

AMENDED
SCHERTZ
ECONOMIC DEVELOPMENT CORPORATION
NOTICE OF MEETING
AGENDA
SEPTEMBER 28, 2023
6:00 P.M.

The City of Schertz Economic Development Corporation (SEDC) Board of Directors will hold a regular monthly meeting on Thursday, SEPTEMBER 28, 2023, at 6:00 p.m. at the Hal Baldwin Municipal Complex, Council Chambers Conference Room, Building No. 4, 1400 Schertz Parkway, Schertz, Texas. This is an open meeting, subject to the open meeting laws of the State of Texas.

Call to Order

1. Roll call, recognition of visitors, and review of meeting instructions for effective Board interaction and public participation.
2. SEDC Board Member Oath of Office for member appointed by City Council on 09/05/2023 for a term of two years ending on 09/30/2025. (S. Edmondson)
 - Appointment: Eryn McElroy

Hearing of Residents

3. *This time is set aside for any person who wishes to address the Board. Presentations should be limited to no more than 3 minutes. The presiding officer will call on those persons who have signed up to speak.*

Minutes

4. Approval of the minutes for the Board of Directors Regular Monthly Meeting held on Thursday, August 24, 2023. (T. Miller)

Presentations

5. Staff briefing on SEDC monthly financial statement for the month of August 2023. (S. Wayman)
6. Presentation by Applicant regarding Caterpillar Projects.

Public Hearing

7. **Resolution 2023-13** - An amendment to Economic Development Performance Agreement between Caterpillar Project Hydra and the City of Schertz Economic Development Corporation.
8. **Resolution 2023-14** - An Economic Development Performance Agreement between Caterpillar Project Aquos and the City of Schertz Economic Development Corporation.

Closed Session

9. Called in accordance with Section 551.087 of the Texas Government Code, Deliberation Regarding Economic Development Negotiations; Closed Meeting. The governmental body is not required to conduct an open meeting (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) the deliberate the offer of a financial or other incentive to a business prospect.
- E-92
 - E-81
 - E-88
 - E-86
 - E-91

Reconvene to Regular Session

10. Take any actions based on discussion held in closed session under Agenda Item No. 9.
11. **Resolution 2023-13** - Approval of an amendment to Economic Development Performance Agreement between Caterpillar Project Hydra and the City of Schertz Economic Development Corporation. (S. Wayman)
12. **Resolution 2023-14** - Approval of an Economic Development Performance Agreement between Caterpillar Project Aquos and the City of Schertz Economic Development Corporation. (S. Wayman)

Requests and Announcements

Announcements by staff:

- Office closed for Columbus Day October 9, 2023
- Next Board Meeting - October 26, 2023
- Lauren Shrum, Parks and Recreation Director, will present November 2023.
- Goals and Mission Statement discussion will be presented in November 2023.

Requests by Board Members to place items on a future SEDC Board Meeting agenda.

Adjournment

CERTIFICATION

I, Tracy Miller, Administrative Assistant, of the City of Schertz Economic Development Corporation, do hereby certify that the above agenda was posted on the official bulletin boards on this the 25th day of September, 2023, at 12:00 p.m., which is a place readily accessible to the public at all times and that said notice was posted in accordance with chapter 551, Texas Government Code.

Administrative Assistant- Economic
Development

I certify that the attached notice and agenda of items to be considered by the Schertz Economic Development Corporation Board of Directors was removed from the official bulletin board on ____ day of _____, 2023.

Name/Title: _____

This facility is accessible in accordance with the Americans with Disabilities Act. Handicapped parking spaces are available. If you require special assistance or have a request for sign interpretative services or other services, please call 210-619-1070.

The Economic Development Corporation Board of Directors reserves the right to adjourn into closed session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by the Texas Open Meetings Act.

Closed Sessions Authorized: This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Closed Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

SEDC MEMORANDUM

SEDC
Board Meeting: 09/28/2023
Department: Economic Development Corporation
Subject: Approval of the minutes for the Board of Directors Regular Monthly Meeting held on Thursday, August 24, 2023. (T. Miller)

SUBJECT:

Approval of the minutes for the Board of Directors Regular Monthly Meeting held on Thursday, August 24, 2023. (T. Miller)

Attachments

August 24, 2023 Minutes

SCHERTZ
ECONOMIC DEVELOPMENT CORPORATION
MINUTES
Thursday, August 24, 2023

The City of Schertz Economic Development Corporation (SEDC) Board of Directors met for a Regular Monthly Meeting on Thursday, August 24, 2023, at 6:00 p.m. at the Hal Baldwin Municipal Complex, Council Chambers Conference Room, Building No. 4, 1400 Schertz Parkway, Schertz, Texas. This was an open meeting, subject to the open meeting laws of the State of Texas.

Call To Order

1. Roll call, recognition of visitors, and review of meeting instructions for effective Board interaction and public participation.

Board President Paul Macaluso presided over the meeting and called it to order at 6:05 p.m.

Board of Directors Present:

Paul Macaluso, Board President
Jesse Hamilton, Board Vice President
Sammi Morrill, Board Secretary
Roy Richard, Board Member
Mark Moody, Board Member

Staff Present:

Scott Wayman, Executive Director
Holly Malish, Deputy Director
Ashley Ritchey, Business Engagement Manager
Tracy Miller, Administrative Assistant
Steve Williams, City Manager
Brian James, Deputy City Manager

Board of Directors Absent:

Bill Dixon, Board Member

Others Present:

Tim Brown, Mayor Pro-Tem, City Council Liaison
Allison Heyward, Councilmember, City Council Liaison
Ray Chavez, Schertz Citizen
Dana Eldridge, Schertz Citizen

Hearing of Residents

2. *This time is set aside for any person who wishes to address the Board. Presentations should be limited to no more than 3 minutes. The presiding officer will call on those persons who have signed up to speak.*

No resident signed up to speak.

Minutes

3. Approval of the minutes for the Board of Directors Regular Monthly Meeting held on Thursday, June 29, 2023. (T. Miller/S. Wayman)

Board President Paul Macaluso asked for a motion to approve the Minutes of the Board of Directors Regular Monthly Meeting held Thursday, June 29, 2023.

Motion by Board Member Roy Richard, seconded by Vice President Jesse Hamilton.

AYE: Board President Paul Macaluso, Vice President Jesse Hamilton, Board Secretary Sammi Morrill, Board Member Roy Richard, Board Member Mark Moody

Presentations

4. Staff briefing on SEDC monthly financial statements for the months of June and July, 2023. (S. Wayman/J. Walters)

Scott Wayman, Executive Director provided a summary and overview on the SEDC Financials for the month of June, 2023.

June, 2023 sales tax received was \$567,015, a 17.0% increase over the year prior. The 12-month rolling average is 9.5% still trending up. Notable expenditures include OnPeak-Conrad Hotel, Catherine Collier-Snow Cone Event, RWLV-Conrad Hotel and Hilton Grand Vacations-ICSC. Total Cash & Investments figure at the end of June was \$29.8 million.

Scott Wayman, Executive Director provided a summary and overview of the SEDC Financials for July, 2023.

July, 2023 sales tax received was \$513,175, a 7.6% increase over the year prior. The 12-month rolling average is 9.4% still trending up. Notable expenditures include Licenses for Guru Prof-GIS Webtech, Marketing Services-Retail Coach, Annual License-Jobs EQ and Doubletree Chicago-Team Texas Road Show. Total Cash & Investments figure at the end of July was \$30.4 million.

