

ECONOMIC DEVELOPMENT PROJECT AGREEMENT BETWEEN THE CITY OF ELGIN
AND ELGIN NH MANAGEMENT, LLC – Contract No. 7218012

WHEREAS, the City of Elgin is the recipient of a certain amount of funds from the Texas Community Development Grant, as administered by the Texas Department of Agriculture for the construction of certain infrastructure improvements in the City; and

WHEREAS, the City of Elgin has signed an agreement with the Texas Department of Agriculture governing the disbursement of said grant funds, and setting out certain reporting requirements which are obligations of the City; and

WHEREAS, the City of Elgin and ELGIN NH MANAGEMENT, LLC desire to enter into this Agreement in an effort to establish each party’s responsibilities under the state program; and

NOW THEREFORE, for good and valuable consideration, the value and sufficiency of which is acknowledged by both parties. The parties agree as follows:

ARTICLE I.
PARTIES TO AGREEMENT

1.01 This ECONOMIC DEVELOPMENT PROJECT AGREEMENT (“Agreement”) is entered into on this the _____ day of _____, 2018 (“**Date of Execution**”), by and between the City of Elgin, Texas (hereinafter referred to as “CITY”) and ELGIN NH MANAGEMENT, LLC, acting under the laws of the State of Texas (hereinafter referred to as “COMPANY”)

ARTICLE II
AGREEMENT PERIOD

2.01 Commencement date for this Agreement shall be fixed as _____, 2018 (“**Commencement Date**”), and the termination date shall be _____, 2021 (the “**Termination Date**”) unless otherwise provided herein, and this Agreement shall be completed in accordance with the Texas Capital Fund Contract by and between the City and the Texas Department of Agriculture, said contract having been executed on _____, 2018, and said contract being attached as Exhibit 1 and incorporated herein by reference for all applicable purposes (“**TCF Contract**”). The time period between the Commencement Date and the Termination Date shall be referred to herein as the “**Contract Term**.” No matching funds or reimbursable expenses may be expended or incurred prior to Date of Execution. Jobs created prior to the Date of Execution will not be counted toward job creation requirements set forth herein.

ARTICLE III
PURPOSE OF AGREEMENT

3.01 The purpose of this Agreement is to carry out an economic development project (hereinafter referred to as the “PROJECT”) between the Texas Department of Agriculture (hereinafter referred to as “DEPARTMENT”) and the CITY. Said PROJECT shall be carried out pursuant to the TCF

Contract referenced in Article II and attached as Exhibit 1, including Exhibits A, B, C, D, E and F of the TCF Contract which are referenced herein.

3.02 The PROJECT includes: Construction by the City of infrastructure improvements in the form of water and sanitary sewer improvements, as well as providing engineering and administrative services, with such infrastructure improvements and services being more specifically detailed in Article V herein.

ARTICLE IV.
OBLIGATIONS OF THE COMPANY

The COMPANY shall perform the following obligations in accordance with the terms and conditions hereof, which such obligations shall support the performance of the obligations imposed on the CITY pursuant to the TCF Contract:

4.01 The COMPANY shall create a minimum of fifty (50) permanent new jobs prior to the Termination Date. Of such fifty (50) total jobs, fifty-one percent (51%) or twenty-six (26) jobs total shall be held by low and moderate-income (LMI) persons as that term is defined in the most recent version of the TxCDBG Project Implementation Manual and any amendments thereto. In the event that more than fifty (50) permanent jobs are created hereunder, the Company shall ensure that at least fifty-one percent (51%) of the total jobs are held by LMI persons.

4.02 To establish a beginning benchmark for verifying the number of jobs created, the COMPANY shall submit to the CITY within ten (10) business days after the Commencement Date a copy of its payroll indicating the number of persons employed at the current Elgin, Texas location (the “**Elgin Facility**”). If no employees are present at the site, a letter on COMPANY letterhead stating such is acceptable. Any employees transferring from another Company location or related business operation shall be identified and may not be considered as a created permanent job. At a minimum, the payroll report shall provide the following information for all employees: full name of the employee, the employee identification number, the employee’s gender and ethnicity, and status of employee as either full-time or part time as defined in the most recent version of the TxCDBG Project Implementation Manual (for each part time job, employer must document total hours worked per week). To establish an ending benchmark for verifying the number of jobs created and retained during the Contract Term, the COMPANY shall submit to the CITY within ten (10) business days of the Termination Date a copy of its ending payroll report in the identical format described herein, and submission of same shall be with the close-out of the TCF Contract. These closeout documents will document the number of permanent jobs created and identify the LMI persons.

