

RESOLUTION NO. 28-2024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN ECONOMIC DEVELOPMENT PROGRAM CHAPTER 380 AGREEMENT FOR SUCH PURPOSES WITH HARMON, INC., FOR THE LEASE AND OCCUPATION OF THE INDUSTRIAL PARK FACILITY LOCATED AT 2614 BIG TOWN BOULEVARD IN THE CITY OF MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO TAKE SUCH ACTIONS AND EXECUTE SUCH DOCUMENTS AS ARE NECESSARY OR ADVISABLE TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, AND ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas (the “**City**”), and other municipalities to establish and provide for the administration of programs that promote local economic development and stimulate business and commercial activity; and

WHEREAS, the City Council has been presented with a proposed Chapter 380 agreement providing economic incentives to Harmon, Inc., a Minnesota corporation authorized to do business in the State of Texas (the “**Company**”), for the lease and occupation of the approximately 212,000-square foot building sitting on approximately 13.69 acres of land located at 2614 Big Town Boulevard, Mesquite, Texas 75150 (the “**Facility**”), and owned by Exeter 2614 Big Town, L.P., a Delaware limited partnership, a copy of said agreement being attached hereto as Exhibit 1 and incorporated herein by reference (the “**Agreement**”); and

WHEREAS, the City would like to encourage the lease and occupation of the Facility by granting certain economic development incentives to the Company; and

WHEREAS, under the terms of this Agreement, the City will provide to the Company economic development incentives equal to 100% of the Business Personal Property taxes paid by the Company for calendar years 2025 through 2031 and the Company will (a) lease the Facility with a minimum of \$3,500,000.00 in new leasehold improvements; (b) purchase and install Business Personal Property at the Facility with a minimum cost of \$3,600,000.00; and (c) operate the Company’s business and continuously employ at least 200 employees at the Facility, for a minimum initial term of seven years; and

WHEREAS, the lease and occupation of the Facility will increase the taxable value of the Facility thereby adding value to the City’s tax rolls and increasing the ad valorem property taxes to be collected by the City, along with increasing employment opportunities in the City; and

Eco Dev / Harmon, Inc. / 380 Agreement / 2614 Big Town Boulevard

June 3, 2024

Page 2 of 3

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement will assist in implementing a program whereby local economic development will be promoted, and business and commercial activity will be stimulated in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council finds that the terms of the proposed Agreement by and between the City and the Company, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference, will benefit the City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 2. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement.

SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 4. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents necessary to consummate the transactions contemplated by the Agreement.

SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$100,000; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

Eco Dev / Harmon, Inc. / 380 Agreement / 2614 Big Town Boulevard

June 3, 2024

Page 3 of 3

SECTION 6. That the sections, paragraphs, sentences, clauses, and phrases of this Resolution are severable and, if any phrase, clause, sentence, paragraph, or section of this Resolution should be declared invalid, illegal, or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect the validity, legality, or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal, or unenforceable provision had never been included in this Resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 3rd day of June 2024.

DocuSigned by:
Daniel Aleman Jr.
D999585317D142B...

Daniel Alemán, Jr.
Mayor

ATTEST:

DocuSigned by:
Sonja Land
C2518095973F46A...

Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:

DocuSigned by:
David L. Paschall
666E18891208434...

David L. Paschall
City Attorney

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**(Chapter 380 Agreement)**

This Economic Development Program Agreement (this “**Agreement**”) is between the City of Mesquite, a Texas home rule municipality, (the “**City**”) and Harmon, Inc., a Minnesota, (the “**Company**”).

WHEREAS, the Company is an expert in managing commercial construction project management with a specialization in complex curtain wall or building façade projects across the United States and Canada since 1949 (the “**Company’s Business**”);

WHEREAS, the Company leased approximately 212,000 square feet of rentable area (the “**Premises**”) in an industrial building located on approximately 13.69 acres of land (the “**Land**”) known locally as 2614 Big Town Blvd., Mesquite, Texas 75150 (the “**Building**”) and owned by Exeter 2614 Big Town, L.P., a Delaware limited partnership, (the “**Landlord**”);

WHEREAS, the Land and Building are sometimes jointly referred to as the “**Mesquite Facility**,”

WHEREAS, the Company has determined to relocate its office and warehouse from 5351 Samuell Blvd, #400, Mesquite, Texas to the Mesquite Facility and will commence operations at the Mesquite Facility no later than October 2, 2024;

