

PERFORMANCE AGREEMENT
Between
Wylie Economic Development Corporation
And
Fuel City Wylie, LLC

This Performance Agreement (the "Agreement") is made and entered into by and between the **Wylie Economic Development Corporation** ("WEDC"), a Texas corporation organized and existing under Chapter 501 of the Texas Local Government Code, known as the Development Corporation Act, as amended from time to time (the "Act") and **Fuel City Wylie, LLC**, a Texas limited liability company ("Company").

RECITALS

WHEREAS, Company has entered into a contract to acquire 7.79 acres of land, more or less, within the corporate limits of the City of Wylie, Texas (the "City"), being Lots 1 and 2, Block A, Woodlake Village, an addition to the City of Wylie, Collin County, Texas, which property is more fully described on the attached **Exhibit "A"** and depicted on the attached **Exhibit "A-1"** (the "Property");

WHEREAS, the Company plans to construct a travel center on the Property consisting of a convenience store with fuel pumps and dining containing approximately 9,340 square feet of space, a covered outdoor dining area covering approximately 770 square feet of space, and a car wash containing approximately 6,214 square feet of space (collectively, the "Facilities"), all as shown on the site plan attached hereto as **Exhibit "B"** (the "Site Plan");

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 Property, 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;

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 incentive 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 which will benefit the surrounding properties, as generally described and/or depicted in the attached **Exhibit "C"**, including, but not limited to, (i) the deceleration lanes labeled on the Site Plan as Decel 2 Lane and Decel 3 Lane (the "Deceleration Lanes"), (ii) all public improvements, fire lanes, and access drives connection Lot 1 and Lot 2 of the Property (the "Lot 1 and Lot 2 Improvements"), and an underground stormwater catchment system (the "Stormwater Catchment System"); 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 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 commercial properties within the City; and

WHEREAS, the WEDC is willing to provide the Company with economic assistance 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.

NOW, THEREFORE, for and in consideration of the above recitals and the terms, conditions and requirements hereinafter set forth, the parties hereto 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 a performance reimbursement incentive (the "Reimbursement Incentive") upon completion of the Performance Criteria set forth below. The total amount of economic assistance and/or incentives to be paid to the Company, including the Reimbursement Incentive, shall not exceed the cumulative sum of Five Hundred Thousand Dollars (\$500,000.00).

2. Performance Obligations. The WEDC's obligation to pay Company the Reimbursement Incentive stipulated above is expressly contingent upon Company completing the following items (the "Performance Criteria") by the due dates set forth below:

A. Company shall supply documentation to WEDC that Company has purchased and taken title to the Property on or before March 1, 2022;

B. The Facilities shall be constructed (as evidenced by one or more Certificates of Occupancy) no later than March 31, 2023 (the "Performance Deadline"), provided, however, that Company shall have the right to extend the Performance Deadline one (1) time for a period of ninety (90) additional days by providing written notice thereof to WEDC prior to the Performance Deadline;

C. Company shall supply documentation to the WEDC that the Qualified Infrastructure has been completed and accepted by the City and that the cost of constructing the Qualified Infrastructure was at least Five Hundred Thousand Dollars (\$500,000.00) no later than the Performance Deadline;

D. Company shall supply documentation to the WEDC prior to the Performance Deadline that the Development Fees have been paid, as evidenced by a paid ‘Permit Fee Receipt’ from the City of Wylie, and such approval of said documentation will be at the sole and absolute discretion of the WEDC;

E. Company shall supply documentation to the WEDC that the Deceleration Lanes have been completed and accepted by the City no later than the Performance Deadline;

F. Company shall supply documentation to the WEDC that the Lot 1 and Lot 2 Improvements have been completed and accepted by the City no later than the Performance Deadline;

G. Company shall supply documentation to the WEDC that the Stormwater Catchment System has been completed and accepted by the City no later than the Performance Deadline; and

H. Company is current on all ad valorem taxes and other property taxes due on the Property and the Facilities through the Performance Deadline and provide written notice and evidence thereof to WEDC in a form satisfactory to WEDC.

3. WEDC Payment of Reimbursement Incentive. Subject to the terms and conditions of this Agreement, the Reimbursement Incentive shall be paid by WEDC to the Company within thirty (30) days after the Performance Deadline.

4. Default. The WEDC's obligation to pay any portion of the Reimbursement Incentive to Company will terminate or be reduced if Company defaults by not completing the Performance Criteria applicable to the Reimbursement Incentive as set forth in Section 2 of this Agreement. In the event Company fails to meet any of the Performance Criteria for the Reimbursement Incentive, the Reimbursement Incentive shall not be paid to the Company and WEDC shall have the right, but not the obligation, in WEDC's sole discretion, to terminate this Agreement.

5. Termination of Agreement. This Agreement may be terminated by mutual written consent of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth in this Agreement, or as otherwise provided in this Agreement.

6. Economic Assistance Termination. Notwithstanding the terms of this Agreement, to the extent this Agreement is not earlier terminated, the WEDC's obligation to pay a portion or all of the Reimbursement Incentive to Company will expire upon the earlier of (i) the full payment of the Reimbursement Incentive, or (ii) July 1, 2023.

