



ECONOMIC IMPROVEMENT CORPORATION AGENDA
JUNE 7, 2022, 4:00 PM
Kerrville City Hall Council Chambers
701 Main Street, Kerrville, Texas

The purpose of the Economic Improvement Corporation is to improve economic prosperity in the City of Kerrville.

1 CALL TO ORDER:

2 INVOCATION:

3 VISITORS / CITIZENS FORUM:

Any citizen with business not scheduled on the agenda may speak to the Economic Improvement Corporation. No deliberation or action can be taken on these items because the Open Meetings Act requires an item be posted on an agenda 72 hours before the meeting. Visitors are asked to limit their presentation to three minutes.

4 CONSIDERATION AND POSSIBLE ACTION:

- 4.A. Lienholders Agreement (Pari Passu Intercreditor Agreement) between EIC and Dacotah Bank concerning monetary grants and loans issued by the parties to Killdeer Mountain Manufacturing, Inc. (Prairie Gold Real Estate, LLC).

Attachments:

[Pari Passu Intercreditor Agreement V7 \(00225671xC60E2\) \(003\).pdf](#)

[KMM Loan amortization schedule1.pdf](#)

[KMM Loan amortization schedule2.pdf](#)

- 4.B. First Amendment to Economic Development Grant and Real Estate Purchase Agreement between Killdeer Mountain Manufacturing, Inc., and the City of Kerrville, Texas, Economic Improvement Corporation.

Attachments:

[FIRST_AMENDMENT_TO_ECONOMIC_DEVELOPMENT_GRANT_AND_REAL_ESTATE_PURCHASE_AGREEMENT 1.pdf](#)

- 4.C. First Amendment to Economic Development Incentive Agreement between Killdeer Mountain Manufacturing, Inc., and The City of Kerrville, Texas, Economic Improvement Corporation.

Attachments:

[FIRST_AMENDMENT_TO_ECONOMIC_DEVELOPMENT_INCENTIVE_GRANT_AGREEMENT 2.pdf](#)

5 EXECUTIVE SESSION:

The Economic Improvement Corporation may, as permitted by law, adjourn into executive session at any time to discuss any matter listed above including if they meet the qualifications in Section 551.071 (consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation regarding security devices), and

551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code, including the following matters:

5.A. Workforce Housing development projects. (551.071, 551.072, 551.087).

6 POSSIBLE ACTION FOR ITEMS DISCUSSED IN EXECUTIVE SESSION:

7 ITEMS FOR FUTURE AGENDAS:

8 ADJOURN.

The facility is wheelchair accessible, and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-257-8000 for further information.

I hereby certify that this agenda was posted as notice of the meeting on the bulletin board at the City Hall of the City of Kerrville, Texas, and on the City's website on the following date and time: 6/3/2022 at 5:00 p.m., and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Kesha Franchina

Kesha Franchina, Deputy City Secretary, City of Kerrville, Texas



**TO BE CONSIDERED BY
ECONOMIC IMPROVEMENT CORPORATION
CITY OF KERRVILLE, TEXAS**



SUBJECT: Lienholders Agreement (Pari Passu Intercreditor Agreement) between EIC and Dacotah Bank concerning monetary grants and loans issued by the parties to Killdeer Mountain Manufacturing, Inc. (Prairie Gold Real Estate, LLC).

AGENDA DATE OF: June 7, 2022

DATE SUBMITTED: May 31, 2022

SUBMITTED BY: Michael Hornes

EXHIBITS: [Pari Passu Intercreditor Agreement V7 \(00225671xC60E2\) \(003\).pdf](#)
[KMM Loan amortization schedule1.pdf](#)
[KMM Loan amortization schedule2.pdf](#)

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	No
Key Priority Area	N/A
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

RECOMMENDED ACTION:

Consider Lienholders Agreement between EIC and Dacotah Bank concerning monetary grants and loans issued by the parties to Prairie Gold Real Estate LLC (dba Killdeer Mountain Manufacturing) and amendment to Economic Development Grant and Real Estate Purchase Agreement.

Pari Passu Intercreditor Agreement

Pari Passu Intercreditor Agreement, dated as of _____ (as amended, restated, supplemented and/or otherwise modified from time to time, this “**Agreement**”), among Dacotah Bank (“**Dacotah**”), City of Kerrville, Texas Economic Improvement Corporation (“**EIC**”), Prairie Gold Real Estate LLC (“**Prairie Gold**”), and Killdeer Mountain Manufacturing Inc. (“**Killdeer**”).

In consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I Definitions

1.01 Certain Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“**Bankruptcy Code**” means Title 11 of the United States Code, as amended.

“**Bankruptcy Law**” means the Bankruptcy Code and any similar Federal or state law for the relief of debtors.

“**Business Day**” means a day other than a Saturday, Sunday, or other day on which commercial banks in Kerrville, Texas are authorized or required by law to close.

“**Collateral**” means all assets and properties subject to Liens created pursuant to any Pari Passu Loan Document to secure one or more Pari Passu Obligations.

“**Dacotah Loan Documents**” means: (1) the note executed by Prairie Gold payable to Dacotah in the original principal amount of \$ _____ secured by a deed of trust on the Real Property, and the guaranties, security agreement, construction loan agreement, financing statements, and such other agreements, documents and instruments evidencing, governing, securing or guaranteeing any portion of the debt evidenced by such note; and (2) any loan documents evidencing “Additional Improvement and FFE Proceeds” as set forth in *Section 2.05*.

“**Dacotah Obligations**” means all amounts owing to Dacotah pursuant to the terms of any Dacotah Loan Document, including, without limitation, all amounts in respect of any principal, interest (including any interest, fees, and expenses accruing subsequent to the commencement of an Insolvency or Liquidation Proceeding at the rate provided for in the respective Dacotah Loan Document, whether or not such interest, fees, or expenses is an allowed claim under any such proceeding or under applicable state, or federal law), penalties, fees, expenses (including expenses related to the enforcement of the Dacotah Loan Documents), indemnifications, reimbursements, damages and other liabilities, and guarantees of the foregoing amounts.