WHEREAS, the Company has committed to increase employment at the Mesquite Facility to a minimum of two hundred (200) full-time Employees at the Mesquite Facility as provided below;

WHEREAS, the commitment by the Company to employ at least 200 Employees at the Mesquite Facility will result in the creation and retention of employment opportunities in the City;

WHEREAS, conducting Company’s Business at the Mesquite Facility will result in additional leasehold improvements to the Building in the minimum amount of \$3,500,000.00, resulting in an increase in the taxable value of the Building and an increase in the ad valorem real property taxes assessed and collected by the City from the Landlord;

WHEREAS, the Company has agreed to purchase, after the Effective Date, additional Business Personal Property in the minimum amount of \$3,600,000.00 to be used in the operation of the Company’s Business at the Mesquite Facility, resulting in an increase in the taxable value of tangible Business Personal Property located at the Mesquite Facility and an increase in the ad valorem business personal property taxes assessed and collected by the City;

WHEREAS, the City has established an Economic Development Program pursuant to Section 380.001 of the Texas Local Government Code (“**Section 380.001**”) authorizing this Agreement under the Economic Development Program (the “**Program**”);

WHEREAS, the Company advised the City that a principal factor inducing it to (a) lease the Premises with a minimum of \$3,500,000.00 in new leasehold improvements, (b) purchase and install Business Personal Property at the Mesquite Facility with a minimum cost of \$3,600,000.00 and (c) operate the Company’s Business and employ at least 200 employees at the Mesquite Facility as provided below, is the agreement by the City to provide the Business Personal Property Incentives to the Company under this Agreement;

WHEREAS, the Company desires to participate in the Program by entering into this Agreement; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program, and that the Company’s performance of its obligations herein will promote local economic development in the City, increase employment opportunities in the City, stimulate business and commercial activity in the City, increase the amount of ad valorem business personal property taxes assessed and collected by the City and benefit the City and its citizens.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Parties agree as follows:

ARTICLE I

Incorporation of Recitals

The foregoing recitals (“**Recitals**”) are incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

ARTICLE II

Definitions

As used herein, the following terms shall have the following meanings:

“Agreement” means this agreement together with all attached exhibits.

“Building” has the meaning in the Recitals of this Agreement.

“Business Personal Property” means moveable items of tangible personal property purchased after the Effective Date and owned and used in the ordinary course of business of the Company which are located at the Mesquite Facility but are not permanently affixed to, or part of, the Building and consisting of machinery, equipment, rack shelving, furniture, computers, vehicles (but only if such vehicles are licensed and registered in Dallas County, Texas), and Taxable Inventory provided such items, other than Taxable Inventory, are considered capital assets under generally accepted accounting principles. Business Personal Property shall not include any personal property appraised, assessed or otherwise on the tax rolls of the Dallas Central Appraisal District as of the Effective Date.

“Business Personal Property Incentive” means the economic development incentive described in Article VIII below.

“Business Personal Property Tax Collections” means the Business Personal Property taxes for the Business Personal Property at the Mesquite Facility the City actually receives in any Incentive Tax Year during the Term.

“Certificate of Compliance” means a certificate in such form as is reasonably acceptable to the City executed on behalf of the Company by a duly authorized Representative of the Company certifying to the City (a) that all Conditions Precedent have been satisfied and are then continuing and (b) that no Company Default then exists under this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Company Default under this Agreement.

“City” means the City of Mesquite, a Texas home rule municipality.

“City Default” has the meaning in Article IX, Section 2 of this Agreement.

“Company” means Harmon, Inc., a Minnesota corporation duly qualified to transact business in Texas, its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

“Company Default” has the meaning in Article IX, Section 1 of this Agreement.

“Condition Precedent” and “Conditions Precedent” have the meanings in Article VII of this Agreement.

“Economic Covenants” are the representations, covenants, agreements, and requirements of the Company in Article VI of this Agreement.

“Economic Development Funds” means any qualifying payment of public monies from the City to the Company in the form of any Incentives related to the construction, opening and operation of the Mesquite Facility.

“Effective Date” means the date the Company and the City sign this Agreement but only if the Company and the City sign this Agreement on the same date. If executed on different dates, the “Effective Date” means the date this Agreement is signed the City.

