

ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT
BY AND BETWEEN
PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION AND
ESSENTIUM, INC.

This Economic Development Performance Agreement (EDPA) is by and between the Pflugerville Community Development Corporation, a Texas Type B Economic Development Corporation ("PCDC") and Essentium, Inc., a Delaware corporation ("Essentium") and is made and executed on the following recitals, terms, and conditions. The PCDC and ESSENTIUM may be referred to singularly as "Party" and collectively as the "Parties."

WHEREAS, the PCDC Board finds PCDC is a Texas B Economic Development Corporation operating pursuant to the applicable provisions of Texas Local Government Code, as amended, and the Texas Non-Profit Corporation Act, as amended; and

WHEREAS, the PCDC Board finds ESSENTIUM is a firm committed to creating industrial solutions for the world's top manufacturers and bridging the gap between 3D printing and machining, by commercializing a suite of high technology offerings in the 3D materials and 3D manufacturing machine platform sectors, and by employing a team of materials scientists, chemists, chemical and mechanical engineers, production specialists, global supply chain and sourcing specialists and applications engineers; and

WHEREAS, the PCDC Board finds that Project as herein described and carried out is an "Authorized Project" as that term is defined in Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, the PCDC Board finds that the payment of the incentives described herein are paid as permissible "Project Costs" as that term is defined in Chapters 501 and 505 of the Texas Local Government Code, as amended; and

WHEREAS, the PCDC Board finds that Project includes the lease of commercial property, causing the purchase, or purchasing, of land, buildings, equipment, facilities, expenditures and improvements that are found by the Board of Directors to be required or suitable for use to promote or develop new or expanded manufacturing and industrial facilities that create or retain primary jobs (defined as a job that is "available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national or international markets infusing new dollars into the local economy") in accordance with Chapters 501 and 505 of the Texas Local Government Code, as amended; and

WHEREAS, the PCDC Board requires that at least one public hearing to be conducted on this Project prior to spending funds in accordance with Section 505.159 of the Texas

Local Government Code, as amended; and

WHEREAS, the PCDC Board finds that this EDPA is conditional in the event the City of Pflugerville, Texas (City) receives a petition no later than the 60th day after the date notice of this Project was published, which is duly certified and accepted by the City Council, from more than 10% of the registered voters of the City of Pflugerville, Texas, requesting that an election be held before the Project is undertaken in accordance with Section 505.160 of the Texas Local Government Code, as amended; and,

WHEREAS, the PCDC Board finds that Section 501.158 of the Texas Local Government Code, as amended, requires an EDPA with Essentium providing a schedule of additional payroll or jobs to be created or retained by Essentium's investment, a schedule of capital investments to be made as consideration for the incentives provided by PCDC in the EDPA, and a provision specifying the terms and conditions upon which repayment must be made should Essentium fail to meet the agreed to performance terms in this EDPA; and,

WHEREAS, the PCDC Board finds that this EDPA benefits PCDC in accordance with Section 501.156 of the Texas Local Government Code, as amended.

WHEREAS, the PCDC Board finds that the terms, conditions, and obligations made by PCDC and accepted by Essentium are conditional upon the authority granted by Section 501.073(a) of the Texas Local Government Code (requiring the City Council to approve all programs and expenditures of the PCDC), and accordingly this EDPA is not effective until the City Council has approved this Project in accordance with Texas law.

NOW, THEREFORE, for and in consideration of the EDPA, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PCDC and Essentium agree as follows:

SECTION 1— RECITALS INCORPORATED

The foregoing recitals are hereby incorporated into the body of this EDPA and shall be considered mutual covenants that are part of and which are incorporated within the terms and conditions that are relied upon and bind the Parties.

SECTION 2—EFFECTIVENESS AND TERM

(a) This EDPA shall be effective upon the completion of all of the following:

1. Approval of this EDPA by the PCDC Board;
2. Approval of this EDPA by Essentium;
3. Approval of this EDPA by the City Council of the City of Pflugerville, Texas; in accordance with Texas law; and

4. All other legal requirements are met in accordance with Texas law as described in the recitals.
5. This EDPA shall have a term of seven years and shall terminate at midnight on the day marking the last day of Year Seven as provided hereafter.
6. Year One of the term shall commence on the date of issuance of the Certificate of Occupancy described below and each successive year of the Term shall commence on the anniversary date thereof one year later.

SECTION 3—DEFINITIONS

“EMPLOYEE OR EQUIPMENT EXPENSES” shall mean costs incurred by Essentium for the purpose of transferring personnel, personal property belonging to the company, and equipment from their current locations to the Essentium place of operations in Pflugerville, and may include the costs of preparation for travel, moving, unloading, and setup, and shall include costs incurred by individual employees or members of their households for moving and securing places of residence within the City of Pflugerville, and similar expenses paid for by such employees or members of their household who move to Pflugerville, if those expenses are first reimbursed by Essentium.

