

RESOLUTION NO. 02-06-2024G

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS APPROVING THE ACTIONS OF THE GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION, WHICH VOTED TO APPROVE A PERFORMANCE AGREEMENT WITH SELECT WATER SOLUTIONS, LLC; AUTHORIZING THE PRESIDENT AND EXECUTIVE DIRECTOR TO EXECUTE SAID PERFORMANCE AGREEMENT AND ANY AND ALL RELATED DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Board of Directors of the Gainesville Economic Development Corporation (GEDC), meeting in accordance with section 4B(n) of the Development Corporation Act of 1979, met on January 22, 2024; and

WHEREAS, The Board of Directors of the Gainesville Economic Development Corporation voted to approve a Performance Agreement with Select Water Solutions, LLC to provide an inventive payment in an amount equal to fifty percent (50%) of GEDC Type B Sales and Use Tax reported and paid by Select Water Solutions, LLC; and

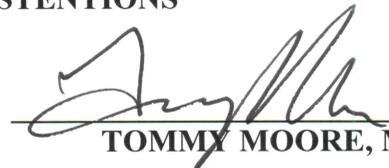
WHEREAS, the City Council of the City of Gainesville is required to approve GEDC actions; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS, MEETING IN REGULAR SESSION ON FEBRUARY 6, 2024:

Section 1. That the City Council of the City of Gainesville hereby approves the actions of the GEDC, which voted to approve the Performance Agreement with Select Water Solutions, LLC.

PASSED AND APPROVED THIS THE 6th DAY OF FEBRUARY 2024, BY FOLLOWING VOTE:

7 AYES, 0 NAYS, 0 ABSENT, 0 ABSTENTIONS


TOMMY MOORE, MAYOR

ATTEST:


DIANA ALCALA, CITY SECRETARY



RESOLUTION NO. GEDC 01-22-2024-A

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION, A TEXAS NON-PROFIT CORPORATION, APPROVING A PERFORMANCE AGREEMENT WITH SELECT WATER SOLUTIONS, LLC.

WHEREAS, the Gainesville Economic Development Corporation (hereinafter referred to as the "GEDC") is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, Select Water Solutions has an operational headquarters in the City of Gainesville and currently has one hundred and forty-four full-time employees; and

WHEREAS the Board of Directors of the GEDC held a public hearing on Monday, January 22, 2024 at 12:00 P.M. at Gainesville Civic Center located at 311 South Weaver, Gainesville, Texas, to consider and take action upon the following project: provide an incentive payment to Select Water Solutions, LLC in an amount equal to fifty percent (50%) of GEDC Type B Sales and Use Tax reported and paid by Select Water Solutions, LLC; and

WHEREAS the Board of Directors of the GEDC does hereby approve the Performance Agreement with Select Water Solutions, LLC, a copy of which is attached hereto as *Exhibit A*.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION AS FOLLOWS:

Section 1. The Gainesville Economic Development Corporation hereby approves a Performance Agreement with Select Water Solutions, LLC, a copy of which is attached hereto as *Exhibit A*, to provide an incentive payment to Select Water Solutions, LLC in an amount equal to fifty percent (50%) of GEDC Type B Sales and Use Tax reported and paid by Select Water Solutions, LLC; Authorizing the President and Executive Director to execute said Performance Agreement and any and all related documents; and providing for an effective date.

PASSED AND APPROVED THIS 22ND DAY OF JANUARY 2024, BY THE FOLLOWING VOTES:

6 AYES, 0 NAYS, 0 ABSENT, 1 ABSTENTIONS



RYAN MORRIS, PRESIDENT

ATTEST:



MARY JO DOELAR, SECRETARY

**GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION
ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT**

This Economic Development Performance Agreement (the “**Agreement**”) made and entered into this 7th day of February, 2024 by and between the **GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (the “**GEDC**”) and **SELECT WATER SOLUTIONS, LLC**, a Delaware limited liability company (the “**COMPANY**”).

WITNESSETH:

WHEREAS, the GEDC a Type B economic development corporation operating pursuant to Chapter 505 of the Texas Local Government Code. GEDC exists for the purpose of encouraging and assisting qualified entities in the creation of jobs and investment in the Gainesville, Texas area; and

WHEREAS, the COMPANY is a provider of sustainable water and chemical solutions to the energy industry; and

WHEREAS, the COMPANY'S operational headquarters is in Gainesville, Texas and has locations throughout Texas as well as the United States; and

WHEREAS, the GEDC believes that the presence of COMPANY in the City of Gainesville, Texas (known as “**Gainesville**”) will benefit the economy of Gainesville and surrounding area by providing employment, increasing sales tax revenue and encouraging growth in other businesses, all of which serve the purposes and goals of the GEDC, and this Agreement is authorized by Sections 501.101 and 501.103 of the Texas Local Government Code; and

WHEREAS, the GEDC desires to encourage COMPANY to organize operations whereby orders are accepted in the City of Gainesville, and/or purchases are stored and/or used in the City of Gainesville, which would require City of Gainesville and GEDC taxes to be paid to the Texas Comptroller of Public Accounts ("State"). In return, the GEDC will provide an Incentive Payment equal to a percentage of the GEDC taxes paid to the State by COMPANY on COMPANY'S Texas Sales & Use Tax Return and/or Texas Direct Pay Tax Return.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained the parties hereto agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, as defined herein, and shall continue thereafter until **October 31, 2028**, unless terminated sooner under the provisions hereof.

