

ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT

This Economic Development Performance Agreement (“EDPA” or “Agreement”) is entered into the ~~19TH~~ day of November, 2021, (“the effective date”) by and between the Seagraves Economic Development Corporation (“SEDC”), a Type B Corporation, and Perez Building Material, LLC, a Texas Limited Liability Corporation (“Perez Building Material”).

Recitals

WHEREAS, Perez Building Material has purchased a vacant building located at 205 Simpson Ave, Seagraves, TX 79359 (“the Property”); and

WHEREAS, Perez Building Material renovated the Property and converted it to a hardware store; and

WHEREAS, Perez Building Material has made a total investment of more than \$450,000.00 to improve the Property and to open a hardware store therein; and

WHEREAS, SEDC desires to establish the Economic Development Program outlined herein and offer incentives to Perez Building Material to stock the hardware store with additional inventory that may be prohibitively expensive for the existing business to purchase without assistance (the “Project”); and

WHEREAS, SEDC is authorized to undertake the Project as a Type B Economic Development Corporation under Chapters 501 and 505, Texas Local Government Code; and

WHEREAS, it is the opinion of the Board of Directors of the SEDC that such renovation, improvements and the creation and maintaining of primary jobs involved in the Project will promote or expand business enterprises and will provide economic development to the City and the surrounding area, as contemplated in Sec. 505.155 and 505.158(a), Texas Local Government Code; and

WHEREAS, Perez Building Material desires to participate in the economic development program established under this Agreement.

NOW THEREFORE, in consideration of the foregoing and the covenants, agreements, representations, and warranties hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SEDC and Perez Building Material agree as follows:

Agreements

Section 1. Recitals. The recitals set forth above are incorporated herein by reference.

Section 2. Term. The term of this Agreement shall be four (4) years from the effective date of this Agreement unless terminated sooner as provided herein.

Section 3. SEDC Requirements. In consideration of Perez Building Material's agreement to develop the Project and to perform the other acts hereinafter described, SEDC agrees:

- (a) To grant Perez Building Material, LLC, a total of fifty thousand dollars (\$50,000.00) for the following purposes:
 - 1. To stock the hardware store with additional inventory that may be prohibitively expensive for the existing business to purchase without financial assistance.
 - 2. Continue to maintain sufficient supply of inventory of the type described above and as set forth in this Agreement.
- (b) Said grant will be made available to PEREZ BUILDING MATERIAL within seven (7) days of the occurrence of all the following:
 - 1. Approval of the Project by the Seagraves City Council by two readings of a resolution, as required by state law.
 - 2. Passage of sixty (60) days from the date of publication of the notice of the Project required by state law without receipt, by the Seagraves City Council, of a petition requiring the City to hold a special election on the Project or, if such a petition is received, then upon the canvassing of the returns of such special election showing voter approval of the Project; and
 - 3. Receipt of a written statement from PEREZ BUILDING MATERIAL that outlines the names and contact information of suppliers, items that Perez Building Material will purchase, the number of items, and the costs to purchase the same.

Section 4. Perez Building Material requirements.

In consideration of the SEDC agreeing to perform the foregoing, Perez Building Material, LLC, agrees

- (a) To make the described purchases within 60 days from the date of this Agreement and to maintain a sufficient supply of inventory at the Property for the full term of this Agreement;
- (b) To employ at least one full-time employee, defined as working at least 1860 hours per year, whose home zip code is 79359, at the Property within 60 days of the date of this Agreement;
- (c) To employ at least three full-time employees at the Property by the third anniversary of the date of this Agreement;
- (d) In order to provide opportunities to Seagraves residents who are unable to work full time, creation of a comparative number of part time positions shall be deemed as satisfaction of parts (b) & (c). Specifically, two part time positions, defined as working at least 1000 hours per year, shall be counted as one full time position.
- (e) To remain in operation as a business for at least four years from the date of this Agreement.

- (f) To provide a written report on the business earnings and number of employees at the business on or before the anniversary date of this Agreement each year for four years. To Include copies of W-2 annual submissions to the Internal Revenue Service.
- (g) To keep current in the payment of taxes owed to each taxing jurisdiction in which the Property is located.
- (h) To stay current on all utility accounts that are payable to the City of Seagraves, and to provide quarterly evidence that all other utility, supply, insurance, and payroll accounts are being paid monthly to all providers, suppliers and, employees necessary to maintain operations at the hardware store.

