

## ECONOMIC DEVELOPMENT AGREEMENT

THIS CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT ("*Agreement*") is entered into as of this 26th day of March, 2019 (the "*Effective Date*") by and between the **CITY OF KYLE, TEXAS**, a home rule city of the State of Texas ("*City*") and **ENF (KYLE) TECHNOLOGY, LLC.**, a Delaware limited liability company ("*Employer*"). Collectively, the City and Employer may be referred to as "Parties" and individually as a "Party," acting by and through their respective authorized officers.

### RECITALS

**A. WHEREAS**, the Employer owns that certain 24-acre tract of land ("*Property*") located within the corporate limits of the City, as further described in "Exhibit A," attached and incorporated herein, at the address commonly known as 1550 Kohler's Crossing, Kyle, Texas; and

**B. WHEREAS**, the Property is currently undeveloped, and the Employer wishes to develop the Property by designing and constructing infrastructure improvements within and outside the boundaries of the Property necessary to prepare the Property for light industrial, employment, and other commercial uses stated in this Agreement, proposed to be operated as business commonly known as the ENF (KYLE) TECHNOLOGY, LLC.; and

**C. WHEREAS**, as part of the Project (as further defined in Section 1.02(e)), the Employer shall invest on the Property, a manufacturing plant approximately 125,000 square feet for a precision semiconductor processing application in order to supply better quality and lower total cost materials to semiconductor customers in the United States and in general provide numerous benefits to the fast-growing electronics market; and

**D. WHEREAS**, the Project will require construction of common public infrastructure that is required by the City-approved construction plans and permits, applicable City ordinances, codes, and regulations, and applicable local, state, and federal law, which provide enhanced mobility to the citizens of the greater Kyle area, and provide utilities and drainage infrastructure for the Property and the Project; and

**E. WHEREAS**, the Employer is willing to construct and pay for the Project, including the public works and improvements necessary to serve the Project, in exchange for the Incentive Payment (defined herein) paid in accordance with the terms and conditions of this Agreement; and

**F. WHEREAS**, the City has the authority pursuant to Chapter 380, Texas Local Government Code, to enter this Agreement and this Agreement sets up a structured arrangement wherein annual economic development incentive payments in the form of property tax rebates will be made to Employer exclusively from property tax revenues collected by City from the property tax revenue

created by Employer on the Property and received by the City, subject to the terms and conditions of this Agreement; and

**G. WHEREAS**, the City hereby establishes a program pursuant to Chapter 380, Texas Local Government Code, to provide for the economic incentive provided to Employer under the terms and conditions of this Agreement;

**H. WHEREAS**, the City hereby finds that this Agreement will promote local economic development and stimulate business and commercial activity in the City.

**NOW, THEREFORE**, for and in consideration of the terms, conditions and covenants set forth herein, the parties agree as follows:

**ARTICLE I**  
**RECITALS; DEFINITIONS**

**Section 1.01. Recitals\_Incorporated.** The representations, covenants and recitations set forth in the recitals to this Agreement are material to this Agreement and are hereby found and agreed to be true and correct, and are incorporated into and made a part of this Agreement for all purposes.

**Section 1.02. Definitions.**

- a) “City” means the City of Kyle, a home rule municipal corporation of the State of Texas.
- b) “Employer” shall mean ENF (KYLE) TECHNOLOGY, LLC, a Delaware limited liability company.
- c) “Property” means the real property described on Exhibit “A” attached hereto.
- d) Full-time Equivalent Employees” or “FTE” shall mean the employees employed on site at the Property by the Employer working at least a thirty-hour work-week for the average base salary established herein as \$ 55,000 annually.
- e) “Project” means the multi-phased development of industrial and non-residential improvements, including a manufacturing plant approximately 125,000 square feet in size for a precision semiconductor processing application, and supporting improvements and infrastructure described in paragraphs B, C, and of the Recitals section above, Section 2.01, and Section 4.01, and as generally shown on the site plan attached hereto as Exhibit B, which is incorporated herein for all purposes, to be located on the Property.
- f) “On site” means on the Property and at the Project.
- g) “Year” shall mean a twelve-month period of time beginning on January 1 and

ending December 31.