“**Debtors**” means Prairie Gold and Killdeer.

“Discharge” means, with respect to any Shared Collateral and any Pari Passu Obligations, the date on which such Pari Passu Obligation is no longer secured by such Shared Collateral. The term **“Discharged”** shall have a corresponding meaning.

“EIC Loan Documents” means (1) a note dated September 25, 2020, executed by Prairie Gold payable to EIC in the original principal amount of \$1,793,600.00 secured by a deed of trust on Tract 1 (see **“Property”** below) recorded in Document No. 20-07186 of the Official Public Records of Kerr County, Texas; and (2) a note dated September 25, 2020, executed by Prairie Gold payable to EIC in the original principal amount of \$250,000.00, secured by a deed of trust on Tract 2 (see **“Property”** below) recorded in Document No. 20-07187 of the Official Public Records of Kerr County, Texas

“EIC Obligations” means all amounts owing to EIC pursuant to the terms of any EIC Loan Document, including, without limitation, all amounts in respect of any principal, interest (including any interest, fees, and expenses accruing subsequent to the commencement of an Insolvency or Liquidation Proceeding at the rate provided for in the respective EIC Loan Document, whether or not such interest, fees, or expenses is an allowed claim under any such proceeding or under applicable state, or federal law), penalties, fees, expenses (including expenses related to the enforcement of the EIC Loan Documents), indemnifications, reimbursements, damages and other liabilities, and guarantees of the foregoing amounts.

“Event of Default” or **“Default”** means an **“Event of Default,”** or **“Default”** (or similarly defined terms) as defined in any Pari Passu Loan Document.

“Insolvency or Liquidation Proceeding” means:

(1) any case or proceeding commenced by or against any Debtor or under any Bankruptcy Law, any other case or proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of any Debtor, any receivership or assignment for the benefit of creditors relating to any Debtor or any similar case or proceeding relative to any Debtor or its creditors, as such, in each case whether or not voluntary;

(2) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to any Debtor, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or

(3) any other case or proceeding of any type or nature in which substantially all claims of creditors of any Debtor are determined, and any payment or distribution is or may be made on account of such claims.

“Lien” means, with respect to any asset, (a) any deed of trust, lien (statutory or otherwise), pledge, hypothecation, encumbrance, collateral assignment, charge or security interest in, on or of such asset, and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Pari Passu Obligations” means, collectively, (i) the Dacotah Obligations and (ii) the EIC Obligations.

“Pari Passu Loan Documents” means, collectively, (i) the Dacotah Loan Documents and (ii) the EIC Loan Documents.

“Pari Passu Parties” means (i) Dacotah and (ii) EIC.

“Person” means an individual, corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

“Possessory Collateral” means any Shared Collateral in the possession of a Pari Passu Party, to the extent that possession thereof perfects a Lien thereon under the Uniform Commercial Code of any jurisdiction.

“Ratable Basis” means the distribution of Proceeds to Dacotah and EIC based on the proportions of the balances of the Dacotah Obligations and EIC Obligations as to the whole of the Pari Passu Obligations at the time the Proceeds are distributed from time to time. By way of example, if at the time of a distribution of Proceeds, the balance of the Dacotah Obligations is \$3,000,000.00 and the balance of the EIC Obligations is \$1,000,000.00, Dacotah will receive 75% of the distributed Proceeds and EIC will receive 25% of the distributed Proceeds.

“Real Property” means the following real property and improvements located thereon:

Tract 1: All that certain tract or parcel of land, lying and being situated in the County of Kerr, State of Texas, being Lot 1, Block 1, Kerrville Airport Commerce Park, Phase 1, according to the plat of record in Volume 7, Page 220, Plat Records of Kerr County, Texas.

Tract 2: All that certain tract or parcel of land, lying and being situated in the County of Kerr, State of Texas, comprising 5.00 acres, more or less, out of O.V. Robinson Survey No. 44, Abstract No. 282, being the same and identical property conveyed in Volume 1189, Page 393, Real Property Records of Kerr County, Texas; and being more particularly described by metes and bounds on Exhibit “A” attached.

“Refinance” means, in respect of any indebtedness, to refinance, or replace, or to issue other indebtedness or enter alternative financing arrangements, in exchange or replacement for such indebtedness (in whole or in part), including by adding or replacing lenders, creditors, agents, borrowers and/or guarantors, and including in each case, but not limited to, after the original instrument giving rise to such indebtedness has been terminated and including, in each case, through any credit agreement, indenture or other agreement. “Refinanced” and “Refinancing” have correlative meanings. “Refinance” does not include any increase in the principal amount of the Pari Passu Obligations.

“Shared Collateral” means the Real Property.

1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include

the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument, other document, statute or regulation herein shall be construed as referring to such agreement, instrument, other document, statute or regulation as from time to time amended, supplemented or otherwise modified, (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, but shall not be deemed to include the subsidiaries of such Person unless express reference is made to such subsidiaries, (iii) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Articles and Sections shall be construed to refer to Articles and Sections of this Agreement, (v) unless otherwise expressly qualified herein, the word “asset” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (vi) the term “or” is not exclusive.

1.03 Impairments. It is the intention of the Pari Passu Parties that the holders of Pari Passu Obligations bear the risk of (i) any determination by a court of competent jurisdiction that (x) any of the Pari Passu Obligations are unenforceable under applicable law or are subordinated to any other obligations (other than other Pari Passu Obligations), (y) any of the Pari Passu Obligations do not have an enforceable security interest in any of the Collateral securing any Pari Passu Obligations and/or (z) any intervening security interest exists securing any other obligations (other than another Pari Passu Obligation) on a basis ranking prior to the security interest of such Pari Passu Obligations but junior to the security interest of any other Pari Passu Obligations or (ii) the existence of any Collateral for any other Pari Passu Obligations that is not Shared Collateral (any such condition referred to in the foregoing clauses (i) or (ii) with respect to any Pari Passu Obligations, an “**Impairment**” of such Pari Passu Obligation); provided, that the existence of a maximum claim with respect to any real property subject to a deed of trust which applies to all Pari Passu Obligations shall not be deemed to be an Impairment of any Pari Passu Obligations. In the event of any Impairment with respect to any Pari Passu Obligations, the results of such Impairment shall be borne solely by the holders of such Pari Passu Obligations, and the rights of the holders of such Pari Passu Obligations (including, without limitation, the right to receive distributions in respect of such Pari Passu Obligations pursuant to *Section 2.01*) set forth herein shall be modified to the extent necessary so that the effects of such Impairment are borne solely by the holders of such Pari Passu Obligations subject to such Impairment. Additionally, in the event the Pari Passu Obligations are modified pursuant to applicable law (including, without limitation, pursuant to Section 1129 of the Bankruptcy Code), any reference to such Pari Passu Obligations or the Pari Passu Loan Documents governing such Pari Passu Obligations shall refer to such obligations or such documents as so modified.

