

# EXHIBIT

## "A"

### ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement ("Agreement") is entered into this \_\_th day of \_\_\_\_\_, 2015, by and between the **City of Round Rock, Texas**, a Texas home rule municipal corporation ("City"), and **Odyssey Technical Solutions, LLC.**, a Texas limited liability company ("Odyssey").

**WHEREAS**, the City has adopted Resolution No. R--\_\_\_\_\_, attached as Exhibit A ("City Resolution"), establishing an economic development program and authorizing the Mayor to enter into this Agreement with Odyssey in recognition of the positive economic benefits to the City through Odyssey's construction of a new building which will contain a minimum of thirty-two thousand (32,000) square feet, located at 2000 Steam Way, Round Rock, Texas (the "Facility"), and the relocation of its existing RF, DC and Microwave power equipment repair and refurbished sales business to the Facility; and

**WHEREAS**, Odyssey will locate its existing business to the Facility and will transfer 48 employees to the Facility initially and will add at least 7 additional employees by December 31, 2016; and

**WHEREAS**, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby Odyssey will expend significant sums to construct and install improvements to the Facility and purchase, 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 Odyssey to defray a portion of the Facility'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 Odyssey 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 Odyssey proceeds with the purchase and occupation of the Facility. The City acknowledges that Odyssey 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 purchase, improve and occupy the Facility.
2. **Definitions.**
  - 2.1 **"Economic Incentive Payment(s)" ("EIPs")** means the amount paid by the City to Odyssey under the Program.
  - 2.2 **"Effective Date"** is the date this Agreement is executed to be effective by the City and Odyssey.

- 2.3 **“Facility”** means the Improvements to be constructed on the Property and all equipment and other personal property located thereon.
- 2.4 **“Improvements”** means the construction of the Facility, and personal property and equipment with a minimum cost of Four Million Dollars (\$4,000,000).
- 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 located at, on which the Facility will be constructed, which is described as follows:

Lot 5, Block “A” of the Altman Business Park, a replat of Lot 3, Block A, Replat of Amanda Subdivision Lot 2 & 3, Block A, according to the plat filed of record as Doc. No. 2015088746, Plat Records of Williamson County, Texas.

- 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 Odyssey in the event of an Odyssey default.

3. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, 2018. In the event the City is unable to appropriate funds for a particular year pursuant to Section 5.1.3 of this Agreement, this Agreement shall be extended for another year(s).

4. **Rights and Obligations of Odyssey.**

- 4.1 Purchase of Property. Odyssey will purchase the Property on or before December 15, 2015. Odyssey agrees to provide City with documentation showing that this obligation has been satisfied.

- 4.2 Improvements. Odyssey agrees to construct and/or install the Improvements on or before June 1, 2016. Odyssey agrees to provide City with documentation showing that this obligation has been satisfied. City shall have the right to audit Odyssey’s records to verify that this obligation has been satisfied.

- 4.3 Jobs.

4.3.1 Initial Jobs. Odyssey agrees to transfer to the Facility at least 48 full-time employees and/or contract workers no later than thirty (30) days after the City issues a Certificate of Occupancy for the Facility.

4.3.2 Additional Jobs. As additional consideration, Odyssey agrees and covenants to transfer, retain, and add at least the number of jobs within the Facility as set forth the following schedule:

<u>Date</u>	<u>Transferred</u>	<u>Retained</u>	<u>New</u>	<u>Total</u>
On June 1, 2016	48	0	0	48
On December 31, 2016	0	48	7	55
On December 31, 2017	0	55	0	55
On December 31, 2018	0	55	0	55

Odyssey agrees to provide to the City annual employee reports on the form attached hereto as Exhibit B within sixty (60) days following the end of each calendar year during the term of this Agreement. City shall have the right to audit Odyssey's records to verify that this obligation has been satisfied.

4.4 Compliance with regulations. Odyssey agrees that it shall comply with the City's development approval processes and shall purchase the Facility and construct and install the improvements and occupy and operate the Facility consistent with City ordinances, development regulations and requirements.

4.5 Continuous operation. Odyssey agrees that it will continuously operate the Facility during the term of this Agreement, including any extensions.

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

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

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

5.1.1 Initial EIP Payment. City shall, subject to Odyssey's satisfaction of its obligations set forth in Sections 4.1 and 4.2 above and the other conditions set out herein, make an initial EIP to Odyssey in the amount of fifty-five thousand (\$55,000) dollars. This initial EIP shall be made within thirty (30) days after the City has issued a Certificate of Occupancy for the Facility.