“INCENTIVIZED JOB” shall mean a primary job created by Essentium at its place of operations in Pflugerville for which Essentium has been or will be paid the job grant of \$2500 by PCDC. An incentivized job may be counted only one time for the purpose of payment of the job grant.

“PRIMARY JOB” shall mean a job as that term is defined in Section 501.002 (12), Texas Local Government Code that becomes available at Essentium during the term of this Agreement at which each employee holding such job works a minimum of thirty (30) hours per week, or one thousand five hundred sixty (1,560) hours per year with an average gross salary of at least \$75,000.00 per year plus medical benefits.

“YEAR ONE” shall mean the period of time from the date this EDPA is executed by both parties until September 30, 2019 and is not intended to be a calendar year or 365 days.

“YEAR TWO” shall mean the calendar year beginning October 1, 2019 and ending September 30, 2020.

“YEAR THREE” shall mean the calendar year beginning October 1, 2020 and ending September 30, 2021.

“YEAR FOUR” shall mean the calendar year beginning October 1, 2021 and ending September 30, 2022.

“YEAR FIVE” shall mean the calendar year beginning October 1, 2022 and ending September 30, 2023.

“YEAR SIX” shall mean the calendar year beginning October 1, 2023 and ending September 30, 2024.

“YEAR SEVEN” shall mean the calendar year beginning October 1, 2024 and ending September 30, 2025.

SECTION 4—ESSENTIUM PERFORMANCE REQUIREMENTS

(a) ESSENTIUM covenants and agrees that while this EDPA is in effect, it shall be obligated to comply with all the terms and conditions of the EDPA and in addition, perform the following obligations:

1. Essentium shall lease adequate space in the City of Pflugerville for its operations for a minimum of five years and shall secure a Certificate of Occupancy from the City of Pflugerville, with occupancy and operations to commence by no later than the last day of April 2019, such place of operations to be identified as Essentium’s headquarters in the State of Texas.
2. Essentium shall provide receipts for the cost of relocation of its employees or equipment reflecting expenses up to \$100,000.00; and
3. During each year of the Term, Essentium shall accomplish the following:
 - A. Year One:
 - i. Secure and execute a lease agreement adequate for its operations in the City of Pflugerville;
 - ii. Obtain a Certificate of Occupancy from the City of Pflugerville for such operations at the site of the leased premises;
 - iii. Invest \$1.5 MM in personal property, capital improvements and the lease agreement;
 - iv. Commence operations and continue operating for at least three months;
 - v. Comply with all applicable City of Pflugerville ordinances and regulations;
 - vi. Provide receipts for relocation of employee or equipment expenses of up to \$100K; and
 - vii. Establish its place of operations in Pflugerville as Essentium’s headquarters in the State of Texas.

B. Year Two:

- i. Maintain residency in the same or similar leasehold in the City;
- ii. Bring to or create at least 50 primary jobs in the City;
- iii. Comply with all applicable City of Pflugerville ordinances and regulations; and
- iv. Maintain its place of operations as Essentium's headquarters in the State of Texas.

C. Year Three:

- i. Maintain residency in the same or similar leasehold in the City.
- ii. Create up to 40 new primary jobs to the City and maintain the 50 primary jobs established in previous years.
- iii. Comply with all applicable City of Pflugerville ordinances and regulations.
- iv. Maintain its place of operations as Essentium's headquarters in the State of Texas.

D. Year Four:

- i. Maintain residency in the same or similar leasehold in the City.
- ii. Create up to 30 new primary jobs in the City and maintain the same all incentivized jobs established in previous years.
- iii. Comply with all applicable City of Pflugerville ordinances and regulations.
- iv. Maintain its place of operations as Essentium's headquarters in the State of Texas.

E. Year Five:

- i. Maintain residency in the same or similar leasehold in the City.
- ii. Create up to 30 new primary jobs in the City and maintain all incentivized jobs established in previous years.
- iii. Comply with all applicable City of Pflugerville ordinances and regulations.

- iv. Maintain its place of operations as Essentium's headquarters in the State of Texas.

F. Years Six:

- i. Comply with all applicable City of Pflugerville ordinances and regulations.
- ii. Create up to 20 new primary jobs and maintain all incentivized jobs established in previous years.
- iii. Maintain its place of operations as Essentium's headquarters in the State of Texas.
- iv. Maintain its place of operations as Essentium's headquarters in the State of Texas.

G. Year Seven:

- i. Maintain all incentivized jobs established in previous years.
- ii. Comply with all applicable City of Pflugerville ordinances and regulations.
- iii. Maintain its place of operations as Essentium's headquarters in the State of Texas.