“Employee” means a full-time, direct employee of the Company, meeting each of the following requirements during the Term (a) working a minimum of thirty-two (32) hours per week, (b) a minimum base hourly wage of twenty dollars (\$20.00), (d) entitled to full benefits including, without limitation, major medical insurance and (e) employed in a position physically based at the Mesquite Facility. “Employee” shall not include any part time employees of the Company or any employees of subcontractors or vendors of the Company, whether working at the Mesquite Facility or otherwise. “Employee” shall include any replacement of a former Employee whose employment is terminated for any reason, with such original Employee and any replacement employee counting as one Employee for purposes of the calculations in this Agreement.

“Event of Bankruptcy or Insolvency” means the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of a receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, the voluntary commencement of any proceeding under any bankruptcy or insolvency laws by any Party, or the involuntary commencement of any proceeding against any Party under any bankruptcy or insolvency laws and such involuntary proceeding is not dismissed within ninety (90) days after the filing thereof.

“Incentive Tax Year” means the period consisting of three hundred and sixty five (365) calendar days [or three hundred and sixty six (366) calendar days for a leap year] beginning on January 1, 2025, and ending on December 31, 2025 and continuing on January 1st and ending on December 31st of each calendar year thereafter during the Term.

“Landlord” means Exeter 2614 Big Town, L.P., a Delaware limited partnership, its successors, and assigns.

“Lease” means the lease executed by the Landlord and the Company for the Company’s rights and obligations to occupy 212,000 square feet of the Building for a minimum initial term of seven (7) years.

“Lease Requirement” has the meaning in Article VI, Section 1 of this Agreement.

“Maximum Incentive Amount” means the maximum amount of Economic Development Funds payable under this Agreement is two hundred fifty thousand dollars (\$250,000.00).

“Maximum Lawful Rate” means the maximum lawful rate of non-usurious interest that may be contracted for, charged, taken, received or reserved by the City in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits the City to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law).

“Parties” means the Company and the City, jointly.

“Party” means the Company and the City individually.

“Payment Request” means a written request executed by the Company and delivered to the City’s Director of Finance requesting the payment of a Business Personal Property Incentive.

“Person” or “Persons” means one or more individuals, corporations, general or limited partnerships, limited liability companies, trusts, estates, unincorporated businesses, organizations, associations or any other entities.

“Premises” means the approximately 212,000 square feet of rentable area in the Building leased by the Company from the Landlord.

“Program” has the meaning in the Recitals to this Agreement.

“Recitals” has the meaning in Article I of this Agreement.

“Representative” means the Chief Executive Officer, Chief Financial Officer or any other duly authorized officer of the Company when referring to a “Representative” of the Company.

“Taxable Inventory” means taxable merchandise and supplies owned by the Company and located at the Mesquite Facility and shall include raw materials, work-in-process and finished goods but shall specifically exclude goods in transit, freeport goods and merchandise, supplies, materials or other goods that are non-taxable.

“Taxable Value” means the appraised value as certified by the Dallas Central Appraisal District as of January 1 of each year.

“Term” has the meaning in Article IV of this Agreement.

“Undocumented Workers” means individuals who, at the time of employment with the Company, are not: (a) lawfully admitted for permanent residence to the United States or are not authorized under law to be employed in that manner in the United States; and (b) such other Persons as are included within the definition of undocumented workers pursuant to 8 U.S.C. § 1324a (f) or any other applicable law or regulation.

ARTICLE III

Authority for Agreement

3.1 Authority. This Agreement is authorized by Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code. The City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company’ performance of their obligations herein will increase the amount of ad valorem business personal property taxes assessed and collected by the City, result in employment opportunities being created and maintained in the City, promote local economic development in the City, stimulate business and commercial activity in the City, and benefit the City and its citizens.

3.2 Maximum Incentive Amount. The Parties agree that the total Business Personal Property Incentive payments during the Term shall never exceed the Maximum Incentive Amount of \$250,000.00.

ARTICLE IV

Term

The term of this Agreement shall commence on January 1, 2025 and shall continue until the earliest of (a) December 31, 2031; (b) the City has paid the Maximum Incentive Amount or (c) the date this Agreement is terminated (the “Term”).

ARTICLE V

Company’ Covenants Not to Employ Undocumented Workers

1. Covenant Not to Employ Undocumented Workers. The Company hereby certifies that it and each of its branches, divisions, and departments do not employ any Undocumented Workers and the Company hereby covenants and agrees that it and each of its branches, divisions and departments will not knowingly employ any Undocumented Workers during the Term.