ARTICLE II

Priorities and Agreements with Respect to Shared Collateral

2.01 Priority of Claims.

2.01.1 Anything contained herein or in any of the Pari Passu Loan Documents to the contrary notwithstanding, if any Pari Passu Party receives the proceeds of any sale or other

liquidation of any Shared Collateral or any distribution is made in respect of any Shared Collateral in any Insolvency or Liquidation Proceeding of any Debtor (all distributions, proceeds of any sale, or other liquidation of any Shared Collateral and all proceeds of any such distribution, being collectively referred to as “**Proceeds**”), shall be applied, subject to *Section 1.03*, (i) first, to the payment in full of the Pari Passu Obligations on a Ratable Basis, with such Proceeds to be applied to the Pari Passu Obligations in accordance with the terms of the applicable Pari Passu Loan Documents and (ii) second, after payment of all Pari Passu Obligations, to whosoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct. For avoidance of doubt, the term “Proceeds” does not include payments made on a Pari Passu Obligation by any party liable for such payments.

2.01.2 It is acknowledged that the Pari Passu Obligations may, subject to the limitations set forth in the then extant Pari Passu Loan Documents, be extended, renewed, restated, supplemented, restructured, repaid, refunded, Refinanced, or otherwise amended or modified from time to time, all without affecting the priorities set forth in *Section 2.01(a)* or the provisions of this Agreement defining the relative rights of the Pari Passu Parties. However, a Refinance cannot include an increase in a Pari Passu Obligation, without the consent of both Pari Passu Parties, which consent may be denied, delayed, and conditioned at the sole discretion of a Pari Passu Party.

2.02.3 Notwithstanding the date, time, method, manner or order of grant, attachment or perfection of any Liens securing any Pari Passu Obligations granted on the Shared Collateral and notwithstanding any provision of the Uniform Commercial Code of any jurisdiction, or any other applicable law or the Pari Passu Loan Documents or any defect or deficiencies in the Liens securing the Pari Passu Obligations or any other circumstance whatsoever (but, in each case, subject to *Section 1.03*), each Pari Passu Party hereby agrees that the Liens securing each Pari Passu Obligation on any Shared Collateral shall be of equal priority.

2.02 Actions with Respect to Shared Collateral; Prohibition on Contesting Liens; Cooperation.

2.02.1 Each Pari Passu Party may, in its sole discretion, act or refrain from acting with respect to any Shared Collateral. Neither Pari Passu Party may instruct the other Pari Passu Party to commence any judicial or nonjudicial foreclosure proceedings with respect to, seek to have a trustee, receiver, liquidator or similar official appointed for or over, attempt any action to take possession of, exercise any right, remedy or power with respect to, or other-wise take any action to enforce its security interest in or realize upon, or take any other action available to it in respect of, any Shared Collateral, whether under any Pari Passu Loan Document, applicable law or otherwise. In any Insolvency or Liquidation Proceeding, any Pari Passu Party may file a proof of claim or statement of interest with respect to the Pari Passu Obligations owed to such Pari Passu Party. Any Pari Passu Party may take any action to preserve or protect the validity and enforceability of the Liens granted in favor of such Pari Passu Party, provided that no such action is, or could reasonably be expected to be, (A) adverse, in any material respect, to the Liens granted in favor of the other Pari Passu Party to exercise remedies. Any Pari Passu Party may file any responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding, or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims or Liens of such Pari Passu Party, including any claims secured by the Shared Collateral, in each case, to the extent not inconsistent with the terms of this Agreement.

2.02.2 Nothing in this Agreement shall be construed to limit the rights and priorities of any Pari Passu Party with respect to any Collateral not constituting Shared Collateral.

2.02.3 Each of the Pari Passu Parties agrees that it will not (and hereby waives any right to) question or contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the perfection, priority, validity, attachment or enforceability of a Lien held by or on behalf of the other Pari Passu Parties in all or any part of the Collateral, or the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of any Pari Passu Party to enforce this Agreement.

2.02.5 Each Pari Passu Party agrees that it will cooperate with the other Pari Passu Party if there is an Event of Default under their respective Pari Passu Loan Documents. The Pari Passu Loan Documents will include (or be amended to include) cross default and cross collateral clauses that provide: (i) an Event of Default under one Pari Passu Party's Pari Passu Loan Documents will be a default under the other Pari Passu Party's Pari Passu Loan Documents; (ii) Liens on the Shared Collateral set forth in each Pari Passu Party's Pari Passu Loan Documents secure both the EIC Obligations and the Dacotah Obligations; and (iii) consent of EIC and Killdeer to the application of the proceeds of any foreclosure sale to the payment of the Pari Passu Obligations regardless of Lien priority. The Pari Passu Parties will jointly accelerate their respective Pari Passu Obligations upon an uncured Event of Default. **[COMMENT – DO THE EIC GRANTS PROVIDE FOR ACCELERATION?]** Neither Pari Passu Party will reinstate their respective Pari Passu Obligations after acceleration without the written consent of the other Pari Passu Party. Neither Pari Passu Party will accept a deed in lieu of foreclosure without the written consent of the other Pari Passu Party. Upon acceleration of the their respective Pari Passu Obligations, the Pari Passu Parties will jointly send notice of a foreclosure sale of the Shared Collateral and jointly conduct the foreclosure sale.

