



HORIZON CITY

Incorporated 1988

**AGENDA
PUBLIC MEETING
CANCEL - ECONOMIC DEVELOPMENT CORPORATION BOARD OF DIRECTORS MEETING
THE TOWN OF HORIZON CITY, TEXAS
Tuesday, December 7, 2021, 6:30 PM**

Notice is hereby given that a CANCEL - ECONOMIC DEVELOPMENT CORPORATION BOARD OF DIRECTORS MEETING of the Town of Horizon City, Texas will be held on **Tuesday, December 7, 2021 at 6:30 PM** at City Council Chambers Room, 15001 Darrington Road, Horizon City, TX 79928, at which time the following will be discussed and considered:

- 1. Call to order; Establishment of Quorum**
- 2. Approval of Minutes from:** October 19, 2021 Regular Board Meeting. **3**
- 3. Discussion:**
Presenter: EDC Executive Director
On recent activities by the Horizon City Economic Development Corporation.
- 4. Discussion:** **6**
Presenter: CIP Manager
On an update on the Horizon City Tax Increment Reinvestment Zone to support commercial activity in Horizon City.
- 5. Discussion and Action:** **10**
Presenter: EDC Executive Director
Discussion and action regarding a Resolution authorizing the President of the Board to sign an Amendment to the Economic Development Incentive Grant/Loan Performance Agreement with PSC Custom, LLC, a Texas Limited Liability Company.
- 6. Discussion and Action:** **17**
Presenter: EDC Executive Director
Discussion and action regarding a Resolution authorizing the Executive Director of the EDC to sign the **Contract for Services with P I Sports, LLC ("Pinnacle")** attached to this Resolution.
- 7. Discussion and Action:** **32**
Discussion and action regarding a resolution authorizing the President of the EDC Board to sign the Second Amendment to Consultant Agreement by and among the Town of Horizon City, the Horizon City Type 4B Economic Development Corporation, and Teresa Quezada d/b/a Quezada Data Management Services.
- 8. Executive Session**
The Economic Development Corporation Board of Directors of the Town of Horizon City may recess into EXECUTIVE SESSION pursuant to the Texas Government Code, Chapter 551, Subchapter D, under Article 551.071 – Consultation with Attorney; 551.072 – Deliberation Regarding Real Property; 551.073 – Deliberation Regarding Gifts and Donations; 551.074 – Personnel Matters; 551.076 – Deliberation Regarding Security Devices and 551.087 – Deliberation Regarding Economic Development Negotiations.
- 9. Adjournment:**

This meeting has been CANCELLED.

Adjournment:

Motion to Adjournment: _____ 2nd _____

Dated this Friday, December 3, 2021

By: _____
Elvia Schuller, City Clerk

I, the undersigned authority, hereby certify that the above notice of the CANCEL - ECONOMIC DEVELOPMENT CORPORATION BOARD OF DIRECTORS MEETING of the Town of Horizon City, Texas is a correct copy of this notice, and that I posted this notice at least seventy-two (72) hours preceding the scheduled meeting at the City Hall Bulletin Boards of the Town of Horizon City, Texas on this Friday, December 3, 2021 by 5:00 p.m.

Agenda Removed: _____ Time _____ By _____

In compliance with the Americans with Disabilities Act, the Town of Horizon City will provide for reasonable accommodations for persons attending meetings. Requests for auxiliary aids and services must be made 48 hours prior to this meeting by calling the City Clerk at (915) 852-1046.



**MINUTES
PUBLIC MEETING
ECONOMIC DEVELOPMENT CORPORATION BOARD OF DIRECTORS MEETING
THE TOWN OF HORIZON CITY, TEXAS
Tuesday, October 19, 2021, 6:30 PM**

Notice is hereby given that an ECONOMIC DEVELOPMENT CORPORATION BOARD OF DIRECTORS MEETING of the Town of Horizon City, Texas was held on **Tuesday, October 19, 2021 at 6:30 PM**, at City Council Chambers Room, 15001 Darrington Road, Horizon City, TX 79928, at which time the following was discussed and considered:

1. Call to order; Establishment of Quorum

Board Members Present: Walter Miller, Jerry Garcia, Kevin Richardson, Sandra Esqueda. Absent Board Members: Allie Lozano, Justin Chapman. Quorum Established

Staff Members Present: Asst City Attorney Sylvia Firth; Board Secretary Veronica Rojas; Lili Gaytan for Board Treasurer Pat Randleel; Horizon City Planning Director Michelle Padilla; Rafael Arellano

2. Approval of Minutes from: July 20, 2021, Regular Board Meeting.

The above-stated minutes were approved on a motion by Board Member Jerry Garcia and seconded by Board Member Dean Hulsey. Motion Carried Unanimously (5-0)

3. Discussion:

On recent activities by the Horizon City Economic Development Corporation.

Presenter: EDC Executive Director

EDC Executive Director Eddie Garcia gave presentation on this item.