SECTION 3. AFFIRMATIVE COVENANTS.

COMPANY and GEDC covenants and agrees with the other party that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Operate Company Facility.** COMPANY covenants and agrees by **November 1, 2023**, and during the Term of this Agreement to keep open to the Select Water Solutions facility located within the City of Gainesville, Texas.
- (b) **Job Creation and Retention.** COMPANY covenants and agrees by **November 1, 2023**, and during the Term of this Agreement to employ and maintain a minimum of one hundred (100) full-time equivalent employment positions working at the Select Water Solutions facility located within the City of Gainesville, Texas.
- (c) **GEDC Financial Incentive.** GEDC hereby commits to provide an incentive payment to COMPANY equal to fifty percent (50%) of the GEDC Type B Sales and Use Tax reported and paid by COMPANY on COMPANY's Texas Sales and Use Tax Return (the "Incentive Payment"). The incentive payment shall be due and payable commencing in respect of sales and use taxes paid beginning **November 1, 2023**, through the period ending **October 31, 2028**, with the final Incentive Payment being due in respect of sales and use taxes paid by Company for the month ending **October 31, 2028**.
- (d) **Time of Payment.** COMPANY will provide the GEDC proof of payment of the GEDC sales and use taxes paid to the State on the COMPANY's Texas Sales and Use Tax Return within a thirty (30) day period after the end of each quarter. Within thirty (30) days of receipt of sales tax by the GEDC, the GEDC will make the Incentive Payment to the COMPANY and thereafter for each quarter for a period of five (5) years until final payments have been made for all periods through **October 31, 2028**.
- (e) **Clawback.** If the State of Texas, at any time, reduces the amount of sales and use tax received by the GEDC and the GEDC paid COMPANY an incentive payment based on the original sales and use tax associated with this reduction, COMPANY agrees to refund the associated portion of incentive payment back to the GEDC.

SECTION 4. CESSATION OF ADVANCES.

If GEDC has made any commitment to make any financial assistance to COMPANY, whether under this Agreement or under any other agreement, GEDC shall have no obligation to

advance or disburse financial assistance if: (i) COMPANY becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 5. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of COMPANY or GEDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of COMPANY or GEDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between COMPANY and GEDC is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the GEDC by or on behalf of COMPANY under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** COMPANY's insolvency, appointment of receiver for any part of COMPANY's property, any assignment for the benefit of creditors of COMPANY, any type of creditor workout for COMPANY, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against COMPANY is an Event of Default.
- (d) **Ad Valorem Taxes.** COMPANY allows its ad valorem taxes owed to the City of Gainesville, Texas, to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from GEDC and/or Cooke County Central Appraisal District is an Event of Default.

SECTION 6. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 5 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default. In the event, COMPANY defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by GEDC to COMPANY pursuant to Section 3 of this Agreement shall become immediately due and payable by COMPANY to GEDC.

SECTION 7. INDEMNIFICATION.

TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS,

enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word. If any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement or any part hereof invalid or illegal, the parties agree to terminate (or if feasible, modify) this Agreement and to negotiate in good faith a remedy that preserves the intent of the parties hereunder as much as reasonably possible.

(f) **GOVERNING LAW:** The Parties agree that this Agreement shall be governed by the laws of the State of Texas without regard to conflicts of laws or principles which may otherwise be applicable, and that venue shall be in Cooke County, Texas.

(g) **CONSTRUCTION OF AGREEMENT:** This Agreement shall not be construed either for or against either party, but shall be interpreted, construed, and enforced in accordance with the mutual intent of the parties ascertainable from the language of the Agreement.

(h) **ENTIRE AGREEMENT:** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement. The parties agree this Agreement has been drafted jointly by the parties and their legal representatives.

(i) **UNDOCUMENTED WORKER PROVISION:** COMPANY certifies that the COMPANY does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, COMPANY is convicted of a violation under 8 U.S.C. § 1324a(f), COMPANY shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of eight percent (8%), not later than the 120th day after the date GEDC notifies COMPANY of the violation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

GEDC:

GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION
a Texas non-profit corporation

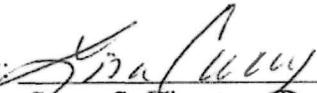
By: 

Ryan Morris, GEDC Board President

Date: 2/9/2024

COMPANY:

SELECT WATER SOLUTIONS, LLC
a Delaware limited liability company

By: 

Lisa Curry, Sr Director Tax

Date: 2/9/2024