

**CITY OF MCKINNEY, TEXAS AND
SLMP FACILITY, LLC
CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AND AGREEMENT**

WHEREAS, SLMP FACILITY, LLC, a Delaware limited liability company (hereinafter “SLMP”), in conjunction with its affiliate company, SLMP, LLC (hereinafter SLMP-1) is relocating its corporate headquarters (the “Headquarters”) for the purpose of constructing, staffing, and operating a state-of-the-art medical products supply business in the University Business Park in McKinney, Texas (the “Project”); and

WHEREAS, the City of McKinney, a Texas municipal corporation (hereinafter “City”) and SLMP desire to enter into a Chapter 380 Economic Development Program and Agreement (the “Agreement”) whereby the City will provide certain incentives incident to the Project; and

WHEREAS, SLMP will construct building improvements and SLMP and SLMP-1 will purchase new equipment on newly-acquired property (Bray Central Addition) which will increase the taxable value of property in the City in advance of current development rates and such development will enhance the economic development of the City through SLMP-1’s creation of jobs and SLMP’s payment of ad valorem taxes to the City; and

WHEREAS, the additional taxable value of real and business personal property will achieve the public purpose of promoting economic development and diversity, increasing employment, reducing unemployment and underemployment, expanding commerce and stimulating business and commercial activity in the State and in McKinney, Collin County; and

WHEREAS, the City has agreed to an incentive to SLMP whereby 50% of the amount of the City’s ad valorem taxes paid by SLMP and SLMP-1 shall be paid to SLMP as a grant from the City’s general fund, if at all, based upon SLMP’s and SLMP-1’s satisfaction of certain obligations incident to the relocation of the Headquarters and specifically tied to the increased capital investment attributable to the relocation of the Headquarters; and

WHEREAS, the City has the authority under Chapter 380 of the Texas Local Government Code to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, the City determines that a grant to SLMP will serve the public purpose of promoting local economic development and enhancing business and commercial activity in the City; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of McKinney and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the City and SLMP.

NOW, THEREFORE, for and in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and SLMP agree as follows:

SECTION 1. TERM.

This Agreement shall be effective from the Effective Date (as such term is defined in Section 8 [h] below) until April 1, 2020 unless terminated sooner under any rights granted hereinafter.

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement:

- a. **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program and Agreement, together with the “Whereas” recitals above, and the exhibits attached to this Agreement, if any, all of which are incorporated into the Agreement as if set out fully hereinafter, all as may be hereafter amended from time to time in accordance with its terms and applicable law.
- b. **City.** The word “City” means the City of McKinney, Texas. For purposes of this Agreement, City’s address is 222 N. Tennessee, McKinney, Texas 75069.
- c. **Grant.** The words “Grant” or “Grant Payments” mean payments to SLMP under the terms of this Agreement computed with reference to City’s assessed ad valorem taxes paid by SLMP and SLMP-1 and received by City for the Property and payable, if at all, as the Improvement/BPP Grant.
- d. **Improvement/BPP Grant.** The words “Improvement/BPP Grant” mean the payment to SLMP of amounts equivalent to SLMP’s and SLMP-1’s paid, City ad valorem taxes for the Property for Tax Years 2015-2019 under the terms of this Agreement.
- e. **MEDC Loan Agreement.** The words “MEDC Loan Agreement” mean that certain loan dated effective February ____, 2014 made to SLMP and SLMP-1 by the McKinney Economic Development Corporation in the

amount of \$157,500.00 including all conditions and obligations of SLMP and SLMP-1, as Borrowers, therein.

- f. **Property.** The word “Property” means the building improvements constructed and new business personal property sited at the Headquarters in, McKinney, Texas, exclusive of the land (and excluding any taxable value of said land) which will be used to compute the amount of the Grant to be paid to SLMP, after adjustment for any existing equipment owned by SLMP or SLMP-1 located in the City as of September 1, 2013.
- g. **SLMP.** The word “SLMP” means SLMP Facility, LLC, a Delaware limited liability company, and its successors, as owners of the Property. For purposes of this Agreement SLMP’s address is 407 Interchange Street, McKinney, Texas, 75071.
- h. **SLMP-1.** The word “SLMP-1” means SLMP, LLC, a Delaware limited liability company, and its affiliates and successors, as tenant of the Property. For purposes of this Agreement, “affiliates” shall only include entities that are majority owned and controlled, directly or indirectly, by SLMP Holdings, LLC, a Delaware limited liability company which is the current sole member of SLMP and SLMP-1.
- i. **Tax Year.** The words “Tax Year” mean a year beginning on January 1 whereupon the ad valorem taxes are assessed and thereafter such assessed taxes are delinquent on January 31 of the following year.

SECTION 3. OBLIGATIONS OF CITY.

During the term of this Agreement and so long as an event of default has not occurred and is continuing as set forth in Section 5(b) below (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of any applicable notice and cure period), City shall comply with the following terms and conditions: for each Tax Year beginning in Tax Year 2015 and ending in Tax Year 2019, that amount of the revenue in the City’s general funds equaling 50% of the City of McKinney ad valorem taxes on real property improvements and new business personal property (exclusive of any taxes on land), assessed against the Property, paid by SLMP and SLMP-1, and received from the Tax Assessor Collector by City shall be tendered to SLMP on an annual basis, commencing on the taxable year but in any event no later than March 1 of each year, following the issuance of the Certificate of Occupancy and conditioned upon SLMP not defaulting under this Agreement or the MEDC Loan Agreement. There shall be no clawback of prior reimbursed taxes required if SLMP and SLMP-1 do not meet the annual criteria required to receive tax reimbursement in

any subsequent year. No other taxing entity's taxes shall be included in determining the amounts due to SLMP hereunder.