4.03 During the Contract Term, the COMPANY shall maintain records and make quarterly reports to the CITY in form, content, and number to satisfy the requirements of Paragraphs 4.01, 4.02, and 4.03 herein. Such records and reports shall document LMI benefit and beneficiaries by race, ethnicity, gender, and handicap status as is made available to the COMPANY by their employees, in the same manner and to the same extent as the DEPARTMENT requires of the CITY. The COMPANY shall submit to the CITY all such reports no later than the 20th day of the second month after the end of each calendar quarter of the Contract Term. Additionally, the COMPANY shall submit to the CITY a copy of the Texas Workforce Commission (TWC) Report and Employee Certification Report no

later than the 20th day of the second month after the end of each calendar quarter of the Contract Term

4.04 The COMPANY shall be liable to the CITY in an amount not to exceed \$250,000.00, and the COMPANY shall be required to repay the CITY for contract funds expended (in an amount not to exceed \$250,000.00) in the event the COMPANY does not fulfill its responsibilities under this Agreement.

4.05 During the Contract Term, assets are restricted from being transferred out of the COMPANY (except during the normal course of business, i.e. cash, fixed assets used in the production process, and accounts receivable) without the express written consent of the DEPARTMENT.

4.06 The COMPANY hereby certifies that all federal taxes and taxes originating in Texas from or attributable to the Elgin Facility are currently paid or will be paid within thirty (30) days of the Date of Execution and all future taxes shall be paid when due. The COMPANY shall provide proof of payment of these taxes to the CITY within thirty (30) days after the Commencement Date. The DEPARTMENT or the CITY may require at any time that the COMPANY provide proof of payment of these taxes.

4.07 The COMPANY shall permit the CITY to have reasonable access and make on-site inspections at the Elgin Facility on a quarterly basis to assess/monitor the progress toward the required job creation. At the time of such on-site visits, the COMPANY shall provide to the CITY local officials or representatives regarding job creation and any other information deemed necessary by the CITY and the DEPARTMENT to administer the TCF Contract and this Agreement. The City shall not unreasonably disturb the Company's (or its Tenants') operations at the Elgin Facility during said inspections.

4.08 The COMPANY shall maintain records and reports regarding documentation of LMI benefit and beneficiaries by race, ethnicity, gender, and handicap status to the same extent as the DEPARTMENT requires of the CITY. The CITY shall insure that it maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms with 2 CFR 200.300-.309; 24 CFR 570.490 and 570.506; and 2 CFR 200.333; and this Agreement. The CITY may be required to meet record retention requirements greater than those specified in this section until audit issues are resolved to the DEPARTMENT's satisfaction, the requirements of 24 CFR 570.487 and 570.488 are met. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. The CITY shall retain such records, and any supporting documentation, for the greater of three years from the Termination Date or the period required by other applicable laws and regulations.

4.10 The COMPANY shall provide the CITY within ten (10) business days of the Commencement Date with a copy of the COMPANY'S starting payroll verifying the number of persons employed.

4.12 Within ten (10) business days of the Termination Date, the COMPANY shall submit to the CITY a copy of the COMPANY's ending payroll verifying the number of persons employed at the Elgin Facility.

4.13 The COMPANY shall provide the CITY a copy of a compiled Balance Sheet and Income Statement on the COMPANY or an audited Balance Sheet and audited Income Statement on the COMPANY when requested by the CITY in writing (but in no event more frequently than one time per quarter) during the Contract Term.

4.14 The COMPANY shall provide the CITY with a copy of a certificate of hazard and liability insurance coverage for the COMPANY’S real estate improvements located on the project site within sixty (60) days of completion of construction, but no later than thirty (30) days prior to Termination Date. This coverage shall be equal to the building’s replacement value.

