

JOB CREATION AGREEMENT FOR KPS GLOBAL, INC.

This Job Creation Agreement for KPS Global, (the “Agreement”) is entered into as of the _____ day of _____, 2017 (the “Effective Date”) by and between KPS Global, Inc., a _____ corporation (“KPS”), and the City of Goodyear, an Arizona municipal corporation (the “City”). KPS and the City are sometimes referred to herein collectively as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, KPS is a leading national manufacturer of walk-in freezers and refrigerators; and

WHEREAS, KPS has identified the need for a new manufacturing facility to support its business and has identified the City of Goodyear as the location of their new facility after an extensive site selection process; and

WHEREAS, KPS identified the City as its preferred location for its manufacturing facility that will accommodate its immediate and long-term expansion plans and otherwise meet its business needs, and occupy an underutilized facility located in the Goodyear Crossings Industrial Park located at 3801 S. Cotton Lane, Suite #180, Goodyear, AZ 85338 (the “Goodyear Facility”) as more particularly described in Exhibit “1” attached hereto; and

WHEREAS, the location of KPS’s manufacturing center at the Goodyear Facility should involve the investment of over \$2.3 million in capital investment in machinery and equipment and tenant improvements to the Goodyear Facility; and

WHEREAS, the City recognizes that the location of KPS within the City with its resulting capital investment and job creation will provide a significant public benefit to the City and its citizens and that the City’s citizens will receive direct consideration from the Parties’ obligations under this Agreement; and

WHEREAS, the City recognizes that KPS’s operations at the Goodyear Facility will have significant economic impact on the City, including but not limited to: the quantity and quality of the jobs that will result from KPS’s operations; tax revenues generated by KPS’s operations, its employees, vendors, service providers; increased economic activity, or multiplier effect, associated with its operations being located within the City; the qualitative value of the City having a high-profile, well respected company locate a critical piece of its business within the City; the catalytic effect it will have on further development within the City, which will generate additional jobs and revenue within the City; and

WHEREAS, KPS anticipates that over the course of five (5) years, its operations should cumulatively provide up to 85 new jobs to the City, with an average annual wage, including all bonuses of \$31,000; and

WHEREAS, the City commissioned ESI Corporation to conduct an economic and fiscal impact analysis of the KPS operations at the Goodyear facility; and

WHEREAS, ESI Corporation estimates the direct tax benefit to the City of Goodyear from the construction sales tax, personal property tax, real property tax, and occupancy tax generated by KPS during the first ten (10) years of operation will be approximately \$180,239; and

WHEREAS, ESI Corporation estimates the direct, indirect and induced economic impact of the new jobs created by KPS operations in Goodyear will total approximately \$37,315,922 in payroll and more than \$557,776,092 in total economic output over the next ten(10) years; and

WHEREAS, the Parties understand that the decision of KPS to locate in the City and acquire the property upon which the Goodyear Facility will be located is based on the City's willingness to provide assistance to KPS regarding job creation; design review and permit fees, and expedited development process; and

NOW, THEREFORE, in consideration of the premises, promises and mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties hereto, it is hereby agreed as follows:

AGREEMENT

1. Acknowledgement of Recitals. The Parties acknowledge the accuracy and importance of the Recitals to the Parties' obligations below, and that the Recitals are the factors upon which the Parties based their respective decisions to enter into this Agreement.

2. Term. The term of this Agreement shall be for five (5) years from the date this Agreement is approved by the Goodyear City Council.

3. Definition. References to "KPS" in this Agreement shall mean KPS Global Inc., Inc., its successors and/or permitted assignees.

4. Location in Goodyear. KPS has completed a lease of a site in Goodyear and KPS will soon begin construction the tenant improvement on the Goodyear Facility and anticipates it will receive a final or temporary Certificate of Occupancy for the facility by December 20, 2016 and, within three (3) years of the Effective Date of this Agreement, KPS will have invested, or will cause to have been invested, a minimum of \$2,300,000 in acquiring the property upon which the Goodyear Facility will be located, and in developing, improving, fixturing, and equipping the Goodyear Facility.