4. Discussion and Action:

On a Resolution authorizing the President of the Board to sign a Consultant Services Agreement between the Town of Horizon City Type 4B Economic Development Corporation and Barracuda Public Relations for the term of one year commencing on the effective date of the Agreement until September 30, 2022.

A motion to approve Resolution authorizing the President of the Board to sign a Consultant Services Agreement between the Town of Horizon City Type 4B Economic Development Corporation and Barracuda Public Relations for the term of one year commencing on the effective date of the Agreement until September 30, 2022 was made by Board Member Jerry Garcia and seconded by Board Member Dean Hulsey.

Motion Carried Unanimously (5-0).

5. Discussion and Action:

On authorizing the Board President to execute an employment agreement with Rafael Arellano as Business Development Manager for the Town of Horizon City Type 4B Economic Development Corporation.

Presenter: EDC Executive Director

A motion on authorizing the Board President to execute an employment agreement with Rafael Arellano as Business Development Manager for the Town of Horizon City Type 4B Economic Development Corporation was made by Board Member Jerry Garcia and seconded by Board Member Dean Hulseley.

Motion Carried Unanimously (5-0).

6. Discussion and Action:

On a Resolution by the Horizon City Economic Development Corporation supporting the application submitted to the U.S. Economic Development Administration's Build Back Better Regional Challenge by the University of Texas at El Paso's Aerospace Center on behalf of the West Texas Aerospace and Defense Manufacturing Coalition and authorizing the Executive Director of the Horizon City Economic Development Corporation to send a Letter of Support for the application.

Presenter: EDC Executive Director

A motion to approve a Resolution by the Horizon City Economic Development Corporation supporting the application submitted to the U.S. Economic Development Administration's Build Back Better Regional Challenge by the University of Texas at El Paso's Aerospace Center on behalf of the West Texas Aerospace and Defense Manufacturing Coalition and authorizing the Executive Director of the Horizon City Economic Development Corporation to send a Letter of Support for the application was made by Board Member Jerry Garcia and seconded by Board Member Dean Hulseley.

Motion Carried Unanimously (5-0)

The EDC Board of Directors entered Executive Session at 6:58 PM and reconvened at 7:15 PM.

7. Executive Session

The Economic Development Corporation Board of Directors of the Town of Horizon City may recess into EXECUTIVE SESSION pursuant to the Texas Government Code, Chapter 551, Subchapter D, under Article 551.071 – Consultation with Attorney; 551.072 – Deliberation Regarding Real Property; 551.073 – Deliberation Regarding Gifts and Donations; 551.074 – Personnel Matters; 551.076 – Deliberation Regarding Security Devices and 551.087 – Deliberation Regarding Economic Development Negotiations.

A. Discussion:

Discussion regarding Performance Agreement with Polar Services (551.087 - deliberations regarding economic development negotiations and 551.071 - consultation with attorney).

Presenter: EDC Executive Director

8. Open Session:

Discussion and actions regarding Performance Agreement with Polar Services

A motion to authorize the EDC Executive Director to negotiate an amendment to the Polar Services Agreement in accordance with the parameters discussed in executive session was made by Board Member Jerry Garcia and seconded by Board Member Sandra Esqueda.

Motion Carried Unanimously (5-0)

9. Adjournment:

ADJOURNMENT

A motion to adjourn meeting was made by Jerry Garcia and seconded by Dean Hulsey to adjourn at 7:18PM.

Approved this ____ day of _____, 20__.

Attest:

Veronica Rojas, Board Secretary

Board President

Horizon TIRZ Update

EDC Board Meeting

December 7, 2021

TOD Projects

Dilley and Delake Drives and **Transit Plaza** RAISE grant application was not successful.

Dilley and Delake and the Transit Plaza are being included in the MPO's analyses for inclusion in the MPO's long-range planning document.

Next steps are to determine alternative funding sources.

Current Activities

- Coordinating with TXDOT for drainage pond acquisition for N. Darrington Reconstruction
- Coordinating with Camino Real Regional Mobility Authority for potential funding and project management
- Coordinating with HRMUD for Oxbow, Pawling and Breaux improvements
- Architectural Guideline Development – recommended firm has been identified; beginning negotiations

Horizon TIRZ Update

EDC Board Meeting

December 7, 2021

Amendment to Economic Development Incentive Grant/Loan And Performance Amendment

WHEREAS, the **Town of Horizon City 4B Economic Development Corporation (“EDC”)** a Texas corporation organized and existing pursuant to Chapter 501 and 505 of the Texas Local Government Code known as the Development Corporation Act entered into an Economic Development Incentive Grant/Loan Performance Agreement (“Agreement”) with **PSC Custom, LLC (“PSC”)** a Texas limited liability company on July 24, 2020, to provide monetary incentives specified therein in return for PSC’s expansion in the Town of Horizon City, Texas, substantial financial investment in the community and the creation of jobs;