Discussion Items

5. **Resolution 2023-9** - Briefing and possible action on recommending approval by the City Council for the proposed Schertz Economic Development Corporation FY 2023-24 Budget and Reserves. (S. Wayman)

Holly Malish, Deputy Director presented an overview of the fiscal year 2023-24 proposed budget. Total revenue estimated at \$8.4 million, growth rate 6%, total project costs for SEDC contractual obligations is estimated \$3 million including Schertz 312, Ace Mart, Sysco, Caterpillar, Kellum and Medical Office Building (MOB). \$8.6 million has been allocated for the Lookout Road Project and Main Street Project sewer upsize and signalization. Operational costs are budgeted at \$1.3 million for Marketing and Professional Services Contract including \$200,000 for the Small Business Grant Fund. Total cost comes out to \$12.9 million. \$4.5 million will be pulled from the reserve fund leaving a balance of \$27.8 million.

Significant updates to the budget include increasing budget for marketing and promotion. TXDOT NEX Signage approval at \$145,000 and the remainder of Retail Coach contract at \$19,000. Recruitment Engagements remain the same and Computer Licenses/Software increased \$4,000. Staff payroll increased by 8% part of which is City Councils 4.7% cost of living increase.

Board President Paul Macaluso asked for a motion to approve SEDC Resolution 2023-9 recommending approval by the City Council for the proposed Schertz Economic Development Corporation FY 2023-2024 Budget and Reserves.

Motion by Board Secretary Sammi Morrill, seconded by Vice President Jesse Hamilton.

AYE: Board President Paul Macaluso, Vice President Jesse Hamilton, Board Secretary Sammi Morrill, Board Member Roy Richard, Board Member Mark Moody

6. Discussion and possible action to appoint a new SEDC Board Treasurer. (S. Wayman)

Scott Wayman, Executive Director discussed with the Board of Directors the resignation of Board Treasurer Bryan Snowden and appointing a replacement. Board President Paul Macaluso requested Board Secretary Sammi Morrill to take on dual roles and be the new Board Treasurer as well as continuing to be Board Secretary and asked for a motion.

A motion to elect Board Secretary Sammi Morrill to also be Board Treasurer was made by Board Member Roy Richard, seconded by Vice President Jesse Hamilton.

AYE: Board President Paul Macaluso, Vice President Jesse Hamilton, Board Secretary Sammi Morrill, Board Member Roy Richard, Board Member Mark Moody

7. **Resolution 2023-6** - Discussion and possible action on authorizing the funding for I-35 NEX Project: Schertz Parkway Bridge Signage. (S. Wayman)

Scott Wayman, Executive Director provided the history of the project. This item was brought to the Board for discussion in December 2022 in preparation for the 2023 budget. The estimated cost was \$40,000 and the cost of the project is more expensive than anticipated. Mr. Wayman discussed staff's recommendation on the bridge signage. TXDOT has agreed in writing to waive the 10% for the cost of lane closure and SEDC staff is asking for an amount not to exceed \$145,000. SEDC staff requested that SEDC will be the funding authority for this project. Board President Paul Macaluso asked for a motion.

Motion by Board Member Roy Richard, seconded by Board Member Mark Moody

AYE: Board President Paul Macaluso, Vice President Jesse Hamilton, Board Secretary Sammi Morrill, Board Member Roy Richard, Board Member Mark Moody.

Board President Paul Macaluso recessed Open Session to Closed Session at 6:25 p.m.

Closed Session

8. Called in accordance with Section 551.087 of the Texas Government Code, Deliberation Regarding Economic Development Negotiations; Closed Meeting. The governmental body is not required to conduct an open meeting (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) the deliberate the offer of a financial or other incentive to a business prospect.

- E-038 ● E-80 ● E-81 ● E-92
- E-051 ● E-84 ● E-91 ● E-93

Start time: 6:25 p.m.

End time: 7:24 p.m.

Board President Paul Macaluso reconvened to Open Session at 7:25 p.m.

Reconvene to regular session

9. Take any action based on discussion held in closed session under Agenda Item No. 8.

No action was taken based on discussion in closed session.

10. **Resolution 2023-7** - Discussion and action on authorizing an amendment to the Performance Agreement Schertz 312 Phase I, Titan, Schertz 35 Business Park, located on Tejas Way south of Doerr Ln. (S. Wayman)

Board President Paul Macaluso asked what changes were made in the amendment. Scott Wayman, Executive Director gave an overview of the changes in the amendment. After discussion the item was tabled. Mr. Wayman will discuss with Schertz 312 amendments requested by the Board. Not more than two 500,000 square foot buildings on the site to equal a million square foot and the street credits will be reserved only for those two structures that are on that site.

Agenda item 10 was tabled to the next meeting for more discussion.

11. **Resolution 2023-8** - Discussion and action on authorizing the amendment and restatement of the Performance Agreement Schertz 312 Phase II, Titan, Schertz 35 Business Parkway, located on Tejas Way south of Doerr Ln. (S. Wayman)

Scott Wayman, Executive Director gave a brief summary of the amendments to the Performance Agreement Schertz 312 Phase II, Titan, Schertz 35 Business Parkway. The bridge infrastructure will be deleted from the agreement. Also, discussed the money for the secondary access point they have already spent for the managed entrance off of Doerr Ln. Board President Paul Macaluso asked for a motion.

Moved by Board Member Roy Richard, seconded by Vice President Jesse Hamilton.

AYE: Board President Paul Macaluso, Vice President Jesse Hamilton, Board Secretary Sammi Morrill, Board Member Roy Richard, Board Member Mark Moody

12. **Resolution 2023-10** - Discussion and action authorizing the Executive Director of the Schertz Economic Development Corporation to enter into a Performance Agreement with Boomerang-Lovett. (S. Wayman)

Scott Wayman, Executive Director gave a brief overview and asked for approval to enter into a Performance Agreement with Boomerang-Lovett. Board President Paul Macaluso asked for a motion.

Motion by Board Secretary Sammi Morrill, seconded by Board Member Mark Moody.

AYE: Board President Paul Macaluso, Vice President Jesse Hamilton, Board Secretary Sammi Morrill, Board Member Roy Richard, Board Member Mark Moody.

13. **Resolution 2023-11** - Discussion and action authorizing the Executive Director of the Schertz Economic Development Corporation to enter into a Performance Agreement with Core5 Industrial Partners. (S. Wayman)

Scott Wayman, Executive Director gave a brief overview. If approved the city will begin to work with them to allow them to start putting in channels to help with water clarity and help manage drainage channels on that development. Once they get a Certificate of Occupancy (C of O) for one of the four buildings they will be paid the reimbursement money for the pilot channel.

Moved to approve by Board Member Roy Richard, seconded by Board Member Mark Moody.

AYE: Board President Paul Macaluso, Vice President Jesse Hamilton, Board Secretary Sammi Morrill, Board Member Roy Richard, Board Member Mark Moody.

Requests and Announcements

Announcements by staff:

- Office closed for Labor Day - September 4, 2023
- Recommending Special Meeting - September 14, 2023
- Next Board Meeting - September 28, 2023
- Lauren Shrum, Parks and Recreation Director, will present September 2023

Request by Board Members to place items on a future SEDC Board Meeting agenda.