2. Covenant to Notify City of Conviction for Undocumented Workers. The Company shall provide the City with written notice of any conviction of the Company or any branch, division or department of the Company of a violation under 8 U.S.C. § 1324a (f) within thirty (30) days from the date of such conviction.

3. Repayment of Business Personal Property Incentive in Event of Conviction for Employing Undocumented Workers. If, after receiving any Business Personal Property Incentive under this Agreement, the Company, or a branch, division or department of the Company, is convicted of a violation under 8 U.S.C. § 1324a (f), the Company shall pay to the City, not later than the 120th day after the date the City notifies the Company of the violation, an amount equal to the total Business Personal Property Incentives previously paid by the City under this Agreement plus interest at

the rate equal to the lesser of (a) the Maximum Lawful Rate or (b) five percent (5%) per annum, such interest rate to be calculated on the amount of each Business Personal Property Incentive being recaptured from the date each Business Personal Property Incentive was paid until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.

4. Limitation on Business Personal Property Incentives. The City shall have no obligation to pay any Business Personal Property Incentives to the Company if any of the Company, or any branch, division or department of the Company is convicted of a violation under 8 U.S.C. § 1324a (f).

5. Remedies. The City shall have the right to exercise all remedies available by law to collect any sums due by the Company to the City pursuant to this Article V including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

6. Limitation. The Company is not liable for a violation of this Article V by a subsidiary, affiliate or franchisee of the Company who is not a Party to this Agreement or by a violation by a third party contractor.

7. Survival. The terms, provisions, covenants, agreements and obligations of the Company and the rights and remedies of the City in this Article V shall expressly survive the expiration or termination of this Agreement.

ARTICLE VI

Economic Covenants

In consideration of the City's agreement to grant the Business Personal Property Incentive to the Company upon the terms and conditions more fully set forth herein, the Company represents, covenants and agrees as follows (collectively, the "**Economic Covenants**"):

1. Lease Requirement/Copy of Lease. The Company has (a) leased a minimum of 212,000 square feet of the Building for a minimum primary term of seven (7) years with required tenant/landlord improvements to the Premises of at least \$3,500,000.00 (the "**Lease Requirement**") and (b) delivered to the City a copy of the signed Lease which meets the Lease Requirement;

2. Required Minimum Investment in New Business Personal Property. After the Effective Date and prior to the first Payment Request, the Company shall purchase and install additional Business Personal Property with a minimum cost of \$3,600,000.00 for the operation of the Company's Business at the Mesquite Facility,

3. Required Jobs. The Company shall increase its Employees at the Mesquite Facility to (a) one hundred seventy five (175) by December 31, 2024 and (b) two hundred (200) by June 30, 2026 and continuously thereafter employ at least 200 Employees at the Mesquite Facility during the Term;

3. Required Average Annual Wage. The average annual wage of Company's Employees conducting their job duties at the Mesquite Facility during the Term shall be no less than \$57,200;

4. Certificate of Occupancy and Business Operations. The Company shall obtain a final certificate of occupancy for the Mesquite Facility from the City and commence operations of the Company's business at the Mesquite Facility no later than October 2, 2024. The Company will stay regularly open for business throughout the Term;

5. Records and Reports. The Company shall deliver to the City within sixty (60) days after written request, copies of such invoices, payment records, and such other records and documentation as the City may reasonably request to confirm compliance by the Company with the representations, covenants and agreements in this Article VI;

6. Inspection. The Company shall provide the City, its agents and employees with access to the Premises at such times as the City may reasonably request to conduct such inspections as the City deems necessary to confirm compliance by the Company with the representations, covenants and agreements of the Company in this Agreement provided the City has given the Company at least seventy-two (72) hours prior written notice of such inspection;

7. Representative of Company to Accompany Inspections. The Company shall provide a Representative of the Company to accompany the City during all inspections of the Premises;

8. Timely Payment of All Taxes. The Company shall (a) timely pay all ad valorem taxes assessed against all tangible personal property owned by the Company located at the Premises during the Term (including, without limitation, Business Personal Property) prior to the date such taxes become delinquent and (b) furnish the City with evidence that the Landlord has timely paid all ad valorem property taxes due or payable for the Mesquite Facility.

