

EXHIBIT

"A"

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is entered into this ____ day of _____, 2022, by and between the **Round Rock Transportation and Economic Development Corporation**, a Type B Corporation created pursuant to Chapter 505 of the Texas Local Government Code ("**TEDCO**"), and **Komico Technology, Inc.**, a Texas corporation ("**Komico**"). The foregoing are referred to collectively as the "**Parties**."

WHEREAS, Komico has an existing manufacturing facility located in the City of Round Rock, Texas ("City") at 201 Michael Angelo Way, (the "Facility"); and

WHEREAS, Komico is in the business of manufacturing and developing semiconductor and related device manufacturing; and

WHEREAS, Komico has determined to construct a significant addition to the Facility; and

WHEREAS, Komico has determined to invest at least \$20,000,000 in Real Property Improvements (as defined in Section 2.6) to the Facility, and

WHEREAS, Komico has determined to purchase new equipment to install in the Facility with a cost of at least \$10,000,000 in Business Personal Property (as defined in Section 2.1) for the Facility; and

WHEREAS, TEDCO has determined that the above-described expenditures are for a "project" as described by §501.101 of the Local Government Code and that it will result in the creation of 70 "primary jobs" as defined by Section 501.002 Texas Local Government Code; and

WHEREAS, TEDCO agrees to provide performance based Economic Incentive Payments (as defined in Section 2.2) to Komico in order to defray a portion of Komico's development expenses;

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TEDCO, and Komico agree as follows:

1. **Authority.** TEDCO's execution of this Agreement is authorized by §501.158 of the Texas Local Government Code.
2. **Definitions.**
 - 2.1 "**Business Personal Property**" means equipment which costs at least \$5,000, per unit and has a model number and/or serial number and is purchased new for the purpose of supporting Komico's manufacturing operations at the Facility.
 - 2.2 "**Economic Incentive Payment(s)**" ("**EIPs**") means the amounts paid by TEDCO to Komico under this Agreement.
 - 2.3 "**Effective Date**" is the ____ day of _____.

- 2.4 “**Employee**” means an employee who is hired by Komico to perform a Primary Job, as that term is defined by § 501.002 of the Texas Local Government Code.
- 2.5 “**Facility**” means the building located in the Round Rock city limits with an address of 201 Michael Angelo Way, Austin, TX 78728.
- 2.6 “**Real Property Improvements**” means the real property improvements to the Facility directly related to the design, rehabilitation, reconstruction, repair, finish out and/or remodeling of the Facility for the purpose of supporting Komico’s manufacturing operations. It does not include any other costs, including, but not limited to, financing cost, attorney fees, architect fees, insurance, and other similar costs.
- 2.7 “**Recapture Liability**” means the total amount of all EIP’s that are paid as result of this Agreement that are subject to recapture by TEDCO from Komico in the event of a default by Komico pursuant to this Agreement.
3. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on the date the final EIP is made in accordance with 5.1 below.

4. **Rights and Obligations of Komico.**

4.1 Investment in the Facility. Over the term of this Agreement, Komico agrees to spend at least \$20,000,000 for Real Property Improvements and \$10,000,000 for Business Personal Property for the Facility according to the schedule set forth below:

| <u>On or Before</u> | <u>Real Property Improvements</u> | <u>Business Personal Property</u> |
|---------------------|-----------------------------------|-----------------------------------|
| December 31, 2023 | \$ 10,000,000.00 | \$ 5,000,000.00 |
| December 31, 2024 | <u>\$ 10,000,000.00</u> | <u>\$ 5,000,000.00</u> |
| TOTAL | \$ 20,000,000.00 | \$ 10,000,000.00 |

4.2 Evidence of Satisfaction of Investment and Tax Appraisal Value. On or before April 15 of the following calendar year, with respect to the Real Property Improvements requirements, Komico agrees to provide proof to TEDCO that the above required expenditures have been made. With respect to the Business Personal Property requirements, on or before April 15 of the following calendar year, Komico agrees to provide proof to TEDCO that it has met the requirements. The proof can be in the form of receipts for the purchase cost of new equipment and/or evidence of the Travis Central Appraisal District’s appraised value of the equipment installed in the Facility. TEDCO shall have the right, at its expense to audit Komico’s records to verify same following reasonable advance notice to Komico.