- Board President Paul Macaluso called a Special Meeting on September 14, 2023 at 6:00 p.m.

Adjournment

Board President Paul Macaluso adjourned the meeting at 7:42 p.m.

MINUTES PASSED AND APPROVED THIS ___ DAY ____ 2023.

Paul Macaluso
Board President

Sammi Morrill
Board Secretary

SEDC MEMORANDUM

SEDC
Board Meeting: 09/28/2023
Department: Economic Development Corporation
Subject: Staff briefing on SEDC monthly financial statement for the month of August 2023. (S. Wayman)

SUBJECT:
Staff briefing on SEDC monthly financial statement for the month of August 2023. (S. Wayman)

Attachments

August Financials

CITY OF SCHERTZ
 REVENUE AND EXPENSE REPORT (UNAUDITED)
 AS OF: AUGUST 31st, 2023

***** 2022 - 2023 *****

620-SED CORPORATION
 FINANCIAL SUMMARY

OVERVIEW

Revenues

Sales Tax	\$	596,424.07	Payment Received in August
		-1.9%	Annual Increase
		8.9%	12-Month Rolling Average

Expenses

Community Impact	\$	1,975.82
Scenic Texas	\$	1,500.00

Year-to-Date

Total Revenue	\$	7,076,625.92	
Total Expenses	\$	<u>858,379.23</u>	
Over/Under			<u>\$ 6,218,246.69</u>

Cash & Investments

Cash	\$	308,106.50	
Investments	\$	<u>30,845,524.19</u>	
Total			<u>\$ 31,153,630.69</u>

CITY OF SCHERTZ
REVENUE AND EXPENSE REPORT (UNAUDITED)
AS OF: AUGUST 31st, 2023

620-SED CORPORATION	***** 2022 - 2023 *****						
FINANCIAL SUMMARY	CURRENT BUDGET	CURRENT PERIOD	PRIOR YEAR Y-T-D ACTUAL	CURRENT Y-T-D ACTUAL	Y-T-D ENCUMBR	BUDGET BALANCE	91.67% OF BUDGET
REVENUE SUMMARY							
Taxes	6,548,000	484,396.57	5,427,665.81	5,955,393.23	-	592,606.77	90.95%
Miscellaneous	182,000	131,289.67	150,129.91	1,121,232.69	-	(939,232.69)	616.06%
TOTAL REVENUES	6,730,000	615,686.24	5,577,795.72	7,076,625.92	-	(346,625.92)	105.15%
EXPENDITURE SUMMARY							
NONDEPARTMENTAL							
City Assistance	3,000,079	-	-	81,944.29	-	2,918,134.71	2.73%
Fund Charges/Transfer	5,750,000	-	-	-	-	5,750,000.00	0.00%
TOTAL NONDEPARTMENTAL	8,750,079	-	-	81,944.29	-	8,668,134.71	0.94%
ECONOMIC DEVELOPMENT							
Supplies	1,000	-	981.59	366.77	143.68	489.55	51.05%
City Support Services	20,000	2,008.91	4,623.39	10,840.44	54.68	9,104.88	54.48%
Utility Services	2,975	-	2,126.91	139.69	-	2,835.31	4.70%
Operations Support	437,610	3,066.66	150,941.45	121,824.38	13,858.19	301,927.43	31.01%
Staff Support	25,775	1,407.18	17,409.49	14,302.94	265.00	11,207.06	56.52%
City Assistance	205,000	-	-	42,115.94	-	162,884.06	20.54%
Professional Services	61,300	351.00	17,883.47	44,046.50	273.00	16,980.50	72.30%
Fund Charges/Transfers	542,221	-	506,984.00	542,221.00	-	-	100.00%
Operating Equipment	5,000	-	4,034.67	577.28	37.99	4,384.73	12.31%
TOTAL ECONO DEVELOPMENT	1,300,881	6,833.75	704,984.97	776,434.94	14,632.54	509,813.52	60.81%
TOTAL EXPENDITURES	10,050,960	6,833.75	704,984.97	858,379.23	14,632.54	9,177,948.23	8.69%
** REVENUE OVER(UNDER) EXPEND	(3,320,960)	608,852.49	4,872,811	6,218,247	(14,632.54)	(9,524,574.15)	

CITY OF SCHERTZ

REVENUE REPORT (UNAUDITED)

AS OF: AUGUST 31st, 2023

***** 2022-2023 *****								
620-SED CORPORATION REVENUES	CURRENT BUDGET	CURRENT PERIOD	PRIOR YEAR Y-T-D ACTUAL	CURRENT Y-T-D ACTUAL	Y-T-D ENCUMBR	BUDGET BALANCE	91.67% OF BUDGET	
<u>Taxes</u>								
000-411500 Sales Tax Revenue (4B)	6,548,000	484,396.57	5,427,665.81	5,955,393.23	-	592,606.77	90.95%	
TOTAL Taxes	6,548,000	484,396.57	5,427,665.81	5,955,393.23	-	592,606.77	90.95%	
<u>Miscellaneous</u>								
000-491000 Interest Earned	2,000	1,301.63	1,042.23	10,518.67	-	(8,518.67)	525.93%	
000-491200 Investment Earnings	180,000	129,988.04	149,087.68	1,110,714.02	-	(930,714.02)	617.06%	
TOTAL Miscellaneous	182,000	131,289.67	150,129.91	1,121,232.69	-	(939,232.69)	616.06%	
TOTAL REVENUES								
TOTAL REVENUES	6,730,000	615,686.24	5,577,795.72	7,076,625.92	-	(346,625.92)	105.15%	

SED CORPORATION
CASH IN BANK AND INVESTMENTS

AS OF: AUGUST 31st, 2023

Cash in Bank

Claim on Operating Cash Pool-Checking	\$ 308,106.50
---------------------------------------	---------------