9. Maintenance Obligations. The Company shall comply with all applicable building codes, zoning ordinances and all other codes, ordinances and regulations of the City applicable to the Premises during the Term and shall, at the Company's sole cost and expense, maintain the Premises in good repair during the Term;

10. Compliance with Laws. The Company shall comply with all applicable federal, state, and local laws, ordinances and regulations during the Term;

11. Performance of This Agreement. The Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under this Agreement; and

12. Performance of Other Agreements. The Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under all other written, executed agreements now or hereafter existing between the Company and the City.

ARTICLE VII

Conditions Precedent to Payment of Business Personal Property Incentive

The Parties agree that the payment by the City of any Business Personal Property Incentives earned during the Term shall be conditioned upon the satisfaction of each and every one of the following conditions precedent (individually, a "**Condition Precedent**" and collectively, the "**Conditions Precedent**"):

1. Payment Request for Business Personal Property Incentives. The Company may submit a Payment Request to the City's Director of Finance at 757 N. Galloway, Mesquite, Texas, no earlier than January 31st and no later than April 15th of the calendar year following the Incentive Tax Year for which the Payment Request is made. For example, a Payment Request regarding 2026 taxes on Business Personal Property shall be submitted no earlier than January 31, 2027, and no later than April 15, 2027. Notwithstanding the expiration of the Term on December 31, 2031, the Company may submit its final Payment Request no later than January 31, 2032 for payment as provided above. Each Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request and, as of the date of the Payment Request, all other Conditions Precedent set forth in this Agreement shall have been satisfied and are then continuing;

2. Payment of Fees. The Company and Landlord shall timely pay to the City all permit, impact and similar fees payable by the Company or Landlord to the City in connection with the Mesquite Facility;

3. Required Jobs. The Company shall increase its Employees at the Mesquite Facility to (a) one hundred seventy five (175) by December 31, 2024 and (b) two hundred (200) by June 30, 2026 and continuously thereafter employ at least 200 Employees at the Mesquite Facility during the Term;

4. Payment of Business Personal Property Ad Valorem Taxes. The Company shall timely pay all ad valorem taxes assessed against the Business Personal Property owned by the Company at the Mesquite Facility for the Incentive Tax Year for which the Payment Request is requested;

5. Certificate of Occupancy and Business Operations. The Company shall have obtained a final certificate of occupancy for the Mesquite Facility from the City, have commenced operations at the Mesquite Facility no later than October 2, 2024 and shall continuously conduct operations at the Mesquite Facility in compliance with this Agreement through and including the date of the City's payment of any Business Personal Property Incentive.

6. Maintenance Obligations. The Premises shall, as of the date of the Payment Request, comply with all building codes, zoning ordinances and all other codes, ordinances, and regulations of the City applicable to the Premises;

7. Records and Reports. The Company shall deliver to the City copies of such invoices, payment records and such other records and documentation as the City may reasonably request to confirm compliance by the Company with the Economic Covenants and the Conditions Precedent;

8. Performance of this Agreement. The Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under this Agreement and no Company Default shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Company Default under this Agreement;

9. Performance of other Agreements by the Company. The Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under all other agreements now and hereafter existing between the Company and the City, and no default shall then exist under the terms of such agreements and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by the Company under any such agreement(s); and

10. No Conviction for Undocumented Workers. As of the date of the Payment Request, and at all times during the Term prior to the Payment Request, the Company and each branch, division and department of the Company, shall not have been convicted of knowingly employing Undocumented Workers.

ARTICLE VIII

Business Personal Property Incentive

1. Grant of Business Personal Property Incentive During the Term. For each Incentive Tax Year during the Term, provided all Conditions Precedent in Article VII and the Economic Covenants in Article VI of this Agreement have been satisfied and are then continuing, the City approves an economic development grant to the Company for such Incentive Tax Year from the revenue in the City's general funds calculated by multiplying the ad valorem taxes paid by the Company to the City for Business Personal Property owned by the Company and located at the Mesquite Facility for such Incentive Tax Year set forth below.

<u>Incentive Tax Years</u>	<u>Percentage</u>
2025 through 2031	100%

2. Other Taxing Entities. The Parties acknowledge and agree that ad valorem taxes assessed or collected against the Business Personal Property by the Mesquite Independent School District, the County of Dallas or any other taxing entity other than the City shall not be included in determining the amount of any Business Personal Property Incentive payable under this Agreement.

