

**CHAPTER 380 ECONOMIC DEVELOPMENT AND INCENTIVE AGREEMENT**

**by and among**

**THE CITY OF MCKINNEY, TEXAS,  
a municipal corporation**

**and**

**MCKINNEY ECONOMIC DEVELOPMENT CORPORATION,  
a Texas nonprofit corporation**

**and**

**EMERSON PROCESS MANAGEMENT REGULATOR TECHNOLOGIES, INC.  
a Delaware corporation**

July \_\_\_, 2012

**Table of Contents**

	<b>Page</b>
<u>ARTICLE I DEFINITIONS</u> .....	5
<u>ARTICLE II TRANSFER OF THE PROPERTY</u> .....	10
2.1. The Gateway Parcel .....	10
2.2. Rollback Taxes.....	11
2.3. Subdivision by the City and MEDC .....	11
2.4. Purchase Price.....	11
2.5. Remedies for Failure to Close.....	11
2.6. Adjustments .....	12
2.7. Incidental Costs and Expenses.....	12
2.8. Possession .....	12
2.9. Closing .....	12
2.10. Documents at Closing.....	12
2.11. City and MEDC Representations and Warranties .....	13
2.12. Emerson Representations and Warranties .....	16
2.13. Emerson Conditions.....	16
2.14. City Conditions .....	17
2.15. Insurance of Gateway Parcel .....	18
2.16. Casualty.....	18
2.17. Condemnation.....	18
2.18. Uniform Vendor and Purchaser Risk Act .....	18
2.19. City Covenants.....	18
2.20. City Post-Closing Covenants .....	19
<u>ARTICLE III TERM</u> .....	19
3.1. Term Commencement.....	19
3.2. Expiration of Term.....	19
<u>ARTICLE IV THE PROJECT</u> .....	20
4.1. Project Development.....	20
4.2. Project Zoning.....	20
4.3. Exactions and Development Fees .....	20
4.4. Cost of Project and Infrastructure Improvements .....	20

4.5.	Survival.....	21
<b><u>ARTICLE V GENERAL REGULATION OF DEVELOPMENT OF PROJECT</u></b> .....		21
5.1.	General Provisions.....	21
5.2.	Review and Processing of Project Approvals.....	21
5.3.	Emerson Signage.....	21
5.4.	Declaration.....	21
5.5.	Enforcement of Laws and City Regulations.....	22
5.6.	Undocumented Workers.....	22
5.7.	Collin College Job Training.....	22
5.8.	Survival.....	22
<b><u>ARTICLE VI ECONOMIC INCENTIVE PAYMENT</u></b> .....		22
6.1.	Economic Development Payment.....	22
<b><u>ARTICLE VII ASSIGNMENT</u></b> .....		22
7.1.	Assignment by the City; MEDC.....	23
7.2.	Assignment by Emerson.....	23
7.3.	Assignment of Incentive Amount.....	23
7.4.	Mortgagee as Transferee.....	23
7.5.	Liability Following Transfer.....	23
<b><u>ARTICLE VIII EVENTS OF DEFAULT; REMEDIES; ESTOPPEL CERTIFICATES</u></b> .....		24
8.1.	Events of Default.....	24
8.2.	General Remedies.....	24
8.3.	Waiver; Remedies Cumulative.....	25
8.4.	Limited Liability.....	25
<b><u>ARTICLE IX MORTGAGEE PROTECTION</u></b> .....		25
9.1.	Mortgagee Protection.....	25
9.2.	Mortgagee Not Obligated; Mortgagee as Transferee.....	26
9.3.	Notice of Default to Mortgagee; Right of Mortgagee to Cure.....	26
9.4.	Priority of Mortgages.....	26
9.5.	Collateral Assignment.....	26
<b><u>ARTICLE X NOTICES</u></b> .....		26
10.1.	Delivery of Notices.....	27
10.2.	Methods of Delivery.....	28
<b><u>ARTICLE XI GENERAL PROVISIONS</u></b> .....		28

11.1. Negation of Partnership .....	28
11.2. Not A Public Dedication .....	28
11.3. Severability .....	29
11.4. Exhibits .....	29
11.5. Amendment or Termination.....	29
11.6. Entire Agreement .....	29
11.7. Construction of Agreement.....	29
11.8. Further Assurances; Covenant to Sign Documents .....	29
11.9. Governing Law .....	29
11.10. Signature Pages .....	29
11.11. Recording .....	29
11.12. Time .....	30
11.13. No Personal Liability .....	30
11.14. Performance on Business Days.....	30
11.15. Independent Contract Consideration.....	30

**LIST OF EXHIBITS:**

- EXHIBIT A: LEGAL DESCRIPTION OF EMERSON PARCEL
- EXHIBIT A-1: GRAPHIC OF GATEWAY PARCEL
- EXHIBIT B: PROPOSED SITE PLAN
- EXHIBIT C: DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS
- EXHIBIT D: PURCHASE AND SALE AGREEMENT
- EXHIBIT E: MEMORANDUM OF AGREEMENT
- EXHIBIT F: INFRASTRUCTURE IMPROVEMENTS
- EXHIBIT G: LETTERS OF CREDIT
- EXHIBIT H: FIRELANE DEPICTION

## CHAPTER 380 ECONOMIC DEVELOPMENT AND INCENTIVE AGREEMENT

July \_\_\_, 2012

This Chapter 380 Economic Development and Incentive Agreement (“**Agreement**”) is entered into by and among THE CITY OF MCKINNEY, TEXAS, a municipal corporation organized and existing pursuant to the laws of the State of Texas (the “**City**”); MCKINNEY ECONOMIC DEVELOPMENT CORPORATION, a Texas nonprofit corporation (“**MEDC**”) and EMERSON PROCESS MANAGEMENT REGULATOR TECHNOLOGIES, INC., a Delaware corporation (“**Emerson**”).

### **RECITALS**

A. The City, MEDC and Emerson previously executed a non-binding Letter of Intent (“**LOI**”) executed effective June 10, 2011, whereby the City, MEDC and Emerson agreed to negotiate definitive agreements for: (1) the purchase of a parcel of real property by the City from Emerson and the conveyance of a parcel of real property by the City/MEDC to Emerson consisting of the following properties: (a) a parcel containing approximately 11.45 acres (“**Emerson Parcel**”) owned by Emerson, (b) a parcel containing approximately 12.16 acres (“**Gateway Parcel**”) currently owned partially by MEDC and partially by the City, which Gateway Parcel will become a platted lot upon subdivision and/or platting, as appropriate, by the City and MEDC. The legal description for the Emerson Parcel is set forth in **Exhibit “A”** to this Agreement, and a graphical depiction of the Gateway Parcel is attached hereto as **Exhibit “A-1”**; *provided, however*, that said legal description and graphical depiction shall be subject to change if a subsequent ALTA survey of the Emerson Parcel or the Gateway Parcel reveals a discrepancy in the legal description or graphical depiction attached hereto.

B. Emerson desires to construct a new corporate headquarters on the Gateway Parcel, which Gateway Parcel is part of an approximately 90 acre master-planned development to be developed under a public-private partnership to include, among other things, a hotel/events center and the administrative offices of Collin College, and which would permit the construction of related corporate, office and retail uses (collectively, the “**Gateway Development**”).

C. The City and MEDC desire to facilitate the corporate relocation of Emerson through the grant of certain incentives, as outlined in the LOI.

D. Pursuant to the LOI, the Parties (as defined herein) now desire to formalize the definitive agreements to allow Emerson to construct and relocate its corporate headquarters to the Gateway Parcel.

NOW, THEREFORE, pursuant to the authority granted to the City and MEDC under all applicable laws, rules and regulations, and in consideration of the foregoing Recitals and the mutual covenants and promises of the City, MEDC and Emerson herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, MEDC and Emerson hereby agree as follows:

# AGREEMENT

## ARTICLE I DEFINITIONS

Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term:

**“Adoption Date”** means [ ]<sup>1</sup>, 2012 (i.e., the latter of those dates on which the City Council and MEDC each adopted an Authorizing Resolution authorizing and approving this Agreement).

**“Affiliate”** means any person or entity directly or indirectly Controlling, Controlled by or under Common Control with Emerson.

**“Agreement”** shall have the meaning set forth in the Preamble to this agreement.

**“Amended Declaration”** shall have the meaning set forth in Section 2.13.3 hereof.

**“Amended Zoning Ordinance”** means the amended zoning ordinance with respect to the Property (as opposed to the Gateway Development) that was enacted by the City Council on April 3, 2012.

**“Approved Gateway Parcel Exceptions”** shall mean those exceptions to title with respect to the Gateway Parcel approved by Emerson during the Due Diligence Period, which in all events shall include that certain Reciprocal Easement Agreement recorded as Document Number 99-0028590, in Volume 04369, Page 02124 of the Land Records of Collin County, Texas. Approved Gateway Parcel Exceptions shall not include any deeds of trust, mortgages, security agreements or other liens, all of which the City and MEDC shall cause to be discharged at or prior to Closing.

**“Architect”** shall mean Fox Architects.

**“Architectural Documents”** shall have the meaning set forth in Section 4.1 hereof.

**“Authorizing Resolution”** means, as to the City, Resolution No. 2012-[ ]-[ ]R<sup>2</sup>, enacted by the City Council authorizing and approving this Agreement, and authorizing the “City Manager” of the City to execute this Agreement on behalf of the City, and, as to MEDC, **[DESCRIBE APPROVAL]**<sup>3</sup>.

**“Certificate(s) of Occupancy”** shall mean certificate(s) issued by the City following construction of the buildings comprising the Corporate Headquarters in a manner consistent with City Regulations, including, but not limited to, the City’s building and fire codes, and the installation of all mechanical and electrical improvements required for issuance of such certificates.

**“City”** shall have the meaning set forth in the Preamble to this Agreement.

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<sup>1</sup> Note to MEDC and City: Please provide relevant date.

<sup>2</sup> Note to City: Please provide resolution number.

<sup>3</sup> Note to MEDC: Please describe the corresponding resolution or approval to be adopted by MEDC.

**“City Approvals”** means permits or approvals required under City Regulations in order to develop, use and operate the Corporate Headquarters.

**“City Council”** means the “City Council” of the City.

**“City Development Fees”** means fees or assessments charged or required by the City in connection with any City Approval to defray, offset or otherwise cover the cost of public services, improvements or facilities.

**“City/MEDC Development Allocation”** means fifty percent (50%) of the total costs and expenses incurred by Emerson in performing the Infrastructure Improvements as reasonably determined by Emerson.

**“City Regulations”** means the Amended Zoning Ordinance and all other ordinances, resolutions, codes, rules, regulations and policies of the City in effect as of the time in question.

**“Clawback Amount”** means (i) \$5,000,000 in the event that Emerson has received payment of the Incentive Amount at the time the Clawback Amount is payable hereunder, and (ii) \$4,000,000 in the event that Emerson has not received payment of the Incentive Amount at the time the Clawback Amount is payable hereunder, which amount shall be discounted by 20% for each year that has elapsed since the date of Substantial Completion. For the avoidance of doubt, on and after the date which is five years after the date of Substantial Completion, the Clawback Amount shall be \$0.