- h) “Certificate of Occupancy” shall mean the final document or documents issued by the City of Kyle, Texas entitled “Certificate of Occupancy” indicating that all building codes, regulations, and ordinances have been officially unconditionally, completely complied, within in all respects, with respect to construction and completion of the Project, and specifically shall not include any temporary or conditional document authorizing temporary or conditional occupancy.
- i) “Code” shall mean the City of Kyle Code of Ordinances.
- j) “Finance Department” means the Finance Department of the City of Kyle.
- k) “Comply”, “compliance”, and “in accordance with” means timely, full, and complete performance of each requirement, obligation, duty, condition, or warranty as stated in this Agreement. “Comply”, “compliance”, and “in accordance with” mean complete compliance in all material respects and do not mean substantial compliance, unless otherwise specifically stated.
- l) “Default” and “Act of Default” means failure in some material respect to comply timely, fully and completely with one or more requirements, obligations, duties, terms, conditions or warranties set forth in this Agreement, including but not limited to:
  - (i) The Employer terminates the use of the Property for the Project at any time during the duration of this Agreement.
  - (ii) The Employer fails to meet the performance criteria as specified in Article IV below, except for the minimum hiring requirement provided in Section 4.01 (b).
  - (iii) The Employer falsely certify that it has met the performance criteria for a particular tax year in its annual certification and reports submitted to the City under this Agreement.
- m) “Incentive Payment” and “Incentive Payments” mean the economic development incentive payments as described hereafter in Section 3.01 of this Agreement. Incentive Payments will be made to Employer within 90-days of Employer making its property tax payment for the Property, subject to compliance with this Agreement. The effective date for the start of the 5-year Incentive Payment shall begin with the year after the year in which the Employer receives a Certificate of Occupancy.
- n) “Construct” and “construction” mean construction in a good and workmanlike manner and in compliance with City-approved construction plans and/or permits, applicable federal, State and local laws, codes and regulations or valid waivers thereof or variances thereunder, and good engineering practices.

- o) “Property Tax” or “Property Taxes” shall mean the ad valorem taxes collected and received by the City on the taxable value of the Property as determined by the Hays County Appraisal District and the buildings, structures, and other fixtures that are erected or affixed to the Property that are included in the definition of real property set forth in Section 1.04(2), Texas Tax Code. The term “Property Tax” or “Property Taxes” shall not include tangible personal property, equipment or fixtures located on the Property that are not included in the definition of real property set forth in Section 1.04(2), Texas Tax Code.

## **ARTICLE II** **IMPROVEMENTS**

**Section 2.01. Construction of Improvements.** Employer agrees to design and construct and install the Project, including all necessary public and private improvements, infrastructure and facilities needed to support the development, use and occupancy of the Project in compliance with City-approved construction plans and permits, applicable City ordinances (including ordinances the Plum Creek Planned Unit Development), codes and regulations, applicable local, state, and federal regulations, and good engineering practices. The Project may be constructed in phases, at the sole discretion of Employer, provided that the Project shall be completed by the deadline set forth in Section 4.01. The plans and specifications for the Improvements shall be subject to the review and approval of all governmental entities with jurisdiction.

**Section 2.02. Funding of Improvements.** Employer shall pay all Project costs.

## **ARTICLE III** **ECONOMIC INCENTIVES AND CERTIFICATION OF COMPLIANCE**

**Section 3.01 Economic Development Incentive.**

- (a) Employer will receive a 5-year rebate of City of Kyle Property Taxes that will extinguish proportionally, subject to compliance with the terms and conditions of this Agreement, including but not limited Article IV. Incentive Payments will begin the year following the year in which the Employer completes and receives a Certificate of Occupancy for the Project.

The annual City of Kyle Incentive Payment shall be calculated as follows:

Year 1: 75% of Property Taxes  
Year 2: 65% of Property Taxes  
Year 3: 55% of Property Taxes  
Year 4: 45% of Property Taxes  
Year 5: 35% of Property Taxes

- (b) The Incentive Payment shall be reduced by 10% each year for a total of 5 years.
- (c) Freeport Tax Exemption. City, Hays County and Hays CISD participate in Freeport Exemption from ad valorem tax on business inventories destined for out-of-state shipment within 175 days.

- (d) State Programs. City staff will aid and provide guidance to facilitate applications and help Employer access various state and/or federal programs including, but not limited to, the Texas Enterprise Program, Sales and Use Tax Benefits, Employee Training Resources, the Skills Development Fund and the Self-Sufficiency Fund.

