

**PERFORMANCE AGREEMENT
BETWEEN
WYLIE ECONOMIC DEVELOPMENT CORPORATION
AND
FIREWATER INVESTMENTS, LLC**

This **PERFORMANCE AGREEMENT** (the "Agreement") is entered into by and between the **WYLIE ECONOMIC DEVELOPMENT CORPORATION**, a Texas corporation ("WEDC") and **FIREWATER INVESTMENTS, LLC**, a Texas limited liability company ("Company").

RECITALS:

WHEREAS, FWIRE, LLC owns a tract of land containing 2.041 acres, more or less, known as Lot 2A, Block 2 of a Replat of Lot 2 and Lot 3 in Block 2 of a Replat or Oaks Retail Addition, an addition to the City of Wylie, Collin County, Texas, as more particularly described on Exhibit A attached hereto and incorporated herein for all purposes (the "Property") which includes;

WHEREAS, Company has entered into an agreement with FWIRE, LLC to allow Company to occupy the Property for its corporate headquarters and business operations, including, but not limited to, operating a distillery; and ;

WHEREAS, the Company is desirous of making real and personal property improvements to an existing 6,000 square foot building located on the Property (the "Facility") and adding at least ten (10) new Full-Time Employees at the Facility (the "Project"). The Project will have an estimated construction cost of at least One Million Five Hundred Thousand Dollars (\$1,500,000.00); and

WHEREAS, Company has requested financial and/or economic assistance from the WEDC to plan and construct certain infrastructure improvements to assist in the development of the Facility, consisting of economic assistance for all hard and soft costs relating to the construction of public infrastructure and site improvements on or adjacent to the Property; and

WHEREAS, Section 501.103 of the Act states that the WEDC may provide funding for 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 streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements (the "Qualified Infrastructure"); and

WHEREAS, Company proposes to use the economic incentives for the construction of the Qualified Infrastructure which will include approved public infrastructure improvements and site improvements as may be amended from time to time, necessary for the development of the Property; and

WHEREAS, the WEDC has found that the Qualified Infrastructure is necessary to promote or develop new or expanded business enterprises in the City and the WEDC has concluded that the Qualified Infrastructure constitutes a "project", as that term is defined in the Act, and is willing to provide Company with economic assistance as hereinafter set forth on the terms and subject to the

conditions as stated herein and Company is willing to accept the same subject to all terms and conditions contained in this Agreement; and

WHEREAS, the completion of the Project in the City of Wylie, Texas will ultimately create “primary jobs”, as that term is defined in the Act; and

WHEREAS, the WEDC has determined that it is in the best interest of the public and the City and promotes the purposes authorized by the voters of the City of Wylie for which the WEDC was established to encourage the development and use of business properties within the City; and

WHEREAS, for the public purpose of promoting economic development and diversity, increasing employment, reducing unemployment and underemployment, expanding commerce and stimulating business and commercial activities in the State of Texas, and the City of Wylie, the WEDC desires to offer economic assistance to Company as more particularly described in this Agreement.

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the WEDC and Company agree as follows:

1. Economic Assistance. Subject to the terms of this Agreement and provided Company is not in default, the WEDC will provide Company economic assistance in the form of performance incentives in an amount not to exceed \$300,000.00 in the aggregate (collectively, the “Economic Assistance”) upon completion of the Performance Obligations set forth below. The total amount of economic assistance and/or incentives to be paid to the Company shall not exceed the cumulative sum of Three Hundred Thousand Dollars (\$300,000.00).

2. Performance Obligations. The WEDC’s obligation to provide Company with the Economic Assistance stipulated above is expressly contingent upon Company completing the following items (the “Performance Obligations”) by the due dates set forth below:

(a) Year One. Economic Assistance will be provided to the Company in the form of payment of a qualified infrastructure incentive in an amount not to exceed Two Hundred Thousand Dollars (\$200,000.00) upon completion of the following Performance Obligations for Year One;

i. Company shall supply documentation to the WEDC proving completion of the 6,000 square foot Facility remodel, as evidenced by a Certificate of Occupancy or letter from the City’s Chief Building Official (a “Certificate of Occupancy”) for the Facility no later than December 31, 2023 (the “CO Deadline”); The issuance date of the Certificate of Occupancy for the Facility will become the “Facility Completion Date”; and

ii. Company shall supply documentation to the WEDC supporting a minimum Project Cost of One Million Five Hundred Thousand Dollars (\$1,500,000.00) as evidenced by paid invoices, no later than the CO Deadline; and

iii. Company shall supply documentation to the WEDC that the Qualified Infrastructure for the Facility has been completed and that the total cost of constructing the Qualified Infrastructure for the Facility was at least Three Hundred Thousand Dollars (\$300,000.00) no later than the CO Deadline; and

iv. Company shall be current on all ad valorem taxes and other property taxes due on the Property through the CO Deadline and provide written notice and evidence of such payment to WEDC in a form satisfactory to WEDC; and

v. Company shall supply documentation to the WEDC on or before the CO Deadline that Company has updated its address in all of its corporate documentation and on its website to be the address of the Facility, as well as updating its address on all relevant platforms, systems, and databases, including, but not limited to, those maintained by the Texas Secretary of State, the Texas Comptroller of Public Accounts, and the Collin Central Appraisal District, in order to ensure that all sales tax associated with or attributed to the Company or its operations is reportable to the City of Wylie and that the City of Wylie receives all sales tax for which it should be entitled based on the Company's headquarters and operations being located at the Facility; and