2.03 No Interference; Payment Over.

2.03.1 Each Pari Passu Party agrees that (i) it will not challenge or question in any proceeding (including any Insolvency or Liquidation Proceeding) the validity or enforceability of any Pari Passu Obligations or any Pari Passu Loan Document or the validity, attachment, perfection or priority of any Lien under any Pari Passu Loan Document or the validity or enforceability of the priorities, rights or duties established by or other provisions of this Agreement. A Pari Passu Party will not take or cause to be taken any action the purpose or intent of which is, or could be, to interfere, hinder or delay, in any manner, whether by judicial proceedings or otherwise, any sale, transfer or other disposition of the Shared Collateral by the other Pari Passu Party. A Pari Passu Party will not institute any suit or assert in any suit, Insolvency or Liquidation Proceeding or other proceeding any claim against the other Pari Passu Party seeking damages from or other relief by way of specific performance, instructions or otherwise with respect to any Shared Collateral. Neither Pari Passu Party shall be liable for any action taken or omitted to be taken by the other Pari Passu Party with respect to any Shared Collateral in accordance with the provisions of this Agreement. A Pari Passu Party will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of any of a Pari Passu Party to enforce this Agreement.

2.03.2 Each Pari Passu Party hereby agrees that if it shall obtain possession of any Shared Collateral or shall realize any proceeds or payment in respect of any such Shared Collateral, pursuant to any Pari Passu Loan Document or by the exercise of any rights available to it under applicable law or in any Insolvency or Liquidation Proceeding or through any other exercise of remedies (including pursuant to any intercreditor agreement), at any time prior to the Discharge of each of the Pari Passu Obligations, then it shall hold such Shared Collateral, proceeds or payment in trust for the other Pari Passu Parties and such Shared Collateral, proceeds or payment, as the case may be, will be distributed in accordance with the provisions of *Section 2.01* hereof.

2.04 Certain Agreements with Respect to Bankruptcy or Insolvency Proceedings.

2.04.1 This Agreement shall continue in full force and effect notwithstanding the commencement of any Insolvency or Liquidation Proceeding (including any case or proceeding under the Bankruptcy Code or any other Bankruptcy Law or similar law by or against any Debtor.

2.04.2 If any Debtor shall become subject to a case (a “**Bankruptcy Case**”) under the Bankruptcy Code and shall, as debtor(s)-in-possession, move for approval of financing (“**DIP Financing**”) to be provided by one or more lenders (the “**DIP Lenders**”) under Section 364 of the Bankruptcy Code or any equivalent provision of any other Bankruptcy Law and/or the use of cash collateral under Section 363 of the Bankruptcy Code or any equivalent provision of any other Bankruptcy Law, each Pari Passu Party agrees that it will raise no objection to any such financing or to the Liens on the Shared Collateral securing the same (“**DIP Financing Liens**”) or to any use of cash collateral that constitutes Shared Collateral, unless the Pari Passu Parties mutually agree to oppose or object to such DIP Financing or such DIP Financing Liens and/or use of cash collateral. Further, (i) to the extent that such DIP Financing Liens are senior to the Liens on any such Shared Collateral for the benefit of the Pari Passu Parties, each Pari Passu Party will subordinate its Liens with respect to such Shared Collateral and (ii) to the extent that such DIP Financing Liens rank pari passu with the Liens on any such Shared Collateral granted to secure the Pari Passu Obligations, each Pari Passu Party will confirm the priorities with respect to such Shared Collateral as set forth herein, in each case so long as (A) the Pari Passu Parties retain the benefit of their Liens on all such Shared Collateral pledged to the DIP Lenders, including proceeds thereof arising after the commencement of such proceeding, with the same priority vis-à-vis all the other Pari Passu Parties (other than any Liens of the Pari Passu Parties constituting DIP Financing Liens) as existed prior to the commencement of the Bankruptcy Case, (B) the Pari Passu Parties are granted Liens on any additional collateral pledged to any Pari Passu Parties as adequate protection or otherwise in connection with such DIP Financing and/or use of cash collateral, with the same priority vis-à-vis the Pari Passu Parties as set forth in this Agreement (other than any Liens of the Pari Passu Parties constituting DIP Financing Liens), (C) if any amount of such DIP Financing and/or cash collateral is applied to repay any of the Pari Passu Obligations, such amount is applied pursuant to *Section 2.01*, and (D) if any Pari Passu Parties are granted adequate protection, including in the form of periodic payments in cash, in connection with such DIP Financing and/or use of cash collateral, the cash proceeds of such adequate protection are applied pursuant to *Section 2.01*. Provided however, that the Pari Passu Parties shall have a right to object to the grant of a Lien to secure the DIP Financing over any Collateral subject to Liens in favor of the Pari Passu Parties that shall not constitute Shared Collateral, Provided, further, that any Pari Passu Party receiving adequate protection shall not object to the other Pari Passu Party receiving

adequate protection comparable to any adequate protection granted to such Pari Passu Party in connection with a DIP Financing and/or use of cash collateral.

2.05 Additional Dacotah Obligations. It is contemplated that from time to time, Dacotah, Prairie Gold, and Killdeer may enter into loan transactions whereby all or part of the loan proceeds will be used for improvements to the Property and/or to purchase furniture, fixtures, and equipment located on the Property (said portion of the loan proceeds the “**Additional Improvement and FFE Proceeds**”). The Additional Improvement and FFE Proceeds shall become and be considered a part of the Dacotah Obligations and by extension a part of the Pari Passu Obligations for all purposes of this Agreement. The loan documents evidencing any loan in which Additional Improvement and FFE Proceeds will be advanced shall become and be considered a part of the Dacotah Loan Documents and by extension a part of the Pari Passu Loan Documents for all purposes of this Agreement. Dacotah will deliver any such loan documents to EIC promptly upon execution and will deliver to EIC a listing of all advances of Additional Improvement and FFE Proceeds made under such loans.