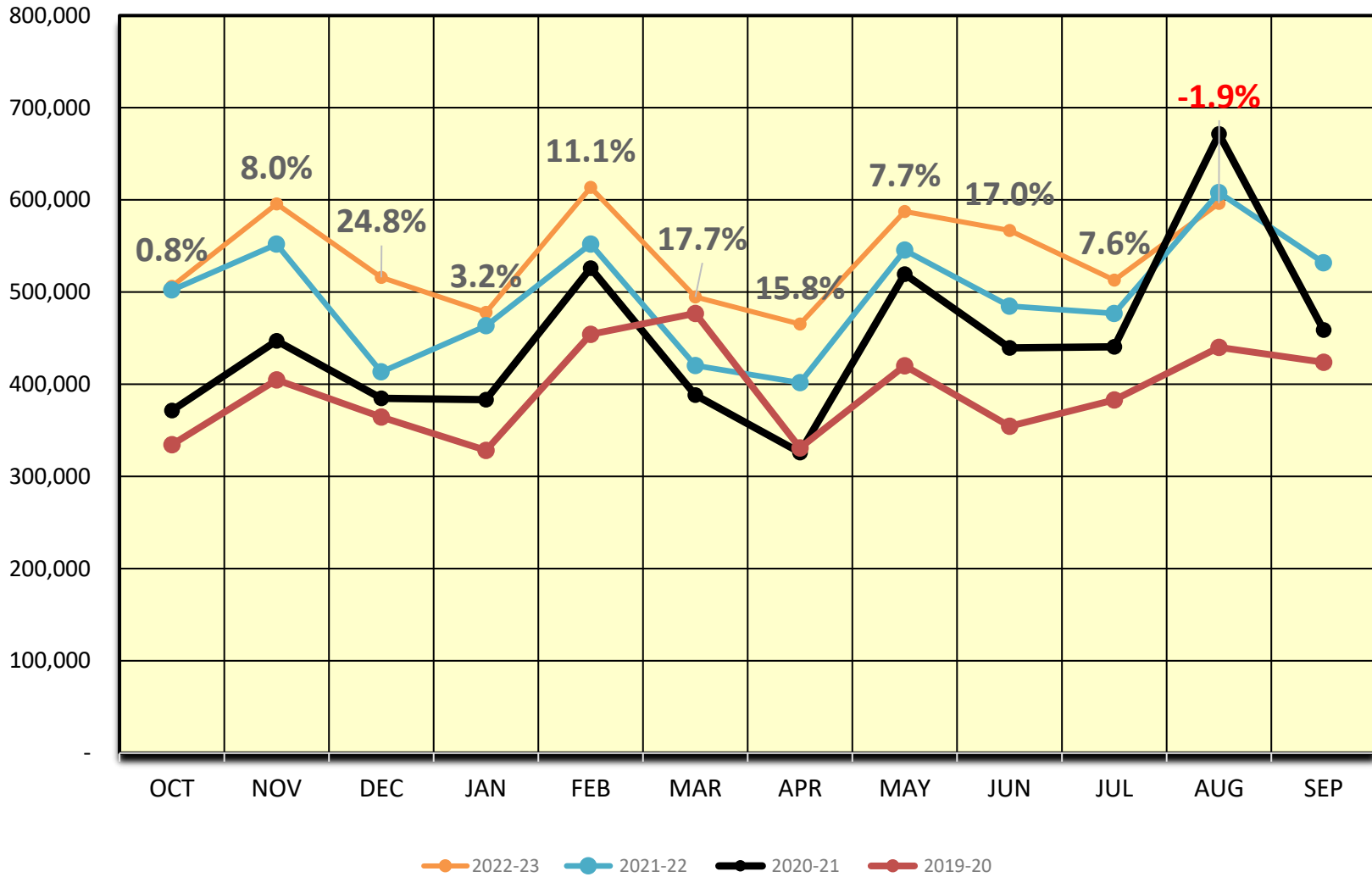
Cash in Investments

Texas Class Investment-Economic Development Corp	28,602,570.99
Schertz Bank & Trust-Certificate of Deposit	1,099,538.79
Schertz Bank & Trust-Certificate of Deposit	<u>1,143,414.41</u>

Total Cash in Bank & Investments	<u>\$ 31,153,630.69</u>
---	--------------------------------

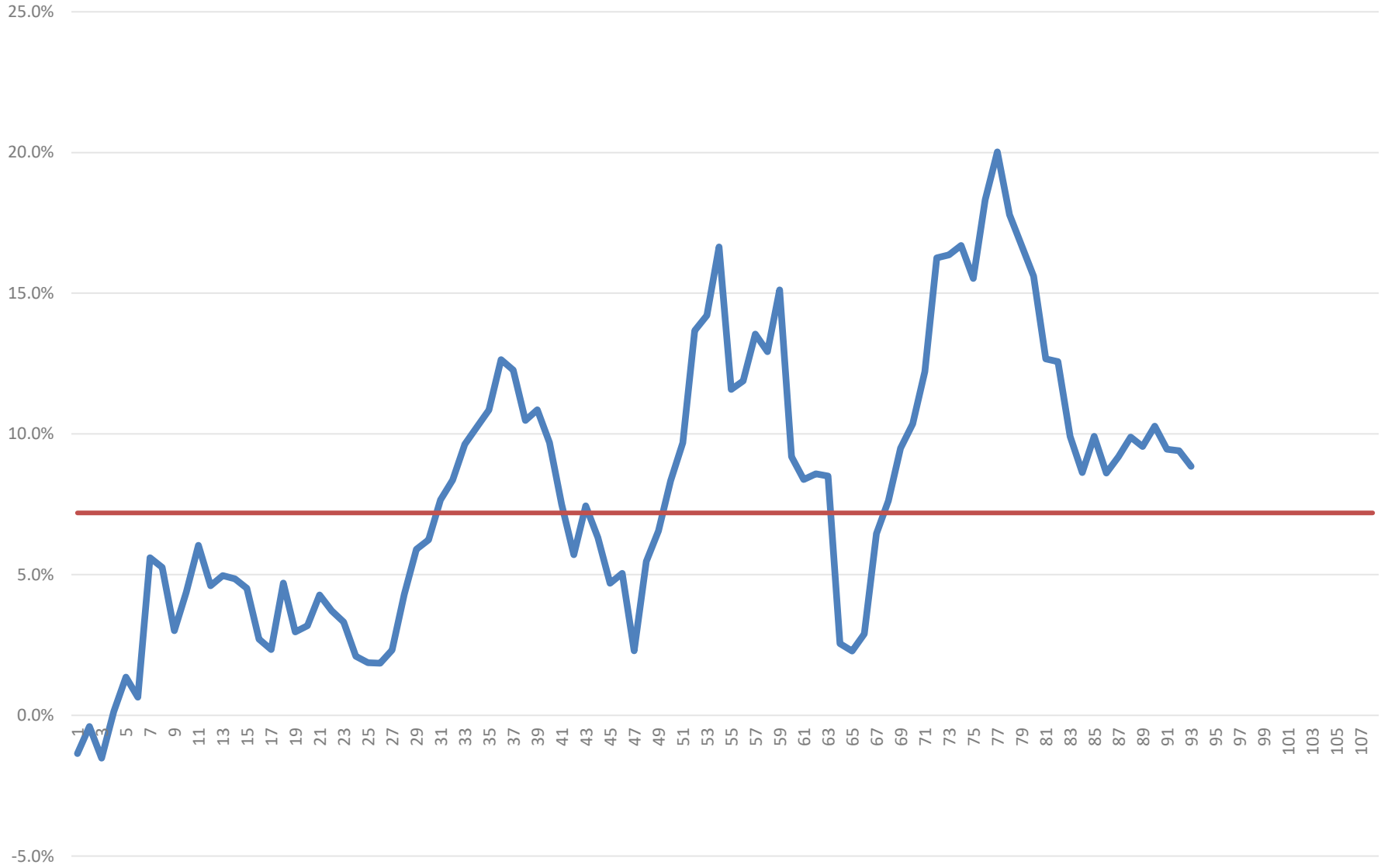
4B SALES TAX

By Collection Month



12 Month Rolling Average Oct 2014 - Present

Rolling 12 Month Average Long Term Average



AUGUST 2023 PAYABLES REPORT

FUND	VENDOR NAME	DESCRIPTION	AMOUNT
Economic Development	SED CORPORATION TEDC	Annual Conference	600.00
		Future Leader Semi	50.00
	UBEO	Monthly Copier	276.55
	AMAZON CAPITAL SERVICES INC.	Promotional items	33.09
		Pad Folios	449.20
		Computer Monitor	89.99
		Return Computer Monitor	-89.99
	ASHLEY RITCHEY	Per Diem -Odessa, TX	254.12
	DENTON, NAVARRO,	Legal Services June	351.00
	CITIBANK	Texas Munciple League	510.00
		Catalano's Pizzeria	23.69
		Mailchimp	42.11
		Community Impact	987.91
		Adobe Stock - Jul	29.99
		Community Impact	987.91
		Formassembly	99.00
		Scenic Texas	1,500.00
		Padfolio Laser Engraved	304.00
		Northeast Partnership	20.00
		Petals To Go!	68.00
		Jimmy Johns	85.18
	DAVIS SUCCESS SOLUTIONS	Disc Profile	162.00
	CITY OF SCHERTZ	Postage	<u>0.00</u>
		SUBTOTAL:	6,833.75
		TOTAL:	\$6,833.75

SEDC MEMORANDUM

SEDC Board Meeting: 09/28/2023
Department: Economic Development Corporation
Subject: Presentation by Applicant regarding Caterpillar Projects.

