

**ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT  
BY AND BETWEEN  
PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION AND  
AUSTIN FOAM PLASTICS, INC.**

This Economic Development Performance Agreement (EDPA) is by and between the PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION, a Texas Type 4B non-profit corporation (PCDC) and AUSTIN FOAM PLASTICS, INC. a Texas corporation, its successors and assigns (AFP) effective as of the 20 day of February, 2019 (the "Effective Date"), and is made and executed on the following recitals, terms, and conditions. PCDC and AFP may be referred to singularly as "Party" and collectively as the "Parties."

**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 amended; and

**WHEREAS**, the PCDC Board finds AFP is company that has been in business for more than 20 years, is currently located in and doing business in Pflugerville, provides packaging design and customer service for the corrugated box and cushion packaging needs of manufacturers, and which intends to expand its facilities in the City, maintain primary jobs, create new primary jobs, and make a substantial capital investment in its facilities and business in the City; 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**, 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 expansion of AFP's current facilities, causing the purchase of equipment 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 finds that granting AFP up to \$105,000 as an economic incentive for AFP to cause the expansion of its facilities and creation of new primary jobs, acquisition and improvement to land within the

City of Pflugerville, Texas is in the best interests of the City and the PCDC; and

**WHEREAS**, the PCDC Board requires that notice be issued and at least one public hearing 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 AFP providing a schedule of additional payroll or jobs to be created or retained by AFP'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 AFP 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 AFP 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 mutual covenants contained in this EDPA and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PCDC and AFP 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 – DEFINITIONS**

As used in this EDPA, the following terms are defined as follows:

"Annual Performance, Employment and Payroll Certification, shall mean a report provided by AFP to PCDC at the times herein specified that demonstrate to the satisfaction of PCDC that AFP has complied with and met all applicable Performance Requirements and conditions for the period of time for with the Certification is submitted.

"Project Site" shall mean AFP's facility located at 2933 A.W. Grimes Blvd., Pflugerville, TX.

"Primary Job" shall mean a job as that term is defined in Section 501.002 (12), Texas Local Government Code that becomes available at the Project Site during the term of this Agreement in 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 the annualized average gross compensation of all such jobs being \$39,450 plus the offer of medical benefits.

"Remainder of the Term" shall mean the period of time from the end of Year Three until 11:59 p.m. on the day that is five (5) calendar years from the effective date of this EDPA.

"Year One" means the twelve calendar months from the effective date of this EDPA until 11:59 p.m. on the last day of the 12<sup>th</sup> calendar month from the effective date.

"Year Two" means the twelve calendar months from 12:00 a.m. on the first day of the 13<sup>th</sup> month from the effective date of this EDPA to the 11:59 p.m. on the last day of the 24<sup>th</sup> calendar month from the effective date.

"Year Three" means the twelve calendar months from 12:00 a.m. on the first day of the 25<sup>th</sup> month from the effective date of this EDPA to 11:59 p.m. on the last day of the 36<sup>th</sup> month from the effective date.

### **SECTION 3 - 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 AFP;
- 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 have been met in accordance with Texas law and as described in the recitals

(B) This EDPA shall have a term of five (5) years from the date of effectiveness.

### **SECTION 4 - PERFORMANCE REQUIREMENTS**

AFP 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 during the term of this EDPA:

- (A) AFP shall continue to occupy its current offices and facilities at the Project Site, which comprise 120,000 square feet, pursuant to a lease with a term of at least ten years with the owners of the property. Satisfactory evidence of fulfillment of this obligation is an executed lease agreement.
- (B) AFP shall take the necessary steps to expand its offices and facilities at the Project Site by an additional 60,000 square feet in the City of Pflugerville, and is expected to occupy such expanded area by no later than December 31, 2019. Satisfactory evidence of fulfillment of this obligation is certificate of occupancy.
- (C) AFP shall maintain a valuation of at least \$5,000,000 on the tax rolls for its current offices, facilities, and personal property. Satisfactory evidence of fulfillment is a tax certification from Travis County.
- (D) AFP shall expend, or cause to be expended, a minimum of \$4,000,000 in Capital Investment, which shall include investments related to the expansion of the Project Site, monthly lease payments made for the Project Site in anticipation of the expansion that is the subject of this EDPA, and \$700,000 in personal property for and in its offices and facilities. Satisfactory evidence of fulfillment of this obligation shall consist of settlement statements, contracts, and receipts.
- (E) During Year One, AFP shall maintain a minimum of 125 primary jobs at its offices and facilities in the City of Pflugerville;
- (F) During Year Two, AFP shall maintain the aforesaid 125 primary jobs and shall hire or relocate, after the Effective Date, at least ten (10) additional primary jobs at its offices and facilities in the City of Pflugerville.
- (G) During Year Three AFP shall maintain the aforesaid 125 primary jobs and the ten (10) primary jobs created during Year Two and shall hire or relocate, after the Effective Date, a minimum of twelve (12) additional primary jobs at its offices and facilities in the City of Pflugerville.
- (H) During the Remainder of the Term, AFP shall maintain all of the primary jobs maintained during Year One and added during Year Two and Year Three.
- (I) Within sixty (60) days from the end of each year of the term of this EDPA, AFP shall provide PCDC with an Annual Performance, Employment and Payroll Certification.

