

PERFORMANCE GRANT AGREEMENT

This Performance Grant Agreement (the “Agreement”) is made and entered into by and between the Tomball Economic Development Corporation, a State of Texas Type B Economic Development Corporation (the “TEDC”), and The Hutson Group (the “Company”) (with each being a “Party”, and together the “Parties”), is entered into by the Parties’ authorized representatives, and is effective as of the date of execution by the Parties (the “Effective Date”).

RECITALS

WHEREAS, it is the established policy of the TEDC to adopt such reasonable measures from time-to-time as are permitted by law to endeavor to attract industry, create and retain primary jobs, expand the growth of the City of Tomball (the “City”), and thereby enhance the economic stability and growth of the City; and,

WHEREAS, the Company proposes to construct pedestrian and parking improvements along Houston Street and North Elm Street in Old Town Tomball (the “Project”), with a description of the Project being attached to this Agreement as “Exhibit A”; and

WHEREAS, the Board of Directors of the TEDC (the “Board”) has determined that the improvements provided by the Company through the Project will enhance the use of Old Town Tomball, and as a Project of the TEDC, the Board wishes to reimburse the Company for a portion of the cost of the Project according to Texas Local Government Code 505.152; and,

WHEREAS, according to the terms and requirements provided herein, the Board desires to provide to the Company the sum of up to Forty-Eight Thousand Eight Hundred Dollars (\$48,800.00) (the “Performance Grant”) if the Company satisfies this Agreement herein, with the amount of the Performance Grant being described in the attached “Exhibit B”; and,

NOW, THEREFORE, in consideration of the mutual benefits and obligations set forth herein, including the Recitals set forth above, the TEDC and the Company agree as follows:

AGREEMENT

SECTION 1. TERM.

This Agreement shall become enforceable upon the Effective Date and shall remain in effect for a term of at least five (5) years, unless terminated or cancelled earlier according to the provisions of this Agreement (the “Term”). The Term may be extended through a written amendment to this Agreement executed by the Parties.

SECTION 2. COMPANY OBLIGATIONS.

- (a) *Continued Operation.* The Company hereby covenants and agrees that it will continue to operate and maintain its business throughout the Term.
- (b) *Reporting.* Throughout the Term, the Company will provide updates to the TEDC showing that it is in compliance with this Agreement and will provide progress reports on the status of the Project (the “Report”). Upon the written request of the TEDC or the City, the Company will promptly provide any additional information related to this Agreement.

SECTION 3. CAPITAL IMPROVEMENTS.

- (a) The Company hereby covenants and agrees that as a part of the Project, it will construct the following Capital Improvements: Phase 1: Sidewalk, Parking and Street Improvements along 150

feet of the south side of Houston Street and 100 feet of the west side of North Elm Street (200 Block); Phase 2: Sidewalk, Parking and Street Improvements along 150 feet of the south side of Houston Street; and Phase 3: Sidewalk, Parking and Street Improvements along 300 feet of the north side of Houston Street and 100 feet of the west side of North Elm Street (300 Block) (the “Capital Improvements”).

- (b) The Company agrees that it will construct the Capital Improvements in accordance with all the requirements of the Code of Ordinances of the City and the plans and specifications of the Capital Improvements as approved by the City and the TEDC.
- (c) The Company agrees that it will certify the costs of the Capital Improvements, and all related infrastructure costs, to the TEDC prior to the initiation of the construction of the Capital Improvements.
- (d) The construction of the Capital Improvements, including the construction of all infrastructure and the obtaining of all necessary permits from the City, shall be completed within twenty-four (24) months of the Effective Date of this Agreement (the “Completion Date”). The Board or the City Council of the City (the “Council”) may adjust the Completion Date at its sole discretion.

SECTION 4. PERFORMANCE GRANT.

