

# EXHIBIT

## "A"

### ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 (the "Effective Date"), by and between the **City of Round Rock, Texas**, a Texas home rule municipal corporation ("City"), and **D.M.A. Enterprises, Inc.**, a \_\_\_\_\_ corporation ("DMA").

**WHEREAS**, the City has adopted Resolution No. \_\_\_\_\_, attached as Exhibit A ("City Resolution"), establishing an economic development program and authorizing the Mayor to enter into this Agreement with DMA in recognition of the positive economic benefits to the City through DMA's purchase and replatting of real property, constructing subdivision improvements suitable for use as an industrial park, and locating a manufacturing facility in the City ("Facility"); and

**WHEREAS**, the real property to be purchased and replatted includes approximately 27 acres, as described in Exhibit B, the ("Property"); and

**WHEREAS**, DMA will replat the Property into at least five (5) lots and construct subdivision improvements suitable for an industrial park thereon; and

**WHEREAS**, the Facility will include new construction of a building and installation of new equipment with a cost of at least \$3,500,000; and

**WHEREAS**, DMA will employ at least 45 full-time employees over the term of this Agreement; and

**WHEREAS**, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby DMA will expend significant sums to purchase and replat the Property, construct subdivision improvements suitable for an industrial park, construct the Facility and purchase and install equipment in the Facility and occupy and operate the Facility in conformance with the City's development approvals for the Facility; and

**WHEREAS**, the City agrees to provide performance based economic development grants to DMA;

**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, the City and DMA agree as follows:

1. **Authority.** The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code, and the City Resolution, and constitutes a valid and binding obligation of the City in the event DMA proceeds with the purchase and replatting of the Property, construction of subdivision improvements suitable for an industrial park, and construction and operation of the Facility. The City acknowledges that DMA is acting in reliance upon the City's performance of its obligations under this

Agreement in making its decision to commit substantial resources and money to lease, improve and occupy the Facility.

**2. Definitions.**

- 2.1 **“Economic Incentive Payment(s)” (“EIPs”)** means the amount paid by the City to DMA under the Program.
- 2.2 **“Effective Date”** is the date this Agreement is executed to be effective by the City and DMA.
- 2.3 **“Equipment”** means the equipment to be purchased and installed in the Facility.
- 2.4 **“Facility”** means the manufacturing facility to be constructed on the Property.
- 2.5 **“Program”** means the economic development program established by the City pursuant to Chapter 380 of the Texas Local Government Code and under the City Resolution to promote local economic development and stimulate business and commercial activity within the City.
- 2.6 **“Property”** means the real property described in Exhibit “B”.
- 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 the City from DMA in the event of a DMA default.

**3. Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, 2019.

**4. Rights and Obligations of DMA.**

- 4.1 Purchase of Property. DMA agrees to purchase the Property on or before November 30, 2013.
- 4.2 Replat of Property and Subdivision Improvement Plans. DMA agrees to replat the Property into at least five (5) lots and to construct subdivision improvements suitable for an industrial park. DMA agrees to obtain final approval of the replat of the Property and the subdivision improvement plans on or before November 30, 2014.
- 4.3 Completion of Subdivision Improvements. DMA agrees to complete the construction of the subdivision improvements on or before eighteen (18) months following final plat approval.
- 4.4 Completion of Building and Installation of Equipment. DMA agrees to complete the construction of the Facility and the purchase and installation of the Equipment in the Facility on or before eighteen (18) months after final plat approval and to

begin operating the Facility on or before twenty-two (22) months after final plat approval.

- 4.5 Cost of Facility, and Equipment. DMA agrees to spend at least \$3,500,000 on the construction of the Facility and the purchase of the Equipment. DMA agrees to provide City with documentation showing that this obligation has been satisfied. City shall have the right to audit DMA's records to verify that this obligation has been satisfied.

4.6 Jobs.

- 4.6.1 Job Creation. DMA agrees to add new full-time employees in accordance with the following schedule:

<u>Date</u>	<u>Retain</u>	<u>New</u>	<u>Total</u>
On Facility Opening Day	0	40	40
On December 31, 2016	40	0	40
On December 31, 2017	40	0	40
On December 31, 2018	40	0	40
On December 31, 2019	40	5	45

- 4.6.2 Salaries and Benefits. DMA agrees that the above full-time employees will have an average annual salary of at least \$40,000 which includes industry standard benefits.

