

## **PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** by and between the **SWEENY ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the “EDC”), and **EQUIPMENTSHARE.COM INC**, a Delaware corporation (hereinafter referred to as “Developer”), is made and executed on the following recitals, terms and conditions.

**WHEREAS**, the EDC is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

**WHEREAS**, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: (A) manufacturing and industrial facilities; (B) research and development facilities; (C) military facilities, including closed or realigned military bases; . . . (F) recycling facilities; . . . (I) distribution centers; (J) small warehouse facilities capable of serving as decentralized storage and distribution centers; (K) primary job training facilities for use by institutions of higher education; or (L) regional or national corporate headquarters facilities”; and

**WHEREAS**, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . .”; and

**WHEREAS**, Developer has applied to the EDC for economic development assistance necessary to construct and operate a shop, warehouse, wash bay, office, and stabilized yard for its Advanced Solutions division to be located on an approximately 6.743 acre tract of land in the Sweeny Economic Development Park addition, an addition to the City of Sweeny, Brazoria County, Texas (hereinafter referred to as the “Property”); and

**WHEREAS**, the EDC’s Board of Directors have determined the economic development assistance to be provided to Developer pursuant to this Agreement is consistent and meets the definition of “project” as that term is defined in Sections 501.101 and 501.103 of the Texas Local Government Code; and the definition of “cost” as that term is defined by Section 501.152 of the Texas Local Government Code; and

**WHEREAS**, Developer agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Sweeny, Texas, to approve all programs and expenditures of the EDC, and accordingly this Agreement is not effective until City Council has approved this project at a City Council meeting called and held for that purpose.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and

other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the EDC and Developer agree as follows:

## **SECTION 1. FINDINGS INCORPORATED.**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

## **SECTION 2. TERM.**

This Agreement shall be effective as of the Effective Date, as defined herein, and shall continue thereafter until **December 31, 2040**, unless terminated sooner under the provisions hereof. If the aggregate taxable sales from the Property during the Term of this Agreement equals or exceeds **One Hundred Eighty-Eight Thousand, Eight Hundred Four and No/100 Dollars (\$188,804.00)** with proof acceptable to the EDC for taxable sales any time on or before **December 31, 2028**, this Agreement shall terminate automatically without further notice to either party.

## **SECTION 3. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Performance Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (c) **Developer.** The word “Developer” means Equipmentsshare.com Inc, a Delaware corporation, its successors and assigns, whose address for the purposes of this Agreement is 5710 Bull Run, Columbia, Missouri 65201.
- (d) **EDC.** The term “EDC” means the Sweeny Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 111 W. 3<sup>rd</sup> Street, Sweeny, Texas 77480.
- (e) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the Developer and the EDC.
- (f) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (g) **Full-Time Equivalent Employment Position.** The words “Full-Time Equivalent Employment Position” or “Full-Time Equivalent Employment Positions” mean and include a job requiring a minimum of One Thousand Nine Hundred Twenty (1,920) hours

of work averaged over a twelve (12) month period.

- (h) **Property.** The word “Property” means the approximately 6.743 acre tract of land in the Sweeny Economic Development Park addition, an addition to the City of Sweeny, Brazoria County, Texas, as generally described and/or depicted in *Exhibit A* of this Agreement, which is attached hereto and is incorporated herein for all purposes.
- (i) **Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures consisting of the construction of a shop, warehouse, wash bay, office, and stabilized yard, consisting of a minimum 12,000 square foot building with 2,500 square feet of conditioned space, located on the Property, and which meet the definition of “project” as that term is defined in Sections 501.101 and 501.103 of the Act, and meet the definition of “cost” as that term is defined in Section 501.152 of the Act.
- (j) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

