

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION  
Economic Development Performance Agreement  
Project "3D"

This Economic Development Performance Agreement (referred to as "EDPA") is by and between EOS of North America, Inc., a Oregon Corporation, its successors and assigns (referred to as "EOS") 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 "3D".

**WHEREAS**, the PCDC Board finds PCDC it 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 EOS is a Oregon Corporation doing business in the State of Texas; and,

**WHEREAS**, the PCDC Board finds that Project 3D 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 and expenditures as defined by Texas Local Government Code Chapters 501 & 505, as amended; and,

**WHEREAS**, the PCDC Board finds that Project 3D 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 60<sup>th</sup> 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 carrying out this project will require the expenditure of more than \$10,000 and therefore is subject to and conditional upon the City Council of the City of Pflugerville, Texas passing a Resolution authorizing the project; and,

**WHEREAS**, the PCDC Board finds that Texas Local Government Code § 501.158 requires an EDPA with EOS providing at a minimum a schedule of additional payroll or jobs to be created or retained by EOS'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 much be made should EOS 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 EOS 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 EOS 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 EOS
- 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 the effective date.

### **SECTION 3 – PERFORMANCE REQUIREMENTS**

EOS 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) EOS shall establish and maintain for five (5) after the effective date, its North American Headquarters and expand its operations within the city limits of the City of Pflugerville, Texas, by January 1, 2016 (Evidenced by the execution of a binding lease agreement for the Headquarters). The date this requirement is fulfilled shall be considered the “opening date”).
- (B) EOS 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 opening the facility provided for in paragraph (A) above.
- (C) EOS shall employ and maintain 25 full-time employees at an average wage of \$70,000 plus health benefits.

### **SECTION 4 - INCENTIVES**

So long as EOS fully complies with the terms and conditions of this EDPA and performs the Section 3 requirements, PCDC offers the following incentives to EOS:

- (A) A grant of furniture and fixtures as provided in Exhibit 1, attached.

### **SECTION 5 – INCENTIVE PAYMENT AND LIMITATIONS**

Not-applicable.

### **SECTION 6 – REPAYMENT**

Pursuant to Texas Local Government Code §501.158, this EDPA must contain terms under which repayment must be made if EOS 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 EOS. Further, in the event any of the items listed below occur, EOS shall reimburse PCDC any and all past advances, disbursements or any other financial



assistance made, including the fair market value of any property granted to EOS by PCDC, within 30 days of demand:

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

## **SECTION 7 – ADDITIONAL PROVISIONS**

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

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

*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.* EOS agrees that any payments owing to EOS under any agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that EOS owes the State of Texas, Travis County, Williamson County the City of Pflugerville or any other political subdivision of the withheld if this certification is inaccurate.

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

*Access to Financial Information.* EOS agrees to make its corporate financial information available to PCDC on request, on an annual basis to ensure the creditworthiness of EOS in connection with the sub-lease agreement between the parties. 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 EOS's confidentiality is preserved.

*Successor and Assigns.* This EDPA shall be binding upon and inure to the benefit 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.

*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 EOS North America:

EOS North America  
Attention: Donnie Vanelli, Chief Operating Officer  
3813 Helios Way, B298  
Pflugerville, Texas 78660

All payments to the PCDC required under this EDPA shall be made to:



Pflugerville Community Development Corporation  
Attention: Executive Director  
16225 Impact Way, Suite 2  
Pflugerville, Texas 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 which 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 EOS and PCDC may terminate the EDPA without further duty or obligation hereunder. EOS acknowledges that the approval of this document is beyond the control of PCDC.

*Undocumented Workers.* Pursuant to Chapter 2264 of the Texas Government Code, EOS certifies that it will not knowingly employ any undocumented workers. EOS 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), EOS 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 15<sup>th</sup> day of October, 2015.

EOS NORTH AMERICA  
An Oregon Corporation  
Donnie Vanelli, Chief Operating Officer

By: Don L. Vanelli

Name: Donald L. Vanelli

Title: Chief Operating Officer

STATE OF TEXAS,

COUNTY OF TRAVIS.

BEFORE ME, the undersigned authority, on this day personally appeared Donnie Vanelli, CEO of EOS, a Oregon 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.

October GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 15<sup>th</sup> day of October, 2015.



Cindy Jones  
Notary Public in and for  
The State of Texas

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION  
A Texas Economic Development Corporation

By:

Name: Doug Weiss

Title: President

STATE OF TEXAS,

COUNTY OF TRAVIS.

BEFORE ME, the undersigned authority, on this day personally appeared Doug Weiss, 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 15<sup>th</sup> day of

October, 2015.

ATTEST:

Randy Duncan  
Secretary

Pflugerville Economic Development Corporation



PCDC Furniture  
Transferred to EOS

Office Furniture		To Remain in Place	
Description	Unit Price	Qty	Extended
Common Area Work Tables			
42"x42" Pub Height Table	\$ 1,003.17	1	1,003.17
Very Side Stool, Faux Leather; Plastic	318.41	4	1,273.64
42"x96" Pub Height Table	1,728.66	1	1,728.66
Very Side Stool, Faux Leather; Plastic	318.41	2	636.82
Conference Rooms			
48"x48" Conference Table	\$ 1,131.51	1	1,131.51
Very Plastic SM Conference Room Chairs	325.59	4	1,302.36
42"x96" Conference Table	1,516.83	1	1,516.83
Very Plastic MD Conference Room Chairs	325.59	6	1,953.54
42"x120" Conference Table	2,363.79	0	-
Very Plastic LG Conference Room Chairs	325.59	0	-
96"x42" Conference Table	1,857.44	1	1,857.44
Executive Conference (Board) Room			
60"x258" Executive Conference Table	\$ 4,306.66	1	4,306.66
Very Task Conference Room Chairs	445.05	8	3,560.40
Very Task Conference Room Chairs	445.05	0	-
Modular Workstations			
6'x6' Workstation	\$ 1,396.71	44	61,455.24
8'x8' Workstation	2,483.04	25	62,076.00
12'x6' Workstation	2,793.42	19	53,074.98
18" Mobile Box File	217.05	88	19,100.40
18" Mobile Box File Cushion	51.85	88	4,562.80
Very Task Chair (Cube)	428.43	88	37,701.84
Private Offices			
18" Mobile Box File	\$ 217.05	6	1,302.30
18" Mobile Box File Cushion	51.85	6	311.10
Very Task Chair (Office)	428.43	6	2,570.58
Pulse Series Desk & Credenza	2,584.87	5	12,924.35
Very Seminar, Faux Leather; Plastic	237.12	10	2,371.20
Break Room			
36"x36" Break Room Tables	\$ 261.82	7	1,832.74
Very Wire Stacker Plastic Seat (Red)	83.08	14	1,163.12
Very Wire Stacker Plastic Seat (Silver)	83.08	14	1,163.12
Common Area Furniture			
18" Mobile Box File	\$ 217.05	38	8,247.90
18" Mobile Box File Cushion	51.85	38	1,970.30
Very Task Chair	428.43	38	16,280.34
Very Task Chair (Reception)	428.43	0	-
Fiat Cube - Fully Upholstered	428.64	1	428.64
Fiat Cube - Fully Upholstered	428.64	1	428.64
Fiat Bench - Fully Upholstered	1,104.56	1	1,104.56
			\$ 310,341.17
Sales Tax			28,238.89
Installation and assembly			31,948.50
Total Furniture Cost			<u>\$ 370,528.56</u>
Agreed Transfer Value			<u><u>\$ 151,595.00</u></u>

\* Excludes reception workstation and lobby furnishings.