

**ECONOMIC DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF
FISHERS AND _____**

THIS ECONOMIC DEVELOPMENT AGREEMENT ("EDA") is made and entered into this 20th day of April, 2020 ("Effective Date") by and between the City of Fishers, Hamilton County, Indiana, an Indiana municipal corporation ("City"), and _____, an Indiana _____ ("Genezen" and together with the City, the "Parties"), as follows:

WHEREAS, founded in Indiana in 2008, Genezen helps companies around the world advance genetic therapies to clinical trial;

WHEREAS, Genezen serves its domestic and international clients by making gene therapy development efficient, accurate and streamlined;

WHEREAS, in addition to its master service agreements with laboratories at Indiana University and Cincinnati Children's Hospital, Genezen currently utilizes space at Launch Fishers;

WHEREAS, Genezen has advised the City that it desires to grow its business in the City by leasing space generally located at _____ (the "Site"), if the City will authorize the personal property tax Abatement (as defined in Article IV herein); and

WHEREAS, the City has determined that incentivizing Genezen to grow its business in the City is in the best interest of the citizens of the City, and therefore, the City desires to enter into this EDA.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE I. RECITALS

The representations, covenants and recitations set forth in the foregoing recitals are material to this EDA and are hereby incorporated into and made a part of this EDA as though they were fully set forth in this Article 1.

ARTICLE II. MUTUAL ASSISTANCE

The Parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this EDA and to aid and assist each other in carrying out said terms, provisions and intent of this EDA.

ARTICLE III GENEZEN'S OBLIGATIONS

In consideration and as a material inducement for the City fully satisfying its obligations included in Article IV below, Genezen shall fully and completely satisfy each of the following:

- A. By or before _____, enter into a lease for the Site;
- B. Invest not less than Seven Million Dollars (\$7,000,000.00) in personal property to be located and maintained at the Site (jointly, Article III(A) - (B), the "Development Commitment"); and
- C. Relocate its five (5) full time employees ("FTEs") to the Site, employ not less than thirty-six (36) new FTEs from the Site by or before January 1, 2024 (the "Employment Date"), maintain not less than forty (40) FTEs for two (2) years from the Employment Date (the "Term") and compensate its employees at an average hourly rate of not less than Thirty-Seven and 62/100 Dollars (\$37.62)(collectively, the "Employment Commitment").

ARTICLE IV. ECONOMIC DEVELOPMENT INCENTIVES

In consideration and as a material inducement for Genezen fulfilling the Development Commitment and Employment Commitment, the City shall, (A) pursuant to and consistent with Ind. Code § 6-1.1-12.1 *et. seq.*, cause the Site to be designated as an ERA; and (B) take the required procedural steps to authorize a five (5) year personal property tax abatement on eligible personal property located at the Site in the amount of one hundred percent (100%) of taxes assessed on such qualifying personal property (the "Abatement").

ARTICLE V. COMPLIANCE REQUIREMENTS

Section 5.01. Compliance/CF-1 Personal Property. By or before April 15th of each year of the Term, Genezen shall file (a) a certificate of compliance, Indiana Form CF-1/Personal Property with the City's legislative body and the Hamilton County Auditor showing the extent to which there has been compliance with the Statement of Benefits submitted for the project; and (b) a certified statement in the form attached hereto as **Exhibit B** ("Employment Commitment Certification") with the City's legislative body affirming that at all times during the Term, Genezen has employed not less than forty (40) FTEs from the Site.

Section 5.02. Additional Compliance Information. Further, during the Term, the City may request information from Genezen concerning its fulfillment of the Development Commitment and Employment Commitment, including, without limitation, the number of FTEs employed from the Site (individually or collectively, "Additional Compliance Information"), and Genezen shall provide Additional Compliance Information within twenty (20) days of such request.

ARTICLE VI. INCENTIVE TERMINATION AND REIBURSEMENT REQUIREMENTS

Section 6.01. Abatement Termination. If the City determines that Genezen (a) has not or cannot reasonably satisfy the Development Commitment; (b) has not or cannot reasonably satisfy the Employment Commitment, including, without limitation, the obligation, at all times during the Term, to employ not less than forty (40) FTEs from the Site; or (c) Genezen (i) ceases operations at the Site; or (ii) announces cessation of operations at the Site, the City may terminate the ERA designation, terminate the Abatement (or Genezen's right to it) and/or seek reimbursement pursuant to **Section 6.03**. Notwithstanding the foregoing or anything in this EDA to the contrary, in the event the City makes a determination of noncompliance under this **Section 6.01**, then prior to proceeding with a termination under **Section 6.02**, the City shall provide preliminary notice (the "Preliminary Notice") to Genezen of such determination of noncompliance and an opportunity to meet with representatives of the City within fifteen (15) days after the date of the Preliminary Notice ("Notice Period") to discuss the City's determination and provide an opportunity for Genezen to submit information regarding the reason for any shortfall or delay in the Development Commitment, Employment Commitment or cessation of operations, as applicable.

