

**ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT
BY AND BETWEEN
PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION AND
MDC VACUUM PRODUCTS, LLC**

This Economic Development Performance Agreement ("EDPA") is by and between the Pflugerville Community Development Corporation, a Texas Type B Economic Development Corporation ("PCDC") and MDC VACUUM PRODUCTS, LLC, ("MDC") and is made and executed on the following recitals, terms, and conditions. The PCDC and MDC 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, MDC is a leader in high quality products in the research, semiconductor, aerospace, life sciences, and food processing sectors that has been in business since 1975 and which intends to relocate its business in Pflugerville; and

WHEREAS, MDC intends to lease an existing building in the City of Pflugerville for at least five years, to make improvements therein that will serve MDC's needs, to make a capital investment of \$4,450,000.00 in the facility and personal property during the term of this EDPA, and to relocate or create up to 90 full-time employment ("FTE") jobs in the City of Pflugerville during the five-year term of this EDPA: and

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, as incentive for MDC's performance hereunder, PCDC will provide MDC with a relocation grant in Year One of up to \$75,000.00 and a jobs grant of up to \$175,000.00 over the term of this EDPA in the manner described hereafter; 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 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 MDC providing a schedule of additional payroll or jobs to be created or retained by MDC'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 MDC 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; and

WHEREAS, the PCDC Board finds that the terms, conditions, and obligations made by PCDC and accepted by MDC 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 MDC 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 MDC;
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 five years and shall terminate at midnight on the day marking the last day of Year Five as provided hereafter.
6. Year One of the term shall commence on October 1, 2021 the "Effective Date" of this EDPA, and each successive year of the Term shall commence on the anniversary date thereof one year later.

SECTION 3—DEFINITIONS

“CAPITAL/TENANT IMPROVEMENTS” shall mean costs incurred by MDC in the transfer and relocation of employees to the Facility from other locations, the establishment of suitable working stations, offices, and similar locations in which its employees will be located, and such improvements that are reasonably necessary for MDC to conduct its operations.

“EQUIPMENT EXPENSES” shall mean the cost of personal property necessary to conduct operations and to provide employees with the tools necessary for the accomplishment of their jobs.

“FTE JOB” shall mean a job, as that term is defined in Section 501.002(12), Texas Local Government Code, that becomes available at MDC 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 no less than forty-two thousand dollars (\$42,000.00) per year plus medical benefits.

SECTION 4—MDC PERFORMANCE REQUIREMENTS

(a) MDC 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 perform the following obligations during each year of the Term:

1. Year One:
 - A. MDC shall enter into a lease of the building in the City of Pflugerville for a minimum of five years;
 - B. MDC shall invest \$650,000.00 in capital improvements, equipment expenses, personal property, and the lease agreement;
 - C. MDC shall relocate or create a minimum of twenty (20) FTE jobs in the City of Pflugerville with an average annual wage of no less than \$42,000.00 plus medical benefits;
 - D. MDC shall obtain a Certificate of Occupancy for the building from the City of Pflugerville;
 - E. MDC shall meet all City rules for permitting and occupancy; and
 - F. MDC shall provide receipts for the Capital/tenant improvements & equipment expenses of up to \$650,000.00.
2. Year Two:
 - A. MDC shall maintain residency and leasehold in Pflugerville;
 - B. MDC shall invest an additional \$650,000.00 in personal property and capital improvements.
 - C. MDC shall create up to 20 new FTE jobs and maintain the 20 jobs from Year One, each with an average annual wage of no less than \$42,000.00 plus medical benefits.
 - D. MDC shall provide receipts for the additional Capital/tenant improvements & equipment expenses of up to the additional \$650,000.00.

3. Year Three:
 - A. MDC shall maintain residency and leasehold in Pflugerville;
 - B. MDC shall invest an additional \$900,000.00 in personal property and capital improvements;
 - C. MDC shall create up to 20 new FTE jobs and maintain the 40 FTE jobs from previous years, each with an average annual wage of no less than \$42,000.00 plus medical benefits.
 - D. MDC shall provide receipts for the additional Capital/tenant improvements & equipment expenses of up to \$900,000.00.

4. Year Four:
 - A. MDC shall maintain residency and leasehold in Pflugerville;
 - B. MDC shall invest an additional \$1,500,000.00 in personal property and capital improvements;
 - C. MDC shall create up to 20 new FTE jobs and maintain the 60 FTE jobs from previous years, each with an average annual wage of no less than \$42,000.00 plus medical benefits;
 - D. MDC shall provide receipts for the additional Capital/tenant improvements & equipment expenses of up to \$1,500,000.00.

5. Year Five:
 - A. MDC shall maintain residency and leasehold in Pflugerville;
 - B. MDC shall invest an additional \$750,000.00 in personal property and capital improvements;
 - C. MDC shall create up to 10 new FTE jobs and maintain the 80 FTE jobs from previous years, each with an average annual wage of no less than \$42,000.00 plus medical benefits.
 - D. MDC shall provide receipts for the additional Capital/tenant improvements & equipment expenses of up to \$750,000.00.

(b) Annually during each year for the first four years of the term of this EDPA, MDC shall provide Payroll Records and an Employment Certification (the "Compliance Information") in substantially the form attached hereto as Exhibit "A" to PCDC showing compliance with this Section 4 during the preceding year, and thereafter shall provide the Compliance Information on each subsequent anniversary of the expiration date of each subsequent year, provided, however, that MDC shall not be required to provide any Payroll Records following the fifth anniversary and shall only be required to provide the Employment Certification.