WHEREAS, pursuant to the terms of the Agreement, PSC signed and delivered a promissory note made payable to the EDC in the amount of \$140,000.00 to evidence a forgivable loan between the parties;

WHEREAS, the effects of the COVID-19 global pandemic seriously negatively affected the ability of the EDC and PSC to perform their respective obligations arising from the Agreement;

WHEREAS, the EDC never advanced the \$140,000.00 intended to provide funding for hard and soft costs required for the expansion of PSC’s business in the Town of Horizon City and to mitigate the effects of certain ordinances and regulations;

WHEREAS, PSC endeavored in good faith to expand its business in the Town of Horizon City and meet the benchmarks provided for in the Agreement which would have resulted in forgiveness of the \$140,000.00 loan; even though it had not received the funding;

WHEREAS, PSC managed to meet most of the obligations which would have resulted in loan forgiveness;

WHEREAS, both parties acknowledge the force majeure clause in the Agreement and the fact neither party was able to perform as was expected before the intensification of the COVID-19 global pandemic during 2020; and

WHEREAS, rather than discard the Agreement in its entirety the parties would like to reform the Agreement and act in good faith to recognize the efforts of each to respect the terms of the deal sought to be memorialized in the Agreement;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Promissory Note Voided.** Despite the fact PSC executed and delivered a Promissory Note dated July 24, 2020, (“Note”) in the amount of \$140,000.00 made payable to the EDC pursuant to the terms set forth therein, the EDC did not provide the funds to PSC. By signing this Amendment both parties acknowledge the funds were never advanced and the Note is hereby cancelled. Upon execution of this document, the EDC will deliver the original Note to PSC marked “VOID” and signed by the EDC Executive Director. By signing this Amendment, PSC acknowledges the cancellation of the forgivable loan and agrees it will not seek further action from the EDC concerning the loan.



2. **Conversion of Incentive Package.** In recognition of the fact the EDC did not advance the forgivable loan and PSC expanded the business into the Town of Horizon City, made the investments required and created some of the jobs required to receive incentives from the EDC, the EDC is converting the incentive package to a grant.
3. **Reduction of Incentives Related to Job Creation.** Recognizing the fact PSC was not able to hire the requisite number of employees within the first 12 months of the Agreement because of the COVID-19 Global Pandemic and will likely not be able to meet the baseline of 36 FTEs in 24 months because of the continuing economic downturn and effects of the pandemic; the EDC will reduce the incentives paid for job creation in a proportionate amount. The sum of \$70,000.00 was proposed for 36 FTE's. Only 13 jobs have been created. Therefore, the amount of the grant related to job creation will be reduced to $13/36 \times \$70,000.00 = \$25,278.00$. This amount will be due and payable to PSC upon proof that all ad valorem taxes have been timely paid and receipt of sufficient documentation in form and substance approved by the Executive Director of the EDC to evidence the fact PSC has at least 13 fulltime employees working at the Town of Horizon City PSC facility who meet the qualifications set forth in the Agreement. Failure to provide sufficient evidence within 60 days of the execution of the Amendment will be considered an event of default and may at the discretion of the EDC, result in revocation of this portion of the incentive package.
4. **Incentives Related to Investment and Construction of Facility.** The Agreement in its original form provided for an additional \$70,000.00 in incentives upon completion of the metrics set forth in Exhibit "C" captioned, "Schedule of Capital Investment and Jobs for Facility to Qualify for Disbursement of Payments". Schedule "C" is replaced by the schedule set forth below. PSC shall be entitled to disbursement of the remaining amount as set forth below:
 - \$30,000.00 - upon providing documentation of \$1 million of site development expenses paid. Failure to provide necessary documentation within 90 days of the signing of this Amendment will be an event of default and may at the discretion of the EDC, result in revocation of this portion of the incentive package.
 - \$20,000.00 - upon obtaining Certificate of Occupancy and providing proof of two months sales tax collected and remitted to the State. Failure to provide necessary documentation by March 24, 2022 (20 months from signing the Agreement) will be an event of default and may at the discretion of the EDC, result in revocation of this portion of the incentive package.
 - \$20,000.00 - upon providing documentation of \$700,000.00 of additional of site development, improvements, furniture, equipment, and tools expenses paid. Failure to provide necessary documentation by July 24, 2022 (24 months from the execution of the Agreement) will be an event of default and may at the discretion of the EDC, result in revocation of this portion of the incentive package.

5. **Total Revised Incentive Package.** The total amount PSC shall be entitled to receive pursuant to the Agreement as revised by this Amendment shall not exceed \$95,278.00. The EDC shall be under no obligation to grant more than \$95,278.00 pursuant to the terms of the Agreement and Amendment to PSC. The payment of any grant funds is expressly contingent upon PSC meeting the terms and conditions of the Agreement and this Amendment. Failure to meet any of the qualifying terms will be an event of default and may result in revocation of all or any part of the incentive package. Time is of the essence and PSC required to perform in accordance with the schedule set forth.
6. **Ratification of Agreement.** Except as expressly modified in writing herein, all other terms and conditions of the Agreement remain in full force and effect.

