

**PERFORMANCE AGREEMENT BETWEEN THE BURLESON 4A ECONOMIC
DEVELOPMENT CORPORATION AND AMERICAN BUILDERS & CONTRACTORS
SUPPLY CO. INC.**

This Performance Agreement (this "Agreement") is entered into as of _____ (the "Effective Date") by and between the Burleson 4A Economic Development Corporation, a Texas municipal development corporation located in the City of Burleson, Texas ("BEDC"), acting by and through the President of its Board of Directors (the "BEDC Board"), and American Builders & Contractors Supply Co. Inc., ("ABC Supply"), a roofing material supply corporation, by and through its authorized managers. BEDC and ABC Supply may be referred to individually as "Party," or collectively as the "Parties."

WITNESSETH:

WHEREAS, the BEDC and the City of Burleson, Texas ("City"), a home rule municipal corporation located in the counties of Johnson and Tarrant, desires to facilitate the expansion and improvement of ABC Supply's storage and parking area; and

WHEREAS, ABC Supply is a for-profit company that specializes in roofing materials supply; and

WHEREAS, ABC Supply seeks to improve their property by constructing a masonry fence to comply with City screening ordinances and expanding the parking lot for additional employee and truck parking (the "Project"), located in the city limits of the City, generally located at 1075 NW John Jones Drive, Burleson, TX 76028 (the "Property"), and depicted on **Exhibit A** attached hereto; and

WHEREAS, the Property is not owned or leased by any member of the Burleson City Council, any member of the BEDC Board, nor any member of the City Planning and Zoning Commission; and

WHEREAS, the BEDC Board finds and determines that the incentives contemplated in this Agreement constitute a "project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 501.101, in that expenditures are for land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are for the creation or retention of primary jobs and required or suitable for the development, retention, or expansion of regional facilities; and

WHEREAS, the BEDC has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to the City as a result of the Project being located in the City, and desires to have ABC Supply expand their storage and parking area, and construct a new masonry fence that will conform to the Code of Ordinances, City of Burleson, Texas; and

WHEREAS, the Project will increase the taxable value in the City and will directly and indirectly result in the creation of additional jobs throughout the City and the value of the benefits of the Project is anticipated to outweigh the amount of expenditures required of the BEDC by the Project under this Agreement; and

WHEREAS, the BEDC has found the Project will contribute to an increase in economic development in the City.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1.
AUTHORIZATION, RECITALS, AND EXHIBITS

- 1.01 Authorization. The BEDC Board finds and determines that this Agreement is authorized by Chapters 501 and 504 of the Texas Local Government Code, and that that the incentives contemplated in this Agreement constitute a “project” as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Sections 501.101 and 501.103.
- 1.02 Recitals. The recitals set forth in the foregoing “WHEREAS” clauses are true and correct, constitute representations and warranties of the Parties, constitute legislative findings of the governing bodies of the Parties, form the basis upon which the Parties have entered into this Agreement, and establish the intent of the Parties in entering into this Agreement. If it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given effect. The Parties have relied on the recitals as part of the consideration for entering into this Agreement and, but for the recitals, would not have entered into this Agreement.
- 1.03 Exhibits. The exhibit attached to this Agreement, incorporated herein by reference for all purposes, is as follows:

Exhibit A – Property Location with Project Improvements Depicted

ARTICLE 2.
DEFINITIONS

- 2.01 The terms “Agreement,” “BEDC,” “BEDC Board,” “City,” “ABC Supply,” “Effective Date,” “Project,” and “Property,” shall have the meanings provided above.
- 2.02 “Affiliate” means a parent company or wholly owned subsidiary entity that directly controls, is controlled by, or is under common control with ABC Supply.

- 2.03 "Certificate of Occupancy" means the certificate issued by the City's building official reflecting that construction has been completed in conformance with appropriate municipal codes and ABC Supply is authorized to secure full utility service and permit occupancy of the building.
- 2.04 "City Council" means the City Council of the City.
- 2.05 "Commence Construction" means the beginning of construction in earnest on the Project with: (1) a signed contract with a general contractor or construction company to construct the improvements, and (2) clearing of the portion of the Property for the improvements.
- 2.06 "Complete Construction" means the completion of construction on the improvements, and the issuance of a Certificate of Occupancy for the Project.
- 2.07 "Event of Bankruptcy" means the dissolution or termination of ABC Supply's existence as a going business, insolvency, appointment of receiver for any part of ABC Supply'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 ABC Supply and such proceeding is not dismissed within ninety (90) days after the filing thereof.
- 2.08 "Full Time Employee" means a job requiring a minimum of One Thousand Nine Hundred Twenty (1,920) hours of work averaged over a twelve (12) month period.
- 2.09 "Impositions" mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Developer or any property or any business owned by ABC Supply within the City.
- 2.10 "Interest" means the interest rate the City is paying on the most recent issuance of bonded indebtedness prior to the receipt of a notice of violation or default hereunder.
- 2.11 "Incentives" mean the combined contributions, monetary or otherwise, of the BEDC toward completion of the Project, as set forth in this Agreement.
- 2.12 "Party" means BEDC or ABC Supply, individually.

