

NOTICE OF MEETING OF THE MCLENNAN COUNTY COMMISSIONERS COURT

NOTICE IS HEREBY GIVEN in accordance with the Government Code, Chapter 551, (known as the Open Meetings Act), as amended, that a special meeting of Commissioners' Court, the governing body of McLennan County, will be held on **Tuesday, the 4th day of August, 2020 at 9:00 o'clock a.m.** in the Commissioners Courtroom, First Floor, West Wing, of the McLennan County Courthouse in the City of Waco, Texas, at which time **the following SUPPLEMENT to the AGENDA** previously posted on July 31, 2020 **will be considered:**

SUPPLEMENTAL AGENDA

- A. Proof of posting of notice** in accordance with the provisions of Chapter 551.041, Government Code, as amended, known as the Open Meetings Act.
- B. Waco-McLennan County Economic Development Corporation (WMCEDC):
Authorization of Agreements; Consulting Services; Proposed Projects / Program Project Agreements / Amendments / Pay Applications:**
 - 1. Authorization of Program Project Agreements:
 - a) Laminate Technologies of Texas, Inc.
 - b) Ryonet Corporation

Signed this the 31st day of July, 2020

Scott M. Felton – Original Signed
SCOTT M. FELTON, County Judge

THE STATE OF TEXAS *
COUNTY OF MCLENNAN *

I, J. A. "ANDY" HARWELL, County Clerk, and the Ex-Officio Clerk to the Commissioners Court, hereby certify that the above and foregoing is a true and correct copy of a **SUPPLEMENTAL NOTICE OF MEETING** posted by me at the Courthouse door in Waco, McLennan County, Texas, where notices are customarily posted, on this the 31st day of July, 2020

Witness my hand and seal of office at Waco, McLennan County, Texas, on this the 31st day of July, 2020 at 2:30 p.m.

(SEAL) J. A. "ANDY" HARWELL, County Clerk
 McLennan County, Texas

BY: Myrce'tez Gowan-Perkins
(Deputy)

NOTICE: Persons with disabilities who plan to attend the meeting and who may need auxiliary aids or services are requested to contact the Office of the County Judge at (254) 757-5049 prior to the meeting date.

PROGRAM PROJECT AGREEMENT BETWEEN
WACO McLENNAN COUNTY ECONOMIC DEVELOPMENT CORPORATION
AND LAMINATE TECHNOLOGIES OF TEXAS, INC.

THIS **PROGRAM PROJECT AGREEMENT** (hereinafter “Agreement”) is entered into to be effective as of the ___ day of ___, 20__ (the “Effective Date”) by and between **LAMINATE TECHNOLOGIES OF TEXAS, INC.** (hereinafter “Laminate”) and the **WACO McLENNAN COUNTY ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter “WMCEDC”), on the date set forth below.

RECITALS:

WHEREAS, WMCEDC is the administrator of the economic development program established by the City of Waco, Texas (hereinafter “City”) and McLennan County, Texas (hereinafter “County”) (collectively referred to herein as “funding entities”) to provide incentives to new or expanding businesses in the City of Waco and McLennan County, Texas; and

WHEREAS, in consideration of said incentives, LAMINATE will relocate its laminate panel and fabricated parts manufacturing business to Waco, Texas, make significant equipment and facility upgrades to support the production equipment and business located on 37.2003 acres at PATRIOT HOMES, Block 1, Lot 2A, and otherwise known as 1001 West Loop 340, Waco, McLennan County, Texas, (the “Facility”), and will create and retain jobs in McLennan County, Texas; and

WHEREAS, LAMINATE and WMCEDC desire to enter into a Program Project Agreement,

NOW, THEREFORE, for the promises and considerations set forth herein, the parties to this Agreement agree as follows:

I.

WACO McLENNAN COUNTY ECONOMIC DEVELOPMENT CORPORATION
ECONOMIC INCENTIVE COMMITMENTS

1.1 Upon completion of the requirements in Sections 1.1.1, 1.1.2, and 1.1.3, and as further set out in Section 2, WMCEDC agrees to provide grant funds in an amount not to exceed **Three Hundred, Forty Thousand Dollars (\$340,000.00)** (“Incentive Funds”) to LAMINATE for business relocation, recruitment and training of new employees, and electrical infrastructure upgrades necessary to support production equipment.