SUBJECT:
Presentation by Applicant regarding Caterpillar Projects.

SEDC MEMORANDUM

SEDC
Board Meeting: 09/28/2023
Department: Economic Development Corporation
Subject: Resolution 2023-13 - Approval of an amendment to Economic Development Performance Agreement between Caterpillar Project Hydra and the City of Schertz Economic Development Corporation. (S. Wayman)

SUBJECT:

Resolution 2023-13 - Approval of an amendment to Economic Development Performance Agreement between Caterpillar Project Hydra and the City of Schertz Economic Development Corporation. (S. Wayman)

Attachments

Res. 2023-13

SEDC RESOLUTION 2023-13

A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING THE AMENDMENT OF THE PERFORMANCE AGREEMENT WITH CATERPILLAR PROJECT HYDRA; AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City of Schertz Economic Development Corporation (“SEDC”) is a non-profit industrial development corporation duly established under the Development Corporation Act of 1979, as amended (Section 501.001 et seq. Texas Local Government Code, formerly the Development Corporation Act of 1979) (the “Act”);

WHEREAS, all powers of the corporation are vested in the SEDC Board of Directors (the “Board”) appointed by the governing body of the corporation’s authorizing unity; and

WHEREAS, the Act authorizes a development corporation to fund certain projects as defined by the Act and request development corporations to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

WHEREAS, Caterpillar Inc. (“Company”) desires to expand its Schertz Texas operations within an existing building that is located at 6800 Doerr Ln, Schertz Texas; and

WHEREAS, Company’s Project is expected to create an additional 24, and maintain 145 full time employees with a minimum annual payroll of \$8,426,420 at the end of Calendar Year 2033 and throughout the life of the amendment; and

WHEREAS, to provide an Economic Corporation intends Development Grant in the form of a rebate of percentage of the taxes paid by Company for a max rebate base value on-site at Company’s Schertz operation; and

WHEREAS, Section 501.155 authorizes expenditures for certain projects that the Board of Directors in the Board’s discretion determines promotes or develops new or expanded business enterprises that create or retain primary jobs; and

WHEREAS, Section 501.158 of the Act requires an incentive agreement to provide minimum for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives provided or expenditures made by the corporation under the agreement and to specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement; and

WHEREAS, Section 505.159 of the Act requires that a corporation hold at least one public hearing on the proposed project before spending money to undertake the project, the public hearing was held on April 28, 2022; and

WHEREAS, the parties agree to amend the original agreement, and

WHEREAS, Section 501.073 of the Act requires the SEDC's authorization unit to approve all programs and expenditures, City Council had previously authorized this expenditure.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION THAT:

Section 1. The Schertz Economic Development Board hereby approve the Economic Development Performance Agreement amendment attached hereto as ATTACHMENT A and authorizes the President to execute and deliver in the substantial form as attached.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Board.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the board hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this ____ day of _____, 2023.

CITY OF SCHERTZ ECONOMIC
DEVELOPMENT CORPORATION

Paul Macaluso, SEDC Board President

ATTEST:

Sammi Morrill, SEDC Board Secretary

SEDC MEMORANDUM

SEDC
Board Meeting: 09/28/2023
Department: Economic Development Corporation
Subject: Resolution 2023-14 - Approval of an Economic Development Performance Agreement between Caterpillar Project Aquos and the City of Schertz Economic Development Corporation. (S. Wayman)

SUBJECT:

Resolution 2023-14 - Approval of an Economic Development Performance Agreement between Caterpillar Project Aquos and the City of Schertz Economic Development Corporation. (S. Wayman)

Attachments

Res. 2023-14

SEDC RESOLUTION 2023-14

A RESOLUTION BY THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION, TEXAS AUTHORIZING THE EXECUTIVE DIRECTOR OF THE SCHERTZ ECONOMIC DEVELOPMENT CORPORATION TO ENTER INTO A PERFORMANCE AGREEMENT WITH CATERPILLAR PROJECT AQUOS; AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City of Schertz Economic Development Corporation (“SEDC”) is a non-profit industrial development corporation duly established under the Development Corporation Act of 1979, as amended (Section 501.001 et seq. Texas Local Government Code, formerly the Development Corporation Act of 1979) (the “Act”); and

WHEREAS, all powers of the corporation are vested in the SEDC Board of Directors (the “Board”) appointed by the governing body of the corporation’s authorizing unity; and

WHEREAS, the Act authorizes a development corporation to fund certain projects as defined by the Act and request development corporations to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

WHEREAS, Company, through wholly-owned subsidiary Caterpillar, Inc. Desires to expand it’s operations within an existing building that is located at 6800 Doerr Lane, Schertz, Comal County, Texas 78132; and

WHEREAS, over the term of the Agreement, Company intends to retain the original one hundred and sixty-nine (169) employees and create an additional twenty-five (25) with a minimum annual payroll of \$9,510,170; and

WHEREAS, Corporation intends to provide a 100% rebate based upon the real and personal property taxes paid by Company calendar year 2026, a 90% rebate based upon the real and personal property taxes paid by company in calendar year 2027, a 85% rebate based upon the real and personal property taxes by company in calendar year 2028, a 80% rebate based upon the real and personal property and property taxes by company in calendar year 2029, a 75% rebate based upon the real and personal property taxes by company in calendar year 2030, a 50% rebate based upon the real and personal property taxes by company in calendar year 2031, a 25% rebate based upon the real and personal property taxes by company in calendar year 2032, and 0% rebate based upon the real and personal property taxes by the in company calendar year 2033, 2034, and 2035; and

WHEREAS, the expansion of the Company, as proposed, will contribute to the economic development of the City of Schertz by creating new jobs and increasing employment, promoting

and developing expanded business enterprises, increased development, increased real property value and tax revenue for the City of Schertz, and will have both a direct and indirect positive overall improvements/stimulus in the local and state economy;

WHEREAS, the Corporation desires to offer incentives to Company to enable Company to expand the Facility pursuant to this Agreement in substantial conformity with the City of Schertz Economic Development Incentive Policy and the Act; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION THAT:

Section 1. The Schertz Economic Development Board hereby approve the Economic Development Performance Agreement amendment attached hereto as ATTACHMENT A and authorizes the President to execute and deliver in the substantial form as attached.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Board.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the board hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this ____ day of _____, 2023.