- (a) In consideration of the Company’s construction of the Capital Improvements according to this Agreement, the TEDC agrees to provide a Performance Grant to the Company for a portion of the actual costs of the Capital Improvements, including the costs of land acquisition, construction, and infrastructure, in an amount not to exceed Forty-Eight Thousand Eight Hundred Dollars (\$48,800.00) with such Performance Grant being distributed according to the schedule included in the attached “Exhibit B”.
- (b) The TEDC’s distribution of the Performance Grant payment to the Company shall be conditioned upon the Company’s providing the TEDC with: (i) certification of the total costs of construction of the Capital Improvements; (ii) a copy of any and all permits required by the City for the Capital Improvements; (iii) certification that the Capital Improvements have been constructed in accordance with the approved plans and specifications and with the City’s Code of Ordinances; (iv) an affidavit stating that all vendors, contractors, and subcontractors providing work or materials in the construction of the Capital Improvements have been paid and any and all liens and claims regarding such work have been released; and, (v) proof of payment to all vendors, contractors, and subcontractors providing work or materials in the construction of the Capital Improvements, including copies of canceled checks or credit card receipts and copies of paid invoices from all vendors, contractors, and subcontractors.
- (c) To the extent allowed by law, the Board may amend this Agreement to allow for an additional provision of land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements to the Company that would promote new or expanded business development.
- (d) The Parties understand and acknowledge that the funding of this Agreement is contained in the TEDC’s annual budget and is subject to the approval of the Board in each fiscal year. The Parties further agree that should the Board fail to approve a budget which includes sufficient funds for the continuance of this Agreement, or should the Board fail to certify funds for any reason, then and upon the occurrence of such event, this Agreement shall terminate as to the TEDC and the TEDC shall then have no further obligation to the other Party. When the funds budgeted or certified during any fiscal year by the TEDC to discharge its obligations under this Agreement are expended, the Company’s sole and exclusive remedy shall be to terminate this Agreement.

SECTION 5. TERMINATION.

- (a) This Agreement shall terminate upon the expiration of the Term, unless terminated earlier as the result

of a default by the Company under one of the following provisions:

(1) *General Default.* Either Party may terminate this Agreement during the Term as provided in this paragraph if the other Party is in default by failing to comply with the obligations of this Agreement. The Party alleging the default will give the other Party notice of the default in writing. If the Party in default fails to cure the default within sixty (60) days of the date of the notice, then the Party giving the notice may terminate this Agreement by written notice to the other Party, specifying the date of termination. However, neither Party may be deemed to be in default of this Agreement if performance of this Agreement is delayed, disrupted, or becomes impossible because of any act of God, war, earthquake, fire, strike, accident, civil commotion, epidemic, act of government, its agencies or offices, or any other cause beyond the control of the Parties (the “force majeure”) during the Term, but only for so long as the event of force majeure reasonable prevents performance.

(2) *Undocumented Worker Employment Default.* According to Chapter 2264 of the Texas Government Code (the “Code”), the Company will not knowingly employ an individual who, at the time of employment: (i) is an undocumented workers as that term is defined in the Code; and, (ii) is not lawfully admitted for permanent residence to the United States or, is not authorized under the law to be employed in that manner in the United States. Additionally, if the Company is convicted of a violation under 8 U.S.C. Section 1324a (f), then the conviction is a breach of this Agreement and the TEDC will send the Company written notice that the Company has violated this paragraph and that the Agreement terminates thirty (30) days from the date of the notice.

(b) It is understood and agreed by the parties that, in the event of a default by the TEDC on any of its obligations under this Agreement, the Company’s sole and exclusive remedy shall be limited to either the termination of this Agreement, or a suit for specific performance.

SECTION 6. REIMBURSEMENT OF PERFORMANCE GRANT.

(a) It is understood and agreed by the Parties that, in the event of a default by the Company on any of its obligations under this Agreement, the Company shall reimburse the TEDC the full amount paid to the Company by the TEDC, with interest at the rate equal to the ninety (90) day Treasury Bill plus one-half percent (½ %) per annum, within one hundred twenty (120) days after the TEDC notifies the Company of the default.

(b) It is further understood and agreed by the parties that if the Company, or any owner or lessee of the Improvements, is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company will reimburse the TEDC the full amount paid to the Company, with interest at the rate equal to the ninety (90) day Treasury Bill plus one-half percent (½ %) per annum, within one hundred twenty (120) days after the TEDC notifies the Company of the violation.

