

## PERFORMANCE AGREEMENT

This Performance Agreement (this "Agreement") is entered into by and between Hearne Community Development Corporation (the "HEDC-B"), a Section 4B corporation incorporated under the Development Corporation Act of 1979 (the "Act"), and Hearne Funeral Home, a Texas Sole Proprietorship ("FUNERAL HOME").

### RECITALS

HEDC-B has determined that it is in the best interests of HEDC-B and the City of Hearne, a Texas Home Rule City in Robertson County, Texas (the "City"), to facilitate FUNERAL HOME in expanding its operations to Hearne to wit: Funeral Home will open a new facility within the City of Hearne as generally described on Exhibit "A" attached hereto (the "Relocation"). HEDC-B has determined that the addition of the Funeral Home within the City will provide significant economic benefits and will further economic development in the City. The economic benefits of the Relocation to the City will include, without limitation, the proceeds received by the City from the ad valorem taxes levied upon the premises and equipment of FUNERAL HOME, and the maintenance of and growth of jobs in the City. In addition, this project will aid directly in the rehabilitation of a dilapidated building in the downtown business district helping to revitalize the commercial area.

HEDC-B and FUNERAL HOME have agreed to enter into this Agreement in connection with FUNERAL HOME's Relocation to provide for certain incentives to FUNERAL HOME and to further define certain obligations of the parties with respect to the Relocation and such incentives. This Agreement is required pursuant to Section 40 of the Act.

### AGREEMENT

#### I.

#### Performance Agreement

1. This Agreement serves as a performance agreement by the parties hereto.
2. FUNERAL HOME hereby agrees that no later than December 31, 2018 FUNERAL HOME shall relocate to the corporate city limits of Hearne, Texas to 202 West Third Street.
3. FUNERAL HOME hereby agrees to maintain operations in the City of Hearne for at least 3 years beginning no later than December 31, 2018.
4. FUNERAL HOME agrees to relocate and/or employ a minimum of 3 full time Employees at its facility located within the corporate city limits of Hearne, Texas within one year from the date that it begins

its operations ("Operating Date"). As used herein, the term

"Employees" means full-time employees who perform a regular work schedule of at least thirty-five (35) hours per week and to whom FUNERAL HOME makes medical benefits available.

5. FUNERAL HOME agrees to maintain at least 3 Employees for a period of 3 years from the date in which it has hired all 3 Employees, ("Full Employment Date"), with an annual minimum payroll of \$57,000.
6. FUNERAL HOME agrees to invest at least \$100,000.00 in capital improvements to its new facility in Hearne.
7. FUNERAL HOME shall pay HEDC-B \$1,000.00 per month following the execution and ratification of this agreement by the CITY until FUNERAL HOME has made at least \$100,000.00 in capital investment in its Hearne facility and obtained a Certificate of Occupancy for the facility from the City of Hearne.

## **II.**

### **Benefit**

In consideration for FUNERAL HOME's agreement to satisfy the above mentioned performance agreement, HEDC-B hereby agrees to grant FUNERAL HOME the following benefit:

1. HEDC-B shall transfer title to the real property for 202 West Third Street in Hearne, Texas to FUNERAL HOME in fee simple absolute.

The above Benefit shall be executed following proof of at least \$100,000.00 in capital investment in the real property and the receipt of a certificate of occupancy. Funeral Home will submit to HEDC-B an Employment Certification substantially in the form attached hereto as Exhibit B.

## **III.**

### **PENALTY**

In the event that (i) FUNERAL HOME fails to obtain a certificate of occupancy, or (ii) FUNERAL HOME otherwise fails to comply with its obligations pursuant to this Agreement other than its employment obligations, and such failure is not cured within 30 days of written notice thereof from HEDC-B to FUNERAL HOME, then in any such event, FUNERAL HOME shall no longer be eligible to receive the Benefits and shall immediately refund to HEDC-B the full amount of the Benefits it has received to date. For the purposes of this agreement the benefit to FUNERAL HOME shall be valued at \$50,000.00.

**IV.**  
**MICELLANEOUS**

*Representations and Warranties.* This Agreement is being entered into pursuant to Section 40 of the Act. HEDC-B hereby represents and warrants to FUNERAL HOME that this Agreement is within its authority and that HEDC-B has been duly authorized and empowered to enter into this Agreement. FUNERAL HOME hereby represents and warrants to HEDC-B that this Agreement is within its authority and that FUNERAL HOME has been duly authorized and empowered to enter into this Agreement. FUNERAL HOME acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

*Mutual Assistance.* HEDC-B and FUNERAL HOME will each do all things reasonably necessary and appropriate to carry out the terms and provisions of this Agreement.

*Successor and Assigns.* This Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties. Neither party hereto may assign this Agreement without the prior written consent of the other party hereto.