Executed and effective the _____ day of December 2021.

**Town of Horizon City 4B Economic
Development Corporation**

By: _____
Walter Miller, President

PSC Custom, LLC

By: 
Jerry Cignarella, President

Approved as to Content:

By: _____
Eduardo Garcia
Executive Director

Approved as to Form:

By: _____
Sylvia Borunda Firth
Board Attorney

RESOLUTION

Town of Horizon City 4B Economic Development Corporation

WHEREAS, the **Town of Horizon City 4B Economic Development Corporation** (“**EDC**”) a Texas corporation organized and existing pursuant to Chapter 501 and 505 of the Texas Local Government Code known as the Development Corporation Act entered into an Economic Development Incentive Grant/Loan Performance Agreement (“**Agreement**”) with **PSC Custom, LLC** (“**PSC**”) a Texas limited liability company on July 24, 2020, to provide monetary incentives specified therein in return for PSC’s expansion in the Town of Horizon City, Texas, substantial financial investment in the community and the creation of jobs;

WHEREAS, both parties acknowledge the force majeure clause in the Agreement and the fact neither party was able to perform as was expected before the intensification of the COVID-19 global pandemic during 2020; and

WHEREAS, rather than discard the Agreement in its entirety the parties would like to reform the Agreement and act in good faith to recognize the efforts of each to respect the terms of the deal sought to be memorialized in the Agreement;

NOWHEREFORE, the Board of Directors of the Town of Horizon City 4B Economic Development Corporation authorizes the President of the EDC Board to sign the **Amendment to Economic Development Incentive Grant/Loan And Performance Agreement** attached to this Resolution.

Approved the _____ day of December, 2021 at a duly held meeting of the EDC Board of Directors.


Town of Horizon City 4B Economic Development Corporation

By: _____
Walter Miller, President

ATTEST:

By: _____
Veronica Rojas
Board Secretary

APPROVED AS TO FORM

By: 
Sylvia Borunda Firth
Board Attorney

Amendment to Economic Development Incentive Grant/Loan And Performance Agreement

WHEREAS, the **Town of Horizon City 4B Economic Development Corporation (“EDC”)** a Texas corporation organized and existing pursuant to Chapter 501 and 505 of the Texas Local Government Code known as the Development Corporation Act entered into an Economic Development Incentive Grant/Loan Performance Agreement (“Agreement”) with **PSC Custom, LLC (“PSC”)** a Texas limited liability company on July 24, 2020, to provide monetary incentives specified therein in return for PSC’s expansion in the Town of Horizon City, Texas, substantial financial investment in the community and the creation of jobs;

WHEREAS, pursuant to the terms of the Agreement, PSC signed and delivered a promissory note made payable to the EDC in the amount of \$140,000.00 to evidence a forgivable loan between the parties;

WHEREAS, the effects of the COVID-19 global pandemic seriously negatively affected the ability of the EDC and PSC to perform their respective obligations arising from the Agreement;

WHEREAS, the EDC never advanced the \$140,000.00 intended to provide funding for hard and soft costs required for the expansion of PSC’s business in the Town of Horizon City and to mitigate the effects of certain ordinances and regulations;

WHEREAS, PSC endeavored in good faith to expand its business in the Town of Horizon City and meet the benchmarks provided for in the Agreement which would have resulted in forgiveness of the \$140,000.00 loan; even though it had not received the funding;

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NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

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2. **Conversion of Incentive Package.** In recognition of the fact the EDC did not advance the forgivable loan and PSC expanded the business into the Town of Horizon City, made the investments required and created some of the jobs required to receive incentives from the EDC, the EDC is converting the incentive package to a grant.
3. **Reduction of Incentives Related to Job Creation.** Recognizing the fact PSC was not able to hire the requisite number of employees within the first 12 months of the Agreement because of the COVID-19 Global Pandemic and will likely not be able to meet the baseline of 36 FTEs in 24 months because of the continuing economic downturn and effects of the pandemic; the EDC will reduce the incentives paid for job creation in a proportionate amount. The sum of \$70,000.00 was proposed for 36 FTE's. Only 13 jobs have been created. Therefore, the amount of the grant related to job creation will be reduced to $13/36 \times \$70,000.00 = \$25,278.00$. This amount will be due and payable to PSC upon proof that all ad valorem taxes have been timely paid and receipt of sufficient documentation in form and substance approved by the Executive Director of the EDC to evidence the fact PSC has at least 13 fulltime employees working at the Town of Horizon City PSC facility who meet the qualifications set forth in the Agreement. Failure to provide sufficient evidence within 60 days of the execution of the Amendment will be considered an event of default and may at the discretion of the EDC, result in revocation of this portion of the incentive package.
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5. **Total Revised Incentive Package.** The total amount PSC shall be entitled to receive pursuant to the Agreement as revised by this Amendment shall not exceed \$95,278.00. The EDC shall be under no obligation to grant more than \$95,278.00 pursuant to the terms of the Agreement and Amendment to PSC. The payment of any grant funds is expressly contingent upon PSC meeting the terms and conditions of the Agreement and this Amendment. Failure to meet any of the qualifying terms will be an event of default and may result in revocation of all or any part of the incentive package. Time is of the essence and PSC required to perform in accordance with the schedule set forth.
6. **Ratification of Agreement.** Except as expressly modified in writing herein, all other terms and conditions of the Agreement remain in full force and effect.