3. Payment of Business Personal Property Incentive. Provided all Conditions Precedent in Article VII and the Economic Covenants in Article VI have been satisfied and are then continuing, the economic development grants in Article VIII, Section 1 of this Agreement shall be payable by the City to the Company in annual payments on the later of (a) June 1st of the calendar year following the Incentive Tax Year for which the incentive payment is payable or (b) sixty (60) days after all Conditions Precedent to the payment of such incentive have been satisfied.

4. Funds Available for Payment of Business Personal Property Incentive. The grant of Business Personal Property Incentives payable by the City to the Company is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. All Business Personal Property Incentives payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. Each Business Personal Property Incentive payment shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the incentive payment is to be made. The provisions of this Article VIII, Section 4 shall expressly survive the expiration or termination of this Agreement.

ARTICLE IX

Defaults/Recapture of Incentives/Remedies

1. Company Default. The Company shall be in default of this Agreement (a) upon the occurrence of an Event of Bankruptcy or Insolvency of the Company or (b) if the Company fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the Company under this Agreement and such failure continues for sixty (60) days after written notice by the City (each a “**Company Default**”).

2. City Default. The City shall be in default of this Agreement (a) upon the occurrence of an Event of Bankruptcy or Insolvency of the City or (b) if the City fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the City under this Agreement and such failure continues for sixty (60) days after written notice by the Company (each a “**City Default**”).

3. Remedies. Upon the occurrence of a Company Default, the City shall have no obligation to pay any earned but unpaid Business Personal Property Incentive or future Business Personal Property Incentive to the Company under this Agreement and the City shall have the right to (a) recapture the Business Personal Property Incentives previously paid by the City to the Company pursuant to Article IX, Section 4 below, (b) terminate this Agreement by written notice to the Company and (c) exercise any remedy available to the City pursuant to the laws of Texas. Upon the occurrence of a City Default, the Company shall have the right to terminate this Agreement by written notice to the City and shall further have the right to exercise any remedy available to the Company pursuant to the laws of Texas, provided, however, the Company shall not be entitled to the recovery of attorneys’ fees.

4. Recapture of Business Personal Property Incentives. In the event of a Company Default, the Company shall pay to the City, within thirty (30) days after written demand, at the City’s address in this Agreement, or such other address as the City may hereafter notify the Company in writing, the amount equal to one hundred percent (100%) of the Business Personal Property Incentives previously paid by the City to the Company under this Agreement plus interest at the rate equal to the lesser of (a) the Maximum Lawful Rate or (b) three percent (3%) per annum, such interest rate to be calculated on each Business Personal Property Incentive being recaptured from the date such Business Personal Property Incentive was paid by the City until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. In the event the Company fails to timely pay any sums due by the Company pursuant to this Article IX, Section 4, the Company shall be in breach of this Agreement and the City shall have the right, without further demand or notice to the Company, to exercise any and all rights and/or remedies available to the City pursuant to the laws of Texas including, without limitation, institution of a suit in a court of competent jurisdiction, to collect such sums from the Company.

5. Survival. All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of the City and the Company pursuant to this Article IX shall expressly survive the expiration or termination of this Agreement.

ARTICLE X

Miscellaneous Provisions

1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of the Company may not be assigned or transferred by Company to any Person without the prior written consent of the City, which may be withheld in the City’s sole discretion. The sale, transfer or assignment of a controlling interest in the shares of the Company or the sale, transfer or assignment of a controlling interest in the membership or other equity interests in the Company shall constitute an assignment of this Agreement and the failure of Company, as applicable, to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares or membership or other equity interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. Any approved assignment shall require the Company and any assignee(s) to be jointly and severally liable for all agreements, covenants, obligations and liabilities of the Company under this Agreement. Furthermore, neither the Company nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, collaterally assign, mortgage, pledge, encumber or otherwise transfer any interest under this Agreement or any part hereof, or the interest of the Company or any approved assignee under this

Agreement, without obtaining the City’s prior written consent, which may be withheld in the City’s sole discretion. Any consent by the City to any assignment of this Agreement shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. Every assignee shall be subject to and bound by all the provisions, covenants, and conditions of this Agreement and shall be required to obtain the prior written consent of the City with respect to any future or further assignment. Any attempted assignment in violation of the terms and provisions of this Agreement shall be void and of no force or effect.