4.3 Employees. Over the term of this Agreement, Komico agrees to relocate to the City or otherwise create a minimum of 70 new primary jobs with a starting average annual salary of \$68,000, plus industry standard benefits in accordance with the following schedule:

| <u>On or Before</u> | <u>New Jobs Created</u> | <u>Cumulative Total</u> |
|---------------------|-------------------------|-------------------------|
| December 31, 2023 | 25 | 25 |
| December 31, 2024 | 25 | 50 |
| December 31, 2025 | 20 | 70 |

4.4 Job Compliance Affidavit. On or before April 15 of 2024, and of each calendar year thereafter through April 15, 2026, Komico agrees to provide to TEDCO a completed Job Compliance Affidavit, the form of such Job Compliance Affidavit being attached hereto as **Exhibit A**. TEDCO shall have the right, at its expense and following reasonable advance notice to Komico, to audit Komico’s records to verify that this obligation has been satisfied.

4.5 Compliance with regulations. Komico agrees that it will comply with the City’s development approval processes and shall operate the Facility consistent with City ordinances, development regulations, and requirements.

4.6 Continuous operation. Komico agrees that it will continuously operate the Facility during the Term of this Agreement, including any extensions, subject to normal down-time and any *force majeure* events.

5. Rights and Obligations of TEDCO.

In consideration of Komico’s compliance with this Agreement, TEDCO agrees as follows:

5.1 Economic Incentive Payments (“EIPs”).

5.1.1 EIPs. TEDCO shall, subject to Komico’s satisfaction of its obligations set forth in section 4 above, make EIPs to Komico as set forth below. The EIPs shall be made in annual payments on or before June 1 of each year, as follows:

| <u>Year</u> | <u>EIP Amount</u> |
|-------------|-------------------|
| 2024 | \$ 250,000 |
| 2025 | \$ 250,000 |
| 2026 | <u>\$ 250,000</u> |
| TOTAL | \$ 750,000 |

5.1.2 EIPs Subject to Future Appropriations. This Agreement shall not be construed as a commitment, issue, or obligation of any specific taxes or tax revenues for payment to

Komico. The EIPs by TEDCO under this Agreement are subject to TEDCO's appropriation of funds for such payments in the budget year for which they are made. The EIPs to be made to Komico, if paid, shall be made solely from annual appropriations from the general funds of TEDCO or from such other funds of TEDCO as may be legally set aside for the implementation of Chapters 501 and/or 505 of the Local Government Code or any other economic development or financing program authorized by statute or other applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that TEDCO does not appropriate funds in any fiscal year for the EIPs due under this Agreement, such failure shall not be considered a default under Sec. 7.3, and TEDCO shall not be liable to Komico for such EIP's; however, TEDCO shall extend this Agreement for another year(s), until Komico has received all the EIPs provided herein. In addition, Komico shall have the right but not the obligation to terminate this Agreement, which shall not be deemed to constitute a default by Komico, and, in such event, Komico shall be permitted to retain any EIP monies received on or before the date of termination. To the extent there is a conflict between this paragraph and any other language or covenant in this Agreement, this paragraph shall control.

6. EIP Recapture. In the event that TEDCO terminates this Agreement as a result of Komico's default, TEDCO may recapture and collect from Komico the Recapture Liability. Komico shall pay to TEDCO the Recapture Liability within thirty (30) days after TEDCO makes written demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which Komico may be entitled. Notwithstanding anything herein to the contrary such Recapture Liability shall not exceed, in the aggregate, an amount equal to all EIPs that were paid pursuant to this Agreement from the Effective Date to the date of termination (together with interest thereon to be charged at the rate for delinquent taxes as determined by Sec. 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty). TEDCO shall have all remedies for the collection of the Recapture Liability as provided generally in the Tax Code for the collection of delinquent property taxes.

7. Miscellaneous.

7.1 Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.

7.2 Representations and Warranties. TEDCO represents and warrants to Komico that this Agreement is within its authority, and that it is duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Komico represents and warrants to TEDCO that it has the requisite authority to enter into this Agreement.

7.3 Default. If either TEDCO or Komico should default in the performance of any obligations of this Agreement, then the other Party shall provide such defaulting Party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If TEDCO remains in default after notice and opportunity to cure, Komico shall have the right to terminate this Agreement by giving written notice thereof to TEDCO and to pursue any

remedy at law or in equity for TEDCO's breach. If Komico remains in default after notice and opportunity to cure, TEDCO as its exclusive remedy shall have the right to terminate this Agreement by giving written notice thereof to Komico and, upon such termination, recapture EIP and interest thereon as provided in Sec. 6 and, in the event of litigation or a court proceeding to enforce such recapture, recovery of attorney's fees and expenses pursuant to the Terms of Sec. 7.4.