**“Closing”** means the closing of the conveyance of the Gateway Parcel from the City and MEDC to Emerson.

**“Collateral Assignment”** shall have the meaning set forth in Section 9.5 hereof.

**“Common Control”** means that two persons or entities are both Controlled by the same person or entity.

**“Construction Permits”** means a building permit or permits issued by the City for any and all construction work relating to the Corporate Headquarters.

**“Control”** means the ownership (direct or indirect) by one person or entity of an interest in the profits and capital and the right to manage and control the day to day affairs of another person or entity. The term “Control” includes any grammatical variation thereof, including “Controlled” and “Controlling”.

**“Corporate Headquarters”** means approximately 128,000 square feet of class “A” office space and research and design space constructed by Emerson on the Gateway Parcel, and having a verified cost of not less than Fifteen Million Dollars (\$15,000,000) (real property improvements and business personal property included).

**“Declaration”** shall have the meaning set forth in Section 5.4 hereof. A copy of the Declaration is attached as Exhibit “C” hereto.

**“Development Fees”** means the City Development Fees that will be imposed by the City in connection with the development of the Gateway Parcel by Emerson or the construction and development of the Project; however Development Fees shall not include Exactions.

**“Due Diligence Period”** shall have the meaning set forth in Section 2.1.1 hereof.

**“Emerson”** shall have the meaning set forth in the Preamble to this Agreement.

**“Emerson Parcel”** shall have the meaning set forth in Recital A hereof.

**“Emerson Parcel Closing Date”** shall be a date after Emerson obtains a Certificate of Occupancy for the Corporate Headquarters and which shall mean the date of “Closing” as defined and set forth in the Purchase and Sale Agreement attached hereto as Exhibit “D”.

**“Enforcement or Remedial Actions”** shall have the meaning set forth in Section 2.11.12 hereof.

**“Environmental Law”** shall have the meaning set forth in Section 2.11.12 hereof.

**“Environmental Liability”** shall have the meaning set forth in Section 2.11.12 hereof.

**“Escrow Agreement”** shall mean that certain Escrow Agreement by and among the City, MEDC, Emerson and the Title Company, which Escrow Agreement shall be in a form reasonably agreed to by the parties during the Due Diligence Period.

**“Escrow Deed”** shall mean that certain special warranty deed to be held in escrow by the Title Company pursuant to the terms of the Escrow Agreement, which special warranty deed shall be in a form reasonably agreed to by the parties during the Due Diligence Period.

**“Event of Default”** shall have the meaning set forth in Section 8.1.1 hereof.

**“Exactions”** collectively means any sewer, water, and roadway impact fees that are required or imposed by the City on Emerson during the Term of this Agreement, including, without limitation, any similar fees imposed as a condition or requirement of the issuance or approval by the City of any City Approvals for the Project and/or the Infrastructure Improvements. The term “Exactions” does not include any City Development Fees.

**“Force Majeure”** means a delay in performance caused by: (a) war, terrorist acts, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, or acts of God; (b) litigation relating to the Project and/or the Infrastructure Improvements brought by persons or entities other than a Party or Affiliate of a Party; or (c) a delay in a governmental approval process, including, without limitation, City Approvals, beyond the time period reasonably anticipated for such approval process.

**“Gateway Development”** shall have the meaning set forth in Recital B hereof.

**“Gateway Parcel”** shall have the meaning set forth in Recital A hereof.



**“Gateway Parcel Transfer Conditions”** collectively means all of the following conditions: (a) Emerson shall not be in material breach of this Agreement as of the date of Closing; (b) the City shall have approved the Architectural Documents pursuant to Section 4.1; and (c) the City, MEDC and Emerson shall have agreed upon mutually agreeable forms of the Special Warranty Deed, Escrow Deed and Escrow Agreement on or prior to the Closing.

**“Gateway Parcel Transfer Date”** means the date on which the City and MEDC transfer fee simple title to the Gateway Parcel to Emerson, which date shall be 7 business days after the satisfaction or waiver of the conditions set forth in Sections 2.1.1, 2.13.1, 2.13.2, 2.13.3, 2.13.4, 2.13.5, 2.13.6 and 2.13.9 hereof.

**“Hazardous Materials”** shall have the meaning set forth in Section 2.11.12 hereof.

**“Improvements”** shall mean the Corporate Headquarters.

**“Incentive Amount”** means the sum of One Million Dollars (\$1,000,000).

**“Infrastructure Improvements”** means the utility, roadway, and other work described on Exhibit “F” to this Agreement.

**“Infrastructure Improvements Property”** shall have the meaning set forth in Section 2.20 hereof.

**“Laws”** means federal, state and local laws, ordinances, codes, regulations, rulings, orders, case law and/or other legal requirements.

**“Letters of Credit”** shall have the meaning set forth in Section 4.5 hereof.

**“LOI”** shall have the meaning set forth in Recital A hereof.

**“MEDC”** shall have the meaning set forth in the Preamble to this Agreement.

**“Mortgage”** means: (a) a mortgage or deed of trust, or other similar transaction, in which Emerson conveys or pledges a lien or security interest in the Improvements on the Gateway Parcel, or a portion thereof for the purpose of (i) financing the development of the Corporate Headquarters, or any portion thereof or (ii) obtaining financing proceeds by encumbering the Improvements on the Gateway Parcel or a portion thereof; or (b) a sale and leaseback arrangement, in which Emerson sells and leases back concurrently therewith its interest in the Improvements, or a portion thereof, or interest therein, for the purpose of (i) financing the development of the Corporate Headquarters, or any portion thereof or (ii) obtaining financing proceeds by encumbering the Improvements on the Gateway Parcel or a portion thereof.

**“Mortgagee”** means: (a) the holder of the beneficial interest under a Mortgage; (b) the lessor under a sale and leaseback; and (c) any successors, assigns and designees of the foregoing.

**“Notice of Default”** shall have the meaning set forth in Section 8.1.1 hereof.

**“Notice of Release of Reverter”** shall mean that certain Notice of Release of Reverter to be held in escrow by the Title Company pursuant to the terms of the Escrow Agreement, which Notice of Release of Reverter shall be in a form reasonably agreed to by the parties during the Due Diligence Period.

**“Notice Request”** shall have the meaning set forth in Section 9.3 hereof.

**“Notices”** shall have the meaning set forth in Section 10.1 hereof.

**“Official Records”** means the Land Records of Collin County, Texas.

**“Parties”** collectively means the City, MEDC and Emerson (or Emerson’s Transferees, as applicable, determined as of the time in question).

**“Permitted Transfer”** means any Transfer (i) to an Affiliate of Emerson, and/or to Emerson’s Mortgagee, (ii) to any party in connection with any sale/leaseback, mortgage or other financing arrangement involving the Corporate Headquarters and/or the Gateway Parcel, (iii) to any party in connection with a sale of all or substantially all of the capital stock or assets of Emerson, (iv) to the City or other municipal or governmental entity in connection with a condemnation, dedication or otherwise, or (v) of an easement interest or similar encumbrance.

**“Project”** means the construction and development of the Corporate Headquarters as well as the parking areas, streets, utilities, sidewalks, landscaping, street lighting, curbs and related improvements on the Gateway Parcel pursuant to this Agreement.

**“Proposed Site Plan”** means the site plan dated [\_\_\_\_], 2012 and related plat dated [\_\_\_\_], 2012, a copy of which is attached as **Exhibit “B”** of this Agreement.

**“Purchase Price”** shall have the meaning set forth in Section 2.4 hereof.

**“Purchase and Sale Agreement”** means that certain purchase and sale agreement dated effective July [\_\_\_], 2012 governing MEDC’s purchase of the Emerson Parcel, a copy of which is attached as **Exhibit “D”** of this Agreement.

**“Release”** shall have the meaning set forth in Section 2.11.12 hereof.

**“Required Final Completion Date”** shall mean March 31, 2014<sup>4</sup>, which date shall be subject to extension due to delays caused by Force Majeure events and pursuant to the terms of Section 8.2.3 hereof.

**“Restricted Transfer”** means any Transfer other than a Permitted Transfer.

**“Right of Reverter”** shall have the meaning set forth in Section 2.10 hereof.

**“Subdivision Approvals”** shall have the meaning set forth in Section 2.3 hereof.

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<sup>4</sup> N.B.: This date will be extended day-for-day if this Agreement and the Purchase and Sale Agreement are not fully executed by July 15, 2012.

“**Substantially Complete**” or “**Substantial Completion**” means the date on which Emerson submits to the City all documentation required by applicable City Regulations for Emerson to obtain a temporary Certificate of Occupancy for all buildings that comprise the Corporate Headquarters.

“**Term**” means the term of this Agreement, as determined pursuant to ARTICLE III below, unless sooner Terminated as provided in this Agreement.

“**Terminate**” means the expiration of the Term of this Agreement, whether by the passage of time or by any earlier occurrence pursuant to any provision of this Agreement. The term “**Terminate**” includes any grammatical variant thereof, including “**Termination**” or “**Terminated**”.

“**Title Company**” means First American Title Company, 6077 Primacy Parkway, Suite 121-B, Memphis, Tennessee 38119, Attn: Rita Bost.

“**Transfer**” means any assignment of Emerson’s respective rights, titles, interests or obligations under this Agreement or any sale or assignment of all or a material part of Emerson’s fee simple interest in the Corporate Headquarters and/or the Gateway Parcel.

“**Transferee**” means the person or entity to whom a Transfer is effected.

## ARTICLE II TRANSFER OF THE PROPERTY

### 2.1. The Gateway Parcel.

2.1.1. Due Diligence by Emerson. Emerson shall have a period through and including July 31, 2012 (such period being referred to herein as the “**Due Diligence Period**”) to study the Gateway Parcel, including any necessary testing feasibility studies it may choose to undertake. The City and MEDC, within three (3) business days after the date of this Agreement, shall deliver or otherwise make available to Emerson copies of any documentation in the possession of the City and/or MEDC relating to the Gateway Parcel, including, without limitation, environmental reports, soil studies, title work, surveys, investigative reports and the like. Emerson may Terminate this Agreement by written notice to the City and MEDC if such notice is given on or prior to the last day of the Due Diligence Period. Upon Termination by Emerson, the Purchase and Sale Agreement shall terminate simultaneously, and the Parties shall have no further liability to each other.

2.1.2. On the Gateway Parcel Transfer Date, the City and MEDC shall cause the Title Company to issue to Emerson a TLTA Form Owner’s Policy of Title Insurance in an amount determined by Emerson (including all available endorsements requested by Emerson), at Emerson’s cost. The Owner’s policy shall list only the Approved Gateway Parcel Exceptions. The parties shall jointly share any other escrow costs for any escrow established for the Closing. The parties agree and acknowledge that Emerson’s agreement to bear the entire cost of the TLTA Form Owner’s Policy of Title Insurance hereunder is in consideration for the conveyance by the City and MEDC to Emerson of that portion of the Gateway Parcel exceeding the ten (10) acre parcel initially contemplated by the parties in the LOI.