2.06 Reinstatement. In the event that any of the Pari Passu Obligations shall be paid in full and such payment or any part thereof shall subsequently, for whatever reason (including an order or judgment for disgorgement or avoidance of a preference or fraudulent transfer under the Bankruptcy Code, any Bankruptcy Law or any similar law, or the settlement of any claim in respect thereof), be required to be re-turned or repaid, the terms and conditions of this Article II shall be fully applicable thereto until all such Pari Passu Obligations shall again have been paid in full (other than contingent obligations).

2.07 Insurance. Neither Pari Passu Party shall have the right to adjust or settle any insurance policy or claim covering or constituting Shared Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding affecting the Shared Collateral, without the written consent of the other Pari Passu Party, which consent will not be unreasonably denied, delayed, or conditioned.

2.08 Modifications and Refinancings. The Pari Passu Obligations may be amended, restated, extended, renewed, restructured, refunded, repaid, modified, supplemented, or otherwise refinanced, in whole or in part, in each case, without notice to, or the consent of any Pari Passu Party, all without affecting the priorities provided for herein or the other provisions hereof. However, a Pari Passu Obligations may not increase the amount of the Pari Passu Obligations, without the written consent of the other Pari Passu Party, which consent may be denied, delayed, or conditioned, in its sole discretion.

2.09 Amendments to Pari Passu Loan Documents. Without the prior written consent of the other Pari Passu Party, each Pari Passu Party agrees that no Pari Passu Loan Document may be amended, supplemented, or otherwise modified or entered into to the extent such amendment, supplement or modification, or the terms of any new Pari Passu Loan Document would be prohibited by, or would require any Debtor to act or refrain from acting in a manner that would violate, any of the terms of this Agreement.

2.10 Duty to Inform. Each Pari Passu Party shall keep the other Pari Passu Party fully informed on: (i) all Events of Default occurring under their respective Pari Passu Loan Documents, and (ii)

all collection, foreclosure, and liquidation efforts related to the Pari Passu Obligations and Shared Collateral. Debtors consent to the Pari Passu Parties sharing any information regarding the Pari Passu Obligations.

2.11 Memorandum of Pari Passu Intercreditor Agreement. EIC, Dacotah, and Debtors will execute a Memorandum of Pari Passu Intercreditor Agreement in the form attached as Exhibit “B” attached and record same in the real property records of Kerr County, Texas.

ARTICLE III

Authority of each Pari Passu Party

3.01 Authority.

3.01.1 Notwithstanding any other provision of this Agreement, nothing herein shall be construed to impose any fiduciary or other duty on any Pari Passu Party or give any Pari Passu Party the right to direct the other Pari Passu Party, except that each Pari Passu Party shall be obligated to: (i) cooperate with the other Pari Passu Party as set forth in *Section 2.03* and *Section 2.10* hereof, and (ii) distribute proceeds of any Shared Collateral in accordance with *Section 2.01* hereof.

3.01.2 Each Pari Passu Party agrees that other Pari Passu Party shall not have any duty or obligation first to marshal or realize upon any Collateral other than Shared Collateral securing any of the Pari Passu Obligations), or to sell, dispose of or otherwise liquidate all or any portion of any Collateral other than Shared Collateral securing any Pari Passu Obligations), in any manner that would maximize the return to the other Pari Passu Party, notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by the other Pari Passu Party from such realization, sale, disposition or liquidation. Each of the Pari Passu Parties waives any claim it may now or hereafter have against the other Pari Passu Party arising out of (i) any actions which any Pari Passu Party may take or omit to take (including, actions with respect to the creation, perfection or continuation of Liens on any Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any of the Collateral other than Shared Collateral, and actions with respect to the collection of any claim for all or any part of the Pari Passu Obligations from any account debtor, guarantor or any other party) in accordance with the Pari Passu Loan Documents or any other agreement related thereto or to the collection of the Pari Passu Obligations or the valuation, use, protection or release of any security for the Pari Passu Obligations, (ii) any election by any Pari Passu Party in any Insolvency or Liquidation Proceeding of the application of Section 1111(b) of the Bankruptcy Code or any equivalent provision of any other Bankruptcy Law or (iii) subject to Section 2.04, any borrowing by, or grant of a security interest or administrative expense priority under Section 364 of the Bankruptcy Code or any equivalent provision of any other Bankruptcy Law, by any Debtor, as debtor-in-possession. Notwithstanding any other provision of this Agreement, a Pari Passu Party shall not accept any Shared Collateral in full or partial satisfaction of any Pari Passu Obligations pursuant to Section 9-620 of the Uniform Commercial Code of any jurisdiction, without the consent of the other Pari Passu Party.

3.02 Exculpatory Provisions. A Pari Passu Party shall not have any duties or obligations to the other Pari Passu Party except those expressly set forth herein. Without limiting the generality of the foregoing, a Pari Passu Party:

3.02.1 shall not be subject to any fiduciary or other implied duties, regardless of whether an Event of Default has occurred and is continuing;

3.02.2 shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby; provided that a Pari Passu Party shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose such Pari Passu Party to liability or that is contrary to this Agreement, or applicable law;

3.02.3 shall not, except as expressly set forth herein, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Debtor that is communicated to or obtained by such Pari Passu Party;

3.02.4 shall not, except as expressly set forth herein, be liable for any action taken or not taken by it in the absence of its own gross negligence or willful misconduct as determined by a final order of a court of competent jurisdiction;

3.02.5 shall not be responsible for or have any duty to ascertain or inquire into (1) any statement, warranty or representation made in or in connection with this Agreement or any other Pari Passu Loan Document, (2) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (3) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (4) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Pari Passu Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Pari Passu Loan Document, (5) the value or the sufficiency of any Collateral for any Pari Passu Obligations, or (6) the satisfaction of any condition set forth in any Pari Passu Loan Document; and

3.02.6 need not segregate money held hereunder from other funds except to the extent required by law and shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing.

