

# EXHIBIT

## "A"

### ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement ("**Agreement**") is entered into this 17th day of December, 2015, by and between the City of Round Rock, Texas, a Texas home rule municipal corporation ("**City**"), and Airco Mechanical, Inc., a Delaware Corporation ("**Airco**").

WHEREAS, the City has adopted Resolution No. 2015-\_\_\_\_\_, attached as **Exhibit A** ("**Program Resolution**"), establishing an economic development program and Resolution No. 2015-\_\_\_\_\_, attached hereto as **Exhibit B** (the "**Authorizing Resolution**"), authorizing the Mayor to enter into this Agreement with Airco in recognition of the positive economic benefits to the City through Airco's long term lease of and improvement to the property and building located at 1000 South IH-35, as more particularly described on the attached **Exhibit C** ("**Property**") as a commercial office building and fabrication shop (the Program Resolution and the Authorizing Resolution being collectively referred to herein as the "**City Resolutions**"); and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby Airco intends to construct, develop and operate the Project, or cause the Project to be operated, in conformance with the City's development approvals for the Project, and;

WHEREAS, the City agrees to provide performance based economic development grants to Airco to defray a portion of the Project's costs.

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 Airco 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 Resolutions, and constitutes a valid and binding obligation of the City in the event Airco proceeds with the improvement and occupancy of the Property. The City acknowledges that Airco 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 improve and occupy the Property.

2. **Definitions.**

2.1 "**Economic Incentive Payment(s)**" ("**EIPs**") means payments of the amount required to be paid by the City to Airco under the Program and this Agreement.

2.2 "**Effective Date**" is the date this Agreement is executed to be effective by the City and Airco.

2.3 "**One Cent Sales Tax Revenues**" means that portion of Sales Tax Revenues (defined below) resulting from the imposition of a one percent municipal sales tax on sales arising from the Project, such as that presently in effect pursuant to Texas Tax Code §321.101(a) and §321.103.

2.4 “**Program**” means the economic development program established by the City pursuant to Chapter 380 of the Texas Local Government Code and under the Program Resolution to promote local economic development and stimulate business and commercial activity within the City.

2.5 “**Project**” means Airco’s planned improvement of the Property which shall consist of a commercial office building and fabrication shop and related facilities.

2.6 “**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 Airco in the event of an Airco default.

2.7 “**Sales Tax Effective Date**” means the first day of the month following the date upon which Airco certifies in writing that it has received one or more certificates of occupancy for and has begun operation of the Project.

2.8 “**Sales Tax Revenues**” means the amount of sales tax collected by the City arising from the Project. The term “Sales Tax Revenues” shall include any taxes authorized by the State in the future that are intended to replace sales or use tax revenues currently available to the City.

3. **Term.** This Agreement shall become enforceable upon its Effective Date. This Agreement shall terminate upon the earlier to occur of: (a) seven (7) years after the Sales Tax Effective Date; or (b) Airco’s receipt of \$201,000.00 in the aggregate pursuant to this Agreement.

4. **Rights and Obligations of Airco.** In consideration of the City’s compliance with this Agreement, Airco agrees as follows:

4.1 **Lease of the Property.** Airco agrees to lease and occupy the Property for at least seven years.

4.2 **Provide Jobs.** Within one year of occupying the Property, Airco agrees to employ approximately 365 individuals with a total annual payroll of \$14,600,000. The annual payroll will include the base salary, overtime, and industry standard benefits. It is anticipated that the annual average salary will be approximately \$40,000. Airco covenants and agrees to provide to the City no later than March 1 of each year an affidavit stating the number of employees that it had as of December 31 of the previous calendar year and the total annual payroll for such calendar year. The said affidavit shall be in the form attached hereto as **Exhibit D.**

4.3 **Compliance with Development Regulations and Other Ordinances.** Airco shall comply with the City’s development approval processes and shall improve the building on the Property consistent with City building and development ordinances, City-approved zoning for the Property, City-approved development regulations, and other City development requirements.