LAMINATE is required to make the following investments before any portion of the Incentive Funds are disbursed:

1.1.1 **Lease Execution** – LAMINATE shall submit proof of an executed lease agreement for the Facility to WMCEDC;

1.1.2 **Equipment And Facility Investments** - LAMINATE shall cause to be invested, by December 31, 2020, no less than **Four Million Dollars (\$4,000,000.00)** in real and personal property improvements at the Facility (“Facility Investment”), as determined by invoices and payment receipts submitted by LAMINATE and verified by WMCEDC; and,

1.1.2.1 Of the Facility Investment, LAMINATE shall cause to be invested One Million Dollars (\$1,000,000.00) in real property improvements and Three Million Dollars (\$3,000,000.00) in personal property improvements which may consist of a combination of relocated and new equipment;

1.1.2.2 LAMINATE will provide invoices, payment receipts, or any other proof of expenditures that the WMCEDC administrator deems necessary to verify the Facility Investments. The WMCEDC administrator will be the final determiner of the actual costs/grant-eligible costs for the Facility Investments; and

1.1.3 **Guaranteed Minimum Job Creation**: At the Facility, LAMINATE shall create, fill, and retain a minimum of 40 new full-time, WMCEDC-eligible jobs by December 31, 2021. A “WMCEDC-eligible Job” means a job that requires full-time year-round employment (2080 hours of work per year), with a minimum of forty (40) hours of work per week or eighty (80) hours of work per two weeks, provides a minimum base wage of no less than thirteen dollars (\$13.00) per hour, and provides health insurance benefits comparable to that provided by the City or the County to their own employees. Additionally, the average annual wage for the 40 jobs shall be no less than \$35,000.00.

1.2 **PAYMENT**: Upon completion of the requirements under 1.1.1, 1.1.2, and 1.1.3, LAMINATE will be eligible to receive a lump sum payment of the Incentive Funds. Failure to meet any of the requirements in 1.1.1, 1.1.2, or 1.1.3 will prevent LAMINATE from receiving the Incentive Funds.

1.2.1 If LAMINATE meets the requirements of 1.1.1 and 1.1.2 and creates, fills, and retains at least 20 of the WMCEDC-eligible Jobs referred to in Section 1.1.3 on or before December 31, 2020, then it will be eligible to receive \$8,500.00 per job created, filled, and retained. In such a case, the remaining Incentive Funds will be paid upon completion of the requirements of Section 1.1.3.

II.

LAMINATE COMMITMENTS AND RECOVERY OF INCENTIVE FUNDS

2.1 In exchange for the payment of the Incentive Funds to LAMINATE by WMCEDC, LAMINATE agrees that it will provide the following economic development to the McLennan County area at its Facility:

2.1.1 **Equipment and Facility Investments** – LAMINATE will make the Facility Investment on or before December 31, 2020;

2.1.2 **Job Creation Phase** - LAMINATE will create, fill and retain at least 40 new full-time jobs that are WMCEDC eligible in McLennan County, Texas, by December 30, 2021 (subject to possible early, partial payment of Incentive Funds pursuant to Section 1.2.1). WMCEDC and LAMINATE agree that as of the execution date of this Agreement, LAMINATE has Zero (0) full-time jobs at the Facility;

2.1.3 **Job Retention Phase** – Job retention is a basic requirement for all new jobs from the time the job is created (i.e. filled for the first time) and throughout the term of the Agreement. In addition to fulfilling the Facility Investments as defined in Section 2.1.1,

LAMINATE shall retain a minimum of 40 new full-time jobs that are WMCEDC eligible and maintain said jobs in McLennan County, Texas, throughout the Term of this Agreement;

2.1.4 **Employee Compensation and Benefits** - LAMINATE shall pay its employees in the newly-created, full-time positions a minimum wage of no less than \$13.00 per hour for all 40 new employees and will provide an overall average wage of no less than \$35,000 per year. LAMINATE also will provide, at employer expense, health insurance and benefits at a level submitted to and approved by WMCEDC, provided, however, that such health insurance and benefits may be changed so long as they do not fall below a level comparable to those provided by the City and the County to their respective employees at the time of the execution of the Agreement; and