2.1.3. During the period commencing on the earlier of the Adoption Date and the date of this Agreement and concluding on the Gateway Parcel Transfer Date, the City and MEDC shall not voluntarily encumber the Gateway Parcel with any liens or encumbrances that shall be binding upon the Gateway Parcel subsequent to the Gateway Parcel Transfer Date, without the written approval of Emerson, which approval may be granted, conditionally granted or withheld in Emerson's sole and absolute discretion.

2.1.4. During the period commencing on the earlier of the Adoption Date and the date of this Agreement and concluding on the Gateway Parcel Transfer Date, the City and MEDC shall exercise reasonable efforts to maintain the improvements, if any, that comprise or that are upon the Gateway Parcel, together with the physical and environmental condition of the Gateway Parcel, in substantially the same condition and repair as of the date of this Agreement, normal wear and tear and casualty and/or condemnation damage excepted and with no alterations, except as may otherwise be expressly provided under this Agreement.

2.2. Rollback Taxes. Emerson shall also pay, and indemnify and hold the City and MEDC harmless in respect of, any "roll back" in, or other redetermination of, taxes (including any interest or penalty thereon or associated therewith) arising by reason of the loss of any exemption from a change in use of the Gateway Parcel by Emerson subsequent to Closing, which obligation shall survive Closing.

2.3. Subdivision by the City and MEDC. Not later than July 16, 2012, the City and MEDC, at their cost, shall apply for and obtain all governmental approvals required to subdivide any portions of the City's and MEDC's property, to create a separate legal parcel consistent with the Proposed Site Plan for the Gateway Parcel (the "**Subdivision Approvals**"). The City and MEDC shall perform all necessary steps pursuant to the subdivision and/or platting ordinances to allow the filing of a record plat for the separate legal parcel described hereinabove. Emerson and the City shall cooperate with MEDC in the processing and approval of the applications under this Section 2.3. Emerson shall have the right to approve in its sole discretion any subdivision map or plat, the application, documentation, and any conditions of approval associated with the Subdivision Approvals under this Section 2.3; provided that failure by Emerson to approve or disapprove such a request within fifteen (15) days of Emerson's receipt of same shall be deemed to be an approval by Emerson.

2.4. Purchase Price. The purchase price to be paid to the City and MEDC at Closing for the conveyance of the Gateway Parcel to Emerson as provided for herein shall be One Dollar (\$1.00) (the "**Purchase Price**"), subject to credit, debit and adjustment as provided in Section 2.6 below, which sum shall be payable to the City and MEDC in cash, cashier's check or wire transfer of current funds.

2.5. Remedies for Failure to Close. If the conveyance of the Gateway Parcel is not closed by the date fixed therefor owing to failure of performance by the City and/or MEDC, Emerson shall have all rights and remedies at law or in equity, including, without limitation, specific performance. If the conveyance of the Gateway Parcel is not closed by the date fixed therefor owing to failure of performance by Emerson, the City and MEDC shall have both of the following remedies, which remedies shall be the sole and exclusive remedies in such instance: (i) Termination of this Agreement and the Purchase and Sale Agreement upon Emerson's receipt of notice from either the

City or MEDC, after which the Parties shall have no further liability hereunder or thereunder; and (ii) reimbursement from Emerson of the aggregate amount of the City's and MEDC's reasonable out of pocket costs incurred in connection with this Agreement and the Purchase and Sale Agreement prior to the date of such failure by Emerson, in an amount not to exceed One Hundred Thousand Dollars (\$100,000.00). The parties hereto acknowledge and agree that this Section 2.5 (and not Article VIII) shall govern and control in the event the conveyance of the Gateway Parcel is not closed by the date fixed therefore owing to failure of performance by one of the Parties.

2.6. Adjustments. The following items shall be credited, debited and otherwise adjusted, and the resulting calculation shall be an adjustment to the Purchase Price payable at Closing: (a) general property taxes (state, county, municipal, school, fire and community college district) for the then current tax fiscal year (in addition, if not fully paid prior to Closing, all taxes for years prior to the current tax fiscal year shall be charged to the City and MEDC as a credit against the Purchase Price); and (b) special taxes or assessments, if any, upon the Gateway Parcel assessed or becoming a lien prior to the date of Closing (all of which shall be deemed due and payable in full as of Closing). In the event on the date of Closing, the precise figures necessary for any of the foregoing adjustments are not capable of determination, the adjustments shall be made on the basis of good faith estimates of the Parties, and such adjustments shall be final and binding on the parties (except with respect to general property taxes for the current tax fiscal year, which shall be adjusted in cash between the City, MEDC and Emerson, as appropriate, upon receipt of written request therefore from any Party, together with reasonably satisfactory written evidence that the actual amounts paid for such taxes differ from the good faith estimates used on the date of Closing. This Section 2.6 shall survive the Closing.

2.7. Incidental Costs and Expenses. Emerson shall pay all recording fees incidental to the recording of the deed, all survey costs, and all title commitment and title insurance premiums. The City and MEDC shall pay all recording fees incidental to the release of any encumbrances, any transfer taxes, and any tax statement or tax certificate costs. Emerson, on the one hand, and the City and MEDC, on the other hand, shall each pay one half of the escrow fees, if any, charged by the Title Company. Emerson shall also pay, and indemnify and hold the City and MEDC harmless in respect of, any "roll back" in, or other redetermination of, taxes (including any interest or penalty thereon or associated therewith) arising by reason of the loss of any exemption from a change in use of the Gateway Parcel by Emerson subsequent to Closing, which obligation shall survive Closing. Except as otherwise expressly provided in this Agreement, the Parties shall pay their own respective costs and expenses, including attorneys' fees, incidental to this Agreement and the transactions contemplated hereby.

2.8. Possession. The City and MEDC shall transfer possession of the Gateway Parcel to Emerson at 12:01 p.m. on the date of Closing.

2.9. Closing. The Closing shall take place in escrow at the offices of the Title Company.

2.10. Documents at Closing. On the date of Closing, (a) the City and MEDC shall execute and deliver to Emerson: (i) a special warranty deed transferring and conveying to Emerson fee simple title to the Gateway Parcel (the City's and MEDC's record title to govern for purposes of the legal description, but the City and MEDC will provide an executed deed without warranty of any

kind and without liability to the City or MEDC with respect to Emerson's surveyed legal description upon request), which special warranty deed shall include an optional right of reverter in favor of the City and/or MEDC (the "**Right of Reverter**") in the event that Emerson fails to Substantially Complete the Improvements on or before the Required Final Completion Date, which conveyance shall be subject only to the lien of general real estate taxes for the then current tax fiscal year, and the Approved Gateway Parcel Exceptions, and which special warranty deed shall be in a form reasonably agreed to by the parties during the Due Diligence Period; (ii) a standard form seller's affidavit, against mechanics liens and against parties in possession, and such other documents, if any, as may be required by the Title Company, on forms customarily used by the Title Company and reasonably satisfactory to the City and MEDC, in order to issue an owner's policy of title insurance; (iii) an assignment of warranties, deposits and intangibles, transferring and assigning to Emerson all right, title, claim, and interest of the City and MEDC in and to any warranties or guaranties concerning the Gateway Parcel which have not by their terms expired, and all deposits and escrows of whatever nature, together with the originals of any agreements or certificates evidencing the same, which assignment of warranties, deposits and intangibles shall be in form reasonably satisfactory to the Parties; (iv) an affidavit from the City and MEDC, in form reasonably satisfactory to Emerson, affirming that the City and MEDC are not foreign persons under the Foreign Investment in Real Property Tax Act of 1980, as amended, and that no taxes or withholding shall be assessed or applied to Emerson in connection with the Closing and the transactions contemplated hereby; (v) an access agreement affording Emerson access to the Infrastructure Improvements Property as contemplated in Section 2.20 hereof, which access agreement (x) shall be in form reasonably satisfactory to the Parties, (y) may, at Emerson's option, be recorded in the applicable real property records, and (z) the City and MEDC shall cause to be senior and paramount to the lien of any deeds of trust, mortgages or other liens affecting the Infrastructure Improvements Property; and (vi) a fully-executed copy of the Notice of Release of Reverter which shall be held by the Title Company in escrow pursuant to the Escrow Agreement, (b) Emerson, the City and MEDC shall execute and deliver to one another counterpart originals of (1) closing statements verifying the adjustments to the Purchase Price, and (2) the Escrow Agreement, and (c) Emerson shall execute and deliver to the Title Company the Escrow Deed which shall be held by the Title Company in escrow pursuant to the Escrow Agreement.

2.11. City and MEDC Representations and Warranties. In order to induce Emerson to acquire the Gateway Parcel, the City and MEDC each make the following representations and warranties, each of which representations and warranties is true and correct on the date hereof and will be true and correct on (and restated as of) the date of Closing, and each of which shall survive the Closing for a period of one year from the date hereof:

2.11.1. Corporate Authority. The City and MEDC each represents and warrants that:

(a) The City and MEDC are a municipal corporation and a non-profit corporation, respectively, duly organized, validly existing and in good standing under the laws of the State of Texas.

(b) The City and MEDC each has all necessary power and authority to own, use and transfer its properties (including the Gateway Parcel) and to transact the business in which it is engaged, and has full power and authority to enter into this Agreement, to execute and deliver the documents required of the City and MEDC herein, and to perform its obligations hereunder.

(c) The City and MEDC are each duly authorized to execute, deliver and perform this Agreement and all documents and instruments and transactions contemplated hereby or incidental hereto.

(d) The individuals executing this Agreement on behalf of each of the City and MEDC are authorized to do so and, upon executing this Agreement, this Agreement shall be binding and enforceable upon the City and MEDC in accordance with its terms.

2.11.2. Commissions. Neither the City nor MEDC has dealt with any broker, finder or any other person, in connection with the sale of or the negotiation of the sale of the Gateway Parcel that might give rise to any claim for commission against Emerson or lien or claim against the Gateway Parcel.

2.11.3. Litigation. To the City's and MEDC's actual knowledge, there are no claims, actions, suits, condemnation actions or other proceedings pending or, threatened by any entity against the Gateway Parcel or against the City and/or MEDC which affect the Gateway Parcel.

2.11.4. No Violations of Laws. To the City's and MEDC's actual knowledge, there are no current violations of any applicable Laws affecting the Gateway Parcel.

2.11.5. No Option. Neither the City nor MEDC has granted any options or rights of first refusal to purchase with respect to the Gateway Parcel.

2.11.6. Tenancies. There are no tenancies or occupancies affecting the Gateway Parcel or persons in possession of any part thereof which will not be terminated on or before Closing. There are no persons or entities with whom the City or MEDC or their agents have negotiated with regard to prospective leases of the Gateway Parcel that in any manner might give rise to a claim by such persons or entities against the City, MEDC or the Gateway Parcel.