4.4 **Airco Accounting.** Airco shall maintain complete books and records showing that it has complied with its obligations herein, which books and records shall be deemed

complete if kept in accordance with generally acceptable accounting principles. Such books and records shall be available for examination by the duly authorized officers or agents of the City during normal business hours upon request made not less than ten (10) business days prior to the date of such examination. Airco shall maintain such books and records throughout the term of this Agreement and for four (4) years thereafter.

4.5 **Waiver of Sales Tax Confidentiality.** Airco agrees to provide the City with a Waiver of Sales Tax Confidentiality in a form approved by the Texas Comptroller's Office ("**Waiver Form**"), a copy of which is attached hereto as **Exhibit E**. The Waiver Form will be utilized by the City to obtain reports filed by Airco to determine the amount of sales tax revenues generated from the Project for the previous calendar quarter. Such reports shall be based upon reports filed by the Airco with the Texas Comptroller's office. The City agrees to maintain the confidentiality of the information provided in such reports and to not disclosure any of such information unless otherwise required by applicable law, Attorney General's opinion, or court order.

4.6 **Submission of Data.** Within thirty (30) days of the end of each calendar quarter, Airco shall submit to the City a schedule detailing the Sales Tax Revenues for each month in that quarter. As backup for the schedule, Airco shall submit the following:

- (a) A copy of all sales tax reports for the Project, including amended reports, filed by Airco with the Texas Comptroller's office for that quarter showing sales tax collected;
- (b) Such other data as the parties mutually determine reasonably appropriate to evidence the Sales Tax Revenues.

5. **Rights and Obligations of the City.** In consideration of Airco's compliance with this Agreement, the City agrees as follows:

5.1 **Economic Incentive Payments.**

5.1.1 **Initial Payment.** City shall, subject to the conditions set out herein, make an initial EIP to Airco in the amount of \$190,000. This initial payment will be made within thirty (30) days after the City has received from Airco an affidavit stating that:

- (a) it has signed a lease for the Property for at least seven years,
- (b) it has taken possession of the Property, and that it has complied with all obligations contained in this Agreement, and
- (c) it has complied with all other obligations contain in this Agreement.

5.1.2 **Subsequent Annual Payments.** Thereafter, subject to the conditions set out herein, including those set out in Sec. 4.2 above, and subject to Airco not being in

default of this Agreement, City shall pay in seven annual payments on or before April 1 of each year as set forth below. The annual payments shall be calculated by using the reports required in **Section 4.6** above. The subsequent annual payments are to be calculated as follows:

- (a) Calculations will be based upon sales subject to the City's one percent (1%) general sales tax for the previous calendar year; and
- (b) The subsequent annual payments will be equal to fifty percent (50%) of the One Cent Sales Tax Revenues generated for the immediately preceding calendar year.

5.2 Payments Subject to Future Appropriations. Although certain payments under this Agreement are calculated based on a formula applied to sales tax revenues, this Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to Airco. All payments 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 payments to be made to Airco, 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 payments due under this Agreement, such failure shall not be considered a default under **Section 7.3**, and the City shall not be liable to Airco for such payments otherwise due during such fiscal year; however, the term of this Agreement shall be extended one (1) year for each year the City fails to appropriate funds for payments otherwise due under this Agreement. Airco shall also 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.

5.3 Permitting. The City shall cooperate with Airco to expeditiously process all City permit applications and City inspections.

**6. EIP Recapture.** In the event the City terminates this Agreement as a result of Airco's default, the Abatement for the year in which the termination occurs will be cancelled, and in addition, the City may recapture and collect from Airco the Recapture Liability, as herein described. Airco 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 Airco may be entitled. Notwithstanding anything herein to the contrary, such Recapture Liability shall be limited to an amount equal to the EIP's paid to Airco during the immediately preceding three calendar years plus the ad valorem taxes which were abated pursuant to this Agreement for the immediately preceding three calendar years, plus interest thereon to be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty. 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 Airco will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions in order to put each other in the same economic condition contemplated by this Agreement regardless of any changes in public policy, the law, or taxes or assessments attributable to the Property.