Executed and effective the _____ day of December 2021.

**Town of Horizon City 4B Economic
Development Corporation**

By: _____
Walter Miller, President

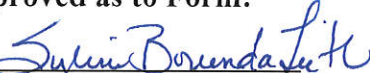
PSC Custom, LLC

By: _____
Jerry Cignarella, President

Approved as to Content:

By: _____
Eduardo Garcia
Executive Director

Approved as to Form:

By: 
Sylvia Borunda Firth
Board Attorney

CONTRACT FOR SERVICES

This Contract for Services is made between **Town of Horizon City 4B Economic Development Corporation (“EDC”)** a Texas corporation organized and existing pursuant to Chapter 501 and 505 of the Texas Local Government Code known as the Development Corporation Act and **P I Sports, LLC (“Pinnacle”)**.

WHEREAS, the EDC desires to procure a customized market study and possibly a financial model regarding the construction, development, and operation of a new indoor/outdoor multi-sport facility in east Horizon City, Texas (the “Project”); and

WHEREAS, Pinnacle has the expertise and resources necessary to gather data, analyze, prepare and present both a market study and a financial model in the form required by the EDC and is willing to undertake such a project under the following terms and conditions.

- 1. Term:** This Contract shall commence upon the date of the last signature of principals for both parties and receipt of the initial payment by Pinnacle and shall terminate no later than July 30, 2022, if the EDC authorizes only Phase I the Market Study set forth in Attachment A to this Agreement; and no later than December 31, 2022, if the EDC authorizes Phase II the Financial Model and Impact Analysis set forth in Attachment B.
- 2. Pinnacle Deliverables:** See Attachment A for the Phase I- Market Study and Attachment B for the optional Phase II -Financial Model and Economic Impact Analysis (provided in Excel). Upon full payment for the deliverables, the Market Study and the Financial Model and Impact Analysis shall be the property of the EDC. Pinnacle shall keep the data gathered and the Market Study and the Financial Model and Impact Analysis confidential and will not release them or information gathered in conjunction with completing this assignment to any third parties without the express written consent of the EDC. The obligation to keep the Market Study and the Financial Model and Impact Analysis and information gathered to prepare them shall survive the expiration date of this Contract. Failure to comply with the confidentiality provision contained in this

6. **Time for Completion.** Phase I shall be completed no later than 6 months from the commencement date of the Contract and Phase II shall be completed no less than 90 days from the date Pinnacle receives written notice from the EDC that the work is authorized. Failure to complete each Phase by the deadline set forth in this paragraph shall be an event of default and EDC may, at its option terminate this Contract and request reimbursement for funds that have been advanced prior to completion of each Phase.
7. **Option for Phase II.** The option to proceed with Phase II of the Contract as set forth in Attachment B is at the sole discretion of the EDC. The option to contract for Phase II as described in Attachment B at the price specified in paragraph 4 above will continue for the duration of Pinnacle's performance of the Phase I-Attachment A components. If such option has not been exercised within ninety (90) days of the end of Pinnacle's performance of the Phase I - Attachment A components, such option will terminate, and the prices listed herein for those components will no longer be valid. Should EDC decide to contract for these services after this option period, a new contract will be required.
8. **Time and effort:** The time and effort that Pinnacle shall devote to the services, as well as the means or method by which Pinnacle shall perform the services, shall be within Pinnacle's control and discretion; but Pinnacle shall devote such time, effort and attention to the services as may be reasonably necessary to fulfill the purposes of this Contract within the time frame specified and agreed to by the parties.
9. **Relationship of parties:** The parties intend that, under this Contract, the relationship between the EDC and Pinnacle is an independent contractor relationship.
10. **Governing law and venue:** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, and venue for any dispute

arising from this Contract shall be El Paso County, Texas.