(b) Annually, Essentium shall provide a report to the PCDC that fully and adequately identifies the type and number of primary jobs created and maintained during the preceding year in order that the PCDC may verify Essentium's compliance with the job creation and maintenance requirements described in this Section. In the event that Essentium fails to maintain the number or type of Primary Jobs required in this Section during some or all of any year due to circumstances beyond its control related to attrition or unavailability of qualified employees, Essentium shall include the following with the annual report for that year:

1. Explanation of the reasons for failure to meet the primary job requirements; and
2. Copies of all documents reflecting Essentium's good faith efforts to attract sufficient employees to fill such primary jobs.

SECTION 5—PCDC PERFORMANCE REQUIREMENTS

The PCDC covenants and agrees that while this EDPA is in effect and so long as Essentium is in full compliance with its obligations thereunder, the PCDC shall to perform the following

1. For Year One: Within thirty (30) days of receiving receipts from Essentium for the cost of relocation of employees or equipment, PCDC shall pay to Essentium a reimbursement grants equal to the total of such receipts up to and not in excess of \$100,000.00.
2. For Year Two, PCDC shall pay Essentium a job grant of \$2500 per primary job created in the City during that year, not to exceed a total of \$125,000.
3. For Year Three, PCDC shall pay Essentium a job grant of \$2500 per primary job created in the City during that year, not to exceed a total of \$100,000.
4. For Year Four PCDC shall pay Essentium a job grant of \$2500 per primary job created in the City during that year, not to exceed a total of \$75,000.00.
5. For Year Five, PCDC shall pay Essentium a job grant of \$2500 per primary job created in the City during that year, not to exceed a total of \$,75.000.00.
6. For Year Six, PCDC shall pay Essentium a job grant of \$2500 per primary job created in the City during that year, not to exceed a total of \$50,000.
7. PCDC shall pay no incentives to Essentium in Year Seven.
8. All incentives are due and payable each year on or before September 30, provided that Essentium has timely furnished proof of compliance and reports due hereunder.

SECTION 6 – INCENTIVE PAYMENT AND LIMITATIONS

- (a) All grants and incentives paid by PCDC under this EDPA shall not exceed \$525,000 in the aggregate (\$100,000 relocation grant plus the maximum of \$425,000 in employee grants).
- (b) The employee grant is limited to a maximum of \$2500 per job actually created and retained by Essentium as provided in Section 4.
- (c) In order to receive job grant incentives, all job creation requirements must be met (100 percent) or exceeded; provided, however, that should Essentium fail to meet said requirements but has met at least eighty percent (80%) of such requirements, the Board may, at its sole discretion, refrain from enforcing any breach of contract and/or clawback provisions provided within the EDPA.
- (d) Under no circumstances will PCDC be obligated to make any job creation grant payment to Essentium less than thirty (30) days after Essentium has provided PCDC with complete and satisfactory proof of employment records required for such payment.

SECTION 7--REPAYMENT

(a) Pursuant to Section 501.158 of the Texas Local Government Code, this EDPA must contain terms under which repayment must be made to the PCDC if Essentium does not meet its Performance Requirements and obligations in this EDPA. Therefore, in the event that the items listed below as Section 6 (a) (1)-(4) occur, PCDC shall have no obligation to advance, disburse, or pay any financial assistance to Essentium and Essentium shall reimburse PCDC any and all past advances, disbursements, and any other financial assistance provided to Essentium by PCDC, within 30 days of demand, to include interest at ten percent (10%) per annum from the date Essentium receives financial assistance, and any and all costs to recover, including attorney's and any expert fees, as provided by law:

(1) ESSENTIUM becomes insolvent, files a petition in bankruptcy (voluntarily or involuntarily) or any similar proceedings, or is adjudged bankrupt;

(2) ESSENTIUM fails to provide PCDC with sufficient documentation to support any individual incentive within 10 days of demand by PCDC;

(3) ESSENTIUM fails to perform any of the obligations, terms, or conditions required under this EDPA;

(4) ESSENTIUM fails to meet any time requirement under this EDPA.

(b) In the event that Essentium fails in any year during the term of this EDPA to maintain the minimum number of Primary Jobs required for that year under Section 4 above, or in the event that such jobs fail to maintain the average minimum gross salary or provision of medical benefits required, the amount of incentive to be paid by the PCDC to Essentium for that year shall be reduced by an amount equal to \$2500.00 for each number or type of job that is less than the minimum required. The PCDC acknowledges that normal attrition, the availability of qualified job candidates or other reasons beyond Essentium's control may result in Essentium being unable to maintain the minimum number of jobs during particular periods of time and will determine, solely in its own discretion, whether the information provided by Essentium under Section 4 (b) above is sufficient to justify and waive any temporary failure by Essentium to meet its primary job requirements during that year.