- 4.6.3 Job Compliance Affidavit. On or before February 1 of each calendar year during the term of this Agreement, DMA agrees to provide to the City an affidavit certifying its compliance with the foregoing job requirements in the form attached hereto as Exhibit "C". Upon request by the City, DMA agrees to provide the City with any and all necessary documentation to verify its compliance with the job retention and creation obligations.

- 4.7 Compliance with regulations. DMA agrees that it will comply with the City's development approval processes and shall construct, equip, occupy, and operate the Facility consistent with City ordinances, development regulations and requirements.

- 4.8 Continuous operation. DMA agrees that it will continuously operate the Facility and employ at the number of full-time employees set out in section 4.6.1 during the term of this Agreement, including any extensions.

## **5. Rights and Obligations of the City.**

In consideration of DMA's compliance with this Agreement, the City agrees as follows:

### **5.1 Economic Incentive Payments ("EIP's").**

5.1.1 EIP. Once DMA has satisfied its obligation under §4.2 above to obtain final approval of the replat of the Property and the subdivision improvement plans, the City shall make an EIP to DMA in the amount of \$400,000. This EIP shall be made within thirty (30) days after DMA has satisfied these obligations.

5.1.2 EIP's 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 DMA. All EIP's by the City under this Agreement are subject to the City's appropriation of funds for such payments in the budget year for which they are made. The EIP's to be made to DMA, if paid, shall be made solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that the City does not appropriate funds in any fiscal year for EIP's due under this Agreement, such failure shall not be considered a default under Section 7.3, and the City shall not be liable to DMA for such EIP's, however, the City shall extend this Agreement for another year(s). In addition, DMA shall have the right but not the obligation to rescind this Agreement. 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 DMA is in default of any of its obligations under this Agreement, the City may recapture and collect from DMA the Recapture Liability after providing DMA written notice and a minimum period of thirty (30) days to cure such default, and the default has not been cured within said time. In the event DMA does not so cure, DMA shall pay to the City the Recapture Liability within thirty (30) days after the City makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which DMA may be entitled. The City 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 City and DMA will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.

7.2 Representations and Warranties. The City represents and warrants to DMA that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. DMA

represents and warrants to the City that it has the requisite authority to enter into this Agreement.

- 7.3 Default. If either the City or DMA should default in the performance of any obligations of this Agreement, 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 the City remains in default after notice and opportunity to cure, DMA shall have the right to pursue any remedy at law or in equity for the City's breach. If DMA remains in default after notice and opportunity to cure, City shall have the right to pursue any remedy at law or in equity for DMA's breach, in addition to the right of EIP recapture set forth above.
- 7.4 Attorney's Fees. In the event any legal action or proceeding is commenced in a court of competent jurisdiction between the City and DMA to enforce provisions of this Agreement and 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.
- 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. DMA may not assign all or part of its rights and obligations to a third party without the express written consent of the City provided, however, that this Agreement may be assigned by either party without the consent of the other to an affiliate or to any third party who succeeds to substantially all of its business or assets.
- 7.8 Amendment. This Agreement may be amended only by the mutual written agreement of the parties.
- 7.9 Termination. In the event DMA elects not to purchase the Property as contemplated by this Agreement, DMA shall notify the City in writing, and this Agreement and the obligations on the part of both 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, 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 City: City of Round Rock  
221 E. Main Street  
Round Rock, TX 78664  
Attn: City Manager  
Phone: (512) 218-5400  
Email: [snorwood@roundrocktexas.gov](mailto:snorwood@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@scrllaw.com](mailto:steve@scrllaw.com)

If to DMA: D.M.A. Enterprises, Inc.  
2255 UNION PLACE  
SIMI VALLEY, CA 93065  
Attn: Mitchell Altman  
Phone: (805) 520-2468 Ext 111  
Email: Mitchell@thermasol.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, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or 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, and in that event, 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; riots; acts of terrorism; or supplier failures, shortages or breach or delay.
- 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. The City, its past, present and future officers, elected officials, employees and agents of the City, 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.

EXECUTED to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2013 (the "Effective Date").