2.11.7. Operating Agreements. There are no service, supply, maintenance, leasing or management agreements affecting the Gateway Parcel or the operation of any part thereof which will be binding upon the Gateway Parcel after Closing.

2.11.8. Environmental. To the City's and MEDC's actual knowledge, the Gateway Parcel has been and is in compliance in all material respects with all applicable Environmental Laws (as hereinafter defined), and there has been no Release (as hereinafter defined) of Hazardous Materials (as hereinafter defined) at the Gateway Parcel.

2.11.9. Real Estate Taxes. Real estate taxes are not and shall not be assessed against the Gateway Parcel during any period that the City and/or MEDC is the owner of the Gateway Parcel.

2.11.10. Infrastructure Improvements Property. The City and MEDC have good title in and to the Infrastructure Improvements Property not located on the Gateway Parcel, and the Infrastructure Improvements Property is depicted on the site plan attached hereto as **Exhibit "F"**.

2.11.11. As used herein and throughout this Agreement: (i) references to the “knowledge” of the City shall refer to the actual knowledge of Jason Gray, City Manager, and shall not be construed, by imputation or otherwise, to refer to the knowledge of the City, or any affiliate, to any current or former property manager, or to any other current or former officer, agent, partner, manager, representative, or employee of the City or any affiliate thereof, or to impose upon Jason Gray any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains; and (ii) references to the “knowledge” of MEDC shall refer to the actual knowledge of Keith Clifton, Board Chairman, and shall not be construed, by imputation or otherwise, to refer to the knowledge of MEDC, or any affiliate, to any current or former property manager, or to any other current or former officer, agent, partner, manager, representative, or employee of MEDC or any affiliate thereof, or to impose upon Keith Clifton any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains.

2.11.12. The following defined terms used in this Agreement shall have the following meanings:

**“Hazardous Materials”** include: (i) oil or other petroleum products, (ii) “hazardous wastes,” as defined by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq., or similar state or local law, ordinance, regulation or order, (iii) “hazardous substances,” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §9601 et seq., or similar state or local law, ordinance, regulation or order, (iv) “hazardous materials,” as defined by the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. §5102, or similar state or local law, ordinance, regulation or order, (v) radioactive materials subject to the Atomic Energy Act (AEA), 42 U.S.C. §2011 et seq., or similar state or local law, ordinance, regulation or order, and (vi) any other pollutant, contaminant, chemical, or substance whose presence creates or could create a hazard to health or the environment or a violation of any federal, state or local Environmental Law.

**“Environmental Liability”** means any and all liability, claim, demand, obligation, cause of action, accusation, allegation, order, violation, damage, loss, cost, expense, injury, judgment, penalty, or fine alleged by any third party (including, without limitation, any private party or governmental entity), arising out of, relating to, or resulting from, directly or indirectly, in whole or in part: (i) the presence, generation, transport, disposal, treatment, storage or Release of Hazardous Materials, (ii) the violation or alleged violation of any Environmental Law, or (iii) any Enforcement or Remedial Action. This liability includes any cost of removing or disposing of any Hazardous Materials, any cost of enforcement, cost of investigation and/or remedial action, and any other cost or expense whatsoever, including, without limitation, reasonable attorneys', accountants', engineers', and consultants' fees and disbursements, interest, and medical expenses.

**“Environmental Law”** means any past, present, or future federal, state, or local laws, ordinances, regulations, judgments, and orders and the common law, including the law of strict liability and the law of abnormally dangerous activities, relating to environmental matters, including, without limitation, provisions pertaining to or regulating air pollution,



water pollution, noise control, wetlands, watercourses, wildlife, Hazardous Materials, or any other activities or conditions which impact or relate to the environment or nature.

**“Enforcement or Remedial Actions”** include any step taken by any person or entity (i) to cleanup, remedy, or remove any Release of Hazardous Materials, or (ii) to enforce compliance with or to collect or impose penalties, fines, or other sanctions provided by any Environmental Law.

**“Release”** includes any and all releasing, spilling, leaking, migrating (from or to), pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, dumping, and any other means by which any Hazardous Material or other substance may be introduced into or travel through the environment (i.e., the soils and/or groundwater).

2.12. **Emerson Representations and Warranties.** In order to induce the City and MEDC to convey the Gateway Parcel, Emerson makes the following representations and warranties, each of which representations and warranties is true and correct on the date hereof and will be true and correct on (and restated as of) the date of Closing, and each of which shall survive the Closing and the sale contemplated hereby:

2.12.1. Emerson is a corporation duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to transact business in the State of Texas, and Emerson is duly authorized to execute, deliver and perform this Agreement and all documents and instruments and transactions contemplated hereby or incidental hereto.

2.12.2. Emerson has dealt with no broker, finder or any other person, in connection with the conveyance of or the negotiation of the conveyance of the Gateway Parcel that might give rise to any claim for commission against the City or MEDC.

2.13. **Emerson Conditions.** The obligations of Emerson to consummate the transactions provided for in this Agreement shall be subject to the satisfaction of each of the following conditions (as satisfactory to Emerson, in its sole discretion unless another standard is provided below) on or before the date of Closing (or earlier, if so specified), subject to the rights of Emerson to waive, in writing, any one or more of such conditions:

2.13.1. The City and MEDC shall have obtained, on or before July 31, 2012, the Subdivision Approvals (the costs and expenses of which, including, without limitation, any application fees, map preparation fees and the cost of compliance with conditions of approval, shall be borne by the City and MEDC). The City and MEDC shall obtain Emerson’s prior written approval of any application, petition, preliminary or final plat, and any other documents submitted to the City or any other governmental authority in connection with the Subdivision Approvals. Notwithstanding the foregoing, should Emerson, in its sole and absolute discretion, determine at any time during the course of the City’s and MEDC’s obtaining the Subdivision Approvals, that Emerson is not satisfied with any terms or conditions pertaining to the Subdivision Approvals, Emerson may Terminate this Agreement by delivering written notice to the City and MEDC on or before the date for satisfaction of this condition.

2.13.2. The City Council shall have adopted, on or prior to July 31, 2012, the Amended Zoning Ordinance, which Amended Zoning Ordinance shall be satisfactory to Emerson in its sole discretion.

2.13.3. On or prior to July 31, 2012, the City and MEDC shall have caused the Declaration to have been amended in a manner to be approved by Emerson (the “**Amended Declaration**”), such approval to be in Emerson’s sole discretion with regard to the Amended Declaration’s impact on the Gateway Parcel, including, without limitation, any impact upon the uses and/or operations that may be conducted thereon and, such approval not to be unreasonably withheld, conditioned or delayed with regard to the Amended Declaration’s impact on the Gateway Development as a whole, including, among other things, the inclusion of the Gateway Parcel.

2.13.4. All conditions precedent to MEDC’s obligation to close under the Purchase and Sale Agreement (other than conditions to be satisfied as of the date of closing under the Purchase and Sale Agreement) shall have been satisfied or waived on or prior to the Due Diligence Date (as defined in the Purchase and Sale Agreement).

2.13.5. On or prior to the expiration of the Due Diligence Period, Emerson shall have determined that all City Approvals have been obtained or will be obtained in connection with the development, use and operation of the Corporate Headquarters.

2.13.6. On or prior to July 31, 2012, the City and Emerson shall have approved the Architectural Documents pursuant to Section 4.1.

2.13.7. No material adverse change with respect to the condition of the Gateway Parcel or the truth or accuracy of any of the City’s or MEDC’s representations or warranties under this Agreement, and no material default on the part of the City or MEDC under this Agreement, shall have occurred since the earlier of the Adoption Date and the date of this Agreement.

2.13.8. The Title Company shall be unconditionally committed to issuing at Closing a title policy in the amount of the fair market value of the Gateway Parcel, as determined by Emerson in its reasonable discretion, subject only to the Approved Gateway Parcel Exceptions. The cost of such owner’s policy shall be borne by the Parties in accordance with Section 2.7 hereof.

2.13.9. The City, MEDC and Emerson shall have agreed upon mutually agreeable forms of the special warranty deed (as required by Section 2.10(i)), Notice of Release of Reverter, Escrow Deed and Escrow Agreement during the Due Diligence Period.

2.13.10. The City and MEDC shall have, on or before the date of Closing, performed all of their covenants, obligations and agreements under this Agreement, in all material respects.

2.14. City Conditions. The obligations of the City and MEDC to consummate the transactions provided for in this Agreement shall be subject to the satisfaction of the Gateway Parcel

Transfer Conditions on or before the date of Closing (or earlier, if so specified), subject to the rights of the City or MEDC to waive any one or more of such conditions.

2.15. Insurance of Gateway Parcel. The City and MEDC will cause the Gateway Parcel to be insured in accordance with their current insurance program. The City and MEDC shall bear the risk of loss to the Gateway Parcel to and including the date of Closing.

2.16. Casualty. In the event of the damage or destruction of all or any part of the Gateway Parcel, Emerson shall have no right to Terminate this Agreement on account thereof, and the City and MEDC will assign to Emerson their interest in and to any insurance policies and proceeds thereof payable as a result of such damage or destruction less such portion thereof as shall first be reimbursed to the City and MEDC for the reasonable out-of-pocket costs of any restoration work incurred by the City or MEDC prior to Closing, and Emerson shall receive at Closing an amount equal to any uninsured loss, by reason of deductible or otherwise, relating to such damage or destruction. Neither the City nor MEDC shall, in any event, be obligated to effect any repair, replacement, and/or restoration, but may do so at its option.

2.17. Condemnation. In the event of the taking of all or any part of the Gateway Parcel prior to Closing, by eminent domain or condemnation, Emerson shall have no right to Terminate this Agreement on account thereof, and the City and Emerson will assign to Emerson their interest in and to any award and proceeds thereof payable as a result of such taking.

2.18. Uniform Vendor and Purchaser Risk Act. The terms and conditions of Sections 2.16 and 2.17 shall supersede and supplant any and all rights and obligations of any party hereto under the Uniform Vendor and Purchaser Risk Act, if enacted and in effect in Texas.

2.19. City Covenants. The City and MEDC covenant and agree that from and after the date of this Agreement and until the date of Closing:

2.19.1. The City and MEDC will, prior to the date of Closing, operate the Gateway Parcel subject to the following provisions and limitations:

(a) The City and MEDC shall continue to operate the Gateway Parcel consistent with the present business and operations thereof, and the City and MEDC shall deliver the Gateway Parcel to Emerson at Closing in its present condition.

(b) The City and MEDC shall not: (i) enter into any leases affecting all or any portion of the Gateway Parcel, (ii) enter into any service, supply, maintenance or other contracts pertaining to the Gateway Parcel or the operation of the Gateway Parcel, or (iii) construct or install or contract for the construction or installation of any improvements; without, in each instance, obtaining the prior written consent of Emerson.