Section 6.02. Abatement Hearing. If (a) the City determines after meeting with Genezen following issuance of the Preliminary Notice that the ERA designation or the Abatement should be terminated; or (b) Genezen does not request a meeting within the Notice Period, the City shall give Genezen final notice (the "Final Notice") of such determination and provide Genezen an opportunity to appear at a City Council meeting to show cause why the ERA designation and/or the Abatement, as applicable, should not be terminated. Genezen shall have fifteen (15) days from the date of the Final Notice to confirm that it desires to be added to the City Council's next agenda and to provide evidence concerning why the ERA designation or the Abatement should not be terminated. If the City Council adopts a resolution terminating the ERA designation and/or Abatement, Genezen shall be entitled to appeal the determination to a Hamilton County Superior or Circuit Court.

Section 6.03. Reimbursement of Abatement Savings. Genezen further acknowledges and agrees that fulfillment of the Employment Commitment, including, without limitation, the obligation to employ not less than forty (40) employees from the Site during the Term is a material inducement and consideration for the City's establishment of the ERA and approval of the Abatement. If, during the Term, Genezen fails to continuously satisfy the Employment Commitment, the City shall be entitled to reimbursement for any year during which Genezen was not continuously compliant (whether determined by the City as a result of the CF-1, Employment Commitment Certification or Additional Compliance Information) in an amount calculated as follows: percentage of failure to comply x the total benefit received as a result of the Abatement during the year of non-compliance ("Reimbursement Amount"). For example, and without limitation, if Genezen employs only thirty (30) FTEs from the Site and Genezen has received a benefit from the Abatement in the amount of One Hundred Thousand and no/Dollars (\$100,000.00) during years in which it was non-compliant with the Employment Commitment, the City is entitled to reimbursement in an amount equal to the product of the following: $(100\% - (30/40)) \times \$100,000.00 = \$25,000.00$.

If the City allows the Abatement to continue despite Genezen not fully and continuously complying with the Employment Commitment, (a) it shall not be considered a waiver of the City's right to seek the Reimbursement Amount; (b) the City shall be entitled to the Reimbursement Amount; and (c) the City shall provide (i) notice of its intent to seek the Reimbursement Amount; and (ii) Genezen the opportunity to meet with the City within fifteen (15) days of such notice.

Notwithstanding the foregoing or anything contained herein to the contrary, the City shall not seek to recover and Genezen shall not be liable for any Reimbursement Amount for a year during which Genezen was determined to be continuously compliant with the Employment Commitment. For example, and without limitation, if Genezen is determined compliant for Years 1-3 of the Abatement; Genezen is not compliant in Year 4, and the City allows the Abatement to continue; and Genezen does not comply with the Employment Commitment and the City terminates the abatement in Year 5, Genezen shall be liable for the Reimbursement Amount for Years 4 and 5, only.

After providing the Reimbursement Notice and, if requested, meeting with Genezen, if the City seeks the Reimbursement Amount pursuant to this Section 6.03, the City may submit an invoice to Genezen for any Reimbursement Amount ("Reimbursement Notice"), and within thirty (30) days of submitting the Reimbursement Notice, Genezen shall pay the Reimbursement Amount (the "Due Date"). If not paid in full by such Due Date, the Reimbursement Amount shall bear interest from the Due Date to the date of payment at the prime rate of interest, as reported in the Wall Street Journal, plus five percent (5%) per annum. The City shall further be entitled to its reasonable attorneys' fees and other costs incurred collecting the Reimbursement Amount.

Genezen's obligation to repay the City pursuant this Section 6.03 shall survive termination of this EDA.

ARTICLE VII. AUTHORITY

Section 7.01. City. The City represents and warrants that it has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver this EDA upon proper approval of the City which shall be subject to completion of such procedures as are required by law.

The City further represents and warrants that it will use its best effort to take (subject to Genezen's performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable the City to execute this EDA and perform its obligations as provided by the terms and provisions hereof.

Section 7.02. Genezen. Genezen represents and warrants to the City that it: (a) is duly registered with the Indiana Secretary of State's Office; (b) shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this EDA ; (c) has the authority: (i) to enter into this EDA; and (ii) to perform its obligations hereunder, (d) has been authorized by proper

action: (x) to execute and deliver this EDA; and (y) to perform its obligations hereunder; and (e) this EDA is the legal, valid, and binding obligation of Genezen.