**Section 3.02 Certification of Compliance.**

- (a) For each year in which the Employer is eligible for an Incentive Payment, at the time that the Employer pays its Property Taxes, the Employer shall submit to City the reports and records reasonably necessary to demonstrate fulfillment of the performance criteria set forth in Article IV, along with a certificate in the form provided by the City verifying compliance with this Agreement. Such reports and records shall include at a minimum the following:

- (i) A certified payroll list containing the information required by Texas Workforce Commission Rule 815.106 submitted by January 31 of each year which includes a list of all Full-time Equivalent Employees (not independent contractors) employed by the Employer at the Property during the prior calendar year. The annual employment report must include the following information and must also include a certification (as attached):

- a. Name of Reporting Entity
    - b. Reporting Period
    - c. Legal Name of Each Employee.
    - d. Position Title of Each Employee.
    - e. Average Number of Hours Worked Per Week by Each Employee During the Reporting Period.
    - f. Actual Taxable Compensation Paid to Each Employee During the Reporting Period (amount that will be reported in Box 1 of IRS Form W-2 Wage & Tax Statement).

- (ii) Proof of payment of the Real Property Taxes for the Property;

- (b) The City may request additional records to support the information to confirm compliance with this Agreement.

**Section 3.03 Audit.** The City shall, upon reasonable prior written notice to the Employer and during normal business hours, have the right to audit and inspect the Employer's records, books, and all other relevant records related to Incentive Payments. The Parties agree to maintain the appropriate confidentiality of such records, unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, State Law (including but not limited to the Texas Public Information Act, Chapter 552, Texas Government Code), municipal ordinance, or at the direction of the Office of the Texas Attorney General.

**ARTICLE IV**  
**PERFORMANCE CRITERIA**

**Section 4.01 Performance Criteria.** (a) To begin receiving the Incentive Payment, the Employer shall complete the Project in accordance with this Agreement and obtain a final Certificate of Occupancy. The Employer shall complete the Project in accordance with this Agreement and obtain a Certificate of Occupancy within twenty-four (24) months of the Effective Date of this Agreement. The City Manager may grant one or more extensions to the deadline to obtain a Certificate of Occupancy, provided that the Employer requests the extension at least 60 days before the then-current deadline and provided further that the City Manager may not grant one or more extensions that in total exceed six months. Extensions that exceed six months, in total, past the original deadline for obtaining the Certificate of Occupancy must be approved by the City Council. In the event that the Employer fails to obtain a Certificate of Occupancy by the deadline established in this subsection, including duly approved extensions, then this Agreement shall terminate.

(b) The Employer shall employ no less than the number of Full-Time Equivalent Employees as designated in the chart below:

Year	Existing Jobs on Site	New Jobs	Total
1	1	3	4
2	4	6	10
3	10	10	20
4	20	12	32
<u>5</u>	32	13	<u>45</u>

(c) Employer may not be delinquent in the payment of ad valorem taxes or business personal property taxes to the City.

(d) Employer shall comply with Article II.

(e) After the first Economic Incentive Payment, compliance with Sections 4.01(b), (c) and (d) shall be a condition of receiving an annual Incentive Payment; provided that in the event that the Employer does not meet the minimum employment requirements for a particular tax year in which a minimum employment requirement is in effect for the Property, the City shall nonetheless pay the Company a pro rata share of the Incentive Payment based on the actual number of FTE's employed that meet the salary and benefits requirement of this Agreement during that year.

**Section 4.02 Forfeiture.** The Employer shall forfeit all rights to the Incentive Payments set forth in Section 3 of this Agreement for each year in which the Employer fails to meet the Performance Criteria set forth in Section 4.01 for that year; provided that failure to employ the required minimum number of FTE's results in a pro-rata reduction of the Payment Incentive as provided in Section 4.01(e) and shall not result in forfeiture of the rights to the Incentive Payments.

**Section 4.03 Employment of Undocumented Workers.** Employer covenants and certifies that Employer does not and will not knowingly and directly employ an undocumented worker as that term is defined by Section 2264.001(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Employer is convicted of a violation under 8 U.S.D. Section 132(a)(f),

Employer shall repay to the City the full amount of Incentive Payments made under Article III of this Agreement. Repayment shall be paid within 120 days after the date following such conviction that Employer receives notice of violation from the City. As provided by 2264.101(c) of the Texas Government Code. Employer shall not be liable for a violation by a subsidiary, affiliate, or franchisee of Employer or by a person with whom Employer contracts.