CITY OF SCHERTZ ECONOMIC
DEVELOPMENT CORPORATION

Paul Macaluso, SEDC Board President

ATTEST:

Sammi Morrill, SEDC Board Secretary

ATTACHMENT A
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
CATERPILLAR
PROJECT AQUOS

This Economic Development Incentive Agreement (“Agreement”) is entered into to be effective as of _____, by and between the Schertz Economic Development Corporation, located in Guadalupe County, Texas (hereinafter called “Corporation”), a Texas non-profit industrial development corporation under the Development Corporation Act and governed by TEX. LOC. GOV. CODE chapters 501, 502 and 505 and the Texas Non-Profit Corporation Act and Caterpillar Inc. Corporation, a Delaware Corporation authorized to do business in Texas (hereinafter called “Company”), otherwise known as the “Parties” to this Agreement.

RECITALS

WHEREAS, the Development Corporation Act of 1979, as amended (Section 501.001 et seq, Texas Local Government Code, formerly the Development Corporation Act of 1979) (the “Act”) authorizes a development corporation to fund certain projects as defined by the Act and requires development corporations to enter into performance agreements to establish and provide for the direct incentive or make an expenditures on behalf of a business enterprise under a project; and

WHEREAS, Section 501.158 of the Act requires an incentive agreement to provide at a minimum for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives provided or expenditures made by the corporation under the agreement and to specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement; and

WHEREAS, Company, through wholly-owned subsidiary Caterpillar, Inc. desires to expand its operations within an existing building that is located at 6800 Doerr Lane, Schertz, Comal County, Texas 78132; and

WHEREAS, over the term of the Agreement, Company intends to retain the original one hundred and sixty-nine (169) employees and create an additional twenty five (25) with a minimum annual payroll of \$9,510,170; and

WHEREAS, Corporation intends to provide a 100% rebate based upon the real and personal property taxes paid by Company calendar year 2026, a 90% rebate based upon the real and personal property taxes paid by company in calendar year 2027, an 85% rebate based upon the real and personal property taxes paid by company in calendar year 2028, an 80% rebate based upon the real and personal property taxes paid by company in calendar year 2029, a 75% rebate based upon the real and personal property taxes paid by company in calendar year 2030, a 50% rebate based upon the real and personal property taxes paid by company in calendar year 2031, a 25% rebate based upon the real and personal property taxes paid by company in calendar year 2032, and 0% rebate based upon the real and personal property taxes paid by company in calendar years 2033, 2034, and 2035; and

WHEREAS, the expansion of the Company, as proposed, will contribute to the economic development of the City of Schertz by creating new jobs and increased employment, promoting and developing expanded business enterprises, increased development, increased real property value and tax revenue for the City of Schertz, and will have both a direct and indirect positive overall improvement/stimulus in the local and state economy;

WHEREAS, the Corporation desires to offer incentives to Company to enable Company to expand the Facility pursuant to this Agreement in substantial conformity with the City of Schertz Economic Development Incentive Policy and the Act; and

WHEREAS, the Parties are executing and entering into this Agreement to set forth certain terms and obligations of the Parties with respect to such matters; and

WHEREAS, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof; and

WHEREAS, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings; if any, have been conducted in accordance with Texas law; and

WHEREAS, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, the Parties agree as follows:

ARTICLE I RECITALS

1. Recitals. The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement.

ARTICLE II AUTHORITY AND TERM

1. Authority. The Corporation's execution of this Agreement is authorized by the Act and constitutes a valid and binding obligation of the Corporation. The Corporation acknowledges that Company is acting in reliance upon the Corporation's performance of its obligations under this Agreement in making the decision to commit substantial resources and money to the establishment of the Project, hereinafter established.

2. Term. This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date, hereinafter established, unless terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.

3. Purpose. The purpose of this Agreement is to formalize the agreements between the Company and the Corporation for the granting of funds in the form of an incremental real and personal property tax rebate to cover certain costs associated with Company's Project and specifically state the covenants, representations of the Parties, and the incentives associated with Company's commitment to abide by the provisions of the Act and to abide by the terms of this Agreement which has been approved by the Corporation and the Company as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation by the Company may constitute a breach of the entire Agreement and terminate any further commitments (if any) by the Corporation unless an alternative penalty or remedy is provided for herein.

4. Administration of Agreement. Upon the Effective Date, the Corporation delegates the administration and oversight of this Agreement to the Executive Director of the Corporation. Any proposed amendments to the Agreement shall require the approval of the Board of Directors of the Corporation.

ARTICLE III DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

“Annual Payroll” shall mean the total wages paid, exclusive of employee benefits, to Full-time Employees at the Schertz Facility.

“Bankruptcy” shall mean the dissolution or termination of a Party's existence as a going business, insolvency, appointment of receiver for any party of such Party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Certificate of Occupancy” shall mean the signed certificate issued by the City of Schertz Inspections Division granting the Company the right to occupy the Facility and confirming that the entire work covered by the permit and plans are in place.

“Default” shall mean failure by any Party to timely and substantially comply with any performance requirement, duty, or covenant if uncured within sixty (60) days of receiving written notice from any other Party.

“Effective Date” shall be the date of the last signature authorizing this agreement.

“Expiration Date” shall mean the earlier of:

1. _____, 2035; or
2. The date of termination, provided for under Article VII of this Agreement.

“Facility” shall mean the property and improvements that house the Project and being located at 6800 Doerr Lane, Schertz, Comal County, Texas 78154.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party, including, without limitation, acts of God or the public enemy, war riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of a party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Full-time Employee” shall mean: (1) an employee with a regular work schedule of at least 36 hours per week as reported on the Texas Employers Quarterly Wage Report from the Texas Workforce Commission and (2) are entitled to at least the customary employer-sponsored employee benefits package afforded by the Company to its similarly situated employees at other locations.

“Grant” shall mean the cash payments from Corporation to Company in the form of a percentage rebate of real or personal property taxes rebate for taxes paid to the City of Schertz for calendar years 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2032 2033, 2034 and 2035 based upon the taxes paid by Company for the real and tangible personal property on-site at Company’s Schertz operation.

“Project” shall mean the expansion of Company’s Schertz Facility along with the retention of 169 jobs and the creation of 25 Full-time Employee jobs.

“State of Texas” shall mean the Office of the Texas Comptroller, or its successor.

“Real and Tangible Personal Property” shall mean tangible personal property, equipment, machinery, fixtures and inventory owned or leased by Company that is added to the Project subsequent to the execution of this Agreement and is accounted on the tax rolls by the Comal County Appraisal District.