2.1.5 **Annual Certification of Employment** - LAMINATE shall provide WMCEDC with an Annual Certification of Employment including an employee roster showing the name or unique identification number, street address including zip code, position, date of hire, and wage of each employee throughout the term of the Agreement. Such certification will be treated as confidential in accordance with applicable law, subject to the provisions in Section 2.1.5.1, and will be used solely for the purpose of verifying compliance with this Agreement. At each time that LAMINATE submits to WMCEDC the yearly employee roster, LAMINATE shall also submit to WMCEDC a certification, in the form reasonably required by WMCEDC, that LAMINATE meets its obligations under this Agreement, including the employment requirements. After providing prior reasonable notice to LAMINATE, WMCEDC shall have the right during regular business hours to conduct a personnel audit of LAMINATE's records that are specifically relevant to this Agreement to verify the number of employees hired and their address, position, wage and employee benefits. WMCEDC agrees that it will hold and process all LAMINATE employee data it receives or views pursuant to this Agreement in accordance with all applicable United States laws and regulations. If LAMINATE fails to provide the above-requested information, it shall be subject to Section 2.5;

2.1.5.1 **Public Information Requests for Information in Annual Certification of Employment.** LAMINATE acknowledges that the City and the County are subject to the provisions of the Texas Public Information Act as set forth in Chapter 552 of the Texas Government Code. Notwithstanding Section 2.1.5, if a public information request is made to the City for information contained in an Annual Certification of Employment provided by LAMINATE, in accordance with the Public Information Act, the City, or the County will send a request to the Texas Attorney General for a decision as to whether or not such information may be withheld from disclosure and will release such information if required to do so by Texas or federal law, as interpreted by the Texas Attorney General. The City or the County will notify LAMINATE that such public information request has been made so that LAMINATE can send any arguments to the Texas Attorney General concerning why the information is confidential and should not be released and so that LAMINATE can assert any other rights it may have under law to keep such information from being disclosed. Also, notwithstanding Section 2.1.5, if WMCEDC, the City, or the County is required to make disclosure of information contained in an Annual Certification of Employment

provided by LAMINATE pursuant to a court order, subpoena or summons, WMCEDC, the City, or the County shall notify LAMINATE to allow LAMINATE to assert whatever exclusions or exemptions may be available to LAMINATE under applicable law. LAMINATE acknowledges that WMCEDC, the City, and County must comply with such court order, subpoena or summons unless otherwise determined by the applicable court. The provisions of this Section 2.1.5.1 shall survive the termination of this Agreement.

2.2 **EMPLOYMENT COMPLIANCE** - LAMINATE must create and fill at least 40 jobs that are WMCEDC eligible with the required salary and benefits set forth in this Agreement and maintain 40 jobs through the Term of the Agreement, in addition to the Facility Investments as defined in Section 2.1.1.

2.2.1 **Compliance with Job Creation and Job Retention** – The Incentive Funds will be paid to LAMINATE for the Facility Investment as is more fully outlined in Section 1.1 when LAMINATE has met the Agreement commitments.

2.2.2 **Temporary Failure to meet “WMCEDC Eligible” Job Retention** – In the event that permanent employment at the Facility falls below 85%, or 34 full-time positions, during the period of time between December 31, 2021, and December 31, 2026, WMCEDC may terminate this Agreement pursuant to this Section 2.5, and LAMINATE shall make a repayment of all of the Incentive Funds actually received upon sixty (60) days written demand by WMCEDC. If the failure to maintain a permanent employment rate of 85%, or 34 positions, is due to normal attrition, that event will not be used as a basis for terminating this Agreement unless LAMINATE does not reasonably attempt to fill the vacant positions through its normal hiring processes. LAMINATE will provide documentation reasonably required by WMCEDC to verify LAMINATE’s reasonable attempt to fill those vacant positions. In the event that permanent employment at the Facility falls below 100%, or 40 full-time positions, but remains greater than 85%, or 34 positions, during the five-year annual reporting period, LAMINATE shall reimburse WMCEDC at the rate of \$1,700.00 per position per effected year.

2.3 **RESIDENCY REQUIREMENT** – At least eighty percent (80%) of the employees who fill the WMCEDC Eligible Jobs must reside in McLennan County and at least Forty percent (40%) of those New Full-Time employees must reside in the City of Waco.