#### **SECTION 4. AFFIRMATIVE COVENANTS OF DEVELOPER.**

Developer covenants and agrees with EDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Qualified Expenditures.** Developer covenants and agrees to commence construction of the Qualified Expenditures within 120 days of the EDC’s completion of the road and utilities leading to the Property. Further, Developer covenants and agrees to complete construction of the shop, warehouse, wash bay, office, and stabilized yard within eighteen (18) months of the City of Sweeny’s completion of the road and utilities leading to the Property. Developer may begin construction on the Effective Date, and the City of Sweeny will work in good faith to minimize the disruption of the Developer’s construction of the Qualified Expenditures while the City of Sweeny is completing the road and utilities leading to the Property.
- (b) **Certificate of Occupancy.** Developer covenants and agrees to apply for or cause to be obtained within eighteen (18) months of the EDC’s completion of the road and utilities leading to the Property, a certificate of occupancy from the City of Sweeny, Texas, for a shop, warehouse, wash bay, office, and stabilized yard located on the Property.
- (c) **Operate Shop, Warehouse, Office, and Yard.** Developer covenants and agrees to maintain and operate the shop, warehouse, office, and yard located on the Property starting no later than eighteen (18) months of the EDC’s completion of the road and utilities leading to the Property, and during the Term of this Agreement.
- (d) **Job Creation and Retention.** Developer covenants and agrees during the Term of this Agreement to employ and maintain a minimum of seven (7) Full-Time Equivalent

Employment Positions working at the Property. Additionally, Developer covenants and agrees to employ and maintain a minimum of thirteen (13) additional Full-Time Equivalent Employment Positions working at the Property by **December 31, 2040**. Developer covenants and agrees on or before **September 1, 2026**, Developer shall deliver to EDC an annual compliance verification signed by a duly authorized representative of Developer that shall certify the number of Full-Time Equivalent Employment Positions, and shall disclose and certify the average wage for all Full-Time Equivalent Employment Positions (the "Compliance Verification"). The Compliance Verifications shall include quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports.

- (e) **Acquisition of the Property.** Developer covenants and agrees to acquire the Property from the EDC within ninety (90) days of the Effective Date of this Agreement or consistent with the terms of a real estate sales contract in a form mutually agreeable and executed by and between the Developer and the EDC. The Developer covenants and agrees the Property has a value of **One Hundred Eighty-Eight Thousand, Eight Hundred Four and No/100 Dollars (\$188,804.00)** ("Original Property Value"). Developer covenants and agrees to execute a deed of trust lien or other lien in a form acceptable to the EDC providing a first lien position the Property.
- (f) **Performance Conditions.** Developer agrees to make, execute, and deliver to EDC such other instruments, documents and other agreements as EDC or its attorneys may reasonably request to evidence this Agreement.
- (g) **Performance.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Developer and EDC.

## **SECTION 5. AFFIRMATIVE COVENANTS OF EDC.**

EDC covenants and agrees with Developer that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Conveyance of the Property.** The EDC covenants and agrees to convey to the Developer good and indefeasible fee simple title to the Property, free and clear of any liens or other encumbrances, by special warranty deed within ninety (90) days of the Effective Date of this Agreement or consistent with the terms of a real estate sales contract in a form mutually agreeable and executed by and between the Developer and the EDC.
- (b) **Performance.** EDC agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Developer and EDC.
- (c) **Third Party Financing.** EDC agrees the Developer's obligation to fulfill the terms of this Agreement is contingent on the Developer obtaining third-party financing to fund the

construction of the shop, warehouse, office, and yard on the Property. In the event the Developer fails to obtain third-party financing within thirty (30) days of the EDC approving this contract and the City's approval to construct the road and utilities, the Developer may unilaterally terminate this Agreement. In such case, the Property will not be conveyed to Developer.

- (d) **Construction of Road and Utilities.** EDC agrees the Developer's obligation to fulfill the terms of this Agreement is contingent on the EDC constructing a road and installation of utilities to the Property, in accordance with the Scope of Work attached hereto as ***Exhibit B*** of this Agreement, which is attached hereto and is incorporated herein for all purposes.

## **SECTION 6. CESSATION OF ADVANCES.**

If the EDC has made any commitment to provide any economic development assistance to Developer, whether under this Agreement or under any other agreement, the EDC shall have no obligation to advance or provide said economic development assistance if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs, while such default is continuing.

## **SECTION 7. EVENTS OF DEFAULT.**

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or EDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or EDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and EDC is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made herein to EDC by Developer that is false or misleading in any material respect is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer, that is not dismissed within sixty (60) days is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City of Sweeny, Texas, to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from EDC and/or Brazoria County Central Appraisal District is an Event of Default.

## **SECTION 8. EFFECT OF AN EVENT OF DEFAULT.**

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement, enforce specific performance as appropriate or maintain a cause of action for damages caused by the event(s) of default.