- 7.4 Attorney's Fees. In the event any legal action or proceeding is commenced in a court of competent jurisdiction between TEDCO and Komico to enforce provisions of this Agreement and/or recover damages for breach, the prevailing Party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.
- 7.5 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. This Agreement may only be amended, altered, or revoked by written instrument signed by the Parties.
- 7.6 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors, and assigns.
- 7.7 Assignment. Komico may not assign all or part of its rights and obligations to a third party without the express written consent of TEDCO, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that Komico may assign this Agreement without the consent of TEDCO to an entity which controls, is controlled by or is under common control with Komico, any successor entity to Komico by way of merger, consolidation or other non-bankruptcy corporate reorganization, or an entity which acquires all or substantially all of Komico's assets, partnership or membership interests, or capital stock.
- 7.8 Amendment. This Agreement may be amended by the mutual written agreement of the Parties.
- 7.9 Termination. In the event Komico elects not to proceed with the investments as contemplated by this Agreement, Komico shall notify the City in writing, and this Agreement and the obligations on the part of all Parties shall be deemed terminated and of no further force or effect.
- 7.10 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, electronic mail transmission, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to TEDCO:

Round Rock Transportation and Economic Development Corporation

221 E. Main Street
Round Rock, TX 78664
Attn: City Manager
Phone: (512) 218-5400
Email: lhadley@roundrocktexas.gov

With a required copy to:
Sheets & Crossfield
309 E. Main Street
Round Rock, TX 78664
Attn: Stephan L. Sheets
Phone: (512) 255-8877
Email: steve@scrrlaw.com

If to Komico:

Komico Technology, Inc.
201 Michael Angelo Way
Austin, TX 78728
Attn: Lisa Kim
Email: lisakim@komico.com

Either Party may designate a different address at any time upon written notice to the other Party.

- 7.11 **Interpretation.** Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, be interpreted fairly and reasonably and neither more strongly for nor against any Party.
- 7.12 **Applicable Law.** This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.
- 7.13 **Severability.** In the event any provisions of this Agreement are illegal, invalid, or unenforceable under present or future laws, it is the intention of the Parties that the remainder of this Agreement shall not be affected. It is also the intention of the Parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement, which is legal, valid, or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.
- 7.14 **Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
- 7.15 **No Third-Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

- 7.16 Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (a "*force majeure* event"). A *force majeure* event for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; epidemic; riots; acts of terrorism; or supplier failures, shortages or breach or delay. Except as otherwise expressly provided, herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*.
- 7.17 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. TEDCO, its past, present, and future officers, elected officials, employees, and agents of TEDCO, do not assume any responsibilities or liabilities to any third party in connection with the development of the Facility or the design, construction, or operation of any portion of the Facility.
- 7.18 Estoppel Certificate. Komico may request an estoppel certificate from TEDCO so long as the certificate is requested in connection with a bona fide business purpose and requests commercially reasonable certifications. TEDCO agrees to promptly execute and deliver any estoppel certificate reasonably requested pursuant to this Sec. 7.18. The certificate, which will upon request be addressed to Komico, or a lessor, lessee, purchaser or assignee of Komico or the Facility, or any lender associated with any of the foregoing, and shall include, but not necessarily be limited to, statements (qualified to the best knowledge of TEDCO) that this Agreement is in full force and effect without default (or if a default exists, the nature of such default and any curative action which should be undertaken to cure same), the remaining term of this Agreement, and such other matters reasonably requested by the party(ies) to receive the certificate.

EXECUTED to be effective as of the Effective Date.

**ROUND ROCK TRANSPORTATION AND
ECONOMIC DEVELOPMENT CORPORATION**

By: _____
Craig Morgan, President

KOMICO TECHNOLOGY, INC.

By:



James Jih its President

EXHIBIT A

Job Compliance Affidavit

Before me, the undersigned authority, on this day personally appeared _____ (name), known to me to be the person whose name is subscribed below and after having been duly sworn, on his/her oath stated as follows:

“My name is _____. I am over the age of 21 years and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. “I am the _____ (title) of Komico, Inc., and I am duly authorized to make this affidavit on its behalf.

As of December 31, 202__, in compliance with Section 4.3 of the Economic Development Agreement, Komico Inc. had created the following Employee positions:

EMPLOYEE ID NO.

JOB POSITION OR TITLE

TOTAL JOBS _____

DATED THIS ____ DAY OF _____, 202__.

By: _____ (Signature)

_____ (Printed Name)

_____ (Title)

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS THE ____ DAY OF _____,
202__.

NOTARY PUBLIC, STATE OF TEXAS