

**RESOLUTION NO. 03-07-2023G**

**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 THE PERFORMANCE AGREEMENT WITH MARCHING USA, LLC. TO FUND A JOB CREATION INCENTIVE; AUTHORIZING THE PRESIDENT AND EXECUTIVE DIRECTOR TO EXECUTE SAID PERFORMANCE AGREEMENT 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 February 27, 2023; and

**WHEREAS**, the Board of Directors of the Gainesville Economic Development Corporation voted to approve the Performance Agreement with Marching USA, LLC. to provide a job creation incentive for Marching USA's relocation to the property at 251 FM 1201 in Gainesville, Texas.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS, MEETING IN REGULAR SESSION ON MARCH 7, 2023 THAT:**

***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 Marching USA LLC to provide a job creation incentive for Marching USA's relocation to the property at 251 FM 1201 in Gainesville, Texas.

**PASSED AND APPROVED THIS 7<sup>th</sup> DAY OF MARCH, 2023 BY THE FOLLOWING VOTES:**

6 AYES, 0 NAYS, 1 ABSENT, 0 ABSTENTIONS

  
\_\_\_\_\_

**TOMMY MOORE, MAYOR**

**ATTEST:**

  
\_\_\_\_\_

**DIANA ALCALA, CITY SECRETARY**



**RESOLUTION NO. GEDC 02-27-2023-C**

**A RESOLUTION OF THE GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION OF THE CITY OF GAINESVILLE WHICH APPROVED A PERFORMANCE AGREEMENT WITH MARCHING USA, LLC.**

**WHEREAS**, the Board of Directors of the Gainesville Economic Development Corporation, in accordance with the Development Corporation Act, Section 505.159 of the Texas Local Government Code; and

**WHEREAS** the Board of Directors of the Gainesville Economic Development Corporation approved a performance agreement with Marching USA, LLC.

**NOW, THEREFORE BE IT RESOLVED BY THE GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION OF THE CITY OF GAINESVILLE, TEXAS MEETING IN REGULAR SESSION ON FEBRUARY 27<sup>TH</sup>, 2023:**

**Section 1.** The Gainesville Economic Development Corporation hereby approves to a Performance Agreement with Marching USA, LLC to expend economic development funds for a jobs creation incentive up to \$88,000.00; 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 27<sup>TH</sup> DAY OF FEBRUARY 2023, BY THE FOLLOWING VOTES:**

6 AYES, 0 NAYS, 1 ABSENT, 0 ABSTENTIONS

  
\_\_\_\_\_  
RYAN MORRIS, PRESIDENT

**ATTEST:**

  
\_\_\_\_\_  
WILLIAM MYERS, EXECUTIVE DIRECTOR

**GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION  
BUSINESS INCENTIVE AGREEMENT**

This Business Incentive Agreement (the "Agreement") made and entered into by and between the GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION, a Texas non-profit corporation (the "GEDC") and MARCHING USA, a Texas 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.

**WHEREAS**, the Company is acquiring a 2± acre property and two buildings including 20,000± square feet at 251 FM 1201 in Gainesville (the "Subject Property") and is making investments in real property improvements and in personal property for business operations as manufacturing facility (the "Business Operations") for marching band instruments and field frame equipment; and

**WHEREAS**, the Company represents the project investment (the "Project Investment") will constitute an approximate investment of Three Hundred Thousand dollars (\$300,000.00) in facility redevelopment and an approximate Tangible Personal Property of Five Hundred Thousand dollars (\$500,000.00) by the Company over the Term of Agreement and Business Operations are expected to bring new employment to Gainesville, with expected employment totaling approximately twenty-two (22) Employment Positions when fully operational. This Project Investment begins in 2023 and will be completed in 2025; 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 related businesses, all of which serve the purposes and goals of the GEDC; and

**WHEREAS**, the GEDC finds and determines the Company is a "primary job" employer as that term is defined in Section 501.002(12) of the Texas Local Government Code, and find and determine this "project" and Agreement is authorized by Sections 501.101 and 501.103 of the Texas Local Government Code; and

**WHEREAS**, to encourage Company to grow to its potential and maintain a long-term presence in Gainesville, the GEDC will offer Business Incentives to Company payable as a Sales Tax Incentive and Jobs Incentive as a cash payment for sales tax generation and for new jobs created by Company upon terms more fully set forth below.