## **ARTICLE V**

### **COVENANTS AND DUTIES**

**Section 5.01 Employer's Covenants and Duties.** Employer makes the following covenants and warranties to the City and agrees to timely and fully perform the obligations and duties contained in Article IV of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Employer.

- a) Employer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.
- b) The execution of this Agreement has been duly authorized by the Employer, and the individual signing this Agreement on behalf of the Employer is empowered to execute such Agreement and bind the company. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Employer's company agreement, by-laws, or of any agreement or instrument to which Employer is a party to or by which it may be bound.
- c) The Employer is not a party to any bankruptcy proceedings currently pending or contemplated, and Employer has not been informed of any potential involuntary bankruptcy proceedings.
- d) Employer shall make diligent efforts to timely and fully comply with all the terms and conditions of this Agreement. Employer also agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of Project improvements on the Property which is within the City limits.
- e) Employer shall require approval of plans and specifications for the Project improvements prior to starting any construction.
- f) Employer owns the Property.
- g) Employer shall have a continuing duty to cooperate with the City in providing all necessary information to assist the City in complying with this Agreement; and to execute such other and further documents as may be reasonably required to comply therewith.

**Section 5.02 Representation and Warranties by the City of Kyle.** The City of Kyle represents and warrants that this Agreement is within the scope of its authority, and that it has been duly authorized and empowered to execute and enter into this agreement.

**Section 5.03 Mutual Assistance.** The parties shall do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions. The parties shall execute any additional documents and agreement reasonably necessary to implement this Agreement.

## **ARTICLE VI** **TERMINATION**

**Section 6.01 Termination.** This Agreement shall terminate upon the earliest occurrence of any one or more of the following: (a) The written agreement of the Parties; (b) The Agreement's Expiration Date; or (c) An uncured Default by the Employer. The Expiration Date shall be the date that the final Incentive Payment is due; provided that the following shall survive termination of this Agreement for any reason: the obligation of the City to pay an annual Incentive Payment for those years in which the applicable performance criteria set forth in Article IV were met; Article IV; Article V; Article VII; and Article IX.

## **ARTICLE VII** **DEFAULT AND REMEDIES**

### **Section 7.01 Default.**

a) A party shall be deemed in Default under this Agreement (which shall be deemed a breach hereunder) if such party fails to perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement. For avoidance of doubt, the Employer's failure to meet the minimum hiring requirement set forth in Section 4.02 (b) which will result in pro-rata reduction of the Incentive Payment as provided in Section 4.01 (e), shall not constitute a Default.

b) Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach or Default of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach or Default of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within fifteen (15) days of the receipt of such notice. Upon a breach or Default of this Agreement, the non-defaulting Party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies; and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

**Section 7.02 Recapture.** In the event of Default by Employer under this Agreement, the City shall, after providing Employer notice and an opportunity to cure, have the right to recapture Incentive Payments.

**Section 7.03 Liability of the Employer, Its Successors and Assignees.** Any obligation or liability of the Employer whatsoever that may arise at any time under this Agreement or any obligation or liability which may be incurred by the Employer pursuant to any other instrument transaction or undertaking contemplated hereby shall be satisfied, if at all, out of the assets of the Employer only. No obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of partners, officers, employees, shareholders or agents of the Employer, regardless of whether such obligation or liability is contract, tort or otherwise.

**Section 7.04 Mediation.** If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation before resorting to litigation or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. All costs of negotiation and mediation, collectively known as alternate dispute resolution (“ADR”), shall be assessed equally between the City and Employer with each party bearing their own costs for attorney’s fees, experts, and other costs of ADR and any ensuing litigation.

## ARTICLE VIII NOTICE

**Section 8.01 Notice.** Notices under this Agreement must be sent by certified mail, return receipt requested, or personal deliver; notice by certified mail, return receipt requested, however, is effective only as of the date delivery of the certified mail correspondence is initially attempted. Personal deliver is effective upon delivery. The Parties' addresses for notice are:

**City of Kyle:**

Attn: City Manager  
100 W Center St  
Kyle, TX 78640

**With copy to:**

The Knight Law Firm, LLP  
City Attorney  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

**ENF (KYLE) TECHNOLOGY, LLC:**

Attn: Woo Jin Yang  
General Manager  
141087 McCoy Loop,  
Austin, TX 78717

**ARTICLE IX**  
**MISCELLANEOUS PROVISIONS**

**Section 9.01 Limitations on Liability.** The City shall not be liable for consequential damages, specifically lost profits, and any damages claimed against the City shall be limited to amounts recoverable under §271.153 of the Texas Local Government Code. The parties agree that this Agreement shall not be interpreted as or otherwise claimed to be a waiver of sovereignty on the part of the City.