(c) In the event that MDC fails to maintain the number or type of Primary Jobs required in this EDPA during some or all of any year due to circumstances beyond its control related to attrition or unavailability of qualified employees, MDC shall include the following with the annual report for that year: (i) An explanation of the reasons for failure to meet the primary job requirements; and (ii) Copies of all documents reflecting MDC's good faith efforts to attract sufficient employees to fill such primary jobs.

(d) All job creation requirements must be met (100 %) or exceeded; provided, however, that should COMPANY fail to meet said requirements but has met at least eighty percent (80%) of such requirements, the PCDC Board may, at its sole discretion, refrain from enforcing any breach of contract and/or “clawback” provisions provided within the EDPA.

SECTION 5—PCDC PERFORMANCE REQUIREMENTS

(a) The PCDC covenants and agrees that while this EDPA is in effect and so long as MDC is in full compliance with its obligations thereunder, the PCDC shall provide MDC with a possible maximum financial incentive of \$250,000.00 over the term of this EDPA, the annual amounts being paid annually and capped, and will perform or accomplish the following during each year of that term:

1. Year One: PCDC shall pay MDC a Relocation Grant of up to \$75,000.00;
2. Year Two: PCDC shall pay MDC a Jobs Grant of \$2500.00 per new job created, up to a maximum of \$50,000.00 for Year Two;
3. Year Three: PCDC shall pay MDC a Jobs Grant of \$2500.00 per new job created, up to a maximum of \$50,000.00 for Year Three;
4. Year Four: PCDC shall pay MDC a Jobs Grant of \$2500.00 per new job created, up to a maximum of \$50,000.00 for Year Four.
5. Year Five: PCDC shall pay MDC a Jobs Grant of \$2500.00 per new job created, up to a maximum of \$25,000.00 for Year five.

(b) PCDC shall coordinate with Texas Workforce Solutions to host job fairs for MDC as needed.

(c) PCDC shall Assist MDC in obtaining skill development funds and other state workforce grants to train new workforce.

(d) Upon request from MDC, provide a health and wellness seminar administered by Baylor Scott & White Hospital.

(e) Provide MDC a one-year, Executive Membership in the Pflugerville Chamber of Commerce.

(f) All incentives are due and payable each year on or before September 30, provided that MDC has timely furnished proof of compliance and reports due hereunder.

SECTION 6—REPAYMENT (“Clawbacks”)

(a) 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 MDC does not meet its Performance Requirements and obligations in this EDPA. Therefore, in the event that the items listed below as Section 6 (a) (1)-(4) occur, PCDC shall have no obligation to advance, disburse, or pay any financial assistance to MDC and MDC shall reimburse PCDC any and all past advances, disbursements, and any other financial assistance provided to MDC by PCDC, within thirty (30) days of demand, to include interest at ten percent (10%) per annum from the date MDC receives financial assistance, and any and all costs to recover, including attorney's and any expert fees, as provided by law:

1. MDC becomes insolvent, files a petition in bankruptcy (voluntarily or involuntarily) or any similar proceedings, or is adjudged bankrupt;
2. MDC fails to provide PCDC with sufficient documentation to support any individual incentive within ten (10) days of demand by PCDC;
3. MDC fails to perform any of the obligations, terms, or conditions required under this EDPA;
- or
4. MDC fails to meet any time requirement under this EDPA.

SECTION 7 — ADDITIONAL PROVISIONS

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

(b) *Mutual Assistance.* PCDC and MDC will each do all things reasonably necessary and appropriate to carry out the terms and provisions of this EDPA.

(c) *Access to Financial Information.* MDC 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 MDC's confidentiality is preserved.

(d) *Successors 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.

(d) *Payment of Debt or Delinquency to the Local or State Government.* MDC agrees that any payments owing to MDC under any agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that MDC 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.

(e) *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.

(f) *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.

(f) *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.

(h) *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.

(i) *Amendments.* This EDPA may be amended or supplemented only by an instrument in writing executed by the Party against whom enforcement is sought.

(j) *Time.* Time is of the essence in the performance of this EDPA.

(k) *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.

(l) *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
3801 Helios Way, Suite 130
Pflugerville, Texas 78660

If notice to MDC: MDC Vacuum Products, LLC
Attention: LFO
30962 SANTAANA ST.
HAYWARD, CA 94544

m) *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.

(n) *Counterpart Execution.* This EDPA 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 EDPA.

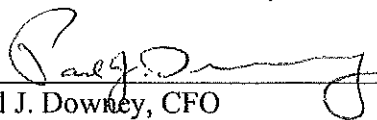
(o) *Performance.* Performance by PCDC under the EDPA is dependent upon the approval of the City Council of the City of Pflugerville (Council). If the Council fails to approve this EDPA, then PCDC shall issue written notice to MDC and PCDC may terminate the EDPA without further duty or obligation hereunder.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

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

(q) *Information Establishing Compliance.* MDC shall provide all information requested by PCDC establishing compliance with this EDPA within thirty (30) days of PCDC's written request.

DATED this March 4th day of 2021, to be Effective on October 1, 2021.

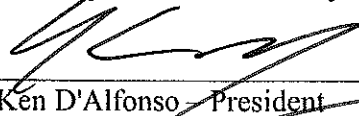
MDC Vacuum Products, LLC :



Paul J. Downey, CFO

Date Executed: Feb 11, 2021


Pflugerville Community Development Corporation



Ken D'Alfonso - President

Date Executed: March 4, 2021

ATTEST:



Jim McDonald, Secretary