2. Notices. Any notice, certificate or statement given under this Agreement shall be in writing and sent by U.S. electronically tracked certified mail, return receipt requested and addressed to the following addresses, by hand delivery or by a nationally recognized courier service. Notices mailed by U.S. certified mail shall be effective one (1) business day after deposit in the United States mail. Notices sent by a nationally recognized courier service as set forth above shall be effective one (1) business day after deposit with the nationally recognized courier service. Notices given in any other manner shall be effective only if and when received by the addressee. Any Party may change its address for notice with at least thirty (30) days’ prior written notice as described herein:

If to: the Company:

Harmon, Inc.

Attn: _____

Phone: _____.____._____

Email: _____

with a copy to:

Attn: _____

Phone: _____.____._____

Email: _____

If to City:

City of Mesquite
1515 N. Galloway Avenue
Mesquite, Texas 75149
Attention: City Manager

with copies to:

City of Mesquite
1515 N. Galloway Ave.
Mesquite, Texas 75149
Attention: Director of Economic Development

and to:

City Attorney
City of Mesquite
1515 N. Galloway Ave.
Mesquite, Texas 75149

3. Right to Offset. The City shall have the right to offset any amounts due and payable by the City under this Agreement against any debt (including taxes) lawfully due and owing by Company to the City regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

4. Remedies Cumulative. The Parties hereby agree that each right and remedy of the Parties provided for in this Agreement or now or hereafter existing pursuant to the laws of Texas shall be cumulative and concurrent and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing pursuant to the laws of Texas, except that the Company shall not be entitled to recover attorneys' fees under this Agreement.

5. Captions. The descriptive captions of this Agreement are for convenience of reference only and shall in no way define, describe, limit, expand or affect the scope, terms, conditions or intent of this Agreement.

6. Modification. This Agreement may only be modified or amended by a written document signed by the City and the Company. Oral revisions, modifications or amendments are not permitted.

7. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

8. Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term, or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term, or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a default of this Agreement shall impair such right or remedy or be construed as a waiver of the breach or a waiver of any other breach.

9. Governing Law; Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of Texas (without giving effect to any conflict of law principles that would result in the application of the laws of any state other than Texas). The Parties agree that venue of any suit to construe or enforce this Agreement shall lie exclusively in state courts in Dallas County, Texas.

10. **WAIVER OF CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES. THE COMPANY AND THE CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.**

11. Severability. The provisions of this Agreement are severable and, if any provision is declared invalid, illegal or unenforceable by the final judgment of a court, such invalidity shall not affect the validity or enforceability of any other provision and the remaining provisions shall remain in full force and effect.

12. No Partnership or Joint Venture. Nothing contained in this Agreement shall be deemed or construed by the Parties, nor by any third party, as creating a partnership or joint venture between the Parties.

13. No Third-Party Beneficiaries. The Parties do not intend to create any third-party beneficiaries of the contract rights contained herein. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. Except for a Party, no Person may bring a cause of action pursuant to this Agreement.

14. Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular and the use of any gender shall include all other genders.

15. Counterparts. This Agreement may be executed in any number of original or electronic counterparts, each of which shall be considered an original and together shall constitute the same instrument.

16. Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers and oral or written

communications of any nature are entirely superseded by this Agreement. There are no oral agreements between the Parties.

17. Authority. The Company represents and warrants that (a) it is duly formed under the laws of Minnesota, (b) validly existing and in good standing under the laws of Texas, (c) it has the full power and authority to enter into and fulfill its obligations under this Agreement and (c) the Person signing this Agreement is authorized by the Company.

18. Usury Savings Clause. The Company and the City intend to conform strictly to all applicable usury laws. All agreements of the City and the Company are hereby limited by the provisions of this Article X, Section 18 which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no event shall any interest contracted for, charged, received, paid or collected under this Agreement exceed the Maximum Lawful Rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under applicable law. If, from any possible development of any document, interest would otherwise be payable to City in excess of the Maximum Lawful Rate, any such construction shall be subject to the provisions of this Article X, Section 18 and such document shall be automatically reformed and the interest payable to the City shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. If the City shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Lawful Rate, an amount equal to the amount which would have been excessive interest shall at the option of the City be refunded to Company or applied to the reduction of the principal amount owing under this Agreement or such document in the inverse order of its maturity and not to the payment of interest. The right to accelerate any indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and City does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the City shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Lawful Rate.

19. Non-Collusion. The Company represents and warrants that neither the Company, nor anyone on the Company's behalf has given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any employee, agent, representative or official of the City as an inducement to or in order to obtain the benefits to be provided under this Agreement.