ARTICLE IV Miscellaneous

4.01 Notices. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, or mailed by certified or registered mail, as follows:

4.01.1 if to Dacotah: Dacotah Bank, Attn: President, 410 W. Villard, P.O. Box 1037, Dickinson, North Dakota 58602;

4.01.2 if to EIC: City of Kerrville, Texas, Economic Improvement Corporation, Attn: President, City Hall, 701 Main Street, Kerrville, Texas 78028; with a copy to: City Manager, City of Kerrville, City Hall, 701 Main Street, Kerrville, Texas 78028;

4.01.3 if to Prairie Gold: Prairie Gold Real Estate LLC, 233 Rodeo Drive, Killdeer, North Dakota 58640; and

4.01.4 if to Killdeer: Killdeer Mountain Manufacturing Inc., 233 Rodeo Drive, Killdeer, North Dakota 58640.

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt (if a Business Day) and on the next Business Day thereafter (in all other cases) if delivered by hand or overnight courier service or sent by telecopy or on the date three Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this *Section 4.01* or in accordance with the latest unrevoked direction from such party given in accordance with this *Section 4.01*. As agreed to in writing among any of EIC, Dacotah, or Debtors from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable person provided from time to time by such person.

4.02 Waivers; Amendment.

4.02.1 No failure or delay on the part of any party hereto in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereto are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this *Section 4.02.1*, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on any party hereto in any case shall entitle such party to any other or further notice or demand in similar or other circumstances.

4.02.2 Neither this Agreement nor any provision hereof may be terminated, waived, amended, or modified (other than pursuant to any Joinder Agreement) except pursuant to an agreement or agreements in writing entered into by each *Pari Passu* Party.

4.03 Parties in Interest. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

4.04 Survival of Agreement. All covenants, agreements, representations, and warranties made by any party in this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement.

4.05 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

4.06 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

4.07 Governing Law. This Agreement, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Texas, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas.

4.08 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR FOR ANY COUNTERCLAIM THEREIN.

4.09 Headings. Article and Section headings used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

4.10 Conflicts. In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any of the Pari Passu Loan Documents or any of the other Pari Passu Loan Documents, the provisions of this Agreement shall control.

4.11 Provisions to Define Relative Rights. The provisions of this Agreement are and are intended for the purpose of defining the relative rights of the Pari Passu Parties in relation to one another. Nothing in this Agreement is intended to or shall impair the obligations of Debtors, which are absolute and unconditional, to pay the Pari Passu Obligations as and when the same shall become due and payable in accordance with their terms.

4.12 Integration. This Agreement together with the Pari Passu Loan Documents represents the agreement of each of the Pari Passu Parties and Debtors with respect to the subject matter hereof and there are no promises, undertakings, representations, or warranties by Dacotah, EIC, or Debtors relative to the subject matter hereof not expressly set forth or referred to herein or in the Pari Passu Loan Documents.

Dacotah Bank

_____, _____
City of Kerrville, Texas Economic Improvement Corporation

_____, _____
Prairie Gold Real Estate LLC

Donald Hedger, Managing Member

Killdeer Mountain Manufacturing Inc.

Donald Hedger, CEO

ADD ACKNOWLEDGMENTS

ATTACH PROPERTY DESCRIPTION AS EXHIBIT A

ATTACH MEMORANDUM AS EXHIBIT B

Loan Amortization Schedule

Enter values	
Loan amount	\$ 250,000.00
Annual interest rate	2.00 %
Loan period in years	10
Number of payments per year	1
Start date of loan	1/1/2022
Optional extra payments	\$ -

Loan summary	
Scheduled payment	\$ 27,831.63
Scheduled number of payments	10
Actual number of payments	10
Total early payments	\$ -
Total interest	\$ 28,316.32

Lender name:

Pmt No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
1	1/1/2023	\$ 250,000.00	\$ 27,831.63	\$ -	\$ 27,831.63	\$ 22,831.63	\$ 5,000.00	\$ 227,168.37	\$ 5,000.00
2	1/1/2024	227,168.37	27,831.63	-	27,831.63	23,288.26	4,543.37	203,880.10	9,543.37
3	1/1/2025	203,880.10	27,831.63	-	27,831.63	23,754.03	4,077.60	180,126.07	13,620.97
4	1/1/2026	180,126.07	27,831.63	-	27,831.63	24,229.11	3,602.52	155,896.96	17,223.49
5	1/1/2027	155,896.96	27,831.63	-	27,831.63	24,713.69	3,117.94	131,183.27	20,341.43
6	1/1/2028	131,183.27	27,831.63	-	27,831.63	25,207.97	2,623.67	105,975.30	22,965.10
7	1/1/2029	105,975.30	27,831.63	-	27,831.63	25,712.13	2,119.51	80,263.18	25,084.60
8	1/1/2030	80,263.18	27,831.63	-	27,831.63	26,226.37	1,605.26	54,036.81	26,689.87
9	1/1/2031	54,036.81	27,831.63	-	27,831.63	26,750.90	1,080.74	27,285.91	27,770.60
10	1/1/2032	27,285.91	27,831.63	-	27,285.91	26,740.20	545.72	0.00	28,316.32

Loan Amortization Schedule

	Enter values
Loan amount	\$1,793,600.00
Annual interest rate	2.00 %
Loan period in years	25
Number of payments per year	1
Start date of loan	1/1/2022
Optional extra payments	\$ -

	Loan summary
Scheduled payment	\$ 91,868.98
Scheduled number of payments	25
Actual number of payments	25
Total early payments	\$ -
Total interest	\$ 503,124.46

Lender name:

Pmt No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
1	1/1/2023	\$ 1,793,600.00	\$ 91,868.98	\$ -	\$ 91,868.98	\$ 55,996.98	\$ 35,872.00	\$1,737,603.02	\$ 35,872.00
2	1/1/2024	1,737,603.02	91,868.98	-	91,868.98	57,116.92	34,752.06	1,680,486.10	70,624.06
3	1/1/2025	1,680,486.10	91,868.98	-	91,868.98	58,259.26	33,609.72	1,622,226.85	104,233.78
4	1/1/2026	1,622,226.85	91,868.98	-	91,868.98	59,424.44	32,444.54	1,562,802.41	136,678.32
5	1/1/2027	1,562,802.41	91,868.98	-	91,868.98	60,612.93	31,256.05	1,502,189.48	167,934.37
6	1/1/2028	1,502,189.48	91,868.98	-	91,868.98	61,825.19	30,043.79	1,440,364.29	197,978.16
7	1/1/2029	1,440,364.29	91,868.98	-	91,868.98	63,061.69	28,807.29	1,377,302.59	226,785.44
8	1/1/2030	1,377,302.59	91,868.98	-	91,868.98	64,322.93	27,546.05	1,312,979.67	254,331.49
9	1/1/2031	1,312,979.67	91,868.98	-	91,868.98	65,609.38	26,259.59	1,247,370.28	280,591.09
10	1/1/2032	1,247,370.28	91,868.98	-	91,868.98	66,921.57	24,947.41	1,180,448.71	305,538.49
11	1/1/2033	1,180,448.71	91,868.98	-	91,868.98	68,260.00	23,608.97	1,112,188.71	329,147.47
12	1/1/2034	1,112,188.71	91,868.98	-	91,868.98	69,625.20	22,243.77	1,042,563.50	351,391.24
13	1/1/2035	1,042,563.50	91,868.98	-	91,868.98	71,017.71	20,851.27	971,545.79	372,242.51
14	1/1/2036	971,545.79	91,868.98	-	91,868.98	72,438.06	19,430.92	899,107.73	391,673.43
15	1/1/2037	899,107.73	91,868.98	-	91,868.98	73,886.82	17,982.15	825,220.91	409,655.58
16	1/1/2038	825,220.91	91,868.98	-	91,868.98	75,364.56	16,504.42	749,856.35	426,160.00
17	1/1/2039	749,856.35	91,868.98	-	91,868.98	76,871.85	14,997.13	672,984.50	441,157.13
18	1/1/2040	672,984.50	91,868.98	-	91,868.98	78,409.29	13,459.69	594,575.21	454,616.82
19	1/1/2041	594,575.21	91,868.98	-	91,868.98	79,977.47	11,891.50	514,597.73	466,508.32
20	1/1/2042	514,597.73	91,868.98	-	91,868.98	81,577.02	10,291.95	433,020.71	476,800.28
21	1/1/2043	433,020.71	91,868.98	-	91,868.98	83,208.56	8,660.41	349,812.15	485,460.69
22	1/1/2044	349,812.15	91,868.98	-	91,868.98	84,872.74	6,996.24	264,939.41	492,456.93
23	1/1/2045	264,939.41	91,868.98	-	91,868.98	86,570.19	5,298.79	178,369.22	497,755.72
24	1/1/2046	178,369.22	91,868.98	-	91,868.98	88,301.59	3,567.38	90,067.63	501,323.11
25	1/1/2047	90,067.63	91,868.98	-	90,067.63	88,266.27	1,801.35	0.00	503,124.46



**TO BE CONSIDERED BY
ECONOMIC IMPROVEMENT CORPORATION
CITY OF KERRVILLE, TEXAS**



SUBJECT: First Amendment to Economic Development Grant and Real Estate Purchase Agreement between Killdeer Mountain Manufacturing, Inc., and the City of Kerrville, Texas, Economic Improvement Corporation.

AGENDA DATE OF: June 7, 2022

DATE SUBMITTED: Jun 03, 2022

SUBMITTED BY: Michael Hornes

EXHIBITS: [FIRST_AMENDMENT_TO_ECONOMIC_DEVELOPMENT_GRANT_AND_REAL_ESTATE_PURCHASE_AGREEMENT 1.pdf](#)

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes
Key Priority Area	N/A
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

RECOMMENDED ACTION:

Approve First Amendment to Economic Development Grant and Real Estate Purchase Agreement between Killdeer Mountain Manufacturing, Inc., and the City of Kerrville, Texas, Economic Improvement Corporation.

DRAFT 6/2/22

FIRST AMENDMENT TO ECONOMIC DEVELOPMENT GRANT AND REAL ESTATE PURCHASE AGREEMENT BETWEEN KILLDEER MOUNTAIN MANUFACTURING, INC. AND THE CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION

THIS FIRST AMENDMENT TO ECONOMIC DEVELOPMENT
GRANT AND REAL ESTATE PURCHASE AGREEMENT is
entered into this ____ day of _____, 2022, by and between
KILLDEER MOUNTAIN MANUFACTURING, INC. (“Company”),
and the CITY OF KERRVILLE, TEXAS ECONOMIC
IMPROVEMENT CORPORATION (“Corporation”)

WITNESSETH:

WHEREAS, on September 21, 2020, Company and Corporation entered into that certain agreement titled *Economic Development Grant and Real Estate Purchase Agreement between Killdeer Mountain Manufacturing, Inc. and the City of Kerrville, Texas, Economic Improvement Corporation* (the “Grant Agreement”) in which Corporation agreed to provide Company grant funding from Corporation’s sales tax revenues for costs relating, in part, to the design and construction of improvements, site development, and the purchase and installation of manufacturing equipment necessary for the operation of Company’s manufacturing and distribution facility (the “Project”); and

WHEREAS, based upon the ongoing economic conditions that continue to impact the entire country, to include rising construction costs, the Corporation and Company have agreed to amend the Grant Agreement as specified below; and

WHEREAS, Corporation finds that it is in the public interest to amend the Grant Agreement as provided herein;

NOW THEREFORE, for and in consideration of the recitals set forth above and the promises made herein, Company and Corporation agree as follows:

1. Article I of the Grant Agreement is amended by revising the definition of “Required Use”, with deletions indicated by ~~strikeout~~ text and additions indicated by underlined text as follows:

“Required Use” means use of the Property for (i) warehousing, manufacturing, and general office purposes in association with Company’s business of manufacturing and assembling ~~circuit-card assemblies and cable and fiber harnesses~~ components for the aerospace industry, similar activities thereto, and activities necessary to support the foregoing; and, (ii) such other purposes as EIC may from time to time authorize in writing.”

