with all applicable City of Pflugerville ordinances and regulations;
and
- v. Maintain its place of operations as Rosendin's regional headquarters.

E. Remainder of the Term:

- i. Maintain residency in the same or similar leasehold in the City:
- ii. Maintain at least 54 primary jobs at the Property plus the number of incentivized jobs created during FY 2020, FY 2021, and FY 2022;
- iii. Comply with all applicable City of Pflugerville ordinances and regulations; and
- iv. Maintain its place of operations as Rosendin's regional headquarters.
- v. Annually, Rosendin shall provide a report to the PCDC that fully and adequately identifies the type and number of primary jobs created and maintained during the preceding year in order that the PCDC may verify Rosendin's compliance with the job creation and maintenance requirements described in this Section. In the event that Rosendin fails to maintain the number or type of Primary Jobs required in this Section during some or all of any year due to circumstances beyond its control related to attrition or unavailability of qualified employees, Rosendin shall include the following with the annual report for that year:
 1. Explanation of the reasons for failure to meet the primary job requirements; and
 2. Copies of all documents reflecting Rosendin's good faith efforts to attract sufficient employees to fill such primary jobs.

SECTION 5—PCDC PERFORMANCE REQUIREMENTS

- 1) All incentives paid under this EDPA shall not exceed \$60,000 in the aggregate.
- 2) PCDC shall pay Rosendin \$2000 for each incentivized job created by Rosendin in the City of Pflugerville, up to ten jobs each in FY 2020, 2021, and 2022, for a total of not to exceed \$20,000 for each fiscal year.
- 3) PCDC shall remit payment to Rosendin the amount due for each fiscal year within thirty (30) days of receipt of the report described in 4(b), the first such payment to be made following the end of FY 2020.
- 4) The maximum number of incentivized jobs for which Rosendin shall be entitled to payment shall be ten for each fiscal year and jobs created each year shall not be cumulative. That is, neither additional jobs above ten created in a fiscal year, nor jobs created in a subsequent fiscal year to make up for a shortfall in the previous fiscal year shall entitle Rosendin to additional job credits.
- 5) Under no circumstances will PCDC be obligated to make any job creation grant payment to Rosendin less than thirty (30) days after Rosendin has provided PCDC with complete and satisfactory proof of employment records required for such payment.
- 6) PCDC shall assist Rosendin in coordinating with Texas Workforce Solutions Capital Area to provide pre-screening and a job fair on location during the term of this Agreement if Rosendin is in full compliance with the applicable performance requirements in Section 4.

- 7) PCDC shall provide Rosendin one executive membership to the Pflugerville Chamber of Commerce during the first year of the agreement.
- 8) PCDC will assist Rosendin in securing available state incentives as appropriate.
- 9) Upon request from Rosendin, the PCDC will provide one health and wellness seminar to Rosendin during the term of this EDPA.

SECTION 6—REPAYMENT

- 1) Pursuant to Section 501.158 of the Texas Local Government Code, this EDPA must contain terms under which repayment must be made to the PCDC if Rosendin does not meet its Performance Requirements and obligations in this EDPA. Therefore, in the event that the items listed below occur, PCDC shall have no obligation to advance, disburse, or pay any financial assistance to Rosendin and Rosendin shall reimburse PCDC any and all past advances, disbursements, and any other financial assistance provided to Rosendin by PCDC, within 30 days of demand, to include interest at ten percent (10%) per annum from the date Rosendin receives financial assistance, and any and all costs to recover, including attorney's and any expert fees, as provided by law:
 - a) ROSENDIN becomes insolvent, files a petition in bankruptcy (voluntarily or involuntarily) or any similar proceedings, or is adjudged bankrupt;
 - b) ROSENDIN fails to provide PCDC with sufficient documentation to support any individual incentive within 10 days of demand by PCDC;
 - c) ROSENDIN fails to perform any of the obligations, terms, or conditions required under this EDPA;
 - d) ROSENDIN fails to meet any time requirement under this EDPA.
- 2) In the event that Rosendin fails in any year during the term of this EDPA to maintain the minimum number of Primary Jobs required for that fiscal year or remainder of the term or in the event that such jobs fail to maintain the average minimum gross salary or provision of medical benefits required, the amount of incentive to be paid by the PCDC to Rosendin for that year shall be reduced by an amount equal to \$2000.00 for each number or type of job that is less than the minimum required. The PCDC acknowledges that normal attrition, the availability of qualified job candidates or other reasons beyond Rosendin's control may result in Rosendin being unable to maintain the minimum number of jobs during particular periods of time and will determine, solely in its own discretion, whether the information provided by Rosendin under Section 4 (b) above is sufficient to justify and waive any temporary failure by Rosendin to meet its primary job requirements during that year.

SECTION 8 — ADDITIONAL PROVISIONS

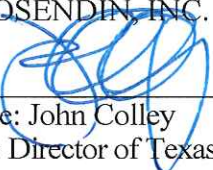
- 1) *Authority to Execute.* PCDC hereby represents and warrants to ROSENDIN that this EDPA is within its authority and that PCDC has been duly authorized and empowered to enter into this EDPA. ROSENDIN hereby represents and warrants to PCDC that this EDPA is within its authority and that ROSENDIN has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

- 2) *Mutual Assistance.* PCDC and ROSENDIN will each do all things reasonably necessary and appropriate to carry out the terms and provisions of this EDPA.
- 3) *Access to Financial Information.* ROSENDIN agrees to make its corporate financial information available to PCDC on request, on an annual basis. Financial Information shall include balance sheet, profit and loss reports and all filed Federal Income Tax Returns for the 12 months prior to the date of the request. Any information provided will be reviewed pursuant to a confidentiality agreement to ensure ROSENDIN's confidentiality is preserved.
- 4) *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. Neither Party hereto may assign this EDPA without the prior written consent of the other Party hereto.
- 5) *Payment of Debt or Delinquency to the Local or State Government.* ROSENDIN agrees that any payments owing to ROSENDIN under any agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that ROSENDIN 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.
- 6) *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.
- 7) *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.
- 8) *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 a district court in Travis County, Texas.
- 9) *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.
- 10) *Amendments.* This EDPA may be amended or supplemented only by an instrument in writing executed by the Party against whom enforcement is sought.
- 11) *Time.* Time is of the essence in the performance of this EDPA
- 12) *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.

DATED this 20 day of March 2019.

[signatures follow]

ROSENDIN, INC. a California corporation

By: 
Name: John Colley
Title: Director of Texas Operations

Date Executed: 3/14/19

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION, a Type B Economic Development Corporation

By: 
Name: Victor Johnson
Title: President, PCDC

Date Executed: 3/20/19

ATTEST: 

Jeff Coleman, Secretary