- 2.13 "Parties" mean BEDC or ABC Supply, collectively.
- 2.14 "Qualified Job" means a Full Time Employee in the following sector of the North American Industry Classification System ("NAICS"): 48-49 – Transportation and Warehousing.

ARTICLE 3. **TERM**

The Term of this Agreement shall commence on the Effective Date and terminate on December 31, 2026, unless terminated earlier as provided in Article 9.

ARTICLE 4. **IN GENERAL**

- 4.01 The Project and Qualified Jobs. ABC Supply will be primarily responsible for constructing the Project. Additionally, it is the Parties' intent that the Project will result in the creation of six (6) new Qualified Jobs. The BEDC will provide the Incentives set forth in this Agreement provided ABC Supply complies with its performance conditions and obligations set forth herein.
- 4.02 BEDC Participation. The BEDC's obligations under this Agreement shall not exceed the sum of Three Hundred and Sixty Thousand Dollars (\$360,000.00) for all obligations set forth herein, including all Incentives. The BEDC authorizes the city manager to allocate such funds as permitted by law and necessary to meet the BEDC obligations set forth in this Agreement.

ARTICLE 5. **COVENANTS OF ABC SUPPLY**

- 5.01 Covenants Regarding the Project and ABC Supply Operations. In consideration of BEDC agreeing to pay ABC Supply the Incentives or otherwise expending Incentive amounts in accordance with the terms, provisions, and conditions of this Agreement, ABC Supply agrees to the following which are duties of ABC Supply that must be fulfilled in order to receive the Incentives:
- (A) Commence Construction within forty-five (45) days after the Effective Date, on a masonry screening fence that complies with City ordinances on the Property and complete construction of the Project within 180 days after the Effective Date.
 - (B) Commence Construction on the expansion of the parking lot on the Property by pouring additional concrete for employee and truck parking within 45 days after the Effective Date..

- (C) Complete Construction for the Project within 180 days after the Effective Date.
 - (D) Hire six (6) new Full Time Employees by December 31, 2026, with a minimum retention period of one (1) year. If any of the Full Time Employees separates from employment for any reason, ABC Supply shall be permitted to replace such Full Time Employee that has been separated from employment and receive credit for the combined employment terms of such duplicate Full Time Employee.
- 5.02 Verification of Project Completion. Within thirty (30) days of the date construction is complete, ABC Supply shall provide written notice of such completion to the BEDC.
- 5.03 Verification of Full Time Employees and Qualified Jobs Information. In verifying milestones related to Full Time Employees and Qualified Jobs, ABC Supply's written documentation to the BEDC shall include the names of the employees, number of employees, job titles, average salary, full time status of employees, and NAICS classification numbers.
- 5.04 Impositions. ABC Supply shall remain current and paid on all Impositions, subject to appeal rights in accordance with law and subject to a right to cure any delinquency.

ARTICLE 6.
COVENANTS AND INCENTIVES OF BEDC

- 6.01 Covenants Regarding BEDC. Subject to ABC Supply satisfying all performance conditions and obligations under this Agreement, the BEDC agrees that upon the hiring of six (6) new Full Time Employees, BEDC shall issue ABC Supply a cash grant in the amount of Sixty Thousand Dollars (\$60,000) per employee with a cap on the grant amount of Three Hundred and Sixty Thousand Dollars (\$360,000).

ARTICLE 7.
PERFORMANCE BY AFFILIATE, DESIGNEE, OR OTHER QUALIFIED PARTY

Performance by an Affiliate, designee, or other qualified party, which ABC Supply has authorized to perform, shall be deemed performance by ABC Supply.

ARTICLE 8.
AUTHORITY; COMPLIANCE WITH LAW

- 8.01 ABC Supply hereby represents and warrants to BEDC that it has full lawful right, power, and authority to execute and deliver and perform the terms and obligations of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by ABC Supply and this Agreement

constitutes the legal, valid, and binding obligation of ABC Supply, and is enforceable in accordance with its terms and provisions.

