

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Program Agreement (“**Agreement**”) is entered into this 21st day of August, 2020, (the “Effective Date”) by and between the **Round Rock Transportation and Economic Development Corporation**, a Type B corporation (“**TEDCO**”) created under the authority of Chapters 501 and 505, Texas Local Government Code, (the “Code”) and Boardwalk Technology LLC, dba East/West Manufacturing Enterprises (“**East/West Manufacturing**”). The foregoing shall be referred to collectively as the “Parties”.

WHEREAS, TEDCO has adopted a resolution approving the Project (defined below) and authorizing the President to enter into this Agreement with East/West Manufacturing in recognition of the creation of primary jobs and the positive economic benefits to the City of Round Rock (the “City”) as set forth below; and

WHEREAS, it is East/West Manufacturing’s intention to construct a facility (the “Facility”) containing at approximately 43,000 square feet and to retain thirty (30) primary jobs and create thirty (30) new primary jobs for a total of sixty (60) primary jobs over five (5) years (the “Project”); and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapters 501 and 505 of the Texas Local Government Code, whereby East/West Manufacturing intends to complete the Project; and

WHEREAS, TEDCO agrees to provide performance-based Economic Incentive Payments (“EIP’s”) (as defined below);

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 East/West Manufacturing agree as follows:

1. **Authority.** TEDCO’s execution of this Agreement is authorized by §505.102 of the Texas Local Government Code. TEDCO acknowledges that East/West Manufacturing is acting in reliance upon TEDCO’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 and create primary jobs.
2. **Definitions.**
 - 2.1. **“City”** means the City of Round Rock, Texas.
 - 2.2. **“Economic Incentive Payment(s)” (“EIPs”)** means the amount paid by TEDCO to East/West Manufacturing as set forth in Sec. 5.1.
 - 2.3. **“Effective Date”** is the date set forth above in the introductory paragraph.
 - 2.4. **“Facility”** means a building containing at approximately 43,000 square feet to be located at 1974 Steam Way, Round Rock, Texas 78665.

- 2.5 “**Full Time Equivalent Employee**” (“**FTE**”) means a combination of employees, each of whom individually is not a full-time employee because they are not employed on average at least forty (40) hours per week, but who, in combination, are counted as the equivalent of a full-time employee. FTE’s shall include original hires or their replacements over time.
- 2.6 “**Primary Job**” means a job that meets the definition in §501.002(12) of the Texas Local Government Code.
- 2.7 “**Recapture Liability**” means the total amount of all EIP’s that are paid as a result of this Agreement that are subject to recapture by TEDCO from East/West Manufacturing in the event of an East/West Manufacturing default.
- 3 **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, of Year 5.
- 4 **Rights and Obligations of East/West Manufacturing.**
- 4.1 **Construction.** East/West Manufacturing intends to construct and complete the Facility on or before August of 2021.
- 4.2 **Investment.** East/West Manufacturing intends to invest at least: 1) \$5,000,000 in real property improvements; and 2) \$650,000 in business personal property. East/West Manufacturing agrees to provide TEDCO with documentation that shows proof that this obligation has been satisfied, and TEDCO shall have the right to audit East/West Manufacturing’s records to verify same.
- 4.3 **Jobs.** East/West manufacturing agrees to retain thirty (30) Primary Jobs and add thirty (30) new Primary Jobs and hire a like number of full-time employees and/or FTEs, within five years of occupying the Facility, in accordance with the schedule set forth below. The sixty (60) total FTEs shall earn an average salary of \$50,000.00 per year plus benefits within five (5) years of the Project completion date. “Year 1” shall mean the calendar year following East/West Manufacturing’s receipt of its Certificate of Occupancy of the Facility.

<u>Year</u>	<u>Retained Jobs</u>	<u>New Jobs</u>	<u>Total Jobs</u>
Year 1	30	2	32
Year 2	32	4	36
Year 3	36	7	43
Year 4	43	8	51
Year 5	51	9	60

- 4.4 **Job Compliance Affidavit.** On or before March 1 following each calendar year of this Agreement, East/West Manufacturing agrees to provide to TEDCO a Job Compliance Affidavit, a copy of such Job Compliance Affidavit being attached hereto as **Exhibit A**. TEDCO shall have the right, following reasonable advance

notice to East/West Manufacturing, to audit East/West Manufacturing's records to verify that this obligation has been satisfied.

4.5 Compliance with regulations. East/West Manufacturing agrees that it will comply with the City's development approval processes, and shall construct and install the improvements and operate the Facility consistent with City ordinances, development regulations, and legal requirements.

4.6 Clawback. In the event that East/West Manufacturing fails to comply with any of the actions as described in Section 4.1 through 4.5 above, East/West Manufacturing will immediately pay to TEDCO an amount equal to, but not to exceed, the Recapture Liability.

5. **Economic Incentive Payments.** In consideration of East/West Manufacturing's compliance with this Agreement, TEDCO agrees as follows:

5.1 Schedule for EIPs. TEDCO shall, subject to East/West Manufacturing's satisfaction of its obligations set forth herein, make EIPs to East/West Manufacturing as set forth herein. The EIP's shall be made in annual payments on or before April 1 of each year. "Year 1" shall be the calendar year following East/West Manufacturing's receipt of its Certificate of Occupancy for the Facility. The amount of the EIP's shall be as follows:

<u>Year</u>	<u>Amount of EIP</u>
Year 1	\$125,000
Year 2	\$ 50,000
Year 3	\$ 50,000

5.2 EIP 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 East/West Manufacturing. The EIPs by TEDCO under this Agreement are subject to the TEDCO's appropriation of funds for such payments in the budget year for which they are made. The EIPs to be made to East/West Manufacturing, if paid, shall be made solely from annual appropriations from the general funds of TEDCO under 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 EIP due under this Agreement, such failure shall not be considered a default under Section 6.3, and TEDCO shall not be liable to East/West Manufacturing for such EIP, however, TEDCO shall extend this Agreement for another year(s), until East/West Manufacturing has received all of the EIPs provided for herein. In addition, East/West Manufacturing 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.