**Section 9.02. Personal Liability of Public Officials; No Debt Created.** No employee of the City, nor any councilmember or agent of the City, shall be personally responsible for any liability arising under or growing out of this Agreement. The Incentive Payments made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

**Section 9.03 Force Majeure.** In the event either Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the obligations of such Party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused, to the extent provided, but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the Party whose contractual obligations are affected thereby shall give notice and the full of such force majeure to the other Party. Such cause, as far as possible, shall be remedied with all reasonable diligence.

- a) The term "force majeure" as employed herein shall mean and refer, without limitation, to acts of God; strikes and/or lockouts; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority (other than the City): insurrections; riots; lightning, earthquakes, fires, hurricanes, storms, floods and other natural disasters; washouts and other weather-related delays' restraint of government and people; civil disturbance; explosions; or other causes not reasonably within the control of the party claiming such inability.
- b) If, because of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed except as hereinafter provide, but of no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.
- c) It is understood and agreed that the settlement of strikes and lockouts shall entirely within the discretion of the party having the difficulty, and that the above requirement and any force majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgement of the party having the difficulty.

**Section 9.04 Independent Contractors.** It is expressly understood and agreed by all Parties hereto that in performing their services hereunder the Employer or its subcontractors or tenants at no time will be acting as agents of the City or and that all consultants or contractors engaged by the Employer, its subcontractors or tenants will be independent contractors. The Parties hereto understand and agree that the City will not be liable for any claims that may be asserted by any third party occurring in connection with services

performed by the Employer under this Agreement, unless any such claims are due to the fault of the City.

**Section 9.05 Interpretation.** Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

**Section 9.06 Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**Section 9.07 Section or Other Headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**Section 9.08 Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein. Any Exhibits attached hereto are incorporated by reference for all purposes.

**Section 9.09 Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by the parties and as approved by the City Council of the City of Kyle, Texas.

**Section 9.10 Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns; provided however (i) the benefits of this Agreement in favor of the Employer may not be assigned to any party other than an affiliate of Employer without the written consent of the City of Kyle (which consent shall not be unduly withheld, provided the City is satisfied that any remaining obligations under the Agreement will be met); and (ii) notwithstanding the foregoing and any other provision of the Agreement to the contrary, any successor owner, occupant, tenant, licensee or invitee of any such portion of the Property (including, without limitation, any business that may operate from time to time thereon).

**Section 9.11 Applicable Law and Venue.** This Agreement is made and all obligations arising hereunder shall be construed and interpreted under the laws of the State of Texas and the venue for any action arising from the Agreement shall be Hays County, Texas.

**Section 9.12 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

**Section 9.13 No Additional Waiver Implied.** The failure of either Party to insist upon performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by the other Party.

**Section 9.14 Parties in Interest.** This Agreement shall be for the sole and exclusive benefit of the Parties and shall not be construed to confer any rights upon any third parties.

**Section 9.15 Merger.** This Agreement embodies the entire understanding between the Parties and there are no other representations, warranties or agreements between the Parties covering the subject matter of this Agreement.

**Section 9.16 Captions.** The captions of each section of this Agreement are inserted solely for convenience.

**Section 9.17 Severability.** If any provision of this Agreement or the application thereof to any

person or circumstances is ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.

**Section 9.18 Indemnification. EMPLOYER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, THE CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND RELATING TO EMPLOYER'S ACTIONS ON THE PROJECT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO EMPLOYER OR EMPLOYER'S TENANTS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF EMPLOYER OR EMPLOYER'S TENANTS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF EMPLOYER OR EMPLOYER'S TENANTS, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. EMPLOYER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY, RELATED TO OR ARISING OUT OF EMPLOYER OR EMPLOYER'S TENANTS' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT EMPLOYER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING EMPLOYER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

**IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, SHALL NOT BE AN INDEMNITY EXTENDED BY EMPLOYER TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE OR INTENTIONAL MISCONDUCT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL APPLY ONLY, TO THE EXTENT OF ANY COMPARATIVE NEGLIGENCE STATUTES AND FINDINGS, WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND IT SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. EMPLOYER FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND IN THE NAME OF CITY ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY (AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES), IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.**

**IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY AND THE EMPLOYER SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND / OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND ELECTED OFFICIALS PERMITTED BY LAW.**

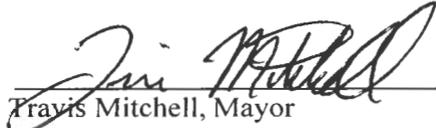
**Section 9.19 Anti-Boycott Verification.** To the extent this Agreement constitute a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, Employer represents that neither Employer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Employer (i) boycotts Israel or (ii) will boycott Israel through the term of this Amendment or the Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this paragraph have the meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended.