4.15 The COMPANY shall certify that it does not and will not knowingly employ any undocumented worker who is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in the United States. If, after receiving any public subsidy from the CITY, the COMPANY is convicted of a violation under 8 U.S.C. 1324a(f), the COMPANY shall repay the amount of the public subsidy (in an amount not to exceed \$250,000.00) with interest, at the rate and according to the other terms provided by an agreement under Subtitle F, Title 10 of the Texas Government Code, Section 2264.053, not later than the 120th day after the public agency, state or local taxing jurisdiction, or economic development corporation notifies the COMPANY of the violation.

4.16 The COMPANY shall ensure that all acquisition of needed real property, easements, and/or rights-of-way is in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Sec. 4601 et seq.) and HUD implementing regulations (49CFR Part 24).

4.17 The COMPANY shall provide to the CITY a copy of a “Certificate of Insurance” verifying flood insurance covering the project site if applicable.

ARTICLE V.
OBLIGATIONS OF THE CITY

The CITY shall comply with the following obligations:

5.01 The CITY shall expend the sum of One Million and No/100 Dollars (\$1,000,000.00) of Texas Department of Agriculture contract funds to provide for the following infrastructure (“**Infrastructure Improvements**”):

Water Improvements

Construction shall consist of the installation of approximately four thousand four hundred linear feet (4,400 l.f.) of twelve inch (12”) water line, with bore steel encasement, valves, fittings, trench safety, fire hydrant, and necessary appurtenances.

<u>ON</u>	<u>FROM</u>	<u>TO</u>
Roy Rivers Road	Existing Water Line on Highway 290	Proposed Site

Sewer Improvements

Construction shall consist of the installation of approximately two thousand five hundred linear feet (2,500 l.f.) of eight-inch (8”) sewer line, eighteen inch (18”) steel casing, manholes, trench protection, and necessary appurtenances.

<u>ON</u>	<u>FROM</u>	<u>TO</u>
Roy Rivers Road	Existing Water Line on Highway 290	Proposed Site

5.01.02 ENGINEERING ACTIVITIES: The CITY shall ensure that the amount of DEPARTMENT funds expended for all eligible project-related engineering services, including preliminary and final design plans and specifications, all interim and final inspections, and all special services does not exceed the amount specified for engineering in the budget.

5.01.03 ADMINISTRATION ACTIVITIES: The CITY shall ensure that the amount of DEPARTMENT funds expended for eligible project-related administration activities, including the required annual program compliance and fiscal audit does not exceed the amount specified for administration in the budget.

5.02 The CITY shall expend a minimum of Nine Hundred Forty Thousand and No/100 Dollars (\$940,000.00) for the Infrastructure Improvements.

5.03 The CITY shall submit detailed documentation delineating and verifying Infrastructure Improvements in the amount of Nine Hundred Forty Thousand and No/100 Dollars (\$940,000.00). These must be provided within ninety (90) days of expenditure of funds, but no later than thirty (30) days prior to the Termination Date. Documentation shall include but not be limited to invoices, receipts, and cancelled checks.

5.04 The CITY shall submit a ledger with supporting documentation to include copies of invoices and proof of payment (i.e. paid receipts, cancelled checks, wire transfer receipts) documenting match expenditures in the minimum amount of One Million, Fifty Thousand and No/100 Dollars (\$1,050,000.00) for infrastructure improvements and the cost of building construction within sixty (60) days of expenditure of funds, but no later than thirty (30) days prior to the Termination Date.

5.06 The CITY shall ensure that all acquisition of needed real property, easements and/or rights-of-way for the Project are in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Sec. 4601 et seq.) and HUD implementing regulations (49 CFR Part 24).

ARTICLE VI.
RECITATION BY CITY OF ITS CONTRACTUAL
OBLIGATIONS TO THE DEPARTMENT

The CITY hereby recites that it has contractually agreed to do or provide the following:

6.01 The CITY shall submit to the DEPARTMENT a completed Depository/Authorized Signatories Form, as specified by the DEPARTMENT, and a copy of the resolution authorizing the signatories from the CITY.

6.02 The CITY shall submit to the DEPARTMENT a copy of the contract between the CITY and the procured Administrator of this TCF Contract and this Agreement.