ARTICLE VIII. GENERAL PROVISIONS

Section 8.01. Indemnity; No Joint Venture or Partnership. Genezen covenants and agrees at its sole expense to pay and to indemnify and save harmless the City and its officers and agents (the "Indemnitees") harmless of, from and against, any and all claims, damages, demands, expenses and liabilities relating to bodily injury or property damage resulting directly or indirectly from this EDA unless such claims, damages, demands, expenses or liabilities arise by reason of the willful act or omission of the City. Genezen's obligation to indemnify the City pursuant this Section 8.01 shall survive termination of this EDA.

Nothing contained in this EDA shall be construed as creating either a joint venture or partnership relationship between the City and Genezen or any affiliate thereof.

Section 8.02. Cure. Except as otherwise specifically stated herein, before any failure of the Parties to perform its obligations under this EDA shall be deemed to be a breach of this EDA, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this EDA may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within seven (7) days of the receipt of such notice. If after said notice, the breaching party fails to cure the breach, the non-breaching party may seek any remedy available at law or equity.

Section 8.03. No Third-Party Beneficiaries. This EDA shall be deemed to be for the benefit solely of the Parties hereto and shall not be deemed to be for the benefit of any third party.

Section 8.04. Effective Date. Notwithstanding anything herein to the contrary, this EDA shall not be effective until all Parties hereto have executed this EDA and the City has approved or ratified this EDA as required by law.

Section 8.05. E-Verify. All terms defined in IND. CODE § 22-5-1.7 *et seq.* are adopted and incorporated into this Section. Pursuant to IND. CODE § 22-5-1.7 *et seq.*, Genezen covenants to enroll in and verify the work eligibility status of all of its employees using the E-Verify program, if it has not already done so as of the Effective Date. Within ten (10) days after the Effective Date, Genezen shall execute an affidavit affirming that: (a) it is enrolled and is participating in the E-Verify program; and (b) it does not knowingly employ any unauthorized aliens. In support of the affidavit, Genezen shall provide City with documentation that it has enrolled and is participating in the E-Verify program. This EDA shall not take effect until said affidavit is signed by Genezen and delivered to City's authorized representative.

Section 8.06. No Remedy Exclusive; Limitation. No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this EDA or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party to exercise

any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this EDA or by the Laws. In no event shall any party hereunder be liable to the other for punitive or consequential damages as a consequence of an event of default by such party. In the event either party hereto employs an attorney in connection with claims by one party against the other arising from the operation of this EDA, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such Claims. The term "prevailing party" as used in this EDA shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

Section 8.07. Notice. Any notice required or permitted to be given by any party to this EDA shall be in writing, and shall be given (and deemed to have been given) when: (i) delivered in person to the other party; (ii) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (iii) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to City at 1 Municipal Drive, Fishers, Indiana 46038, Attn: Scott Fadness, Mayor, with a copies to: Chris Greisl, City Attorney, 1 Municipal Drive, Fishers, Indiana 46038 and Jennifer Messer (via email) at jennifercmesserlaw@gmail.com; and to Genezen at _____ with a copy to _____. Any party may change its address for notice from time to time by delivering notice to the other party as provided above.

Section 8.08. Merger. All prior agreements, understandings, and commitments are hereby superseded, terminated, and merged herein, and shall be of no further force or effect.

Section 8.09 Assignment. The rights and obligations contained in this EDA may not be assigned by Genezen without the express prior written consent of the City, which assignment shall not be unreasonably withheld.

Section 8.10. Miscellaneous. Subject to **Section 8.09**, this EDA shall inure to the benefit of, and be binding upon City, Genezen, and their respective successors and assigns. This EDA may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This EDA shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this EDA shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Genezen waives, to the extent permitted under applicable law: (i) the right to a trial by jury; and (ii) any right Genezen may have to: (A) assert the doctrine of "forum non conveniens"; or (B) object to venue. This EDA may be modified only by a written agreement signed by City and Genezen. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this EDA shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this EDA are attached hereto and incorporated herein by reference. Time is of the essence in this EDA. If any

provision of this EDA or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this EDA or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this EDA a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the Parties and still be valid and enforceable. The captions in this EDA are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this EDA or the scope or content of any of its provisions. Nothing contained in this EDA shall be construed to create a partnership or joint venture between or among Genezen, City or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Site is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

[signatures on following page]

City of Fishers, Hamilton Co., Indiana

By: _____
Scott Fadness, Mayor

By: _____

Its: _____

EXHIBIT A
POST-EMPLOYMENT DATE COMMITMENT CERTIFICATION

_____ (“Genezen”) hereby affirms and certifies the following:

- A. As of the date written below, Genezen employs _____ full time employees from the Site;
- B. That, at all times during the previous twelve (12) months, Genezen has employed at least forty (40) full time employees from the Site; and
- C. Genezen plans to continue employing at least forty (40) full time employees from the Site.

Dated: _____

By: _____

Its: _____

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