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

## GENERAL PROVISIONS

1. Company represents that it has purchased the Subject Property and contemplates establishing Business Operations thereon and locating Tangible Personal Property on the Subject Property.
2. The Subject Property is not owned or leased by any member of the GEDC.
3. Company acknowledges and agrees, beginning on the date of the execution of this Agreement and continuing during the term of this Agreement, that the Company, or an affiliate wholly-owned, directly or indirectly, by the Company or one of its constituent parties or a related entity owned or under the common control of the Company, shall, subject only to events of Force Majeure, continuously own and occupy the Subject Property, and shall continuously operate and maintain the Subject Property as a manufacturing, distribution, and retail facility.

## DEFINITIONS

4. Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:
  - A. "Annual Report" means calendar year reporting, to request payment of Businesses Incentives, including Employment Report, Sales Tax Report, proof of Gainesville Area Chamber of Commerce membership dues payment, and proof of local non-profit donation submitted to GEDC.
  - B. "Business Incentives" means the combined Jobs Incentives.
  - C. "Business Operations" shall have the same meaning set forth in the recitals above
  - D. "Effective Date" means the last date of acknowledgment of the signatures set forth on the signature page below.
  - E. "Employment Position" means non-temporary full-time employment positions of the Company having an official scheduled work week of not less than forty (40) hours and that according to company policy, is entitled to full benefits with a wage of at least twenty dollars (\$20.00) per hour as shown in Employment Reports. Two (2) or more part-time employees, totaling, a combined, forty (40) hours or more per week with wages of at least twenty dollars (\$20.00) per hour as shown on Employment Report, and that according to company policy, are entitled to full benefits, may be substituted for one (1) full time employee. The wages for new jobs that have not worked a full calendar year shall be annualized for reporting purposes to reflect a true annual wage. The wage of a new Employment Position must be equal to or greater than an average annualized wage of forty-one thousand six-hundred dollars (\$41,600) or twenty dollars (\$20.00) per hour.

- F. “Employment Report” means taxable payroll documented and submitted to GEDC which will contain employee headcount and the wage of each Employee Position, or equivalent, created at Company’s Gainesville Subject Property in the form of quarterly IRS 941 returns, Texas Workforce Commission Employer Quarterly Reports, or employee rosters that show the hours worked and wages paid; the specific form documentation submitted by COMPANY will be determined by COMPANY provided that it is of the forms permitted by this Agreement and provides information necessary to calculate Employment Positions.
- G. “Force Majeure” means any delay caused by reason of war, civil commotion, acts of God, strike, inclement weather, shortages or unavailability of labor, supplies or materials (including but not limited to circumstances related to declared national emergencies such as but not limited to COVID-19) or other circumstances which are beyond the reasonable control and are without the fault or negligence of the obligated party, regardless of whether any such circumstance is similar to any of those enumerated or not, the obligated party shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such requirement and any applicable completion deadline shall be extended for a period of time equal to the period the obligated party was delayed. Force Majeure will not mean nor include delays caused by the Company’s lack of, or inability to obtain, funding.
- H. “Improvements” collectively means all real property and personal property investments Company develops, constructs, and installs through the Project Investment all which shall be located on the Subject Property.
- I. “Jobs Incentives” means the annual payment equal to Four Thousand and no/dollars (\$4,000.00) per non-retail sales related Employment Position for annual New Employment Positions as documented by Company Employment Reports in each Annual Report. This Jobs Incentive excludes Retail Related Employment Positions.
- J. “New Employee Positions” means the additional net Employment Positions created and filled in one calendar year.
- K. “Quarterly Report” means one (1) quarter (January to March or April to June or July to September or October to December) of Business Operations which will contain a quarterly Employment Report and quarterly Sales Tax Report. This Quarterly Report shall be for informational purposes only to the GEDC and is not a material term to this Agreement that shall be construed as a basis for the Annual Report or payment under this Agreement. The first Quarterly Report shall be for the first full quarter after the Effective Date and due to the GEDC (30) days after the end of the quarter, and every subsequent calendar quarter thereafter during the term of this Agreement.

- L. “Retail Related Employment Position” means part-time and/or full-time Employments Positions primarily engaged in retails sales, retail service, commission-based sales, retail customer service, or any other ancillary retail sales and/or retail service activities.
- M. “Sales Tax Report” means official Texas Comptroller periodic reports of taxable sales and sales tax submitted by Company to the Texas Comptroller of Public Accounts.
- N. “Subject Property” shall have the same meaning set forth in the recitals above and any Improvements.
- O. “Tangible Personal Property” means all tangible personal property, including, without limitation, equipment, machinery and fixtures, inventory, and supplies owned by the Company that are located on the Subject Property.
- P. “Term of Agreement” means eight (8) Quarterly Reports from the Effective Date including 2023, 2024, and part of 2025.
- Q. “Total Employment Positions” means all Employment Positions documented in the Annual Report. Company began with zero (0) Total Employment Positions. Each annual Employment Report will establish New Employment Positions. Year One (1) (four Quarterly Reports) Total Employment Positions plus Year two (2) New Employment Positions equal Year Two (2) (four Quarterly Reports) Total Employments Positions.