2.4 **COMPLIANCE THROUGH THE END OF AGREEMENT TERM** - If LAMINATE satisfies its obligations under this Agreement for the periods set forth above, LAMINATE shall have no obligation to repay any portion of the Incentive Funds.

2.5 **PENALTY PROVISIONS** – If LAMINATE fails to certify its compliance and/or fails to comply with any of the terms of this Agreement, WMCEDC may cancel and/or modify this Agreement following WMCEDC’S written notice to LAMINATE of LAMINATE’S deficiencies. In the event that the WMCEDC terminates this Agreement pursuant to this Section, LAMINATE shall make a repayment of all of the Incentive Funds actually received upon sixty (60) days written demand by WMCEDC.

III.
APPRAISAL DISPUTES

3.1 **APPRAISAL DISPUTES:** Subject to Section 3.2, LAMINATE shall have the right to protest and/or contest any assessment by the McLennan County Appraisal District (“MCAD”) of the real and personal property improvements required by this Agreement.

3.2 **PROPERTY IMPROVEMENTS VALUATION:** LAMINATE agrees that after completion and installation of the real and personal property improvements required by this Agreement, LAMINATE will report the fair market value of the improvements, the subject of this Agreement, to MCAD at a valuation of not less than \$4,000,000.00 (including \$1,000,000.00 in real property improvements and \$3,000,000.00 in personal property improvements). If during the term of this Agreement an appraisal dispute initiated by LAMINATE or an agent of LAMINATE results in the reduction of the appraised value of real property improvements that are the subject of this Agreement to an amount less than \$1,000,000.00 or the personal property improvements to an amount below \$3,000,000.00, less depreciation, then the total amount of the WMCEDC Incentive Funds shall be proportionally reduced. For example, if LAMINATE or an agent of LAMINATE, initiates an appraisal dispute that results in a personal property improvements appraisal value of \$2,600,000.00 (90% of the estimated real and personal property fair market value as represented by LAMINATE), less depreciation, then LAMINATE will only be eligible for 90% of the WMCEDC Incentive Funds provided for in this Agreement. In that event, then within sixty (60) days written demand from WMCEDC, LAMINATE shall repay the portion of the WMCEDC Incentive Funds for which it is no longer eligible. This provision will remain in effect even if the appraisal dispute of the property is initiated by a subsequent third party purchaser.

IV.
MISCELLANEOUS

4.1 **TERM.** This Agreement shall be effective from Effective Date until December 31, 2026.

4.2 **REMEDIES.** LAMINATE, WMCEDC or the City and/or County as its assignees, shall have all remedies provided by law or in equity to recover the Incentive Funds. Further, WMCEDC, or the City and/or County shall be entitled to recover all reasonable and necessary attorneys’ fees and costs incurred in connection therewith.

4.3 **VENUE.** Texas law shall govern interpretation of this Agreement and all disputes hereunder. This Agreement is to be performed in McLennan County, Texas, and venue of any dispute between the parties shall be fixed in a court of competent jurisdiction in McLennan County, Texas.

4.4 **SIGNATURE AUTHORITY.** The persons executing this Agreement are authorized to sign this Agreement on behalf of the party for which they sign, and have the express power to bind the parties for which they sign.

4.5 **NOTICE.** Notices or correspondence under this Agreement to either party from the other may be personally delivered or sent by First Class Mail, or other reliable courier.

Notice to the **WMCEDC** shall be sent to:

WMCEDC Administrator
c/o Greater Waco Chamber of Commerce
P. O. Box 1220
Waco, Texas 76703

Notice to **LAMINATE** shall be sent to:

LAMINATE TECHNOLOGIES OF TEXAS, INC.
Attention: Fred Zoeller
161 Maule Road
Tiffin, OH 44883
(419) 448-0812
fzoeller@lamtech.net

4.6 **WAIVER**. No waiver by either party of any provision of this Agreement shall be effective unless in writing and such waiver shall not be construed as or implied to be a subsequent waiver of that provision or any other provision.

4.7 **ASSIGNMENT**. WMCEDC may assign its rights and responsibilities under this Agreement to one or more of its funding entities. The funding entity that is assigned the rights and responsibilities under this Agreement must assume all obligations hereunder. LAMINATE may not assign this Agreement without the prior written approval of WMCEDC and its funding entities, which approval shall not unreasonably be withheld.

