

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION
Economic Development Performance Agreement
Project “iRobot” – Board Approved 04.21.2016

This Economic Development Performance Agreement (referred to as “EDPA”) is by and between SISU Devices, a Texas Limited Liability Corporation, its successors and assigns (referred to as “SISU”) and the Pflugerville Community Development Corporation, a Texas Type 4B non-profit corporation (referred to as “PCDC”) and is made and executed on the following recitals, terms and conditions. This “Project” is referred to as “iRobot”.

WHEREAS, the PCDC Board finds PCDC is a Texas Type 4B economic development corporation operating pursuant to the applicable provisions of Texas Local Government Code, as amended and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and,

WHEREAS, the PCDC Board finds SISU is a growing company manufacturing electro-mechanical machines employing a diverse workforce from at least 12 different states and six countries. SISU employs machinists, assembly technicians and engineers in the fields of mechanical, electrical, computer software, and manufacturing. It serves companies large and small throughout the United States and around the world. SISU is an alliance partner with National Instruments. SISU is a Texas Limited Liability Corporation doing business in the State of Texas; and,

WHEREAS, the PCDC Board finds that Project iRobot as herein described and carried out is an “Authorized Project” as that term is defined in Texas Local Government Code Chapter 505; 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 by Texas Local Government Code Chapters 501 & 505, as amended; and,

WHEREAS, the PCDC Board finds that Project iRobot allows for land, buildings, equipment, facilities, 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 business enterprises that creates or retains 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 Texas Local Government Code § 505.155; and,

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

WHEREAS, the PCDC Board finds that this EDPA is conditional in the event the City of Pflugerville, Texas 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 municipality, requesting that an election be held before the project is undertaken in accordance with Texas Local Government Code §505.160; and,

WHEREAS, the PCDC Board finds that Texas Local Government Code § 501.158 requires an EDPA with SISU providing at a minimum a schedule of additional payroll or jobs to be created or retained by SISU'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 SISU 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 Texas Local Government Code §501.156.

WHEREAS, the PCDC Board finds that the terms, conditions and obligations made by PCDC and accepted by SISU are conditional upon the authority granted by Texas Local Government Code § 501.073(a) requiring the City Council of the City of Pflugerville, Texas, 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 an in consideration of the EDPA, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PCDC and SISU 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 incorporated within the terms and conditions that are relied upon and bind the parties.

SECTION 2 - TERM

(A) This EDPA shall be effective upon:

- 1) Approval of this EDPA by the PCDC Board
- 2) Approval of this EDPA by SISU
- 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.

(B) This EDPA shall terminate five (5) years after its execution and approval by all parties.

SECTION 3 – PERFORMANCE REQUIREMENTS

SISU 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:

- (A) SISU shall enlarge its current 5,600 sq. ft. facility at 1520 Royston Lane (located in the city limits of Pflugerville, Texas) to 17,600 sq. ft. by December 31, 2017.
- (B) SISU shall maintain the facility in operation within the city limits of the City of Pflugerville, Texas for a period of no less than five (5) years after enlarging the facility as provided by paragraph (A) above.
- (C) SISU shall annually create and employ up to 15 new full-time equivalent employee (an employee who performs a regular work schedule of at least thirty-five (35) hours per week in a primary job) while maintaining at an average salary of \$40,000 per year plus employer paid health care benefits for each employee, at its facility within the city limits of the City of Pflugerville, Texas.
- (D) SISU shall make a total capital investment of at least \$2,100,000 achieved in any of the following ways or in combination:
 - 1) Costs related to enlarging the facility as provided by Section 3 (A); and,
 - 2) Additional furniture, fixtures and equipment expenses for the enlarged Pflugerville facility.

SECTION 4 - INCENTIVES

So long as SISU fully and continuously complies with the terms and conditions of this EDPA, and annually creates and employs up to 15 new full-time equivalent employee performs the Section 3 requirements, PCDC shall make up to 15 yearly grants of \$1,600 per new employee, per year, for up to 15 new employees. The total yearly incentive is \$24,000 per PCDC fiscal year, with a maximum \$72,000 in the aggregate for the three-year period.

[To be entitled to any new employee or employee retention benefit, SISU must provide a letter to PCDC certifying the number of qualified and eligible employees. With its letter, it must provide payroll records sufficient to demonstrate entitlement to the incentive. Submittals shall be compared to the last determination under this EDPA to show entitlement to the incentive. Any determination made shall be made using reasonable discretion of the Executive Director. If SISU believes a determination is made in error, it may appeal to the PCDC Board and provide any additional information requested to support its request for the grant.]

SECTION 5 – INCENTIVE PAYMENT AND LIMITATIONS

All incentives paid under this EDPA shall not exceed \$24,000 per PCDC fiscal year and shall not exceed \$72,000 overall.

SECTION 6 – REPAYMENT

Pursuant to Texas Local Government Code §501.158, this EDPA must contain terms under which repayment must be made if SISU does not meet the performance requirements (Section 3, above). Therefore, in the event that the items listed below as Section 6 (A)-(D) occur, PCDC has no obligation to advance, disburse or pay any financial assistance to SISU. Further, in the event any of the items listed below occur, SISU shall reimburse PCDC any and all past advances, disbursements or any other financial assistance made to SISU by PCDC, within 30 days of demand, to include interest, as provided by law:

- (A) SISU becomes insolvent, files a petition in bankruptcy (voluntarily or involuntarily) or any similar proceedings, or is adjudged bankrupt;
- (B) SISU fails to provide PCDC with sufficient documentation to support any individual incentive within 10 days of demand by PCDC;
- (C) SISU fails to perform any one or all of the obligations, terms or conditions required under this EDPA;
- (D) SISU fails to meet any time requirement under this EDPA;

SECTION 7 – ADDITIONAL PROVISIONS

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

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

Access to Financial Information. SISU 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 SISU's confidentiality is preserved.

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.

Payment of Debt or Delinquency to the Local or State Government. SISU agrees that any payments owing to SISU under any agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that SISU 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 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 incentive provided 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.

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 the PCDC:

Pflugerville Community Development Corporation
Attention: Executive Director
16225 Impact Way, Suite 2
Pflugerville, Texas 78660

If notice to SISU Corporation:

Marc Christenson
Russell Aldridge
1520 Royston Lane
Round Rock, Texas 78664

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

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

DATED this _____ day of _____, 2016.

SISU Devices

By: _____

Name: _____

Title: _____

STATE OF TEXAS,

COUNTY OF TRAVIS.

BEFORE ME, the undersigned authority, on this day personally appeared _____ of **SISU Devices**, a Texas Limited Liability 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 _____, 2016.

Notary Public in and for
The State of Texas

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION
A Texas Economic Development Corporation

By: _____
Name: Wayne Cooper
Title: President

STATE OF TEXAS,

COUNTY OF TRAVIS.

BEFORE ME, the undersigned authority, on this day personally appeared Wayne Cooper, 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 _____, 2016.

ATTEST: _____

George Cudd

Secretary

Pflugerville Economic Development Corporation