SECTION 4. CONDITIONS OF GRANT TO SLMP.

While this Agreement is in effect, the following conditions shall be continuously satisfied (whether by SLMP or SLMP-1) for SLMP's eligibility for Grants hereunder:

- a. SLMP shall commence construction of new building improvements prior to January 31, 2015 and locate new business personal property on the Property incident to the Project on or before January 1, 2016. SLMP and SLMP-1 shall provide to City verified, construction draws and related vendor receipts for the Property and verified costs of equipment, furniture and fixtures in the aggregate amounts not less than \$6,100,000.00. SLMP-1's equipment, furniture and fixtures shall be documented and distinguished from its existing Business Personal Property located and taxed in the City as of the effective date such that the increment of capital investment and taxable values in excess of the values of the existing business personal property can be accurately determined. SLMP shall obtain a Certificate of Occupancy for the Headquarters prior to January 1, 2016.
- b. SLMP and SLMP-1 shall be in compliance with all terms and conditions of the MEDC Loan Agreement throughout the term of this Agreement.

SECTION 5. EVENTS OF DEFAULT.

Each of the following shall constitute an "event of default" under this Agreement:

- a. Upon the expiration of the notice and cure period set forth in the first sentence of Section 6 below, City's failure to process any Grant payments owing to SLMP in accordance with Section 3 of this Agreement or otherwise comply with its obligations under this Agreement.
- b. Upon the expiration of the notice and cure period set forth in the first sentence of Section 6 below, SLMP's and SLMP-1's failure to comply with Section 4 of this Agreement.

SECTION 6. EFFECT OF AN EVENT OF DEFAULT.

In the event of the occurrence of a default described under Section 5 above, the non-defaulting party may give written notice to the defaulting party of such default, and the defaulting party shall have thirty (30) days thereafter to cure said default. So long as no default exists under Section 5(a), if a default is not otherwise cured

under Section 5(b), the City may either enforce specific performance or terminate this Agreement. Upon such termination, the parties shall have no further rights against the other party. So long as no default exists under Section 5(b), and without terminating the Agreement, SLMP shall have the power to enforce specific performance to collect amounts owing upon City's default under Section 5(a). SLMP shall further have the right to seek a judicial declaration of the appropriate amount of Grant payments owing by City under Section after first seeking review by the City Manager, and after an appeal of any determination of the City Manager to the City Council. In the event of the occurrence of an event of default by SLMP under Section 5(b) above and prior to any termination by City, any unpaid Grant payment shall be waived by SLMP. No action shall lie for damages by either party, including punitive damages, and no special or consequential, incidental, indirect, special, or exemplary damages of any kind (including, but not limited to, lost profits, loss of business, loss of use of data, interruption of business) arising from, relating to, or in connection with this Agreement shall be recovered by any party, even if such party has been advised of the possibility of or could have foreseen such damages.

SECTION 7. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT.

City may terminate this Agreement without an event of default by SLMP and effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual or illegal, including case law holding that a Chapter 380 Economic Development Agreement remitting general funds as such is contemplated by this Agreement is an unconstitutional debt.

Termination of this Agreement by City under this Section 7 shall render this Agreement null and void from that point forward with each party having no further rights against each other under this Agreement or at law; provided, however, that (i) SLMP shall be entitled to receive from City any Grant due SLMP through the date of termination and (ii) the City and SLMP agree to negotiate in good faith a remedy that preserves the intent of the parties hereunder, including SLMP's reasonably expected receipt of all or a portion of the Improvement/BPP Grant, as much as reasonably possible including, without limitation, the creation of an interest and sinking fund.

SECTION 8. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- a. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by all of the parties hereto.

- b. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Collin County, Texas.
- c. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. SLMP warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- d. **No Waiver; Sovereign Immunity.** Neither any failure nor any delay on the part of either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or of any other right, power or privilege. No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.
- e. **Execution of Agreement.** The City Council has authorized the City Manager to execute this Agreement on behalf of City.
- f. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- g. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.
- h. **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be February ____, 2014.

- i. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- j. **Time of the Essence.** Time is of the essence with respect to each and every term and condition of this Agreement. If the time period by which any right, obligation or election must be exercised or performed expires on a weekend or legal holiday, then such time period shall automatically be extended through the close of business on the next regularly scheduled business day.
- k. **Attorney's Fees.** SLMP agrees that it shall not seek attorney's fees from the City in any action to enforce the terms of this Agreement.

***SLMP Facility, LLC,
a Delaware limited liability company***

By: _____
 DANIEL HENN
 Co-President
 Date: _____

***CITY OF MCKINNEY,
a Texas municipal corporation***

By: _____
 JASON GRAY
 City Manager
 Date: _____

ATTEST:

 SANDY HART, TRMC, MMC
 City Secretary
 BLANCA I. GARCIA
 Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

PREPARED IN THE OFFICES OF:

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