11. **Paragraph Headings**: Paragraph headings have been inserted in this Contract for convenience. If paragraph headings conflict with the text in the construction of this Contract, the text shall control.
12. **Severability**: Each provision of this Contract shall be considered severable, and if for any reason any provision or provisions of this Contract are determined to be invalid and contrary to any existing or future law, the invalidity shall not affect or impair the operation of those portions of this Contract that are valid, or the application of such provisions in situations in which that are not invalid.
13. **Amendment; counterparts**: No change or modification of any of the provisions of this Contract shall be valid unless in writing and signed by both the parties to this Contract. This Contract may be executed simultaneously in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument.
14. **Standard of Care/Warranty**: Pinnacle shall perform the work using reasonable diligence, exercising its best judgment, and using the care and skill ordinarily used by similar persons in providing the same or similar services under similar circumstances. There is no guarantee of success in any business and that all business ventures entail some risks that simply cannot be planned for in advance. PINNACLE MAKES NO ADDITIONAL WARRANTIES WITH RESPECT TO THE PRODUCTS OR SERVICES SOLD HEREUNDER. ANY IMPLIED WARRANTY OF MERCHANTABILITY, AND ANY IMPLIED WARRANTY THAT THE GOODS OR SERVICES ARE FIT FOR A PARTICULAR PURPOSE, ARE HEREBY

DISCLAIMED. Pinnacle shall not be liable for any error of judgment or mistake of law or for any loss, **except a loss resulting from willful malfeasance, bad faith, or gross negligence on the part of Pinnacle.** Neither Pinnacle nor its officers, members, managers, employees, or agents shall be liable for any special, incidental, indirect or consequential damages.

15. Non-Compete: Pinnacle agrees not to contract with any other new, proposed, or existing indoor/outdoor sports facility located within 15 miles of the location listed in Attachment A during the term of this Contract and for the 6 months immediately following the completion of all services being provided by Pinnacle under this Contract. Pinnacle also agrees that it will keep confidential the market study report developed by it on your behalf and that it will not share the market study report with any persons or entities other than you and your representatives.

While providing services, Pinnacle may reveal, or EDC personnel may be otherwise exposed to Pinnacle's confidential or proprietary business information ("Confidential Information"). Such Confidential Information shall not include any information that is: (i) already known to you prior to the date of this Contract or independently developed by you after the date hereof; or (ii) rightfully received by you from a third party without similar restriction from such party and the disclosure of which by such third party does not constitute a violation of any obligation by such third party to Pinnacle. To the extent permitted by applicable Texas laws, for a period of two (2) years from the completion of this Contract, the EDC will hold in confidence and for its own use, the Confidential Information and will not, without prior written consent of Pinnacle, duplicate, disseminate, disclose or transfer any portion of the material or

media on which the Confidential Information is presented to any other person or entity not directly related to your efforts to develop an indoor/outdoor sports facility in the market specified in Attachment A. Disclosure of the Confidential Information to such persons or entities with a legitimate need to know for the purposes of developing an indoor/outdoor sports facility in the market specified in Attachment A will not be prohibited so long as such persons or entities agree to hold the Confidential Information in confidence as set forth herein. **Pinnacle will clearly mark any information it considers to be confidential or proprietary business information before providing it to the EDC.** In the event the EDC receives a request pursuant to the Texas Public Information Act (“TPIA”) that would result in having to disclose the confidential information, the EDC will notify Pinnacle so Pinnacle can assert any confidentiality claims with the Texas Attorney General and a court of law, if necessary. The EDC will not have an obligation to raise the exceptions to disclosure pursuant to the TPIA and **Pinnacle is advised to engage legal counsel familiar with Texas open government laws to protect its confidentiality interests.** At the conclusion of two years from the completion of the work under the Contract the EDC will no longer be bound by this confidentiality agreement and will not be required to notify Pinnacle in the event, it receives a request under the TPIA that will result in information marked “confidential or proprietary business information” being released.

16. **Addresses for Notice.** Any notice required pursuant to the terms of this contract shall be deemed to have been properly given if it is hand-delivered or mailed to the person at the address below:

For the EDC:

Mr. Eduardo Garcia
Executive Director
Horizon Economic Development Corporation
14999 Darrington Rd.
Horizon City, Texas 79928

With Copy to:
Ms. Sylvia Borunda Firth
Bojorquez Law Firm
11675 Jollyville Road, Suite 300
Austin, Texas 78759

For Pinnacle:

Mr. Norm Gill
P I Sports, LLC
12468 LaGrange Rd.
Louisville, KY 40245

With Copy to:

17. Logos and Names. Pinnacle Indoor Sports; P I Sports, LLC; and Pinnacle all retain exclusive rights to all names, logos, programs (including names and logos), and operational procedures and have not licensed or otherwise transferred these to you as a part of this agreement.