4.8 **AGREEMENT AND BINDING AUTHORITY**. This Agreement supersedes and constitutes a merger of all prior oral and/or written agreements and understandings of the parties on the subject matter of this Agreement and is binding on the parties and their legal representatives, receivers, executors, successors, agents and assigns.

4.9 **AMENDMENTS**. This agreement can be supplemented and/or amended only by a dated written document executed by both parties.

4.10 **ARTICLE AND SECTION HEADINGS**. The Article and Section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this agreement.

4.11 **PARTIAL INVALIDITY**. If any term, provision, covenant, or condition of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

4.12 **SEVERABILITY**. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

4.13 COUNTERPARTS; FACSIMILE SIGNATURES. This Agreement may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a PDF image) shall be deemed to be an original signature hereto.

EXECUTED this _____ day of _____, 20__.

[Signatures on next page]

DRAFT

LAMINATE TECHNOLOGIES OF TEXAS, INC.

By: _____
Fred Zoeller

ATTEST:

By: _____

**WACO MCLENNAN COUNTY
ECONOMIC DEVELOPMENT CORPORATION**

By: _____
Scott M. Felton, President

ATTEST:

By: _____
William L. Clifton, Jr.

CITY OF WACO

ATTEST:

By: _____
Wiley Stem III
City Manager

By: _____
Esmeralda Hudson
City Secretary

McLENNAN COUNTY

ATTEST:

By: _____
Honorable Scott M. Felton
County Judge

By: _____
J.A. "Andy" Harwell
County Clerk

APPROVED AS TO FORM & LEGALITY:

By: _____
Jennifer Richie
City Attorney, City of Waco

**PROGRAM PROJECT AGREEMENT BETWEEN
WACO McLENNAN COUNTY ECONOMIC DEVELOPMENT CORPORATION
AND RYONET CORPORATION**

THIS **PROGRAM PROJECT AGREEMENT** (hereinafter “Agreement”) is entered into by and between **RYONET CORPORATION** (hereinafter “RYONET”) and the **WACO McLENNAN COUNTY ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter “WMCEDC”), on the date set forth below.

RECITALS:

WHEREAS, WMCEDC is the administrator of the economic development program established by the City of Waco, Texas (hereinafter “City”) and McLennan County, Texas (hereinafter “County”) (collectively referred to herein as “funding entities”) to provide incentives to new or expanding businesses in the City of Waco and McLennan County, Texas; and

WHEREAS, in consideration of said incentives, RYONET will make equipment and facility upgrades for a national distribution center, training facility, and showroom of commercial screen-printing equipment, on 1.1478 acres with a legal description of CROW SCALES, Block D, Lot 17, Acres 1.1478 McLennan County Appraisal District Property ID # 139815, located at 215 Cotton Drive, Waco, McLennan County, Texas, (the “Facility”) and will create and retain jobs in McLennan County, Texas; and

WHEREAS, RYONET and WMCEDC desire to enter into a Program Project Agreement,

NOW, THEREFORE, for the promises and considerations set forth herein, the parties to this Agreement agree as follows:

I.

**WACO McLENNAN COUNTY ECONOMIC DEVELOPMENT CORPORATION
ECONOMIC INCENTIVE COMMITMENTS**

1.1 Upon completion of the requirements in Sections 1.1.1 through 1.1.4, and 1.2, and as further set out in Section 2, WMCEDC agrees to provide grant funds in an amount not to exceed **One Hundred, Ten Thousand Dollars (\$110,000.00)** (“Incentive Funds”) to RYONET for relocation expenses from locations in Atlanta, Georgia, and Edgerton, Kansas to the Facility.

RYONET is required to do the following before any portion of the Incentive Funds are disbursed:

1.1.1 **Lease Execution** – RYONET shall submit to WMCEDC proof of an executed lease agreement with the owner of the Facility;

1.1.2 **Equipment and Facility Investments** - RYONET shall cause to be invested, on or before September 30, 2020, no less than \$30,000.00 in real property improvements and \$90,000.00 in personal property as equipment and facility upgrades at the Facility (collectively referred to as “Facility Investment”), all as determined by invoices and payment receipts submitted by RYONET and verified by WMCEDC; and

1.1.3 **Relocation and Relocation Expenses** – On or before September 30, 2020, RYONET shall relocate to the Facility from locations in Atlanta, Georgia, and Edgerton, Kansas. The City will reimburse up to \$110,000.00 in relocation expenses, all as determined by invoices and payment receipts submitted by RYONET and verified by WMCEDC.

