

**ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT  
BY AND BETWEEN  
PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION AND LDDF**

This Economic Development Performance Agreement (EDPA) is by and between the Pflugerville Community Development Corporation, a Texas Type 4B non-profit corporation (PCDC) and LDDF, Inc., a State of Texas Corporation, its successors and assigns (LDDF) and is made and executed on the following recitals, terms, and conditions. PCDC and LDDF 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 LDDF is a corporation that provides test equipment calibration, repair, and assembly services and provides these services nationally for telecommunications firms. LDDF is a State of Texas Corporation doing business in the State of Texas as TesCom; 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 purchase of 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 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 LDDF an economic incentive of \$25,000 as an incentive to allow LDDF to acquire and improve land, to acquire machinery and equipment, and to allow it to relocate its National Headquarters to the City of Pflugerville (City), builds and serves the Pflugerville community; 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 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, 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 LDDF providing a schedule of additional payroll or jobs to be created or retained by LDDF'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 LDDF 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 LDDF 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, PCDC and LDDF 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 LDDF;
- 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 on December 31, 2020.

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

LDDF 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) LDDF shall relocate its National Headquarters to the City; and
- (B) LDDF shall spend at least \$800,000 on acquiring land and constructing improvements to the land for its National Headquarters. Satisfactory evidence of fulfillment of this obligation is settlement statements, contracts, and receipts; and
- (C) LDDF shall commence construction of its National Headquarters no later than January 1, 2017. Construction shall be complete no later than December 31, 2017, unless extended by mutual agreement of the Parties. Satisfactory evidence of fulfillment of this obligation is a Certificate of Occupancy issued by the City; and
- (D) LDDF shall hire or relocate 30 full-time equivalent employees (an employee who performs a regular work schedule of at least thirty-five (35) hours per week in a primary job, referred to as "FTE") to work at its National Headquarters no later than December 31, 2017.
- (E) LDDF shall maintain the required staffing levels at its National Headquarters through December 31, 2020; and
- (F) LDDF acknowledges that it is not entitled to any payments from PCDC until it obtains its Certificate of Occupation from the City for its National Headquarters and meets all obligation in this EDPA; and
- (G) LDDF shall provide PCDC with an annual Employment and Payroll Certification no later than February 1st of each applicable year of this Agreement; and

(H)LDDF shall make a capital investment of at least \$800,000 during the term of this Agreement, achieved in any of the following ways or in combination:

- 1) The acquisition of land, buildings, and construction costs expended to meet the acquisition and ownership obligations provided for in Section 3 (B) above; and
- 2) Payment of acquisition costs for furniture, fixtures & equipment to be used in LDDF's National Headquarters.

#### **SECTION 4 - INCENTIVES**

PCDC shall provide the following incentives to LDDF, as provided below:

- (A) Upon presentment of the Certification of Occupancy and valid documentation to PCDC demonstrating that LDDF has fulfilled its obligation to expend at least \$800,000 to acquire and improve real property in the City for the relocation of its National Headquarters, PCDC shall pay a one-time economic incentive in the total amount of \$25,000 to LDDF.

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

- (A) Grant funding determinations by PCDC shall be made no later than July 1 of each year in conjunction with the PCDC and City annual budgeting processes.
- (B) All incentives paid under this EDPA shall not exceed \$25,000.

#### **SECTION 6 – REPAYMENT**

Pursuant to Section 501.158 of the Texas Local Government Code, this EDPA must contain terms under which repayment must be made if LDDF 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 LDDF. Further, in the event any of the items listed below occur, LDDF shall reimburse PCDC any and all past advances, disbursements or any other financial assistance provided to LDDF by PCDC, within 30 days of demand, to include interest and any and all costs to recover, including attorney's and any expert fees, as provided by law:

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

## SECTION 8 – ADDITIONAL PROVISIONS

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

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

*Access to Financial Information.* LDDF 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 LDDF'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.* LDDF agrees that any payments owing to LDDF under any agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that LDDF 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 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  
16225 Impact Way, Suite 2  
Pflugerville, Texas 78660

*With a copy to:*

George E. Hyde  
DENTON NAVARRO ROCHA BERNAL HYDE & ZECH, PC  
2500 W. William Cannon, Ste. 609  
Austin, Texas 78745

If notice to LDDF:

David Collmann  
CEO & President  
LDDF Inc dba TesCom  
15527 RR 620 N, Austin, TX 78717

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

*Undocumented Workers.* Pursuant to Chapter 2264 of the Texas Government Code, LDDF certifies that it will not knowingly employ any undocumented workers. LDDF 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), LDDF 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 NOVEMBER, 2016.

By:

Name:

Title:



David Collman

CEO & President

LDDF Inc dba TesCom

STATE OF TEXAS §

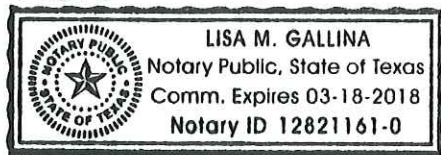
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COUNTY OF TRAVIS §



BEFORE ME, the undersigned authority, on this day personally appeared David Collmann, CEO and President of **LDDF, INC. a State of 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 15<sup>th</sup> day of November, 2016.



Lisa M. Gallina  
Notary Public in and for  
The State of Texas

**PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION**  
A Texas Economic Development Corporation

By: Wayne Cooper  
Name: Wayne Cooper  
Title: President

STATE OF TEXAS       §  
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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, 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 17 day of NOVEMBER, 2016.

ATTEST: [Signature]  
Secretary  
Pflugerville Economic Development Corporation