(c) The Company shall also reimburse the TEDC for any and all reasonable attorney’s fees and costs incurred by the TEDC as a result of any action required to obtain reimbursement of the funds contemplated in this Section. Such reimbursement shall be due and payable thirty (30) days after the Company receives written notice of default.

(d) If the Company breaches this Agreement, then the Company’s obligation to reimburse the Performance Grant, or any other expenditure of the TEDC related to the Project, survives termination of this Agreement.

SECTION 7. MISCELLANEOUS PROVISIONS.

(a) This Agreement shall inure to the benefit of and be binding upon the TEDC and the Company, and upon the Company's successors, assigns, lessees, affiliates, and subsidiaries, and shall remain in force whether the Company sells, leases, assigns, or in any other manner disposes of, either voluntarily or by

operation of law, all or any part of the Capital Improvements, and this Agreement shall be held to be a covenant running with the Property throughout the Term.

- (b) This Agreement shall be performable and enforceable in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas.
- (c) The failure of either Party to insist in any one or more instances on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance. However, the TEDC hereby reserves and retains any and all governmental immunities that it might now have or be granted in the future.
- (d) Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment, or modification only in writing, and by the signatures and mutual consent of the Parties.
- (e) In the event any one or more words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement, or the application thereof to any person, firm, corporation, or circumstance, shall be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, then the application, invalidity, or unconstitutionality of such words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement shall be deemed to be independent of and severable from the remainder of this Agreement, and the validity of the remaining parts of this Agreement shall not be affected thereby.
- (f) Any notice provided or permitted to be given under this Agreement must be in writing and may be served by: (i) depositing the same in the United States mail, addressed to the Party to be notified, postage prepaid, registered, or certified mail, return receipt requested; (ii) delivering the same in person to such Party; (iii) overnight or messenger delivery service that retains regular records of delivery and receipt; or, (iv) facsimile; provided a copy of such notice is sent within one (1) day thereafter by another method provided above. The initial addresses of the Parties for the purpose of notice under this Agreement shall be as follows:

If to the TEDC:

**Tomball Economic Development Corporation
29201 Quinn Road, Suite B
Tomball, Texas 77375
Attn: President, Board of Directors**

If to the Company:

**The Hutson Group
9431 Rosie Lane
Magnolia, TX 77354
Attn: Teresa Latsis**

- (g) This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any Party without first obtaining written consent of the other Party.

SIGNATURES

THIS AGREEMENT IS HEREBY ENTERED INTO BY THE PARTIES ON _____ 2021.

FOR THE TEDC:

FOR THE COMPANY:

GRETCHEN FAGAN, PRESIDENT

Name [Signature]

Date

Name [Printed]

Title/Position

Date

DRAFT

Exhibit A: Description of the Project

- Phase 1:** Sidewalk, Parking and Street Improvements along 150 feet of the south side of Houston Street and 100 feet of the west side of North Elm Street (200 Block).
Estimated Cost: \$31,250
- Phase 2:** Sidewalk, Parking and Street Improvements along 150 feet of the south side of Houston Street. **Estimated Cost: \$18,750**
- Phase 3:** Sidewalk, Parking and Street Improvements along 300 feet of the north side of Houston Street and 100 feet of the west side of North Elm Street (300 Block).
Estimated Cost: \$47,600

DRAFT

Exhibit B: Performance Grant Description and Payment Schedule

TEDC agrees to reimburse the Company 50% of the cost of the Capital Improvements up to a total amount of \$48,800.00. Upon completion of each Phase of the Project, the Company may request funding in accordance with Section 4 of this Agreement.

The Payment Schedule shall be set as follows:

- Phase 1: Estimated Cost: \$31,250**
TEDC Reimbursement: Up to \$15,625

- Phase 2: Estimated Cost: \$18,750**
TEDC Reimbursement: Up to \$9,375

- Phase 3: Estimated Cost: \$47,600**
TEDC Reimbursement: Up to \$23,800

DRAFT