1.1.4 RYONET will provide invoices, payment receipts, or any other proof of expenditures that the WMCEDC administrator deems necessary to verify the relocation expenses and Facility Investment. The WMCEDC administrator will be the final determiner of the actual costs/grant-eligible costs for the Facility Investment and relocation expenses.

1.2 **Payment:** Upon completion of the requirements under Sections 1.1.1 through 1.1.4, RYONET will be eligible to receive a lump sum grant payment in an amount not to exceed \$110,000.00. Failure to meet any of the requirements in Sections 1.1.1 through 1.1.4 will prevent RYONET from receiving Incentive Funds under this Agreement.

II.

RYONET COMMITMENTS AND RECOVERY OF INCENTIVE FUNDS

2.1 In exchange for the payment of the Incentive Funds to RYONET by WMCEDC, RYONET agrees that it will provide the following economic development to the McLennan County area at its Facility:

2.1.1 **Equipment and Facility Investments and Relocation Expenses** – RYONET shall relocate and make the Facility Investments required by Sections 1.1.2 through 1.1.4 on or before September 30, 2020;

2.1.2 **Job Creation Phase** - RYONET shall create and fill at the Facility a minimum of 9 new full-time jobs on or before December 31, 2020 and an additional 1 new full-time job on or before December 31, 2021, with all 10 of those jobs being WMCEDC-eligible jobs. A “WMCEDC-eligible Job” means a job that requires full-time year-round employment (2080 hours of work per year), with a minimum of forty (40) hours of work per week or eighty (80) hours of work per two weeks, provides a minimum base wage of no less than thirteen and one-half dollars (\$13.50) per hour, and provides health insurance benefits comparable to that provided by the City of Waco or McLennan County to their own employees which includes the employer paying for the majority of the premium. Additionally, the average annual wage for all jobs created shall be no less than \$32,000.000 on or before December 31, 2021. WMCEDC and RYONET agree that as of the execution date of this Agreement, RYONET has one (1) full-time employee in McLennan County, Texas.

2.1.3 **Job Retention Phase** – Job retention is a basic requirement for all new jobs from the time the job is created (i.e. filled for the first time) and throughout the term of the Agreement. In addition to fulfilling all equipment and facility upgrades and relocating as defined in Sections 1.1.2 through 1.1.4 and 2.1.1, RYONET shall retain a minimum of 10

new full-time jobs that are WMCEDC eligible, with an overall average annual wage for all employees of no less than \$32,000.000 on or before December 31, 2021, and maintain said jobs in McLennan County, Texas, through the Term of the Agreement.

2.1.4 Annual Certification of Employment - RYONET shall provide WMCEDC with an Annual Certification of Employment including an employee roster showing the name or unique identification number, street address including zip code, position, date of hire, and wage of each employee throughout the term of the Agreement. Such certification will be treated as confidential in accordance with applicable law, subject to the provisions in Section 2.1.5.1, and will be used solely for the purpose of verifying compliance with this Agreement. At each time that RYONET submits to WMCEDC the yearly employee roster, RYONET shall also submit to WMCEDC a certification, in the form reasonably required by WMCEDC, that RYONET meets its obligations under this Agreement, including the employment requirements. After providing prior reasonable notice to RYONET, WMCEDC shall have the right during regular business hours to conduct a personnel audit of RYONET's records that are specifically relevant to this Agreement to verify the number of employees hired and their address, position, wage and employee benefits. WMCEDC agrees that it will hold and process all RYONET employee data it receives or views pursuant to this Agreement in accordance with all applicable United States laws and regulations. If RYONET fails to provide the above-requested information, it shall be subject to Section 2.5.