Accepted and agreed to:

Norm Gill
P I Sports, LLC

Date

Eduardo Garcia
Executive Director
Horizon City EDC

Date

Attachment A

Phase I - Market Study

Location: Horizon City / El Paso, TX Region (4-hour drive)Market Study Elements (where applicable)

1. General population analysis of the effective local MSA.

- A. Locate and obtain socio-economic data from:
 - 1. U.S. Census Bureau
 - 2. Claritas, Inc.
 - 3. Other available private sources
 - 4. State, regional, and city planning agencies
 - 5. Business organizations such as Chambers of Commerce

- B. Perform a population trend analysis by Zip Code of:
 - 1. Age
 - 2. Family status
 - 3. Household income
 - 4. Housing attributes

- C. Establish an economic overlay of:
 - 1. Target customer populations
 - 2. Access traffic patterns
 - 3. Geographic or political considerations

2. Specific analysis of existing local and regional organized recreational sports groups.

- A. Identify and obtain demographic data from relevant sources such as:
 - 1. National governing bodies
 - 2. National organizations for other target sports, i.e., AAU
 - 3. US Soccer Association, US Lax, etc.
 - 4. Organized but unaffiliated ethnic groups
 - 5. Local, state, regional and national organizations for targeted sports such as:

- a. Basketball
- b. Soccer
- c. Volleyball
- d. Baseball/Softball
- e. Track and Field
- f. Rugby
- g. Swimming
- h. Lacrosse
- i. Field Hockey
- j. Futsal
- k. Boxing
- l. Wrestling

- B. Factor in historical and projected growth patterns of target market populations
- C. Develop contact lists for all the key organizations and interview the key actors to determine:
 - 1. Attitudes concerning existing recreational opportunities
 - 2. Willingness to entertain a change in venue
 - 3. Input in the placement of proposed new indoor/outdoor multi-sport facilities

3. Public and private schools; colleges and universities; and military intramural sports leagues in the local MSA.

- A. Determine current facility usage as competitors
- B. Investigate partnership opportunities to provide contract space for:
 - 1. Overflow needs
 - 2. Expansion of programming
 - 3. Formation of cooperative leagues

4. Existing organized social, ethnic, and religious groups.

- A. Identify and quantify groups that sponsor sports-related activities such as:
 - 1. Church leagues—usually basketball and volleyball leagues
 - 2. Latino soccer leagues
 - 3. Foreign national expatriate organizations
 - 4. College sports associations

5. Identify other targeted recreational sports with varying degrees of organization:

- A. Investigate school gymnasium off-hours usage
- B. Electronic community bulletin boards
- C. Community centers
- D. YMCA's
- E. Regional and community sports connections

6. Competitive analyses—identify, investigate, and document existing venues and facilities for recreational sports (both local and regional).

- A. Commercial indoor/outdoor multi-sport facilities.
 - 1. Identify all facilities providing direct competition in at least one of the contemplated activities within a 60-minute driving radius and determine:
 - a. Mode of operation
 - b. Market positioning
 - c. Pricing
 - d. Level of success
 - e. Clientele.
- B. Other commercial indoor/outdoor sports facilities.
 - 1. Identify and profile venues such as:
 - a. Athletic clubs
 - b. Fitness centers
 - c. Tennis facilities
 - d. Volleyball centers
- C. Municipalities and school districts.
 - 1. Identify all structures, sports offerings, amenities, and pricing of public venues in direct competition with a proposed new indoor/outdoor facility such as:
 - a. Gymnasiums
 - b. Field houses
 - c. Covered fields (bubbles)

- d. Ice and roller rinks
- e. Community centers

D. YMCA's and church facilities

1. Identify existing facilities and offerings as a competitive component relating to:
 - a. Target sports communities
 - b. Sports camp offerings to youth
2. Investigate possible future partnerships to provide expansion space

7. Evaluate the corporate climate for partnership, sponsorship, and other advertising opportunities.

1. Quantify the area employer/employee base:
2. Identify the market for corporate partners and sponsors
3. Identify and assess possible employee benefit program tie-ins

8. Site identification and evaluation.

- A. Evaluate the MSA as a whole and identify preferred locales based on:
 1. Socio-economic demographic analysis
 2. High travel period commute times
 3. Ease of access and/or visibility
 4. Public perception of nighttime safety issues
- B. Evaluate specific identified sites for suitability

9. Recommendations.

- A. Pinnacle will present an executive summary of data gathered, analyses, evaluations and conclusions as respects the entry of a new indoor/outdoor multi-sport facility in East Horizon City / El Paso region.
- B. Pinnacle will present recommendations based on these conclusions and Pinnacle's experience with similar installations in similar markets.

Attachment B (optional)

Phase II

1. Financial Model.

Following the completion of the market study, Pinnacle will construct a detailed (expanded lineitem) 3-year financial model for the proposed facility based on the market study findings and analysis, and proprietary historical data from Pinnacle affiliates and customers. The process is a cooperative, iterative exercise requiring good-faith input from client in response to proposed revenue scenarios specific to the applicable market and estimated expense factors calculated by Pinnacle from existing available data.

This Pinnacle deliverable incorporates a table-driven financial model that clearly identifies all the inputs at a verifiable level of detail, including: price points for each projected activity; seasonal revenue variability based on projected team and individual attendance by activity; corresponding expense factors derived from actual facility operations; capitalized monthly cost projections; and personnel cost estimates.