2.19.2. The City and MEDC shall allow Emerson and its agents and consultants, from and after the date of this Agreement, continuing access during business hours to the Gateway Parcel for the purpose of conducting pre-audits, audits, or inspections and to verify compliance by the City and MEDC with this Agreement. Such access shall be exercised by Emerson at such times as deemed reasonably necessary to Emerson, may be exercised by

Emerson or by agents of or consultants to Emerson on Emerson's behalf, and shall be at the risk of Emerson.

2.19.3. The City and MEDC shall maintain and repair the Gateway Parcel in a careful, prudent and efficient manner.

2.19.4. The City shall, on or prior to July 18, 2012, transfer fee simple title to all portions of the Gateway Parcel owned by the City to MEDC.

2.19.5. MEDC shall have, on or prior to Closing, execute and record a mutual access, firelane, water, sanitary sewer and drainage easement, in favor of Emerson and other members of the public with respect to that portion of the Gateway Development shown as highlighted on **Exhibit "H"** attached hereto and made a part hereof, which easement shall be in form reasonably satisfactory to Emerson.

2.19.6. MEDC shall, on or prior to Closing, cause to be removed of record any and all restrictions on the Gateway Parcel included in that certain Restrictive Covenant by and between McKinney Blue Diamond, L.P., a Texas limited partnership and MEDC, dated September 28, 2000, and recorded in Volume 4763, Page 2427 of the Real Property Records of Collin County, Texas.

2.19.7. If Emerson Substantially Completes the Improvements on or before the Required Final Completion Date (as such date may be extended by the terms hereof), the City and MEDC shall promptly provide notice to the Title Company authorizing the Title Company to (i) release the Notice of Release of Reverter from escrow pursuant to the terms of the Escrow Agreement and (ii) record the Notice of Release of Reverter in the Official Records.

2.20. City Post-Closing Covenants. The City and MEDC covenant and agree that from and after the date of this Agreement and until the date of final completion of the Infrastructure Improvements, each shall permit, and cause any necessary third-party to permit, Emerson continuing access during business hours to all parcels of land necessary for Emerson to perform the Infrastructure Improvements (the "**Infrastructure Improvements Property**"). Such access shall be exercised by Emerson at such times as deemed reasonably necessary to Emerson, may be exercised by Emerson or by agents, consultants, or contractors of Emerson on Emerson's behalf, and shall be at the risk of Emerson. The provisions of this Section 2.20 shall survive the Closing.

### ARTICLE III TERM

3.1. Term Commencement. The rights, duties and obligations of the Parties hereunder shall be effective, and the Term commenced, upon execution hereof by the Parties.

3.2. Expiration of Term. Unless sooner Terminated pursuant to the applicable provisions of this Agreement, the Term shall expire on December 31, 2019, unless such date may be extended in the event of Force Majeure events. The Parties have established the Term as a reasonable estimate of the time required to carry out the Project, develop the Project, and obtain the public benefits of the Project.

ARTICLE IV  
THE PROJECT

4.1. Project Development. Emerson, MEDC and the City shall have the right to develop the Project and the Infrastructure Improvements in accordance with the terms and conditions of this Agreement. Prior to its commencement of work on the Infrastructure Improvements and the Corporate Headquarters, Emerson shall submit to the City architectural drawings for the Infrastructure Improvements and the Corporate Headquarters (collectively, the “**Architectural Documents**”), which Architectural Documents shall be subject to the City’s approval, which approval shall not be unreasonably withheld, conditioned or delayed, prior to Emerson’s commencement of the construction of the Infrastructure Improvements or Corporate Headquarters. The City agrees to streamline the development of the Gateway Parcel and the Infrastructure Improvements through the use of a project-specific liaison to assist Emerson through the implementation of the City Regulations for the Project and the Infrastructure Improvements. Emerson agrees to exercise reasonable efforts to Substantially Complete the Corporate Headquarters by the Required Final Completion Date. The City and MEDC agree to take all commercially reasonable steps to diligently facilitate the full, master-planned development of the entire Gateway Development, including the reasonable enactment and enforcement of amendments to the Declaration, including, without limitation, the Amended Declaration, in form satisfactory to Emerson in its sole discretion.

4.2. Project Zoning. The Project shall involve the development of the Corporate Headquarters, including buildings and improvements on the Gateway Parcel, pursuant to the terms of this Agreement. Emerson shall have the right to submit changes and modify its general development plan, in its business judgment, including but not limited to changes in the Architectural Documents relating to the Corporate Headquarters and changes in the location and square footage of any of the buildings and improvements depicted on the Architectural Documents relating to the Corporate Headquarters as long as the Project, as so modified, complies with the Amended Zoning Ordinance, this Agreement and all Applicable City Regulations. Emerson hereby acknowledges and agrees that the City’s approval of any amendment to the Amended Zoning Ordinance submitted by Emerson to the City that does not comply with any and all applicable Laws and any and all covenants, conditions and restrictions of record shall in no event be a basis of liability for the City or MEDC under this Agreement.

4.3. Exactions and Development Fees. The City agrees to waive Exactions that are imposed by the City in connection with the construction and development of the Project and/or the Infrastructure Improvements. Emerson agrees to pay all Development Fees in connection with the construction and development of the Project.

4.4. Cost of Project and Infrastructure Improvements. Subject to the immediately succeeding two grammatical sentences, Emerson shall be responsible for all onsite costs incurred in connection with the construction of the Corporate Headquarters. Notwithstanding the foregoing, the City and MEDC shall promptly (and, in any event, within five (5) business days) reimburse Emerson, from time to time, following request by Emerson with respect to all costs associated with installing a 16” water line as shown on **Exhibit “F”** attached hereto over and above the cost to install a 12” water line in such location as reasonably determined by Emerson. Emerson shall be responsible for the costs of the Infrastructure Improvements; provided, however, the City and MEDC shall promptly

(and, in any event, within five (5) business days) reimburse Emerson, from time to time, following request by Emerson for the City/MEDC Development Allocation.

4.5. Letters of Credit. Following request by the City, Emerson shall cause an Issuer (as defined in Exhibit “G” attached hereto and incorporated herein) to issue two irrevocable letters of credit (the “Letters of Credit”), the first in the amount of Four Million Dollars (\$4,000,000.00), and the second in the amount of One Million Dollars (\$1,000,000.00), which Letters of Credit, when issued, shall be promptly delivered to the City. The Letters of Credit shall be issued in accordance with, and enforceable under, the terms and conditions set forth in Exhibit “G”, with such changes to such terms and conditions as may be required to conform such terms and conditions to prevailing practice and custom or as may be required by the Issuer to issue such Letters of Credit. The City agrees to promptly reimburse Emerson for all reasonable costs and expenses incurred by Emerson directly in connection with the Letters of Credit, including, without limitation, the costs of issuance thereof. If Emerson Substantially Completes the Corporate Headquarters on or before the Required Final Completion Date, the City shall immediately return the Letters of Credit to Emerson.

4.6. Survival. This Article IV shall survive the Closing.

#### ARTICLE V GENERAL REGULATION OF DEVELOPMENT OF PROJECT

5.1. General Provisions. In addition to being subject to the City’s approval pursuant to Section 4.1 above, the Infrastructure Improvements and the Corporate Headquarters shall comply with all design criteria established in or pursuant to the Amended Zoning Ordinance, subject to variance thereto reasonably approved by the City.

5.2. Review and Processing of Project Approvals. Subject to the provisions of Sections 4.1 and 4.3, the City Approvals required for the construction and development of the Infrastructure Improvements and Corporate Headquarters shall be issued per the standard procedures of the City. The City Approvals covered under this Section 5.2 include building permits and certificates of occupancy. The City shall cooperate with Emerson to facilitate prompt and timely review and processing of all applications for City Approvals, including the timely processing and checking of all maps, plans, permits, building plans, subdivision plats and other plans relating to development of the Infrastructure Improvements and/or Corporate Headquarters filed by Emerson. In connection with any City Approval, the City shall exercise its discretion or take action in a manner which complies and is consistent with this Agreement and applicable Laws.

5.3. Emerson Signage. Emerson shall have the right to signage for the Corporate Headquarters that is permitted in the City Regulations.

5.4. Declaration. MEDC has previously recorded the Declaration of Conditions, Covenants and Restrictions in the form attached hereto as Exhibit “C” (the “Declaration”), which covers and affects certain property owned by MEDC. On or prior to July 16, 2012, the City and MEDC shall cause the Declaration to be amended pursuant to Section 2.13.3. Notwithstanding the foregoing, Emerson shall have sole discretion with regard to the Amended Declaration’s impact on the Gateway Parcel.

5.5. Enforcement of Laws and City Regulations. Nothing herein shall preclude the City, in its discretion, from taking any action authorized by Laws or City Regulations to prevent, stop or correct any violation of Laws or City Regulations occurring before, during or after construction of the buildings and improvements on the Gateway Parcel by Emerson.

5.6. Undocumented Workers. In connection with the construction phase of the Project only, Emerson, prior to Substantial Completion of the Improvements, agrees to not knowingly employ an undocumented worker (as opposed to an independent contractor) in violation of Chapter 2264 of the Texas Government Code, as amended.

5.7. Collin College Job Training. The City agrees to assist Emerson in the coordination of job training assistance for Emerson from Collin College at its Gateway campus for a period of up to three (3) years beginning on January 1, 2013.

5.8. Survival. This ARTICLE V shall survive the Closing.

#### ARTICLE VI ECONOMIC INCENTIVE PAYMENT

6.1. Economic Development Payment. Emerson has represented to the City and MEDC, and the City and MEDC acknowledge that they have been informed, that the acquisition of the Gateway Parcel and the development and construction of the Corporate Headquarters and Infrastructure Improvements as described in this Agreement can only occur with the use of an economic incentive payment in an amount equal to the Incentive Amount. The Incentive Amount shall be payable from sales tax receipts of MEDC as such are delivered thereto by the City for the implementation of Article III, Section 52-a of the Texas Constitution or any other economic development or financing programs authorized by statute or the home-rule powers of the City or MEDC under applicable Texas law. The Incentive Amount shall be payable by MEDC to Emerson within five (5) days after Substantial Completion of the Corporate Headquarters and shall be a contingent liability of MEDC. The City hereby finds and affirms that the City has the authority under Chapter 380 of the Tex. Loc. Gov't Code to provide economic development incentives in the form of loans or grants of public funds to support the expansion of local business activity, employment and development. Additionally, the City hereby finds and affirms that for the public purpose of promoting economic development and diversity, increasing employment, reducing unemployment and underemployment, expanding commerce and stimulating business and commercial activity in the State of Texas, the County of Collin and the City, the City and MEDC desire to enter into this Chapter 380 Economic Development and Incentive Agreement program and agreement, which is hereby included and incorporated herein, through which the City and MEDC shall offer the incentives and grants to Emerson as are more particularly described in this Agreement. The Parties agree that Emerson shall have no right to any Incentive Amount under this ARTICLE VI if Emerson fails to achieve Substantial Completion of the Corporate Headquarters on or prior to the Required Final Completion Date and such failure has not been cured in accordance with Section 8.1.1. This ARTICLE VI shall survive the Closing.