**7.2 Representations and Warranties.** The City represents and warrants to Airco 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. Airco 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 Airco 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, Airco shall have the right to pursue any remedy at law or in equity for the City's breach. If Airco remains in default after notice and opportunity to cure, the City's remedy shall initially be limited to suspension of the EIPs that accrue after the date of such default until such default is cured. After any such default is cured, the City shall promptly forward any such suspended payment to Airco. If Airco's default is not cured within sixty (60) days after Airco's receipt of a second notice of default from the City that clearly and conspicuously indicates the City's intention to terminate this Agreement, the City may terminate this Agreement by giving Airco written notice of such termination prior to the date Airco cures such default. Any EIPs from City to Airco which is not timely paid by City (unless due to Airco's default) shall incur interest at the highest rate per annum allowed by the applicable law of the State of Texas from the date such EIPs are due until paid. Any funds owed by Airco to the City which are not timely paid by Airco shall incur interest at the highest rate per annum allowed by the applicable law of the State of Texas from the date such funds are due until paid.

**7.4 Attorney's Fees.** In the event any legal action or proceeding is commenced between the City and Airco 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. This Agreement may only be amended, altered or revoked by written instrument signed by the City and Airco.

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.** Airco may not assign all or part of its rights and obligations to a third party without the express written consent of the City (which consent shall not be unreasonably withheld, conditioned or denied).

7.8 **Amendment.** This Agreement may be amended by the mutual written agreement of the parties.

7.9 **Termination.** In the event Airco elects not to proceed with the Project as contemplated by this Agreement, Airco shall notify the City in writing of such election, and this Agreement and the obligations on the part of both parties shall thereafter be deemed terminated and of no further force or effect. Notwithstanding the above, in the event Airco does not substantially complete the improvement of the Project and open for the business by December 31, 2015 (subject to delays caused by an event of force majeure), the City may terminate this Agreement by giving Airco notice thereof prior to the date the Project is opened for business.

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: [citymanager@roundrocktexas.gov](mailto:citymanager@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 Airco: Airco  
1000 South IH-35  
Round Rock, TX 78681  
Attn: Chip Chambliss  
Phone: (512) 906-3963  
Email: [chip.chambliss@directenergy.com](mailto:chip.chambliss@directenergy.com)

With required copies to:

Airco  
1000 South IH-35  
Round Rock, TX 78681  
Phone: (512) 837-2917  
Email: [tammye.brown@directenergy.com](mailto:tammye.brown@directenergy.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 (an "*event of force majeure*"). An *event of force majeure* 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. 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 **Exhibits.** The following **Exhibits A--D** are attached and incorporated by reference for all purposes:

<b><u>Exhibit A:</u></b>	City Resolution No. _____
<b><u>Exhibit B:</u></b>	City Resolution No. _____
<b><u>Exhibit C:</u></b>	Property Description
<b><u>Exhibit D</u></b>	Jobs and Payroll Affidavit
<b><u>Exhibit E:</u></b>	Waiver of Sales Tax Confidentiality Form

7.18 **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 Project or the design, construction or operation of any portion of the Project.

EXECUTED to be effective as of the 17th day of December, 2015 (the “*Effective Date*”).