5.1.2 Subsequent Annual EIP Payments. Thereafter, subject to Odyssey's satisfaction of its retention and/or creation of new jobs as set forth in Section 4.3 above and the other conditions set out herein, and subject to Odyssey not being in default of this Agreement, City shall pay a total of \$1,000.00 EIP per job retained or created by December 31, 2016. The aforesaid EIP's shall be paid by the City no later than 45 days after receipt of the annual employee report filed by Odyssey

pursuant to paragraph 4.3.2 above. The total amount of EIP's for job retention or creation shall not exceed \$55,000.00.

5.1.3 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 Odyssey. 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 Odyssey, 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 Odyssey for such EIP's, however, the City shall extend this Agreement for another year(s). In addition, Odyssey 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 Odyssey is in default of this Agreement, the City may recapture and collect from Odyssey the Recapture Liability after providing Odyssey 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 Odyssey does not so cure, Odyssey 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 Odyssey 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 Odyssey 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 Odyssey 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. Odyssey 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 Odyssey 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, Odyssey shall have the right to pursue any remedy at law or in equity for the City's breach. If Odyssey remains in default after notice and opportunity to cure, City shall have the right to pursue any remedy at law or in equity for Odyssey'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 Odyssey 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. Other than that certain Property Tax Abatement Agreement of even date herewith, 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 Odyssey.
- 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. Odyssey 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 by the mutual written agreement of the parties.
- 7.9 Termination. In the event Odyssey elects not to purchase the Facility as contemplated by this Agreement, Odyssey 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  
[citymanager@roundrocktexas.gov](mailto:citymanager@roundrocktexas.gov)



With a required copy to:

Stephan L. Sheets  
Sheets & Crossfield  
309 E. Main Street  
Round Rock, TX 78664  
Attn: Stephan L. Sheets  
Phone: (512) 255-8877  
[steve@scrllaw.com](mailto:steve@scrllaw.com)

If to Odyssey: Odyssey Technical Solutions, LLC  
3916 Gattis School Road, Suite 108  
Round Rock, Texas 78664  
Attn: Lisa Strong  
Phone: (512) 989-7007  
Email: [lisa.strong@odysseyrf.com](mailto:lisa.strong@odysseyrf.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. 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. 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 \_\_\_\_\_, 2015 (the "Effective Date").

**CITY OF ROUND ROCK, TEXAS,**

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

APPROVED as to form:

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

**ODYSSEY TECHNICAL SOLUTIONS, LLC**

By: James Plorde  
Its: James Plorde - President  
Date: 10-28-15

**EXHIBIT "A"**

**RESOLUTION NO. R-2015-\_\_\_\_\_**

**WHEREAS**, Odyssey Technical Solutions, LLC ("Odyssey") is a leading RF and DC power equipment repair and refurbished sales company, and

**WHEREAS**, Odyssey has expressed to the City of Round Rock ("City") its desire to relocate its existing facility to the City 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 Odyssey a §380.001 Program in exchange for Odyssey relocating its existing DC power equipment repair and refurbished sales business facility to the City, 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 \_\_\_\_\_, 2015.

---

ALAN MCGRAW, Mayor  
City of Round Rock, Texas

ATTEST:

---

SARA L. WHITE, City Clerk

## **EXHIBIT A**

### **ECONOMIC DEVELOPMENT PROGRAM**

The terms of the \$380,001 Economic Development Program to be offered to Odyssey in exchange for Odyssey's relocating its existing DC power equipment repair and refurbished sales business facility to the City of Round Rock are as generally outlined below:

1. Odyssey's obligations:

1.1. Odyssey agrees to purchase the property containing 2.702 acres Lot 5, Block "A" of the Altman Business Park, a replat of Lot 3, Block A, replat of Amanda Subdivision Lot 2 & 3, Block "A" on or before December 15, 2015.

1.2. Odyssey agrees to invest at least \$ 4,000,000 dollars in Facility improvements and personal property.

1.3. Odyssey agrees to transfer 48 or more full-time equivalent employees, including contract workers, to the Facility no later than 30 days following the issuance of a Certificate of Occupancy for the Facility.

1.4. Odyssey agrees to retain said 48 full-time equivalent employees and hire an additional 7 full-time equivalent employees, including contract workers, no later than December 31, 2016.

2. City's obligations:

2.1. City agrees to make an initial program payment to Odyssey of \$55,000 upon Odyssey's obtaining the Certificate of Occupancy for the Facility.

2.4. City agrees to make additional program payments of \$1,000 per job to Odyssey for a maximum of \$55,000.

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 “B”**

**Employment Report**

CALENDAR YEAR ENDING DECEMBER 31, 201\_\_

EMPLOYEE ID NO.	JOB POSITION OR TITLE	ANNUAL SALARY
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
TOTAL JOBS _____		