- 8.02 BEDC hereby represents and warrants to ABC Supply that it has full lawful right, power, and authority to execute and deliver and perform the terms and obligations of this Agreement, and that the execution and delivery of this Agreement has been duly authorized by all necessary action by the BEDC, and upon the approval of this Agreement by the City Council, this Agreement will constitute the legal, valid, and binding obligation of BEDC, and is enforceable in accordance with its terms and provisions.
- 8.03 In its performance under this Agreement, ABC Supply shall comply with all federal, state, and local laws.
- 8.04 During the term of this Agreement, ABC Supply agrees not to knowingly employ any undocumented workers at the Project and, if convicted of a violation under 8 U.S.C. Section 1324a(f), ABC Supply shall repay the amount of the Incentives received by ABC Supply as of the date of such violation within one hundred and twenty (120) business days after the date ABC Supply is notified by the BEDC of such violation, plus Interest. This Section shall supersede any other conflicting term in this Agreement and shall survive termination of the Agreement.

ARTICLE 9. **TERMINATION**

- 9.01 Termination. This Agreement shall terminate at the expiration of the Term specified in Article 3 unless terminated earlier as follows:
- (A) By written agreement of the Parties;
 - (B) On the date of termination set forth in a written notice provided by a Party to the other Party in the event the other Party is in default and breaches any of the terms and conditions, including performance conditions, of this Agreement and such default is not cured within ninety (90) days after the non-breaching Party sends notice to the breaching Party of such breach;
 - (C) On the date of termination set forth in a written notice by BEDC to ABC Supply if ABC Supply experiences an Event of Bankruptcy;
 - (D) On the date of termination set forth in a written notice by BEDC to ABC Supply if ABC Supply has delinquent Impositions (provided that ABC Supply retains the right to timely and properly protest and/or contest any such taxes), and such delinquent Impositions are not paid within ninety (90) days after the BEDC sends notice to ABC Supply; or

- (E) On the date of termination set forth in a written notice by a Party to the other Party if either Party receives notice that any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal, or unenforceable.
- 9.02 No Additional Incentives Following Termination. In the event this Agreement is terminated by the BEDC pursuant to Section 9.01, then ABC Supply shall not be entitled to any additional Incentive payments or other funds paid pursuant to this Agreement from BEDC and the BEDC shall have no further obligation to ABC Supply.
- 9.03 False Representation or Falsification of Documentation. In the event this Agreement is terminated by the BEDC pursuant to Section 9.01(B) because ABC Supply has provided any false representation or provides any false documentation of investments, jobs, enrollment, costs, or achievement of any milestone or requirement under this Agreement, then ABC Supply shall, within thirty (30) days of the date of termination, return to the BEDC any funds received by ABC Supply related to such false representation or report with Interest from the date of termination. The terms set forth in this Section shall survive termination.
- 9.04 Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, in no event shall BEDC be liable to ABC Supply for consequential, incidental, punitive, special, or exemplary damages, including lost revenues, profits, delays, or other economic loss arising from any cause including breach of warranty, breach of contract, tort, strict liability or any other cause whatsoever. To the extent permitted by law, any statutory remedies that are inconsistent with this provision of the Agreement are waived. The terms set forth in this Section 9.04 shall survive termination.
- 9.05 No Waiver. No waiver or any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement. Any waiver of any term or condition of this Agreement must be in writing and approved by the authorized representatives of the Parties and approved by the City Council.

ARTICLE 10.
RIGHT OF OFFSET

ABC Supply agrees that, subject to the provision of notice by BEDC and ninety (90) day period following receipt of notice in which ABC Supply may respond or act, BEDC may offset the amount of any compensation due to ABC Supply for any calendar year under this Agreement against any amount which is: (i) lawfully due to City or BEDC from ABC Supply, and (ii) not subject to challenge by ABC Supply in a court of competent jurisdiction.

ARTICLE 11.

MANDATORY STATUTORY CERTIFICATIONS

11.01 By executing this Agreement, ABC Supply warrants, agrees, verifies, and certifies that it does not and, during the duration of this Agreement, will not:

- (A) Boycott Israel as that term is defined in Texas Government Code Section 808.001 and Chapter 2271, as amended;
- (B) Do business with Iran, Sudan, or a foreign terrorist organization, as defined in Texas Government Code Chapter 2270, as amended;
- (C) Boycott energy companies as defined in Texas Government Code Section 809.001 and Chapter 2274, as amended;
- (D) Discriminate against a firearm trade association as defined in Texas Government Code Chapter 2274, as amended; or
- (E) Operate as a foreign owned or controlled company in connection with a critical infrastructure project as defined in Texas Government Code Chapter 2275, as amended.