In the event Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the Parties agree and acknowledge that the actual damages to the EDC resulting from such a default would be difficult or impracticable to calculate with precision. The Developer shall immediately pay to the EDC liquidated damages in an amount calculated as follows: Original Property Value - Cumulative Sales Tax Generated and Remitted. The "Cumulative Sales Tax Generated and Remitted" means the total verifiable sales tax revenue generated from operations on the Property and remitted to the City of Sweeny from the Effective Date through the date of default (the difference between the two being the "Liquidated Damages"). The minimum Liquidated Damages amount shall be \$0.00, even if the calculation results in a negative number. In the event of default, Developer shall provide documentation of all sales tax remitted to the City of Sweeny. The Parties agree the specified Liquidated Damages represent a reasonable estimate of the anticipated harm and are agreed upon as fair compensation, not as a penalty.

## **SECTION 9. INDEMNIFICATION.**

Each party (the "Indemnifying Party") shall indemnify, defend, and hold harmless the other party, including its respective directors, officers, agents, attorneys, and employees (collectively, the "Indemnitees"), from and against any and all third-party claims, demands, actions, proceedings, liabilities, losses, damages, or expenses (including reasonable attorneys' fees) to the extent arising from (i) the gross negligence, willful misconduct, or breach of this Agreement by the Indemnifying Party or its agents, representatives, or employees; or (ii) any use of funds or assistance provided under this Agreement that violates applicable law or this Agreement. Notwithstanding the foregoing, no party shall be liable for any indemnification to the extent such claim arises out of the gross negligence, willful misconduct, or breach of this Agreement by the Indemnitee. The Indemnitee shall promptly notify the Indemnifying Party of any such claim, demand, or action; however, failure to provide prompt notice shall not relieve the Indemnifying Party of its obligations under this Section unless such failure materially prejudices its ability to defend against the claim. The Indemnifying Party shall have the right to participate in and, if it so elects, assume the defense of any such claim with counsel reasonably acceptable to the Indemnitee. Any proposed settlement or compromise that may result in an obligation of the Indemnifying Party shall be subject to the Indemnifying Party's prior written consent, which shall not be unreasonably withheld or delayed.

## **SECTION 10. EARLY TERMINATION.**

In the event that Developer desires to terminate this Agreement prior to the end of the Term, Developer shall provide notice to EDC and pay, as an early termination fee, the amount of Liquidated Damages that would be due if an Event of Default were to occur, as set forth *infra* in Section 8.

## **SECTION 11. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Brazoria County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Brazoria County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party, but such consent shall not be unreasonably withheld, delayed, or conditioned.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Developer warrants and represents that the individual or individuals executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. EDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Filing.** This Agreement shall be filed in the deed records of Brazoria County, Texas. The provisions of this Agreement shall be deemed to run with the land and shall be binding on heirs, successors and assigns of the Developer.
- (h) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally

delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to EDC: Sweeny Economic Development Corporation  
111 W. 3<sup>rd</sup> Street  
Sweeny, Texas 77480  
Attn: Michelle Medina, Executive Director  
Telephone: (979) 548-2894

if to Developer: Equipmentsshare.com Inc  
5710 Bull Run  
Columbia, Missouri 65201  
Attn: Legal Department  
Telephone: \_\_\_\_\_  
Email: [legal.general@equipmentsshare.com](mailto:legal.general@equipmentsshare.com)

- (i) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (j) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (k) **Undocumented Workers.** Developer certifies that the Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of six percent (6%), not later than the 120<sup>th</sup> day after the date the EDC notifies Developer of the violation.

**[The Remainder of this Page Intentionally Left Blank]**





**DEVELOPER:**

**EQUIPMENTSHARE.COM INC,**  
a Delaware corporation,

By: \_\_\_\_\_

Jabbok Schlacks, CEO

Date Signed: \_\_\_\_\_

**STATE OF** \_\_\_\_\_

§

§

**COUNTY OF** \_\_\_\_\_

§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2025,  
by Jabbok Schlacks, CEO of Equipmentsshare.com, Inc., a Delaware corporation, on behalf of said  
Delaware corporation.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

***Exhibit A***

[Legal Description and/or Depiction of the Property]

***Exhibit B***

[Scope of Work for EDC running road and utilities to Property]