SIGNATURES ON FOLLOWING PAGES



**CITY OF ROUND ROCK, TEXAS,**  
a home rule city and municipal corporation

By: \_\_\_\_\_  
Alan McGraw, Mayor

APPROVED as to form:

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

**Airco Mechanical, Inc.**  
a Delaware Corporation

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

Its: Bob Polito, Vice President

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

**EXHIBIT A**

(Program Resolution)

**CITY RESOLUTION NO.**\_\_\_\_\_

**EXHIBIT B**

**CITY RESOLUTION NO.**\_\_\_\_\_

## **EXHIBIT C**

### **PROPERTY DESCRIPTION**

Approximately 5.5 acres of real property out of the 9.034 acres of land situated in the Jacob M. Harrell Survey, Abstract 284, in Williamson County, Texas. The Premises include: (a) the Land, which contains approximately 5.5 acres of real property; (b) a one-story masonry industrial building located on the Land containing approximately 46,800 square feet ("Building"), and (c) any other improvements situated on the Land, including any signs, site utilities, walkways, driveways, paved parking areas, gravel parking areas, existing landscaping, storage areas, or other ancillary facilities located on the Land.

**EXHIBIT “D”**

**JOB COMPLIANCE AND ANNUAL PAYROLL 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 AIRCO MECHANICAL AND I AM DULY AUTHORIZED TO MAKE THIS AFFIDAVIT.**
- 3. “AS OF DECEMBER 31, 201\_\_, AIRCO MECHANICAL HAD THE FOLLOWING JOB POSITIONS AND SALARIES:**

<b>EMPLOYEE ID NO.</b>	<b>JOB POSITION OR TITLE</b>	<b>ANNUAL SALARY</b>
_____	_____	<b>\$ _____</b>
_____	_____	<b>\$ _____</b>
_____	_____	<b>\$ _____</b>
_____	_____	<b>\$ _____</b>
_____	_____	<b>\$ _____</b>
_____	_____	<b>\$ _____</b>
_____	_____	<b>\$ _____</b>
_____	_____	<b>\$ _____</b>
_____	_____	<b>\$ _____</b>
_____	_____	<b>\$ _____</b>
_____	_____	<b>\$ _____</b>

_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

**TOTAL JOBS** \_\_\_\_\_

**TOTAL ANNUAL SALARY** \$ \_\_\_\_\_

**TOTAL ANNUAL OVERTIME** \$ \_\_\_\_\_

**TOTAL ANNUAL BENEFITS** \$ \_\_\_\_\_

**TOTAL ANNUAL PAYROLL** \$ \_\_\_\_\_

**DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_.**

\_\_\_\_\_

**(PRINTED NAME)**

\_\_\_\_\_

**(TITLE)**

**SUBSCRIBED AND SWORN TO BEFORE ME ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_.**

\_\_\_\_\_

**NOTARY PUBLIC, STATE OF TEXAS**

## **EXHIBIT E**

### **WAIVER OF SALES TAX CONFIDENTIALITY**

Date \_\_\_\_\_

I authorize the Comptroller of Public Accounts to release sales tax Information pertaining to the taxpayer indicated below to \_\_\_\_\_, a \_\_\_\_\_, its successors, assigns or nominees, and the City of Round Rock, Texas, and the Round Rock Transportation System Development Corporation. I understand that this waiver applies only to our retail store located in the City of Round Rock, Williamson County, Texas.

Please print or type the following information as shown on your Texas Sales and Use Tax permit:

Name of Taxpayer Listed on Texas Sales Tax Permit:

\_\_\_\_\_

Name Under Which Taxpayer is Doing Business ( d/b/a or Store Name):

\_\_\_\_\_

Taxpayer Mailing Address:

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

Physical Location of Business Permitted for Sales Tax in Round Rock, Texas:

\_\_\_\_\_  
Texas Taxpayer ID Number

\_\_\_\_\_  
Tax Outlet Number  
(As shown of Texas Sales Tax Permit)

\_\_\_\_\_  
Authorized Signature<sup>1</sup>:

\_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_

<sup>1</sup> The authorized signature must be of an owner, officer, director, partner or agent authorized to sign a Texas Sales Tax Return. If you have questions concerning this Waiver of Confidentiality, please contact Sandra C. Joseph, Texas Comptroller of Public Accounts at (800) 531-5441, Ext. 5-0411.