Section 5. Recapture/Termination

(a) Any of the following shall be default on the part of Perez Building Material:

- i. Failure of Perez Building Material to purchase the inventory described within its written statement to the SEDC as required by Section 3(b)(3) within 60 days of this Agreement, or to maintain sufficient supply of the same for the full term of this Agreement.;
- ii. After commencement of operation of the planned businesses on the Property, subsequent discontinuation of operation of either of such businesses prior to the end of four years from the date of this Agreement for any reason, excepting fire, explosion or other casualty or accident or natural disaster, Federal, State, or local mandate that requires the businesses to close, or other event beyond the reasonable control of Perez Building Material, LLC for a period of one hundred eighty (180) days;
- iii. Failure pf Perez Building Material to spend the \$50,000.00 grant for the purposes for which it is granted;
- iv. Failure of Perez Building Material to employ at least one full time employee within one year of the date of this Agreement;
- v. Failure of Perez Building Material to employ at least three full time employees within three years of the date of this Agreement;
- vi. Failure of Perez Building Material to keep current on utility accounts payable to the City of Seagraves.

(b) SEDC shall notify PEREZ BUILDING MATERIAL in writing of the occurrence of any of the default events described immediately above, and PEREZ BUILDING MATERIAL shall have thirty (30) days to fully cure the default. In the event of occurrence of default event no.(a) ii, the burden shall be upon PEREZ BUILDING MATERIAL to prove to the satisfaction of the SEDC that the discontinuance of the operation of a business was as a result of fire, explosion, or other casualty or accident or natural disaster or other event beyond the control of PEREZ BUILDING MATERIAL, and that the business shall be re-opened and operating within a reasonable period of time. In the event that PEREZ BUILDING MATERIAL fails to carry such burden of proof or otherwise fails to fully cure another default event to the satisfaction of SEDC, the \$50,000.00 grant provided under this Agreement shall convert to a loan, and PEREZ BUILDING MATERIAL agrees to:

- i. Execute and grant SEDC a lien on the property for \$50,000.00.
- ii. Execute and deliver a promissory note to SEDC in which it agrees to repay SEDC the \$50,000.00, plus interest at prime plus one percent, within four (4) years of the date of the promissory note.
- iii. Allow SEDC to foreclose upon its lien on the Property for failure to execute the promissory note or to thereafter comply with its terms.

Section 6. Certification of Compliance by PEREZ BUILDING MATERIAL, LLC

At the time of making the annual report described in part 4(f) of this Agreement, PEREZ BUILDING MATERIAL shall certify in writing to the SEDC its compliance with all provisions of this Agreement. Such certification shall include any and all documentation establishing that PEREZ BUILDING MATERIAL has met the employment requirements and that all taxes related to the Property have been paid in full as required by law. The SEDC, at any reasonable time, shall have the right to review any and all records of PEREZ BUILDING MATERIAL related to the provisions of this Agreement.

Section 7. Dispute Resolution

Any controversy or claim arising out of or relating to this Agreement, or the breach of this Agreement, may be settled by mediation or other alternative dispute resolution, and should such mediation or alternative dispute resolution not occur within 90 days of commencement of such controversy or claim, or should it fail to resolve the claim or controversy, then the same may be litigated in a court of competent jurisdiction in Gaines County, Texas.

Section 8. Entire Agreement

This Agreement contains the entire agreement between the SEDC and PEREZ BUILDING MATERIAL with respect to the transactions contemplated herein. This Agreement may be amended, altered, or revoked only by written instrument signed by the SEDC and PEREZ BUILDING MATERIAL.

Section 9. Successors and Assigns

This Agreement shall be binding on and inure to the benefit of the parties, their respective successors, and assigns. PEREZ BUILDING MATERIAL may assign all or part of its rights and obligations hereunder only upon prior written approval of the SEDC, which approval shall not be unreasonably withheld or delayed.

Section 10. Notices

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses or at such addresses provided by the parties in writing hereafter:

PEREZ BUILDING MATERIAL, LLC:

Perez Building Material, LLC
c/o Carlos Perez, Sr.
PO BOX 1412
Seminole, TX 79360-1412

SEDC:

Seagraves Economic Development Corp.
Attention: SEDC President
309 Hill Street
Seagraves, TX 79359

Section 11. Interpretation

Regardless of the actual drafter of this Agreement, this Agreement shall in the event of dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

Section 12. Applicable Law

This Agreement is made and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Gaines County, Texas.

Section 13. Severability

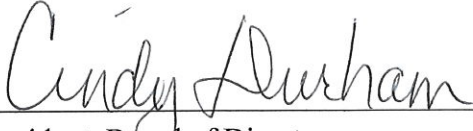
In the event that any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or 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.

Section 14. Mutual Assistance

SEDC and PEREZ BUILDING MATERIAL agree to do all things 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.

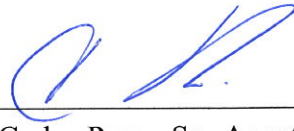
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective on the date first written above.

**SEDC: SEAGRAVES ECONOMIC
DEVELOPMENT CORPORATION:**



President, Board of Directors

PEREZ BUILDING MATERIAL, LLC.



Carlos Perez, Sr., Agent of Perez Building
Material, LLC