SECTION 8 — ADDITIONAL PROVISIONS

(a) *Authority to Execute.* PCDC hereby represents and warrants to ESSENTIUM that this EDPA is within its authority and that PCDC has been duly authorized and empowered to enter into this EDPA. ESSENTIUM hereby represents and warrants to PCDC that this EDPA is within its authority and that ESSENTIUM has been duly authorized and empowered to enter into this EDPA. ESSENTIUM acknowledges that the EDPA may be terminated and payment may be withheld if this certification is inaccurate.

(b) *Mutual Assistance.* PCDC and ESSENTIUM will each do all things reasonably necessary and appropriate to carry out the terms and provisions of this EDPA.

(c) *Access to Financial Information.* ESSENTIUM agrees to make its corporate financial information available to PCDC on request, on an annual basis. Financial Information shall include balance sheet, profit and loss reports and all filed Federal Income Tax Returns for the 12 months prior to the date of the request. Any information provided will be reviewed pursuant to a confidentiality agreement to ensure ESSENTIUM's confidentiality is preserved.

(d) *Successor and Assigns.* This EDPA shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the Parties. Neither Party hereto may assign this EDPA without the prior written consent of the other Party hereto.

(e) *Payment of Debt or Delinquency to the Local or State Government.* ESSENTIUM agrees that any payments owing to ESSENTIUM under any agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that ESSENTIUM owes the State of Texas, Travis County, Williamson County, the City of Pflugerville or any other political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

(f) *Severability.* If any portion of this EDPA is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this EDPA shall be given the intent manifested by the portion held invalid or inoperative. The failure by either Party to enforce against the other any term or provision of this EDPA shall be deemed not to be a waiver of such Party's right to enforce against the other Party the same or any other such term or provision.

(g) *Survival.* Any portion of the agreement necessary to enforce the repayment of an incentive (whether a direct payment or third-party grant) shall survive termination of the agreement for the limited purpose of enforcement of the agreement to recover any payment made by PCDC, in accordance with Texas law.

(h) *Governing Law.* This EDPA shall be governed, construed, applied, and enforced in accordance with the laws of the State of Texas, and shall be performable with venue in a district court in Travis County, Texas.

(i) *Third Party Beneficiaries.* This EDPA is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary, unless specifically stated.

(j) *Amendments.* This EDPA may be amended or supplemented only by an instrument in writing executed by the Party against whom enforcement is sought.

(k) *Time.* Time is of the essence in the performance of this EDPA.

(l) *Attorney's Fees.* Should any Party employ attorneys to enforce any of the provisions hereof, the Party losing in any final judgment agrees to pay the prevailing

Party all reasonable costs, charges and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.

(m) *Notice and Payments.* All notices hereunder must be in writing and shall be deemed delivered on the day personally delivered on the third day from the day sent by registered mail or certified mail, return receipt requested with the U.S. Postal Service, or on the day after the day sent by national overnight courier, to the Parties at the following addresses, or at such other addresses as shall be specified by notice.

If notice to PCDC: Pflugerville Community Development Corporation
Attention: Executive Director
3801 Helios Way, Suite 130
Pflugerville, Texas 78660

If notice to ESSENTIUM: Essentium, INC
Attention: Blake Teipel

Pflugerville, Texas _____
cc: Blake.Teipel@Essentium3d.com

(n) *Construction.* The Parties acknowledge that the Parties and their counsel have reviewed and revised this EDPA and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this EDPA or any exhibits or amendments hereto.

(o) *Counterpart Execution.* This EDPA may be executed in any number of counterparts, each of who shall be deemed to be an original, and all such counterparts shall constitute one EDPA.

(p) *Performance.* Performance by PCDC under the EDPA is dependent upon the approval of the City Council of the City of Pflugerville (Council). If the Council fails to approve this EDPA, then PCDC shall issue written notice to ESSENTIUM and PCDC may terminate the EDPA without further duty or obligation hereunder. ESSENTIUM acknowledges that the approval of this document is beyond the control of PCDC.

(q) *Undocumented Workers.* Pursuant to Chapter 2264 of the Texas Government Code, ESSENTIUM certifies that it will not knowingly employ any undocumented workers. ESSENTIUM further agrees that if the business, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), ESSENTIUM shall repay the amount of the public subsidy with interest, at the rate of ten percent (10%) per annum from the date this EDPA is entered into, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the business of the violation.

(r) *Information Establishing Compliance.* ESSENTIUM shall provide all information requested by PCDC establishing compliance with this EDPA within thirty (30) days of PCDC's written request.

DATED this 28th day of September 2018.

[signatures follow]