#### ARTICLE VII ASSIGNMENT

7.1. Assignment by the City; MEDC. The City shall not have the right to assign, pledge, transfer or convey the City's rights, titles, interest, or obligations under this Agreement other than to MEDC. MEDC shall not have the right to assign, pledge, transfer or convey MEDC's rights, titles, interest or obligations under this Agreement other than to the City. Any such assignment by the City or MEDC shall not relieve the assigning entity of any of their respective obligations under this Agreement.

7.2. Assignment by Emerson.

7.2.1. Emerson shall not, prior to Substantial Completion, have the right to assign its respective rights, titles, interests, or obligations under this Agreement to any third party, other than pursuant to a Permitted Transfer, without the prior written consent of the City, which consent may be withheld in the City's sole discretion.

7.2.2. If Emerson shall consummate a Restricted Transfer within five (5) years after the earlier of Substantial Completion and the Required Final Completion Date, Emerson shall (i) pay the Clawback Amount to the City within 30 days following the consummation of such Restricted Transfer and (ii) if, and only if, (1) MEDC shall have purchased the Emerson Parcel from Emerson pursuant to the terms of the Purchase and Sale Agreement and (2) MEDC can and does convey fee simple title to the Emerson Parcel to Emerson with no material changes to the improvements thereon and no material changes to the status of title to the Emerson Parcel existing as of the time of closing under the Purchase and Sale Agreement (including, without limitation, no leases and no new encumbrances), pay MEDC an amount equal to the "Purchase Price" (as defined in the Purchase and Sale Agreement) upon conveyance of the Emerson Parcel back to Emerson. Notwithstanding the foregoing, Emerson shall have no obligation to pay the Clawback Amount or repurchase the Emerson Parcel in the event that Substantial Completion does not occur prior to the Required Final Completion Date.

7.3. Assignment of Incentive Amount. Notwithstanding an assignment under Section 7.2.2, Emerson understands and agrees that the City and MEDC expressly prohibit Emerson from selling, transferring, assigning or conveying in any way any rights to receive the Incentive Amount (unless in connection with a first lien deed of trust loan or a Transfer to an Affiliate of Emerson).

7.4. Mortgagee as Transferee. No Mortgage of the Gateway Parcel or the improvements thereon (including the execution and delivery thereof to the Mortgagee) shall constitute a Transfer. A Mortgagee shall be a Transferee only upon: (a) the acquisition by such Mortgagee of the affected interest of Emerson encumbered by such Mortgagee's Mortgage; and (b) delivery to the City and MEDC of a written agreement assuming, from and after the date such Mortgagee so acquires its interest, the applicable rights, duties and obligations of Emerson under this Agreement. The City and MEDC hereby consent to the Transfer to a Mortgagee in accordance with this Section 7.4. No further consent of the City or MEDC shall be required for any such Transfer.

7.5. Liability Following Transfer. Prior to Substantial Completion of the Corporate Headquarters, unless specifically released by the City and MEDC, Emerson and any other subsequent owner Transferring fee title, and such other rights, titles and interests in this Agreement, to the extent



the same is permitted hereunder, shall upon the consummation of such Transfer, not be relieved of its liability for the obligations under this Agreement. The City and MEDC covenant and agree that this Agreement shall remain in full force and be unaffected by any such permitted assignments, pledges, Transfers or conveyances.

ARTICLE VIII  
EVENTS OF DEFAULT; REMEDIES; ESTOPPEL CERTIFICATES

8.1. Events of Default

8.1.1. Any failure by a Party to perform any material term or provision of this Agreement shall, subject to the provisions of this Agreement to the contrary, constitute an **“Event of Default”**, if: (a) such defaulting Party does not cure such failure within thirty (30) days following delivery of a Notice (as hereinafter defined) of default from one of the other Parties (**“Notice of Default”**), unless some other time period is expressly provided under this Agreement, where such failure is of a nature that can be cured within such thirty (30) day period; or (b) where such failure is not of a nature which can be cured within such thirty (30) day period, the defaulting Party does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure. Any Notice of Default given hereunder shall specify in reasonable detail the nature of the failures in performance by the defaulting Party and the manner in which such failures of performance may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

8.2. General Remedies.

8.2.1. Upon the occurrence of an Event of Default by the City or MEDC, Emerson shall have the right, in addition to all other rights and remedies available under this Agreement to: (a) bring any proceeding in the nature of specific performance, injunctive relief or mandamus; and/or (b) bring any action at law or in equity.

8.2.2. Except as otherwise provided in this Agreement, upon the occurrence of an Event of Default by Emerson, the City and MEDC shall have the right, in addition to all other rights and remedies available under this Agreement, to: (a) bring any proceeding in the nature of injunctive relief or mandamus; and/or (b) bring any action at law or in equity. The City and MEDC expressly acknowledge and agree that they shall not have the right to bring a specific performance action against Emerson to require Emerson to complete construction of the Corporate Headquarters.

8.2.3. Notwithstanding anything contained in this Agreement to the contrary, in the event Emerson fails to Substantially Complete the Improvements on or before the Required Final Completion Date, the City’s and MEDC’s sole remedies shall be to either, by written notice to Emerson, (a) exercise the Right of Reverter, cause the Title Company to release from escrow and record the Escrow Deed pursuant to the terms of the Escrow Agreement (and without the necessity of any notice or other action on the part of Emerson), in which event Emerson shall promptly, but in no event later than one hundred twenty (120) days after receipt of such notice, at Emerson’s sole cost and expense, demolish the improvements, if any, constructed by Emerson on the Gateway Parcel, remove all materials and debris located on the

Gateway Parcel and restore the Gateway Parcel to substantially the same condition as existed on the Gateway Parcel Transfer Date, or (b) require Emerson to pay the City, within thirty (30) days following such written notice, Four Million Dollars (\$4,000,000), whereupon Emerson shall make such payment, after which Emerson shall retain title to the Gateway Parcel, the Escrow Deed shall be destroyed in accordance with the terms of the Escrow Agreement, and the Notice of Release of Reverter shall be recorded by the Title Company in the Official Records. In the event Emerson fails to timely perform its obligations under subsection (a) above, the City and/or MEDC may immediately draw upon the second Letter of Credit referenced in Section 4.5 in accordance with the provisions of **Exhibit "G"**. Notwithstanding the foregoing or anything in this Agreement to the contrary, in the event that on the Required Final Completion Date, Emerson shall have achieved ninety-five percent (95%) completion of the construction of the Corporate Headquarters in accordance with the Architectural Documents (as reasonably determined by the Architect), the Required Final Completion Date for all purposes hereof shall be automatically extended to June 30, 2014.

8.3. Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any failure of performance, including an Event of Default, shall be effective or binding upon such Party unless made in writing by such Party (or unless expressly otherwise provided herein), and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other action or inaction, or cover any other period of time, other than any action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent action or inaction. Except as expressly provided herein, nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

8.4. Limited Liability. Notwithstanding any other provision of this Agreement, no Party shall in any circumstances be liable to any other Party under, arising out of or in any way connected with this Agreement for any consequential, special or punitive damages, whether arising in contract or tort, including negligence.

## ARTICLE IX MORTGAGEE PROTECTION

9.1. Mortgagee Protection. This Agreement shall be superior and senior to the conveyance of any Mortgage encumbering any interest in the Improvements. Notwithstanding the foregoing, no Event of Default shall defeat, render invalid, diminish or impair the conveyance of any Mortgage made for value, but, subject to the provisions of Section 9.2, all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity (including any Mortgagee) who acquires any right, title or interest in and to the Improvements, or any portion thereof or interest therein or improvement thereon, by foreclosure, trustee's sale, deed-in-lieu of foreclosure, or otherwise.

9.2. Mortgagee Not Obligated; Mortgagee as Transferee. No Mortgagee shall have any obligation or duty under this Agreement whatsoever, including but not limited to, any obligation to construct the Corporate Headquarters or the Infrastructure Improvements, except that nothing contained in this Agreement shall be deemed to permit or authorize any Mortgagee to undertake any new construction or improvement in the Project, or to otherwise have the benefit of any rights of Emerson, or to enforce any obligation of the City or MEDC, under this Agreement, unless and until such Mortgagee elects to become a Transferee pursuant to Section 9.3. Any Mortgagee that affirmatively elects to become a Transferee shall be later released from all obligations and liabilities under this Agreement upon the subsequent Transfer by the Mortgagee of its interest as a Transferee to another person or entity.

9.3. Notice of Default to Mortgagee; Right of Mortgagee to Cure. If the City or MEDC receives notice from a Mortgagee requesting that a copy of any future Notice of Default that may be given Emerson hereunder and specifying the address for service thereof (“**Notice Request**”), then the City or MEDC shall deliver to such Mortgagee, concurrently with service thereon to Emerson, any Notice of Default thereafter given to Emerson. Such Mortgagee shall have the right (but not the obligation) to cure or remedy, or to commence to cure or remedy, the Event of Default claimed within the applicable time periods for cure specified in this Agreement. If, however, the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession of the Project, or portion thereof, such Mortgagee shall seek to obtain possession with diligence and continuity (but in no event later than ninety (90) days after a copy of the Notice of Default is given to Mortgagee) through a receiver or otherwise, and shall thereafter remedy or cure such Event of Default or noncompliance promptly and with diligence and dispatch after obtaining possession. Other than an Event of Default or noncompliance (i) for failure to pay money or (ii) that is reasonably susceptible of remedy or cure prior to a Mortgagee obtaining possession, so long as such Mortgagee is pursuing cure of the Event of Default or noncompliance in conformance with the requirements of this Section 9.3, the City or MEDC shall not exercise any right or remedy under this Agreement on account of such Event of Default or noncompliance. When and if a Mortgagee acquires the interest of Emerson encumbered by such Mortgagee’s Mortgage and such Mortgagee elects in writing to become a Transferee pursuant to this Section 9.3, then such Mortgagee shall promptly cure all Events of Default or noncompliance then reasonably susceptible of being cured by such Mortgagee to the extent such that such Events of Default or noncompliance are not cured prior to such Mortgagee’s becoming a Transferee pursuant to this Section 9.3.

9.4. Priority of Mortgages. For purposes of exercising any remedy of a Mortgagee pursuant to this ARTICLE IX, the applicable Laws of the State of Texas shall govern the rights, remedies and priorities of each Mortgagee, absent a written agreement between Mortgagees otherwise providing.

9.5. Collateral Assignment. As additional security to a Mortgagee under a Mortgage on the Project or any portion thereof, Emerson shall have the right to execute a collateral assignment of Emerson’s rights, benefits and remedies under this Agreement in favor of the Mortgagee (“**Collateral Assignment**”) on the standard form provided by the Mortgagee.