6.03 The CITY shall provide to the DEPARTMENT the bid tabulation sheets that set forth this project's winning bid(s) for the "minimum necessary" contract funded activities or improvements specified in Exhibit A. Any alternate provisions of the winning bid addressing over-sizing activities or improvements, in addition to the "minimum necessary," shall be separate from the basic bid for the "minimum necessary" activities or improvements since these additional goods or services are ineligible for payment with contract funds. The CITY is responsible for the cost of any activities or improvements exceeding the "minimum necessary" and any cost overruns.

6.04 The CITY shall provide the DEPARTMENT with a copy of the CITY's Excessive Force Policy as specified in Exhibit F, "Certifications," of the TCF Contract.

6.05 The CITY shall provide the DEPARTMENT with a copy of the CITY's Section 3 Policy Plan, Form A1002 as specified in the current version of the TxCDBG Project Implementation Manual.

6.06 The CITY shall provide the DEPARTMENT with a copy of the CITY's 504 Self Evaluation Review Form and documentation of compliance as specified in the current version of the TxCDBG Project Implementation Manual.

6.07 The CITY shall provide the DEPARTMENT a copy of the contract between the CITY and the procured architect/engineer that shall include the retainage language specified in the TCF Contract.

6.08 The CITY shall provide the DEPARTMENT a copy of the contract between the CITY and the COMPANY, with a completed and signed Contractor/Company Contract Agreement Certification. Each Contractor/Company Contract Agreement shall detail, at a minimum, the following terms, and conditions for each respective company, including the following:

6.08.01 The COMPANY shall create a minimum of fifty (50) permanent new jobs prior to the Termination Date. Of such fifty (50) jobs, twenty six (26) of the same representing fifty-one percent (51%) of the total number of jobs shall be held by "low and moderate income persons" as that term is defined in the most recent version of the TxCDBG Project Implementation Manual and any amendments thereto. In the event that more than fifty (50) permanent jobs are created hereunder, the COMPANY shall ensure that at least fifty-one percent 51% of the total jobs created are held by low and moderate income persons.

6.08.02 to establish a beginning benchmark for verifying the number of jobs created and retained, the COMPANY shall submit to the CITY a copy of the COMPANY'S starting payroll indicating the number of persons employed at the Elgin Facility. At a minimum, the payroll report shall provide the following information for all employees:

- The employee's full name,
- The employee's identification number,
- The employee's gender and ethnicity, and
- An indication of whether the employee is full time or part time as defined in the current version of the TxCDBG Project Implementation Manual (for each part time job, the employer must document the total hours worked per week).

To establish an ending benchmark for verifying the number of jobs created and retained during the contract term, the COMPANY shall submit to the CITY a copy of its ending payroll report in the identical format described herein, and submission of the same shall be with the closeout documents to document the number of permanent jobs created and retained and identify the LMI persons. Any employee transferring from another company location or related business operation must be identified and may not be considered as a created job.

6.08.03 During the Contract Term, the COMPANY shall maintain records and make quarterly reports to the CITY in the form, content, and number to satisfy the requirements of Paragraphs 4.01, 4.02, and 4.03 herein. Such records and reports shall document LMI benefit and beneficiaries by race, ethnicity, gender, and handicap status as is made available to the CITY by their employees, in the same manner and to the same extent as the DEPARTMENT requires of the CITY. The COMPANY shall submit to the CITY all such reports no later than the 20th day of the second month after the end of each calendar quarter of the Contract Term.

6.08.04 The CITY shall submit to the DEPARTMENT detailed documentation of infrastructure improvements and building construction in the amount of Two Million One Thousand, Two Hundred, and No/100 Dollars (\$2,001,200.00). Documentation shall include but not be limited to invoices, receipts, and cancelled checks, which document the CITY's matching expenditures to the DEPARTMENT's satisfaction.

6.08.05 The COMPANY shall be liable to the CITY in an amount not to exceed \$250,000 of the DEPARTMENT's maximum obligation under the Texas Department of Agriculture contract, and the COMPANY shall be required to repay the CITY for contract funds expended not to exceed \$250,000 in the event that the COMPANY does not fulfill its responsibilities under this Agreement.

6.08.06 During the Contract Term, the COMPANY is hereby restricted from transferring assets out of the COMPANY (except during the normal course of business, i.e. cash, fixed assets used in the production process, and accounts receivable) without the express written consent of the DEPARTMENT.