11.02 By executing this Agreement, ABC Supply warrants, agrees, verifies, and certifies that, to the best of its knowledge and belief, no member of City Council, city manager, deputy city manager, city secretary, department heads, or deputy department heads of the City has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof, in violation of Section 132 of the Home Rule Charter of the City.

ARTICLE 12.

VENUE AND GOVERNING LAW

This Agreement is performable in Johnson County, Texas and venue of any action arising out of this Agreement shall be exclusively in Johnson County, Texas. This Agreement shall be governed and construed in accordance with applicable federal and state laws, violation of which shall constitute a default of this Agreement. To the extent permitted by law, the laws of the State of Texas shall apply without regard to applicable principles of conflicts of law, and the Parties submit to the jurisdiction of the state and federal courts in Burleson, Johnson County, Texas.

ARTICLE 13.
FORCE MAJEURE

Performance of ABC Supply's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and ABC Supply's obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, acts of God, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, disease outbreak, pandemic or epidemic, States of Emergency, delaying or withholding of the issuance of any permit and/or legal authorization (including engineering approvals) by any governmental entity, unexpected delays in governmental approvals and permits, shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, labor shortages, delays caused by government action; acts of nature, unusually adverse weather or wet soil conditions or other causes beyond the Parties' reasonable control, including but not limited to, any court order or judgment affecting the ABC Supply performance, the Property, or this Agreement.

ARTICLE 14.
GIFT TO PUBLIC SERVANT OR TO ABC SUPPLY REPRESENTATIVE

- 14.01 No Benefit. Each Party hereto represents to the other that it has not offered, conferred, or agreed to confer and that it will not offer, confer or agree to confer in the future any benefit upon an employee or official of the other Party. For purposes of this Section, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.
- 14.02 Right of Reimbursement. Notwithstanding any other legal remedies, BEDC may obtain reimbursement for any expenditure made to ABC Supply as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official or a BEDC employee or official.

ARTICLE 15.
ASSIGNMENT

- 15.01 Assignment. ABC Supply may not assign any part of this Agreement without consent or approval by the BEDC.

ARTICLE 16.
INDEMNIFICATION

- 16.01 **ABC SUPPLY EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE BEDC, AND ITS OFFICERS AND EMPLOYEES, AND THE CITY, AND ITS OFFICERS AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES,**

JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT (COLLECTIVELY, "LOSSES"), SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF ABC SUPPLY OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT; NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL ABC SUPPLY BE RESPONSIBLE FOR, NOR SHALL ITS INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 16.01 EXTEND TO, ANY LOSSES ARISING OUT OF OR OCCASIONED BY THE ACTS OR OMISSIONS OF THE BEDC, AND ITS OFFICERS AND EMPLOYEES, OR THE CITY, AND ITS OFFICERS AND EMPLOYEES, THAT CONSTITUTE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. Nothing in this Section may be construed as waiving any governmental immunity available to the City under state law. This provision is solely for the benefit of ABC Supply, BEDC, and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

- 16.02 It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties. The City and BEDC (including its past, present, and future officers, elected officials, directors, employees, and agents of the City and BEDC) do not assume any responsibility to any third party in connection with ABC Supply's construction of the Project.

ARTICLE 17. **MISCELLANEOUS MATTERS**

- 17.01 Time is of Essence. Time is of the essence in the performance of this Agreement. The Parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.
- 17.02 Agreement Subject to Law. This Agreement is made subject to and in accordance with the Burleson Home Rule Charter and ordinances of City, as amended, and all applicable state and federal laws.
- 17.03 Interpretation. Each of the Parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any Party based on draftsmanship.

BEDC: Burleson 4A Economic Development Corporation
Attn: Economic Development Director
141 West Renfro
Burleson, Texas 76028

With a copy to: E. Allen Taylor, Jr.
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place
Suite 200
Fort Worth, Texas 76107

- 17.08 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.
- 17.09 Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.
- 17.10 Approval by the City Council Required. The BEDC's action to enter into this Agreement is subject to the approval of the City Council. This Agreement shall not be effective until such Agreement is signed by the Parties and the City Council ratifies and approves the BEDC's action to enter into this Agreement.

[Signature pages to follow]

EXECUTED on the respective dates of acknowledgement, to be effective as of the Effective Date.

BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION

By: _____

Name: _____

Title: Board President

Date: _____

AMERICAN BUILDERS & CONTRACTORS SUPPLY CO. INC.

By:  _____
Jim Anderson (Dec 21, 2024 09:25 CST)

Name: Jim B. Anderson

Title: Senior VP & Chief Financial Officer

Date: **12/21/2024** _____

Exhibit A