2.1.5.1 Public Information Requests for information in Annual Certification of Employment. RYONET acknowledges that the City of Waco and McLennan County are subject to the provisions of the Texas Public Information Act as set forth in Chapter 552 of the Texas Government Code. Notwithstanding Section 2.1.5, if a public information request is made to the City for information contained in an Annual Certification of Employment provided by RYONET, in accordance with the Public Information Act, the City or the County will send a request to the Texas Attorney General for a decision as to whether or not such information may be withheld from disclosure and will release such information if required to do so by Texas or federal law, as interpreted by the Texas Attorney General. The City or the County will notify RYONET that such public information request has been made so that RYONET can send any arguments to the Texas Attorney General concerning why the information is confidential and should not be released and so that RYONET can assert any other rights it may have under law to keep such information from being disclosed. Also, notwithstanding Section 2.1.5, if WMCEDC, the City or the County is required to make disclosure of information contained in an Annual Certification of Employment provided by RYONET pursuant to a court order, subpoena or summons, WMCEDC, the City or the County shall notify RYONET to allow RYONET to assert whatever exclusions or exemptions may be available to RYONET under applicable law. RYONET acknowledges that WMCEDC, the City and County must comply with such court order, subpoena or summons unless otherwise determined by the applicable court. The provisions of this Section 2.1.5.1 shall survive the termination of this Agreement.

2.2 **EMPLOYMENT COMPLIANCE** - RYONET must create and fill at least 10 jobs that are WMCEDC eligible with the required salary and benefits set forth in this Agreement and maintain 10 jobs through the Term of the Agreement, in addition to the Facility Investment as defined in Section 2.1.1.

2.2.1 **Temporary Failure to meet “WMCEDC Eligible” Job Retention** – In the event that permanent employment at the Facility falls below 100%, or 10 full-time positions, during the period of time between December 31, 2021 through the Term of the Agreement (“Permanent Employment Rate”), RYONET shall reimburse WMCEDC at the rate of \$1,571.00 per position per year.

WMCEDC may terminate this Agreement pursuant to Section 2.5, and RYONET shall make a repayment of all of the Remaining Incentive Funds actually received upon sixty (60) days written demand by WMCEDC. If the failure to maintain the Permanent Employment Rate is due to normal attrition, that event will not be used as a basis for terminating this Agreement unless RYONET does not reasonably attempt to fill the vacant position(s) through its normal hiring processes. RYONET will provide documentation reasonably required by WMCEDC to verify RYONET’s reasonable attempt to fill those vacant positions.

2.3 **RESIDENCY REQUIREMENT** – At least eighty percent (80%) (8) of the employees who fill the WMCEDC Eligible Jobs must reside in McLennan County and at least Forty percent (40%) (4) of those Full-Time employees must reside in the City of Waco.

2.4 **COMPLIANCE THROUGH THE END OF AGREEMENT TERM** – For each year beginning in 2021 that RYONET satisfies the obligations under this Agreement, the amount of Incentive Funds subject to repayment shall be reduced by \$15,714.29 or 1/7 of the of the Incentive Funds, whichever is less. Such forgiveness shall occur on December 31st of the applicable year. For example, if RYONET has satisfied the obligations of the Agreement for the 2021 calendar year and received the full amount of Incentive Funds, then on December 31, 2021, WMCEDC shall forgive \$15,714.29, such that the Remaining Incentive Funds shall be \$94,285.71. The amount of Incentive Funds remaining after application of the forgiveness shall be referred to as the “Remaining Incentive Funds.”

2.5 **PENALTY PROVISIONS** – If RYONET fails to certify its compliance and/or fails to comply with any of the terms of this Agreement, WMCEDC may cancel and/or modify this Agreement following WMCEDC’S written notice to RYONET of RYONET’s deficiencies and a failure to cure such deficiency by RYONET within 30 days of said notice. In the event that the WMCEDC terminates this Agreement pursuant to this Section, RYONET shall make a repayment of all of the Remaining Incentive Funds upon sixty (60) days written demand by WMCEDC.

III. APPRAISAL DISPUTES

3.1 **Appraisal Disputes:** Subject to Section 3.2, RYONET shall have the right to protest and/or contest any assessment by the McLennan County Appraisal District (MCAD) of the real and personal property improvements required by this Agreement.