2. Section 4.6(d) of the Grant Agreement is amended with deletions indicated by ~~strikeout~~ text and additions indicated by underlined text as follows:

“(d) If Company fails to establish that it has employed the minimum number of Full-Time Positions as required by Section 4.6(a) for a calendar year, ~~not later than thirty (30) days after delivery of written demand from EIC,~~ Company, in accordance with Section 3.5(a), shall pay to EIC a Grant Reimbursement Payment for such calendar year in full. If, however, at least 85% of the minimum number of Full-Time Positions were employed as required by Section 4.6(a) for a calendar year, the amount of the Grant Reimbursement Payment shall be proportionate to the number of Full-Time Positions actually employed in relation to the number of Full-Time Positions that were required to be employed for said calendar year. Any Grant Reimbursement Payment not paid by Company to EIC on or before the thirtieth (30th) day after the date of delivery of the demand for such payment shall bear interest at the maximum rate allowed by law. EIC shall further be entitled to costs and reasonable attorney fees if EIC institutes any action to collect any delinquent Grant Reimbursement Payment(s).”

3. Except as amended, the provisions of the Grant Agreement remain in full force and effect. Should a conflict exist between the terms amended and the Grant Agreement, the terms and language provided here shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in the year and as of the date indicated.

**CITY OF KERRVILLE, TEXAS
IMPROVEMENT CORPORATION**

**KILLDEER MOUNTAIN
MANUFACTURING, INC.**

Greg Richards, President

By: _____
Printed Name: _____
Its: _____

ATTEST:

Kesha Franchina, Recording Secretary

APPROVED AS TO FORM:

Michael C. Hayes, Attorney for EIC

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**TO BE CONSIDERED BY
ECONOMIC IMPROVEMENT CORPORATION
CITY OF KERRVILLE, TEXAS**



SUBJECT: First Amendment to Economic Development Incentive Agreement between Killdeer Mountain Manufacturing, Inc., and The City of Kerrville, Texas, Economic Improvement Corporation.

AGENDA DATE OF: June 7, 2022

DATE SUBMITTED: Jun 03, 2022

SUBMITTED BY: Michael Hornes

EXHIBITS: [FIRST_AMENDMENT_TO_ECONOMIC_DEVELOPMENT_INCENTIVE_GRANT_AGREEMENT 2.pdf](#)

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes
Key Priority Area	N/A
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

RECOMMENDED ACTION:

Approve First Amendment to Economic Development Incentive Agreement between Killdeer Mountain Manufacturing, Inc., and The City of Kerrville, Texas, Economic Improvement Corporation.

DRAFT 6/2/22

FIRST AMENDMENT TO ECONOMIC DEVELOPMENT INCENTIVE GRANT AGREEMENT BETWEEN KILLDEER MOUNTAIN MANUFACTURING, INC. AND THE CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION

THIS FIRST AMENDMENT TO ECONOMIC DEVELOPMENT
INCENTIVE GRANT AGREEMENT is entered into this ____ day of
_____, 2022, by and between KILLDEER MOUNTAIN
MANUFACTURING, INC. (“Company”), and the CITY OF
KERRVILLE, TEXAS ECONOMIC IMPROVEMENT
CORPORATION (“Corporation”)

WITNESSETH:

WHEREAS, on September 21, 2020, Company and Corporation entered into that certain agreement titled *Economic Development Incentive Grant Agreement between Killdeer Mountain Manufacturing, Inc. and the City of Kerrville, Texas, Economic Improvement Corporation* (the “Grant Agreement”) in which Corporation agreed to provide Company grant funding from Corporation’s sales tax revenues for costs relating, in part, to the construction of improvements necessary for the operation of Company’s manufacturing and distribution facility (the “Project”); and

WHEREAS, based upon the ongoing economic conditions that continue to impact the entire country, to include rising construction costs, the Corporation and Company have agreed to amend the Grant Agreement as specified below; and

WHEREAS, Corporation finds that it is in the public interest to amend the Grant Agreement as provided herein;

NOW THEREFORE, for and in consideration of the recitals set forth above and the promises made herein, Company and Corporation agree as follows:

1. Article I of the Grant Agreement is amended by revising the definition of “Required Use”, with deletions indicated by ~~strikeout~~ text and additions indicated by underlined text as follows:

“Required Use” means use of the Property for (i) warehousing, manufacturing, and general office purposes in association with Company’s business of manufacturing and assembling ~~circuit-card assemblies and cable and fiber harnesses~~ components for the aerospace industry, similar activities thereto, and activities necessary to support the foregoing; and, (ii) such other purposes as EIC may from time to time authorize in writing.”

2. Section 4.6(d) of the Grant Agreement is amended with deletions indicated by ~~strikeout~~ text and additions indicated by underlined text as follows:

“(d) If Company fails to establish that it has employed the minimum number of Full-Time Positions as required by Section 4.6(a) for a calendar year, ~~not later than thirty (30) days after delivery of written demand from EIC,~~ Company, in accordance with Section 3.2(a), shall pay to EIC a Grant Reimbursement Payment for such calendar year in full. If, however, at least 85% of the minimum number of Full-Time Positions were employed as required by Section 4.6(a) for a calendar year, the amount of the Grant Reimbursement Payment shall be proportionate to the number of Full-Time Positions actually employed in relation to the number of Full-Time Positions that were required to be employed for said calendar year. Any Grant Reimbursement Payment not paid by Company to EIC on or before the thirtieth (30th) day after the date of delivery of the demand for such payment shall bear interest at the maximum rate allowed by law. EIC shall further be entitled to costs and reasonable attorney fees if EIC institutes any action to collect any delinquent Grant Reimbursement Payment(s).”

3. Except as amended, the provisions of the Grant Agreement remain in full force and effect. Should a conflict exist between the terms amended and the Grant Agreement, the terms and language provided here shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in the year and as of the date indicated.

**CITY OF KERRVILLE, TEXAS
IMPROVEMENT CORPORATION**

**KILLDEER MOUNTAIN
MANUFACTURING, INC.**

Greg Richards, President

By: _____
Printed Name: _____
Its: _____

ATTEST:

Kesha Franchina, Recording Secretary

APPROVED AS TO FORM:

Michael C. Hayes, Attorney for EIC

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