5. Operations and Job Creation. KPS agrees that it shall operate the Goodyear Facility in the ordinary course of its business for a minimum period of five (5) years from the date the City issues a final Certificate of Occupancy authorizing KPS's occupancy of the Goodyear Facility. Additionally, over the course of three (3) years after issuance of a final Certificate of Occupancy, KPS will maintain Minimum Employment as defined in Section 6 below.

6. Minimum Employment. Notwithstanding the other provisions of this Agreement, in consideration for the development process assistance provided in this Agreement in Section 7 KPS will cumulatively hire eighty-five (85) New Employees at the Goodyear Facility within thirty-six (36) months of obtaining a final Certificate of Occupancy, and KPS agrees to maintain an annual average of sixty-three (63) Employees ("Minimum Employment") at the Goodyear Facility beginning the third year of this Agreement. KPS shall annually provide to Goodyear documentation that states the total number of employees who are employed at the Goodyear Facility.

KPS agrees that all existing and new employees at the Goodyear Facility who meet the following requirements will be counted towards the Minimum Employment figures in this section; (i) Employees must be employed by KPS full time; and (ii) Employees at the Goodyear Facility must be offered health insurance that is subsidized by KPS, with KPS paying at least sixty-five percent (65%) of the premium costs. In addition, those employees must be compensated with annual wages that collectively average \$31,000 or greater. Bonuses are included in the definition of annual wages.

Should KPS not meet the Minimum Employment requirements, the City shall send a Notice of Non-Compliance to KPS. Upon receipt of the Notice of Non-Compliance, KPS shall have six (6) additional months to meet the Minimum Employment requirements at the Goodyear Facility. After the additional six (6) month period, should KPS still not have met the Minimum Employment requirements, as the sole and exclusive remedy, KPS shall be obligated to reimburse the City for Plan Fees waived by the City pursuant to Section 7 below. Should KPS subsequently meet the Minimum Employment requirements threshold prior to the expiration of this Agreement, the City shall return to KPS any funds previously returned to the City under this provision. In determining the portion of the incentives to be returned, if any, the City will consider all relevant circumstances including whether KPS continues to maintain operations in the City and force majeure as described in Section 13. The City will make its determination upon concluding joint discussions with the KPS. In the event KPS breaches this agreement, the City's sole and exclusive remedy is to require reimbursement of Plan Fees that were actually waived and documented by the City.

7. Development Process Assistance. The City agrees to waive all plan review and permit fees ("Plan Fees"), including the expedited portion of plan review fees, up to a maximum of \$100,000 related to the Goodyear Facility. To the extent that KPS paid (or had paid on its behalf) any Plan Fees to the City prior to the Effective Date of this Agreement, the City agrees to reimburse such fees to KPS or a third party beneficiary designated by the KPS in a written notice to the City, within thirty days of the Effective Date of this Agreement. The City shall account for, and provide documentation to KPS that expressly identifies the specific sums of fees waived.

Should KPS not open the Goodyear Facility within twelve (12) months of the issuance of a final Certificate of Occupancy, or operate the Goodyear Facility for at least twenty-four (24) months prior to the expiration of this Agreement, then KPS shall reimburse the City for the cost of Plan Fees that were waived pursuant to this provision.

8. Minimum Capital Investment. As a term of this Agreement, KPS agrees to make a Minimum Capital Investment of \$2,300,000 in leasing the property upon which the Goodyear Facility will be located, and in improving, developing, fixturing, and equipping of the Goodyear Facility within three (3) years of the Effective Date of this Agreement.

9. Incorporation of Exhibits. All exhibits attached hereto and referred to in this Agreement are incorporated herein by this reference and made a part of this Agreement.

10. Entire Agreement. This Agreement, including any exhibits attached hereto, constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations, and understanding of the Parties, oral or written, are hereby superseded and merged herein.

11. Amendment of the Agreement. This Agreement may be amended or cancelled, in whole or in part, only by a written agreement or amendment fully executed by the Parties.

12. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties. No person other than the Parties has any right of action based upon any provision of this Agreement.

13. Force Majeure. The deadlines contemplated in this Agreement shall be extended if the delay is caused by an act of God, adverse weather conditions, casualty, third party malicious mischief, moratoriums imposed by any governmental entity, unreasonable delays by governmental authorities, civil or military disturbance, war, or other events that are not reasonably foreseeable and not within the reasonable control of KPS. The amount of such extension shall be determined by the City after consultation with KPS.