## ARTICLE X NOTICES

10.1. Delivery of Notices. All notices, statements, demands, consents and other communications (“**Notices**”) required or permitted to be given by any Party to another Party pursuant to this Agreement or pursuant to any applicable Law or requirement of public authority shall be properly given only if the Notice is (a) made in writing (whether or not so stated elsewhere in this Agreement); (b) given by one of the methods prescribed in Section 10.2; and (c) sent to the Party to which it is addressed at the address set forth below or at such other address as such Party may hereafter specify by at least five (5) calendar days prior written notice:

If to the City:

City of McKinney  
222 N. Tennessee  
McKinney, Texas 75069  
Attention: Jason Gray, City Manager  
Facsimile: (972) 547-2607

If to MEDC:

McKinney Economic Development  
Corporation  
321 N. Central Expressway, Suite 200  
McKinney, Texas 75070  
Attention: Keith Clifton, Board Chairman  
Facsimile: (972) 562-1222

and to:

Brown & Hofmeister, LLP  
740 E. Campbell Road, Suite 800  
Richardson, Texas 75081  
Attention: Mark Houser, Esq.  
Facsimile: (214) 747-6111

If to Emerson:

Emerson Process Management Regulator  
Technologies, Inc.  
c/o Emerson Electric, Co.  
8000 W. Florissant Ave.  
P.O. Box 4100  
St. Louis, Missouri 63136-8506  
Attention: Mr. Stephen L. Clarke  
Facsimile: (314) 553-1365

and to:

Emerson Process Management Regulator  
Technologies, Inc.  
310 East University Drive  
McKinney, Texas  
Attention: Mr. Dan Owens  
Facsimile: (314) 553-1365

and to:

Bryan Cave LLP  
One Metropolitan Square  
211 North Broadway  
Suite 3600  
St. Louis, Missouri 63102-2750  
Attention: James G. Buell, Esq.  
Facsimile: (314) 552-8373

10.2. Methods of Delivery. All Notices required or permitted to be given hereunder shall be deemed to be duly given: (a) at the time of delivery, if such Notice is personally delivered; or (b) on the third business day after mailing, if such Notice is deposited with the United States Postal Service, postage prepaid, for mailing via certified mail, return receipt requested; or (c) on the next business day, if such Notice is sent by a nationally recognized overnight courier which maintains evidence of receipt; or (d) upon receipt of delivery, if such Notice is sent by facsimile transmission with a confirmation copy delivered the following day by a nationally recognized overnight courier which maintains evidence of receipt. If any Notice is not received or cannot be delivered due to a change in address of the receiving Party, of which notice was not properly given to the sending Party, or due to a refusal to accept by the receiving Party, such Notice shall be effective on the date delivery is attempted.

#### ARTICLE XI GENERAL PROVISIONS

11.1. Negation of Partnership. The Parties specifically acknowledge that the Project and the Infrastructure Improvements are a private development, that no Party is acting as the agent of any other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Emerson, the affairs of the City or MEDC, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any person or entity who is not a Party or a Transferee; and nothing in this Agreement shall limit or waive any rights Emerson may have or acquire against any third party with respect to the terms, covenants or conditions of this Agreement.

11.2. Not A Public Dedication. Except as shown on any approved final or record plat of the Gateway Parcel, nothing herein contained shall be deemed to be a gift or dedication of the Gateway Parcel or any buildings or improvements constructed in the Project or the Infrastructure Improvements, to the general public, for the general public, or for any public use or purpose whatsoever (except those public benefits described in Section 6.1 hereof which accrue to the City through the development of local business activity, employment and development, none of which in any way entitle the City or any other governmental or quasi-governmental entity to any gift or dedication of the Gateway Parcel as private property), it being the intention and understanding of the Parties that this Agreement be strictly limited to and for the purposes herein expressed for the development of the Gateway Parcel as private property.

11.3. Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person or entity, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or entity or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

11.4. Exhibits. The Exhibits, to which reference is made herein, are deemed incorporated into this Agreement in their entirety by reference thereto.

11.5. Amendment or Termination. Except as expressly provided in this Agreement, this Agreement may be Terminated, modified or amended only by the written consent of the Parties.

11.6. Entire Agreement. This written Agreement and the Exhibits hereto, contain all the representations and the entire agreement among the Parties with respect to the subject matter hereof. Upon execution of this Agreement, any prior or contemporaneous correspondence, memoranda, agreements, warranties or representations, including without limitation, the LOI, are superseded in total by this Agreement and Exhibits hereto. Neither the conduct nor actions of the Parties, nor the course of dealing or other custom or practice between the Parties, shall constitute a waiver or modification of any term or provision of this Agreement. This Agreement may be modified or amended only in the manner specified in this Agreement.

11.7. Construction of Agreement. All of the provisions of this Agreement have been negotiated at arms-length among the Parties and after advice by counsel and other representatives chosen by each Party, and the Parties are fully informed with respect thereto. Therefore, this Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provisions hereof, or by reason of the status of either Party. The provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party and consistent with the provisions hereof, in order to achieve the objectives and purpose of the Parties hereunder. The captions preceding the text of each Article and Section are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

11.8. Further Assurances; Covenant to Sign Documents. Each Party shall take all actions and do all things, and execute, with acknowledgment or affidavit if required, any and all documents and writings, which may be necessary or proper to achieve the purposes and objectives of this Agreement.

11.9. Governing Law. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the Laws of the State of Texas.

11.10. Signature Pages. For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

11.11. Recording. The Parties agree that this Agreement shall not be recorded. In lieu thereof, the Parties shall prepare a separate Memorandum of Agreement, a form of which is attached hereto as **Exhibit "E"**, to be recorded in the Land Records of Collin County, Texas.

11.12. Time. Time is of the essence of this Agreement and of each and every term and condition hereof.

11.13. No Personal Liability. No member, officer, director or employee of Emerson shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement. The City and MEDC shall look solely to the assets of Emerson for the payment of any claim under this Agreement.

11.14. Performance on Business Days. If any date for the occurrence of an event or act under this Agreement falls on a Saturday or Sunday or legal holiday in the State of Texas, then the time for the occurrence of such event or act shall be extended to the next succeeding business day.

11.15. Independent Contract Consideration. Contemporaneously with the execution of this Agreement, Emerson hereby delivers to the City and MEDC, and the City and MEDC hereby acknowledge receipt of, One Hundred Dollars (\$100), which sum is in addition to and independent of any other consideration or payment set forth in this Agreement, is nonrefundable under any circumstance, and will be retained by the City and MEDC as consideration for this Agreement notwithstanding any other terms or provisions contained in this Agreement.

*[signatures on the following pages]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement to be effective as of the date hereinabove provided.

**CITY:**

THE CITY OF MCKINNEY, TEXAS  
a municipal corporation

By: \_\_\_\_\_  
Name: Jason Gray  
Title: City Manager

**MEDC:**

MCKINNEY ECONOMIC DEVELOPMENT  
CORPORATION,  
a Texas non-profit corporation

By: \_\_\_\_\_  
Name: Keith Clifton  
Title: Board Chairman

**EMERSON:**

EMERSON PROCESS MANAGEMENT  
REGULATOR TECHNOLOGIES, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT "A"**  
to that certain  
CHAPTER 380 ECONOMIC DEVELOPMENT AND  
INCENTIVE AGREEMENT  
by and among  
the CITY OF MCKINNEY, TEXAS,  
a municipal corporation  
and  
MCKINNEY ECONOMIC DEVELOPMENT  
CORPORATION,  
a Texas nonprofit corporation  
and  
EMERSON PROCESS MANAGEMENT REGULATOR  
TECHNOLOGIES, INC.

**LEGAL DESCRIPTION OF EMERSON PARCEL**

[see attached]

**EXHIBIT “A-1”**  
to that certain  
CHAPTER 380 ECONOMIC DEVELOPMENT AND  
INCENTIVE AGREEMENT  
by and among  
the CITY OF MCKINNEY, TEXAS,  
a municipal corporation  
and  
MCKINNEY ECONOMIC DEVELOPMENT CORPORATION,  
a Texas nonprofit corporation  
and  
EMERSON PROCESS MANAGEMENT REGULATOR TECHNOLOGIES, INC.

**GRAPHIC OF GATEWAY PARCEL**

[see attached]

**EXHIBIT “B”**  
to that certain  
CHAPTER 380 ECONOMIC DEVELOPMENT AND  
INCENTIVE AGREEMENT  
by and among  
the CITY OF MCKINNEY, TEXAS,  
a municipal corporation  
and  
MCKINNEY ECONOMIC DEVELOPMENT  
CORPORATION,  
a Texas nonprofit corporation  
and  
EMERSON PROCESS MANAGEMENT REGULATOR  
TECHNOLOGIES, INC.

**PROPOSED SITE PLAN**

[see attached]

**EXHIBIT “C”**  
to that certain  
CHAPTER 380 ECONOMIC DEVELOPMENT AND  
INCENTIVE AGREEMENT  
by and among  
the CITY OF MCKINNEY, TEXAS,  
a municipal corporation  
and  
MCKINNEY ECONOMIC DEVELOPMENT  
CORPORATION,  
a Texas nonprofit corporation  
and  
EMERSON PROCESS MANAGEMENT REGULATOR  
TECHNOLOGIES, INC.

**DECLARATION OF CONDITIONS, COVENANTS  
AND RESTRICTIONS**

[see attached]

**EXHIBIT “D”**  
to that certain  
CHAPTER 380 ECONOMIC DEVELOPMENT AND  
INCENTIVE AGREEMENT  
by and among  
the CITY OF MCKINNEY, TEXAS,  
a municipal corporation  
and  
MCKINNEY ECONOMIC DEVELOPMENT  
CORPORATION,  
a Texas nonprofit corporation  
and  
EMERSON PROCESS MANAGEMENT REGULATOR  
TECHNOLOGIES, INC.

**PURCHASE AND SALE AGREEMENT**

[see attached]

**EXHIBIT “E”**  
to that certain  
CHAPTER 380 ECONOMIC DEVELOPMENT AND  
INCENTIVE AGREEMENT  
by and among  
the CITY OF MCKINNEY, TEXAS,  
a municipal corporation  
and  
MCKINNEY ECONOMIC DEVELOPMENT CORPORATION,  
a Texas nonprofit corporation  
and  
**EMERSON PROCESS MANAGEMENT REGULATOR TECHNOLOGIES, INC.**

**MEMORANDUM OF AGREEMENT**

[see attached]

**THIS DOCUMENT PREPARED  
BY AND AFTER RECORDING  
RETURN TO:**

Edward Fields, Esq.  
Bryan Cave LLP  
One Metropolitan Square  
211 North Broadway, Suite 3600  
St. Louis, Missouri 63102

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**MEMORANDUM OF CHAPTER 380 ECONOMIC  
DEVELOPMENT AND INCENTIVE AGREEMENT**

**THIS MEMORANDUM OF CHAPTER 380 ECONOMIC DEVELOPMENT AND INCENTIVE AGREEMENT** is dated this \_\_\_\_ day of July 2012, between **THE CITY OF MCKINNEY, TEXAS**, a municipal corporation (the "City"), **MCKINNEY ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation ("MEDC"), and together with the City, collectively, "Grantor"), and **EMERSON PROCESS MANAGEMENT REGULATOR TECHNOLOGIES, INC.**, a Delaware corporation ("Grantee").