Along with all base assumptions the model provides monthly projections of: space utilization by activity; annual revenue by source of revenue, and corresponding expenses; resulting cashflows; pre-opening expenses; and permanent and seasonal investment requirements.

The financial model will be included in any subsequent business plans that are developed for presentation to the capital markets. The projections will be updated and revised as additional/better information becomes available.

Economic Impact Analysis

With our partner, Impact DataSource, LLC, we will conduct a 10-year economic analysis of the proposed sports facility and prepare a report showing the results of that analysis.

We will estimate the impact of the indoor/outdoor sports facility in terms of direct, indirect, and induced economic activity. This economic activity would include both the facility's operations activity and the spending by visitors that takes place in the city but "off-site". We will then translate these economic impacts into tax revenues for city and other local taxing districts.

This will include identifying the local vs. out-of-town visitor spending and lodging spending.

The economic impact of the operations of the facility will include the direct and indirect economic impacts, including:

- Amount of direct and indirect sales and revenues to be generated in the community

- Number of new direct and indirect jobs created in the community
- Salaries to be paid to these workers
- Number of new workers moving to the community
- Number of new residents
- Number of out-of-town and area visitors to the facility
- Taxable sales expected in the community including sales generated by direct and indirect workers, sales at the facility and sales generated in the city by out-of-town visitors to the facility
- Lodging sales expected in the community

Further, these economic impacts will be translated into revenues for the city and other local taxing districts, including:

- Sales taxes
- Property tax on new commercial property on local tax rolls
- Hotel taxes and other taxes and user fees
- The annual net benefits for the City and local taxing districts will be calculated for ten years

RESOLUTION

Town of Horizon City 4B Economic Development Corporation

WHEREAS, the **Town of Horizon City 4B Economic Development Corporation** (“**EDC**”) a Texas corporation organized and existing pursuant to Chapter 501 and 505 of the Texas Local Government Code known as the Development Corporation Act is authorized to contract for goods and services to fulfill the mission of the EDC

WHEREAS, the EDC desires to procure a customized market study and possibly a financial model regarding the construction, development, and operation of a new indoor/outdoor multi-sport facility in east Horizon City, Texas (the “**Project**”); and

WHEREAS, **P I Sports, LLC (“Pinnacle”)** has the expertise and resources necessary to gather data, analyze, prepare and present both a market study and a financial model in the form required by the EDC and is willing to undertake such a project under the following terms and conditions

NOWHEREFORE, the Board of Directors of the Town of Horizon City 4B Economic Development Corporation authorizes the Executive Director of the EDC to sign the **Contract for Services** with Pinnacle attached to this Resolution.

Approved the _____ day of December, 2021 at a duly held meeting of the EDC Board of Directors.

**Town of Horizon City 4B Economic
Development Corporation**

By: _____
Walter Miller, President

ATTEST:

By: _____
**Veronica Rojas
Board Secretary**

APPROVED AS TO FORM

By: _____
**Sylvia Borunda Firth
Board Attorney**

RESOLUTION

Town Of Horizon City 4B Economic Development Corporation

WHEREAS, on September 13, 2016, the Town of Horizon City and Teresa Quezada d/b/a/ Quezada Data Management Services entered into a Second Amended Engagement Agreement (the "Agreement") that superseded the obligations of the parties under the previous March 12, 2013, Engagement Agreement and February 1, 2014, First Amended Engagement Agreement, and the Agreement restated the parties' obligations and identified the consulting services to be provided for capital program planning functions and services for the Town Of Horizon City 4B Economic Development Corporation; and

WHEREAS, on December 11, 2018, the parties entered into a First Amendment to Consultant Agreement that extended the term of the Agreement to December 31, 2021, and identified additional services to be provided; and

WHEREAS, on March 10, 2020, the Town of Horizon City and the Town Of Horizon City 4B Economic Development Corporation entered into an Agreement for Administrative and Operational Support Services, and the parties agreed that the Town of Horizon City would provide services for the administration and operation of the Town Of Horizon City 4B Economic Development Corporation EDC; and

WHEREAS, the parties desire to clarify the services Teresa Quezada d/b/a/ Quezada Data Management Services will provide to the Town of Horizon City and to the Horizon Economic Development Corporation and to extend the term of the Agreement.

NOW, THEREFORE, the Board of Directors of the Town of Horizon City 4B Economic Development Corporation authorizes the President of the EDC Board to sign the Second Amendment to Consultant Agreement by and among the Town of Horizon City, the Horizon City Type 4B Economic Development Corporation, and Teresa Quezada d/b/a Quezada Data Management Services.

Approved the _____ day of December, 2021 at a duly held meeting of the EDC Board of Directors.


Town of Horizon City 4B Economic Development Corporation


By: _____
Walter Miller, President

ATTEST:

By: _____
Veronica Rojas, Board Secretary

APPROVED AS TO FORM:



 Sylvia Borunda Firth, Board Attorney