

## **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 Pflugerville Fund for Excellence in Education d/b/a the Pflugerville Educational Foundation, Inc. a Texas nonprofit corporation (“PEF”).

### **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 PEF in helping to establish a workforce training vocational programs at the Pflugerville Independent School District to wit: CNC Milling (the “Vocational Program”). PCDC has determined that the addition of the Vocational Programs within the City will provide significant economic benefits and will further economic development in the City. The economic benefits of the Vocational Program to the City will include, without limitation, the proceeds received by the City from the skilled workforce that will be trained and ultimately allow for the construction of new residential, retail, office research and development and industrial sites within the city including the sales tax and property tax collected by these new members of the workforce and the industries they help build in Pflugerville.

PCDC and PEF have agreed to enter into this Agreement in connection with PEF’s support of a Vocational Program to provide for certain incentives to PEF 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. PEF hereby agrees that within 1 year of the execution of this agreement PEF shall use 100% of the funds from PCDC to fund the “Vocational Program” contemplated in this agreement.
3. PEF hereby agrees that no PCDC funds shall be utilized to fund any operations or programs at PEF other than the “Vocational Program” contemplated under this agreement.

**II.**  
**Benefit**

In consideration for PEF's agreement to satisfy the above mentioned performance agreement, PCDC hereby agrees to grant PEF \$20,000 (Benefit). This payment shall be paid within 30 days of the approval of this agreement by the Pflugerville City Council. PCDC's payments to PEF shall not exceed \$20,000.

**III.**  
**PENALTY**

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

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

*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.

*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.

*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 PEF:

Pflugerville Education Foundation  
Attention: Director  
1401 Pecan Street West  
P.O. Box 773  
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 PEF and PCDC may terminate the Agreement without further duty or obligation hereunder. PEF acknowledges that the approval of this document is beyond the control of PCDC.

*Undocumented Workers.* Pursuant to Chapter 2264 of the Texas Government Code, PEF certifies that they will not knowingly employ any undocumented workers. PEF 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), PEF 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 \_\_\_\_\_, 2013.

PFLUGERVILLE FUND FOR EXCELLENCE IN EDUCATION  
DBA Pflugerville Education Foundation  
A Texas Non Profit Corporation

By: \_\_\_\_\_  
Name: Victor Gonzales  
Title: President

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 PEF, 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 \_\_\_\_\_, 2013.

\_\_\_\_\_  
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 \_\_\_\_\_, 2013.

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