6.08.07 The COMPANY shall submit to the CITY a certification that all federal taxes and taxes from or attributable to the Elgin Facility are currently paid or shall be paid within thirty (30) days of the Date of Execution and all future taxes shall be paid when due. The DEPARTMENT or the CITY may require at any time that the COMPANY provide proof of payment of these taxes.

6.08.08 The CITY and DEPARTMENT shall have access and make quarterly on-site visits at the Elgin Facility to the COMPANY to assess or monitor the progress toward job creation and requiring the COMPANY to provide local officials at the time of the on-site visits information regarding job

creation and any other information deemed necessary by the CITY and the DEPARTMENT to administer the TCF contract and the Agreement between the COMPANY and the CITY. The City shall not unreasonably disturb the Company's (or its Tenants') operations at the Elgin Facility during said inspections.

6.08.09 The COMPANY shall maintain records and reports regarding documentation of LMI benefits and beneficiaries by race, ethnicity, gender, and handicap status in the same extent as the DEPARTMENT requires of the CITY. The CITY shall insure that it maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 2 CFR 570.490 and 570.506, and 3 CFR 200.333, and this Agreement. The CITY may be required to meet record retention requirements greater than those specified in this section until audit issues are resolved to the DEPARTMENT's satisfaction and the requirements of 24 CFR 570.487 and 570.488 are met. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. The City shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.

6.09 The CITY shall provide the DEPARTMENT within ten (10) business days of the Commencement Date with a copy of the COMPANY's starting payroll verifying the number of persons employed as described in Exhibit A, Project Objectives and Exhibit D, Special Conditions.

6.10 The CITY shall provide the DEPARTMENT with documentation of an acceptable activity to affirmatively further fair housing as specified in the current version of the TxCDBG Project Implementation Manual.

6.11 The CITY shall not advertise or solicit bids for constructions or rehabilitation of a project assisted with contract funds until the DEPARTMENT has received the required labor standards documentation specified in the TxCDBG Project Implementation Manual.

6.12 The CITY shall provide the DEPARTMENT with a copy of a "Certificate of Insurance" verifying flood insurance covering the project site or an original signed statement from the CITY's authorized signatory that indicates such property does not require flood insurance.

6.13 The CITY shall provide the DEPARTMENT with a copy of the portion(s) of the site plan which depict the dimensions of the public infrastructure, easements, encroachments, ingress and egress including the location of the COMPANY's facilities, flatwork, driveways, and the connections to the public infrastructure, and which were used to award the construction contract (2) for the proposed infrastructure activities or improvements identified in the Performance Statement. If not detailed on the site plan, the CITY shall provide a plat identifying the names of the property owners adjacent to the public infrastructure improvements, including the name and location of any other business that could use the proposed infrastructure improvements.

6.14 The CITY shall provide to the DEPARTMENT evidence of the start of building construction on the COMPANY's site as specified in the Performance Statement.

6.15 The CITY shall provide documentation to the DEPARTMENT that the plans and specifications for its water and sewer system activities/improvements have been reviewed and when applicable, approved by the Texas Commission on Environmental Quality (TCEQ) prior to construction. These documents shall be sent to the TCEQ, Water Quality Division, Wastewater Permitting Section, MC-148, P.O. Box 13087, Austin, Texas 78711-3087, and shall be identified as activities being financed through TxCDBG. This Special Condition is applicable only to contract funds budgeted for sewer system activities/improvements.

6.16 At any time during the contract, upon request of the DEPARTMENT, and prior to the termination of the contract, the CITY shall submit to the DEPARTMENT a copy of the COMPANY's ending payroll, which may be in electronic file format, verifying the number of persons employed as described in the TCF Contract.

6.17 Upon completion of construction, the CITY shall provide a copy of the site plan as built, or record drawings, for the completed public infrastructure activities or improvements specified in the Performance Statement within sixty (60) days of completion of construction, but no later than thirty (30) days prior to Date of Termination. Such plans shall depict the dimensions of the public infrastructure, easements, encroachments, ingress and egress, including location of the COMPANY's facilities, flatwork, driveways and the public infrastructure connections.

6.18 The CITY shall provide to the DEPARTMENT evidence of the start of construction on the COMPANY's project site as specified in the Performance Statement.

6.19 The CITY shall ensure that it has obtained any and all applicable permits or approvals required by any federal, state or local entity or regulatory agency with jurisdiction.