ARTICLE IV ECONOMIC DEVELOPMENT INCENTIVE TERMS AND CONDITIONS

1. Incentive.

Subject to the satisfaction of all the terms and conditions of this Agreement and the obligation of Company to repay the Grant pursuant to Article V hereof, the Corporation agrees to provide Company with the following economic development incentives:

Property Tax Rebate:

Corporation shall provide a property tax rebate of 100% based upon the real and personal property taxes paid by Company calendar year 2026, a 90% rebate based upon the real and personal property taxes paid by company in calendar year 2027, an 85% rebate based upon the real and personal property taxes paid by company in calendar year 2028, an 80% rebate based upon the real and personal property taxes paid by company in calendar year 2029, a 75% rebate based upon the real and personal property taxes paid by company in calendar year 2030, a 50% rebate based upon the real and personal property taxes paid by company in calendar year 2031, a 25% rebate based upon the real and personal property taxes paid by company in calendar year 2032, and 0% rebate based upon the real and personal property taxes paid by company in calendar years 2033, 2034, and 2035; and

The Grant shall be paid within sixty (60) days after receipt of a copy of the Annual Report reflecting that the applicable performance period objectives have been met as shown in the following Performance Table:

Performance Table

Performance Period Ending December 31	Full-Time Employees Created and Retained/ Minimum Payroll	Max Rebate Base Value	Certification Date	Grant on Incremental Tangible Personal Property Investment
Year 0 – 2025	Manufacturing equipment is located on-site by December 31, 2025			
Year 1 – 2026	194/ \$9,510,170	\$70,000,000	15-Feb-27	100%
Year 2 - 2027	194/ \$9,510,170	\$68,000,000	15-Feb-28	90%
Year 3 - 2028	194 / \$9,510,170	\$66,000,000	15-Feb-29	85%
Year 4 - 2029	194 / \$9,510,170	\$64,250,000	15-Feb-30	80%
Year 5 - 2030	194 / \$9,510,170	\$62,250,000	15-Feb-31	75%
Year 6 - 2031	194 / \$9,510,170	\$60,250,000	15-Feb-32	50%
Year 7 - 2032	194 / \$9,510,170	\$58,250,000	15-Feb-33	25%
Year 8 - 2033	194 / \$9,510,170	\$56,250,000	15-Feb-34	0%
Year 9 – 2034	194 / \$9,510,170	\$54,750,000	15-Feb-35	0%
Year 10 - 2035	194 / \$9,510,170	\$53,250,000	15-Feb-36	0%

2. Current Revenue. The funds distributed hereunder shall be paid solely from lawfully available funds to the Corporation. Under no circumstances shall the obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3. Confidentiality. The Corporation agrees to the extent allowed by law, to keep all tax information and documentation received, pursuant to this Agreement hereof, confidential. In the event a request is made for such information pursuant to the Texas Public Information Act, Corporation will not disclose the information unless required to do so by the Attorney General of Texas under the provisions of the applicable statutes.

4. Conditions Precedent. The obligation of the Corporation to pay funds in the form of a Grant shall be conditioned upon Company's continued compliance with and satisfaction of each of the conditions set forth in this Agreement as reflected in the Performance Table above.

5. Annual Report. The Company shall submit an Annual Report (an "Annual Report") for the preceding Calendar Year to the Executive Director of the Corporation each year not later than February 15th. The Annual Report should substantially conform to the Annual Report Form attached as Exhibit A to this Agreement. The first Annual Report will be due February 15th, 20__.

ARTICLE V COVENANTS AND DUTIES

1. Company's Covenants and Duties. Company makes the covenants and warranties to the Corporation, and agrees to timely and fully perform the obligations and duties contained in Article IV of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Company.

(a) Company is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement and shall timely and fully comply with all of the terms and conditions of this Agreement to commence and complete the Project in accordance with the Agreement.

(b) The execution of this Agreement has been duly authorized by Company's authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Company's by-laws, or of any agreement or instrument to which Company is a party to or by which it may be bound.

(c) Company is not a party to any Bankruptcy proceedings currently pending or contemplated, and Company has not been informed of any potential involuntary Bankruptcy proceedings.

(d) To its current, actual knowledge, and subject to the Certificate of Occupancy (or other approvals and permits to be obtained under subpart (f) immediately below), Company has acquired and maintained all necessary rights,

licenses, permits, and authority to carry on its business in the City of Schertz and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.

(e) Company agrees to obtain or cause to be obtained, all necessary permits and approvals from City of Schertz and/or all other governmental agencies having jurisdiction over the construction of any improvements to the Facility and shall be responsible for paying, or causing to be paid, to City of Schertz and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project.

(f) Company shall cooperate with the Corporation in providing all necessary information to assist them in complying with this Agreement.

(g) During the term of this Agreement, Company agrees to not knowingly employ any undocumented workers as part of the Project, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), Company shall be in Default (subject to the remedies in Article V above). Company is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts provided however that identical federal law requirements provided for herein shall be included as part of any agreement or contract which Company enters into with any subsidiary, assignee, affiliate, or franchisee for which Grant provided herein will be used.

(h) Maintain and prepare financial statements in accordance with generally accepted accounting principles in the United States of America as established by the Financial Accounting Standards Board and permit Corporation to visit, examine, audit, inspect, and make and take away copies or reproductions of Company's book of accounts and other records at mutually agreed upon times (provided, Corporation shall pay the reasonable fees and disbursements of any accountants or other agents of Corporation, selected by Corporation, for the foregoing purposes). Unless written notice of another location is given to Corporation, Company's books and records will be located at 6800 Doerr Lane, Schertz, Comal County, Texas 78154.

(i) Grant Corporation the right to periodically (and with reasonable advance notice) verify the terms and conditions of this Agreement including, but not limited to, the number of persons employed by Company as a result of the assistance provided hereunder, the addresses of those persons, the number of hours each employee worked during the previous 12 months, the total expenses attributable to training and employing those employees, and the cumulative payroll for Company's Schertz operation.

2. Corporation's Covenants and Duties. The Corporation is obligated to pay Company a Grant in the form of a rebate on personal property taxes paid to the City of Schertz as outlined in Performance Table. The Grant shall be paid within sixty (60) days after receipt of a copy of the Annual Report reflecting that the applicable performance period objectives have been met as set forth in this Agreement.

3. Substantial Compliance and Default. Failure by any Party to timely and substantially comply with any performance requirement, duty, or covenant shall be considered an act of Default

if uncured within sixty (60) days of receiving written notice from any other Party. Failure of Company to timely and substantially cure a default will give the Corporation the right to terminate this Agreement, as reasonably determined by the Board of Directors of the Corporation.

4. **Recapture.** In the event of Default by the Company, the Corporation shall as its sole and exclusive remedy for Default hereunder, after providing Company notice and an opportunity to cure, have the right to discontinue all future Grant payments and recapture all amounts previously paid under this Agreement (as applicable, the “Recaptured Amount”).

The Recaptured Amount shall be paid by the Company within one hundred twenty (120) days after the date Company is notified by the Corporation of such Default (the “Payment Date”) provided said Default was not cured. In the event the Recaptured Amount is not repaid by the applicable Payment Date, the unpaid portion thereof shall accrue interest at the rate of two percent (2.00%) per annum from the Effective Date until paid in full.

ARTICLE VI TERMINATION

1. **Termination.** This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

- (a) The written agreement of the Parties;
- (b) The Agreement’s Expiration Date;
- (c) Default by Company (at the option of the Corporation).

ARTICLE VII DISPUTE RESOLUTION

1. **Mediation.** If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, San Antonio, Texas, before resorting to litigation; provided that a Party may not invoke mediation unless it has provided the other Party with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All costs of negotiation and mediation collectively known as alternate dispute resolution (“ADR”) shall be assessed equally between the Parties with each party bearing their own costs for attorneys’ fees, experts, and other costs of ADR and any ensuing litigation.

2. During the term of this Agreement, if Company files and/or pursues an adversarial proceeding against the Corporation regarding this Agreement without first engaging in good faith mediation of the dispute, then, at the Corporation’s option, all access to the funds provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest bearing account until the resolution of such adversarial proceeding.

3. Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against either the Corporation or the City of Schertz.

ARTICLE VIII MISCELLANEOUS

1. Binding Agreement. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. The Executive Director of the Corporation shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the Corporation, on behalf of the Parties related thereto. Notwithstanding any other provision of this Agreement to the contrary, performance of either Party under this Agreement is specifically contingent on Company obtaining a Certificate of Occupancy from the City of Schertz and commencing operations at the Facility under the terms of this Agreement.

2. Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

3. Representations and Warranties. The Corporation represents and warrants to Company that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Company represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement.

4. Assignment. Company shall have the right to assign all of its rights, duties, and obligations under this Agreement to a duly qualified third party with prior written approval of the Corporation. Any assignment provided for herein shall not serve to enlarge or diminish the obligations and requirements of this Agreement, nor shall they relieve Company of any liability to the Corporation including any required indemnity in the event that any Assignee hereof shall at any time be in Default of the terms of this Agreement. The Corporation may demand and receive adequate assurance of performance including the deposit or provision of financial security by any proposed Assignee prior to its approval of an assignment.

5. Independent Contractors.

(a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Company at no time will be acting as an agent of the Corporation and that all consultants or contractors engaged by Company respectively will be independent contractors of Company; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed the Parties hereto understand and agree that the Corporation will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by Company respectively under this Agreement, unless any such claims are due to the fault of the Corporation.

(b) By entering into this Agreement, except as specifically set forth herein, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official

immunity by the Corporation with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

(c) No employee of the Corporation, or any board member, or agent of the Corporation, shall be personally responsible for any liability arising under or growing out of this Agreement.

6. Notice. Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, or on the first business day after depositing the same in the hands of a reputable overnight courier (such as United States Postal Service, FedEx or UPS) and addressed to the Party at the address set forth below:

If intended for SEDC: Schertz Economic Development Corporation
Attention: Exec. Dir. of Economic Development
1400 Schertz Parkway
Schertz, TX 78154

With a copy to:
Denton, Navarro, Rocha, & Bernal, PC
Attention: T. Daniel Santee
2517 North Main Avenue
San Antonio, TX 78212

If to the Company: Caterpillar Corporation
Attention: _____

Any Party may designate a different address at any time upon written notice to the other Parties.

7. Governmental Records. All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10

8. Governing Law. The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement (subject to the dispute resolution mechanisms of Article VIII above) shall be in the Courts of Guadalupe County. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

9. Amendment. This Agreement may be amended by mutual written agreement of the Parties, as approved by the Board of Directors of the Corporation.

10. Legal Construction. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and

enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

11. Payment of Legal Fees. Company commits to reimburse the Corporation for the necessary legal fees in the preparation of any amendment to this Agreement requested by Company. Timely payment shall be made within 60 days of submittal of invoice to Company by the Corporation or its assigns. Each Party shall bear its own attorney's fees in connection with the negotiation of this Agreement.

12. Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the Board of Directors of the Corporation.

14. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

15. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

16. Exhibits. Any Exhibits attached hereto are incorporated by reference for all purposes.

17. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

18. Indemnification.

COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CORPORATION AND CITY, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUSTMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO ANY OF THE FOLLOWING: ANY CLAIMS OR DEMANDS BY THE STATE OF TEXAS THAT THE CORPORATION HAS BEEN ERRONEOUSLY OR OVER-PAID SALES AND USE TAX FOR ANY PERIOD DURING THE TERM OF THIS AGREEMENT AS A RESULT OF THE FAILURE OF COMPANY TO MAINTAIN A PLACE OF BUSINESS AT THE PROPERTY OR IN THE CITY OF SCHERTZ, OR AS A RESULT OF ANY ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY COMPANY UNDER THIS AGREEMENT EXCEPT THAT THE IMDEMUNITY PROVIDED HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE ACTION OR OMISSIONS OF THE CORPORATION OR CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO

CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT BEING THE INTENTION OF THE PARTIES THAT COMPANY SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY ANNUAL GRANTS PAID TO COMPANY HEREIN THAT INCLUDES CITY SALES TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WAS ERRONEOUSLY PAID, DISTRIBUTED OR ALLOCATED TO THE CORPORATION.

19. Additional Instruments. The Parties agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

20. Force Majeure. Whenever a period of time is herein prescribed for action to be taken by the Company, the Company shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to causes of any kind whatsoever which are caused by Force Majeure.

Executed on this _____ day of _____ 202__.

SCHERTZ ECONOMIC DEVELOPMENT CORPORATION

By: _____

ATTEST:

By: _____

Executed on this _____ day of _____, 2022

COMPANY

By: _____

Name:

Title:

Exhibit A

SAMPLE ANNUAL CERTIFICATION REPORT FORM

[SEE ATTACHED]

Annual Certification Report

Reporting Period: January 1 to December 31, 20__

The Annual Certification Report for the Economic Development Incentive Agreement between the City of Schertz Economic Development Corporation and _____, is due on **February 15, 20__**. Please sign and return the Annual Certification Report form with accompanying narrative.

I. PROJECT INFORMATION

Project Information:

Company's legal name: _____

Project address subject to incentive: _____

Company primary contact: _____ Title: _____

Phone number: _____ E-mail address: _____

II. REPORTING INFORMATION

Employment and Wage Information:

Has the Company employed undocumented workers? Yes No

What is the total number of Full-time Employees located at the Schertz facility during the calendar year? _____

What is the total Annual Payroll for the Schertz facility during the calendar year? _____

Investment Information:

What is the 20__ appraised ad valorem tax value for Tangible Personal Property? _____

Narrative:

A brief narrative explaining the current year's activities and/or any potential defaults has been provided? Yes No

III. ADDITIONAL INFORMATION (VOLUNTARY)

Employment:

Total full-time employees: _____

Total annual payroll: _____

Number of full-time jobs added in past year: _____

Number of employees that live in Schertz, Texas: _____

Interested in being contacted about workforce training opportunities? Yes No

Interested in being contacted for assistance with City permits? Yes No

IV. CERTIFICATION

I certify that, to the best of my knowledge and belief, the information and attachments provided herein are true and accurate and in compliance with the terms of Economic Development Incentive Agreement.

I further certify that the representations and warranties contained within the Agreement remain true and correct as of the date of this Certification, and Sysco Corporation. renounces those representations and warranties as of the date hereof.

I further certify that the employment and wage information provided is true and accurate to the best of my knowledge and I can provide documentation from the Texas Workforce Commission to support my claim if so requested.

I understand that this Certificate is being relied upon by the SEDC in connection with the expenditure of public funds.

I have the legal and express authority to sign this Certificate on behalf of Sysco Corporation.

Name of Certifying Officer

Certifying Officer's Title

Phone Number

E-Mail Address

Signature of Certifying Officer

Date

STATE OF TEXAS X
COUNTY OF GUADALUPE X

This information was acknowledged before me on this _____ day of _____, _____ by
[first and last name], [title] for Sysco Corporation, a Texas corporation, on behalf of said agency.

Notary Public, State of Texas

Notary's typed or printed name

My commission expires

The Annual Certification Report is to be completed, signed and returned on or before February 15, 20__.
Please send an original to the following address:

**Attention: Executive Director
City of Schertz Economic Development Corporation
1400 Schertz Parkway, Bldg. No. 2
Schertz, TX 78154**