**Section 9.20 Iran, Sudan and Foreign Terrorist Organizations.** To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Employer represents that neither Employer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Employer is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

IN WITNESS, WHEREOF, the Parties hereto have executed this Agreement in multiple copies, each of equal dignity, to be effective on the latest date of execution. Any party may change the address which notices are to be sent by giving the other parties written notice in the manner provided in Section 8.01.

**EXECUTION PAGE FOLLOWS:**

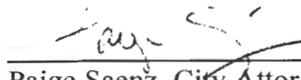
THE CITY OF KYLE, TEXAS

  
\_\_\_\_\_  
Travis Mitchell, Mayor

ATTEST/SEAL:

  
\_\_\_\_\_  
Jennifer Vetrano, City Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Paige Saenz, City Attorney

Agreed to and accepted on March 26, 2019.

ENF (KYLE) TECHNOLOGY, LLC



Woo Jin Yang, General Manager

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Agreed to and accepted on March 26, 2019.

Exhibit A: Property Description Tracts 1, 2, and 3

Exhibit B: Project Site Plan

**Exhibit A**  
**Property Description**

## 1. Project Summary:

ENF is planning to construct a chemical production facility for the purpose of manufacturing Ammonium Hydroxide, Copper Stripper, ArF Thinner and Sulfolane chemistries. These materials will be sold to semiconductor manufacturers for use in their processes. The plant will also install a process to purify waste sulfuric acid from semiconductor wafer cleaning operations. It is expected that the ammonium hydroxide and copper stripper lines will be started up in the initial phase with the remaining chemistries added in the future as market conditions require.

The precision blending and production of chemicals will all occur internally to the facility in an environmentally controlled (clean) area. ENF's plant will employ the latest technology for both process control automation as well as for life safety systems. The technology utilized to eliminate any type of particulate or contamination during the manufacturing process will be extremely unique and complex.

ENF's goal is to establish the Kyle site as their North American corporate headquarters. The site will include executive staff, engineering, R&D, production, and supply chain management. ENF is expecting to make an initial investment of \$40+M over the next 24 months. Their 10-year plan includes continued expansion and investment in personnel, facilities, and research and development.

The purpose of this site development report is to describe facility layout design and traffic study, assess site grading and drainage, provide conceptual design for utility supply lines, and provide supporting documents for the TCEQ air permit. The scope of the Site Development project is redundant in some cases when compared to the Site Assessment project. However, in the case of the Site Development project the scope was specifically executed based upon the design package for the actual facility planned for the site rather than just an assessment of the site viability. This report is part of the site development permit submittal.

## 2. Site Layout

ENF is planning to construct a chemical blending and packaging facility in Kyle, Texas. Production may be phased, with some operations occurring at a future date; however, the full site build-out has been assumed for this report. The intent is to optimize the use of the land with respect to the facilities, site utilities, pedestrian traffic, vehicular traffic and overall aesthetics.

The site for the proposed facility is located within Plum Creek Planned Unit Development (PUD) Phase 1 Section 7A and subject to the PUD ordinance requirements. The final plat for the site has been reviewed and approved by the City of Kyle. The overall site is approximately 24.56 acres and has been subdivided into two lots. The ENF facility will be developed on Lot 1 and encompasses approximately 12 acres of the property, while Lot 2 is slated for future development. The site plan and layout has been optimized so that Lot 2 meets the minimum requirements to apply for and receive an agricultural exemption if it is not developed in the future.

A street address has been assigned to the site: 1550 Kohlers Crossing Kyle, Texas 78640.

The proposed ENF facility design will consist of an office building ( $\pm 15,000$  GSF) connected to a main production building ( $\pm 90,000$  GSF) and associated support structures including exterior equipment and a central plant ( $\pm 15,000$  GSF). The buildings are organized to maximize site utilization and provide efficient flows for people and products.

**Exhibit B**  
**Project Site Plan**