7. Miscellaneous.

a. This Agreement shall be construed according to the laws of the State of Texas and is subject to all provisions of the Act, which are incorporated herein by reference for all purposes. In the event any provision of the Agreement is in conflict with the Act, the Act shall prevail.

b. This Agreement shall be governed by the laws of the State of Texas and is specifically performable in Collin County, Texas.

c. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. This Agreement shall not be assignable by Company without the prior written consent of the WEDC, which consent will be at the sole and absolute discretion of the WEDC.

d. Any notice required or permitted to be given under this Agreement shall be deemed delivered by hand delivery or depositing the 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 other address as any party hereto might specify in writing:

WEDC: Mr. Jason Greiner
Executive Director
Wylie Economic Development Corporation
250 South Highway 78
Wylie, TX 75098

with copy to: Abernathy, Roeder, Boyd & Hullett, P.C.
Attention: G. Randal Hullett
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000

COMPANY: Fuel City Wylie, LLC
Attention: Joseph Bickham
801 S. Riverfront Blvd.
Dallas, Texas 75207

e. This Agreement contains the entire agreement of the parties regarding the within subject matter and may only be amended or revoked by the written agreement executed by all the parties hereto.

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

g. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, 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.

h. 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.

i. Time is of the essence in this Agreement.

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

By the execution hereof, each signatory hereto represents and affirms that he is acting on behalf of the party indicated, that such party has taken all action necessary to authorize the execution and delivery of the Agreement and that the same is a binding obligation on such party.

[SIGNATURE PAGE FOLLOWS]

WEDC Board approved this _____ day of _____, 2022 (the “Effective Date”).

WEDC:

WYLIE ECONOMIC DEVELOPMENT
CORPORATION, a Texas Corporation

By: _____
Jason Greiner, Executive Director

COMPANY:

Fuel City Wylie, LLC, a Texas limited liability
company

By: _____
Name: _____
Title: _____

Exhibits:

Exhibit “A” - Legal Description of the Property

Exhibit “B” - The Site Plan

Exhibit “C” - The Qualified Infrastructure

EXHIBIT "A"

Legal Description of the Property

West Tract (Lots 1 & 2)

BEING a 7.79 acre tract of land out of the FRANCISCO DE LA PENA SURVEY, ABSTRACT NUMBER 688, situated in the City of Wylie, Collin County, Texas, being a portion of Lot 1, Block A, Woodlake Village, a subdivision of record in Cabinet G, Page 385 of the Map Records Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING, at a 1/2-inch iron rod with yellow cap stamped "HALFF" found at the North end of a cutback line at the intersection of the East right-of-way line of Eubanks Lane (a 65-foot right-of-way), and the North right-of-way line of State Highway No. 78 (right-of-way varies), being the Northwest corner of a called 5,724 square feet of land conveyed to the State of Texas by deed of record in Volume 5266, Page 5809 of the Deed Records of Collin County, Texas, also being in the West line of said Lot 1, Block A, Woodlake Village, for the most Westerly Southwest corner hereof;

THENCE, N00°30'15"E, along the East line of Eubanks Lane, being the common West Line of said Lot 1, Block A, Woodlake Village, a distance of 294.82 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" set at the intersection of the East right-of-way line of Eubanks Lane and the South right-of-way line of Centennial Drive (a 60-foot right-of-way), being the Northwest corner of said Lot 1, Block A, Woodlake Village and hereof;

THENCE, departing the East right-of-way line of Eubanks Lane, along the South right-of-way line of Centennial Drive, being the common North line of said Lot 1, Block A, Woodlake Village, the following two (2) courses and distances:

1. N67°08'13"E, a distance of 774.73 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" set at the point of curvature of a tangent curve to the right;
2. Along said tangent curve to the right, having a radius of 1970.00 feet, a chord bearing of N67°23'09"E, a chord length of 17.13 feet, a delta angle of 00°29'54", an arc length of 17.13 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" set at the end of said curve, for the Northeast corner hereof;

THENCE, S00°53'13"W, departing the South right-of-way line of Centennial Drive, over and across said Lot 1, Block A, Woodlake Village, a distance of 628.18 feet to a 1/2-inch iron rod with green plastic cap stamped "EAGLE SURVEYING" set in the North right-of-way line of State Highway No. 78, being the North line of said 5,724 square foot tract, for the Southeast corner hereof;

THENCE, along the North right-of-way line of State Highway No. 78, being the North line of said 5,724 square foot tract, the following four (4) courses and distances:

1. N89°03'48"W, a distance of 587.92 feet to an aluminum Texas Department of Transportation monument found;

2. N89°43'22"W, a distance of 67.45 feet to an aluminum Texas Department of Transportation monument found;
3. S89°07'47"W, a distance of 49.89 feet to an aluminum Texas Department of Transportation monument found;
4. N46°25'26"W, a distance of 23.98 feet to the **POINT OF BEGINNING**, and containing an area of 7.79 Acres, (339,256 Square Feet) of land, more or less.

EXHIBIT “C”

The Qualified Infrastructure

[SEE ATTACHED]