Grantor is the owner of the real property legally described on Exhibit A attached hereto (the "Property").

Grantor and Grantee have entered into that certain Chapter 380 Economic Development and Incentive Agreement dated as of July [\_\_\_], 2012 (the "Agreement") pursuant to which Grantor has granted Grantee the exclusive right to construct a new corporate headquarters on the Property, which Property is part of an approximately 90-acre master-planned development to be developed under a public-private partnership. In connection with such development, Grantor has agreed to transfer fee simple title to the Property to Grantee upon the satisfaction of certain conditions related to the approval of design development documentation, subdivision approvals, recordation of an amended and restated declaration relating to the Property and other development-related items.

Any transfer of the Property by Grantor shall be subject to the rights of Grantee under the Agreement, and no such transfer shall be deemed to extinguish such rights, each of which shall remain in full force and effect as against any subsequent owner of the Property or any portion thereof, until the expiration of such rights.

In the event of a conflict between the terms of this Memorandum and the terms of the Agreement, the terms of the Agreement shall control, to the extent of the conflict.

This Memorandum may be executed in counterpart.

IN WITNESS WHEREOF, the parties have signed below as of the day and year first above written.

GRANTOR:

THE CITY OF MCKINNEY, TEXAS,  
a municipal corporation

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

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

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

MCKINNEY ECONOMIC DEVELOPMENT  
CORPORATION,  
a Texas non-profit corporation

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

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

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

GRANTEE:

EMERSON PROCESS MANAGEMENT  
REGULATOR TECHNOLOGIES, INC.,  
a Delaware corporation

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

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

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



**[NOTARY BLOCKS TO BE PROVIDED AND FORM SUBJECT TO REVIEW  
BY TITLE COMPANY]**

**EXHIBIT A**  
**REAL PROPERTY**

**EXHIBIT “F”**  
to that certain  
CHAPTER 380 ECONOMIC DEVELOPMENT AND  
INCENTIVE AGREEMENT  
by and among  
the CITY OF MCKINNEY, TEXAS,  
a municipal corporation  
and  
MCKINNEY ECONOMIC DEVELOPMENT CORPORATION,  
a Texas nonprofit corporation  
and  
**EMERSON PROCESS MANAGEMENT REGULATOR TECHNOLOGIES, INC.**

**INFRASTRUCTURE IMPROVEMENTS**

[see attached]

**EXHIBIT “G”**  
to that certain  
CHAPTER 380 ECONOMIC DEVELOPMENT AND  
INCENTIVE AGREEMENT  
by and among  
the CITY OF MCKINNEY, TEXAS,  
a municipal corporation  
and  
MCKINNEY ECONOMIC DEVELOPMENT CORPORATION,  
a Texas nonprofit corporation  
and  
**EMERSON PROCESS MANAGEMENT REGULATOR TECHNOLOGIES, INC.**

**LETTERS OF CREDIT**

1. **Letters of Credit.** Emerson shall cause to be issued, on or before the date sixty (60) days after Closing, two unconditional, irrevocable standby letters of credit (“Letters of Credit”) which comply with the requirements of this Exhibit “G”, with such changes to such terms and conditions as may be required to conform such terms and conditions to prevailing practice and custom or as may be required by the Issuer to issue such Letters of Credit (or is otherwise reasonably acceptable to the City) and which:

(a) are issued by a United States federal or state chartered bank (“Issuer”) that (i) is either a member of the New York Clearing House Association or is a commercial bank or trust company reasonably acceptable to the City, (ii) has total assets of at least \$10,000,000,000, as determined in accordance with generally accepted accounting principles consistently applied (“Total Assets”), and (iii) maintains and operates a branch in the Dallas, Texas area;

(b) name the City as beneficiary thereunder;

(c) have a term ending no earlier than March 31, 2015;

(d) automatically renew for one-year periods unless Issuer notifies beneficiary in writing, at least 60 days prior to the expiration date, that Issuer elects not to renew the Letters of Credit;

(e) provide for payment to beneficiary of immediately available funds (denominated in United States dollars) in the amount of, with respect to the first Letter of Credit, \$4,000,000.00, and with respect to the second Letter of Credit, \$1,000,000.00, within 24 hours after presentation of the Sight Draft substantially conforming to the form attached as Exhibit “A” to the Letter of Credit;

(f) provide that draws may be presented, and are payable, at Issuer’s letterhead office, an office located at a specific location in Dallas, Texas and any other full service office of Issuer;

- (g) are payable in sight drafts which only require the beneficiary to state that the draw is payable to the order of beneficiary;
- (h) permit partial and multiple draws;
- (i) permit multiple transfers by beneficiary;
- (j) waive any rights Issuer may have, at law or otherwise, to subrogate to any claims beneficiary may have against applicant or applicant may have against beneficiary; and
- (k) are governed by the International Standby Practices 1998, published by the International Chamber of Commerce.

2. **Definition of Draw Event.** “Draw Event” means the occurrence of both of the following events:

(a) Emerson fails to Substantially Complete the Corporate Headquarters on or before the Required Final Completion Deadline, as such terms are defined in the attached Agreement; and

(b) (1) with respect to the \$4,000,000 Letter of Credit, City elects the remedy set forth in Section 8.2.3(b) of the attached Agreement and Emerson fails to pay City \$4,000,000 in accordance with the timeframe set forth in Section 8.2.3(b) of the attached Agreement (the “\$4 Million Payment Default”) or (2) with respect to the \$1,000,000 Letter of Credit, City elects the remedy set forth in Section 8.2.3(a) of the attached Agreement and Emerson fails to demolish the improvements, if any, constructed by Emerson at the Gateway Parcel (as defined in the Agreement) in accordance with the timeframe set forth in Section 8.2.3(a) of the attached Agreement (the “Demolition Default”).

3. **Draw and Use of Draw Proceeds.** Immediately upon the occurrence of a Draw Event, and at any time thereafter, the City may draw on the Letter of Credit, in whole or in part (if partial draw is made, the City may make multiple draws), as the City may determine in the City’s sole and absolute discretion. The term “Draw Proceeds” means the cash proceeds of any draw or draws made by the City under the Letter of Credit. Any delays by the City in drawing on the Letter of Credit or using the Draw Proceeds will not constitute a waiver by the City of any of its rights hereunder with respect to the Letter of Credit or the Draw Proceeds. The City will hold the Draw Proceeds in its own name and may co-mingle the Draw Proceeds with other accounts of the City or invest them as the City may determine in its sole and absolute discretion.

If it is determined or adjudicated by a court of competent jurisdiction that the City was not entitled to draw on the Letter of Credit, Emerson may, as its sole and exclusive remedy, cause the City to (i) deliver the prior original Letter of Credit to Issuer for cancellation (if not theretofore fully drawn), (ii) return to Issuer the amount of the Draw Proceeds which the court determines the City was not entitled to draw and (iii) reimburse Emerson for all out-of-pocket fees (including, without limitation, attorneys’ fees, costs and interest expenses actually incurred by Emerson as a direct result of the City’s draw on the Letter of Credit) (City hereby agrees to perform the foregoing obligations); provided, however, Emerson may exercise its exclusive remedy only after Emerson has caused a replacement Letter of Credit complying with Section 1

above to be issued and delivered to the City. The City will not be liable for any other actual damages or any indirect, consequential, special or punitive damages incurred by Emerson in connection with either a draw by the City on the Letter of Credit or the use or application by the City of the Draw Proceeds. Nothing in the attached Agreement or in the Letter of Credit will confer upon Emerson any property right or interest in any Draw Proceeds.

4. **Additional Agreements of Emerson.** Emerson expressly acknowledges and agrees that:

(a) the Letter of Credit constitutes a separate and independent contract between the City and Issuer, and Emerson has no right to submit a draw to Issuer under the Letter of Credit;

(b) Emerson is not a third-party beneficiary of such contract, and the City's ability to either draw under the Letter of Credit for the full or any partial amount thereof or to apply Draw Proceeds may not, in any way, be conditioned, restricted, limited, altered, impaired or discharged by virtue of any laws to the contrary, including, but not limited to, any laws that restrict, limit, alter, impair, discharge or otherwise affect any liability that Emerson may have under the attached Agreement or any claim that the City has or may have against Emerson;

(c) neither the Letter of Credit nor any Draw Proceeds will be or become the property of Emerson, and Emerson does not and will not have any property right or interest therein; and

(d) Emerson is not entitled to any interest on any Draw Proceeds.

5. **Restrictions on Emerson Actions.** Subject to the terms hereof, Emerson hereby irrevocably waives any and all rights and claims that it may otherwise have at law or in equity, to contest, enjoin, interfere with, restrict or limit, in any way whatsoever, any requests or demands by the City to Issuer for a draw or payment to the City under the Letter of Credit. If Emerson, or any person or entity on Emerson's behalf or at Emerson's discretion, brings any proceeding or action to contest, enjoin, interfere with, restrict or limit, in any way whatsoever, any one or more draw requests or payments under the Letter of Credit, Emerson will be liable for any and all direct and indirect damages resulting therefrom or arising in connection therewith, including, without limitation, reasonable attorneys' fees and costs.

6. **Additional Agreements of City.** City expressly acknowledges and agrees that:

(a) In the event of a \$4 Million Payment Default, the City's sole and exclusive remedy with respect thereto shall be a draw on the \$4,000,000 Letter of Credit, and Emerson shall not be liable for any other actual damages or any indirect, consequential or punitive damages.

(b) In the event of a Demolition Default, the City's sole and exclusive remedy with respect thereto shall be a draw on the \$1,000,000 Letter of Credit, and Emerson shall not be liable for any other actual damages or any indirect, consequential or punitive damages.

(c) In the event the City draws on the \$1,000,000 Letter of Credit following a Demolition Default, the City shall promptly demolish the improvements, if any, constructed by Emerson at the Gateway Parcel (as defined in the Agreement) and shall use such funds for reasonable costs and expenses incurred by the City or MEDC arising from, relating to or in connection with such demolition, the \$1,000,000 Letter of Credit, and the cleaning and restoration of the Gateway Parcel, including without limitation all amounts paid in connection with the issuance of or drawing upon the Letter of Credit and all costs and all fees and other amounts paid to contractors, engineers, attorneys and other professionals in connection with the Letter of Credit or the demolition, cleaning and restoration of the Gateway Parcel, and shall promptly after the completion of such demolition return any funds not used for such purpose to Emerson.

**EXHIBIT “H”**  
to that certain  
CHAPTER 380 ECONOMIC DEVELOPMENT AND  
INCENTIVE AGREEMENT  
by and among  
the CITY OF MCKINNEY, TEXAS,  
a municipal corporation  
and  
MCKINNEY ECONOMIC DEVELOPMENT CORPORATION,  
a Texas nonprofit corporation  
and  
**EMERSON PROCESS MANAGEMENT REGULATOR TECHNOLOGIES, INC.**

**FIRELANE DEPICTION**

[see attached]