*Payment of Debt or Delinquency to the Local or State Government.* FUNERAL HOME agrees that any payments owing to FUNERAL HOME under an agreement with the City of Hearne may be applied directly toward any debt or delinquency that FUNERAL HOME owes the State of Texas, Robertson County, Robertson County the City of Hearne or any other political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

*Severability.* If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be given the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision.

*Governing Law.* This Agreement shall be governed, construed, applied, and enforced in accordance with the laws of the State of Texas, and shall be performable with venue in Robertson County, Texas.

*Third Party Beneficiaries.* This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary.

*Amendments.* This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

*Time.* Time is of the essence in the performance of this Agreement.

*Attorney's Fees.* Should any party employ attorneys to enforce any of the provisions hereof, the party losing in any final judgment agrees to pay the prevailing party all reasonable costs, charges and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.

*Notice and Payments.* All notices hereunder must be in writing and shall be deemed delivered on the day personally delivered on the third day from the day sent by registered mail or certified mail, return receipt requested with the U.S. Postal Service, or on the day after the day sent by national overnight courier, to the parties at the following addresses, or at such other addresses as shall be specified by notice.

If notice to the HEDC-B:

Hearne Economic Development Corporation  
Attention: President  
207 Cedar Street  
Hearne, Texas 77856

with copy to:

City Manager  
City of Hearne  
207 Cedar Street  
Hearne, Texas 77856

If notice to FUNERAL HOME:

with copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All payments to the HEDC-B required under this agreement shall be made to:

Hearne Community Development Corporation – Type B  
Attention: President  
207 Cedar Street  
Hearne, Texas 77859

*Construction.* The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

*Counterpart Execution.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one Agreement.

*Performance.* Performance by HEDC-B under the Agreement is dependent upon the approval of the City Council of the City of Hearne (Council). If the Council fails to approve this Agreement, then HEDC-B shall issue written notice to FUNERAL HOME and HEDC-B may terminate the Agreement without further duty or obligation hereunder. FUNERAL HOME acknowledges that the approval of this document is beyond the control of HEDC-B.

*Undocumented Workers.* Pursuant to Chapter 2264 of the Texas Government Code, FUNERAL HOME certifies that it will not knowingly employ any undocumented workers. FUNERAL HOME further agrees that if the business, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), FUNERAL HOME shall repay the amount of the public subsidy with interest, at the rate of ten percent (10%) per annum from the date this agreement is entered into, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the business of the violation.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

HEARNE FUNERAL HOME.  
A Texas Sole Proprietorship

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

HEARNE COMMUNITY DEVELOPMENT CORPORATION-Type B  
A Texas Economic Development Corporation

By: \_\_\_\_\_  
Name: Virgil Blankenship  
Title: President

STATE OF TEXAS,

COUNTY OF ROBERTSON.

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_ of HEARNE FUNERAL HOME, a Texas Sole Proprietorship, known to me to be the person whose name is subscribed to the foregoing instrument, and sworn and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated and as the act and deed of the business.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

STATE OF TEXAS,

COUNTY OF ROBERTSON.

BEFORE ME, the undersigned authority, on this day personally appeared Virgil Blankenship, President of the Hearne Community Development Corporation Type B, a Type B corporation incorporated under the Development Corporation Act of 1979, known to me to be the person whose name is subscribed to the foregoing instrument, and swore and acknowledged to me that he executed the same for the purpose and consideration therein expressed, and in the capacity therein stated and as the act and deed of the Hearne Economic Development Corporation Type B.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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Notary Public in and for  
The State of Texas

**EXHIBIT A**

**FUNERAL HOME'S DOWNTOWN HEARNE LOCATION**



**EXHIBIT B**

**FORM OF EMPLOYMENT CERTIFICATION**

Hearne Community Development Corporation  
Attention: President  
207 Cedar Street  
Hearne, Texas 77859

**Re: PERFORMANCE AGREEMENT BETWEEN THE HEARNE ECONOMIC DEVELOPMENT CORPORATION TYPE B AND HEARNE FUNERAL HOME; EMPLOYMENT CERTIFICATION**

This Employment Certification is being delivered by Hearne Funeral Home (the "FUNERAL HOME") in connection with the Performance Agreement between the Hearne Economic Development Corporation-Type B and the FUNERAL HOME effective \_\_\_\_\_, 2018 (the "Agreement"). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

The undersigned authorized officer of the FUNERAL HOME hereby certifies to the City that as of the date below, the FUNERAL HOME has created and retained 3 full-time employees. As provided in the Agreement, the term "Employees" means full-time employees who perform a regular work schedule of at least thirty-five (35) hours per week and to whom Funeral Home makes medical benefits available.

The undersigned hereby certifies that I am a duly authorized representative of the FUNERAL HOME and am duly authorized to execute this Employment Certification.

HEARNE FUNERAL HOME

By: \_\_\_\_\_  
Owner

STATE OF TEXAS            )  
  )  
COUNTY OF ROBERTSON )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, Owner of Hearne Funeral Home.

\_\_\_\_\_  
Notary Public