5.3 EIP Recapture. In the event TEDCO terminates this Agreement as a result of East/West Manufacturing's default, TEDCO may recapture and collect from

East/West Manufacturing the Recapture Liability. East/West Manufacturing shall pay to TEDCO the Recapture Liability within thirty (30) days after TEDCO makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which East/West Manufacturing 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 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). 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.

6. Miscellaneous.

- 6.1. Mutual Assistance. TEDCO and East/West Manufacturing will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.
- 6.2. Representations and Warranties. TEDCO represents and warrants to East/West Manufacturing 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. East/West Manufacturing represents and warrants to TEDCO that it has the requisite authority to enter into this Agreement.
- 6.3. Default. If either TEDCO or East/West Manufacturing should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party with notice of such default, and a reasonable opportunity 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, East/West Manufacturing shall have the right to pursue any remedy at law or in equity for TEDCO's breach. If East/West Manufacturing remains in default after notice and opportunity to cure, TEDCO shall have the right to pursue any remedy at law or in equity for East/West Manufacturing's breach.
- 6.4. Attorney's Fees. In the event any legal action or proceeding is commenced in a court of competent jurisdiction between TEDCO and East/West Manufacturing 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.
- 6.5. 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 TEDCO and East/West Manufacturing.
- 6.6. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

- 6.7. Assignment. East/West Manufacturing 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 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.
- 6.8. Amendment. This Agreement may be amended by the mutual written agreement of the parties.
- 6.9. Termination. In the event East/West Manufacturing elects not to construct the Facility as contemplated by this Agreement, East/West Manufacturing shall notify TEDCO 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.
- 6.10. 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 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 East/ West Manufacturing:
East/West Manufacturing Enterprises
11100 Metric Blvd
Suite 200C
Austin, Texas 78758
Attn: Andy Salo
Phone: (512) 258-2303
Email: andy.salo@ewme.com

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

- 6.11. 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.
- 6.12. 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.
- 6.13. 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.
- 6.14. No Third-Party Beneficiaries. This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.
- 6.15. 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; Pandemic Measures; 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*.
- 6.16. "Pandemic Measures" means any quarantine, cordon sanitaire, "shelter in place," work shut down order, non-essential business designation, occupancy or spacing limitation, protective or cleaning measures, or any other valid law, ordinance or regulation issued in response to a pandemic, or an epidemic occurring in the vicinity of the Project, by a governmental entity with jurisdiction over the Project or the Work, and which hinders or delays a Party's ability to satisfy an obligation of this Agreement.
- 6.17. 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 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.

- 6.18. Estoppel Certificate. East/West Manufacturing 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 Section 6.18. The certificate, which will upon request be addressed to East/West Manufacturing, or a lessee, purchaser or assignee of East/West Manufacturing, 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 ___21st___ day of ___August_____, 2020.

**ROUND ROCK TRANSPORTATION AND
ECONOMIC DEVELOPMENT CORP.**

By: _____
Craig Morgan, President

**EAST/WEST MANUFACTURING
ENTERPRISES**

By: Andy Salo
____Andy Salo____, its ____CEO____

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:

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 East/West Manufacturing Enterprises, and I am duly authorized to make this affidavit.
3. "As of December 31, 20____, EAST/WEST MANUFACTURING ENTERPRISES had the following Primary Job Positions:

[illegible]

EMPLOYEE ID NO.

JOB POSITION OR TITLE

ANNUAL SALARY

\$ _____

\$ _____

\$ _____

\$_____

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TOTAL JOBS _____ AVG. SALARY\$_____

Dated this _____ day of _____, 20__.

_____ (signature)

_____ (printed name)

_____ (title)

Subscribed and sworn to before me on this the _____ day _____, 20__.

Notary Public, State of Texas

RESOLUTION NO. _____

WHEREAS, East/West Manufacturing Enterprises (“East/West Manufacturing”) has expressed an interest in constructing an electronics manufacturing facility (the “Facility”) containing at least 43,000 square feet in the City of Round Rock and to retain thirty (30) primary jobs and create thirty (30) more primary jobs over five (5) years (the “Project”); and

WHEREAS, the purpose of the Round Rock Transportation and Economic Development Corporation (“TEDCO”) is to promote economic development as contemplated by Chapters 501 and 505 of the Texas Local Government Code (the “Code”); and

WHEREAS, pursuant to §505.159 of the Code, the Board of Directors of TEDCO held a public hearing on the proposed Project; and;

WHEREAS, at said public hearing the Board heard evidence that the proposed project meets the definition of a “project” under the terms of §501.101 of the Code; and

WHEREAS, the Board of Directors has determined that the Project will encourage economic development and provide primary jobs within the City, **NOW THEREFORE**

BE IT RESOLVED BY THE BOARD OF DIRECTORS THAT,

That the President is hereby authorized and directed to execute on behalf of TEDCO the Economic Development Agreement with East/West Manufacturing Enterprises, a copy of which is attached hereto as Exhibit A.

The Board of Directors 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 _____, 2020.

CRAIG MORGAN, President

ATTEST:

Jon Sloan, Secretary