## **SECTION 5 – INCENTIVES**

PCDC shall provide the following incentives to AFP:

- (A) At the end of Year One, assuming AFP has met all applicable Performance Requirements that must be performed prior to the beginning of Year Two, PCDC shall pay AFP a grant of \$35,000.
- (B) At the end of Year Two, assuming AFP has met all applicable Performance Requirements that must be performed prior to the beginning of Year Three, PCDC shall pay AFP and additional grant of \$35,000.
- (C) At the end of Year Three, assuming AFP has met all applicable Performance Requirements that must be performed during Year Three, PCDC shall pay AFP and additional grant of \$35,000.
- (D) PCDC shall provide AFP job fair and skill development during the term of this Agreement if AFP is in full compliance with the applicable performance requirements in Section 4.
- (E) Upon request from AFP, the PCDC will provide one health and wellness seminar to AFP during the term of this EDPA.

#### **SECTION 6 – INCENTIVE PAYMENT AND LIMITATIONS**

- (A) Financial incentive determinations by PCDC shall be made no later than July 1st of each year in conjunction with PCDC and the City's annual budgeting processes, conditioned on receipt of each satisfactory Annual Performance, Employment and Payroll Certification for that year.
- (B) Financial incentive payments shall be paid in each applicable year when payment is due on or before July 31st.
- (C) All financial incentives paid under this EDPA during the term of this EDPA shall not exceed \$105,000.

#### **SECTION 7 – REPAYMENT**

(A) Pursuant to Section 501.158 of the Texas Local Government Code, this EDPA must contain terms under which repayment must be made by AFP to PCDC if AFP does not meet the Performance Requirements (Section 4, above). Therefore, in the event that any of the listed conditions in Section 4 (A)-(I) do not occur, PCDC has no obligation to advance, disburse, or pay any financial incentive to AFP. Further, in the event any of the events listed immediately below occur, AFP shall upon demand by PCDC, reimburse PCDC any and all past grants, disbursements, and other

financial provided to AFP by PCDC, within 30 days of demand, to include interest at ten percent (10%) per annum from the date AFP receives financial assistance, and any and all costs to recover, including attorney's and any expert fees, as provided by law:

- (1) AFP becomes insolvent, files a petition in bankruptcy (voluntarily or involuntarily) or any similar proceedings, or is adjudged bankrupt;
  - (2) AFP ceases operations in the City of Pflugerville for a period of six months or longer;
  - (3) AFP fails to provide PCDC with sufficient documentation to support any individual incentive within 10 days of demand by PCDC;
  - (4) AFP fails to perform any of the obligations, terms, or conditions required under this EDPA; or
  - (5) AFP fails to meet any time requirement under this EDPA.
- (B) In the event that AFP fails to maintain the requisite number of primary jobs during any year of the term of this EDPA, AFP shall, upon demand by PCDC, reimburse PCDC in the amount of \$1000 per job for each job that was not so maintained.
- (C) In order to receive job grant incentives, all job creation requirements must be met (100 percent) or exceeded; provided, however, that should AFP fail to meet said requirements but has met at least eighty percent (80%) of such requirements, the Board may, at its sole discretion, refrain from enforcing any breach of contract and/or clawback provisions provided within the EDPA.
- (D) The PCDC acknowledges that normal attrition, the availability of qualified job candidates or other reasons beyond AFP's control may result in AFP 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 AFP under Section 4 above is sufficient to justify and waive any temporary failure by AFP to meet its primary job requirements during that year. Under no circumstances shall PCDC grant job incentive credit to any single primary job more than once.

## **SECTION 8 – ADDITIONAL PROVISIONS**

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

withheld if this certification is inaccurate.

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

**Access to Financial Information.** AFP 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 AFP'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.** AFP agrees that any payments owing to AFP under any agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that AFP 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 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 a district court in Travis or Williamson 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  
3801 Helios Way, Suite 130  
Pflugerville, Texas 78660

If notice to AFP: Austin Foam Plastics, Inc.  
Attn: Rick Lange  
2933 A.W. Grimes Blvd  
Pflugerville TX 78660

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


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

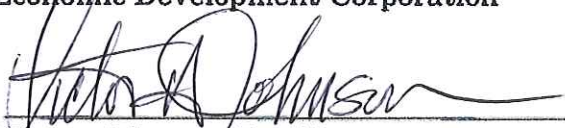
Information Establishing Compliance. AFP shall provide all information requested by PCDC establishing compliance with this EDPA within thirty (30) days of PCDC's written request.

DATED this 18<sup>th</sup> day of FEBRUARY 2019.

AFP: AUSTIN FOAM PLASTICS, INC. a  
Texas corporation  
By:   
Name: RIK L. Lange  
Title: PRESIDENT

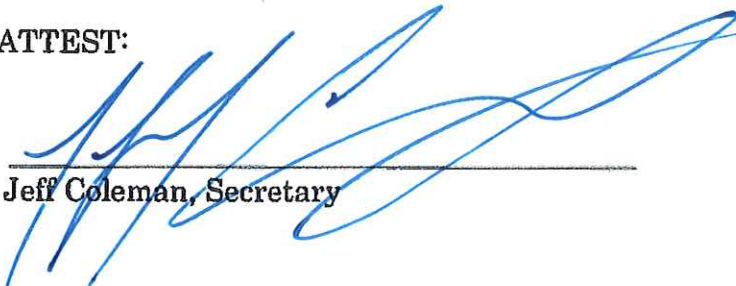
Date Executed: 2.18.19

PFLUGERVILLE COMMUNITY  
DEVELOPMENT CORPORATION, a Type B  
Economic Development Corporation

  
Victor Johnson, President

Date Executed: 2/20/19

ATTEST:

  
Jeff Coleman, Secretary