#### **GEDC COMMITMENTS**

- 5. GEDC hereby commits the sum of up to a maximum of Eighty-Eight Thousand and no/100 dollars (\$88,000.00) over the Term of Agreement, cash payment amount, as a Jobs Incentive to be paid to Company for new jobs created by Company over the Term of Agreement from the Effective Date. There is not a maximum annual Jobs Incentives.
- 6. GEDC will pay the Business Incentive on an annual basis within thirty (30) days of receiving the complete, current Annual Report from Company.

#### **COMPANY COMMITMENTS**

- 7. Company agrees that to receive the Business Incentives identified above, Company must meet the following requirements:
  - A. Company will complete Project Investment within Term of Agreement.

- B Company will provide an Annual Report due to the GEDC within sixty (60) days of the end of each calendar year, including a partial year for 2025, during the term of this Agreement. Annual Reports shall commence beginning with calendar year 2023, due on or before March 1, 2024, and continue annually for the Term of Agreement with the final Annual Report due by end of this Agreement in 2025. At GEDC sole discretion, Annual Reports not received within sixty (60) days of the end of each calendar year may be deemed delinquent with any related Business Incentive being forfeited by Company.
- C Company will join and remain an active member of the Gainesville Area Chamber of Commerce for the term of this Agreement.
- D Company will make an annual contribution to a local non-profit in the amount of One Thousand and no/dollars (\$500.00) payable before each Annual Report.
- E All requirements set forth in Definitions section and in Company Commitments section must be met within the Term of Agreement for all the Business Incentives to be claimed.
- F Company will provide Quarterly Reports to the GEDC
- G Company will remain in good standing with all Texas local or state taxing entities and with City of Gainesville Codes and Ordinances.

#### **TERMINATION**

- 8. This Agreement shall terminate on the later of December 31, 2025 or GEDC payment of Year Two Business Incentive, or if Company misses two (2) consecutive Annual Report deadlines, or if Company should cease to do business in Gainesville, Texas.

#### **AUTHORITY**

- 9. Each individual executing this Agreement hereby represents and warrants that he/she is authorized to execute and deliver this Agreement and bind any and all entities, persons or individuals presently having an interest in the Company and Subject Property, as well as heirs, successors and assigns of the parties.

#### **SUCCESSORS, ASSIGNS AND RECORDATION**

- 10. This Agreement and any addenda hereto shall be binding upon and inure to the benefit of the heirs, successors, agents, representatives and assigns of the parties hereto.

#### **COUNTERPARTS**

11. The Parties acknowledge and agree that a facsimile copy or scan of this Agreement with a Party's signature is as legally valid and binding as the original Agreement with an original signature. The parties agree that this Agreement can be signed in counterpart with the same legal force and effect as if not signed in counterpart.

#### NOTICE

12. All notices required by this Agreement shall be in writing and addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid or by hand delivery.

If to the GEDC:

Gainesville Economic Development Corporation  
Attn: Ryan Morris, President  
311 S Weaver St  
Gainesville, TX 76240

If to the Company:

Marching USA, LLC  
Attn: Roger Treacher  
505 Kiowa Drive West  
Lake Kiowa, TX 76240

#### SEVERABILITY

13. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement, shall be 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.

#### GOVERNING LAW

14. 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.

#### CONSTRUCTION OF AGREEMENT

15. 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.

#### COUNTERPARTS

16. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. The parties acknowledge the inherent unpredictability of the global semiconductor industry and the possibility that schedules for investment and job creation and other provisions may require adjustment over the terms of this Agreement, subject to the mutual written assent of all parties.

**ENTIRE AGREEMENT**

17. 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.

**UNDOCUMENTED WORKER PROVISION**

18. 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:**

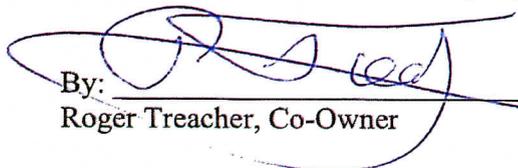
**GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION**  
a Texas Corporation

By:   
Ryan Morris, GEDC Board President

Date: 3-7-2023

**COMPANY:**

**MARCHING USA**  
a Texas Limited Liability Company

By:   
Roger Treacher, Co-Owner

Date: 3-7-2023