20. Date for Performance. If a deadline or date falls on a Saturday, Sunday, legal or City holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

21. Form 1295 Certificate. The Company agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

22. Dispute Resolution. Any controversy or claim ("**Claim**") arising from or relating to this Agreement or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any Party unless the institution of such legal or equitable proceeding is necessary to avoid the running of an applicable statute of limitation. The Parties shall endeavor to resolve their claims by non-binding mediation for a period not to exceed sixty days from the date of the Claim. The mediation shall be held in Dallas County, Texas and the Parties shall share the costs of mediation equally.

23. No Permit. This Agreement does not constitute a permit pursuant to Chapter 245 of the Texas Local Government Code or any City code or regulation and does not vest any rights to the Company under Chapter 245. The City does not, by entering into this Agreement, concede or agree that there are any developer rights or obligations arising under Chapter 245 and the City reserves all rights and defenses against any such assertion.

24. Reservation of Legislative Authority. Notwithstanding any provision in this Agreement, this Agreement does not control, waive, limit or supplant the City Council's legislative authority or discretion.

25. No Acceleration. None of the Incentives are subject to acceleration.

26. Report Agreement to Comptroller's Office. City will report this Agreement to the Texas State Comptroller's office within fourteen (14) days of the Effective Date in accordance with § 380.004 of the Texas Government Code.

27. Certification Regarding Boycotting Israel. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under §§ 2271.001-002 Tex. Gov't. Code, Company and its parent company, wholly or majority- owned subsidiaries, and other affiliates, if any, further certifies and verifies that it does not boycott Israel and agrees that it will not boycott Israel during the Term. The term "boycott Israel" means and includes terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory. (Tex. Gov't. Code §§ 2270.001-.002, 808.001-.006, .051-.057, .101-.102) The foregoing verification is made solely to comply with Chapter 2271, Tex. Gov't. Code, to the extent the applicable provision in Chapter 2271.001, Tex. Gov't. Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott Israel" shall have the meaning assigned to such term in § 808.001(1), Tex. Gov't. Code. Company Consultant understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Company and exists to make a profit.

28. Certification Regarding Terrorist Organizations. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under §§ 2252.151-.154 Tex. Gov't. Code, Company hereby certifies that it and its parent company, wholly or majority- owned subsidiaries, and other affiliates, if any, is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State.

29. Verification Regarding Firearm Entities or Trade Associations. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under § 2274.002 (b) Tex. Gov't. Code (a) the Company verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) the Company will not discriminate during the Term against a firearm entity or firearm trade association. The foregoing verification is made solely to comply with Chapter 2274, Tex. Gov't. Code, to the extent the applicable provision in Chapter 2274.002, Tex. Gov't. Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "firearm entity or firearm trace association" shall have the meaning assigned to the terms in § 2274.001 (6), (7), Tex. Gov't. Code. Company understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Company and exists to make a profit.

30. Verification Regarding Energy Company Boycotts. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under §§ 2276.002(b)(1)-(2) Tex. Gov't. Code, Company hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, will not boycott energy companies during the Term. The foregoing verification is made solely to comply with § 2274.002, Tex. Gov't. Code, as amended, to the extent § 2274.002, Tex. Gov't. Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" shall have the meaning assigned to the term "boycott energy company" in § 809.001, Tex. Gov't. Code. Company understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Company and exists to make a profit.

31. City Council Authorization. This Agreement must be authorized and approved by resolution of the City Council at a City Council meeting.

32. Execution of Agreement by Parties. If this Agreement is not executed by the Company and the City within sixty (60) days after approval by the City Council, this Agreement will be null and void and of no force or effect.

33. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF

PERFORMANCE.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized agents, officers and/or officials on the dates set forth below.

ATTEST:

CITY OF MESQUITE,
a Texas home rule municipality

By: _____
Sonja Land
City Secretary

By: _____
Name: Cliff Keheley
Title: City Manager

Date: _____, 2024

Date: _____, 2024

APPROVED AS TO LEGAL FORM:

City Attorney

<p>ATTEST:</p> <p>By: _____ Name: _____ Its: Corporate Secretary</p> <p>Date: _____, 2024</p>	<p>HARMON, INC., a Minnesota corporation</p> <p>By: _____ Name: _____ Title: _____</p> <p>Date: _____, 2024</p>
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