THE CITY OF ROUND ROCK, TEXAS,  
a Texas Home Rule Municipality

By:

\_\_\_\_\_  
Alan McGraw, Mayor

Date: \_\_\_\_\_

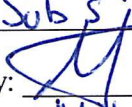
Attest:

\_\_\_\_\_  
Sara White, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephan L. Sheets, City Attorney

D.M.A. Enterprises, Inc.,  
a Sub S "CA" corporation

By:   
Mitchell Altman, (printed name)  
CEO, (title)

Date: 10/28/13



**EXHIBIT "A" TO THE ECONOMIC DEVELOPMENT AGREEMENT**

**RESOLUTION NO. R-\_\_\_\_\_**

**WHEREAS**, D.M.A. Enterprises, Inc., ("DMA") has expressed to the City of Round Rock ("City") its desire to (i) purchase approximately 27 acres in the City (the "Property"), (ii) replat the Property, (iii) construct an industrial park with at least five (5) lots, and (iv) locate and construct a manufacturing facility on the Property which will provide jobs and additional tax base to the City, and

**WHEREAS**, §380.001 Local Government Code provides that a municipality may establish an economic development program ("Program") to promote local economic development and to stimulate business and commercial activity in the municipality, and

**WHEREAS**, the City Council has determined that the Program described in Exhibit "A" will meet the goals set forth in said §380.001 and will be of mutual benefit to both parties, Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

That the City offers to DMA a §380.001 Program in exchange for DMA purchasing the Property, replatting the Property into at least five (5) lots, constructing subdivision improvements suitable for an industrial park, and locating and constructing a manufacturing facility on the Property, and

**BE IT FURTHER RESOLVED**

That the offer of the Program shall be as generally outlined in Exhibit "A" attached hereto and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**RESOLVED** this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
ALAN MCGRAW, Mayor  
City of Round Rock, Texas

ATTEST:

\_\_\_\_\_  
SARA L. WHITE, City Secretary

**EXHIBIT "A" TO THE RESOLUTION**  
**ECONOMIC DEVELOPMENT PROGRAM**

The terms of the \$380,001 Economic Development Program to be offered to D.M.A. Enterprises, Inc. ("DMA") in exchange for DMA's purchasing the Property, replatting the Property, constructing subdivision improvements suitable for an industrial park, and locating and constructing a manufacturing facility in the City of Round Rock are as generally outlined below:

1. DMA's obligations:
  - 1.1. DMA agrees to purchase a tract of land containing approximately 27 acres (the "Property") as described in Exhibit "1", attached hereto.
  - 1.2. DMA agrees to replat the Property into at least five (5) lots and construct subdivision improvements suitable for an industrial park thereon.
  - 1.3. DMA agrees to construct and operate a new manufacturing facility ("Facility") on the Property.
  - 1.4. DMA agrees to invest at least \$3,500,000 in the construction of the Facility and the purchase and installation of new equipment.
  - 1.5. DMA agrees to hire 45 new full-time employees over the next six years.
2. City's obligations:
  - 2.1. City agrees to make an Economic Incentive Payment of \$400,000 to DMA if it meets its obligations to replat the Property and construct subdivision improvements suitable for an industrial park thereon.
3. The terms and provisions of this Program will be set out in more detail in the Economic Development Program Agreement of even date herewith.

## **EXHIBIT "1" TO THE ECONOMIC DEVELOPMENT PROGRAM**

### **Property Description**

Lot 3 of the REPLAT OF AMANDA SUBDIVISION LOT 2 & 3 BLOCK "A", as shown in Document Number 9134502 of the Official Public Records of Williamson County and the plat recorded in Cabinet K, Slide 29, Plat Records of Williamson County, Texas.

**EXHIBIT "B"**

**TO THE ECONOMIC DEVELOPMENT AGREEMENT**

**DESCRIPTION OF REAL PROPERTY**

Lot 3 of the REPLAT OF AMANDA SUBDIVISION LOT 2 & 3 BLOCK "A", as shown in Document Number 9134502 of the Official Public Records of Williamson County and the plat recorded in Cabinet K, Slide 29, Plat Records of Williamson County, Texas.

**EXHIBIT “C” TO THE ECONOMIC DEVELOPMENT AGREEMENT**

# 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:

1. "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.
2. "I am the \_\_\_\_\_ (title) \_\_\_\_\_ of D.M.A. Enterprises, Inc., and am duly authorized to make this affidavit.
3. "As of December 31, 201\_\_\_\_, D.M.A. Enterprises, Inc. had the following full-time employees and salaries:

[illegible]

\_\_\_\_\_  
\_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_

**TOTAL FULL-TIME EMPLOYEES** \_\_\_\_\_ **AVG. SALARY \$** \_\_\_\_\_

4. "In addition to the salary, all full-time employees had industry standard employee benefits.

Dated this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Title)

SUBSCRIBED AND SWORN TO before me on this the \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public, State of Texas