14. Cooperation and Further Acts. The Parties shall act reasonably with respect to any and all matters that require either Party to review, consent or approve any act or matter hereunder. Each of the Parties shall promptly and expeditiously execute and deliver any and all documents and perform any and all acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

15. Representation of Counsel. The City and KPS acknowledge that they were each represented by counsel in connection with the drafting of this Agreement, that each of them and their respective counsel reviewed and revised this Agreement, that each of them and their respective counsel have independently reached their own conclusions as to the enforceability of this Agreement, that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement and that

the language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning.

16. Governing Law. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the substantive laws of the State of Arizona (without reference to conflict of law principles).

17. Venue. Any action arising from this Agreement, which includes by way of example, but not limitation, any action to enforce or interpret any provision of this Agreement, shall be commenced and maintained in a court of competent jurisdiction located within Maricopa County, Arizona, and the Parties hereby irrevocably waive any right to object to such venue.

18. Severability. Any provision of this Agreement that is declared void or unenforceable shall be severed from this Agreement, and the remainder of this Agreement shall otherwise remain in full force and effect.

19. Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through the impasse process, the Parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, either Party may request the presiding judge of the Superior Court of Maricopa County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

20. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

21. Attorneys' Fees and Costs. If either Party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party will be entitled to reasonable attorneys' fees and court costs.

22. No Personal Liability. No member, shareholder, partner, owner, manager, officer, director, representative, agent, official, or employee of the City or KPS shall be personally monetarily liable to the other party, or any successor or assignee, (a) in the event of any default or breach by any Party, (b) for any amount which may become due to such Party or its successor or assign, or (c) pursuant to any obligation of any Party under the terms of this Agreement.

23. Conflict of Interest. Pursuant to Arizona law, rules, and regulations, no member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. This Agreement is subject to, and may be terminated by the City, in accordance with the provisions of A.R.S. § 38-511.

24. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. KPS represents and warrants that they are duly formed and validly existing under the laws of the State of Texas and that they are duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. KPS and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing.

25. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from the counterparts and the signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

27. Notices. All notices and communications provided for herein, or given in connection with this Agreement, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

The City:	City of Goodyear Attn: City Manager 190 No. Litchfield Rd. P.O. Box 5100 Goodyear, Arizona 85358 and City of Goodyear Attn: City Attorney 190 N. Litchfield Rd. P.O. Box 5100 Goodyear, Arizona 85338
To KPS:	KPS Global, Inc., 4201 N. Beach Street Fort Worth, TX 76137 Attn: Andrew Sweeny

Notice of address may be changed by either Party by giving notice to the other Party in writing of a change of address. Such change will be deemed to be effective five days after date the written notice of change of address is personally delivered to the other Party or as of the seventh

business day after mailing the written notice of change of address to the other Party by registered or certified United States Postal Service mail, return receipt requested, postage prepaid.

28. Date of Performance. If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday or legal holiday, then said obligation shall be due and owing, and said time period shall expire, on the first day thereafter which is not a Saturday, Sunday or legal holiday.

[signature page follows]

In WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as follows:

KPS GLOBAL, INC.,
A CORPORATION

By: [Signature]

Name: THOMAS A MARCY

Its: COO KPSG 01-12-17

STATE OF Texas)
) ss.
COUNTY OF Tarrant)

On this 12th day of January, 2017, before me, personally appeared Thomas Marcy, the COO of KPS Global, Inc., a Delaware LLC corporation, and he, in such capacity, being authorized to do so, executed the foregoing instrument on behalf of KPS Global, Inc., for the purposes contained therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]
Notary Public

My Commission Expires: 12-31-2018

NOTARY SEAL:



CITY

CITY OF GOODYEAR,
an Arizona municipal corporation

By: _____

Brian Dalke

Its: City Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, _____ 2017, before me, personally appeared Brian Dalke, the City Manager of the City of Goodyear, an Arizona municipal corporation, and he, in such capacity, being authorized to do so, executed the foregoing instrument on behalf of the City of Goodyear for the purposes contained therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

NOTARY SEAL:

ATTEST:

APPROVED AS TO FORM

City Clerk

City Attorney

Exhibit 1: Aerial of 3801 S. Cotton Lane