vi. Company shall supply documentation to the WEDC on or before the CO Deadline that Company has paid on time all fees associated with construction or remodel of the Facility including, but not limited to, Building Permit Fee, Plumbing, Mechanical, and Electrical Permit Fees, Fire Inspection Fee, Fire Department Plan Review Fee, Fire Development Fee, Thoroughfare Impact Fee, Water & Sewer Impact Fees, third party review of Fire Sprinkle and Fire Alarm plans, and all other inspection fees not specifically named that may be applicable to the remodel of the Facility; and

vii. Company shall supply documentation to the WEDC verifying that Company has added and maintained not less than ten (10) Full-Time Employees at the Facility as of the Facility Company Date, approval of said documentation at the sole and absolute discretion of the WEDC.

(b) Year Two. Economic Assistance will be provided to the Company in the form of payment of a qualified infrastructure incentive in an amount not to exceed One Hundred Thousand Dollars (\$100,000.00) upon completion of the following Performance Obligations for Year Two;

i. Company shall have complied with all Performance Obligations for Year One; and

ii. Company shall be current on all ad valorem taxes and other property taxes due on the Property and provide written notice and evidence of such payment to WEDC in a form satisfactory to WEDC; and

iii. Company shall provide to WEDC documentation acceptable to WEDC providing that Company has maintained continuous occupancy at the Property and the Facility from the Facility Completion Date through the first (1st) anniversary of the Facility Completion Date; and

iv. Company shall supply documentation to the WEDC verifying that Company has maintained not less than twelve (12) Full-Time Employees at the Facility from the Facility Company Date through the first (1st) anniversary of the Facility Completion Date, approval of said documentation at the sole and absolute discretion of the WEDC.

3. Term of the Economic Assistance. Notwithstanding anything to the contrary herein contained, this Agreement shall be null and void if the Company fails to satisfy the Performance Obligations to qualify for Economic Assistance described in paragraph 2 above (as further defined in paragraph 5), or in the event of the following (collectively a “Default”):

(a) Any event of bankruptcy incurred by Company.

(b) The non-payment of property taxes prior to the delinquency date imposed by the City of Wylie, Wylie Independent School District, Collin County Community College, and Collin County in a timely manner.

4. Payment of Economic Assistance. Subject to the terms and conditions of this Agreement, the Economic Assistance shall be paid by WEDC to the Company within thirty (30) days after the applicable deadline for satisfaction of the Performance Obligations.

5. Event of Default by Company. In the event of a Default by Company, WEDC may declare Company in Default of the Agreement in which event WEDC must provide Company with written notice of the particular Default. Company shall have thirty (30) days from the written notice to cure the said Default. In the event, Company fails to cure the Default within such thirty (30) days, the Agreement shall become null and void with all future economic incentive payments suspended.

6. Miscellaneous.

(a) This Agreement may not be assigned by Company without the prior written consent of the WEDC, which consent shall be within the sole discretion of the WEDC.

(b) This Agreement contains the entire Agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by mutual written agreement of the parties hereto.

(c) The Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

(d) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(e) The individuals executing this Agreement on behalf of the respective parties below represent to each other and to the others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which such signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing such signature hereto is authorized to do so, and such authorization is valid and effective on the date thereof.

(f) This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

(g) Any notice provided for under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested. Notice to the WEDC shall be sufficient if made or addressed to the President, Wylie Economic Development Corporation, 250 State Highway 78 South, Wylie, Texas 75098. Notice to Company shall be sufficient if made or addressed to _____, until the issuance of the CO and thereafter to the address assigned to the Property. Each party may change the address to which notice may be sent to that party by giving notice of such change to the other parties in accordance with the provisions of this Agreement.

(h) This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

(i) In case any one or more of the provisions contained in this Agreement shall for any reason be held to be valid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(j) Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

(k) Time is of the essence in the Agreement.

(l) The parties agree this Agreement has been drafted jointly by the parties and their legal representatives.

(m) Under Chapter 2264 of the Texas Local Government Code, the Company has submitted the required certification that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker. An undocumented worker means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under the law to be

employed in that manner in the United States. If after receiving this public subsidy/grant from the FEDC, the Company, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company shall repay the amount of the public subsidy/grant from the FEDC with interest, at the rate and according to the terms provided by this Agreement under Section 2264.053, but not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the Company of the violation.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below (the "Effective Date").


Wylie Economic Development Corporation, a Texas corporation

By: 

Jason Greiner, Executive Director

Date of Execution: 7/25/23

Firewater Investments, LLC, a Texas Limited Liability Company

By: 

Ryan Hamar, Ryan Hamar

Date of Execution: Jul 26, 2023

EXHIBIT A
The Property

Lot 2A, Block 2, of Replat of Lot 2 and Lot 3 in Block 2 of a Replat of Oaks Retail, an addition to the City of Wylie, Collin County, Texas, according to the plat thereof recorded in Cabinet G, Page 285, Plat Records, Collin County, Texas.

EXHIBIT A (Continued) The Property

