

PERFORMANCE AGREEMENT

This Performance Agreement (this "Agreement") is entered into by and between Pflugerville Community Development Corporation (the "PCDC"), a Section 4B corporation incorporated under the Development Corporation Act of 1979 (the "Act"), and Mechanical Technical Services, Inc. a Comfort Systems USA Company a Delaware corporation ("Mtech").

RECITALS

PCDC has determined that it is in the best interests of PCDC and the City of Pflugerville, a Texas Home Rule City in Travis County, Texas (the "City"), to facilitate MTECH in constructing a headquarters facility its Regional Headquarters to wit: a Regional Headquarters Facility to be located within the City PCDC has determined that the addition of the Regional Headquarters Facilities within the City will provide significant economic benefits and will further economic development in the City. The economic benefits of the Regional Headquarters Facilities to the City will include, without limitation, the proceeds received by the City from the ad valorem taxes levied upon the premises and equipment of the Regional Headquarters Facilities, and the maintenance of 178 permanent full-time jobs within the City at the Regional Headquarters Facilities.

PCDC and MTECH have agreed to enter into this Agreement in connection with MTECH's construction of a Regional Headquarters Facilities to provide for certain incentives to MTECH and to further define certain obligations of the parties to this Agreement with respect to the construction of the Regional Headquarters Facility and such incentives. This Agreement is required pursuant to Section 40 of the Act.

AGREEMENT

I.

Performance Agreement

1. This Agreement serves as a performance agreement by the parties hereto.
2. MTECH hereby agrees that within 18 months of the execution of this agreement MTECH shall complete construction of its Regional Headquarters Facility, a 30,000 square foot building with a value of approximately \$3,000,000 in Pflugerville, Texas. The Regional Headquarters shall operate at this site for at least 5 years. The completion of construction of the Regional Headquarters Facility shall be evidenced by the issuance of a certificate of occupancy from the City of Pflugerville. The foregoing shall be considered the "Regional Headquarters Facility Requirement".

3. MTECH hereby agrees that Mtech shall employ approximately 178 full time employees that have an average salary of \$40,000 per year plus medical benefits (if so elected by the employee), for a cumulative average annual payroll of \$7,120,000.00 throughout the 5 year duration defined in Section I Paragraph II of this agreement. MTECH will maintain its Regional Headquarters operations in the City of Pflugerville for at least 5 years beginning on the date of the execution of this agreement.
4. MTECH agrees that the Regional Headquarters Facility shall follow all applicable City Codes and Regulations.

II.

Benefit

1. PCDC will pay MTECH \$2,000 per job up to 178 jobs that have an average salary of \$40,000 per year plus medical benefits (if so elected by the employee). After the issuance of a certificate of occupancy for the Regional Headquarters Facility in Pflugerville, Mtech shall provide PCDC written verification via readily available payroll reports through its existing software of full time employment at the Pflugerville Facility. PCDC shall make payments to MTECH quarterly within 30 days of submission of written employment verification. Quarterly payments shall not exceed \$89,000. Total payments under this agreement shall not exceed \$356,000. Ongoing evaluation of Mtech's full time employment head count and average annual payroll may be reviewed in subsequent years on a quarterly basis if requested in writing by PCDC throughout the life of this agreement.

III.

PENALTY

In the event that (i) MTECH fails to fulfill the Facilities Requirements, or (ii) MTECH otherwise fails to comply with its obligations pursuant to this Agreement, and such failure is not cured within 30 days of written notice thereof from PCDC to MTECH, then in any such event, MTECH will immediately pay to PCDC the amount of the Benefit pro-rated on an annual basis as it relates to the combined annual payroll commitment in Section I Paragraph III of this agreement only. This pro-rated penalty for the 5 years ties directly to the running average of combined annual payroll (not employee count) based on a \$40,000.00 average salary throughout the duration of this agreement.

IV.

MICELLANEOUS

Representations and Warranties. This Agreement is being entered into pursuant to Section 40 of the Act. PCDC hereby represents and warrants to MTECH that this Agreement is within its authority and that PCDC has been duly authorized and empowered to enter into this Agreement. MTECH hereby represents and warrants to PCDC that this Agreement is within its authority and that MTECH has been duly authorized and empowered to enter into this Agreement. MTECH acknowledges that the agreement may be terminated and payment may be withheld if this certification is inaccurate.