3.2 **Real and Personal Property Improvements Valuation:** RYONET agrees that after completion and installation of the real and personal property improvements required by this Agreement, RYONET will report the fair market value of the improvements, the subject of this Agreement, to MCAD at a valuation of not less than \$30,000.00 in real property improvements and \$90,000.00 in personal property improvements. If during the term of this Agreement, an appraisal dispute initiated by RYONET or an agent of RYONET results in the reduction of the appraised value of the real property improvements the subject of this Agreement to an amount below \$30,000.00, and/or the personal property improvements the subject of this Agreement to an amount below \$90,000.00, less depreciation, then the total amount of the Remaining Incentive Funds shall be proportionally reduced. For example, if RYONET or an agent of RYONET, initiates an appraisal dispute that results in a personal property improvements appraisal value of \$81,000.00 (90% of the estimated personal property fair market value after installation of the personal property as represented by RYONET), less depreciation, then RYONET will only be eligible for 90% of the Remaining Incentive Funds provided for in this Agreement. In that event, then within sixty (60) days written demand from WMCEDC, RYONET shall repay the portion of the Remaining Incentive Funds for which it is no longer eligible. This provision will remain in effect even if the appraisal dispute of the property is initiated by a subsequent third party purchaser.

IV.

MISCELLANEOUS

4.1 **TERM.** This Agreement shall be effective from Effective Date until December 31, 2027.

4.2 **REMEDIES.** RYONET, WMCEDC or the City and/or County as its assignees, shall have all remedies provided by law or in equity to recover the Incentive Funds. Further, WMCEDC, or the City and/or County shall be entitled to recover all reasonable and necessary attorneys' fees and costs incurred in connection therewith.

4.3 **VENUE.** Texas law shall govern interpretation of this Agreement and all disputes hereunder. This Agreement is to be performed in McLennan County, Texas, and venue of any dispute between the parties shall be fixed in a court of competent jurisdiction in McLennan County, Texas.

4.4 **SIGNATURE AUTHORITY.** The persons executing this Agreement are authorized to sign this Agreement on behalf of the party for which they sign, and have the express power to bind the parties for which they sign.

4.5 **NOTICE.** Notices or correspondence under this Agreement to either party from the other may be personally delivered or sent by First Class Mail, or other reliable courier.

Notice to the **WMCEDC** shall be sent to:

WMCEDC Administrator
c/o Greater Waco Chamber of Commerce
P. O. Box 1220

Waco, Texas 76703

Notice to **RYONET** shall be sent to:

RYONET CORPORATION.
Attention: Jim Rice
VP of Operations
12303 NE 56th Street
Vancouver, WA 98682
(800) 314-6390
jrice@ryonet.com

4.6 **WAIVER.** No waiver by either party of any provision of this Agreement shall be effective unless in writing and such waiver shall not be construed as or implied to be a subsequent waiver of that provision or any other provision.

4.7 **ASSIGNMENT.** WMCEDC may assign its rights and responsibilities under this Agreement to one or more of its funding entities. The funding entity that is assigned the rights and responsibilities under this Agreement must assume all obligations hereunder. RYONET may not assign this Agreement without the prior written approval of WMCEDC and its funding entities, which approval shall not unreasonably be withheld.

4.8 **AGREEMENT AND BINDING AUTHORITY.** This Agreement supersedes and constitutes a merger of all prior oral and/or written agreements and understandings of the parties on the subject matter of this Agreement and is binding on the parties and their legal representatives, receivers, executors, successors, agents and assigns.

4.9 **AMENDMENTS.** This Agreement can be supplemented and/or amended only by a dated written document executed by both parties.

4.10 **ARTICLE AND SECTION HEADINGS.** The Article and Section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

4.11 **PARTIAL INVALIDITY.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

4.12 **SEVERABILITY.** If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

4.13 **COUNTERPARTS; FACSIMILE SIGNATURES.** This Agreement may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a PDF image) shall be deemed to be an original signature hereto.

EXECUTED this _____ day of _____, 20__.

[Signatures on next page]

RYONET CORPORATION

By: _____
Ryan Moor
CEO

ATTEST:

By: _____

**WACO MCLENNAN COUNTY
ECONOMIC DEVELOPMENT CORPORATION**

By: _____
Scott M. Felton, President

ATTEST:

By: _____
William L. Clifton, Jr.

CITY OF WACO

ATTEST:

By: _____
Bradley Ford
City Manager

By: _____
Esmeralda Hudson
City Secretary

McLENNAN COUNTY

ATTEST:

By: _____
Honorable Scott M. Felton
County Judge

By: _____
J.A. "Andy" Harwell
County Clerk

APPROVED AS TO FORM & LEGALITY:

By: _____
Jennifer Richie
City Attorney, City of Waco