6.20 The CITY shall certify that it does not and will not knowingly employ any undocumented worker who is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in the United States. If, after receiving any public subsidy from the CITY, the COMPANY is convicted of a violation under 8 U.S.C. 1324A(f), the COMPANY shall repay the amount for the public subsidy with interest, at the rate and according to the other terms provided by an agreement under Subtitle F, Title 10 of the Texas Government Code, Section 2264.053, 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.

ARTICLE VII. MONITORING

7.01 The CITY shall have the right to make, at a minimum, quarterly on-site visits to the COMPANY and the COMPANY's project site to assess/monitor the COMPANY's compliance with the terms of this Agreement, including reasonable access to records regarding hiring practices related to jobs created, and pursuant to the terms of this Agreement. After each monitoring visit, the CITY shall provide the COMPANY with a written report of the monitoring findings. In the event that the CITY notes deficiencies in the COMPANY's performance under this Agreement, then the monitoring report shall include requirements for the timely correction of such deficiencies by the COMPANY.

Failure by the COMPANY to take action specified in the monitoring report may be cause for this contract's suspension or termination.

ARTICLE VIII.
WAIVER OF RIGHTS AND REMEDIES

8.01 No waiver by either party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

8.02 It is expressly understood and agreed by and between the parties hereto that waiver of any right or remedy provided under this Agreement shall not preclude the exercise of any right or remedy under this Agreement or any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other right.

ARTICLE IX.
ASSIGNMENT

9.01 This Agreement shall not be assignable by the COMPANY without prior express written consent of the CITY. In the event of an assignment by the COMPANY to which the CITY has consented, then and in that event the assigned or its legal representative shall be bound to agree in writing with the CITY to personally assume, perform, and be bound by all covenants, obligations, and agreements contained herein.

ARTICLE X.
SUCCESSORS AND ASSIGNS

10.01 Subject to Article IX herein regarding assignment, this Agreement shall be binding on the successors and assigns of the respective parties.

ARTICLE XI.
ENTIRE AGREEMENT

11.01 This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement, which is not contained herein, shall be valid or binding.

11.02 If any conflict exists between this Agreement and the TCF Contract, then and in that event the TCF Contract shall govern.

ARTICLE XII.
CHANGES AND AMENDMENTS

12.01 Except as specifically provided otherwise in this Agreement, any alteration, addition or deletion to its terms shall be by amendment hereto in writing and shall be executed by both parties to the Agreement and the DEPARTMENT.

12.02 Any alteration, addition or deletion to the terms of this Agreement that are required by changes in federal or state law or regulations, including specifically those set forth in the various sections and exhibits to the TCF Contract, are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

ARTICLE XIII.
NON-PERFORMANCE

13.01 Subject to the limitations set forth in Section 4.04 of their Agreement, in the event that the COMPANY should default in any of its obligations or covenants imposed by this Agreement, then and in that event the COMPANY shall be liable to the CITY, in addition to any other damages suffered by the CITY by virtue of such default, for reimbursement of any and all monies, which the CITY shall be obligated to reimburse to the DEPARTMENT or any other agency as a result of such default by the COMPANY.

13.02 As the CITY has already entered into the TCF Contract attached as Exhibit 1, the City is committed to fulfilling the obligations and covenants imposed by the TCF Contract and reiterated by this Agreement and has expended considerable resources towards the fulfillment of those obligations and covenants prior to the execution of this Agreement. The CITY acknowledges that the COMPANY will incur significant expense in reliance on the CITY's timely performance of its obligations hereunder and the COMPANY would not incur such expenses without the CITY's obligations hereunder.

ARTICLE XIV.
TERMINATION

14.01 Either of the parties to this Agreement shall have the right to terminate this Agreement, in whole or in part, provided that both parties agree in writing to the conditions of such termination.

14.02 Notwithstanding anything herein to the contrary, upon completion of the obligations of COMPANY and CITY hereunder, this Agreement shall terminate and be of no further force or effect except those duties, covenants, and obligations hereunder which expressly survive the expiration or termination of the Agreement.

ARTICLE XV.
INDEMNIFICATION

15.01 The COMPANY shall comply with the requirements of all applicable laws, rules and regulations, and shall indemnify and hold harmless the CITY, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, expenses of litigation, court costs, and attorney fees, for injury to or death of any person, or for damage to any property arising

out of or in connection with work done by the COMPANY under this Agreement unless attributable to the negligence or willful misconduct of the CITY, its officers, agents, and employees.