Mutual Assistance. PCDC and MTECH will each do all things reasonably necessary and appropriate to carry out the terms and provisions of this Agreement.

Successor and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties. Neither party hereto may assign this Agreement without the prior written consent of the other party hereto.

Representations and Warranties by MTECH. If MTECH is a corporation or a limited liability company, MTECH warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of MTECH has been duly authorized to act for and bind MTECH. MTECH acknowledges that the agreement may be terminated and payment may be withheld if this certification is inaccurate.

Franchise Tax Certification. A corporate or limited liability company MTECH certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. MTECH acknowledges that the agreement may be terminated and payment may be withheld if this certification is inaccurate.

Payment of Debt or Delinquency to the Local or State Government. MTECH agrees that any payments owing to MTECH under an agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that MTECH owes the State of Texas, Travis County, Williamson County the City of Pflugerville or any other political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

Child Support Certification. MTECH hereby certifies that none of the officers of the corporation are delinquent in their court ordered child support obligations and shall acknowledge that any agreement with the city may be terminated and payment may be withheld if this certification is inaccurate.

Severability. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be given the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision.

Governing Law. This Agreement shall be governed, construed, applied, and enforced in accordance with the laws of the State of Texas, and shall be performable with venue in Travis County, Texas.

Third Party Beneficiaries. This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary.

Amendments. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

Time. Time is of the essence in the performance of this Agreement.

Attorneys Fees. Should any party employ attorneys to enforce any of the provisions hereof, the party losing in any final judgment agrees to pay the prevailing party all reasonable costs, charges and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.

Notice and Payments. All notices hereunder must be in writing and shall be deemed delivered on the day personally delivered on the third day from the day sent by registered mail or certified mail, return receipt requested with the U.S. Postal Service, or on the day after the day sent by national overnight courier, to the parties at the following addresses, or at such other addresses as shall be specified by notice.

If notice to the PCDC:
Pflugerville Community Development Corporation
Attention: Executive Director
203 West Main Street, Suite E
P.O. BOX 1160
Pflugerville, Texas 78691

If notice to MTECH:

with copy to:

All payments to the PCDC required under this agreement shall be made to:

Pflugerville Community Development Corporation
Attention: Executive Director
203 West Main Street, Suite E
P.O. BOX 1160
Pflugerville, Texas 78691

Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one Agreement.

Performance. Performance by PCDC under the Agreement is dependent upon the approval of the City Council of the City of Pflugerville (Council). If the Council fails to approve this agreement, then PCDC shall issue written notice to MTECH and PCDC may terminate the Agreement without further duty or obligation hereunder. MTECH acknowledges that the approval of this document is beyond the control of PCDC.

Undocumented Workers. Pursuant to Chapter 2264 of the Texas Government Code, MTECH certifies that they will not knowingly employ any undocumented workers. MTECH further agrees that if the business, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), MTECH shall repay the amount of the public subsidy with interest, at the rate of ten percent (10%) per annum from the date this agreement is entered into, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the business of the violation.

DATED this _____ day of _____, 2013.

Comfort Systems USA, Incorporated
Mtech
A Delaware Corporation

By: _____
Name: Bob Fabrizio
Title: President

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION
A Texas Economic Development Corporation

By: _____
Name: Omar Pena
Title: President

STATE OF TEXAS,

COUNTY OF TRAVIS.

BEFORE ME, the undersigned authority, on this day personally appeared Bob Fabrizio, President of Comfort Systems USA Incorporated (Mtech), a Delaware Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and sworn and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated and as the act and deed of the corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2013.

Notary Public in and for
The State of Texas

STATE OF TEXAS,

COUNTY OF TRAVIS.

BEFORE ME, the undersigned authority, on this day personally appeared Omar Pena, President of the Pflugerville Community Development Corporation, a Section 4B corporation incorporated under the Development Corporation Act of

1979, known to me to be the person whose name is subscribed to the foregoing instrument, and swore and acknowledged to me that he executed the same for the purpose and consideration therein expressed, and in the capacity therein stated and as the act and deed of the Pflugerville Community Development Corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 31 day of MAY, 2013.



Notary Public in and for
The State of Texas