ARTICLE XVI.
RELEASE

16.01 The Company assumes full responsibility for the work to be performed hereunder by the Company, and hereby releases, relinquishes and discharges the CITY, its officers, agents and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, including death, of any person (whether that be a third person, contractor, or employee of either of the parties hereto) and any loss of or damage to property (whether the same be that of either of the parties hereto or of third parties) caused by or alleged to have been caused by, arising out of, or in connection with the COMPANY's work to be performed hereunder whether or not said claims, demands and causes of action in whole or in part are covered by insurance unless attributable to the negligence or willful misconduct of the CITY, its officers, agents and employees.

ARTICLE XVII.
VENUE

17.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Elgin, Texas.

ARTICLE XVIII.
ATTORNEY'S FEES

18.01 In the event that any action of law or inequity is necessary to enforce or interpret the terms of this Agreement, then and in that event, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

ARTICLE XIX.
NOTICE

19.01 Notice shall be mailed to the addresses designated hereunder, or as may be designated in writing by the parties from time to time, and shall be deemed received when sent postage-prepaid U.S. mail to the following:

CITY: City of Elgin
Attn: Thomas Mattis, City Manager
310 N. Main Street
Elgin, TX 78621

COMPANY: ELGIN NH MANAGEMENT, LLC
Attn: Rick Griffin, Manager
610 Towson Avenue

Fort Smith, AR 72902

WITH COPY TO:

Metcalfe Wolff Stuart & Williams, LLP
Attn: Talley J. Williams
221 W. 6th Street, Suite 1300
Austin, TX 78701

IN WITNESS HEREOF, this Agreement is executed on this the _____ day of _____, 2018.

ELGIN NH MANAGEMENT, LLC

By: _____

Name: Rick Griffin, Manager

Witness _____

ATTEST: CITY OF ELGIN, TEXAS

By: _____

Thomas Mattis, City Manager
City of Elgin

Witness _____

CONTRACTOR/COMPANY CONTRACT AGREEMENT CERTIFICATION **D1**

Cross Reference (Page# & Clause#)	Special Condition Clause #	Brief Description
P. 2, Clause 4.01 P. 7, Clause 6.08.01	1.a.	Job Creation
P. 2, Clause 4.02 P. 4, Clause 4.10 P. 7, Clause 6.08.02	1.b.	Company Payroll Report
P. 2, Clause 4.03 P. 7, Clause 6.08.03	1.c.	Employee Certification Report (ECR)
P. 5, Clause 5.01	1.d.	Contract Performance Activities (Construction Activities)
P. 3, Clause 4.04 P. 7, Clause 6.08.05	1.e.	Company Liability
P. 3, Clause 4.05 P. 8, Clause 6.08.06	1.f.	Transfer of Assets
P. 3, Clause 4.06 P. 8, Clause 6.08.07	1.g.	Taxes
P. 3, Clause 4.07 P. 8, Clause 6.08.08	1.h	Quarterly Visit Accessibility
P. 2, Clause 4.01 P. 3, Clause 4.08 P. 8, Clause 6.08.09	1.i.	LMI Records and Reports
P. 3, Clause 4.05	1.j.	Ownership
P. 9, Clause 6.15 P. 9, Clause 6.19	1.k.	Permits and Approvals
P. 4, Clause 4.15 P. 9, Clause 6.20	1.l.	Undocumented Workers
Not Applicable	1.m. (i-vi)	Real Estate Lease Agreement
Not Applicable	1.n. (i-iv)	Private Infrastructure Repayment

I hereby certify that the above listed requirements have been included in the Agreement between the City of Elgin and ELGIN NH MANAGEMENT, LLC

Thomas Mattis, City Manager
City of Elgin

Date

ATTACHMENT

EXHIBIT 1

**AGREEMENT BETWEEN THE TEXAS DEPARTMENT OF AGRICULTURE
AND
THE CITY OF ELGIN
CONTRACT NO. 7217xxx
FOR TEXAS CAPITAL FUND: INFRASTRUCTURE
INCLUDING EXHIBITS A-F THERETO**